

REVIEW ESSAY

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GUARDING THE TREASURE

Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism*,
Brandeis University Press, Waltham 2004, xxiv + 342 pp.

I. Introduction

The early 1970s in the United States was a turbulent, rebellious period – in which all questions were legitimate, certainly on the college campus. As the rabbinic advisor to the Orthodox *minyán* at Harvard-Radcliffe Hillel, I found myself challenged repeatedly by congregants, colleagues and friends regarding the status of women in Jewish law and ritual. This required me, in turn, to search for honest and appropriate explanations and rationale. This quest has continued to preoccupy me for more than three decades. When I first embarked on this endeavor, I did so with a sense of confidence and commitment. As a “Halakhic Feminist,” I have searched for ways to increase women’s involvement in Jewish spiritual and ritual life, and I remain confident in the inherent viability of the halakhic process. But through it all, my highest commitment has been to the integrity of Halakhah. I firmly believe that without Halakhah as our anchor, we would rapidly lose our direction and *raison d’être*.¹

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- 1 See: (a) Aryeh A. Frimer, “Feminist Innovations in Orthodoxy Today: Is Everything in *Halakha* – Halakhic?” *JOFA Journal*, 5:2 (Summer 2004/*Tammuz* 5764), pp. 3-5. PDF file available online at: <http://www.jofa.org/pdf/JOFASummerFinal1.pdf>; (b) Aryeh A. Frimer, “On Understanding and Compassion in *Pesak Halakha* – A Rejoinder,” *JOFA Journal*, 5:3 (Winter 2005/*Tevet-Shvat* 5765), p. 6. PDF file available online at: <http://www.jofa.org/pdf/JOFAWinter%20pdf.pdf>.

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Because of these sensitivities, I picked up Tamar Ross's recent book "Expanding the Palace of Torah: Orthodoxy and Feminism"² with a great deal of excitement and anticipation. The author comes with wonderful credentials: she is an esteemed professor of philosophy, a traditional Jewess, and a highly respected Orthodox feminist.³ Academically, this extremely analytical, insightful, erudite and well-documented book turned out to be highly challenging because of its interdisciplinary nature, saturated with new jargon and concepts. But it was by no means disappointing. Indeed, more than 300 pages later, I found myself intellectually edified and stimulated by my newfound understanding of the history, philosophy and theology of feminism. Prof. Ross is quite effective at outlining many of the troubling issues concerning the status of women in Jewish law – issues that every thinking, committed Jew should ponder. As a result, this work has received generally laudatory reviews.⁴

Despite all the above, I found the book very unsettling. In her preface (p. xvii), the author indicates that, in addition to scholars of religion and feminism, this book is directed to two other audiences. The first group includes those who have been sensitized by feminism but are desirous of keeping their grip on tradition. The second audience consists of those who are firmly Orthodox, but would like to gain greater insight into what the feminist fuss is all about.⁵ In short, as the title of

2 Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (Waltham, MA: Brandeis University Press, 2004).

3 At one conference on Orthodoxy and feminism, those gathered for her lecture rose in her honor.

4 For previous reviews, see the following: (a) Yehuda Mirsky, "An Uphill Battle," *The Jerusalem Post*, 2 September 2004. (b) Judith Tydor Baumel, "Torah for Everyone," *Ha'aretz*, 3 September 2004, p. B7. (c) Yoel Finkelman, "A Critique of *Expanding the Palace of Torah: Orthodoxy and Feminism* by Tamar Ross," *Edah Journal*, 4:2 (2004, Kislev 5765) – English translation of the following Hebrew article. This review is followed by a rejoinder from Tamar Ross. (d) Yoel Finkelman, "*Hitgalut le-Lo Mashma'ut*," *Akdamot*, 17 (Av 5765), pp. 199-207. This review is followed by a rejoinder from Tamar Ross. (e) Malka Landau, "A Revolutionary Encounter," *Jerusalem Report*, 16 May 2005, p. 39. (f) Miriam Shaviv, "Rethinking the Divine: Addressing the Complicated Relationship between Feminism and Orthodoxy," *Forward*, 20 May 2005. (g) Elizabeth Shanks Alexander, "*Expanding the Palace of Torah: Orthodoxy and Feminism* by Tamar Ross," *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, 10 (2005), pp. 243-49. (h) Daniel Reifman, "Review Essay," *Modern Judaism*, 26:1 (2006), pp. 101-108. (g) Jonathan Groner, "A Woman's Place" – available online at: http://www.socialaction.com/issues/human_civil/women/womans_place.shtml.

5 For negative critiques of Orthodox feminism, see R. Nisson Wolpin and Levi Reisman, "Orthodoxy and Feminism: How Promising a Shidduch," *The Jewish Observer* (April 1997), pp. 8-15; Levi Reisman, "Feminism – A Force that Will Split Orthodoxy?" *The Jewish*

the book suggests, Prof. Ross attempts to span the divide between Orthodoxy and feminism. Unfortunately, I do not believe she has succeeded in this task, and this essay is an attempt to delineate why.

II. Feminism, Halakhah and Cumulativism

The volume opens with an introduction to the philosophy and theology of feminism and its development, proceeding next to feminism's critique of Scripture and Halakhah. From a feminist perspective, the belief in the divinity of the biblical text is presumably at odds with what feminists believe to be its paternalism and male bias. As Prof. Ross explains, feminists see evidence of bias not only in the fact that God is referred to in male terminology, but also by the Torah's very style and presentation, which reflects a typically male way of viewing the world. Thus, the Torah emphasizes action, and the primacy of law and obedience – not experience, emotion and perception, which would have been a more feminine perspective. Feminists are particularly troubled by the different religious roles, obligations and privileges that distinguish between genders in Judaism. The lack of equivalence in Jewish law, with a seeming advantage given to men in family law, personal commandments (e.g., *tzitzit*, *tefillin*, *sukkah*, *shofar* and Torah learning) and public rituals (public prayer, Torah reading, *sheva berakhot*) are also perceived as reflective of a male bias.

To resolve the discord between feminism and Torah, Prof. Ross proposes an approach to divine revelation that she terms "cumulativism." She argues that the revelation at Sinai was not a onetime event limited to the period of Moses; rather, God continues to speak with **new** messages throughout history. Although the new messages may appear to contradict the old, they do not **replace** them but, rather, **build** on them. These fresh messages adapt, modify and transform previous expressions of the divine will, which were appropriate for previous generations. The novel idea of feminism, she writes, should be seen as "the manifestation of higher moral sensibilities," with men "voluntarily ceding the privileges of hierarchy for the sake of greater equality and justice." Rather than challenging traditional Judaism, feminism should be seen as a "new revelation of God's will."

God's will, maintains Ross, can be heard through the rabbinical interpretation of Jewish texts, but also through the consensus of His people. A legal system's ultimate authority, she says, comes not from a set of objective rules or principles in the text, but from the willingness of the community to understand the law in a

Observer (May 1998), pp. 37-47; R. Aharon Feldman, "Review Essay: Halakhic Feminism or Feminist Halakha?" *Tradition*, 33:2 (Winter 1999), pp. 61-79.

certain way and live by it. Any group with an “alternative vision” of the way the law should be interpreted can, within certain limits, decide to live it out, hoping that they will create the conditions for wider acceptance and change. Within the limits of what Orthodoxy deems acceptable, feminists should, therefore, simply forge ahead with their innovations, hoping to create “facts on the ground.”⁶

III. Feminism and Cumulativism: A Second Look

With all her scholarly analysis, I believe the author has obfuscated the focal point of the discussion between feminism and Halakhah. Broadly speaking, feminism is a doctrine about **rights** (*zekhuyot*), advocating equality of opportunity for both genders in all spheres of life, be they social, economic, political or spiritual. It is involved with advancing women’s viewpoint and concerns. Above all, it is deeply preoccupied with personal autonomy and fulfillment, the freedom of the individual to determine the directions s/he will take and the path that makes her/him happiest.

The focus of halakhic Judaism, on the other hand, is *mitzvot* and **obligations** (*hovot*), which, by definition, seriously limit one’s personal autonomy and one’s options for personal fulfillment.⁷ This theme of obligation was impressed upon the Children of Israel while they were still under Egyptian servitude. The cry for liberation was “*shalah et ami ve-ya’avduni* – Let my people go **to serve me**.”⁸ From its very inception, Judaism has spoken of freedom – not as an end – but as a means to serve God.⁹ Religious meaningfulness for a Jew stems from an individual’s response to the Creator’s call to duty.

Furthermore, halakhic Judaism has consistently maintained that the fundamentals of how exactly we are to serve the Almighty were delineated in an

6 See the review of Miriam Shaviv, note 3, *supra*.

7 R. Isaac Breuer, *Concepts of Judaism* (Jerusalem: Israel Universities Press, 1974), pp. 70-76; Justice Moses Silberg, *Kakh Darko shel Talmud [Principia Talmudica]* (Jerusalem: Hebrew University Faculty of Law, 1964), pp. 66-75 – translated into English by Ben Zion Bokser, *Talmudic Law and the Modern State* (New York: The Burning Bush Press, 1973), pp. 61-70; Robert M. Cover, “Obligation: A Jewish Jurisprudence of the Social Order,” *J. Law & Religion*, 5 (1987), pp. 65-74; Michael Wigoda, “*Bein Zekhuyot Hevrativot le-Hovot Hevrativot baMishpat haIvri*,” in *Zekhuyot Kalkaliyot Hevrativot veTarbuyot beYisrael*, ed. Yoram Rabin and Yuval Shani (Tel Aviv: Tel Aviv University, 2004), p. 233 – see especially pp. 234-39; Yoram Rabin, *haZekhut leHinukh veHahova leHanekh, Skivot beNosim Mishpatiyim beZikatam laMikra*, no. 175 (*Ekev*, 5764) – available online at: <http://www.daat.ac.il/mishpat-ivri/skirot/175-2.htm>; Naama Set, “*haHinukh keHovat haTsibbur*,” *Skivot beNosim Mishpatiyim beZikatam laMikra*, no. 219 (*Ekev*, 5765), note 3 and references cited therein – available online at: <http://www.daat.ac.il/mishpat-ivri/skirot/219-2.htm>.

8 Exodus 7:16 and 26; 9:1 and 13. In Exodus 5:1 we also find “*shalakh et ami ve-yahogu li* – Let my people go **to sacrifice** to me” – again a form of service.

immutable Sinaitic revelation 3,500 years ago. This revelation was twofold, and was comprised of a *Torah she-bi-khetav* (Written Law) and a *Torah she-be-al peh* (Oral Law). The former is the Pentateuch, and the Talmud indicates that its revelation began through Moses in Egypt and Mara shortly before Sinai,¹⁰ and continued up to Moses' death in the plains of Moab.¹¹ The Oral Law includes verbally transmitted divine laws, literal and legal definitions of terms and concepts, and various logical and hermeneutical principles designed for use in further interpretation, derivation and expansion of the Law. The Written Law and its oral interpretive counterpart are all considered part of the divine revelation, even though the latter has a substantial human component in its derivation. Halakhic Judaism also affirms the reliability of the *mesora* – that this oral and written **tradition** has been transmitted down to our day essentially unchanged. The links in this unbroken chain of transmission of oral traditions from Moses to the present era have been documented by *Masekhet Avot*, Rav Sherira Gaon,¹² Maimonides,¹³ *Mahzor Vitri*,¹⁴ Meiri,¹⁵ and modern authors as well.¹⁶

Several critical points in the previous paragraph require further amplification. This is because it is these points that create the incompatibility between halakhic Judaism and much of the radical feminism propounded by Prof. Ross.

1. Firstly, halakhic Judaism, as a whole, accepts the Thirteen Maimonidean Principles (*ikkarim*) of faith as its theological backbone.¹⁷ While it is true that

- 9 R. Sol Roth, "Two Concepts of Freedom," *Tradition*, 13:2 (Fall 1972), pp. 59-70.
- 10 In Egypt, see Exodus 12:1ff; *Tanhuma Yashan*, Genesis 11 cited in Rashi to Genesis 1:1 "Amar Rabi Yitshak." At Mara, see Exodus 15:25; *Sanhedrin* 56b.
- 11 *Gittin* 60a "Amar Rabi Yohanan..." and Rashi ad loc.; Nahmanides' Introduction to his Commentary on Genesis.
- 12 R. Sherira ben Hanina Gaon, *Iggeret Rav Sherira Gaon*.
- 13 R. Moses ben Maimon, Introduction to Commentary on *Mishna*; R. Moses ben Maimon, Introduction to *Mishne Torah*.
- 14 R. Simha ben Samuel of Vitri, *Mahzor Vitry*, sec. 424, *Pirkei Avot*, end of Chapter 1. See *infra*, note 43.
- 15 R. Menahem ben Solomon haMeiri, Introduction to *Bet haBehira, Avot*. See also R. Shlomo Zalman Havlin, "Seder haKabbalah leRabenu Menahem haMeiri" (Jerusalem and Cleveland: Ofeq Institute, 1992).
- 16 R. Judah Leib Graubart, *Resp. Havalim baNe'imim*, IV, sec. 86; R. Joseph Elijah Henkin, *Korei haDorot, Luah haYovel shel Ezrat Torah* (1936), pp. 43-60 and additions, p. 162; R. Raphael Halperin, *Atlas Etz Hayyim* (Tel Aviv: Hekdesh Ruah Yaakov, 1973-85) – twelve out of the planned twenty volumes have thus far appeared.
- 17 R. Moses ben Maimon, Commentary to the Mishnah, *Sanhedrin*, Introduction to Chapter 10 (available online in English at: <http://www.members.aol.com/LazerA/13yesodos.html>).

various *ikkarim* have been disputed and modified by recognized Torah scholars throughout the generations, these principles for the most part remain well within the consensus and fundamentally unchanged.¹⁸ The uniqueness of Moses' prophecy is posited in the seventh *ikkar*, the assertion that the text of the *Torah she-bi-khetav* is divine is formulated in the eighth, while faith in its immutability is in the ninth. If indeed the entire Torah was accurately transmitted to Israel by Moses directly from the Almighty, then it follows that each phrasing, each word, indeed each letter, needs to be counted and accounted for. Every student of the Talmud is aware of the "omnisignificance"¹⁹ of the Pentateuchal text, and knows that unnecessary redundancies and curious formulations can have broad halakhic repercussions.

For an in-depth presentation and discussion of these principles, see R. J. David Bleich, *With Perfect Faith* (New York: Ktav, 1983) and Marc B. Shapiro, *infra*, note 18b. These principles are also summarized in the thirteen verses of the hymn *Yigdal* (available online in English at: <http://www.panix.com/~jibaker/Yigdal.html>) and the *Ani Ma'amin* catechism (available online in English at: <http://www.ou.org/torah/rambam.htm>), which respectively open and close the morning prayers in most Ashkenazic prayerbooks. In the Sephardic, Italian, and Yemenite rituals, *Yigdal* is generally recited at the conclusion of the Friday and festival evening services. For a comparison of the three formulations, see Marc B. Shapiro, *infra*, note 18b, p. 19, note 86 and references cited therein. While the authorship of *Yigdal* is unsure, there is consensus that it was written in the early 14th century and entered the daily Ashkenazic liturgy in the 15th century; see Marc B. Shapiro, *infra*, note 18b, p. 18. The presence of *Yigdal* in nearly all standard prayerbooks – irrespective of the *nusah ha-tefilla* – is evidence enough of the general acceptance of the Thirteen Principles throughout Torah Judaism.

- 18 It should be noted that much of the disagreement of scholars with Maimonides was not on the ultimate correctness of his creedal formulation of Jewish faith, but whether the rejection of one of its aspects is grounds for a status of heresy with all its spiritual and halakhic repercussions. For discussion on the binding nature of the Thirteen Maimonidean Principles, see R.J. David Bleich, note 17, *supra* and the following references: (a) R. Marc. B Shapiro, "Maimonides' Thirteen Principles: The Last Word in Jewish Theology?" *The Torah U-Maddah Journal*, 4 (1993), pp. 187-242. (b) R. Marc B. Shapiro, *The Limits of Orthodox Theology: Maimonides' Thirteen Principles Reappraised* (The Littman Library of Jewish Civilization. Oxford: Oxford University Press, 2004). (c) R. Gil Student, "Where Theology Meets Halacha—A Review Essay," *Modern Judaism*, 24:3 (2004), pp. 272-95. (d) R. Yitzchak Blau, "Flexibility with a Firm Foundation: On Maintaining Jewish Dogma," *The Torah U-Maddah Journal*, 4 (2005), pp. 179-91. (e) R. Gidon G. Rothstein, Review of Marc B. Shapiro's *The Limits of Orthodox Theology: Maimonides' Thirteen Principles Reappraised*, *AJS Review*, 29:1 (2005), pp. 169-71.
- 19 James Kugel, *The Idea of Biblical Poetry: Parallelism and Its History* (New Haven and London, 1981), pp. 103-104; R. Yaakov Elman: "'It is No Empty Thing': Nahmanides and the Search for Omnisignificance," *Torah U-Maddah Journal*, 4 (1993), pp. 1-83; R. Yaakov Elman, "Progressive *Derash* and Retrogressive *Pshat*: Nonhalakhic Considerations in *Talmud Torah*," in *Modern Scholarship in the Study of Torah: Contributions and Limitations* (Orthodox Forum Series), ed. R. Shalom Carmy (Northvale, NJ: Jason Aronson, 1996), pp. 227-87, at p. 229ff.; R. Yaakov Elman, "The Rebirth of Omnisignificant Biblical Exegesis in the Nineteenth and Twentieth Centuries," *JSLJ*, 2 (2003), pp. 199-249.

As we have seen above, however, Prof. Ross posits that what feminists perceive as a male bias in the biblical text undermines a belief in its divinity. Unfortunately, as Yoel Finkelman²⁰ has noted, this and many other conclusions in this volume are a derivative of Ross's total acceptance of feministic values as the axiomatic given; she then judges halakhic Judaism by them. But she does not judge feminism by the values and givens of the halakhic tradition. The problematics she cites could well have other interpretations and resolutions. For example, one might well have concluded that this incompatibility indicates that the divine Torah rejects several central temporal feminist values and perspectives.

The assertion by Ross of a male bias is difficult for several additional reasons. The fact is that God is referred to in Hebrew as male, just as are all neutral objects lacking female endings in their Hebrew names. While the Almighty is referred to as a "Man of War,"²¹ God is also referred to as "merciful and kind."²² To take gender seriously in reference to God, be it male or female, is to give the Creator physical attributes, contravening the third Maimonidean principle.²³ As to the Torah's emphasis on action, it is consistent with the Pentateuch's ultimate essence as a book of law, rather than of theology or romantic history.²⁴ In contradistinction to most other religions, Judaism is indeed not a faith-centered religion, though it is not without doctrine. In Judaism, one discharges God's will primarily through action; faith and emotion are secondary.²⁵ To expect it to be otherwise is to misunderstand Judaism's essence.

Ross's critique of the biblical text also reflects an acceptance of higher biblical criticism,²⁶ which echoes in turn a denial of the giving of the entire Torah to Moses (*Torah miSinai*). Prof. Ross's conception of revelation attempts to affirm the divinity of the Torah (*Torah min ha-shamayim*) while accepting the historical development that, according to the view of Biblical Criticism, was key in the creation of the biblical text.²⁷ According to her view, and as noted briefly above, God speaks through

20 See the reviews of Yoel Finkelman, note 4, *supra*.

21 Exodus 15:3.

22 Exodus 34:6 (R. Aryeh Kaplan translation).

23 "For you did not see any form" (Deut. 4:15); third Maimonidean principle, *supra*, note 17.

24 See the first commentary of Rashi to Genesis 1:1.

25 R. Norman Lamm, "Faith and Doubt," *Tradition*, 9:1-2 (Spring-Summer 1967), pp. 14-51. The article was reprinted in slightly more expanded form in *Faith and Doubt: Studies in Jewish Thought* (New York: Ktav, 1972) pp. 1-40. See also R. Marc. B Shapiro, notes 18a and 18b, *supra*.

26 See, for example, the discussion on page 223, third paragraph.

27 For additional and more detailed presentations of Prof. Ross's views on Revelation and Bible Criticism, see Tamar Ross, "The Cognitive Value of Religious Truth Claims: Rabbi

history and through concepts and ideas that the community of believers chooses to accept. Revelation for Ross is not necessarily something that occurred in one period (from Egypt to the plains of Moab); rather, it is an open-ended ongoing process. In such a system, she maintains, God's word is often recognized retroactively; what the people eventually accept – whether part of the initial grant or not – becomes **retroactively** the word of God. Biblical Criticism is not contradictory to such a concept of revelation, because the different layers of the Torah are seen as different layers of revelation, and the different authors as prophets through whom God's word was revealed. While not **denying** the concept of *Torah min hashamayim*, she clearly changes its definition. Presumably, Ross does not accept the idea that the written text of the Torah was revealed only through Moses and that it is unchanging (the seventh, eighth and ninth Maimonidean principles).²⁸

To summarize, then, no matter how one comprehends God “speaking” and “giving” the Torah, traditional Judaism has always understood it to have taken place in a defined time period. It would be problematic enough to speak of *new* revelations, as Prof. Ross does, since such a position is explicitly rejected by the talmudic dicta: “The Torah is no longer in Heaven”;²⁹ “Henceforth, a prophet may not introduce a new matter”;³⁰ and “Matters of Torah cannot be derived from the words of the Prophets.”³¹ If this is the ruling of tradition regarding *bona fide* prophecy, how much more would this be true in the case of “revelations” of uncertain origin. But this issue aside, Prof. Ross does not even affirm the uniqueness of the original Sinaitic revelation, nor does she require that it be an actual event. This alone would render Tamar Ross's novel position, to say the least, very problematic for halakhic Jewry.

A.I. Kook and Postmodernism,” in *Hazon Nahum: Studies in Jewish Law, Thought, and History Presented to Dr. Norman Lamm on the Occasion of his Seventieth Birthday*, ed. R. Yaakov Elman and R. Jeffery S. Gurock (New York: Yeshiva University Press, 1997), pp. 479-527 – republished in Hebrew in *Akdamos* (Jerusalem: Bet Morasha, 2000); Ilana Goldstein Saks also reports on her conversations on this matter with Prof. Ross in her paper “Encounters between *Torah Min Hashamayim* and Biblical Criticism,” *The Atid Journal* (1998), available online at: http://www.atid.org/journal/journal98/saks_sum.asp.

28 See Ilana Goldstein Saks, *ibid.* R. Yitzchak Blau, note 18d, *supra*, bottom of page 180 therein, indicates that Ross denies the significance of dogmas in Judaism altogether.

29 *Bava Metzia* 59b; *Temura* 16a; Jerusalem Talmud, *Moed Katan* 3:1; Maimonides, Introduction to Commentary on *Mishna*, s.v. “*veHineni*”; *Mishneh Torah, Hilkhhot Yesodei haTorah*, 9:1.

30 *Yoma* 80a; *Megilla* 2b and 3a; *Temura* 16a. *Mishneh Torah, Hilkhhot Yesodei haTorah* 9:1; R. Zvi Hirsch Chajes, *Kol Kitvei Maharatz Hayyot*, I, *Torat Nevi'im*, Chapter 1 (*Eile haMitzvot*).

31 *Hagiga* 10b; *Bava Kamma* 2b; *Nidda* 23a. *Encyclopedia Talmudit*, VII, *Divrei Kabbala*, p. 106, at p. 112, sec. 3. R. Zvi Hirsch Chajes, *Kol Kitvei Maharatz Hayyot*, I, *Ma'amar Torat haNevi'im Divrei Kabbalah*.

2. The aforementioned centrality of the *mitzvah* leads us to our second point. The *mitzvot* revealed to Moses were not the same for Jew and gentile; nor were they, for that matter, identical for all Israelites. This lack of identity in religious obligation creates various different religious roles. All Jews share the same level of *kedushat Yisrael*, Jewish sanctity.³² Nevertheless, Jewish law distinguishes between the obligations of *kohanim* (priestly clan), *leviyim* (Levites) and *yisraelim* (other Israelites), as well as between males and females.³³ In particular, women were generally freed from the *mitzvot asei she-ha-zeman grama* (time-determined positive commandments) which include, *inter alia*: *sukkah*, *lulav*, *shofar*, *tefillin* and *tzitzit*.³⁴ In none of the halakhic sources do we find any doubt, question or dispute as to women's fundamental exemption from *mitzvot asei she-ha-zeman grama*. Furthermore, we find no historical evidence indicating that women as a group ever acted otherwise at any time in Jewish history.³⁵ On the contrary, until the Middle Ages, it was rare for women to voluntarily perform a time-bound commandment.³⁶

This exemption is derived in the Oral Law through the use of the hermeneutical principals,³⁷ and is therefore deemed to be **biblical** in origin. This must be the case since the rabbis lack the authority to exempt women from commandments that the Torah itself obligates them to perform.³⁸ Thus, if women are exempt from performing

32 For further discussion, see Aryeh A. Frimer and Dov I. Frimer, "Women's Prayer Services: Theory and Practice. Part 1 – Theory," *Tradition*, 32:2 (Winter 1998), pp. 5-118, text following note 25. PDF file available online at: <http://www.jofa.org/pdf/Batch%201/0021.pdf>.

33 R. Saul F. Berman, "The Status of Women in Halakhic Judaism," *Tradition*, 14:2 (Fall 1973), pp. 5-29.

34 See *Mishna Kiddushin* 1:7; *Tosefta Kiddushin* 1:10; *Talmud Kiddushin* 29a, and *Kiddushin* 33b and ff.

35 Babylonian Talmud, *Eruvin* 96a and Jerusalem Talmud, *Berakhot* 2:3 record that Michal the daughter of Saul was notable in that she wore *tefillin*, while the wife of Jonah would make the triannual pilgrimage.

36 See R. Israel M. Ta-Shma, *Halakha, Minhag, uMetziut beAshkenaz (1000-1350)* (Jerusalem: Hebrew University Magnes Press, 2000), p. 265.

37 *Kiddushin* 34a.

38 A reviewer has challenged this assertion by noting that the rabbis indeed have the authority to abrogate positive Toraidic commandments by requiring inaction. For references and discussion, see "Yesh ko'ah bi-yad hakhamim la'akor davar min haTorah," *Encyclopedia Talmudit*, XXV, pp. 607-57. Classic examples are the prohibition against sounding the *shofar* or shaking the *lulav* on the Sabbath; see *Rosh haShana*, 29b and *Sukkot* 44a. This precedent is irrelevant, however, to women's exemption from time-determined positive commandments, for three reasons. Firstly, use of this rabbinic authority is restricted to a limited number of instances in which fulfillment of the commandment might lead to widespread violation of a serious Toraidic injunction; see R. Zevi Hirsch Chajes, *Kol Kitvei Maharitz Hayyot, Torat*

time-bound *mitzvot*, as Jewish law indeed maintains, then obviously the exemption itself must be Toraidic. Moreover, Maimonides cogently argues that this exemption is rooted in ancient oral tradition.³⁹ The bottom line, then, is that halakhic Judaism maintains that God Himself ordained and commanded **non-identical** roles for men and women.

This clearly does not sit well with feminists. Ross uncritically cites Plaskow, that this is “a profound injustice of the Torah itself in discriminating between men and women” (p. 118), while Ozick believes that the status of women is not an essential feature of Judaism and “is by no means a ‘theological’ question” (p. 103). One resolution is to deny that women’s exemption from time-determined positive commandments is divine, but this violates Maimonides’ eighth *ikkar*. Ross would prefer to believe “that Halakhah was *born* in a broader sociocultural context” (p. 35).

As Orthodox Jews, we believe that the Torah was not born but divinely revealed; it is eternal, and, hence, not resonant of a particular sociocultural context. Since the Torah is immutable, so is gender-related religious obligation. In fact, this lack of equivalence was extended further by the rabbis of the Talmud who followed the Torah’s lead in their edicts (*kol de-takun rabbanan, ke-ein de-oraita takun*).⁴⁰ Thus, according to most halakhic authorities, *Hazal* generally freed women from time-determined rabbinic commandments as well,⁴¹ though there are various exceptions.⁴²

haNevi'im, Hora'at Sha'ah, sec. 6, pp. 37-38. Thus, sounding the *shofar* or shaking the *lulav* on the Sabbath might lead to carrying these ritual items on the Sabbath in the public domain – a prohibition that carries corporal punishment. Secondly, rabbinic scholars have emphasized that the Toraidic commandment is never abrogated. Rather, *Hazal* direct one not to perform a particular *mitzvah* action under certain limited circumstances. See R. Zevi Hirsch Chajes, *ibid.*; R. Elhanan Bunim Wasserman, *Kovetz Shiurim*, II, *Kuntres Divrei Soferim*, sec. 3; R. Jacob Israel Kanievsky, *Kehillot Ya'akov, Berakhot*, sec. 8. However, women were completely exempted from time-determined positive commandments. Finally, *Hazal* used their authority to **prohibit** the performance of a *mitzvah*; however, women are only **exempted** – not excluded – from fulfilling time-determined *mitzvot*. Indeed, these *mitzvot* remain optional for any woman who wishes to carry them out.

39 R. Moses ben Maimon, Commentary to *Mishna, Kiddushin* 1:7.

40 *Pesahim* 30b and 116b; *Yoma* 31a; *Yevamot* 11a; *Gittin* 64b and 65a; *Avoda Zara* 34a.

41 *Inter alia: Tosefot, Berakhot* 20b, s.v. “*beTefilla*”; *Tosefot, Pesahim* 108b, s.v. “*sheAf*.” R. Solomon ben Isaac (Rashi), *Berakhot* 20b, s.v. “*veHayyavin beTefilla*” seems to dissent. See *Encyclopedia Talmudit*, II, “*Isha*,” p. 247; R. Isaac Arieli, *Einayyim laMishpat, Berakhot* 20b, s.v. “*deRahamei ninhu*.”

42 Thus, women are rabbinically commanded in private prayer because it is “a request for mercy” (*Berakhot* 20b and *Tosefot ad loc.*, s.v. “*beTefilla*”), which women require from the Almighty no less than men. Similarly, they are required to read *Megillat Esther* (*Megilla* 4a), light Hanukka candles (*Shabbat* 23a), and drink the four cups of wine at the Passover

For those whose highest commitment is to Halakhah, this lack of identity in religious roles is, once more, a resounding rejection of certain basic feminist values. It suggests that the Torah's set of priorities is not always consonant with those of modern-day radical feminism. Ross acknowledges this on page 94, but sides with feminism.

3. The *Torah she-be-al peh* is primarily concerned with the transmission of oral traditions and the interpretation of the *Torah she-bikhtav*. A Jew's faith in the accuracy and objectivity of the oral tradition is expressed in the eighth and ninth principles of Maimonides. In this regard, Prof. Ross is strongly influenced by "Feminist Relativism." This school maintains that since the Halakhah was interpreted and transmitted (predominantly⁴³) by *males* – one can assume that it is not accurate and dispassionate, but reflects a male perspective. What's more, had the Torah been transmitted and interpreted by women, it would have been substantially different – presumably more sympathetic to women and more resonant with their sensitivities. Ultimately, such a position challenges the objectivity and authenticity of the entire *mesora* – the transmission of Torah and Halakhah from Moses down to our very day – in all aspects, gender-related or not.⁴⁴ For if we are

seder (Pesahim 108a/b) "*she-afhen hayu be-oto ha-nes*" (because they [women], too, were included (or involved) in the same miracle [of salvation])." Consequently, women must thank and praise the Lord as do their male counterparts. As an aside, we note that Prof. Ross translates "*she-afhen hayu*" as "they too were **witness** to the same miracle" (see p. 16 first line; note 43, p. 255; and note 18 on p. 280). From the Jerusalem Talmud (*Megilla* 2:5), Rashbam (*Pesahim* 108b, s.v. "*sheAf*"), *Tosefot* (ibid., s.v. "*sheAf*" and s.v. "*hayu*") and other *rishonim*, it is clear that it was the women's **involvement** as participants or protagonists in the events that is the reason for their obligation.

43 Interestingly, R. Simha ben Samuel of Vitri, *Mahzor Vitry*, sec. 424, *Pirkei Avot*, end of Chapter 1, lists the prophetesses Deborah and Hulda as links in the chain of tradition.

44 It is very important to note that the aforementioned *mesora* contains two types of *derashot* (hermeneutical derivations): *midrash mekayem* (supportive derivations, also referred to as *halakha kadma li-derash*) and *midrash yotzer* (creative derivations, also referred to as *derash kadam le-halakha*). A very large percentage of Halakhah was passed orally from generation to generation uncontested, but without an explicit source. In this case, the *midrash mekayem* is suggesting a *possible* source; but there never was any doubt about the law's correctness – which may well go back to Sinai. At other times, *Hazal* used the thirteen hermeneutical principles to expand into new areas – *midrash yotzer*. See Jacob Nachum Epstein, *Mevo 'ot leSifrut haAmoraim* (Tel Aviv: Dvir, 1962); Ezra Zion Melamed, *Pirkei Mavo LeSifrut HaTalmud* (Jerusalem: Galor, 1973); Menachem Elon, *haMishpat halvri* (Jerusalem: Hebrew University Magnes Press, 3rd edn., 1988); Menachem Elon, *Jewish Law: History, Sources, Principles* (Philadelphia: The Jewish Publication Society, 1994). From what Tamar Ross claims, everything is suspect.

to follow this logic, then an affluent scholar should come under suspicion regarding his rulings on the poor, and vice versa. If he were a farmer, then he should be deemed unreliable when it comes to agricultural laws. Nonetheless, the Torah has explicitly commanded us to heed the words of the rabbinic scholars who are the *ma'atikei ha-shemua*, the transmitters of tradition and the Oral Law.⁴⁵

Prof. Ross, throughout this work, indeed challenges *Hazal's* authority as interpreters of the Torah, and/or contests the accuracy of the transmission of the oral tradition. For example, on page 88, Ross is troubled by *Hazal's* exclusionary reading of the word “*ben*” as referring to a son, rather than a daughter.⁴⁶ In a related instance, on page 89, she challenges Maimonides' barring women from being appointed as queen.⁴⁷ Note 61 thereto makes it clear that she is aware that the source of this ruling is explicitly derived in the *Sifre*, “*melekh – ve-lo malka*”;⁴⁸ but that doesn't prevent her from concluding that the exclusion is arbitrary. The binding authority of every such *derasha* requires, to her mind, a rationale or explanation that *she* can accept. The divinity of the *derasha* or its interpretive accuracy is irrelevant. What's more, the institutional authority of *Hazal* also has little force. This confrontational stance with regard to *Hazal's derashot* places her beyond the pale of Orthodoxy and traditional Torah Judaism.⁴⁹

45 Deuteronomy 17:11; Maimonides, *Sefer haMitzvot, Asei* 174 and *Lo Ta'ase* 312 (the transmitters of the oral tradition are referred to as *ba'alei ha-kabala*); Maimonides, Introduction to his Commentary on the *Mishna (ma'atikei ha-shemua)*; Maimonides, Introduction to the *Mishne Torah (ha-ma'atikum Torah she-be-al peh)*; *Mishne Torah, Hilkhot Mamrim* 1:1-2; Nahmanides, Commentary to Deuteronomy 17:11; *Hinukh*, Commandment 495. This subject was developed extensively by R. Joseph B. Soloveitchik; see “*Keviat Moadim al pi haReiyah veAl Pi haHeshbon*,” *Or haMizrach, Gilyon haMeah (Tishrei-Tevet 5741)*, pp. 7-24, sec. 7 at pp. 20-21; “*Shenei Sugei Masoret*,” in *Shi'urim leZekher Aba Mori z"l*, I, pp. 220-39; “*Kevi'at Mo'adim al Pi haReiya ve-al Pi haHeshbon*,” in *Kovetz Hiddushei Torah – haGram ve-haGrid Soloveitchik*, pp. 47-65, at p. 59ff.; *Iggerot haGrid haLevi, Hilkhot Kiddush haHodesh* 5:1-2, secs. 8-9, pp. 86-88; cited by R. Zvi (Hershel) Schachter, *Nefesh haRav* (Jerusalem: *Reishit Yerushalayyim*, 1994), p. 34ff.

46 The reason is simple: if the text had not wanted to exclude a daughter, it could have used the non-gendered term “*zera*” (seed). See *Encyclopedia Talmudit*, Vol. 3, “*Ben*.” R. Meir Leibush Malbim, *haCarmel*, “*Ben Bat*.”

47 *Mishne Torah, Hilkhot Melakhim* 1:5.

48 Deuteronomy 17:15, *Sifre* ad loc., *piska* 157.

49 See Maimonides, *Mishne Torah, Hilkhot Teshuva* III:8, who includes under those who deny the Torah (*ha-kofrim baTorah*) those who deny the authority of *Hazal* as interpreters of Torah (*ve-ha-makhish magideha*). In this regard, see the transcribed remarks of R. Joseph B. Soloveitchik entitled “*Talmud Torah and Kabalas Ol Malchus Shamayim*” – available online at: http://mail-jewish.org/rav/talmud_torah.txt; R. Zvi (Hershel) Schachter, *Nefesh haRav* (Jerusalem: *Reishit Yerushalayyim*, 1994), p. 37; and the sources cited in note 45, *supra*.

Even if Ross were to admit that the *Torah she-bikhtav* and *Torah she-be-al peh* were passed on loyally (which she doesn't), she would (and does) charge that later decisions are biased and suspect because the rabbis, *poskim* and codifiers were male. In this regard we note that there is a general belief in Torah Judaism that Halakhah, as it is today, did not take a "wrong turn" and that it correctly reflects *retzon haBorei* (the will of the Creator). What's more, while Judaism never claimed rabbinic infallibility, it has long maintained that there is an element of divine guidance in the course of Jewish law.⁵⁰ Thus, even if it were to occur that the ruling of a particular halakhic authority was incorrect – despite his **honest** search for truth⁵¹ – the sincere give and take of the halakhic system itself would correct the deviation. It is for this reason that the *mesoret ha-pesak* – the flow of halakhic decision-making – while not singularly conclusive, does, nonetheless, carry much weight with halakhic authorities.

Besides, the suggestion that Halakhah would be different if we had women rabbis and scholars is belied both by theory and fact. Prof. Steven Fridell's study reveals that even though women have little day-to-day input in the development of Jewish law, Halakhah incorporates the major components of what would be "female jurisprudence."⁵² In addition, over three decades of personal experience indicates

50 See *Bava Batra* 12a "[Prophecy] was not taken from the scholars" and the comments of Nahmanides and *Ritva* ad loc.; Rabbi Judah haLevi, *Kuzari* 3:41; Nahmanides, Num. 11:16 and Deut. 17:11; R. Samuel ben Ali, cited in S. Assaf, *Tarbitz*, 1:2 (1930), pp. 64-66 (cited in Lawrence Kaplan, "Da'as Torah: A Modern Conception of Rabbinic Authority," in *Rabbinic Authority and Personal Autonomy* [Northvale, NJ: Jason Aronson, 1992], pp. 1-60, note 68); *Shiltei Giborim* to *Mordekhai*, *Shabbat*, Chapter 2, sec. 265, no. 5; R. Jonathan Eibenschutz, *Urim veTumim*, *H.M.*, sec. 25 on *Kitzur Tekafo Kohen* (nn. 123-24), 48b; R. Zadok haKohen of Lublin, *Mahshevet Harutz*, pp. 6a-b; R. Moses Sofer, *Resp. Hatam Sofer*, *E.H.*, II, no. 102, s.v. "laZeh"; R. Hayyim Halberstam, *Resp. Divrei Hayyim*, *Y.D.*, II, sec. 105; R. Avraham Yeshayahu Karelitz, *Letters of Hazon Ish*, 1:15 and 2:14; R. Avraham Yeshayahu Karelitz, cited by R. Zvi A. Yehuda, "Hazon Ish on Textual Criticism and Halakhah," *Tradition*, 18:2 (Summer 1980), pp. 172-80, at p. 175: "The hand of Providence must be seen in the historical evolution of *halakha*"; R. Moses Shternbuch, *Mo'adim uZemanim*, IV, sec. 274, s.v. "u-veYoter halo"; R. Yaakov Elman, "Progressive *Derash* and Retrogressive *Pshat*: Nonhalakhic Considerations in *Talmud Torah*," in *Modern Scholarship in the Study of Torah: Contributions and Limitations* (Orthodox Forum Series), ed. R. Shalom Carmy (Northvale, NJ: Jason Aronson, 1996), pp. 227-87, at p. 242 ff. R. Yaakov Tendler reported to R. Dov I. Frimer in 1972 that this was also the view of his sainted grandfather, R. Moses Feinstein.

51 For a discussion on how to determine an honest search, see *supra*, notes 1a and 1b.

52 Steven F. Fridell, "The 'Different Voice' in Jewish Law: Some Parallels to a Feminist Jurisprudence," *Indiana Law Journal*, 67 (1992), pp. 915-49. I thank Joel B. Wolowelsky for bringing this article to my attention.

that, like men, the more serious a *talmida hakhama* (or *talmidat hakham*) a woman becomes, the greater her confidence in the integrity of Halakhah and her commitment to the halakhic system.^{52*}

4. As should by now be clear, Ross's "cumulativism" certainly cannot be entertained by an Orthodox Jew who accepts *Torah miSinai* and the immutability of Torah. Indeed, her theology closely resembles that of the Conservative movement, with her conception of cumulative revelation more strongly linked to Solomon Schechter's notion of "Catholic Israel" (and some of its later reformulations)⁵³ than with Orthodox ideology. As the ninth Maimonidean principle teaches, "the Torah will never be abrogated... and nothing will be added to it or detracted from it, neither in the Written Torah nor in its [orally transmitted] interpretation (*lo baktuv ve-lo ba-peirush*), as it says, '...you shall not add to it, nor diminish from it' (Deuteronomy 13:1)".⁵⁴ *Retzon Hashem* (God's will) is unchanging, since God is unchanging. The *Shelah* (R. Isaiah Horowitz), cited by Ross on page 197, who speaks of the voice of God that is unceasing, is referring to the ever-increasing insights that we obtain into the original Sinaitic revelation through the ongoing interpretive process.⁵⁵ The revelation is expanding in the sense of new insights and applications of the originally revealed rules and principles – but not that there are radically new rules and novel principles being revealed. Right on point is the

52* See relevant comments of Aviad Stollman, "Review Essay: 'A Lifetime Companion to the Laws of Jewish Family Life,' by Deena R. Zimmerman," *Meorot*, 6:1 (*Shevat* 5767), p. 4ff.

53 Seymour Siegel, "The Meaning of Jewish Law in Conservative Judaism: An Overview and Summary," in *Conservative Judaism and Jewish Law*, ed. Seymour Siegel with Elliot Gertel (New York: Rabbinical Assembly, 1977), pp. 13-26; Neil Gillman, *Conservative Judaism: The New Century* (Springfield, NJ: Behrman House, Inc., 1993); Elliot N. Dorff, *Conservative Judaism: Our Ancestors to Our Descendants* (New York: United Synagogue, 1996).

54 R. Moses ben Maimon, note 17, *supra*. This is the reading in the Kafah edition (Jerusalem: Mosad haRav Kook, 5763-5767); however, the standard Al-Harizi translation reads "...neither in the Written Torah nor in the Oral Law (*lo baTorah she-bi-khtav ve-lo baTorah she-be-al peh*)." On the question of which aspects of rabbinic tradition qualify as divine Oral Law according to Maimonides, see R. Gerald J. Blidstein, "Oral Law as Institution in Maimonides," in *The Thought of Moses Maimonides: Philosophical and Legal Studies*, ed. Ira Robinson, Lawrence Kaplan and Julien Bauer (Lewiston, NY: Edwin Mellen Press, 1990), pp. 167-82.

55 This formulation of the *Shelah* is stated explicitly by R. David ben Moses of Navardok, *Galya Massekhet*, II (*Derush*), folio 42a-c and by *Savi Mori zt"l*, R. Moses Zev Kahn, Introduction to *Resp. Tiferet Moshe* (Chicago: 1953), p. 6. This view also finds clear expression in the writings of other scholars: R. Zvi Hirsch Chajes, *Hiddushei Maharitz Hayyot*, *Megilla* 19b; R. Barukh haLevi Epstein, *Torah Temima*, Exodus 24:12, note 28; R. Jacob Ariel, Introduction to *Resp. beOhala shel Torah*, II, *O.H.*, pp. 7-8.

talmudic statement: “Even that which a distinguished student will teach in the future before his teacher has been said to Moses at Sinai. And why do I need to know this? Because someone will come along and say: ‘See this new revelation!’ His fellow should respond to him: ‘This has been revealed long ago.’”⁵⁶

Tamar Ross is not unaware of the clash between “cumulativism” and the ninth *ikkar*. Indeed, she repeatedly cites Marc Shapiro’s encyclopedic work on the Thirteen Maimonidean *ikkarim*⁵⁷ to demonstrate that, although these principles are now commonly viewed to be accepted in Orthodoxy, they were not always so. However, as noted above, the challenges to these principles have for the most part been minor. Furthermore, these challenges have nothing to do with the ninth *ikkar*. Those who dispute the Rambam, such as R. Joseph Albo and R. Jacob Emden,⁵⁸ claim that God “could” have another revelation, not that another has ever occurred. Furthermore, this new revelation is contingent on its being relevant to the whole nation, similar to that of *ma’amad har Sinai*. But, as discussed above, Ross’s understanding of revelation is not the same as that of R. Emden and R. Albo. She sees revelation in terms of individuals arriving at a new ethical understanding. From Ross’s perspective, the Torah was never really given at any moment in time. The Torah, the divine will, is continually changing, as each generation sees its truth in the Torah.⁵⁹

Whether or not Prof. Ross’s theology is ultimately judged to be within the ambit of Orthodoxy, it is certainly not what has historically been understood as traditional dogma even in its broader sense.

5. We closed Section II with Ross’s assertion that within the limits of what Orthodoxy deems acceptable, feminists should simply forge ahead with their innovations, hoping to create “facts on the ground.” This is consistent with her view (page 43) that the validity of Torah comes – not from its divinity – but from the fact that people accept it. Rejecting just such an approach is the noted *posek*,

56 Jerusalem Talmud, *Pe’ah* 2:6. Similar statements are found in the Babylonian Talmud, *Megilla*, 19b and *Safra*, Leviticus 25:1. See also R. Eliezer Waldenberg, *Resp. Tzitz Eliezer*, Introduction to Vol. XIV; R. Jehiel Mikhel Epstein, *Arukh haShulkhan*, O.H., 588, sec. 9.

57 See note 18a and b, *supra*. The author would like to thank Prof. Marc Shapiro for clarifying for me many of the issues raised regarding the Maimonidean *Ikkarim*.

58 R. Joseph Albo, *Sefer haIkkarim*, III:13-20; R. Jacob Emden, *Migdal Oz*, secs. 26b-c. For discussion, see Marc Shapiro, notes 18 and b, *supra*.

59 See references in note 27, *supra*, and Tamar Ross, “Reflections on the Possibilities of Interfaith Communication in our Day,” *Edah Journal*, 1:1 (Marheshvan 5761). We have already cited Yitzchak Blau’s assertion, note 28, *supra*, to the effect that in actuality Prof. Ross denies the significance of dogmas in Judaism altogether.

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R. Moses Feinstein, who comments:⁶⁰

Indeed, all women are permitted to perform even those commandments that the Torah did not obligate them [to do], and they have fulfilled a *mitzvah* and [receive] reward for the performance of these commandments... Nevertheless, it is obvious that this is so only if her soul desires to fulfill *mitzvot* even though she is not commanded [to do so]. However, since her intention is not such, but rather, she is motivated by her grievance with God and His Torah, her deed is not to be considered a *mitzvah*-action at all, but, on the contrary, a forbidden action. For she is violating the prohibition of heresy – since she thinks that the laws of the Torah are subject to change – [not only in thought, but] also in deed, which is [all the more] serious.

That a prominent and sensitive halakhic authority such as R. Feinstein would characterize the type of behavior advocated by Prof. Ross as heresy must carry great weight with any Jew seriously concerned with Jewish law.

IV. Ross's Critique of Halakhah

Prof. Ross's mastery is in philosophy; nevertheless, much of the book deals with a scathing critique of Halakhah. Unfortunately, the citations in this section of the book are overwhelmingly from secondary sources, strongly suggesting that she has little first-hand acquaintance with the primary sources she is citing or critiquing. This is borne out by the plethora of serious errors that will be detailed in the next section. She is untrained in legal distinctions, and repeatedly attacks a legal system whose workings and methodology she does not seem to fully understand.⁶¹ She demands a single explanation for a broad spectrum of laws regarding women, appearing to be insensitive to the complexities and nuances of both law and life.⁶² In addition, from its title, this tome is presumably about **Orthodoxy** and feminism. Hence, it is somewhat surprising that Ross does not hesitate to rely extensively on – and reference works authored by – those whose theology is anything but Orthodox, i.e., who reject the binding and divine nature of *Torah she-bikhtav* and *Torah she-be-al peh*.

When she discusses feminism, her presentation is for the most part respectful and uncritical. While the author asks many thoughtful and probing questions, she is most often unwilling to seriously consider the answers tradition has to offer. On

60 R. Moses Feinstein, *Resp. Iggerot Moshe, O.H.*, IV, sec. 49.

61 The second paragraph on p. 87 is a classic example.

62 See the discussion on page 94 and elsewhere.

the contrary, in the clash between feminism and Halakhah, one perceives a clear bias **against** Halakhah. When it comes to the traditional stance, she is negative, critical and one-sided. Her language is charged, and at times derogatory. She will cite minority rabbinic opinions, no matter how marginal they may be, which buttress her claim of a bias against women in Halakhah – despite a sympathetic majority position. She often references positions she finds distasteful, although they find no expression in the way Judaism is lived or practiced today.

Throughout her critique of Halakhah, Tamar Ross repeatedly confuses the law with its proposed rationales. The latter are merely non-binding suggestions, human attempts to understand the divine edict. Proposed rationales may contradict each other and shift from one society and culture to another – while the Halakhah remains non-fluxional. As a result of this confusion, Prof. Ross seems to believe that if she can succeed in refuting or placing in question a proposed rationale, she will have effectively undermined the specific Halakhah, which is then no longer binding or relevant. (We will return to this issue in point 14 below.)

She is focused on asking questions – many good ones – but less receptive to seriously considering the answers of tradition – many good ones – to these very questions. The few explanations she does cite, often only in the endnotes, are usually categorized as “apologetics,” to be understood as lame defenses to valid questions. The feminist analysis is her given starting point; hence, the response of Jewish tradition, no matter how cogent, can never prevail against the feminist critique. While apologetics in the service of Jewish tradition are looked down upon, Ross believes that they can readily be enlisted into the service of feminism, “enabling the transition from one generation and mind-set to another” – namely, from one less sympathetic to feministic values to another more sympathetic.

Furthermore, she has difficulty with the halakhic process as well. “The problem is,” writes Ross, “... the selective reading of present day Orthodoxy, which prefers to ignore all those Midrashic sources that speak, for example, of the role that Moshe *Rabbenu*’s active input ... had in transmitting the word of God.” In addition, “...the decisions of *posekim* regarding when to employ ‘the open playfulness of *midrash aggadah*’ ... and when to limit themselves only to close readings of texts and their minutiae are themselves judgments that *posekim* make daily.” But, contrary to her charge,⁶³ the rules are quite clear – and what she observes as a close reading of the

63 Not surprisingly, Conservative Jewish scholars, as well, have prided themselves on involving *midrash aggada* in *pesak*; see Seymour Siegel, *supra*, note 53. As far as her reference to Moshe *Rabbenu*’s active input in transmitting the word of God, all authorities agree that nothing was included in the Torah without God’s direction. See discussion of R. Marc Shapiro, *supra*, note 18b, p. 113 and note 165.

sources is by no means a “modern” phenomenon. When it comes to interpretations of the biblical text that have no halakhic repercussions, there is no fixed or binding tradition. Hence, each scholar – indeed, each individual – can be “playful” and creative with the text.⁶⁴ However, when the interpretations affect law and practice, the readings must be careful and close, and correspond to halakhic tradition – for we are attempting to determine the divine will of how we should act. It is for this very reason that *Hazal* themselves ruled that “one may not learn [Halakhah] from *aggada*.”⁶⁵

And this brings us to a more fundamental point.⁶⁶ In the absence of prophecy, the halakhic process is Man’s attempt to try and discover the divine will – *retzon haBorei*. The utilization of the rules of *pesak*, as well as their application to a particular case, is based on tradition and close intellectual analysis. In addition, relevant precedent needs to be reviewed and scrutinized. Admittedly, since we are dealing with human beings, what one considers to be “the proper” understanding of the rules and precedent is often a matter of discretion and subjective preference. One cannot always prove that one’s analysis or interpretation is the absolutely correct *peshat*. Nonetheless, one’s analysis and understanding are always subject to peer review by other *talmidei hakhamim*, and can be either confirmed or rejected – as with any academic discipline. In this context, consensus and “*rov poskim*” is often invoked as an indication that a certain approach or result is the more compelling view^{66*} – even though majority is not always an absolute arbiter or guarantor for

64 R. Samuel haNagid, *Mevo haTalmud*, s.v. “*veHagada*”; R. Hai Gaon and R. Sherira Gaon, *Otzar haGeonim, Perushim, Hagiga* 14a; R. Abraham ben Moses Maimonides, *Ma’amar al Derashot Hazal*, s.v. *haHelek haRevi’i*; R. Moses ben Nahman (Nahmanides), *Vikuah haRamban – Milhamot haShem* (Chavel edition), sec. 39 and notes of R. Chaim David Chavel thereto; R. David Kimhi, Samuel I, 28:24; R. Isaac Abravanel, Samuel II, 11:3; R. Hayyim ben Atar, *Or haHayyim*, Deuteronomy 32:1; Rashbam, Ibn Ezra, R. Isaac Caro (*Toldot Yitzhak*), Abravanel and R. Bahya to Deuteronomy 26:5 (*arami oved avi*) and related discussion of R. Isaac Lampronti, *Pahad Yitzhak*, “*Avraham ben Ezra*”; R. Yosef Eliyahu Henkin, cited by R. Yehuda Herzl Henkin, *Equality Lost* (Jerusalem: Urim, 1999/5759), p. 6; *Encyclopedia Talmudit*, I, *Aggada*, sec. 4, p. 132 and references cited therein. See also R. Samuel Shtrashon, *Hagahot Reshash, Shabbat* 70b. Two dissenting opinions who maintain that the aggadic statements of *Hazal* are also based on oral tradition are R. Elijah Mizrahi, Deuteronomy 26:5 and R. David Ibn Zimra, *Resp. Radvaz*, IV, sec 232.

65 Jerusalem Talmud, *Pe’ah* 2:6; Jerusalem Talmud, *Hagiga* 1:8. See also *Encyclopedia Talmudit*, I, *Aggada*, sec. 4, p. 132; Aryeh Abraham Frimer, “*beHagdarat haNes sheAlav Mevarkhim birkat haNes*,” *Or haMizrach*, 31, 3-4 (110-111, *Nisan-Tammuz* 5743), pp. 308-22, at p. 317, s.v. “*Amnam*.”

66 See discussion in Aryeh A. Frimer, *supra*, note 1a.

66* See *Hinukh*, Commandment 78; R. Avraham Yeshayahu Karelitz, *Hazon Ish, Zera’im*, sec. 1, no. 1.

absolute truth. But the most important element of *pesak* is intellectual honesty. The search for *retzon haBorei* is not the place for playfulness and unbridled creativity. But Prof. Ross denies all this because, as noted above, to her mind there is no absolute divine will.

Most regrettably, this volume is deeply marred throughout by a plethora of errors in fact and analysis, a small selection of which now follows.⁶⁷

(1) On page 15, Ross writes: “A few rabbinic sources appear to assume that all the commandments were at the outset addressed only to men.” To justify this statement, she refers (in note 40) to *Tosefta Berakhot* 6:23 [not 6:22 as written]. The latter cites Rabbi Judah as requiring a male to recite the benediction “...who has not made me a woman, because they [women] are not obligated in *mitzvot*.” This could readily mean that women are not obligated in **some** *mitzvot*, but Ross understands this to indicate that they are not obligated in **any** *mitzvot*. Sadly, Ross’s reading is totally untenable in light of the explicit and undisputed Mishnah in *Kiddushin*, which states that women are obligated in **all** commandments, except those positive commandments that are time determined.⁶⁸ Instead of quoting this authoritative Mishnah, she cites instead two medieval scholars, R. Menahem haMeiri (*Bet haBehira*, *Berakhot* 60b) and R. Eliezer ben Yoel haLevi (*Ra’avya*) “who understand the *Tosefta* as saying ... some *mitzvot*.” Studying these sources in their entirety makes it clear that this is actually the Meiri’s reading in the *Tosefta* and that of the *Ra’avya* in the Jerusalem Talmud.

Nevertheless, to corroborate her unprecedented “**any** *mitzvot*” suggestion, she cites R. Solomon Adret (*Rashba*) to *Kiddushin* 34a, who indicates that “all the Torah was written in the male gender.” Unfortunately, she errs twofold. Firstly,

67 Several other more minor errors: (1) Regarding p. 16, first line, “*she-afhen hayu be-oto ha-nes*” is translated as “they too were **witness** to the same miracle.” This translation also appears in note 43, p. 255; and note 18 on p. 280. This is incorrect and should be “for they, too, were involved in the same miracle”; see end of note 42, *supra*. (2) On page 25, penultimate line, Ross refers to R. Nahman’s request to “hand [his wife] Yalta the customary cup of wine **before** the grace after meals” (*Berakhot* 51b). Actually, the purpose of passing the cup was for her to drink from this “cup of blessing” (*Shulkhan Arukh* 183:4). However, this cup is only passed around and drunk **after** *birkat ha-mazon*; see *Pesahim* 103b and *Shulkhan Arukh* 190:1. (3) On p. 26, 6 lines from bottom, Prof. Ross states that women in the Reform movement were granted equal rights and obligations in synagogue ritual dating from 1820. Actually, a quick web search revealed that women were allowed to be counted in a *minyan* only in 1845, to sit together with men in the synagogue in 1929, to receive *aliyot* in the 1940s, to serve as cantors in 1955, and to be ordained as rabbis in 1972. (4) Note 87, appearing at the end of the penultimate paragraph on p. 45, is missing from the endnotes on p. 266.

68 See note 34, *supra*.

there is no commentary by the *Rashba* to *Kiddushin* 34a. Secondly, the statement “all the Torah was written in the male gender” actually has a meaning opposite to the way Ross understands it. In point of fact, it explains why women are generally to be *included* in all Torah obligations, unless explicitly excluded by the use of the superfluous word “man.”⁶⁹

(2) On the same page, she writes that the *mitzvah* is to don “phylacteries (*tefillin*) in the course of the morning prayer.” Actually, the *mitzvah* is to wear *tefillin* all day long, and the obligation has no formal connection to the morning prayers. However, because the wearing of *tefillin* requires special sanctity and intention, the medieval custom became to limit *tefillin* wearing to the morning prayers.⁷⁰

(3) On page 16 (and again on page 29), she discusses women in community leadership roles and cites the prohibitive view of Maimonides, who bars women from all such positions. She neglects to mention that the majority of medieval scholars were lenient. Nor does she seem to be aware that, according to most modern authorities, democratic appointments circumvent even Maimonides’ objections.⁷¹ Furthermore, the rationale she cites for Maimonides’ stringency, the honor of the community (*kevod ha-tzibbur*), appears nowhere in the sources. Indeed, *kevod ha-tzibbur* is only a rabbinic construct, while the prohibition against women in communal leadership roles (*serara*) is, according to Maimonides, biblical in nature.

(4) On page 17, she links the absence of female leadership in the ultra-Orthodox community with the objection in some isolated Hasidic circles to women driving a car. There is no necessarily compelling connection, as a reading of the original responsa literature will verify.⁷² The former is a communal matter, while the latter is private in nature.

(5) In discussing the Jewish family on the same page, Prof. Ross contends that the Halakhah is designed to subordinate women. As a result, therefore, she is astounded that Halakhah frees women from the obligation to wed, procreate or care for children. Should one, however, abandon Prof. Ross’s *a priori* premise and adopt a view such as the thoughtful and sensitive perspective presented by R. Saul Berman,⁷³ then these halakhot are very much in keeping and congruous with the

69 *Tosafot*, *Yoma* 43a, s.v. “*ve-Natan*”; *Tosafot*, *Nazir* 29a, s.v. “*leZakhar u-liNekeiva*”; *Tosafot*, *Erakhim* 2b, s.v. “*leRabbot haIsha*.”

70 *Shulkhan Arukh*, *O.H.*, sec. 37, no. 2.

71 For further discussion, see Aryeh A. Frimer, “*Nashim beTafkidim Tzibburiyim biTekufa haModernit*,” in “*Afikei Yehudah – Rabbi Yehuda Gershuni zt”l Memorial Volume*,” ed. R. Itamar Warhaftig (Jerusalem: Ariel Press, 5765/2005), pp. 330-54. HTML file available online at: <http://www.daat.ac.il/daat/mishpach/maamad/nashim-2.htm>.

72 R. Shmuel HaLevi Wosner, *Resp. Shevet haLevi*, IV, sec. 1, no. 2.

73 See note 33, *supra*.

overall role of women in halakhic Judaism. Briefly, according to R. Berman, males have divinely **mandated** roles of *Kohen*, *Levi* and *Yisrael*, as well as husband and father – roles clearly defined by a series of obligations and prohibitions. In contradistinction, a woman’s role of wife, mother and homemaker is only a **preferred** one, which the Torah hopes that women will voluntarily assume. To assist women in implementing this role, the latter was protected by giving women greater flexibility and freeing them from time-bound positive commandments and those obligations that demand communal appearance.

(6) In the text on page 20, Prof. Ross cites Plaskow and Adler, who charge that women are nowhere mentioned at the giving of the Torah, only to refer in note 92 to a few of the hundreds of *midrashim* who naturally and readily understand the Toraidic text to be inclusive. The rabbinic interpretations are of course dubbed apologetics. Even if that were so, these *midrashim* clearly demonstrate *Hazal*’s almost instinctive predisposition to view women as integral to God’s revelation to *Klal Yisrael*.

(7) On the next page she charges: “Standard prayers are also phrased with reference to men only. The female pronoun appears only in brackets....” This is another groundless, broad-sweeping charge, since nearly all the standard prayers are gender neutral. The only possible exceptions are the *birkhot ha-shahar*, and in this case the *poskim* **extensively** discuss the formulation that should be used. Thus, upon waking and in the prayer “*Elokai, neshama...*,” women should say “...*modah ani le-fanecha*” – not the masculine-gendered “*modeh*.”⁷⁴ Indeed, this is the text found not only in the popular Israeli *Siddur Rinat Yisrael*, but also the Roedelheim *Siddur Sfat Emet* – which was probably the most widely used *Siddur* in the Orthodox communities of pre-war Germany. Similarly, many authorities⁷⁵ are of the opinion

74 R. Shlomo Zalman Auerbach, *Halikhot Shlomo, Hilkhote Tefilla*, sec. 2, *Devar Halakha*, no. 5; R. Efraim Greenblatt, *Resp. Rivevot Efrayim*, I, sec. 37, no. 2; *Siddur Rinat Yisrael*, ed. R. Solomon Tal (Jerusalem: Moreshet, 5743); *ha-Siddur le-Bat Yisrael* (Jerusalem: Yeshivat Ohr ve-Derekh, 5748); *Siddur Tefillat Hana*, ed. R. Isaac Bar-Da (Ramat Gan: 5746); *Siddur Hazon Ovadiah ha-Shalem* (Jerusalem: Yeshivat Hazon Ovadiah, 5748); R. Isaac Yosef, *Dinei Hinukh Katan uBar Mitzva, Kuntres Dinei Hinukh Katan*, sec. 1.

75 R. Hayyim Joseph David Azulai, *Kesher Godel*, sec. 5, no. 22; R. Joseph Hayyim, *Od Yosef Hai, Va-Yeshev*, sec. 9; R. Jacob Hayyim Sofer, *Kaf ha-Hayyim, O.H.*, sec. 46, no. 42 in the name of the *Pri Hadash*; R. Judah Samuel Ashkenazi, *Siddur Beit Oved*; R. Jacob Zevi Meklenburg, *Siddur Avodat Yisrael*; R. Mordechai Eliyahu, *Sefer Halakha*, I, *Birkhot ha-Shahar*, no. 31, p. 37; references cited in note 74, *supra*; R. Hayyim David haLevi, *Mekor Hayyim le-Benot Yisrael*, sec. 2, no. 2; R. Isaac Yosef, *Otzar Dinim le-Isha u-le-Vat*, sec. 2, no. 1; R. Aaron Zakai, *Mitzvot haNashim*, sec. 1, no. 12; R. David Yosef, *Halakha Berura*, III, sec. 46, no. 4, subsec. 10. See also R. Solomon Tal, *ha-Siddur be-Hishtalsheluto*, p. 39.

that women should say “*she-lo asani goya*” and “*she-lo asani shifha*”; these formulations are specifically feminine forms and, hence, are to be preferred over “*goy*” and “*aved*” which are the masculine forms. Many other authorities⁷⁶ indicate that, since “*goy*” and “*aved*” are also the generic formulation appropriate to both genders, they should be preferred. The benediction “*she-asani kirtzono*,” which is specifically for women,⁷⁷ is found in all *siddurim*, as is the *mi-she-beirakh* for a birthing mother, a female child, and an ill woman. The *Yizkor* memorial prayer also has male and female formulations. If any insensitivity exists in the page layout or instructions, it is on the part of the publishers, not the Halakhah.

(8) An article by this reviewer on women and *minyan*⁷⁸ is cited on page 29, to the effect that “only men are regarded as part of the ritual community (the *edah*) quorum (*minyan*).” Again she errs: ***edah*** is not the criterion – **obligation** is. (The use of *edah* in the Talmud is merely a mnemonic device; see the next comment.) Because women are not obligated in public prayer, they do not count toward the quorum of public prayer rituals. But where women are obligated equally, they are included. Thus, according to the majority of *poskim*, women count toward the *minyan* for the following rituals: 1) *Megilla* reading and the “*haRav et riveinu*” benediction that follows it; 2) public martyrdom; 3) the *haGomel* blessing; 4) circumcision; 5) kindling the *Hanuka* candles in the synagogue. Prof. Ross errs again when she states (in note 93 to Chapter 5) that a minority opinion maintains

76 R. Abraham Butchach, *Eshel Avraham, O.H.*, sec. 46, no. 14; R. Elijah Schlessinger, *Resp. Mahazeh Eliyahu*, sec. 13; R. Jonah Metzger, *Sefer me-Yam ha-Halakha*, III, sec. 19; R. David Auerbach, *Halikhot Beita*, sec. 3, no. 7; R. Isaac Jacob Fuchs, *Halikhot Bat Yisrael*, sec. 2, no. 5; R. Jacob Kaminetsky, *Emet le-Yaakov, O.H.*, sec. 46, note 50.

77 In passing, I would like to comment on the benediction “*shelo asani isha*” recited by men. R. Reuven Margaliyot, *Nitzotzei Or, Menahot* 43b, translates this benediction not “...**because Thou** has not created me a women,” but “...**Who** has not created me a women.” This is not an expression of celebratory thanks, argues R. Margaliyot, but of a serious and willing acceptance of a weighty and spiritually dangerous role. There is a serious trade-off here. After all, God could have chosen to create Jewish males as non-Jews or as women with a concomitantly smaller burden of specific *mitzvot*. But the Jewish male’s greater role has its dangers. Jewish men who do not respond to their greater calling – who, for example, do not sit in a *sukkah*, neglect to don *tallit* or *tefillin*, or are careless about hearing *shofar* – are punished for *bittul aseh*, for not fulfilling their positive obligations. Hence, by reciting *she-lo asani goy* and *she-lo asani isha*, men acquiesce to the greater responsibility and risks that have been thrust upon them. For an alternate approach, see R. Gidon G. Rothstein, “Men and Women’s Differing Religious Aims, as Taught by the Category of *Mitzvot Aseh she-haZeman Grama*,” available online at: <http://www.utoronto.ca/wjudaism/contemporary/articles/rothstein.html>.

78 Aryeh A. Frimer, “Women and *Minyan*,” *Tradition*, 23:4, pp. 54-77 (Summer 1988). PDF file available online at: <http://www.jofa.org/pdf/Batch%201/0019.pdf>.

that women may even join with men in constituting a *minyan* for *Megilla* reading. This is actually the majority view.⁷⁹

(9) She returns to a discussion of *minyan* on p. 88, and cites this reviewer⁸⁰ regarding the following seeming paradox. The necessity for a *minyan* to sanctify God's name either through public martyrdom (*kiddush haShem*) or via certain public prayers or rituals (*devarim she-bi-kedusha*) is derived from the **same** verse: "I shall be sanctified (*ve-nikdashiti*) in the midst of the children of Israel."⁸¹ Nonetheless, while many authorities include women in the quorum for public martyrdom, they are ineligible with regard to public prayer. Ross views this as a classic example of an "inconsistent application of exclusionary textual readings." However, she overlooks the simple resolution already proposed in the article for this seeming contradiction. The requirement of ten for public *kiddush haShem* is a **biblical** obligation, and the reliance on the verse "*ve-nikdashiti*" is a *bona fide* derivation (*derasha*). However, according to most commentators,⁸² the reference to this same verse for necessitating a *minyan* quorum for the *davar she-bi-kedusha* public prayers and rituals is not a true *derasha* but rather an "*asmakhta*" (mnemonic device for **rabbinic** obligations).⁸³ As noted by Rabbenu Nissim Gerondi,⁸⁴ this logically follows from the fact that blessings and prayers are themselves only of rabbinic origin. As a result, the rules for these two cases (martyrdom and public prayers) may differ; ultimately, the controlling criterion is obligation. Thus, in the case of martyrdom where women are obligated, they count for the quorum of public *kiddush haShem*. By contrast, women are exempted from the obligation of public prayers and rituals, and, hence, may not count towards the *minyan* required.

(10) On pages 19, 53 and 90, our author deals with the issue of women wearing *tzitzit* and *tefillin*. She concludes that sincerely motivated women wearing *tzitzit* and *tefillin* "is not antithetical to halakhic values." The problem with *tzitzit* is one of *yohara*, showing off – a faulty character trait. This is because *tzitzit* is only obligatory for men if they wear a four-cornered garment, which is generally uncustomary in our days.⁸⁵ For a woman to wear *tzitzit* involves her assuming

79 Ibid., sec. F, pp. 64-66.

80 Aryeh A. Frimer, note 78, *supra*.

81 Leviticus 22:32

82 For an extensive list, see Aryeh A. Frimer, "*Ma'amad haIsha beHalakha—Nashim uMinyan*," *Or haMizrah*, 34:1,2 (*Tishrei* 5746), pp. 69-86, notes 14 and 15 therein. The first to take this position is the R. Nissim Gerondi (Ran), *Megilla* 23b, s.v. "*ve-Ein Nosim*."

83 For a discussion of *asmakhtot* see R. Menachem Elon, *haMishpat haIvri* (Jerusalem: Hebrew University, Magnes Press, 1973), II, p. 256; *Encyclopedia Talmudit*, II, *asmakhta*.

84 See R. Nissim Gerondi, note 82, *supra*.

85 *Mishne Torah*, *Hilkhos Tzitzit*, 3:11. For a recent discussion, see R. Aharon Lichtenstein,

upon herself a double stringency: the first is to put on a non-normative four-cornered garment; the second is to put *tzitzit* on the corners of the four-cornered garment even though she is exempt.⁸⁶ Thus, women wearing *tzitzit*, certainly as a *tallit* in public view, could well be viewed as “showing off.” Nevertheless, R. Moses Feinstein⁸⁷ has ruled that if a woman wears *tzitzit* out of a righteous desire to perform a *mitzvah*, then we should not be concerned with possible *yohara*.

But, as R. Feinstein himself indicates, donning *tefillin* is a totally different story. Because of the sanctity of *tefillin*, Halakhah obligates one who wears them to be careful about *guf naki* – a special requirement of physical cleanliness – which prohibits, *inter alia*, flatulence, sleep, distracting thoughts, light-headedness, levity, lying and *lashon ha-ra*.⁸⁸ Furthermore, Jewish law objects to women’s donning *tefillin* for fear that they will not be as careful about *guf naki* as required.⁸⁹ Most *poskim* argue that the fundamental distinction between men and women as regards *tefillin* is not based on biology, but on halakhic obligation.⁹⁰ According to this

“*haIm Mitzvat Tzitzit Hi Hova*”; available online at www.etzion.org.il/vbm.

86 *Rema, O.H.*, sec. 17:2, *Mishna Berura* no. 5.

87 *Resp. Iggerot Moshe*, note 60, *supra*.

88 *Shabbat* 49a and 130a; *Shulkhan Arukh, O.H.*, sec. 37, no. 2 and sec. 38, no. 14; *Bi'ur Halakha*, sec. 37, s.v. “*Mitsvatan*”; *Encyclopedia Talmudit*, IX, “*Hanahat Tefillin*,” p. 466 – see especially pp. 472 and 512; R. Menahem Mendel Kasher, *Torah Sheleima*, XII, *Bo*, Addenda, no. 41, pp. 254-59 – reprinted in a somewhat expanded form in *Resp. Divrei Menahem*, I, sec. 19; R. Joseph B. Soloveitchik as cited by R. Zvi (Hershel) Schachter, “*miPeninei Rabbeinu, Z”l*,” *Beit Yitzhak*, 27, p. 1 (5755) – reprinted in R. Zvi (Hershel) Schachter, *miPeninei haRav* (Jerusalem: *Beit Midrash deFlatbush*, 5761), p. 22; *Resp. Shevet haLevi*, IX, *O.H.*, sec. 18. Lying and *lashon ha-ra* are extensions of Rabbi Moses Sofer, see *Hiddushei Hatam Sofer, Shabbat* 49a, s.v. “*Amar*,” and 130b, s.v. “*Tefillin*”; *Derashot Hatam Sofer*, III, p. 96b, to *Shabbat* 49a and the *Sha'ar Yosef* ad loc.; *Resp. Tzitz Eliezer*, XIII, 10, s.v. “*beShulei haTeshuva*.”

89 This ruling of the *Rema, O.H.*, sec. 38, no 3, has been accepted by both Ashkenazic and Sephardic codifiers. See ad loc.: *Birkei Yosef*, subsec. 1, *Mishna Berura*, subsec. 13, *Arukh haShulkhan*, subsec. 6, *Kaf haHayyim*, subsec. 9; R. Haim David Halevi, *Mekor Hayyim leBenot Yisrael*, sec. 3, note 14. An in-depth discussion of *guf naki* in regard to women is beyond the scope of this paper. For some recent discussion, see R. Eliezer Berkovits, “*Hithayvut Atzmit al Nashim beMitzvat Aseh she-haZeman Grama*,” *Sinai*, 100, pp. 187-93 (5747) – see especially 192ff.; R. Eliezer Berkovits, *Jewish Women in Time and Torah* (Hoboken, NJ: Ktav Publishing House, 1990), Chap. 4, pp. 72-74; Aliza Berger, “*Wrapped Attention: May Women Wear Tefillin*,” in *Jewish Legal Writings by Women* (Jerusalem: Urim Publications, 1998), pp. 75-118 – see, however, note 93, *infra*.

90 See on *Shulkhan Arukh, O.H.*, sec. 37, no. 3: R. Abraham Abli, *Magen Avraham*, subsec. 3; R. Joseph Te'omim, *Pri Megadim, Eshel Avraham*, subsec. 3 and *Mishbetzot Zahav*, subsec. 2; R. Elazar Santav, *Ma'aseh Roke'ah*, subsec. 3; R. Judah Loew of Prague, *Hidushei Gur Arye, Eruvin* 96a, s.v. “*mi-deLo*”; R. Joseph Engel, *Gilyonei haShas, Eruvin* 96a, s.v.

latter view (and contrary to Ross's explanation on p. 90), the concern regarding *guf naki* is a general one affecting both males and females alike. Nevertheless, men are obligated to don *tefillin* and, perforce, concerns regarding *guf naki* are set aside for the brief period of the *shaharit* prayers, so they can fulfill their minimal obligation – but not beyond that.⁹¹ Women, on the other hand, are not required to put on *tefillin* at all; hence, should a woman nevertheless wish to don them, we are to protest such an action (*mohin be-yada*),⁹² lest she unnecessarily violate their sanctity. In contradistinction to other time-determined commandments, a woman cannot assume this stringency, because there is a clear downside. In this light, it would seem that the feministic insistence on wearing *tefillin* despite the unanimity of codifiers for the last five hundred years⁹³ – is indeed a rejection of the halakhic process and is most certainly antithetical to halakhic values.

(11) On p. 86, Prof. Ross seeks an explanation for the supportive attitude of the rabbinate to women's increased Torah study, in contradistinction to their generally negative attitude to women's prayer groups. The obvious differences escape her. Increased Torah study for women, from the time of its inception in 1917 by Sarah Schnirer, was done with the consent, blessing and guidance of the generation's leading scholars: R. Abraham Mordechai Alter, the Gerer Rebbe; R. Joseph Isaac Schneerson, the Lubavitcher Rebbe; R. Issachar Dov Rokeach, the Belzer Rebbe; R. Israel Meir haKohen Kagan, the Hafetz Hayyim; and R. Hayyim Ozer Grodzinsky.⁹⁴ Prayer groups, on the other hand, were initiated by and large without

“*Mikhal*”; R. David Ortinberg, *Tehilla leDavid, O.H.*, sec. 38, no. 1; R. Mordechai Carmi, *Ma'amar Mordechai*, subsec. 3; *Arukh haShulkhan*, sec. 6; R. Ben-Tsiyon Lichtman, *Benei Tziyyon*, I, *O.H.*, sec. 38, no. 3, subsec. 2; *Iggerot Moshe, O.H.*, IV, sec. 49; R. Joseph B. Soloveitchik, *supra*, note 88; R. Benjamin Jehiel Zilber, *Beit Barukh to Hayyei Adam, kelal* 14, no. 18, subsec. 135. The fundamental distinction between these two approaches would be in the case of an *eved kena'ani* (non-Jewish slave); see R. Shalom Isaac Mizrahi, *Resp. Divrei Shalom, O.H.*, I, sec. 15.

91 *Shulkhan Arukh, O.H.*, sec. 37, no. 2; *Resp. Shevet haLevi*, IX, *O.H.*, sec. 18.

92 Gloss of *Rema* to *Shulkhan Arukh, O.H.*, 38, no. 3.

93 Aliza Berger's reliance (*supra*, note 89) on a singular and even unconvincing ruling by R. Saul Berman against the scores of major *poskim* and key codifiers of the past five centuries seems rather tendentious. See also the critique of R. Aharon Feldman in note 5, *supra*, and “Communications: Jewish Legal Writings by Women,” *Tradition*, 34:1 (Fall 2000), pp. 107-11. That Prof. Ross finds this lone article sufficient grounds for undoing such a longstanding ruling, demonstrates a lack of appreciation for the dynamic of the halakhic process.

94 Shoshana Pantel Zolty, *And All Your Children Shall Be Learned: Women and the Study of Torah in Jewish Law and History* (Northvale, NJ: Jason Aronson, 1993), pp. 278-79. See also R. Emanuel Feldman, “Communications: ... Who has not made me a Woman,” *Tradition*, 32:2 (Winter 1998), pp. 171-73.

the approval or guidance of leading rabbinic authorities; in many cases, their initiation was an act of rebellion.

Furthermore, as noted by R. Joseph B. Soloveitchik, women's Torah study is an authentic halakhic category involving greater *kiyyum ha-mitzvah* (fulfillment of a commandment); women's prayer groups are not.⁹⁵ Contrary to Tova Hartman Halbertal's assertion that "Our congregating has religious significance,"⁹⁶ a women's *tefilla* group has no more halakhic significance than nine men praying together. Of course, it has significance, as does the prayer of any single individual; but it is not *tefilla be-tzibbur* (public prayer). A true desire for *kiyyum ha-mitzvah* would dictate that women pray together with a *bona fide minyan* of ten men. No wonder, then, that rabbinic authorities are less than enthusiastic about such prayer groups.

(12) Ross wonders on p. 92 why the *poskim* are so concerned that feminist motivations be spiritually and sincerely motivated. Why not simply assume that proper intention will come with time, as suggested by the talmudic principle "*mitokh she-lo li-shemah ba li-shemah*." The answer is straightforward: Jewish law and the rabbinic establishment are justifiably wary of new innovations, especially when they appear motivated by – and are accompanied by the rhetoric of – rebellion against halakhic values. R. Feinstein's comments in this regard have already been cited above.⁹⁷ Similarly, the renowned jurist and former Deputy President of the Israeli Supreme Court, Justice Menachem Elon, in his noted "The Women of the Wall" decision, underscores the significance of this motivational element:

A well-established principle in the world of Halakhah – when enacting legislation, establishing custom, or introducing changes in them – is that the observance of a ritual must be performed with the intent and purpose of *fulfilling* the *mitzvah* and not out of a motivation to *disregard* a halakhic rule (*din*) because of "extraneous considerations." [Such "extraneous considerations"] include the fundamental objection to, and offense taken from, women's essential exemption [from certain commandments and rituals].... This requirement is counted among the *value-based* precepts of the halakhic system, which serves as a major factor in determining the *judicial policy* of the Halakhah in

95 See the relevant comments of R. Joseph B. Soloveitchik cited in Aryeh A. Frimer and Dov I. Frimer, note 32, *supra*, text at note 242, note 244 and end of note 285 therein.

96 Tova Hartman Halbertal, "Rabbinic Backlash against Women's Prayer Groups: The Uses and Abuses of Meta-Halakha," taped lecture at the Third International Conference on Feminism and Orthodoxy (New York City, February 2000).

97 See the quote following note 60, *supra*.

general, and in sensitive and unique issues, such as the one before us, in particular.⁹⁸

It should be noted that the issue of motivation is of substantially less concern when one is fulfilling an obligation. Hence, women's *Megilla* readings have found much more widespread acceptance among *poskim*.⁹⁹ However, the general policy is historically more guarded regarding non-obligatory innovations, in line with the dictum of *Hazal*: "*kol ha-mishaneh yado al ha-tahtona*" ("One who innovates is at a disadvantage, i.e., must prove his/her position").¹⁰⁰ The principle "*mi-tokh she-lo li-shmah ba li-shmah*" relates to existing obligations. Moreover, Orthodox Judaism has always held religious subjectivism suspect, especially when it comes at the expense of a greater and proper *kiyyum ha-mitzvah* (fulfillment of a *bona fide* obligation).¹⁰¹

(13) The preclusion of women from receiving *aliyot* because of *kevod ha-tzibbur* (honor of the community) is discussed on page 97 and again on page 256, note 57 (to page 16). Ross writes that *kevod ha-tzibbur* should be understood to mean that the community is disgraced by the implication that no competent male could be found for the task of reading the Torah. She references R. Mendel Shapiro's article in the *Edah Journal*¹⁰² who, based on this understanding of *kevod ha-tzibbur*, argues

98 Justice R. Menahem Elon, "Hoffman et al. vs. the Custodian of the Western Wall; Alter et al. vs. the Minister of Religious Affairs et al." (1994), *Bagatz* 257/89, *Piskei Din* 48 (ii), pp. 265-358 – at p. 308. See also p. 323. The syntax of the original Hebrew is quite complex and has been somewhat simplified in our English translation.

99 See Aryeh A. Frimer, "Women's *Megillah* Reading," in *Traditions and Celebrations for the Bat Mitzvah*, ed. Ora Wiskind Elper (Jerusalem: Urim Publications, 2003), pp. 281-304. Word file available online at: http://www.matan.org.il/Data/UploadedFiles/Free/bm_Frimer_eng_101.doc.

100 *Bava Metzia*, 76a.

101 See R. Joseph B. Soloveitchik, *The Halakhic Mind* (New York: Seth Press, distributed by the Free Press – A Division of Macmillan, Inc., 1986), pp. 62-99; R. Joseph B. Soloveitchik, *Nora'ot haRav*, X, ed. B. David Schreiber (New York, NY: B.D. Schreiber, 1999), pp. 88ff; Samuel A. Safran, "R. Joseph B. Soloveitchik: Man of Halacha, Man of Faith," *B.D.D.*, 9 (Summer 1999), English section, pp. 99-115, notes 13 and 19; and the related comments of Jonathan Rosenblum, "Sincerity is Not the Issue," *The Jerusalem Post*, Friday, 7 July 2000, p. 19. As the Rav himself stated in a 1955 lecture to the Yeshiva University Rabbinic Alumni, cited by R. Aaron Rakeffet-Rothkoff, *The Rav: The World of Rabbi Joseph B. Soloveitchik* (New York: Ktav Publishing House, 1999), II, pp. 174: "Every religious experience must be based on *halakha*. The religious emotion must originate from the fusion of the intellect and the *halakha*." See also R. Aharon Lichtenstein, "Joseph Soloveitchik" in *Great Jewish Thinkers of the Twentieth Century*, ed. Simon Noveck (Bnai Brith, 1963), pp. 281-97.

102. R. Mendel Shapiro, "*Qeri'at ha-Torah* by Women: A Halakhic Analysis," *The Edah Journal*, 1:2 (Sivan 5761).

that, from a strictly halakhic standpoint, there is little reason to prohibit women's *aliyot* today. However, in actuality, it was R. Yehuda Herzl Henkin who introduced this view into current halakhic discourse two decades ago.¹⁰³ Hence, Ross's account on page 180 that "R. Henkin accepts Shapiro's essential argument..." should actually read "R. Shapiro accepts R. Henkin's essential argument...." From R. Henkin's perspective, however, all this was theoretical; in practice, he maintains that regular women's *aliyot* remain unacceptable because they violate the communal custom of millennia.¹⁰⁴ More fundamentally, however, the analyses of both R. Shapiro and R. Henkin are problematic, for a plethora of reasons that are beyond the scope of this review.¹⁰⁵ However, it should be noted that among these reasons is the fact that the overwhelming majority of rabbinic commentators reject the abovementioned understanding of *kevod ha-tzibbur*.¹⁰⁶ Once again, Prof. Ross's difficulties with Halakhah emanate from her adopting clear minority views.

(14) In her discussion of halakhic directions of the future, Prof. Ross cites (p. 236) an unpublished ruling by R. Yoel Bin-Nun as a prime example.¹⁰⁷ The latter suggests that, despite the mishnaic exemption of women from time-determined

103 R. Yehuda Herzl Henkin, "Mahu Kevod haTzibbur," *HaDarom*, 55 (*Elul* 5746), p. 33 (see p. 39); R. Yehuda Herzl Henkin, *Bnei Vanim*, I, sec. 4; II, sec. 10; and IV, sec. 2.

104 R. Yehuda Herzl Henkin, "Qeri'at Ha-Torah by Women: Where We Stand Today." *The Edah Journal*, 1:2 (Sivan 5761). See also R. Mendel Shapiro and R. Yehuda Herzl Henkin, "Concluding Responses to Qeri'at ha-Torah for Women," *ibid*.

105 A series of refutations have recently appeared, are in press or in preparation; see R. Eliav Shochetman, "Aliyat Nashim leTorah," *Sinai*, Vols. 135-36 (2005), pp. 271-349; R. Gidon G. Rothstein, "Qeri'at haTorah by Orthodox Women: What's the Halakhic Story?," *Tradition*, 39:2 (2006; in press); R. Michael J. Broyde, "Women Receiving Aliyot? A Short Halachic Analysis" (in preparation); R. Ephraim Bezalel Halivni, "Women, Kriah and Aliyot to the Torah" (in preparation); Aryeh A. Frimer and Dov I. Frimer, "Women, Kri'at haTorah and Aliyot" (in preparation).

106 *Inter alia*: R. Yaakov Emden, R. Abraham David Rabinowitz-Teomim, R. Dov Eliezerov, R. Joseph Kapah, R. Joseph B. Soloveitchik, R. Shaul Yisraeli, R. Shlomo Zalman Auerbach, R. Zalman Nechemia Goldberg, R. Shlomo Yosef Elyashiv, R. Eliezer Waldenberg, R. Efraim Greenblatt and R. Ovadiah Yosef. See Aryeh A. Frimer and Dov I. Frimer, note 105, *supra*.

107 In a communication to Women's Tefilla Network (WTN:7031), 11 June 2003, Prof. Ross indicated that her presentation of R. Bin-Nun's position is based on a direct interview she had with him. He later confirmed the written rendition of his position as it now appears in "Expanding the Palace of Torah." Similar comments were made by R. Bin-Nun in a public lecture, as reported by Debbie Weissman (WTN:7019) on 9 June 2003. The category of *benot horin* is also introduced by R. Bin-Nun in his response to the article of Ayelet Regev, "Birkat Hatanim: haIm Minyan Gevarim Hu Hekhrehi," *Geranot* (Jerusalem: Women's *Bet Midrash, Bet Morasha*, 5763), pp. 153-78, beginning at p. 172. This response has been reprinted in a recent collection of R. Bin-Nun's halakhic writings, *meHevyon Oz – Pirkei*

positive commandments,¹⁰⁸ modern women's halakhic obligation to perform *mitzvot* is, in principle, equal to that of men. Basing himself on R. David Abudraham,¹⁰⁹ R. Bin-Nun concludes that the exemption of women from time-bound obligations in the past was due simply to their dependent status, whereby their time was not under their control. This is because contemporary women are *benot horin* (independent women) and no longer regard themselves as subject to the authority of their fathers or husbands. R. Bin-Nun relies further on the classical halakhic authority of the 17th century, R. Abraham Gombiner, author of *Magen Avraham*,¹¹⁰ who declared that a woman may voluntarily take on the performance of a *mitzvah* and, thereby, transform its status to that of a compulsory obligation. From this, R. Bin-Nun concludes that if a group of modern women consistently undertake the obligation of prayer, this allows them to form a proper *minyán* (prayer quorum) for themselves and to recite all the blessings that generally require a male quorum (*devarim she-bi-kedusha*). This ruling could obviously be extended to other time-bound *mitzvot*.¹¹¹

Unfortunately, R. Bin-Nun's ruling rests on a very shaky, problematic and questionable foundation, as we will shortly demonstrate. It is true that it would be unfair to hold Prof. Ross accountable for the faults of R. Bin-Nun's analysis. Nevertheless, in light of the scrutiny to which Ross has subjected other halakhic rulings, it is noteworthy and somewhat puzzling that this novel pro-feminist position is presented in great detail, without the slightest word of criticism or critical analysis. This raises the query whether the favorability of the result is the ultimate criterion for a feminist acceptance of a halakhic ruling. Where does intellectual honesty and integrity come into play? These are essential methodological questions which Prof. Ross nowhere addresses in her volume, and their absence is sadly felt.

Halakha uMussar (Yeshivat Kibbutz haDati, Tamuz 5763), pp. 61-62. For a critique of several elements of this responsum, in particular, and R. Bin Nun's approach to halakhah, in general, see R. Hayyim Navon, "Mi Yifsok leGingiyim," *Mekor Rishon, Shabbat*, 27 October 2006 (5 Heshvan 5757), p. 17. See also Amit Gevaryahu, "Hadash Tahat haShemesh – Halakha veOrtodoksia Yetziratit etzel haRav Yoel Bin-Nun," *Akdamot*, 16 (Av 5765), pp. 65-80, at pp. 74 and 79-80.

108 *Supra*, note 34.

109 R. David Abudraham, *Sefer Abudraham, Sha'ar 3, Birkat haMitzvot*.

110 R. Abraham Gombiner, *Magen Avraham, O.H.*, 489, subsec. 1. The view of *Magen Avraham* is a matter of considerable debate; see R. Ovadiah Yosef, *Resp. Yehave Da'at*, II, sec. 70; R. Ovadiah Yosef, *Resp. Yabia Omer*, II, *O.H.*, sec. 30.

111 The latter portion of the responsa bears a striking resemblance to a ruling by Conservative rabbi Joel Roth, "On the Ordination of Women as Rabbis: Studies and Responsa," in *The Ordination of Women as Rabbis*, ed. Simon Greenberg (New York: The Jewish Theological Seminary of America, 1988), pp. 127-87. See, however, the refutation by R. Gidon G.

Returning now to R. Bin-Nun's responsum, it suffers from several glaring shortcomings. Firstly, the Torah did not reveal to us the rationale for women's exemption from time-determined obligations. The Abudraham proposal is merely one of many suggestions¹¹² and, despite its popularity, has been seriously challenged.¹¹³ How can one change biblical law, even permit *berakhot le-vatala* (needless benedictions), based on mere conjecture regarding its rationale?

Secondly, R. Bin-Nun's "new" category of *benot horin* has actually been around for millennia in the form of adult single, divorced and widowed women, who – despite their totally independent status – are still not obligated in time-determined obligations.¹¹⁴ The suggestion that an adult bachelorette is under the halakhic control of her father is simply untrue. The category of an "important woman" (*isha hashuva*) invoked by R. Bin-Nun (in note 12 on page 304) as coming "closest to the liberated status of many women today" has been around since talmudic times,¹¹⁵ and as a widespread social phenomenon from the 13th century.¹¹⁶ Yet no *posek* has suggested that such liberated women could obligate themselves in time-determined obligations.

Thirdly, if the women as *benot horin* are **inherently** obligated, why is there any need to invoke the *Magen Avraham* to the effect that women can **take on** obligations? This is presumably clarified by note 12 on page 304. Ross reports that R. Bin-Nun initially assumed that women, who are no longer bound by the needs of others, should be regarded as obligated to perform all the *mitzvot*. However, confronted with the general reluctance of women to assume men's roles, he altered

Rothstein, "The Roth Responsum on the Ordination of Women," *Tradition*, 24:1, pp. 104-15 (Fall 1988), and the exchange of letters between Joel Roth and Gidon Rothstein, "On the Ordination of Women," *Tradition*, 24:4 (Summer 1989), pp. 112-14.

112 See R. Getsel Ellinson, *Serving the Creator: A Guide to the Rabbinic Sources* (Jerusalem: World Zionist Organization, 1986), Chap. 2, sec. IX, pp. 39-42.

113 R. Isaac Judah Schmelkes, *Resp. Bet Yitshak*, II, *Y.D.*, part 1, sec. 94, no. 10; R. Barukh haLevi Epstein, *Torah Temima*, Exodus 13:9, note 42; R. Shalom Taubes (Toibisch), *Resp. She'eilat Shalom*, II, sec. 46 and 47; R. David Leifer, *Resp. Bet David*, sec. 70; R. Shlomo Schneider, *Resp. Divrei Shlomo*, II, sec. 127. See also the sources cited in note 114, *infra*. R. Emanuel Rackman notes that women are obligated in all the *mitzvot* of Pesach, which is certainly the busiest time of year in a Jewish home; see R. Emanuel Rackman, "Arrogance or Humility in Prayer," *Tradition* (Fall, 1958), pp. 13-26.

114 See R. Joseph Saul Nathanson, *Resp. Sho'el uMeishiv*, I, Part 1, sec. 61; R. Barukh Epstein and R. Shlomo Schneider, *supra*, note 113; R. Gedaliah Felder, *Yesodei Yeshurun*, I, *Ma'arekhet Tzitzit*, p. 65 and references cited therein; R. Abraham Weinfeld, *Resp. Lev Avraham*, I, end of sec. 122; R. Zvi Zev Friedman, *Tiferet Yosef*, Genesis 2:18, pp. 86-87.

115 *Pesahim* 108a and elsewhere.

116 The statement of *Rema*, *O.H.*, 472 to the effect that all our women are "*nashim hashuvot*" is based on previous such statements of the 13th century: *Mordechai* (*Pesahim* 108a) and *Rabbenu Yeruham*.

his position, concluding that modern women, who are not burdened with the yoke of family responsibilities, should also be left free to choose which of the *mitzvot* they will adopt. But, this transformation in R. Bin-Nun's position is astounding. If he honestly believes that independent women are inherently biblically obligated, why should they be any different than men who are obligated – whether they like it or not?

Fourthly, if obligation devolves on the women because of repeated performance of a *mitzvah*, then the *benot horin* analysis is totally irrelevant. What's worse, as several scholars have already commented, the acceptance route solves nothing.¹¹⁷ It is true that women who repeatedly take upon themselves the performance of a normally voluntary *mitzvah* may transform its status into that of a compulsory obligation. But this is not because there is now an inherent obligation, but rather because there is now a *neder mitzvah* – an **oath** to perform a righteous act.¹¹⁸ As such, the obligation can be removed via *hatarat neder* (procedure for removal of an oath).¹¹⁹ In addition to not being inherent, an assumed obligation may only have a lesser rabbinic stature, even if the original commandment may have been biblical in authority.¹²⁰

The fact that women's performance remains inherently optional, or even obligatory but of lesser stature, has direct halakhic repercussions with regard to women's ability to assist men in fulfilling their inherent obligations. This is because, as a rule, one Jew can assist another in fulfilling his/her obligations only if the former has an obligation that is equal to or greater than that of the latter.¹²¹ A classic example is the centuries-old custom of religious women to hear *shofar* blowing; the various codes of Jewish law indicate that this custom obligates women to continue this practice yearly.¹²² However, since they are not inherently obligated, they cannot blow *shofar* for men.¹²³ The lack of inherent obligation in *tefilla be-*

117 See R. Solomon Kluger, *Resp. uVaharta vaHayyim*, sec. 51; R. Samuel E. Volk, *Sha'arei Tohar*, VI, sec. 47, end of no. 2; Gidon Rothstein, note 111, *supra*;

118 *Halikhot Beita*, *Petah haBayit* no. 22, and sec. 20, note 4.

119 *Shulkhan Arukh, Y.D.*, sec. 214, no. 1; R. Ovadiah Yosef, *supra*, note 110.

120 R. Solomon Kluger, note 117, *supra*; R. Ovadiah Yosef, *Resp. Yabia Omer*, *supra*, note 110.

121 “*Kol she-eino mehuyav ba-davar, eino motzi et ha-rabim yedei hovotam* – Anyone who is not obligated, cannot assist others in fulfilling their obligation.” *Mishna, Rosh haShana* 3:8.

122 *Halikhot Beita*, sec. 20, no. 3, para. 4; R. Ovadiah Yosef, *supra*, note 110.

123 *Halikhot Beita*, sec. 20, no. 3, para. 7. See also Israel M. Ta-Shma, note 36, *supra*, p. 267 therein, regarding *tzitzit* and *lulav*. Prof. Ta-Shma demonstrates that although *Rabbenu Tam* clearly encouraged women to perform time-bound *mitzvot* and even recite the appropriate *berakha*, he nonetheless clearly distinguished between inherent option and obligation. Thus *Rabbenu Tam* did not allow women to prepare *tzitzit* on a *tallit* for men.

tzibbur (public prayer) and *keri'at haTorah* (Torah reading) is also the fundamental reason why women cannot serve as *hazzaniyot* or *ba'alot keria*.¹²⁴ Most importantly, the quorum required for a *minyan* is ten individuals who are inherently obligated.¹²⁵ Interestingly, even in the case of *Megilla* reading, where both genders indeed have a *bona fide* obligation, Ashkenazic sources rule that a *Megilla* reading performed by women does not exempt Ashkenazic men from their obligation. This is because a woman's duty is not on the same **maximal** level as that of men.¹²⁶ Thus, we see that invoking the *Magen Avraham* solves no problem for feminists.

(15) On page 239, Tamar Ross turns to the laws of ritual purity. She indicates that, biblically, a menstruant (*nidda*) may resume sexual relations after immersing in a *mikveh* the evening after the cessation of her menstrual flow. This is inaccurate, since biblically a *nidda* must abstain from sexual relations for a minimum of seven days (Leviticus 15:19). She then notes that the rabbis gave every *nidda* the more stringent status of a *zava*, a woman who had a flow out of cycle, which requires seven "clean" days in addition to the days of menstrual flow. Prof. Ross is again imprecise, since the practice that all menstrual flow has the status of a *zava* requiring seven "clean" days is actually the stringency of the daughters of Israel (*humrat benot yisrael*).¹²⁷

She then inserts the following statement: "This imposition [of the *zava* status] is despite the fact that...both men and women are regarded as ritually defiled to the highest degree (*temei'ei met*)...." This latter comment is totally irrelevant to the present discussion of the sexual interaction of a woman and her spouse. The laws of *nidda* have two distinct aspects to them.¹²⁸ One affects a woman's ability to engage in sexual relations and remains operative to this day. The second has to do with ritual impurity as regards the laws of the Temple. The latter aspect, like the rules of *tumat met*, has been generally out of use¹²⁹ for two millennia.

The bottom line is that a couple must abstain from physical contact for a few days longer than actually biblically ordained. Citing a responsum of R. Ovadiah

124 Aryeh A. Frimer and Dov I. Frimer, note 105, *supra*.

125 See note 78, *supra*.

126 See Aryeh A. Frimer, note 99, *supra*.

127 *Berakhot* 31a; *Megilla* 28b, *Nidda* 66a. For a clear presentation of the development of the laws of *nidda*, see R. Abraham Danzig, *Hokhmat Adam, Hilkhhot Nidda*, sec. 107, especially para. 1, 5, 15-19.

128 R. Judah haLevi, *Kuzari*, 3:49; R. Aryeh Leib haKohen, *Shev Shmateta, Shmateta* 1, sec. 12; R. Joseph Engel, *Atvan deOraita*, sec. 21. For a varying formulation, see R. Joab Joshua Kinski, *Resp. Helkat Yoav, Mahadura Kamma, Y.D.*, sec. 29.

129 Certain limited aspects remain relevant to *kohanim* (see Leviticus 21:1 and *Shulkhan Arukh, Y.D.*, 373) and to all Jews regarding entry to the Temple mount.

Yosef,¹³⁰ she then states that there is a precedent for leniency, “taking into account **men’s** sexual needs.” Reading the *teshuva* itself makes it clear that the leniencies have to do with *mitzvat ona*, which is a husband’s obligation to satisfy his **wife’s** sexual needs; this is all the more true the night before the husband leaves on a trip, which is the instance to which R. Yosef is referring.¹³¹ Ross next suggests that the **rabbis** were insensitive to “women’s psychological needs for physical expressions of affection that do not entail full sexual relations.” Here too she seems unaware that many, if not most, authorities rule, like Maimonides, that the prohibition against physical expressions of affection before a menstruant immerses in a *mikveh* is actually **biblical** in nature.¹³²

To conclude this section, we note that one of the preeminent Orthodox Jewish thinkers and talmudists of the 20th century, Rabbi Joseph B. Soloveitchik, has summarized for us the prerequisite qualifications necessary for one who wants to become involved in public halakhic discourse.¹³³

First, one has to be a *lamdan* [scholar]. Just as one who speaks about mathematics or physics must have a thorough knowledge of his field, so must one first know the Halakhah in order to discuss its problems. But *lamdanut* [scholarship] cannot be achieved without study, nor by the process of Divine Revelation. One must sacrifice years of study to Halakhah in order to understand it.

Secondly, one must unconditionally accept the sacredness of the Halakhah in its eternal and absolute character. One must confess that it obligates everyone to realize its demands at all times and under all

130 *Resp. Yabia Omer*, I, *Y.D.*, sec. 15.

131 See *inter alia*: *Pesahim* 72b, “Rava said: a man is obligated to rejoice his wife with a meritorious act” and Rashi ad loc.; *Shulkhan Arukh, E.H.*, sec. 76; *Resp. Iggerot Moshe, E.H.*, I, sec. 102, s.v. “*u-biDvar*”; *ibid.*, *E.H.*, III, sec. 28; *ibid.*, *E.H.*, IV, sec. 86.

132 Leviticus 18:19 “And to a menstruant in her ritual impurity do not come close to uncover her nakedness.” *Safra* ad loc. writes: “I only know that it is forbidden to uncover, how do I know it is forbidden to come close? For it is written: do not come close...”; Maimonides, *Sefer haMitzvot, Lavim* 353; *Mishne Torah, Hil. Issurei Biah*, 21:1; *Hinukh*, Commandment 188; R. Shabbetai ben Meir ha-Kohen, *Sifte Kohen* (Shakh), *Y.D.*, 157:1, no. 7. Nahmanides dissents, however. For reviews, see *Encyclopedia Talmudit*, VI, *Gilui Arayot*, pp. 106-15, at p. 111; *Otzar haPoskim*, IX, *E.H.*, sec. 20, para. 1, no. 5, pp. 27-28.

133 R. Joseph B. Soloveitchik, “On Orthodoxy and Non-Orthodox Movements,” in *Community, Covenant and Commitment: Selected Letters and Communications*, ed. Nathaniel Helfgot (New Jersey: The Toras HoRav Foundation/Ktav, 2005), Chap. 21, pp. 143-49, at p. 147. See also R.J. David Bleich, “*Lomdut* and *Psak*: Theoretical Analysis and Halakhic Decision-Making,” in R.J. David Bleich, *Contemporary Halakhic Problems*, V (Southfield, MI: Targum Press, Inc., 2005), pp. xi-xxxvi.

conditions – social, political or cultural. One cannot be selective about Halakhah and say: “This part pleases me and the other does not; lighting candles I will accept, but not the laws of purity of the family.” Either one believes in *Torah min ha-shamayim* [the Divine origin of the Torah], and one accepts the Halakhah in its totality, or one does not believe in this basic principle and rejects it entirely. Halakhah, to be accepted in part, is impossible.

Thirdly, the interpretation of Halakhah must be accomplished in accordance with the methods, principles and categorical forms of the halakhic logic, which were hammered out by the sages of Torah, *rishonim* [early rabbinic period] and *aharonim* [late rabbinic period], Rashi, the Tosafists, Ramban, the *Shakh*, Rav Akiva Eiger, Rav Hayyim Brisker, etc. The substance of Halakhah is tradition. Not only the content and the text, but also the formal instruments of halakhic thinking that have been handed down from generation to generation.

V. Points to Ponder

Despite the above criticism, Tamar Ross’s volume does raise a variety of issues that should concern the Orthodox community.¹³⁴

(a) **Opportunities for Unmediated Communal Rituals:** Many halakhically committed women seek wider opportunities for unmediated communal rituals. For example, while both men and women are enjoined by Jewish law to pray daily, women need not fulfill their obligation within the context of communal services. Since it is the men who are obligated in public prayer and Torah reading, it is the men who count for the required *minyan* and lead the community in these rituals.¹³⁵ Thus, from the perspective of Orthodox women, public prayer rituals as a rule involve the intermediacy of men. While this may be the halakhic reality, there are many women who nevertheless seek a more active and meaningful involvement in the spiritual moments of public prayer. One response has been women’s *tefilla* (prayer) groups which, according to Gitelle Rapoport: give many women *nahat*

134 Many of the issues below have been discussed previously by Joel B. Wolowelsky; see Joel B. Wolowelsky, *Women, Jewish Law and Modernity: New Opportunities in a Post-Feminist Age* (Hoboken, NJ: Ktav Publishing House, 1997); Joel B. Wolowelsky “Feminism and Judaism: Women, Tradition, and the Women’s Movement, by Michael Kaufman – Review,” *Judaism*, 47 (Fall 1998), p. 499; Joel B. Wolowelsky, “Embers to Radical Flames,” *Hamevaser, Tevet 5759* [January 1999].

135 Aryeh A. Frimer, *supra*, note 78.

ru'ah (spiritual satisfaction);¹³⁶ ease the pain some women feel at permanent exclusion from *minyan*; intensify concentration and *kavanna*; provide an opportunity to sing praise to God, out loud, without fear of objections related to *kol isha*; encourage more serious study of the *tefillot*, Torah portions and *haftarot*; enhance diversity of practice, within halakhic parameters, of the Jewish community; and consequently strengthen the perception that Orthodox Judaism is sensitive to individual spiritual needs.¹³⁷ As indicated earlier, the rabbinate has been seriously split on the advisability of such prayer groups for a variety of hashkafic and public policy grounds.¹³⁸ But if the verdict is indeed in the negative on this innovation, some appropriate meaningful alternatives must be seriously considered.

(b) **Life Cycle Events:** Somewhat related to the issue of women's *tefilla* groups, is the issue of how the Orthodox community celebrates life-cycle events. In the case of a male child there are a variety of events, such as *shalom zakhar*, *brit mila*, *pidyon ha-ben*, *bar-mitzvah* (including *keri'at haTorah*, *aliya*, *haftara*, *devar Torah* and even serving as *hazzan*), *aufruf* and/or *Shabbat hatan*. For daughters, the opportunities and the spiritual quality of the celebrations are much more limited. Women's prayer groups often serve as the venue for such communal celebrations. Indeed, women, who are only marginally involved in *tefilla* groups on a regular basis, eagerly attend when some special occasion or event is celebrated – be it a *simhat bat* (or *zeved ha-bat*), *bat mitzvah*, engagements, a *Shabbat kala*, or a women's *Megilla* reading. However, if, as noted above, the verdict is indeed in the negative on *tefilla* groups, the rabbinate should actively seek out meaningful ways and appropriate frameworks to celebrate these formative and transitional moments.

(c) **Megilla Reading, haGomel Benediction, Zimmun and Mourner's Kaddish:** There are several rituals, benedictions and prayers that women are empowered to recite in public. For example, inasmuch as women are halakhically obligated in hearing the *Megilla*, the notion of a women's *Megilla* reading poses less of a problem for rabbinic authorities than does the idea of a women's prayer group. As a result, many *poskim*¹³⁹ – including some who oppose women's prayer groups¹⁴⁰ – concur that there is little if any halakhic problem with women reading

136 *Sifra*, *Parsheta 2*; *Hagiga* 16b.

137 Gitelle Rapoport, Letter to the Editor, *Tradition*, 33:2 (Winter 1999), p. 82.

138 See the discussion in Aryeh A. Frimer and Dov I. Frimer, *supra*, note 32.

139 See the discussion in Aryeh A. Frimer and Dov I. Frimer, *supra*, note 32 and Aryeh A. Frimer, *supra*, note 99.

140 In the words of R. David Feinstein: "You can't forbid women from doing that in which they're obligated." See the discussion in Aryeh A. Frimer and Dov I. Frimer, *supra*, note 32, note 221 therein.

Megilla for themselves, individually or in a large group. Similarly, despite the widespread impression to the contrary, women, too, are obligated by the majority of *poskim* to recite the *haGomel* blessing in the presence of a *minyán*.¹⁴¹ They may rise in the women's section and say it as the whole congregation responds.¹⁴² In addition, *Shulkhan Arukh*¹⁴³ rules clearly that three or more women are empowered to make their own *zimmun* prior to *birkat ha-mazon*. Indeed, R. Shlomo Zalman Auerbach¹⁴⁴ indicates that three women, who ate with fewer than three men, may make a *zimmun* even in the presence of the men, and the latter may join in the response "*barukh she-akhalnu....*" Finally, there is also substantial rabbinic precedent for women to recite *kaddish* for a deceased relative.¹⁴⁵

- 141 R. Hayyim Joseph David Azulai, *Birkei Yosef*, O.H., 219:2; R. Elijah Shapiro, *Elya Rabba*, O.H., 219:12; R. Schneur Zalman of Lyady, *Seder Birkat haNehenin* 13:3; R. Yaacov Emden, *Siddur Shaarei Shamayim*, *Birkat haGomel*, 2; R. Ephraim Margaliyot, *Shaarei Efrayyim* 4, *Pithei Shaarim* 28; R. Joseph Hayyim, *Ben Ish Hai*, *Ekev*, 5; R. Abraham Danzig, *Hayyei Adam* 65:2; R. Eliezer Waldenberg, *Resp. Tziz Eliezer* 13, 17; R. Barukh Goldberg, *Penei Barukh*, *Bikur Holim keHilkhato* 2:33 – see also comments of R. Y.Y. Fisher therein, who notes that the custom nowadays is that women do make the *haGomel* blessing; R. Abraham Alkalai, *Zechor le-Avraham* II, O.H., II, sec. 12; R. Judah Samuel Ashkenazi, *Siddur Beit Oveid*, *Birkat haGomel* laws 22; R. Jacob Culi, *me-Am Lo'ez*, *Vayera*, p. 348; *Derech Yeshara* 2, 12.
- 142 R. Hayyim ben Israel Benveniste, *Knesset haGedola*, O.H., 219:9 – cited by *Birkei Yosef*, O.H., 219:2; R. Shneur Zalman of Lyady, *Seder Birkat haNehenin* 13:3; R. Judah Ashkenazi, *Be'er Hetev*, *ibid.*, no. 1; *Mishna Berura*, *ibid.*, no. 3; *Kaf HaHayyim*, *ibid.*, no. 3; R. Ovadiah Yosef, *Yehave Da'at* IV:15, note 1; R. Ovadiah Yosef, *Resp. Yabia Omer*, VIII:22, no. 10; R. Barukh Pinhas Goldberg, *Penei Barukh*, *Bikur Holim keHilkhato* 2:33, note 80.
- 143 *Shulkhan Arukh*, O.H., 199, no. 6; *Encyclopedia Talmudit*, XII, "Zimmun," sec. 8. See also R. Ari Z. Zivotofsky and Naomi T.S. Zivotofsky, "What's Right with Women and Zimmun," *Judaism*, 42:4 (168) (Fall, 1993), pp. 453-64; R. Ari Z. Zivotofsky, "Legal-ease: What's the Truth about ... Womens Zimmun?," *Jewish Action*, 60:1 (Fall 5760/1999), p. 52; Joel B. Wolowelsky, *supra*, note 134, pp. 34-42; Joel B. Wolowelsky, "Women and Zimmun," in *Traditions and Celebrations for the Bat Mitzvah*, ed. Ora Wiskind Elper (Jerusalem: Urim Publications, 2003), pp. 257-68.
- 144 R. David Auerbach, *Halikhot Beita* 12:7, n. 14. R. Aharon Lichtenstein, in an oral communication to R. Dov I. Frimer, concurs.
- 145 For recent reviews, see Joel B. Wolowelsky, "Women and Kaddish," *Judaism*, 44:3 (Summer 1995), pp. 282-90; Joel B. Wolowelsky, *Women, Jewish Law and Modernity: New Opportunities in a Post-Feminist Age* (Hoboken, NJ: Ktav Publishing House, 1997), pp. 84-94; R. Reuven Fink, "The Recital of Kaddish by Women," *The Journal of Halacha and Contemporary Society*, 31 (Spring 1996), pp. 23-37; R. Yehuda Herzl Henkin, Letter to the Editor, *The Journal of Halacha and Contemporary Society*, 32 (Fall 1996), pp. 97-102; reprinted in *Equality Lost: Essays in Torah, Halacha and Jewish Thought* (Jerusalem: Urim Publications, 1999), pp. 42-53; R. Yisroel Taplin, *Ta'arikh Yisrael*, sec. 19, no. 19, note 34; R. Eliav Shochetman, "*Aliyot Nashim la-Torah*," *Kovetz haRambam* (Jerusalem: Mossad

Despite the substantial halakhic support for each of these practices, there is still hesitancy in the Orthodox community to adopt or even tolerate these practices, because of their relative novelty. Yet, perhaps public policy considerations should direct the rabbinic leadership to encourage their practice – for they are *bona fide* opportunities for unmediated rituals that many women crave. This would seem to be the thrust of R. Ahron Soloveichik's¹⁴⁶ comments regarding *kaddish yetoma*:

Nowadays, when there are Jews fighting for equality for men and women in matters such as *aliyot*, if Orthodox rabbis prevent women from saying *kaddish* when there is a possibility for allowing it, it will strengthen the influence of Reform and Conservative rabbis. It is, therefore, forbidden to prevent women from saying *kaddish*.

In a similar spirit, the outstanding American *posek*, R. Joseph Elijah Henkin writes:¹⁴⁷

It is known that were it not for *kaddish*, many would refrain from teaching prayer to their sons and would not come to synagogue. When they come because of *kaddish*, they also come a bit closer to Judaism the rest of the year; and for that reason itself, one should not rebuff the *na'arot* [girls] either, since it fosters closeness to Judaism.

(d) **Optional Mitzvot:** Jewish tradition and law are replete with examples where women have traditionally been careful about fulfilling time-determined commandments despite their exemption from them. Thus, women are universally careful about hearing *shofar* blowing, and most hear *parashat zakhor*, shake *lulav* and sit in a *sukkah*. Yet, it is rare for women to bring a *lulav* to *shul* for *Hallel*; nor is it customary for them to parade around a central *bima* in the *ezrat nashim* for *hoshanot* and few attend the synagogue for *Hoshana Rabba* – despite its High Holiday content. Why is the rabbinate complacent about having the women remain spectators? Why don't they use these opportunities to spiritually enrich the lives of their female congregants? Women are encouraged to attend *shul* Shabbat morning; why is not the same true for Shabbat *minha* and *ma'ariv* and for the daily *minyan*? In many a weekday *minyan* there isn't even a *mehitza* available should women want to attend.

haRav Kook, 5765/2005) (*Sinai*, 68, pp. 135-36), pp. 271-349, at p. 341 and note 306. See also the collection of articles at: <http://www.daat.ac.il/daat/tfila/kadish/legufo-2.htm>.

146 R. Ahron Soloveichik, *Od Yisrael Yosef Beni Hai*, end of sec. 32, p. 100.

147 R. Joseph Elijah Henkin, *Kitvei haGri Henkin*, II, *Teshuvot Ibra*, sec. 4, no. 1; see also R. Chaim Pinchas Scheinberg, cited in *Ta'arikh Yisrael, supra*, note 145; *Resp. Iggerot Moshe, O.H.*, V, sec. 12, no. 2.

(e) Torah Study: By the turn of the last century, in a world of social, political and moral upheaval, it became eminently obvious that extensive education was the only real way to assure the transmission of Jewish values and knowledge.¹⁴⁸ This has led to what is unquestionably the most radical change to have occurred in the past century, and most dramatically in past thirty years: the explosion in women's education.¹⁴⁹ In the modern period, women have available to them educational opportunities that are on an extremely high level. We also live in a more affluent society, which allows young adults to spend more time in higher learning – Jewish and secular – before they get a job and establish a family. *Kolelim* for women are no longer a fantasy. For many women, *limud Torah* is the most genuine and satisfying form of an unmediated source of spirituality. Indeed, the *Sifre* and Maimonides¹⁵⁰ view Torah learning as one example of “service of the heart.”¹⁵¹

Nevertheless, women, who see their future in Torah scholarship, sense that the road is an uphill battle. If we encourage our daughters to pursue a career while raising a family, why can't their career be Torah learning and education? There is a need for the Orthodox community to encourage its women in their pursuit of higher Torah studies, much as we do for our men. We need it for the spiritual health of our women and our community at large. What could be a louder message to the next generation than to see how **both** parents sacrifice time for Torah? We must allow talented women not only to learn for themselves, but to interact with the community at large – through teaching, lecturing, researching and publishing. The introduction of *to'anut rabbaniyot* (women advocates in the rabbinic courts), first trained by *Midreshet* Lindenbaum, testifies to the ability of qualified women to master Jewish family law. Similarly, *Nishmat*, under the leadership of Reb. Chana Henkin, has trained several classes of *yo'atzot halakhah* (women halakhic advisors) to give rulings in the laws of family purity. This novel institution has proven to be a real success and of great value. This course of study should be expanded to the laws of *kashrut*, mourning and medical ethics – indeed, to whichever areas these scholars view appropriate. There will also be a need for certification of advanced study, and proper titles that reflect this new-found competence.

(f) The Aguna: The problem of the *aguna* (a tied, chained or anchored wife), a woman whose husband has disappeared and is presumed dead, has been handled with great wisdom and sensitivity in the past. The recent case of the tragic collapse

148 R. Haym Soloveitchik, “Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy,” *Tradition*, 28:4 (Summer 1994), pp. 64-130.

149 Shoshana Pantel Zolty, *supra*, note 94.

150 *Sifre*, *Piska* 41; Maimonides, *Sefer haMitzvot*, *Esei* 5.

151 Deut. 11:13.

of the World Trade Center Twin Towers¹⁵² proves that such is the situation in our day as well. However, the issue that is of greater concern in our day is the “chained wife” whose recalcitrant husband is alive and refuses to give her a *get*.¹⁵³ Such a woman cannot halakhically remarry, and often lives a life of anguish and despair. This is not a feminist issue – nor should it be presented as such, lest it be marginalized and politicized. The greater prevalence of divorce in our times and, consequently, the increasing incidence of contemporary *agunot*, invests the situation with new urgency. It is imperative that the problem be confronted with astuteness and compassion by rabbis today.

Unfortunately, in the Diaspora, there is little way of compelling a recalcitrant husband to give a religious divorce. In Israel, the theoretic legal power that rabbinic courts have, to sanction a husband who refuses to give a *get*, is rarely applied. Instead, the rabbinical courts engage in haggling – often pressuring the woman to give up property or even child support to secure the *get* – thereby granting legitimacy to the husband’s extortion tactics. Sadly, there are no magic solutions to this problem. Nonetheless, there is a value in publicly admitting that a crisis exists. Solutions tend to appear more quickly when the community-at-large raises the alarm.

VI. Conclusion

In her rich and impressive interdisciplinary work, Prof. Tamar Ross has explored many divergent fields of scholarship in an attempt to understand the points of

152 See R. Gedalia Dov Schwartz, “*beHeter Agunot sheBa’aleihem Ne’evdu beHitmotetut Migdal haTeomim*,” *HaDaron*, 72/73 (Elul 5762), pp. 63-72; R. Mordechai Willig, “*She’eilah beInyan haAgunot meAson Migdalei haTe’omim*,” *Kol Tzvi (Yeshivat Rabbenu Yitschak Elhanan)*, IV (5762), pp. 3-13; R. Ovadiah Yosef, “*Heter Aguna me’Migdalei haTeomim’ beNyu York*,” *Tehumin*, XXIII (5763) pp. 97-109 – this responsum first appeared in *Kol Tzvi (Yeshivat Rabbenu Yitschak Elhanan)*, IV (5762), pp. 44-63; R. Zalman Nehemia Goldberg, “*Heter Agunot me’Migdalei haTeomim’ beNyu York*,” *Tehumin* XXIII (5763) pp. 110-124 – this responsum first appeared in *Kol Tzvi (Yeshivat Rabbenu Yitschak Elhanan)*, IV (5762), pp. 14-35 and 41-43 with comments by R. Menachem Senderovic, *ibid.*, pp. 36-40; R. Chaim Jachter, “The Beth Din of America’s Handling of the World Trade Center *Agunot*,” *Gray Matter*, Vol. II (Brooklyn, New York: Yashar, 2006), pp. 114-38; R. Jonas Prager, *Journal of Halacha and Contemporary Society* (Fall 2002).

153 For some general reviews, see R. Judah David Bleich, “The Agunah Problem,” in J.D. Bleich, *Contemporary Halakhic Problems*, Vol. 1 (New York: Ktav, 1977), pp. 150-59; R. Shlomo Riskin, *Women and Jewish Divorce: The Rebellious Wife, the Agunah and the Right of Women to Initiate Divorce in Jewish Law* (Hoboken, NJ: Ktav, 1989). R. Michael J. Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law* (New York: Ktav, 2001); R. Chaim Jachter and Ezra Frazer, “Grappling with the Problem of *Agunot*,” *Gray Matter – Discourses in Contemporary Halacha* (Teaneck, NJ: privately published, 2000), pp. 1-59.

conflict between feminism and Orthodox Judaism. This book makes it eminently clear that these worldviews have divergent sets of values, goals and expectations. The author has attempted to present a new theological approach that she believes will bridge the gap between these different *weltanschauungs* and allow unabashed feminism to coexist with Orthodoxy. This reviewer believes that Ross has, unfortunately, failed to attain the goal she set out to do. Firstly, the theology presented in this volume is clearly at odds with a number of basic tenets and principles of faith that have characterized Orthodox Judaism over the millennia. Secondly, the work fails to fully appreciate the nature and dynamic of the halakhic process, as well as the vastness, richness and depth of the rabbinic literature.

Indeed, where feminism and Halakhah can coexist with integrity, it behooves contemporary rabbis to take the steps to make room for those women who find “feminist” practices meaningful and significant. However, where a value choice must be made between feminism and Torah Judaism, an Orthodox Jew, bound by a divine and immutable Torah and committed to the halakhic process, must be prepared to be religiously and intellectually honest and choose the latter.

This message has been insightfully captured by recent comments of R. Aharon Lichtenstein.¹⁵⁴ In response to the child’s query “What is this service to you?” (Exodus 12:26), the Torah replies: “You shall say: It is a Pesach offering to God, Who passed over the houses of the children of Israel in Egypt, when He struck the Egyptians and saved our children, and the nation kneeled and prostrated themselves” (Exodus 12:26, 27). The Torah’s answer seems unintelligible, almost unrelated to the question. However, on closer examination, argues R. Lichtenstein, we find here a fundamental lesson.

The parents’ answer relates to the commandment of “*Pesach dorot*,” the Pesach sacrifice brought in future generations, which was dramatically different from the original celebration in Egypt. Thus, in this statement, we are effectively telling our children that there is room for innovation and change where necessary, in accordance with a shifting reality; the commandment of the Pesach sacrifice in fact symbolizes this adjustment. However, we must also bear in mind the final words of the verse: “And the people kneeled and prostrated themselves.” Change is often essential, and the great Torah sages throughout history have applied Halakhah to the new circumstances and conditions of each generation. But, underscores R. Lichtenstein, all of this can only occur with the clear proviso that it is undertaken with complete commitment to Halakhah: its obligations, values and principles.

154 R. Aharon Lichtenstein, “What is This Service to You?” – talk delivered at *Seuda Shelishit, Shabbat Parashat Bo 5765* (2005) at Yeshivat Har Etzion; notes available online at: <http://vbm-torah.org/archive/sichot66/15-66bo.htm/>.