**REVIEW ESSAY**

**Aryeh A. Frimer**

**GUARDING THE TREASURE**


**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 *minyan* 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.*

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Because of these sensitivities, I picked up Tamar Ross’s recent book “Expanding the Palace of Torah: Orthodoxy and Feminism” 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. 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.

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. 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.
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

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.”

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. 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.” From its very inception, Judaism has spoken of freedom – not as an end – but as a means to serve God. 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.
8 Exodus 7:16 and 26; 9:1 and 13. In Exodus 5:1 we also find “shalakh et ami ve-yahugo li – Let my people go to sacrifice to me” – again a form of service.
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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, and continued up to Moses’ death in the plains of Moab. 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*, Maimonides, *Mahzor Vitri*, Meiri, and modern authors as well.

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. While it is true that

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*.
15 R. Menahem ben Solomon haMeiri, Introduction to *Bet haBehira, Avot*. See also R. Shlomo Zalman Havlin, “*Seder haKabalah leRabenu Menahem haMeiri*” (Jerusalem and Cleveland: Ofeq Institute, 1992).
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/13vesodos.html](http://www.members.aol.com/LazerA/13vesodos.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. 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” 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/~jjbaker/Yigdal.html) and the Ani Ma’amir 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-tefila – is evidence enough of the general acceptance of the Thirteen Principles throughout Torah Judaism.


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 problems 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.
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).  

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”; “Henceforth, a prophet may not introduce a new matter”; and “Matters of Torah cannot be derived from the words of the Prophets.” 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.


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, Hilkhot Yesodei haTorah, 9:1.

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

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. Nevertheless, Jewish law distinguishes between the obligations of kohanim (priestly clan), leviyim (Levites) and yisraelim (other Israelites), as well as between males and females. 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. 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. On the contrary, until the Middle Ages, it was rare for women to voluntarily perform a time-bound commandment. This exemption is derived in the Oral Law through the use of the hermeneutical principals, 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. Thus, if women are exempt from performing

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.
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 Chajoe, 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. 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*). Thus, according to most halakhic authorities, *Hazal* generally freed women from time-determined rabbinic commandments as well, though there are various exceptions. R. Solomon ben Isaac (Rashi), *Berakhot* 20b, s.v. “*deRahamei ninhu*.”

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...
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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

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 halakhah 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 haAvri (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 rabbinc 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”;
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 Tu‘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 atikim 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 Sugoi Masoret,” in Shi’urim leZekher Aba Mor z”; I, pp. 220-39; “Keviat 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-makhsh 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 *rezon 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 truth\(^51\) – 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


\(^{51}\) For a discussion on how to determine an honest search, see *supra*, notes 1a and 1b.

that, like men, the more serious a talmida hakhama (or talmidot 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 ba-katuv 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

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. Bbildstein, “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.
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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 Mikhail 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.
R. Moses Feinstein, who comments: 

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. 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. 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
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 view66* – even though majority is not always an absolute arbiter or guarantor for


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,
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.”

(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.

(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. 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. 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, 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 halsha.”
70 Shulkhan Arukh, O.H., sec. 37, no. 2.
73 See note 33, supra.
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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, Hilkhhot 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 Ovadia ha-Shalem (Jerusalem: Yeshivat Hazon Ovadia, 5748); R. Isaac Yosef, Dinei Hishuk Katan uBar Mitzva, Kuntres Dinei Hishuk 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 ha-Levi, 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 authorities 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, 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 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.

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-nikdashti) 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-nikdashti” 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 uncustumary 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 halasha 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 asmakhot see R. Menachem Elon, haMishpat halvri (Jerusalem: Hebrew University, Magnes Press, 1973), II, p. 256; Encyclopedia Talmudit, II, asmakhita.
84 See R. Nissim Gerondi, note 82, supra.
85 Mishne Torah, Hilkhot 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 t'zitzit on the corners of the four-cornered garment even though she is exempt.86 Thus, women wearing t'zitzit, 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 t'zitzit 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

86 Rema, O.H., sec. 17:2, Mishna Berura no. 5.
87 Resp. Iggerot Moshe, note 60, supra.
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 haShulchan, 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 Shulchan 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, Hidashei 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 Rebbi; R. Joseph Isaac Schneerson, the Lubavitcher Rebbi; R. Issachar Dov Rokeach, the Belzer Rebbi; 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’amor Mordechai, subsec. 3; Arukh haShulkan, sec. 6; R. Ben-Tsiyon Lichtman, Benei Tzijyon, I, O.H., sec. 38, no. 3, subsec. 2; Igerot 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’an (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.
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.
97 See the quote following note 60, supra.
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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 ha 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 Journal102 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.


100 Bava Metzia, 76a.


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. 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. 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. 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*. 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. The latter suggests that, despite the mishnaic exemption of women from time-determined

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103 R. Yehuda Herzl Henkin, “*Mahu Kevod haTzibbur*,” *HaDarom*, 55 (Elul 5746), p. 33 (see p. 39); R. Yehuda Herzl Henkin, *Bnei Vanim*, 1, sec. 4; II, sec. 10; and IV, sec. 2.


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: halm 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. modern women’s halakhic obligation to perform mitzvot is, in principle, equal to that of men. Basing himself on R. David Abudraham, 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, 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 minyan (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.

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 halakha, 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 Tahan 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.
111 The latter portion of the responsum 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 respossum, 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 suggestions and, despite its popularity, has been seriously challenged. 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. 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, and as a widespread social phenomenon from the 13th century. 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


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’elat Shalom, II, sec. 46 and 47; R. David Leifer, Resp. Pet 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.


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.
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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. *waharta vaHayyim*, sec. 51; R. Samuel E. Volk, *Sha’arei Tovah*, 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.


121 “Kol she-eino mehuyav ba-davar, eino motzi et ha-rabim yedei hovatam – 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 *Halikhet 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 keri’ot. Most importantly, the quorum required for a minyan is ten individuals who are inherently obligated. 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. Therefore, we see that invoking the Magen Avraham solves no problem for feminists.

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).

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. 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 use 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, Hilkhot Nidda, sec. 107, especially para. 1, 5, 15-19.
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.
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Yosef,\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 conditions.

\textsuperscript{130} Resp. Yabia Omer, I, Y.D., sec. 15.
\textsuperscript{131} See inter alia: Pesahim 72b, “Rava said: a man is obligated to rejoice his wife with a meritorious act” and Rashi ad loc.; Shulchan Arukh, E.H., I, sec. 102, s.v. “u-biDvar”; ibid., E.H., III, sec. 28; ibid., E.H., IV, sec. 86.
\textsuperscript{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, Siftei 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.
conditions – social, political or cultural. One cannot be selective about Halakah 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 Halakah 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


135 Aryeh A. Frimer, supra, note 78.
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ru’ah (spiritual satisfaction); 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 tefilot, 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. 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. 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 – including some who oppose women’s prayer groups – 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 minyan.141 They may rise in the women’s section and say it as the whole congregation responds.142 In addition, Shulkhan Arukh143 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, Eliya 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 Efrayym 4, Pithei Shaarim 28; R. Joseph Hayyim, Ben Ish Hai, Ekev, 5; R. Abraham Danzig, Hayyei Adam 65:2; R. Eliezer Waldenberg, Resp. Tez 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 Oved, 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. Ovadia Yosef, Yecheive Da’at IV:15, note 1; R. Ovadia Yosef, Resp. Yabia Omer, VIII:22, no. 10; R. Barukh Pinhas Goldberg, Penei Barukh, Bikur Holim keHilkhato 2:33, note 80.


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’s 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:

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 rabbinic 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.

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, note145; 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. 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. 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. Kollelim 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 Maimonides view Torah learning as one example of “service of the heart.” 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’anot 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...
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of the World Trade Center Twin Towers\textsuperscript{152} 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.\textsuperscript{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.

\textbf{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


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.