

The Edah Journal

CONTENTS

Editor's Introduction to the *Kislev 5765* Edition

Eugene Korn

ARTICLES

**Rabbis Joseph B. Soloveitchik and Abraham Joshua Heschel
on Jewish-Christian Relations**

Reuven Kimelman

**Contemporary Fads and *Torah u-Madda*:
A Response to Alan Brill**

Yitzchak Blau

Response by Alan Brill

Women and Writing the *Megillah*

Ross Singer

***Edah* in Israel**

Saul J. Berman

Moshe Tur-Paz

From *De'ot*

**The Challenge of Unmarried Women: Does Defining Them as a
"Problem" Meet a Social Need?**

Hagit Bartov

REVIEW ESSAYS

A Critique of *Expanding the Palace of Torah: Orthodox and Feminism* by Tamar Ross

Yoel Finkelman

Response by Tamar Ross

***Tears of the Oppressed* by Aviad Hacoen**

Michael J. Broyde

REVIEW

**What Makes a Book Orthodox? *Wrestling With God and Men*
by Steve Greenberg**

Reviewed by Asher Lopatin





The Edah Journal **A Forum of Modern Orthodox Discourse**

Statement of Purpose

The Edah Journal is a forum for discussion of Orthodox Judaism's engagement with modernity. It is Edah's conviction that such discourse is vital to nurturing the spiritual and religious experiences of Modern Orthodox Jews. Committed to the norms of *halakhah* and Torah, *The Edah Journal* is dedicated to free inquiry and will be ever mindful that, "Truth is the seal of the Holy One, Blessed be He."

Editorial Board

Eugene Korn - Editor
Naftali Harcsztark – Associate Editor
Joel Linsider – Text Editor
Moshe Halbertal (Israel)
Richard Joel
Norma Baumel Joseph
Simcha Krauss
Barry Levy
Dov Linzer
Tamar Ross (Israel)

Directions for Submissions

The Edah Journal invites submissions of original scholarly and popular essays, as well as new English translations of Hebrew works. Popular essays should be between 800-2000 words. The journal particularly welcomes halakhic, philosophic, and literary studies relating to *qedushah* in modern experience, the religious significance of the State of Israel, Jewish ethics, emerging Torah conceptions of and opportunities for women, *Talmud Torah* as an intellectual and spiritual discipline, pluralism, and Judaism's relation to gentiles and contemporary culture.

The Edah Journal will publish two online editions per year, and beginning February 2005 will be available in a hard-copy edition. Opinions expressed in the articles are those of the authors only and do not necessarily represent the views of Edah or the Editorial Board. Edah retains copyrights to all material published in the journal.

Submissions to *The Edah Journal* should be sent online to journal@edah.org, or mailed in duplicate to Editor, *The Edah Journal*, c/o Edah, 18 Columbia Turnpike, Florham Park, NJ 07932. Submissions must include a one paragraph abstract and one line biography of the author. Paper submissions should be accompanied by a diskette with essay in RTF, TXT or MSWORD format. Notes should appear as endnotes. Communications should be directed to the above email address.

Reader responses should be sent to the editor at journal@edah.org for possible electronic publication at the journal's website.

Copyright © 2004 Edah, Inc.
Graphic Design: Erica Weisberg
Web Design: SalemGlobal

Introduction to the *Kislev 5765* Edition

Eugene Kom

Welcome to the *Kislev 5765* edition of *The Edah Journal*. For the past four years *The Edah Journal* has enjoyed phenomenal success as an exclusively on-line publication. Approximately 30,000 people access the journal on-line every month, making it one of the widely read journals in the world. Through this period we have received numerous requests from individuals and institutions for the journal to appear also in the more traditional paper format. We understand this need, and we now plan to begin publishing *The Edah Journal* in hard-copy form alongside the online version. We will publish two volumes that will be available for sale at Edah's biannual New York Conference in February 2005. The first volume will include the initial four editions (1:1-2:2) of *The Edah Journal*, while the second volume will include editions 3:1-4:2. Beginning with edition 5:1 in the spring of 2005, we will publish all editions concurrently both on-line and in paper format. Readers will be able to order the paper version on the Edah website (www.edah.org) or from the Edah office.

A second exciting development has emerged from Edah's continuing relationship with Modern Orthodox organizations in Israel and the success of our recent joint Jerusalem conference with *Ne'emanai*

Torah va-Avodah on *Hag ha-Sukkot*. We share many values, challenges, and principles with the membership of *Ne'emanai Torah va-Avodah*. As the brief statements of Rabbi Saul Berman and Moshe Tur-Paz found in this edition make clear, our dreams, ideals and world-view are remarkably similar despite the geographical distance of 5,000 miles and the problems unique to religious life in Israel. It was natural therefore for Edah and our Israeli spiritual counterparts to intensify on-going collaboration in order to share each other's Torah, wisdom and thinking. As a result, Edah and *Ne'emanai Torah va-Avodah* have agreed to publish articles found in each others journals. Beginning with this edition, *The Edah Journal* will translate and publish relevant articles from *De`ot*, the publication of with *Ne'emanai Torah va-Avodah*. Hagit Bartov's penetrating article on the existential and spiritual condition of single Israeli religious women represents the first article of this joint venture. *De`ot* will also translate into Hebrew and publish articles from *The Edah Journal*. Additionally, each organization is exploring ways to make available to its membership the full editions of each other's journals.

In a further indication of the strengthening bonds we are forging with our Israeli counterparts, *The*

Edah Journal is working with Beit Morasha in Jerusalem to share scholarly articles between us. This edition's interchange between R. Yoel Finkelman and Prof. Tamar Ross was originally commissioned by *Aqdamot* (Bet Morasha's journal), where it will appear in the original Hebrew in the spring. *Aqdamot* has also published as a separate monograph the English translation of a critical article by R. Benjamin Lau on the subjects of saving gentile life on *Shabbat* and the relationship of *halakhab* and moral values. That translation was done by Joel Linsider, *The Edah Journal's* translator and text editor, and is scheduled to appear as the principal paper in a symposium in our journal in 2005. We look forward to hearing from you regarding these Israeli articles and encourage you to help us continue to stimulate deeper connections with Edah's *yedidei nefesh* in Israel.

The *Kislev* 5765 edition contains articles on a variety of subjects critical to Modern Orthodoxy. In a major study Professor Reuven Kimelman explores the sometimes cooperative-sometimes divergent positions of the two greatest Jewish theologians of the second half of the twentieth century, Rabbis Joseph B. Soloveitchik and Abraham Joshua Heschel, on the issue of Jewish-Christian relations. Often depicted as polar opposites—the Rav the quintessential Orthodox Lithuanian rationalist and R. Heschel the Conservative descendant of great Hasidic *rebbe*s—Kimelman limns their parallel expertise in Western philosophy, their common experience in Berlin, their deep interest in Christian

theology and above all, their passionate commitment to Jewish tradition and the Jewish people. He traces their cordial relation and initial collaboration in responding to the Vatican's overture for Jewish-Christian dialogue in the 1960's before they parted ways. Heschel ultimately went to Rome and promoted theological dialogue, while Rav Soloveitchik decided that dialogue with Christian clergy on moral, social and political issues was "desirable even essential," but theological dialogue should be avoided. Lastly, Kimelman begins to evaluate whether there was really a substantive difference in their respective "rules of engagement" with Christian churches and whether dialogue today would satisfy the ground rules that each laid down.

The *Iyar* 5764 edition of *The Edah Journal* featured a lengthy essay by Prof. Alan Brill on the nature of *Torah U-Madda*, in which he called for a reconceptualization of that idea and consideration of differing formulations of Torah as embedded cultural products rather than understanding Torah as standing outside of non-Jewish culture. He also urged a conception *Torah U-Madda* that would better serve Modern Orthodox life in suburbia, where so many Modern Orthodox Jews live. In this edition, R. Yitchak Blau mounts a passionate refutation of Brill's conception, finding it overly dependent on post-modern—and therefore temporal—thinkers. Brill responds that Blau's rebuttal misses the mark and fails to address the principle thesis of his original paper.

In a perceptive non-academic paper, Hagit Bartov of Israel reflects on the condition of single religious women in Israel and why religious society regards them as “a problem.” She argues that when the religious establishment views them as such, it frequently ignores their personal interests and concerns itself exclusively with preserving social stability and the status quo. And what is a single religious woman who realizes that her bachelorhood is not merely a “temporary status” between living with her parents and with her husband to do regarding *mitsvot* related to the home, like lighting Hanukah candles or reciting *Kiddush*? When she views her non-temporary single status as an existential home, can it also constitute a “halakhic home”?

Rabbi Ross Singer examines the halakhic opinions and considerations regarding whether a woman can qualify as a scribe for writing a Scroll of Esther (*Megillat Esther*) that is used for ritual purposes. Singer makes clear at the outset that his study is for theoretical purposes only, and that he is not advocating the practical implementation of women scribing *megillot* for the community. Such a step would require consideration of empirical communal conditions that transcend the analysis of technical and theoretical halakhic issues. To date, most halakhic discussion regarding women and *Megillat Esther* has centered on whether a woman can function as a reader of the *megillah* for other women and for the community. Singer’s study focusing on qualifications for a halakhically valid scribe thus

opens up a new area of inquiry regarding women’s participation in ritual, one that may have implications for their scribing of other sacred texts.

The challenge of feminism with its demand to grant women full voice and place in religious life is perhaps the most critical flashpoint in Orthodoxy today. It is the place at which Modern Orthodoxy comes to full confrontation with modernity and its values. Prof. Tamar Ross, a member of the editorial Board of *The Edah Journal*, has written a far-reaching book on the implications of feminist thought for Torah and *halakhab*. In many ways it challenges the foundations of current Orthodox practices and theology. R. Yoel Finkelman critiques Ross’s ideas, finding them radical and ultimately unsuited to Orthodox tradition. Ross responds at length to Finkelman’s concerns, arguing for a wider understanding of Orthodox theology, *halakhab* and methodology. This interchange encapsulates the divide between Orthodox traditionalists and Modern Orthodox feminists. It will likely prove to be a prime catalyst for further in-depth discussions on this searing issue.

No specific problem vexes modern *halakhab* more than that of the tragic *agumab*—the woman forbidden to marry because her husband refuses or fails to grant her a religious bill of divorce (*get*). Recently the Israeli press reported the sad tale of a woman who had to wait eleven years before the Rabbinical High Court could allow her to remarry, since her husband had refused to give her a religious divorce for five

years and after attempting suicide he remained brain dead for six years thereafter. Either because of the interpretation or the current administration of *get* law, this woman suffered eleven years of loneliness and humiliation. Variants of this tragedy are multiplied a thousand-fold among religious women in Israel and America. Many consider the current adjudication of *gitten* fundamentally unjust and argue that the halakhic system cannot recapture its moral credibility until it solves this painful human problem.

One attempt to solve this problem is being made by R. Emmanuel Rackman, whose *beit din* utilizes the concept of *kiddushei ta'ut* (mistaken betrothals) to annul marriages in which the husbands obstinately refused to give their wives religious divorces. This technique has been largely rejected by religious authorities, yet a certain amount of mystery surrounds the Rackman *beit din*, since it has previously not opened its decisions and legal reasoning to public review. R. Michael J. Broyde critiques a new book, *The Tears of the Oppressed*, by Rabbi Prof. Aviad Hacohen that attempts to supply just such an explanation. In a lengthy and detailed analysis, R. Broyde finds R. Hacohen's justification of the technique employed by R. Rackman's *beit din* to be fundamentally flawed and halakhically unsound.

R. Broyde is not content to argue solely against an attempted solution, and outlines a possible approach he considers valid.

The popular success of the documentary film, "Trembling Before God," put the issue of homosexuality into the public discourse of the Orthodox community. One of the central figures in that film was Steve Greenberg, an ordained Orthodox rabbi. Rabbi Greenberg has now written *Wrestling With God and Men*, a book that argues for a re-evaluation and ultimately Orthodox license for homosexual unions built on monogamy and fidelity. Rabbi Asher Lopatin reviews this book, evaluating whether Greenberg's arguments conform to classic halakhic protocol and logic and whether the book can ever find its way into the Orthodox library, even as one that espouses a rejected minority opinion.

We invite you join the conversation by sending us your thoughtful responses to the material in this edition. You may reach *The Edah Journal* at journal@cdah.org.

b'verakah,
Eugene

Rabbis Joseph B. Soloveitchik and Abraham Joshua Heschel on Jewish-Christian Relations

Reuven Kimelman

Abstract: How is it that Rabbis Joseph B. Soloveitchik and Abraham Joshua Heschel, who had so much in common, became the spokesmen for opposing positions on Jewish-Christian dialogue? Is there a fundamental difference in their analyses of the nature of Judaism and Christianity? Have recent developments confirmed or disconfirmed their hopes and fears? Would they say anything different today?

Biography: Reuven Kimelman is Professor of Talmudic History, Midrash, and Liturgy at Brandeis University. He is the author of *The Mystical Meaning of Lekhab Dodi and Kabbalat Shabbat* (Hebrew), published by Magnes Press of the Hebrew University.



Rabbis Joseph B. Soloveitchik and Abraham Joshua Heschel on Jewish-Christian Relations¹

Reuven Kimelman

From the forties through the seventies of the twentieth century, the two most consequential religious thinkers on the American Jewish scene were Rabbi Abraham Joshua Heschel (1907-1972) and Rabbi Joseph B. Soloveitchik (1903-1993), the former a professor at The Jewish Theological Seminary of America, the latter a professor and Rosh Yeshiva at Yeshiva University. By the late fifties each had emerged as the major theological voice of his institution and movement.² Indeed, they were probably the only theologians read by students of both institutions. Each had international followings.³

By 1960 R. Abraham J. Heschel was the most widely read Jewish theologian in America,⁴ whereas R. Joseph B. Soloveitchik was the most widely accepted ideologue of “Integrationist Orthodoxy.” Integrationist Orthodoxy” is preferable to “Modern,” since it reflects better its ideological tenor. For it, as represented by its ideological mentor, believes in integrating Orthodoxy and the university, Orthodoxy and the State of Israel, and Orthodoxy and the Israeli army. It not only exists in modernity or takes its cue from modernity, but relates to it by encounter or dialogue rather than by rejection or capitulation.⁵

Rabbis Heschel and Soloveitchik had much in common: Both were scions of illustrious eastern European families. R. Heschel, a direct descendant of the Apter Rav, was related to many of the great rebbes from the circle of the Maggid. R. Soloveitchik, a direct descendant of the Beis Halevi, was related to the giants of Lithuanian talmudic scholarship. Both were child prodigies⁶ who in their twenties broke with family tradition and started their general education in Warsaw only to continue at the University of Berlin—1925 for R. Soloveitchik, 1927 for R. Heschel—where both earned their doctorates in philosophy in the early 1930s.⁷ Indeed, in their dissertations both thanked the same neo-Kantian professor of philosophy, Max Dessoir.⁸ R. Heschel and R. Soloveitchik met first in Berlin⁹, and, later, in New York.¹⁰

Both R. Soloveitchik and R. Heschel struggled with the epistemology of Kant,¹¹ admired Kierkegaard,¹² and enlisted Bergson, Otto, Dilthey, Scheler, Husserl, Hartmann, Heidegger, among others,¹³ in Europe as well as Reinhold Niebuhr in America¹⁴ in their exposition of Judaism. To buttress their argument, they relied on physicists and philosophers of science such as Newton, Planck, Einstein and

Whitehead.¹⁵ Enamored of Rambam, they extensively cited and significantly modeled their lives after him.¹⁶ Indeed, R. Heschel at age twenty-eight wrote in seven months a commissioned biography of Rambam, published in 1935, in honor of his eight hundredth birth anniversary. In their major works, they cited the first Lubavitcher Rebbe, Rabbi Schneur Zalmen of Liadi, at crucial places in their argument.¹⁷

“Both were scions of illustrious East European families who overcame family tradition and started their general education in Warsaw only to continue in Berlin.”

Both were masters of the full gamut of the Jewish tradition. They not only knew Bible and its exegesis, the full panoply of Rabbinic literature, Jewish medieval philosophy, Kabbalah, Hasidism¹⁸, Musar, and modern German Jewish thought, but also articulated illuminating reformulations of much of them. Indeed, their mastery of the depth and breadth of the Jewish tradition along with much of the rest of the Western intellectual tradition and Christian theology may be unparalleled amongst twentieth century theologians.¹⁹

Both saw prayer²⁰ and the Sabbath²¹ as defining religious experiences in Judaism and penned penetrating works on their meaning. Together they

fought the intellectual trivialization of Judaism and defended the *halakhab* as a concretization of religious experience.²² They expounded Judaism in terms of religious anthropology and presented it as a response to the problems of—indeed the conflicts inherent in—human nature.²³ Both focused on the religious consciousness,²⁴ depicted religious experience as part of the human response to the mystery of existence,²⁵ understood the religious life as a response to the reality of being commanded,²⁶ conceptualized the problem of human existence in terms of meaning rather than being,²⁷ and perceived much of the divine-human relationship as a partnership.²⁸

Whereas others talked primarily of the ultimacy of Torah or Israel, they spoke primarily of the ultimacy of God.²⁹ Nonetheless, each realized the limitations of such talk. Since with regard to the Divine, one apprehends more than one can comprehend, clearly more than one can verbalize, each realized that much of faith experience must remain ineffable.³⁰ Both wrote of the potential redemptive significance of the State of Israel.³¹ Each was intensely involved in the passions of the day.³² Both used a literary style that matched their inspired vision.³³ The two were master stylists of English, Hebrew, and Yiddish,³⁴ indeed captives of the poetic muse.³⁵

Besides their mastery of these three languages, they knew Greek, Latin, Polish, and German. Finally, they raised many disciples. There is hardly a signify-

cant theological voice in modern traditional Judaism of the twenty-first century in America who does not count him or herself as a disciple of one, if not both, of them.³⁶

“Together they fought the intellectual trivialization of Judaism and defended the halakhab... When others talked of Torah or Israel, they spoke of the ultimacy of God.”

Nonetheless, in the area of Jewish-Christian dialogue, by 1964 they had become the spokesmen for allegedly antithetical positions. What is the history and significance of their divergent approaches? In 1959 Pope John XXIII convened the Second Vatican Council. From 1958 to 1960 the Papacy eliminated from Catholic liturgies several expressions prejudicial to the Jews. The Pope charged Cardinal Augustin Bea, president of the Secretariat for Christian Unity of the Holy See, with the task of preparing a draft on the relationship between the Catholic Church and the Jewish people for the consideration of the Council Fathers.

Among the organizations that became involved was the American Jewish Committee. AJC set up an advisory group consisting of Rabbis Elio Toaff of Rome, Jacob Kaplan of France, and Louis Finkelstein, Salo Baron, Joseph Soloveitchik and Abraham Heschel of America. Interestingly, while

the Europeans were chief rabbis, the Americans were academics.

R. Soloveitchik and R. Heschel emerged early on as the major Jewish spokesmen. Already on December 8, 1960, R. Soloveitchik declared before rabbis of the various denominations, convened by the World Jewish Congress, that he opposed the presence of Jews as observers or with any formal status at the Ecumenical Council.³⁷ Within a year, on November 26, 1961 (moved from November 25, which fell on the Sabbath, to allow for R. Heschel’s presence), R. Heschel played the central role in a meeting with Cardinal Bea. They initiated their conversation with a discussion of Rabbi Akiba’s pronouncement on the uniqueness of The Song of Songs, about which Cardinal Bea had recently written. Among the other subjects discussed were: the difference in the sense of mission young people felt in Communist countries versus Western countries, the renewed religious interest in Israel, the underground Jewish religious life in the Soviet Union, the significance of holiness in time, and the talmudic idea that when reciting the *Shema* one should be ready for martyrdom if necessary.³⁸

On January 9, 1962, R. Heschel received a personal letter from Cardinal Bea in German which expressed his anticipation of a memorandum from R. Heschel. Three books by R. Heschel—*God In Search of Man*, *Man Is Not Alone*, and *The Sabbath*—were sent in

February 1962 to Cardinal Bea³⁹, who received them as evidence of the “strong common spiritual bond between us.” (This language of “spiritual bondedness” was eventually incorporated into the text of the Church document and became central to papal teaching on the Jews. Pope John Paul II reiterated the phrase during his visit to the Great Synagogue of Rome in May 1986.)⁴⁰ Still, in April it was unclear whether the Church would repudiate the notion that Jews are “deicides” cursed by God.

In May, 1962, R. Heschel responded to Cardinal Bea’s invitation to submit proposals for the document on the Catholic Church and the Jewish people by submitting a memorandum “On Improving Catholic-Jewish Relations.” In his introduction, R. Heschel stated:

Both Judaism and Christianity share the prophet’s belief that God chooses agents through whom His will is made known and His work done throughout history. Both Judaism and Christianity live in the certainty that mankind is in need of ultimate redemption, that God is involved in human history, that in relations between man and man God is at stake; that the humiliation of man is a disgrace of God.

R. Heschel went on to make four recommendations to improve mutually fruitful relations between the Church and the Jewish community:

1. That the Council brand anti-Semitism as a sin and condemn all false teachings, such as that

which holds the Jewish people responsible for the crucifixion of Jesus and sees in every Jew a murderer of Christ.

2. That Jews be recognized as Jews ... and that the council recognize the integrity and the continuing value of Jews and Judaism.

3. That Christians be made familiar with Judaism and Jews.

4. That a high-level commission be set up at the Vatican, with the task of erasing prejudice and keeping a watch on Christian-Jewish relations everywhere.

In the summer of 1962⁴¹, R. Heschel was in frequent contact with Abbot Leo Rudloff, an active member of Cardinal’s Bea’s unofficial group on Catholic-Jewish relations. Abbott Rudloff had impressed upon R. Heschel the importance of his being available at the Ecumenical Council during the spring session when the resolution against anti-Semitism was scheduled for action. R. Heschel expressed concern about his “representativeness.” Accordingly, R. Tanenbaum worked to set up a meeting between R. Heschel and R. Soloveitchik⁴² for the Orthodox community, and another between R. Heschel and R. Freehof for the Reform community. The meeting between R. Heschel and R. Soloveitchik was to take place in early September. According to R. Bernard Rosensweig, in 1962 R. Soloveitchik met with Monsignor Johannes Willebrands (subsequently Cardinal and president of Commission for Religious

Relations with the Jews) to discuss the possibility of religious dialogue between Jews and Christians.⁴³

On March 31, 1963, Cardinal Bea visited New York. R. Heschel chaired a delegation of Jewish leaders who met privately with him and spoke at a banquet held in Cardinal Bea's honor. R. Heschel spoke of the common threat of evil facing humanity and of the necessity of dialogue. According to Cardinal Willebrands:

Rabbi Joseph B. Soloveitchik had also been expected at this meeting. He was not able to come because of the serious illness of his wife. I had the privilege and the joy to meet with him privately on the evening of the same day. This convinced me definitively: If the Vatican Council fulfilled its intention concerning the Declaration on the Jews, we would have a dialogue of a spiritual nature with the Jews.⁴⁴

The text of the Council's declaration, to be called *Nostra Aetate* ("In our Time"), from the second session in 1964 omitted specific reference to the term "deicide" (though condemning the notion of collective guilt quite strongly) and added a statement of eschatological hope for the union of Israel and the church. This last statement, which at best may have been intended to express the belief that at the end of time all who profess God's name will be gathered into union with God⁴⁵, was taken by many Jews as a reaffirmation of the Christian mission to the Jews. Accordingly, R. Heschel called the draft

"spiritual fratricide," and declared that, faced with the choice of conversion or death in the gas chambers of Auschwitz, he would choose Auschwitz. Nonetheless, on September 14, on the eve of Yom Kippur, feeling it an act of *qiddush ha-shem*, if not *piquah nefesh*, R. Heschel had an audience with Pope Paul VI in order to persuade him to adopt the original language of Cardinal Bea against the conversion of the Jews and the calumny of deicide. About this effort R. Heschel said:

And I succeeded in persuading even the Pope ... [H]e personally crossed out a paragraph in which there was reference to conversion or mission to the Jews. The Pope himself ... This great, old wise Church in Rome realizes that the existence of Jews as Jews is so holy and so precious that the Church would collapse if the Jewish people would cease to exist.⁴⁶

According to Eugene Fisher, executive secretary of the Secretariat for Catholic-Jewish relations, National Conference of Catholic Bishops, R. Heschel's efforts ultimately had such a transforming effect that by 1967 he was able to write that "The Schema of the Jews is the first statement of the Church in history—the First Christian discourse dealing with Judaism—which is devoid of any expression of hope for conversion."⁴⁷

In February 1964, at the Conference of the Rabbinical Council of America, R. Soloveitchik criticized the proposed decree as "evangelical

propaganda” that dealt with Jews only as potential converts. He argued that discussion between Christians and Jews should be limited to non-religious subjects, and that the Council should be asked solely for a condemnation of anti-Semitism, not for assertions of religious brotherhood.⁴⁸

R. Heschel declared that “faced with the choice of conversion or death in the gas chambers of Auschwitz, he would choose Auschwitz.”

In the spring of 1964, R. Soloveitchik delivered the talk “*Confrontation*.”⁵⁰ Rarely has a talk, subsequently an essay, been more consequential or more provocative to Christian-Jewish relations. What follows is not a summary of the essay, since the rhetoric of the essay is essential to its meaning and cogency.⁵¹ Only those elements significant for a comparison and contrast with R. Heschel are noted.

R. Soloveitchik lays down four preconditions for Jewish-Christian engagement:

- (1) There must be an acknowledgement that the Jewish people is an “independent faith community endowed with intrinsic worth to be viewed against its own meta-historical backdrop without relating to the framework of another (i.e. Catholic) community” (pp. 71-72)
- (2) The Jewish “singular commitment to God and...hope for survival are non-negotiable and not subject to debate or argumentation.”

(3) Jews should refrain from recommending changes to Christian doctrine, for such recommendations would lead to reciprocal Christian recommendations for changes to Jewish belief. Change must emerge autonomously from within, for “non-interference is a *sine qua non* for good will and mutual respect.”

(4) Each community must articulate its position that the other community “has the right to live, create, and worship God in its own way, in freedom and dignity.”

R. Soloveitchik emphasized that both communities have “the right to an unconditional commitment to God that is lived with a sense of pride, security, dignity and joy in being what they are.” This precludes “trading favors on fundamental matters of faith” or “reconciling differences” out of an obligation to compromise.

R. Soloveitchik spells out what he means by his rejection of any negotiation of differences:

Any intimation, overt or covert, on the part of the community of the many that it is expected of the community of the few to shed its uniqueness and cease existing because it has fulfilled its mission by paving the way for the community of the many must be rejected as undemocratic and contravening the very idea of religious freedom (p. 72).

We must always remember that our singular commitment to God and our hope and indomitable will for survival are non-negotiable and non-rationalizable and are not subject to debate and argumentation (p. 73).

For our purposes, note that the R. Soloveitchik's first recommendation (recognition of Jews as an independent faith community) resembles R. Heschel's second recommendation to Cardinal Bea, while his third (no Jewish proposals to change Christian doctrine) can be taken as opposing R. Heschel's first.

“Rarely has a talk been more consequential or more provocative to Christian-Jewish relations.”

The essay itself is quite unusual. Perhaps it can best be described *via negativa*, by stating what it is not. It is not written in Hebrew, the traditional language of Jewish legal discourse. It does not come to a clear behavioral conclusion (*pesaq halakhab*). It makes no reference to the history of Jewish understandings of Christianity. In this regard, it does not cite the Talmud, Judah Ha-Levi, Maimonides, Nachmanides, Menahem ha-Meiri, Jacob Emden, or Israel Lifschutz, not to mention authorities of the last century.⁵² Indeed, it hardly cites at all. And when it does cite Maimonides and Nachmanides,⁵³ the citations have nothing to do with Christianity. It also makes no assessment of the relationship between Christianity and *avodah zarah*.⁵⁴

On the other hand, what it does do is rife with paradoxes. By promoting the communication between Adam and Eve as paradigmatic of humanity, abstracting them from their maleness and femaleness, it spiritualizes the biblical narrative more than Philonic or Christian allegory. The references to an Adam I and an Adam II, though possibly Kabbalistic, have their closest cognates in Paul's Epistles⁵⁵ and modern Christian theology.⁵⁶ The analysis of Jewish-Christian relations is locked into ancient Jacob-Esau imagery redolent of medieval Jewish thought.⁵⁷ Its conclusion based on the assumption of an assertive Jacob turns out to be R. Soloveitchik's exegetical creation, opposed to the traditional midrashic reading of an obsequious Jacob before Esau.⁵⁸ The irony is even greater upon realizing that Catholic theological tradition identifies the Jews with Esau, and themselves—as the true Israel—with Jacob.⁵⁹

The essay also draws an analogy between the religious situation of the individual and that of the community, albeit assuming that much of individual religious experience is ineffable. It proclaims the standard of all religious communities to be "religious democracy and liberalism," while asserting that there can be no trans-religion standard. Finally, it draws upon the language of "The Lonely Man of Faith," which was delivered to a Catholic audience at St. Johns Seminary in Brighton Mass, 1964 and depicts what he holds to be the incommunicable faith experience.⁶⁰

Why is this response, or responsum, different from all other responses to Christianity? Why does it lack the traditional elements of the Jewish discussion of Christianity? Are they absent because R. Soloveitchik realized how much the modern situation differs from the medieval? After all, the political-religious equation has almost been turned on its head. Then the Church was at the apex of its temporal power, whereas Judaism was at its nadir. Now Judaism through the State of Israel is at the apex of its temporal power, whereas the Church is at its nadir.⁶¹ Since the ratio is more one of numbers than brute power, R. Soloveitchik only designates the Church as the “community of the many” and Judaism as “the community of the few.” Noteworthy is the fact that the Church is presented as a faith community with its own integrity.

“The essay itself is unusual. Perhaps it can best be described via negativa, by stating what it is not.”

Rather than being formulated as a *pesaq halakhab*, the essay constitutes a meditative ambivalent reflection on the complexity of the issues. Its contradictory quality is intrinsic to its message.⁶² What it gives with one hand, it takes away with the other. On the one hand, it is sufficiently prohibitive to buttress those who are apprehensive about, or unwilling to engage in, such a conversation, providing the requisite religious legitimation for their declining to do so. On the other hand, it is sufficiently equivocal to allow

those who are well-informed theologically, and who psychologically do not grovel before Christianity or modernity, to broach a conversation with Christianity. It thus serves as a prohibition for the many and a permission for the few.⁶³ Some will claim that the Rav is talking out of both sides of his mouth. Precisely; the fragmented modern Jewish situation prevents a single answer on the burning issues of the soul. In the contemporary life of the soul there are few universals. A rebbe's answer has to be attuned to the needs, abilities, and the situations of his students. By referring to himself more as a *rebbe* than a *poseq*, R. Soloveitchik allowed himself to give divergent rulings to different students.⁶⁴ Apparently, in the vagaries of the post-modern world, one cannot be a *poseq* without being a *rebbe*, for the validity of an objective order so often consists in reflecting a subjective reality.⁶⁵

R. Heschel responded to the type of position identified with R. Soloveitchik⁶⁶ in his article “From Mission to Dialogue,” which appeared in “*Conservative Judaism*” 21 (Spring 1967). The article had been adapted from R. Heschel's address to the 1966 Rabbinical Assembly convention. It also incorporated selections from his 1965 Inaugural Address at Union Theological Seminary that was published as “No Religion is an Island.”⁶⁷ After stating that the primary aim of the article is to find a religious basis for cooperation on matters of moral and spiritual concern in spite of disagreements, R.

Heschel honed in on the difference between our contemporary situation and the pre-modern one:

A good many people in our midst still think in terms of an age during which Judaism wrapped itself in spiritual isolation, an age which I sought to relive in a book called "*The Earth is the Lord's*." Nowadays... involvement has replaced isolation. The emancipation...has not only given us rights, it has also imposed obligations...we are deeply conscious of the vital interrelationship of religious sensitivity and the human situation (p. 1).

As physical isolationism is no longer a socio-political reality, so spiritual isolationism, for R. Heschel, is no longer a moral option.

"Its contradictory quality is intrinsic to its message. It serves as a prohibition for the many and a permission for the few."

Having attacked Jewish isolationism, R. Heschel then targets Christian triumphalism, saying that while we pray "that all human being will call upon God, we abstain from conversion and regard any attempt at depriving a person of his noble faith, of his heritage, as an act of arrogance" (p. 1). Nonetheless, aware of the ineluctable dependence between what goes on in the Christian world and in the Jewish, he asserts "Unless we learn how to help one another, we will only weaken each other" (p. 2).

R. Heschel then turns to those Jews who affirm the supremacy the *halakhab* as well as those Christians who affirm the supremacy of the Church saying:

The supreme issue today is... the premise underlying both religions, namely, whether there is a pathos, a divine reality concerned with the destiny of man which mysteriously impinges upon history. The supreme issue is whether we are alive or dead to the challenge and the expectation of the living God. The crisis engulfs all of us. The misery and fear of alienation from God make Jew and Christian cry together (p. 2).

R. Heschel faulted Christianity for its dejudaization, especially of the Bible, and the dogmatization of its theology. He sought a coalition of Judaism and Christianity against the movement of modern nihilism, the desanctification of the Bible, and the removal of the Bible from public discourse, lest the life of faith become an anomaly. It is precisely such an understanding of this joint mandate that provoked R. Heschel's opposition to religious parochialism. In a possible allusion to his Bostonian counterpart, R. Heschel says:

"There was a time when you could not pry out of a Bostonian an admission that Boston Common is not the hub of the solar system or that one's own denomination has not the monopoly of the holy spirit. Today we know that even the solar system is not the hub of the

universe” (p. 3).

In contrast, R. Heschel insisted that “no religion is an island” since “We are all involved with one another. Spiritual betrayal on the part of one of us affects the faith of all of us” (p. 3). Since cynicism, as he notes, is not parochial, surely religions cannot “insist upon the illusion of complete isolation” (p. 3). R. Heschel then poignantly asks: “Should we refuse to be on speaking terms with one another and hope for each other’s failure? Or should we pray for each other’s health, and help one another in preserving our respective legacies, in preserving a common legacy?” Answering his rhetorical question, R. Heschel states: “The world is too small for anything but mutual care and deep respect; the world is too great for anything but responsibility for one another” (p. 3). In actuality, R. Heschel not only opposed religious isolationism, but worked to create a coalition of religions to counter the worldwide movement of inter-nihilism that threatens the ecumenical movement of interfaith.

R. Heschel then makes a paradoxical move. While stressing that “the community of Israel must always be mindful of the mystery of its uniqueness,” he goes out of his way to identify the verse that would normally support such a position—“There is a people that dwells apart, not reckoned among the nations” (Num. 23:19)—with “the gentile prophet Balaam” (p. 4), as if to say that only a perverse interpretation of Scripture would circumscribe the

meaning of the uniqueness of Israel to dwelling apart.

“As physical isolationism is no longer a socio-political reality, so spiritual isolationism, for R. Heschel, is no longer a moral option.”

On what basis do Jews and Christians come together? Whereas all of humanity, R. Heschel believes, can come together on the basis of the image of God in all, Jews and Christians can also meet on “the level of fear and trembling, of humility and contrition, where our individual moments of faith are mere waves in the endless ocean of mankind’s reaching out for God ... where our souls are swept away by the awareness of the urgency of answering God’s commandment” (p. 5). Admittedly, “We may disagree about the ways of achieving fear and trembling, but the fear and trembling are the same.” However divided we are by doctrine, we are united by “Our being accountable to God, our being objects of God’s concern.” More specifically:

We are united by a commitment to the Hebrew Bible as Holy Scripture, faith in the Creator, the God of Abraham, commitment to many of His commandments, to justice and mercy, a sense of contrition, sensitivity to the sanctity of life and to the involvement of God in history, the conviction that without the holy the good will be defeated, prayer that history may not end before the end of days (p. 6).

R. Heschel challenges both Christians and Jews with regard to the other's role. "A Christian ought to realize that a world without Israel will be a world without the God of Israel. A Jew ... ought to acknowledge the eminent role and part of Christianity in God's design for the redemption of all men." Indeed, "Opposition to Christianity must be challenged by the question: What religious alternative do we envisage for the Christian World? Did we not refrain for almost two thousand years from preaching Judaism to the Nations?" After all, if "Judaism is the mother of Christianity, it has a stake in the destiny of Christianity. Should a mother ignore her child [see Isaiah 49:15] even a wayward... one?" (p. 8).

"What religious alternative do we envisage for the Christian World?"

R. Heschel concludes with a caveat that, while conceding some of R. Soloveitchik's reservations, manages to maintain his own position on Jewish-Christian discourse:

Refusal to speak to Christian scholars would be barbarous. Yet to teach without competence, without commitment, would lead to confusion and frustration. We may not be ready for a dialogue in depth, so few are qualified. Yet the time has come for studying together on the highest academic level in an honest search for mutual understanding and for ways to lead us

out of the moral and spiritual predicament affecting all of humanity.

Did R. Heschel's approach bear any fruit in the sixties?⁶⁸ For a fuller answer see the recent article on the subject, "Heschel and the Christians," by Michael Chester.⁶⁹ For our immediate purposes, Chester cites a eulogy of R. Heschel by John C. Bennett, president of Union Theological Seminary, where R. Heschel had been invited to be the first non-Christian visiting professor. President Bennett states:

Abraham Heschel belonged to the whole American religious community. I know of no other person of whom this was so true. He was profoundly Jewish in his spiritual and cultural roots, in his closeness to Jewish suffering, in his religious commitment, in his love for the nation and land of Israel, and in the quality of his prophetic presence. And yet he was a religious inspiration to Christians and to many searching people beyond the familiar religious boundaries. Christians are nourished in their own faith by his vision and his words (p. 249).

Bennett then says:

I truly believe that there has been a radical break in the minds and consciences of both Protestants and Catholics with their evil past of anti-Judaism⁷⁰, which so often helped to create the climate in which brutal racist anti-Semitism has flourished. I have great confidence that this

turning point has at last come, this turning away from so cruel and wicked a history, and Abraham Heschel has had an enormous influence in what one may call the consolidation of this change (p. 251).

This judgment of Bennett is confirmed by the Jesuit priest, Donald J. Moore, who writes:

Anyone familiar with the course of Catholic-Jewish relations will recognize the remarkable coincidence between the four proposals set forth in this memorandum [i.e. of Heschel cited above] and what has actually taken place within the Roman Catholic Church in its teachings and structures over the past quarter of a century.⁷¹

In the seventies, two events underscore the fruits of R. Heschel's efforts. In January 31, 1973, a little more than one month after R. Heschel's death, Pope Paul VI addressed thousands at the Vatican about the nature of the quest for God. There he stated: "Even before we have been moved in search of God, God has come in search of us." The published text credits the 1968 French edition of R. Heschel's, "*God in Search of Man*."⁷² According to many, this was an unprecedented public acknowledgement of a non-Christian by a pope. On March 10 of the same

year, *America*, the leading Jesuit American journal, took the unprecedented act for any Christian journal of devoting its entire issue to Jewish religious thought through a discussion of R. Heschel's impact:

The editor, Rev. Donald Campion wrote in his lead editorial:

The best instruction we Christians may receive concerning the continuing vitality and richness of the Judaic tradition in which we providentially share is the life and example of a Jew like Professor Heschel... May this special issue serve not only to introduce a Christian readership to the wisdom and holiness of a man and the sacred tradition that nourished him, but also promote the love ... that he strove mightily to inculcate. Each of you, our readers, will have his own lesson to learn from Abraham Heschel as he speaks to you of the living tradition of Judaism, in all its energy, holiness, and compassion. May the God whom Jews, Christians, and Muslim worship bring us to live together in peace and understanding and mutual appreciation.

Finally, we should ask whether R. Heschel's approach continues to bear fruit in the twenty-first century. In 2003, the Statement by the Christian Scholars Group entitled "*A Sacred Obligation: Rethinking Christian Faith in Relation to Judaism and the Jewish People*" offered the following ten statements for the consideration of their fellow Christians⁷³:

1. God's covenant with the Jewish people endures forever.
2. Jesus of Nazareth lived and died as a faithful Jew.

3. Ancient rivalries must not define Christian-Jewish relations today.
4. Judaism is a living faith enriched by many centuries of development.
5. The Bible both connects and separates Jews and Christians.
6. Affirming God's enduring covenant with the Jewish people has consequences for Christian understanding of salvation.
7. Christians should not target Jews for conversions.
8. Christian worship that teaches contempt for Judaism dishonors God.

9. We affirm the importance of the land of Israel for the life of the Jewish people.
10. Christians should work with Jews for the healing of the world.⁷⁴

This statement totally meets the demands of R. Abraham Joshua Heschel, indeed, it sums up his various pronouncements. Still, it is only a statement by a group of Christian scholars. The question is: were it to be adopted by the Church would it meet equally the demands of R. Joseph B. Soloveitchik? It is hard to see why not.

NOTES

¹ I am indebted to Professors Edward E Kaplan and Byron Sherwin, and Rabbi Jacob J. Schachter for their comments on this essay.

² Instructive in this regard is the volume in the B'nai Brith Great Book Series entitled *Great Jewish Thinkers of the Twentieth Century*, which was published in 1963. The youngest thinker represented is R. Soloveitchik. However, in the Forward, the editor writes: "It is regrettable that limitations of space prevented the inclusion ... of ... Heschel, whose neo-Hassidic thought has made such an impact on American Judaism" (p. xii). Such a statement is made of no other living thinker.

³ A comparable contemporary phenomenon of a Jewish theologian's influence extending far beyond his reference group is that of Rabbi Menachem Mendel Schneerson, the late Lubavitcher Rebbe. I recall an issue of *Panim el Panim*, the defunct Israeli weekly on religious life edited by Pinchas Peli, of the early sixties that featured the pictures of all three on the same page as the major influentials of the day.

⁴ To judge by paperback sales

⁵ See The Orthodox Forum, *Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century*, ed. M. Sokol (Northvale, NJ: Jacob Aronson, 1997), especially the essays on R. Soloveitchik.

⁶ R. Heschel's first publication was of talmudic *novellae* at the age of fifteen. It appeared in a Warsaw rabbinic journal, *Sha'arei Torah, Tishrei-Kislev*, 5683 (1922). Already in 1925, R. Soloveitchik was known to have mastered the Talmud; see Hillel Goldberg, *Between Berlin and Slobodka: Jewish Transition Figures from Eastern Europe* (Hoboken, NJ: Ktav, 1989), p. 191, n. 11.

⁷ R. Soloveitchik wrote on Hermann Cohen's epistemology and metaphysics. He had originally planned on writing on Maimonides and Plato. R. Heschel wrote on prophetic consciousness. He told me that he had toyed with the idea of writing on the logical system of the *Sha'agas Aryeh* by the eighteenth century halakhist R. Aryeh Leib. Neither found a sponsor for his initial plan.

⁸ See Shaul Shimon Deutsch, *Larger Than Life: The Life and Times of the Lubavitcher Rebbe: Rabbi Menachem Mendel Schneerson* (New York: Chasidic Historical Productions, 1997), 2:159.

⁹ Rabbi Shalom Dov-Ber Wolpo reports in his book *Shemen Sasson me-Haveirekha* (Holon: Ideal Press, 4763), p. 186, that Rabbi Ephraim Wolf wrote to the Lubavitcher Rebbe that the former president of Israel, Zalmen Shazar, told him that R. Soloveitchik, whom he met in his hotel in New York City, mentioned that he had met both Rabbi Schneersohn, the future Lubavitcher Rebbe, and R. Heschel in Berlin. Professor Haym Soloveitchik, told me (telephone conversation, March 16, 2004, as well as all other references to him) that his father told him that he only saw the future Rebbe pass by. R. Soloveitchik's oldest daughter, Dr. Atarah Twersky, recalls her father saying that the future Rebbe visited him unexpectedly in his apartment in Berlin. When he introduced himself as the son-in-law of the Lubavitcher Rebbe, R. Soloveitchik asked him why he was studying at a university when his father-in-law opposed it. My wife's uncle, Zvi Kaplan of Jerusalem, told me that Rabbi Yitsḥak Hutner told him that he was with the future Rav and Rebbe together at a lecture on Maimonides at the University (apparently in 1929). After the lecture, when the professor approached Schneersohn for his opinion, he deferred to R. Soloveitchik. In any case, in Berlin both Rabbis Heschel and Soloveitchik maintained relations with Rabbi Hayyim Heller, Rabbi Jehiel Weinberg, and Professor Eugen Mittwoch.

¹⁰ Rabbi Fabian Schoenfeld (telephone conversation of March 21, 2004) recalls seeing R. Heschel in the 1960s at two of R. Soloveitchik's *yahrzeit* lectures for his father in Lamport Auditorium of Yeshiva University. Prof. Haym Soloveitchik recalls that in 1962-63 he saw the two together twice in his father's Yeshiva University apartment and heard of a third meeting from his mother, who was present at all three. He also recalls (telephone conversation, June 23, 2004) that in 1967 R. Heschel paid a visit to R. Soloveitchik, who was then sitting *shiv`ab* for his mother in her or his brother's apartment in New York. R. Heschel's daughter, Professor Susannah Heschel, e-mailed me that she recalls R. Soloveitchik visiting her father in their home in the mid- or late sixties and that he paid a *shiv`ab* call when R. Heschel died. He died on Friday night, Dec. 23, 1972.

¹¹ See Goldberg, *Between Berlin and Slobodka*, p. 121 and Lawrence Perlman, "Heschel's Critique of Kant," eds. J. Neusner, E. Freichs, and N. Sarna, *From Ancient Israel to Modern Judaism: Essays in Honor of Marvin Fox*, Vol. 3, (Atlanta: Scholars Press, 1989) 213-226.

¹² Both considered Kierkegaard the Christian religious genius of the nineteenth century (see below). For R. Soloveitchik, the more theological the work, the more Kierkegaard is cited. For R. Heschel, see *A Passion for Truth* (New York: Farrar, Straus & Giroux, 1973), *passim*.

¹³ This comes through both in R. Soloveitchik's Hebrew work, *Halakhic Man*, translated by Lawrence Kaplan (Philadelphia: Jewish Publication Society, 1983), esp. p. 164; with Jeffrey Saks, "An Index to Rabbi Joseph B. Soloveitchik's Halakhic Man," *The Torah U-Madda Journal* 11 (2002-03), pp.107-122, respective entries in the index; and in his English work *The Halakhic Mind* (New York: Seth Press, 1986), respective entries in the index, both written in 1944. For R. Heschel, see Edward K. Kaplan and Samuel H. Dresner, *Abraham Joshua Heschel: Prophetic Witness* (New Haven: Yale University Press, 1998), indices respectively. On Heidegger, see R. Heschel's *Who Is Man?* (Stanford: Stanford University Press, 1965), p. 97.

¹⁴ For R. Soloveitchik, see *Halakhic Man*, n. 41; for R. Heschel, see *The Insecurity of Freedom: Essays on Human Existence* (New York: Noonday Press, 1967), pp. 127-149. R. Heschel was called upon to eulogize his friend Niebuhr; see his *Moral Grandeur and Spiritual Audacity*, ed. S. Heschel (New York: Noonday Press, 1996), pp. 301-02.

¹⁵ For R. Heschel, see the appendix to *The Sabbath* (Philadelphia: Jewish Publication Society, 1963); for R. Soloveitchik, see *Halakhic Man*, *passim*; and *The Halakhic Mind*, respective entries of the index.

¹⁶ For both, see Goldberg, *Between Berlin and Slobodka*, pp. 123-26, and 202, n. 37. For R. Heschel, see Edward Kaplan, "Metaphor and Miracle: Abraham Joshua Heschel and the Holy Spirit," *Conservative Judaism*

46 (Winter 1994), pp. 3-18, esp. 6-8; and my eulogy of Professor Isadore Twersky, the Talner Rebbe, at the annual Maimonides dinner (1997), archived at the Rabbi Joseph B. Soloveitchik Institute, Maimonides School, Brookline, MA.

¹⁷For R. Soloveitchik, see *Halakhic Man*, n. 31 along with nn. 55, 59, 60, 65, 66, and 70; and “*U-Viqqashtem me-Sham*,” in *Galui ve-Nistar* (Jerusalem: Department of Education and Torah Culture in the Diaspora of the World Zionist Organization, 5739), pp. 170-71. For R. Heschel, see “The Concept of Man in Jewish Thought,” eds. S. Radhakrishnan and P. Baku, *The Concept of Man* (London: Allen and Unwin, 1960), pp. 162, n. 26, and 165, n. 76; *God in Search of Man* (New York: Meridian Books, 1961), p. 333, n. 16; and *Man’s Quest for God: Studies in Prayer and Symbolism* (New York: Charles Scribner’s Sons, 1954), p. 75. Haym Soloveitchik told me that his father considered the two great religious minds of the nineteenth century to be R. Schneur Zalmen and Kierkegaard. He had special regard for the former’s Torah commentary, *Liqqutei Torah*.

¹⁸Whereas the mastery of Kabbalah and Hasidism by R. Heschel, the *basid* and Professor of Jewish Ethics and Mysticism, is assumed, it is noteworthy how often R. Soloveitchik, the *litvak*, cites these sources when constructing his own theology. In his arguably most theological essay, “*U-Viqqashtem me-Sham*,” his citation of them, especially the Zohar, is only second to his citations of Maimonides. On the whole subject, see Lawrence Kaplan, “*Motivim Qabbaliyim be-Haguto shel ha-Rav Soloveitchik*,” in Avi Sagi, ed., *Emunah bi-Zemanim Mishtanim* (Jerusalem: Department for Torah Education and Culture in the Diaspora, 1996), pp. 75-93. On R. Heschel’s mysticism, see Arthur Green, “Three Warsaw Mystics,” *Jerusalem Studies in Jewish Thought* 13 (1966), pp. 1-58.

¹⁹For initial comparisons, see my “The Inexplicable Phenomenon,” Review of Abraham Joshua Heschel, Prophetic Witness (*Midstream*, May/June 1999), pp. 43-44; and Goldberg, *Between Berlin and Slobodka*, respective entries of the index. There is a sense in which both Rabbis Heschel and Soloveitchik constructed distinctive syntheses of Maimonidean, Hasidic-Kabbalistic, and modern Continental thought.

²⁰For R. Soloveitchik, see *Worship of the Heart: Essays on Jewish Prayer* (Jersey City, NJ: Ktav, 2003); for R. Heschel, see *Man’s Quest for God: Studies in Prayer and Symbolism* (New York: Charles Scribner’s Sons, 1954).

²¹For R. Soloveitchik, see his *Shi’urim le-Zekher Abba Mori z”l*, 2 vols. (Jerusalem, 5743-45), pp. 1:50-68; 2:105-151, and “*Ha-Shabbat ve-ha-Mo’adot*,” in *idem*, *Ha-Adam ve-Olamו*” (Jerusalem: Department for Torah Education and Culture in the Diaspora, *Sifriyat Eliner*, 5758), pp. 241-248. For R. Heschel, see *The Sabbath*.

²²While this is R. Soloveitchik’s signature position, R. Heschel also says: “Jewish law is sacred prosody. The Divine sings in our deeds, the Divine is disclosed in our deeds” (*Man’s Quest for God*, p. 106).

²³This perspective permeates their entire oeuvres. For R. Soloveitchik, start with his “Confrontation,” and “The Lonely Man of Faith,” conveniently published together in *Studies in Judaica in Honor of Dr. Samuel Belkin as Scholar and Educator*, ed. L. Stitskin (New York: Ktav, 1974), pp. 45-133. (See note 50 below.) For R. Heschel, see his *Man Is Not Alone: A Philosophy of Religion* (New York: Harper and Row, 1966), Part II, “The Problem of Living,” and his *Who Is Man?*

²⁴Compare R. Soloveitchik’s description of “Halakhic Man” in his book of that name, and R. Heschel’s description of “The Pious Man” in his *Man Is Not Alone*, pp. 273-296.

²⁵See Rivkah Horowitz, “*Yahasו shel ha-Rav Soloveitchik la-Havayyah ha-Datit ve-le-Mistorin*,” in Avi Sagi, ed., *Emunah bie-Zemanim Mishtanim*, pp. 45-74.

²⁶R. Heschel even subtitled a chapter “I am commanded—therefore I am” (*Who Is Man*, p. 111).

²⁷For R. Soloveitchik, see *Worship of the Heart*, p. 120; for R. Heschel, see *Who Is Man*, pp. 67-68.

²⁸For R. Soloveitchik, see *Mo’adei Harav: Public Lectures on the Festivals by the Late Joseph B. Soloveitchik* (Based upon Students’ Notes), ed. Shlomo Pick (Ramat Gan: The Ludwig and Erica Jesselson Institute for Advanced Torah Studies, Bar-Ilan University, 2003), pp. 168-193. For R. Heschel, see *Who is Man*, pp. 75

119, with Byron Sherwin, "My Master," eds. H. Kasimow and B. Sherwin, *No Religion Is an Island: Abraham Joshua Heschel and Interreligious Dialogue* (Maryknoll, NY: Orbis Books, 1991), pp. 56-57.

²⁹Compare: "If God is not the source of the most objectified norm, faith in Him is nothing but an empty phrase" (Soloveitchik, *The Halakhic Mind*, p. 55); "The supreme problem in any philosophy of Judaism is: What are the grounds for man's believing in the realness of the Living God?" (Heschel, *God in Search of Man*, p. 26).

³⁰Instructively, R. Soloveitchik, *à la* Barth (see below), uses the category to assert the incommunicability of faith where it functions as a separator, whereas R. Heschel uses it to underscore the pre-conceptual, or at least pre-verbal, commonality of the faith experience where it serves as a unifier.

³¹For R. Soloveitchik, see *Hamesh Derashot* (Jerusalem: Tal Orot, 5734); and his manifesto of religious Zionism, "Kol Dodi Dofek," translated in *Theological and Halakhic Reflections on the Holocaust*, eds. B. Rosenberg and F. Heuman (New York: Ktav, 1992), pp. 51-117. For R. Heschel, see *Israel: An Echo of Eternity*, New York: Farrar, Straus and Giroux, 1967.

³²For R. Soloveitchik, see Bernard Rosensweig, "The Rav as Communal Leader," *Tradition* 43:4 (1996), pp. 210-218. For R. Heschel, see my "The Jewish Basis for Social Justice," eds. G. Orfield and H. J. Lebowitz, *Religion, Race, and Justice in Changing America* (New York: The Century Foundation Press, 1999), pp. 41-47, 183; and "Abraham Joshua Heschel—Our Generation's Teacher," *Religion & Intellectual Life* 2.2 (Winter 1985), pp. 9-18 (www.crosscurrents.org/heschel.htm).

³³I know, and have heard of even more, cases of people whose religiosity was triggered by reading their works. On R. Heschel's poetics of piety, see Edward Kaplan, *Holiness in Words* (Albany: State University of New York Press, 1996).

³⁴When R. Heschel's biweekly seminar of the late 1960s dealt with Rabbi Mendel of Kotsk it was conducted in Yiddish. For him, only Yiddish could capture authentically the Kotsker's spirit. The result was his two-volume Yiddish work on the Kotsker Rebbe (1973). Many of R. Soloveitchik's essays were originally delivered in Yiddish. Both were masters of the spoken idiom and, given the choice, preferred speaking *mame loshn*. According to Haym Soloveitchik, their first meeting in New York, at which his mother was present, focused on Yiddish literature.

³⁵One of R. Heschel's first works was a book of Yiddish poetry, *Der Shem Hameforash: Mentsh* (translated by Morton Leifman, *The Ineffable Name of God: Man: Poems in Yiddish and English*, (New York: Continuum 2004)) Written in Vilna in the mid 1920s and published in Warsaw in 1933, it consisted of dialogues with God. R. Soloveitchik told me of his appreciation of the poetry of the grandfather of my wife's uncle, known as the *ilui* of Rakov. He was taken by the idea that one of the great scholars of his grandfather's coterie composed poetry. For the poetry, see *Kitvei ha-Ilui me-Rakov*, ed. Zvi Kaplan (Jerusalem: Netsach, 5723), pp. 175-200.

³⁶On our subject of Jewish-Christian relations, the works of two disciples are instructive. David Hartman, albeit a disciple of R. Soloveitchik, expounds more the position of R. Heschel; see his *A Heart of Many Rooms: Celebrating the Many Voices within Judaism* (Woodstock, Vermont: Jewish Lights Publishing, 1999), pp. 180-91. David Novak, albeit a disciple of R. Heschel, expounds more the position of R. Soloveitchik; see his *Jewish Christian Dialogue: A Jewish Justification* (New York: Oxford University Press, 1989), pp. 6-9.

³⁷This and what follows is based on the archives of the American Jewish Committee, and on Eugene J. Fisher, "Heschel's Impact on Catholic-Jewish Relations," *No Religion Is an Island*, pp. 110-23. I accessed these archives of the Committee, located in their Manhattan office, through the kindness of Dr. Steven Bayne and Charlotte Bonelli of the Committee.

³⁸From a memorandum of Zachariah Shuster to Foreign Affairs Department of AJC, dated December 1, 1961.

³⁹This follows Fischer's article. According to the memo in the archives of AJC, it was at Cardinal Cushing's invitation that R. Heschel and R. Tanenbaum went to Boston on March 27 to meet Cardinal Bea, at which time R. Heschel gave him *The Sabbath*.

⁴⁰See Fisher, "Heschel's Impact on Catholic-Jewish Relations," p. 114.

⁴¹The following is taken from a memo of R. Marc Tanenbaum, the head of interreligious affairs of the American Jewish Committee, to John Slawson, its president, dated September 4, 1962. In another letter, dated July 10, 1962, R. Tanenbaum wrote to Martin Buber and mentioned that R. Heschel had told him of his recent meeting with Buber in Israel to update him on Catholic—Jewish relations.

⁴²According to Professor Haym Soloveitchik, their second meeting focused on issues that were central to Vatican II. I was told that R. Wolf Kelman of the Rabbinical Assembly reported that R. Heschel mentioned to him that prior to his visit to the Vatican R. Soloveitchik had told him: "*Ir zeit unser shaliach*" (you are our representative). According to Haym Soloveitchik, his father already then had reservations about Vatican II, believing that the Church could not engineer the requisite theological revisions to accommodate Jewish understandings of national redemption. Indeed, Cardinal Willebrands, head of the Vatican's Commission for Religious Relations with the Jews, called the subsequent change in the teachings of the Roman Catholic Church "a real, almost miraculous conversion in the attitudes of the Church and Catholics toward the Jewish people" (cited in Thomas Stransky, "The Catholic-Jewish Dialogue: Twenty Years After *Nostra Aetate*," *America* 154, No. 5 [February 9, 1986], p. 93).

⁴³"The Rav as Communal Leader," p. 214. Rosensweig wrote, "The Rav rejected this notion totally, using the basic arguments which he had developed in *Confrontation*." Rosensweig believes (telephone conversation, March 14, 2004) that the 1964 lecture, "Confrontation," composed at the urging of Rabbi Walter Wurzburger, reflected R. Soloveitchik's thinking of 1963 if not 1962. See the next note.

⁴⁴From his Forward to *A Prophet for Our Time: An Anthology of the Writings of Rabbi Marc H. Tanenbaum*, eds. J. Banki and E. Fisher (New York: Fordham University Press, 2002), p. xiv. R. Soloveitchik's wife became ill between Purim and Passover of that year. R. Fabian Schoenfeld (telephone conversation of March 21, 2004) recalls hearing from R. Soloveitchik of a meeting between him and Willebrands in a New York hotel at which R. Israel Klavan was present. R. Soloveitchik reportedly pressed the Cardinal on the Jewish right to the Land of Israel, access to the Western Wall, and the Jewish right to build the Temple. The Cardinal acceded to the first two, but not to the third. Dr. Atarah Twersky, recalls (in two conversations in late March, 2004) that a non-American Cardinal (Willebrands is Dutch) came to their home in Brookline probably in the mid-or late sixties. She remembers her father telling the Cardinal that his mother would keep him indoors on Easter out of fear of anti-Semitic attacks. Henry Seigman claims (telephone conversation on March 4, 2004) to have arranged a meeting in the early 1970s between the two in a New York hotel at which Rabbi Klavan and Father Flannery were present. At that meeting, R. Soloveitchik pressed Cardinal Willebrands on whether Catholic theology could entertain the possibility of the salvation of a faithful Jew. Cardinal Willebrands told me (telephone conversation on March 29, 2004) that he recalls meeting R. Soloveitchik at least twice.

⁴⁵After all, R. Soloveitchik himself describes Jews as "praying for and expecting confidently the fulfillment of our eschatological vision when our faith will rise from particularity to universality" ("*Confrontation*," [see below] p. 74).

⁴⁶"A Conversation with Dr. Abraham Joshua Heschel," Dec. 20, 1972, NBC transcript, pp.12-13.

⁴⁷Abraham J. Heschel, "From Mission to Dialogue," *Conservative Judaism* 21 (Spring, 1967), p. 10.

⁴⁸For a detailed treatment of the Jewish involvements in the fourth session of the Vatican Council in 1964-1965, see the two articles by Judith Herschcopf, "The Church and the Jews," in vols. 66 and 67 of *The American Jewish Year Book 1965*, Vol. 66 (pp. 99-136) and 1966, Vol. 67 (pp. 45-77), prepared by the American Jewish Committee.

⁵⁰Subsequently published in the journal *Tradition* (1964), pp. 5-29, and republished in *A Treasury of Tradition* (New York: Hebrew Publishing Co., 1967), pp. 55-78, which is cited throughout.

⁵¹Much of what follows is based on the extensive assessment of its content by Eugene Korn; see <http://www.bc.edu/research/cjl/meta-elements/texts/conferences/korn> with the response of Dr. David Berger. See also, Daniel Rynhold, "The Philosophical Foundations of Soloveitchik's Critique of Interfaith Dialogue," *Harvard Theological Review* 96 (2003), pp. 101-20.

⁵²Many of which are cited in R. Heschel's comparable essay (see below).

⁵³Notes 2 and 6.

⁵⁴Of course, anyone as well versed as R. Soloveitchik was in the writings of Karl Barth and Reinhold Niebuhr would be hard put to deal with Christianity in such terms. In "*Kol Dodi Dofek*," p. 70, R. Soloveitchik intimates having a comprehensive knowledge of nineteen centuries of Christian theology from Justin Martyr to the present.

⁵⁵Corinthians 15 and Romans 5.

⁵⁶Dr. Alan Brill of Yeshiva University hears in this formulation echoes of the Protestant theologian, Karl Barth. Barth in the *Church Dogmatics* dichotomizes culture and faith. The former he assigns to Adam I, majestic man, and the latter to Adam II, covenantal man. The other influential Protestant theologian is Emil Brunner. The impact of his books, *The Divine Imperative* and *Die Mystik und das Wort*, are so pervasive that Brill thinks that R. Soloveitchik "consulted with Brunner's writings directly before delivering many of his essays" (unpublished typescript). Haym Soloveitchik told me that his father had "high regard" for Brunner. R. Soloveitchik frequently refers to Barth and Brunner separately. In *The Halakhic Mind* he mentions them together in the introduction (p. 4) and in n. 93 (p. 129). R. Heschel also cites Barth's *Church Dogmatics* and Brunner's *The Divine Imperative*; see his *Moral Grandeur and Spiritual Audacity*, p. 419, n. 70; and p. 420, n. 4.

⁵⁷For a spirited defense of the identification of Esau with Christianity, see Abarbanel's Commentary to Isaiah 35. The origin of the Rabbinic association of Esau/Edom with Rome is unclear (see Louis Feldman, "Remember Amalek!": *Vengeance, Zealotry, and Group Destruction in the Bible According to Philo, Pseudo-Philo, and Josephus* [Cincinnati: Hebrew Union College Press, 2004], pp. 62-67); it may be related to the Hadrianic persecutions (see Genesis Rabbah 65, 21). In any case, when Christianity took over the Roman Empire, it got stuck with the designation. Such a designation, however, has nothing to do with history, as Saadia Gaon noted over a thousand years ago; see Saadia's *Polemic Against Hivi Al-Balkhi*, ed. Israel Davidson (New York: The Jewish Theological Seminary of America, 1915), #76, p. 67. Even stranger is how Jacob's twin brother came to epitomize the gentile world. The phrase "As a rule, it is known that Esau hates Jacob" (*Sifrei* Numbers 69, ed. Horovitz, p. 65), referring to the biblical Esau in Genesis, came to be understood as "it is axiomatic that Esau hates Jacob," referring to the gentile world in general.

⁵⁸Gen. Rabbah 75, 2. One wonders what conclusions would have resulted had Abraham, who taught the fear of God and the Torah to the people of Haran (*Tanhuma, Lekh Lekha*, end Gen. 12), served as the model. See Menahem Kasher, *Torah Shelamah*, 3:555, n. 95.

⁵⁹See Rosemary Reuther, *Faith and Fratricide: The Theological Roots of Anti-Semitism* (New York: Seabury Press, 1979), p. 133; and Gerson Cohen, *Studies in the Variety of Rabbinic Cultures* (Philadelphia: The Jewish Publication Society, 1991), pp. 251-261.

⁶⁰When I mentioned this to R. Soloveitchik's daughter, Dr. Atarah Twersky, she agreed that the talk, at which she and her late husband were present, comes under the rubric of general religious discourse and thus confirms R. Soloveitchik's position that whereas "we are ready to discuss universal religious problems, we will resist any attempt to debate our private individual commitment" (p. 80). According to Dr. Twersky, R. Soloveitchik's opposition to Jewish-Christian dialogue was rooted in two perceptions. The first was that "dialogue" is prone to downplay differences in order to underscore commonality and thus result in

intellectual perversion. The other was that Jewish-Christian dialogue is especially prone to misunderstanding since Judaism and Christianity share theological terms without sharing their meanings.

⁶¹R. Soloveitchik relished this reversal, indeed deemed it the strongest knock of the Beloved “on the door of the theological tent.” (“*Kol Dodi Dofek*,” p. 70).

⁶²For the purposeful contradictory nature of R. Soloveitchik’s writing, see Ehud Luz, “*Ha-Yesod ha-Dialekti be-Kitvei ha-Rav Y. D. Soloveitchik*,” *Da`at* 9 (Summer, 1982), pp. 75-89. For a defense of it, see my late colleague (O.B.M.), Marvin Fox, “The Unity and Structure of Rabbi Joseph B. Soloveitchik’s Thought,” *Tradition* 24/2 (Winter, 1989), pp. 44-64.

⁶³See David Hartman, *Love and Terror in the God Encounter: The Theological Legacy of Rabbi Joseph B. Soloveitchik* (Woodstock, VT: Jewish Lights Publishing, 2001) ch. 5; and Walter Wurzbürger, “Justification and Limitations of Interfaith Dialogue,” W. Wurzbürger and E. Borowitz, eds., *Judaism and The Interfaith Movement*, (New York: Synagogue Council of America, 1967), pp. 7-16.

⁶⁴This is in line with the paradoxical nature of the phenomenon known as “the Rav” for such a wide diversity of disciples. For recent literature on this, see Seth Farber, *An American Dreamer: Rabbi Joseph B. Soloveitchik and Boston’s Maimonides School* (Hanover: Brandeis University Press, 2004), p. 157, n. 1. R. Soloveitchik was the great bridge builder and boundary marker. Many of his disciples, unwilling or unable to bear the tension in maintaining both, became either bridge builders or boundary markers to constituencies outside Modern Orthodoxy, Jewish or otherwise. The former see in their mentor the great permitter; the latter—the great prohibitor. Both are partially right. Indeed, one’s location on the ideological spectrum as well as one’s role in the community seems to color one’s view of what in R. Soloveitchik was primary and what was secondary.

⁶⁵In a similar vein, R. Yitzhak Hutner, the American *rosh yeshiva* closest in mentality and experience to R. Soloveitchik, was quoted as saying, “Regardless of what you hear quoted in my name, do not believe it unless I have told it to you personally” (Goldberg, *Between Berlin and Slobodka*, p. 63). For individualizing of answers by a *rebbe*, see Akiva Yosef Isenbach, *Or Shabbat* (Jerusalem: 5754) pp. 1:277-279.

⁶⁶It turns out that R. Soloveitchik and R. Heschel first responded positively to an invitation by a Christian audience to address them on the subject. They then addressed their respective rabbinic audiences. It would be worthwhile to compare the differences between the two Heschel articles with those between the two Soloveitchik ones.

⁶⁷*Union Seminary Quarterly Review* 21 (January, 1966), reprinted in *No Religion Is an Island*, eds. Kasimow and Sherwin, pp. 3-22. (See note 28 above.)

⁶⁸With regard to the fifties, Professor J. A. Sanders of Union Theological Seminary opined that Karl Barth’s famous work, *The Humanity of God*, which appeared in 1956, was influenced by R. Heschel’s *God in Search of Man*, which appeared the year before” (“An Apostle to the Gentiles,” *Conservative Judaism*, 28 [Fall, 1973], p. 61).

⁶⁹By Michal A. Chester, *Journal of Ecumenical Studies*, 38:2-3 (Spring-Summer, 2001), pp. 246-70.

⁷⁰Cardinal Johannes Willebrands writes in his book *Church and Jewish People: New Considerations* (New York: Paulist Press, 1992) that Abraham Heschel’s article of 1966, “No Religion is an Island,” helped persuade him that “anti-Semitism is simply anti-Christian” (p. 162—reference courtesy of Father David Michael of Brandeis University).

⁷¹Donald J. Moore, S. J., *The Human and the Holy: The Spirituality of Abraham Joshua Heschel* (New York: Fordham University Press, 1989), p.12. Moore correlates R. Heschel’s memorandum with the changes in the teachings of the Church (pp. 17-18). Moore’s assessment is confirmed by Fisher’s; see Fisher “Heschel’s Impact on Catholic-Jewish Relations,” p. 115. Cardinal Willebrands also testifies that “Heschel’s influence on the Second Vatican Council’s theology of world religions was deep and decisive” (“Forward” to *No Religion Is an Island: Abraham Joshua Heschel and Interreligious Dialogue*).

⁷²The classic formulation of this idea is in Judah Halevi's, "*Ana emtsa'ekb: U-be-tsateti li-gratekb li-grati matsatikb.*" ("In going out toward Thee, toward me I found Thee.")

⁷³ Annual Report 2003 Center for Christian-Jewish Learning at Boston College, pp. 8-9. This statement is partially a response to *Dabru Emet: A Jewish Statement on Christians and Christianity*, which called on Jews to re-examine their understanding of Christianity. Both are available at <http://www.bc.edu/research/cjl/resources/articles/>.

⁷⁴ To get a sense of how much progress has been made, the findings of Claire Huchet-Bishop, *How Catholics Look at Jews* (New York: Paulist Press, 1974) follows. She lists what young Catholics in many countries were taught about the Jews in the 1960s when R. Soloveitchik was formulating "Confrontation":

1. The Jews are collectively responsible for the crucifixion and they are a "decide people";
2. The Diaspora is the Jew's punishment for the crucifixion and for their cry, "His blood be upon us and upon our children";
3. Jesus predicted the punishment of his people: the Jews were and remained cursed by him, and by God; Jerusalem, as a city, is particularly guilty;
4. The Jewish people as a whole rejected Jesus during his lifetime because of their materialism;
5. The Jewish people have put themselves beyond salvation and are consigned to eternal damnation;
6. The Jewish people have been unfaithful to their mission and are guilty of apostasy;
7. Judaism was once a true religion, but then became ossified and ceased to exist with the coming of Jesus;
8. The Jews are no longer the chosen people, but have been superseded as such by the Christians.

Contemporary Fads and *Torah u-Madda*: A Response to Alan Brill

Yitzchak Blau

Response by Alan Brill

Abstract: This essay challenges Alan Brill's contentions that the prevalent *Torah u-Madda* ideology must be both updated to match contemporary intellectual trends and altered to match the reality of its community of adherents. The paper argues that Brill accepts current academic thinking much too readily, that Brill depicts much greater dissonance between previous generations and our current generation than actually exists, and that he errs in many of his generalizations about Orthodoxy. At the same time, it notes the contributions of Brill's work.

Biography: Rabbi Yitzchak Blau teaches at *Yeshivat Hamivtar* in Efrat, Israel. He has published articles on Jewish ethics, Zionism, Jewish education, twentieth century rabbinic figures, and other aspects of Jewish thought.



Contemporary Fads and *Torah u-Madda*: A Response to Alan Brill*

Yitzchak Blau

Alan Brill's "Judaism in Culture: Beyond the Bifurcation of *Torah* and *Madda*"¹ challenges popular assumptions in the *Torah u-Madda* camp. This, in itself, is a valuable endeavor on a number of grounds. On the most basic level, each community needs to occasionally recheck the soundness of its fundamental ideology and to perform an evaluative comparison of the multiple models available. Secondly, in communities blessed with a towering rabbinic presence such as R. Yosef Dov Soloveitchik, ר. י. דוב, or R. Aharon Lichtenstein, there exists a danger of followers mechanically parroting their leader without a real understanding of that leader's position and what it takes to bring it to fruition. Lastly, any evaluation of Judaism's interaction with *madda* needs to differentiate between the *madda* in question during different eras. Thus, Brill's essay, though I shall contend that its argument ultimately fails, serves as a helpful prod towards thinking about where *Torah u-Madda* currently stands.

Brill adds three important points to the ongoing *Torah u-Madda* discussion. He focuses our attention away from the intellectual elite to the common *Torah u-Madda* suburbanite. This latter group is not in reality, and may not be capable of even in theory, working to sharpen their understanding of Torah and humanity through study of Kierkegaard, Yeats

and Charles Taylor. Rather, they view a college degree as the gateway toward professional advancement. They study *madda* with an eye towards the best law and medical graduate schools and the plum jobs that follow. If so, much of the literature on *Torah u-Madda* with its intellectually elitist bias fails to directly address the majority of its practitioners.

"Each community needs to occasionally recheck the soundness of its fundamental ideology."

While Brill's point does have some bite, two responses ought to be made. Even if only a small percentage of the population proves capable of real intellectual integration, a trickle down effect enables that percentage to influence a much wider circle. Brill argues that the Rav drew heavily upon the work of Karl Barth (p. 17). No doubt, few Modern Orthodox Jews will ever open up *Church Dogmatics* or think about how Barth's thinking might illuminate aspects of Judaism. However, they do access such integration through the Rav's writings. A significantly wider circle will read *Halakhic Man* and *The Lonely Man of Faith* and benefit from our community's exposure to Barth even if they never even hear the mention of his name. This wider circle of readers includes many rabbis and educators,

so that these ideas will find even wider dissemination in the community. Secondly, the less intellectual crowd may still be benefiting from skills imparted by their college educations, such as clear and persuasive writing or the varied modes of thinking required by various intellectual disciplines. Even if their motivation is purely or mostly pragmatic, they can still grow from the endeavor.

The previous paragraph spoke of the intellectual benefits of exposure to a good university education. David Shatz points out another model of *Torah u-Madda*, admittedly less emphasized in Modern Orthodox literature, which questions “to what degree should theories and methods of secular disciplines be used to secure not intellectual ends, but vital practical ends in our daily lives.”² The figure of Adam I in R. Solovetichik’s *The Lonely Man of Faith* serves as a good basis for this model. As Shatz explains R. Soloveitchik’s position, medical, psychological and other forms of broader knowledge enable the religious Jew “to fulfill the biblical mandate of *mil’u et ha-arets ve-kinshuba*; to achieve dignity and majesty; to carry out their responsibilities to others and, further, by increasing the modalities for improving human welfare, to expand the range of these responsibilities; and, finally, to fulfill the mandate of *imitatio Dei*.”³ This form of *Torah u-Madda* applies to a larger population, and we should develop its implications further as it should influence important decisions such as choice of career.⁴

Brill’s second contribution is his emphasis on the broader range of Jewish literature. Indeed, much of the spiritual insight we are looking for can be found in the *aggadah*, *midrash*, philosophical literature, *piyyutim*, mystical accounts and sermons produced by the best of our people. An exclusive focus on *gemara* may blind us to this treasure trove, but a broader sweep reminds us that we need not always turn to Augustine and Pascal for inspiration. Indeed, we look forward to Brill and others mining this literature and introducing the community to the spiritual gems found there. Brill’s third contribution, a demand that we rethink the *Torah u-Madda* question in each era based on the *madda* of that era, will be discussed toward the end of this essay.

“Brill seems much too ready to accept current theories just because they are current.”

Other aspects of Brill’s article prove much more problematic. He seems much too ready to accept current theories just because they are current. Although he explicitly rejects espousing regnant theories just because of their novelty, his terminology may reveal that he does just that. Among other similar expressions, Brill argues that “the literature on *Torah u-Madda* becomes outdated (p. 2),” cites “current thinking about the Maimonidean controversy (p. 6),” informs us that “contemporary social theory shows (p. 12),” accuses the Modern Orthodox writers of not caring if their

“material is out of date (p. 17),” demands that the “*Madda* should be up to date (p. 23),” complains that the “*gemara*, in Modern Orthodox discourse, is conveniently, but anachronistically in dialogue with Freud (p. 24),” and bemoans that writers on *Torah u-Madda* ignore the work of Peter Berger and Clifford Geertz, even though it finds “widespread acceptance in college educated circles (p. 4).” From this perspective, Brill apparently need not argue for the correctness of Berger and Geertz as one simply has to accept them after contemporary intellectuals have “paskened.”⁵ Now, I certainly accept that much wisdom can be found in the halls of the universities but I am not willing to quickly endorse any theory currently in vogue in these halls. Such an approach means that we would have been communists in the thirties and logical positivists in the forties.

“Should we assume that the Torah includes all necessary wisdom or should we also look elsewhere?”

Moreover, I contend that Brill’s reliance on Berger and Geertz leads him astray. Both those thinkers emphasize that every religious position is also embedded in a particular culture. From this perspective it seems that the medieval debates on *Torah u-Madda* should have little to no bearing on contemporary manifestations of the debate. This explains Brill’s emphasis on being up to date. However, a reader perusing the medieval literature is

struck by the similarity to current debates regarding *Torah u-Madda*. Should we assume that the Torah includes all necessary wisdom or should we also look elsewhere? Is it too dangerous to read material that contradicts our tradition? These remain the central questions through the last thousand years of the debate. When Rambam states: “accept the truth from whoever utters it”⁶ and Judah Alfakar counters that “[Torah and Greek wisdom] cannot live together on the earth and be like two sisters, for the Hebrew women are not like the Egyptian ones. To this our Torah says: No, my son is the living one, and yours is the dead,”⁷ the parallel to contemporary debates rings clearly. While the answers to these questions certainly change somewhat as per the *madda* being confronted, a good deal of overlap exists whether the *madda* in question is Aristotle and Averroes or Mill and Nietzsche.⁸

Secondly, Brill’s reliance on ideology as embedded in a particular culture runs the risk of replacing ideology with sociology. In other words, he tells us to pay less attention to official ideology and more attention to what people are actually doing. Modern Orthodox Jews are not integrating Torah with William James but rather combining Torah with “Dougies, the NCAA playoffs and Blockbuster movies (p. 11).” Brill’s article implies that we need to revamp our ideology to match this reality. Perhaps the opposite is true. Rather than letting less committed laity set the agenda, we should try to

influence the reality to catch up with the ideology.⁹ Otherwise, one runs the risk of holding that whatever is practiced is right by definition.¹⁰

All too frequently, Brill tosses out strong assertions without any effort to demonstrate their truth. He cites approvingly Geertz's maxim that "a legal code does not determine conduct (p. 3)." What does this mean? Does the *Shulchan Arukh* have no impact on how Jews live their lives? Such a position is patently absurd. It must mean that their conduct is not solely determined by the legal code. Yet this point may be trivial unless we can figure out just how much of the average observant Jew's life is guided by the code. Until one clarifies this point, we do not know whether to accept Brill's assertion and whether or not it says something banal or something important.

"Rather than letting less committed laity set the agenda, we should try to influence the reality to catch up with the ideology."

Brill states that the Hirschian school has created a Judaism that supports middle class values, but rabbinic texts do not support those values (p. 13). Again, I have no idea whether or not to accept this argument, as Brill does not bother to explain what he means. Does Brill mean that contemporary Modern Orthodox Jews are interested in physical pleasure and creature comforts to a degree not supported by texts in the rabbinic tradition? This

might be true, but our tradition includes a wide range of opinions on issues of physical enjoyment and asceticism and he at least needs to make a start of explicating his argument.

In fairness, Brill does mention, toward the end of his essay, several examples of the clash between earlier authorities and modern sensibilities. Yet his claims there are unconvincing. He contends that we fail to follow Rambam's view on the role of intellect in life, Ramban's views on asceticism and visiting doctors, and the Vilna Ga'on's rejection of petitionary prayer (p. 24).¹¹ Here, he stacks the deck unfairly by citing minority positions as the traditional consensus and then pitting that consensus against our current thinking. Ramban may have viewed visiting doctors as a *bi-de'avad*, but that is not the normative position of halakhic decisors.¹² Regarding the example from Rambam, R. Meir Halevi Abulafia and others sharply point out that Rambam's granting more value to understanding than performance represents a deviation from the mainstream Torah position.¹³ And despite the thinking of the Vilna Ga'on and some qabbalists, the simple reading of *Tanakh* and *Hazal* is in favor of making requests of God in prayer.¹⁴ Thus, none of the examples truly show an estrangement between moderns and our tradition.

In the same section, Brill concludes with a remarkable assertion: "We have to admit that we are constructing and there is no given of Torah (p. 24)." Nothing in Brill's article forces us to admit that

“there is no given of Torah” and we should not admit anything remotely resembling such a claim. *Yabadut* (Judaism) may incorporate great leeway, but it also includes a closed set of sacred scripture, authoritative traditions, dogmatic beliefs¹⁵ and a defined halakhic process. This has not prevented diversity and debate, but it had drawn boundaries within which that debate takes place.

“Viewing Rambam as a model in no way entails blindly following his position on every issue and ignoring all other authorities and arguments.”

According to Brill, there exists a “Modern Orthodox strategy of limiting Judaism to only *halakhab*” which “precludes appeals to the canon of Jewish spirituality (p. 14).” It is difficult to make any sense of this claim. While Haredi yeshivas tend to put all their emphasis on study of *gemara*, Yeshiva University and *hesder* yeshivas offer classes on *Tanakh* and Jewish thought as well. The curriculum at most Modern Orthodox yeshiva high schools includes a much wider range of subjects than at their right-wing counterparts. Indeed, Rav Aharon Lichtenstein, who bears the brunt of Brill’s criticism, cites this as a significant advantage of our community’s approach.¹⁶

In addition to the above, Brill tells us that Rambam would consider much of Modern Orthodox theology about God to be idolatry (p. 24). Surely, such a

sweeping and significant claim should be backed up by more than a footnote referring to two chapters in *Moreh Nevukhim*. When the reader actually looks up the chapters and discovers that they refer to the doctrine of negative attributes, that reader can only conclude that Brill’s statement is rather misleading. For thousands of years, Jews have referred to God as benevolent, wise, powerful and the like, despite Rambam’s position on positive attributes. This leaves us with two options. First, we can reconcile our terminology with Rambam’s position by understanding those statements as referring either to Divine actions or, despite appearances, to negative attributes (God is not ignorant or weak etc.). Alternatively, we can conclude that Rambam’s position on this issue has been rejected. Either way, this has nothing to do with Modern Orthodoxy, as implied by Brill. Viewing Rambam as a model in no way entails blindly following his position on every issue and ignoring all other authorities and arguments.

In the citation that follows, sources cited in the accompanying footnote simply fail to clarify or justify Brill’s assertions. “Rather than pointing to the rejection of culture by an autonomous Judaism, current thinking about the Maimonidean controversy finds the opponents of the Maimonideans debating power, *paideia*, theology, laity, *qabbalah*, Church relations and regional autonomy (p. 6).” Let us leave aside the fact that the list of what the controversy was really about is so

long and varied as to render the sentence almost meaningless. A footnote listing “current scholarship on the Maimonidean controversy” includes articles by Ram Ben Shalom and Dov Schwartz. Ben Shalom’s article contends that Rashba softened his tone against the philosophers out of fear that the Church would become involved. Schwartz’s article showed that one medieval rationalist attributed the talmudic admonition against studying “Greek wisdom” to a fear limited to a particular historical time. Neither article does anything to support Brill’s point about the inaccuracy of the Modern Orthodox conception of the Maimonidean controversy.

Brill’s criticism of R. Lichtenstein also misses the mark. He accuses the latter of using culture in the nineteenth-century way of Newman and Arnold, even though we now realize that culture is much broader than the canons of Western literature, incorporating “the entire functioning of a society.” Here, Brill gets too caught up in the terminology question. One can easily admit that culture has a broader meaning but only be interested in the narrower meaning. No doubt, culture can also refer to watching sitcoms and taking expensive vacations, but R. Lichtenstein legitimately contends that this is not the culture we want to focus our energies on. We value the narrower culture spoken about by the Victorians. If Brill insists on terminological precision, we can specifically refer to this as “high culture,” but that will not change the fact that it is a

roughly defined body of material we think quite worthwhile.

“One can easily admit that culture has a broader meaning but only be interested in the narrower meaning.”

Brill also writes that R. Lichtenstein’s approach leads to a Modern Orthodoxy that knows more about Christianity than Jewish thought (p. 22). I have already challenged his assertion that Modern Orthodoxy stands for a narrowing of the Torah curriculum and agreed with his contention that we should look in the broader range of Jewish literature for spiritual insight. However, we can still affirm that gentile writers did certain things more effectively. *Kinot* and *selihot* can be quite moving, but our poetry does not match that of Auden and Yeats. We have no novelists like Dostoevsky, no playwrights like Ibsen, and no modern defenders of religion like Lewis and Chesterton. R. Lichtenstein’s position does not depend on denying any place for Jewish writings on spirituality. It only assumes that non-Jewish writers have conveyed certain ideas more profoundly and successfully and we suffer from ignoring their works. There is no need to be ashamed of this, for rabbinic writing can retain its authority even without a monopoly on theological sophistication, psychological depth and clarity of expression. I also find it ironic that Brill faults this focus on Christian literature. Our worldview is

much closer to Christianity than to the postmodern thinking of Foucault and Derrida adopted by Brill, and we should be much happier to see our students reading Alvin Plantinga than Paul de Man.¹⁷

Finally, Brill never fully articulates to what degree he accepts post-modernist, historicist and relativist assumptions. Does he think we are so culturally removed from the medievals as to render their writings incoherent or irrelevant to us? Alternatively, do we employ their works for our own purposes even knowing that we distort the authors' intentions (assuming Brill allows us to speak of authorial intent)? Does he lapse into the radical skepticism that undercuts its own questions? Is his critique of R. Lichtenstein hopelessly trapped in the categories of the early twenty - first century? Will a writer on *Torah u-Madda* some fifty years from now complain that Brill is stuck in outmoded categories just as he complains about R. Lichtenstein?

“Our worldview is much closer to Christianity than to the postmodern thinking of Foucault and Derrida.”

Despite the criticism, Brill does helpfully goad us towards giving a fresh look to *Torah u-Madda* as manifest in our generation. We have reason to think that “the hermeneutic of suspicion” cannot be integrated into a Torah worldview as productively as the intellectual life of Victorian culture.¹⁸ On the

other hand, if the Torah-only camp currently finds itself rather weak in producing Jewish thought with intellectual scope or psychological depth, this provides greater reason to look for help outside the canons of our tradition. Along similar lines, R. Lichtenstein returned to the topic of *Torah u'Madda* some three decades after his original essay on the topic and wrote that he now sees both greater danger and greater needs for *madda* than he did before.¹⁹

As I stated, Brill raises important questions and makes some worthwhile points. In addition, he does us the favor of provoking adherents of *Torah u-Madda* into thinking about multiple models for understanding their endeavor. Nonetheless, this reader did not find his call for a radical paradigm shift or his bold but bald assertions to be convincing. R. Lichtenstein and his finest students have produced significant essays employing his conception of *Torah u-Madda*. Although most Modern Orthodox professionals have not achieved the pinnacle of integration, they have been positively affected by the writings and teachings of those more successful and they have formed a community more intellectually sophisticated than the competition from the right and more resistant of prevailing societal and intellectual trends than those on the left. The former have reduced Jewish thought to monolithic simplicity, while the latter appear all too eager to identify Judaism with the current fad, be it relativism, post-modernism or a constant posture of

cynical debunking. Judged within this context, we have good reason to stick with our current approach, despite its many warts. Brill has not given us sufficient reason to abandon the prevailing model.

NOTES

* I thank David Shatz for his very helpful comments on an earlier draft of this essay.

¹ Brill's article appeared in the *Edah Journal* 4:1 (2004). All page references to Brill's article will appear in the body of this essay.

² David Shatz, "Practical Endeavor and the Torah u-Madda Debate," *The Torah U-Madda Journal* 3 (1991-1992), pp. 98-149. The citation is found on p. 98.

³ Shatz, "Practical Endeavor," p. 112.

⁴ R. Lichtenstein, who clearly emphasizes the more intellectual aspect of *Torah u-Madda*, makes brief reference to this model as well. See his "Torah and General Culture: Confluence and Conflict," in *Judaism's Encounter With Other Cultures*, ed. Jacob J. Schacter (Northvale NJ, 1997), pp. 222-225.

⁵ According to Nancy K. Frankenberry and Hans H. Penner, uncritical acceptance of Geertz is a widespread academic malady. See their "Geertz's Longlasting Moods, Motivations and Metaphysical Concepts," in *Language, Truth and Religious Belief: Studies in Twentieth Century Theory and Method in Religion*, ed. N. Frankenberry and H. Penner (Atlanta, 1999), pp. 218-245.

⁶ See Rambam's introduction to *Shemoneh Peraqim*.

⁷ Cited and translated in "Maimonidean Controversy," *Encyclopedia Judaica*, Vol. 11, p. 749

⁸ For a similar discussion in a general philosophical context, see Leo Strauss's forceful rejection of historicism in his *Natural Right and History* (Chicago, 1965), pp. 9-34.

⁹ David Shatz pointed out to me that influencing the masses is not so easily done. I agree that we need to include a definition of *Torah u-Madda* that expresses what we want the less intellectual crowd to learn from their university studies. At the same time, we must challenge all types of *Torah u-Madda* adherents to show good judgment and selectivity in their openness to broader culture. For example, an inordinate amount of television watching contradicts any authentic *Torah u-Madda*. The fact that many will find it difficult to accept that message does not free us from the responsibility to teach the truth.

¹⁰ For a good critique of a writer granting sociology excessive influence, see Shalom Carmy, "Rejoinder: Synthesis and the Unification of Human Existence," *Tradition* 21:4 (Fall 1985), pp. 37-51. In response to an author's analysis of the appropriateness of Orthodox Jews vacationing at Club Med, Carmy writes "To equate this with a sociological question is to say that spiritual authenticity is a matter of figuring out what—if anything—Modern Orthodox Jews really believe, and then instantiating oneself as one of them....Is it good; is it worthwhile? The question seems beside the point."

¹¹ "Rejection" is Brill's term. In truth, the Vilna Ga'on downplays petition but does not reject it. See *Shenot Eliyyahu*, *Berakhot* 5:1 where the Ga'on contends that the praying individual should concentrate during the middle section of the *amidah* on completing the supernal *keneset yisra'el* and during *elokai netzor* on his or her personal needs.

¹² *Shulkhan Arukh*, *Yoreh De'ab* 336:1.

¹³ The objections of Ramah and others are discussed in Bernard Septimus, *Hispano-Jewish Culture in Transition: The Career and Controversies of Ramah* (Cambridge, 1982), pp. 92-95.

¹⁴ R. Joseph B. Soloveitchik, "Redemption, Prayer, Talmud Torah," *Tradition* 17:2 (Spring 1978), pp. 65-66; *Worship of the Heart: Essays on Jewish Prayer*, ed. Shalom Carmy (New York, 2003), pp. 28-36. As R. Soloveitchik argues, the link drawn by *Tanakh*, *Hazal* and later authorities between distress and prayer suggests that petition is central to the endeavor.

¹⁵ For a defense of Jewish dogma, see my "Flexibility With a Firm Foundation: On Maintaining Jewish Dogma" in Volume 12 of *The Torah u-Madda Journal* (forthcoming).

¹⁶ R. Aharon Lichtenstein, *Leaves of Faith: The World of Jewish Living*, Vol. 2 (Jersey City, 2004), p. 321.

¹⁷ Plantinga is a contemporary Christian philosopher who persuasively argues for our ability to maintain traditional religious epistemology and truth claims. See his *Warranted Christian Belief* (Oxford, 2000). De Man was one of the fathers of deconstructionist literary theory in America.

¹⁸ On this issue, see the exchange between R. Lichtenstein and William Kolbrener in the Spring 2004 issue of *Jewish Action* and Jonathan Sacks, "Torah Umadda: The Unwritten Chapter," *L'Eylab* (September 1990), pp. 10-15.

¹⁹ A. Lichtenstein, "Tovah Hobkumah im Nabalab," *Mamlechet Kobanim ve-Goy Kadosh*, ed. Y. Shaviv (Jerusalem, 1996), pp. 39-43.

Alan Brill Responds

I thank R. Blau for pointing out the need for me to develop more fully my idea of Judaism and culture, and that a fuller presentation of Geertz would be needed for that purpose.

It is unfortunate, however, that Blau failed to address my essay's purpose or its fundamental thesis on the possibility of using a cultural approach. Contrary to his claims, I did not attempt to engage post-modern thought, use Derrida, deMan, or deconstructionism—and I never questioned authorial intent or rejected modernity.

Peter Berger and Clifford Geertz are in the modernist—not post-modern—canon, trodding the well-worn paths of functionalism, personal meaning, and symbolism. Geertz analyzes the world as a traditional humanist, and his work has been accepted for thirty-five years, serving as the standard in many fields. There are few works in religion, history, and literary criticism that do not refer to him (Fifteen years ago, he was already assigned to juniors at Maimonides High School.) And today historical and social sciences still write in his wake. A further discussion should engage his critics like James Clifford, Robert Wuthnow, Charles Taylor, or Hans Penner. But it is odd that Blau enlists Penner's polemic against Geertz, since Penner's materialistic and reductionist approach is contrary to any version of Orthodoxy.¹

I sought to begin thought process to determine which cultural thinkers are most useful to us: Geertz, Taylor, Ricouer, Newman, Conger, evangelicals, and others. We only gain by joining the conversation.

The review credited my article with calling for a need to examine the community's elitism, yet missed the point. I wanted the reader to consider (1) that culture is not outside of Judaism; (2) that Judaism is richer than the bifurcation model allows; (3) that halakhic analysis is a thin description; (4) that we are constructed using the past; (5) and that Judaism plays itself out in a concrete way. These ideas are hardly evident to a community that treats ideal halakhic frameworks as reality. Perhaps I should have explained more of the basics.

I start from the text, and assume that the needs of the generation cannot eradicate the past. I see *Torah u-Madda* as quest and journey, not as a destination. In questing after the Divine, we write articles to open up debate, not to talk to the committed only or build walls against new ideas. Blau and I have a serious disagreement about the nature of Jewish tradition and its canon. He has a closed canon, and when needs change, his narrow conception opts to eradicate the past in the eternity of the present moment. My critic's canons (both Jewish and general) were formulated in mid-twentieth century, in which traditional texts can only be "mined" for

their modern value. I prefer an open, multi-faceted canon that discusses the wider positions of Maimonides, Nahmanides, and the Vilna Gaon and where the full ideas of *Sefer Hasidim*, Maharal, and the Ari can still speak to us.

Rather than “substituting sociology for theology,” I tried to set the ground for future theology. I asked to probe the role of work, family life, playing with one’s children, and building community within the ideology for the future theology of the laity. Hirsch’s Torah and *Derekh Erets* addressed the needs of a community of families that combined a cultured bourgeois life with Torah; *Torah u-Madda* helped Yeshiva College students navigate the use of their college years. But we still need a theology for the family in contemporary America or a discussion of many other constructions of Orthodoxy. High culture’s lack of influence in suburbia is not due to economics or laziness. Contemporary people learn practical skills through role models and sound-bites; their application of the high theory in popular culture often creates results the opposite of their original intent. A reality check is very much in order—especially since the yeshiva world produces leaders who capture their hearts and minds of the laity.

Nor was my essay a rejection of Rav Lichtenstein’s important approach to combining the best of Western culture with Torah. I pointed out, however, that *pace* Berger, Geertz and Taylor, his approach is only one cultural construct, embedded in his time. It

seems that R. Blau illogically mixes up very different elements of modernity, post-modernity, academia, and historicism. This conflation only obscures the issues.

Despite its missing the mark, Blau’s critique admits the following points that can bring a dogmatic position closer to mine: (1) contextualizing R. Soloveitchik as influenced by dialectic thought, and R. Aaron Lichtenstein as influenced by Victorian thought as mediated by new criticism; hence neither thinker’s ideas should be regarded as eternal truths; (2) acknowledging that Modern Orthodoxy’s Rambam is closer to Maimonides’ critics (R. Meir Abulafia and R. Abraham Adret, who selectively use the conservative elements) than it is to Maimonides himself, and that Maimonides’ own position on divine language has not been accepted; (3) advocating reading evangelical thinkers like Alvin Plantinga, whom no one sees as value-neutral; (4) acknowledging that Modern Orthodoxy uses Bible as the means of fostering its own sense of modernity and openness, usually through reading the text as reflecting the human condition, despite the fact that literary criticism assumes that texts are a human product.

Yes, my categories will date themselves as all human texts do, but non-dogmatic products are not futility. Goethe wrote “all theory is gray and the golden tree of life is green.” And following German Romanticism, R. Hirsch enthusiastically presented Judaism as embracing progress and the eternal tree

of the *mitsvot* as reflected in the ever verdant blossoming culture. Yet, the historian of Neo-Orthodoxy, Mordechai Breuer describes the doom of later Hirsch followers who dogmatically justified Judaism based on Schiller, decades after that poet lost his cultural resonance. We dare not risk the same epitaph.

Paradoxically, Blau's position places him as modernist knowing more Victorian thought than R. Hayyim's *Nefesh ha-Hayyim*—in contrast to those that teach R. Hayyim of Volozhin without any need to explain his thought in contemporary terms.

Ultimately though, his essay offers an approach that turns all into ideological dogmatism and relegates his opponents to orthopraxy. I am also against the recent trend toward orthopraxy and am an advocate of Jewish thought. To imply otherwise is uncalled-for rhetorical snowballing.

I strive to be in the center by explaining *Nefesh ha-Hayyim* in modern categories. I do not “mine” the tradition—I strive to be part of it. Tellingly, Blau's thinking excludes we who are steering a middle course to explain Jewish texts, who seek God in our lives, and who are formulating theory for our age.

NOTES

¹ It is common in certain Orthodox circles to use a rhetorical device whereby the author finds a citation from a critic of Western thought and uses that citation to dismiss the field under discussion, or even all secular studies without any need to sustain an argument. A prime example was Orthodoxy's dismissal of psychology in the 1950's and 1960's. Knowing that an argument from traditional views of the soul would not be accepted, some portrayed the entire discipline as contrary to tradition and sought to ridicule it by means of out-of-context citations. Blessed with hindsight, we now see that R. Abraham Twersky's integration of psychology into Torah has been more successful than superficial past critiques.

Women and Writing the *Megillah*

Ross Singer

Abstract: This paper outlines the theoretical possibilities for women to serve as scribes (*sofrot*) as presented in the classical talmudic and post-talmudic literature. Particular attention is paid to the literature addressing the validity of women to scribe *Megillat Esther*. It concludes that the majority of authorities and the weight of halakhic reasoning point towards considering women eligible to write *Megillot Esther*.

Biography: Ross Singer is currently a Jerusalem Fellow, and formerly Rabbi of Shaarey Tefilah Synagogue in Vancouver, British Columbia. His essay, “Halakhic Values: *Pesaq* or Persuasion?” appeared in the *Tevet* 5763 edition of *The Edah Journal*.



Women and Writing the *Megillah*

Ross Singer

I. Introduction

In the preface to his book, *Women, Jewish Law and Modernity* (Hoboken NJ: Ktav, 1997), Dr. Joel Wolowelsky charts a new course for exploring the inclusion of women in religious ritual and practice. He states:

“Given the overall friction between ideology and *halakhab*, Orthodox leaders have been suspicious of arguable constructive suggestions for increased women’s participation in religious activities on the grounds that accepting them could legitimize feminism in the eyes of the halakhic community.

It is now time to move past this fear of feminism. We are fast approaching a post-feminist age in which accepting specific proposals originally promoted by feminists no longer carries the implication that we accept feminist ideology as a whole.... It is time for a *lekhatehilab* encouragement of increased women’s involvement in a wide spectrum of religious activities.” (pp. x-xii)

Wolowelsky welcomes his readers to “suggest

additional areas to explore,” with the proviso that these “should be explored in classical terms, with reference to classic texts and recognized authorities” (p. xii). In the spirit of this approach, the following essay will explore the issue of women writing *Megillot Esther* for ritual use on Purim.

At the outset it is important to clarify this inquiry’s relationship to practical ruling, *pesaq halakhab*. R. Yehuda Henkin notes:

Three factors enter into a halachic decision. The first is the optimal, or "pure," Halacha determined from the sources alone. The second is the *metzi'ut*, "reality," the situation on the ground. To bridge any gap between the two comes the third element, *hora'ah*, literally "ruling."¹

This study attempts neither to analyze current communal considerations (*metzi'ut*) nor to serve as a legal decision, *hora'ah*. Rather it is meant to serve only as a theoretical exploration of the “pure *halakhab*,” as defined by R. Henkin.

II. The Talmud: Women are Disqualified from Writing *Tefillin*.

The key text from which to begin this discussion is a *beraita* that appears in tractate *Gittin* 45b:

“R. Hamnuna² son of Rava from Pashronia taught: a *sefer Torah*, *tefillin*, and *mezuzot* written by an informer, an idolater, a slave, a woman, a minor, a Samaritan or an apostate are invalid, as it says ‘you shall bind them [*tefillin*]...you shall write them [*mezuzot*]. Those who fall within [the commandment to] ‘bind them’ are those who fall within [the class eligible to] ‘write them.’”

This passage serves as the source for the unequivocal *halakhab* that women are ineligible to write *tefillin*. This position is unchallenged in the classical rabbinic literature.

III. The *Rishonim* and *Ahronim* on Women Writing *Sifrei Torah*

While the disqualification of women from writing *tefillin* goes uncontested, their fitness to write Torah scrolls is the subject of debate. A close examination of Rav Hamnuna’s *beraita* shows some ambiguity. The *beraita* does not make any distinction between *tefillin* and *mezuzah* on the one hand and *sifrei Torah* on the other. Yet, the verses on which the principle “those who fall within [the commandment to] ‘bind them’ are those who fall within [the class eligible to] ‘write them,’” refer to *tefillin* and *mezuzah* but not to Torah scrolls. The Ran³ noticed this inconsistency

and addressed it. He writes that while the matter of *sefer Torah* does not appear in the relevant biblical passage, it may be inferred; he reasons that since a *sefer Torah* is of greater sanctity, the restrictions applying to *tefillin* and *mezuzah* certainly apply to it.

While Ran explicitly disqualifies women as writers of Torah scrolls, the Tur⁴ omits women from his list of those so disqualified. This is particularly striking, given that he includes women in his list of those who are ineligible to write *tefillin*.⁵ The *Derishab*⁶ notes this discrepancy and states that he found that Rif and Rosh⁷ also omitted the *beraita* quoted by Rav Hamnuna. The *Derishab* concludes that these *rishonim* must have felt that women are eligible to write Torah scrolls.

The *Ma`aseh Rokeah* suggested that the *Derishab* may have reasoned that since “*sefer Torah*” does not appear in the biblical passage R. Hamnuna cites, he did not intend to disqualify women from writing *sifrei Torah*. The other categories listed in the passage are disqualified from writing Torah scrolls because of their problematic religious positions, but the exclusion of women arises only out of their exemption from the *mitsvah* of *tefillin*. This exclusion applies only to the writing of *tefillin* and *mezuzot* because they appear in the biblical passage on which Rav Hamnuna’s position is built; it does not apply to Torah scrolls because the *mitsvah* to write a scroll does not appear in the same passage. Although he suggests the possibility of this

reasoning, the *Ma`aseh Rokeah* ultimately rejects it, along with the *Derishab*'s position.⁸

While the material on women's eligibility to write Torah scrolls, *tefillin*, and *mezuzot* (referred to collectively by the acronym "*stam*") is fairly straightforward, the question of women writing a ritually-usable scroll of the Book of Esther (*Megillat Ester*, referred to here for convenience simply as "a *Megillah*") is directly addressed neither in the Talmudic literature nor by the *risbonim*. This *lacuna* cannot be explained by suggesting that these early sources could not imagine women writing sacred texts, for as we have seen, the Talmud and many *risbonim* address this matter explicitly. Indeed, as we will see later (section IX), the silence of the *risbonim* with regard to women's eligibility to write a *Megillah*, contrasted with their explicit disqualification from writing *stam*, may lead one to conclude that the *risbonim* held that women are, indeed, eligible. The conclusion is strengthened by the fact that Rambam and *Shulhan Arukh* omit women from their lists of categories of individuals who are disqualified from writing a *Megillah*.

In any event, the silence of the *risbonim* on this issue did not continue for long into the period of the *ahronim*. Despite the lack of source material directly addressing this issue, they found ample tangential material on which to base arguments both for and against. It is to these discussions that the bulk of this study will be dedicated.

Before proceeding to the material found in the *ahronim*, it is worth noting that the disagreement between the Ran and the Tur, as understood by the *Derishab*, has implications for the question of women writing a *Megillah*. According to the *Derishab*'s understanding, women's exclusion is limited to *tefillin* and *mezuzah*, and they would therefore be considered eligible to write Torah scrolls and, *a fortiori*, a *Megillah*, which is of a lesser status and which they are obligated to hear read. But the *Derishab*'s position is that of an individual only (*da`at yahid*), and is not normative;⁹ it would be exceedingly difficult to rely on it. Any practical discussion of women's eligibility to write a *Megillah* needs to begin from the premise that a woman is not eligible to write a Torah scroll and then consider whether there is a reasonable basis for distinguishing a *Megillah* and concluding that the disqualification does not extend to it.

IV. The Dispute between Rabbeinu Tam and the *Maggid Mishneh*

As mentioned, the applicability to a *Megillah* of the disqualification noted in Rav Hamnuna's *beraita* is not explicitly addressed in the classical rabbinic literature or in the *risbonim*. The *Risbonim*, however, do raise a pertinent related issue. One of the requirements for a Torah scroll is that its parchment have been dressed or worked for the specific purpose of being used in a Torah scroll (*li-shemah*).¹⁰ The *risbonim* differ as to whether that requirement extends as well to a *Megillah*. Rabbeinu Tam¹¹ takes

the view that the requirement applies. He reasons that since the *Megillah* is called a *sefer* (in rabbinic Hebrew, a scroll),¹² all the laws of a *sefer Torah* apply to it except those that the tradition explicitly informs us are different. We are nowhere told that the parchment for a *Megillah* need not be worked *li-shemah*, and the requirement accordingly applies. It is fair to infer that Rabbeinu Tam would take an analogous position regarding a woman writing a *Megillah*: since the classical Rabbinic literature never explicitly states the contrary, a *Megillah* is treated like a Torah scroll in this regard as well, and a woman is disqualified from writing it. On the other hand, Rambam (*Hilkehot Megillah* 2:9) writes that one need not dress the parchment for a *Megillah li-shemah*. Commenting on this passage, the *Maggid Mishneh*¹³ writes that,

“This is obvious, for dressing was not mentioned with regard to it, and it (a *Megillah*) is like a *sefer Torah* only with regard to those things in which it (the *Megillah*) was compared to it (the *sefer Torah*).”

The *Maggid Mishneh* thus takes a position diametrically opposed to Rabbeinu Tam’s, suggesting that a *Megillah* is treated like a *sefer Torah* only where the rabbis expressly say it should be. The *Maggid Mishneh*’s logic would lead one to conclude that women are eligible to write a *Megillah* because the rabbis never explicitly said they were not. The *Sedei Hemed*¹⁴ cites the Radbaz as understanding of Rambam in the same way.

V. The *Ma`aseh Rokeah* Rules the *Halakhah* Follows Rabbeinu Tam

The next question, of course, is whether the *halakhah* follows the *Maggid Mishneh* or Rabbeinu Tam, and we find a diversity of views. The *Ma`aseh Rokeah*, for one, rules in accordance with Rabbeinu Tam and that the disqualification of women scribes extends not only to Torah scrolls but to scrolls of the Book of Esther as well. He argues his case at length, offering numerous proofs.

The *Ma`aseh Rokeah* cites the *Bah*, who notes an exception to Rabbeinu Tam’s position that a *Megillah* must be written subject to all the rules of a *sefer Torah*. While Torah scrolls are rolled from both ends of the parchment and therefore can be rolled to the middle of the book, scrolls of Esther have only one roller and therefore must always be rolled to the beginning. The *Bah* accounts for the difference by noting that only regularly-read Torah scrolls need two rollers; those that are read infrequently may have only one roller. *Megillot Esther* are similarly read infrequently—only once a year—and accordingly require only one roller. The *Ma`aseh Rokeah* infers that the *Bah* goes so far out of his way to find a precedent for single-roller scrolls of Esther because he agrees with Rabbeinu Tam that all the *halakhot* of a Torah scroll apply to a *Megillah* as well.

The *Ma`aseh Rokeah* further claims that R. Joseph Karo, the author of the *Beit Yosef* and the

authoritative *Shulhan Arukh*, also rules in accord with Rabbeinu Tam. He notes that the *Beit Yosef*¹⁵ cites the dispute between Rashba and Raviyah over including the blessings over the *Megillah* reading at the beginning of a *Megillah* scroll. Rashba permits their inclusion, but Raviyah forbids it, arguing that since a *Megillah* is compared to a *sefer Torah*, all the laws of a *sefer Torah* apply to it. The *Beit Yosef* rules that one may rely on Rashba only *post-facto* (*be-di-avad*), i.e., the blessings should not be included in the first instance, but their inclusion, though improper, does not invalidate the scroll. The *Ma'aseh Rokeach* suggests this shows that the *Beit Yosef* sides with Rabbeinu Tam, but this seems to be an overstatement, since the *Beit Yosef* presumably would disqualify even *post-facto* a Torah scroll with the blessings included, showing he draws a distinction between a Torah scroll and a *Megillah*. Furthermore, in his *Shulhan Arukh*, R. Karo formulates his ruling as follows: “if one wrote on its first column blessings or liturgical poems, it is not invalidated thereby.”¹⁶

The *Ma'aseh Rokeach* points as well to the *Beit Yosef*¹⁷ on the issue of writing *tefillin* with the left hand. The *Beit Yosef* cites the view of the *Sefer ha-Terumah* that *tefillin* must be written with the right hand. That view is based in part on the *halakhab* that a right-handed person who writes on Shabbat with the left hand has not transgressed the prohibition of writing *mi-de-oraiyeta* (as a matter of Torah, as distinct from rabbinic, law). According to this view,

it follows that a *sefer Torah* must be written with the right hand; for were it otherwise, a valid Torah scroll could be written on the Sabbath without thereby violating the Sabbath—a patently unreasonable result. The *Sefer ha-Terumah* explicitly extends the requirement of writing with the right hand to *Megillat Esther*, and the *Beit Yosef* never challenges this position; and, he concludes his comments by citing the view of the *Semaq* that *tefillin* written with the left hand are invalid even *post-facto*.

While the *Ma'aseh Rokeach*, cites the *Sefer ha-Terumah*'s ruling in support of his claim that the *halakhot* of a *Megillah* are identical to those of a Torah scroll, one might argue instead that the ruling rests on a different rationale: writing is by definition done with the right hand, and writing with the left hand is not really writing. Since both *Megillah* and Torah scroll must be written, the laws of writing apply to both, and require use of the right hand. (The flaw in that argument is that no one would claim that a woman is exempt from the prohibition against writing on Shabbat, and just as a woman's writing counts as a violation of the Sabbath, it ought to be valid for writing a *Megillah*.) Furthermore, the *Matteh Yebudah*¹⁸ counters the *Ma'aseh Rokeach*'s argument by suggesting that the *Beit Yosef* did not, in fact, acquiesce in the extension of the right-hand requirement to the *Megillah*. His silence on the matter simply reflects the fact that the subject at issue in the passage cited was *tefillin*, not *Megillah*. In fact, the *Mateh Yebudah* continues,

when the *Beit Yosef* discusses the laws of *Megillah*, he does not mention writing with the left hand as a disqualifying flaw.

Finally, the *Ma`aseh Rokeah* notes other *rishonim* who follow Rabbeinu Tam's view, including the *Sefer ha-Yirei'im*,¹⁹ the *Tashbetz*, and the Maharam.²⁰

Before turning to the arguments of those who rule that the *halakbah* is contrary to Rabbeinu Tam, it is important to note a comment of the *Teshuvah mei-Ahavah*.²¹ He argues that Rabbeinu Tam's ruling may apply only to the *process* of the writing and not to the requirements of the *person* who writes. In other words, Rabbeinu Tam's position would require that the preparation of the parchment, the forms of the letters, and other such matters conform to the requirements for writing a valid *sefer Torah*, but would not so limit the eligibility of a person to write the scroll. Indeed, all the *rishonim* who agree with Rabbeinu Tam and therefore require that a *Megillah* be written in accordance with the laws of a Torah scroll direct their attention not to the writer but only to the writing itself (such matters as the shapes of the letters, the exclusion of cantillation marks and vocalization points, the prohibition against including blessings and other matters extraneous to the text itself). Moreover, Ramban and Ran,²² when articulating the principle that the *halakhot* of Torah scrolls pertain to a *Megillah*, say that this principle does not apply to matters that are "outside of the body" of the

Megillah. The *Ma`aseh Rokeah*, for his part, argues that the person who writes a *Megillah* certainly counts as a matter pertaining to "the body of the *Megillah*," but that is not necessarily so. The examples of "the body of the *Megillah*" cited by Ran—parchment, ink, and scoring—are physical aspects of a *Megillah* and are thus consistent with the meaning of the word "body" (*gufa*); one could easily argue that the writer of a *Megillah* is something different entirely. If so, according to Ramban and Ran, the requirements pertaining to the person who writes a *sefer Torah* need not pertain to the person who writes a *Megillah*. On this understanding, it is possible that even according to Rabbeinu Tam women may be considered eligible.

VI. The Hida Follows the *Maggid Mishneh*

Despite the *Ma`aseh Rokeah*'s lengthy discourse, it is not at all clear that the *halakbah* follows Rabbeinu Tam. The Hida, in his *Birkei Yosef*,²³ refers to the *Maggid Mishneh*'s position as one that would indeed allow women to write a *Megillah*. He observes that the *Shulhan Arukh*²⁴ cites both Rabbeinu Tam's position on working the parchment *li-shemah* and Rambam's, but he mentions Rambam's first, without comment, and then refers to Rabbeinu Tam's position as an alternate view held by some. This, the *Birkei Yosef* states, implies that the *Shulhan Arukh* is deciding in favor of Rambam.

Accordingly, the *Birkei Yosef* concludes, on the basis of the *Maggid Mishneh*'s understanding of Rambam,

that the *Shulhan Arukh* rules that women are eligible to write a *Megillah*. He bolsters that conclusion by noting that the *Peri Hadasb*²⁵ validates *post-facto* a *Megillah* written with the left hand, though a *sefer Torah* written that way is invalid even after-the-fact.²⁶

In his *Shi`urei Berakbah*, the *Hida* offers another proof that women are eligible to write the *Megillah*. The *gemara*²⁷ states that it is forbidden to read the *Megillah* in public (for ritual purposes on Purim) from a scroll that contains other sacred writings. From this it is inferred that in private, one may read the *Megillah* from such a scroll. Since women are eligible to write sacred writings other than Torah scrolls, as deduced in *Tosafot*, one must conclude that women are eligible to write a *Megillah*. Were that not case, the *gemara* could not have allowed one to read privately from such a scroll, for it might have been written by a woman.

VII. Women's Obligation to Read/Hear the *Megillah* Validates Their Writing It

The *Peri Megadim*²⁸ likewise takes the view that Rav Hamnuna's *beraita* cannot be read to disqualify women from writing a *Megillah*. The *beraita* excludes women from acting as scribes because they are not obligated by the commandment to don *tefillin*. But women are subject to commandment of *Megillah* reading (at least to the extent of hearing it read²⁹), and the *Peri Megadim* reasons they accordingly are eligible to write a *Megillah*. This approach is echoed

by the *Sedei Hemed*,³⁰ who cites the statement in *Masekhet Soferim*³¹ that all who are eligible to fulfill the community's obligation to read a sacred text are eligible to write that text. Since women are bound by the *mitsvah* of *Megillah*, they ought to be eligible to write a *Megillah*.

However the matter is not so simple. The author of *Sefer Halakhot Gadol*³² (*Babag*) maintains that women are obligated only to hear a *Megillah* read, but they are not eligible to read a *Megillah* for men. According to the *Babag*, the rule enunciated in *Masekhet Soferim* would not validate the writing of a *Megillah* by a woman. Indeed, the *Ma`aseh Rokeah*³³ invalidates a *Megillah* written by a woman on the basis of his very reasoning. Nevertheless, the *Sedei Hemed*³⁴ finds a different basis for validating a *Megillah* written by a woman. The *Mishnah* in *Gittin* 22b states that a woman is eligible to write a *get* (bill of divorce). The *Sedei Hemed*, quoting a statement by Rabbi Eliyahu Tzvi, attributes that result to the fact that the laws of divorce are applicable to women. Similarly, he reasons, the fact that women are obligated to hear the *Megillah* makes them eligible to write it.

The *Arnei Nezer*³⁵ raises a serious objection to this approach. The *Peri Megadim*'s logic suggests that women are eligible to write any sacred texts with respect to which they have halakhic obligations. But women are obligated by the *mitsvah* of *mezuzah*,³⁶ yet the *beraita* disqualifies them from

writing *mezuzot*! The *Keset ha-Sofer*³⁷ resolves the difficulty, explaining that the disqualification extends to *mezuzot* because they are referred to in the Torah in close proximity to *tefillin*, but *Megillah*, of course, is not mentioned there.

VIII. The *Megillah* Itself Suggests that Women are Eligible to Write It

Megillat Esther 9:29 states:

“Then Esther the queen, the daughter of Avihayil, and Mordekhai the Jew, wrote with all emphasis to confirm this second letter of Purim.”

The Targum renders this verse as “Esther the daughter of Avihayil and Mordekhai the Jew wrote all this *Megillah*.” Rabbi David Oppenheim³⁸ infers from the Targum’s suggestion that Esther herself wrote the *Megillah* that women must be eligible to serve as *Megillah* scribes; after all, a woman wrote the very first one! R. Oppenheim notes that the *gemara* (*Megillah* 19a) derives from this verse the halakhic requirement that a *Megillah* be written in ink on parchment:

“From where do we know that the *Megillah* requires parchment and ink? For it says [in Esther 9:29] ‘Esther the queen **wrote**,’ and it is written [in another context, Jeremiah 36:18] ‘and I **write** on the scroll [parchment] and with ink.’”

Using the rabbinic hermeneutical rule of *gezerah shavah*, the *gemara* deduces that the scroll of Esther must be on parchment and ink. R. Oppenheim reasons that the *gemara*’s use of the verse as the basis for the *halakhic* details of parchment and ink opens the way for our use of the verse to learn that women are eligible to write a *Megillah* from the fact that it says “Esther wrote.”

But while R. Oppenheim uses Esther 9:29 as a proof that women are eligible to write a *Megillah*, R. Meir Pearles reads that verse as supporting his position to the contrary. In his book, *Megillat Sefer*,³⁹ R. Pearles argues that a *Megillah* is subject to all the strictures of a *sefer Torah*. In taking this position, he alludes to *Megillah* 16b, where Rabbi Tanhum (some say Rabbi Asi) states that the phrase “words of peace and truth” (Esther 9:30) teach that before a *Megillah* is written, the parchment, like that of a Torah scroll (“the truth of Torah”) must be scored with lines (*shirtut*). R. Pearles goes on to argue that just as a *Megillah* requires *shirtut*, it requires conformance to all laws of a Torah scroll. To strengthen his position, he notes that Esther 9:29 explicitly mentions that Mordekhai also wrote a *Megillah*; he suggests that had Mordekhai not assisted Esther, then the *Megillah* that they wrote would not have been valid. Based upon this reading, he suggests that a *Megillah* written by a woman is not invalid if she had the assistance of a

man. He finds further support for this approach in the *halakhot* pertaining to sewing the parchments of the *Megillah* together. While the *sefer Torah* must be sewn together exclusively with animal tendons, a *Megillah* is valid if three of its sections are sewn together with tendons and the rest with linen.⁴⁰ R. Pearles understands this *halakhab* to imply that a *Megillah* must be written in general conformance to the laws applicable to the writing of a *Sefer Torah*, but that those laws need not be adhered to as strictly in the case of a *Megillah*. A *Megillah* needs to be sewn with tendons, but not entirely so; so too a *Megillah* needs to be written by a man, but not in its entirety. Esther's contribution mentioned in 9:29 did not invalidate the *Megillah*.

Rabbi Eliezer Waldenberg⁴¹ finds R. Pearles' arguments unconvincing, criticizing the *Megillat Sefer's* wavering between the view that the laws of a Torah scroll apply to a *Megillah* and the view that they apply in general but not entirely. R. Waldenberg argues that either a *Megillah* is subject to the same requirements as a *sefer Torah* or it is not. If it is not, then we must allow for the possibility that women are eligible to write it. R. Waldenberg finds R. Pearles' reading of Esther 9:29 excessively casuistic.

IX. The Codes Do Not Mention the Disqualification of Women.

As noted above, the *Annei Nezer* initially objected to the *Peri Megadim's* claim that women are eligible to

write scrolls of Esther. However, he later had second thoughts about his position,⁴² based on the fact that Rambam did not include women in his list of those disqualified from writing a *Megillah*.⁴³ The *Shulhan Arukh* similarly makes no mention of women being so disqualified. These omissions lead other *abronim* as well to conclude that women are not disqualified from writing a *Megillah*.⁴⁴

The *Matteh Yebudab* suggests an explanation for the codes' omission of women from the lists of those disqualified. Noting that the codes regard an idolater and a heretic (*apikoros*) as disqualified, incorporating those provisions or R. Hamnuna's *beraita*, he posits two separate grounds for disqualifying a person from writing Torah scrolls, *tefillin*, and *mezuzot*. The first is that a person is not within the class of those commanded to observe the *mitsvah* of *tefillin* (or simply fails to fulfill the commandment). The second is that a person may not write the scroll *li-shemah*. With respect to *Megillah*, however, only the second ground applies. On this analysis, the exemption of women from the *mitsvah* of *tefillin* does not disqualify them from writing a *Megillah*, but they are eligible to do so on if they are capable of writing *li-shemah*. Strikingly, the *Ma'aseh Rokeach* denies that women are capable of writing *li-shemah*; the *Matteh Yebudab* disagrees, maintaining they are. The *Matteh Yebudab's* position is supported by the fact that in principle, women are qualified to prepare *tsitsit*,⁴⁵ which must be done *li-shemah*.⁴⁶ Based on his analysis, the *Matteh Yebudab*

concludes that women are indeed eligible to serve as *Megillah* scribes.

X. Conclusion

A number of *ahronim* write that women are disqualified from writing the *Megillah*. These include the *Ma`aseh Rokeah*, R. Me'ir Pearles, R. Akiva Eiger⁴⁷, R. Yosef Messas⁴⁸, *Meleket Shamayim*⁴⁹, and the *Sha`arei Teshuvah*⁵⁰.

Yet there is a strong trend in *halakhab* to validate a *Megillah* written by a woman. The *Derishah* goes further, regarding women as eligible to write a *sefer Torah* as well; and while the *Shulhan Arukh* and all other *risbonim* disagree with the *Derishah*, they fail to mention women among those who are disqualified from writing a *Megillah*. The omission is glaring,

given that the *gemara* and *risbonim* all explicitly disqualify a woman from writing Torah scrolls, *tefillin*, and *mezuzot*. This silence along with strong theoretical arguments, lead a large number of major *ahronim* to rule either in principle or in practice that scrolls of Esther written by women are valid. These *ahronim*⁵¹ include R. David Oppenheim, the *Hida*, the *Peri Megadim*, the *Teshuvah mei-Ahavah*, the *Matteh Yebudah*, the *Keset ha-Sofer*, the *Sedei Hemed*, the *Arukh ha-Shulhan*, the *Avnei Nezer*, the *Beit Oved*,⁵² and the *Tsits Eliezer*. Given the number, stature, and compelling reasoning of these *ahronim*, it seems that the weight of the halakhic discussion inclines toward regarding women as eligible to write scrolls of Esther for communal ritual use provided that they are competent in the requisite *halakhot*.

NOTES

- ¹ R. Yehuda Henkin, *Equality Lost* (Jerusalem: Urim Publications, 1999), p. 54. See also R. Henkin, *Bnei Banim* II, p. 215.
- ² The same passage appears in *Menahot* 42a, with Rav Hininah replacing R. Hamnuna.
- ³ Rabbenu Nissim 23b in the pagination of Rif. While other earlier *risbonim*, such as Rambam (*Hilkebot Tefillin* 1:13), and Rosh (see note 6), also explicitly rule that women are disqualified from writing Torah scrolls, Ran is the only one who explains how Torah scrolls are included based on the exegesis of Rav Hamnuna's *beraita*. For this reason, I will use Ran as the representative of the position contrary to the *Derishab*'s.
- ⁴ *Tur*, *Orah Hayyim* 271.
- ⁵ *Tur*, *Orah Hayyim* 39.
- ⁶ *Derishab*, *Yoreh De'ab* 271:1.
- ⁷ See, however, the *Ma'aseh Rokeah* at the beginning of *Hilkebot Megillah* s.v. *u-mehankhim* and the *Nish'al David*, *Orah Hayyim* #30, who note that the Rosh explicitly states that women are disqualified from writing Torah scrolls. See *Halakhot Qetanot*, *Tefillin* #3; Rosh, *Gittin* 4:46. *Kitsur Pisqei ha-Rosh*, *Gittin* 4:45, collected by the *Tur* himself, states explicitly that women are disqualified from writing Torah scrolls.
- ⁸ *The Ma'aseh Rokeah*, at the beginning of *Hilkebot Megillah*, s.v. "*u-mehankhim*."
- ⁹ *Ibid*; *Nish'al David*, *Orah Hayyim* #30; and *Shakh*, *Yoreh De'ab* 281:6.
- ¹⁰ *Gittin* 54b and *Shulhan Arukh*, *Yoreh De'ab* 271:1.
- ¹¹ See the *Mordekhai* to tractate *Megillah* #795 and the *Tur*, *Orah Hayyim* 691.
- ¹² *Megillat Esther* 9:32.
- ¹³ *Ad. loc.*
- ¹⁴ *Sedei Hemed*, *Ma'arekhet Purim* #12.
- ¹⁵ *Beit Yosef*, 691, s.v. *ketav ha-Rashba*.
- ¹⁶ *Shulhan Arukh*, *Orah Hayyim* 691:9. See, however, *Mishneh Berurah* #26 who states one should not do so in the first instance (*le-khatehilah*).
- ¹⁷ *Beit Yosef*, *Orah Hayyim*, 32, s.v. "*ve-tsarikh*."
- ¹⁸ *Matteh Yehudah*, *Orah Hayyim* 691:4.
- ¹⁹ See *Beit Yosef*, *Orah Hayyim* 691, s.v. *u-Behag Katav*.
- ²⁰ See *Magen Avraham*, *Orah Hayyim* 691:3.
- ²¹ *Teshuvah mei-Ahavah*, *Orah Hayyim* 691.
- ²² Ran on Rif page 5b-6a s.v. "*ve-tsarikh*."
- ²³ *Birkei Yosef* 691:6.
- ²⁴ *Shulhan Arukh*, *Orah Hayyim* 691:1.
- ²⁵ *Peri Hadash*, *Orah Hayyim* 691:2.
- ²⁶ *Shulhan Arukh*, *Orah Hayyim* 32:5.
- ²⁷ *Megillah* 19b.
- ²⁸ *Mishbetsot Zahav* 691:2.
- ²⁹ See note 31. For a full treatment of women's obligation regarding reading of the *Megillah*, see R. Avraham Weiss, "Women and the Reading of the *Megillah*," *The Torah u-Madda Journal* 8 (1998-1999): 295-317.
- ³⁰ *Sedei Hemed*, *Ma'arekhet Purim* #12.
- ³¹ *Masekhet Soferim* 1:14.
- ³² *Tosafot*, *Arakhin* 3b s.v. *l'atui nashim*. See note 28.
- ³³ *Ma'aseh Rokeah* at the beginning of *Hilkebot Megillah*, s.v. "*u-mehankhim*."
- ³⁴ *Sedei Hemed*, *Ma'arekhet Purim* #12.

-
- ³⁵ *Avnei Nezer, Orah Hayyim* 516:4.
- ³⁶ *Yoma* 11b; *Shulhan Arukh, Yoreh De`ah* 286:1.
- ³⁷ *Keset ha-Sofer* 28:9 in the notes entitled *Lishkat Ha-Sofer* note #7. See also *Arukh ha-Shulhan, Orah Hayyim* 691:3.
- ³⁸ *Nish'al David, Orah Hayyim* #30. See also *Keset ha-Sofer* 28:9 in the notes entitled *Lishkat Hasofer* note #7.
- ³⁹ *Megillat Sefer* to Esther 9:29.
- ⁴⁰ See *Shulhan Arukh, Orah Hayyim* 691:6 for details regarding this law.
- ⁴¹ *Tsits Eliezer* 11:92.
- ⁴² *Avnei Nezer, Orah Hayyim* 518:11.
- ⁴³ *Mishneh Torah, Hilkhot Megillah* 2:9.
- ⁴⁴ *Matteh Yehudah, Orah Hayyim* 691:4; *Lishkat ha-Sofer* #7 to *Keset ha-Sofer* 28:9; *Mahaziq Berakhab* 691:2; *Arukh ha-Shulhan, Orah Hayyim* 691:3.
- ⁴⁵ *Shulhan Arukh, Orah Hayyim* 14:1. See the *Mishneh Berurah ad. loc.* #3, who says that there is no question that women are qualified to spin and interweave the wool, which must be done *li-shemah* (see note 44).
- ⁴⁶ *Shulhan Arukh, Orah Hayyim* 11:1,2.
- ⁴⁷ *Hagabot* R. Akiva Eiger to the *Shulhan Arukh* 691:2.
- ⁴⁸ *Otsar ha-Mikhtavim* Vol. 3:1617.
- ⁴⁹ *Kelal* 24:3 with note 11.
- ⁵⁰ *Sha'arei Teshuvah, Orah Hayyim* 91:3.
- ⁵¹ Sources for these are those already listed throughout this essay with the exception of the *Beit Oved* (see note 52). Rabbi Ovadia Yosef already collected these sources in his *Yabi`a Omer* 8, *Orah Hayyim* #55. He also quotes the *Get Mequshbar* p. 154d as validating a *Megillah* written by a woman. I have also heard that Ya`aqov Hayyim Sofer, author of the *Kaf ha-Hayyim*, in his book *Qol Ya`aqov*, deems a woman eligible to write a *Megillah*, but I have failed to able to obtain this work and confirm it.
- ⁵² *Beit Oved* 691:6.

Edah* in Israel: Engaging Israeli Modern Orthodoxy and Partnership with *Ne'emanai Torah va-Avodah

Saul J. Berman, Executive Director of *Edah*

Moshe Tur-Paz, Chairman of *Ne'emanai Torah va-Avodah*

From *De`ot*

The Challenge of Unmarried Women: Does Defining Them as a “Problem” Meet a Social Need?

Hagit Bartov

Abstract: This article argues for the need of traditional Jewish community to rethink the ways it regards the status of single women, understanding that for many “singleness” is not a temporary condition. This recognition has implications for both ritual and the traditional social structure of the observant Jewish community.

Biography: Hagit Bartov is Project Coordinator at *Mercaz Ya`akov Herzog* in Israel.



Edah* in Israel: Engaging Israeli Modern Orthodoxy and Partnership with *Ne'emanai Torah va-Avodah

Rabbi Saul J. Berman

For the past four years *Edah* has engaged in programming in Israel with a number of Israeli Religious Zionist organizations that share *Edah's* ideals of Modern Orthodoxy. During *Hol ha-Mo'ed Sukkot* of 2001 our Jerusalem Conference was attended by over 700 people. The following year, 800 people attended a similar one-day conference, and an additional 34,000 people around the world participated through our webcast of the proceedings. During *Hag ha-Sukkot* of 2004, we sponsored a series of nine evening programs spread throughout Israel, at which both American and Israeli scholars and rabbis spoke on issues of contemporary religious, ideological and ethical concerns. Over 1,000 people participated in these special evenings.

Edah initiated these programs in 2001 in a simple desire to show support for Israel and to promote North American Jewish tourism to Israel at the height of the *intifada*, when few were traveling there. The partnership was originally formed with *KeLavi Yakum* and its constituent organizations, *Kibbutz HaDati* and its yeshiva at Ma'aleh Gilboa, *Bet Morasha* of Jerusalem, Bar-Ilan University and *Kolech*.

Since then we are happy to announce that *Itim* and *Ne'emanai Torah va-Avodah* have joined this group.

The real long-term benefits to Modern Orthodoxy and the Jewish People of this cooperative venture are clear: An intense linkage between the North American and the Israeli Modern Orthodox communities breaks down isolation and demonstrates the enormous intellectual power of our community. As a result of this partnership, we have significantly increased the number of Israeli participants and presenters at the Biennial *Edah* Conference in New York and our lecture series conducted by *Edah* at the Jewish Community Center of Manhattan. Videotapes of the Israeli conference presentations are posted on *Edah's* website (www.Edah.org), which gets over 300,000 clicks a month, and are amongst the most frequently visited elements at the site.

Second, as communities we share many strengths and weaknesses, and learn from each other's experiences. We are now engaged in planning the Joint Leadership Conference where we will address a

single issue faced by the North American and the Israeli communities. Through intense preparation and discussion, we hope to achieve a consensus for a single approach that can be implemented in both communities.

Third, we have become deeply aware of the richness of published thought in each of the communities. Thus far, this material has not been easily available across linguistic boundaries. This awareness has led us to the initiation of a joint venture between *The Edah Journal* and *Ne'emei Torah va-Avodah*, the publishers of *De'ot*. Beginning with this issue *The Edah Journal* will publish a regular flow of outstanding articles translated from the pages of *De'ot*, while *De'ot* will publish exceptional articles translated from *The Edah Journal*. Our plans call for making entire issues of *De'ot* available to English readers on our website and to publish annually a joint issue of both journals that would include the

best thought and scholarship that has appeared in the preceding year.

Edah's partnership with Modern Orthodox leaders in Israel and the cross-fertilization of ideas enrich our communities. The North American Modern Orthodox community will be able to draw more effectively on the Torah and communal wisdom of our Israeli counterparts, and they will more easily be able to draw on ours. Modern Orthodox Israelis are eager to learn from our community's experience with American democracy, tolerance and separation of church and state. We will gain from the Israeli community's experience in the formation of a new and vital Jewish culture. And the richness of the exchange for the evolving spiritual life of both communities may outweigh all of the other benefits.

We invite you to join in this rich conversation.



***Ne'emanai Torah va-Avodah:* Preserving the Values of Religious Zionism**

Moshe Tur-Paz

The fusion of *Torah* and *avodah* was a fundamental premise of the Religious Zionist movement whose founders regarded *halakhab* as dynamic. They believed that Judaism's traditional values provide a basis for the establishment of a modern society in the Land of Israel. The integration of observant citizens in all walks of life in the newly established State was essential to that vision

In recent years some leaders of the religious community have advocated a policy of isolation and seclusion, particularly in social and educational matters. This policy widens the gaps between traditional and secular communities. If embraced by our society, it would effectively deny religious Jews integration into modern Israel and threaten the delicate fabric of cooperation that has been patiently woven between religious and non-religious Israelis.

Ne'emanai Torah va-Avodah was founded in 1978 in response to this threat. We are socially and ideologically oriented and are intentionally not affiliated with any political party. They represent different segments of the population, who for the sake of our cause put political issues aside. Through

Ne'emanai Torah va-Avodah, we concentrate on questions of modern observance, Jewish identity in a modern state, and issues that are critical to the internal workings of Israeli society.

Ne'emanai Torah va-Avodah aims to achieve its goals through a wide range of scholarship and programming. The following are the titles of some of our recent Hebrew publications:

- Women as Public Figures
- The Change through Generations in How *Halakhab* Views Women
- How Judaism Views Secular Studies
- Studying Torah Versus Army Service
- Authority of *Halakhab* as Represented by Rabbis vs. the Free Will of Observant Jews
- Recruiting Women into the Army
- The Proper Relationship with Our Arab Neighbors

Our journal, *De'ot*, is published three times a year and explores topics that are burning issues within the religious community. With high quality writing, *De'ot* is a popular journal that presents authors with

differing points of view. There are few publications of equal standing that offer a platform for such pluralistic opinions. *De`ot* is mailed to members, subscribers, public personalities, *yeshivot*, libraries and institutions of higher learning.

Ne`emanei Torah va-Avodah runs parlor meetings, seminars and study groups, and weekend seminars for older circles. Separate programs for singles and younger groups provide an opportunity for dialogue on many important topics. Some of the subjects discussed have been: conversion and the status of converts, *agunot*, *halakhab*, Judaism and the media, relationships between observant and non-observant Jews, and ethics in time of war.

Here is a partial listing of our current programs:

- **The Charles Liebman “Beit Midrash Re`im,”** the official *Bet Midrash* of *Ne`emanei Torah va-Avodah*, is on its way. Approximately thirty men and women are devoting their time to study *gemara* and Jewish intellectual history, in study groups and classes for four hours every Friday. The atmosphere is wonderful and the study is enjoyable and productive.
- ***Shiurim* at Ohel Nehama Synagogue in Jerusalem** have resumed every Monday evening. We continue to discuss issues of *halakhab* and State, religion and ethics, tradition and modernity.

- **2004 Members Meeting** will convene on December 30, 2004 to evaluate activity for the past year.
- **A *Shabbat Iyun* on “Halakhic Questions in the Modern State”** will be held on *Shabbat, Parashat Vayechi* at Shefayim Guesthouse. The inter-organizational cooperation on *Shabbat* proved to be successful (following *Shabbat Parashat Noach* with ‘*Kolech*’). This *Shabbat Iyun* will be in cooperation with the organization, Mosaica.
- ***De`ot***, published by *Ne`emanei Torah va-Avodah* and *Mercaz Ya`akov Herzog*, has now concluded seven years in which *De`ot* was issued every four to five months. We have recently concluded an agreement with *Edah* to translate and exchange articles regularly with *The Edah Journal*.
- **Essays** written by the board members of the movement were published recently in various media. Some are published in the website of *Ne`emanei Torah va-Avodah* (www.toravoda.org.il) under the title, ‘*Emdo?*’.
- **The Be`er Sheva Branch** has begun. The branch activities will take place primarily at the campus of Be`er Sheva University. Members are invited to open new branches at their place of residence.

More information about *Ne`emanei Torah va-Avodah* can be found in our website: www.toravoda.org.il or at our offices at 972 2 5611761.

The Challenge of Unmarried Women: Does Defining Them as a “Problem” Meet a Social Need?*

Hagit Bartov

Author’s note:

In his recent book, A Tale of Love and Darkness, Amos Oz wrote:

To seek the heart of a story in the space between the work and its author is a mistake: it makes better sense to search not in the expanse between the writing and writer but in the expanse between the writing and reader. ...Not that there is nothing worth seeking between the text and the author—there is a place for biographical research, and gossip itself has a certain sweetness.... But the pleasures of gossip are merely pink cotton candy larded into an entire mountain of sugar. (Pp. 38-39)

Amos Oz suggests that the reader seize the opportunity to examine a story via one’s inner world. The encounter between the story’s protagonists and that inner world can serve to ease loneliness and pain. I want to use this master writer’s observation to clarify something about what I’ve written here. I am a single woman, a fact that may lead many, perhaps justifiably, to wonder about the expanse between the writing and the writer. But I invite my readers to seize the opportunity to search the expanse between the written words and their own inner worlds, as Amos Oz goes on to say:

*Do not ask...what is going on with this author.
Ask yourself; ask about yourself.
And you may keep the answer to yourself. (P. 40.)*

What follows is neither a literary work nor a learned academic study. It is, rather, an exposition of some thoughts and ideas that have occupied me in recent years; and I believe they can provide some insights regarding religious society.

In recent years, the question of unmarried women** has preoccupied the religious community. Symposia abound at which educators and rabbis ask themselves, “Where have we gone wrong?” “How do we account for the large number of single men and women in our community?” And, most importantly, “How do we solve ‘the problem’?” It is important to note at the outset that many of these inquiries are concerned specifically with unmarried women, a point I will return to later. And the inquiries are a phenomenon associated with the religious community. I have encountered no examination of the question on the part of secular educators, even though female bachelorhood is proportionately no less characteristic of the secular community. It is clear that these inquiries originally grew out of the religious conception of marriage and family life as something sacred; but it seems to me that the proliferation of the inquiries, and the sense of foreboding that emanates from them, require a deeper explanation. What is it about this issue that so disturbs religious society?

On the surface, these symposia appear to be concerned about the well-being of unmarried women, living bereft of love and children. As a practical matter, however, little is said about the lives of these women and their multifaceted implications. The first, perhaps only, person to consider such matters was Hefzibah Shatul, who presented, at the second “*Kolekib*” conference (Summer 2001), a study she had conducted of single women in Jerusalem;

the study was later published in *De`ot 11 (Elul 2001)*. Shatul defined the “process of *hitranqut*” (“bachelorization”) that women undergo during their unmarried years, as they grapple with the expectation of religious society, internalized as part of their education: “a woman needs to marry young.”

One interviewee remarks to Shatul:

In invitations to social events and similar occasions, they don’t treat you as an independent adult until you’re married. This is expressed at holiday times, when they don’t pick up a phone to wish you happy holiday. It is enough to telephone the family; that covers you as well.

And further:

...If you want to talk about symbolism, I decided this year that in anticipation of next Hanukkah I would buy a Hanukkah *menorah*. Until now, I didn’t have my own *menorah*; I’d light candles here or there and I didn’t take great pains to light, since my father had me in mind [when he lit his candles]. But this year I said “there’s no alternative; this isn’t such a temporary situation; I’m not under my father’s protection; this is now my life and I don’t live suspended in air.”

As Shatul explained in that article, these quotations evidence society’s attitude toward the meaning of unmarried women’s lives: even if they have passed

the age of thirty, they are still regarded as appendages of their parents; even if they lead rich personal lives with successful careers, advanced academic degrees, or significant accomplishment in Jewish learning, they are regarded as children. Similarly, many single women see themselves the same way: they are cautious about building independent religious lives, just as they are cautious about establishing their physical homes. One interviewee, for example, accounts in that way for avoiding the purchase of a washing machine. The single woman internalizes the social concept that a woman does not become a woman until she marries and establishes her home. Society's voice becomes an inner, critical voice, inducing a deep sense of something missing.

“A single woman internalizes the social concept that a woman does not become a woman until she marries and establishes her home.”

What interests me is why religious society has this need (conscious or not) to relate to single women as children rather than as independent players within society. In a certain sense, *halakhab* treats women in general as children, excluding them, for example, from being counted in a prayer quorum, just as children are excluded. Nevertheless, married women attain an aura of maturity through their husbands while single women, lacking a “maturing” factor,

remain children in society's eyes.

Whom Are We Worried About?

I want to examine the latent meaning of the inquiries and symposia concerning the question of single women. Do they express genuine concern about the well-being of these women, or might the concern really be about the stability of society? For if society were primarily concerned about the contentment of women, it would rejoice with them in any decision that enhanced that contentment: living together without marriage (and finding ways to resolve the associated halakhic issues), single motherhood, or independent life with no partner or children, tending to one's professional life or personal spiritual development. “Contentment” is a subjective concept, flowing from each individual's character and needs. It seems to me that not one of these symposia offers alternative choices such as these; instead, all try to steer unmarried women into choosing a single, exclusive version of “contentment”—namely, marriage.

What is it, then, that troubles religious society (and, in many ways, Israeli society as a whole)? I would argue that, in the eyes of religious society, a woman who is not tied to a family unit disrupts the social order, the sexual order, and the religious order and thereby threatens the stability of society. It is that problem that preoccupies the educators and rabbis who deal with this issue.

Challenging the Social Order

The social philosopher Friedrich Engels argued that the family is a tool used by society to preserve the existing social order. Accordingly, the existence of the family is in the interests of the ruling class, which seeks to preserve its dominance over society and the subservience of society's members to the rules and laws that promote the existing social order.¹

In a recent article in *Devarim* (published by *Mercaz Ya'akov Herzog*), Ariel Picker noted that unmarried, religious young men and women tend to pursue diverse religious and spiritual opportunities, while married couples tend to seek stability and conformity.²

“Unmarried young men and women tend to pursue diverse religious and spiritual opportunities, while married couples seek stability and conformity.”

This implies that an unmarried person threatens the stability of society, for he or she derives less benefit from submission to its rules. He has less need for communal institutions—such as those related to education, society, or religion—and he can therefore challenge the arrangements on which those institutions are grounded.

But it appears that unmarried women represent even

more of a threat to society than do unmarried men. The feminist critique argued that while the family may regulate both spouses, transforming them into an efficient and submissive component of society, the family as a patriarchal institution in fact maintains the woman's inferior position in society: the wife is clearly tied to domestic tasks and to responsibility for the private aspects of life rather than the public aspects that society regards as central.

The complex feminist analysis of the bourgeois distinction between the private and the public, and the multi-faceted implications of that distinction, are beyond the scope of this article. For present purposes, it is important to note only that a woman who is not directly tied to a conventional family unit disturbs the existing social order and challenges the power relationships within it. As we saw in the remarks of the interviewees quoted earlier, religious society does not know how to relate to a woman alone—how, for example, to invite her to family events—and it has difficulty in situating those women who depart from the adage “his wife is his household”: to what household, if any, does such a woman belong?

One of the family's functions is to order and regulate sexual relations. In the religious world, sexual life is termed “family life,” and it is regulated by the laws of *niddah*, requiring separation of husband and wife

during menstrual impurity. Unmarried women raise a concern about impairing the sexual order and, as a result, about undermining both *halakhab* and society.

Undermining the Religious Order

The most interesting question in this context is that of the religious order. Samuel Heilman, an American sociologist and Orthodox Jew, conducted an anthropological study of a Modern Orthodox congregation in the United States. In his book, *Synagogue Life*, he argues that a woman's path to status within the synagogue, and thence in the community, runs via her husband. The benefits of belonging to a community and achieving status within it are attained by a woman through her husband, who bears the obligation of public worship and other public religious rituals. Moreover, he argues, this arrangement binds the couple together and forges them into a single social unit.³ The fact that men are the focus of Jewish congregational ritual in both synagogue and home applies as well with respect to religious society in Israel, where men act on behalf of their wives (and their daughters or their mothers) in pronouncing various blessings.

The comments made by Shatul's interviewee in recounting her decision to purchase her own Hanukkah *menorah* this year evidence an unmarried woman's recognition that her bachelorhood is not merely a brief interval between her father's home and her husband's. No longer passively biding her

time, this woman has decided to embark on an active religious life, symbolized by the purchase of a Hanukkah *menorah*.

"Some women recognize that their bachelorhood is not merely a brief interval between their fathers' homes and their husbands'."

This is part of the process of bachelorization, as Shatul terms it, a process that compels religious women to change the conventional religious order. In contrast to the accepted religious norm, under which women refrain from kindling Hanukkah lights (even though *halakhab* permits them to light), a religious single woman is compelled to kindle the lights herself in order to celebrate the holiday more fully. Similarly, unmarried women must themselves recite *Kiddush* at the start of the Sabbath or *Havdalah* at its conclusion and take upon themselves other obligations that men typically discharge on behalf of their wives, daughters, or mothers. I use the term "compelled" because for many women, the choice flows not from religious feminist notions but simply from the reality of their lives.

Nevertheless, this reality forges a new religious order. Religious rituals become part of women's religious and personal lives, without male involvement. And so, as a result of the life-situation of single women—and not necessarily out of a rebellious or critical stance—the conventional

ordering of religious life is shaken, and new possibilities emerge for feminine religious expression.

“If You’re a Feminist You Must Be Unmarried”

The familiar feminist slogan that “the personal is the political” expresses the idea that personal experience is also a political matter. Feminist thought proceeds from personal experience to political insight. Similarly, religious single women are likely to test their personal life-experiences against religious society’s conventional religious norms and challenge the force of those norms. The need to perform religious rituals on their own leads many women to ask why that should not be the accepted practice throughout religious society. The religious experiences of single women become an integral part of their religious world, something they want to preserve even in the absence of compulsion.

It thus appears that the lives of single women establish, at the very heart of religious society, an alternative in which women lead independent religious lives. That alternative is problematic for the religious establishment, as it grapples with the tendency to involve women in religious rituals.

“The proliferation of unmarried women is often termed, ‘the problem of unmarried women.’”

In the many analyses of this issue within the religious community, the proliferation of unmarried women is

often termed (both in titles and in the course of discussion) “the problem of unmarried women.” Pejoratively designating the phenomenon a “problem” distances these women from religious society and makes their lives into something irrelevant to that society. The negative designation implies an equation: an unmarried woman = a woman who says *Kiddush* = a problem; and that equation, in turn, deters women from consciously choosing an independent religious life, for no one wants to be equated to a “problem” or regarded simply as “a woman alone.” Labeling unmarried life as somehow problematic marginalizes the widespread phenomenon of women leading independent religious lives and makes it into something transient. And treating unmarried women as children similarly relegates them to irrelevance for “mature” married women.

It may be as well that the emphasis on unmarried women’s lack of contentment reinforces the equation of marriage with contentment and confirms the institution of marriage as the sole alternative. But that disregards the limitations on human contentment, limitations that exist as well—perhaps especially—within married life.⁴

I do not claim that the lives of unmarried women are free of frustration and inner pain. As noted, unmarried women internalize the values of the society of which they form a part; and many crave the societal validation that comes with a wedding

and the expected contentment of married life. But it must be understood that we are talking here not of each individual unmarried woman's personal situation but of a social phenomenon having aspects that are important for the entire community of women.

The social forces that distrust—consciously or not—all change in society's defining relationships thereby deny society, and the women within it, the possibility of benefiting constructively from perspectives that can be offered by unmarried life. The phenomenon of unmarried women maintaining a religious way of life that does not depend upon a man embodies both a challenge and an opportunity for society in general—or, at least, for that segment of society seeking social legitimization for the equal involvement of women in public and private Jewish life.

Terming unmarried women a "problem" diminishes the strength of that alternative and reconfirms the existing, "non-problematic" religious order. That

fact, it seems to me, weakens the efforts being made in some religious circles to find ways to broaden women's religious activity. It is important, therefore, to find new ways of considering the subject of unmarried women, seeing in it a complex phenomenon, some aspects of which can offer lessons for religious society, opening new horizons and revealing possibilities implicit in our Jewish world.

In one of her poems, Leah Goldberg considers the self-revelation undergone by a woman precisely when she is alone. One passage reads:

Were you to seek me now,
You'd not recognize your yesterdays—
I move toward myself
With a face that you sought in vain
When I moved toward you

Borrowing that image, one might say that unmarried women moving toward themselves find the paths that we sought in vain.

NOTES

* Translation by Joel Linsider from *De`ot 17*, Spring 2004.

**The Hebrew word here translated as “unmarried woman” or “single woman” has the specific meaning of “never-married woman”; in contrast to the English terms, it does not encompass widows or divorcees, and the translation should not be taken to extend the reach of the author’s observations. (A more precise translation might be “bachelorette,” but that term is objectionable on other obvious grounds.)—

translator’s note

¹ See Fredrich Engels, *The Origin of the Family, Private Property and the State* (Chicago, 1902)

² Ariel Picker, “Family and Cohabitation in Our Times” (Hebrew), in *Devarim—the Many Faces of Judaism*

³ See Samuel C. Heilman, *Synagogue Life*, 1979, p. 71.

⁴ See Amit Hazzan, “The Silent Majority” (Hebrew), *De`ot 16* (Sivan 2003), pp. 42-43 (Hebrew) *De`ot 16* (Sivan 2003), pp.42-43.

REVIEW ESSAY

A Critique of *Expanding the Palace of Torah: Orthodoxy and Feminism* by Tamar Ross

Yoel Finkelman

Response by Tamar Ross

Biographies:

Dr. Yoel Finkelman teaches at *Midreshet Lindenbaum* in Jerusalem, and the Project Coordinator at ATID, a Jerusalem-based foundation that provides resources and training for Jewish educational leadership.

Professor Tamar Ross is a member of the editorial board of *The Edah Journal* and teaches in the department of Jewish philosophy at Bar Ilan University. She has taught Jewish thought at *Midreshet Lindenbaum* since its inception in 1976, and this year is the Blaustein visiting professor in the department of religious studies at Yale University.



REVIEW ESSAY

A Critique of *Expanding the Palace of Torah: Orthodoxy and Feminism* by Tamar Ross (Waltham, MA: Brandeis University Press, 2004) pp. 324

Yoel Finkelman with Response by Tamar Ross¹

The status of women may be the single most pressing theological, sociological, and halakhic challenge currently facing Orthodoxy. As time passes it becomes increasingly difficult to justify the yawning gap between the roles that Orthodox women play in their secular lives and their roles within Jewish religion. Enormous progress in women's Torah education has been made, but in other issues, from *agunah* to public prayer, many Orthodox women and sympathetic men feel dissatisfied and cheated by the status quo.

Prof. Tamar Ross, who lectures in Jewish Philosophy at Bar-Ilan University and who has emerged as one of the most articulate, thoughtful, and radical of Orthodox feminist leaders, has written a book that will undoubtedly spark debate and controversy. *Expanding the Palace of Torah: Orthodoxy and Feminism* is a model of clarity, subtlety, sophistication, and cautious writing. The book is deep and thought-provoking, and demands a close reading and re-reading. It is sure to become central in any future discussion of women's place in Judaism.

Ross blasts the hypocrisy, defensiveness, fear, and power politics that characterize much of the current Orthodox apologetics about women. Moving beyond her predecessors, she argues that the feminist critique of the Jewish tradition transcends a demand for more equal legal status. The central problem is not this or that ritual from which women are excluded, this or that legal inequality which weakens them in divorce proceedings. Rather, feminism challenges the very core of traditional Jewish self-understanding. Feminism identifies a deep-seated gender bias that affects the basic discourse of traditional Jewish sources, from the Bible itself through contemporary writings.

“Ross blasts the hypocrisy, defensiveness, fear, and power politics that characterize much of the current Orthodox apologetics about women.”

For example, when Moses prepares Israel to hear God's revelation at Sinai, he tells "the nation, be prepared for the third day; do not come close to a woman" (Ex. 19:15). How are contemporary Jewish

women to understand this verse, which excludes them from the nation which was present at Sinai? According to Ross, answering this challenge requires a rethinking of the basic categories which Orthodox Jews use to describe and participate in their tradition. Women must be at the forefront in formulating that rethinking.

“The claim that any text, even one revealed by God, transcends its time and place is self-contradictory.”

The seriousness of the issue which Ross raises was made quite clear to me in a recent class I taught to Orthodox Jewish women taking their first steps in Talmud study. We interrupted our regular learning to **consider** the issue of women's obligations to study Torah. The sources, by our reading, not only defended, but encouraged women's study of any field of Torah. However, my students asked a set of questions to which I had no satisfactory answer. "We understand that we can and should study Torah. We do not understand why we need a special dispensation to do so. We do not understand why our Torah study is justified by the claim that it will defend us from punishment in a case of adultery! (*Mishnah, Sotah* 3:4) We do not see ourselves as exceptions to the general rule that most women are neither smart nor serious enough for Torah study!" (*Rambam, Mishneh Torah, Hilkhot Talmud Torah* 1:13).

I had, and still have, no adequate response.

Ross raises many difficult questions which Orthodoxy can ill afford to ignore, and she suggests radical solutions. She argues that the feminist critique requires redefining the notions of divine revelation and *halakhab* in light of recent feminist theory and post-modern philosophy of law. Orthodoxy must come to understand that all language is inherently bound to a particular time and cultural atmosphere. Sacred sources, including the Torah itself, are no exception. The claim that any text, even one revealed by God, transcends its time and place is self-contradictory. God's revelation of the Torah at Sinai must be understood as the beginning of an ongoing and changing revelatory history that began at Sinai and has yet to come to an end. Revelation is, according to Ross's vivid expression, "cumulative." It develops as the community interprets and reinterprets, privileges or downplays, accepts for contemporary use or sidelines as antiquated, the revelatory traditions of the past.

Furthermore, texts themselves do not have absolute or objective meaning. Their meaning and their authority is grounded in the interpretive community, which is the final arbiter of normativity. Interpretation of Torah is not an attempt to comprehend an objective "will of God" which exists outside of the community's voice. Rather, the will of

God is articulated through the community's discourse. This related to a larger claim about religious language, which does not make “empiric statements” (p. 220). Rather, religious truth statements should be judged in functionalist and pragmatic terms (pp. 193-194, 220). It is more important to understand the consequences of faith statements for the lives of believers than it is to know if these consequences correspond to an external reality. The “function” of the “religious language game” is “constructive rather than descriptive, shaping our attitudes to reality rather than providing us with precise metaphysical information” (p. 219).

“Texts themselves do not have absolute or objective meaning.”

By this theory, *halakbah* is not the mechanical application of eternal and pre-existing legal principles to changing conditions. Instead, the ever-changing interplay between texts, social reality, and shifting hermeneutic and moral assumptions can alter not only particular conclusions, but the very ground rules of the game. Whatever conclusions are produced in the complex dynamic of social and textual forces, however distant from the original texts which appear to be foundational, are, by definition, normative. Hence, the legal authority of *halakbah* is not located exclusively in the statements of *poseqim*. Rather, community practice and social

reality—even when they deviate from traditional norms—are part of the process by which the collective negotiates its normative consensus. The authority of the community means that until there is consensus on a controversial social or halakhic issue, there can be no objective determination of which option is binding and which is prohibited

Contemporary Orthodox feminists, according to Ross, are thereby in a position to gradually alter not only the place of women in Orthodoxy, but the very texture of interpretation and religious life. By seeing the sexist language of the Jewish tradition in its historical context, it becomes possible to suggest that this may have been the way in which God was revealed in the patriarchal society of the past. Today, the cumulative revelation of feminism can build on that past to forge a new religious language that is less biased. By becoming learned in every area of sacred tradition, women can make their voices and concerns more central as the interpretive community goes about understanding itself and God's Torah. By challenging the status quo from within the community, Orthodox women can gradually rewrite the ground rules by which Orthodox Jewry plays the language game of Torah and *mitsvot*.

Ross presents these conclusions with a rare seriousness, sophistication, and philosophical self-consciousness. Further, the argument seems coherent, in the sense that the conclusions follow

from the assumptions. If Ross's position is correct, she has indeed found a way for Orthodoxy to bring itself into line with the moral sensibilities of contemporary feminism. Still, I find both her methodological assumptions and philosophical conclusions to be highly problematic.

A One-Sided Philosophy of *Halakhah*

In his 1935 classic, *Philosophy and Law*, Leo Strauss argues that medieval religious thought revolves around the meeting of two discourses: philosophy and law. Each discipline stakes a claim regarding the meaning, value, and limits of the other, and they must find a way of living with each other in relative harmony. For Maimonides and his predecessors, each discipline must justify itself before the bar of the other. Philosophy must explain the purpose and meaning of revelatory law, while the revealed law must justify the value of philosophy.

Ross's book deals with only one half of Strauss's dialectic. She subjects the revealed law to the critique of philosophy, but does not run the conversation in the other direction. The discourse of this book is that of feminist critique, post-modern literary theory, and contemporary philosophy of law. Revelation is called upon to answer questions posed by these disciplines, and to meet their standards. But, despite its references to traditional Jewish sources (almost all of them theological rather than halakhic), the book does not subject philosophy to a parallel critique from traditional religion and

halakhab. In apparent conflict between feminist theory and traditional religion, feminist theory “problematizes” (p. 140) revelation, but revelation does not problematize feminist theory. This approach is understandable, since almost all other Orthodox writings on women suffer from the opposite problem: refusal to take the claims of feminism seriously. Still, Ross's one-sided methodology weakens her claim substantially.

“Philosophy must explain the purpose and meaning of revelatory law, while the revealed law must justify the value of philosophy.”

At the less important apologetic level, Ross risks alienating some of her most important audiences: the traditional believer and the halakhist. Ross distances any reader who, when faced with a contradiction between feminist critique and the accepted Jewish tradition, begins with the question “Where is the flaw in feminist theory?” rather than “What must change in our notion of revelation?” Ross calls on Jewish feminists to work within the existing halakhic establishment, despite its problems, in order to transform its self-understanding and discourse. Yet, she has less chance of doing so if she does not explain to halakhists, in their own language, why her philosophical enterprise is justified. A halakhist, even one who would understand and appreciate her philosophical lexicon, still has reason to ask: how does *halakhab*, as it exists now, relate to

this philosophical project? Are the questions which this book raises, and the answers suggested, acceptable from within the confines of existing halakhic discourse?

This one-sidedness is related to Ross's assumption that philosophy of *halakhab* is methodologically prior to the *halakhab* as it currently exists, and therefore is in a position to define for *halakhab* what it can legitimately do. Philosophy asks such questions as: How is verbal revelation possible? What does it mean to interpret texts in general and legal texts in particular? In a legal system, what is the relationship between text, accepted practice, and institutional decision makers? Once philosophically sound answers to these questions are found, *halakhab* should gradually come to adopt and live up to these *a priori* standards.

“Ross suggests a philosophy of halakhab that is not true to the self-understanding of halakbic literature.”

But this ignores a different and complementary task that should also occupy philosophy of *halakhab*: making ex-post-facto sense out of how *halakhab* is actually thought and practiced. It must look at the raw data of halakhic discourse, and tease out the often unstated assumptions that will make sense of the way practicing halakhic Jews behave and their *poseqim* think. It must provide a theory of

hermeneutics, divine authority, the authority of texts, the decisor's task, and the nature of legal change that explains not only what *halakhab* ought to be, but what *halakhab* is. It seems to me that a fuller philosophy of *halakhab* can only be built when these two methods are brought into conversation with one another.

Ross's method leads to an *a priori* definition of *halakhab* that cannot make sense of some central elements in actual halakhic discourse. She suggests a philosophy of *halakhab* that is not true to the self-understanding of halakhic literature throughout the generations. I am not merely claiming the obvious, that the great rabbis of the past were unaware of post-modern literary theory. Rather, their writings indicate unstated assumptions that oppose Ross's theology. The language of halakhic debate is not only the open playfulness of *midrash aggadah*, but also the finality of decisions and the rejection of potential positions as being incompatible with the relevant texts. It is hard to comprehend halakhists' infatuation with close readings of texts—and their at times bitter disputes over the *minutiae* of those texts—if those halakhists think that texts can mean anything that the community believes that they do. Furthermore, it is hard to understand the *halakhab*'s fixation on the details of socially insignificant rituals, and the seriousness with which it takes violation of those details, if halakhists view the notion of God's will in functionalist or metaphorical terms. When a *responsum* declares that one must not brush teeth on

Shabbat with regular toothpaste, and that one who does so is a violator of the Sabbath, it assumes that God cares about the outcome in a more literal way than Ross's theology allows. If Ross is correct about the nature of *halakhab*, then it is hard to make sense of the kind of discourse that appears on virtually every page of halakhic literature through the ages.

Further, *poseqim* regularly take strong positions on non-consensual issues. *Poseqim* who conclude, for example, that Jews may not eat gelatin made from non-kosher animals, know that consensus on this issue has not yet been reached. These *poseqim* implicitly reject Ross's position that it does not

“make sense to question the status of those who act during the time before consensus is solidified... The attempt to assess the halakhic status of practices conducted before their normativity is determined [by collective consensus] is entirely misplaced.... [There is a] lack of precise and unequivocal criteria for assessing the acceptability of halakhic innovations in any given situation *before* they become commonly accepted.” (p. 220).

A *poseq* who accepts this conclusion must confine him or herself to answering questions about which there is already consensus, or in which the community is uninterested.

Perhaps this explains Ross's own preference for a

philosophical discourse over a halakhic one. Once one has experienced the loss of theological and hermeneutic innocence, it is hard to return to the commonplace learning in which one determines the law in the details of obscure rituals based on close readings of texts. From the perspective of the historian, who views *halakhab* from outside itself, or the post-modern literary theorist, who tries to explain how mutually exclusive interpretations derive from one text, it is hard to avoid the conclusion that halakhic authority is vested in communal practice and that texts have no objective meaning. But from within the "language game" of existing halakhic discourse, making those assumptions could prove suicidal.

“Once one has experienced the loss of theological and hermeneutic innocence, it is hard to return to the commonplace learning.”

Ross might argue that I am giving too much weight to the halakhic discourse of the past, thereby unwisely (and perhaps immorally) privileging the gendered status quo. Perhaps. But just as feminists take offense at a male establishment that claims to understand the essence of women better than women understand themselves, halakhists have reason to question philosophers who define the essence of *halakhab* without adequately accounting for *halakhab's* own self-understanding.

When Everything is Revelation, Nothing is Revelation

Ross's notion of "cumulative revelation"—which claims that novel ideas rooted outside of the Jewish tradition are gradually incorporated into Jewish revelation, even at the expense of older revelations—opens the door for feminist consciousness to slowly penetrate the inner sanctum of Jewish tradition. This can lead to wide-ranging changes not only in the legal status of women, but in the very language and categories in which the *halakhab* speaks to and about women. But this approach could open the door equally wide for any change in Orthodox belief, practice, or language that anybody at all could find compelling. While I, for one, find feminist concerns to be morally more convincing, Ross's arguments could be used equally effectively to alter Judaism in the most fundamental ways to make it more compatible with, say, racism, fascism, or sexism (and echoes of these dangerous ideas can be heard in at least some Orthodox circles). Other than my own conscience, what tools do I have to determine which new ideas are revelations to be embraced and which are heresies to be fought? A theology that is incapable of saying "no!" to anything is equally incapable of saying "yes!" to anything. If everything is potentially revelation, than nothing at all is really revelation.

Furthermore, Ross's notion of the authority of the community leads to a *reductio ad absurdum*. There is a

phenomenon which has allowed outside influences to mix with aspects of Jewish tradition, thereby altering the social structure, philosophy, hermeneutics, laws, and very sense of self of a large portion of Orthodoxy's "interpretive community."

“Other than my own conscience, what tools do I have to determine which new ideas are revelations to be embraced and which are heresies to be fought?”

That phenomenon is not feminism, but fundamentalism. Secularization and modernity brought about movements in numerous religions which call for dogmatic stringency, intellectual and social isolationism, radical traditionalism, vigorous opposition to outsiders, world-transformative political radicalism, and activist messianism. These trends, in various different versions, have had vast influence on halakhic Jews, altering the very texture of Orthodox religious life. Certainly, these trends have been much more successful than feminist philosophy and post-modern hermeneutics in capturing the collective attention of observant Jews. It would seem that we should conclude, particularly if these trends continue, that fundamentalism is God's new revelation. Jewish sources that might counter fundamentalism could be understood as appropriate for a previous era. We should thank God for providing us with this new, closed-minded revelation.

It should be obvious that accepting fundamentalism on these grounds is self contradictory and absurd. After all, one of basic tenets of fundamentalism is that revelation is permanent and unchanging. Still, are we to accept both feminism and fundamentalism as divine revelation, even though they are mutually exclusive? If fundamentalism becomes the exclusive narrative by which Orthodoxy defines itself, would we be forced to declare that communal consensus has sided with a position that we find morally and religiously objectionable? If yes, are we willing to sacrifice our moral and religious conscience on the altar of communal consensus? If not, what force is there to the claims that the communal narrative forms binding revelation? If post-modernism has taught us anything of value, it is that modernistic confidence in the morality of consensual human values is unfounded, to say the least. If the prophets have anything to teach us, it is that communal religious consensus may not be revelation but idolatry.

Toward a Philosophically Sophisticated but Religiously Insuperb Theology

In her zeal for solving the problem of Orthodox women, Ross accepts many religious and philosophical notions that have wide implications for the texture of religious experience. Although she deals extensively with women's issues and the nature of revelation, she does not paint a picture of the kind of religious experience she anticipates for

followers of her position. She measures religious truth claims functionally, by the kind of behavior they motivate, rather than their correspondence to some external reality. She accepts a naturalistic process theology; reflects deep discomfort with a transcendent and commanding God; adopts the claims of biblical historians; and virtually equates human ideas with divine revelation.

“If post-modernism has taught us anything of value, it is that modernistic confidence in the morality of consensual human values is unfounded.”

I fear that adoption of this theology will lead to a bland and insipid religion, reduced to social policy, communal politics, and literary metaphor. The elemental power of faith in the living, personal, and demanding God who reveals Himself in the sacred words of His Torah which He dictated directly to Moses is replaced with functionalism, metaphor, and sociology. Ross may be turning her back on the living, caring, commanding God, notions which can make Orthodoxy particularly rich and powerful. In the final analysis, adopting her suggestions would answer the challenge of feminism, but this would come at a very high price indeed. Despite my desire for women to find an appropriate place for themselves in Orthodoxy, as a believer I am not capable of paying that price.

If I need revelation, it is not to give a divine seal of approval to ideas that I might believe without it. If God matters at all, it is because He can teach me what I could not know myself, can demand of me more than I would demand of myself, can call me to task for failing to live up to His uncompromising demands.

If I care about God, it is because He cares about me, about my nation, about the world. Perhaps this reflects a philosophically unsophisticated neo-Orthodoxy. Perhaps it reflects a male-oriented preference for power and authority. In the end of the day, the root assumptions of this neo-Orthodoxy are so different from Ross's post-modern philosophical approach that there is little point in arguing one against the other. I have no way of proving my claim at the expense of hers. Still, to speak only of myself, I find the religion that she suggests to be bland and uninspiring, bound to give in weakly to the challenges of contemporary

intellectual trends and fads, both those which seem more compelling (like equality and fairness for women) and those which seem less so (like relativistic notion of truth). As serious as the feminist critique is, we should make sure that we are not selling the raw vitality of traditional religion for a “mess of pottage” of fickle post-modern trends.

An Apology

After disagreeing with Ross's position, I should end this essay with at least a brief outline of an alternative solution to the questions which feminism raises for Orthodoxy. While I expect the current trend toward inclusiveness of women to continue—albeit slowly and on an *ad-hoc* basis—I have no adequate systematic theological solution. If the gap between tradition and feminism is as large as Ross claims, perhaps there is no complete solution. As a man, perhaps I have the unfair privilege of being able to live, however uncomfortably, with this hesitancy and indecision.

Tamar Ross Responds

Dear Yoel,

Let me start by saying that I appreciated your review. It is thoughtful, even-handed and latches onto some of the obvious and more substantial questions that my book raises. I also appreciate your decency in turning to me in order to make sure that you have represented my views accurately. Indeed, there were several points at which I did not recognize myself in your summary of my views, largely because they are probably an overstatement of my position.

1. Certainly in my own eyes I am not a “radical feminist leader.” This is because (a) with regard to the “radical” part - although the questions I raise may be radical (in the sense of getting down to the basic roots), the bottom lines I would promote in practice are not; and (b) with regard to the “feminist leader” part, I really am not a political creature, have no agenda beyond the honest exchange of ideas, and have gone into this whole exercise mainly in order to clarify my own theological stance, without much thought of pushing this or that tangible consequence. I have sympathy for JOFA, *Kolech* and other such organizations dedicated to improving women’s position in the halakhic community, but I am not a card-carrying member of any of these groups, and that is not where my primary interests lie.

When you attribute to me the assertion that women must be at the forefront in formulating “a rethinking

of the basic categories which Orthodox Jews use to describe and participate in their tradition,” this is no doubt true, but if I subscribe to this view I do so less as a *desideratum* or campaign project than as the most reasonable assessment of the effects of a reality that has already taken hold. I am not out to lobby for the deliberate creation of a committee of female *posqot halakhab*; I don’t think that that’s the way religious developments are negotiated. But I do believe that women will gradually be playing a much more active part in interpreting Jewish tradition than they have done in the past (and in select communities even infiltrating the realm of *pesiqah*) and that this will surely have an influence in the long run upon the way we interpret our traditional beliefs and practices.

2. You use the term “radical” again to describe my solution to the feminist critique, when I call for redefining the notion of divine revelation and *halakhab* in light of feminist theory and postmodern philosophy of law. While my reservation with regard to your first use of the “radical” label relates merely to your summary of my position and may simply be regarded as a quibble over definitions and semantics, my quarrel with your second use of the label involves a more fundamental point at issue between us. Here you describe my position as radical because I appeal to philosophy and theology rather than to the language of halakhic discourse. I do not regard the “radical” label as pejorative per se and do not

deem it necessary to avoid it under all circumstances. Nevertheless, I believe that your use of it in this instance is also misplaced. As this allegation of radicalism—founded on what you regard as a lack of balance in my methodological assumptions—serves to introduce the more substantive criticisms you have to make regarding my philosophical conclusions, I will first try to unpack our differences here at this level before proceeding to address the conclusions to which you believe they lead.

A One-sided Philosophy of *Halakhah*:

Although I strove to write my book from the point of view of an insider (and I do count myself as such in terms of my communal loyalties and commitment to traditional religious practice), it is perfectly true that my formal training and proficiency definitely lie more in the realm of philosophy than of *halakhah*. This is probably the result of personal predilections, as well as of the fact that I was born a generation too early and didn't have the benefit of educational opportunities now open to my daughters and many of my female students.

“Your use of ‘radical’ is misplaced.”

This could be one explanation of why I do not attempt to explain to halakhists—in their own language—why my philosophical enterprise is justified, and why I address only the theologian, who almost by definition must speak the language of

philosophy as well. But even while acknowledging this limitation on my part, I still believe that you cannot really fault me for problematizing revelation without problematizing feminist theory.

One reason is because I don't agree that this is altogether true. My grounding in Jewish tradition has conditioned me to certain ways of thinking that definitely do mute my feminist proclivities and often lead me to opt for policies that cannot be justified from a strictly feminist point of view. For example, I genuinely have internalized traditional Jewish notions of modesty, barriers upon physical contact between the sexes, and the sanctity of marriage, adopting positions that no feminist purist would consider and even not some of my JOFA compatriots. The same may be said for a more long-suffering attitude I am prepared to adopt regarding the importance of *mehitsab* at this stage in history as a symbolic barrier for consolidating the identity of the Orthodox community, irrespective of arguments that can be brought against its formal halakhic credentials in all circumstances, or of the statement it makes regarding the place of women in the public sphere and its dissonance with our everyday experience in the modern world. Because my starting point is from within the tradition, I can also appreciate *mehitsab* as an element essential to a certain type of prayer experience which—for better or for worse—has become powerfully interwoven with the traditional Jewish way of life.

On the other hand, it is true that all such conclusions have to do with practice and public policy, whereas your claim that I am unwilling to “subject philosophy to a parallel critique from traditional religion and *halakhal*” relates to the self-perception of the insider on the level of theory, and especially epistemology. However, I believe that even on this level, my appeal to philosophy and theology is not merely a function of my own predilections or one-sided training.

“The theological issues that are involved in my discussion were already raised by Hazal.”

Your reference to the late Leo Strauss’ treatment of philosophy and religious law as two distinct disciplines destined, as it were, to be engaged in an eternal dialectic seems to me to be an unfortunate reliance upon his idiosyncratic statement of the case. It is true that in the history of Jewish thought there was a dialogue between the Greek philosophical tradition and the Jewish tradition that centered on halakhic observance. But even in Hellenistic times, the meeting between the two traditions took on other less confrontational forms, in which the ideas of the philosophical tradition assisted in the conceptualization of historic Judaism. Moreover, the *theological* issues that are involved in my discussion have little to do with this process but were already raised by Hazal themselves, who “problematized” revelation long before the advent of feminist theory. Your talk, then, of the

importance of redressing a “one-sided methodology” may sound good on paper, but I do not believe that it has any relevance to the point at hand. The problem is not my one-sided methodology but rather the selective reading of present-day Orthodoxy, which prefers to ignore all those midrashic sources that speak, for example, of the role that *Mosheh Rabbenu*’s active input (and that of the daughters of Tselofhad, etc.) had in transmitting the word of God (see pp. 198-207 in my book), and to single out instead only those sources that portray Moses as an unthinking stenographer passively transcribing the divine message. For this reason, it is my conviction that the feminist critique, in acknowledging the impossibility of avoiding human standpoints, coincides with rabbinic insights, is totally persuasive, and trumps hands down current Orthodox notions of halakhic fixity.

You attempt to balance what you regard as my one-sided portrayal of halakhic discourse by pointing to the halakhists’ “infatuation with close-readings of texts,” which often serves to curtail a sense of open-ended possibilities. But the decisions of *poseqim* regarding when to employ “the open playfulness of *midrash aggadah*” (or appeals to liberating considerations of over-arching principles and context) and when to limit themselves only to close readings of texts and their *minutiae* are themselves judgments that *poseqim* make daily. Any *poseq* knows that by formal definition, brushing one’s teeth with ordinary toothpaste on Shabbat constitutes a

violation of the Sabbath. But his application of this prohibition always takes into consideration the particular circumstances of the case at hand.²

Whether or not his decision will rely on a close reading of the text has nothing to do with philosophical questions regarding how literally he takes the notion of God's will and His concern with our actions. One can conceive of a case in which even the most fundamentalistically inclined *poseq* will advise—in spite of his conviction that the squeezing of toothpaste involves a biblical prohibition (*issur de-oraita*)—that there is no alternative under the circumstances but that this activity should be allowed; this might occur, for example, in an extreme case of dissension between an abusive husband and his battered wife.

“It is not true that halakhic practice even in the halakhist’s mind necessarily entails closed decisions.”

Moreover, a more lenient decision in this case may not even reflect a difference of opinion regarding how closely to read the text, but rather regarding which text the close reading should be applied to—the laws of the Sabbath or the laws of *piquah nefesh* (preservation of life)? The answer to either of these issues is invariably the function of a variety of background assumptions; in the mind of a *poseq* with halakhic integrity what the community believes about these matters is surely not a determining

factor, but the *context* in which the both he and the community live and practice does have its part to play in his decision. So it is not true that halakhic practice even in the halakhist's mind necessarily entails closed decisions and a process whose outcome is predetermined from the outset.

Rachel Adler's book *Engendering Judaism* culminates in the delineation of a Jewish wedding ceremony and *ketubbah* that retain traditional metaphors of covenant but rely on partnership law rather than property law to provide the legal underpinnings for a conception of marriage more suited to the present-day reality of most halakhically observant Jews. It is grounded on close reading of *minutiae*, much like R. Jacob Emden's parallel suggestion for building upon the halakhic category of *pilegesh* in order to create an alternative to the drawbacks of the usual model of *qiddushin*. Yet both, for differing reasons that have little to do with their lack of attention to halakhic *minutia*, did not and do not have a fighting chance for a serious hearing from within the confines of existing halakhic discourse. Similarly, as you yourself bring out in the example of the reaction of your students to the existing halakhic rationale for permitting women to study Torah, this rationale is founded on an understanding of women that is inadequate to the situation at hand. A close reading of texts could arguably lead to other conclusions. The precise nature of the conclusions is always a function of who is doing the reading, what texts are regarded as relevant, and the general context within

which such texts are brought to bear. It is because the current ideology of Orthodoxy does not allow for acknowledging the impact of historical circumstances and gender biases upon what was revealed and developed in tradition that it also precludes the possibility of seriously relating to tools that the halakhic system itself provides for reformulating women's status.

I agree that the dominant interpretive tradition cannot be ignored in the process of halakhic adjustment and indeed fault Adler for her lack of attention to this requirement (see p. 158). As I insist there:

“Simply denigrating the intransigence of the halakhic establishment...(as some feminists are wont to do), or writing it off altogether (as Adler seems to do) is not a viable option. Something important is going on when the experts struggle mightily to discover internally legitimate solutions in light of the recognized rules, principles, and policies of the law as they appear to them. The self-perception of the experts cannot be dismissed as completely illusory—a type of Marxist ‘false consciousness’ with no basis to speak of.”

But I also believe that a more dynamic and proactive model of halakhic practice that acknowledges the role of context and implicit values in halakhic deliberation can nevertheless be extracted from a

halakhic self-understanding that already exists in the sources. If my promotion of this model looks like a radical one-way conversation lacking reciprocity, so be it. To my mind, at least, what I offer is not an outsider's view of what *halakhab should* look like but an alternative understanding that indeed looks at the raw data of halakhic discourse and tries to make sense of the way halakhic Jews and their *poseqim* actually *do* behave and of unstated assumptions that are *already* there.

“I offer an alternative understanding that indeed looks at the raw data of halakhic discourse and tries to make sense of the way halakhic Jews and their poseqim actually do behave.”

Given all this, I still think that there are other parts in your critique regarding my “methodological assumptions and philosophical conclusions” that are well founded and concern points over which I myself have agonized. Some of these may still be capable of resolution by further clarification or greater substantiation of my position. But others may be grounded, as you suggest, upon “root assumptions” or a religious temper so different from yours that they leave little room for further discussion. All of them revolve around a common theme, which is the lack of fixed and absolute standards by which to measure burning questions of the here and now.

This theme occurs first in the arena of halakhic deliberation, then in the question of identifying revelation, and finally in the effects upon religious experience. I will try to address these in the order in which you presented them, but let me first begin by cordoning off my understanding of the role of communal consensus, which seems to be confusing the issue.

I think you appreciate that my understanding of the role of communal consensus is not that of authoritative power or majority rule. Community is important simply for providing a context in which certain forms of life are played out, thereby lending their assumptions and norms power and conviction.

Because this is admittedly a vague indicator of right and wrong, my remark that it does not “make sense to question the status of those who act during the time before consensus is solidified” and that “the attempt to assess the halakhic status of practices conducted before their normativity is determined is entirely misplaced” (p. 220) is made there in the context of a theological discussion (p. 219) regarding “how we are to judge those who placed their bets on a decision that is ultimately rejected.” As I commented there and reiterate now, all that this statement comes to teach us “is the folly of using the same criteria that we apply to the ordinary statements of our everyday world when relating to religious metaphors.” But this statement does apply in borderline cases (as indicated by the Shapiro-

Henkin controversy discussed in my book) even to the world of *halakhab le-ma`aseh* (practical law e.g., controversies regarding the halakhic status of the use of electricity or thermostatic control on the Sabbath). In many instances of this sort, leading rabbis acted in a manner contrary to what has now come to be consensually agreed upon as the decisive *pesaq halakhab*. Do we regard such rabbis then and now as sinners? Does the *Ribbono shel Olam* regard them as such?³

All this does not come to deny that on the level of practical decision making, the retroactive decree of history obviously cannot serve as a guideline for *poseqim*, and I by no means intended (contrary to what your explanatory interpolation to my statement would indicate) that “collective consensus” can serve that function here. For all practical purposes, a *pesaq* is *pesaq*.

On the other hand, on the practical level of halakhic deliberation, there truly is a dilemma in finding common ground between an internal and an external view of *halakhab*, and the need to find methods of overcoming this difficulty is a problem that Jewish feminists convinced by the feminist critique of *halakhab* share with proponents of post-positivist legal theory in general. I am painfully aware of the fact that constant cognizance of the determining influence of context upon our manner of reading texts does not sit well with the regular need of *poseqim* and ordinary Jews to take strong positions on

non-consensual issues, some of which may hold very great stakes indeed for those who are involved. The problem arises, however, not because extraneous considerations of circumstances and context were disregarded in the past when texts were read closely, but because this activity was often (though by no means always) conducted intuitively and unselfconsciously, and certainly not under public scrutiny.

“The poseqim will be called upon by their constituents to lay their cards on the table and articulate clearly the reasoning and hierarchy of values that inform decisions that could readily go in several directions.”

My book is an attempt to minimize the gap between the two situations; I harbor no illusions as to my success in eliminating it completely. But—as you yourself have appreciated—I do believe that those of us who are attuned to the role of history, sociology, politics, and all sorts of other extraneous factors in determining what the insiders see as objective meaning no longer have the option of turning back and retrieving innocence lost with regard to the halakhist’s own self-understanding. For this reason I believe that halakhic decision making in the twenty-first century among the modern Orthodox (in contrast to the *haredi* community) is destined to be much more self-aware and that the *poseqim* of this community will be called upon increasingly by their

constituents to lay their cards on the table and to articulate clearly the reasoning and hierarchy of values that inform decisions that, from a formal point of view, could readily go in several directions. They will have to explain why *sheitels* are in and women’s *tefillah* groups are out for the moment, despite the inadequacy of the motivation argument. They will have to persuade us why precedents for resolving the plight women denied halakhic divorce by their husbands should be ignored while more questionable justifications for relying upon unprecedented definitions of *eruv* (the mechanism for creating a legal domain within which objects may be carried on the Sabbath outside a building) can be applied to even so populated an area as Manhattan and relied upon. But this does not mean that their decisions will be more “subjective” than that of their compatriots. The only difference will be their awareness of the fact.

When Everything is Revelation, Nothing Is Revelation

You contend that “a theology that is incapable of saying ‘no!’ to anything is equally incapable of saying ‘yes!’ to anything. If everything is potentially revelation, than nothing at all is really revelation” is an argument that I attempt to address in chapter 11 of my book. It is the same argument that is cited by Christian theologian Daphne Hampson (whom I cite on p. 217) when she writes that equating God’s will with the revelations of history makes it difficult “to adduce abstract principles which should have a life

of their own, quite apart from whether they have been exemplified within history, which may be used to judge history.”

Essentially this critique is simply a variation in theme of the last one—the need for clear cut criteria in distinguishing right from wrong—but now this need emerges in the ideological realm of belief and heresy rather than that of halakhic norm. In both cases, what is required is a formula which would enable us to move effectively from the breadth of vision of the outsider point of view to the commitment of the insider, without forfeiting any of the added illumination gained in the process.

“Messages stemming from a divine source can never be divorced from human categories of thought and from our time and culture bound proclivities.”

On the halakhic plane, I propose for the most part to tackle this need exactly as you suggest at the end of your remarks, by moving “slowly...and on an *ad-hoc* basis,” simultaneously contributing to the emergence of a new and relevant context to which these case-by-case decisions are forced to relate. But my ultimate response to this need (I offer several—see pp. 217-220) on this more theological plane is an attempt to dance a more difficult dance between two levels (at least) of understanding. On the first level we function within our human limitations and in

accordance with the popularly accepted, personalistic, model of God, convinced that the religious insights that overwhelm us undoubtedly constitute a divine message imposed upon us from without. But those of us who are more philosophically inclined are occasionally prompted to take a step back from this experience of total identification with clear-cut distinctions and to realize that messages stemming from a divine source, in addition to the very notion of divine communication itself, can never be divorced from human categories of thought and from our time and culture bound proclivities, belief systems, and expectations. This forces us to acknowledge the role of human interpretation in events even as striking as prophecy. (It is surely no coincidence that in the past Christians have had visions of the Virgin Mary and Jews of the Torah speaking to them, and that while today we do not credit our ability to receive divine tidings and would question the sanity of the bearers of such claims, Moses could identify such messages from within a burning bush and follow their command). On this view, the function of accepting something as revelation is transformed from a means for determining the *content* of the message to a means of recognizing and expressing the *force* of a belief that some of our decisions are aligned in some manner with a cosmic reality and therefore do bear ultimate import.

Such a view does indeed imply a measure of reservation regarding our ability to arrive at the final

or objective meaning of any text, and doubly so with regard to a text which is taken to be God's word. It is worth pointing out, however, that reservations regarding the latter stem less from a secular post-modernist orientation than from the profound insights of mystics who have recognized that even the concept "God" is a construct that is valid only from our point of view (*mi-tsideinu* in the terminology of R. Hayyim of Volozhin), whereas—according to the ultimate reality that this concept attempts to signify—distinctions between "objective" and "subjective" make no sense, given that the absolute nature of such a reality leaves no room for definition at all.

As R. Eilyahu Dessler writes:⁴

The definition of [God's] unique unity expressed as *ein `ol milvodo* (there is none but Him alone) cannot be grasped inherently from within creation, for this aspect of God's uniqueness implies that creation does not really exist [i.e., "there is *nothing* but Him alone"]. The world was created through [divine self-] contraction and concealment of that truth, and the reality of creation can be perceived only from within creation itself—that is to say, following, and within, that self-contraction—and its reality is only in and of itself, relative to itself. . . . It follows that all our understandings are only relative to creation. They are only within and respect to creation, in accordance with our concepts, which are also created. We

possess only relative truth, each one in accordance with his station and condition.

Of interest in this passage is R. Dessler's acknowledgement of the paradox involved in our obligation to relate to our time-bound and culture-bound perceptions as absolute truth, while at the same time recognizing that these perceptions are valid only from the perspective of created beings. So long as we have a sense of our independent selves as created beings, we are incapable of totally transcending a personalistic model of God. At that level, distinctions between free will and determinism or abstract principles and conflicting messages of history do indeed exist; however, R. Dessler believes that we should be aware of the existence of another level of being beyond our usual picture of God-world relations, at which point there is no difference between revelation and being itself. Only this will allow us to overcome all sorts of antinomies and illusory contradictions in our belief.⁵

"This relative perception is valuable because it pertains to us in accordance with our situation in this world."

After registering his awareness of how difficult it is for human beings to acknowledge the relative nature of their beliefs,⁶ R. Dessler concludes with the notion that this relative perception is nevertheless valuable because it pertains to us in accordance with

our situation in this world—the world of free will and worship.⁷ In other words, since this is the only truth that we humans can grasp, it *is* the truth for us; we must make do with it and are duty-bound to work on its terms and within the confines of its limited perspective.

From this it would seem that, in true Mitnaggedic fashion, he was not prepared to draw any normative conclusions from this insight regarding the relativity of our perceptions. Nevertheless, it is quite clear from other contexts⁸ that he does indeed suggest that it is possible and even desirable that we strive to pierce the veil of our illusory existence (at any rate with regard to all activity outside of the dictates of Torah) and unite with that sublime state of being in which all distinctions become obliterated.

None of the traditional Jewish mystics and philosophers, nor any of the most morally responsible postmodernists, ever meant to suggest that appreciation of the relative nature of our perceptions leaves us free to gauge the revelations of history in the here and now simply in accordance with personal caprice. Acknowledging our perceptual limitations does not afford us the liberty of disregarding the meaning of these revelations as perceived from within by the interpretive community to which we relate, even when such meaning is understood in a fundamentalist manner. But because the role of community in determining

the legitimacy of any idea is effectuated not simply by numbers but rather via the plausibility structures which its forms of life construct, awareness of the contingent nature of these structures—when it does occur—induces us at times to ignore numbers and to foster a belief that recognition of the folly of fundamentalism (or of other, less rigid, understandings of received tradition that now appear to us doubtful) will eventually prevail.

As for the criteria to be called upon in this endeavor, I can only repeat what Christian theologian Nicholas Wolterstorff has so aptly stated:⁹

...there is no way to avoid employing our convictions as to what is true and loving in the process of interpreting for divine discourse—no way to circumvent doing that which evokes the wax-nose anxiety—the anxiety, namely, that the convictions with which we approach the process of interpretation may lead us to miss discerning what God said and to conclude that God said what God did not say. The anxiety is appropriate, eminently appropriate, and will always be appropriate. Only with awe and apprehension, sometimes even fear and trembling, and only after prayer and fasting, is it appropriate to interpret a text so as to discern what God said and is saying thereby. The risks cannot be evaded.” (p. 236).

Toward a Philosophically Sophisticated but Religiously Insipid Theology

I am aware and sensitive to the dangers of an over-cerebral, philosophically sophisticated religion and the sense of detachment upon which it may feed. Although I regard the theological quest and the personal yearning for *qirvat Elokim* (intimacy with God) that it represents for me as a form of worship, I do not deny that some of my worthier religious moments were experienced in situations far removed from this type of intellectual activity and often even counter-productive to it.

“Some of what appeared to me then as enthusiastic dedication now appears as narrowly conceived formalism, marked at times by a lack of compassion, if not downright moral blindness.”

In this respect I suppose that I am no different than most people, often coming upon what you so eloquently describe as “the elemental power of faith” in the indisputably high points of life (giving birth to a child, singing with eyes closed and heart open to the soaring of one’s soul, standing on a hilltop and sensing a unity with nature, driving to swim on a sun-filled early Jerusalem morning, sensing the power of holiness in some Jewish weddings, witnessing simple and spontaneous acts of human kindness, shouting, “*A-donai Hu ba-Elokim*” at the top of my lungs with the rest of the congregation at the close of Yom Kippur) and occasionally also in

the low (feelings of dependence, spiritual or physical weakness and frailty, glimpses of mortality). And simply hanging in with the community of believers serves in a sense to cover whatever else can be salvaged from the ordinary and mundane.

Years ago, in my teens, I too rebelled against the very bland and insipid religion that you now associate with feminism and which I then identified with middle-class North American synagogue Orthodoxy. I found its substitute in a blend of the hard-line and uncompromising religious idealism of the Lithuanian yeshiva world and of a form of religious Zionism that made sense at the time. Much water has flowed under the bridge since then. Some of what appeared to me then as the enthusiastic dedication of the yeshiva world to fulfilling God’s word now appears as an unimaginative and narrowly conceived formalism, marked at times by a lack of compassion, if not downright moral blindness with regard to those outside the camp; the promise of religious Zionism to encompass all of life in its benign embrace appears premature and presumptuous in its sectarian expressions of triumphalism. Moreover, exposure to historicism, the rigor and critical thinking of academia, and even the insights of feminism and its legitimization of a more intimate and natural women’s way of knowing do not allow me to view the basic imagery of classical monotheism and its commandment imagery as the last word. I can now regard it as an indispensable element in our struggle to identify with

the spiritual dimensions of life, but nevertheless believe that it could be enhanced by the fleshing out of other traditional models.

It is perfectly true that my understanding of the ultimate worth of our religious truth claims is that of functionality—i.e., their measure lies in the kind of behavior they motivate, or the spiritual experiences they provide, rather than in their correspondence to some external reality and in their ability to present us with precise metaphysical information. In that sense, even our monotheistic talk of the “will of God” and our sense of alignment with it is indeed part of a “language game”—in Wittgenstein’s technical sense—whose object is to capture a sense of that ultimate reality which does exist but is beyond definition.¹⁰ (I must stress that my use of Wittgenstein’s “language-game” terminology in no way implies a sense of frivolity about the matter.

“Feminism opens us up to some refreshing new possibilities.”

All our uses of language are “language games” of one sort or another—meant sometimes to assert, sometimes to command, sometimes to engender empathy, sometimes to greet, and sometimes even to express our absolute commitment to an all-encompassing religious worldview. Calling such usages “games” simply conveys that each is conducted in accordance with its own internal rules, grammar, and function, and that one cannot judge

religious truths by the same standards that one judges empirical statements, although their internal grammars sometimes overlap. None of this denies that many religious truth statements are by their nature dead serious, and almost the only sort that we might choose to live or die for.)

I have no wish to turn my back on the power of simple faith and the demands of tradition, but I do believe that feminism opens us up to some refreshing new possibilities. It alerts us to the need for admitting a variety of religious paradigms and for learning how to allow them to sit comfortably side by side. Such an enterprise requires a great measure of wisdom, as well as spiritual depth, agility and religious finesse. This is why figures such as Maimonides and even more so R. Kook have always held a special fascination for me, in that they somehow managed to hold onto extremely rarefied levels of theological sophistication without allowing such flights of the intellect to temper the intensity of their emotional, moral and halakhic commitment. While both these thinkers made the distinction between “necessary beliefs” and “true beliefs,” this had no influence upon the seriousness and care with which they engaged in their halakhic deliberations. Lack of fervor is indeed the greatest challenge that a heightened modern and postmodern consciousness must face, and I wonder whether the recent attraction to mysticism might not be an intuitive response to this demand.

An Apology

As for your final confession (i.e., that you have no alternative to offer) I appreciate your candidness. But I must point out that when you declare that belief in a God who reveals Himself in the words of a Torah dictated directly to Moses is preferable to what would result from my more nuanced understanding because of its innate power, you are in the last resort submitting religion to the same measure that you fault me for using. In other words, you too are slipping into an implicit admission that religious doctrines are essentially shaped by our prior interest in a particular form of life, rather than the other way around. As you anticipate, I personally find a religion that can be upheld only at cost of ignoring the feminist critique far less compelling than a religion forced to juggle between belief in the metaphor of God revealing His will in the form

of unequivocal commands and the obligation to take it seriously and a recognition of the contingent nature of such a belief. Perhaps this is, as you imply, because you as a man can afford the luxury, but I am not sure that our gender differences are the only explanation for this difference of approach. I thank you for your careful reading of my book. At the very least, I hope my clarifications make it evident that I am not simply a “naturalist” who views religion as the outward expression of human subjectivity, but rather very much a supernaturalist who—in the wake of several of our great Jewish mystics and philosophers—recognizes the limitations of our ability to grasp and portray the object of our spiritual striving.

New Haven

November, 2004

NOTES

¹Dr. Finkelman's essay and Professor Ross's response are English versions adapted from the Hebrew interchange to be published in the Israeli journal, *Aqdamot* (Edition 16). *The Edah Journal* thanks *Aqdamot* and *Bet Morasha* for their permission to publish them here.

² It should be noted, however, that even with regarding to the initial ruling, consensus among *poseqim* is not universal. My thanks to Prof. Marc Shapiro for calling my attention to the dissenting minority views.

³ Illuminating in this connection is the ingenious explanation of Rabbi Joseph Bloch (one of the latter representatives of the Musar movement and head of Telz Yeshiva) of *Hazal's* paradoxical statement, *elu ve-elu divrei Elokim hayyim* ("These and these are the words of the living God"). According to this explanation, the possibility for rival opinions to exist side by side and merit equal truth status does not stem from a pragmatic need to make peace with the inability of human reason to ever achieve absolute truth, but rather from the fact that metaphysical realities (e.g., pure and impure, permitted and forbidden, obligation and exemption) are actually established by the consensual agreement of Torah authorities and from then on compose the nature of the world. Indeed this rabbinic power constitutes the unique partnership between God and man in the act of creation; if the world was originally established in accordance with the Torah, its ongoing existence continues to be defined in accordance with the rulings of *talmidei hakhamim* (the sages of the Oral Law). Thus, it is possible for "these and these" to be the words of the living God until the moment of agreement, because every one of the conflicting opinions relates to the Torah that preceded this decision, which still left room for a variety of interpretations. The received tradition does not offer an unequivocal truth which is already completely worked out for all time. The Oral Law chooses from amongst the total range of possibilities buried within the Torah which preceded it, and thus gradually refines the truth of Torah on the basis of its decisions. R. Bloch even acknowledges the subjective nature of these halakhic decisions, freely admitting that had any given decision been established by another group of sages in another generation, it might have been determined differently. Bloch resolves any unease we might have with the contingent aspect of such rulings by means of this assumption of a metaphysical alignment between the rulings of *talmidei hakhamim* and the nature of reality. (See *Shei'urei Da'at* I, 23-25.) For further exposition of Bloch's position as well of that of other Musar teachers who understood the truth of Torah similarly as open-ended and dynamic, see my article, "The Musar Movement and the Hermeneutical Approach to Jewish Studies" (Hebrew), *Tarbiz* 59 (1990), Jerusalem, pp. 191-214. Although there is significant difference between the understanding of halakhic process suggested in my book and that of the *musar* writers in the weight of influence we attach to the bearers of the Oral Law, the important common feature lies in the rejection of an unequivocal, fixed and objective understanding of texts, and a recognition that the "correctness of" any particular judgment is established consensually in accordance with a dominant interpretive tradition.

⁴ *Mikhtav mi-Eliyahu* 1, pp.256-257

⁵ "Only with that awareness can a person move beyond the perplexity generated by the various definitions and illusory contradictions and attain a belief grounded on solid foundations" (*id.*).

⁶ "It is very difficult for a person to acknowledge this in his innermost heart. He imagines he can perceive the truth in an absolute sense, and he is unwilling to believe that after all his efforts, he will manage to attain only relative truth: a truth that relates to his situation as a created being." (*id.*)

⁷ "What is the value of a relative perception? Its value lies in its being relative *to us*, in accordance with our situation in this world—the world of free-will and worship; accordingly, *it is the only truth we have*. 'You endow man with understanding'—even our perceptions have been created for us and given to us by the Creator, may He be blessed, for purposes of fulfilling our role in this world—and *that is their entire value.*" (*Id.*)

⁸ See his discussions of miracle versus natural law and the value of this-worldly human effort in *Mikhtav mi-Eliyahu* 1, pp. 170-172; 177-197

⁹ Walter Wolterstorff, *Divine Discourse: Philosophical Reflections on the Claim that God Speaks* (Cambridge and New York: Cambridge University Press, 1995), p. 236.

¹⁰ There is indeed a connection here between this view and the Maimonidean notion of God-talk.

REVIEW ESSAY

An Unsuccessful Defense of the *Beit Din* of Rabbi Emanuel Rackman: *The Tears of The Oppressed* by Aviad Hacoheh

Michael J. Broyde

Abstract: *The Tears of the Oppressed* was introduced at a press conference on October 22, 2004 as a solution to the *agunah* problem. It proposes that the doctrine of *kiddushei ta`ut** (error in the creation of marriage) be expanded to include blemishes that arose after the marriage was entered into and that this doctrine then be used by rabbinical courts to solve the modern *agunah* problems related to recalcitrance. This review essay demonstrates that such an expansion is supported neither by Jewish law sources nor by the *responsa* cited in the book itself. This review essay also addresses the procedural pitfalls of the book as well as its impact on marriage theory, and explores other solutions to the *agunah* problems.

Biography: Michael Broyde is a Professor of Law at Emory University School of Law and a *Dayan* in the Beth Din of America. He is the rabbi of the Young Israel in Atlanta and gives the daily Talmud class to the members of the Atlanta *Torah Mitzzion Kollel*.



Review Essay

An Unsuccessful Defense of the *Beit Din* of Rabbi Emanuel Rackman: *The Tears of The Oppressed, An Examination of the Agunah Problems: Background and Halachic Sources* by Aviad Hachohen

Foreword by Menachem Elon, Retired Deputy President of the Supreme Court of Israel; Afterword by Emanuel Rackman, Chancellor Emeritus of Bar-Ilan University; Blu Greenberg, editor, (Ktav, 2004) 107 pp. plus 157 pp. Hebrew appendix

Michael J. Broyde**

I. Introduction

In 1997, Rabbi Emanuel Rackman and a small group of rabbis who were not widely recognized as rabbinic decisors (*poseqim*)¹ formed a *beit din* (rabbinical court) that claimed to be freeing *agunot*² without requiring that a *get* be given by the husband to the wife; this *beit din* is now called “The Rabbi Emanuel Rackman—Agunah International *Beit Din L’Inyanei Agunot*.”³ A great many rabbis denounced this *beit din*, which was defended in a text advertisement placed in the New York *Jewish Week* by Agunah International.⁴ Nearly no Orthodox rabbis accept the pronouncements of this *beit din* as valid; one of the consistent criticisms of this court over the last seven years has been the absence of a serious scholarly work to demonstrate that the theoretical legal underpinnings of the mechanisms employed by the *bet din* are consistent with generally accepted halakhic

principles and precedent. Rabbi Dr. Aviad Hachohen of the Law Faculty of Hebrew University has now written that book, defending the practices of Rabbi Rackman’s *beit din*,⁵ and he is to be thanked for that valuable contribution. A detailed intellectual analysis of the methods employed by Rabbi Rackman and his *beit din* is now possible. This review essay undertakes to do that.

The opening section of the essay sets down this author’s understanding of the book’s strengths as well as its weaknesses. The second section notes the possibility of an alternative thesis to this book, and demonstrates that that more minimal thesis, though halakhically correct, does not provide a justification for the practices of Rabbi Rackman’s *beit din* and thus

cannot be a correct explanation of its conduct. The section that follows notes three crucial procedural matters, one discussed in this book and two that ought to have been. The next section reviews some general methodological concerns which, in this reviewer's opinion, undermine the basic thesis of this book, and the final section reviews alternative solutions to the *agunah* problems not considered by this book and makes note of an avenue not explored. This review concludes that Rabbi Dr. Aviad Hacoheh's proposed solution to the *agunah* problems is consistent neither with general halakhic principles nor with general marriage theory and thus is wrong.

II. The Book's Thesis and A Critique

A serious approach to perhaps the most vexing halakhic problem of our time, *The Tears of the Oppressed* is well-written, interesting and usually lucid. The book accurately surveys many different Talmudic, medieval, and modern sources dealing with the problem of *agunah* and faithfully summarizes them. However, the work ultimately falls short, as its conclusions stray from the evidence presented and, unfortunately, its flaws overwhelm all else.

The book's central aim is to explore the idea of *kiddushei ta`ut** (error in the creation of marriage), with an eye to it as a robust solution to the *agunah* problems of our time. *Kiddushei ta`ut* is a doctrine derived from the Talmudic discussion at *Bava Qamma* 110a-111a that indicates that marriages that unexpectedly cause the

bride to fall to a levirate brother-in-law who is profoundly defective might be void. Although there are *risbonim* who maintain that only defects in the wife or in the brother-in-law are grounds for a finding of error in the creation of marriage (but never defects in the husband), this position is ultimately rejected by most halakhic authorities; they recognize that a severe defect in the husband not revealed at the time of the marriage can rise to the level of error in the creation of marriage such that if the woman were to otherwise remain an *agunah*, a rabbinic court would not require a *get* to end the marriage. For example, Rabbi Moshe Feinstein applied this doctrine to cases of hidden prenuptial apostasy, homosexuality, impotence, and other such situations.⁶

The intellectual foundation of *kiddushei ta`ut* postulates that a marriage, parallel to the construct of a commercial transaction, requires a "meeting of the minds" of both parties about all significant aspects of the marriage. The revelation of circumstances existing but unknown at the time of a deal indicates the absence of an agreement about the principal terms that is required to make a valid deal. In the case of information concealed by a spouse regarding a serious defect that his or her partner could not (and should not) have been aware of, the marriage could very well be void or voidable. In a previous article,⁷ this author has encapsulated the three axial rules for *kiddushei ta`ut* as follows:

1. The woman must discover a serious defect present in the husband after they are married.
2. That defect must have been present in the husband at the time of the marriage.
3. The woman must have been unaware of the defect at the time of the marriage.

(A fourth condition of *kiddushei ta`ut*, regarding the discontinuation of marital relations, will be discussed in section IV, procedural matters, below.)

The central chapters of *The Tears of the Oppressed* undertake a systematic exploration of the sources, understandings and applications of *kiddushei ta`ut*, from the Talmudic passages, especially the one in *Bava Qamma* mentioned above, to the analysis of the *rishonim* and codification of the *poseqim*, including 28 *teshuvot* on the topic; the entire presentation is valuable and interesting and informative. There is a basic dispute here among the *rishonim* as to the parameters of when and how one claims error in the creation of marriage, with some early and modern *poseqim* allowing the inclusion of subjectively societal sensibilities into the calculus and others arguing that such is not relevant, and pointing this out is a public service. Noting the contours of the dispute is helpful, and examining them case by case is of great value. Though it is unclear why specifically these *teshuvot* rather than others were examined—this author is aware of dozens more⁸—Hacohen provides a clear and lucid explanation of these *teshuvot* and the general principles employed.

It is most unfortunate, then, that the small percentage of the work that is wrong is deeply wrong, and it causes the entire treatise to be flawed. After undertaking a refined survey of *agunah* problems in the first eight chapters of his book, Rabbi Hacohen in chapter 9 (page 93) summarizes his conclusions, and the summary begins to veer far away from the *teshuvot* that he has compiled. He makes four basic points, three of which are correct and supported by the sources but one of which is unsupported even by his own sources, and that error is egregious. (In addition, there is a series of procedural lacunae that are addressed in Section IV of this review essay.)

First, Rabbi Hacohen correctly notes that the list of major blemishes or defects which form the grounds for women to claim *kiddushei ta`ut* has expanded over time, reflecting a (positive) change in the status of women, both economically and socially. That is not to say that categorical virtues of times past have been redefined suddenly as vices. Rather, social and economic reality affect the assumptions husbands and wives make as they enter into a marriage as well as the presumptions that halakhic experts make in forming their assessments of the mindset and intentions of the parties. As people's views of the goals and utility of marriage change, what we consider to be defects or blemishes changes, too. With the increased opportunities available to women in the modern world, women now have less patience for flawed

husbands and floundering marriages. *Halakhab* recognizes that there are more and more cases nowadays where, had the woman been aware of the full reality of the situation at the time of the marriage, she would not have agreed to marry.

Second, Rabbi Hacoheh correctly notes that there is a relationship between matters that would mandate coercion (*kefiyyah*) and those opening the possibility of *kiddushei ta`ut*. A defect that, were it to arise after the marriage had begun, would be grounds for a court to compel an end to the marriage is grounds for *kiddushei ta`ut* if found to have arisen (or been latent) before the marriage began. Of course, all agree that a defect which is revealed by a spouse-to-be during courtship is no longer grounds for *kiddushei ta`ut*, even though it might be grounds for coercion.

Third, Rabbi Hacoheh is correct in noting that some *poseqim* go so far as to create *umdenot* (presumptions of intent) that certain pre-existing defects void a marriage, which lead the *beit din* to aver that had knowledge of the defect come to light at the outset, no woman (including the one before the court) would have consented to marry. Furthermore, *tav lemativ tan du mi-lemativ armelo* (the Talmudic maxim that it is better for a woman to be with another [even unhappily] than to be alone, which supports the presumption that a woman is willing to accept any husband, even a flawed one) poses no obstacle to this concept. One could even go farther and posit that certain blemishes (impotence due

to hormonal deficiencies in testosterone levels, for example) must have been present at the beginning of the marriage, even if they were unknown. There is no need, in this writer's view, that even the blemished spouse be aware of the blemish, never mind fraudulently hide it; it is sufficient that the blemish be present, and not revealed.

These *umdanot* allow one to assume that certain defects that are now present must always have been present and are thus considered latent defects. Employing statistical evidence in these types of cases is not without foundation in *halakhab*, as *umdenot* have a well-established provenance in the halakhic literature.⁹ Indeed, a firm presumption (*umdena de-mukhabal*) allows a person to rely on it even without checking, just like a strong *hazakah* (presumed status). To draw a parallel from a very different area of Jewish law, consider the question of when one must check vegetables for insects. *Halakhab* divides the obligation to check into three categories: (1) Cases where most of the vegetables have insect infestation (i.e., there is an *umdena* that insects are present); (2) Cases where a statistically significant number (but less than 50%) of the vegetables have insect infestation (i.e., there is an *umdena* that insects are not present); (3) Cases where insect infestation is statistically very, very unlikely (i.e., there is an *umdena de-mukhabal* [firm presumption] that no insects are present). In cases one and two one must check for infestation; in case three one need not.¹⁰ It is quite conceivable that a

classification of blemishes by the relative likelihood of their latency will likewise form a body of presumptive knowledge that *batei din* will utilize in adjudicating cases of *ta`ut*.

Yet, to this writer's surprise, there is just one paragraph in the entire book on which types of defects can be assumed latent at the inception of the marriage when only expressed later. On pages 99-100, Rabbi Hachohen states that:

Moreover, today new scientific evidence helps satisfy the definition that the hidden defect had to be in existence prior to the marriage. Specifically, many studies show that characteristics such as violence, criminal behavior and vindictiveness in the husband have roots in childhood. For example, in the area of spousal abuse alone, it has been shown that there is a typical profile to a batterer and that his aggressive behavior as an adult has deep antecedents in his earlier life. This body of knowledge can be marshaled to allow even the more conservative *poskim* to interpret the defect of domestic violence as meeting the strictest parameters of *kiddushei ta`ut*.

A significant addition to the literature of kiddushei ta`ut could have been undertaken if that paragraph had been elaborated upon in much greater detail. Cataloging the social science literature, delimiting a set of principles, applying them to different situations, and determining which blemishes are never pre-existing, which are

always pre-existing and which need a case-by-case evaluation, would have been an important, valuable, and constructive contribution, which could change the way *poseqim* understand the concept of a latent blemish. The simple fact is that not all blemishes are latent, and the explication of the tools available to determine what is a pre-maritally latent blemish and what is a postnuptial development would be very helpful. From this reviewer's studies of the behavioral science literature on sexuality, to give but one example, some sexual dysfunctions are latent, and some are developed. This subject is complex and in need of close analysis, which was not done in this work (or this essay).

Rabbi Hachohen's fourth point, however, drastically departs from the three valid points discussed above. The statement (page 96) that some "*poskim* allow for blemishes that arose after the marriage, explicitly citing the category of *umdenab*," to be used as the predicate for *kiddushei ta`ut*⁴¹ is completely unsupported by credible evidence. There is not a single *teshuvab* cited that allows the voiding of marriage with a defect that was not present at the time of the marriage. The book's agenda is found in just this one line, but the line is completely unsubstantiated by the book itself. *Not a single one of the 28 responsa cited by him ends a marriage by noting a blemish that was created after the marriage was entered into.* Only Maharam of Rutenberg posits such, and then only in cases of *yibbum* (levirate marriage), where, we should recall, the husband is dead already, and his

view is clearly rejected by all later authorities. The best that can be said is that one finds occasional *teshuvot* positing that blemishes of certain types must have been in place prior to the inception of the marriage. But there are no *teshuvot* in the halakhic literature, and (not surprisingly, therefore) none cited in this book, that allow *kiddushei ta'ut* to apply to post-marriage blemishes in instances where the husband is still alive.¹² (Section V of this review essay will explain why.)

The state of the literature not only raises the issue of lack of precedent; it also points to further conceptual proof that Rabbi Hacoen's textual understanding of *umdenah* and its broad application is incorrect. According to his analysis, not only is the case of the apostate levir brother-in-law grounds for voiding the marriage, but even the apostasy of the husband should be grounds for declaring the marriage void based on this retrospective *umdenah* (where the wife says, "Had I known he would apostatize, I never would have married him."). One therefore would expect such a possibility to have been raised in the *agunah* literature over the centuries. In fact, not a single *rishon*—not even Maharam of Rutenberg or any of his disciples, who discussed at great length the problems associated with a husband who had apostatized—ever suggests that this retrospective *umdenah* is possible according to Jewish law. Hundreds of *responsa* have been written about *iggun* resulting from the husband's apostasy, none of which void the marriage based on this *umdenah*.

The reason this is so is that it is not possible.¹³

Beyond this *argumentum ex silentio*, Hacoen's conclusion is demonstrably in error in that it is reached by conflating different categories of *agunah*. The general attitude of *halakhab* toward matters of *iggun* is to seek to balance of two integral, opposing values: on the one hand, *mi-shum iguna aqilu bah rabbanan* (the rabbinic tradition to employ leniency when encountering cases of women who would otherwise become tied to lifeless marriages); on the other, *humra shel eshet ish* (the imperative to proceed cautiously in recognition of the gravity of releasing a married woman without a *get*). These values are not competing (in the sense that one should triumph), but operate in dialectic tension. Approaches that ignore one value over the other are misconceived and in error. Recognizing this balance leads one to see that situations of *yibbum* (levirate marriage) are completely different from our typical cases of *iggun* precisely because in cases of *iggun me-yavam* (the inability of a woman to marry because the levirate brother-in-law will not do *halitsah* [the ceremony releasing the widow from levirate marriage], *the husband is dead*.) When the husband is dead, the natural inclination of the *halakhab* is to be more lenient, as the need to balance the stringent posture *eshet-ish* demands against the desire to free bound women is no longer in play—only the second is present, subject to the normal rules of a Torah obligation. This book completely misses that balancing issue, in that it freely mixes cases of *iggun*

with cases of *iggum deyavama*, when they belong to distinct classes, not just factually, but conceptually and halakhically.

The same is true of situations where the husband has disappeared under circumstances in which Torah law allows one to assume that the husband is dead, and it is only by rabbinic decree that we need further proof (such as a report, by credible, but technically *pasul* [invalid] witnesses of disappearance in *mayim she'ein lahem sof* [limitless waters; e.g., an ocean]).¹⁴ Thus, all of Rabbi Hacoheh's chapter four, with its list of leniencies in cases of *iggum*, is limited to cases where Torah law allows the assumption that the husband is dead and the marriage is really over. This is of little use to us in modern times in cases of recalcitrance. The common recitation of these Talmudic leniencies dealing with the presumed death of the husband in a work dealing with recalcitrance seems intellectually insupportable, especially since the modern scenario might not even be rightly classified as a case of *iggum*. When a court finds that the husband is most likely dead, the rabbinic calculus of stricture and leniency changes, but that recalibration does not occur in cases involving a husband who is very much alive.

As a further example, this basic failure of reasoning is reflected as well in Rabbi Hacoheh's analysis of Maharam of Rutenberg's unique view that the subsequent apostasy of the brother can be used to retroactively void the marriage and not require *halitsah*.

When Rabbi Hacoheh writes on page 40 that “the original marriage—which ended in her husband's death—is nullified *ab initio*, even without a *get*, and it follows that she does not now require *halitsah*,” he misses the point. Of course, she does not need a *get*—*her husband is dead*. The words “even without a *get*” are unneeded in cases where the husband is dead. This case is the epitome of why *yibbum* cases are different. Indeed, a close examination of the Mordecai (on *Yevamot* 4:107), which discusses the view of Maharam of Rutenberg, makes it quite clear that the unique issue here might relate to the dispute among the *rishonim* about how to understand the status of an apostate as a Jew who can marry (as an *ah mesummad* [apostate brother of the deceased husband] might be a gentile).¹⁵ Maharam's crucial insight is that we can be more lenient in cases of *yibbum* than in cases of ongoing marriage (and yet even here, his leniency that post-marriage blemishes count to obviate *halitsah* is rejected, for reasons to be explained in Section V).

So too, Rabbi Hacoheh's presentation of the *Shulhan Arukh* and *Rama* is a bit twisted on this matter. He implies that *Rama* accepts the view of the Maharam of Rutenberg *be-di'avad*, when in fact it is clear that *Rama* only accepts the possibility of apostasy mattering as a blemish in cases where the brother had converted out *prior to the marriage* taking place. Indeed, there is not a single use of Maharam's *hiddush* (innovative insight)—that one can release a woman from a marriage based on the subsequent apostasy of the brother—in the

Shulhan Arukh or codes or even *responsa* (as far as I know). Rabbi Feinstein's *teshuvah* that is quoted so well on pages 41-42 also deals specifically with an apostate who had already converted out prior to his brother's marriage.¹⁶ There is a significant overplaying of the *halakhab* here, in that Rabbi Feinstein merely created an implied condition to the marriage, which is itself quite remarkable, but still only pertaining to a pre-marriage defect.

This *teshuvah* of Rabbi Feinstein, however, does point to a crucial conceptual issue in *halakhab*'s understanding of *umdena*. *Umdena* (a presumption of intent) is conceptually—at best—a specific sub-unit of the category of *tenai* (a condition), in that a presumption held by all regarding the intent behind an action in question (anticipating or excluding a particular outcome) might also be regarded as an implied condition to that action.¹⁷ Thus in the context of marriage, one could imagine circumstances where presumptions about the present and past are implicitly incorporated into a marriage at its inception.¹⁸ Such an *umdena*, however, can never be more effective than a full-blown conditional marriage with a verbal expression explicitly addressing the same facts; Rabbi Feinstein's insight is that it sometimes can be equally effective, as in the case of *ah mumar* (heretic [levirate] brother[-in-law]). *But implied conditions can never be more effective than explicit conditions.* While Jewish law has a clear tradition allowing conditional marriages to avoid unresolvable levirate situations,¹⁹ it has an equally firm

commitment that such conditional marriages should not be used in situations where the husband is alive.²⁰ Indeed, notwithstanding some scholarship and *teshuvot* to the contrary,²¹ neither the Orthodox rabbinate nor the community has ever authorized conditional marriages (other than in situations where the husband dies prior to the woman benefiting from the condition), and the reason for this is clear: an ongoing sexual relationship is generally understood to void all conditions in a marriage, at least in situations where the marriage is still otherwise intact.²² *Umdena* ought to suffer the same limitation. Thus, *Tears of the Oppressed* can also be understood as yet another proposal of conditional marriages, and if it is such, it would have been better served by doing so clearly, as an explicit conditional marriage has more validity than an implicitly conditional one,²³ although—as outlined above—conditional marriages as a solution to the *agunah* problem have never been deemed normative.

Section Summary

The Tears of the Oppressed fails as a work advocating any change in the normative *halakhab*. The book's major premise—that *kiddushei ta'ut* can serve as an expansive solution to the modern *agunah* problem by employing the mechanism of *umdena* in retrospect to end marriages where a defect arose even after the inception of the marriage—is profoundly mistaken. The few sources throughout the halakhic literature that even raise such a possibility are limited to cases where the husband is dead already, where the usual requirement

to balance the stringencies of *esbet ish* with the leniencies of *agunah* therefore does not exist, and where the finding of the *umdena* does not actually end the marriage, for the death of the husband did. Hacoheh's conclusion that "There are simply two positions on the matter—a stringent one and a lenient one—and each has significant precedent in the halakhah" (page 98), is thus flatly untenable. And the description of *batei din* and *dayyanim* who have "searched under every crevice" and found the precedents that employed *kiddushei ta'ut* to be fully adequate and appropriate" (page 99)—the *beit din* of Rabbi Rackman—is equally unfounded.

III. An Alternative Thesis of This Book and What Is Wrong With It

It is possible to construe Rabbi Hacoheh's arguments to be limited to situations where the defect, though it "arose" (page 96) after the marriage took effect, was latently present before the marriage was created. If that is what Rabbi Hacoheh means, then this statement and this book are valid and within the framework of *halakhab*, but hardly novel. Rabbi Moses Feinstein adopted that view,²⁴ and it is widely used by various *batei din* in situations that fit such a case. We hardly need a book to explain to us something widely known and used by *dayyanim* throughout the Torah world.²⁵

If Rabbi Hacoheh intends to limit his analysis to cases where the defect was latent prior to the marriage, then the fundamental aim of his book—a defense of the work of Rabbi Rackman's *beit din*—has not been achieved. It can be shown that Rabbi Rackman's *beit*

din operates under the assumption that even a post-marriage defect, created by the post-marriage misconduct of the husband, is grounds for an annulment of the marriage. Consider the following transcribed conversation between a woman who was seeking a divorce through Rabbi Rackman's *beit din* and two of the directors of that rabbinical court, Estelle Freilich and Dr. Susan Aranoff,²⁶ provided to me by the woman in question. (Dr. Aranoff and Mrs. Freilich do the initial screening for Rabbi Rackman's *beit din* prior to the case's presentation before the rabbinic panel itself.) In this conversation, it is made clear that the *beit din* views the husband's decision not to support his wife upon separation to be grounds for voiding the marriage, since absence of support is a defect in the husband's conduct, albeit one that developed after marriage.

Freilich: Now according to your story, basically, you are living apart and he is not supporting you. And according to *halakhab*, it is the husband's obligation to support a wife so that, that would basically be the halachic grounds which is sort of weak, but it is still a ground, I mean your marriage is over. Susan, correct?

Aranoff: Right.

Freilich: Yeah, so based on that, if, if the Rabbis annul the marriage, you are not married to him.

Woman: Okay.

Freilich: Okay. You see, but according to Jewish law, the only way a woman can get out of a marriage is if the husband dies or if he gives her the *get*.

Woman: Oh, okay.

Freilich: Or if the Beit Din annuls the marriage. They cannot force the husband to

- give the *get*. That is not legally, you know, legally accepted in Jewish law today. But for a husband to release himself from a marriage, he is able to do that, so all he has to do is just give the *get* and then he could remarry.
- Woman: Now, if the marriage is annulled, isn't he free?
- Freilich: If the marriage is annulled, no, it is annulled for you.
- Woman: Oh, so you are not saying the whole marriage is annulled?
- Freilich: No, the marriage is declared illegal and you are free to remarry because the Beit Din freed you. But he has to give a *get* which is required by Jewish law for him to remarry.
- Aranoff: It's kind of a paradox and it is inconsistent because if you are not married to him, how can he be married to you but you do find it in the Rabbinic writings that the Rabbis say we do it for her but not for him because all he needs is to give the *get*, so....

Notwithstanding much of the technically erroneous material put forward in the name of Jewish law by Freilich and Aranoff in their colloquy, one sees from this the obvious: Rabbi Rackman and his *beit din* are prepared to free a woman from a valid marriage under Jewish law on the basis of a defect that developed after the marriage was entered into, including the post-marriage refusal of the husband to divorce his wife or support her or more general grounds that void all such marriages. Similar statements are found on the web site of Agunah International, the sponsor of Rabbi Rackman's *beit din*. Indeed, the basic view taken by Agunah International and Rabbi Rackman's *beit din* is

that every marriage entered into according to Jewish law is void as matter of Jewish law, and thus a *get* is never actually needed in any situation. They reach this somewhat startling conclusion with two sweeping assertions. The first is that:

[H]ad these women known at the time of marriage that they were agreeing to a union in which they could be literally imprisoned by an unscrupulous husband, they never would have consented . . .²⁷

The second is that:

[N]o woman views marriage as a transaction in which her husband "acquires" her. No one can credibly maintain today that brides are consenting to the concept of *gufab qanui*, that marriage is a *kinyan* in which the husband acquires title to the wife's body. . . . Thus there is no informed consent by women to *kinyan* at the time of marriage and the marriage is void *ab initio* The *beit din* may dispense with the *get* and release the woman . . .²⁸

Rabbi Rackman seems to have affirmed his ongoing agreement with these principles in a letter to the editor published in *Tradition*.²⁹

Limiting Rabbi Hachohen's work to situations of preexisting defect (latent but present) compromises its basic purpose, which is to explicate to the public the grounds upon which Rabbi Emanuel Rackman's *beit din* operates.

Section Summary

Utilization of *kiddushei ta'ut* (the claim of error in the creation of marriage) to end marriages without issuing a *get* in the set of cases limited to a demonstrable blemish that was in existence prior to the inception of the marriage is not a significant or valuable tool in resolving the *agunah* problem of our time (nor is it a novel insight). The reason is obvious: most marriages end due to post-marriage defects rather than pre-marriage defects, unless one is prepared to label all defects as latent (which is just a charade) or void all Jewish marriages.

IV. Procedural Matters

Three procedural matters are worthy of review. The first is Rabbi Hacoheh's plea (pages 101-102) of *beit din ahar beit din lo dayyeqi*, which argues that Orthodox rabbinical courts of every stripe should respect the judgments of other rabbinical courts across the Orthodox spectrum, and those who utilize *kiddushei ta'ut* even for post-marriage blemishes accordingly should be respected. This is a plea of the desperate, reflecting a misunderstanding of how *batei din* work. Rabbinical courts do not generally examine *the facts* as determined by other honorable rabbinical courts (i.e., courts that follow the requirements of *halakhab* in making factual determinations), but they regularly examine the basic *legal* framework of rulings issued by other *batei din*, and refuse to honor those that are (in their view) wrong. That would seem a logical posture, and it is certainly the longstanding practice of *batei din*

in cases of innovation by other rabbinical courts. Innovation can be incorrect, and needs to be publicly identified and circumscribed when it is. Why defer to a wrong view?³⁰

A second issue is equally pressing, but, to my surprise, not treated in the book. What are the evidentiary requirements needed for an honorable *beit din* to allow an assertion of "error in the creation of marriage"? How should a *beit din* evaluate such claims? Should all testimony be subject to robust cross-examination? It seems from my own review of the literature that Jewish law requires testimony on these matters be consistent with the general requirements of testimony for all contested Torah law matters.³¹ Indeed, the *Shulhan Arukh* explicitly recounts that a woman lacks credibility with regard to matters of *iggun* once it is clear that her marriage was one that was leading to divorce.³² It seems clear to me that one cannot find a marriage to have been erroneously entered into solely on the basis of the unsubstantiated testimony of one witness who is a party in the proceedings. Hacoheh's book should have had a chapter on criteria for evidence and establishing credibility,³³ particularly considering the reputation of Rabbi Rackman's *beit din* for procedural lapses.³⁴

Another procedural matter ought to have been addressed by Rabbi Hacoheh. At what point must a woman who is aware of a glaring defect in her husband leave the marital relationship? Must she leave

the marriage immediately? Many authorities seem to adopt the view that she must leave as soon as the defect is discovered,³⁵ which would pose significant challenges to the use of *kiddushai ta'ut* in numerous cases.

The rationale for this requirement is clear. *Shulhan Arukh* rules³⁶ that if a couple whose wedding ceremony was technically flawed (as by use of a wedding ring worth only half a *perutah*) discover the error and continue to live together (sexually), that decision creates a valid marriage at the moment of the resumption of their sexual relationship, since both parties were aware of the error and of their ability to leave the marriage because of it, and chose not to.³⁷ Indeed this rule is explicitly described in the context of defects in the woman by the *Arukh ha-Shulhan*, who states:

In the case of defects in the woman which he explicitly stated before the marriage that he does not desire such defects . . . if he lives with her after their sexual relationship for an extended period of time, as a man and woman who are married do, they are certainly married . . . The marriage was completed with certainty, when he lived with her, as that made it clear that he really does not care about these defects.³⁸

Of course, it is possible to create a construct in which the woman immediately decides to leave, but stays for a short period of time while planning to leave. It is

also quite conceivable that the *Arukh ha-Shulhan* provides a leniency when he states “for an extended period of time,” which indicates that the marriage is not ratified immediately (contrary to the apparent view of Rabbi Feinstein). So, too, it is possible to argue that general ignorance about *kiddushei ta'ut* is so widespread in our community that until the woman *knows she can leave*, her ongoing sexual relationship with her defective husband is not a ratification of the marriage at all, for ratification requires awareness of the option of leaving.

Yet another possibility is the view of the Beth Din of America that the woman need not leave until she discovers that the defect is incurable. None of these options is even considered in this work.

Section Summary

The use of *kiddushei ta'ut* to void marriages requires adherence to a set of complex procedural rules dictated by Jewish law. Rabbi Hachohen's decision to ignore the three significant procedural problems posed leaves the reader who is familiar with Jewish law sensing that a great deal of technical Jewish law analysis is missing from this book.

V. Some General Methodological Comments

Two final general methodological observations are needed about this book. First, the book is fundamentally flawed in its lack of definitions and perspectives on the problem of *iggum*. It makes no attempt to define an *agunah*, to explore which problems need solving, to relate *iggum* to the problems of a civil

divorce, or even to connect it to *herem de-Rabbenu Gershom* (the decree prohibiting coerced divorce absent a finding of fault) When should women (or men) be encouraged to leave the confines of a “dead” marriage?

In Talmudic times, *iggum* occurred when the husband had disappeared for an extended time and was feared, but not proven, dead. In medieval times, it occurred when a husband renounced the Jewish community and the authority of its leaders by abandoning the faith. In modern times, the situations have grown more complex. Should a rabbinical court consider a woman an *agumab* when she and her husband are in civil court fighting over the terms of the civil divorce, and the husband states that he will give a *get* when the civil divorce is over? When the wife will not go to a *beit din* to resolve claims and the husband wants to? When there is a pre-nuptial agreement mandating that they must go to a particular *beit din* and the woman will not? Much more care needs to be put into definitions. Why is a *mesarevet get* (a woman who declines to receive a *get*) an *agumab*? Does it matter what conditions are imposed and by whom? There is no analysis of those crucial definitional matters.³⁹

Secondly, it is obvious to this writer that once one constructs any theoretical model of marriage, one quickly comes to the conclusion that blemishes that did not exist prior to the inception of the marriage cannot be grounds for voiding the marriage. This book gives little or no thought to the marital institution as it relates to error in the creation of marriage. The

relevance is obvious to this writer: Marriage involves a certain amount of change and growth (and even regression, too, sometimes). All marriages would become legal nullities if one allowed a man or a woman to exit a marriage (without a divorce) on the grounds that something very serious and unexpected had undermined (even eliminated) one spouse’s desire to be married to the other. It is obvious that when one’s spouse gets cancer after twenty years of marriage, it is not a case where *kiddushei ta`ut* ought to apply. Yet by the logic of Rabbi Hacoheh’s paper it does. Whether it be apostasy or adultery or Alzheimer’s (and those are just some of the A’s), marriage entails a future that is unknown, and marriages cannot become a nullity based on future events that cannot be predicted or disclosed through diligent investigation.⁴⁰

Indeed, notwithstanding the length and breadth of this book, Rabbi Hacoheh can cite no precedent for the proposition—central to the reason he wrote this book—that blemishes developing after the marriage can ever be used to establish *kiddushei ta`ut* in situations where the husband is now alive (and a *get* would be required absent *kiddushei ta`ut*). The reason is obvious: this proposition is patently wrong as a matter of Jewish law, and blemishes that developed after entry into a valid marriage can never form the needed premise for *kiddushei ta`ut*. And this is a good thing, for expanding the category of error in the creation of marriage to encompass changes in people following marriage would fundamentally destroy every Jewish marriage.

That is so, as already suggested, because all marriages entail change in the parties that cannot be anticipated—some of it good, and, sadly enough, some of it bad. To allow marriages to break up in the face of any and every unanticipated changes is not only to solve the *agunah* problem; it is to dissolve every Jewish marriage whenever either party wishes, and to do so without any divorce.⁴¹ Jewish marriage will become a vehicle of convenience, discarded at the roadside of life the moment trouble occurs.

Section Summary

Jewish law recognizes marriage as a central vehicle for family values and treats the ending of a marriage as a profound matter. “Solutions” to the *agunah* problem predicated on the ultimate destruction of all marriages (as all marriages involve change, growth, and some risk) violate fundamental precepts of Jewish family law theory. Rabbi Joseph B. Soloveitchik, in response to a proposal of Rabbi Rackman’s (thirty years ago) that annulments be reinstated as a regular procedure for solving the *agunah* problem, noted that such a proposal was unwise as a matter of policy and violated many meta-halakhic norms in family law. This proposal is similarly flawed.⁴²

VI. Can There Be Solutions to the *Agunah* Problem?

In truth, the *agunah* problem is most likely—at its core—insoluble in a global manner because marriage as a private law matter subject to dissolution only with

the consent of the parties⁴³ is part of the structure of Jewish marriage law.⁴⁴ This reviewer has dealt with this issue at some length elsewhere,⁴⁵ in a manner that makes it clear that solutions grounded in a global recasting of Jewish marriages will encounter fatal problems by definition, and we need not repeat those arguments here.

Any effort to craft a remedy must begin with a number of observations concerning potential solutions. First, solutions that incorporate secular law into the workings of Jewish law in a mandatory way should be sought only if they have the support of vast segments of the Orthodox community, since it is patently unethical (and a violation of halakhah) to impose one’s understanding of a disputed Jewish law matter on another person or group through the use of secular law. In the alternative, such legislation must have an opt-out clause allowing those who disagree to decline to be governed by it.⁴⁶

Second, given the vastly different conceptions of the right to divorce found within the Jewish tradition and the resulting disagreements in how to solve the *agunah* problem, it is likely that the only solution that has the true possibility of “solving” the problem is one that recognizes the diversity of understandings found within Jewish law and allows each community to adopt whatever solution it deems religiously acceptable. But to prevent the religious posturing by spouses that comes with acrimonious divorce, such solutions have

to be spelled out prior to marriage and agreed upon by the parties. In the absence of such prior agreements as to what the base rules are, contemporary Jewish law will not be able to impose a solution.⁴⁷

It is important to understand the impact of these two observations: just as there is diversity in the understanding and application of the Sabbath laws, the family purity laws, the financial laws, and the marriage laws of Judaism, there is diversity in the understanding of its divorce laws. And just as disputes over the Sabbath laws, family purity laws, financial laws, and marriage laws of Judaism are (almost) *never* resolved in a coercive manner (each community follows the *halakhab* as it understands it to be without any coercive direction from other communities), the same should hold true in the area of divorce law. But when the ground rules are not set at the outset, dispute resolution becomes much harder to accomplish in the area of divorce law. The contest between the spouses in an acrimonious divorce matter causes many individuals to misunderstand the norms of their community, either unintentionally or otherwise, and to seek a rule of Jewish law which, while normative, does not reflect the understanding of the *halakhab* found within his or her own community. Thus, every person involved in Jewish divorce can recount cases of one spouse or another seeking resolution of a contested Jewish divorce matter in front of a *beit din* that one spouse or the other believes is not representative of the Jewish law traditions of the community in which

the *res* of the marriage resided.

Just as solutions to the problems of kosher food fraud cannot be predicated on the community's agreeing on a single standard for keeping kosher, the same must be true for rules related to marriage and divorce. Individuals have the right and ability to discuss and agree in a halakhically binding way when and under what circumstances they, and not anyone else, determine that their marriage should end; they can then write a document directing their choice. There are a variety of models they can choose from, each grounded in the classical Jewish tradition and its sources, or common contemporary practice, or even simply mutual agreement of the parties. Once they reach such an agreement, it is binding on them and controls their end-of-marriage dispute should they have one.

VI. A. Prenuptial Agreements: A Success

In my own view, the only way to implement this type of a solution is through prenuptial agreements such as the kind endorsed by the Orthodox Caucus and the Beth Din of America. This is not the place to review the literature on these highly successful agreements.⁴⁸ Suffice it to say that my experience as a *dayyan* in the rabbinical court in the United States that arranges the largest number of *gittin* of any rabbinical court in the Diaspora is that they are highly successful and effectively eliminate the *agunah* issue when they are properly used. They do, in fact, solve the problem, but

they need to be used prior to marriage.

VI. B. Other Possible Solutions?

Yet some argue that this solution still has its limitations and failures, and are seeking a solution that works independent of the will of the husband upon separation. The search for such solutions has been widely written about,⁴⁹ and I would like to use this review essay as an opportunity to present what such a proposal would have to look like in order to have a chance to be accepted. First, it would have to rely on opinions found in mainstream, classical halakhic sources that are inherently valid. One cannot build a system of Jewish divorce law based on opinions of writers and scholars no one has heard of. In addition, such a proposal would require acknowledgement on the part of significant halakhic authorities that even if it is not ideal (*le-kehatehila*), it is a halakhically satisfactory after-the-fact (*be-di-`avad*) response to a situation.

There are many valid reasons why such a proposal has never been forthcoming and endorsed by significant segments of the rabbinic community, and I have elsewhere explained them.⁵⁰ Were such a proposal to be crafted and accepted by mainstream halakhic authorities, it would likely be formulated, I think, to combine three different mechanisms into a single document, and in a way that if any of them were halakhically valid, then the resulting *get* would be valid.⁵¹ The three elements would be conditions applied to the marriage (*tenai be-kiddushin*),⁵²

authorization (*barsba'ah*) to give a *get*,⁵³ and broad communal ordinance to void a marriage (*taqqanat ha-qahal*).⁵⁴ Each of these avenues has significant halakhic support of both classical and modern *poseqim*; consequently, a real case could be made that a single document that successfully incorporates all three elements would survive any *be-di-`avad* halakhic criticism, and the *get* issued as a result of such a document would be valid according to most authorities. Indeed, in the twentieth century alone, one can cite a list of luminary rabbinic authorities who have validated such agreements in one form or another, including Rabbi Yosef Eliyahu Henkin, Rabbi Isaac Herzog, Rabbi Jechiel Jacob Weinberg, and Rabbi Ovadia Yosef, as well as many others.⁵⁵ And no less an authority than Rama approved of conditional marriages (although maybe only in *yibbum* situations).⁵⁶

Even with this broad conceptual foundation, I would never actually use such a document unless and until a significant number of reputable *poseqim* determine that (at least) this document is effective *be-di-`avad* and that it would be respected as valid *be-di-`avad* even by *poseqim* who do not advocate its use. Maybe it would be halakhically better to rely on the array of leniencies advanced by various eminent *poseqim* in support of such documents with our understanding that *sha`at ha-dehag kemo be-di-`avad* (“a time of urgency is to be treated as if it is after-the fact”), rather than maintaining the none-too-pleasant or successful status quo, which also leads to *mamzerut*. That calculus would

require the approval of the foremost halakhic authorities of our times.

Section Summary

Pre-nuptial agreements of the kind endorsed by the Orthodox Caucus and the Beth Din of America represent the best theoretical and practical solution to the *agunah* problem in the United States (and Canada) and need to be implemented with greater vigor by our community. Tripartite solutions (based on conditions applied to the marriage (*tenai be-kiddushin*), authorization (*barsba'ab*) to give a *get*, and broad communal ordinance to void a marriage (*taqqanat bakahal*)), even if theoretically advantageous, still require a great deal of further halakhic analysis.

VII. Conclusions

An intellectual lion of Modern Orthodoxy at the height of his prowess, while prowling the byways of *halakhab* for shoddy reasoning forty years ago, noted:

Judaism's antinomies are important for an understanding not only of its theology and ethics, but also its Halakhah. Indeed, the data of Jewish theology and ethics are usually derived from the Law which fixes the essential character of all of Judaism. Unfortunately, however, many who are presently called upon to resolve questions of Jewish law are often oblivious to the antinomies which are implicit in their subject. Altogether too frequently they seize upon one or another of two or more possible antithetical

values or interests between which the Halakhah veers, and they assume there must be an exclusive commitment to that single norm. The

dialectic of the Talmud, however, reveals quite the contrary. Implicit in almost every discussion is a balancing of the conflicting values and interests which the Law seeks to advance. And if the Halakhah is to be viable and at the same time conserve its method and its spirit, we must reckon with the opposing values where such antinomies exist. An equilibrium among them must be achieved by us as objective halakhic experts rather than as extremists propounding only one of the antithetic values.⁵⁷

The author of this paragraph is, of course, Rabbi Emanuel Rackman, and the elegant truth of his statement is timeless. Yet while *Tears of the Oppressed* takes passing note of the dialectic tension within *halakhab* between the stringency of releasing a married woman without a *get* (*lumra shel esbet ish*) and the leniencies provided to release women who are tied to “dead” marriages (*mishum iguna aqilu bah rabbanan*), it presents conclusions that far overreach the evidence offered to champion the overriding ideal of leniency and ultimately loses sight of any notion of equilibrium. The absence of that balance undermines the very nature of this book as a work of *halakhab*, for the *halakhab* here—true to its elemental meaning as “the path” of the law—must be tread between two values

in counterpoise. Rabbi Rackman correctly notes that the abandonment of one value to exclusively pursue the other represents an egregious methodological failure in understanding the processes of Jewish law.

Much as we all wish to find a solution to the *agunah* problem, truth is an ultimate value in Jewish law, and we must not hesitate to conclude that the expansive solution advocated by Rabbi Dr. Aviad Hacohen in *Tears of the Oppressed* is without any halakhic foundation. Women freed from their validly entered-into marriage based on a defect in their husband that was not present at the time of the marriage's inception are still married according to Jewish law, and any claim to the contrary is incorrect. Children born from a subsequent marriage of this woman to another man could well be⁵⁸ illegitimate. It pains this writer to write those words, and this writer cannot express to the reader how much he wishes it were not so.

Postscript: Some Personal Comments

Those readers familiar with my writing or who have directly asked me questions of Jewish law on occasion know that I am not one who is afraid of controversy in matters of *halakhab*, or one who rejects ideas merely because they are new or novel, or who cannot go forward since he is continuously looking over his right or left shoulder. Rather, I feel instead a great deal of satisfaction when one can find an established solution to a complex problem grounded in the *rishonim* or *ahronim*, or even put

forward a well thought out *hiddush* that solves a communal or personal problem with integrity, even if others might disagree.⁵⁹ One need not cease to act merely because of controversy.

If, however, this book fails to persuade well nigh any members of the Orthodox rabbinate of its correctness (a not unreasonable assumption), the time has come for Rabbi Emanuel Rackman's *beit din* to cease operation, even if Rabbi Rackman continues to maintain his approach is correct. It is obvious to all involved that the conduct of his *beit din* does not fall within the confines of *halakhab* as apprehended by the Orthodox community. Even if Rabbi Rackman does not agree with this understanding of *halakhab*, he does no service to the many women whom he claims to have released from their status as *agunot* by placing his name—that of an esteemed Orthodox Rabbi now retired—on a document that purports to free these women from the bonds of their marriage according to Orthodox understanding of *halakhab*, when that document will not be accepted as valid by the Orthodox Rabbinate or community. Rather, he adds to these women's frustration when they discover that—even after Rabbi Rackman and his *beit din* gave them permission to remarry—they are still not an accepted part of the Orthodox community, and their conduct is still viewed as a sin.

No one is benefiting from Rabbi Rackman's

conduct, including the women whom he claims to release from their marriage. Rabbi Rackman should see that his rabbinic colleagues and community have rejected his view, and he should cease to act on his unique understanding of the *halakhab* in a *halakhab le-*

ma`aseb manner. He need not retract his sincerely held intellectual views, but he ought to cease acting on them for the betterment of Orthodoxy Jewry worldwide. It is the proper thing to do.

Appendix: Suggested Tripartite Document (*Shelo le-Halakhah*)

This document is to certify that on the [ordinal number] day of the month of [name of month], in the year [calendar year], in [location], [name of groom], the groom, and [name of bride], the bride, of their own free will and accord entered into the following agreement with respect to their intended marriage.

The groom made the following declaration to the bride under the *huppah* (wedding canopy):

“I will betroth and marry you according to the laws of Moses and the people of Israel, subject to the following conditions:

“If I return to live in our marital home with you present at least once every fifteen months until either you or I die, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding;

“But if I am absent from our joint marital home for fifteen months continuously for whatever reason, even by duress, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence, and the blessings recited a nullity.

“I acknowledge that I have effected the above obligation by means of a *qinyan* (formal Jewish transaction) before a *beit din hashuv* (esteemed rabbinical court) as mandated by Jewish law. The above condition is made in accordance with the laws of the Torah, as derived from Numbers Chapter 32. Even a sexual relationship between us shall not void this condition. My wife shall be believed like one hundred witnesses to testify that I have never voided this condition.

“Should a Jewish divorce be required of me for whatever reason, I also appoint anyone who will see my signature on this form to act as scribe (*sofer*) to acquire pen, ink and feather for me and write a *Get* (a Jewish Document of Divorce), one or more, to divorce with it my wife, and he should write the *Get lishmi*, especially for me, *ve-lishmah*, especially for her, *u'lesheim gerushin*, and for the purpose of divorce. I herewith command any two witnesses who see my signature on this form to act as witnesses to the bill of divorce (*Get*) to sign as witnesses on the *Get* that the above-mentioned scribe will write. They should sign *lishmi*, especially for me, *ve-lishmah*, and especially for her, *u'leshem gerushin*, and for the purpose of divorce, to divorce with it my above-mentioned wife. I herewith command anyone who sees my signature on this form to act as my agent to take the *Get*, after it is written and signed, and be my messenger to give it into the hands of my wife whenever he so wishes. His hand should be like my hand, his giving like my giving, his mouth like my mouth, and I give him authority to appoint another messenger in his place, and that messenger another messenger, one messenger after another, even to one hundred messengers, of his own free will, even to appoint someone not in his presence, until the *Get*, the document of divorce, reaches her hands, and as soon as the *Get* reaches her hands from his hands or from his messenger's hands, or from his messenger's messenger's hands, even to one hundred messengers, she shall be divorced by it from me and be allowed to any man. My permission is given to the rabbi in charge to make such changes in the writings of the names as he sees fit. I undertake with all seriousness, even with an oath of the Torah, that I will not nullify the effectiveness of the *Get*, the Jewish Document of Divorce, to divorce my wife or

the power of the above-mentioned messenger to deliver it to my wife. And I nullify any kind of a statement that I may have made which could hurt the effectiveness of the *Get* to divorce my wife or the effectiveness of the above-mentioned messenger to deliver it to my wife. Even if my wife and I should continue to reside together after the providing of this authorization to divorce her, and even if we have a sexual relationship after this authorization to write, sign and deliver a *Get*, such a sexual relationship should not be construed as implicitly or explicitly nullifying this authorization to write, sign and deliver a *Get*. My wife shall be believed like one hundred witnesses to testify that I have not nullified my authorization to appoint the scribe to write the *Get* on my behalf, or the witnesses to sign the *Get* on my behalf or any messenger to deliver it to the hand of my wife.

“Furthermore I recognize that my wife has agreed to marry me only with the understanding that should she wish to be divorced that I would give a *Get* within fifteen months of her requesting such a bill of divorce. I recognize that should I decline to give such a *Get* for whatever reason (even a reason based on my duress), I have violated the agreement that is the predicate for our marriage, and I consent for our marriage to be labeled a nullity based on the decree of our community that all marriages ought to end with a *Get* given within fifteen months. We both belong to a community where the majority of the great rabbis and the *batei din* of that community have authorized the use of annulment in cases like this, and I accept the communal decree on this matter as binding upon me.

“Furthermore, should this agreement be deemed ineffective as a matter of *halakhab* (Jewish law) at any time, we would not have married at all.

“I announce now that no witness, including any future testimony I might provide, shall be believed to nullify this document or any provision herein.”

Signature of Groom _____

The bride replied to the groom:

“I consent to the conditions you have made and I accept the *qinyan* (formal Jewish transaction) in front of the *beit din hashuv* (esteemed rabbinical court).”

Signature of Bride _____

We the undersigned duly constituted *beit din* witnessed the oral statements and signatures of the groom and bride.

Rabbi _____

Witness 1 _____

Witness 2 _____

NOTES

*The conventional transliteration of *'kiddushin'* has been adopted to facilitate electronic searches—*ed.*

**The author would like to thank the following individuals for their kind reading of an earlier draft and the insights they offered: Rabbi Yitzchok Adlerstein, Michael Ausubel, Rabbi Dr. Michael Berger, Rabbi J. David Bleich, Dr. David Blumenthal, Rabbi David Cohen (Gvul Yaavetz), Rabbi Basil Herring, Rabbi Jonathan Reiss, Rabbi Gedalia Dov Schwartz, Rabbi Dr. Don Seeman and Rabbi Mordechai Willig.

¹Currently, the members are Rabbi Eugene Cohen, Rabbi Asher Murciano and Rabbi Haim Toledano. Rabbi Moshe Morgenstern was a member as well but no longer is, as it was revealed that he himself had withheld a *get* from his wife for seven years. This review does not address issues of *get zikkui*, as upon Moshe Morgenstern's departure, that line of reasoning was discarded.

²"*Agunah*" (Heb., pl. *agunot*) is the popular term used to denote an estranged wife denied a divorce conforming to Jewish law (the issuing of a *get*) due to a missing or recalcitrant husband; the term *agunah* literally refers to the straps that bind this woman to her marriage. In Talmudic times this term was used only to refer to cases where the husband had disappeared and thus could not effectuate a divorce, but has now taken on the more generic meaning of a case where a woman cannot terminate her marriage and is desirous of doing so.

³See Agunah International Inc. Web site, www.agunahintl.org.

⁴The initial ad announcing the creation of this rabbinical court was published in the Jewish Week on August 28, 1998. A response was issued by the Beth Din of America in October of 1998, and Rabbi J. David Bleich wrote two articles on this issue as well; see "*Kiddushei Ta'ut*: Annulment as a Solution to the Agunah Problem," *Tradition* 33:1 (1998), p. 90 and "Constructive Agency in Religious Divorce: An Examination of *Get Zikkui*," *Tradition* 35:4 (2001), p. 44.

⁵As Hachohen states in his introduction, "I have endeavored to examine the sources relevant to the subject of release of *agunot* through these new efforts." These "new efforts" are the actions of Rabbi Emanuel Rackman's *beit din*. Furthermore, in his conclusion he reiterates that a goal of the work is to "shed light on, and help to clarify, matters relating to the current controversy over the release of *agunot* through the application of the principle of *kiddushei ta'ut*."

⁶All references are to *Iggerot Mosheh*: for apostasy, see *Even ha-Ezer* 4:83; for homosexuality, see *Even ha-Ezer* 4:113; for impotence see *Even ha-Ezer* 1:79 and for insanity, see *Even ha-Ezer* 1:80.

⁷See Michael Broyde, "Error in Creation of Marriage in Modern Times Under Jewish Law", *Dinei Israel*, Tel Aviv Law School 22 (2003), pp. 39-65.

⁸See *ibid.* for a list of many other *responsa*.

⁹See *Intsiqlopediyah Talmudit*, s.v. "*umdena*."

¹⁰See *Shulhan Arukh*, *Yoreh De'ab* 39:1 and *Bi'ur ha-Gra* 39:2. See also *Mishkenot Ya'aqov*, *Yoreh De'ab* 16 for a discussion of what are the exact statistical ranges for each category. It is beyond the scope of this article to explain why the *umdena* (or *rov*) that insects are not present in case two is not sufficient to alleviate the need to check for insects; however, it will be made quite clear to the reader why a parallel *umdena* based on a statistical likelihood of 51 percent is insufficient in cases of *iggum*; this is another manifestation of *humra shel eshet ish* (the imperative to proceed cautiously in recognition of the gravity of cases involving the potential for adultery).

¹¹This stands, he states, in contrast to *poseqim* who "adhere to the requirement that the blemish must have been in existence prior to the marriage" in order to be used as grounds for voiding a marriage (page 96).

¹²As far as I know. But see note 13 for one such citation, albeit *shelo le-halakhah*.

¹³Consider the lengthy exchange between Rabbis Isaac Herzog and Rabbi Jechiel Jacob Weinberg (found in *Seridei Aish* 1:90 (as numbered in the Bar Ilan Responsa) dealing with a number of Yemenite husbands who apostatized, leaving each wife an *agunah*. According to Rabbi Hacoen, this matter is simple: all one needs to do is posit that since no religious woman would marry an apostate, even though the apostasy developed many years after the marriage, the marriage is void, for the retrospective *umdena* allows such a claim. Indeed, this *responsum* is the only one I am aware of that even considers (at sections. 44-49) the possibility of such a calculus at all, and even Rabbi Weinberg is prepared to consider this view only as a possible understanding of the opinion of Maharam of Rutenberg, which is rejected by many other decisors, and only as a small, contributing factor in a *responsum* that has 58 sections. (Ultimately, Rabbi Weinberg declines to accept the claim, concluding at sections 52-53 that the views at sections 44-49 are not to be followed.) Thus, it would not be beyond the pale to regard the view presented in *Tears of the Oppressed* as a possible understanding of the opinion of a single *rishon* that is rejected by the later authorities and not even cited in any of the codes. It is, however, quite wrong to consider it normative. (Two parenthetical notes are worth making. First, this *responsum* by Rabbi Weinberg is rarely cited, as he collects many different, unique views on matters of *iggun* without differentiation between those that are mainstream and those that are not, citing even widely discredited theories such as *get zikui*. Second (and on the other hand), it is quite surprising that *Tears of the Oppressed* makes no mention of this *responsum*, for it quotes from and cites more far-fetched *responsa*, by far less prominent authorities.)

¹⁴See *Shulhan Arukh, Even ha-Ezer* 17:29-32.

¹⁵There is a group of *rishonim* who posit that an apostate Jew is like a gentile for many halakhic issues, and use this as grounds to analyze *yibbum* and *halitsah* issues in a unique light. For an excellent English article on this topic, see Rav Aharon Lichtenstein, "Brother Daniel and the Jewish Fraternity," *Judaism* 12 (1963), pp. 260-280.

¹⁶*Iggerot Moshe, Even Ha-Ezer* 4:121.

¹⁷BT *Kiddushin* 49b.

¹⁸That is exactly the case in *Iggerot Moshe* above, where Rabbi Feinstein reframes an *umdena* as an implied condition to a marriage where the husband is now dead so as to obviate the need for *halitsah*. Of course, the status that led to the *umdena* was present at the inception of the marriage.

¹⁹See *Rama, Even ha-Ezer* 157:3; *Terumat ha-Deshen* 223 and *Bach, Even ha-Ezer* 157. See also *Teshuvot Rabbi Akiva Eiger* 93; *Chatam Sofer, Even ha-Ezer* 111; *Noda Be-Yehudah, Even ha-Ezer* 1:56 and *Arukh ha-Shulchan, Even ha-Ezer* 157:15, all of whom agree with Rama.

²⁰For a collection of the *responsa* on this matter, see Yehuda Lubetsky (ed.), *Ein Tenai be-Nisu'in* (Vilna, 1930).

²¹See Eliezer Berkovitz, *Tnai be-Nisu'in ve-Get* (Jerusalem, 1967).

²²See Irving Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Greenwood Press, 1993) at pages 57-62, particularly 61-62 which states, "[V]irtually all responsible members of the world Orthodox rabbinate reject this [conditional marriage] approach."

²³See *Imrei Aish, Even ha-Ezer* 95 for such a situation. For more on this, see section VI of this review and appendix A.

²⁴*Iggerot Moshe, Even Ha-Ezer* 1:79 and 80.

²⁵I myself, a minor player in the vast world of permitting *agunot* to remarry, have participated in several such cases.

²⁶The third director is Dr. Elana Lazaroff.

²⁷Quote taken from <http://www.agunahintl.org/halakhic.htm> on October 13, 2004.

²⁸Quote taken from <http://www.agunahintl.org/halakhic.htm> on October 13, 2004.

²⁹Communications, *Tradition* 33:4 (1999), p. 102, by Michael I. Rackman in the name of his father.

³⁰This matter is more complex than can be fully addressed in this review. A *beit din* is generally called upon to do one of three things regarding cases of another *beit din*: enforce the prior ruling, validate the earlier decision or re-litigate a matter that was previously adjudicated. In this context, for example, when a husband approaches a *beit din* to determine whether he is still validly married to his wife according to Jewish law even after she has received a release from Rabbi Rackman's *beit din*, one has no choice but to reexamine the validity of the judgment of the previous rabbinical court.

³¹See *Shulhan Arukh, Even ha-Ezer* 11:4, 17:21 and 42:4 for more on this and whether cross-examination is needed.

³²*Shulhan Arukh, Even ha-Ezer* 17:48. Of course, one could respond that this *halakhab* is only applicable to classical cases of *iggun* but not to recalcitrance. Such an argument would require an acknowledgement that not all cases of recalcitrance deserve either the strictures or the leniencies of *iggun* matters, which Rabbi Hacohen would not concede.

³³Consider for example, the statement of Dr. Susan Aranoff:

To prevent *aginut*, testimony does not have to meet standards of Biblical *drishah* and *bakirah*. A single witness, circumstantial evidence, and hearsay are all admissible. (Rambam, *Hilkebot Gerushin*, 13:29.)

(<http://www.agunahintl.org/halakhic.htm>.)

This statement by Rambam is used by Dr. Aranoff to allow for these same liberalities in the case of a recalcitrant (as opposed to a presumed deceased) husband, which seems to be without halakhic foundation.

³⁴Sadly enough, it is well known that Rabbi Rackman's *beit din* has weak procedural safeguards. I am aware of cases where that *beit din* has heard matters without ever contacting the husband, without even verifying the existence of the marriage, or without contacting the local rabbinate to verify the woman's story. Indeed I am aware of a case where the entire matter was handled long-distance by telephone and neither the *dayyanim* nor the directors of the *beit din* ever actually met the woman petitioning for a *beter* (permission) to remarry. Such procedural lapses are hard to justify.

³⁵Rabbi Feinstein (*Iggerot Mosheh, Even ha-Ezer* 4:113) states:

If as soon as she found out that he was bisexual she left him, it is logical that if one cannot convince him to give a *get*, one should permit her to remarry because of the rule of *kiddushei ta'ut*....

Rabbi Feinstein repeats this:

But all this [her ability to leave without a *get*] is limited to when she leaves him immediately, but if she lives with him (sexually), it is difficult to rule the marriage void.

³⁶*Shulhan Arukh, Even ha-Ezer* 31:9.

³⁷Such is our practice, for example, when individuals who are married in a civil ceremony become religious. When they realize that their civil marriage was void in the eyes of *halakhab* and yet continue to stay married, they are married.

³⁸*Arukh ha-Shulhan, Even ha-Ezer* 39:13.

³⁹Yet I am aware of the fact that Rabbi Rackman's *beit din* has issued letters that claim to free women from the need for a *get* in exactly such procedurally murky situations, and particularly before a civil divorce has been issued, even when a *get* is held in escrow by another rabbinical court pending the granting of a civil divorce.

⁴⁰As *Minhat Yitschaq* 5:44 put it:

Behold, it is obvious that before one marries one needs to disclose the situation in one's family so that each party to the wedding knows whom they are marrying, and through this process

[each] will grow comfortable and accepting [of the problems that each of us has]; with this process there will be no disputes and no error in the creation of marriage.

Obviously, one cannot reveal that which one cannot discover no matter how much diligence is employed. (Some predictable contingencies that cannot be detected could be covered, perhaps, through the use of the *tenai kaful* construct, which is beyond the scope of Rabbi Hacoheh's book or this review of it.)

⁴¹Not discussed in this review is the impact of the dual legal systems that Orthodox Jews adhere to in the United States and how that bears on the *agunah* problem. The need to be divorced according to both Jewish and secular law complicates certain matters. This is discussed at some length in Michael Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Ktav, 2001) in chapters 4 and 5.

⁴²Rabbi Joseph B. Soloveitchik stated:

“I also was told that it was recommended that the method *afkinu rabanan l'kidushin minei* be reintroduced. If this recommendation is accepted, and I hope it will not be accepted, but if it is accepted, then there will be no need for a *get*. *Ha-isha niknes b'shalosh d'rachim: b'kesef b'shtar ub'bia*, the *get* of a *gerushah*—we will be able to cross out this *mishna*, this *halachah*; every rabbi will suspend the *kidushin*. Why should there be this *halachah* if such a privilege exists? . . . *ribono shel olam*, what are you, out to destroy all of it? I will be relieved of two *masechtos*; I will not have to say *shiurim* on *Gitin* and *Kidushin*, and then *Yevamos* as well. I want to be frank and open. Do you expect to survive as Orthodox rabbis? Do you expect to carry on the *mesorah* under such circumstances? I hope that those who are present will join me in simply objecting to such symposia and to such discussion and debate at the Rabbinical Convention. When I was told about it, I thought, "Would it be possible?"”

(http://mail-jewish.org/rav/talmud_torah.txt.)

⁴³Consider the question of a married soldier who goes off to war and disappears. Whether any legal system ought to allow his wife to remarry really depends on how certain we are that the soldier is dead. The American legal system, which allows courts to end such marriages, can also create enormous difficulties, as noted by President Jimmy Carter:

When the Japanese bombed Pearl Harbor, my uncle Tom Gordy and about thirty other sailors were stationed on Guam . . . Tom and the others were captured about a month after the war began, and taken to Japan as prisoners. Tom's wife, Dorothy, and their three children left San Francisco and came to Georgia to stay with my grandparents, who were then living with us in Archery. . . .

In the summer of 1943, the International Red Cross notified Dorothy officially that Tom was dead, and she began receiving a widow's pension. Everyone was heartbroken, and she and the kids moved back to San Francisco to live with her parents. After a year or so, she married a friend of the family who had a stable job and promised to care for her and the children.

Two years later, when the war ended and American troops entered Japan, they found Tom Gordy still alive!

(Jimmy Carter, *An Hour Before Daylight* (Simon & Schuster, 2001).) Jewish law avoids this problem by only allowing private divorce.

⁴⁴Justice Menachem Elon in his forward takes excellent note of these issues; this review is not the place to assess his proposed solution, other than to note that it is not consistent with that proposed by Rabbi Hacoheh.

⁴⁵See Michael Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Ktav, 2001).

⁴⁶See Chaim David Zweibel, "Accommodating Religious Objections to Brain Death: Legal Issues," *Journal of Halacha and Contemporary Society* 17 (Spring 1989), p. 49.

⁴⁷This is completely consistent with the empirical theory related to methods of alternative dispute resolution. Theoreticians of alternative dispute resolutions insist that the only situation in which parties can agree on a system of law that governs their dispute different from the rules provided by secular law, which is the default law in society, is prior to the dispute arising. After a dispute has arisen, one party or another will decline to accept the jurisdiction of a third party resolution (including *beit din*) as such a forum will not be to his or her advantage. Precisely because prior to a dispute no one is certain whether switching forum will be advantageous, a choice of law and choice of forum agreement is possible. After the dispute has already arisen, the only type of agreement that is in fact possible is one that is purely efficient, providing benefits to each party. Consider the case of a simple Jewish divorce, in which the couple had assets of \$100 and two children. Assuming that secular law would divide the assets and children equally, so that each party got \$40 and one child, and \$20 went to legal fees, neither party would ever consent to appearing in front of a *beit din* that was likely to award them less than \$40 and one child. The *beit din* would be allowed to hear the case only if it were more efficient than the secular court, so that neither party would be "hurt," either financially or in terms of the custody arrangement. If the *beit din* could not do that, each party will invoke its halakhic right to *zabla* (Heb. acronym, "*zeh borer lo echad*" ["*ve-zeh borer lo echad*"]— the right of the parties to select one judge each, who together select the third panelist) and prevent the *beit din* from resolving the matter. However, before the dispute arose, each party would have the ability to craft rules or make choices concerning forum unaware of the direct consequences to his or her case, since the person would have no idea what the particular dispute (if one ever arose) would look like. For more on this matter from a law and economics view, see Steven Shavell, "Alternative Dispute Resolution: An Economic Analysis," *J. Legal Studies* 24 (1994), p. 1.

⁴⁸For more on this, see the Orthodox Caucus Web site, www.ocweb.org/index.php/pre_nuptial.

⁴⁹For an excellent survey, see Irving Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Greenwood Press, 1993).

⁵⁰See Michael Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Ktav, 2001).

⁵¹A suggested text for a document along these lines (*shelo le-halakhah*) can be found in Appendix A.

⁵²See Rama, *Even ha-Ezer* 157:3; *Terumat Ha-Desben* 223 and Bach, *Even ha-Ezer* 157. See also *Teshuvot Rabbi Akiva Eiger* 93; *Chatam Sofer, Even ha-Ezer* 111; *Noda Be-Yehudah, Even ha-Ezer* 1:56 and *Arukh ha-Shulchan, Even ha-Ezer* 157:15, all of whom agree with Rama.

⁵³Rabbi Yosef Eliyahu Henkin, *Perushai Ibra* 110-117. The section on sexuality prior to divorce not voiding the authorization can be found in Rabbi Yitzchak Isaac Herzog, *Hechal Yitzchak*, 2:41.

⁵⁴*Teshuvot Rashba* 185, 1163. See Maharam Alshaker 48 who explicitly adopts this view. See also, Rabbi Ovadia Yosef, "*Kol ha-Meqaddesh Ada`ata de-Rabbanan Meqaddesh*," *Sinai* 48 (1961), 186-193. See also Rabbi Jechiel Jacob Weinberg in *Seridei Aish* 1:90, 1:168 and Rabbi Weinberg's introduction to Eliezer Berkowitz, *Tenai be-Nisuin ve-Get*.

⁵⁵See above, notes 53 and 54.

⁵⁶See Breitowitz, above note 49, at 59.

⁵⁷Rabbi Emanuel Rackman, "The Dialectic of the Halakhah," *Tradition* 3:2 (1961), pp. 131-32. So renowned was Rabbi Rackman at that time that he is the author of the first article, in the first issue, of *Tradition*.

⁵⁸Matters of *mamzerut* are complex, and many other grounds to be lenient might be present, including the intentional decision not to investigate second-generation facts (see *Rama, Even ha-Ezer* 2:5) as well as many other reasons and rationales not relevant to this review. I have no doubt that the Orthodox rabbinate will be plagued for decades with cases of women who remarried based on a document issued by Rabbi Rackman and his *beit din*, and are horrified to find out that their second marriage is void and their children presumptively *mamzerim*.

⁵⁹See *Iggerot Mosheh, Yoreh De`ab* 1:101, s.v. “*u-mah she-kataf yedid?*” for an extraordinarily elegant statement on this type of matter, involving a case similar to *iggum*, by Rabbi Moshe Feinstein.

REVIEW

What Makes a Book Orthodox? *Wrestling With God and Men* by Steve Greenberg

Reviewed by Asher Lopatin

Abstract: This review focuses on whether *Wrestling With God and Men* can be considered an Orthodox work. It concludes that due to a lack of confidence in Orthodoxy, the book's dearth of Orthodox sources and its failure to utilize the halakhic system to solve the problems it raises, *Wrestling* will not become part of the Orthodox library. Nevertheless, Orthodoxy is open to innovation, controversy, and potentially a new attitude towards homosexuality.

Biography: Rabbi Asher Lopatin is the spiritual leader of Anshe Sholom B'nai Israel Congregation, a leading Modern Orthodox synagogue in Chicago. A Rhodes Scholar and a Wexner graduate, he holds a Master of Philosophy in Medieval Arabic Thought from Oxford University, and ordination from both Rabbi Isaac Elchanan Theological Seminary of Yeshiva University and Brisk Rabbinical College.



REVIEW

What Makes a Book Orthodox? *Wrestling With God and Men* by Steve Greenberg (University of Wisconsin Press: 2004;304 pages)

Reviewed by Asher Lopatin

When Rav Moshe Feinstein, ז"ל, agreed to write an *haskamah*, an approbation for a book of *halakhab*, almost invariably he would write something like: “I have received with joy a new book by the author, *ba-rav ha-ga'on* So and So, who is a God fearing and righteous man. Even though I do not, as a rule, discuss the contents of a halakhic work, since I do not have the time to examine every ruling, I am confident that the author would not say anything that is in violation of the law. Wishing him success in all his endeavors...” Such a *haskamah* would tell us of an important characteristic: it is an acceptable book that is worthy of examination and serious reading from Orthodox tradition.

When I received an early copy of Rabbi Steve Greenberg’s book, I was personally excited, since my wife and I knew how long and hard Steve had worked on this book—and he had finally finished it and gotten a top notch publisher. But immediately after my thoughts revolved around whether this book would be accepted in the Orthodox world as an Orthodox work. It was a question I asked myself, despite my admiration and respect for Rabbi Greenberg as a thinker and an educator. Is

Wrestling With God and Men part of the tradition of Orthodox Torah—the *masoret* or *shalshelet ha-qabbalah*—worthy of a generic *haskamah* of an Orthodox *gadol*, or just an intelligent study, similar to academic or popular non-Orthodox works on Judaism? Turning to the author, as Rav Moshe, ז"ל, did: Would people come to know and accept Rabbi Steve Greenberg as an Orthodox rabbi through this book? Or would people regard him merely as a serious Jewish thinker who happens to have ordination from an Orthodox institution (Yeshiva University’s RIETS), but who is not acting in the Orthodox world?

When Rabbi Joel Roth wrote his paper for the Committee on Jewish Law and Standards for the Rabbinical Assembly, there was no doubt that he wrote it as a Conservative argument by a Conservative thinker. In fact, in defending this paper and its views, Roth said: “For me the most important thing in the world is the halakhic integrity of the Conservative movement,” in an impassioned speech in Chicago, February 23, 2004. No one can question his attachment to Conservative Judaism, even one who disagrees with his findings. No one

can argue that Rabbi Joel Roth's paper is anything but a Conservative analysis of homosexuality and Judaism. The focus of this article will be whether Rabbi Greenberg's *Wrestling With God and Men* contains the same loyalty and adherence to Orthodox Judaism that Joel Roth has demonstrated toward Conservative Judaism. If it does, it represents a major breakthrough in Orthodox thinking on homosexuality and Judaism.

“Would people accept Rabbi Steve Greenberg as an Orthodox rabbi through this book or regard him as a Jewish thinker who happens to have Orthodox ordination?”

If *Wrestling* is seen as a serious work of Orthodox *halakhab*—albeit controversial and novel—I am confident it will gain an audience and will be seriously discussed. A precedent would be Rabbi Mendel Shapiro's article regarding women and Torah reading (*The Edah Journal*, 2002), which has had a significant impact within Modern Orthodox circles. If *Wrestling* is not seen as a serious Orthodox halakhic work, its impact will be limited and passing.

Moreover, if *Wrestling* contains a demonstrably Orthodox approach to the question of homosexuality and Judaism then it will become an integral part of the Orthodox world of *halakhab*. This would mean that even though no one might

rule according to the halakhic teachings of *Wrestling*, it would become one more voice alongside of other Orthodox opinions and rulings on the question. It might remain a singular opinion—a *da'at yahid*—or it might cause a groundswell of supporting arguments, as Rabbi Mendel Shapiro's article garnered the general support of Professor Daniel Sperber. If they were part of the Orthodox world, *Wrestling* and Rabbi Greenberg could light up the world of *halakhab* on this issue through the creativity of new halakhic thinking.

For three major reasons, however, *Wrestling with God and Man*, and Rabbi Greenberg's voice in this book fall outside the bounds of Orthodoxy.

The first reason for rejecting Rabbi Greenberg's approach as Orthodox appears in one of the most compelling and telling sections of *Wrestling*, as Rabbi Greenberg speaks openly about his struggle with being Orthodox and gay. While he starts out by declaring his allegiance to *halakhab*—definitely placing him within striking distance of Orthodoxy—he then retreats from full allegiance to Orthodoxy. “The ultimate aim, of course, is not to be Orthodox per se,” he declares (p.13). Orthodox Jews are Orthodox for all different reasons, but the Greenberg of *Wrestling* is not committing himself fully to Orthodoxy. Remember Rabbi Roth's statement: For him, his life is about being a Conservative Jew. Even if all the Conservative Jews abandoned what Roth sees as true Conservative

Judaism, he would remain committed to it. In contrast, Rabbi Greenberg honestly admits that his aim in life is not to be Orthodox “per se.” My interpretation of that position is that as long as he can square *halakhab* and Orthodoxy with some greater values, then he is fine. But loyal Orthodox Jews understand that Orthodoxy is about clinging to *halakhab* while struggling with any external issues, movements or phenomena that cause tension with *halakhab*. The Orthodox world of Torah and *halakhab* grows because of that very tension, but the tension is lost when the commitment to Orthodoxy is conditional. Orthodox feminists and Zionists have all struggled, but they have made an impact on the Orthodox, halakhic world because their loyalty to Orthodoxy “per se” was unyielding.

“Quoting Torah, Talmud or even some medieval authorities—as Rabbi Greenberg does—might create a powerful, convincing argument, but it does not follow Orthodox methodology.”

Rabbi Greenberg, intentionally or not, loses his Orthodox *bona fides* by stepping away from loyalty to the Orthodox process of *pesaq* and *halakhab*, to a position of merely remaining in an Orthodox environment. “I have chosen to remain inside the Orthodox community because for all its difficulty with contemporary social issues, it is the Jewish community that for me possesses the richest religious resources” (pp.13-14). Remaining inside

the Orthodox community is far less than remaining an Orthodox leader who is committed to the future of Orthodoxy. Rabbi Roth, again, does not just want to remain in the Conservative community; he is committed to Conservative Judaism, and, because that commitment is felt, he wields tremendous authority in the Conservative world despite his strict views on homosexuality. “[The Orthodox community’s] weaknesses are not secret . . . I simply prefer this set of strengths and weaknesses over others,” Rabbi Greenberg writes (p.14). For the author to convince an Orthodox audience that he is Orthodox he would need to use a language of being commanded—such as “I remain Orthodox because that is what God has chosen for me to be through divine revelation at Sinai and the unbroken chain of Torah and tradition.” There are many gay Jews, some whom I know, others who are featured in the film “Trembling Before God” who could make such a statement. Rabbi Greenberg does not, and the only conclusion we can reach from the book is that he cannot make such a statement.

The second reason *Wrestling with God and Men* cannot be classified as an Orthodox work—neither an Orthodox halakhic book, nor an Orthodox biographical or philosophical work—revolves around the methodology and style of the entire book. What typifies an Orthodox approach is to quote accepted Orthodox authorities frequently. These may be contemporary halakhic authorities, or classic, well-known figures from centuries past.

Merely quoting Torah, Talmud or even some medieval authorities—as Rabbi Greenberg does—might create a powerful, convincing argument, but it does not follow Orthodox methodology. I am not arguing that every Orthodox book needs to quote hundreds and hundreds of names, as does Rav Ovadia Yosef with his encyclopedic mind, or that the Orthodox author must be slavishly submissive to every authority he or she quotes—in Artscroll style. However, the pages of the book must “feel” Orthodox. Greenberg quotes Rav Soloveitchik, *זצ”ל*, only one time in the entire book even though he recognizes the Rav as “the dean of Modern American Orthodoxy” (p. 219). Moreover, the quote is a minor one about a sex change, not the main focus of the book. As a *musmakb* of Yeshiva University’s Rabbi Isaac Elchanan Theological Seminary, where for decades Rav Soloveitchik was the dominant personality, Rabbi Greenberg is surprising in his failure to quote the Rav more often. But almost no contemporary Orthodox authorities make it into the book: Yeshayahu Leibowitz is quoted, but he is a marginal name in the Orthodox world. Dr. Norman Lamm, Chancellor of Yeshiva University, is not quoted at all, although he has written thoughtfully on the subject of homosexuality and Judaism (“Judaism and the Modern Attitude Toward Homosexuality,” *Encyclopedia Judaica Yearbook*, 1974, p. 197).

Even when Rabbi Greenberg does devote a few significant pages to two well-known Orthodox

thinkers, Rabbi Mordechai of Izbica (“the Izhbitzer”) (p. 239-241) and Rav Avraham Yitzchak ha-Kohen Kook (p. 241-243), he reverses the way they are typically used in the Orthodox world. The Izhbitzer is a popular Torah commentator, but rarely if ever cited in Orthodox circles on *halakhab*. Rav Kook is well-known and well-cited by Jews of all stripes as a great religious Zionist philosopher and voice for tolerance and Jewish unity, but only Orthodox thinkers use him as a halakhist, perhaps because he is an extremely conservative, traditional halakhic thinker (see *The Edah Journal*, *Sivan* 5761). Rabbi Greenberg uses Rav Kook at his philosophical and theoretical best—“There are times when there is a need to violate the words of the Torah . . .” (p. 242)—but these words could be easily quoted by a Conservative, Reform, Reconstructionist or even atheistic writer. If Rabbi Greenberg had cited Rav Kook as a halakhist, it would have given the book a greater Orthodox flavor. But Rav Kook’s approach here needs to be put in the context of the complicated workings of *aveira li-shemah*, a sin for the sake of heaven, which Rav Kook’s teacher, R. Naftali Tzvi Yehudah Berlin (Netziv) explicated in several places. The key requirement for an *aveirah li-shemah* is refraining from any pleasure out of the sin—which is certainly not the case in the homosexual relationships that Rabbi Greenberg is advocating, based as they are on mutual desire. Thus Rav Kook in his halakhic role probably would not have advanced Rabbi Greenberg’s arguments at all.

The only contemporary halakhic authority Rabbi Greenberg deals with at length is Rabbi Moshe Feinstein. But here, rather than using Rav Moshe as a supporting Orthodox authority, Rabbi Greenberg quotes him: Rav Moshe becomes the problematic Orthodox figure in the book that Rabbi Greenberg sets out to deconstruct and reject. Of course many Orthodox writers disagree with Rav Moshe on particular points, either explicitly or implicitly, but they do so at their own peril and almost always show how other weighty Orthodox authorities back up their disagreements with Rav Moshe. Rabbi Greenberg himself recognizes Rav Moshe's position as the pre-eminent Orthodox halakhic authority of the twentieth century, while at the same time admitting that "[Rav Moshe's] gut response to homosexuality will serve as a foil to our endeavors to understand the biblical prohibition" (p.136). But if Rav Moshe is just a foil, Rav Soloveitchik isn't relevant and Rav Kook doesn't get any halakhic play, then with whom in the Orthodox world does Greenberg surround himself?

"My dear one, my friend, you have twice the power of love. Use it carefully,"

Even before *Wrestling* was published, I had heard the moving story of Rabbi Greenberg's encounter with the great Rav Yosef Shalom Eliashav, *shli"ta*, while he was still a teenager. Rav Eliashiv is perhaps the greatest living halakhic authority in the

world—a sage emblematic of the *haredi* Orthodox camp. "Master, I am attracted to both men and women. What shall I do?" the young Greenberg asked. "My dear one, my friend, you have twice the power of love. Use it carefully," Rav Eliashav replied (p. 7). This actually is a quintessentially Orthodox story, involving a classic process: having a question (*she'elab*) and going to the rabbi for an answer (*teshuvah*). It demonstrates that the questioner is connected to the Orthodox world. I know that Rav Aaron Soloveichik, *z"tl*, valued the mere action of people asking questions of their rabbis, even if they did not follow the answers in all respects. Rav Gedalia Dov Schwartz, who rules for rabbis across America, connects to people—and thus connects them to Orthodoxy—when they actively approach him with *she'elot*, especially on a regular basis.

The story of the Rav Eliashav encounter could have been a great start to an Orthodox work. But instead of continuing in this direction of interfacing with the Orthodox world, Rabbi Greenberg never makes it back to any other such encounters. Rav Eliashav's words become almost mystical and prophetic, without being transformed into a halakhic framework. True, Rabbi Greenberg says that Rav Eliashav was purposefully vague, but if Rabbi Greenberg takes Rav Eliashav's words as encouragement for being both gay and Orthodox, he must somehow bring those words back to the Orthodox world. *Wrestling* is not within that world.

On the other hand, the people whom Rabbi Greenberg does learn from and cite are outside the Orthodox world: Professors Tikvah Frymer-Kensky, Jacob Milgram, Brad Artson, even Daniel Boyarin are all top-notch thinkers and perhaps personally observant, but they are not authorities for the Orthodox world. In fact, they are much better-known in Conservative and Reform circles. It seems that Rabbi Greenberg has a romantic connection to Orthodoxy, which explains his recalling the encounter with Rav Eliashav, a warm Rav Soloveitchik story, the view of Rav Kook as a philosopher and accepting the Izhbitzer Rebbe as a Hasidic thinker—all sentimental reflections. But when it comes to “*tachlis*,” how to approach tradition and follow it as a practical matter, Rabbi Greenberg reaches for non-Orthodox figures. *Wrestling* reads less like an Orthodox analysis of Torah and *halakhab*, and more like Rabbi Joel Roth’s *teshuvah* for the Conservative movement. Both analyze biblical and talmudic passages and refer to medieval Jewish authorities who discuss homosexuality, but neither quotes from the great halakhic authorities—or even modern or contemporary traditional thinkers. Yet for Rabbi Roth there is no need to so: he follows a Conservative methodology.

Why is it so important for an Orthodox book to reflect not only the vision of the author but the opinion of Orthodox thinkers who would support

the view in that book? Precisely because Jewish practice and thought is so open to change resulting from different ways of viewing the tradition. Rabbi Dr. Solomon Rockove writes in an unpublished essay entitled, “The Ebb and Flow of the Moral Concept in Judaism”:

“Basically, Judaism, particularly the *halakhab*, did not change over the many centuries. What was altered was the attitude of the people, the interpretation of the *halakhab* (ch. V, p. 6).”

For a halakhic work to remain Orthodox, it needs to connect to the vast world of other Orthodox thinkers because *halakhab* is constantly being re-interpreted, and therefore vulnerable. Why do I quote Rabbi Rockove? Not because he is the only person to have both *semikhab* from the Chafetz Chayim Yeshiva and a Ph.D. from Bruno Bettleheim at the University of Chicago. Rather, his Orthodox *bona fides* comes from Rav Aaron Soloveichik, ז”ל, who vouched for Rabbi Rockove’s credentials as a reliable *poseq*. Rabbi Rockove has a *haskamah*—an approbation—by a well known Orthodox thinker. Had Rabbi Greenberg introduced his work with a *haskamah* as Rabbi Rockove had from Rav Aaron, it would have gone a long way toward vouching for this book. But *Wrestling* lacks that *haskamah*: As a brilliant work of creativity and research it doesn’t need it, yet it cannot enter the Orthodox bookshelf without it.

The third reason that *Wrestling* is not an Orthodox book of halakhic practice or philosophy draws on the previous two, but might be the most surprising: *Wrestling* is not sufficiently halakhically creative. If this were truly an Orthodox work it would have combined—in a novel way to be sure—Rabbi Greenberg’s commitment to his homosexual identity and way of life with the binding nature of *halakhab*. Before I read the book, I had heard and read some of Rabbi Greenberg’s arguments for Judaism accepting homosexual acts: re-interpreting the verses in Leviticus to refer solely to demeaning acts of sex (pp. 203-209), and suggesting, based on Talmudic statements, that *halakhab* might recognize an additional gender (the homosexual) who would be permitted sexual encounters forbidden to heterosexuals (pp. 188-189). But instead of being at the center of *Wrestling*, as they would need to be to make this an Orthodox halakhic work, these creative ideas—right or wrong—are relegated to a later section called “Rationales”.

What a terrible word, ‘rationale’--or the Hebrew “*sevarah*”—when it means rationalization. Rav Moshe Hayyim Luzatto rails against it in *Sefer Mesilat Yisbarim*. Rationales are made up by the evil inclination simply to apologize for something wrong, Luzatto writes. Rabbi Greenberg is talking about “rationalizing away” the prohibitions against homosexual acts in the tradition, which undoubtedly have caused pain to homosexual people through the centuries. However, by

categorizing these important creative ideas as mere rationales, and by sequestering them to this part of the book, Rabbi Greenberg denies them any halakhic valiance. In this section he does quote some Orthodox rabbis, e.g. Rapoport, Engel, Unterman, but even if some of them may be well known local Orthodox leaders quoting them means little from an Orthodox point of view, since they are all relegated solely to the “Rationales” section. In the central part of the book, “Conversations”, where Greenberg talks about how the individual homosexual seriously engages the Orthodox world in halakhic conversation, these powerful ideas are nowhere to be found. Instead we get the almost desperate, and therefore unhelpful, use of Rav Kook, the Izhbitzer and the *halakhab* of *oness*—being in an uncontrollable situation.

“By categorizing these important creative ideas as mere rationales, and by sequestering them to this part of the book, Rabbi Greenberg denies them any halakhic valiance.”

Oness is the least original argument that Greenberg could bring. The Orthodox Rabbi Norman Lamm and the Conservative Rabbi Joel Roth have brought it into the conversation regarding homosexuality for decades. Rabbi Greenberg does a fine job of sprucing it up for a twenty-first-century audience: “Instead of [seeing this *oness* as] ugly pathology might gay people be “compelled” by their very

difference?” (p. 250), but he admits at the end of *Wrestling* that he has not essentially changed the standard reading of “*onesh Rahmana patrei*”—“The Merciful One absolves one who acts under duress” (p. 253).

“From the book we derive no confidence that halakhab, that argumentation within the community of Orthodox interpreters, can take us to where Greenberg thinks we need to arrive.”

Rabbi Greenberg admits that his hypothetical homosexual Jew must accept as *halakhab* at least two of the “Rationales” listed in the previous section. An Orthodox work of *halakhab* would endeavor to take those innovations out of the category of “rationales” and work with them, be “*mifalpel*—play with and argue them” in Netziv’s language—until they work halakhically. Joel Roth ignores any possibility of such halakhic play; indeed, only an Orthodox thinker, who truly has the confidence that *halakhab* can and must work for our world, will work with *halakhab* in the creative and innovative way necessary to derive the true meaning of the sources and Orthodox tradition. Blu Greenberg (who is unrelated to Rabbi Steve Greenberg) spoke as an Orthodox feminist when she declared that, “Where there is a rabbinic will there is a halakhic way.” Whether or not one agrees with the bluntness of her statement, it is a decidedly Orthodox statement born out of an ingrained faith

in the power and potential of an eternal Torah revealed at Sinai.

Rabbi Greenberg really wants to move the arguments in “Rationales” to “*Halakhab*”, but *Wrestling* gives us no sign that that is possible. From the book we derive no confidence that *halakhab*, that argumentation within the community of Orthodox interpreters, can take us to where Greenberg thinks we need to arrive. If Rabbi Greenberg wants the Orthodox world to receive *Wrestling* into its halakhic discourse, he has to make the plunge only an Orthodox thinker can make: to leap into the great pool of our tradition, certain that he will be received by water rather than by a dry cement bottom.

Even if we cannot regard *Wrestling* as an Orthodox work, we cannot move on without emphasizing that Rabbi Greenberg could have come up with novel halakhic approaches and still preserved the Orthodox nature of his book. We must recognize just how open Orthodoxy—of any flavor, ultra, modern, centrist or open—is to creative, innovative thinking. In a humorous pun, Rabbi Moshe Sofer, the Hatam Sofer, might have said that innovation, “*hadash*”, was prohibited from the Torah, but he never prohibited innovative thinking and analysis of our tradition. This innovative, creative thinking is called “*hiddush*” by Netziv, who overlapped with the end of the Hatam Sofer’s life and who lauds his works on *halakhab*. (See his Introduction to *Emeq*

ha-Netziv.) In his classic Torah commentary, *Ha-ameq Davar*, the Netziv states: “The Ark is the place for the written words and also for commanding the oral tradition . . . but missing in this mix is the power of argumentation (i.e. dialectic) and innovation that enables a person to innovate—on his own—a halakhic understanding which was never part of the tradition. This wondrous power—called Talmud—came from the *menorah*.”(Exodus 27:20, p. 346,. New Edition, *Yeshivat Volozhyn*, Jerusalem: 1999).

Rabbi Greenberg’s acceptance of homosexual relationships or his radical interpretations of the verses in the Torah do not necessarily place his thoughts outside the Orthodox camp. As mentioned above, Rambam is arguably far more radical in his reworking of anthropomorphic verses in the Torah. Even though some rejected him outright for these innovations, Rambam was always accepted as a halakhic authority by many traditional communities. Verses in the Torah with which Rabbi Greenberg deals extensively are not the direct sources for any halakhic argument—for or against the homosexual act. Rabbi Yoel Kahn interprets the word “*to`evah*”—mentioned in Leviticus 18 and 20 regarding homosexual acts—as “a *shande*,” a disgrace. But he goes on to state accurately that there is no “*Masekhet Shande*” or even “*Masekhet To`evot*” in the Talmud. And the Talmud is the true primary source for *halakhab* in traditional Judaism.

As provocative as *Wrestling* might be, Orthodoxy can handle such punches. The most controversial parts of the book might be when Rabbi Greenberg suggests that not only David and Jonathan, but also Rabbi Yohanan and Reish Laqish, had homosexual relationships. As questionable as these accusations might be, they would not place this book outside of the pale of Orthodoxy. Abarbanel is accepted throughout the Orthodox world as a classic commentator on *Tanakh*, yet he takes on a Talmudic authority when he condemns King David for unmitigated adultery with Bat Sheva. Outside of the realm of *halakhab*, Orthodoxy has always allowed individuals to declare reality as it makes sense to them, as long as they do not violate any articles of faith.

“Missing is the power of argumentation that enables a person to innovate—on his own—a halakhic understanding that was never part of the tradition.”

Rabbi Greenberg violates no article of the Jewish faith even when he publishes translations of apparently homo-erotic poetry of Moshe Ibn Ezra and Yehuda ha-Levi (pp.113-123). Initially I was shocked reading those parts. When I asked Rabbi Rockove about them, he answered that some might be metaphorical, but even if they were literal the key is that none involved *halakhab*. When it comes to

non-halakhic material, especially poetry written by poets—and Moshe Ibn Ezra is known only as a poet, never in *halakhic* literature—there is such as thing as poetic license, and each person is given their space, even within Orthodoxy. So while the section of Rabbi Greenberg’s book titled “Evidence” might make the book controversial, or even distasteful, it remains acceptable to Orthodoxy. In fact, Rabbi Greenberg himself is respectful and tentative by declaring that he is not trying to show that the figures in Jewish tradition were homosexual lovers, but, rather, “that erotic pull and committed love between people of the same sex were acknowledged in our sacred tradition.”

Rabbi Greenberg’s many friends and students can vouch for his integrity, his commitment to the Orthodox world, and his importance as a voice within the Orthodox community. He is a brilliant, thoughtful and courageous rabbi. My discussion here revolves solely around how people will get to

know him and his thinking from his book. For now, the public has *Wrestling with God and Men* before them, and they have the Rabbi Greenberg of *Wrestling* before them. Neither represents an Orthodox approach to the issue of homosexuality. Yet I am confident that Rabbi Greenberg can write the Orthodox book that will show us that he is committed to staying the long and difficult course of persuasion that Orthodoxy demands. It remains to be determined whether any study could demonstrate the support for each halakhic argument he makes based on teachings of accepted Orthodox thinkers and *poseqim*. Even more importantly, such a study could show us how creative, innovative and relevant *halakhab* can be. We may not agree with him, but if he publishes such a work, it would be taken into the Orthodox library, be debated, scrutinized and even lambasted, and, at the end of the day, make a huge impact on the course of Orthodoxy’s understanding of God’s Torah—*lebagdil Torah u-leha’adirah*.