

Orthodoxy And Feminism

Norma Baumel Joseph

Abstract: Norma Baumel Joseph explicates the Orthodox feminist demand for more inclusive roles for Jewish women, including fuller participation in communal and religious activity. She examines four different models offered by Rabbis Yisrael Meir Ha-Kohen (Hafetz Hayyim), Samson Raphael Hirsch, Moshe Feinstein and Joseph B. Soloveitchik to justify the acceptance of women's Torah study, in an attempt to determine a valid halakhic model for feminist innovation.

Biography: Dr. Norma Baumel Joseph, a member of *The Edah Journal* editorial board, is Associate Professor and PhD. Graduate Program Director in the Department of Religion at Concordia University, Montreal, Quebec.

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Modern Orthodox Jews place great emphasis on certain issues. They are concerned with religious Zionism, secular studies, halakhic approaches to modern standards of science and medicine, democracy, respect for differing religious traditions, and a Judaism that encourages living in the world. They also purport to advocate greater inclusion of women within the practice of Jewish ritual. My interest in this essay is with this last item and its diverse standards and divisive thrust.

What does it mean to Modern Orthodoxy to be inclusive of women? Surely Jewish practice applies to women. There is no exemption for women from the many laws of *kashrut* or *Shabbat*. Those who claim that women have only three *mitsvot*—*hallah*, *hadlaqat neirot* (candles), and *niddah* (menstrual separation)—do not know what they are talking about. Women are ritually obligated in almost all of Jewish ritual. Women are exempted from only 14 of the 613 commandments, according to Maimonides.¹ So what is the big complaint about? Even the exemptions have been mostly overridden today as women have taken upon themselves the obligations of *shofar*, *lulav*, and *sukkah*.

The concentration on exemptions, obligations and prohibitions conceals a plethora of issues and problems.

When the current phase of feminism began in the seven-

ties, religious Jewish women from all denominations found that their concerns were focused not on theology (like those of their Christian colleagues), but on ritual--ritual that would sanctify their lives, mark their life cycle passages, and set a standard for their inclusion in the corporate community of Israel. Thus, the first indication of feminist transformations appeared in the area of ritual celebrations, especially those life cycle rituals that marked the individual's passage into the community of adult Jews. Although puberty rituals were not significant in Jewish life until the modern period, they have fast become vital. Hence, the absence of communal acknowledgment of their presence left female children invisible in communal life. Today, a girl can have a *Bat Mitzvah* celebration in every denomination or sector of Jewish practice. Although the ceremony varies greatly—from an identical copy of the *Bar Mitzvah* to school parties, group ceremonies, *havdalah* rituals, and even *haredi* parties at Rachel's Tomb—the mere fact that a girl's coming of age is celebrated publicly and religiously is an historic shift.

The problem addressed by these changes is not the absolute absence of women in ritual patterns, but the consequential absence of women at certain critical moments either in their lives or in the life of the community. In the past three decades, many of these ritual customs were amended to embrace women's needs. The communities of Modern Orthodoxy, not just the women,

¹ See Saul Berman, "The Status of Women in Halakhic Judaism," *Tradition*, 14,2 (1973): 5-28. See also, Rachel Biale, *Women in Jewish Law*, (NY: Schocken Books, 1984).

have benefited from women's increased participation and knowledge.

But there is still a misunderstanding that lies at the heart of the problem. The issue is not unconditional participation, but rather a new understanding of that role. All rituals by definition involve action, but some demand greater individuation and engagement than others. Prayer from the synagogue sidelines is active, but central roles require skills and leadership not experienced behind the *mehitsah*. Furthermore, men understand that they can pray on behalf of others and represent the community, while women cannot. Orthodox women, seeking neither to displace men's participation in communal prayer nor to override rabbinic decision making, undertook to add to their prayer experiences and knowledge through women-only prayer groups. Cautious of halakhic minefields, they avoided categories such as *minyan* in order to comply with halakhic standards. They were unprepared for the vituperative and inaccurate allegations against these activities. Women seeking greater participation within Orthodoxy were suddenly maligned and misunderstood. While there is no official Modern Orthodoxy, the various reactions indicate that issues and motives are still misinterpreted.

Women's standard for participation in the community has changed. In the past women may have felt themselves to be firmly rooted in the collective. Although women appeared less frequently than men in biblical tales, the holy places and sacrificial system described in the Torah were available to them. After the destruction of the Temple, Jews had fewer personalized rituals, but membership in the community was self-evident. Modernity, however, brought with it both the end of a corporate sense and a powerful new emphasis on the individual and on public display. Thus, some women have sought greater inclusion in just those arenas from which they had been absent. The issue is not assessing the shortcomings of the past. The current challenge is to find the right fit in today's circumstances. And that includes both public and individual participation in communal membership and leadership.

Not all Modern Orthodox women want separate prayer groups, but they do appear to want expand their spheres of influence and extend their ritual action. The challenge to Modern Orthodoxy is to find avenues for greater participation, new venues and modes in which the entire community can acknowledge and derive benefit from women's expertise and resources. In America especially, the challenge is to find new ways for women to participate in synagogue ritual and leadership.

The twentieth century presents a positive model for that kind of extension and expansion. The inclusion of women in the world of Torah learning undeniably marks a radical shift from previous standards. This transformation was heralded and inaugurated by the Orthodox world. Changes in Jewish women's lives, experiences and expectations are intimately linked to that achievement. Today there are numerous places where women can receive an advanced Torah education. Women with different backgrounds and diverse levels of education can attend advanced *shi'urim* (classes). Some manage full-time study while others avail themselves of individual classes. In Israel, women can get rabbinically recognized advanced degrees in specific areas of Jewish law. Learning is in.

Feminism is not. Recently, one of the pioneers of *yeshivot* for women asserted that she is not a feminist. Why is the "F" (feminism) word so objectionable? That word has paved the way for women to enter the world of Jewish learning and use their knowledge to aid other women. Concentrating on women, providing women with added resources, and giving women experiences usually reserved for men--all those are feminist objectives. Feminism need not be inimical to Judaism. It provides a new insight and an added resource. It focuses on women not because it is necessarily man-hating or revolutionary, but because women have been ignored, underrepresented, or just plain left out. That does not mean that women wish to be identical to men; nor do feminists invariably reject characteristic female roles or modes of action. Rather, the issue is one of being present and representing, of supporting and being supported by, of determining and

influencing the course of the modern Jewish community. Women's religious needs, aspirations and desires are appropriately included. On the other hand, their invisibility and lack of participation continues to challenge Judaic claims for justice.

Justice. All of Orthodoxy, all of Jewish law, and all of Judaism are implicated in the unresolved injustice of Jewish divorce law. "From where will come our help?" Jewish women are held hostage to a rabbinically sustained system that traps them in failed marriages. Although there have been suggestions for improvement, and there are theoretical halakhic solutions, there are as yet no real absolute solutions available. Prenuptial agreements serve a purpose but they are not a universal solution. Moreover, there is no case law in civil or rabbinic courts that indicate their effectiveness. Some countries, like Canada, have federal civil laws that encourage the recalcitrant spouse to release barriers to the religious remarriage of the other spouse. While civil laws help alleviate some of the problems, they are contested by some and are not the locus of the problem.

The problem is with *halakhah* and must be corrected there. Annulments present a partial solution, but their use is severely limited by *halakhah*. Those proposing greater reliance on annulments must be very careful. A contested annulment translates into a worse scenario for the *agunah* (the woman anchored to a recalcitrant husband). After almost thirty years of work on this issue, I truly believe that if modern Orthodoxy cannot or will not address this issue and solve it, then its claim to care about women's role in Judaism is empty. There can be no excuses; there must be solutions. Too many women have been sacrificed on the altar of "there is nothing I can do to help you."

Justice and righteousness must be secured.

Modern Orthodox women have surely been in the vanguard of the movement to protect and free *agunot*. Many have used their expertise in Jewish law to propose and advocate. Women in Israel can be trained as *to`anot*, (legal advocates) for divorce seekers in rabbinic courts. Perhaps it is time to extend their expertise to develop systems of halakhic solutions that will work.

The crucial question, it seems to me, is what shall be our model for change. How will we as a community of Orthodox Jews accept greater female participation? In what way shall we legitimate women's inclusion and legal expertise? The legitimate search for halakhically valid methods and procedures is complex. As with all legal systems, past precedents pave the way for future innovations. In this regard the twentieth century provides us with a significant and appropriate case study. If we look to the development of Jewish law on the issue of women's learning, there will be standards that can be promoted and applied.² The dispute over women's Jewish education has been settled for most of Orthodoxy. The success of that development has already changed the face of the Jewish world. It has enhanced all our lives. Herein lies a series of diverse halakhic solutions that can be extended or applied by Modern Orthodoxy in its attempt to be more inclusive of women.

One fertile approach was formulated at the beginning of the twentieth century by Rabbi Yisrael Meir Ha-Kohen of Lithuania, known, as the *Hafets Hayyim*. He urged educating women even though doing so involved a radical break with tradition.³ Another approach was suggested by Rabbi Samson Raphael Hirsch of Frankfurt-on-Main

² The following discussion relies heavily on a previously published article of mine. "Anticipating the Future: A Jewish Feminist Scenario", in Bernie Lightman and Michael Brown, eds. *Creating the Jewish Future*, (Toronto: AltaMira Press) pp.281-98.

³ Rabbi Israel Meir HaCohen, *Liqutei Halakhah*.

towards the end of the nineteenth century. He claimed that Jewish history had bequeathed a continuous legacy of educating females upon which the community could build.⁴

Responding to a request from Sarah Schnirer who sought to educate women about Judaism, the *Hafets Hayyim* claimed that the talmudic condemnation of "one who teaches his daughter Torah" no longer applied.⁵ He saw his generation as beset by the "sins" of emancipation and modernity. Girls could no longer learn about the tradition by emulating their parents. It was necessary, the *Hafets Hayyim* declared, to break with convention and teach daughters formally. In fact, he ruled, teaching women was now not an issue of permission but of duty, of *mitsvah*.⁶ (His plan, of course, did not extend to Talmud.)

Following his example, we should formulate an agenda in terms of necessity, obligation, and responsibility, omitting claims of privilege and rights. Jewish legal arguments are constructed in terms of obligations, not rights. For the *Hafets Hayyim*, educating women is a matter of necessity because of the changed circumstances of Jewish life. The fear that women would "leave the path completely and abrogate the principles of the faith, God forbid" motivated drastic but justifiable measures to ensure the greater good during a crisis.⁷

But while the *Hafets Hayyim* justified women's study and even welcomed this particular innovation, he was certainly not eagerly embracing change. He was practicing

brinkmanship. If the threat to Jewish survival enabled him to propose something new, in what ways is that a usable precedent today?

Conversely, Rabbi Hirsch legitimated female education while denying any need for change. Astonishingly, he claimed that women had in principle always been obligated to study Torah.⁸ He used a different view of the past to accentuate continuity rather than change. According to his model, women's inclusion is part of the mission of Israel. His ideal, however, reifies a map of divided gender roles. Rabbi Hirsch follows rabbinic opinion that claims women do not need all the *mitsvot* or rituals, because they are constructed differently. For him, women's mothering roles enable them to develop a relationship to commandments that does not necessitate the same timed performance of rituals prescribed for men.⁹ Despite this, his strategy for the incorporation of new trends may be usable: all that is required is a reexamination of the past to find the right precedent or interpretation.

The *Hafets Hayyim* openly, and perhaps more honestly, proclaims that Judaism needs change and can handle this innovation. But he does so only because of our many sins. If we could go backward in time, the *Hafets Hayyim* would not be permissive. His argument is never about women's need to study for themselves. It is only about extenuating circumstances and women's ability to influence or educate their families in such times.

Unquestionably, neither rabbi envisioned female halakhic scholars, although both approaches open the door for

⁴ The contrast between these two positions was first brought to my attention by my teacher, Rabbi Getsel Ellinson, z"l, author of the three-volume publication *Ha-Ishah ve-ha-Mitsvot* (Jerusalem: Jewish Agency, 1977). He specifically differentiates their perspectives in v. 1 p. 159, n. 77.

⁵ Sotah 20a.

⁶ *Id.*

⁷ This principle of Jewish law is cited in rabbinic responsa in varied crisis situations.

⁸ Samson Raphael Hirsch, *Horeb: A Philosophy of Jewish Life and Commentaries*, trans. Dr. I. Grunfeld, (London: Soncino Press, 1962), v. 2, chap. 75, sec. 494, p. 371. See also Ellinson, *Ha-Ishah ve-ha-Mitsvot*, v. 1, pp.158-159.

⁹ This philosophical perspective is clear in other sections of *Horeb*, especially in his commentary on Gen. 1-3.

such an eventuality. The question that interests me at this stage, as I noted earlier, is which paradigm to appropriate. Both approaches deny the validity of the feminist critique; both offer interesting possibilities for meeting it. In all probability, if we look at the contemporary academies of advanced Judaic studies for adult women, we will see their philosophical connection to Hirsch and their halakhic reliance on the *Hafets Hayyim*. Significantly, however, in those schools that follow Hirsch's philosophy, girls are taught more classical text, and in greater depth, than in the Beth Jacob schools that were founded by Schnirer.¹⁰

Rabbi Moshe Feinstein in his *Iggerot Mosheh* subtly combines the approaches of Hirsch and the *Hafets Hayyim* while advancing a new standard. It is self-evident to him that girls must get a good Jewish education. In his judgments, he fashions a radically new legal and theoretical position. Like the *Hafets Hayyim*, he takes account of altered socio-cultural conditions.¹¹ But he does not bemoan the contemporary trend of educating females. For him, it is obligatory for a father to pay for his daughter's education,¹² a radical shift from talmudic antecedents, although he maintains a Hirschean view of a continuous pattern of education.¹³ It is significant to note the way in which he justifies a new practice that contravenes the law or displaces a past convention.¹⁴

By embracing change and proclaiming continuity while

denying change, the Orthodox community made the education of female Jews normative. These approaches established as a given for all segments of the Jewish world that girls must be formally educated. For many in the modern Orthodox world, Rabbi Joseph B. Soloveitchik set the standard when, despite great controversy, he inaugurated Talmud classes for women at Stern College.¹⁵ For others, the content of women's education was to be different from that of boys, but schools were to be built, and money was to be spent on their education. And that was *new!* Significantly, the new was proclaimed in such a way that it was immediately accepted as part of Judaism, not perceived as a threat, even by the traditionalists.

These models for change are useful. But which approach meets the needs of the moment? Which would be the best approach for my Orthodox Jewish feminism? While implementing them, I would wish to claim a more obviously hallowed prototype. When Moses details the laws of inheritance in the book of Numbers (27:1-11), the daughters of *Tselofhad* point out a flaw in the law. Since their father has no son, he has no direct heir; his land and name will disappear. They wish to inherit his estate in order to preserve family continuity. Given their social status, they wisely do not ask for land in their own names; they merely express a desire to maintain their father's birthright.¹⁶ Moses does not know what to do and presents their case to God. God tells him to give the women a portion. That sounds like a divine plan!

¹⁰ Naomi G. Cohen, "Women and the Study of Talmud," *Tradition*, 24 (1988): 28-37. See also Ellinson, *Ha-Ishah ve-ha-Mitsvot*, v. 1, p. 159, n. 77.

¹¹ Rabbi Moshe Feinstein, *Iggerot Mosheh, Yoreh De'ah*, (New York: Rabbi M. Feinstein, 1981) 3:87, 3:73.

¹² Feinstein, *Yoreh De'ah*, 2:113.

¹³ Feinstein, *Yoreh De'ah*, 2:102, 3:80, 3:87b.

¹⁴ For a detailed analysis see Norma Joseph, "Jewish Education for Women," *American Jewish History* 83 (1995):205-222.

¹⁵ Rabbi Joseph B. Soloveitchik went even further than the others discussed, but he did not justify it in any formal document or *responsum*. Thus his particular reasoning is not available to us.

¹⁶ The Talmud relates that these women were wise and knew how to argue a point of law. *Bava Batra* 119b.