

## **REVIEW ESSAY**

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

Yoel Finkelman

Response by Tamar Ross

#### **Biographies:**

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## 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 Ross<sup>1</sup>

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, *halakhab* 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 *halakhab* 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.

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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 halakhic 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.<sup>2</sup>

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 *pilegsh* 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?<sup>3</sup>

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:<sup>4</sup>

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.<sup>5</sup>

*"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,<sup>6</sup> 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.<sup>7</sup> 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 contexts<sup>8</sup> 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:<sup>9</sup>

...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.<sup>10</sup> (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

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## NOTES

<sup>1</sup>Dr. 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> *Mikhtav mi-Eliyahu* 1, pp.256-257

<sup>5</sup> "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.*).

<sup>6</sup> "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.*)

<sup>7</sup> "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.*)

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<sup>8</sup> 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

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

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