COMMENTS

Tamar Ross, Guarding the Treasure and Guarding the Tongue (*Shemirat Halashon*)

Response to Aryeh Frimer's Review of *Expanding the Palace of Torah: Orthodoxy and Feminism* by Tamar Ross (*B.D.D.* 18, April 2007, pp. 67-106)

I. INTRODUCTORY REMARKS

I must confess that several aspects of Prof. Aryeh Frimer's review[1] of my book[2] in the previous issue of *B.D.D.* gave me cause for anguish:

1. The first and only official notice I received of this review was via an impersonal electronic mailing list, after it had already been published. While editors or reviewers are certainly not obliged to notify authors of their intentions, when the nature of the review is sharply critical (as this one), the common practice of academic journals is to extend the author of the reviewed work the courtesy of prior notification and opportunity for a side-by-side rejoinder. Amongst other disadvantages, allowing half a year to elapse between Frimer's critique and my reply places an uncalled for burden on *B.D.D.* readers, who must now recall Frimer's very lengthy and detailed article in order to make full sense of my response.

2. On my initial cursory reading, I was taken aback by the sheer volume of Frimer's response, buttressed by such copious notes and references. I wondered: had I really slipped up so badly after investing three years of hard thinking and writing on this project? However, once I began examining the content of his material more closely, I found myself moving quickly from consternation to impatience and worse. I found it hard to believe that he had actually read the entire book. If he did, it certainly was not with the careful attention or genuine understanding that would entitle him to write a review, let alone a theological critique. I also found his more pinpointed list of arguments with my treatment of various halakhic issues, which he describes as "a plethora of errors in fact and analysis," artificially bloated and

1 Aryeh Frimer, "Guarding the Treasure," *B.D.D.* 18, April 2007, pp. 67-106 (henceforth: Frimer).

2 Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (Hanover/London: New England University Press, 2004), p. 178 (henceforth: Ross).

irrelevant for the most part, or simply unjustified, for reasons that I will elaborate upon below.

3. Perhaps most disturbing of all was the confrontational tone of the review. I barely know Frimer personally, but am familiar with some of his halakhic research relating to women's issues, and have always held his expertise in these matters in high regard. While several statements of his had led me to believe that we may have differences of opinion regarding ideological matters, I always felt that we had much more in common – both of us being practicing halakhic Jews, interested in furthering Torah and the comfort level of contemporary women within Jewish tradition. I was therefore offended and deeply saddened by some of the strident and sarcastic undertones of his review, which appeared bent on creating divisiveness rather than mutual understanding and cooperation. This stands in sharp contrast to a similar exchange (to which Frimer himself refers) initiated by Yoel Finkelman in the *Edah Journal*.[3] To his credit, Finkelman took the trouble of checking with me in advance whether he was indeed representing my opinions accurately. This created the conditions for an honest and respectful discussion between us, sharpening definitions of difference, and offering a welcome opportunity for fresh insights and clarifications.

As indicated above, the issues between us are split between two realms: one that is more global, relating to theological and ideological matters, and another that is more technical and relates to detailed questions of Halakhah. For the sake of clarity, I will more or less follow Frimer's framing of the issues relating to the first realm in offering my response. I have added headings to his numbering of the points, in order to more clearly define their substance, and reversed the order of his points #4 and #5, so that they conform more smoothly to the flow of my discussion. I will then move on to a point-by-point discussion of issues belonging to the second realm, after regrouping them into three categories in terms of their legitimacy or relevance.

II. GLOBAL ISSUES OF THEOLOGY AND RELIGIOUS DOCTRINE

Let me state at the outset that the purpose of my book is not political. It is not a how-to book for feminist activists, and therefore should not be equated with radical feminism in terms of any practical agenda. It is also not a halakhic compendium,

3 Yoel Finkelman with response by Tamar Ross, "Review Essay: A Critique of *Expanding the Palace of Torah: Orthodoxy and Feminism*," *Edah Journal*, 4:2 (Kislev, 2004), pp. 1-10 (henceforth: Finkelman-Ross).

directing religiously observant women as to what they may or may not do in strictly halakhic terms. Its main objective is theoretical. Although I do suggest how the changing status of halakhically observant women in the modern world may be accommodated on a practical level even within an authoritarian religious framework, I do not set out with clearly defined goals in this realm. Indeed, my own position as to what changes should be actively agitated for in practice is relatively conservative and probably not all that different from Frimer's.

On a theological plane, however, I do attempt to establish a rationale for any form of change in women's status that honestly acknowledges the feminist understanding of revelation as manifesting a male bias, while still maintaining the divinity and authority of that revelation intact. Frimer's statement (Frimer, p.73), therefore, that I posit "that what feminists perceive as a male bias in the biblical text undermines a belief in its divinity" is entirely misleading and misconceived. My object is to *refute* the notion of an inevitable and eternal clash between feminism and Jewish tradition, contending that this clash is only made possible by a simplistic and theologically inadequate view of revelation that is not necessitated by the sources.

The same may be said for Frimer's allegation (ibid.) that "this and many other conclusions in this volume are a derivative of Ross's total acceptance of feministic values as the axiomatic given; she then judges halakhic Judaism by them. But she does not judge feminism by the values and givens of the halakhic tradition." I beg to differ. I have remained a halakhic Jew by choice. I *davven* in a *shul* with a *mehitza*, recite traditional prayers suffused with male-centered God imagery, conform to a dress code that makes me stick out like a sore thumb in secular surroundings, and, contrary to prevailing norms, have raised a family with seven children. In other words, I continue to observe many of the practices that perpetuate the more enduring sexual differentiations against which radical feminism rails, and which it claims are responsible for continued inequality between the sexes.[4]

I admit that not all of my compliance with prevailing halakhic norms is motivated by a deep identification with some hypothetical a-historical and comprehensive view of women attributed to tradition. While some of the practices I adopt reflect genuine internalization of existing traditional values, there are others that I certainly do not idealize, and – given the choice – would welcome formulating them

4 See Ross, p. 178: "Choosing to limit our issues only to those that may conceivably be tolerated within the current Orthodox framework makes the statement that although feminism is an important value, it is not the exclusive yardstick by which everything else in our lives is measured. Occasionally this value is offset by other values equally dear."

differently. But these are also maintained out of appreciation for the importance of constancy on the ritual level and continuity with the Halakhah-observing community, respect (sometimes genuine and sometimes formal) for the current consensus of its halakhic experts, and as important symbolic signifiers of my own personal identity. I do not view this lack of fit between internalized values and outer practice as a flaw, because – contrary to Frimer – I do not believe that there is one consistent and ideal view of the place of women in Jewish tradition that has already been metaphysically signed and sealed for all time, just as there is no one consistent view of feminism. This, however, does not lead me to agree with what he terms "feminist relativism" (Frimer, p. 77); this is a grave misunderstanding of my position on his part,[5] which exhibits itself in the succession of ideological flaws that he attributes to me below.

1. Obfuscating the Difference between a Secular Doctrine of Rights and a Religious Concern for Obligations

After an introduction and brief summary of my views, Frimer begins his review (Frimer, p. 70) by characterizing feminism as a doctrine of rights, personal autonomy and self-fulfillment – as opposed to halakhic Judaism, which is focused on *mitzvot* and obligations; he accuses me of obfuscating this focal point of the discussion. I am well aware of this popularly-held view, which posits an inherent difference between Judaism and Western secular morality, and indeed include it in my list of conservative responses to the feminist critique (Ross, pp.13-14). Halakhic Jews in particular are fond of linking a way of life based on obligation with the notion of dedication to a greater goal, in order to posit its moral superiority to a social order preoccupied with the protection of individual welfare. In this context, feminism is often depicted as a movement of self-indulgent women who find nothing better to do with their time than to seek opportunities to fulfill their own narrowly conceived goals. But despite a widespread inclination to make much of this distinction, I do not believe that it can be taken very far.

The fact of the matter is that religious society has no monopoly on heteronomously driven behavior. Proponents of a rights-oriented social order dedicated to the ideal of equal opportunity for happiness and self-fulfillment (such

5 It is also a misnomer. A more accurate term would be "non-foundationalism," which is the term used in my book. I have also pointed out that non-foundationalism and feminism are not to be equated; not all feminists adopt an epistemological stance that rejects the existence of firm and objective foundations of knowledge "out there" waiting passively for our discovery, or our ability to perceive them – see Ross, pp. 8-9, 165-66.

as that informing the Constitution of the United States) are not a monolithic group; amongst them can still be found some who are Kantian in orientation.[6] More significantly, just as many claims to rights imply corresponding obligations, so concern for equality implies a broader concern for social justice and special sensitivity for the needs of the oppressed.[7] Over and above this, feminism has long ceased to be a movement concerned merely with political issues pertaining to women's equality. As Frimer himself intimates (Frimer, p.70), it is also concerned with "advancing women's viewpoints and concerns" in general. These include viewpoints and concerns that have nothing to do with an ethos of egotism and very much to do not only with broader issues of social justice, but also with matters of the spirit that have much in common with traditional Jewish concerns.

While it is true, for example, that Judaism and religious worship at large are governed by a sense of duty, Jewish tradition itself is equivocal regarding the worthiness of slavish and unquestioning obedience, as opposed to wrestling with God's command on the strength of contrary personal convictions and concepts of justice. This duality is reflected in the contrasting images of Abraham arguing against God's decree in the instance of Sodom, and succumbing to his command in the instance of the *akeda*, and in the wealth of commentary this contrast has engendered over the ages. Moreover, any sense of duty, or conviction that we have been commanded, must inevitably be preceded by assumptions or decisions that are autonomous in some sense. In order to obey God, we must first decide that it is indeed God speaking to us, and assent to the obligation of listening to Him. This understanding is expressed in various forms by classical Jewish thinkers, most notably in commentaries regarding the giving of the Torah at Mt. Sinai and *kefiyat*

6 The claim has already been made regarding Kant's categorical imperative that this is simply a replica of divine command theory with the name of God deleted. Indeed, Kant's concept of "the holy will" comes very close to *Hasid me-uleh* of Maimonides, who still retains some element of subservience to a higher force or to R. Kook's idealization of the *ratzon penimi elyon* in which our natural desires and the sense of command are one and the same. Although feminist ethics are more typified by a consequentialist view of morality, Kantians are not totally absent from their ranks.

7 Friedell, whom Frimer himself cites (Frimer, p. 79), makes this same point in drawing similarities between feminist jurisprudence and Jewish law in their mutual concern (inter alia) for communal responsibility and an ethic of caring instead of insisting on rights and adhering to strict formal legal demands. See Steven F. Friedell, "The 'Different Voice' in Jewish Law: Some Parallels to a Feminist Jurisprudence," in *Indiana Law Journal*, 67 (1992): 915-49 and my comments in note 11 below.

har kegigit.[8] Not only awareness of duty, but even its substance, is affected by autonomous deliberation.

Just imagine the reception that would be granted someone in our day who told us that he was commanded to sacrifice his son on the altar as a *horaat sha-ah*. Even if his name were Yisrael Meir Kagan or Abraham Isaac Hacohen Kook, and he were to satisfy all of Maimonides' criteria for a true prophet, I have no doubt that we would find a hundred reasons to commit him to an insane asylum rather than accord him legitimacy. Yet, despite deep controversy surrounding the issue, many segments of the modern Orthodox community have found grounds for incorporating modern nationalistic ideals into tradition and viewing their concomitant obligations (including army service and possible sacrifice of life) as a religious duty, understanding such activity as a necessary stage in our redemption. Why is this form of sacrifice an obvious duty and the other not? And why, for that matter, should Zionism be "in" for most modern Orthodox Jews and feminism "out"? Surely simple distinctions between heteronomy and autonomy are inadequate explanations of the selectivity involved.

Beyond this overlap, many aspects of Jewish tradition exhibit great concern for matters having to do with individual welfare and self-fulfillment, beginning with the biblical promise of personal reward (*ve-akhalta ve-savata*) phrased in the singular. A religious mindset that extends beyond self-abnegation has already been identified as being more congenial to feminine forms of religiosity. In my book I refer to the incorporation of such motifs within Judaism (Ross, pp. 129-31, 241-42). As opposed to a dominant tendency of the modern Musar movement to view subservience (*bittul he-ani*) as the ultimate spiritual ideal, R. Kook celebrates individualism and the spontaneous and unmediated yearnings of the human spirit as bearing religious value, and measures theological options in terms of the spiritual joy (*oneg*) that they afford.[9] This is a natural development of the kabbalistic observation that the letters of the Hebrew words *ani* and *ayin* are interchangeable – indicating that there is religious value to self-fulfillment as a path to the divine.

In sum, while I do not deny that there may be tangible differences in the spiritual temper engendered by traditional religious society and feminist understandings

8 See for example TB Shabbat 88:a, Rashi and Tosafot; R. Yeruham Leibowitz, *Daat Hokhma u-Musar* II (Brooklyn: Edison/Grat, 1969), p. 155; R. Simha Zissel of Kelm, *Hokhma u-Musar* II (Brooklyn: Edison/Grat, 1964), p.118; Maharal, *Tiferet Yisrael* (Tel Aviv: Ortzel, 1954), chapter 32, and my discussion of these sources in the Bar-Ilan *Daf Shevui* on Parshat Yitro, no. 61.

9 *Iggerot ha-Reayah* I (Jerusalem: Mosad Harav Kook, 1985), p. 48.

(Ross, p. 245), there are significant areas of commonality in which a religious feminist can find her place and feel very much at home.

2. Heretical Understanding of Revelation

As already emphasized in the introduction to my book (Ross, pp. xv-xvi, xix-xx), I believe that the deepest theological challenge of feminism lies in the fact that it problematizes the view of a sterile transmission of God's word, clean of all human input, and forces us to develop a more sophisticated understanding of the relationship between the divine word and human interpretation. In developing this idea, I contend (Ross, pp. 140-42) that, quite apart from questions of justice or of the gender of God, the ultimate problem raised by the feminist discovery of a pervasive male bias in the Torah is the very possibility of verbal revelation, as this is normally understood. In other words, can a document that so subtly and thoroughly represents partiality of any sort truly be regarded as divine and above human conditioning?

> Because language itself is shaped by the cultural context in which it is formulated, and because it must of necessity be bound to a particular standpoint, is a divine and eternally valid message at all possible? Can a verbal message transcend its cultural framework? (Ross, p. 186)

My response to this is a resounding "Yes!" But in order to understand and evaluate my answers, any reviewer must first fully understand my questions. I therefore found it profoundly dissatisfying that Frimer's chief method of contending with the wealth of material brought in my book (all over the place, but particularly in Ross, pp.184-87) attesting to the time and culture-bound nature of the divine word is simply to disregard such evidence and repeat doctrinaire insistence on the existence of a "divine and immutable Torah" (Frimer, p. 106). It is not this that is the subject of our debate!

To the extent that Frimer does progress any further in addressing feminist allegations of biblical androcentrism, this is done in a manner that reveals his inability to internalize the deeper theological questions following in their wake. Thus, for example, when he suggests (Frimer, p.73) that the problematics I raise "could well have other interpretations and resolutions. For example, one might well have concluded that this incompatibility [between Judaism and feminism] indicates that the divine Torah rejects several central temporal feminist values and perspectives." Frimer does not seem to understand that the ultimate difficulty raised by women – namely, the pervasive androcentric character of the Torah – has nothing to do with feminism as such. What is revealed by a modern woman's reading of the Torah (after noting to herself: "Well, that's just the way men regarded women in

ancient times") is rather that *any* value and perspective phrased in human language – as well as human language itself – is inevitably conditioned, no matter what its content.

Frimer's next response (ibid.) to this problem, which I regard as the core theological challenge invoked by feminism, and around which my entire book is structured, is to introduce the well-worn truism that "to take gender seriously in reference to God, be it male or female, is to give the Creator physical attributes, contravening the third Maimonidean principle." This objection is common knowledge even amongst the feminists (Ross, p. 119); moreover, the issue of God's gender, as already explained, is a red herring that does not touch upon the heart of the problem to be resolved. In addition, Frimer cites the Torah's emphasis on law and action, and its view of faith and emotion as secondary. But this, again, is simply a reiteration of the problem rather than its solution, according to those (including himself by implication, in his appropriation [Frimer, p. 79] of Professor Steven Friedell's characterization of Halakhah as "female jurisprudence"[10]) who view such phenomena as symptomatic of a male way of thinking. His only direct reference to the stance I develop as a response to the most profound theological challenge posed by feminism, is to raise the specter of biblical criticism as antithetical to Jewish dogma. This again begs the question, ignoring all the support that I bring even from within tradition (Ross, pp. 200-207) for acknowledging historical process without undermining the divinity of the codified canon or its authority. Appeal to the uniqueness of Moses' prophecy in order to prove its freedom from conditionality (Frimer, p. 73) is merely another form of circular reasoning.

Frimer's blatant misconstruing of the theological stance I propose in response manifests itself in his statement (Frimer, p. 76) that "Ross uncritically cites Plaskow," who states that a new understanding of Torah must begin with acknowledgment of the profound injustice of Torah itself in discriminating between men and women. Again, I must protest this careless reading. Giving space to Plaskow, Ozick, and other challenges to Orthodox views of tradition on this score, and even considering these seriously, does not imply blanket acceptance of their conclusions. Indeed, I

10 See my discussion of this view in Ross, p. 242 and note 38 ad loc., referring to Friedell. In general, Frimer's reliance on Friedell is infelicitous. One of the features he regards as characteristic of Jewish law is its subservience to formal claims to intuition, experience, context, subjective judgment and an ethic of caring. In addition, he himself notes: "It may strike many as odd that Jewish law would offer insights and values that parallel those of feminists. For Jewish law, although it values and protects women, generally subordinates them" – Friedell (*supra*, n. 8), p. 918, and ibid., pp. 945-48 for further discussion of this disparity and its implications.

devote much attention to vigorously refuting these (Ross, pp. 125-37, 155-64, 188-89, 207-210, 213-17) and offering another line of response, one that – despite acknowledgment of male bias – rejects the feminist critique of divine justice and satisfies the traditional requirement that the binding authority applies to the *entire* Torah, including every word.

All in all, Frimer seems to be incapable (Frimer, p. 76) of grasping that, according to the view I suggest, the assertion "that Halakhah was *born* in a broader socio-cultural context" bears no contradiction to its divine authorship; God doesn't speak via vocal chords but via the dynamics of history and the developing human understanding triggered in its wake. Given God's options of deputized speech and illocutionary speech acts, it is possible to view the Torah as a document that is all human and all divine at one and the same time. Contrary to Frimer's suggestion (ibid.), the talmudic dictum that "the Torah is no longer in Heaven" does not negate this view. A dominant stream in Jewish tradition adopting the view of a dynamic Torah (including the *Shela*, Maharal, R. Hayim of Volozhin, R. Zadok Hacohen and countless others)[11] implicitly and even explicitly[12] appropriates precisely this dictum in support of its position. Nor do the *Shela* and all the others on this list make any mention of Frimer's artificial distinction (Frimer, p. 80) between "new insights and applications of the originally revealed rules and principles" and "radically new" ones. As for the talmudic statement: "Even that which a distinguished student will teach in the future before his teacher has been said to Moses at Sinai," etc., Frimer makes no reference to my alternative understanding of this dictum (Ross, p. 57) when bringing it as another objection to a cumulativist view (Frimer, p. 81), and offers no suggestion of his own for tallying his more literalist interpretation with contrary statements of *Hazal* themselves.

11 In our day, views that regard *hiddushei Torah she-be-al peh* of *talmidei hakhamim* as a *tikkun* of the written law and bearing the same force are propagated by some leading *haredi* thinkers – see, for example, Moshe Shapiro, *Sefer Afikei Mayim be-Inyanei Sefirat Ha-omer ve-Shavuot* (Jerusalem: Dfus Alon, 2006), p. 185 and throughout the book. For related ideas suggesting that had halakhot of previous generations been determined later, they would have been determined differently, and that *talmidei hakhamim* are partners of the Almighty in establishing metaphysical attunement between the Torah and reality, see Joseph Bloch, *Sheurei Daat* I (New York: Feldheim, 1949), pp. 23-26.

12 See, for example, Isaiah ben Avraham Halevi Horowitz, *Shnei Luhot Habrit* (Amsterdam, 1649), *Bet Hokhmah*, p. 25b. See also Hayim Hillel ben Sasson's commentary on this view in *Hagut Vehanhagah: Hashkafoteihem Hahevratiyot shel Yehudei Polin Beshalhei Yemei Habenayim* (Jerusalem: Mosad Bialik, 1959), pp. 19-21.

Witnessing his total misapprehension of my preference for a more subtle understanding of divine communication, and his complete obliviousness to all the evidence I bring of alternative views already existing within tradition that complicate the notion of a one-time revelation transmitted only to Moses from Egypt to the plains of Moab (Ross, p. 191; pp. 199-207), I find myself sympathizing with Maimonides' exasperated plea in the introduction to his commentary on *Perek Helek*.[13] Regarding believers who are incapable of critical thinking and therefore suppose that they are glorifying the name of God by interpreting all aggadic statements of *Hazal* literally, he writes:

> Since they don't know and don't understand, would that they would keep silent... or that they would say: "We do not understand the meaning of the sages in this statement".... But they suppose that they understand and try to notify and explain to the people in accordance with what they themselves grasped on the basis of their weak perception.

3. Rejection of Rabbinic Authority

The same flaws that I find in Frimer's representation of my approach to the written Torah and to my understanding of revelation appear again in his dismissal of my attitude to rabbinic authority. Although much of my book consists of debunking naively objectivist claims to truth that are often made in the name of religion, and concomitant pretensions to disinterested and neutral decision making, it is more significantly a struggle to develop a constructive response to the feminist breakdown of this modernist view. Indeed, all of chapter 9 in my book is devoted to this project and I would have expected any reviewer's response to relate more seriously to such an effort than blanket rejection on dogmatic grounds.

It is not sufficient to counter feminist allegations of male bias in Halakhah simply by appealing to the general obligation of respect for the sages (*kevod hakhamim*) or for the integrity of the *mesora* at large. I have no doubt that the leading and reputable authorities try their best to be objective and disinterested in rendering the law as they see it. Nevertheless, this does not negate the fact that Halakhah has been formulated exclusively by men, or obviate the necessity for exploring the significance of this phenomenon and its implications. Frimer's citation (Frimer, note 43) of R. Simha ben Samuel's inclusion of Deborah and Hulda as links in the chain of tradition is an interesting tidbit, but negligible in its ability to modify the general picture. It also belies a certain naiveté, which Frimer evidences

13 Edited by M. Rabinowitz (Jerusalem: Mosad Harav Kook, 1961), p. 119 – the translation is mine.

throughout his review, in confusing ideology with history. My tendency would be to relate to R. Simha's statement more as a possible indication of *his* views than as testimony of women's actual role in the development of the Oral Law.

Contrary to Frimer's contentions, however, awareness of the inevitability of male bias in a process of decision making that has thus far left no scope for the direct input of independent women's practical experience, expertise, and self-knowledge does not lead me to "challenge *Hazal*'s authority as interpreters of the Torah" (Frimer, p.78). Just as belief in the divinity of the written Torah is not logically dependent on its literary genesis and the manner of its transmission, so the authority of oral law is similarly not dependent on proof of *Hazal*'s objectivity and neutrality. Questions regarding "the accuracy of the transmission of the oral tradition" (ibid.) are irrelevant for exactly the same reason.

In understanding biblical and rabbinic distinctions between the obligations of men and women against the background of gender assumptions regarding the role of men and women that no longer hold true, rather than attributing these to some comprehensive and eternal metaphysical principle, I do not – as Frimer suggests (Frimer, p. 83) – "confuse the law with its proposed rationales" or "believe that if [I] can succeed in refuting or placing in question a proposed rationale, [I] will have effectively undermined the specific halakhah, which is then no longer binding or relevant." I fully appreciate the irrelevance of theoretical speculation regarding the original rationale for this or that halakhic practice for their current normative status, and indeed devote most of chapter 7 in my book to attacking this position. In this connection, I specifically reject (Ross, pp. 138-39) attempts on the part of Orthodox sympathizers of feminism to rely on their understanding of Maimonides that the Torah is a pedagogic work, intended to gradually wean humanity to higher moral standards, as the basis of such revisionism, contending that "this solution involves a non sequitur," which Maimonides himself did not support. In continuation (ibid.), I state quite clearly: "Acknowledging that the original formulation of a law is influenced by surrounding circumstances does not necessarily mean that the law may be revoked when those circumstances no longer pertain."

However, just as Frimer's difficulty in acknowledging my understanding of revelation stems from a dichotomous view that sees only two options (either the Torah is divine or it is human), so his difficulty with my sociological and historic explanations of halakhic development stems from the same predilection for binaries (which, interestingly, is classified by gender scholars as a typically male way of thinking). Frimer assumes that if we understand the Halakhah as being independent of its purported rationale, this leaves us with only two options:

(a) Either we remain loyal to existing halakhic constraints, come what may, understanding these as a perfect expression of the divine will;[14]
(b) Or we conclude that since the Halakhah has obviously been fixed in terms of a temporary sociological structure, we are the ultimate determiners of the divine will and free to reinterpret previous formulations of Halakhah so that they accord with our independently conceived notions of what is now desirable in His eyes.

I, on the other hand, stand behind a more nuanced third view that regards both of these options as a continuum, breaking down the sharp distinction between them.

Every halakhah has an aspect of *yikov ha-din et ha-har* ("let the law pierce the mountain"), demanding imperviousness to the real-life consequences of its implementation. This is the ideal, default position. Yet alongside this aspect, there is another aspect of Halakhah (embodied in such statements as *derakheha darkei noam* ["the ways of the Torah are pleasant"]), which involves awareness of the constant need to adjust to the demands of changing situations, including sensitivity to contemporary notions of justice. Although one could view the internal tension between these two aspects as a necessary evil, I tend to put a more religious face on it, regarding the dialectic between the two that is inevitably forced upon us by history as another medium for revealing the divine will (Ross, pp. 199-200, 209-212, 223) – a will that, to my mind (contrary to Frimer's allegation [Frimer, p. 85]), is absolute and eternal but which, of necessity, unfolds for us in time.

My contention is that awareness of the potential for tension between the ideal and the conditional lurks at all times in the background of halakhic deliberation. The decision as to where the lines are to be drawn, and at what point the consequential aspect of Halakhah moves to the forefront in order to challenge the more obvious thrust of its formal demands, is a subjective one, governed by various considerations of ideology and practical politics. Varying attitudes regarding this issue unconsciously and sometimes even consciously influence the manner by which *poskim* tally and assess majority vs. minority opinions, the relative weight of halakhic precedent, the applicability of these to the situation at hand, and the extent

14 Proponents of the first view, including Frimer, will regard all sociological or historical explanations of original halakhic positions as sacrilege. Unlike Maimonides (regarding sacrifices – *Guide of the Perplexed*, III, 29-32) and Nahmanides (regarding *yibbum* in his commentary to Genesis 38:8), they will deny that halakhic principles and doctrines are the product of a particular culture, and invest much energy in attempting to prove that the Torah and subsequent interpreters somehow transcended time-bound considerations and were oblivious to the forces of history. They believe that in this way their legal decisions acquire a status of absolute proportions, and all change can be attributed simply to questions of application.

to which overriding meta-halakhic principles are introduced in judging the final outcome. Halakhic deliberation is not a logical exercise leading to one necessary and predetermined outcome; it is an art capable of various results – some better than others in terms of its own internal criteria.[15]

The influence that a subjective discretionary element has wielded on the development of Halakhah in modern times is evident on many fronts. Thus, for example, regarding a halakhic tradition of extreme intolerance regarding Jewish heretics (including an obligation not only to hate some types of sinners and deprive them of the usual forms of welfare, but also to actively cause them harm and even death), modern *poskim* facing the dramatic rise of secularism did not all take the same route. The Hatam Sofer and the neo-Orthodox community of R. Samson Raphael Hirsch opted for a policy of separatism. Maintaining a smaller and more selective community enabled them to faithfully preserve traditional norms and attitudes. Others who found it increasingly difficult to ignore the Jewish relevance of the larger surrounding community adopted various strategies allowing for a more tolerant view. These included taking into consideration the secularist's own understanding of his transgressions, re-defining the concept of *poresh min ha-tzibbur* in view of their widespread nature, establishing the inapplicability of the *mitzvah* of *tokheha*, introducing the notions of *tinok she-nishba* and intellectual ones of the times, etc.[16] This same variety of outcomes can be found in *psak* relating to relations between Jews and non-Jews, Zionism, and openness to secular culture, and can be explained to a great extent by the degree of stress sensed by the halakhically observant community to which such halakhot relate.

Hence, the importance of raising the practical problems women experience today with biblical and rabbinic formulations of their status that were framed in a patriarchal setting is not in order to override their dictates. It is rather to highlight the tension that previous sociological assumptions embedded in the Halakhah create for women today, in order to allow greater awareness of this tension to figure as another serious factor to be taken into account in halakhic deliberations. Adding this factor alters the contours of halakhic discourse, framing it in a new context, forcing original understandings of the meaning and significance of existing halakhic constraints to compete with other weighty considerations in determining our current understanding of Torah.

15 See Nahmanides' expression of the same idea in his introduction to *Sefer Milhamot Hashem* against *Hamaor* on Alfasi in TB *Berakhot*.

16 For further discussion of these issues, see Tamar Ross, "Between Metaphysical and Liberal Pluralism: A Reappraisal of Rabbi A.I. Kook's Espousal of Toleration," pp. 61-110.

My entire conception of *masoret* is not one of passive transmission of a hermetically sealed message. Precisely because of this lack of interdependence between authority and imperviousness to human predilections, I do not preclude the possibility of future correctives in light of the changed status of women today. My debate with Rachel Adler, a non-Orthodox feminist, is nevertheless motivated by my concern to preserve rabbinic authority and the integrity of what she terms "classical halakhah" in effecting this change. This, as I state clearly (Ross, p. 157), involves "working hand in hand with institutional representation of the law" and "in accordance with the accepted procedural rules and conventions of the legal tradition."

4. Advocacy of Indiscriminate Feminist Pro-activism

Like Frimer, I believe in the importance of intellectual honesty in interpretation. In addition to love for Torah and faith and trust in its resilience, this involves focusing on the constraints of text and precedent, attending to the details, being sensitive to the various levels of concern in the particular case at hand, alongside insight into the nature of the whole. It involves willingness to follow the directions of the text rather than one's own desires, and adopting a genre of interpretation that corresponds to the genre of the text. But intellectual honesty also requires acknowledging one's prior commitments and pre-understandings, and a willingness to hear and consider the ideas of others, including those that conflict with one's own, without prejudice, malice, or fear. In our day and age, this involves listening sympathetically to the newfound voice of women and interpreting Halakhah against the background of their emerging concerns. Therefore, like Adler, I also attach more importance to the role of context than representatives of the religious establishment would normally care to acknowledge.

Frimer asserts "that there is a general belief in Torah Judaism that halakhah, as it is today, did not take a 'wrong turn' and that it correctly reflects *retzon haBorei* (the will of the Creator)." I wholeheartedly share this belief, but would extend the element of divine guidance in the course of Jewish law not only to the "sincere give and take" of the *Bet Midrash* (Frimer, p. 79), but also to the outside realities that provoke and inform its direction. As Frimer states it, however (Frimer, pp. 70, 81), my assertion is that "within the limits of what Orthodoxy deems acceptable, feminists should simply forge ahead with their innovations, hoping to create 'facts on the ground'." Aside from reservations regarding the rather brute description of "forging ahead," Frimer's claim (Frimer, p. 81) that this assertion is consistent with my view "that the validity of the Torah comes not from its divinity but from

the fact that people accept it" is a total distortion. As I already wrote in my response to Yoel Finkelman's critique: "... 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" (Finkelman-Ross, p. 16; see also Ross, p. 205).

In recognizing this more oblique and subtle influence of community on halakhic understanding, I contend that even the perceptions of a halakhic authority as prominent and sensitive as R. Moshe Feinstein, whom Frimer cites (Frimer, p. 82) as a prime example of the ability to distinguish between core and context, or between sincere religious intentions and extraneous feminist goals, cannot remain unaffected by the influence of new forms of life on his halakhic assessments. In my book (Ross, p.181, note 35), I note one instance where R. Feinstein himself underwent a change of policy within three years over the question of *bat mitzvah* celebrations in the synagogue.[17] In our lifetime, we have both witnessed far more dramatic examples than this in *psika* regarding the range of religiously acceptable practice of women. Not all of these examples can be grounded on fine distinctions between noble religious zeal and the conscious or subconscious influence of feminist attitudes and new self-images (Ross, pp. 90-92). Moreover, given the breakdown of rabbinic authority in our day and many other features of the modern Jewish reality (Ross, pp. 51-52, 64, 178-83; 242-47), the attempt to forcibly limit the creation of alternative communal lifestyles in the name of rabbinic hegemony is a quixotic enterprise of debatable worth. A far more productive path is to encourage halakhic experts and women to work in harmony, striving to reach common ground on the basis of good will and persuasion, while recognizing the fact that we are all functioning now in an open marketplace of ideas, and that new reflections of *retzon haBorei* might emerge from the most unexpected places. This is not a prescriptive statement. It is simply a realistic assessment of the way things are.

5. Diminishing the Role and Status of Doctrine in the Religious Life

I believe that Frimer's persistent inability to grasp the possibility of a fidelity and commitment to Torah and to rabbinic authority that is not driven by literalist views of revelation and a naïve objectivism has to do with his misplaced equation of

17 In a responsum dated Shevat 1956, such a celebration is absolutely forbidden (*Iggrot Moshe, Orah Hayim*, part 1 [New York: Moriah, 1959], *simman* 104), whereas a responsum dated Sivan 1959 allows it on synagogue premises in the form of a *kiddush* and not a ceremonial meal (*seudat mitzvah*) (ibid., part 4, *simman* 36).

Jewish tradition with a very specific and narrow conception of Orthodoxy. This conception presumably stems from the legal positivist worldview favored by some followers of Rabbi J.B. Soloveitchik. This approach was developed in the last century as an outgrowth of Orthodoxy's concern for the preservation of the future of Jewish tradition in the face of modernity. In North America, in particular, this battle took the form of consolidating the ranks of "Torah-true Judaism" against watered-down commitments of Conservative, Reform, and Reconstructionist Jews, and exaggerating the differences between "them" and "us."

The need for sharply delineated borders is one that I can understand and to which I can also relate. However, preoccupation with communal identity and a "keeping of the gates" must be seen for what it is and assessed on its own merits, rather than grounded on a one-sided selective view of tradition that has lost its appeal and power of conviction for many. Frimer finds my position unsettling because – as he (correctly) states (Frimer, p. 71) – "halakhic Judaism, as a whole, accepts the Maimonidean thirteen principles of faith as its theological backbone," whereas my position appears to him to run roughshod over the seventh, eighth and ninth principles in this list (faith in the uniqueness of Moses' prophecy, in the divinity of the Torah, and in its immutability).

Contrary to Frimer's suggestion and to that of Rabbi Yitzhak Blau, however, I am not an Orthoprax who "denies the significance of dogmas in Judaism altogether" (Frimer, p. 74, note 28). My basis for straying from a literal understanding of revelation as a one-time affair does not rest on rejection of traditional belief statements as being irrelevant to religious life. Nevertheless, an important element of my theology is the understanding of religious truth statements as being something other than simple statements of fact.

It is instructive to note that Frimer attributes my freedom from literalism to historic awareness of the various interpretations that have been given to Maimonides' principles over the ages, stating (Frimer, p. 81) that I "repeatedly cite Marc Shapiro's encyclopedic work on the thirteen Maimonidean *Ikkarim* to demonstrate that, although these principles are now commonly viewed to be accepted in Orthodoxy, they were not always so." The truth is that I refer to Shapiro only once in my book (Ross, note 18 to chapter 10), and this in connection with an article he wrote on the subject of Maimonides' thirteen principles, as his book on that topic only came out around the same time that mine did. Much as I value Shapiro's work as a fine piece of scholarship, I did not wait for him in order to come to similar conclusions about the latitude of interpretation regarding the nature of Jewish dogma. A quick look at the sourcebook I compiled over thirty years ago for a basic class on

Maimonides' thought (which I taught for years at Bar-Ilan and continue to teach at Midreshet Lindenbaum to the present day) will confirm that I have long been operating with the same idea. I mention all this not in a spirit of one-upmanship, but in order to suggest that Frimer's mistaken impression of my reliance on Shapiro's book may be worthy of further examination. The fact that this book is entitled: *The Limits of Orthodox Theology – Maimonides' Thirteen Principles Reappraised* corroborates my hunch that Frimer's resistance to looser understandings of doctrine reflects the more general denominational fears of North American Orthodoxy, as narrowly defined by fundamentalist applications of a positivist approach to the realm of dogma.

If this is the case, Frimer does indeed have something to fear. While I am not a proponent of radical feminism, I am a proponent of radical Orthodoxy. This is so because my rejection of literalism goes far beyond the options suggested by scholarly historical studies after the fashion of Shapiro. As stated in chapter 10 of my book (Ross, pp. 193-97) and exemplified in my discussion of the principle of reward and punishment in chapter 11 (Ross, pp. 219-20), my understanding of the nature of religious truth statements relates to a more general sympathy for non-foundationalism (i.e., rejection of the view that there is one universal truth, "out there," simply waiting to be discovered, and unaffected by our perceptions of it). This leads me to view the function of such statements, in the wake of the 20th-century philosopher Ludwig Wittgenstein and his followers, as expressive, constitutive or regulative rather than propositional. The profession of doctrines and the willingness to live by them comes to reflect or enable certain attitudes, experiences or mindsets essential to the religious life or even to serve a ritual function as declarations of loyalty to the general worldview entailed.[18]

I am well aware that my view of the role of doctrine does not conform to the popular understanding of religious beliefs as simple statements of fact. However, if such an attitude is not Orthodox, then I'm afraid we shall also have to write off many proponents of Jewish belief throughout the ages — including Maimonides himself (with his distinction between "necessary beliefs" and "true beliefs"[19]) – as being outside the pale of Orthodoxy. Even the ordinary, unsophisticated believer is constantly called upon to bridge the gap between his plausibility structures and

18 For further elaboration of this position in Christian and classical Jewish theology, see my article: "The Meaning of Religious Statements in a Postmodern Age" (Hebrew), *Tarbut Yehudit Be-Ein ha-Se'ara: A Jubilee Book in Honor of Yosef Ahituv* (Tel Aviv: Hakibbutz ha-Meuhad, 2002), pp. 459-84.

19 Maimonides, *Guide of the Perplexed*, III, chapter 28.

the literal meaning of doctrine. As time goes on, the grip of newer models of reality leads to a greater consciousness of the limited ability of religious truth claims formulated centuries ago to correspond and incorporate more recent human discoveries and ways of thinking. How does Frimer, for example, as a natural scientist, relate to the biblical account of Adam's creation from the dust of the earth and the fashioning of Eve from his rib (or side)? Does he understand all the details of the flood and Noah's ark literally or even allegorically or symbolically? And what on earth is he imagining when he posits *Hashem*'s rest after six days of work at world-building as the basis for our *Shabbat*?

And if Frimer thinks that there is a difference in principle between such statements and those that refer to the one-time giving of the Torah at Sinai (as the cornerstone for all religious practice), what does he suppose that various *Hazal*, medieval commentators and subsequent *Gedolei Yisrael*, who conceived of later interpolations to the Torah or flaws in its transmission, were thinking of when they recited: "*Ve-zot ha-Torah asher sam* ***Moshe***," etc.? What is *he* thinking when he does so? And if he is concerned that a difference in quantity becomes a difference in quality once we allow for the more radical suggestions of biblical criticism, where does he draw the line? Is the choice really in his hands? The difference in principle between Frimer's choices and mine are not as great as he might imagine; much of it can be attributed to the difference between natural scientists and those who engage in the humanities in the plausibility structures to which they are exposed. While Frimer (I presume) cannot condone the recent persecution of a religiously devout Rabbi Slifkin, who finds it impossible to ignore the findings of modern cosmology, paleontology and zoology,[20] I cannot condone the persecution of the growing ranks of religious academicians, especially those involved in the humanities, who find it impossible to remain impervious to the findings of comparative religion, ancient Near Eastern languages, mythology, archeology, history, textual analysis, and the like. The popular guessing game – "What would so-and-so say if he were alive today?" – is admittedly highly speculative, yet I would be willing to lay great stakes on the conjecture that if Maimonides were our contemporary, he would apply the same rationalist approach to current biblical scholarship as he did with regard to his philosophical convictions, drawing equally unconventional conclusions.

It is not internal religious logic, but rather the obsession with borders and denominational lines that drives considerable segments even of *Torah u-Madda*

20 Further information regarding this controversy can be found on the internet: http://en.wikipedia.org/wiki/Natan_Slifkin.

circles to selectivity in their willingness to veer from literalist interpretations of dogma that cannot be defended on rational grounds. It is this that drives them to engage in often ludicrous contortions and splitting of hairs in order to come up with some consistent doctrinal formula that distinguishes between Orthodox conceptions of Torah and Halakhah and those of other denominations, such as Frimer's painful effort (Frimer, p. 80) to distinguish between the *Shela*'s understanding of God's unceasing voice and my understanding of cumulativism. The truth is that there are ideological statements of R. Zadok Hacohen regarding the relationship between the oral and written law that are uncomfortably reminiscent of Conservative notions of progressive revelation. There are also formulations in the protocols of 20th-century centenary meetings of leaders of the Reform movement regarding the imperative of commitment to heritage and "preserving of the historical precedents, sanctions and norms of Jewish life" that sound as though they might have been written by the Orthodox Rabbinical Council of America. This is not to say that there are no differences between denominations (otherwise, why my personal insistence on Orthodoxy?), but they are not to be exhaustively explained by this or that interpretation of dogma, and the manner in which such interpretations interact with our commonsense understanding of reality.

I am not so foolish as to suppose that conscious acceptance of my understanding of religious doctrine is food for general consumption, although I do believe that it is unconsciously adopted all the time by professedly Orthodox Jews. Nuances and convoluted thinking are not everyone's cup of tea. Knowing the surprising twists and turns of theological and scientific thought over the centuries, I do not even foster any certainty that this type of resolution will last forever. But the approach I have developed over the years does appear at the moment useful to some (including myself), who can no longer be satisfied with an unsophisticated understanding of metaphysical answers. One of the most gratifying tributes I recently received from one of my students at Midreshet Lindenbaum, after a year of exposure to this approach, reads as follows: "Thank you for helping me realize that I am not a heretic, just an intellectual." I have received many similar expressions of appreciation from secular students at Bar-Ilan, who have thanked me for providing them for the first time with a sense that perhaps there is something in the Jewish religious tradition for them after all. Given such testimonies, Frimer's fingers should tremble before they type out accusations that write off such attitudes as being outside the pale of Orthodoxy.

In this connection I would urge Frimer to heed the advice extended by R. Kook to the religious historian Zeev Yaavetz, who takes Maimonides to task for having

introduced foreign Greek ideas to Judaism in his philosophical writings.[21] R. Kook begins with the general declaration that if any idea served the faith of a man such as Maimonides, who are we to object to it? He then goes on to say that everyone has the right to choose the path suited to him (whether that of Maimonides or that of his opponents), in accordance with his spiritual state. Moreover, he adds that in general one should not adopt an unequivocal stand on general and abstract issues. The ultimate purpose of all the various positions is only to clarify man's relationship to his Creator in a manner that is intelligible to us. Sometimes, one theory does the job better and sometimes another. Circumstances dictate which theory will be more effective and have a more beneficial effect upon man.

Although R. Kook refers in this instance specifically to belief in the centrality of man to the cosmos, he suggests that his pragmatic approach should be applied to our understanding of the role of dogma in general. Indeed, the move away from scholastic debate regarding doctrine is already manifesting itself in a reshuffling of denominational lines that complicates rigid definitions of Orthodoxy and renders conventional distinctions anachronistic. Despite the horror of the Orthodox establishment, this may be indicative of a healthy religious response to the need to accommodate new views of doctrine and the manner in which we integrate these with other aspects of our lives.

III. DISCUSSION OF CONCRETE HALAKHIC ISSUES

Frimer's critique of my treatment of halakhic issues begins with the observation (Frimer, p. 82) that "the citations in this section of the book are overwhelmingly from secondary sources, strongly suggesting that [I have] little first-hand acquaintance with the primary sources [I am] citing or critiquing." Frimer charges that "this is borne out by the plethora of serious errors that will be detailed in the next section," indicating that I am "untrained in legal distinctions," repeatedly attacking "a legal system whose workings and methodology [I] do not seem to fully understand." Proof of this is that I "demand a single explanation for a broad spectrum of laws regarding women, appearing to be insensitive to the complexities and nuances of both law and life."

Firstly, I wish to declare that I am not out to "attack Halakhah," but rather to add a feminist perspective to the manner in which it has been implemented (particularly in matters relating to women and particularly by *poskim* in the modern Orthodox community), thereby enhancing its ability to address present day needs.

21 *Maamarei ha-Reayah* I (Jerusalem: Mosad Harav Kook, 1984), p. 112.

Beyond this, I do not believe that my reliance on secondary sources is as untoward as Frimer makes it out to be. I can testify to personal examination in the original of nearly all of the sources I cite (barring only a few that were impossible find, but regarding which I trusted the secondary source citing them as reliable). There were occasions when I had the choice of referring in my footnotes to primary Hebrew sources or to secondary-source English language anthologies, and preferred the latter option, taking into account the wish of my publishers to make the book accessible to a wider audience, or due to the fact that they enabled me to refer to all the relevant sources with one citation (in the Hebrew edition, this policy has been reversed somewhat).

Nevertheless, I would be the first to confess to my lack of proficiency in halakhic matters, and to the fact that my approach to most sources was focused on extracting pinpointed material (sympathetic or otherwise) relating to women's issues, rather than gleaning it naturally from a broader body of learning. In addition to the importance of seeing halakhic treatment of particular issues in their greater legal context, I appreciate the added understanding that is gained from years of practice in a particular discipline and its influence on discretionary matters of judgment. Indeed, I can understand that Frimer might view my treatment of halakhic matters as bearing the same "bull in a china shop" quality that I find in his treatment of Jewish thought and reliance on second-hand opinions.

Despite my decided disadvantage in terms of halakhic erudition, the type of objection Frimer raises illustrates a classic dilemma, unique to feminists. Every field of scholarship that women have initially entered has been historically established by male formulations and definitions of the ground rules. As Rachel Adler remarks,[22]

> We are confronting what Mary Daly calls methodolatry. In a methodolatrous system, the choice of problems to be addressed is determined by the method, rather than the method being shaped to address questions. Questions that do not fit the categories of the method are simply classified as non-data....The categories determine the questions asked. These questions in turn beget other questions, propagations from the same family.

Initially, women attempting to enter a male-dominated system are shamed and reproached for their ignorance. Their efforts to master the ground rules and primary body of knowledge are mediated by male experts, who have a natural interest in

22 Rachel Adler, "I've Had Nothing Yet So I Can't Take More," *Moment*, 8:8 (September 1983): 24.

structuring the material in a manner congenial to the existing system.[23] In order to gain acceptance, women generally must prove themselves not only by being more than equal to their male counterparts in terms of competence and expertise, but also in terms of their willingness to play by the rules. But, as they gain independence and mastery in their chosen discipline, women often find that there are major discrepancies between the questions they ask, the manner in which they approach available evidence, assess its relevance, and weigh it up when drawing their final conclusions. This pattern is particularly evident in the legal tradition.[24] Men on the inside who look at the issues on a case-by-case basis are convinced by the intricacies of reason applied in each particular ruling. Women, representing a special interest group marginalized on the outskirts, can more easily identify the implications of optional roads not taken and point to the general influence of unnecessary gender biases.

The same applies to women's immersion in Torah study. Frimer testifies, on the basis of three decades of personal experience (Frimer, pp. 79-80), that the more serious a female student of Halakhah becomes, the greater her confidence in the integrity of Halakhah and commitment to the halakhic system. I have no doubt that such is the case regarding the first generation of *talmidot hakha**mim***. But, as noted in chapter 12 of my book (Ross, pp. 228-30), on the basis of personal experience that I venture to suggest is even broader and more intimate than Frimer's,[25] a second generation of *talmidot hakha**mot*** is developing a far more complicated relationship to the object of their study. While still remaining absolutely committed to the system, many of these second-wave students seek to inform their Torah study with women's unique insights, alongside conformance to the established interpretive conventions and rules.[26] This involves a delicate dance especially on the part of

23 As I note (Ross, p. 229), in the case of Jewish education this tendency need not necessarily stem from interests in preserving male hegemony, but rather from a wish to deemphasize material that would be spiritually devastating to the sensibilities of the new wave of female religious enthusiasts.

24 See Bryna Bogoch, "Courtroom Discourse and the Gendered Construction of Professional Identity," *Law and Social Inquiry*, 24: 2 (1999): 601-47.

25 I have been involved in the women's learning movement since the establishment of the first women's Midrasha focused on study of the oral law in 1976, where I teach until the present day. I have also taught for many years in the Midrasha for women of Bar-Ilan, as well as in other Torah institutions for women of various stripes to the religious right and left of these.

26 See Ross, pp. 229, and my article: "A Bet Midrash of Her Own: Women's Contribution to the Study and Knowledge of Torah," *Study and Knowledge in Jewish Thought*, edited by Hayim Kreisel (Beer Sheva: Ben Gurion University, 2006), pp. 309-58.

such women, whose Torah study – unlike that of men – is more often accompanied by exposure to academia and the increasing influence of gender analysis. Such exposure leads them to discover the striking parallels to their situation in other religions, corroborating the extent to which forces beyond disinterested halakhic reasoning are at work.

Conducting this dance myself between the outsider-insider viewpoints, I can vouch for my personal acknowledgment of the need to abide by the constraints of halakhic process, and the interpretive by-laws entrenched in tradition. Contrary to Frimer's charge, I am well aware of the fact that "later authorities do not take the kind of innovative liberties that the talmudic sages availed themselves of in their development of the Oral Law," and elaborate on these distinctions in my book (Ross, pp. 49-52). In view of the afore-mentioned passage, as well as my insistence on the importance of conforming to established halakhic procedure in my debate with Adler (Ross, pp. 157-60), Frimer's diatribe against my "difficulty with halakhic process" (Frimer, p. 83) is extremely unfair. The basis he offers for this is an incomplete citation from my response to Finkelman (Finkelman-Ross, p. 13), in which I write that "the decisions of *poskim* regarding when to employ 'the open playfulness of *midrash aggada*' (or appeals to liberating considerations of overarching principles and context) and when to limit themselves only to close readings of texts and their minutiae are themselves judgments that *poskim* make daily." In citing this passage, Frimer leaves out the phrase in brackets and fails to note that my use of the "open playfulness" phrase was merely referring back to a direct quote from Finkelman, and was therefore misleading when taken out of this context.

Frimer's tendency to portray my halakhic attitudes in a distorted manner, as impervious to mainstream halakhic opinion, is apparent throughout his review. It makes me wonder why he is so bent on going into such great detail in order to set me up as a straw man. Thus, for example, in item #1 of his long list of so-called "errors in fact and analysis," when I write (Ross, p. 15): "A few rabbinic sources appear to assume that all the commandments were at the outset addressed only to men," he argues (with justice) with the reading of the *Tosefta* that supposedly serves as a basis for this opinion, but then alleges that this is my view. In actual fact, I say nothing of the kind and, on the contrary, follow with the observation that "the established consensus of rabbinic law" rules otherwise.

1. With regard to rest of the list that follows (Frimer, pp. 86-99), a few of the items included relate to genuine mistakes regarding reference pages or legal detail that I myself had already noted (along with a few others of which Frimer may be

unaware). To the limited extent allowed by New England University Press, these mistakes were already corrected in the second printing of the English edition of my book, and the rest were, to the best of my knowledge, attended to in the Hebrew translation published last month. Thus, the mistaken reference in item #1 (Ross, p.15, note 40) to Rashba's commentary was replaced with the correct one. In item #13, my statement that "R. Henkin accepts Shapiro's essential argument" (Ross, p. 180) was rephrased so as to avoid any mistaken impression, noting that R. Henkin preceded Shapiro in introducing the argument (originally brought by his grandfather, R. Eliyahu Henkin), that, from a strictly halakhic standpoint, "the dignity of the congregation" (*kevod hatzibbur*) ceases to be an issue involved in women's reading of the Torah, since the spread of the institution of an official reader (*ba'al korei*) who reads for all.[27] I have, by the way, also added references in the Hebrew translation to more recent material written by Eliav Shohetman and Gideon Rothstein to which Frimer refers (Frimer, p. 94, note 105), drawing attention to their alternative understandings of the concept of *kevod ha-tzibbur*. My imprecise phrasing of the biblical laws of *nidda* which Frimer points out in item #15 (Frimer, p. 98) was also already corrected.

With regard to item #2, when I write (Ross, p.15) that "halakhic compendiums will list such *mitzvot* as wearing fringes on any four-cornered garment (*tzitzit*), donning *tefilin* in the course of the morning, etc.," I think it's quite obvious that the purpose of the adverbial phrase ("course of the morning") to which Frimer objects (Frimer, p. 86) does not come to define the formal conditions of the *mitzvah* itself but simply the circumstances of its performance. In any case, knowledge of the fact that originally the *mitzvah* was to wear *tefilin* all day long bears no relevance at all to the main point of the sentence.

2. Mistakes or formulations liable to being misunderstood are always to be regretted, and if any reader of my book finds other instances of such I would certainly appreciate notice of these. However, I do not believe that anything in the short list above affects the substance of my argument or even my general credibility, a fact *Frimer* seeks to "obfuscate" with the sheer volume of his comments and sources. This is evident in item #3, where he provides some interesting additional

27 Nevertheless, it should also be noted that
(a) Shapiro's halakhic discussion of the issue of women's *aliyot* is far more comprehensive than that of his predecessors
(b) Rabbi Uziel already suggested the possibility of waiving considerations of *kevod hatzibbur* in a somewhat different manner in connection with women's right to vote and to be elected to public office in view of current sensibilities of the community, although he did not apply this argument to questions of women's *aliyot*.

information, none of which affects the substance of my argument. Thus, I am happy to learn of his recent article (referenced in Frimer, note 71) regarding women in leadership positions in the modern period, and have no doubt that I will benefit from reading it. I can imagine that this article documents welcome attempts to ameliorate the currently problematic thrust of biblical law as understood by Maimonides, prohibiting women from public office. Contrary to Frimer's allegation (Frimer, p. 86), I too am well aware of efforts of modern authorities to override Maimonides' understanding, by reasoning that "democratic acceptance of women's leadership does not fall under this category" (Ross, p. 54 and note 19 ad loc.). But if this is the position of "most modern authorities," as he claims, there is no question that the reticence of the Orthodox establishment to appoint women to positions of communal leadership is still exceedingly powerful[28] and is construed at least in the popular imagination as an affront to the dignity of the community. Such construal may not be the result of careful study of halakhic fine-points, but it most definitely is an indirect by-product of the general halakhic reluctance to extend to women positions of prominence or authority over men in the public sphere.

The same may be said regarding item #4: of course there is "no necessarily compelling connection" between the absence of female leadership in the ultra-Orthodox community and the objection in some isolated Hasidic circles to women driving a car (Frimer, p. 86), and I thank Frimer for reference to R. Shmuel Wosner's explicit halakhic ruling to that effect. But this simply proves the extent to which women's collective standing as defined by Halakhah on the communal level wields a more extended influence on their private lives. As feminists have long noted: "The personal is the political." In other words, the experiences and possibilities of women's personal lives are not just a matter of personal preference, but are limited, molded and defined by the texture and character and especially the systemic limits of the broader political and social setting in which these evolve.

3. In addition to the above items, most of the remaining objections appearing on Frimer's list (which he would presumably describe as "errors of analysis") stem

28 As testified by the difficulty (mentioned on p. 17 and note 59 in my book) that Israeli religious parties (not merely *haredi*) had in accepting Golda Meir's appointment as prime minister, or kibbutz Hafetz Hayim in accepting a woman as *mazkirat pnim*. An interesting anomaly I personally experienced a few years ago was an invitation to deliver a *dvar Torah* at the annual dinner of a modern Orthodox day school in the States. During the evening I was informed that the school was having difficulties in finding a principal as the only suitable applicants at the moment were women. The local rabbi, a genuine *talmid hakham* and also an Ivy League graduate, found this option halakhically problematic, notwithstanding his full support of the school's invitation to me.

from the differences between the insider and outsider view alluded to above. As a self-professed "Guardian of the Treasure," Frimer's interest is in presenting the harmonious picture of the insider. This leads him to treat the body of tradition as one unified and coherent whole, whose current applications confirm the consistency of its inner logic throughout. Writing from a feminist vantage point, my interest is in highlighting what Frimer himself phrases as "many of the troubling issues concerning the status of women in Jewish law" (Frimer, p. 68). This leads me to seek the initial premises responsible for these difficulties and methods of ameliorating their harmful effects.

Such differences in perspective inform our differences in relating to item #5. I have no doubt that much of the current rationale for women's dependent personal and family status reflects a benign interest in their welfare. This does not alter the fact that the initial premises responsible for this dependent condition reflect a sociological reality that is very different from ours today. (Contrary to Frimer's report [Frimer, p. 86], nowhere do I contend that the Halakhah is "designed" to subordinate women; merely that it *reflects* the traditional attitudes of a patriarchal society.) While Frimer assumes a unified Torah view with regard to women's domestic standing, my differing view regarding the development of Halakhah does not shy away from recognizing links to parallel developments in the surrounding culture (Ross, pp. 43-44; 128-29). This does not alter my commitment to biblical formulations and subsequent rabbinic guidelines in any way, or my recognition of the necessity to frame any new understanding within these terms. But it does allow me to *note* (rather than be "astounded by" [Frimer, p. 86]) the discrepancy between an idealization of woman's separate but equal role as homemaker, and her freedom from obligation to wed, procreate or care for children. The paradoxical nature of this discrepancy also allows me to feel free to wrest myself from the "preferred-role-of-women" rationale if and when it does not advance women's interests, religious and general.

I agree that Rabbi Berman's distinction between men's mandated roles and women's more open options is a useful one (and indeed it is worth considering whether it might somehow be incorporated into R. Bin-Nun's concept of *benot horin*, of which Frimer is critical [Frimer, pp. 94-98]). On the other hand, many feminists would view special protection for women which frees them from participation in communal activities as a double-edged sword, distancing them from the centers of power, in an age where homemaking has increasingly become a shared effort.

Regarding item #6, Frimer's rendition of my attitude to rabbinic midrashim regarding the participation of women in the giving of the Torah is again a distortion

of my views. As I have already stated (Ross, p. 43), "I do not regard apologetics as a necessarily negative phenomenon. Apologetics are the very stuff of civilization, and, if and when offered in good faith, they can assist in enabling the transition from one generation and mind-set to another." Frimer (Frimer, p. 83) seems to understand this statement as referring to apologetics in the defense of feminism. This makes no sense: the type of religious apologetics I was referring to in chapter 2 is obviously that offered in the interest of protecting traditionally held opinions in the face of new circumstances rather than the other way around. (I would even go so far as to suggest that my book is also an apologetic effort of this sort, striving to offer a systematic theological defense of women's status in Judaism by developing a dynamic view of Torah and Halakhah.) Hence, when noting (Ross, p. 20, note 92) rabbinic midrashim that expressly emphasize the participation of women in the Sinai revelation, even if I were to dub these as apologetics (which I am not inclined to do; my tendency would be to distinguish between the original impetus for the formulation of such midrashim and their subsequent function in modern times), this would not necessarily be regarded as derogatory. This nevertheless does not prevent me from also noting that such midrashic material still regards women "as a separate class – rather than as part of the norm," and distinguishes between the level at which they heard God's word as opposed to that of the men, thereby limiting their comfort for contemporary women.

Regarding item #7, the term "standard prayers" that I use is perhaps infelicitous, although I think Frimer understands well enough that I am referring to phrases such as "*kol ha-kahal ha-kadosh ha-zeh...hem u-nesheihem u-veneihem u-venoteihem, ve-khol asher la-hem.*" These simply echo the form of the biblical verses recited at *Shabbat kiddush*, whose words are directed to the head of the household, instructing: "you shall not do any manner of work, you, nor your son, nor your daughter, nor your man-servant, nor your maid-servant, nor your cattle, nor your stranger that is within your gates," leaving out any mention of the wife and mother of the home. It is a welcome development that increasing editions of the *siddur* are taking women's participation into account, and that there are halakhic rulings supporting the use of feminine pronouns in the formulation of prayers. But again, this does not alter the fact that all the classical Jewish sources are addressed to men, nor the importance of noting this in a summary of aspects in the traditional status of women in Judaism that are problematic for many today.

Items # 8-14 are all classic examples of the greater difficulties women face in working with a methodolatrous system, because – as opposed to the examples above – they all bear some connection to a more deeply entrenched distinction that works against their desire for further equality in these areas: i.e., women's unequal

obligation to perform *mitzvot*.

Regarding items #8 and #9 (relating to women and *minyan*), of course I understand that *edah* is not the original criterion for distinguishing between men and women with respect to their standing in the ritual community, and that the use of this term in its biblical circumstances is merely a mnemonic device. Viewed from the inside, the difference in obligation between men and women is clearly the explanation for women not being counted towards the quorum of public prayer rituals. It could also very well be – as Frimer suggests in his excellent article on women and *minyan* – that differences between men's and women's *mitzvah* obligations also offer the most convincing explanation for the fact that, despite this form of exclusion, women may nevertheless be counted in the quorum required for public martyrdom. But recognizing the pernicious influence on the religious lives of some women today of the paradoxes arising from such differences might – in some contexts – have an impact on the relative weight and significance accorded to these. It could – as in the example of attitudes toward secularism – encourage novel definitions of these differences and their conditions of applicability, as exemplified by R. Yoel Bin-Nun's attempt (item #14) to utilize the concept of *benot horin*. I dare say such recognition may already have affected the manner of tallying the "majority of poskim" who count women towards *minyan* in the five rituals Frimer lists.

I am aware that not all the effects of differences in obligation between men and women are equally amenable to change by the internal logic of the halakhic system. With regard to *minyan*, it may well be that we are dealing with a logical effect of difference in obligation that is so tightly woven into the fabric of Halakhah that radical change in this case is unthinkable to traditionalists, at least for the moment. Such, however, may not be the case with regard to issues of *tzitzit* and *tefilin* (item #10), women's learning and prayer groups (item #11), assessments of women's motivation (item #12), women's *aliyot* (item #14), or *hilkhot ishut* (#15). In all these cases, greater sensitivity to women's interests might lend greater weight to optional roads not taken, without causing a sense of major upheaval.

Thus, for example, with regard to item #10: while women investigating the permissibility of women wearing *tzitzit* and *tefilin* must inevitably figure the discussion around the very same factors that Frimer raises (the danger of *yohara*, the optional nature of the *mitzvah*, the special sanctity of *tefilin*), such considerations and the majority stance of codifiers over the last five hundred years might be overruled by the rare historic precedent of Michal bat Shaul and a few other devout women over the ages, some minority views, and the added importance that re-appropriation of this *mitzvah* holds for some women today.

With regard to item #11, the fact that most *poskim* have thus far not used this kind of reasoning with regard to women's *tefila* groups, yet nevertheless have generally come to more favorable attitudes regarding advanced Torah study for women is not at all self-evident, as Frimer suggests, and cannot be explained on formal grounds, as demonstrated in chapter 5 of my book. On the one hand, Maimonides' opinion regarding Talmud Torah for women – even though widely quoted – is clearly a minority opinion among the *Rishonim*. Sara Schnirer's agitation for increased Torah study for women – contrary to Frimer's account – did not achieve the blessings of the generation's leading scholars right from the start. Even the grudging grounds offered by the Hafetz Hayim for his support (*mutav tiflut zu mishe-tiflut aheret*) were initially the subject of sharp controversy and opposition on the part of heavyweight *poskim* (including R. Kook). This opposition to advanced Torah study for women is undergoing some measure of revival in *haredi* circles today (witness the latest furor against women's higher education instituted by Rabbi Elyashiv, which is not directed exclusively to women's secular studies and training for high-powered careers). On the other hand, Frimer's claim (originally tendered by Rabbi Meiselman) that "a true desire for *kiyyum ha-mitzvah* would dictate that women pray with a bona fide *minyan* of ten men" (Frimer, p. 92) cannot provide a satisfactory explanation for opposition to women's *tefila* groups. As I have already demonstrated (Ross, p. 84), Rabbi Twersky offers a nearly contradictory explanation for the same bottom line, while Rabbi Berkowitz enlists the argument of women's formal exemption from prayer in order to reach the opposite conclusion and endorse such groups.

Thus, the "obvious differences" that induce current halakhic support for women's advanced Torah study yet reject their independent convening for prayer do not "escape" me (Frimer, p. 91). I simply locate them in another place – one that has at least as much to do with subjective methods of assessing the weight of various considerations as with conclusive halakhic considerations. This – when tempered with the direct testimony of women on their situation – might lead to different conclusions. I cannot help feeling that in debating this issue Frimer is simply re-treading old ground.

The same may be said regarding item #13 – the issue of women's *aliyot*. In condemning feminist reliance on minority views as tendentious (Frimer, p. 94), Frimer ignores the fact that there is a long tradition, from the time of the Mishnah, supporting the reliance on minority opinions in times of stress (*b'she'at ha-dehak*). The history of Halakhah is riddled with instances where *poskim* have gone out on a limb in order to promote a new direction which they feel is necessary or beneficial to the religious life. The dramatic change in the status of women in modern society

may be the sort of *she'at dehak* that turns such opinions and precedents into the correct solution for a new situation.

As for my lack of "intellectual honesty or integrity" in presenting R. Bin-Nun's pro-feminist suggestion (item #14) "without the slightest word of criticism or critical analysis" (Frimer, p. 95), I do not pretend to have the expertise necessary for conducting such a discussion. My motive in raising his suggestion, as well as in scrutinizing other halakhic rulings, is avowedly biased. It is an attempt to draw attention to a novel effort to address the limitations of a methodolatrous system, and respond sympathetically to the earnest desire of some women to assume greater obligation in the performance of *mitzvot*. How far Bin-Nun's suggestion can be accommodated in light of other formal and procedural considerations is a question to be determined by authorities with halakhic expertise far greater than mine. In general, when I cite unexpected minority views, which appear to complicate mainstream notions regarding women's place in the tradition or their halakhic possibilities, I do not presume to take sides in these matters, knowing full well that I have nowhere near the knowledge, experience or authority for making such decisions. However, Frimer's allegation that I nowhere address "essential methodological questions" such as the role of intellectual honesty and integrity or considerations of result in halakhic rulings is totally unfounded. My detailed critique of positivist claims to objectivity throughout chapter 5 (including Frimer's attempt to distinguish between public policy and pure Halakhah [Ross, pp. 83-84]) and my discussion of halakhic pro-activism and its limitations in chapters 8 and 9 address precisely these issues, simply reaching different conclusions than his.

Regarding item #15, Frimer's rendition of R. Ovadiah Yosef's responsum (Frimer, pp. 98-99) is plainly mistaken. Aside from the fact that fulfilling of *onah* obligations entails satisfaction of the sexual needs of both men and women, this particular responsum makes no mention of a husband's obligation to satisfy his wife's sexual needs the night before a trip. The general point of the responsum is to advocate leniency regarding when a woman whose menstrual bleeding has ceased may begin counting "seven clean days." One of the sections of the responsum is addressed to the query of a woman whose husband insists that she disregard her family's custom of counting seven clean days after seven days of *niddah* (instead of the usual five) before immersing in the *mikveh*. R. Yosef counsels the woman not only to disregard her family custom, but also to commence counting seven clean days after only four, as this is the length of her actual menstrual bleeding. R. Yosef's inclination towards leniency in this matter is explicitly motivated by a concern for men's interests. It is driven by a general assumption that women's tendency to stringency in counting days reflects their lesser sexual drives and does

not take sufficient account of the greater trials of men to keep to the straight and narrow when surrounded by a culture of sexual permissiveness and constant temptation.[29]

In the interests of protecting religious authority and of distancing myself from allegations of halakhic anarchy, I might add that particularly with regard to questions of sexual relations, which are by nature a private affair, I would not recommend that women "simply forge ahead with their innovations, hoping to create 'facts on the ground'." I personally have kept the halakhot of *harhaka* and "seven clean days" throughout my married life, and absenting halakhic approbation would most likely do so again in my next *gilgul*. This does not prevent me from pointing to the limitations of a predominantly male perspective in rulings on such matters. Given greater awareness of women's sexual needs, *as defined by women themselves*, Frimer's contention (Frimer, p. 99) that "many, if not most, authorities rule like Maimonides that the prohibition against physical expressions of affection before a menstruant immerses in a *mikveh*" may not be sufficient justification for ignoring those who rule otherwise.

IV. AN AFTERWORD

I am not by nature an assertive person, and have a great distaste for controversy and intellectual sparring matches. Although I was indeed personally offended by the manner in which the publication of Frimer's review was conducted and by some of its tone, my main concern is that the ideas themselves that he presented in my name be given a fair hearing, and be depicted accurately. If I have offended anyone in the process, I apologize for this now. I would like to believe that any residual ill feeling can be overcome, and lead to a spirit of greater understanding and communication in the future.

29 For more extensive analysis of this *teshuva* and R. Ovadya Yosef's rulings regarding "seven clean days" in general, see Ariel Picard, *Mishnato shel Harav Ovadya Yosef Be-eidan shel Temurot: Heker Hahalakha u-Bikoret Hatarbut* (Ramat Gan: Bar-Ilan, 2007), pp. 229-43.

Aryeh Frimer, Reply to Tamar Ross's Response

The length of my response has been limited by the editor; I will therefore be brief. Having studied Prof. Ross's rejoinder (as I did her book), I find that she has not responded to the central critique of my review, which relates to her theology and her halakhic analysis. Regarding the former, I argued that the theology she presents in this volume – as nuanced, profound and erudite as it may be – cannot hide the fact that it is simply at odds with a number of the basic tenets and principles of faith that have characterized Orthodox Judaism over the millennia. In particular, I noted that Jews have traditionally accepted a Sinaitic revelation as a one-time historical reality, with new insights into that original revelation gleaned in every generation. However, the new theology proffered by Prof. Ross maintains that divine revelation with halakhic ramifications is an ongoing process, and continues down to our very day. Hence, it does not require that Moses' prophecy be unique, or that the entire written Torah was revealed to him (*Torah miSinai*). Secondly, it denies the Torah's immutability, and takes exception to its gender-related religious obligations and exemptions (e.g. time-determined commandments) – whether they find their source in the *Torah she-bi-khtav* or *Torah she-be-al peh*. And finally, it posits that a halakhah interpreted and transmitted predominantly by males cannot be accurate and dispassionate, but perforce reflects a male perspective and bias. As a result, this novel theology questions *Hazal*'s authority as interpreters of the Torah, and contests the accuracy of the *mesora* – the transmission of the oral tradition. If this is the case, then – no matter how nuanced or sophisticated Prof. Ross's reasoning and rationale, no matter how sincere and sanctified her motivation, no matter how beneficial her formulation – the suggested theological approach would seem to contravene the seventh, eighth and ninth Maimonidean principles of faith. I sit in judgment of no one's faith, but a theology that rejects three such principles is certainly not in consonance with how classical Orthodoxy has understood itself over the generations.

In addition to the frontal challenge to *Hazal*'s authority, the work reveals a lack of appreciation of the working and dynamic of the halakhic process. The charge of "methodolatry" serves merely as an attempt to further sidestep the halakhic system. Moreover, Jewish law, first and foremost, calls for intellectual integrity. I am,

therefore, deeply troubled by any goal-oriented analysis that exhibits a conscious attempt to equate human temporal need with the divine will.

Prof. Ross has confused my lack of acceptance of her carefully crafted arguments with a lack of understanding. Since she considers my faith naive and theology unsophisticated, we will just have to agree to disagree. Prof. Ross claims that the classical view of revelation is "a simplistic and theologically inadequate view... which is not necessitated by the sources." By contrast, we have sought to document that it is well rooted and affirmed by some of the keenest and most sophisticated minds of Jewish history. My conclusion that Prof. Ross has not succeeded in her primary objective – to bridge the gap between classical orthodoxy and unabashed feminism – is very disappointing for me personally, and for many others who consider themselves Orthodox feminists in both practice and creed.