Review Essay

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Reviewing a book usually focuses on the presentation of its main theme. But this volume also demands a discussion of much more: the relationship of its contents to the title; the choice of authors who deal with the issues; the nature of the introduction; and the publisher. Indeed, in some ways the main topic is far from the most interesting.

One couldn’t tell from the title, but the book focuses almost exclusively on one simple halakhic question: may women in an Orthodox shul get an aliya, that is, be called forward to recite the blessings on the Torah when it is read publicly? We may instinctually think the answer is no, but it is important to realize that even if the answer is negative, the reasoning is not the same as that for excluding a woman from being the hazzan, the cantor who leads the service, sometimes called the shalih tsibbur, “the messenger of the congregation.”

Halakha is not an egalitarian system; there are areas of life in which men and women have differing obligations, and prayer—private and public—is one of them. To fulfill one’s obligation vicariously—that is, in common halakhic parlance, “to be yostei” through the actions of another—the active person cannot have a lower degree of obligation than the passive individual. Since a woman has a lower degree of obligation than the men in the congregation with regard to public prayer, she cannot act as a hazzan on their behalf.

But that is not the logic involving the question of women getting an aliya. Here the discussion begins with a bereita from Megilla 23a:
Our Rabbis taught: All may be included among the seven [called to the Torah on Shabbat], even a minor and a woman. But the Sages said that a woman should not read in the Torah because of the dignity of the congregation (kevod hatsibbur).

Rabbi Mendel Shapiro takes this at face value. The only impediment to a woman receiving an aliya, he argues, is that her congregation would consider it an affront to its dignity. If the members of the congregation have no such reservations—or if they think denying a woman an aliya absent any other formal halakhic objections is itself offensive—there is no reason to deny her the honor, he argues.

Of course, this places interpretation of a text in opposition to centuries of practice. But, as Rabbis Aryeh Frimer and Dov Frimer have pointed out, Professor Haym Soloveitchik, in his now classic work “Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy,” [Tradition, Vol. 28, No. 4 (Summer 1994), pp. 64–130] skillfully documented the gradual move in Contemporary Orthodoxy from a mimetic halakhic tradition to a text-based tradition. He further noted the profound impact that this transition had on the move of contemporary Orthodoxy in the 20th Century towards greater humra (stringency). What we are now beginning to witness is a similar, but opposite, text-oriented movement towards greater kula (leniency).1

In any event, it will come as a surprise to no one that there are other ways of interpreting this text, not the least of which is that aliya for women should constitute an affront to the dignity of the congregation. That is, the rabbis were simply describing what should be the norm, and if others think otherwise, it is they who should reconsider their positions in light of rabbinic legislation. Indeed, the bulk of the book is an enlightening and vigorous debate between Shapiro and his opponents on how to interpret centuries of texts and commentaries.

Rabbi Daniel Sperber’s essay in the JOFA volume approaches the issue from a somewhat different perspective. He concedes that granting a woman an aliya might violate kevod hatsibbur. However, he says, denying a woman an aliya violates kevod haberyot, respect for human dignity required for all people. Modern sensibilities make this exclusion painful and humiliating for learned women, and in a conflict between these two requirements, kevod haberyot should trump. R. Sperber’s standing as a recognized Torah scholar whose se-


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ries Minhagei Yisrael has become something of a classic lends force to his arguments, as do the many halakhic examples that he marshals. Professor Eliav Shochetman, Professor of Mishpat Ivri at Hebrew University, argues that the examples are hardly parallel and the total argument lacks force.

However, reviewing the details of this debate—let alone taking sides—is not my concern here. Other important issues flow from this volume, first and foremost from the fact that the editors and publishers chose Rabbi Shlomo Riskin as Shapiro’s major opponent.² R. Riskin had championed Women’s Prayer Groups (WPGs)—an earlier attempt to expand women’s role in the synagogue—as well as women’s hakafot (dancing with the Torah scrolls) on Simhat Torah. These WPGs were women-only groups in which the Torah was read by the participants without the blessings before and after the reading (as these blessings require the presence of a halakhic minyan). These prayer groups were met with fierce opposition characterized for the most part by ad hominem attacks from both sides, the details of which are best not recorded here. I think it fair to say that these WPGs gathered no traction in the Orthodox community. There was an ersatz character to the manipulation required to make the pseudo-aliyot “look like” actual aliyot, and it might even be fair to say that the whole program was kept alive by the ad hominem attacks on the participants. It is not really a relevant issue any more.

JOFA—the Jewish Orthodox Feminist Alliance—had championed these WPGs, and with the sponsorship of this volume it has apparently taken a new approach. First, rather than look for women-only expression of communal prayer, the focus is now—as the title of the book suggests—women and men in communal prayer. Second, they welcome a serious halakhic discussion of the issue, and by choosing R. Riskin as the lead opponent they remove ad hominem arguments from the table. No one can claim that R. Riskin bases his opposition on an unsympathetic attitude towards expanding women’s participation in communal prayer. As described by Blu Greenberg (founding president of JOFA) on the back cover, this volume was meant to introduce a civil discourse which is a makhloket le-shem shamayim, an argument “for the sake of Heaven,” where the dissenting views were cogent, thoughtful, and welcome.

Indeed, it is interesting to contrast this with the original presentation of R. Shapiro's thesis in the on-line *Edah Journal.* There, the “opposing” view was presented by Rabbi Yehuda Herzl Henkin, respected author of the four volumes of *Responsa Bnei Banim.* R. Henkin took issue with some of the fine points of R. Shapiro’s analysis, but in the end he conceded that R. Shapiro’s conclusion was correct. His objection was on practical and not halakhic grounds: “Regardless of the arguments that can be proffered to permit women’s *aliyot* today . . . [w]omen’s *aliyot* remain outside the consensus, and a congregation that institutes them is not Orthodox in name and will not remain Orthodox in practice.” This is a far cry from R. Riskin’s opposition to R. Shapiro’s conclusion.

In this respect, it is instructive to take note of R. Benjamin Lau’s observation:

> The rabbi is expected to know and present the various aspects of each issue and not to conceal those aspects that are inconsistent with his own point of view. If a rabbi is untrue to the sources and reaches his decision without taking account of conflicting views, he will be seen to be untrustworthy. And a lack of trust between a rabbi and his community of questioners will drive a wedge between that community and the Torah overall. Stating the truth, of course, does not require the decisor to remain neutral; his role requires him to reach a decision one way or the other. But the decision must be reached through disclosure, not concealment, of the alternatives. . . . Now, when everyone has access to the [Bar Ilan] Responsa Project data base and Google provides answers to all imaginable questions, everyone can check every responsum and examine its trustworthiness. A rabbi who rules in an oversimplified way, whether strictly or leniently, in a area of halakhic complexity will be caught as untrustworthy.

Perhaps the most blatant example of “neglecting” to fully report halakhic options regarding women and communal prayer is found in the various recent compendia on halakhic mourning practices. One finds no reference to Rabbi Moshe Feinstein’s note that “throughout the generations it was customary that at times a poor woman would enter the *bet midrash* to ask for charity, or a woman mourner would enter to say Kaddish.” There is no mention that allowing women to say Kaddish in the synagogue is the position taken

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by late leading Lithuanian halakhic authorities of the past generation, including Rabbis Hayyim Ozer Grodzinski, Yosef Eliyahu Henkin, and Joseph B. Soloveitchik.\(^7\) (Rabbi Soloveitchik adds that there is no problem if she is the sole individual saying Kaddish.) Absent too is the conclusion of Rabbi Aaron Soloveitchik that it is forbidden to prevent daughters from saying Kaddish.\(^8\) This is no less than a ziyuf haTorah, a falsification of Torah, that should offend everyone, not simply those who favor allowing women to say Kaddish.

Indeed, with this in mind, it is worth noting at length the reaction of one senior Torah authority to an example of such a presentation. In his review of Rabbi Aharon Feldman’s The Eye of the Storm, Rabbi Aharon Lichtenstein was hardly championing women wearing tefilin (phylacteries) when he wrote the following:

With respect to women’s tefilin, we are told first “that the classic authorities agree unanimously that women are forbidden to wear tefilin.” Shortly thereafter, we read of “the nearly unanimous [my italics —A.L.] array of the classical poskim cited above who prohibited women wearing tefilin”; but then again read “of unanimity among halachic authorities to forbid it.” Strictly speaking, of course, if we use Rishonim as a yardstick, neither statement is accurate. A practice which was regarded as open to acceptance by the Rashba, the Riva, the Meiri and less prominent Rishonim—all of whom asserted, minimally, that while the Yerushalmi cites conflicting views as to whether authoritative chachamim had protested against Michal’s (the daughter of Shaul HaMelech) wearing tefilin, the Bavli, whose views ordinarily prevail, assumed unequivocally that they had not—can hardly be peremptorily dismissed for lack of support. As to the statement that the Vilna Gaon held, contrarily, that the Bavli could be aligned with the Yerushalmi, I believe the Vilna Gaon’s remark can be readily interpreted as conjecture rather than fact. Or again, inasmuch as the practice was nowhere proscribed by the Rambam or the Mechaber in Shulchan Aruch and, on some readings, was even permitted by the Ba’alei HaTosafot—it cannot be said to have been rejected, either unanimously, or nearly unanimously. Are not the giants here cited “classical authorities?”

Moreover, in the very same paragraph in which the Maharam is cited as a source for extending the scope of the term guf naki (a clean or pure body) to include pure thought devoid of salacious content, the author of the Orchot Chaim, a fourteenth-century Provencal compendium, clearly indicates that he, at any rate, thought the extension has no bearing upon women, who, in his opinion, are ap-

\(^7\)See the more extensive discussion in my Women, Jewish Law and Modernity (Hoboken, N.J.: Ktav, 1997), pp. 84–94.

\(^8\)R. Aaron Soloveitchik, Od Yisrael Yosef Beni Hai, no. 32.
parently not defiled by sexual ruminations. And indeed, he quotes the Rashbag as holding, without qualification, that a woman may wear tefillin and recite their berachah. I presume that Rabbi Feldman felt that these points could and should be outweighed by other factors. For my part, I would submit that given the complexity—rather than the supposed simplicity—of the issue, we can readily and emphatically agree with Rabbi Feldman’s judgment, to the effect that traditional prevalent practice should be sustained. But let the basis of that position be clearly understood, and let us beware of passion infringing upon precision. Assuredly, we can emulate the model cited in the Gemara (Ketubot 83a-84b), and common in legal practice, of accepting juridic conclusion, but for different reasons.

The first synagogue to adopt and implement R. Shapiro’s and R. Sperber’s analysis was Shira Hadasha in Jerusalem, creating what is now called a Partnership Minyan. While it has a physical mehitsa separating the men’s and women’s sections, it differs from most Orthodox shuls we know in a number of other ways besides allowing aliyyot for women as well as men and allowing them to read the Torah. For example, women may serve as the prayer leader for Kabbalat Shabbat. I say “the prayer leader” rather than hazan or shaliah tsibbur because—they maintain—a hazan or shaliah tsibbur is the one through whom individuals fulfill their obligation, as is the case with services containing obligatory recitation of the Amida. Since there is no obligation to say Kabbalat Shabbat, there is no reason to restrict the person setting the pace to an adult male. Indeed, in some communities there is no formal leader for Pesukei d’Zimra, and in many the hazan stands away from the amud where the hazan usually stands to indicate that he is fulfilling a different function—setting the pace rather than acting as a hazan through whom one’s obligation is fulfilled.

Rabbi Barry Freudel, writing in Tradition, the journal of the Rabbinical Council of America, argues that Kabbalat Shabbat has over time become obligatory for men, and as such requires an equally obligated male adult hazan. “Only someone who is required to pray communally can lead such a service and fulfill the hazan’s role in that prayer.” This would seem to preclude women and pre-bar mitsva children from serving as prayer leaders.” Having discovered (or constructed) a new obligation for men not mentioned in the halakhic codes or responsa literature, R. Freundel offers a novel argument on

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why the custom is to allow minors to act as hazzan for Kabbalat Shabbat. “The only rationale I can find is that since there is a rabbinic mitsva of hinnukh—of educating a child to perform the mitsvot that he will need to fulfill as an adult—a child could, therefore, be used in the prayer leader’s role in those parts of the service that are more generally derived from custom than from rabbinic law. . . . Since women are not going to grow into a position where being a Hazan is a possibility in a mixed gender setting, there is no mitsva of hinnukh for them in this context.”

When a New York Orthodox synagogue instituted a women leading Kabbalat Shabbat services, the Board of Directors of the Union of Orthodox Jewish Congregations of America resolved as follows:

> With regard to the matter of a woman leading Kabbalat Shabbat services before an audience of men and women, the position of the Orthodox Union is that such practice is improper and constitutes an unacceptable breach of Jewish tradition.

Rabbi Michael J. Broyde, a dayan in the Beth Din of America (affiliated with the Rabbinical Council of America), offered a fuller explanation of this position. He conceded that the recitation of Kabbalat Shabbat does not have the status of a davar shebikedusha (a section of the prayer service requiring a male minyan), so a woman acting as a hazzan would not violate the classical yatza-motzi rules that govern fulfilling one’s obligation vicariously. He noted that Kabbalat Shabbat is generally discussed in the classical literature (see Shulhan Arukh 261 and 263 as well as Ishei Yisrael 36:14–15) in the context of a minhag and nothing more, and generations of tanaim, amoraim, and rishonim did not say otherwise. Furthermore, he said, it is not generally treated as a davar shebikedusha in many communities, where, for example, a child will lead Kabbalat Shabbat, hazzanim repeat words in Lekha Dodi who never repeat words in tefilla, and the hazzan will step off the bima to dance and engage in many other frivolities that are inconsistent with a davar shebikedusha structure. Claims that women cannot lead Kabbalat Shabbat because it is a davar

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11 Freundel, “Kabbalat Shabbat.”
12 http://www.ou.org/index.php/news/article/75771/ In their article “Partnership Minyanim” (n. 2 above), R. Aryeh A. Frimer and R. Dov Frimer argue that a woman leading Kabbalat Shabbat or Pesukei de-Zimra violates kavod ha-tsibbur, just as her getting an aliya does.
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shebikedusha or because it is a violation of the yatza-motzi rules, like a woman saying Hazarat HaShatz for Musaf, seem, he said, counter to the normative halakha and the normative minhag of many shuls. Moreover, he doubted that there is any violation of halakha associated with a shul skipping Kabbalat Shabbat completely, or having no hazzan at all for it.

Finally, he concedes that as a matter of normative halakha, we would be hard pressed to claim a consensus that women may not lead any communal activities in an Orthodox community, and that it is a violation of general rules of modesty in our community.

There certainly are situations where women do lead even yatza-motzi activities, such as kiddush or maggid (or even Mourner’s Kaddish according to some) and women certainly make birchot hanehenim (blessings after eating foods) for mixed audiences. In many of our communities, we have in fact developed practices that permit women to engage in certain public communal rituals that even fulfill the obligations of men, such as kiddush. Certainly, to the extent that there is a generic claim of a lack of modesty (tzniyut) in a woman leading Kabbalat Shabbat, I think that this argument does not resonate as correct in many RCA or OU communities.

R. Broyde agrees with the OU position because it is a violation of minhag yisrael, traditional Jewish custom. Yet, he says,

[L]et me confess that I do not think that merely pointing out to the community that having a woman lead Kabbalat Shabbat is a vast breach of minhag yisrael is enough of an explanation of why it should not be done when speaking to large segments of the Orthodox community. Our community looks at many of its innovations in the last century that were breaches of historical minhag yisrael and yet necessary to adapt to life in America. The notion of Jews speaking the vernacular or dressing as gentiles do is a breach of minhag yisrael, the concept of a yeshiva which is a university or college is a breach, as is religious Zionism, as is the rabbi giving a sermon in the vernacular, as is women learning and teaching Torah, as are literally dozens of innovations in American Orthodoxy. Each of us, in our synagogues, I suspect, engages in practices that would have been completely unacceptable a century ago in Europe. Our community, I think, will not agree with us if we oppose this merely because it is an innovation. We must explain why it is a bad innovation. . . . Claiming technical violations of halacha based on what normal educated members of our community think are difficult and farfetched reads of the halacha will not lead to our community respecting us or listening to us.

For R. Broyde, the problem with this particular innovation is that it “badly obfuscates between situations where a proper shaliah tzibbur is needed and where one is not, and thus a bad innovation, likely to lead people astray.” Having a minor lead the services is not a problem because everyone realizes that...
he is minor. Yet people associate adult women with adult men, not children. Hence allowing women to act as *shaliah tsibbur* creates a confusion not to be associated with children leading the services.

Of course, once the issue is whether or not something is a good or bad idea, honest people will differ. Indeed, one might come to the opposite conclusion, as R. Aaron Soloveichik did in the issue of women saying Kaddish: Forbidding what is permitted might backfire and encourage those who would permit what is really prohibited.

Yet it is not clear how significant that specific debate might actually be. Few women—like few men—want to serve as a *shaliah tsibbur*. Allowing those who so desire to do so because the activity only *looks like* serving as a *shaliah tsibbur* without being one calls to mind the *ersatz aliyot* of women of the women’s prayer groups in which the activity was justified in that it only *looked like* an *aliya* without being so.

Yet there is something about Kabbalat Shabbat services at Shira Hadasha that does impact on the more general question of women and communal prayer. At Shira Hadasha, there are 130–140 men and 170–180 women present for Kabbalat Shabbat services. Compare that with what goes on in most Orthodox synagogues, where not only are no women present, but the women’s section is often populated by men, making it very uncomfortable for women to show up.

Similarly, Shabbat Shaharit starts with about 50 men and 50 women, and by the time the Torah is read there are 120 men and 140 women. (There are no services for Shabbat Minha and Maariv.) Services will not start until there are 10 men and 10 women present. This is not done as a neo-halakhic construct, but rather to emphasize the fact that women are welcome as an integral part of the communal experience.14 (This idea was introduced decades ago at Harvard Hillel when Aryeh Frimer was the rabbi.)

Now, the question that comes to mind is why congregational rabbis don’t mind that women don’t come to shul for Kabbalat Shabbat, seuda shelishit, or Shabbat Shaharit. It simply will not do to say that they are home with the children or preparing the family meal. For the large majority of women who could be in shul—including teenagers and grandmothers—this is simply not true. Rabbis who spoke out against women’s prayer groups on the basis of the women losing the opportunity of praying with a halakhic minyan generally express no disappointment that women who could be in their shul on time would rather have a relaxing cup of coffee. Indeed, if a woman walks over to

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14I thank Sam Pilzer for these figures and information.
join a minyan at the side of some simha celebration or comes on a weekday morning to a shul minyan, she risks being labeled a “feminist.” Shira Hadasha is not so much pushing the envelope on leadership positions in shul as it is forcing the discussion of the place of women in communal prayer. The JOFA book focuses on the “simple” question of women getting an aliya, but it challenges us to consider the more significant issue: do we really think women should be part of the communal synagogue experience and, if we do, how shall we go about encouraging it.

Perhaps the most disappointing part of the JOFA volume is the introduction. While Prof. Tamar Ross does a good job of summarizing the actual debate, her framing of the discussion in terms of “feminist legal theory” harks back to older, unproductive approaches. She writes:

It is worth noting that Shapiro’s argument not only concurs remarkably with feminist legal theory in its affirmation of the contextual nature of legal interpretation of social sensitivity and consideration of the consequences when interpreting law, it also concurs with the feminist role of judges and their obligation to maintain social stability by a willingness to accommodate minority views. (p. 13)

This is at best an irrelevant observation, but it is worse. R. Shapiro would be first to want to argue that his is a traditional halakhic argument in the best tradition of halakhic dispute. Suggesting that it reflects the values of some opposing secular legal theory surely does nothing to advance the acceptance of his position in the mainstream halakhic community. Those who oppose his position do not argue against accepting the validity of minority positions—that is, after all, common practice in the halakhic community—but rather argue that his opinion is not built on an honest interpretation of classic sources. They may be right or wrong in making this charge, but it has nothing to do with “feminist legal theory” or valuing minority opinions. Indeed, it is not certain that her comment has importance in any context, as Steven F. Friedell points out:

Although Jewish law was developed almost entirely by men, it nevertheless incorporated many of the ideals and approaches that feminists of the Gilligan school [as reflected in Carol Gilligan’s In a Different Voice] would favor. This suggests that the values of responsibility and caring are not necessarily the province of women alone and are therefore not necessarily the result of an innate psychology of young girls. . . . [W]hen we examine aspects of Jewish law . . . such as matters of dispute resolution, legal representation, judicial procedure,
and substantive law relating to injuries and competition, we see that Jewish law has much in common with the feminist approach. ¹⁵

Equally irrelevant is Ross’s observation on women as halakhic authorities:

Women, when allowed an independent voice in halakhic matters, not only raise new questions reflecting their own special interests; they often have their own typically gendered ways of assessing the alternatives available in addressing such questions, or of evaluating the relevance of the various surrounding factors that might be taken into account and their relative advantages and disadvantages. (p. 18)

This is but the flip side of R. Aaron Feldman’s charge:

Training women to be halakhic authorities . . . is thus a reckless venture, and one which, although politically correct and likely to be popular with the unlettered and with feminist philanthropists, is fraught with danger to the halakhic process. Training those whose hands quiver to be brain surgeons would be a boon for the status of the handicapped, but would be a tragedy for those who would rely on their service. ¹⁶

These types of arguments simply do not befit the seriousness of the topic at hand.

At present, there seems to be little future for congregations like Shira Hadasha. As we noted, there is little enthusiasm for women’s full involvement in communal prayer, even when there are no halakhic problems involved. But there will surely be individual Orthodox groups who want to explore this development, and it is therefore interesting to note two additional comments by R. Henkin. First, on the private level, he noted that “if done without fanfare, an occasional aliya by a woman in a private minyan of men held on Shabbat in a home and not a synagogue sanctuary or hall can perhaps be countenanced or at least overlooked.” On the more public level, he offered the following suggestion:

Simhat Torah is already marked by unusual leniencies, and what goes on there does not necessarily affect the rest of the year. In many synagogues a number of readings take place simultaneously inside and outside the main sanctuary, and another could be added largely for women. This would obviate the need for women to go up to the bimah in the men’s section. Also according to a number of shitot and depending on structure, women in the ezrat nashim may be halakhi-


cally considered to be in the presence of a minyan in the men’s section in spite of the mehitsah. . . . If so, it might be possible for women to have aliyyot even in the ezrat nashim without ten men being on the women’s side.

But it will be, in the end, sociology and not simple halakha that decides the issue. As Rabbi Yosef Kanefsky notes:

R. Henkin wrote that, “women’s aliyyot remain outside the consensus, and a congregation that institutes them is not Orthodox in name, and will not remain Orthodox in practice.” If R. Henkin’s projection is correct, and minyanim that institute this practice fail to generate bona fide Orthodox communities, then the experiment will inevitably fade, as Conservative minyanim will be equally attractive. On the other hand, if these minyanim actually succeed in raising a generation of Orthodox Jews who are meticulously observant of Shabbat, kashrut, and taharat ba-mishpaha [the laws that govern intimate marital relations], and who are steadfast in their commitment to tefilla and talmud Torah, the story will come out very differently. I’m guessing that time will tell.17

Indeed, time will tell.