

Chapter 1



Innovation and Authority

A Feminist Reading of the "Women's Minyan" Responsum

Rachel Adler

On 13 Kislev 5745 (December 13, 1984), five faculty members of Rabbi Yitzhak Elhanan Seminary at Yeshiva University issued a brief proclamation on a subject unprecedented in Jewish legal history.¹ The proclamation announced that it was forbidden for women to participate in separate gatherings for prayer, for Torah reading, for reading the Book of Esther, or for Simhat Torah processions. Lacking both documentation and argument, the proclamation departed radically from the conventions governing classical responsa, but subsequently one signatory, Rabbi Zvi Schachter, buttressed its halakhic conclusions in an extensive and heavily documented essay published in Yeshiva University's halakhah journal, *Bet Yitzhak*.² The first responsum, as many of its critics noted, cannot really be analyzed, since it is more of a ukase than a responsum, offering neither argument nor evidence.³ This paper is concerned, therefore, with the content and implications of Rabbi Schachter's responsum, which has been widely circulated and much quoted, both in subsequent decisions in

Notes for this section begin on page 27.

the United States and in the recent legal cases before the Israeli Supreme Court involving the prayer group Women at the Wall and their right to pray communally at the Western Wall in Jerusalem.

The responsum is interesting for several reasons. First, as a responsum, it confronts a singular challenge: to render a halakhic decision on a phenomenon for which halakhah has neither law nor precedent, data nor categories, and which involves behaviors in which classical halakhah had no interest. Hence, both Schachter's responsum and the activity it seeks to suppress raise questions about the location and the limits of halakhic authority and of communal creativity. These questions are not new. There is a sizable literature in the philosophy of halakhah about whether halakhah is an inclusive and self-sufficient system of behavioral norms or a code confined to particular concerns that allows room for supplementary ethical systems.⁴ Similarly, there is both philosophical and historical literature concerning how customs originate and take root, and how Torah authorities respond to these new religious developments.⁵ But it is interesting to trace the implications of particular answers to these theoretical questions in a work whose purpose is quite practical: to forbid a religious expression it views as subversive and to dismantle the institution that embodies it.

There is a second point of interest. Information exists about this responsum that is rarely available. Had Schachter's responsum been written five hundred years ago, we might now have only his legal argument, his precedents, and the counter arguments of opposing authorities from which to infer a complex social reality. The reasoning and motives of the innovators themselves would be refracted obliquely through the only perspectives referenced in responsa literature: those of the jurisprudential elite who control the discourse.

In contrast to law whose authors are specifically cited in the literature, custom is attributed to groups or communities rather than individuals.⁶ In the case of women's prayer groups, however, indisputable evidence exists that identifiable leaders created and popularized the controversial legal and liturgical vision under discussion. We have their writings. We know their names. Yet the voices of women and the impact of women's actions on their social and religious environments are as subtextual in

recent legal writings as they might have been five hundred years ago. The male elite who claim responsa literature as their domain continue to converse only with one another and to render anonymous the outsiders whose acts provide the content for the elite conversation. Hence, Rabbi Abraham Weiss in his book opposing Schachter's opinion, is hardly less reticent than Schachter about the social reality that occasioned its composition, nor does Weiss cite the women who created this new religious institution.⁷ There is a "gentlemen's agreement" to converse *about* rather than *with* these mothers of inventions so that their accomplishments may be reframed for the purposes of the responsa literature as problems detected by one rabbi and referred to another for solution. The problem is framed either as an upsurge of antinomian rebellion against halakhah and its legitimate interpreters which the decisor must put down or as an inchoate longing felt by anonymous women for which the compassionate decisor will offer a remedy: the prayer group. Suppressing the social history of the prayer group, then, is a distortion designed to reinforce a rabbinic monopoly on authority.

Although the creators of responsa have excluded this social history as legally irrelevant, the student of responsa literature need not ignore it. As David Ellenson's pioneering work in this area demonstrates, applying sociological and historical methods to the study of responsa greatly enriches our understanding of the responsa themselves.⁸ The Schachter responsum is a prime candidate for just such an analysis. It offers an unprecedented diversity of extralegal sources. We have observers' descriptions of women's prayer group services and discussions of related concerns in the innovators' own words, as well as news articles from the Jewish press that reveal political agreements and rabbinic motives unacknowledged by the responsum. A wealth of primary and secondary sources chronicle and analyze secular and Jewish feminist movements in whose contexts women's prayer groups were conceived. Once these extralegal sources are consulted and the responsum's author no longer exclusively controls information about the issue, the author's representation of the phenomenon that occasioned the responsum and his account of the legal facts about which he will reason, are revealed to us as a perspective on reality, rather than reality unmediated.

These concerns about the impact of context and perspective on legal decision making are fundamental to feminist jurisprudence. Feminists argue that law rests upon narratives and is composed of narratives.⁹ Narratives are not abstract and general but concrete and sharply specific.¹⁰ By dropping crucial contextual elements, a jurist may distort the nature of a case. A feminist approach to law demands an expanded notion of legal relevance that renders admissible more richly particularized accounts and wider temporal boundaries than classical legal argumentation would admit.¹¹ Feminist legal scholars argue that admitting more data about the actual circumstances and concerns of women into the legal process enables a better fit between cases and the legal principles applied to them.¹² In contrast to formalist legal approaches, this approach is implicitly historicist. It seeks out data about personal and social experience that abstract paradigms would exclude.

A second principle of feminist jurisprudence germane to the study of *responsa* concerning women is the hermeneutics of suspicion with which feminist legal theorists approach the ostensibly ungendered language and categories of law and social policy.¹³ Discourse and principles may present themselves as universal and gender-free and yet harbor hidden androcentric presumptions or reflect exclusively androcentric narratives or perspectives. Feminist jurisprudence presumes that no unitary account of human nature and no universal enunciation of norms can ensure justice. Rather, justice demands an account of human difference and norms that reflects gendered existences.¹⁴ To this end, feminist jurisprudence uses the social sciences to provide richer descriptions of human psychology and of human environments.¹⁵

In this article I have combined the principles of feminist jurisprudence with Ellenson's sociohistorical methodology for reading *responsa* to produce a feminist reading of the Schachter *responsum*. This methodology allows me to retrieve and interpret the narratives at issue: the narrative implicit in the *responsum* and the counter narrative the *responsum* seeks to repress. It peoples these narratives with real, complexly motivated human beings and situates them historically. Thus, it provides a social and historical frame within which to examine the form, function, and argument of the *responsum*. The article is organized as follows: First, I will situate the development of prayer groups within

the context of the social history of the Jewish feminist movement and offer a description and analysis of prayer groups based on the testimony of members and observers. Next, I will recount the circumstances under which the Schachter responsum was elicited and place it in its larger social and ideological context. Third, I will analyze the content of the responsum. Finally, I will suggest implications and conclusions.

Prayer Groups and the Social History of American Jewish Feminism

The 1970s saw the burgeoning of Jewish feminism, an outgrowth of the second great wave of American feminist thought and practice that began in the mid-1960s. Although Jewish feminists borrowed theory from major feminist thinkers such as Simone De Beauvoir and practices such as consciousness raising from secular feminist praxis, distinctive Jewish concerns remained addressable only by a home-grown Jewish feminism. Central among these concerns were issues concerning halakhah and participation in Jewish ritual.¹⁶ The mothers of Jewish feminism were thoroughly acculturated, highly educated, American Jews. They identified halakhah as a source of stigma and unequal treatment. Halakhah accounted for painful dissonances between secular and religious experience. As severely as sexism affected the secular lives of middle-class Jewish women, it was seldom as concrete and overt as the exclusion and disempowerment these women experienced when they attended synagogue or sought a Jewish divorce. From no field of secular knowledge were they excluded as comprehensively and openly as they were excluded from the knowledge of halakhah and its sources, nor did any other system of authority demand their obedience while explicitly denying them representation in the power structure that governed them. Secular sexism was an undercurrent, concealing and dissembling its menaces and biases beneath an ideology of merit. This ideology declared that all had equal opportunities to become corporate executives, senators, or scientists, and the best "men" won. Halakhah, in contrast, unequivocally stated that the status of woman disqualified them from full participation in the public life of the Jewish community.

Judged by the liberal civic values inculcated in American Jews, such a system could be regarded only as unjust. As American citizens and good liberals, Jewish women were taught that all people were entitled to equal rights; that communities should be structured democratically, with no one excluded from participation; and that privileges ought to be awarded fairly on the basis of merit. Where reality fell short of the ideal, the model of the Civil Rights movement and the assertion of Black Power demonstrated how a disenfranchised group can confront a discriminatory system and force it to change.

The critique of halakhah and the efforts both to mend it where it harmed or excluded women and to supplement it where it did not address women are among the earliest themes of feminist Judaism.¹⁷ The activists on this issue were modern Orthodox and learned Conservative women. I wrote the much reprinted essay "The Jew Who Wasn't There," as an Orthodox woman in 1971.¹⁸ The first Jewish women's group to place feminist themes on the American Jewish agenda, *Ezrat Nashim*, was an offshoot of the New York *Havurah* and had many Conservative Jewish members. Its members lobbied at the 1972 national meeting of the Rabbinical Assembly of the Conservative movement and distributed a manifesto calling for equal participation in Jewish life and ritual. They also provided the first nationally known model of a Jewish women's community at prayer.

Early in 1973, under the sponsorship of the North American Network of Jewish Students, a national Jewish women's conference was held in New York. Five hundred women attended, among them a number of Orthodox women, including the keynote speaker, Blu Greenberg. One of the most electrifying experiences of the conference was Shabbat worship for women only, led by members of *Ezrat Nashim*. Most of the attendees had never before heard women lead prayers or chant from the Torah or seen women wear a *tallit*, nor had they had ever experienced themselves as full participants in the service. Women who had never touched a Torah scroll before were called up for their first *aliyot*. They wept, and the congregation wept with them.

Participation was revelatory on many levels. Women experienced new spiritual dimensions in communal worship. They emerged with an enhanced sense of Jewish competence, a hunger

to learn more, and a newly awakened determination to replicate their experience in their home communities. These themes are apparent in Blu Greenberg's recollection of lifting the Torah at the Network Shabbat service.

Choose someone else, I pleaded. They persisted gently but firmly. It was only good breeding that propelled me down the aisle. Then something happened that was to make me think for a long time about the value of practiced skills. I had seen *hagba'ah* performed at least a thousand times in my life. Yet, as I stood there, I had to ask the women standing next to me, "What do I do now?" Also, to my surprise, caught as I was with my defenses down, I found it an exhilarating moment. It was the first time I had ever held a Torah scroll.¹⁹

In subsequent years, women's minyanim became an option at institutes and conferences. In some communities continuing women's minyanim were established. At first, Orthodox women participated without constraints in these minyanim, relying on unpublished decisions such as that of Rav Shlomo Goren, the Ashkenazic Chief Rabbi of Israel.²⁰ This opinion was explicitly withdrawn in December 1989. Well before that time, however, most of the rabbis upon whom American Orthodox feminists relied were telling them that women were not permitted to say the distinguishing prayers of a minyan, *devarim she-be-qedusha*, including *barekhu*, *qaddish*, and *qedusha*, citing *B. Berakhot* 45b and the accompanying *Tosafot* and *Shulhan Arukh Orah Hayyim* 55:1. Although permissions were unpublished and came to the women concerned only by word of mouth, relayed from rabbi to rabbi, interdictions were published early on.

The very project of an Orthodox feminism came under attack while still in its formative stages in a famous responsum in 1976 by R. Moshe Feinstein (*Igrot Moshe Orah Hayyim* 4:49): *Ha-Nashim Ha-Sha'anut Ve-Ha-Hashuvot* (Concerning the new movement of smug and important women.²¹ In this responsum R. Moshe labels the feminists "heretics" (*kofrim*), a code word for Conservative Jews, and forbids their taking on mitzvot from which they are exempt, not because he regards this as categorically forbidden but because "the desire comes out of a rebellion against God and his Torah." The responsum clearly registers the political significance of the women's ritual behavior and sees *minhag* as the battleground.²² The tone of the responsum is

ambivalent, divided between a condemnation of feminism and an apologetic defense of the respected status of women in Judaism and arguing that "there is no reason to be angry." In conclusion, R. Moshe exhorts the rabbi who has submitted the question to "prevent these women ... from changing any sacred customs of Israel."²³

No text and no precedent explicitly forbid women to pray in the company of other women, and that was an implicit permission upon which Orthodox feminists seized. In contrast to non-traditional feminists, who demanded that discriminatory laws be changed or simply defied such rules in spite of the rabbis, Orthodox feminists pursued two different strategies: first, they took on certain observances that were in practice performed exclusively by men but from which women were exempted rather than explicitly barred and second, they made innovations in areas unaddressed by halakhah. The prayer group may be regarded as a union of these strategies.²⁴

In the late 1970s, Orthodox women began to organize worship communities that they called prayer groups rather than minyanim, to emphasize their compliance with the prohibition on *devarim she-be-qedusha*, in their liturgies.²⁵ By the mid-1980s, prayer groups dotted the East Coast as far north as Toronto and as far south as Baltimore. They were subsequently augmented by a few West Coast groups, and groups in England, Australia, and Israel. The ecumenical prayer group of Jerusalem, Women at the Wall, in which women from all branches of Judaism pray together omitting *davar she-be-qedusha*, takes much of its group culture from American prayer group worship. An umbrella organization, the Women's Tefillah Network, links the international web of prayer groups and distributes a newsletter.²⁶

One of the organization's founders, Rivkeh Haut, describes the prayer group's distinctive ritual practices and ambiance in this way:

Halakhic women's prayer groups enable Jewish women to commemorate important events in their lives in a synagogue setting. Women receive *aliyot* in order to celebrate engagements, marriages, receiving degrees, buying homes, getting new jobs. Women are able to nurse their babies in shul. *Bat Mitzvah* girls are able to actively participate in the prayer service by reading the Torah, reciting the

haftarah, delivering a *d'var torah*. Women can recite the *mi shebeyrach* prayer for people who are ill. Orthodox women have, through prayer groups developed a mode whereby women no longer have to vicariously experience religious expression in the synagogue through fathers or husbands; they can participate actively and directly in all aspects of synagogue services, and they can do so in an *halakhically* acceptable way.²⁷

Haut's defense of the prayer groups emphasizes their function as communities where women's joys and achievements are given public religious acknowledgment. The values of prayer group worship appear strikingly similar to those of the *havurah*. Both appropriate the communality and active participation that characterize traditional worship but also demand that worship be personally relevant and expressive of experience.²⁸

Significantly, when Haut speaks of what she values most in the prayer group, the Torah service comes immediately to mind. The Torah service, which is at the core of prayer group worship, is its most halakhically controversial feature. The Torah service is a solemn and elaborated liturgical metaphor for the group members' appropriation of the Torah as their own. In procession they carry the Torah, and reverently touch and kiss it, direct *access* denied to women in nearly all Orthodox synagogues, where women witness in their separate section a procession they can never join. Here, in contrast, women read to women, proclaiming performatively a Torah that addresses women and seeks their attention as auditors. Reading with cantillation, a skill traditionally unavailable to women, announces that competence with the Torah is no longer reserved for men. Finally and most daringly, there are *aliyot*. Individuals are called up by name for the sections into which the reading is divided. These honors are traditionally withheld from women, not because they are ineligible but because of *kavod ha-zibur*, the honor of the congregation.²⁹ Here, where women *are* the congregation, the *aliyot* declare their capacity to honor the Torah and be honored by it. The nature of these *aliyot* vary in different prayer groups, depending on the ruling followed regarding women saying *devarim she-be-qedusha*.³⁰ Thus, in some, the entire Torah blessing is recited; in others, the Torah blessings are not recited in *birkot ha-shahar*, and then each woman called to the Torah makes her

blessing at that time omitting *barehu*; and in still others a creative prayer that does not technically constitute a blessing is substituted for the Torah blessing.

In short, through the institution of the prayer group, Orthodox women succeeded impressively in filling the halakhic vacuum. Without departing definitively from halakhic norms, they created a formidable liturgical statement that Orthodox authorities would be reluctant to endorse and a vigorous new institution that Orthodox authority had no precedents for controlling. Yet, ironically, although they expressly designed the prayer group to avoid confrontations with halakhah, it has been a principal focus of halakhic attack, both as an impermissible incursion into men's praxis and as an unprecedented innovation.³¹

Prayer Groups Under Attack: The Context of the Schachter Responsum

In 1984, Rabbi Gilbert Klapperman concluded his term as president of the centrist Orthodox Rabbinical Association of America by recommending that the organization "confront the needs of women to find some form of rewarding participation in the synagogue."³² He urged his successor to create a commission (of male rabbis) to establish for congregations desiring them halakhic guidelines for "membership for women on synagogue boards, women's *hakafot* [Simhat Torah processions with the Torah], women's *davening* [prayer] groups, Torah study, bat mitzvahs, etc."³³ His successor, Rabbi Louis Bernstein, not only rejected this strategy of accommodation to feminist rumblings, but formed his own strategy of aggressive opposition. Citing the evidence of newspaper interviews, prominent Modern Orthodox Jews accused Bernstein of soliciting a responsum from five faculty members of Rabbi Yitzhak Elhanan Seminary (RIETS) of Yeshiva University. David Singer, editor of the American Jewish Yearbook, charged;

The *teshuvah* [responsum] of the "RIETS five" was hatched as part of a plot. It was the brainchild of Rabbi Louis Bernstein, current president of the Rabbinical Association of America and staunch opponent of women's *minyanim*. Rabbi Bernstein went "shopping" for some *posekim* [decisors] who would back his position, and hit

upon the "RIETS five." Rabbi Bernstein openly admits that he "discussed the issue informally" with the learned gentlemen before asking them to prepare a written response. "I did have an idea of their position," he states.³⁴

The resulting responsum affronted learned readers with its deviations from the traditional formal requirements, as Rabbi Michael Chernick's reaction makes clear: "The fact that the so called responsum ... contained no documentation for its position gives the impression of a lack of scholarship, or alternatively, a patronizing and tyrannical attitude toward the community."³⁵

The simplest reason for issuing a ukase rather than a responsum, however, is that there was no legal precedent for forbidding women from sharing their private devotions with one another. It is rabbinically established that women have an obligation to pray, because prayer is supplication for mercy (*B. Berakhot* 20b) and thus, as Rashi explains, is needed by every creature.³⁶ As long as women's prayers are directed toward the God of Israel, however, rather than some other deity, and as long as they eschew the formulae that distinguish men's communal prayer, neither talmudic nor post-talmudic texts evince any interest in the content or form of women's prayers. Such prayers affect no halakhic categories, and hence, the tradition accumulates no information about them. From the perspective of the tradition, they are "non-data."³⁷ The fundamental problem facing contemporary decisors is how to exert authority over an issue that classical tradition does not address but that threatens the stability of Orthodox life and opinion. This dilemma shapes the document to which we are about to turn.

Authored by Rabbi Zvi Schachter, one of the signers of the RIETS Five responsum, "*Ze'i Lakh B'iqvei Ha-Zon*" superficially resembles a classical responsum, since it contains an argument buttressed with citations from classical sources.³⁸ But it is even more reminiscent of the polemical responsa against the nineteenth century Reformers. Polemical responsa attest that something is happening among Jews that is beyond the control of the legal decisor but that he wishes to label as deviant behavior for those obedient to his authority. In that sense polemical responsa are policy statements. As David Ellenson demonstrates, modern polemical responsa have a boundary-maintaining function that Durkheimian deviance theory effectively describes.³⁹ In his clas-

sic work on deviance, Kai Erikson emphasizes that deviant behavior is not merely different; it is different behavior that is not tolerated.⁴⁰ The function of intolerance is to rigidify group boundaries to exclude those that most resemble the group but who, it is feared, may compromise its identity. This fear surfaces, Erikson argues, when group identity has become unclear. Such crises occur periodically in Orthodox Judaism around issues of acculturation. By labeling this behavior deviant, Schachter hopes to arrest the synthesis of feminism with Orthodox practice that threatens to transform gender roles and gender relations and hence alter the distribution of power and authority.

Authority, in any case is, hotly contested among Orthodox decisors. The voluntary nature of modern Judaism creates a free marketplace of halakhic decisions in which, as David Singer accuses, interested parties may shop. Moreover, since warring factions compete for a share of the market, decisors undercut one another's decisions and credibility more often than they support them. One modern consequence has been a reluctance on the part of Orthodox rabbis either to assume responsibility for halakhic decision making or to publicize the decisions they do make. In these shark-infested waters two modern styles of responsa publication are common. One is the statement signed by a number of decisors pooling their prestige and spheres of influence for greater impact and circulated as a broadside or poster, or published in newspapers. The other is the scholarly article published in the format of a professional periodical devoted to issues of practical halakhah. Such periodicals cultivate a certain ambiguity about whether their contents are to be regarded as theoretical discussions or binding legal decisions. This hybridization with the scholarly article accounts for some ambiguity about whether Schachter's piece is indeed a responsum. Some who discuss it do not use the term, yet it has been invoked as a responsum in later practical arguments.⁴¹

Analysis of the Responsum: The Title

Schachter titles his piece with a literary allusion from Song of Songs 1:8: "*Ze'i Lakh B'iqvei Ha-Zon*" (Go follow the tracks of the

sheep)." The woman asks where her lover's flock is resting and is advised: "If you do not know, O fairest of women / Go follow the tracks of the sheep / and graze your kids / by the tents of the shepherds." The title uses the feminine imperative, as if the responsum were addressing the deviants directly. Schachter has selected the eroticized shepherdess of the Song to deliver an admonition to women to follow rather than to lead as the rebels are doing. Nine pages into the response, Schachter cites Seforno's exegesis on this exhortation. It is obviously this text Schachter had in mind when he chose his title:

*Go follow the tracks of the sheep. When the halakhah vacillates in your hand, follow the minhag. And graze your kids, ... the students who will teach in the future. By the tents of the shepherds. By the interpretations of the scholars of the generation, according to their reasoning, and they will consider what to approve.*⁴²

Seforno appears to be quoting *Y. Maaser Sheni* 5:56b: "If the law vacillates (*roffefet*) in the courts and you do not know what its nature is, see what the people do." Schachter understands this passage to mean that halakhic uncertainty is best resolved by following prevailing custom, but rather than seeing what the people are doing as the Palestinian Talmud recommends, Schachter's reading of Seforno proposes that even *minhag* is contingent on the approval of the scholars of the generation, among whom he implicitly numbers himself. The allusion in the title, then, is more to Seforno than to Song of Songs directly. It betrays Schachter's admission that the case he is deciding is halakhically uncertain and that custom is at issue. Lacking hard halakhic evidence (which is why he has had recourse to an exegesis on Song of Songs in a legal argument), Schachter will base the core of his argument on an assertion that *poskim*, decisors, are the arbiters of custom.

The Introductory Statement

The responsum opens with a brief statement of the issue: some Orthodox congregations have permitted separate women's *hakafot*, *megillah* readings, and minyanim. In using the term minyan to describe the prayer groups, Schachter makes no distinction

between the minyanim of liberal feminists and the prayer groups of Orthodox women that do not say *devarim she-be-qedush*. His equation of the Orthodox women with outright violators distorts a crucial fact about the case. There is another departure from classical form. Whereas classical responsa generally reserve their conclusion until the issues have been defined, Schachter's conclusion appears in his initial section: "It is clearly apparent that all such customs are forbidden for a number of reasons."⁴³

This opening section has a subtext of which its elite audience would be aware. The epistolary introduction to a classical responsum names the rabbi that requested it. This responsum lacks an epistolary introduction, but because of the publicity surrounding the RIETS Five responsum, readers know that this too is not the unsolicited responsum it purports to be. The circumstances surrounding its solicitation have been left unstated because authority was relocated in an aberrant manner. Rather than being handed up from a lower level of hierarchy, authority has been handed down. A powerful person representing a national constituency has delegated others to render the decisions he has commissioned. The reader's foreknowledge of these circumstances compromises the impartiality of the responsum *ab initio*, and exposes it, to use Ronald Dworkin's terminology, as a policy statement masquerading as a principle.⁴⁴ Ironically, the responsum relativizes halakhah in the eyes of adherents who were previously naive about its possibilities as a tool for social manipulation and had thought that halakhic decision making was "objective."

The Body of the Responsum

The body of the work, unlike classical, nonpolemical responsa and unlike scholarly articles, offers no arguments pro and con, no possible objections or contrary perspectives. It consists simply of a list of twelve reasons why women's communal worship is out of the question. Like other polemical responsa, the document consists not of, an introductory statement of the problem, a body of text debating it, and a conclusion rendering a decision, but of one massive conclusion. With the exception of the sections dealing with *minhag*, the argument does not build incrementally from

section to section. Most of the twelve sections are self-enclosed, and some arguments even contradict the premises of others. The arguments fall into three general categories: (1) arguments for women's attendance at male-led services rather than their own groups; (2) arguments for denying women the authority to innovate; and (3) arguments that women's activism is forbidden because it imitates the behavior of non-Jews. I will analyze a selection of these arguments.

*Arguments for Synagogue Attendance: Commandments Incompletely Fulfilled*⁴⁵

This section rests upon two contentions: First, that if women optionally assume commandments not obligatory for them, they must fulfill them "completely," according to Schachter's criteria. Second, completely fulfilling the commandments of prayer is not in women's power without dependence on a male minyan. Schachter is on firm ground reiterating the classical post-talmudic precedents excluding women from the structures of communal prayer: women are ineligible for minyan and thus may not say *devarim she-be-qedusha* (*Orah Hayyim* 55:1). Because there is no explicit talmudic statement excluding women from minyan for daily prayer, Schachter quotes *Berakhot* 45b, which in the context of the requirement of three for *mezuman* for *birkat ha-mazon* declares that a hundred women are like (that is, as inadequate as) two men; that is, women possess a qualitative lack that renders the presence of any number of them equally insignificant for the purpose of the quorum. The Tosafot to this passage extends the ruling to include any communal prayer situation and any *davar she-be-qedusha*. Thus, to hear or say a *davar she be-qedusha*, women are dependent on a minyan of men.⁴⁶

The organizational premise of the prayer groups is that by forgoing *devarim she-be-qedusha*, women at prayer can make themselves independent of the male minyan. Schachter seeks to break the back of this independence by proving that women are unable to pray acceptably without men to pray for them. His first attack is directed toward the heart of prayer group ritual: the Torah service, which symbolizes direct access to Judaism and its sancta. Schachter argues that it is forbidden to read the Torah

without the blessings, which women may not say. His argument rests on minority opinions and *hiddushim* (novelli). He cites an opinion that he says J. B. Soloveitchik attributed to his uncle, R. Velvele, an opinion for which there is no written source—that fulfillment of the obligation of Torah reading is incomplete without the blessings. He then cites a *hiddush* of the *Magen Avraham*,⁴⁷ who contends, based on the commandment of *hakhel* (assembly to hear the book of the law described in Deut. 31), that women are required to hear the Torah read. Schachter, however, has omitted the second part of the citation. The complete citation reads: "It is written in *Massekhet Sofrim*: Women are obligated to hear the reading of the scroll as men are, and one is obligated to translate for them so that they understand. But here the women are accustomed to go outside." The commentator contrasts the law of *hakhel* with the antithetical *minhag ha-makom*, but he does not condemn nor seek to eradicate the *minhag ha-makom*.

Schachter, on the other hand, concludes that women must hear the Torah read with its blessings. To reach this conclusion he places the condition attributed to R. Velvele upon the requirement of the *Magen Avraham's*, piling one minority opinion atop another. But in an implicit concession that this evidence will be less than universally convincing, he argues that even those who disagree that women are so obligated would have to agree that the commandment is fulfilled fully in a male minyan, whereas "by themselves [women] have only a facsimile and a vestige (*dugma ve-zekher*)" of the real thing.

Similarly, Schachter seeks to argue that the reading of *Megillat Esther* is another commandment that can be fulfilled completely only by attendance at what he calls "a regular, [that is, male] minyan." Without citing the explicit statement of *B. Megillah* 4a that women are obligated in *Megillah* reading, he moves immediately to the dispute among the *Rishonim* as to whether women counted in the *Megillah* minyan. Citing the *Shulhan Arukh* and the *Rema*, he argues that without a minyan one may not say the concluding blessing. This is Schachter's only acknowledgment that there is a body of opinion contending that the obligation of *Megillah* may be fulfilled without a minyan. For neither the issue of women counting in a minyan for *Megillah* nor for the question of whether a minyan is required for the final blessing does

Schachter lay out or weigh the conflicting arguments. He draws his conclusions by piling uncertainty upon uncertainty: it is uncertain whether women are obligated in *Megillah* and hence whether they count in the minyan for its reading. It is uncertain whether the concluding blessing requires a minyan (gender unspecified). So, on the apparent assumption that the most stringent opinion from every dispute must be applied, he combines the minyan dispute with the blessing dispute and concludes that women can fulfill the commandment completely only by dependence on a minyan of males.

Aside from the questions raised by this mode of legal calculus, Schachter's argument contains another basic flaw. There is no evidence that persons who assume commandments optionally are limited in the manner in which they choose to do so. Whether they pray in congregation or at home, they are still credited as non-obligated persons who fulfilled a commandment. Whether they do so according to one legal opinion or another is as much a matter of personal preference as whether they undertake the commandment in the first place. Even the tradition of whether men have an obligation to pray in a minyan is disputed, for while authorities are unanimous that *devarim she-be-qedusha* cannot be said without a minyan, they disagree about whether there is an obligation to say *devarim she-be-qedusha*.⁴⁸ There is not, as Schachter seeks to posit, a recognized legal category of incomplete fulfillment of commandments. The underlying point of the section seems to be that women are legally constructed to be incomplete, and consequently, their deportment and their religious expressions should properly be characterized by passivity, receptivity, and dependence on men. This view echoes a long-standing tradition in Western philosophy stemming from Aristotle that views women as maimed or deformed men who have "only a facsimile and a vestige" of what defines male superiority and justifies masculine privilege.⁴⁹

Misrepresentation of the Torah

Schachter objects that the prayer groups misrepresent the Torah by fostering the impression that women are equal in status to

men and hence appropriate for inclusion in a minyan.⁵⁰ Some of Schachter's critics counter this charge by pointing out that Schachter distorts the facts; prayer groups explicitly differentiate themselves from minyanim.⁵¹ Schachter's objection, however, is more fundamental. As his previous section makes clear, Schachter regards women as incapable of fully effective prayer independent of men. His underlying assumption is that, by conferring on men the capacity to address God with a communal voice, the Torah renders them spiritually superior to women. Consequently, the Torah is misrepresented as soon as women pray together as though they constituted an entity to which God would listen. Schachter's category "misrepresentation of the Torah" is based upon a metaphoric and hortatory use of the prohibition on misrepresentation by the *Yam Shel Shlomo*, the sixteenth century authority Rabbi Solomon Luria. As Schachter himself must acknowledge, misrepresentation (*zi'uf*) applies legally only to monetary fraud. Neither Schachter's source nor his use of it qualifies as a legal argument.

The King is Honored by Multitudes⁵²

This third objection is at best, quasi-halakhic.⁵³ The Talmud uses it to justify a worship aesthetic in which the largest possible number of persons participate, even though ritual efficacy does not depend upon their participation.⁵⁴ Having demonstrated that women are not part of the community, Schachter now forbids them to separate from an entity they did not belong to in the first place. The bulk of this section is a sermon based on Rashi's commentary on Korah's rebellion (Num. 16), which depicts the prayer groups as competing power structures that challenge normative authority by disrupting the alleged monolithic solidarity of Orthodox institutions. The prayer group is depicted as a forbidden attempt to circumvent the status of nonentitlement.⁵⁵

These three sections are followed by an argument categorizing women's synagogue attendance as a mitzvah, preferably performed by those able to beautify it: the male minyan, its Torah reader, and its prayer leader.⁵⁶ In these sections, Schachter depicts the modern Orthodox synagogue as a place where men

occupy center stage, controlling and mediating religious expression for an encircling audience of dependent women. The vision is a distinctively modern one because women are essential to it, in contrast to earlier notions that the presence of women at services is inconsequential or even, as the Vilna Gaon admonishes his daughters, bad for their characters.⁵⁷ Nevertheless, Schachter's modern vision is reactionary, since it seeks to reinforce precisely the subordination and powerlessness of women that a secular culture is eroding. This secular empowerment of women is the ultimate target of Schachter's wrath, as the concluding sections of the responsum will indicate.

Arguments Concerning Innovation of *Minhag*

As I have noted, a major strategy of Orthodox women has been to innovate in areas where there is no halakhah. Schachter consequently moves to close off these free areas to the feminists. He concedes that neither law nor *minhag* is static. But although changes may be made, he argues that women are ineligible to make them. Accordingly, Schachter cites Tosafot on *Pesahim 40b* reconciling two conflicting texts concerning Torah study that is not for the sake of heaven, and concludes that new *minhagim* may be created only for the sake of heaven.⁵⁸ There are two criteria for evaluating this: the character of the innovators and the attachment of the *minhag* to preexistent law. Schachter declares the *minhagim* created by prayer groups unacceptable on both counts. He charges their leaders with an unseemly desire for public recognition and accuses them of innovating so that they can publish. Since the customs they establish are not connected to the fulfillment of any Torah or rabbinic law to which they are obligated, these customs can have no standing.

The women are, in any case, ineligible to innovate, since in order to ensure that innovation is in the spirit of the halakhah, it can be made only by *vatin*, experienced Torah scholars, "who do everything for the sake of heaven." To supplement this ahistorical account of the origins of *minhagim*, Schachter quotes the midrashic statement that everything a *vatik* will innovate was revealed to Moses at Sinai (*Y. Peah 2:6*). Since innovation is pre-

sumed to derive from the system and process of Torah study, its sources are handed down from teacher to student.

Schachter's description of the origins and criteria for legitimate *minhagim* excludes women in two ways. First, women can always be accused of ulterior motives because in a system where Torah study and communal prayer are gender-specific, status-conferring obligations, women's very desire to study and pray can be interpreted as desire for superior status. Yet even if women do study, since they are excluded from the yeshiva system in which learning, and with it authority, are passed from teacher to student, women can never qualify as *vatikin*. They are categorically denied access to the network through which divine revelation is said to flow.

Innovation that deviates from the teachings of the innovator's rabbi is rebellion, which immediately disqualifies the innovator on the grounds of flawed character. This ruling, Schachter maintains, applies to those students of J.B. Soloveitchik who have supported the prayer groups, for Schachter maintains that R. Soloveitchik, like R. Moshe Feinstein opposes all the women's customs at issue. Soloveitchik's concurrence is disputed by Abraham Weiss, who maintains that Soloveitchik not only told Saul Berman and Shlomo Riskin that women's prayer groups were halakhically permissible but suggested substitute texts for the forbidden *devarim she-be-qedusha*.⁵⁹ Moreover, even R. Feinstein's position is more moderate than Schachter's. A one page responsum by R. Feinstein's son-in-law, R. Moshe Tendler, written on R. Feinstein's stationery and circulated at the Women's Tefillah Network Conference of June 1983, permits "pious women whose considerations are solely for the sake of heaven" (that is, who remain doctrinally Orthodox) to pray together as long as they refrain from *devarim she-be-qedusha*.⁶⁰ This is the first overt indication in the responsum that the prayer group issue is implicated in a larger struggle between R. Soloveitchik's conservative and liberal disciples. The struggle is complicated by the fact that most of R. Soloveitchik's opinions were communicated orally and are difficult to verify. The latest scholars to offer an account of R. Soloveitchik's attitudes toward women's group prayer, the brothers Aryeh and Dov Frimer, represent Soloveitchik as having been convinced that women's group prayer is halakhically per-

missible, nevertheless, the brothers Frimer point out that Soloveitchk was gravely concerned that the groups were at odds with prudent public policy and erosive of a proper Orthodox world view.⁶¹

Schachter's second contention, that a *minhag* must be linked to a preexistent traditional obligation, employed previous exclusions of women's customs and concerns, and legal precedent for further exclusions. Elsewhere I have explained how women's concerns that do not fit the androcentric categories of halakhah are rejected by the system as non-data.⁶² Since the categories determine future questions, huge bodies of precedent are amassed on some issues whereas other issues cannot be addressed because the system has no information with which to address them. This process eventually seals halakhah against the intrusion of non-data. Here, Schachter attempts to seal off *minhag* as well. It is in this context that he quotes Seforno on pursuing the existing *minhag*. Schachter further argues that the fact that something has never been done constitutes per se, a universal custom that can be preserved only by continuing not to do it. Eliezer Berkovits reduces this argument to absurdity, citing the halakhic principle *lo ra'inu eino ra'ayah*, that not having seen a practice is not a proof that the practice is forbidden:

[The norm is that in the cases quoted] to show that *lo ra'inu* is *ra'aya* (proof), there are always two opinions, one for the practice and one against it. In all these cases, the nonpractice is a rejection of an opposing ruling. Where, however, there is no opposing ruling the nonpractice of an activity does not establish it as a *minhag* that must not be changed. ... During the Torah reading, writes the Magen Avraham, women would leave the synagogue. Shall we now argue that because it was not customary for women to attend the Torah reading, it is now not permitted for them to violate the *minhag* and listen to the Torah reading!⁶³

Schachter's position on innovation runs so far counter to everyday attitudes that he is forced to acknowledge the inherent contradiction in a modern Orthodox worldview. Orthodox rabbis are not Amish. They presume that progress—scientific and technological progress in particular—is largely good. That God has given a static Torah to a historical world is affirmed as a mysterious paradox. Schachter's defense for his extreme position on inno-

vation is to portray himself as protecting an infinitely fragile system in which the slightest change may provoke an avalanche that inundates the tradition. Hence, even justifiable changes, such as reading *Megillah* in the vernacular to women who do not speak Hebrew or allowing daughters to recite *qaddish*, must be viewed in terms of the larger danger they pose.⁶⁴ The argument, ironically, calls for a broader concept of legal relevance. Schachter wants the effect on the entire system to be considered over and above the merits of the particular case. But whereas feminist jurisprudence seeks an extended definition of legal relevance to admit more data about the actual circumstances and concerns of women into the legal process, Schachter's concern is the protection of the system, even at the cost of injuring those whom it disadvantages.

Schachter's most astonishing piece of legal evidence that nothing may be changed is an absolutized and decontextualized citation from one of the most celebrated modernist authorities, R. Yehiel Yaakov Weinberg. Weinberg rules that an infant may not be anesthetized for circumcision because it is contrary to Jewish practice. A more apposite Weinberg responsum Schachter does *not* quote permits women to participate in mixed singing in Jewish youth groups.⁶⁵ In that responsum Weinberg gives priority to the context that demands such a ruling. He also observes that women accustomed to joining in would feel hurt by their exclusion, a consideration Schachter never raises in his halakhic decisionmaking. In this section, Schachter presents an idealized revisionist account of *minhag* that conflates custom and law and defines both as enactments handed down by an authoritative elite. A special power is attributed to communal *minhag*, from which it is forbidden to deviate. Not only is it forbidden to deviate from present local custom, Schachter argues, but from the customs of all the communities of the past. Given the temporal and cultural range of Jewish communities, it is impossible to imagine how anyone could fulfill such an obligation.

Arguments Regarding Imitation of Non-Jews

In the final section of the responsum, Schachter charges that the customs of the prayer groups are unacceptable because they are

syncretistic.⁶⁶ He does not really mean to suggest that women's Torah readings or *hakafot* borrow from the practices of New-Age goddess-worshippers or Christians. Instead, this category codes Schachter's concern that Orthodox feminists have much less rigid boundaries with their non-Orthodox counterparts than he and his constituency approve. As Erikson emphasizes, a group stigmatizes as deviant those within or upon its boundaries from whom it is anxious to distinguish itself. Conservative Jews, especially the learned Conservative elite, are more like Orthodox Jews than any other group. Hence Orthodox authorities vigilantly reinforce the boundary with Conservatism. But the Orthodox feminists who fashioned the prayer groups participate in many undertakings with non-Orthodox feminists: conferences, periodicals, research centers, and study groups, where they rub elbows with their smart-mouthed peers from "Shechter's seminary."⁶⁷ These permeable boundaries expose Orthodox feminists to the ideas and influences that have caused massive changes in Conservative Judaism and in the broader society. Through the medium of the prayer groups, these ideas and influences percolate through Orthodoxy.

Here, Schachter recycles the common arguments of nineteenth century Orthodoxy's battle to preserve its distinctness from Reform and to control the processes of acculturation. He goes on to attack feminism itself for "licentiousness," by which he means the eradication of many gender distinctions, causing fewer differences between women and men. Some of the accusations are bizarre and salacious: for example that "women's lib" leads women to shave their pubic hair. The underlying concern, however is not about sexual license but about the effect of gender equality in secular society on the system of gender complementarity that constructs and justifies different roles and statuses for men and women in Orthodoxy.⁶⁸ Gender distinctions and gender discrimination were among the few plausibility structures left in modernity that continued to mirror, however partially or irregularly, the naturalness of Orthodoxy's gender distinctions.⁶⁹ Apologists argue that because complementarity ensures Orthodox women distinctive roles and necessary social functions, feminism is unnecessary for them. The treason of the prayer groups is to uphold Orthodoxy while belying this claim. The very exist-

tence of Orthodox feminism declares that gender complementarity no longer suffices to keep Orthodox women from desiring fulfilling and privileged masculine roles.

Conclusions and Implications

The final quintessentially modern feature of the prayer group controversy is that, like the other conflicts between traditionalists and modernists in the last two centuries, it focuses on synagogue decorum. As Riv-Ellen Prell maintains, because the secularization of modern society privatized and fragmented the everyday praxis of Judaism, the synagogue became the major institution where Jewish identity is rehearsed, authenticated, and replicated.⁷⁰ Because this is as true for Orthodox as non-Orthodox Jews, synagogue practice is the great Jewish battleground of modernity. The entrance of Orthodox women into the fray means that the Orthodox home no longer provides them an adequate rehearsal of Jewish identity. Orthodox women also need a synagogue, and, like members of the *havurot* Prell studied, they have shaped it to meet the cultural aesthetic of third generation American Judaism, with its emphases on nonhierarchical structures, participation, and self-expression.

As a piece of legal argumentation, the Schachter responsum is third-rate, poor in legal evidence, lacking in balanced argument, and tortuously reasoned. What is remarkable is that a horde of elite male halakhists are spawning mountains of halakhic verbiage about an issue concerning which the tradition had no interest and hence accumulated no information. The latest of these productions is part one of an article by the brothers Frimer (part two is yet to come) consisting of 49 pages of argument, 20 pages of addenda, and 50 pages of footnotes. Paradoxically, these documents would be infinitely briefer if the classical tradition offered any specific data on the issue. Amid this din of pettifogging and pontification, only Eliezer Berkovits z"l has simply maintained that how women pray when they are not in the presence of men is a question on which tradition has neither data nor policy nor perspective but, rather is "a complete vacuum," that may be filled now that the need has arisen.⁷¹ But for others engaged in prayer

group legal polemics—both the defenders of the women graciously adducing permissions and their censorious opponents amassing prohibitions and stringencies—the notion of a halakhic vacuum in which women are free of any authority but their own seems the most intolerable possibility of all.

Notes

1. Abba Bronspiegel, "Minyan Mehuhadim le'Nashim," *Hadarom* 54 (Sivan 5745), 51-53.
2. Zvi Schachter, "Ze'i Lakh B'Iqvei Ha-Zon," *Bet Yitzhak* 17 (5745) 118-134.
3. For example, David Singer, "A Failure of halakhic 'Objectivity,'" *Sh'ma* 15 (May 17, 1985), 110; and Michael Chernick, "In Support of Women's Prayer Groups," *Sh'ma* 15 (May 17, 1985), 105.
4. The literature on this point is too extensive to cite. For a sampling of differing contemporary perspectives on the issue see: Aaron Lichtenstein, "Does Jewish Tradition Recognize an Ethic Independent of Halakhah?" in *Contemporary Jewish Ethics*. Menachem Mark Kellner, ed., New York, 1978, 112-123. Shubert Spero, *Morality, Halakhah and the Jewish Tradition* New York, 1983, Chapter 6. Yeshayahu Leibowitz, "The Religious and Moral Significance of the Redemption of Israel" in *Contemporary Jewish Theology*, Elliot N. Dorff and Louis E. Newman, eds., Oxford, 1999, 453-464. Eliezer Berkovits, *Not in Heaven: The Nature and Function of Halakhah*, New York, 1983, 19.
5. See Menachem Elon, "Minhag" in Menachem Elon, ed. *The Principles of Jewish Law*, Jerusalem, 1975, 91-110. For discussions by liberal halakhists see Elliot N. Dorff and Arthur Rosett, *A Living Tree: The Roots and Growth of Jewish Law*, Albany, 1988, 421-434 and Louis Jacobs, *A Tree of Life: Diversity, Flexibility and Creativity in Jewish Law*, Oxford, 1984, 221-235.
6. For an early example involving women, see *b. Berakhot* 31a, where a custom concerning extra-menstrual spotting attributed to "the daughters of Israel" is cited as an example of halakhah *pesukah*.
7. Abraham Weiss, *Women at Prayer: A Halakhic Analysis of Women's Prayer Groups* Hoboken, NJ, 1990.
8. Singer, *Op. Cit.*, 110 and Chernick, *Op. Cit.*, 105.
9. Although agreement among feminists about the importance of narrative is widespread, some feminists characterize women's decision-making as narratively based and oppose this to legal rule making See Carol Gilligan, *In a Different Voice* Cambridge, MA, 1982, 24-63. I base my own work on that of Robert Cover, who argued that all law is narratively based. Robert M. Cover, "The Supreme Court 1986 Term: Forward: *Nomos* and Narrative," *Harvard Law Review* 97, no. 4 (November, 1983): 4-68.

10. Narrative and contextuality are also distinguishing themes of critical legal studies. See Roberto Mangabeira Unger, *Passion: An Essay on Personality*, New York, 1984, 5-15.
11. For an extended discussion of Jewish law, see Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics*, Philadelphia, 1998, 37-44. For specific articles regarding secular jurisprudence, see: Kenneth Karst, "A Woman's Constitution," *Duke Law Journal*, no. 3 (1984): 447-508, especially 499-500, and Robin J. West, "Jurisprudence and Gender" *University of Chicago Law Review* 55 (Winter 1988): 1-71.
12. Robin J. West, "The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory," in *At the Boundaries of Law: Feminism and Legal Theory*, Martha Albertson Fineman and Nancy Sweet Thomadsen, eds., New York, 1991, 115-34.
13. Seyla Benhabib, "The Generalized and Concrete Other: The Kohlberg-Gilligan Controversy and Moral Theory," *Women and Moral Theory*, Eva Feder Kittay and Diana T. Meyers, eds., Totowa, NJ, 1987, 154-177. Another version of this essay can be found in Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics*, New York, 1992, 148-177.
14. Martha Minow, "The Supreme Court 1986 Term: Forward: Justice Engendered," *Harvard Law Review* 101, no. 4, November 1987, especially 31-70. Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law*, Ithaca, N.Y. and London, 1990.
15. Jean Bethke Elshtain, "Feminist Discourse and Its Discontents: Language, Power, and Meaning," in *Feminist Theory: A Critique of Ideology*, Nannerl O. Keohane, Michelle A. Rosaldo and Barbara Gelpi, eds., Chicago, 1982, 127-45. See also Robin J. West, "Authority, Autonomy and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner," *Harvard Law Review* 99 (December 1985): 384-428.
16. These concerns distinguishing Jewish feminism from other religious feminisms are noted by Carol P. Christ and Judith Plaskow, eds., *WomanSpirit Rising*, New York, 1979, 134.
17. On this issue see the articles of Paula Hyman, Esther Ticktin, and Saul Berman in *The Jewish Woman: New Perspectives*, Elizabeth Koltun, ed., New York, 1976, as well as the articles of Rachel Adler, Blu Greenberg, Cynthia Ozick and Judith Plaskow in *On Being a Jewish Feminist*, Susannah Heschel, ed., New York, 1983, and Blu Greenberg, *On Women and Judaism: a View From Tradition*, Philadelphia, 1981.
18. Rachel Adler, "The Jew Who Wasn't There: Halakhah and the Jewish Woman" *Davka* (Summer, 1971), reprinted in *On Being a Jewish Feminist*, 12-18.
19. Blu Greenberg, *On Women and Judaism*, 33.
20. Weiss, *Women at Prayer*, 110-111n. In note 38, Weiss summarizes the argument of this responsum. Goren relates the question of whether women may say *devarim she-be-qedusha* to the right to recite *berakhot* on commandments from which one is legally exempt. In other instances, Ashkenazic practice on this matter follows Rabbenu Tam, who permits women to recite blessings on positive time-bound commandments such as holiday observances, and, indicates that this was the communal practice in his time. Goren reaffirmed this opinion in a conversation with Weiss in Spring 1989, but in a letter to the Sefardic

- Chief Rabbi dated 1 Tevet 5750 (Dec. 29, 1989) Goren says that women are not permitted to say *devarim she-be-qedusha* when they pray together and characterizes his previous opinion as a purely theoretical exercise.
21. R. Moshe Feinstein, *Igrot Moshe Orah Hayyim*, 4:49.
 22. *Ibid.*, 4:49.
 23. The term *hashuvot* is important, see Norma Baumel Joseph, who points out that the term has a halakhic history indicating women who are to be treated with special respect because they are learned, wealthy, or powerful. She argues that the women referred to are clearly insiders and notes two passages unusual in a responsum: (1) the lengthy theological section that reiterates the credo that the Torah, written and oral is divinely ordained and may not be questioned, followed by a biological determinist justification of gender roles: and (2) the apologetic exaltation of women's status. I would add that the content of these passages, a rehearsal of ideology that the elite submitter of the responsum would regard as common knowledge, indicates that the responsum is designed to be "overheard" by the learned rebels under discussion. Norma Baumel Joseph, " 'Those Overconfident Women': Heretical Insiders in Rabbi Moshe Feinstein's Responsa" (unpublished manuscript, 1998).
 24. For a study of women who support these strategies by participating in prayer groups, see Ailene Cohen Nusbacher, "Efforts at Change in a Traditional Denomination: The Case of Orthodox Women's Prayer Groups," *Nashim: A Journal of Jewish Women's Studies and Gender Issues*, no 2, (Spring 1999): 95-113.
 25. Compliance with the prohibition on *devarim she-be-qedusha* is neither uniform nor consistent. In a communication with R. Aryeh A. Frimer dated July 25, 1997, Ms. Haut confirms that the Flatbush prayer group, basing itself on the repudiated responsum of R. Goren cited here in note 20, still permits women to recite mourner's qaddish, a policy the Frimers condemn as "halakhically improper, unfounded and indefensible." (80) Aryeh A. Frimer and Dov I. Frimer, "Women's Prayer Services—Theory and Practice: Part 1: Theory." *Tradition* 32:2 (Winter, 1998): 5-118.
 26. Women of the Wall (WOW) has its own organization, The International Committee for Women of the Wall, which raises funds for its legal expenses. WOW has e-mail and a web page. See "Haim Shapiro, "Women at the Wall," *Jerusalem Post* (March 30, 1989); Deborah Brin, "Up Against the Wall" *The Reconstructionist* 54 (June 1989) 13-17; Deborah Budner, "Facing the Wall: The Politics of Women and Prayer," *New Outlook* (June/July 1989): 25-26; Bonna Devora Haberman, "Women Beyond the Wall: From Text to Praxis," *Journal of Feminist Studies in Religion* 13:1 (Spring 1997) 5-34.
 27. Rivkeh Haut, "From Women: Piety, Not Rebellion," *Sh'ma* 15 (May 17, 1985), 110. See also Rivka Haut, "Women's Prayer Groups and the Orthodox Synagogue" and Yonina Penkower, "Bat Mitzvah: Coming of Age in Brooklyn" both in Rivka Haut and Susan Grossman, eds., *Daughters of the King*, Philadelphia, 1992), 135-158 and 265-70.
 28. Compare Riv-Elle Prell, *Prayer and Community: The Havurah in American Judaism*, Detroit, 1989: 159-202.

29. *B. Megillah* 23a. However see *Tosefta Megillah* 3:5, which omits the phrase *kavod ha-zibur* but says, "we do not bring a woman out to read in public." Weiss offers several explanations. Quoting Ritva to *B. Megillah* 4a and Rabbi Jacob Emden (*Yavez, Haggahot ve-Hiddushim to Megillah* 23a) he notes their assumption that a woman would not be asked to perform this act when there were men competent to do so. Hence, although her act is legally efficacious, the public display of female knowledge and competence with the Torah presumes male ignorance and incompetence, and therefore shames the (male) congregation. An alternative explanation is that modesty demands that women not be visible or audible in public. Weiss, *Women At Prayer*, 68–69.

The first explanation would seem to apply only in contexts where men are expected to be more Jewishly educated than women. If a single standard applied across gender lines, female competence and knowledge would not be experienced as offensive. The second explanation rests on the dual assumptions that men experience women primarily as sexual objects and that men's religious experience and behavior are of more value and concern than that of women. "Modesty" means women's acquiescence to their erasure from the "homosocial" public sphere where cultural norms are enacted and recreated and power and privilege are exercised and their relegation to a private sphere in which sexual and enabling functions define and circumscribe women's roles. See Eve Kosovsky Sedgwick, *Between Men: English Literature and Male Homosocial Desire*, New York, Columbia University Press, 1985: 1-27.

30. Personal communications from Bonna Haberman, Brandeis University, Norma Baumel Joseph, University of Toronto, and Chaia Beckerman, Women of the Wall, Jerusalem.
31. While it is clear in primary sources that women may assume mitzvot from which they are exempt, some later commentators complicate legal decision making by raising objections that would render women ineligible, and authorities opposed to feminism have assiduously collected such precedents. The major source for the question of whether it is permissible for women to assume commandments from which they are exempt is a discussion in *B. Eruvin* 96a-b, addressing whether women may optionally don *tefilin*, lay hands on a sacrifice in order to designate it, or blow the *shofar*. Regarding *tefilin* *B. Eruvin* 96a says that Saul's daughter Mikhal put on *tefilin* and the rabbis did not protest. However *Tosafot* s.v. *Mikhal* objects that women do not have the requisite *guf naki*, clean body, which is forbidden in *tefilin*. *Guf naki* is variously understood to mean that women are more flatulent than men or that the uncleanness referred to is menstruation. See the discussion in Getzel Elinson *Ha-Isha ve-ha-Mizvot*, Jerusalem, Histadrut Ha-Zionit Ha-Olamit, 1975: 55-56. Moshe Isserles (Rema) gloss to *Shulhan Arukh, Orach Hayyim* 38:3 says, "we do protest [women's wearing *tefilin*]." See also the *makhloket* between Maimonides, *Mishneh Torah Hilkhot Zizit* 3:9 and Rabbenu Tam (*B. RH* 33a *Tosafot* s.v. *Ha*) concerning whether women may make a blessing on mitzvot from which they are exempt. Examples of books designed to nip Orthodox feminist observance in the bud by cataloguing authorities against women taking on practices from which they are

- exempt are Moshe Meiselman, *The Jewish Woman in Jewish Law*, New York, 1979, and the aforementioned Getzel Elinson, *Ha-Isha ve-ha-Mizvot*.
32. Rabbi Gilbert Klapperman, Presidential Address, May 30, 1984 in Lancaster, PA, quoted in Weiss, *Women at Prayer*, xv.
 33. Ibid.
 34. David Singer, "A Failure of Halakhic 'Objectivity,'" *Sh'ma* 15 (May 17, 1985), 110. Singer derives his quotes from *The Long Island Jewish World* (Feb. 15, 1985).
 35. Michael Chernick, Op. Cit., 105.
 36. *B. Berakhot* 20a s.v. Rashi *Tefillah d'rahamei ninhu*.
 37. See Rachel Adler, *Engendering Judaism*, 28-29 for the halakhic critique that explains how some data cannot be admitted to the system and is thus considered nondata. For a brief review of how classical liturgy rendered women's ritual non-data see Lawrence Hoffman, *Covenant of Blood: Circumcision and Gender in Rabbinic Judaism*, Chicago, 1996, 173-189.
 38. Zvi Schachter, "Ze'i Lakh B'Iqvei Ha-Zon" *Bet Yitzhak* 17 (5745) 118-134.
 39. David Ellenson, *Tradition in Transition: Orthodoxy, Halakhah and the Boundaries of Modern Jewish Identity*, Lanham, MD, 1989, 33-57.
 40. Kai Erikson, *Wayward Puritans: A Study in the Sociology of Deviance*, New York, 1968.
 41. Abraham Weiss *Women at Prayer*, xvi n.
 42. Seforno on Song of Songs 1:8.
 43. Schachter, 118.
 44. Ronald Dworkin, *Taking Rights Seriously*, Cambridge, 1977, 1978: 22-28. Dworkin says, "I call a 'policy' that kind of standard that sets out a goal to be reached, generally an improvements in some economic, political, or social feature of the community (though some goals are negative in that they stipulate that some present feature is to be protected from adverse change). I call a 'principle' a standard that is to be observed, not because it will advance or secure an economic, political, or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of morality." (22)
 45. The discussion below covers Schachter, 118-119.
 46. For a critical analysis of the issue and its adjudication see Judith Hauptman, "Women and Prayer: An Attempt to Dispel Some Fallacies" *Judaism* 42:1 (Winter 1993): 94-103 and Michael J. Broyde, Joel B. Wolowelsky and Judith Hauptman, "Further on Women as Prayer Leaders and Their Role in Communal Prayer: An Exchange" *Judaism* 42:4 (Fall 1993): 38-413.
 47. R. Avraham Gumbiner (Magen Avraham) gloss to *Shulhan Arukh OH* 282:3.
 48. Although there are many statements encouraging men to attend synagogue and rebuking those who do not (see for example *B. Berakhot* 7b-8a), the Talmud enunciates no specific mitzvah of praying with a minyan. Weiss, *Women at Prayer*, 40-41 summarizes the controversy on this point in post-talmudic tradition, citing an overview by Yitzhak Yaakov Fuchs, *Ha-Tefillah Be-Zibur*, Jerusalem, 1978: 30-37.
 49. Catherine Keller, *From a Broken Web*, Boston, 1986: 47-92.
 50. The following discussion concerns Schachter, 119-120.
 51. Singer, 109, Haut, 110-111, Chernick, 107.

52. The scriptural source of the statement is Proverbs 14:28.
53. Schachter, 119-120.
54. See for example, *B. Berakhot* 53a, *B. Pesahim* 64b, and *B. Sukkah* 52b.
55. Schachter, 120. "For us there is only one synagogue and one prayer leader, and it is forbidden for those who are not suitable to be a prayer leader or bless the Torah to separate from the community and make a minyan for themselves."
56. Schachter, 121-122.
57. Israel Abrahams, *Hebrew Ethical Wills*, Philadelphia, 1976: 315-316. Reprint of original 1926 edition. According to the Gaon, synagogue attendance encourages women to gossip.
58. Schachter, 122-127.
59. Abraham Weiss, *Women at Prayer*, 107n.
60. Chernick, 107.
61. Aryeh A. Frimer and Dov I Frimer, "Women's Prayer Services—Theory and Practice: Part 1: Theory," *Tradition* 32:2 (Winter, 1998): 40-47.
62. Rachel Adler, *Engendering Judaism*, 28-29.
63. Eliezer Berkovits, *Jewish Women in Time and Torah*, Hoboken, NJ, 1990, 78-79.
64. Schachter, 128-129.
65. R. Yehiel Yaakov Weinberg, *Seridei Esh* 2, no. 8.
66. Schachter, 133-4.
67. Schachter, 127.
68. For a discussion of gender complementarity see Rosemary Ruether, "Women's Difference and Equal Rights in the Church" in Anne Carr and Elisabeth Schussler-Fiorenza, eds., *The Special Nature of Women?* London, 1991: 11-18.
69. This is the terminology of Peter Berger, *The Sacred Canopy*, New York, 1969.
70. Riv-Ellen Prell, *Prayer and Community*. Detroit, 1989.
71. Eliezer Berkovits, *Jewish Women in Time and Torah*, 81.