

# Orthodox Egalitarianism

BY ELIE FISHMAN

Every Modern Orthodox congregation, every daily *minyan*, every Yom Kippur service in North America violates the fundamental tenets of Jewish law.

More than any other Jewish denomination, Orthodoxy holds that religious observance stems from obligation. Orthodox Jews can choose only whether to fulfill those obligations, not whether to accept responsibility for fulfilling them. Modern Orthodoxy has never purported to change that principle. Rather, it has sought to continue strict observance of *halacha*, taking into account the surrounding society even while maintaining the traditional way of life. For the founding assumption of Modern Orthodoxy, as set forth by Samson Raphael Hirsch and others in nineteenth-century Germany, is that a Jew can and should live as a part of modern society while living within the framework of *halacha* in its entirety.

In the last generation many Modern Orthodox women, changing with society as a whole, have radically transformed their way of life. Their new experience raises the question: does the founding assumption of a halachic way of life in modern society represent a contradiction in terms? The crux of the problem lies in religious participation. For *halacha*, consistently and thoroughly, forbids women from public religious roles. Women may not count toward a *minyan*, the quorum of ten necessary for many communal religious functions (although a *minyan* of women alone, for women alone, is allowed). They may not read from the Torah, lead prayers or give legal testimony.

But rules that keep women from public or communal religious roles do not stand alone. They are part of, and cannot be separated from, a halachic philosophy of women's proper place in the family and in the community as a whole. Women have differing private halachic obligations as well. They receive a special dispensation from most positive commandments that have time constraints. They have special commandments to fulfill, mostly dealing with the care of family and home. This philosophy reduces to a single idea: that women may not take

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public roles in the community, but rather that they should play primary parts in the other basic level of Jewish society—the family. This division is not exclusive, most notably in that men have some familial responsibilities as well (primarily to support the household financially and to educate the children in Torah). But the exclusion of women from public Jewish life is clear. During the Talmudic era, this paradigm for the community was formalized and, for the following centuries, the perspective of halachic Judaism on this subject did not differ from that of its secular surroundings.

But in the last forty years, American women in general, including Modern Orthodox women, have taken on the same roles as men in almost every aspect of public life. This includes Jewish communal life; virtually every Modern Orthodox organization of which I am aware has women serving in public, leadership positions. Synagogue committees, the National Conference of Synagogue Youth, Orthodox day school boards—all contain women in prominent and leading positions. To see that this represents a radical break with the past, one need only look at Orthodox society in Israel, where women, in public life in general as well as in religious communal life, do not play much of a part. (Of course, there are numerous examples of highly educated Orthodox women who command considerable respect in Israeli Orthodox communities.) For the most part, women do not sit on the boards of Orthodox synagogues in Israel, nor do they participate in community religious leadership. Indeed, a recent Israeli supreme court case involved a woman who was chosen to serve on an Orthodox community's religious council. The court upheld her position on the council, but only over the objections of most of Israel's Orthodox establishment.

In America, by contrast, Modern Orthodox women (though perhaps to a lesser extent than non-Orthodox women) have taken a much more prominent place in public life, both secular and religious, in the last generation. Yet one major area of Jewish life has not yet become part of this change: the ritual of prayer. These women remain secondary.

My hometown *shul*, Sha'are Tefilah of Newton, Massachusetts, highlights this inconsistency in Modern Orthodoxy. Women there often give the weekly sermon on Sabbath. But, by judgment of a group of three scholarly synagogue members on the *shul* "Rabbinic Committee," they cannot speak during the service itself, when men speak. Instead, they speak after the service is over. Women speak on religious topics, before the entire community, in a synagogue(!), but not in a liturgical context. As soon as prayer is done, women suddenly can take a blatantly public role at the front of the synagogue. Modern Orthodoxy has chosen to change the role of women in most aspects of Jewish public

life but not in others. The changes originate in changes in modern society—women's public role has grown in most aspects of American life. Yet those areas of Jewish observance that have not changed regarding women are no more inviolable, no more integral or explicit in the *halacha*, than those which have. The same idea of female public inconspicuousness forms the basis for preventing women from teaching a class in Mishnah, or sitting on a synagogue governing board, as well as from counting for a *minyan* or reading from the Torah.

Moreover, Orthodoxy's emphasis on obligation creates a particular demand for egalitarianism in observance. For now that many women play similar roles to men in society, their special dispensation to be free of many commandments should end. The Jewish Theological Seminary, the rabbinical academy of the Conservative movement, states that women may choose whether or not to take on the obligations of public worship, as a choice independent of other issues. For Conservative Judaism, this represents the granting of a right unavailable to women before, a right which they may choose to accept or reject. But for Orthodoxy, the obligations of communal service to God are not a matter of choice. Once a woman takes a public role in the community, she takes on the obligations of any such member of her people, whether she wants them or not. Public religious obligations and leadership are an integral part of that public role.

It is for this reason that I began this essay with the statement that every Modern Orthodox congregation in America has been violating *halacha*. Every woman who has taken on a public role in her community, in Jewish organizations or in the workplace, takes on the responsibility of halachic public life as well, just as men take on these responsibilities as members of the community. Unless women continue to see a substantial difference between their place in Jewish communal life and that of men—and most Modern Orthodox women do not, any more than they see such a difference in their careers or in their education—then the basis for a halachic distinction in the one major area where it remains, the synagogue, evaporates. Modern Orthodox women do not fulfill and are not allowed to fulfill their halachic obligations.

If one looks at the *Shulchan Aruch*, the authoritative codex of Jewish law for the last several hundred years, one can see the legal basis for completing the change in women's status to include public worship. For rabbinic authorities, beginning with the Talmud and continuing through the Chafetz Chayim at the turn of this century, base the rules restricting women's public role in worship to a great extent on their larger place in society.

The Talmud explicitly permits women in principle to read from the Torah. (Tractate *Megilla*) But in the same ruling, the Talmud bars women from participating in the Torah-reading service on the basis of *kevod tzibur*, the dignity or honor of the community. For the same reason, the Talmud prohibits children and those who are dressed improperly from chanting the Torah. The parallel between a woman, a child and a poorly dressed man is not that they have something inherent in their natures that turns their reading from the Torah into a violation of the community's dignity. Rather, each has an external status, a place in society, which would lead the community to "look bad" if they read from the Torah in public. As the community changes, and as the status of various groups within it change, the concept of the "honor of the community" should change as well.

Changes in women's position in the Jewish community have led to changes in their halachic status in the past. In section 472 of the volume *Orach Chayim* in the *Shulchan Aruch*, Rav Yosef Karo rules that most women, unlike men, are not obligated to recline at the Passover Seder. Citing the Talmud, however, Rav Karo maintains that important or significant (*chashuva*) women do recline. Rav Moshe Isserles, the major Ashkenazic commentator on the *Shulchan Aruch*, writes that "all of our women are called important." In his community (Ashkenazic Jewry) women have a differing halachic status, one derived from their particular status in the community. Rav Isserles holds that women do not customarily recline anyway, because reclining at meals during the year is no longer practiced. Thus he bases his ruling on something other than some characteristic inherent in women. Rav Moshe Isserles, one of the most widely cited authorities for halachic practice, has established a change in women's halachic status based on their new place in the community. Women's religious participation, in this case reclining at the *seder*, is predicated on women's role in communal life.

During the last fifteen hundred years, since the Talmudic ruling against ritual Torah-reading by women, a woman appearing publicly before the community, particularly in an honored position, would have indeed been an unusual occurrence. For this reason, a woman participating in the Torah-reading service would have violated the honor of the congregation. Now that women appear in honored positions before Modern Orthodox communities all the time, their public participation in the *davening* should no longer make the community look bad.

There is another, similar reading that supports my case. Counting for a *minyan* and saying the more sanctified, public parts of the service such as *kaddish* and *kedusha* are forbidden for women and *avadim*, a term conventionally translated as "slaves." (The halachic concept of *avadut* is

more correctly understood as indentured servitude than as chattel slavery.) The Vilna Gaon, an outstanding eighteenth-century sage, comments that women and *avadim* have the same status "in many cases." (*Shulchan Aruch, Orach Chayim* 45:4)

This connection between women and *avadim* cannot be merely stylistic. For the Gaon makes this comment in reference to the issue of who may count in a *minyan* for *kaddish*, and in reference to no other specific cases—what stylistic goal could this serve? It is the only comment he makes on the relevant paragraph in the *Shulchan Aruch*, and therefore does not advance our understanding of this case specifically at all. Thus this comment could only serve the purpose of indicating a substantive similarity between the basis for the religious participation of *avadim* and women in general.

Women have always been respected and highly valued members of Jewish communities. Their similarity to *avadim* did not imply a servile place in Jewish society. Rather, women and *avadim* were similar simply in that neither took public, leading roles in the community. What does this similarity imply for the religious participation of women in present-day Modern Orthodox communities?

Imagine if you will: a long lost Jewish community is discovered in a forgotten corner of Papua, New Guinea. This community has retained the halachic institution of *avadut*, never having known of the geonic responsum that abolished *avadut* a thousand years ago. In celebration of the discovery, a great event in Jewish history, a Modern Orthodox congregation invites some members of this community to Shabbat services. I would find it hard to believe that any Modern Orthodox congregation in the United States would exclude an *eved* from this community from a *minyan* or forbid him to say *kaddish*. Yet, halachically, he would be an *eved*, for he would be a member of a community where *avadut* remained a Jewish communal institution.

Treating the slave differently from anyone else in the synagogue would violate some of the most deeply held values of most American Modern Orthodox Jews. Some halachic way to allow the *eved* to count for a *minyan*, to lead services and to say *kaddish*, would be found. I suspect the outlines of a solution would be something like this: "In Modern Orthodox society, *avadut* no longer has any significance in determining social status. When the Rabbis set the *halachot* establishing the different ritual obligations of *avadim*, the community recognized a substantive difference in social status between *avadim* and others. Now it no longer does. Therefore, *avadim* ought to have the same role in our community's public Jewish life, including ritual life, as any other Jew."

## MOSAIC

Why should not this reasoning apply to women as well? Their status for the issues of *minyana* and special public parts of the service is the same as *avodim*, and their status in Modern Orthodox society has changed much to the same degree that the status of *avodim* changed a millenium ago. But that millenium makes all the difference. (Millenia will do that.) Only because for a thousand years we have not seen *avodim* treated differently in *halacha* do we see how treating *avodim* differently in the *shul* would be an affront to the values we hold dear—particularly to the idea that all human beings have the same fundamental worth. Only because we are used to having women on the side of the *mechitza* opposite from public religious participation do we not see the significance that secondary status has. Modern Orthodoxy maintains a separation of women from public Jewish ritual, when women now have virtually the same place as men in the Modern Orthodox community. In maintaining this separation, the movement denies the most fundamental of Jewish values.

I am fully aware that there may not be a single Orthodox *posek*—rabbinic authority on halachic issues—who would now agree to this interpretation. But when Orthodox practice has changed, it has always been the *poskim* who followed the general community, not vice versa. A pertinent example: a generation ago, any Orthodox *posek* would have rejected out of hand *bat mitzvah* celebrations, and many did. More recently, though, many modern Orthodox communities have begun to hold *bat mitzvahs*, and the practice has taken root. In response, *poskim* have found ways to justify the *bat mitzvah* halachically. This pattern has repeated itself throughout Jewish history (as anyone who has read, for example, the well-known medieval talmudic commentaries of the Ba’alei HaTosafot can affirm.)

In the last generation, a vast world of previously unknown opportunities has opened up for women in America. One aspect of this change has been the newly significant role Modern Orthodox women play in Jewish communal life and in American society in general. But within an Orthodox framework, these new opportunities bring new obligations—the obligations of a full member in public halachic life. It is time all members of the Jewish community had a chance to fulfill the *mitzvot* incumbent upon them.