ABSTRACT
This article explores the writings of three prominent contemporary Jewish feminist thinkers—Rachel Adler, Tamar Ross, and Ronit Irshai—on halakhah (Jewish law) and psak (legal rulings). It employs “On Interpretation,” the classic essay written by Shimon Rawidowicz, to frame their works. Rawidowicz had argued that Jewish thinkers in every generation were required to hear the imperative “Interpret or perish,” if Judaism was to maintain its vitality. In our day, no thinkers have done this more than Adler, Ross, and Irshai. They have attempted to reshape the world of halakhah by exposing many of its assumptions and expanding its concerns. There is a tension between “continuation and rebellion, tradition and innovation,” in their work as they seek to create “a new halakhic story.” They see themselves as bearing responsibility for Jewish continuity and

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spirituality even as they forthrightly acknowledge the novel turns their writings take within the framework of Jewish textual and legal tradition. By bringing their arguments together in dialogue with one another and by discussing their critics, this essay presents and highlights their views in a way that has implications for the moral shape of the Jewish community and Jewish law now and in the future.

Shimon Rawidowicz was arguably the most synthetic Jewish thinker of the twentieth century. What the Mishnah said of R. Jose ben Joezer, that he was an “eshkol—ish she-hakol bo—a cluster, i.e., a scholar in whom there was everything,” surely applied to Professor Rawidowicz. His mastery of classical Jewish sources, his command of Jewish and general philosophy, and his intimate familiarity with Jewish and world history were complete. Most impressively, he possessed an analytic mind that allowed him to weave the strands of all these disciplines and areas together. His broad-ranging works on Jewish history and thought bear the impress of his genius and allowed him to make original contributions to Jewish thought that remain remarkable in their importance. By employing his essay “On Interpretation” as a framework to explore the writings of three Jewish feminist thinkers—Rachel Adler, Tamar Ross, and Ronit Irshai—on halakhah (Jewish law) and psak (legal rulings), a fuller appreciation of and clarity about this ever-growing body of literature and its Jewish authenticity will emerge.

“ON INTERPRETATION”

In “On Interpretation,” Rawidowicz pointed out that there is a “double-layered” phenomenon in Judaism—“text” on the one hand, and “commentary” on the other. As he states, paraphrasing the Bible, “Bereishit bara yisrael—In the beginning, Israel created ‘the text.’” During the biblical era, the period that Rawidowicz labels the time of Bayit Rishon—The First House—Israel was said to be “creative and original.” In contrast, Israel, as it moved into the Diaspora during the period of “Bayit Sheni—The Second House,” became confined to commentary. He notes that some claim that “what the prophets and the seers have done in Bayit Rishon” was innovative and vital, while the “‘men of halakhah and aggadah in Bayit Sheni’” have done nothing more than continue that which originated during the earlier period. In the Bible, Israel was creative; afterward it was only “commenting.”
To dismiss the work of *Bayit sheni* as nothing more than commentary is to miss the essence of the work of the Second House, and Rawidowicz finds this dismissal of commentary as problematic for several reasons. One, this position bars the way for understanding the dynamic meaning of interpretation. Secondly, this understanding goes too far in deepening the gap between “creating” and “interpreting,” which adds to the very misunderstanding of the meaning of “interpreting.” As he maintains, all interpretation is creation. Like Gadamer, Rawidowicz claims that the hermeneutical task in a written tradition is unending. The horizon of possible interpretation is open-ended and inescapably involves inventiveness and imagination. The moment we begin to conceptualize our sensory data, while applying certain laws and forms to them, we are already involved in a process of “interpretation.” In short, persons, as interpreters, cannot escape thinking or judgment.

The work of the Second House therefore cannot be reduced to commentary. It is “interpretation” of the highest order. Creativity and interpretation are interwoven and *perush*, the interpretation, has equal validity with the original text. As it states in the Talmud Yerushalmi, Peah 2,4, “That which a *talmid vatik* (veteran pupil) will teach in the future was already said to Moses at Sinai.” Rawidowicz therefore approvingly cites the opening words of the Mishne Torah, where Maimonides writes, “*Kol ha-mitzvot she-nitnu lo l’moshe, b-fei’ru’shei’hen nitnu*—All the commandments that were given to Moses on Sinai were given in their Perush.” This means that there is an “absolute equality of value” between the writings of those later masters who engage in the act of interpretation and those sages who preceded them in the age-old *shalshelet ha-kabbalah*, the venerable chain of Jewish textual tradition.

Rawidowicz then goes on to distinguish between “explication” and “commentary” on the one hand, and “interpretation” on the other. The former “eases the burden of a document,” while the latter “reshapes either the document or the world it came from.” In the latter, there is a tension between “continuation and rebellion, tradition and innovation.” Explication follows the text and uncovers it. Interpretation seeks to uncover the “sub rosa meaning” of the text and transcends the literal. Hence, “explication” cannot avoid “interpretation.” In understanding the development of Jewish thought, Rawidowicz therefore maintains that interpretation allows for an understanding of the relation between the original “text” of Israel’s beginning and the accumulated work of interpretation that follows.
Interpretation, the reshaping of the text, allows for continuity and change. It is the beginning of wisdom. It allows for Judaism to live.\textsuperscript{10}

Interpretation and study of the text are one, and both are attributed to God. God, in Babbâ Metzi’a 59a, quotes Scripture, and asserts, “Lo ba-shmâyim hi—the Torah is not in heaven,” thereby surrendering the application of the law to human beings.\textsuperscript{11} The Oral Law represents an interpretation in which Israel of the Second House in every generation attempts to understand divine revelation and the meaning of the Messorâh (tradition) for its time. Rawidowicz cites Maimonides as the prime model of this process, and the Rabham fought to affirm this duty of interpretation by seeking to have the words of the Sages conform to reason and truth. The Mishneh Torah and the Guide for the Perplexed represent Maimonides’s faith in interpretation, and they testify to the capability of ongoing elucidations of Jewish meaning.\textsuperscript{12}

Nevertheless, Rawidowicz contends that “interpretation” remains the cardinal problem for Israel. After all, Israel lives in a non-Sinai world. Revelation and its meanings remain elusive. Yet Israel cannot live without the interpretatio of the texts that extend back to Sinai. Thus, “interpretation” remains a constant element in the ongoing creativity of the Jewish people,\textsuperscript{13} the eternal task that Israel must confront in every generation. Rawidowicz maintains that “interpret or perish” is the voice that Israel has heard incessantly since Sinai. Those who would dismiss the interpretation of the Second House and its Oral Tradition reject the continuity of “Israel’s spirituality . . . in the arena of history.”\textsuperscript{14} They “do not consider themselves responsible for Israel’s survival.”\textsuperscript{15} Jewish life rises and falls with interpretation.

In our day, no persons have heeded this command of “interpret or perish” more acutely or sensitively than a whole host of Jewish feminist thinkers. Judith Plaskow, Susannah Heschel, Judith Hauptman, Ellen Umansky, Blu Greenberg, and Marcia Falk have been among the leading feminist liturgists and theologians in the North American Jewish community for more than three decades, and echoes of their work have been heard in Israel and throughout the world. Indeed, there are now too many women and men engaged in feminist interpretations and reinterpretations of Jewish tradition to be counted. However, three names surely stand out as the foremost theoreticians and thinkers in the field of feminist thought and its relationship to a philosophy of Jewish law (halakhah) in general and legal adjudication (p’sak) in particular—Rachel Adler, Tamar Ross, and
Ronit Irshai. Formerly an Orthodox Jew, Adler became a Reform rabbi with a doctorate in Religion and Social Ethics from the University of Southern California. She now serves as Professor of Modern Jewish Thought and Feminist Studies at Hebrew Union College-Jewish Institute of Religion, Los Angeles. Tamar Ross is an Orthodox woman who received her Ph.D. in Jewish Thought at Hebrew University in Jerusalem. She is currently Professor of Jewish Thought at Bar Ilan University, and has served as a Visiting Professor at the Bernard Revel Graduate School of Yeshiva University. Irshai earned her doctorate at Bar Ilan University in their then nascent Gender Studies program and was formerly a Visiting Scholar at Harvard Divinity School. She currently teaches “Judaism and Gender” at Bar Ilan.

All three of these women have attempted to reshape the world of halakhah by exposing many of its assumptions and expanding its concerns. There is, to quote Rawidowicz, a tension between “continuation and rebellion, tradition and innovation,” in their work as they seek through novel interpretations and discussions and arguments with one another and others to reshape the contours and substance of Jewish faith and practice in our time. They see themselves as bearing responsibility for Jewish continuity and spirituality even as they unapologetically acknowledge the novel turns their writings take within the framework of the Jewish textual tradition. We will now explore how they have done this by turning to their works of “interpretation” and will indicate what the responses of sectors of the Orthodox world have been to their positions as well as the counter responses they have offered. In so doing, a fuller appreciation of the creativity and originality as well as daring that marks their thought will emerge.

 ADLER, ROSS, AND A FEMINIST PHILOSOPHY OF JEWISH LAW

Rachel Adler, in her 1998 Engendering Judaism: An Inclusive Theology and Ethics, provides the foundational conversation upon which so much of the writings of Ross and Irshai rest. That is, Ross and Irshai are in active dialogue with Adler and build upon her arguments, even as they, as Orthodox women, feel they depart from her positions in significant ways.

Adler, in her powerful 1983 Moment essay, “I’ve Had Nothing Yet, So I Can’t Take More,” indicted rabbinic tradition for making women “a focus of the sacred rather than active participants in its processes.” Writing then as an Orthodox woman, Adler observed, “Being a Jewish woman is very much
like being Alice at the Hatter’s tea party. We did not participate in making the rules, nor were we there at the beginning of the party.”\textsuperscript{14} This is a theme that will be repeated, in different ways and with different emphases, over and over again in the writing of all these women, and the moral accusation it lodges against the sexism of classical Jewish tradition has resonated with many women and men alike during the last three decades.

In light of this observation, it is hardly surprising that, in her 1993 *Tikkun* essay “In Your Blood, Live: Re-visions of a Theology of Purity,” Adler repudiated an essay she had written two decades earlier and argued “that purity and impurity do not constitute a cycle through which all members of society pass, as I argued in my [earlier] essay.”\textsuperscript{17} Instead, “impurity and purity define a class system in which the most impure people are women.” By this point, a “new Rachel Adler” had emerged—a person who was going to contribute to a revolution in the Jewish world by paying systematic attention to gender as both an analytical and a normative category for understanding and redirecting Jewish conversations about Jewish law and legal rulings.

Building upon numerous articles written in the late 1980s and throughout the 1990s on the presentation and classification of women in rabbinic literature, Adler gave mature expression to her thought in *Engendering Judaism*. In this work, Adler insisted, unlike other Jewish feminists, that halakhah must serve as a source for her own reflections on Judaism. To be sure, a feminist non-Orthodox theologian like Judith Plaskow did not completely reject halakhah. However, Plaskow, in her own words, was at best “ambivalent about Halakhah.” She questioned whether “a system based on law could be harmonized with a feminist emphasis on relationship.”\textsuperscript{18} Adler had no such ambivalence. While she recognized that traditional Jewish law had systematically excluded the voices of women, Adler contended that the halakhah was too central an idiom in the Jewish experience—to too vital a part of the Jewish narrative—to be rejected summarily. As she writes, “We [Jewish feminists] urgently need to reclaim this term [halakhah] because it is the authentic Jewish language for articulating the system of obligations that constitute the content of the covenant.”\textsuperscript{19} While the liberal community of which she is a part is often notoriously disinterested in halakhah, Adler refused to surrender to this reality and expressed her aspiration to make Jewish law an integral part of the feminist and progressive Jewish worlds of which she remains a part when she asserted, “Any authentic modern Jewish theology has to account for the norms and praxis of Judaism.”\textsuperscript{20}
However, Adler was too critical a feminist to allow classical notions of Jewish law to remain unchallenged and argued that a feminist approach to law would create a transformed halakhah. While sympathetic to the efforts made by Rabbi Louis Jacobs and Conservative rabbis such as Joel Roth and Elliot Dorff and Reform rabbis like Moshe Zemer and Mark Washofsky in the Reform camp, to offer “liberal correctives”—generally of an ethical nature—to traditional understandings of the halakhic system and process, Adler charged that none of them paid sufficient attention to gender as a category allowing for a critical analysis of halakhah. She found their efforts flawed and insisted upon a completely different theoretical approach to the question of Jewish law than that found in the work of others—either women or men. Nevertheless, Adler insisted that halakhah not be cast aside in the Judaism she envisioned because Jewish law is required as “a way for communities of Jews to generate and embody their Jewish moral visions.”

To construct this novel approach to Jewish law, Adler utilized the work of Yale University law professor Robert Cover. Cover had argued that law itself functioned in two modes, one “imperialistic” and the other “jurisgenerative.” The former approach was marked by an emphasis upon authority and the application and enforcement of rules. Adler held that this was the manner in which virtually all previous theorists of Jewish law—even liberal ones—had approached halakhah. However, Adler embraced the latter mode of “jurisgenesis” that Cover had adumbrated as more promising for her own enterprise. In this mode, law is viewed as embodying a paideia—the highest ideal of the community—that is embedded in a master narrative of the community, and the ongoing enactment of legislation and the rendering of judgments attempt to give this ideal ever more exact and just application over time. Adler asserted, “Using Cover’s framework, so-called non-halakhic groups are more properly identified as incipient paideic communities attempting to establish differing nomic visions. The norms they establish for living out the implications of the poems and stories they create will be a halakhah.” Groups charged as nonnormative within the existing structure of Jewish law can therefore still be norm-generating and they can create new norms for the entire community. Loyalty to a tradition does not mean fidelity to a tradition as contemporaneously constituted. Rather, jurisgenesis means that there are “richer and more vital worlds that could be,” that traditions contain within themselves the seeds for the creation of new normative worlds.
Adler employs the Yiddish folktale of Skotsl to illustrate how an ethos of jurisgenesis informed by a feminist sensibility might be applied as a needed corrective to the power of patriarchy with traditional Judaism. She maintains that the story symbolizes the kind of work called for by a feminist hermeneutic. The story, as Adler relates it, states, “Once upon a time, women began to resent that men seemed to own the world. Men got to read from the Torah and had all the interesting mitzvoth and all the privileges. The women decided to present their grievance directly to God. They appointed Skotsl, a clever woman and a good speaker, as their representative.”

The women then decided to construct a human tower so that Skotsl could scale the tower and ultimately present the case of the women before God. However, the tower collapsed and the women who constituted it fell every which way. Skotsl disappeared and men continued to rule the world. Nothing changed. However, women are still “hopeful, and that is why, when a woman walks into a house, the other women say, ‘Look, here comes Skotsl.’ And someday, it may really be she.”

The phrase, “Skotsl kumt—Look, here comes Skotsl,” that concludes this story and that was traditionally used as a greeting in eastern European society among Jewish women, becomes, for Adler, her feminist proclamation of “Hineini—I am here!” Skotsl has arrived and women will no longer hide their dissatisfactions with the patriarchal structures of power that mark Judaism and its forms of Jewish law. Skotsl, Adler writes, “must bring revelations to heaven, disclosing stories unknown to the tradition, the stories of its female claimants.” Moreover, she must “tell the tradition its own stories in a new way . . . draw meanings that contest the tradition’s legal meanings [and thereby] make the law her accomplice in its own destabilization.”

Women and men are now charged with the task of heeding Skotsl and her message, so that together they can construct, as Cover teaches, “a bridge to a better world.”

Adler employed these insights in Engendering Judaism to maintain that a messianic goal—the creation of a more just world—lies at the heart of the Jewish story. The responsibility of each generation of Jews is to allow that goal to be more fully approximated so that a messianic vision of righteousness can be more fully realized. Her aim in this book was to indicate to men and women alike how a “more inclusive Judaism” could be forged, one that would inspire all Jews to draw upon the totality of Jewish tradition and law to fulfill the Jewish paidea of messianic justice.
In *Engendering Judaism*, Adler selected the issue of marriage as a means to illustrate the nature of her overarching approach to Judaism. She noted that classical halakhah employed the metaphor of *kinyan* (acquisition) to grant religious sanction to the relationship that is created between a man and a woman when they marry. Adler condemned this metaphor as inappropriate for two principal reasons. First, in the traditional marriage ceremony it is the husband who “acquires” the wife. This was clearly offensive to her egalitarian sensibilities. More significantly, Adler maintained that a “metaphor of acquisition” failed to express the feelings of reciprocity and concern that more properly characterize the bonds that obtain between two persons who wish to sanctify their devotion to one another as permanent partners.28

As Tamar Ross, writing on Adler, notes, Adler employs traditional metaphors of covenant and relies on partnership law as being more appropriate to *kiddushin* than property law. By turning to the notion of covenant and legal partnership, Adler was able to argue that these ideals provided a more fitting metaphor for the relationship of mutuality and love that exists between two people than the contractual elements alone that mark property law. Drawing upon diverse examples of covenantal commitment and care found throughout the tradition, Adler composed a document she entitled a *Brit Ahuvim*, or Lover’s Covenant, that could be used by both heterosexual and homosexual couples to celebrate and consecrate their enduring connections. In writing this document, Adler granted ritual expression in the realm of praxis to the theological ideals she had articulated and employed Jewish law and texts in an original and innovative manner. Ross appreciatively observed that Adler paid close attention to textual sources in the *Messorah* in writing this document and cited it as providing a bold understanding of how the resources available in the tradition could be reconstructed and reconfigured to provide novel directions for Jewish life and thought. In so doing, the Reform Adler could speak across classical religious divides within Judaism and forge a ritual document that attracted the attention of a broad swath of Jews. Indeed, the Adler *Brit Ahuvim* allowed Ross to conclude that decisions rendered in Jewish legal discourse are surely “a function of who is doing the reading, what texts are considered relevant, and the general context within which such texts are brought to bear.”29

The appreciation Ross showed for Adler indicates the shared theological universe both women share across denominational line. For Ross, no less than for Adler or Judith Plaskow, the issue that Orthodox feminism needs
to confront is theological. As Plaskow, writing about Ross, puts it, Ross “acknowledges that concrete efforts to alter the legal position of women in Jewish law cannot be divorced from more far-reaching consideration of the status of halakhah and the question of the extent to which halakhic change is possible. Women’s status in halakhah is a moral issue and not simply a practical one.” Orthodox Jews “need a theology that will allow them to acknowledge that Torah and halakhah are shaped by culture, and yet still see them as representing the eternal voice of God.” Indeed, from this perspective her work represents an attempt to “develop an account of halakhah” in the interests of justice “that allows for change in the direction of greater inclusion of women, but sees that change as part of the unfolding of divine revelation.”

Indeed, this is the crux of the theological-interpretive dilemma Ross confronts. In an exchange with Plaskow in *Nashim: A Journal of Jewish’s Women’s Studies and Gender Issues*, Ross acknowledges that her position and movement overlap with the positions and creations of liberal Jewish exponents of feminism. Indeed, she writes,

> Orthodox Jewish feminism, like Jewish feminism of the non-Orthodox variety, follows in the footsteps of the feminist movement at large. Like its predecessor, [Orthodox feminism] began with acknowledging the problem of women’s subordination and continued by struggling to achieve equality as defined by male standards. Eventually, however, even Orthodox women who started out rebelling against the traditionalist “separate but equal” line of apologetics have developed awareness of the need to balance male ways of thinking by adding their uniquely feminine insights.

The fruit of these insights can be seen in women’s *tefillah* groups that do more than “mimic the male form of worship,” in the “form and delivery of their *divrei Torah,*” in the creation of novel women-oriented lifecycle rituals, in the questions women pose in Torah study as they gain more confidence “to find their own voices in the substance of their learning,” and in “the contributions of religiously educated women to discussions of a more ideological nature that appear in the journals of modern Orthodoxy.”

This correspondence, though not identity, between Orthodox and non-Orthodox modes of Jewish religious feminism can also be seen in the realm of textual interpretation. Ross and by extension Orthodox feminists
oppose those who affirm literalist readings of Scripture and she and they are consciously open to the multifaceted readings that can emerge from different interpretive strategies. As she observes, quoting Maimonides, “The gates of interpretation are never closed.” After all, “Consensually agreed-upon limitations restricting the way we understand [the tradition] are themselves the products of interpretation and, as such, their content and import is always—at least hypothetically—open to re-evaluation.” All this allows Ross to conclude boldly, “The difference between Orthodox and non-Orthodox responses to the challenge of feminism is not a matter of variant models; it is a difference of degree and pace rather than kind.”

It is hard to imagine male champions of Orthodoxy—even the most open of them—making such a statement about their liberal Jewish counterparts.

However, despite this appreciation and similarity, Ross has a concern with religious authority and divine revelation of Jewish tradition that distinguishes her from Adler and her liberal Jewish feminist colleagues. While Adler speaks of a desire to “create anew” and forge “a framework for halakhah that breaks the classical tradition’s monopoly upon rules, categories, and the transmission of authority,” the Orthodox Ross speaks of halakhah in decidedly more conservative terms. She writes, “Irrespective of our opinion on any given question of law, in order for a ruling to be legally viable it must be formulated in accordance with accepted procedural rules and conventions of the legal tradition.” Adler, in contrast, adopts what Ross charges is “a non-foundationalist vision of [Jewish] law.” While Ross concedes that Adler “appreciates full well that ‘an engendered Judaism’ needs the materials of the tradition to make credible theology,” Ross charges that Adler’s “lack of commitment to what she [Adler] labels ‘classical halakhah’” makes the Adler approach of limited utility in the Orthodox world Ross inhabits. She is undoubtedly correct on this point, and for all their overlap, the traditionalism of Ross marks her as decisively distinct from Adler.

Ross makes that abundantly clear when she writes that a refashioning of old standards can only be effectuated “through a process of interpretation of the tradition’s authoritative texts, utilizing established hermeneutic principles and legal procedures.” Judaism, she asserts, is “a religious tradition based on revelation of God’s word.” It is impossible to imagine Adler, for all her attention to the “authoritative texts” of the tradition, making a comparable theological declaration about revelation and her own views of halakhah diverge considerably from those that Ross here expresses. This is why, despite her considerable appreciation for Adler, Ross critiques...
Adler and her appropriation of Cover and his notion of “jurisgenesis” by asserting, “Cover’s image of law as a bridge applies not only to where the law is going, but also to where it is coming from. . . . Adler’s contrasting emphasis . . . disregards the fact that these standards and rules control . . . the nature of the bridge that is to be formed.”39 Ross’s charge is that Adler does not sufficiently appreciate the divinity of what Ross still regards as a revealed tradition and that Adler does not therefore adequately situate herself on the “bridge” of Jewish legal tradition as Ross does. Instead, Adler and her allies, in Ross’s assessment, are architects of a new bridge.40

Ross defends her own theological approach to Jewish law and distinguishes herself from Adler by speaking of what she labels “cumulative revelation.” She insists that this doctrine of “cumulative revelation” is fully consonant with the tenets of Orthodox Judaism and asserts that “Jewish tradition provides precedents for a view of divine revelation that can assimilate feminist exposure of a pervasive male bias in Scripture, without resorting to untenable conceptions of God and His methods of communication.”41 Ross does this by delineating three assumptions extant in Jewish tradition that “enable belief that the Torah is divinely revealed without denying human involvement (hence male interests and biases).”42 The first assumption is that Torah is a “cumulative process” that views Torah as “a series of ongoing ‘hearings’ of the voice at Sinai throughout Jewish history.”43 She asserts that this view is well rooted in Jewish tradition and cites Rabbi Isaiah Horowitz, author of the *Shnei Luhot Habrit*, when he writes, “We find God gave the Torah and continues to give the Torah every moment.”44 The second assumption holds that “His word is heard through rabbinical interpretation of texts . . . and through the mouthpiece of history.” History and what happens to the Jewish people “is essentially another form of ongoing revelation.”45 Finally, as an Orthodox Jew, Ross asserts the “original message is never replaced.”46

Ross then turns her attention to Orthodox colleagues and faults the selective reading of present-day Orthodoxy, which prefers to ignore all those midrashic sources that speak, for example of the role Moshe Rabbeinu’s active input (and that of the daughters of Tselofhad) had in transmitting the word of God, and to single out instead only those sources that portray Moses as an unthinking stenographer passively transcribing the divine message. For this reason, it is my conviction that the feminist critique,
In acknowledging the impossibility of avoiding human standpoints, coincides with rabbinic insights, is totally persuasive, and trumps hands down current Orthodox notions of halakhic fixity.⁴⁷

In making this statement about the contextual and personal factors that unavoidably inform and direct Orthodox views of revelation in relationship to law, Ross is echoed by another prominent Orthodox feminist, Tova Hartman, who contends, “What becomes striking . . . is not the exercise of rabbinic creativity by religious authorities to validate and encompass forms of knowledge and values derived elsewhere, but rather the selectivity with which this creativity is applied, and the discourse within which the process of selection is configured.”⁴⁸

Having cited traditional warrants drawn from the wellsprings of biblical and Talmudic traditions that speak about the “situatedness” of revealed texts, Ross contends, “The very notion of divine communication itself can never be divorced from human categories of thought and from our time and culture bound proclivities, belief systems, and expectations.”⁴⁹ Even if one assumes the text is revealed, there is a human being that interprets it. There is a hermeneutical circle that cannot be escaped. Ross therefore asserts that we can make “no distinction between ‘subjective’ and ‘objective,’” and quotes R. Eliyahu Dressler’s statement in his Michtav mei-Eliyahu, “We possess only relative truth, each one in accordance with his station and condition.”⁵⁰ In speaking of revelation in this way, Ross is surely reminiscent of Adler and she puts forth views that many liberal Jewish theologians would endorse.

Ross seems cognizant of the affinity that exists here between her views and those of persons in the non-Orthodox Jewish camp and is keenly aware that disquiet may emerge in Orthodox circles from her description of the contingent nature of revelation. She confesses that one cannot avoid anxiety when interpreting what a text says, for we may “miss discerning what God said. . . . Only with awe and apprehension, sometimes even fear and trembling . . . is it appropriate to interpret a text so as to discern what God said and is saying. The risks cannot be evaded.”⁵¹ Ross does not believe that the “ultimate worth of religious truth claims . . . lies . . . in their ability to provide us with precise metaphysical information” or certainty.⁵² Rather, what is crucial is “the kind of behavior they motivate or the spiritual experiences they provide.”⁵³

Of course, such accounts of the metaphysical uncertainty surrounding revelation and Jewish law have elicited negative responses and even
condemnations from a number of Orthodox spokesmen. For example, Dr. Yoel Finkelman, who teaches in the Interdisciplinary Graduate Program at Bar Ilan, issues a firm yet respectful dissent from her work when he writes, “From the perspective of historian, who views halakhah from outside itself, or the post-modern literary theorist, who tries to explain how mutually exclusive interpretations derive from one text, it is hard to avoid the conclusion that halakhic authority is vested in communal practice and that texts have no objective meaning. But from within the ‘language game’ of existing halakhic discourse, making these assumptions could prove suicidal.”

However, Finkelman’s critique is not only sociological—that is, a result of the condemnation that would emerge from adopting the postures that Ross has put forth. Rather, it is theological. He contends, “The elemental power of faith in the living, personal, and demanding God Who reveals Himself in the sacred words of His Torah which He dictated directly to Moses is replaced [by Ross] with functionalism, metaphor, and sociology.” Finkelman simply asserts that he not willing to pay that price. While conceding that he has no way to prove his claim over against Ross, he states, “I find the religion that she suggests to be bland and uninspiring, bound to give in weakly to the challenges of contemporary intellectual trends and fads. . . . As serious as the feminist critique is, we should make sure that we are not selling the raw vitality of traditional religion for a mess of pottage of fickle post-modern trends.”

Rabbi Aryeh Frimer, Ethel and David Resnick Professor of Active Oxygen Chemistry at Bar Ilan University and a prominent and well-published rabbinic authority, offers a critique of Ross that is more strident than Finkelman. Her views, in his opinion, are simply heretical. He writes, “Halakhic Judaism has consistently maintained that the fundamentals of how exactly we are to serve the Almighty were delineated in an immutable Sinaitic revelation thirty-five hundred years ago. This revelation was twofold and comprised of a Written Law and an Oral Law.” This certainty about the nature of Jewish revelation and authority allows Frimer to assert that the Divine Will for humanity in respect to gender roles has been ordained with absolute clarity apart from socio-cultural and psychological-personal contexts. He asserts, “God Himself ordained and commanded non-identical roles for men and women. As Orthodox Jews we believe that the Torah was not born, but divinely revealed; it is eternal, and, hence, not resonant of a particular sociocultural context. Since the Torah is immutable, so is gender-related religious obligation.”
Frimer states that Ross believes that since the Torah was transmitted by males, it reflects a male perspective. Had Torah been transmitted by women, it would reflect different perspectives. However, Frimer charges, “Such a position challenges the objectivity and authenticity of the entire Torah . . . in all its aspects, gender-related or not.”58 Ross’s “cumulativism” simply cannot be accepted “by an Orthodox Jew who accepts Torah mi-Sinai and the immutability of Torah.”59 She has placed herself beyond the “pale of Orthodoxy and traditional Torah-Judaism.”60 While Frimer concedes, “Revelation is expanding in the sense of new insights and applications of the originally revealed rules and principles,” he also contends there are no “radically new rules and novel principles being revealed.” This for him is the meaning of the Talmudic statement from the Jerusalem Talmud Peah 17a, cited above by Rawidowicz, “Mah she-talmid vatik l’horot (Even that which a veteran rabbi will one day recite).” While Rawidowicz contended that this verse points to the open-ended nature of Jewish interpretation, Frimer takes a different stance. For him, this statement means that all has been revealed long ago in an original and one-time Sinaitic moment. “Halakha remains non-fluxional,” he asserts.61

Ross simply disagrees and will not bow to such criticism. She observes, “The decisions of poseqim (decisors) regarding when to employ ‘the open playfulness’ of midrash aggadah (or appeals to liberating consideration of over-arching principles and context) and when to limit themselves only to close readings of texts and their minutiae are themselves judgments that poseqim (decisors) make daily.”62 The context in which both the community and the poseq (decisor) live play a part in the decision that will be rendered. She maintains “that a dynamic and proactive model of halakhic practice that acknowledges the role of context and implicit values in halakhic deliberation can be extracted from a halakhic self-understanding that already exists in the sources,”63 and therefore is completely compatible with an authentic Orthodox Judaism and its views of revelation. She will not be cowed by her male critics.

IRSHAI AND A FEMINIST APPROACH TO JEWISH LEGAL ADJUDICATION

The path that Ross and Adler have hewn is further witnessed in the publications of Ronit Irshai. Schooled in both classical rabbinic sources and in modern philosophy, Irshai is a pioneer in feminist legal hermeneutics
who offered a pathbreaking approach to Jewish legal adjudication (p’sak) in her *Fertility and Jewish Law: Feminist Perspectives on Orthodox Responsa Literature* (2012). At the very outset of her book, Irshai proclaims directly and unapologetically, “Jewish law (halakhah) is the product of an exclusively male preserve. Though it governs the lives of men and women alike, it has been formulated and interpreted, for thousands of years, by an all-male scholarly elite. While this fact cannot be denied, its implications and consequences can be understood in varied, even contradictory ways.”

Irshai herself then goes on to delineate those consequences and implications. She asserts that she “will tell a different halakhic story, one that accounts for the female narrative and its missing perspective” (emphasis original). In so doing, she echoes Adler, though she clearly intends to address an Orthodox, not a liberal, Jewish audience that holds halakhah at the center of its concerns. In so doing, she aims her remarks at the “growing number of women and men” for whom “the patriarchal picture of the world that lies at the heart of the halakhic system” is no longer satisfactory.

Of course, Irshai acknowledges that conservatives within the Orthodox world, like the critics of Ross mentioned above, even when they acknowledge that there are “subjective proclivities in halakhic decision-making,” will nevertheless insist that halakhic decisors act in “an objective . . . manner” that allows them “to rise above their personal [and subjective] inclinations.” Furthermore, these scholars maintain that there is an overarching ethos of equity—“to do what is right and just”—in the halakhic system that serves as a corrective to protect against any potential abuses in the extant system. As Irshai writes, “In this sense, even ‘subjectivity’ is a product of the halakhah’s ethos” and this ensures genuine neutrality and objectivity in the halakhic system even if the province of p’sak—legal ruling—has been the exclusive preserve of men. However, Irshai doubts whether such “objectivity” can actually be realized, and she claims that subjective male values that lead to patriarchal domination and control have found their way into the halakhah despite claims to the contrary. By pointing this out, Irshai candidly admits that she hopes to move the Jewish community “toward a halakhah that is more inclusive and egalitarian.”

Irshai acknowledges that this position is highly controversial within the world of a traditional Orthodox Judaism, which insists “that halakhah is a complete closed system with internal rules of inference activated by an interpretive process having no connection to outside reality.” These persons claim that the system is marked only by a “legal formalism,” which
asserts that legal rules stand completely apart from social context or political concerns. The Orthodox proponents of this view of Jewish law contend that rabbis apply the rules found in the tradition to an instant case with complete disregard for social interest or considerations of public policy. In Irshai’s words, they maintain that the “halakhic process is unaffected by any consideration of independent values.” She cites the venerated legal authority and Talmudist Rabbi Joseph B. Soloveichik as having maintained that halakhic decision-making is “untainted by any contingency, subjectivity, or reduction.” Soloveichik writes, “The halakhah has no need to reflect the character of the halakhist, and neither changes in circumstance nor historical events contribute to shaping it. Psychologization or sociologization of the halakhah are an assault on its soul. . . If halakhic thought depends on psychological factors, it loses all its objectivity and deteriorates to a level of subjectivity lacking all substance.” Such halakhic formalism, with its claims of objectivity, Irshai observes, has the virtue of ascribing “certainty, stability, and authenticity to the halakhic system” and insists “that legal discourse is gender neutral.”

Nevertheless, Irshai vehemently disagrees with Soloveichik. Irshai claims that his descriptions fail “to accurately describe the work of halakhic decisors past or present.” Feminist criticism regards such claims with a “hermeneutic of suspicion.” Indeed, feminists reject the claim of formalism with its “conceit” of objectivity as a matter of principle not only because it is inaccurate, but because “it is inconsistent with the interests of women.”

Irshai states this is so for three reasons. First, in the spirit of Harvard-trained NYU Professor Carol Gilligan who has written extensively from a feminist perspective on the importance of relationship in moral development, Irshai claims that “traditional halakhah reflects a distinctively masculine way of thinking” that focuses on rules, not relationships. If the latter consideration was primary and halakhah embodied more fully the voices and authority of women, then she believes that “halakhic-decision making . . . would look entirely different from halakhic decision-making by men.” Secondly, in the spirit of Catherine MacKinnon, Elizabeth A. Long Professor of Law at the University of Michigan and foremost feminist champion of equality for women in a patriarchal world marked by male domination, Irshai posits “that the halakhah is structured so as to preserve the existing patriarchal order” and “to maintain the domination of women by men.” Finally, she asserts, inspired by the ideas of Robin West, Frederick J. Haas Professor of Law and Philosophy at the Georgetown
University Law Center, who has written extensively on the relationship between jurisprudence and gender, that “halakhah does not regard [female experience] as equivalent in value to male experience or as warranting the acceptance of women as equal partners in formulating halakhah. At best, female perspectives will be expressed indirectly, filtered through a male lens.” By citing Gilligan, MacKinnon, and West as sources for her thought, Irshai clearly goes beyond the bounds of what one might anticipate from an Orthodox Jewish expert on Jewish law and reveals how embedded her work is in the realm of contemporary feminist theory. In this way, Irshai, no less than Adler or Ross, demonstrates that her critique is part of a larger and more general feminist project.

Irshai continues by exploring what this male-created and male-dominated halakhic system means by delineating in great depth and with considerable precision the halakhic corpus of writings—from Bible and Talmud through medieval commentaries and codes to modern responsa—dealing with the broad issues of sex and reproduction. The first chapter of her work focuses on the “religious mandate to reproduce” while the second centers on “methods of birth control.” The next two chapters deal with issues surrounding abortion. The final two chapters deal with issues of artificial fertilization and artificial insemination—what Irshai labels as “procreation without sex.”

Irshai maintains that the lens of gender sharply illuminates the stance that the overwhelming preponderance of modern rabbinic writings takes in relationship to women and reproduction. While the biblical commandment to reproduce is surely a weighty one, she shows that it has been qualified in the past in order to accommodate the other values in the tradition, e.g., Torah study for men. However, Irshai claims that such weight is not assigned the independent personhood of women in contemporary halakhic writings because male decisors “emphasize the reproductive value of a woman at the expense of her value as a person.” Thus, in her discussion of the mokh and other methods of birth control, Irshai argues that even though birth control “techniques that entail no halakhic violation” have been developed, most poskim generally still forbid unlimited access to birth control even though “the question of birth control poses no particularly difficult halakhic problems.” This is because she charges that there is a procreative bias among the leading decisors that values women above all as bearers of children. To rule leniently, as Jewish law could permit, on the issue of birth control, would “involve a challenge to the traditional role of women” and
would thereby undermine “the existing social order.” As such, the question of birth control “leaves the domain of pure Halakhah” and becomes a matter of political control in which the personhood of the woman is diminished and the power she, as opposed to the male poskim, can exercise is severely circumscribed. 

Irshai completes her discussion of modern halakhic writings on the issue of birth control and women by citing explicitly the insights of Foucault and his writings on the question of power. She indicts the male-dominated halakhic system by stating that the moral and gender concepts that inform halakhic rulings on this issue lead to the inescapable “conclusion that the halakhic power structure has an interest in creating a halakhic foundation for the maintenance of traditional gender notions that consider a woman’s primary function to be the bearing and raising of children” and that this same “infrastructure [of stringent rulings on the permissibility of women employing even halakhically-sanctioned methods of birth control] means to fortify the halakhah against the penetration of a ‘debased modernism’ that could undermine its way of ordering the world.”

Similarly, in relationship to abortion, Irshai argues that “lenient interpretive options” that could allow for a more expansive definition of the conditions under which an abortion would be permissible have been rejected by and large in contemporary halakhic discourse “because the male decisors’ unarticulated gender assumptions fail to take account of women’s fundamental interests and fail to respect them [adequately] as persons.” Instead, she charges once again that the rulings of these male rabbis affirm “a patriarchal concept of women as beings meant exclusively for reproduction and child rearing.”

Finally, in the last two chapters, where Irshai deals with assisted modes of reproduction, she points out that this is an area that was not addressed in earlier halakhic sources. Simply put, the ability of science to distinguish genetic and gestational dimensions of parenthood was unknown in pre-modern times. Questions that arise in this area are a novum in halakhic discourse. While poskim therefore possess wide discretion and latitude in rendering their decisions on this issue, their vision of woman as child-bearer causes most present-day halakhic authorities to authorize the use of advanced technology and to ignore moral considerations of women as independent agents in order to promote procreation. While Irshai recognizes that sympathy for non-fertile couples—women and men—surely plays a major motivational role in leading poskim to render such judgments, this
factor only reinforces her contention that subjective considerations and values influence halakhic decisions. It leads her yet once more to assert that her principal criticism of halakhic rulings surrounding reproductive technology “is directed not at their promotion of childbearing but at the negative conception of women that they necessarily imply—a view of women that fails to acknowledge their worth as full-fledged human beings” apart from their child-bearing capacity.80

In sum, classical halakhah is tied to male power, privilege, and perspective. Yet the male interpreters of the law are human and therefore fallible.81 If this is so, then their authority “is open to critique”82 and “the adjudicatory act is not as absolute as it is said to be.”83 Irshai, like Ross, demonstrates that Jewish legal ruling (psak) is inescapably subjective and must therefore be approached with humility. Most importantly, she claims as much legitimacy for her own understandings of Jewish law and those of her female colleagues as those put forth by men.

To be sure, Irshai, like Adler before her, does acknowledge that her methods are drawn “for the most part from critical feminist theory.” She recognizes that she can “be subject to challenge on the grounds that [her] methods are not without a gender bias” and concedes “that [my judgments] are [also] ‘political’ in the sense that they are not neutral.”84 Her own “lack of objectivity” is no less subjective than that of her male counterparts. Yet Irshai maintains that this should no more “discredit” her analysis than it should discredit that of men. The contention that values and viewpoints do not play a determinative role in halakhic adjudication cannot be defended. Her views, like those of her male counterparts, are surely partial. However, “if that is a ‘bias,’ then it is a salutary or correct one.”85 A feminist approach to Jewish law provides a needed moral corrective to one in which male viewpoints alone govern.

Irshai, like Ross, has been subject to critique from members of the Orthodox halakhic establishment for her efforts to affirm a simultaneous commitment to “halakhic discourse and the values of equality.”86 By far, the most interesting and compelling such critic is Alan Jotkowitz, a member of the medical school faculty at Ben Gurion University. Writing in the pages of Nashim, Jotkowitz displays great respect for Irshai and her work. He points out that Irshai charges that contemporary halakhic attitudes towards abortion have “been influenced by a specific repressive attitude towards women” that consistently places “the fetus’s interest ahead of the woman’s.” However, Jotkowitz asserts that this is not true. Modern
poskim like Ben Ish Chai, Ben Zion Meir Hai Uziel, Eliezer Waldenberg, and Aharon Lichtenstein “have . . . rejected a formalistic approach to halakhic decision-making regarding abortion.” They have instead considered the personal plight of women in issuing their rulings on abortion and have employed the flexibility inherent in Jewish law to issue rulings “consistent with a feminist ethical approach” that emphasizes “the contextual nature of the moral decision.”

Citing the general approach that Rabbi Lichtenstein takes to the phenomenon of p’sak, Jotkowitz points out that Orthodox rabbis recognize that considerations of human and social context influence decisors when they issues rulings. Classical pesikah (legal ruling) and feminist theory are seen to be one in explaining how “context and human relationships play a role in halakhic decision-making.”

Jotkowitz undoubtedly provides some type of corrective to the general case Irshai is making. Clearly, there are modern poskim who display sensibilities that Irshai [and Adler and Ross] would applaud. However, this argument simply avoids the point that Irshai and her colleagues are making. Even if the attitudes of some decisors are seemingly “consistent with modern feminist thinking regarding the setting of priorities in this highly charged debate,” this misses the overarching and powerful thrust that Irshai and her colleagues have been making over and over again about the nature of traditional halakhic discourse.

As feminist legal scholar Dena Davis puts it, a prior problem remains no matter how sensitive the decisors are. That is, “Who is allowed into the interpretive process and whose subjective experience is to count?” She continues, “Our contemporary awareness of the exclusion of female scholars at the time of Talmudic rulings on contraception causes us to question whether the rulings might not be the products of a flawed process.” Furthermore, even if contemporary halakhic reasoning is conceded to be “analogical, interpretive, and ineluctably subjective,” Davis points out that “only half the people expected to adhere to it are allowed into the process. This presents problems for its credibility both within and without its own community.” Therefore, a moral problem remains despite the fact that male decisors sometimes take “women’s suffering into account, [and] even put it first.” For men in this system are the sole custodians of power. Their rulings reflect a “male understanding of female experiences.” Again, this is not to say that women’s interpretation is any less ideological than men’s. It is to say that if women are not allowed equal entry into the adjudicatory
process, then their full personhood is denied and the process remains morally flawed.\textsuperscript{94}

Irshai is not content with pointing out that women are excluded from a formal role in the adjudicatory process. She does not see the problem with traditional halakhah as one of power alone. Rather, Irshai has sought to uncover the attitudes toward women that inform the entire halakhic system. Formed by men, these attitudes do not affirm the full and equal personhood of women. Consequently, the rulings that emerge are based on a moral paradigm that is both incomplete and defective. Women and men should not be expected to affirm the legitimacy of a system that does not allow the voices of women to be fully present and the full dignity of women as persons affirmed in the life of the community. By exposing this paradigm and arguing against the putative objectivity of the traditional halakhic system, Irshai feels she has set the stage “to create a new halakhic story” in which women and men participate as equals. This new story “will be one that is interested in gender justice. It will lend itself to construction and interpretation that is consistent with egalitarian insights.”\textsuperscript{95} In so arguing, Irshai has built upon Adler and Ross as they and other female colleagues forge new paths in this unconcluded and excitingly evolving chapter in modern Jewish law.

\textbf{CONCLUDING REMARKS}

Simon Rawidowicz maintained that “interpret or perish” is the voice that Israel has heard incessantly since Sinai. He maintained that Jewish living and learning rise and fall with \textit{interpretatio}. In our day, Adler, Ross, and Irshai are among the foremost respondents to this challenge Rawidowicz posed. Their writings embody the continuity of “Israel’s spirituality in history” and they prod the people Israel—both within the Jewish State and in the Diaspora—to hear the moral call that lies at the heart of Jewish tradition, the biblical assertion that all people—women and men—are created in God’s image. They grasp that the Torah is not in heaven, and that its message must be heard and expressed ever anew and unchalantly by our generation so as to recognize the full personhood of women as well as men.

Judaism is a religion that centers on the life of Torah, the root covenantal religious experience that God and the Jewish people share across time and space. It is a dialectical and inexact and all too often fallible process in which the Jewish people strive in every generation to hear the voice of God.
and the obligations—the mitzvot—that emerge from such strivings. The life of Torah has been recorded powerfully and idiomatically in the texts of a Jewish legal tradition that provide us with a sense that God wants us to act in Godlike ways. These texts are too vital a part of Jewish tradition to be cast aside by any segment of Jews, regardless of the precise epistemological understanding each has of the authority in which the texts are grounded. This is why Adler, Ross, and Irshai speak to one another and to other Jews across denominational lines and why their calls for “gender justice” in Jewish law provide an important corrective to the traditional ways that Jewish law speaks to and for many of us.

The task confronting the Jewish people today is the challenge of creating institutions in which all Jews can have a sense of confidence and hope. It is an aspiration that calls for the reconstitution of Jewish communal life on textual foundations that recognize the dignity of every human being. The women presented and discussed in this paper help us recognize the urgency of this task and their demand that Jewish law affirm the equal worth of women and men helps us realize that aspiration. Out of their “fructifying vision,” to give Rachel Adler the final word, “comes the seeds of future nomic worlds . . . a world that Jewish women build together with Jewish men, a nomos we inhabit where we co/habit justly and generously.”

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NOTES

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2. Ibid.
3. Ibid., 89.
4. Ibid., 90.
5. Ibid., 84.
6. Ibid., 91. Of course, the meaning of this phrase, as we shall see below, comes to be a major point of contention between the feminist thinkers we will discuss in this lecture and some Orthodox thinkers who condemn the work of these women as heretical from a traditional theological point of view. The former assert this text serves as a warrant that legitimates open-ended and changing interpretations on the part of later generations of rabbis while the latter contend that the text does not allow for contemporary authorities to deviate from the “received tradition.”

7. Ibid., 92.
8. Ibid., 85.
9. Ibid., 88.
10. Ibid., 88–89.
11. Ibid., 95.
12. Ibid., 106.
13. Ibid., 125.
15. Ibid., 101.
18. These quotations from Judith Plaskow are taken from her encyclopedia article entitled, “Feminist Theology,” on the website of the Jewish Women’s Archive, http://jwa.org/encyclopedia/article/feminist-theology.
20. Ibid., 113.
21. Ibid., 21.
23. Adler, Engendering Judaism, 143.
24. Ibid., 35.
25. Ibid., 22.
26. Ibid., 119.
27. Ibid., 120.
32. Ibid., 241.
33. Ibid., 217.
34. Ibid., 242.
37. Ibid., 167.
40. I want to thank Joshua Krug, a doctoral student at New York University, who was enrolled in a graduate seminar I taught, “Modern Responsa Literature,” at NYU, Spring 2015, for making this point in his seminar paper “Modes of Liberal Feminist Halakhic Discourse.”
41. Ross, *Expanding the Palace of Torah*, 197.
42. Ibid.
43. Ibid.
44. Ibid.
45. Ibid., 198.
46. Ibid.
50. Ibid., 19.
51. Ibid., 20.
52. Ibid., 23.
53. Ibid., 24.
54. Ibid., 7.
55. Ibid., 9.
56. Ibid., 10.
58. Ibid., 7.
59. Ibid., 9.
60. Ibid., 7.
61. Ibid., 10.
62. Ibid., 13.
63. Ibid., 15.
65. Ibid., 2.
66. Ibid., 2–3.
67. Ibid., 3.
68. Ibid., 12–13.
69. Ibid., 13.
70. Ibid., 14.
71. Ibid.
72. Ibid., 15.
73. Ibid., 16.
74. Ibid., 19.
75. Ibid. See 58–77 for her discussion of the mokh and the evolution of halakhic approaches to birth control over the millennia. The mokh is a soft cotton pad or cloth worn against the cervix that prevents conception by absorbing semen.
76. Ibid., 109.
77. Ibid.
78. Ibid., 19–20.
79. Ibid., 20–21.
80. Ibid., 273.
81. Ibid., 131.
82. Ibid., 131–32.
83. Ibid., 271.
84. Ibid., 272.
85. Ibid., 272–73.
86. Ibid., 275.
88. Ibid., 103.
89. Ibid., 104.
90. Ibid.
92. Ibid., 321.
93. Ibid.
94. Ibid.
96. Adler, Engendering Judaism, 212.