

# CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



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"Taking Responsibility for Torah"

## FEMINISM, ANTI-FEMINISM, & THE HALAKHIC PROCESS

Rabbi Aryeh Klapper, Dean

The discipline of legal interpretation has political value only so long as it can surprise. When judges are merely lawyers for client ideologies or classes, their predictable rulings have power but no influence, and courts lose the capacity to bridge over troubled waters. Witness our embarrassing inability to even consider a replacement for Antonin Scalia on the Supreme Court. This often generates a vicious paradox. Critics will argue that the existing legal structures embody the values of the powerful, e.g. males, rather than of the full community. But since their arguments are framed as advocacy for a particular subgroup, they often kill the golden goose they are attempting to capture. Law's authority depends on the perception it has legitimacy beyond power; why else would the powerful submit to its authority?

The Torah acknowledges this paradox when it bans judges from favoring the poor over the wealthy. Such favoritism is shortsighted, and leads to the wealthy buying the courts or else evading them. Courts that apply law evenhandedly are the best hope of the poor, unless the law is so corrupt that anarchy or revolution seem justified.

All the above applies to the discipline of halakhic interpretation and its role in the Orthodox community. To the extent that asking a *sh'eilah* is an assertion of power—I get to choose who decides for you—rather than a submission to the authority of Torah, *psak* becomes a tool of oppression. But *Halakhah* can enable a divided community to creatively address religious challenges. Relating to halakhic decisionmaking as nothing more than an assertion of power is a self-fulfilling prophecy that undermines the best hope of the marginalized to live as full members of a society governed by religious law.

Feminist halakhists understand themselves as advocating for a marginalized subgroup within Orthodoxy. My contention is that to be constructive and effective they need to sustain rather than undermine the authority of the legal system. They need to appeal to Torah rather than making claims on Torah; they need to retain the capacity to surprise with their Torah interpretations, and to be surprised by Torah.

The same is true of anti-feminist halakhists, who generate despair, and ultimately revolution or anarchy, when their *psakim* become ideological recitations rather than live engagements with Torah.

Let me illustrate my point via three skeletal model *teshuvot* about the following *sh'eilah*: May a woman make a *berakhab* on *Parashat Zakhor* when leining it from a *sefer Torah* for a *minyan* composed entirely of women? (Please assume that each skeleton would be halakhically plausible if fleshed out. R. David Brofsky assembles and synthesizes the sources at [www.torahmusings.com/2014/03/zakhor/](http://www.torahmusings.com/2014/03/zakhor/))

Here is the first model, which aims to justify women's maximal ritual participation:

*Q. Are women obligated in the d'oraita mitzvah of Zekhirat Amalek?*

*A. Sefer HaChinnukh says no, but Minchat Chinnukh says yes, and offers a plausible argument for his position. Since we wish to eliminate distinctions of obligation between men and women where possible, we rule like Minchat Chinnukh.*

*Q. Does women's obligation in the mitzvah of Zekhirat Amalek extend to an obligation, whether d'oraita or d'rabbanan, to hear Parashat Zakhor read from a Torah scroll in public?*

*A. Rabbi Nosson Adler, as cited by Binyan Tzzyyon, held that women have such an obligation. Binyan Tzzyyon suggests that this follows from the combination of Minchat Chinnukh's position that women are obligated d'oraita with Trumat HaDeshen's position that the d'oraita obligation entails public reading from a scroll. Minchat Yitzchak attests that contemporary Ashkenazic practice is to have late-afternoon readings just for women, which shows we rule like Minchat Chinnukh.*

*Q. If women are obligated to hear Parashat Zakhor read in public, can they form their own minyan for that purpose, read for themselves, and make birkot haTorah in the process?*

*A. The default setting is that anyone obligated to perform a mitzvah in public can count toward that public. This is addressed regarding women in the contexts of kiddush Hashem, birkat hagomel, and keriat Megillah. Women can therefore make birkot haTorah when leining Parashat Zakhor for a minyan of women. They can certainly lein for other women, as even BHG's odd suggestion regarding Megillah, that women have an obligation to hear but not read, does not apply here. However, this does not necessarily mean that women can say Barkehu before leining Parashat Zakhor, as that is a davar shebikedushah and requires separate analysis.*

Here is the second outline, which seeks to limit what it sees as halakhic boundary-pushing:

*Q. Are women obligated in the d'oraita mitzvah of Zekhirat Amalek?*

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A. *Sefer HaChinnukh* says no, because women are not obligated to fight the war against Amalek. *Minchat Chinnukh* objects that Amalek is an obligatory war, and women participate in obligatory wars. However, *Sefer haChinnukh* would presumably have responded that women's participation does not involve combat, and therefore is unlikely to be improved by the emotion of hatred/ revenge. Binyan Tz'yyon notes that some historical women, for example Yael, were praised for playing combat-like roles, but these were exceptional boraot sha'ah, not models for ordinary women to emulate in ordinary circumstances. Indeed, the Talmud refers to Yael as engaging in a "Sin for the sake of Heaven"! In any case, as a rishon, *Sefer HaChinnukh*, has more authority than *Minchat Chinnukh*, and furthermore, some argue that Rosh and T'rumat HaDeshen clearly agree with *Sefer HaChinnukh*.

Q. Does women's obligation in the mitzvah of Zekhirat Amalek extent to an obligation, whether deoraita or derabbanan, to hear Parashat Zakhor read from a Torah scroll in public?

A. The questioner in *Responsa Torah Lishmah* 187 suggests that even if women are obligated in the d'oraita mitzvah, they are not obligated in the public reading. This is because while the d'oraita mitzvah is constant, the public reading is a d'rabbanan obligation with a specific timeframe – annual or triennial – and thus constitutes a mitzvat aseh shebazman garma, a time-cause commandment, from which women are exempt. This seems compelling, in the following way: The mitzvah d'oraita is a private mitzvah, intended to make sure that children are reared to this hatred/ revenge. The d'rabbanan mitzvah is to translate that hatred/ revenge into martial spirit, and therefore must take place in public. T'rumat Hadesben and Rosh demonstrate that Rabbi Adler was incorrect in stating that women are obligated in the public reading, or perhaps misunderstood – see below.

Q. If women are obligated to hear Parashat Zakhor read in public, can they form their own minyan for that purpose, read for themselves, and make birkot haTorah in the process?

A. We stated above that women are probably not obligated to hear the public reading, in which case the question is moot. However, even if one adopts Rabbi Adler's position, the default setting is that any requirement for a "public" requires the presence of ten adult male Jews. While some suggest that women can form halakhically significant groups of ten for mitzvot in which they are obligated, such as Kiddush Hashem, birkat HaGomel, and keriat Megillah, others disagree, and traditional practice has followed the restrictive position. Even *Minchat Yitzchak*, while accounting for Rabbi Adler's position, held that men should not make the blessing when lining Parashat Zakhor for women, probably even if a minyan of men were present but had already heard Parashat Zakhor that year. Women may choose to inspire their private sense of hatred/ revenge by participating in the public ritual, and in some cases their participation may be necessary to inspire the men, or alternatively, prevent the men from acting on their hatred/ revenge inappropriately. For these reasons, in some cultures there may develop an obligatory custom for women to attend the reading, and perhaps this is all that Rabbi Adler meant.

The problem is that these *teshuvot* are not in genuine dialogue with each other. Just about no one following A would consider following B, or vice versa, in response to a reevaluation of the argument about Rosh's position, or to a demonstration that Rambam disagreed with *Sefer HaChinnukh*. The hypothetical authors and followers of these *teshuvot* seem incapable of being genuinely responsive to Torah that surprises them. They have raised shields, and nothing that conflicts

with their ideologically preordained *psak* can get through. Here is a tentative fragment of a third response, one that I hope would have a better chance of generating authentic halakhic conversation:

Both *Sefer HaChinnukh* and *Minchat Chinnukh* assume that the purpose of remembering Amalek is to enable war in the moment. But perhaps the purpose of the mitzvah is not immediate inspiration but rather ongoing cultural hatred/ revenge. In that regard, women are certainly vital, as they are vital to generating all the love of mitzvot and mitzvot of love (see the Rav's essay "Two Categories of Tradition," while recognizing that the sharp gender-role dichotomy the Rav sets out there is not descriptive of our social reality). This may be the understanding of the many rishonim who make no explicit distinction between men and women with regard to this mitzvah. Even if this is not the purpose of the mitzvah d'oraita, perhaps it was the purpose of Chazal in mandating a public reading of Parashat Zakhor. Even if the public reading is not a mandate of Chazal, but rather a communally adopted custom, it seems clear that at least Ashkenazi women adopted the custom. Perhaps, as well, the exemption of women from war is culturally bounded, and in a society where women serve in combat, they are obligated in this mitzvah as well. (Note that in both Israel and the US women do not have the same military service obligations as men, and that there are very good pragmatic reasons for even the most egalitarian of cultures to be more physically protective of young women than of young men.)

And yet, the notion of a mitzvah to hate and take revenge, to the point of genocide, is properly and deeply challenging and troubling. This is true even though the ethnic category of Amalek is halakhically defunct, and the mitzvah in any case applies only in Messianic times, and even then only when Israel is sovereign and completely at peace with all its neighbors. In contemporary times, the felt absence of G-d's Presence has led to an increased desire for the pressure of His yoke, as Dr. H. Soloveitchik wrote. Two manifestations of this phenomenon are the search for chumra/ stringency in the charedi world and the desire for increased obligation among women in the Modern Orthodox world – benot Yisroel hechmiru al atzman.

All stringencies inevitably lead to leniencies.

Both Rav Aharon Lichtenstein ז"ל and the Chofetz Chayim reached the conclusion that the mitzvah of erasing Amalek could be fulfilled only by someone acting for no motive other than obedience to Divine Command; rationalization turns mitzvah into murder. Shaul lost his kingdom not because he was merciful, but because by sparing Agag, he demonstrated he thought genocide could be rationally justified. If a mitzvah related to Amalek can be justified only in the context of commandedness, and all agree that women are fulfilling it, perhaps it is **necessary** to rule they are obligated. Or perhaps with regard to these mitzvot specifically, it is inappropriate or worse to seek obligation where it does not already exist.

While this third outline is clearly aware of and sympathetic to the concerns of both the first and second, it feels open to being surprised by Torah, and able to react without defensiveness to new sources and ideas that lead in unexpected and previously undesired directions. Unlike the others, it feels genuinely interested in the specific mitzvah under discussion. None of this guarantees success, or even influence. In a polarized environment, especially one with an existing power imbalance, there are always authentic and also projection-based reasons for seeing bridges as vulnerabilities rather than as opportunities. But the alternative too often has been mutual pyrrhic victory, so I think the effort is called for. *Shabbat Shalom!*

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