

REVIEW ESSAY

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THE ROTH RESPNSUM ON THE ORDINATION OF WOMEN

One of the most persistent problems of the past twenty years for many people in the Jewish community has been the role of women in Judaism. The concept of full equality for members of both sexes has become more accepted in American society both as an ideal and in practice, and the Jewish community has not been immune to the pressures generated by this development. One of the recent responses to these pressures has been the decision of the Jewish Theological Seminary to train women as rabbis and cantors.

Many—if not most—of the members of the halakhic community have dismissed this decision as just another example of substituting contemporary values for halakhic norms. Indeed, most of the senior talmudists of J.T.S. ended their affiliation with the Seminary in protest of this decision. While Seminary officials insisted that there was a halakhic basis for its move, until the recently published *The Ordination of Women as Rabbis: Studies and Responsa*, there was no public presentation of its halakhic justification.¹

Indeed, all of the participants in the debate insisted that the decision to ordain women as rabbis and cantors be in accord with the views of the Halakhah. Many of the authors, however, operate with a conception of the nature of the Halakhah that differs from the Orthodox perspective.² While a discussion of the differences among the various points of view would be interesting, it is not our purpose at the present time. Instead, we will address the one article which Seminary publicists refer to as the responsum which offers the halakhic justification for its move, Joel Roth's contribution.³ The collection contains an article arguing against this halakhic reasoning⁴ and some of its arguments are included here. The main theme of the collection, however, is to justify the J.T.S. decision.

There are many issues that could be addressed in justifying such an innovation. For Roth, the central one is the question of a woman's

limited ability to fulfill a man's obligations through her own actions. In presenting what he considers to be a halakhic construct for allowing a woman to fulfill these obligations, Roth feels that he has found a way to halakhically justify J.T.S.'s controversial decision to admit women to its professional schools. However, to understand his argument, some background material is needed.

The idea that one Jew's actions can be used to fulfill another's obligation in some matter, colloquially called "being *motsi* someone else," is one with which most Jews are quite familiar. For example, on Friday night all Jews have the obligation to make *kiddush*, yet it is an almost universal custom that one person at the table (or one member of each family present) says the *kiddush* for everybody else there; this person has "been *motsi*" everyone else, and they have fulfilled their obligation by listening to him.

This is hardly an intuitive concept. Even though the Torah has required that each and every Jew "remember the Sabbath day to keep it holy"—which the gemara understands to mean remembering it over wine with *kiddush*—a person may listen to somebody else perform this act, acquiesce in it by saying "amen," and thereby fulfill his or her obligation. This ability to avoid physically performing an obligated act is clearly not generalizable; for example, one cannot watch somebody else take a *lulav* and *etrog* on Sukkot and thereby fulfill one's obligation. The concept grows out of the talmudic text, but not our intuition.

There are several passages in the Talmud of direct relevance to the question of fulfilling others' obligations through one's own actions. The first Talmudic source is a mishnah (*Rosh ha-Shanah* 29a): "This is the principle: Anyone who is not obligated (*mehuyyav*) in a matter cannot be the agent through whom others fulfill their obligation." The mishnah seems to assume that generally one Jew can act to fulfill another's obligation, but simply limits its applications.

The second relevant source is at the bottom of the same page in *Rosh ha-Shanah*. Ahava the son of R. Zeira rules that with regard to all blessings, even a man who has already recited them may repeat them for the sake of fulfilling somebody else's obligation, except for the blessing on bread and/or wine, which he may say only if he has not yet made it for himself. In other words, according to Ahava one can repeat the *berakhah* on *shofar*, *lulav*, or *megillah* for others who have not yet fulfilled their obligation in this area and need him to make the *berakhah* for them.

Ahava apparently has no problem with the issue of saying a *berakhah le-vattalah* or a *berakhah she-einah tserikhah*, a blessing recited without adequate justification. Rashi explains that the ability

to repeat blessings is due to the concept of “*Kol Yisrael arevin zeh bazeh la-mitsvot*,” that all of the people of Israel are responsible for each other’s fulfillment of their religious obligations. Thus, if a member of *Am Yisrael* has a requirement to say a blessing, some of that obligation devolves upon every member of the community. Hence even a person who has recited the blessing has not completely discharged his or her obligation and is therefore justified in repeating it for others. This interpretation is reinforced by the ruling that one may not say a blessing over bread and/or wine for others unless he or she is eating as well; Rashi explains that as there is no obligation to eat, there is nothing obliging, and therefore allowing, the second person’s blessing—the person who wishes to eat can refrain from eating and therefore be exempt from making a blessing. In the case of a blessing which is obligatory, though, one does not have this option, and therefore the second person also has a certain obligation to help others fulfill their responsibility.

Thus, when one is obligated in an act, *arevut* obligates others to a certain extent as well; the *arevut* creates a bond between them which allows the application of one’s actions to another—as if they are joined together, so that both are considered to have performed the same act. The obligation creates the *arevut* bond which allows certain acts of one to be applied to others in *Am Yisrael*, provided the act which is applied to the second is similar enough to the act in which the first is obligated.

This ability is not absolute; it is limited in the Halakhah to acts where the other can join in by answering “amen” (as in *kiddush*) or listening (as in blowing *shofar*). There is another qualification—that of the mishnah in *Rosh ha-Shanah*—that the one performing the act be obligated in the act as well. However, there are several ways the factor of obligation could be understood. First, we might say that in order to help others fulfill their obligations, the agent of the *mitsvah* must be *presently* at least as obligated in the action being performed as are the people for whom he or she is acting. In terms of the mechanics of the situation, we could say that the specific *arevut* which is significant for our discussion is a temporary bond created among all those who have the obligation to perform certain acts; as soon as that obligation is fulfilled, the bond ends until the next time the obligation arises. In addition, we might say that in order for two acts to be considered similar enough to fulfill the second person’s obligation, we require that the acts have similar levels of present obligation.

A second possibility is that while the person who is fulfilling the other’s obligation must indeed have the same level of obligation, it does not have to be an active obligation at the moment; rather, both

must merely belong to a class of people who are obligated in this *mitsvah*. In this view, *arevut* exists among groups of people, namely people who share similar halakhic obligations; any of those people can share their actions with other members of that group. The equivalence of acts here would be established by the general levels of obligation under which the people involved work, but the lack of a present obligation would not alter the nature of an act.

The final possibility is that while the person must indeed be presently obligated in the action that he or she is attempting to perform, that obligation does not have to be of the same level as those for whom the action is made. *Arevut*, according to this view, is created among all those Jews who have an obligation to perform a certain act, regardless of the source of that obligation; or, it is only the existence of a present obligation which is crucial to the nature of the act, not the source or level of that obligation.

The third possibility might be discarded on the basis of another talmudic source. *Berakhot* 20b deals with the question of whether a woman's obligation to say *Birkat ha-Mazon* is mandated by the Torah or is only a rabbinic obligation. When the Talmud questions the significance of the distinction, the answer given is that if a woman has a *de-oraita* (Torah) obligation, "a Torah obligation can satisfy another's Torah obligation, but one with a rabbinic obligation cannot help in satisfying another's Torah obligation." This gemara presents an important addition to our understanding of the mishnah in *Rosh ha-Shanah*, namely that the reference to "being obligated in a matter" requires not just any sort of obligation, but an equal *level* or source of obligation.

However, *Berakhot* 48a expresses disapproval of Shimon ben Shetah who, having partaken of only a cup of wine, led a communal *Birkat ha-Mazon* at the king's table, thereby "being *motsi*" all those present. This was inappropriate, we are told, because in order to lead *Birkat ha-Mazon* one must have eaten a *ke-zayit* of bread. This conflicts with the previous gemara. The Torah obligation to say *Birkat ha-Mazon* applies only if one has eaten enough to be full. The custom to say *Birkat ha-Mazon* even after eating just an olive's volume is considered to be only a righteous act undertaken by *Am Yisrael* on their own.⁵ Thus, we seem to have a gemara which grants one the right to lead others in *Birkat ha-Mazon*—even those who have eaten enough to be full—although he himself does not have the Torah obligation.

Halakhot Gedolot, quoted in Rashi, argues that the story of Shimon ben Shetah concerns a case where nobody present had been satiated, and therefore all had only a rabbinic obligation to say *Birkat ha-Mazon*; Shimon ben Shetah could therefore fulfill their

obligation once he had incurred a rabbinic obligation by eating a *ke-zayit* of bread. Other Rishonim, however, object to this interpretation, as it is inconceivable to them that the king would give a feast where people did not eat enough to fill themselves.

Ra'avad, in his gloss to Maimonides' *Hilkhot Berakhot* (5:15), uses similar reasoning, but in reverse; he says that eating a *ke-zayit* of bread incurs a Torah obligation in *Birkat ha-Mazon*, and therefore one who has eaten that much can fulfill others' obligations. (Ra'avad apparently feels that the gemara which considered this observance of *Am Yisrael's* to be nonobligatory expresses the nonauthoritative opinion of an individual.) Both of these sources assume that in order to fulfill somebody else's obligation one must be presently and equally obligated in the action about to be performed.

The Tosafot, however, present the second possibility we mentioned above, that as long as the person acting to fulfill the others' obligation is a *mehuyyav* in this *mitsvah* he can act for others around him, even though he has no immediate obligation; according to Tosafot the only reason the gemara required the eating of a *kezayit* is that *Hazal* decided that one should not say *Birkat ha-Mazon* without having eaten at least something. According to Tosafot, then, what is important in being able to fulfill somebody else's obligation is the *hovat gavra*, the actual level of obligation of the person trying to perform the act, and not the general status *vis-à-vis* this *mitsvah*.

Rashi's comment to the gemara on 48a is somewhat problematic and lends itself to various interpretations, a discussion of which is not essential here. But, however one interprets Rashi, the consensus of most of the Rishonim is clearly that a person must at least be among those generally obligated in a commandment before he can fulfill others' obligations in that commandment. Other Rishonim require not only a general obligation, but even a specific present obligation. The conclusion from these various sources seems fairly clear: unless both people are of the same class of obligation, one cannot "be *motsi*" the other.

Of course, the requirement of an obligation on the part of the person performing the act is a minimum requirement—there is no problem if the person performing the act has a *greater* obligation. Thus, people with a rabbinic obligation to perform a certain act can fulfill their responsibility through somebody with a Torah obligation. In the terms of our understanding of this whole issue, either the *arevut* of the one with a higher level of obligation extends to all those with lower levels of obligation as well, or an act performed under a higher level of obligation is sufficient to satisfy the obligations of all those at lower levels of obligation.

With regard to women's involvement in *arevut*, Rosh, in his comments on *Berakhot* 20b, notes that inasmuch as we are unclear as to whether or not women are obligated *de-oraita* in *Birkat ha-Mazon*, their inclusion in the concept of *arevut* is also doubtful, and they therefore cannot be used as the source of fulfillment of a man's Torah obligation. The Aharonim⁶ argue whether the Rosh meant that women are not included in the concept of *arevut* at all, or merely for those *mitsvot* in which they are not obligated. According to those Aharonim who say that women are excluded from *arevut* in general, they could not fulfill men's obligations even in *mitsvot* in which they share a Torah obligation, such as *kiddush*. The second view, the one generally accepted in normative Halakhah, allows women to "be *motsi*" others like everyone else with respect to those *mitsvot* in which they are obligated, there being no reason to exclude them.

With this background, we can finally begin an analysis of Roth's paper. According to a mishnah (*Kiddushin* 29a), women are generally exempt from positive time-bound commandments, *mitsvot aseh she-ha-zeman geraman*. While the gemara points out that this rule does not accurately describe all those *mitsvot* from which women are exempt, it serves as a convenient term for those *mitsvot* which women are not obligated to perform. In those situations where women are not obligated—or where their obligation is only rabbinic while the man's is *de-oraita*—the halakhic conclusion is that men cannot fulfill their obligation through women.

Roth concedes all of this. No egalitarian rabbi, he condemns the Conservative decision to count women in general in a *minyan*. Women do not share a man's obligation for public prayer, and therefore cannot join them in forming a *minyan* or leading them in public prayer. But Roth has a novel construct for dealing with this troublesome halakhic reality. If women *obligate themselves* in these *mitsvot*, he argues, they are the equal of the men in obligation and can "be *motsi*" them. Thus those women who obligate themselves in *tefillah be-tsibbur*—and only those women—would count in a *minyan* and qualify as a cantor. Undertaking such an obligation would be a requirement for entering the ordination program.

Roth tries to develop this concept of being "self-obligated" on the basis of a statement in the laws of counting the *omer* by *Magen Avraham*, Rabbi Abraham ben Hayyim Halevi Gumbiner. *Magen Avraham* states that women, by their continued performance of this *mitsvah*, have now obligated themselves in the counting of the *Omer*.⁷ While Roth notes the *Minhat Hinnukh's* amazement at this idea, he sees this as confirmation of the fact that there is a traditional source which believed in the idea of obligating oneself in a commandment as a valid halakhic concept.

To further support his argument, Roth quotes *Halakhot Gedolot*, which requires the repetition of *ma'ariv* if one forgot to say the *ma'ariv* for Shabbat or Yom Tov;⁸ although *ma'ariv* is a voluntary prayer, *Halakhot Gedolot* feels that by praying one has obligated oneself in this prayer and therefore must make sure to say it properly. Ra'avya extends this to repeating *Birkat ha-Mazon* if one forgot to include the special paragraph for Hanukkah or Purim,⁹ as one has clearly accepted the saying of this paragraph upon oneself as an obligation. *Tashbets* says that women should be allowed to wear *tsitsit* and say the blessing over them, as they have the ability to obligate themselves in *mitsvot*; *Responsa Besamim Rosh* (#89) does the same for the *musaf* prayer as well.¹⁰ From these additional four sources, Roth concludes that there is a valid concept of accepting, and thereby creating, a binding halakhic obligation upon oneself.

Roth now argues that his category of self-imposed obligations is sufficient to fulfill the requirements of the mishnah in *Rosh ha-Shanah* discussed above. He points out that the mishnah refers to a *mehuyyav*, one who is obligated, rather than a *metsuvveh*, one who is commanded, and posits that based on his sources the term *mehuyyav* has "already been demonstrated to be applicable to the voluntary acceptance of *mitsvot*." Roth also finds significant the fact that the clause preceding the general rule in *Rosh ha-Shanah* excludes deaf-mutes, imbeciles, and minors, all of whom are clearly unable to even voluntarily accept obligations because of their mental incompetence, a fact which "surely . . . cannot be said of women."¹¹

Finally, Roth notes a statement in *Kiddushin* 31a, where Rav Yosef, a blind Amora, debates whether it would be better for him if blind people were or were not commanded to perform *mitsvot*. The gemara decides that *gadol ha-metsuvveh ve-oseh mi-she-eino metsuvveh ve-oseh*, "one who is commanded to perform a *mitsvah* and does so is greater than one who is not commanded and performs the *mitsvah* anyway," and therefore Rav Yosef concludes that he would prefer blind people to be among the commanded so his performance of *mitsvot* could be in the best possible manner. This gemara, at first glance, argues against Roth's position. If a *metsuvveh ve-oseh* is actually greater than an *eino metsuvveh ve-oseh*, apparently Roth would not permit the *eino metsuvveh* to fulfill the *metsuvveh's* obligation.

Roth understandably did not appeal to the distinction he himself had made between a *mehuyyav* and a *metsuvveh* in the mishnah in *Rosh ha-Shanah* to argue that the statement in *Kiddushin* refers only to the relative greatness of *metsuvvim*, making it irrelevant to the discussion of fulfilling others' obligations (which revolves around *mehuyyavim*). Instead, he quotes the explanations of the statement

given by the Tosafot and Ri ha-Zaken to the effect that the “greatness” of the *metsuvveh ve-oseh* has to do with the worry and anxiety that goes into the fulfillment of the *mitsvah*, which makes it a harder task. This worry stems from the fact that the person commanded has no choice about whether or not to perform this *mitsvah*, and therefore feels a tension to fulfill his obligations. Roth argues that this rule can only be reasonable as a distinction between non-Jews and Jews; the “mindset of commandedness” already exists for Jewish women. They take their voluntary obligations as seriously as men do; therefore the statement in *Kiddushin* cannot apply to them.

Truthfully, even if we accept Roth’s category of self-imposed obligations and his reading of all the sources we have quoted so far, we would still not accept the length to which Roth stretches the concept. Perhaps an *arevut* bond can be created between two women who have self-imposed obligation, so that one woman could fulfill her self-imposed obligation to say *ma’ariv* by answering “amen” to another similarly self-obligated woman’s prayer. Surely, though, it requires a logical leap to argue that this obligation is strong enough to “be *motsi*” one with an obligation stemming from the Torah or *Hazal*. After all, a person acting under an obligation imposed by *Hazal* certainly also has a “mindset of commandedness”; yet he or she cannot “be *motsi*” someone who has a Torah obligation (a fact Roth accepts). This hierarchy in which self-imposed obligations have equal rank with those of the Torah, and above those imposed by *Hazal*, strains rational understanding of the issue.

But this category of self-imposed obligations is problematic in its very conception, let alone the uses which Roth makes of it. First, the source of the concept is unclear. Roth can find no talmudic source which hints at his interpretation. The earliest source that he can present is *Halakhot Gedolot* (written no earlier than 800 C.E.). Of the five sources which he presented, only two—the statements by *Halakhot Gedolot*¹² and *Tashbets*¹³—are accepted as normative halakhah, and even in these two cases the halakhah is not necessarily based on their reasoning. The argument of *Magen Avraham* is disputed by many Aharonim, who base their decision on women counting the *omer* totally on the basis of the custom of women in their country.¹⁴ The obligation of women in *musaf* is also subject to disagreement among the Aharonim,¹⁵ and the Ra’avya’s claim about repeating *Birkat ha-Mazon* on Hanukkah and Purim is rejected.¹⁶ Collecting and interpreting these varied sources as the foundation for a revolutionary interpretation of contemporary halakhah is a tenuous proposition at best.

In addition, while Roth’s sources admittedly refer to accepting an obligation upon oneself, none of them define the parameters of

this new obligation. Roth assumes that the Rishonim mean the word “*hovah*” as an obligation in every sense of the word. However, four of these sources are dealing with questions of whether or not to say a certain blessing or series of blessings (*Halakhot Gedolot* for *ma’ariv*, Ra’avya for *Birkat ha-Mazon*, *Tashbets* for the blessing of *tsitsit*, and *Besamim Rosh* for *musaf*).

It seems more plausible that these sources (a Gaon, three Rishonim, and an Aharon) are, in fact, using the term in a very limited sense to imply an obligation which allows or necessitates use of God’s name—and that this “obligation” is sufficient to get around the problems of a *berakhah she-einah tserikhah* (a blessing which is unnecessary), which entails a forbidden use of the Name. There is certainly no indication that they felt this was an obligation which could create the *arevut* which is crucial to our situation.

A further problem with Roth’s thesis has to do with his primary source, *Magen Avraham*. The simplest reading of *Magen Avraham* is that he is only describing the reality of his time. That is, even though women had the option of not performing this time-bound *mitsvah*, he notes that they have nonetheless undertake it as an obligation. But even if we read him as saying that a new obligation for women has been created because of women’s continual performance of this *mitsvah*, we would have something that is far from Roth’s thesis that any particular woman can at any particular time instantaneously create an obligation upon herself. *Magen Avraham* clearly does not base his decision about obligation on specific women, but on the general custom among women of his time. Roth would therefore have to show a general acceptance of public prayer by women before he could use *Magen Avraham* as a source for his construct. Such general acceptance simply does not exist.

One could perhaps argue that *Magen Avraham* is saying that obligations can be created by revelation, legislation, or custom, and that therefore all women are now obligated. But, as we have noted above, to say that the obligation created by custom is equivalent to the obligations created by revelation—and stronger than that created by rabbinic legislation—is an unwarranted jump of logic, with no basis in *Magen Avraham* at all. It becomes even less plausible when we recall that a self-imposed obligation can be removed at any time through *hattaret neder*, an option hardly available to those with other-imposed obligations. The linchpin of Roth’s argument is missing.

So much for Roth’s halakhic construct. In terms of dealing with sources, though, the article has additional weaknesses. Returning to the mishnah in *Rosh ha-Shanah* which states that anyone who is not

obligated in a matter cannot be the agent through whom others fulfill their obligation, Roth comments:

Women are not specifically mentioned in the preface [to the general rule; only deaf mutes, imbeciles, and minors were mentioned]. That alone, admittedly, would not be sufficient to indicate that they were intended to be excluded from the principle. But, the omission of women gains increased significance when one notes that the three categories which are specifically mentioned are such that even voluntary acceptance of the observance of *mitsvot* by them would not have any element of obligation attached to it, on the grounds that those three classes are mentally, and, therefore, legally incompetent. Surely, the same cannot be said of women.

It is extremely doubtful that the reason that these three are the examples given in the mishnah is their complete inability to *accept* obligations upon themselves. It is rather that these are the three categories of people on whom no obligation can be *imposed*. It is also probable that the three categories of people used are merely the best examples of those unable to help fulfill others' obligations, since they are never *mehuyyavim*, and are thereby completely precluded from fulfilling others' obligations. Women, though, are not excluded from this principle, since they can "be *motsi*" men in their obligations when both have a Torah or rabbinic obligation. They, therefore, would not fit into a mishnah specifically enumerating only the most general examples.

Further, Roth's dismissal of the gemara in *Kiddushin* is questionable. The conclusion of that gemara was that one who performs a *mitsvah* out of a sense of obligation is greater than one who does so voluntarily. First, it is far from obvious that the Tosafot's reasoning for R. Hanina's dictum is authoritative; Ramban and Ritva in *Kiddushin*, for example, ascribe the factor of "greatness" to the greater evil inclination which is engendered by being commanded to do something. Following this reasoning, Roth would be forced to say that in obligating themselves in a *mitsvah*, women also manage to automatically create in themselves the evil inclination not to perform that same commandment.

But even Tosafot's reasoning—that the greatness stems from the mindset of commandedness—does not force Roth's conclusion. Both the statement in the gemara and Tosafot's explanation were made in the context of comparing R. Yosef to ordinary people. It is clear that R. Yosef feels that if blind people are exempt from all the commandments, then he himself (who was blind) would be included in this rule. Certainly his "mindset" about the *mitsvot* was as positive as that of contemporary women who obligate themselves in *mitsvot*. Yet the gemara clearly includes him in this rule, and Tosafot still advances his reasoning for the dictum. It would seem, then, that the "mindset

