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SEPARATE SPHERES  
WOMEN IN THE RESPONSA OF RABBI MOSES FEINSTEIN

Norma Baumel Joseph

A Thesis in  
The Department of Religion

Presented in Partial Fulfillment of the Requirements  
for the Degree of Doctor of Philosophy at  
Concordia University  
Montreal, Quebec, Canada

February, 1995

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## ABSTRACT

Separate Spheres:  
Women in the Responsa of Rabbi Moses Feinstein

Norma Baumel Joseph, Ph.D.  
Concordia University, 1995

This dissertation is a detailed inquiry into the decisions of one major modern Orthodox authority pertaining to women's social and religious location in the communal sector. The problematic to be explored is the effect of modernity on a traditional religious community. By focusing on the texts or responsa of Rabbi Moshe Feinstein dealing with women's position in the public domain, the dilemma facing a religious community in the modern world is highlighted and examined. The research reveals his various standards for different Jews and his overall strategy of distinction. His main concern is the survival of his Jewish world in a difficult and sometimes dangerous environment. Nonetheless, while fighting change and legislating a mediated isolation, he is transformed, as is the responsa process, by the American experience.

The areas chosen to explore these issues are education, synagogue and ritual responsibility. These three spheres demonstrate Feinstein's commitment to gender separation. Clearly, his ideal of distinctiveness causes him to separate Jew from non-Jew, Orthodox from non-Orthodox as well as female and male. In addition, his cumulative decisions in these three spheres highlight his stance towards change and towards life in America. Remarkably, Feinstein's decisions treat the

marketplace as neutral, allowing and even encouraging associations elsewhere unacceptable. Consistently, in these three spheres, Feinstein demonstrates his acceptance of women as knowledgeable, capable and religiously significant. It is in his rulings about women that we can see his accommodation to and argument against American modernity. American Judaism is different and Rabbi Moses Feinstein's responsa have substantiated much of that transformation.

### Acknowledgements

This dissertation represents a considerable undertaking consuming many years of my life. During that time many people - friends, family and colleagues - supported me intellectually and emotionally. I wish to thank them all.

This work is dedicated to:

My parents, Madeline and Moshe Baumel who gave me the gift of life.

My children, Leora, Michael, Joshua, Ami, and Naphtali who responded to my gift of life with their own creativity and love.

My husband, Howard, whose love sustains my life.

Concordia University has been a wonderful place for growth, challenge and intellectual exploration. The Department of Religion extended to me a remarkably supportive scholarly community in which to develop. Special thanks are due to my dissertation committee; Professor Jack Lightstone who supported and directed my work with interest and a keen insight, and conferred on me a much welcomed confidence; Professor Ira Robinson whose paper was the incentive for this thesis and who has been a mentor and supporter of my work; and Professor Michael Oppenheim in whose friendship I found the encouragement and openness needed for exploration and creativity. There were others in the department on whom I have

come to rely and who have encouraged me every step of this long and arduous process. Leslie Orr and Rosemary Hale have enthusiastically sustained me with conversation, friendship and coffee. My husband, Rabbi Howard Joseph, did exemplary service as both my computer technician and rabbinic resource. Sonia Zylberberg, my research assistant, whose help with the notes and bibliography, as well as the daily apple, enhanced my work. Finally, special mention must be made of the late Rabbi Getsel Ellinson, z"l, who helped start me on the path of responsa research.

Sections of this research have already been published in somewhat different forms:

"The Traditional Denial of Change: Women's Place in the World of Rabbi Moses Feinstein," *Journal of Religion and Culture*, 2:1 (Fall, 1987) 190-201.

"Mehitza: Halakhic Decisions and Political Consequences," *The Daughters of the King*, Grossman & Haut, JPS, 1992, chapter 8.

The biographical section is being published in the *American National Biography*, under the auspices of the American Council of Learned Societies by Oxford University Press. forthcoming

The discussion in the chapter on education is to be published this Spring, as "Jewish Education for Women: Rabbi Moshe



Feinstein's Map of America," in *American Jewish History*,  
edited by Pamela Nadell. forthcoming

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## Chapter 1. INTRODUCTION

### I. The Genesis of Research and its Opening Hypothesis

The research for this dissertation began with a general concern to investigate the position of women within the world of contemporary Orthodox Judaism. The purpose was not to produce a sociological description of a community but to understand and reach an appraisal of current Judaic sources and opinions about women. By combining the methodology of the social scientific study of religion with a feminist critique, it was hoped that it would be possible to examine the underlying premises preventing women's full participation in a traditional religion. Further, it became apparent that by focusing on women, the study would be able to distinguish a set of norms and tactics used by the traditional community in facing or dealing with modernity. Thus, one of the subtexts of the research is an analysis of change and continuity in the face of an onslaught of new values, norms, premises and technologies. It is significant to the research and its findings that so much of the battle over modernity is fought on the "backs" of women.

Contrary to the longstanding predictions of Liberal Jews and academic scholars concerning the future demise of the Orthodox Jewish community, this Orthodox segment has not disappeared, withdrawn or changed its basic distinctness. In fact, many sociological and institutional markers indicate a definite growth of the separate or sectarian Orthodox groups

in proportion to the rest of the community. One can find many reasons for this trend including a general propensity in American society towards ethnic pride, appreciation of religion and sectarianism. As sociologists began to uncover the processes involved and describe the patterns of behavior, greater attention was focused on individual religious communities and their various responses to modernity, their methods of coping, of solving problems and of renewal. Within that scholarly endeavor, attention has been focused on segments of Orthodox Jewry, resulting in important sociological descriptions.<sup>1</sup> Following that development, scholars have begun to explore the different conceptions of the place of Jewish law and the role of Jewish legalists in forming and maintaining community.<sup>2</sup> The question at hand is what is the method by which the Orthodox survive in the modern world, what principles and norms govern their approach, and how are these enunciated and activated. Adherence to halakha, Jewish law, and its application to daily living seems to be one of the major differentiating factors among Jews today.

Any comprehensive sociological description of the Orthodox Jewish community must detail the complex if tenuous link between rabbinic authority, law and public need. As yet, there has been very little analysis of this sort. How does a religious specialist respond to communal problems? How is the law formulated to apply in a contemporary setting? Who chooses the leader and in what format is his message promulgated? Most

importantly, what are the guidelines, principles and assumptions, explicit or implicit, that form the basis of the specialist's response to the religious community.

Given the above research goals and questions, the most fruitful approach seemed to be an investigation into the current responsa literature. This particular genre is central to Judaism, gives direct access to issues currently being discussed or problems being raised, is particularly relevant in the Orthodox world, and is readily accessible and plentiful.

In attempting an analysis of the Orthodox Jewish community today, the research focuses on the corpus of legal decisions of one decisor, Rabbi Moses Feinstein, that deal with some of the issues as they relate to women. The role and rights of women is one of the major challenges of modernity for traditionalists today. By focusing on this area, I hope to highlight some of the patterns, underlying norms, problems and resolutions facing religious communities in contemporary society.

Rabbi Moses Feinstein was one of the acknowledged leaders in contemporary North American Orthodoxy. His religious/legal decisions, collected in numerous volumes, are widely referred to throughout the Jewish world and form the basis of practice for many. The central task of the research is to examine Feinstein's arguments and decisions. This study will focus on an analysis of his major concerns, his legal reasoning and

moral argument. Not only is it necessary to examine the basic premises underlying his approach, but it will also prove helpful to clarify the conceptual framework and detail the differential standards operative in his reasoning. It is hoped that a careful analysis of the role of women as defined by Feinstein, will further our understanding of religion, religious norms and processes.

This research begins with the hypothesis that Rabbi Moses Feinstein operates with a specific and variable set of assumptions concerning the nature of women, their motives, their proper position in Jewish society, and the effects of modernity on them. His decisions seem to assume a division of the community into "true believers" and "others", with women possibly classified as "other". I hope to describe the ways in which women are singled out and treated separately from other Jews; to suggest possible reasons for Feinstein's position; to explicate the principles of division used and then to consider what accrues to the process. The hypothesis explored is that women are differentiated and separated only when they are seen as potentially dangerous - as a threat to the survival of the traditional community. Specifically, any changes in their role and ritual practice would appear to challenge the proper practice and structure of Orthodox Judaism. This attitude seems to be pervasive and requires documentation and analysis.

The research touches upon separate issues in the study of

religion: the relationship between the religious specialist and the community, between law and practice, between the legal process and underlying norms and principles, and the position of women within the religious community.



## II. Biographical sketch

Rabbi Moses Feinstein (b. 3 March 1895<sup>3</sup>, d. 23 March 1986), was born in Uzda near Minsk, Belorussia, the son of Rabbi David Feinstein and Faya Gittel Davidowitz. His parents named him Moshe because his birth date on the Jewish calendar (7 Adar 5655) corresponded to the presumed birth date of the Biblical Moses. Moses Feinstein, one of the acknowledged leaders of Orthodox Judaism in the twentieth century, was initially educated by his father who was the head of the Jewish court (*av beth din*) in both Uzda and Starobin. His mother's family also was noted for its rabbinic scholars, such as rabbis Yitzhak Yehiel Davidowitz and Yeshaya Halevi Horowitz. One of twelve children, his early life was devoted to the study of Jewish law. Trained by prominent European rabbis, Feinstein received ordination from his father and Rabbi P. Pruskin sometime during World War I. His father helped him to avoid the Russian army draft by arranging for him to serve as rabbi for the town of Uzda when he was twenty. Feinstein wrote his first major responsum in 1917 (*IM EH 1:82*) and published it forty-four years later. In 1920, at twenty-five, he accepted the position of rabbi in Luban and in 1922 married his wife of 64 years, Sima Kastonowitz. Together they had five children, four survived into adulthood: Faya (Schisgal), Sifra (Tendler), David and Reuven. The family stayed in Luban for sixteen difficult yet, for Feinstein, productive scholarly years. During that time Feinstein

received no salary but was given a monopoly on the yeast and candle trade. Financially self-reliant, he was able to develop his rabbinical role as an impartial decisor and to allocate time for the study and writing that eventually would form the basis of his renown.

As Jewish life became ever more precarious, many left Europe for the freedom of the United States of America. The Feinstein family remained, but life was very difficult for them in Russia. Suffering under Communist rule, the Feinsteins emigrated to the United States in August of 1936 and arrived in November or December of that year. The first job offered to Rabbi Feinstein was in a Cleveland *yeshiva* (Talmudic academy). When that school closed a few months after he arrived, Rabbi Feinstein was hired as *rosh yeshiva*, head of the *Mesivtha Tifereth Jerusalem* school of New York, where he remained until his death. Feinstein was never a pulpit rabbi. As head of the school, his responsibilities were educational, not administrative. "Under his inspired leadership, the yeshivah flourished and guided thousands of rabbis and lay scholars to prominent positions in American Jewry".<sup>4</sup> He was based at the Manhattan school but also regularly visited the Staten Island branch (founded in 1966). His sons, Rabbis David and Reuven, have succeeded him in Manhattan and Staten Island, respectively.

During his prolific life, Feinstein held many important positions such as president of Agudath HaRabbanim (Union of

Orthodox Rabbis in America and Canada), chairman of Agudath Israel's Council of Torah Sages, member of Ezras Torah, Chinuch Atzmai (Torah Schools for Israel), and vice president of Torah U'mesorah (National Society of Hebrew Day Schools). His primary role however, and the arena of his lasting influence is that of decider of *halakhic* (Jewish legal) questions. Literally thousands of Jews abide by his decisions on all types of problems. He was approached by lay as well as rabbinic petitioners. Feinstein's religious/legal *respona* were collected and privately published in the seven-volume corpus *Iggerot Moshe* (1959-1985), which contains over 1,700 of his answers. In his later years, his grandson, Rabbi Mordecai Tendler, assisted him in his writing and publishing.

Rabbi Moses Feinstein is known as a *Gadol HaDor*, an eminent sage of his generation. This title, infrequently used, has been given in recognition of his prodigious scholarship and able leadership. Acknowledged as a great decisor, his *respona* are widely referred to throughout the Jewish world and form the basis of practice for many Orthodox Jews. His rulings encompass such diverse fields as organ transplants, taxation, reproductive technology, automated elevators, frozen foods, synagogue structures, insurance policies, unions, blood donors, professional sports, and the death penalty. He also was frequently asked to adjudicate disputes between individuals, businesses, and institutions.

Rabbi M. Feinstein's decisions on business are more

numerous than those on ritual matters, such as *kashrut* (Jewish dietary laws), and serve as the basis of much of his popularity. His expertise and willingness to render decisions in these complicated arenas recommended him to many in the American Orthodox Jewish community. He also addressed Jewish American concerns of intergroup relations, both among Jews and between Jews and non-Jews. For example, Feinstein maintained that Jews could engage in joint projects with gentiles, but would not tolerate associations with Conservative or Reform institutions. Many of his important decisions focused on the synagogue in particular, its proper structure and functioning. He was also renowned for his positions on marriage, divorce and conversion. Finally, in consultation with his son-in-law, Rabbi Dr. Moses Tendler, Feinstein left a legacy of significant and influential decisions on medical problems and procedures.

Reb Moshe, as Feinstein was affectionately called, was a judge, interpreter and even legislator. Sometimes he applied an old precept in a new and startling manner or defined the issue in such a way as to permit a new practice, such as artificial insemination by a donor. In other situations, innovation was tolerated because circumstances had changed; for example, the improved success of kidney transplants yielded a reversal of his original prohibition. The social context is often crucial for Feinstein, as one finds in his decision to allow the wearing of American style clothing (IM

YD 1:81). Frequently, his examination of the rabbinic sources enabled him to permit something previously unheard of, such as allowing a seeing eye dog into the synagogue on Sabbath (*IM OH* 45) or the use of birth control pills (*IM EH* 4:67, 69, 72, 74). In each of these cases, Feinstein did not intend to formulate new laws, merely to apply existing precepts. His rulings, however, resulted in the creation of a legal document that served as precedent for future deliberations. In the responsa process, the more notable the decisor and the more striking the case, the greater the tendency to treat the decision as a general prescriptive standard. Many of Rabbi Feinstein's judgments present such a standard.

Reserved and humble, he was hesitant to accept such authority. In his introduction to volume 1 of *Iggerot Moshe*, he explained that he was merely an explicator. Feinstein's genuine humility and reverence for past Torah sages forced him to justify his willingness both to answer questions and publish them. "After consulting all the sources, according to his ability, in humility, and awe of God...even today's sage is obligated to instruct. ...on this basis, I have instructed and responded according to my poor knowledge, (and) I will explain the law for those who wish to know my opinion.... It also seems to me that a sage is not permitted to send his questioner to another..."<sup>5</sup> He often framed his answers in non-authoritarian terms, using phrases such as "in my humble opinion" and "if it is possible". Nonetheless, his rulings are

decisive, and by publishing them he accepted the role of judicial authority. Questions of his authority are difficult to clarify especially since there is no institutional support or enforcement mechanism. Interestingly, Feinstein refused permission to translate or codify his responsa (*IM YD 3:91*). Also, although he was interested in spreading or popularizing his message, his decisions are most often directed to those who are learned, adopting a style that is a communication between equals. As a result, his published material is in a complex form of rabbinic Hebrew. Thus, form and language have limited his audience. It is clear, however, that he was aware of how seriously his words are studied and of his great fame and popularity as a decisor.

The responsa in *Iggerot Moshe* reflect Feinstein's very strong commitment to classical rabbinic Judaism as well as his pragmatic appreciation of life in the United States. The decisions themselves encompass permission, prohibition and persuasion, practical considerations and theoretical speculation, lenient and stringent requirements, compassion and uncompromising disapproval. His work, obviously emerging from a traditionalist perspective, tried to preserve a vision of an Orthodox Jewish world that operates within clear boundaries but is not isolated. His spiritual leadership and authority were based on his mastery of and dedication to medieval categories of law. Stories are told of his exceptional memory and focused concentration. They also are

told of his compassion, care and patience with all petitioners. Nonetheless, his popularity emanated in part from the way in which he embraced and understood the modern world, an aspect of his responsa which we shall repeatedly see. American norms of work, marketplace and education often were integrated in his approach. For example, he determined: that men must travel the subway system to work, even if they will be in close proximity to women (*IM EH 2:14*); that a man may go to work without the traditional head covering and a widow may remove her hair covering for job advancement (*IM HM 1:93; OH 4:2; EH 1:57*); that secular subjects can be taught in yeshivoh, but only in the afternoon (*IM YD 3:83*); that one can be paid for donating blood (*IM HM 103*); and that buying an insurance policy does not indicate an absence of trust in God (*IM OH 2:111, 4:48*). As will be evident, every question and answer reflects the social reality of American Jewish life and Feinstein's appreciation of and responsiveness to that life. Notwithstanding his European education, dress and demeanor, and his fierce dedication to Jewish law, Moses Feinstein was most definitely an American rabbi. He died in New York City.

## II. 1. Published texts

*Iggerot Moshe*, his seven volumes of privately published responsa, follow the order of the four divisions of the *Tur* and the *Shulkhan Arukh*. Volume 1, *Orah Hayyim* (OH), and volume 2, *Yoreh De'ah* (YD), were both published in New York in 1959. *Even Ha-Ezer* (EH), volume 3, came out in 1961. In 1963, volume

4 appeared containing *Hoshen Mishpat* (HM) as well as the second installment of OH and EH. Volume 5 covering YD2, OH3, and EH3 emerged in 1973. In 1981, volume six was devoted to OH4 and YD3. The seventh volume covering EH4 and HM2 was published in 1985.

In addition to *Iggerot Moshe*, Feinstein wrote and published several volumes of commentary on the Talmud, known as *Dibrot Moshe*. These were privately published beginning in 1947 through to 1979. A volume of his sermons and original insights, *Darash Moshe*, was published posthumously by the family in 1988, and translated into English in 1994.

Significantly, there are a number of unpublished responsa. Some of Feinstein's unpublished responsa were enthusiastically circulated. Most of these were disseminated by those who were the recipients of either an oral communication or a private letter. Frequently, these involved a particularly sensitive issue. After Rabbi Feinstein's death, his family sent out letters to locate these documents in order to publish them.



### III. Conceptual, Theoretical and Methodological Framework

#### III.1. The study of responsa literature

Responsa are literally answers that trained, recognized rabbinic authorities dispense in response to specific questions. The questions are posed by lay individuals or rabbinic colleagues. The answers are either oral or written. Some rabbis become renowned in particular areas of Jewish law. Others produce large collections of responsa that establish them as master decision makers, consulted by many. From medieval times to the present, responsa comprise the vast and vital core of rabbinic writings.<sup>6</sup> Through these literary texts, rabbis shape and control their world, as they respond to the pressing needs of their coreligionists. They are the outcome of a legal process that is reactive rather than legislative, individual rather than universal. The process itself is a demonstration of religiosity for both the decisor and the committed. The specific decisions deal with unusual, anomalous and questionable events. The questions arise because the issues are new, legally unprecedented, and the questioner, as a member of a practicing community, is unsure of the correct or required action. Yet, the result of this highly personal process is a series of legal decisions that are used as precedents in subsequent cases and are clues to the normal social processes at work. The more notable the decisor and the more striking the case, the greater will be the tendency to treat the decision as a general prescriptive standard. The

cumulative outcome is the creation of a distinct literary and legal genre that can yield elements of the social history of a community.

In the past two hundred years, Jewish life has been confronted with a whole new set of norms, attitudes and values. The Jewish community has accommodated to life in the Western world in a variety of ways. Orthodox Jewish legal responses have used medieval categories to make the necessary accommodation for survival and renewal. Hundreds of rabbis have written thousands of responsa in an effort to solve the pressing problems and map out a guide for proper Jewish behavior. In the process of meeting modernity, these traditionalists, even those who denounce modernity, have brought their communities into the twentieth century.<sup>7</sup> The responsa written are a direct source for an understanding of the method by which traditionalists survive in the modern world, what principles and norms govern their approach and how these are enunciated and activated.

Thus, the legal decisions of responsa grow out of complex social and cultural factors affecting both the questioner and the decisor. What questions are asked and how they are responded to are social artifacts.<sup>8</sup> By examining the texts it is possible to explicate the practitioners' shared environment, convictions and values. Rather than examine the decisions merely for their existing fact patterns<sup>9</sup> or in order to consider the internal development of Jewish law, this

research posits the importance of the personal stance of the author and particularity of the specific community as keys to understanding the process as well as the end product.

Responsa research has been limited.<sup>10</sup> Those most familiar with this genre read it mainly for the decisions in a bottom line approach. Those interested in social history have typically not been trained in this type of text analysis. Those few who have the requisite skills describe substantive changes in style and venue as indicative of major shifts in the history of the Jews.<sup>11</sup> Moreover, the various cultural and geographic contexts have been shown to have affected both the questions and the decisions. Although in the post-emancipation era there has been less reliance on traditional modes of authority, nonetheless, responsa have continued to be the locus of traditional categories confronting new situations for a significant part of the populace. Any attempt to write the history of the Jewish response to the modern era would do well to incorporate the information available in these decisions.<sup>12</sup> Rather than being irrelevant, Orthodox responsa can be seen as the stage upon which the dynamic tension between tradition and modernity is played out. It is the premise of this research that the play reaches an especially dramatic and revealing focus in the decisions proclaimed concerning women's religious lives.

Discussions about tradition and innovation, persistence and modernity have dominated certain approaches to the study

of religion. Responsa texts, frequently ignored, offer a unique view of the process of religious transformation. How has the religious community actually kept its "traditional" face while living in the modern world? What are the mechanisms of change, where is maintenance operative and how does a conceptual consensus evolve? Ironically, the decisions themselves reveal a religious vitality and an innovative strategy for accommodation. Many studies of religion implicitly accept the opposition between tradition and innovation. Traditionalists add to that impression by maintaining a negative stance towards the idea of change. The challenge is to catalogue the process of combining continuity with innovation that will reveal a picture of survival and renewal, of modification and continuity.

### III.2. Theoretical and methodological perspective

The theoretical orientation of the research avoids dichotomies which assume an adversarial style of analysis. Rather than positing tradition versus modernity, treating all traditional communities as if they did not in any way incorporate modern ideas or styles of living, it would appear to be more effective to examine all patterns of interaction with modernity including those of Orthodoxy.<sup>13</sup> The decisors cannot accurately be labelled as either resisters or accommodators; they have frequently been both at the very same time. It is in the mapping out of the details of responsa that we can begin to see the complex interplay of opposition and

acceptance, endorsement and denial.

Similarly, it does not further understanding to posit all the rabbis as misogynist, although some clearly were. Nor is it accurate to rely apologetically on textual references to righteous women or to the great respect for women in rabbinic writings. The difficulty in responsa research is that the texts by and large emanate out of a patriarchal social structure and unquestionably accept an androcentric perspective. Nonetheless, many are motivated by an honest search for justice and by a sense of communal responsibility. Embedded in many texts is a serious encounter with the reality of women's lives. Regrettably, this awareness is frequently only partial and does not generate legislative enactments or inclusion. We do not encounter women in these texts. Mostly, they reveal the androcentric assumptions of the male authors and their cultural constructions of gender. The author's fears of modernity are translated into a containment of women within familial and familiar patterns.

This research is an attempt to explore appropriate methods for the feminist critique of responsa literature. Women were always affected by these decisions; placing them at the center of the inquiry is crucial. In looking at law as it affects women's lives, the work challenges the very premises of the system while respecting its integrity. It is in the mapping out of the details of responsa that the complex interplay of accountability, invisibility, centrality and

supremacy are articulated.

Characteristically, responsa texts can provide a window on the world of tradition as it encounters and adapts to the challenging world of modernity. In addition, they can impart much about the socio-historical context. Finally, they can reveal the role and style of the religious specialist in that process. Jewish law with its history and incorporation of a multiplicity of views explicitly and implicitly acknowledges that law can be variously interpreted. Moreover, a particular interpretation frequently reflects the author's own convictions about the law, about community and even about the role of leader.<sup>14</sup> The texts themselves make available the assumptions, perceptions and goals of a key decision maker as he struggles to respond to his community and its changed social and historical reality.<sup>15</sup> Thus, the role of religious leader, his relationship to the community and the character of religious authority can be addressed in the context of these documents.

It is being suggested here that current responsa research has challenged the received tradition of the nature of Jewish law. Rather than focusing exclusively on the law's linear internal logic, the current preference is to explore the social setting, cultural assumptions and subjectivity of the decisor. As Peter Haas notes:

"This area of research has changed fundamentally how we view Jewish law. It has clearly demonstrated that legal decisions are the products of individual perceptions as these take shape in concrete historical contexts. We can no longer take seriously the myth that responsa simply

spell out what is inherent in the law. Responsa, rather, reflect the creative thought of legal minds struggling to formulate responses to new situations." <sup>16</sup>

### III. 3. Focus on Feinstein's responsa

This dissertation's focus on the responsa of Rabbi Moses Feinstein is an example of such an approach. It explores the legal process and decisions of one man in a particular cultural environment. Never disavowing his faithfulness to accepted traditions and standards of law, the research documents this interplay between law, social context and individual motivation. As a religious leader, Feinstein works within the confines of halakha as a judge not a legislator. Yet he is able to apply his own blend of learning, compassion and responsiveness to these legal sources in the process of generating a decision. The result is a unique map used by thousands of Jews to navigate life in the modern world.

But the purpose of the study is not just an examination of the thought of one person. It is rather an attempt to describe the interaction between religious leader, traditional law and a modern cultural environment. The sphere chosen is that of the social and religious location of women.

### III. 4. Responsa and women

The study of women in religion has developed from a political ideology to advanced scholarly inquiry and achievement. The current interest in understanding patterns of male-female interaction, gender relations and women's religious experiences has produced a wide range of analytic

studies. Research on women in Judaism has recently accelerated. Within that endeavor, the focus on women in Judaism has produced a series of historical critiques and evaluations that reveal women's presence and experiences.<sup>17</sup> Yet, no one concerned with Jewish women has examined responsa texts in any systematic fashion. This study's focus on Feinstein's responsa is an attempt to situate the study of women in Judaism within a systemic approach to text, tradition and modernity. Responsa literature would appear to be a poor source for such research since women do not produce the texts. They may ask some of the questions and are bound by the decisions but as of this moment, they do not have any active role in the decision making process. They are silent and invisible, which in itself sustains a critique of Judaism. But the proposed investigation wishes to use these documents to better describe the issues that affected women's experience and to expose the assumptions, explicit and implicit, that governed their lives. It also represents an endeavor to locate women within that textual context and make those texts available to women. Moreover, the study explores the link between women and modernity in a traditional context that is of particular significance in the study of religion. "Women's place" poses a major challenge to traditionalist societies. It would appear that any change in the role, ritual and public participation of women has generated heated debate and great tension in the traditional world. This attitude requires



documentation and analysis. Furthermore, the thesis of the study is that legal formal reactions to women are the vehicle for a community's reaction to modernity in general. Women's issues can thus be seen as a test case which can disclose an apprehension about modern living.

Responsa literature offers much to the student of religion. It is the meeting ground of archaic legal formulae, scholarly distance and subjectivity, charismatic leadership and communal need. Filtered through the lens of women's issues, while factoring in their silence and passivity, responsa literature offers a revised picture of women's historical experience of religion and modernity.

### III. 5. Dissertation design: Topic choices

The areas chosen to explore these issues are education, synagogue and ritual responsibility. The more customary categories associated with women's position of marriage and divorce were not examined because they do not touch upon the issues critical for this thesis. The three selected spheres clearly demonstrate gender separation which is a guiding principle for Feinstein. Essentially, gender separation highlights the challenge of modernity in American society, which is ostensibly opposed to segregation, perceiving it as a form of discrimination. Paradoxically, these spheres evidence Feinstein's acceptance of women as knowledgeable, capable and religiously significant.

As well, these sectors feature the so-called public arena of communal religious life in America which has been at the very heart of the feminist quest and challenge. In some of the texts the author disavows sexism, trying to claim that Judaism does not discriminate although it does differentiate. Remarkably, Feinstein's decisions treat the marketplace as neutral, allowing and even encouraging associations elsewhere unacceptable. These business-related decisions will be parenthetically referred to in order to substantiate the main argument. The resulting contradictions add to the inquiry showing texts as both antithesis and complement to his purpose. In each of these three spheres the religious leader is encountered as he reacts to modernity, creating legal

binding decisions that emanate out of an attempt to preserve a vision of continuity while setting precedents for modification and adjustment.

#### IV. Text Analysis: Method and Results

The documents used in developing the thesis of this dissertation are individually presented, summarized and analyzed before inclusion in the larger general discussion. Thus, the integrity of each responsum is respected and sustained. They are treated sequentially as they appear in the published volumes in order to preserve the organizing principles of the editors.<sup>18</sup> The discussion at the end of each chapter is based on an examination of all the preceding relevant texts. The general topic of each chapter is first introduced and then all the individual texts are presented in English in a comprehensive paraphrastic summary. The detailed summary of each responsum closely corresponds to the text itself. Select documents are directly translated. These extensive translations were done only when the text was deemed particularly vital and linguistic accuracy advanced subsequent analysis.

The principle of selection of primary texts to be translated is at times determined by the central concern of the thesis, such as *IM OH 4:49*, wherein Feinstein concentrates on women's increased desire for ritual participation. At times, the centrality of a document is made evident by Feinstein himself, such as in *IM OH 1:39*. In the bulk of decisions on *mehitsa*, he consistently refers to this first extensive ruling. Occasionally, a document will appear to be crucial in emphasizing or supporting one section of my

argument and so will receive greater attention, such as his decision to obligate a father to pay for his daughter's education in *IM YD 2:113*. At times, a document will be translated in order to highlight his stylistic approach, as in *IM YD 2:87(2)* in which he briefly discusses teaching Mishna to girls. The overwhelming majority of the principal texts are closely summarized. These provide the primary evidence for the study's conclusions.

In order to be comprehensive, supplementary texts are at times included. Although not consistently devoted to the central topic of the chapter, these were chosen as they introduce supplemental and supportive evidence. Thus, responsa dealing with the teaching of secular subjects was introduced in order to advance the investigation of Feinstein's separation agenda in education. Similarly, his responsum defending the hiring of a female *mashgiah* is introduced to highlight both his attitude towards women in positions of authority and his defensive mode.

On two occasions, unpublished texts that are directly pertinent are included. Unpublished letters written on Feinstein's stationary, usually by his grandson Rabbi Mordecai Tandler, are part of the Feinstein "currency" in Orthodox communities.<sup>19</sup> These letters were part of the process of direct, immediate and personal communication with the questioner. The two chosen have a straightforward connection to the topic discussed. However, since they were not

officially circulated by Feinstein, they are treated as merely supplementary texts.

Ancillary or tangential decisions are often mentioned and reviewed in the discussion without necessarily being summarized. These were selected to augment the argument even though detailed presentation was not judged necessary at this time. This policy was especially adhered to in terms of Feinstein's decisions on business related matters. They serve as a complement to the main argument, definitely requiring independent treatment at a later date.

Thus, for each topic, all related published responsa are summarized and analyzed. The directory at the back of each volume of *Iggerot Moshe* was indispensable as was the separately published index of his responsa.<sup>20</sup> Informal familiarity with all seven volumes was also productive.

#### IV. 1. Evaluation of the work

Initial stages of the research are not completely or explicitly represented in this thesis. A brief account of those stages is, however, in order. After choosing the arenas for investigation, all the responsa were read, outlined and given a preliminary translation. As all the texts relevant to one topic were initially covered, a summary of the key issues was prepared. The initial investigation focused on each text and each sphere independently. Concurrently, other responsa of Feinstein's were examined. As well, the responsa of assorted rabbinic authorities on the same topics were scanned.<sup>21</sup>

Slowly Feinstein's main premises emerged. The links between all three sections became solidified as the analysis intensified and expanded.

At this juncture, the critical text summaries and translations to be presented in this thesis were prepared. After each summary, the specific responsum was assessed as a separate document on its own terms. At the same time, the chapter discussions were initiated. When the definitive summaries and translations of all related responsa were completed, the chapter introduction and discussion were formulated.

#### IV. 2. Analytical categories

The process of analysis involves appraising many different factors. Fundamentally, the text is examined for its literary traits. Language style and structure are key to understanding his message and its unfolding. His linguistic style definitely depends on legal sources, but the manner in which his argument is generated and the key words repeatedly used are indicative of his purpose as well as of his method. Formularies are also noted as suggestive clues. At times, certain words are relied upon by the decisor to shift the correlation of factors. The result is innovative without recourse to established legal sources.

His responsa style varies from simple statements to complex argumentative presentations. Again the literary format is understood within the context of his purpose. The length

and clarity of the document plays a role in signaling importance and complexity. At times length is also a clue to audience and precedential significance. Responsa are persuasive documents and style indicates audience as well as the gravity of argument. The frequent inclusion of advice and opinion alongside straight ruling is very significant. Feinstein uses this technique to address different elements in his community.<sup>22</sup> This style then indicates an assumed pattern of concentric circles that classify his adherents.

Essentially, since they are legal decisions the texts must be carefully scrutinized for their legal characteristics. First, the types and number of sources cited constitute a crucial element. Then the manner in which he relies on these sources indicates much about his perspective. His varying style of presentation, exegesis, argumentation and harmonizing of legal citations extends the analysis. At times his reference to his own previous decisions yields insight into the overall process. Finally, consideration must be given to any patterns found in his legal justification.

In addition to legal sources, he bolsters his argument with illustration and interpretation. These explanatory segments are regarded as clues to both intent and concern. The reasons presented and the way in which they were introduced are all patterns to be accounted for. Certainly, the absence of explanation or justification also plays an important role in analyzing Feinstein's assumptions and perspective.



The way in which the decision itself is introduced and emphasized is another factor found to be pertinent. Frequency of ruling on a topic, patterns of consistency and shifts within the ruling obviously are all taken into consideration. Finally, the various ways in which Feinstein makes his decision fit into existing legal structures is distinctive and worthy of consideration.

#### IV. 3. Outline of text: Structure

After each responsum summary, the structure of the text is presented in outline form. The purpose of this section is to attempt to document the range of styles used and the internal complexity of each argument. Every responsum is a statement of law as well as an argument of persuasion. Since the author has no enforcement capacity, some aspect of the text must persuade the respondents to accept the authority of the decisor and to follow through on the decision. The use of varying formats is possibly a clue to the author's intent and focus as well as to his estimation of the intended audience. Literary and rhetorical characteristics of documents are clues to purpose, function and relevant social structure. This section, then, will plot the predominant form in an effort to explore and seek correlations between the style of the text and the purpose of the author. It will inquire into Feinstein's specific style in rendering his decisions authoritative and self-evident.

In general, Feinstein's published responsa follow one set

pattern. The title is followed by a date - according to the Hebrew calendar only - and then some identification of the addressee. At times, the locale is also mentioned. Often, an honorific designation is added to the name of the addressee in the salutation. This is a standard literary device used at the beginning and end of responsa. It is designed to flatter and/or show respect for the person and is mostly ornamental. However, it does offer a clue as to the status or social location of the questioner. The more flowery or hyperbolic the words, the more likely that the letter is addressed to a colleague of Feinstein. Occasionally, honorifics are used in texts that are argumentative or even hostile to the questioner. Typically, much is camouflaged in language of appeasement or protocol. Feinstein's use of honorifics is also a standard gesture indicating modesty.<sup>23</sup>

Since the responsa are letters in response to specific questions, the opening paragraph usually contains a reference to the question but does not repeat it. Feinstein most frequently begins with some form of "hinei be-davar, concerning" which contains a succinct declarative statement of the topic. Periodically, this section contains a suggestion of the final decision. Occasionally, the responsum will constitute a rebuttal or refutation of another rabbinic opinion rather than an answer to a question.

The following section constitutes the essence of the responsum. The length and intricacy of legal argumentation

will depend on the particular style being used. Whether brief or lengthy, it is in this section that Feinstein must build the convincing basis for whatever decision he is about to render. Most routinely, the citation and discussion of sources is the primary technique of responsum construction. Any conflicts in texts as well as in communal custom are then addressed as are any pertinent rationales.<sup>24</sup>

The concluding segment contains the definitive ruling for this particular case. Feinstein will sometimes include his personal preference and advice at this juncture. Any final word of warning or support is then attached with intermittent protestations of humility or of deference to the local rabbi. If the questioner is known personally to Feinstein, his signature will include words of affection.

#### IV. 4. Feinstein's stylistic variants

Feinstein uses three basic styles in his responsa. The classic responsum style relies heavily on earlier rabbinic sources and presents an in depth examination of the texts cited. Feinstein's reliance on rabbinic sources is selective. He does not engage in the exhaustive technique of citation of all principal precedents. Most frequently, Feinstein's legal position is developed through a close examination of Talmudic texts occasionally encompassing the positions of certain *rishonim*. He seldom refers to subsequent commentators and their decrees.<sup>25</sup> The pastoral letter contains no source reference and relies completely on Feinstein's personal

authority. The abbreviated method refers briefly to some sources but does not explicate them.

The first method is by far the most formal, demanding and complex. As a rule, these legal documents are the longest, often consisting of several pages. This mode requires expert knowledge of talmudic and medieval sources and their rhetorical style. Traditionally, responsa include much of the relevant sources. Citation and discussion will begin with talmudic passages, and then situate the opinions of the early and later authorities including references to the important codes. Feinstein's method diverges from this encyclopedic pattern.<sup>26</sup> He relies heavily on his explication of particular talmudic sources. Most typically, he will then discuss a source in Maimonides. At times, other *rishonim* will be cited, as will the *Shulhan Arukh*. He seldom quotes from the later authorities and hardly ever refers to decisors of the last two centuries.

In initially stating the question, Feinstein focuses on the phrase or aspect of the case that he will proceed to develop. He then cites the talmudic source, standard codes and some of the relevant rulings. Supplementary sources are quoted and their relationship to the case explored. Often this section continues for many pages as he argues through critical issues and attempts to harmonize the sources. After this complex legal presentation, he sometimes includes reasons for the particular rulings cited. Every now and then he will add

a comment about the prevailing social context. Similarly, he occasionally will add special advice for those whom he considers capable of greater piety. He often will use this opportunity to mention his preference even though the law does not absolutely require such behavior. In closing, he typically confirms his final ruling, at times including his reasons.

In this responsum style, the sources clearly form the basis of the decision. They are presented in the body of the document as proof of the knowledge of the decisor and in support of the legitimacy of the decision. In this format, Feinstein's authority depends on his ability to know and quote the relevant texts and to use them properly as precedents in building his case. As a lawyer might, he has to apply principles of law that had already been established from one fact pattern to a potentially unrelated case. He is also called upon as an exegete to interpret and harmonize all the necessary texts. This scholastic method, used effectively, not only establishes the decision as valid but also situates Feinstein as an authoritative decisor skilled in rabbinic jurisprudence.

In direct contrast to the classical responsa format, Feinstein also frequently uses a much more simplified and neat form. This type is more accessible with persuasive statements rather than detailed halakhic arguments. This latter style, which I call the pastoral letter for purposes of contrast, is a straight declarative ruling. Not only are there no textual

references or quotations, but there is also no ambiguity. The decision is clear and formal. The respondent is convinced by the personal authority of Feinstein and not by a display of his powers of reasoning or culled sources. At times, he does refer to his earlier decisions on the same topic. The letter format is clear as there is no serious argumentation or convoluted justification. A decree is given and accepted as law by virtue of the authority of the decisor. This unsupported determination of a ruling is an unusual format in responsa literature.

Feinstein begins these letters in the same manner as all his decisions. The case is alluded to or briefly presented. Sometimes the case will be enlarged. His advice is then presented as a definitive ruling without any substantiating references. Brevity marks this style as well as the appearance of unanimity, simplicity and clarity. Occasionally, his reasons are supplied. Finally, his ruling is most often repeated before closure.

The third style used by Feinstein appears to be a combination of the previous two. In the abbreviated format, he does cite sources. However, he does not present any analysis or explanation of them. He merely cites them in some form of proof texting. He presents his decision as straightforward, without any ambiguity or debate. Reasons for his decision are often included. As in the pastoral letter, the strength of this ruling rests on his personal authority. He uses this

style for two different categories of questioners. The common folk who cannot follow or do not require a detailed legal fact pattern look to Feinstein for a clear decision, relying on his reputation and personal charisma. His authority has already been established in their eyes, and so the abbreviated form as well as the pastoral letter style satisfy their needs. However, this abbreviated form is also frequently used in communication with colleagues, people who are so learned in the texts that they do not require Feinstein's services as an exegete. He merely refers to the sources as a brief notation between scholars, not as a convincing tool for the uninformed or the unconvinced.

Thus, different styles are used to persuade different readers. Often the more technical responsa are aimed at the specialists, acknowledged rabbinic experts. The citing of many sources is an established means of communication in responsa. It is in the absence of this method that Feinstein displays great ingenuity and flexibility. Some rabbinic decisors use only the traditional responsa format while others experiment with a variety of methods and models. It is plausible to argue that the abbreviated or pastoral letter style does not appear to diminish the legitimacy or popularity of the decisor. On the contrary, many more Jews are able to respond to simple rule statements rather than complicated points of rabbinic law. Certainly, Feinstein is not considered any less an halakhic authority when he uses the pastoral or abbreviated

format. In fact, it is possible that the perfunctory style of issuing decisions lends greater authority to the decisor.

#### IV. 5. Stylistic inferences

Although, a totally consistent and specific correlation between style and function is not apparent in this study, some general comments and conclusions are possible. The classical responsa style is most frequently found in decisions rendered in his earlier years. Feinstein first had to establish himself as a master of rabbinic sources and also as a decisor able to use those sources in the decision making process. The pastoral letter appears in the latter part of his life as a decisor. Thus, there is a chronological pattern that would correlate with the process of becoming a renowned authority. No brief unsupported ruling would be acceptable until the decisor is himself an acknowledged authority. The early elaborate responsa form the basis both for his later popularity and for his ability to issue pastoral letters. The abbreviated format also appears in his writing later than the classical responsa format. He can use this method only after he has established his credentials as an expert in Jewish jurisprudence in the eyes of other experts.

Of course, Feinstein does continue to use the classic pattern in his later responsa. In these specific instances, it appears that the issue itself requires a critical inquiry into the related texts. Thus, when Feinstein is faced with a particularly challenging problem, he resorts back to the



talmudic sources and the development of those principles in the literature. His prowess continues to be demonstrated in the process as more and more rabbinic experts turn to him in difficult cases. Style then is a clue to the evolution of the decisor and the complexity of the issues that are addressed to him. In addition, form can be linked to the differentiated nature of his social framework.

The classical responsa format is used not only when Feinstein is challenged by a problem but also when the questioner appears to be disputing his authority or a previous decision. In some instances, if he determines that the challenge is not too serious, he will use the abbreviated form. Additionally, when he is trying to convince the rank and file of the severity of some issue, he is liable to use the classical responsa format. Apparently, Feinstein uses the classical responsa format when he is most challenged.

Interestingly, in the body of texts explored for this dissertation, the most frequent style used is the abbreviated format. The use of the pastoral letter is sometimes shocking in its assumption of simplicity with issues that were anything but simple. In the decisions examined, he routinely relies on his personal authority and on his powers of persuasion. In general, it appears that his use of the classic responsa style is earlier and less frequent than the other two.

V. Anticipating the Conclusions: Women, Boundaries and Modernity

Interestingly, women's issues provide a good test case in which to explore and expose Feinstein's overall strategy.

The traditional assumption of women's silence and/or absence from the scene of communal religion has been challenged and in some ways overturned by modern norms and patterns of interaction. This challenge is further exacerbated by the traditional association of women and the family - not, as is commonly held, the home. If changes are to be allowed, they might threaten both the pattern and power structure of a religious hierarchy as well as the stability of the family which is held to be the building block of society. Those who fear changes in the position of women are followers of the "domino" theory of social adjustment and change: "If this goes, then everything related will fall". In that vein, women who are not silent and do not wish to remain absent are seen as threatening the entire fabric of society; they become the vehicles for the worst effects of modernity.

Thus, in specific spheres, Feinstein rules with great care, treating women indeed as outsiders because he is afraid of these losses due to modernity. It is not his fear of women *per se* that impinges on his decision, but rather his fear of modernity's challenge to the continuity of the form of Judaism he is bound to preserve. Because of the pivotal role played by women, looking at groups of responsa led to the identification

of Feinstein's goals and major premises. As a result, three major positions can be differentiated and explored.

V. 1. The Traditional Denial of Change.

The Orthodox world responded to the Enlightenment and its promise or threat of modernity with a pledge of faith to God's Law, a law that is deemed eternal and therefore, unchanging and unchangeable. To an incredible degree, masking a complex variety of actual belief and praxis, the Orthodox Jewish world has maintained this faithful denial of change. Under the banner of Torah from Sinai, immutable divine authority is claimed for all of Jewish law. Thus, there exists a pervasive and conscious ideological commitment to continuity and preservation. The past precedes and, therefore, dictates present possibilities. Within that framework all efforts and arguments for legal changes that would affect ritual and practice must be refused and refuted.

While the Conservative movement has openly embraced change within the law, and the Reform sector has either relegated specific Jewish law to the realm of irrelevancy or at the least denied it as the determining factor of Jewish living, sectarian Orthodoxy has fallen back on the denial of any change within the Halakhic or legal realm. To utter the word "change" is to leave their discourse. To be accepted as a member of the group, to be able to argue points of law and morality, one must keep to this pattern.

Ironically, the language and style of "no change" makes possible the continuous and dynamic application of law within a changing system. In fact, one major traditional mode of communication between a rabbinic leader and his community, the responsa format, is based upon a legal system that is continually responsive to the present. Each new problem or case forces a new evaluation, a weighing of the significant factors. Thus, every time a rabbi responds, he must selectively choose the guiding principles and precedents to apply to the case. Within Orthodoxy, the rabbi as legalist must maintain faithful allegiance to the immutability of divine law while interpreting the law so that it can apply to and encompass the realities of modern living.

Thus, as will be shown, under the rubric of "no change", change is accepted and even cultivated as long as it is in the desired direction of the decisor. My hypothesis is that those very tools heralded by a given community as forces for continuity, for preservation of the past or of a frozen ahistorical "tradition", are at one and the same time tools of creative adaptation, of change. Law manages to variously reflect, mold and reject social transformation. By demonstrating that the law can apply to "new" situations as they arise, the categories of classical rabbinic law are shown to be permanent. So Feinstein and his decisions, while denying change and decrying modernity, build boundaries that are themselves changes and that are based on premises, unexplored,

borrowed from this alien culture.

#### V. 2. The strategy of separate spheres

His central concern is to maintain, bolster and create boundaries between Jews and the world, Orthodox and others, those who "fear the Lord" and those who "merely" keep the Sabbath, rabbis who are learned and those who are pulpit rabbis, Torah-law and rabbinical ordinances, men and women, law and custom. He is constantly working out "strategies of distinction." The use of such strategies to maintain the Jewish community is of course, not alien to Judaism. The biblical command of *kedoshim tihiyu*, translated as "Be holy", is built on the notion of separation, of isolating the Israelites from foreign influence and contamination. Feinstein merely carries that concept into the modern world in his own unique way. Every generation chooses its categories of differentiation for separation and protection. For him it would appear to be focused on the need to protect and maintain the Orthodox, and to prevent foreign intrusion of all things non-Orthodox. His task is compounded by the contemporary pattern of gender integration. He views this "mixing" as emanating out of a "foreign" influence and, therefore, resists it with the full force of his authority.

Rabbi Moshe Feinstein's map of America indicates that it is a very dangerous place. The moral climate and cultural environment appear inimical to his community and to his vision of the correct Jewish lifestyle. As a result, his legal

decisions create a map with boundary markers set in places that are different from his European predecessors. Motivated by a need to protect the Jewish world and ensure its survival, Feinstein's responsa implicitly recognize the power of the cultural context in the Jewish legal process.

Interestingly, it is not modernity in its economic form that he fears or distances. In the responsa of separation, the business world is strangely neutral. As will be shown, his message of separateness and contamination is controlled and overridden by his appreciation of the business world as necessary and neutral in all respects. It is the place of non-erotic, non-polluting work that renders permitted behavior patterns elsewhere prohibited. Thus he allows and even encourages living in this modern work world which, not inconsequentially, has contributed to his acceptability as the *posek* of contemporary religious Jews. Feinstein's scheme is focused on specifically Jewish institutional parameters. It is in the realm of synagogue life and education that he will most carefully and forcefully develop his design, maintaining his internal classificatory scheme. In those two domains, his responsa consistently maintain the absolute imperative of separating men from women and Orthodox from all non-Orthodox.

### V. 3. The Americanization of a European rabbi and his rabbinic tradition

Feinstein repeatedly decries American standards and values. He uses many legal ploys to prevent contact with and

absorption of those values into his community. One might say, that it is his distrust of all things American that frequently controls or shapes his decisions. The oft repeated phrase "in this country" presages a negative reality that he unhappily feels forced to accept. He uses it in the same tone and format as "because of our many sins" and even links the two at times. Peppered with phrases such as - in this country, in our generation, and because of our many sins - he uses the concept of *in extremis* to forbid and permit new norms and standards. Due to extenuating circumstances, i.e., the debilitating fact of living in America with its rampant sexual permissiveness (*IM YD 2:102*), he is able to forestall any arguments from history or past decisions. This place is different and because of its particular brand of dangers we need a unique cartography, a heroic ethic for survival. This attitude is manifest in many responsa.

Nonetheless, based on this research, it is my opinion that American values and precepts have entered into his "vocabulary" and have significantly affected his priorities and judgements. His decisions on women in the business world, their educational opportunities, and their position in synagogue and related ritual participation, all show the effect of Americanization. Is it conceivable that this body of responsa contribute to the formation of a modern type of Judaism which one may call *minhag America*?<sup>27</sup>

## Notes

1. Reuven Bulka, ed, *Dimensions of Orthodox Judaism*, New York: KTAV Publishing House, 1983; Samuel Heilman, *Synagogue Life: A Study in Symbolic Interaction*, Chicago: University of Chicago Press, 1976; William Helmreich, *The World of the Yeshiva: An Intimate Portrait of Orthodox Jewry*, New York: Free Press, 1982; Charles Liebman, "Orthodox Judaism Today", *Midstream* 25 (1979): 9-26.

2. David Ellenson, *Tradition in Transition: Orthodoxy, Halakhah, and the Boundaries of Modern Jewish Identity*, Lanham: University Press of America, 1989, and "Jewish Legal Interpretation: Literary, Social and Ethical Perspective", *Semeia* 34 (1985): 93-114; Jeffrey Gurock, "Resistors and Accommodators: Varieties of Orthodox Rabbis in America, 1886-1983", *American Jewish Archives* 35 (Oct 1983): 100-130; Peter J. Haas "The Modern Study of Responsa", in David R. Blumenthal, ed, *Approaches to Judaism in Medieval Times*, vol.II, Chico, Calif: Scholar's Press, 1985; Ira Robinson, "Because of Our Many Sins: The Contemporary Jewish World as Reflected in the Responsa of Moses Feinstein", *Judaism* 35,1 (Winter 1986): 35-46.

3. *Who's Who in World Jewry* records Feinstein's birth date as March 5, 1895. Judith Turk Rosenblatt, ed., New York: Who's Who in World Jewry, Inc., 1987: 136. All bibliographic sources agree that Feinstein was born on 7 Adar 5655 which correlates with Sunday, March 3, 1895. See the computerized calendar program in *Word Perfect and Corresponding Date and Family Record: From 1784 to 2000*, compiled by Rabbi Salomon W. Freund, New York: Hebrew Publishing Co, n.d.: 156. *Who's Who in World Jewry* also errs in listing eight volumes of *Iggerot Moshe*. There are only seven to date.

4. A. Y. Finkel, *The Responsa Anthology*, Northvale: Jason Aronson, 1990: 168

5. page 4.

6. They comprise the bulk of rabbinic writing from the medieval period through to modern times. See Peter Haas, "The Modern Study of Responsa", in David Blumenthal, ed, *Approaches to Judaism in Medieval Times II*, Calif: Scholar's Press, 1985: 35. Interestingly, although there has been a definite decline in the use of this format in the twentieth century, recently both Conservative and Reform rabbis have resorted to using this style as a form of communication.

7. David Ellenson, *Tradition in Transition*, Lanham: University Press of America, 1989.



8. "In short, we became aware that Jewish legal speculation is a social artifact, closely bound up with the perceptions and values of individual authors living in particular historical contexts." Peter Haas, "The Modern Study of Responsa": 64.
9. The term 'fact pattern' is used by lawyers to describe the arrangement of determining factual events in a case.
10. See Peter Haas for an overview of the field in "The Modern Study of Responsa."
11. Most notably, David Ellenson has used responsa to write social history. See also Haym Soloveitchik, *The Use of Responsa as Historical Source: A Methodological Introduction*, Jerusalem: Hebrew University, 1990.
12. David Ellenson makes this point: "Simply put, the Orthodox Jew and Orthodox Judaism have not been sufficiently appreciated as being active participants in the dialectical interplay of tradition and modernity universally acknowledged as characteristic of other movements and denominations within modern Judaism." p. 2, in *Tradition in Transition*, 1989.
13. In my thesaurus (word perfect 5.1) the antonym for innovative is traditional.
14. Haas, "The Modern Study of Responsa": 46-47.
15. In the absence of any known female authors of responsa, especially in the modern period, the masculine pronoun prevails.
16. "The Modern Study of Responsa": 52, emphasis added.
17. Bernadette Brooten, *Women Leaders in the Ancient Synagogue*, Calif: Brown Judaic Series, 1982; Susan Starr Sered, *Women as Ritual Experts: The Religious Lives of Elderly Jewish Women*, New York: Oxford University Press, 1992; Chava Weissler, "Women in Paradise", *Tikkun* 2, 2 (1988): 43-46, 117-20; idem, "Traditional Piety of Ashkenazic Women", in Arthur Green, ed., *Jewish Spirituality* vol. 2, New York, 1987: 245-75.
18. In the preface to volume seven, Feinstein thanks his grandson, Rabbi Shabtai Rappaport, who was responsible for organizing the responsa for publication, labeling the texts, and editing the later volumes.
19. In his preface to volume seven and in one published text, *IM* EH 4:18, Feinstein publicly acknowledges Rabbi Mordecai Tendler as his assistant.

20. *Yad Moshe: Index to the Igros Moshe of Rav Moshe Feinstein ZTL*, compiled by Daniel Eidensohn, New York: Daniel Eidensohn, 1987.

21. Initially, the three volumes by my tutor, Getsel Ellinson were very helpful at this stage. *Ha-Isha Ve-Ha-Mitsvot*, Jerusalem: Jewish Agency, 1977.

22. See Ira Robinson, "Because of Our Many Sins: The Contemporary Jewish World as Reflected in the Responsa of Moses Feinstein".

23. Both the honorifics and claims of modesty are regular features of Ashkenazic rabbinic discourse.

24. For an interesting analysis of the interplay of custom and text as sources in responsa, see Haym Soloveitchik, "Rupture and Reconstruction", *Tradition* 28 (Summer 1994): 67-72.

25. Haym Soloveitchik claims that the approach of Feinstein is continuous with the style of the Gra. His description of the diverse styles is germane as his analysis of the Gra's style fits Feinstein quite accurately.

"The crux of the Gaon's approach both to Torah study and to *pesak* was its independence of precedent. A problem was to be approached in terms of the text of the Talmud as mediated by the *rishonim* ( and in the Gaon's case even that mediation was occasionally dispensed with). What subsequent commentators had to say about this issue, was, with few exceptions (e.g. Magen Avraham, Shakh), irrelevant. This approach is writ large on every page of the *Biur ha-Gra*, further embodied in the *Hayyei Adam* and the *Arukh ha-Shulhan*, and has continued on to our day in the works of such Lithuanian *posekim*, as the Hazon Ish and R. Mosheh Feinstein. The *Mishnah Berurah* rejects *de facto* this approach and returns to the world of precedent and string citation. Decisions are arrived at only after elaborate calibration of and negotiation with multiple "aharonic" positions."

"Rupture and Reconstruction", *Tradition*: 112, note 20.

26. Interestingly, he calls his collection "*Iggerot*," meaning letters. He does not use the more common term *teshuvot*, *responsa*, in the title or preface.

27. This term was first used by Isaac Mayer Wise as the title for his new American prayer book. Recently, there has been discussion between scholars and practitioners on the application of the concept to Jewish legal and ritual matters. These will be elaborated on in the concluding part of the dissertation.

Chapter 2. JEWISH EDUCATION FOR WOMEN: RABBI MOSHE FEINSTEIN'S  
MAP OF AMERICA<sup>1</sup>

I. American Jewish Education: A Difference

Jewish nostalgia frequently portrays the past as a golden era of scholarship. All great-grandfathers of contemporary Jews were admirable rabbinic scholars, and their great-grandmothers worked tirelessly to support them.<sup>2</sup> One gets the impression that never again will we be graced with such levels of learning and wisdom.<sup>3</sup> However, sociological surveys show that in this century in America more Jews have spent time in specifically Jewish educational institutions than in any previous era for which we have documentation. American Jewish history, then, is distinguished by the development of an exceptional institutional approach to education.<sup>4</sup> Founded on the American version of democracy and public education, Jewish schools were created for all Jews, even women.<sup>5</sup> This democratization, activated by educational trends in Europe, created a unique form of Judaism. Not only were the elite to be learned, not only were men to be scholars, but all Jews, including female Jews, needed schooling. Many American Jews came to believe that one could not be a good Jew without some form of Jewish education. (Perhaps this has been one impetus for the nostalgic "myth" of learned ancestors.) The commonplace inclusion of women as students and teachers is a marked development of American Judaism.

The rabbinic response to this transformation has varied

from reluctant approval to routine endorsement. The absence of sustained opposition is as remarkable as the rapid growth and almost universal acceptance of this innovation.<sup>6</sup> In the Orthodox world especially, which has most readily created schools for girls yet where the advocacy of change is anathema, this development deserves comment and investigation. In an effort to understand the Orthodox response that not only enabled but encouraged this massive change of attitude towards the education of Jewish females, this chapter will examine the response of Rabbi Moses Feinstein. Since he is considered by many to be a *gadol ha-dor*, a great luminary of the generation, his stance is both authoritative for and representative of American Orthodoxy.

For Feinstein the critical issue of educating girls is not whether they may learn nor even what they may learn. It is clearly self-evident for him that girls should go to school and that their schools should have a serious Jewish curriculum. His responsa further indicate that for him these developments must reveal a continuity with tradition that belies this radical break with the past. Nonetheless, in all these deliberations, his perspective is challenged and channeled by American social norms and values. The result is a new form of American Judaism that is inclusive of women and provides resources for greater inclusiveness.

#### I. 1. The Historical Context

The study of Judaism and Jewish texts has not always been

open to women. Debates concerning the propriety of teaching women emanate from early rabbinic literature. The Talmud states that women were considered exempt from the obligation to study Torah (TB Ber. 20b, Kid. 34a). The proof-text is the Biblical verse in Deuteronomy 11:19, "And you shall teach them to your children", the last word commonly rendered as "your sons and not your daughters" (Sifre, Deuteronomy 46). The Talmud (TB Kid. 29b) specifies that a father is responsible for teaching his sons but is not obligated to teach his daughters. In fact, the Mishnah in Sotah 3:4 and the ensuing talmudic debate posit the question of whether women were even allowed to study.

This is not to say that women were not educated. Contemporary research has brought to light a history replete with women who were considered "exceptional".<sup>7</sup> Jewishly educated women were taught despite the legal arguments against it. In fact, some of these women were even noted and celebrated for their scholarship.<sup>8</sup> Nonetheless, it is necessary to acknowledge the problematic nature of women's education in Jewish history and law.<sup>9</sup> The range of interpretations and possibilities is not important in this context except to note the major negative approach. Most women were not taught in a formal or systematic manner.<sup>10</sup> The legal debates focused on what of Judaism they needed to know in order to function as Jewish wives and mothers. They were primarily expected to learn all that they needed at their

proverbial 'mother's lap'. One twentieth century rabbi commenting on the past, wrote that girls "practically nursed Judaism from their mother's breasts."<sup>11</sup> Mothers were responsible for instilling in their children faithfulness and devotion while teaching the necessary technical details to their daughters.<sup>12</sup>

As late as the nineteenth century, Rabbi Y. M. Epstein, author of the *Arukh Ha-Shulhan*, wrote: "We have never taught women from a book, nor have we heard that people actually do so. Rather, every mother teaches her daughter or daughter-in-law those well-known rules women should know."<sup>13</sup>

This attitude became increasingly problematic and eventually was altered in the modern period as different rabbinic decisors such as Rabbis Samson Raphael Hirsh, A. Y. Karelitz, and Israel Meir ha-Kohen unambiguously ruled in favor of educating girls. The mass appeal and open availability of schools for Orthodox women was due to the vision and perseverance of one woman, Sara Schenirer.<sup>14</sup> She founded the *Bais Yaakov* school for girls in 1918. The resultant Beth Jacob movement was officially sanctioned by the *Hafetz Hayyim* (R. Israel Meir ha-Kohen), who permitted this innovation in recognition of historical and sociological factors. The once forbidden or at least debatable education of Jewish females was now to be considered a *mitsva*, a religious obligation, and made available to all girls, not just the exceptional ones.<sup>15</sup>

This decision inaugurated a new era with wide-ranging repercussions. Jewish girls were to be publicly, professionally and communally educated in Jewish subjects. Since World War II, there has been an incredible growth in day-school education. Notably, the Orthodox community has not only been in the forefront of this development, but it has led the way in the arena of female education.<sup>16</sup> Moreover, the focus today is not just education for children. Intensive study of Judaic texts, comparable to that traditionally available only for males, is now increasingly accessible to adult females in Jerusalem, New York and Boston.<sup>17</sup> Modern Judaism is significantly different from previous eras in part because of its attitude towards and unique development of the education of its female children.<sup>18</sup>

## II. Text Treatment

### II. 1. Glossary of technical terms

*Da'at Ha-Torah*... Torah position

*Da'at Ha-hakhamim* ... sages' view

*erva*... unchastity, nakedness, sexual immorality

*hinukh* ... instruction, training

*hiddush*... innovation

*hol* ... lit. everyday, refers to secular or general sphere

*limud* ... learning, the more serious form of scholarship

*ma'aser* ... the tithe, a required charitable donation

*she'at ha-dehak* ... in extremis, under duress

*tiflut* ... frivolity, obscenity, trivial

*yihud*.... Lit. coupling, unity or privacy, refers to the prohibition preventing unmarried men and women from any possible intimate contact



## II. 2. Primary Sources

IM YD 1: 137

1954

CONCERNING YOUNG BOYS AND GIRLS LEARNING TOGETHER

### TEXT translation

Concerning teaching boys and girls together in one class, even young ones, certainly this is not the way of the wise. Even though there is no fear of the evil inclination or lewd thoughts at this age, nonetheless it is necessary to train boys and girls to keep their distance from each other. Moreover, when they are in a classroom together they conversely become accustomed to accessibility which will be routine when they are older and culpable in terms of the evil inclination. Therefore, even though there is as yet no hint of a prohibition - notwithstanding the inclusion of children in some prohibitions they are not involved in this one - there is still the obligation of training.

Initially, it begins with the debate in the Talmud (Succah 46) on giving or transferring to a child a lulav on the holiday. The Magen Avraham (658:8) thinks that the young one (*ha-katan*) has not fulfilled his obligation. This means that the father has not fulfilled his obligation of *hinukh*, training. Thus, he must buy the child a separate lulav and etrog. The father cannot transfer possession as he still must use it himself and

ownership is now doubtful, see in *L'vush* as most authorities agree. However, the *Mishna Berura* (28) brings later authorities that appear to accept that the responsibility of training is accomplished via a loan of the objects. Look further in the *Mordekhai* who rules accordingly. Therefore, in this case there is a reversal (of strict and lenient decisions). Thus, the *Magen Avraham* would rule leniently (and permit boys and girls together), since there is no prohibition. If the child had been obligated the transfer would not have been prohibited. But since he was not obligated, it could not apply even for educational purposes. Those who disagree claim education substantiates the act without the proper transfer since the obligation to educate involves familiarizing the children with the patterns of behavior required later in life. Therefore, this ruling would require the separation in order to accustom them to be separate from women although there is no legal prohibition (at this age) even when they are obligated to *mitsvot*. It appears that because of extenuating circumstances the *Mishna Berura* maintains that later authorities would not rule according to the *Magen Avraham* and would decide that the law prohibits. However, even though the majority of later authorities would rule like the *Magen Avraham*, and not pronounce a legal prohibition, nonetheless wisdom dictates otherwise for everyone. The

law remains questionable even for the very young.

Therefore, I agreed to a lenient position only due to extenuating circumstances. Since they could not establish a school for girls, and the girls would have been sent to state schools that lack faith and (training in good) deeds, God forbid, it was obviously better for them to go to a school run by the faithful even though they would be learning together with young boys. Since, as I have explained according to the majority of later authorities, the prohibition does not apply to them. Even according to the view of the *Mishna Berura* perhaps one could argue that it is permissible for the sake of education. They could not educate both groups and the education of females in faith is a priority. Thus, it is clear and simple that if it is possible to build a separate school for girls even for the very young, it is compulsory. All the more so for even slightly older children for whom the law (of separation) applies whether for sacred or secular subjects.

FORM

1. *Hinei bedavar...* general case  
 specific case + ruling1 + appeal to traditional authority +  
 reason

2. *Ve-likhora...* dispute of authorities + source1 + source2 +  
 explanation + source3 + support of others + reason +  
 supportive sources.

a. *She-lakhen...* case1 + apply source2 to case1 +  
 ruling2.

b. *U-le-ha-holkim...* apply source3 + ruling3

c. harmonize sources + appeal to traditional authority +  
 legal doubt + ruling1.

3. *Ve-lakhen...* ruling2 + in extremis + explanation + ruling2  
 + reason according to source2 + reason according to source3.  
 + preference for ruling1.

The form of this responsum correlates closely with Feinstein's use of the classical format. However, he does not fully explicate the sources cited. Some of the sources do not appear frequently in Feinstein's work. In these three paragraphs the preferred ruling is repeated frequently in order to emphasize its importance while minimizing the lenient exception. His decision precedes his marshalling of sources and halakhic reasoning. None of the sources deal directly with the issue of education.

ANALYSIS

This responsum appears to be one of the earliest in which Feinstein clearly develops his educational program. Though I have not found any earlier statements, there is an impression that this is not his first ruling on the matter. It appears in paragraph three that he had already allowed young children to study together and that here he is only explaining the leniency due to extenuating circumstances in the context of his absolute preference for separation.

In this initial responsum, Feinstein argues for separation of boys and girls in all learning situations. He clarifies that the basis for the separation is not a child's liability to the evil inclination of sexual arousal or stimulation, but rather the issue for him is one of establishing patterns of behavior as part of a child's proper development. The ruling explicitly states that there is no primary *issur* (legal prohibition) involved, but that the obligation to educate must legally include proper conditioning. The halakhic argument is followed by a lenient ruling, permitting very young boys and girls to learn together. In explaining the reason for this exception, Feinstein argues that according to the majority consensus at the young age in question there is no legal prohibition. He further justifies his ruling according to the minority view by claiming that one cannot rule on the obligation to educate if there is no possibility to educate. In the specific case under

consideration, there was no place for girls to study and they would have been forced into a secular public school. In such a situation only, and only for the very young, Feinstein permitted learning together. He concludes by restating his preference for separate education and emphasizes that the above exception is only in difficult situations and only for the very young.

The format of this case permits Feinstein to argue a general prohibition and a specific leniency. It begins with the general statement that everyone prefers separation. Even though the strict law does not apply, nonetheless in order to regulate later behavior, the obligation to educate brings with it the need to separate. This is then followed by his argument through the sources about the purpose of education. The sources do not refer to the specific nor to the general case at all. After establishing the need to separate as part of an educational program, Feinstein then introduces the exception. In explaining his leniency he reaffirms the need to educate girls along with a preference for separation. He concludes with a firm legal ruling on absolute separation.

Remarkably, Feinstein uses a case in which he has allowed mixed classes to contend that even those who legally would permit mixed classes, undoubtedly prefer separation especially since there is a legal doubt (*sfeka ledina*). He does not present legal sources on this point but merely resorts to the general idiom that wisdom does not reside in this path.

Thus, the effect of this responsum is to establish quite clearly the ruling demanding separate education for boys and girls. Though he demonstrates leniency, he clearly does not wish it to become a precedent in other situations. Moreover, he maintains that according to the law, whether in sacred or secular subjects, boys and girls must learn separately. This added clause strikes directly at many schools that maintain separate classes for Judaic subjects only. For Feinstein, subject matter is irrelevant. He is concerned with training the students for an encompassing and self-consistent way of life.

The halakhic argument significantly does not introduce any sources that deal with separation of male and female nor with the specific case of separation during education. These are assumed as agreed upon and known to all. The evil inclination and fear of sinful thoughts can only be avoided by constant vigilance. The argument is developed on the basis of sources that deal with inclusion of children in *mitsvot*. Feinstein uses these sources to demonstrate his own theories on the purpose of education. Significantly, the noun *hakatan*, used to refer to the young child, is masculine. Furthermore, women are exempted from the specific obligation mentioned in the sources. Thus, the child in question is assumed to be a son. Interestingly, Feinstein transposes the case to apply equally to educating girls.

Feinstein's emphasis on separation of boys and girls

remains one of his primary stances. Yet, when it conflicts with the need to educate girls, leniency is called for. Thus, though for Feinstein the stated proper procedure is separation, the implicit goal of female education remains very strong. Nowhere does he allow that girls need not be educated "in faith". When there is a conflict between his stated preference and his assumed goal, the education of female children remains a strong priority. However, once the age is reached wherein he claims the law is applicable, then no compromise would appear to be available. At that juncture Feinstein assumes that money will be found to build a separate school for the girls. He does not even allow for the possibility that girls will not be educated Jewishly. Thus, though he repeats the ruling on separation three times, and never argues from sources that girls must be educated, it clearly is one of his motivating principles.

Feinstein's insistence that the obligation to educate involves getting children used to certain patterns is significant in later rulings. In this case he specifies that children should not be allowed to get accustomed to familiarity or nearness of the opposite sex. Initially, he does not approach the issue from the perspective of protecting the boys only. Rather, he specifies that the purpose of the ruling is to educate the boys to keep their distance from women and vice versa. Offsetting this evenhandedness, later in his argument when explaining the minority view in this case,



he states that the purpose of separate classes is to become accustomed to keeping men away from women.

Although simply stated, his words "The education of girls in faith is a priority" are a powerful testimony. Whatever the intricacies of his reasoning, and however much he emphasizes separation, it is clear that the education of girls in faith and deeds is a high priority for R. Moses Feinstein.

IM YD 2: 102

1971

CONCERNING THE SCHOOL KNOWN AS HAFETZ HAYIM THAT MUST MOVE AND WISHES TO BUILD ON THE BETH JACOB CAMPUS BECAUSE OF SERIOUS FINANCIAL CONSIDERATIONS.

TEXT Summary

After a flowery introduction, Feinstein excuses himself for not writing sooner as the Passover holiday intervened. He then quickly informs the questioners that it is forbidden to build the boys school on the girls campus.

The responsum then cites ancient custom and talmudic sayings ( Mishna; end of Makot) as to the power of sexual temptations and the inferred need to keep separate. Because of these ever present desires, Maimonides rules that people (men) must "accustom themselves in extra holiness to pure thoughts and correct views" by distancing themselves from frivolity and sensuous things (Maimonides, end of *Isurei Biah* ). The underlying premise being that these cause sexual sinning. The Talmud (TB Ber 12) is further cited regarding visual distraction and sinful thoughts. All these talmudic warnings were issued when girls dressed with great modesty (TB Yoma 86). Feinstein concludes that even in those days it would have been forbidden to build the schools close to each other.

In this case, though the campus is large, it would be like a city with students all over and therefore, forbidden.

The responsum then cites the licentiousness of our generation which even teaches these things in the government schools. The prevalence of uninhibited sexuality in this society is so serious a threat that even Jewish children are affected. Therefore, Feinstein maintains it is necessary to exert extreme care and caution to erase these ideas and temptations.

The work of the educators in both institutions is very important and worthwhile. The responsum praises their work and decries any financial consideration that would spoil the education of the children.

The law therefore, remains clear that it is forbidden to build the Beth Jacob school on the boys' campus. Feinstein expresses his hope that female students will increase and will become the pride of Israel. The responsum concludes with a blessing for future success and praise for past accomplishments on behalf of boys and girls, the children of Israel.

FORM

1. Greeting + apology
2. *Ve-hinei pashut...* ruling1 + *ki harei...* source1 + statement + source2 + statement + source3 + explanation
3. *Ve-kol she-ken...* statement of present reality + result
4. *Asher al kein...*praise + source4 + refusal of other considerations + aphorism
5. *Ve-lakhen...*Conclusion ruling1 + praise and blessing.

This is a brief and straightforward text. There are a number of sources cited none of which address the issue directly. The text does not explicate the sources merely refers to them as though they are self evident. The form is one of moral exhortation rather than legal documentation.

There is a disagreement between the title and the text concerning which school is to be relocated.

ANALYSIS

In this responsum Feinstein takes an unequivocal stand on separation of schools. No financial consideration can be allowed to "ruin" the children. The schools involved are repeatedly praised for their efforts. In fact, this *teshuva* recognizes that it is dealing with *yirei hashem*, those who "fear the Lord". Yet even in this committed group there are those who would seek a shared environment. It is precisely with these children that Feinstein takes his most inflexible stand. Even though they come from the "right" homes, are practicing and fearing Jews, who spend their days "learning" properly, still they must be protected from all forms of contact. Leading the right life does not make anyone immune to the temptations of sex. It is in precisely this community that Feinstein demands that heroic effort of extra precaution. The ruling is firm and absolute and makes no mention of other cases where financial considerations influenced his decision.

The legal reasoning relies on sources that clearly warn against intermingling and frivolity. None of them specifically mention separate schools. This responsum has the most complete listing of sources. It is clear that for Feinstein the talmudic fear of sexual temptations and Maimonides' concern with overindulgence in frivolity and excessive intermingling constitutes a sufficient and direct basis for his ruling. Their laws apply for him to the separation of boys and girls in all instances even to the point of requiring not only

separate buildings but also separate locations. It is a direct step for him and does not require any serious legal reasoning or interpretations.

In an interesting anachronism, Feinstein claims that even in "those days" it was forbidden to build the girl's school too close to the boy's yeshiva. "Those days" refers to talmudic times when girls dressed modestly. Not only is there no source for separate schools in "those days", but there is no source to indicate that girls had any schooling that corresponded to the boys. In fact, historical scholarship has always accepted that the Beth Jacob movement was a major innovation of the twentieth century. It is significant that Feinstein herein assumes that girls did have a Torah education in "those days". He does not allow the possibility anywhere in his responsa that girls do not need a proper education. It is his conviction that girls who are well educated become the pride of Israel. In his concluding remarks, he praises those who work so diligently to teach both the boys and the girls. It is noteworthy that he specifies teaching boys and girls Torah and fear of God. But his balanced appreciation is not tantamount to identical status or treatment. The principal name for a serious school is "yeshiva" and that title is reserved for the boys in the world of Moses Feinstein.

Feinstein goes on to condemn twentieth century America for its rampant sexual permissiveness and in so doing reveals his underlying motivation. He is dismayed that the subject is

taught even to the very young in the public schools. But his main concern is for the Jewish children who are affected by this environment. Sexual perversion and preoccupation is in the "air" and reaches even the most protected children. In his eyes there is a contagious atmosphere that perverts all and, therefore, requires the strictest countermeasures. It is so far gone that he writes of even removing the thoughts from "those who fear the Lord", not just preventing contact with this depravity. Believing as he does in the rampant destructive sexual context of this country, he requires the strictest measures of prevention. His ruling is perhaps a clear indication that he recognizes the power of cultural contexts and sees his role of legislator as responding to them.

This responsum appears to be a twin to *IM YD 3:80* which was also written in 1971. Only this one specifies the location, Baltimore. The date on this one is *Nissan 26* and on that one, *Nissan 13*. Neither document mentions the other, but the format is very similar, as is the reasoning. Except for the reference to Maimonides which repeats the same quotation, the sources used are different but offer the same type of basis. In both he writes despairingly of the sexual climate in this country, its effect on students and the need for extra caution. *IM YD 3:80* refers to a Beth Jacob school that must move. *IM YD 2:102* begins by referring to the Hafetz Hayim school as the one that must move but concludes by mentioning

that the Beth Jacob school must move. Both texts abundantly praise the schools and those who work for them. Both emphasize the importance of educating girls. *IM YD 3:80* praises Beth Jacob only. *IM YD 2:102* praises both schools and writes equally of the importance of educating boys and girls in Torah and bringing a good name to Israel.

This document is longer and the stronger of the two but in *IM YD 3:80*, Feinstein explains that even in the Bible sexual transgressions required more prohibitions. He attempts to forestall any arguments from the recent past by reference to present day depravity. Inconsistently, in *IM YD 2:102*, he argues as though the past was continuous with present practice in terms of separation. It would appear that *IM YD 2:102* claims the same standards of separation as in the Talmud but *IM YD 3:80* conceivably admits a different past.

In both responsa, Feinstein's fear of the present cultural atmosphere reveals the impetus for his program of strict segregation. Although it might be arguable that he has no direct sources for these rulings, it is nonetheless demonstrable that the fear of sexual transgressions motivated the rulings which dictated the choice of sources. On the other hand, one could argue that the sources dictated his fears which resulted in his decree.



IM YD 2:104

n.d. (the surrounding responsa date from the 1960's and early 1970's. There is an internal reference to a six year lapse from a previous similar responsum. If the earlier one is IM YD 1:137 from 1954, then this can be dated 1960.)

#### CONCERNING YOUNG BOYS AND GIRLS LEARNING IN ONE GROUP

##### TEXT Summary

In this responsum, Feinstein lends his authority to a colleague who is trying to establish separate schooling in his community. Feinstein declares that according to his view it is forbidden to educate boys and girls together. He then explains the position of those who erroneously think it is permissible. Even though they are correct that there is no applicability of the law of evil thoughts in the very young, nonetheless, explains Feinstein, there is a commandment to educate that must involve accustoming the children to conduct appropriate for their later years.

The halakhic argument introduces the category of education as involving an obligation to familiarize the child with required adult behavior patterns. He also writes disparagingly of attitudes "in this country" that are so child centered as to expand the lenient consideration from the very young to even those of nine or ten. At that age, the legal prohibition applies and

cannot be tampered with.

In a significant addition to this responsum, Feinstein discusses the obligation to involve children in *Hak'hel* (TB Hagiga 3). By developing the importance of the *hiddush* in the text, he emphasizes that the obligation to educate is the parents *mitsva* and is not dependant on the child's ability to learn. There should be no judgement made by the parent on whether their child can learn or will use the information. According to Feinstein, this is a ruling (*gezera*) from God having no reason other than to reward the parent (father). There is no excuse for not educating a child completely and no room for lowering any standards based on a judgment of the child's level. Thus, in this case, if a lenient ruling will be allowed for the very young, there will be no limit to the application of youthfulness as a category and the evil inclination will influence judgment.

In conclusion, Feinstein allows that he did once permit girls and boys to study together when it was impossible to set up a separate school. In that case, the girls would have had no place to study other than state schools. The importance of teaching girls in faith and deeds forced him to allow only the very youngest to study together as long as the actual prohibition does not apply. However, when it is possible to have two schools, even for the very young, it is mandatory according to

Feinstein.

FORM

1. *Bedavar* ... case + difference + ruling1 + reference to previous ruling.
2. *Hinei*... converse reasoning + correct reasoning + reason1 for ruling1 + referral to *IM YD1:137*
3. *Ve-likhora*... dispute of authorities + source1  
     source2 + explanation of source2 + general agreement of authorities.  
     source3 + support of others + reason + referral to *Raban* mentioned in *Sha'ar Ha-Tsion* in source3.  
     case1 + apply source2 + leniency + reason (expanded from *YD1:137*) + story.  
     source3 + reason3 + ruling1  
     source3+ custom of *lulav* + law according to source3 + prohibition in case1.
4. *Ve-af*... source2 harmonized to agree  
     source4 + source2 + repeat ruling1 as law + supportive sources + ruling1 in all cases.
5. *Ve-gam*... local custom + legal prohibition + reference to *bar da'at*..no source.  
     source5 + explanation + application  
     ruling2 + case1 + no grounds for leniency.
6. *Aval*... not need source5 + ruling1 + ruling3 (lenient permission) + special conditions + reason + repeat preference for ruling1 even in case2.

The text is written as supportive to those in agreement. It literally repeats sections of *IM YD 1:137*. The primary ruling is repeated frequently. An unusual number of sources for such a short responsum are cited. (TB *Succah* 46; *Magen Avraham* 658; *Mishna Berura* 28; TB *Hagiga* 6; TB *Hagiga* 3.) The sources are cited in a direct yet relaxed manner. There is an assumption that the facts are indisputable and all who disagree will be easily convinced. The sources are eventually all harmonized to yield the same judgment. Any deviations are treated as rare and excusable minor exceptions.

ANALYSIS

This responsum essentially repeats his earlier one from 1954 (*IM YD 1:137*) with some interesting variations. Parts of the halakhic sections are exactly the same with an occasional elaboration of some of the halakhic reasoning that clarifies but does not change the basic position. The sources address the pedagogic question of training; to what degree must the very young practice the full role that will be expected of them when they are older. The context of this is in terms of the requirement for personal possession of *lulav* and *etrog*<sup>19</sup>. However, the general tone of this responsum is actually more adamant about the need to separate even the youngest children. He emphasizes that the role of education is to regulate and accustom children to all that is expected of them as adults. This notion of education as role pattern training has in it both ancient and modern ideas.

However, his views of childhood and suitable responsibility are based in talmudic rather than modern perceptions. In fact, he is quite critical of modern American patterns of prolonged immaturity. In this responsum he disparages the emphasis in this country on youth and the concurrent permissiveness towards children. Though his kindness towards and concern for children is manifest in many responsa, this particular aside gives evidence for a dislike of indulgence especially since it corresponds to avoidance of duty.

Consequently, this responsum refers to the age of nine or ten as the point at which separation of the sexes becomes a legal necessity as the child is now considered *bar da'at*, having statutory competence. This reference is to the talmudic discussion of the age of responsibility and the age of susceptibility to evil thoughts. Feinstein never specifies the talmudic foundation of this concept. Presumably such a specification would be considered an insult and is not necessary for those to whom he is responding. It is clear in this case and the others like it that he is writing primarily for specialists in education and not the nonprofessional.

The two new sources from TB Hagiga 3 and 6 are used for aggadic support rather than halakhic argumentation. The text in Hagiga 3 provides him with an opportunity to develop his ideas on the purpose of education and the father's proper role and attitude. Feinstein makes a point of emphasizing the innovation, namely that the child must be brought to hear the reading of Torah (*Hak'hel*) for the fathers sake. Thus, the parents' role and reward is independent of the child's ability to learn. No parent, writes Feinstein, should judge his child's ability and then decide whether or not to educate. In this matter parents have no choice; they must take their children to Jewish institutions of learning. Feinstein thereby invalidates individual choice while emphasizing individual responsibility.

The importance of educating girls again underlies any

leniency in terms of separation. He is most adamant in his endorsement of separate schools as is evident in the style and frequency of this ruling. This forceful reiteration reflects Feinstein's effort to overcome any financial considerations for using the same location. However, when the need for separation conflicts with the education of females, he is forced into a compromise position. Feinstein is fully aware that his requirement of separate buildings is a significant financial strain on many communities. Invariably, he does not disdain or denigrate this concern or motivation. Yet, he will not tolerate a solution that eliminates a girl's school. Thus, his compromise is to allow mixed schooling but only for the very young. Nothing is allowed to cancel the communal obligation to educate its female children. However, he is loathe to overstate this concession, since he does not wish it to become the precedent for increased permissiveness. Moreover, although there is equal emphasis in this context on educating boys and girls, in other responsa it is plain that the education of boys is more significant. In addition, although they must be educated, the substance differs for girls. Girls must learn faith and deeds, whereas boys must study text.

Finally, in this responsum, the reciprocal need to keep boys away from women and girls away from men is mentioned twice. It is noteworthy that he does not present the separation as a form of protection for the males only. There

is a clear attempt in his style and language to keep a balance to this requirement. His overriding preference and emphasis is on separate schooling for both males and females.



IM YD 2:106

n.d. (the surrounding responsa are from the 1960's.)

CONCERNING ACCEPTING A POSITION IN A SCHOOL THAT IS  
CONSERVATIVE

TEXT translation

Concerning accepting a job in a Conservative school (Talmud Torah), I have already written in my book *Iggerot Moshe* on *Yoreh De'ah* number 139 that in so far as they allow the teachers to teach properly without any interference and the school is in a separate place that is not their synagogue, it is not forbidden to accept (the job). However, I also wrote there that the principals of Yeshivoth should not hire teachers who would be teaching in both places. It is a concern that the parents of the Yeshiva students will assume that it is as good to study there as in the Yeshiva, since the Rebbe (teacher) is the same. And this will cause harm to the Yeshiva, God forbid. Therefore, the principal of the day school who says he does not want his teachers to teach in the Conservative school is correct. And it is not, as your honorable letter suggests, because it is forbidden by the law, but rather because of possible damage that would accrue to the day school.

But the second suggestion that the boys' classes study the sacred subjects first and afterwards general

studies, while the girls study their general studies in the morning and afterwards their sacred subjects, so that the same teachers can teach all day and earn a living is a good suggestion according to my humble opinion. After all, we do not have to be so strict with sacred subjects for girls since they are exempt from the study of Torah. As a matter of fact, permission for them to study is an innovation, *hiddush*.

The main object in teaching girls is that they should know the principle laws of the Torah, and be educated in faith and "awe of heaven." This is possible even if they study the sacred subjects after general studies. And we do not have to worry that people will say that general studies are more important, since this will be done only with the girls and in order for the same teachers to teach them.

However, perhaps the principal has other reasons that you ('your honor') did not include in the letter and on which I can not judge unless the principal writes of them. It is advisable that you (plural) should turn to the local authorities in Toronto, and they will decide.

FORM

1. *Hinei be-davar...* case1  
     source1 + ruling1 + conditions  
     ruling2 of source1 + reason
2. *Ve-Lahen...* ruling2 this case + reason
3. *Akh hatsa'a...* case2 + reason + ruling3  
     reason2 + reason3 + rationale
4. reiterate ruling2  
     + disregard possible negative results  
     + repeat reason1
5. *Akh ulai...* no closure + recommendation to local authorities.

There are two distinct parts to this text, both emanating from the questioner's original letter. The sections are linked in that they are both concerned with school policy and the hiring of appropriate personnel. Each confronts separate issues in education but it is possible that the second part can be seen as a solution to the financial difficulties of the first part.

Both parts are relatively short. There is almost no legal argument in either section. After a brief reference to the question, Feinstein cites his own previous responsum on the issue and then repeats his essential ruling and reasons. With specific conditions he permits accepting the job. However, he does not favor such a rule and makes a secondary ruling that

complicates the issue. He also states that his secondary ruling is not a matter of law but rather of public opinion and possible damage. In this paragraph, he is obviously disagreeing with the questioner.

In the second ruling, he humbly agrees with the suggestion of the questioner. He cites no sources, not even his own regarding this subject, and adduces two reasons for the permission. Public opinion is again raised but assumed to be inoperative since we are dealing with girls. Another reason for this permission is added. Significantly, Feinstein uses the language of innovation here. Finally, he refers the questioner back to local authority.

Paradoxically, great weight is given to public opinion in the first section but it is dismissed as a concern in the second. In both sections there is room for varying factors to influence the actions of those involved. The absence of legal sources is noteworthy while repetition is used to enhance the force of the advice. The decisions of this responsum rely totally on Feinstein's personal authority and powers of persuasion

ANALYSIS

These two brief sections contain very interesting elements of Feinstein's legal opinions and educational perspective. The issues are very important though he does not argue them through the legal sources. It is significant that he takes the time to restate his former ruling and the reasons for it, rather than simply refer the questioner to that source. It is also important to note his clear separation of law from opinion, even though both can be sources of rulings.

In the first section, it is plain that though he dislikes contact with the Conservative movement and in other cases forbids it, in this case he finds no basis in law for such a prohibition. This declaration is quite curious given his repeated insistence on the legal necessity to separate boys and girls in the classroom. Presumably, in a Conservative school, boys and girls study together in the same class. Typically, he is moved by the financial needs of teachers. In fact, this concern unites both sections of the document. However, the consequence of this ruling is that although it may be possible to take a job with a Conservative school, the teacher who does so will ultimately suffer a job loss.

Thus, Feinstein does not claim that law mandates a separation here, but that damage due to public opinion and misconception are enough to allow the day school principal to forbid his teachers from accepting such jobs. He is very concerned with impressions and with what people will say.

Again this thread runs through both parts of this responsum but with very different legal results. If people will assume that a Conservative school is as good as a day school because they both hire the same teachers, then the yeshiva must protect itself by not hiring anyone who teaches Judaica in the Conservative establishment. He emphasizes that this is not based on a law but simply on the need for self protection. Thus, financial considerations of the individual teacher move him, but he is more concerned with the whole school community. The result is that though there is permission, any teacher who wishes to teach in a yeshiva would not take a job with the Conservative school. His concern for popular impressions renders his permissive ruling negligible. He is certainly aware of competitive markets and enrollment difficulties.

The second ruling is of significance for a number of reasons. Feinstein is unfailing in his support of education for females but in this responsum he exposes his double standard. In this section, he accepts the suggestion of teaching girls Jewish subjects in the afternoons. Thus, schools can hire teachers for full days and solve their financial dilemma. Although that may appear to be a straightforward solution to a financial matter, in the context of his other decisions this one reveals a very important distinction that he attributes to the education of boys and girls. At issue is the use of prime time in school. Feinstein has adamantly insisted that Judaica must be taught in the

morning when students are at their best (*IM YD 3:83*). In this apparent reversal, he allows Torah study in the afternoon, giving Torah teachers full time jobs. Girls may study secular subjects in the morning because of the constraints of the teachers' finances. However, he is very clear that this permission is not a reversal. Rather it stems from a recognition that a girl's education is different than a boy's and does not require the same level of concentration being less arduous. Boys must learn in the morning when presumably they are at their best. Girls after all are not even required to study rendering their learning in some ways less significant. Moreover, the purpose of male-female education differs. The instruction of boys is for content and detail. The girls study to learn primary principles and faith.

His reference to the fact that girls are after all not obligated to study is very interesting. Again his argument appears to be simple. Because they are not obligated, we are not so strict with the requirements of their study. Also they study for different reasons. But most suggestively, in this responsum, Feinstein calls the permission for girls to study an innovation. Remarkably, he uses the technical word *hiddush*. This open admission of change is unusual since he frequently denies any type of legal change and yet he accepts it here in the arena of women's participation. He certainly does not mention it in other responsa such as women studying Mishna or a father's obligation to pay for his daughters' education.

Paradoxically, in *IM YD 2:102*, he maintains that girls always studied in separate schools even in talmudic times.

Ironically, while at the same time diminishing girls' study, he specifies that it was important enough to require a legal innovation. But the disequilibrium between boys' and girls' studies is most apparent. The boys must learn text while girls must learn attitudes and behavior. The difference in life roles is reflected in these different educational goals. However, to recognize difference is not necessarily to maintain secondary status. In fact, this solution enables the same teachers to work with both the girls and the boys. Feinstein's comment that this is good presumably indicates his approval of hiring qualified teachers for the girls as well as for the boys. Nonetheless, in a world view where serious study is everything, to limit or eliminate diligent study, to recognize officially that concentration is not needed, to acknowledge that no one will get the wrong impression (because just girls are doing it), is to admit that girls' study is in every way less important than boys'.

Also interesting in this text is his clear separation of law from opinion even though both can be sources of rulings. He is very concerned in the first section with the negative effect of public opinion. In this part, he clarifies that public opinion is only concerned with male activities. He assumes, probably correctly, that public opinion will not be affected by the schedule of subjects in a girl's school. If



boys were to study general subjects in the morning, there is a possibility that people would learn to value general subjects over sacred studies. But, no one will assume such a value preference from the order of the girls' day.

One final note, this responsum gives evidence of Feinstein's consistent concern for and consideration of local authority. He is humble when he agrees with the questioner, and is always conscious of local authorities. He also hints that the questioner, not being the principal, might not be in control of all the facts. He allows that as he himself has not heard directly from the principal, he might not be aware of all the issues, and defers the case to the local authorities.

Public opinion and finances are the overriding considerations in this brief piece. Yet, it also suggests that although he clearly values the education of girls, it is never to be equated with that of the boys.

IM YD 2:109

1960

MAY WOMEN REMAIN AT A SOCIETY'S MEETING DURING THE TORAH STUDY  
SEGMENT

TEXT translation

This concerns meetings of a particular society (unnamed) where men and women come together to discuss, debate and decide general issues of concern to the society. They designated that at every meeting one of the members will teach the group some form of Torah study, either laws from the *Shulhan Arukh* or matters of ethics and faith. This is a good plan and you should be strengthened (formulary salutation). The question pertains to the women and whether they can remain during the study session. As they are present during the time of discussion and make decisions on the general issues, is it necessary for them to leave and go to another room? After all, words of Torah and ethics are not less important than secular matters. Since you are not strict in prohibiting them from coming to the meeting, as is the custom in this country that even women participate in all things, even though the reason for the leniency in this country is not known, therefore, because you are lenient there is no sense for the women to leave during the study time. Women also need to learn the laws of the Torah. It is good for them to hear words of Torah, law and ethics

as our sages included women in the obligation of *hak'hel*. Therefore, it is beneficial that they should hear words of Torah everywhere. However, if the time for afternoon and evening prayers approaches and you intend to pray there, then the women will have to leave and go to a different room, one not being used by men praying.

FORM

1. Salutation
2. *Hinei* ... Case + explanation + praise + specific question  
statement + problem + absence of legal basis  
ruling1 + reason + unspecified source + general counsel  
new condition + ruling2.

This responsum is in the style of a pastoral letter. Feinstein gives permission without any reference to it being opinion or law or to any legal sources. His one reference to a legal source is non-specific. He does not use it to develop any kind of halakhic argument. Initially, in stating the question he elaborates and gives approval to the original development that resulted in the specific question. The primary ruling is to permit but he also includes his opinion on a different issue that is not a problem for the questioner and indicates his disapproval. Again no sources are discussed. Finally, he adds a condition presumably not originally of concern to the questioner.

ANALYSIS

Mention must be made of Feinstein's use of English in the text of the responsum. The words for 'meeting' and 'society' are not translated but transliterated with a Yiddish spelling. It is unclear as to why he resorted to this device when there are appropriate Hebrew words. Although, he does this with neutral words such as dishwasher, there are instances such as his transliteration of the word "rabbi" in referring to Conservative rabbis, when this device indicates his disdain. Perhaps, he is uncomfortable with this form of activity that is so associated with negative facets of modernity for him. Certainly, he chastises them for including women in communal affairs.

Consistent with his views on the education of women, Feinstein sees nothing wrong with allowing the women to remain in the room. In fact, he says it is a good thing, women as men should be exposed to words of Torah. He does not refer to the history of exclusion nor develop any basis for his overwhelming approval.

His consistent concern is mingling between the sexes. Thus, learning together is proper as long as they are working together. But he neither understands nor accepts the need to always work together. Why, he ponders, does American society allow women to participate in everything? He finds no basis in law for this practice. Although he recognizes the prevalence in this country, he still does not approve. There is an

implied reference to the 'old' country where this mixing would not have been tolerated. Interestingly, in a previous responsum, he deals with the problem of finding a practice he sees no sources for by finding sources for it. Thus, in *IM YD* 3:73 he says that though there is no source to allow the hiring of female teachers, since it is practiced here someone must have given permission and therefore, he argues through the sources to ratify the presumed permission. Obviously, in this case (mixed meetings) he does not wish to argue for the practice and just leaves us with the aside that he does not like it. Nonetheless, although he does not like it, neither does he forbid it. Given his numerous decisions regarding the separation of boys and girls in school, it is remarkable that Rabbi Moses Feinstein permits adult men and women to study together.

However, an edict is necessary to stress that there are still boundaries to his tolerance and so he must mention that no matter what, prayer may never be conducted in a mixed environment. The separation, furthermore, cannot merely be a table. The women must go into another room.

His technique in this pastoral letter is noteworthy. Though he is critical of the ease with which women are included, he begins with high praise for the group's innovative inclusion of study at business meetings. He also praises the education of women. His disapproval is mentioned lightly and merely as an aside. Yet, he must mention it so

that no one will be misled into believing that he favors mixed meetings and so that those 'God fearers' who are capable of stricter adherence to the law would not permit such doings. Enigmatically, he does not rationalize this disdain with his evident endorsement in the real business world of most forms of integration. It would be difficult to argue that women belong at home in Feinstein's view. On the other hand, his aversion towards women at these meetings is an indication of a social map that limits women's access to the public domain.

In one brief paragraph of twenty lines he accomplishes much, not that least of which is an affirmation that all prayer must be separate. Feinstein's acceptance of the modern world includes a primary acceptance of the legal propriety of educating women. He is less willing to accept social integration, but minimally does. But he will never accept mixed prayer services. His polemic against this form of modernity is consistent.

IM YD 2: 113

1968

CAN ONE PAY A GIRLS TUITION FEES FROM TITHES

TEXT translation

This concerns using tithed funds to pay for a daughter's education in the Beth Jacob school. There is certainly a distinction in the law between boys and girls. A father is obligated to teach and even pay for the Torah education of his son. Since it is a mandatory ruling, he may not use the funds of the tithe. On the other hand, since there is no such obligation upon the father in terms of his daughter's learning Torah, if necessary it is permissible to use the tithe. However, since in our country there is a state regulation that all must be educated in their schools - praise to God that we have permission to educate them in schools run by kosher and faithful ones - if he does not send her to a kosher school like Beth Jacob where she will be taught the way of Torah, faith and observance, then, God forbid, he will have to let her go to a state school lacking in faith and Torah. After all, he is obligated to see that his daughter is kosher, believes in God and the Torah, and observes the commandments even if it costs money. This is mandatory.

Inquire into (ShA) OH 306:14, concerning a father's refusal to help save his daughter from those who abducted



her to convert her. In that case, he is forced to contribute. Consequently, the father is obligated for this. Although according to the *Mishna Berura* in *Sha'ar Ha-Tsi'yon* the case is applied to the daughter specifically because of the concluding section which states that coercion is not used because he is her relative. The implication is that the father is not specifically obligated any more than the general populace. It is just because of his relationship that he would be deemed initially responsible, in which case, one would think, he could use the tithe funds. But this is problematic. Firstly, even according to Reish Lakish who claims (TB Nazir 29) that there is no obligation to instruct daughters, the law does not follow. The *gemara* there directly proposes that he is obligated in the instruction of his daughter by questioning Reish Lakish about the daughter. As is explained in the *Mishna*, Yoma 82, which asserts that children must be instructed in (the laws of) suffering for Yom Kippur and the *gemara* specifically notes that children includes daughters. Secondly, it is possible to explain that according to Reish Lakish it is just in the realm of instruction for commandments (that fathers are not obligated to teach their daughters). However, to instruct her about belief in God and the Torah and to be mindful of the prohibitions, even he would obligate (the father).

Clearly, in my humble opinion, (the father) is obligated for both sons and daughters even if it costs money. Therefore, since this too is an obligation, it would be inappropriate to use the money of the tithe, and it is necessary to examine the words of *Sha'ar Ha-Tsi'yon*. Indeed, that which he can afford to pay from his income cannot be taken from his tithe. But if they ask for more (money), he can take the extra money from the tithe and this law is applicable for sons too.

According to the tithe calculation, he earns less than he spends so that he is exempt. Self-support takes precedence as seen in *the Rama* 251:3. It is an extraordinary act of piety to restrict household expenses in order to give the tithe to charity. Certainly, (in this instance) it is not necessary to be strict (with the obligation to tithe).

FORM

1. *Hinei be-davar...* case + statute1 (not this case)+ statute2 (not this case) + possible decision.
2. *Aval...* context of the case + analysis + ruling1
3. *Ve-A'yen...* source1  
     problem + source2  
     challenge through source3 + source 4 + explain source3  
     ruling 1 + ruling 2 + compromise
4. *Ve-Lifnei...* reason + source5 + advice.

Following the classical format, Feinstein first states that which he will disprove. He then shows that this case involves a different set of circumstances that require a distinct legislative resolution. By sorting out an interesting interplay of texts, he reaches his conclusion. The expected permission is at first denied and then partially reversed.

This responsum is unusual in the number of sources cited in a short responsum. It also is rare in that Feinstein does not always use sources on this issue of the education of girls. Both factors give an indication of the seriousness of the larger issue for Feinstein.

ANALYSIS

This is a most remarkable responsum. It is exceptional both in terms of the radical ruling as well as due to the way in which that decision is reached. The question may appear to be innocuous, the decision is not. It displays a resourceful use of sources and an ingenious ability to apply principles from a different realm of law.

In this responsum, Rabbi Feinstein simply and directly obligates the father to pay for his daughter's education. The talmudic requirement is unambiguous; fathers are responsible for their son's education only. Feinstein shifts the scene to this country and in doing so is able to claim that another set of stipulations pertain. Consequently, he is able to compel a new standard. Given his usual disclaimer regarding halakhic change, this stance is noteworthy. Although the end result is the authorization of a new pattern, he would quickly vindicate his decision by showing that the legal principles applied all remain the same.

The pertinent law, that only boys must be educated is not challenged. Rather, Feinstein indicates that the problem is not education but rescue. He then argues forcefully for the father's special obligation to save his daughter if she is kidnapped. The talmudic reference is to a girl who is about to be forcibly converted. He argues that is analogous to forcing a girl into a public school. Since the father must save her from conversion, Feinstein argues, he similarly must save her

from a school whose environment is totally lacking in faith and Torah. This equation is asserted and never thematically or legally developed.

Furthermore, in the process of presenting the sources on rescue, he inserts the legal opinions that indicate that a man must educate his daughter in matters of faith, Torah and *mitzvot*. One of the complicating issues is the legal difference between education (*limud*) and instruction (*hinukh*). Feinstein does not develop a straightforward presentation of these concepts. He merely links her rescue to the father's responsibility to raise daughters who are believing Jews. In doing so he provides the basis for recognizing the necessity of some form of instruction for girls. The combination of kidnapping, forced conversion and instruction is an imaginative and resourceful step that yields an impressive shift in legal conventions.

Another complication is the entanglement of money in this question. Boys, it appears, must learn text. Moreover, when necessary their fathers are obligated to spend money for that. Given that obligation, they cannot use money dedicated to the tithe for the purpose of education. Two obligations cannot be fulfilled with one act. If, on the other hand, there is no obligation, as with a daughter's education, then the fees to her school can be considered charity. In that case, tithe money can be used to pay for a girl's schooling. Feinstein wants to argue that paying for a daughter's instruction is an

obligation. He is well aware of and concerned by the fact that the fees may be a hardship on the parents. He also is aware that the issue in this particular case is not whether to send the girl to school. The only question before Feinstein is financial; from where can the funds be taken. It is pertinent to note that financial motives are deemed valid and frequently influence Feinstein's responsa. Nonetheless, he does not shrink from asserting that a father must pay for a daughter's Jewish school. There is no compromise on this primary directive. It stands as an obligation no matter what difficulties that imposes.

However, he is so interested in the education of girls as an obligation and so concerned with the resulting financial burden, that at the end he retracts part of the prohibition on use of tithes. If a father cannot pay full tuition then he may use tithes; money should not be the reason for not sending a girl to school. Thus, permission is given to use the tithes partially for both boys' and girls' schools. He manages to stand firm on this key question of education for both males and females while being compassionate towards the family's financial concerns.

This text is a fine example of Feinstein's style. It presents a composite of his techniques. Using both classical format and moral suasion, Feinstein accomplishes much in three paragraphs. He cites the texts, but he does not present a penetrating legal analysis or develop their line of thinking

fully. Yet the result is a profound legal treatise. He has also accommodated the new world, compelled a new standard for parents, and still maintained his legal fiction of "no change." Finally, he insists on an unyielding position that he combines with a compassionate leniency. Significantly, all this is done for the sake of educating girls.

IM YD 3:73.1

1969

CONCERNING THE PRACTICE IN THIS COUNTRY TO HIRE FEMALE TEACHERS AND NO ONE PREVENTS THIS, and more.

TEXT Summary

Feinstein begins by noting that it is difficult to respond to the question because "in our country they have been lenient, in extremis and when not in extremis, and there must be a reason." He claims that there must be grounds for hiring female teachers in all subjects both holy and secular. His problem is that the Talmud is most explicit (TB Kid. 82) in stating that a woman may not teach because of 'the fathers of the children'. The major sources ( *Rambam, Shulhan Arukh, Kesef Mishna* ) all forbid a woman to teach even young children, even if she is married. These sources differ only as to whether she may teach when her husband regularly is in the city. The general rule appears to be that she may not teach because he may need to leave the city. The *Taz* goes further in explaining the *Kesef Mishna* and requires that even if her husband is usually in the same city he must be at home, claiming that a ruling would not be issued for the very few men who regularly leave the city. Most men work in the city. In an interesting aside, Feinstein explores a talmudic source that presents a separate ruling for men who are not in the city. He cites the Mishna in TB Ket.



61 that details the sexual obligation of husbands. There is a requirement of *onah*, sexual gratification, for a labourer of twice a week. However, if he works outside of the city, even though he returns on the weekend, he is obligated to accommodate his wife only once a week. Despite this appearance of separate decrees dependant on a husbands presence in the city, Feinstein reiterates the understanding of the *Taz* that according to the *Kesef Mishna* the prohibition stands even if the husband is in the city. Thus, since it is not the custom of men to stay at home, women may not teach. On the other hand, a man may teach since it is the custom of women to stay at home and she will protect him from suspicion of *yihud* (sexual impropriety). Accordingly, if it is the practice of the husband to remain at home, it is possible for a woman to teach. In another view, the *Bah* explains the *Kesef Mishna* as granting that if he is in the city it is essentially permissible for her to teach. However, since a husband may have to leave the city occasionally, they instituted a precautionary measure forbidding women to teach even when her husband is in the house.

Feinstein must now grapple with the reality of this country in which women are hired in almost all the elementary *yeshivoth*. Women, married or not, teach both holy subjects and secular ones. Even though there are extenuating circumstances such as a lack of teachers and

hiring men costs more money, Feinstein still is troubled by the absence of justification for this permission.

He finds a possible solution in the work of the Taz as he explains Karo's ruling that a single man cannot teach because when mothers come to collect their children they might arouse the male teacher. If the teacher is female, then the concern is with the fathers of the children. However, with a female teacher there is a real question of *yihud* if she teaches in her home. The text indicates that a male teacher working in a school only poses the problem of being aroused, 'stirred up' by the presence of mothers. The female teacher working in her home raises the much more serious prohibition of *yihud*.

Therefore, relying on this reading of the Taz, Feinstein rules that arousal when there is no possibility of *yihud* is not a problem for women teaching. Therefore, in a school where there are many teachers, there is no fear of *yihud*, then there is no prohibition of female teachers. The rule forbidding women to teach young children applies only in her home. Thus, since in this country no one teaches in their home, and all children are taught in schools, Feinstein finds no ban against female teachers. It is even permitted for women to teach in the public school system since there is no possibility of *yihud*.

Feinstein then acknowledges that there remains a

problem in the analysis of who can be suspected of arousal. The question revolves around gender and marital state. There are serious differences between the *Bah*, the *Bash* and the *Taz*. One possible reading establishes that only men are inciteable. Another is only concerned if there is no spouse in which case the incitation could lead to trouble. This is a problem for Feinstein and he leaves it as requiring further study. He reiterates his conclusion that according to the *Taz* and the *Bah* women are not subject to arousal and can therefore, teach young children, as long as there is no suspicion of *yihud*. Thus, the practice of this country is permitted.

Feinstein then turns to the specific question asked concerning a woman teaching older children, specifically boys. His answer is that since there is no question of *yihud* and she is allowed to teach in general, there is no difference in the age of the child nor in the subject matter taught. Consequently, she is allowed to teach. There remains the question of arousal. Feinstein solves this by claiming that since a woman is shy, it is not her way to become aroused. Concern for the father who is there to pick up his children is minimized because he is in the woman's presence for such a brief moment there can be no problem. The difficulty is with the older students who are in the teacher's presence for a long time and might become stimulated by her. However, in a school

where there is no possibility for yihud, there is no prohibition. Furthermore, Feinstein maintains, the students are in awe of their teacher and shy with her precluding any arousal. Therefore, in the case of extreme necessity only, there is room to permit a female to teach older boys. If, however, there are no major extenuating circumstances, it is better not to hire a female teacher for the older boys and there is no difference if the woman is young or old.

FORM

1. *Hinei*... general problem + prohibitions  
     source1 + explanation of sources +  
     source2 + source3 + source4  
     prohibition
2. *U-ktsat* ... different case + talmudic source
3. *Aval*... explanation of sources + context of prohibition
4. *U-Be-medinateinu* ... restate case + seek justification +  
     reasons  
     source3 + interpretation + source4  
     removal of prohibition + ruling1
5. *Ve-Hinei* ... conflicting opinions + ruling1
6. *U-Mimeleh* ... case2 + Ruling1 + no conditions  
     reasons + ruling1 + reasons + ruling2

The presentation of sources in this classical style text is complex and the argument offered intricate. The sources are difficult and conflicting. The social context is a very important factor. Feinstein's disapproval underlies his opening and concluding remarks. He does not refer to any of his own responsa.

ANALYSIS

In this difficult responsum, Feinstein must find a legal reason to permit that which is already being practiced. He can not imagine that his predecessors and colleagues would have allowed the practice without proper basis, even if he cannot find their responsa. Theoretically, women are not allowed to teach. That law appears unambiguous. Yet, the current practice in most Orthodox schools is to hire female teachers. His goal is to provide the proper sanctions so that the practice will be legally justified.

He is very clear that cultural factors are the main conditions which allow for this leniency. He is also insistent that extenuating circumstances alone cannot justify such a basic adjustment in law. Finally, his entire effort is to find legal vindication for a change that had already taken place. Evidently, it is unacceptable to him to allow current practice to appear to supersede law. There must be a supporting legal document authorizing the shift.

His analysis displays a brilliant piece of detective work. He sets himself to find a source and he does. He explores all the variations of wording and intention in the primary sources and is thus able to translate their conditions to a contemporary scene. Relying on the social environment, as he does in *IM YD 2:113*, he is able to cite texts that support the shift to permit in a different environment. The problem that so concerned all the decisors is not relevant in a public

building. If sexual intimacy is not possible then there is no necessity to prevent females from teaching. In this manner, he has demonstrated that the issue was never a woman's ability to teach.

His comments on the social context are revealing. In listing the practical problems that might have constituted extenuating circumstances, he notes that there are not enough male teachers. Moreover, he acknowledges and does not decry the fact that men must be paid more than women. He appears to agree that it is justifiable to hire women in order to keep a low budget and handle a resource problem. His only concern is that this justification is insufficient to explain the change in law. These social inequities do not appear to disturb his sense of proper practice. He consistently accepts the legitimacy of gender difference but this is one of the few times he accedes to overt discrimination. The differences in occupation and remuneration remain as self evident to him. Men are more important teachers, heads of household and require more money. However, men are also more excitable or more easily aroused. Women are more shy. These characteristics are accepted and ratified. This acceptance of sexual differences is a further demonstration of the correctness of gender distinction and separation in Feinstein's world view. Nonetheless, they are used in this context to legitimate gender integration.

Consequently, this responsum does pave the way for

greater equivalence since it confirms that females are able to be teachers. There are a number of interesting facets to this certification. Primarily, this responsum accepts without any excuse or grounds that women can be competent to teach. Moreover, they can be skilled in both secular and Judaic subjects. Feinstein's hesitation to allow female teachers to work with the older boys has no hint of doubt as to their capability. His only concern is sexual arousal. In other responsa he does address teachers' qualifications and talent (*IM YD 2:101*), but not in this one. It is assumed that the female hired is qualified even in sacred study. Finally, he concludes this responsum by announcing that there is no difference whether the teacher is old or young. Most likely this comment is directed at those schools that hire elderly females assuming that there is no possibility of arousal with older women. He gives no reason for dismissing that practice. It appears to be self-evident to him that the restriction must be in terms of all females. Age is a factor but only in limited terms. Arousal is the consequence of any possible contact between males of a certain age and adult females. Ironically, all children must be kept separate. That division of boys and girls is enforced for pedagogic reasons, of establishing appropriate life patterns and not because of arousal. This responsum substantiates the importance of reasons in Feinstein's halakhic style.

It also marks an interesting break in his consistent



requirement for separation of the sexes in educational contexts. His language in presenting this problem indicates that he would rather not see this happen. But he is compelled to write the responsum because it is already the practice. He cannot allow the practice to continue without proper rulings and reasons for the sake of the halakhic system. There is a repeated refrain "there must be a reason." Furthermore, Feinstein is bothered by the fact that no one stopped this practice. In his view someone must have given permission. He cannot tolerate the absence of a proper reasoned legal basis. As a result, he feels compelled to do the job.

However, once he has removed the prohibition and denied the *yihud* or sexual problem, then he must face the possibility of women even teaching older boys. This appears to have been the original question. He does not wish to encourage this practice but he also will not forbid it. Consequently, there is a double layer in this ruling. His permission to hire female teachers in the younger grades is a blanket one. With the older students, his concerns for sexual segregation compel him to declare that the practice is allowed only *in extremis*. His preference is clearly not to hire a female to teach older boys, though he no longer has a legal reason for this. His moral endorsement is to maintain a separation of the sexes and keep the boys in an all male environment. Yet, his task here was to permit the common practice of hiring female educators. Having established the legal basis for this he will not misuse

the halakhic sources. But he does find a way to indicate a higher standard and limit the use of his lenient ruling. His warning carries great weight.

This responsum clearly accepts and legitimates an innovation, a change in practice in an arena that concerns Feinstein greatly. The method of legal justification is somewhat reversed. First the practice is found to be widespread and then a rabbi writes the permissive ruling. This pattern is known to have happened in Jewish legal history,<sup>20</sup> but Feinstein is not pleased with it. On the other hand, he does not attempt to stop it or eliminate female teachers completely. Both practicality and prevailing custom are admissible. As in other innovative decisions of his, this is presented as preexisting in law and, therefore, not remarkable. Innovation is not acceptable, application of Jewish principles to changed contexts and needs is acknowledged.

IM YD 3:73.2

TEXT Summary

In this text, Feinstein explains that his previous use of the term *she'at ha-dehak* (IM YD 1:137, 2:104) referred to the absence of funds such that a school for girls would not be built and the girls would have no place of study. Under such difficult conditions young boys and girls might study together in one class. Here, in this case, he elaborates that if the financial commitment will be excessive and very difficult, then the concept of duress can also apply so that the lenient ruling regarding young children may be used.

Form

1. *U-Bi-Dvar*... general problem + 3 sources + explanation  
reason 1 + 2.

This a brief explanatory addendum. No new ruling is issued.

ANALYSIS

Feinstein adds this section to the previous longer answer. In it he briefly clarifies his approach to extenuating circumstances. In the first case there appears to have been no money, which would have left the community without a school for girls. That would be unacceptable and so permission was granted for very young boys and girls to study together in one class. In the second situation, there appears to be some money but building a separate building would create a severe financial strain on the community. Again Feinstein gives his

permission with the proviso that this, is for the very young only.

This short decision demonstrates the seriousness of both issues for him. Girls must be educated, even the very young. Boys and girls must be separated, even the very young. Leniency on this requirement is permitted under two conditions only. First, the financial difficulty must be severe. Second, the tolerance of mixed environments can only be extended to the very young. His willingness to compromise his prominent separation standard - even in a limited way - indicates his prevailing commitment to the education of both boys and girls.

IM YD 3:73.3

TEXT Summary

Secular books that contain heretical material about creation are not to be used in the classroom. Feinstein cautions that the teachers of secular subjects not be allowed to use them. He further adds, that if these are the only textbooks available, then the offending sections should be ripped out of the book.

Form

1. *Ve-Sifrei*... problem + definition + warning + advice.

This brief note contains two pieces of advice. No sources or legal issues are invoked.

ANALYSIS

This brief section demonstrates Feinstein's fierce and unyielding attitude toward certain secular theories. Evolutionary theory must not be taught. He calls this heresy and sectarianism. Insisting that the books be torn is evidence of his great distrust and fear of this subject matter. It adds to an understanding of his decisions to isolate Jews and Jewish study from all things non Jewish. Given this absolute rejection of such types of study, his equating a girl's attendance at a state public school with forced conversion becomes understandable. His policy of separation is consistent with his estimation of the secular world.

IM YD 3:73.4

TEXT Summary

Feinstein bemoans the conditions of life in this country. "Because of our many sins", there is no way to control standards of dress. However, teachers who are hired by the Yeshivoh can be controlled. The schools must insist that teachers are properly dressed in women's dresses that are not too short. Little girls should not learn from improper attire. In addition, any dress that is not modest should not be permitted in the schools.

FORM

1. *Ve-Hinei...* general problem + ruling1 + specific problem + general advice.

In this brief note, there is no source given. The responsum is an addendum to a longer one on female teachers. It is unclear if this is in response to a specific question or an unsolicited opinion. The reason is social rather than legal.

ANALYSIS

Feinstein is worried about the current dress code. He sees women's fashions as indicative of moral laxity. He decries the present moral laxity as exhibited in dress fashion for women. The ruling prohibiting teachers who are improperly dressed from working is unequivocally stated. Presumably, he is concerned about women wearing pants but he only specifies the length of their skirts. He does not mention sleeveless

dresses nor women's head covering. He clearly feels the pattern is out of control in this country, and can only be partially contained in the schools. His reason rests on role modelling, namely he is worried that little girls will copy the style of dress of their teachers. He does not comment on the dress of male teachers but that may not have been questioned. He is not legislating on the basis of the teachers' compliance with the strictures of Jewish laws of dress and modesty. In this short piece, Feinstein indicates that he views teachers as role models. This is consistent with his concern for the total educational environment, and not just the curriculum content.

IM YD 3:75

1977

CONCERNING SENDING CHILDREN TO A BETTER SCHOOL WHEN THAT WILL  
HARM THE LOCAL ESTABLISHMENT

TEXT Summary

Children who must learn Torah are better off in Gateshead because all the children there come from parents who are *bnei Torah* and *yirei Hashem*, knowledgeable and believing Jews. However, if all such families send their children to that school, it is feared that the system of schooling at the local place, Sutherland, will dissipate due to lack of students. Feinstein is of the opinion that until the age of seven the children can learn in the local school. He cites the ruling in the Talmud (TB BB 21a) that considers the great inconvenience of taking a child to a distant school. Furthermore, there is no great loss if the child will not learn so well (in his first years) as at Gateshead. They should comply with the ruling of R. Yehoshua Ben Gamla as far as possible. However, after seven years of age, the damage is substantial as they are not learning as well as they might. Furthermore, at this age when the influence of the child's peers begins to have a serious effect, they should take him to Gateshead. At this point, parents do not have to compromise their child's needs for the sake of the local school.



Feinstein is willing to leave girls in the local school longer. They can stay at Sutherland until they are nine years old because they are influenced more by their kosher mothers than by others. Moreover, concerning their studies, as long as Sutherland has teachers who "fear the Lord", then there is no cause for worry even if they will learn more at Gateshead.

FORM

1. *Be-davar*... case + problem + opinion + source  
conditions + ruling<sub>1</sub>
2. *U-be-davar* ... second case + ruling<sub>2</sub> + reasons

The responsum begins with the question as put to Feinstein which includes the key phrase for Feinstein , i.e. that the children at one school have the proper home environment. The conflict is then established. However, Feinstein does not rule on the needs of the local school. The primary ruling is stated in terms of his opinion. He then quotes the primary source in the Talmud and relies on that completely. His ruling is based on social and psychological reasons. The second ruling makes clear the distinction between girls and boys. The relative absence of sources in this responsum is noteworthy.

ANALYSIS

Feinstein is consistently attentive to the education of children. He concerns himself with both the content as well as the environment. In this responsum he continues to place the education of children as the primary objective. He also weighs the social atmosphere and peer influence as significant factors. No moral argument will supersede the primacy of a child's educational needs. In fact, when he permits the child to study locally until seven, he does not argue on the basis of the moral needs of the local community. Instead, he bases his perspective on the student's need. It would be too difficult to take a young child to a distant school.<sup>21</sup> On that basis alone he allows using the local establishment. The moral argument of a conflict of interests, implicit in the question, never surfaces.

In a series of different cases, when there is a conflict between teachers and schools, he generally favors the school over the individual. Thus, he advises teachers to go to and even pay for a dinner in honor of their school (*IM HM 2:58*). He advises against teacher strikes, though there his concern is with an uninterrupted education for the children (*IM YD 1:138, YD 2:74*). He also rules that although a teacher can take a job in a Conservative school, the Orthodox school should not hire him as it would damage their reputation (*IM YD 2:106*). In these cases, his consideration is for the institution. In the above responsum, his concern is only with

the children. It is arguable, that all the decisions are ultimately based on his overriding concern with the quality of education the children receive. In a notable responsum on the conduct of teachers in a yeshiva (*IM YD 2:71*), Feinstein demonstrates his steady focus on the child. He rules that a child who is difficult must be taken in to the classroom and taught no matter how hard it is on the teacher. On the other hand, if that child is found to disturb the other children then he should be removed from the classroom. Despite the blunt nature of that ruling, he amends it by adding a cautionary note that such a decision to exclude a child requires very serious deliberation. Continuing the deliberation, he mentions a different situation in which a mother brings her son to study but will not let him wear *tsitsit*. Feinstein worries over the loss to the child of a proper education but he will not let him into the school. His concern is focussed on the rest of the students. He fears that they will copy this attitude of dissension and, therefore, forbids the boy from entering. He suggests that the teacher work with him privately. On the other hand, if the mother would allow the boy to wear the fringes just in school, then he could be accepted. His concern for the child is profound, but he will not let that override the needs of the majority of students. Invariably, Feinstein's decisions protect and sustain the educational requirements of the students.

Finally, he consistently rules differently for boys and

girls. Implicit in his reasoning is the distinction between them, as students who need to learn and who are influenced by the social environment differentially. He clearly is of the opinion that a girl's education matters. Girls may not stay indefinitely at an inferior school. He does not even rule that girls do not need to learn as much as boys, though that may be implicit. He concedes that girls may learn more or better at Gateshead but that is not the most important factor. For boys it is. Thus, boys must leave for Gateshead at an earlier age than girls. But content is not the only differentiating factor. He is interested in and decides on the basis of prevailing influences. Accordingly, in his world view boys are more prone to peer pressure and less in the sphere of their mother's influence than girls. Feinstein trusts the young impressionable girls to their mothers, but not the boys. Whatever the reasoning, the boundary between male and female remains. They are always and absolutely distinct and consequently require different rulings.

It is of significance to note that Feinstein places great weight on factors of social influence and role modelling when it comes to learning. The teachers must not only know enough but they must also be of the right attitude. They must have the proper reverence of God. *Yirei Hashem* is Feinstein's term for the highest category of a 'good' Jew. Furthermore, the school is also judged by the quality of its constituent families. A fine institution must draw families that are also

of this category. Significantly, women too can receive the title of *yirei hashem*. This responsum is rare in its use of that phrase to designate females.

The concern for the local school is not in any way addressed in this answer. Surely, the school will suffer if all seven year old boys and nine year old girls will leave. In his world, moral reasoning focuses first and foremost on the educational needs of the children. One question remains; is this a rule of law or simply advice? How binding is this responsum? He clearly states this as his opinion. In fact, it is expressed as an inclination.

This responsum is innovative in the weight given to social and psychological factors in the education of children over strictly curricular consideration. This has been Feinstein's pattern consistently. It is also consonant with his *responsa* requiring that girls be educated while maintaining a distinction between the type of education needed for girls and boys.

IM YD 3:78

1980

BOYS AND GIRLS STUDYING TOGETHER

TEXT Summary

The text begins with a statement that Feinstein's views on the subject are already known and have been published. Essentially, he rules that from a pedagogic perspective boys and girls, even the very young, should be taught separately. However, he allows that in certain cases - such as the impossibility of building a school for young girls - it is permissible to be lenient. The law, however absolutely prohibits even slightly older children from studying together. Feinstein defines the older child as reaching the classes of the seventh and eighth year. At this age all agree that it is necessary to build separate schools for boys and girls. There is no reason that would allow any leniency, neither differentiating between sacred and secular studies nor even use of outdoor recess space. The places must be separate.

He concludes that the issue is clear and simple. The text ends with a blessing that compliance with the law will result in God's granting success for two schools. He continues with the hope that all the male and female students will be *yirei Hashem*, and that the boys will all be learned scholars while the girls will be modest and

respectful of the glory of Israel.



## FORM

1. *Hinei* ... issue + source + ruling1

conditional clause + limit + ruling1 + consensus

general application

2. *U-merov*... conclusion + blessing

The responsum does not begin with any question. It is addressed to an education committee. It rather begins with the statement that Feinstein has already ruled on this issue and that his ruling is well known. His only source cited is his own in *IM YD* 1.137. He then states the strict view and gives his reason. Next the case for leniency is explored and specifically limited. His reason is not given. He formally establishes separation of the sexes as a basic principle of Jewish education claiming universal consensus. Two possible conditions for mixing are presented and denied without any analysis or argument. The brief responsum concludes with an interesting blessing and wish for those who follow the law.

ANALYSIS

The basic premise of this responsum is so self-evident to Feinsein that he does not feel the need to argue or give reasons. Boys and girls must be educated separately. It also includes his unstated premise that all agree that girls must be educated. In fact, the matter is so simple that it is dealt with very briefly. And yet, it is strange that he deals with it at all. In his opening comment, he makes it clear that he has already answered this question. Why then the repetition? Obviously, though all agree not all observe. Feinsein wishes to press the issue home, to insure that separation of sexes will be practiced. And so he is willing to take the time to repeat himself. It is also noteworthy that this is addressed to an education committee.

Whatever leniency is permitted in this case, it is severely restricted. The cutoff is based on age after which no leniency is allowed. The argument for allowing both genders to study together or in the same building is unstated but probably related to financial considerations. Feinsein assumes that the community has the resources to build one school and, by necessity, built one for boys first. His assumption indicates an implicit acceptance that a boy's education is more important than a girl's. It is important to note here that Feinsein further prohibits not only mixed classes - boys and girls studying together- but he also seems to prohibit separate classes in the same building. Many common

practices of contemporary religious day schools are rejected in this responsum. Especially common is separate classes in the same building, but also usual is the practice of allowing secular subjects to be taught to mixed groups. For Feinstein, even, or especially, recess must be separate.

Separation is essential but not exclusionary. Boys and girls must study and learn. Both are even capable of the highest status of reverence for God. However, there is a definite difference. Boys grow up to be learned scholars. The purpose of their education is knowledge. Girls on the other hand, grow up to be modest and respectful. The purpose of their education is the development of proper character traits.

The responsum hinges on separation as a fundamental ideal. Implicit in all these demands for separation is his assumption of a fundamental difference between boys and girls. Above all, he uses the responsum format to guard against any moral decline. Young boys and girls must be separate in school so that they will come to accept separation as adults. In that manner, Feinstein is protecting his followers from the decadence of American society.

IM YD 3:79

1967

CONCERNING BUILDING SCHOOLS FOR BOYS AND GIRLS IN ONE PLACE

TEXT Summary

This responsum to an anonymous rabbi begins with a restatement of the absolute prohibition to teach even the youngest boys and girls in the same classroom. Feinstein further specifies that the children should be separated not only in the classroom when the teacher is present to insure proper conduct, but especially during mealtime and outdoor recess. Given these concerns, the author consistently requires the building of separate buildings in different locations.

Acknowledging that sometimes young boys and girls are taught together, Feinstein is quick to explain that those were only allowed because of difficult conditions that no longer apply. They were operating in public schools without Torah and faith. Thus, they chose the lesser of two evils. In this particular case where all agree to the propriety of separating the students, the only problem that remains is financial. The community leaders claim that it is impossible to build two separate buildings now and have therefore, devised a plan to build one complex containing two schools. According to this plan, the entrances for boys and girls will be on different streets and all activities will take place in

separate facilities.

Recognizing that this plan is not ideal but that it is an improvement over the past, Feinstein voices special concern that conditions not be allowed to deteriorate to the previous undesirable state of affairs. However, there is disagreement in the community as some people think it is possible to raise the money. Therefore, he gives his conditional approval but advises the community to wait thirty days attendant upon an effort to raise the necessary funds to build in two separate places. Recognizing communal dissent and the exigencies of time to be critical factors, he permits a delay of only thirty days after which all concerned are to work for the single building plan as presented.

The text concludes with a serious cautionary note and a blessing. The building of one structure is approved as a temporary measure only. Eventually, those involved are expected to raise the necessary funds to build a second school on another site. Feinstein concludes by assuring the people that they will succeed as long as there is proper intent and peace.

FORM

1. *Hinei...* Case + ruling1 + extension +reason

exception + reason

case + intent + problem + detailed plan

ruling1 + ruling2

dispute + delay + ruling1 + ruling2

2. *Ve-im ...* conditions

3. *Ve-ha-ikar...* blessing

The primary ruling in its strictest form with all its ramifications is stated. The question is then introduced. A plan is examined with all its variations. Acceptance involves a delay and a bid for unity. Permission is conditional and limited. The final ruling pertains to a future when compliance with the original and stricter law will be possible.

There are no sources presented at all. The argument is only concerned with the details of the plan and the length of time. Feinstein relies completely on his personal authority. He ends with a formulaic wish for peace and future success.

ANALYSIS

Feinstein is in a difficult position here. He wishes to maintain the strictest separation of the sexes in all educational institutions. He insists that even the buildings must be separate and his reasons are given. Under no conditions will he allow joint classes and especially not joint recesses or meals. This particular community claims to be absolutely unable to afford two buildings. The case of one building is presented as an unavoidable and regrettable exception. He is faced with a plan that will prevent any meeting of boys and girls in one building but will still encompass one structure. It is an ideal compromise. He wishes to allow this plan while not giving ground on the issue of separation. He also does not wish this responsum to be used for further leniencies. Thus, he phrases his permission very tentatively. He often repeats that it is best and proper to have two buildings that are far away from each other. He even insists on postponing his permission for 30 days so that the community can work once more on two building campaigns. However, in the final analysis he knows full well that practical considerations will force acceptance of the plan. He also knows that the plan is a good compromise and the people have the proper intention. Nonetheless, he hesitates because it violates his ideal ethic.

The case is further complicated by the dispute amongst the locals. The principal, who is also a rabbi, favors the

plan but some people are claiming that it is not necessary. Feinstein wishes to support the local rabbi and also instill communal unity. His political analysis and strategy is significant. Ultimately, he backs the local rabbi relying on his presentation and augmenting the rabbi's authority while modifying Feinstein's own ideal. Interestingly, the necessity to educate girls remains a primary ruling and is not compromisable. Eventually, the community is bound to support two school systems no matter how difficult.

It is noteworthy that Feinstein was shown the diagrams of the proposed building. Even though he trusts the rabbi and the community, it was still necessary for him to see the plans themselves. Feinstein appears to have been reassured by this concrete proof that the intention of the people is in fact to keep the children separate at all times. Another surprising bit is a particular phrasing of Feinstein's in this text. In describing the impossibility for the community to raise the necessary funds, he states that "it is not possible to even dream about it." That Americanism "don't even dream about it" is quite amusing in this context.

On the critical issues of separation and girls education, Feinstein's preference easily becomes the requirement. When a compromise is unavoidable, it is made possible but only with severe limits and only very temporarily. His ideal of separation without surrendering the girls' education is preserved even as he allows a deviation.



The absence of any sources in this ruling and of any legal argument is significant. For Feinstein it is self-evident that the law absolutely mandates separation. While not presenting any halakhic argument, he somehow manages to present the case as an example of universal consensus.

IM YD 3:80

1971

BUILDING A YESHIVA NEXT TO A GIRL'S SCHOOL (sic)

TEXT Summary

The question concerns moving the Beth Jacob School in an unspecified city next to the local Yeshiva Etz Haim. This would allow for an easier relocation and would also be much less costly. The school is praised because it teaches girls to be modest, kosher and faithful to God, *yirei Hashem*. Those working on behalf of the school are praised for their dedication to *mitsvot*.

However, permission is denied. The Torah position (*da'at torah*) and the sages' view (*da'at hakhamim*) is presented as clearly and simply opposed to building the Beth Jacob school near the Etz Haim building, even if that was the situation of previous generations. Separation was developed as preventive laws, "fences", within biblical proscriptions. More than any other realm of prohibition, those dealing with unchastity require the strongest standards because the "evil inclination" is so strong. The Talmud (TB Hagigah 11) allows that even students sitting in front of their teacher might be swayed by licentious desires and mistakenly be lenient in difficult cases. Maimonides (*Isurei Biah* 22:20) warns of the need for strong control in this area. He warns people to vanquish their inclinations and regulate themselves in

matters of holiness in order to succeed. Especially in our depraved culture, where "because of our many sins" we live, shame has been eliminated. In the public schools they are lenient even with children and encourage them to talk of these poisonous things. Therefore, Feinstein concludes, it is necessary to be vigilant.

FORM

1. Greeting
2. *Hinei Be-davar...* question + praise + reason
3. *Hinei Pashut...* appeal to traditional authority + ruling1  
     source1 + source2 + reasons
4. *Ve-Kol She-ken...* reasons

This responsum is quite similar to *IM YD 2:102*. It is a very short text to an unnamed rabbi. The question is posed with praise for both the school and the persons involved. The sources cited are not specific to this case. There is an unusual appeal to the "way of Torah and the wisdom of the sages". The concluding remarks denounce American moral standards.

There is an error in the title which appears to indicate that the question concerns building a yeshiva near a girls' school. This responsum clearly presents the problem of building a girls' school on the yeshiva grounds. *IM YD 2:102* deals with the former situation.

Translating one particular phrase has raised a problem of interpretation. The words *af im* usually mean "even if". They might mean "also". The former translation, the most usual, implies a historical precedent that disputes Feinstein's ruling. Thus, he would be saying that even if in the previous generation schools were not separate, it does not affect the prohibition. The latter meaning supports a continuous custom, indicating that in the past all schools were separate which is

the claim of *IM YD 2:102*.

ANALYSIS

The text begins with high praise for the girls' school. There is no doubt in his responsa as to the necessity of schools for girls. There is also no compromise acceptable that would disregard the need for such a school. Feinstein also accepts that the motives of the people involved are correct. Nonetheless, even in a trustworthy environment, it is forbidden.

This responsum is consistent with his general theme of separation. Not only must boys and girls study separately, but the buildings in which they study must be geographically distant from each other (see especially *IM YD 2:102*). Economic difficulty is not an acceptable cause for leniency. This stance is especially interesting in light of the previous ruling. In *IM YD 3:79*, Feinstein considers monetary constraints and allows the use of one structure to house both schools temporarily. Moreover, in *IM YD 3:73* and *78*, he does concede that under difficult financial conditions it is possible to use one building for very young children. It might appear contradictory to maintain stricter standards in a case where two buildings are proposed than in one where the use of one building is requested. However, it is possible that the temporary use of one building is a guarantee of the transitory nature of the arrangement. Perhaps Feinstein believes that once a new building is built a permanent situation is automatically established. In addition, it is possible that he

is legislating a stricter standard in this case because he feels these people are able to accommodate it. These are the *yirei Hashem*, those who demand of themselves the highest level of compliance with God's wishes.

Feinstein's answer is short. He presents the decision as clear, simple and unambiguous. According to him, everyone agrees, and the ruling emanates directly from biblical concerns with sexual immorality. He never connects the cited sources with separate school buildings. The unanimous concern for sexual modesty and propriety is automatically translated into separate buildings for him.

At one ambiguous point in this responsum, it appears that Feinstein concedes an inconvenient precedent<sup>22</sup>. In the recent past, schools for boys and girls may have been in close proximity to each other. He must argue that despite the historical facts, there is no conceivable way to allow it now. His case rests on three approaches. He calls upon rabbinic and biblical law, wisdom of the sages, and social context. Ultimately, Feinstein's ruling may be innovative but his claim is that it is consistent with God sanctioned tradition.

The use of *Da'at Ha-Torah* and *Da'at Ha-hakhamim* in this responsum is interesting. They are terms he seldom uses. They can either indicate absolute unanimity on the issue or the need to marshal all one's forces in a very contentious area. Most probably, Feinstein intends to persuade everyone of the importance and seriousness of the issue. He wants everyone to

follow the most stringent path. From his perspective, much is at stake. His ideal world consistently maintains a complete separation of male and female. Since all forms of sexual immorality are intolerable and humans are too susceptible to temptation, all fences are necessary and therefore, justified. Hence, extra precautions are required and there is no room for leniencies.

Feinstein's final comment is revealing of these concerns and of his dread of the American experience. He demands that especially in this generation, Jews must be diligent. "Because of our many sins" they live in a perverse world in which even school children are exposed to the sexual immodesty - even immorality- of American general society. Shame which was an effective suppressant for generations has been removed. The result, according to Feinstein, has been to create a destructive and "poisonous" atmosphere of sexual license that requires even stricter standards than those found in the past. His solution has been to protect Jewish children from the onslaught of American standards by insisting on their separate education: separate from the public sector, boys separate from girls, and curriculum strictly controlled to eliminate dangerous topics.



IM YD 3:87(2)

1976

THE STUDY OF MISHNA FOR GIRLS

TEXT translation

Concerning the request on the part of the administration and teachers of the Beth Jacob school to teach Mishna to the girls. Rambam (*Hilkhot Talmud Torah* 1:13) decides according to R. Eliezer's statement in Sotah 20a not to teach the Torah to girls. But Rambam disagrees (with R. Eliezer). Although teaching the Oral Torah (to girls) is frivolous, the Written Torah is not, even though a girls education should not begin with it. At any rate, Mishna which is surely oral Torah is not permitted according to the sages. It is as though they were being taught frivolity and therefore, we may not teach it except for the section known as Ethics of The Fathers. This Mishna is allowed because it is concerned with morals and proper conduct. It should be taught with an interpretation that will inspire the girls to love Torah and study well. But this permission is not extended to the other tractates. And since the issue is simple, the answer is short.

FORM1. *Hinei* ... case

source1 + source2 + differences + addition

ruling1 + reason + reiterate prohibition

exception + reason + purpose

ruling2

2. *U-Mitokh* ... conclusion + blessing

The responsum begins with a restatement of the question as a general issue which is not usual. It then proceeds with a reference to the relevant source in Maimonides as he accepts the opinion of R. Eliezer in the Talmud. Without reference to the many arguments and disagreements, Feinstein agrees with Maimonides subsequent divergent opinion from the source in Talmud Sotah. Feinstein then accepts that Maimonides offers some stringent advice. The ruling is conveyed in the name of the sages. An exception is made and his reasoning is added. Finally, using formulary words he claims that the issue is very simple and therefore, deserves only a short answer.

ANALYSIS

Feinstein's brevity on this issue is noteworthy. For him it is clearly not an issue. The answer is quite simply, no. Girls may not learn the Oral Torah. They are not merely exempt but they are excluded from the world of Talmud. Thus, he takes no notice of a major controversy in Talmud, disregards the debates and interpretations of generations of sages and ignores the contemporary scene where even in some Orthodox schools girls study Talmud<sup>23</sup>. Previous responsa indicate his concern for changes that take place because of living in America, yet on this topic he makes no mention of the differences in this country.

Feinstein bases his decision solely on the ruling of Maimonides. Furthermore, he appears to accept Maimonides' reluctance to even teach the Written Torah, at least *ab initio*. Yet, he also is not interested in quoting the stricter sources that forbid all Torah to girls. He would appear to be accepting of current practice in the Beth Jacob system. It is puzzling that he does not quote or refer to the *Hafetz Hayim* who was the first to allow the Beth Jacob schools to teach girls and even to learn the Mishna *Pirkei Avot*, known as *Ethics of the Fathers*.

The major effect of this responsum is to prevent any future change in the curriculum. The significance lies in his brevity and in his advice. He is cautious about teaching girls any Torah. It is not that girls are not capable of learning.

Clearly, since in other responsa he discusses the necessity to give girls a good Jewish education, and since he allows women to teach Torah, he cannot forbid all study to women. There is a contradiction in his attitude. Even in this responsum he ends with the desire to inspire love of Torah in girls. Can one love without learning according to Feinstein? Most probably the discrepancy emerges from the various renderings of the word Torah. Feinstein would appear to be restricting textual studies but certainly not the Torah view or way.

Finally, his reason is salient. He wishes all learning to lead girls to proper conduct and good morals as well as love of Torah and study. His consistent concern is with behavior. A particular portion of Mishna may be taught because it will encourage good conduct but only that and no more. On this he is firm. He does not add that the reason or permission for this exception is not his, he does not quote his source nor tell us that this practice is traditional or accepted by the sages. He also does not explain why girls cannot study Talmud. He never defines *tiflut* but leaves it as obvious. Somehow the study will ruin their moral behavior and so is to be avoided. The impression given in this responsum is that all agree and there is no problem.

Addendum A: Unpublished personal letter to Rabbi Meir Fund

Date illegible

Text translation

In accordance with the wishes of my teacher and grandfather, the eminent Rabbi Moshe Feinstein, I am writing that which I have told you previously. Quite simply there is no obligation to interfere with or publicly decry against a group of women who study Mishna on their own. In fact, according to the essence of the law, they are not violating any prohibition by learning in this manner.

I trust that this will suffice.

Analysis

The background to this letter is quite fascinating. A woman in Brooklyn, Rivka Haut was teaching Saturday Mishna classes to women in private homes. A visiting sister complained that the teacher did not cover her hair. The husband of the sister who was a regular student forbade her to attend. Subsequently, a number of people became embroiled in the issue. Rav Gedalia Felder, the decisor for Yeshiva University students was asked his opinion. He said that since only women attended, the teacher did not have to cover her hair. The Rosh Yeshiva of Chaim Berlin countered that women were not permitted to learn Mishna at all. In order to convince the woman's husband to let her attend, Rabbi Meir Fund, a friend of the Hauts, then asked Rabbi Feinstein. The

above letter is the result. (The woman attended classes after that.)

Interestingly, everyone forgot about the issue of hair covering and focussed only on the question of whether women may study the Mishna. At that time, the women were learning the Mishna of Sanhedrin. They soon switched to the gemara and have since completed the entire tractate. It is regrettable that Feinstein was not asked about talmudic study for women in general. It is impossible to tell from this document whether Feinstein's attitude would have been any different.

Rabbi Fund wrote on the bottom of the letter his notes of the referred to conversation: what women do is of no concern to men, how did Devora attain her level - obviously, *lamda li-atsma*, (she learned on her own). If this is accurately the words of Rabbi Feinstein, then it is possible to argue that he would have allowed women to learn any text on their own. Certainly, that idea is supported by Feinstein's responsum on women teaching young men sacred subjects.

The most notable aspect of this letter is that it appears to be incompatible with his published restriction on teaching Mishna to girls. Perhaps his permission is based on the fact that the women are teaching themselves. Is it possible that his ban only focusses on disallowing the teachers from teaching, but the girls could learn on their own? But who teaches in the Beth Jacob school? Women just like the teacher of this study group. Possibly, the critical difference is that

the group is composed of adults who are responsible for themselves, without any official communal support. The purported verbal comments that Devora learned on her own and that what women do is of no concern to men might support this suggestion. Without clarification or any legal evidence on which to base such a view, the two statements remain at odds. In one, he clearly forbids Mishna to females. In the second, he absolutely permits it. In both decisions his short unsupported ruling seems to assume that the answer is obvious.

The date on this text is indecipherable. His decision on hiring female teachers was written in 1969. His prohibition of Mishna for girls is from 1976. Rivka Haut told me that this letter was written in the early 80's.

IM EH 4:65.13

1981

IS IT PERMISSIBLE (FOR A MAN) TO TEACH YOUNG CHILDREN WHEN HIS WIFE IS NOT IN THE CITY

TEXT Summary

The case concerns a man teaching while his wife is in another city. The original ruling in *Helkat Mehokek* (note 21) forbids teaching young children when his wife is not in the city. Rabbi Akiva Eiger brings the ruling of *Lehem Rav* that it is customary to be lenient when his wife is not with him, meaning she is not with him in the city. *Pithei Teshuva* specifically states that the ruling includes even when she is not in the city with him. This position seems dependable since it is not possible to release the children from their studies whenever his wife happens to leave the city. The problem is augmented if his wife gives birth at home and he teaches in another house or she gives birth in a hospital, both situations are comparable to her being out of the city. It is not possible that the children should waste a week or two. The solution of hiring a substitute is also not a good choice for the children. Therefore, the intention of the decisors must be that it is customary to be lenient even if she is in another city. The ruling in *Helkat Mehokek* requires further study. The praxis is to allow the lenient custom based on Rabbi Akiva Eiger.



FORM

1. *Mi...* case + source1 + source2 + source3

Reason + two variations + possible solution

2. *Ve-lakhen ...* ruling1

outstanding problem

3. *Aval ...* ruling1

The disparity in the sources troubles Feinstein. He relies on one authority but acknowledges that he has not satisfactorily solved the conflict. Yet, he has no difficulty reaching his decision. The customary leniency translates quickly to accepted law. He presents his own reasoning as obvious and does not bother phrasing his opinion as advice. The form is short and straightforward using a classical style of presentation.

ANALYSIS

The problem being addressed - named in the general title of *IM EH 4:65* - is that of *yihud*. Feinstein appears to be concentrating on the talmudic text in *TB Kiddushin (80b)*. The section of the *Shulhan Arukh* that forms the basis for this responsum is *Even Ha-Ezer, Hilkhoh Ishut (Laws of Matrimony) 22*. There is a large body of rules and regulations dealing with *yihud*. In this long responsum, Feinstein explores the circumstances under which a man and a woman might come into contact in the normal course of their day so as to be suspected of a prohibited sexual act. The concern for teachers and sexual impropriety is raised in this responsum twice. It is also at the heart of the responsum on hiring female teachers in *IM YD 3:73*, which was written in 1969 and to which Feinstein seriously does not refer here.

This segment focuses on the problem of a possible relationship between the male teacher and the parent of the student. Therefore, the emphasis in the text is on 'young' students. There is a different argument involved once the student is old enough to have a liaison with the teacher. Thus, separation of the sexes permeates questions of education even when the students are young.

The question is focussed on whether the wife of the teacher is in the city or is temporarily out of town. The critical wording is *she-ain ishto imo*, "when his wife is not with him." The interpreters differ on the reference "with

him." Is it a question of her being with him at home or in the city? The lenient position maintains that he can continue to teach even if his wife is not with him in the city. The underlying traditional assumption here is that if a wife is home when the female parent comes to bring or collect her child, then no one will suspect anything. Moreover, a wife is a protector even if she is in the city but not at home all the time. The question of the man's location is only indirectly raised here. In building the case, Feinstein mentions that the man could be teaching in another house while his wife is giving birth at home. Most probably, the discussion revolves around the suspicion of *yihud* precisely because the man is at home.

His primary concern is the education of children, his goal is to prevent wasted time. The children must always study. His preference for continuous study is compounded by his preference for study with the same teacher. Continuity is an important principle. Thus, even when a temporary solution of hiring a substitute would alleviate all conflict, he rejects this solution.

Interestingly, he never mentions any financial considerations. He easily decides on the intention of Eiger to permit whether in or out of the city. So clear is his commitment to Torah study that he opts for a lenient solution without any great argument or defense.

This text might indicate an implicit acceptance of

current cultural practice of male-female interaction that is accepted as normative. Or it might indicate his trust of males in any environment, but this is not sustained by the rest of the responsum. It is also possible that he bases his judgement on his preference for male teachers. They are the 'real' teachers of Torah and therefore, their work must not be stopped. If female teachers receive a different ruling, then this text might imply that women's teaching is on a different - less significant- level. However, that too is not supported by his other decisions. Most probably, it can be argued that Feinstein prefers male teachers especially for male students. However, he does not appear to indicate that women are incapable. The cumulative effect of his responsa on male and female teachers promotes the premise that Feinstein is comfortable with male-female adult interaction in the educational sphere.

IM EH 4:65.18

1981

CAN A WOMAN WHOSE HUSBAND IS IN THE CITY TEACH YOUNG CHILDREN?

TEXT Summary

A woman is permitted to teach young children if her husband is in the city. This ruling is based on *Helkat Mehokek* (note 21) and *Beit Shmuel* (note 22). The question that arises is whether a woman can be hired for a regular class that is a full year, since it is not customary for a husband to stay at home. According to the *Kesef Mishna* (Talmud Torah 2:4) in his house does not necessarily mean in the physical house. It can mean even in the city since there is no question of *yihud* as long as her husband knows his wife's location. The *Beit Shmuel* uses this position of the *Kesef Mishna* to rule that if the husband is accustomed to travel to another place it is forbidden to hire her regularly. But if he stays in the same city, then it is permitted. There is a problem in the sources. The *Turei Zahav* (YD 245:7) relying on a passage in Maimonides concludes that the husband must be in the house with her. The problem centers on the general statement in both Maimonides and the *Shulhan Arukh* that a woman should not teach young children. Such a blanket ruling requires explanation. After all, many occupations require that the man will stay in the city. In an effort

to understand these latter sources, *Turei Zahav* assumes that they require that the husband actually be with her in the home. If he is just in the city, then the fear of *yihud*, of the female teacher and the father of the student, is still operative. The reasons for this view are then advanced. However, since obviously both *Helkat Mehokek* and *Beit Shmuel* knew of the ruling and analysis of *Turei Zahav* and yet they still allowed her to work as a teacher when her husband is in the city, then it is permissible today. Furthermore, the rule of "in the city" is extended to occasions when the husband is out of town but can return in the same day due to the fast forms of travel available in this nation.

FORM

1. *Isha* ... ruling1 + source1 + source2  
     problem + source3 + source4 + ruling1
2. *Aval* ... source5+ conflicting ruling2  
     supportive source6 + source7 + reason  
     explain source5
3. *U-le-dina*... source1 + source2 + ruling1  
     ruling1 extended

Unusually, the responsum begins and ends with his decision. It is a classic rabbinic exploration of a variety of conflicting texts. Feinstein does not attempt to harmonize or resolve the basic controversy. He relies on one set of rabbinic statements and concludes that the other requires further study.

ANALYSIS

Feinstein decides that a woman is permitted to teach in a permanent job as long as her husband is in the city. He asserts it first and then after a complicated review of varying rabbinic texts, he reiterates his decision. It is a difficult decision given the halakhic arguments against this practice. The constant concern is for potentially prohibited sexual liaisons between parent and teacher. This is not a responsum dealing with a woman's ability to teach. Her skills are not the issue here, only her sexuality concerns the decisors.

This responsum may appear to be a mirror of the previous one (*IM EH 4:65.13*) on male teachers, for the issue of *yihud* is the same. Also similar is the age of the student and the schooling in both instances seems to be in the home. However, the differences are significant in indicating Feinstein's implicit categories of separation as they affect women. This text begins in a different place. The question is not may women teach when their husbands are away, as in the earlier one, but rather may women teach when their husbands are in the city. According to Feinstein, in the earlier decision, a man can teach even if his wife is not in the city. In this responsum, a woman can teach only if her husband is in the city. In other words, a wife protects her husband even if she is out of town, but a man can protect his wife only if he is in town. The implication is that a man is more trustworthy



just by being married. The text relates that it is possible to be lenient as long as he has a wife. A woman is more open to suspicion. As a result, a woman's ability to teach is then clearly limited by her husband's location and occupation. The conclusion of both responsa is a lenient one in terms of allowing the individual to function as a teacher, yet, there is a greater restriction on women.

Feinstein's analysis and use of sources is different in each case. In the earlier responsum, he refutes *Helkat Mehokek* whereas in this one he relies on that same source. Instead he refutes *Turei Zahav* and Maimonides. Most incredibly, Feinstein relies totally on this ruling of *Turei Zahav* in a different responsum (*IM YD 3:73*) that legitimates the hiring of female teachers even in boys yeshivoth. It is odd that he does not refer to that responsum in this later one.

In all the texts, he is clearly in favor of female and male teachers. His decisions have widened the scope of permitted teaching environments and lessened the circumstances of suspected sexual impropriety. Interestingly, he never uses any financial grounds as reason for the leniencies. Yet his argument is different in each case. In this text he does not discuss the importance of continuous education. He does not even mention the effects on the students which he does in the previous one. That one is very short and the few sources referred to are simply explained. This one is longer and more complicated in his legal reasoning. One of his explanations

raises an interesting question. He says that there is no *yihud* when her husband is in the city since he knows where she is. When did sexual transgression become an issue of the husband's knowledge rather than the wife's opportunity? Furthermore, he specifies that the central issue is a possible relationship between teacher and father of student. As he clarifies elsewhere, the location is her home. The husband, wherever he is, knows she is at home. If that is sufficient prevention, why must the husband be in the same city?

In presenting this complicated dispute, he never explains his reasons for leniency. He cites his sources and relies on them. He then states that those he follows must have seen the opposing view and still chose to allow her to teach. Their reasons as well as Feinstein's are unexplored.

The only reference to the modern social context is his comment on the speed of our transportation system. Using this social factor, he amends the restriction and goes so far as to allow her to teach even when her husband is out of the city. The old prohibition then certainly is expanded by Feinstein from not allowing women to teach to accepting female teachers even if their husbands might be out of town. One interesting question lingers; must the husband return at night or is it only necessary that he be close enough to return? And what if he is out of town, but by using the telephone system can check up on his wife and 'know where she is'? On these possibilities, Feinstein is quiet. However, the contemporary

educational process occurs mostly in school buildings and Feinstein has already permitted women to teach there. The consequences of these decisions about women teaching in their homes are negligible.

In the above decisions, Feinstein has altered the categories under which a woman would be suspected of *yihud*. Obviously, he is not in favor of open relations between the sexes. His overriding goal is to keep men and women separate. Rather, he has accepted certain parts of the modern social reality, especially those generating educational advantage. His premise that women can and should study and teach stands. These evident concerns clearly dictate the direction of his answers.

IM OH 4:67

n.d.

THE PRAYER FORMULA (*MI SHE-BERAKH*) FOR A WOMAN GIVING BIRTH  
AND HER DAUGHTER

TEXT Summary

This document is the text of the prayer that Rabbi Moshe Feinstein used at the occasion of the naming of his granddaughter. There is a change from the traditional text which Feinstein claims is incorrect. He explains that his version accurately contains two distinct blessings. According to him it is improper to combine the two items or to interrupt the first part with the naming.

The prayer (*mi she-berakh*) begins with a blessing for the mother's health. She is considered to be ill and hence, requiring a special prayer. After that is completed, the baby girl is named. Finally, it is obligatory to bless the child and her parents with the hope that they will be privileged to raise her to marriage (*hupa*) and good deeds.

He then allows that an addition may be made. For those who wish, it is possible to say; May her parents merit raising her to Torah and a student of Torah, marriage and good deeds.

FORM

1. Zehu... statement + prayer +
2. Nusah... explanation + correction + optional variation

This unusual letter is a clarification of a prayer used. There are no sources mentioned and no legal issue or ruling indicated. It is not a responsum.

ANALYSIS

This brief letter to Rabbi Mordecai Tendler, his grandson, is concerned with correcting the common but improper blessing on the birth of a daughter. He is of the opinion that there are two items worthy of separate attention. One is the health of the mother. A woman who gave birth is considered ill, actually to have gone through a potentially life threatening crisis, requiring a special prayer. After that blessing is completed then it is appropriate to name the baby and bless the parents. Significantly, Feinstein's version contains an important emphasis on the woman who gives birth, as well as on the birth of a female child.

The additional wording distinctly indicates the possible change in the future life of females. Although the emphasis surely remains on marrying the appropriate male, a new element is recognized. No longer is she only to live a life of deeds, now she may also live a life of learning which had previously been reserved for boys only. Meriting a life of Torah is not merely living one's life according to Torah ideals. It is an announcement of dedication to study of the Torah, something that had not been associated with women in the past. In the contemporary Orthodox world, the study of Torah by girls has become the norm. Feinstein's wording substantiates this shift. It is a subtle recognition of changes that have taken place and that he has endorsed and facilitated. The only uncertainty that remains pertains to his intention as to what kind of

Torah.

### II. 3. Supplementary Sources

a) ISSUES RELATED TO TEACHING SECULAR KNOWLEDGE = LIMUDEI HOL  
IM YD 3:82

n.d.

A PROHIBITION TO DEFER SACRED STUDY FOR SECULAR STUDY

#### TEXT Summary

Feinstein clearly states that in a real yeshiva there is no possibility to include secular subjects. Even if no heretical subjects are taught and there is no mixing with girls, still it is not permitted to potential *talmedei hahamim*. For them any study that is not Torah is a waste of their energy and literally steals time from them. Feinstein denounces any excuse even for the sake of earning a living. He claims that this is the way of wickedness - of the evil inclination - that starts slowly and takes over all one's time.

In concluding he amends this blanket prohibition. He explains that obviously, this is not a message for all Israel. Those who keep the Torah are permitted some form of general studies. But Torah scholars and students in yeshivoth who can attain exalted levels of scholarship must not divert their energy from Torah study in any way.

#### ANALYSIS

This responsum reveals quite clearly Feinstein's preferences and prejudices. He is opposed to secular studies. They are at best irrelevant and at worst a disturbing



influence. This text and others indicate that he finds the worst case scenario to be the predominant situation. If he could, one imagines, he would eliminate all secular studies. But he does understand the need for some subjects that enable Jews to earn a living. His final paragraph softens his initial condemnation. Certainly, he displays a double standard. Regular believing Jews, *shomrei torah*, are allowed secular studies. They must earn a living. They are his audience and he cannot be too hard line with them. But then he returns to his passionate and extreme position. Those capable of intense study must devote themselves completely to yeshiva study. His denunciation of any other path or advice is severe.

In comparison, the previous responsum (*IM YD 3:81*) reveals Feinstein as undecided. He is asked about setting up a secondary yeshiva in Europe that would include certain secular subjects. He refuses to render a decision and leaves it up to the local authority. However, his purpose appears to be to insinuate that it is not a good idea. The matter is very serious and even when necessary, caution is advised. He consistently decries the compulsion to include secular education. But he is always aware of the conditions under which most Jews live. Thus, his amended approval for the majority enables them to continue to look to him for decisions.

IM YD 3:83

1970

SACRED SUBJECTS PRECEDING SECULAR STUDIES AND GENERAL STUDIES  
IN A BUILDING CONSECRATED FOR SACRED SUBJECTS

TEXT Summary

The responsum congratulates those responsible for ensuring that sacred subjects will be taught in the morning in yeshivoth in Argentina. Since the government requires general studies, permission is granted to comply but with the proviso that they are to be taught after the Torah subjects. Feinstein claims that Torah must be first when the students are fresh and strong in the morning. The text bemoans the importance given to required secular subjects and counsels to minimize their significance. If even the yeshivcth give priority to general studies by scheduling them in the morning, then, argues Feinstein, it will be as if the rabbis and teachers agreed to the secondary status of Torah study. The protestation continues that this plan will even weaken belief in God and Torah. Therefore, all efforts in all schools that teach Jewish studies in the morning are praised. This section ends with a regret that it is necessary to teach general studies at all. They are only permitted due to government regulations.

The second section deals with the permissibility of teaching general studies in a building dedicated to Torah

study. Feinstein approves decisively given the state of affairs. It is by far preferable to keep the children in a Jewish school, no matter what it was built for, than to allow them to enter a government school where they would be in contact with non-Jews and their ways. Even if there was any doubt about this use of the building, the threat to the children overrides all considerations. Thus, the ruling is that they can learn all required subjects in the Jewish school.

#### ANALYSIS

There are no sources cited in this brief document. Its importance lies in revealing Feinstein's attitude to general studies. In his opinion, it would be better if they were not taught at all. But compliance with government regulations is necessary and he is practical enough to understand that they must be taught. Thus, he exercises control in the limited arenas at his disposal. First and foremost, Torah studies must occupy the students when they are fresh and energetic. Secondly, all Jewish children must remain in a Jewish environment. Keeping Jews away from non-Jews is primary. It involves physical and cultural distance hence his separation policy. These themes run through many of his responsa.

This text would appear to brook no compromise on both requirements. However, *IM YD 2:106*, permits girls to study Torah in the afternoon and secular subjects in the mornings. Clearly, his absolute ruling in this text is not so absolute.

Gender distinctions play an important role in these responsa.

IM YD 3:84

1973

PROHIBITION TO FORFEIT SCHOOL ON SUNDAY

TEXT Summary

The closing of yeshivoth on Sunday is a clear case of *bitul torah*, a sinful waste of time and energy that should be spent on the study of Torah. It will also damage the children who will have nothing proper to do. In fact, teaching them on Sundays will have the opposite effect of being spiritually uplifting. Furthermore, taking off on Sunday is a forbidden slavish imitation of non-Jews, which is a terrible corruption of our ways. The argument concludes with a plea to disregard the parental pressure. They can go places with their children after school for there is still time for such wasteful activities.

The problem of a conflict of interest is raised. Some say that the teachers, who are pushing for school on Sunday, are biased. Feinstein retorts that it does not matter if there is a conflict of interest since what the teachers want is the correct path. He urges the educators to insist on Sunday classes and to make sure those lessons are serious. The matter is quite simple and clear for him.

ANALYSIS

In this case, Feinstein intervenes even though he was not

asked directly by the assembly of educators. It is obviously a situation that he is very concerned about and wishes to encourage others to take a firm stand.

Whatever it takes to live in this world, Feinstein is not willing to compromise on the necessity to educate Jewish children. In his estimation, even though the situation is not ideal, it still is not permissible to give up or to debase the level of education. As long as it is possible, the best education must be offered to the children. He also does not allow the intrusion of parental desires nor of anything that appears to resemble imitation of non-Jewish ways.

Thus, this epistle to the principals and educators is worded in the strongest possible terms. Interestingly, he does not cite any sources nor offer any legal argument. This is a simple and unambiguous matter that brooks no discussion. His argument is a presentation of compelling reasons and not legal analysis. He insists that eliminating classes on Sunday is *bitul Torah*, a violation of the commandment to study God's law. He then adds that without classes the students will be open to *kilkul*, ruination. His final determining factor is the impropriety of appearing to copy non-Jewish ways. The text indicates that for Feinstein these three factors are so clear and obvious no further discussion is needed. Instead, he warns the professionals not to be pressured by foolish parents and not to mess with the existing system of Sunday classes.

IK YD 3:85

1967

PROHIBITION TO GRANT VACATION TO STUDENTS ON THEIR HOLIDAYS

TEXT Summary:

This is in response to those who wish to give the students a break in their studies from December 26 to the New Year holidays, which corresponds to the vacation period of the public schools. The ruling is a simple and direct prohibition. Even if there is no intention of celebrating on their holiday, rather it is requested because the fathers have no work and wish to travel with their children, nonetheless it is forbidden. Proper intention does not modify the prohibition. Furthermore, the ruling is not affected if they have classes on the holiday itself, December 25, and only afterwards go away. The reasons given are that the children will come to value those days and that is unacceptable. In concluding, Feinstein scoffs that it is really a disgusting thing to take a vacation on those days when they, whose ancestors for almost a thousand years oppressed the Jews, worship their gods. He concludes by warning that this tendency remains amongst them. "God forbid we should do this."

ANALYSIS

This letter contains a serious legal decision but has no sources and no traditional style of legal argument. The author simply and firmly states the prohibition. It is short,

unequivocating and does not allow for any extenuating circumstances.

In this responsum, Feinstein forcefully separates those who follow his advice from all others. There is no room for concessions and no statement "in our day" that would permit any leniency. In all cases no Jewish child should miss studies because of Christian holidays. He is very careful to distinguish these days as religious holidays. It is possible to contend that these vacation days are part of the general cultural pattern and have no religious significance for many Americans. Moreover, New Years Day does not have any particular Christian significance. At one point in time, many American Jewish schools and even yeshivoth used these days as a mid-winter break. But Feinstein will not accept such reasoning. The American cultural world is in no way neutral for him. It is alien and to be avoided. His polemic against all things secular is clear and fearful of any non-Jewish influence. The non-Jewish world is alien and he usually does not differentiate components within it. Only the business world remains neutral. From other responsa it does appear that clothing too can remain neutral. In all cases, Jewish schools must continue as if there was no holiday, in complete separation from the general society. No reasons are accepted for any variation. The forcefulness of this norm is accented by the style and brevity of the responsum. Jews must not appear in any way to celebrate or value this time of year.



They must in all ways separate from the world in which they live, especially around the time of major holidays. This stance is very reminiscent of talmudic decrees preventing contact with idol worshippers on their festival days. Feinstein is also concerned lest Jewish children learn to enjoy this season. On this basis, no reason is accepted for a change. Interestingly, many schools in New York, even those who had off this season twenty years ago, now insist on classes throughout this period.

For Feinstein, this prohibition signifies a serious statement about Jewish life and education in the Diaspora. The whole enterprise will be suspect if a separation from non-Jewish ways is not maintained. This time he is not even willing to make concessions for the world of business nor for the convenience of parents. There is no distinction here between those who keep the law and those who "fear the Lord". All must obey; this is not a heroic ethic. The primary separation to be maintained is that between Jew and Other.

## b) ISSUES RELATED TO TEACHERS

IM YD 2:107

1963

CONCERNING ACCEPTING A POST AS TEACHER AND PRINCIPAL IN A NON-ORTHODOX SYNAGOGUE SCHOOL

TEXT Summary

Feinstein advises against accepting a job as principal and teacher in an afternoon school that is part of a Conservative synagogue. He is quick to distinguish this as advice and not prohibition, but his language is very strong. ('The wisdom of the sages does not reside in this act'). He then carefully outlines the conditions under which such a job would be permitted; they must allow you the freedom to teach God's Torah and to pray properly and not in their synagogue. Thus, it is permitted to accept the job under these conditions for financial reasons. There is also the added factor that amongst the students there will be those who will be positively affected and perhaps become 'kosher' and learned Jews. However, to accept the job primarily for this latter reason does not make sense. The concern here is with the deleterious effects on the teacher himself. Through the job he might be drawn to "their" ways. The sages warned to keep a distance from "them" (TB Avoda Zara 17). Although it is just a minor concern, nonetheless, even a small doubt is problematic (no matter

how strong the man is). Furthermore, there is also the concern that someone else not so strong will follow his example. Therefore, permission is given to accept the job but only for financial reasons. In any event, the desire to accept the position in order to save these children for the sake of heaven, is not considered a good enough reason. Finally, Feinstein notes that if this man has a sincere desire to teach children, there is much to be done in the synagogues of the 'kosher' ones, where even others can join in.

FORM

## 1) Salutation

2) *Hinei* ... case + advice + law + 3 conditions

permissive ruling<sup>1</sup> + acceptable motive + benefit

unacceptable motive + prohibition + source<sup>1</sup> + concern

repeat ruling<sup>1</sup> + acceptable motive

repeat restraining advice + reasons

alternative choice + reason + prohibition

## 3) Closure

Contradictory advice is embedded in a permissive ruling without any reference to direct legal sources. There is no reasoning through sources. The primary permission is handicapped with very strict conditions. Feinstein presents a series of reasons for his advice. One source is referred to but its applicability to this case is never demonstrated. The responsum is one long paragraph, repeating parts of similar rulings without mentioning them.

ANALYSIS

As in other similar texts (*IM* YD 1:139; YD 2:106; YD 2:108), Feinstein permits and discourages at the same time. He does not want to allow anyone to teach in a Conservative establishment. He calls them heretics and sectarians. But his tendency is to allow such occupational decisions for financial reasons. Other grounds are not sufficient. Moreover, he assumes that the law would allow such a position.

Feinstein consistently maintains the separation between Conservative and Orthodox (kosher) Jews. In his responsa on teaching (such as *IM* YD 3:73), it would appear that he allows more association of males and females than of Jews from different affiliations. In trying to convince the man not to teach in a Conservative school, he elaborates on his reasons but refrains from making a legal pronouncement. Remarkably, in outlining the grounds for accepting the job, he does not refer to or require that boys and girls be separated in the classroom. Presumably, given Feinstein's responsa on this matter, integrated education is against the law, yet he does not use that to prohibit or qualify. Thus, accepting the job is permitted for financial reasons. The grounds for accommodation are always economic. Under very strict conditions one might teach there. But it is better not to, even for the best of intentions, as there would always be a doubt as to the man's attachment to the proper ways. The message is clear: contamination with their institutions

renders one's allegiance questionable. He concludes with advice; help our own first, that is your obligation.

It is worthwhile to briefly focus on the source he does quote. The talmudic reference is to the tractate that examines issues of contact with those who are idol worshippers. Many laws from that period, including some dietary ones, were developed from the biblical warnings to keep Jews isolated from any form of idolatry. This was often rabbinically extended to all non-Jews no matter what their religious belief. In this text, as in others like it, Feinstein extends the same prohibitions to Jews. In his estimation Jews belonging to Reform and Conservative institutions, especially the leaders (*IM YD 2:108*), are indisputably heretics<sup>24</sup>. All heresy is equated with idol worship and the ancient ban against any contact is activated. Even to learn Torah from the mouth of a heretic is to raise the specter of heretical teachings. Thus, no matter how strong the individual teacher, nor how sincere his determination to work "for the sake of heaven," there will always be a doubt as to his allegiance and trustworthiness. Even though the demands of earning a living create a neutral zone of permission, Feinstein's careful use of words rebuke any contact with the Conservative movement. The result is that in the world according to Rabbi Moses Feinstein, Jews must be separated from other Jews.

IM TM 2:58

1973

CONCERNING A SCHOOL THAT COMPELLED ITS STAFF TO ATTEND AND PAY  
FOR A FUNDRAISING DINNER

TEXT Summary

Feinstein apologizes for not answering sooner as he did not open the letter. He says he did not know of the urgency and then berates the writer for not writing a second time to pressure him for an answer.

Legally, he writes that there is no verbal or written claim upon the teachers and both sides know this fact. However, he understands that it would benefit the school to have its staff present. His solution is quite simple; the teachers should attend the function and have the choice of eating and paying or not eating. If their not eating will be misunderstood by the parents as a sign of doubtful kashrut, then they should eat but pay only what it would have cost them to eat at home. The presence of the teachers is a mark of honor and will aid the school. Therefore, they should attend. But they should not be made to pay the full price.

However, in order to further good relations with the boss (*ba'al ha-ba'yit*), he counsels that they should pay the full price. The teachers can even consider this fee as part of their charity donations of one tenth (tithes).

ANALYSIS

This letter has no halakhic sources or references nor is it based on a legal approach. He writes as leader of a community giving advice. His opinion is the persuasive element, not the law or rabbinic text.

It begins with an unusual personal statement. Obviously he considers the issue and his response important since it applies to others also. Issues such as this one, of personal involvement and commitment, of relationship and contract are primary to Feinstein. Thus, although there is no legal issue at stake, as he claims later, it is of enough significance that he wished to have been repeatedly approached. He proceeds to give his opinion for next year's event. This text is of interest as an example of his personal sense of involvement in community issues and of responsibility and availability.

His concern for the social dynamics of public opinion is significant. Since he understands that the teachers presence at the fundraiser will help the school, he uses the full weight of his personal counsel to recommend that the teachers attend. He understands full well that their presence is not to aid the school with their financial contribution. Rather, teachers bring honor simply by physically showing their support. Furthermore, although he is concerned with the teachers' finances, he does not completely release them from paying for the dinner. If they would not eat, it is possible that parents would assume their abstention to be a sign of a



lack of faith in the kashrut of the dinner. Thus, just as their presence indicates support, so too their eating indicates approval. In the world of contemporary Orthodoxy, Feinstein knows full well the power of *mareet a'yin*, appearances. His responsa on education consistently uphold the need of a school to be concerned with impressions and appearances.

His recommendation to pay but not more than the cost of a meal at home certainly demonstrates his concern for the salaried worker as well as for the needs of the institution. Frequently, however, the compromise reached gives priority to the needs of the school. In fact, in a final addendum he moves to favor the school's position. The law does not necessitate the teachers paying for the dinner, and there is a way for them to attend without paying, nonetheless he advises that they go and pay the full price. Much is possible in order to strengthen the school's position in the community. This responsum differs considerably from his decision concerning students going to a better school (*IM YD 3:75*). In that case, his concern for the school's survival is secondary to his focus on the educational needs of the children.

Finally, the text is relevant to this dissertation in his concluding comment. He allows that the teachers can consider the full payment for the dinner to be part of their required charitable donation. The tithe obligation is one Feinstein considers in *IM YD 2:113* also. In both texts, his concern for

the financial resources of the persons involved allows a certain flexibility in distribution. Although the dinner is not strictly a charitable donation, since it merely pays for the food eaten, nonetheless, Feinsein is willing to consider the teachers presence as an act of charitable support. After all they are not attending in order to eat and they cannot attend, according to his advice, without paying. Thus, he will combine the whole evening into a charitable expense. In the earlier responsum, although initially forbidding the use of the tithe, he concludes by allowing part of the payment to be considered tithe. His priorities appear to be the education of daughters, school reputation, individual financial need, and finally tithes. This sequence enables him to manipulate, but not override, this obligatory act of charity.

### III. Discussion

#### III. 1. Feinstein's Main Concern

In reading the responsa of Rabbi Moshe Feinstein in his seven volume *Iggerot Moshe (IM)*, one would not be aware of the historic development nor cognizant of the rabbinic debate concerning the education of females. For him the issues are radically different. Rabbi Moshe Feinstein's map of America indicates that it is a very dangerous place. The moral climate and cultural environment appear inimical to his community and to his vision of the correct Jewish lifestyle. As a result, his legal decisions chart a course with boundary markers set in places that are different from those set by his European predecessors. Motivated by a need to protect the Jewish world and ensure its survival in an immoral country, Feinstein's response is to create barriers that will prevent any form of male-female interaction. Consequently, his main concern in the education of females is the proximity of the males.

By far the largest number of responsa dealing with education, written between 1954 and 1980, consistently require the separation of boys and girls (*IM* YD1:137; YD2:102, 104; YD3:73.2, 78, 79, 80). Separation of the sexes is so serious an issue that he uses the full force of his personal authority to require separate buildings, even preferring geographical distance between campuses. He is consistent and unyielding on this point. His most complete argument is found in his earliest decision on this issue, *IM* YD1:137, written in 1954.

In it he is very careful to explain the nature of the legal requirement. The primary issue involved - prohibition - is of *yihud*, the possibility of illicit sexual contact. But the laws of *yihud* do not apply since according to *halakha* children are not liable to the evil inclination of sexual arousal or stimulation. In order to resolve this discrepancy, he relies on pedagogic principles of role modeling (*IM* YD 3:71) and behavior patterning (*IM* YD2:104). Consequently, Feinstein's argument maintains that in order for children to learn how to behave as adults they must be educated in an environment where sexual segregation is normative. The argument of *IM* YD1:137 is repeated frequently and patiently because of its seriousness. It is developed on the basis of sources that promote observance of *mitsvot* even before the appropriate age in order to prepare children for a fully responsible adult life. No direct sources are presented that explicitly establish the need for separation during education. There are none. The fact that children must be separated is simply and consistently affirmed in all of Feinstein's responsa.

His legal argument, most completely enumerated in *IM* YD2:102, relies on sources that warn against intermingling and frivolity. Again, none specifically mentions schools or education. For Feinstein the talmudic fear of sexual temptation, combined with Maimonides' concern with excessive intermingling and frivolity, leads directly to a requirement for separate school buildings. In his view, there is no need

for a complex legal analysis or further interpretation. The situation is self-evident.

Atypically, Feinstein resorts to the language of rabbinic consensus and authority - *Da'at Torah*<sup>25</sup> and *Da'at hakhamim* (*IM YD3:80*) - to establish this essential goal. At the same time, he does admit that in the past schools may not have been separated. His historical references on this topic, however, are inconsistent. In *IM YD3:80* he seems to suggest that in the unspecified past schools for boys and girls were not isolated from each other.<sup>26</sup> On the other hand, in *IM YD2:102* he indicates that in the past when girls dressed modestly, schools were physically separate. And, in another responsum, *IM YD2:104*, he says that the education of girls is a *hiddush*, an innovation.

Feinstein contends that the Torah contains many "fences" (that is, preventative measures) around prohibited sexual relations because the evil inclination is so strong. As he understands current social mores, the only way to keep from transgressing is to maintain a rigid segregation of the sexes. He is compelled by fear of rampant immorality in the surrounding environment to insist on standards of separation not practiced in the past. In recognizing that his prohibition is innovative, he can still maintain that it is continuous with a traditional perspective and Torah ideals. He reasons that since all forms of sexual immorality were intolerable, and the world in which we live is so loose, all "fences" are

necessary and therefore legally justified.

The only exception permitted - and this is in extenuating circumstances in which financial strain might result in no school for girls at all - is in the case of children under the age of eight (*IM* YD1:137; YD2:104; YD3:73.2, 78). By the age of nine, according to Feinstein, the full force of the laws of *yihud* are in place and no exception under any circumstances is entertained.

All of the above decisions insisting on segregation of the sexes for educational pursuits apply only to children. Curiously, in the case of adults for whom the laws of sexual restrictions apply most directly, Feinstein's rulings are ambiguous if not lenient or contradictory to his main purpose. Adult men and women can share educational environments. In *IM* YD2:109 he permits men and women who are at a community meeting to study Torah together. He insists that they separate only when it is time for prayers to be said. Moreover, in a long responsum dealing with various aspects of *yihud*, he permits a man to continue his teaching activities at home when his wife is not in the city (*IM* EH 4:65.13) and a woman is allowed to teach (in her house) even if her husband is not at home (*IM* EH 4:65.18). Both these situations were previously suspect because of the potential *yihud* between the teacher and parent of the child, and hence prohibited. For the sake of an uninterrupted semester, Feinstein relies on lenient though contradictory sources. In one responsum, he relies on a source

that he repudiates in another one. His preference for continuous study is compounded by his dislike of substitute teachers even for the very young. His analysis differs for male and female teachers but his conclusion remains the same<sup>27</sup>. Both men and women may teach young children even when their spouse is not immediately on location. In the world of learning and for the sake of education, he has limited the application of the category of suspected *yihud*.<sup>28</sup>

The most significant permission for crossing the barrier of sexual segregation is found in his responsum permitting the hiring of female teachers in schools for boys (*IM YD3:73*). In this case, he allows current practice to continue in apparent violation of the legal standard and in contradiction to his own map requiring the separation of the sexes. The telling title of that responsum is "Concerning the practice in this country to hire female teachers and no one prevents this." In the very first paragraph it becomes clear that he is not happy with the American pattern, that he knows of no legal precedent permitting it, but that he will attempt to justify it since it is already practiced.<sup>29</sup>

In the world of strict segregation of the sexes, it is forbidden for a woman to teach even small children. The rabbinic argument fears improper contact between teacher and father of the student. Yet the reality, as Feinstein well knows, is that even in Yeshivoth - traditional schools - women are hired to teach both secular and religious studies.

Consequently, his responsum on this issue is indicative of his style and purpose. The questioner must have asked - there is regrettably no record of the questions - whether women can in fact teach. Feinstein does not even entertain a negative response. Theoretically, the answer must be no, but current practice is so prevalent that he sets out to find the reason for allowing the practice. "Because of the leniency of those in our country, in extremis and even when not in extremis, and they do not prevent this practice, there must be a good reason." (*IM YD 3:73*). There is a direct contradiction to the law, but changing the law is not contemplated. So he will reason that the practice must be founded on an adequate legal basis, this despite the fact that we cannot find said legal argument. In fact, what has occurred is the acceptance of a new practice that supersedes the law. Only after the fact does Feinstein give it official legal sanction.

Thus, R. Moses Feinstein paves the way for the new by delineating the socio-historical context of the old. In this case the original prohibition was for a society which knew no official school building. Teachers, for the most part, taught in their homes. Forbidding women to teach was a way of enforcing their separation, limiting their public accessibility, and preventing them from having opportunities for suspicious contacts. Feinstein would like to keep women and men separated, but he operates in a world where they are not. As a result, his strategy is to limit the requirement for



separation to very specific areas, remarkably permitting all forms of interaction in the marketplace.<sup>30</sup> In this situation, he understands that limiting the opportunity for illicit sexual intimacy and arousal was the paramount concern of the law. If there is no such possibility today because schools are public buildings in which many parents, teachers and students intermingle, then obviously the regulation is not necessary.<sup>31</sup> Thus, for Feinstein there is no deviation. The original and primary purpose of the law, namely, preservation of specific moral standards, is maintained. Although women teach in our schools, they do not have the opportunity therein to violate the prohibitions of the sexual code, and all is preserved.

Feinstein is not completely comfortable with this ruling. For him, gender segregation is still a value if not a pervasive requirement. While, according to his reasoning, it is clearly not illegal for a woman to teach even grown boys - he is no longer worried about their fathers, but about the boys themselves - he prefers that they do not. After his legal analysis of the case and his clear permission, he adds one proviso: "but when it is not a case of serious in extremis, then one should not hire a woman to teach grown boys, and we cannot differentiate between a young or old teacher." He can accommodate reality in legal terms, but he wishes to maintain a different standard also. In his world it would be preferable to limit contact between growing teenagers and members of the

opposite sex. It is remarkable that Feinstein does not allow boys and girls above grade three to learn together in the same classroom under any circumstances. His insistence on separate buildings knows of no sociohistorical contextualizing nor of any legal accommodation (*IM YD 3:80*). Thus, his permission to hire female teachers would seem to be somewhat of a contradiction to the segregation required of the very young. In this postscript, he issues an advisory preference that brings his rulings into consonance. In his view, all forms of gender interaction require limitations. The final addendum stipulating that there is no difference between young or old women is clearly in reply to those schools that argue that there is no sexual enticement if the teacher is old. His abrupt denial of that mode of reasoning would almost seem to belie his initial premise that the restriction relies only on the possibility of sexual sinning. Nonetheless, it certainly fits in with his overall scheme.

We are dealing with a complex moral message. For Feinstein, sexual segregation is the ideal but no-longer-practiced custom. Within that framework he will allow and even sanction certain patterns of interaction. However, he will also try to persuade the community to keep separate in cases where the law might not absolutely require it. There are many levels in his argument. The barest minimum allows a woman to teach all ages. The preferred common standard will allow women only in the classrooms of the young. The ideal will find women

never teaching males of any age. In this one responsum Feinstein has accommodated practical needs of modern Jewish living in North America, indicated the proper moral standard, and hinted at his ideal ethic. He has also implicitly established the fact that women can be proficient in Judaic sources and therefore able to teach even boys. Particularly since his objections never hint at a lack of expertise nor at the impropriety of women working, he is implicitly sanctioning a new pattern. And all this has been done in the name of and according to the principles of TORAH FROM SINAI: eternal, immutable and, hence, unchanging principles.

### III. 2. Issues Not on His Map

Analyzing this map that is both continuous with the past and yet responsive to this new and threatening world requires a look at the questions that are not raised, at the non-issues. For Feinstein and his colleagues the issue is never the Talmudic one of whether girls should be taught anything. It is clearly self-evident in this world that girls should go to school and that they should go to a Jewish school. No question is raised concerning even that which would have been questioned in the responsa of 150 years ago. For Feinstein the education of girls is normative.

In every one of his responsa the education of girls is an assumed reality requiring no legal justification. He does not write a responsum: "Concerning the education of girls in this

country and no one prevents this." Even when forced to compromise his primary directive of separate schools, he never permits the once historically acceptable reality of no school for girls. In fact, he is forced into that compromise because he will not permit the community to continue without any school for girls - even for the very young. He goes so far as to say that the education of girls in faith is a priority (*IM YD1:137*).

Thus, Feinstein maintains the somewhat contradictory position that girls must be formally educated though they are not obligated to *talmud torah* (*IM YD2:106*). Their educators are admonished to inspire them to love Torah and to study well (*IM YD3:87.2*). Yet in his responsa on Bat Mitsva, Feinstein insists that a girl is not obligated to the study of Torah. In ruling that there should be no Bat Mitsva celebration, he cites a variety of reasons, the most relevant one being that girls are not obligated to study and, therefore, cannot give the customary *drasha* which would make this the occasion for a *se'udat mitsva*, an obligatory festive meal (*IM OH 2:97*).<sup>32</sup>

On the other hand, the Beth Jacob schools receive important praise from Feinstein, and he decrees that communal funds should be spent on such institutions (*IM YD 3:80*). Significantly, his expectation that women can be knowledgeable in Torah is so profound that he creates a variant format for an old blessing (*IM OH4:67*). The prayer *mi she-berakh* recited on the birth of a baby may contain the following phrase for a

daughter: May her parents raise her to a life of Torah.<sup>33</sup> This small change in the wording of the prayer indicates that in Feinstein's world women can aspire to a life of Torah study.

One of his most brilliant legislative moves in this area is the responsum in which he obligates a father to pay for his daughter's Jewish education (*IM YD2:113*). Asked whether a man can use his required charitable contribution (tithe) to pay for his daughter's education, Feinstein uses some very unusual sources to conclude that for the most part charity dollars may not be used.<sup>34</sup> He acknowledges that a father must pay for his son's education only. However, "in this country" if Jewish girls do not go to Jewish schools, they will be sent by American law to public schools. He then calls upon two rulings that place the burden of educating daughters on the father. Firstly, he cites the law of the *Shulhan Arukh* (*OH 306:14*) that a father can be forced to pay for the ransom of his kidnapped daughter even on the Sabbath. Thus, he relies on the *Shulhan Arukh* to establish the concept of coercion. In addition, he is swayed by the notion of violating the Sabbath to save her. As explained in the *Magen David* commentary on that ruling (*ShA, OH 306:14*), if she is not saved the kidnappers will force her to convert. Therefore, it is a case of *pikuah nefesh*, saving a life which necessitates violating the Sabbath. For Feinstein it is clear that if a young girl were to go to an American public school, it would be

equivalent to forced conversion: she would be lost as a Jew. While not condemning the American policy of compulsory education for all minors, Feinstein manages to equate an American public school to a kidnapping.

He then consolidates his position by claiming that there is a legal difference between the terms teach (*limud*) and train (*hinukh*). Though a father is exempt from the first in relation to his female children, he is most definitely obligated in the latter (TB Nazir 28b).<sup>35</sup> A man must make sure his daughter knows about the laws of Yom Kippur (TB Yoma 82) and that she is raised to believe in God, the Torah and observe all the commandments. Feinstein's innovative use of the kidnapping precedent allows him to insist that the father has no alternative but to pay for this "training". Given the state of affairs in America, a father is obviously obligated to send his daughter to a Jewish school. He is not obligated to educate her, merely to save and train her.

By requiring fathers not only to instruct their daughters but to pay for it, Feinstein raises the seriousness and status of schools for girls. This is not advice but law. Paradoxically, although girls are not officially obligated to study, Feinstein expects and prefers that they do so. Moreover, fathers must pay, and communities must build separate schools for girls.

Thus, on the subject of whether girls can study, a major Talmudic dispute, Feinstein remains unconcerned. They must,

and he does not even bother to argue the point. In addition, he is relatively casual about the important rabbinic issue of what girls may study. In fact, there is only one reference in *Iggerot Moshe* to the issue that plagued rabbinic discussions on this topic. In a remarkably short responsum, he decrees that girls cannot be taught Mishna. They can, however, learn that one segment of Mishna known as *Pirkei Avot* (IM YD3:87). He refers to Maimonides' ruling based on the Tractate Sotah, which states that teaching Torah to girls is "as if" one were to teach them nonsense or trifle with the Torah.<sup>36</sup> He qualifies the statement with the traditional division between Torah that is written and permitted to women and that which is known as oral law and forbidden to women. Interestingly, even here he echoes Maimonides' hesitation. Girls may be taught Bible but not *ab initio*. In any event, Mishna is forbidden by the sages. Only *Pirkei Avot* is permitted, according to Feinstein, because it teaches morality and good behavior, the required elements of a woman's education.<sup>37</sup> Uncharacteristically, he does not address those Orthodox and non-Orthodox schools which teach not only Mishna but also Talmud to girls. In previous responsa he either objects to or accepts changes that have occurred as a result of living in America. Yet in this ruling he does not.<sup>38</sup> Clearly, the content of girls' education is not a problem for him. Most telling is his remark at the end: "because of the simplicity [of this issue], I will be brief." This about a topic that

permeates centuries of rabbinic deliberation.

One final discrepancy. Feinstein's grandson, Rabbi Mordechai Tendler, in an unpublished letter written for his grandfather, says that there is no duty to prevent women from studying Mishna. He adds that from a purely legal perspective, the women are not transgressing any law by studying Mishna together.<sup>39</sup> No sources or legal arguments are presented. There is no reference to the above published responsum. It would appear that what was forbidden to the children is again permitted to the adults. Nonetheless, this informal decision is consistent with Feinstein's overall scheme. Only if women study texts such as the Mishna will they be qualified teachers. Regrettably, there is no indication in this letter of his position on the larger and more controversial question of women studying Talmud.

### III. 3. Differences in Education of Girls and Boys

Although Feinstein attributes great importance to the education of girls, it would be wrong to infer that for him it is of equal significance to the education of boys.<sup>40</sup> Most notably, as indicated in the above responsum, boys and girls do not study the same material (*IM YD:104, 106*). There is a clear limit to what girls may study, but an obligation for boys to learn it all (*IM YD 2:110, 3:82*).

It is also evident that the education of boys has a higher priority. Thus, boys should go to a better school at an



earlier age than girls (*IM YD 3:75*).<sup>41</sup> Girls can even stay in a weaker institution indefinitely if necessary. Most significantly, Feinstein rules that Jewish subjects must be taught first thing in the morning when students are at their best. However, for a variety of reasons, girls can be taught these subjects in the afternoon (*IM YD 2:106*), whereas boys must be taught them in the morning at all cost (*IM YD 3:83*).

The primary difference is to be found in the divergent goals of male and female education, which for Feinstein explains all the above distinctions. Boys must learn for the sake of learning, to be knowledgeable Jews. Girls must study in order to function as Jews. Obviously, this echoes the traditional discussion. Feinstein's emphasis is that girls must learn an attitude of faith and reverence for God and proper conduct (*IM YD 2:106*). His concern is with behavior. That Mishna tractate, *Pirkei Avot*, which encourages good conduct is permitted. Perhaps for Feinstein other sections of Mishna or Talmud will somehow ruin female moral development and so are forbidden. They do not need a text-oriented program, nor do their studies require the focused concentration available in the morning. It is their moral character with which he is concerned (*IM YD 3:78, 87*), a stance quite consistent with tradition. His position is further clarified in his homiletic explanation of the phrase *beit ya'acov*, house of Jacob, in Exodus 19:3: "Thus shall you say to the house of Jacob and declare to the children of

Israel."<sup>42</sup> Feinstein poses a question. According to that verse, since "house of Jacob" is taken to refer to the females, girls' education should be given priority over boys'. Why? Although boys have a greater obligation to study Torah, he concludes that the biblical phrasing is in reference to mothers as children's first and most basic teachers. The only way to ensure a life of Torah is to begin at an early age. Mothers, then, are responsible for the spiritual development of their children, which will ensure the continuity of Judaism in the future. Hence the established distinction between boys and girls is maintained through their conventional roles as educating parents. The argument can be made that functionally the education of girls today is an example of a continuous tradition. The form and structure of that continuity is radically different, yet it receives no legal justification.

### III. 4. Responsa and Change

Feinstein's attitude toward change is as complex as his use of history. Primarily, he is opposed to change. All those who accept change are weakening Judaism and leading the Jewish community astray; thus his attitude towards all things Conservative and Reform<sup>43</sup>. He even labels them heretics. He seems to see his role as a preserver of tradition, not an innovator. His purpose is not to change law nor to write new laws but to apply existing laws to contemporary society. His unique contribution is the ability to find the right precedent

that fits the case or to define the situation correctly so that the appropriate law applies.

In terms of the education of girls, most of his responsa are predicated on the premise that the relevant laws are clear and unchanging. Certainly, he does not see himself in a role of innovative leadership. He is merely showing the community the way. So he argues that there has not been any change. In those days, girls went to school, schools were separate, and girls learned piety and *Pirkei Avot* (*IM* YD2:102; YD3:80; YD3:87.2).

In another set of *teshuvot*, and even sometimes within the same responsum, he mentions that there has been change, but it is unremarkable, no big deal. Girls are educated today, and that is different but not significant. He even calls this development a *hiddush*, an innovation (*IM* YD2:106). His silence on the significance of that fact while using that term is astounding.

Then there are those situations in which he recognizes that an important change has taken place which necessitates bold interpretative moves. In these cases it is possible that Feinstein actually sees himself as an agent of necessary change. Thus, he legislates that today schools for boys and girls must be separated geographically no matter what the history or current practice of those schools. On the other hand, today women have been accepted as teachers in male schools, and he feels compelled to justify that innovation.

Finally, he creates a new obligation: fathers must pay for their daughter's Jewish education.

In ratifying the education of Jewish females, he has applied precedents differently, redefined the current situation, reinterpreted the original sources, and even disagreed with past practice.

### III. 5. On Maps and Boundaries

Having presented some cases wherein he does and does not find legislative legitimacy for innovative practices and new obligations, I think the explanation resides in the social boundaries that Feinstein believes necessary and impermeable. He accepts those acts that reinforce his sense of group distinctiveness and lead to communal survival. He tries to create social distance in areas where he feels the group is most threatened.

For Feinstein the issue is not whether girls can learn, nor where or how they can learn, not even what one may legally teach them. Rather, the issue that consistently concerns him is separation. How and when must we separate boys from girls, men from women? His concern is structural, not functional, metaphysical or legal. He must create boundaries that separate us from them. Many of his responsa separate Jew from non-Jew. Even in the realm of education, his decisions to prevent Jewish schools from closing during that infamous midwinter break better known as the Christmas holidays (*IM YD3:85*) enhances the social and cultural boundary between "us" and

"them". Moreover, Jewish children must go to school on Sunday (*IM YD 3:84*). The line dividing Jews from non-Jews thus thickens. His strategy of creating distance between the two social groups extends to curriculum content. General studies are to be avoided or reduced or taught at the least effective time of day (*IM YD 3:82, 83*). His position on this is not simply to outlaw heretical material such as theories of evolution or even polytheistic religion, but even to limit all forms of secular knowledge (*IM YD 2:53, 111, 3:73.3*). It is all alien and detracts from the true all encompassing path of Torah study. The cumulative message of these responsa is to create an unbridgeable gap between the cultural world of the Jew and non-Jew.

Other responsa separate Jew from Jew, namely the Orthodox from Conservative and Reform. Again, in the field of education he encourages schools to refrain from hiring teachers who teach in "their" system, although he does not prohibit it (*IM YD2:106, 107*). In some instances, he does prohibit hiring a teacher who works for a Conservative institution to give classes to adults (*IM YD 2:108*). He even forbids using books authored by "them", even if the subject matter has no relevance to Judaic studies (*IM YD 2:105*). His comment is quite revealing of his purpose: it is better that the children not learn to trust their authorship or scholarship. Trust can be extended. Thus, the boundary is established beyond mere halakhic requirements in order to prevent any influence or

shared perspective from linking Orthodox Jews with those who are not.

Both these divisions of us and them are maintained and strengthened by the rigid requirement for separate schools. More is at stake than mere male-female separation. Indeed, he is not consistent with this separation requirement at the adult level. But separate schools most definitely keep us separate from them, that is, Jew from non-Jew, Orthodox from non-Orthodox, and Judaism from American social mores.

### III. 6. America

Rabbi Moses Feinstein, through his responsa, has tried to set up boundaries of difference and distinctiveness that will ensure the continuity of his community in its traditional format. However, at the very instant that he has affirmed differences, he has also accepted certain shared cultural possibilities and has become himself an agent of change.

Peppered with phrases such as "in this country", "in our generation", and "because of our many sins", Feinstein's texts use the concept of *in extremis* in order to forbid and permit new norms and standards. Due to extenuating circumstances, e.g., the debilitating fact of living in America with its rampant sexual permissiveness (*IM YD 2;102, 3:80*), he is able to forestall any arguments from history or past decisions. This place is different, and because of its particular brand of dangers we need a unique cartography, a heroic ethic for

survival. With this as his implicit argument, he is able to use precedents innovatively, reinterpret his sources, redefine the situation and disagree with previous decisions (sometimes without even using the classic responsa method). This process is distinctly illustrated in his responsa dealing with the Jewish education of women.

The American norm of universal public education has permeated his rulings. He even argues that every child, no matter what his or her abilities, must be educated in a school (*IM YD2:104*). When he most adamantly prohibits school closings on December 25, he argues against following "their" ways, making "their" days important. He never argues against the notion of school vacation despite his arguments elsewhere for an uninterrupted education and the traditional fear of wasting Torah study time, *bitul Torah*.

Feinstein rejects the moral climate of the North American social environment, he rejects religious and cultural pluralism, and he rejects a secular education (*IM YD 3:82*). But he most certainly accepts specific American cultural norms. I am arguing that the education of girls is fitting in his world and that this principle is an American norm. He nowhere presents it in terms of the formulary "because of our many sins". He also does not use the denigrating phrase "in this country" which often assumes that Jewish life was better outside of America. In other words, this aspect of American life is good. Even though American law forces all girls to go

to school, he does not fall back on the excuse of in extremis in justifying girls' schools.<sup>44</sup> Children must be educated in school buildings, girls must go to school to receive their education, girls need books to learn from, and women can be teachers. All these premises that permeate his work are evidence that he is an American Rabbi.

American Jewish women today have greater access to Jewish knowledge than any generation in history. Not only are women entering the halls of academe, they have also entered the *beis medrash*, the scene of intensive Torah study. Whether in coeducational environments, sex-segregated schools, or women-only study groups, as children or adults women are amassing the tools and skills of Jewish scholarship. Ever so slowly the historically gender restricted ideal of Torah study has become an egalitarian goal.<sup>45</sup> Knowledge has become the membership card in every denomination. Indeed, Orthodox women, like their male counterparts, are advised to use their spare time studying some portion of Torah. Serious study groups abound even in secular Jewish women's organizations. The history of the American Jewish community in the twentieth century, especially since 1950, has been marked by the education of its female members. The vitality of the community and its durability now can depend equally on male and female knowledge and leadership. The result is a picture of Judaism that is uniquely different. Rabbi Moshe Feinstein's responsa have substantiated much of this process and helped make this map a



reality.

## NOTES

1. A condensed version of this chapter was prepared for publication in the journal of *American Jewish History*, forthcoming. Parts of this paper were presented at the Canada-Israel Conference on Social Scientific Approaches to the Study of Judaism at Concordia University in May 1989.
2. This mythic memory is often held with the contradictory vision of our female ancestors as being restricted to the domestic sphere, having no role in the public marketplace. Both versions distort rather than illuminate the past.
3. It is of course possible to argue that certain individuals in history were the most learned or scholarly. The question remains whether the community as a whole was educated or even literate.
4. Lloyd P. Gartner, "Jewish Education in the United States", reprinted in Marshall Sklare, ed, *American Jews/A Reader*, New York: Behrman House, 1983: 365-392. For a penetrating analysis of Orthodoxy and the pivotal position of education see Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy", *Tradition* 28 (1994): 64-130.
5. There have been a number of studies of the Jewish day school, such as: Zvi Kurzweil, *Major trends in Jewish Education*, New York: 1964; Alvin Irwin Schiff, *The Jewish Day School in America*, New York: The Jewish Education Committee, 1966; Judah Pilch and Meir Ben-Horin, eds, *Judaism and the Jewish Day School*, New York: Bloch, 1966.
6. Some Jews have accepted the notion of schools but retained an opposition to either substantive or text education. See Tamar El-Or *Educated and Ignorant: Ultra Orthodox Jewish Women and Their World*, Boulder, Colorado: Lynne Rienner, 1993: 75ff.
7. Shoshana Pantel Zolty, "And All Your Children Shall Be Learned": *Women and the Study of Torah in Jewish Law and History*, New Jersey: Jason Aronson Inc, 1993. See also various chapters and references in Judith Baskin, ed, *Jewish Women in Historical Perspectives*, Detroit: Wayne State, 1991. A surprising list is to be found in H. Rabinowicz, "Lady Rabbis and Rabbinic Daughters", *The World of Hasidism*, Hartford: Hartmore House, 1970: 202-210.
8. Shlomo Ashkenazi, *Ha-Isha Ba-Aspaklaria Ha-Yehudit*, vol.1, Tel Aviv: Zion, 1979: 115-138. Also in his *Generations and Their Customs* (Hebrew), Tel Aviv: Don Publishers, 1977.

9. Rachel Biale, *Woman and Jewish Law*, New York: Schocken Books, 1984: 29-41; Saul Berman, "The Status of Women in Halakhic Judaism", in E. Koltun, ed, *The Jewish Woman: New Perspectives*, New York: Schocken Books 1976: 119-124; Arthur Silver, "May Women be Taught Bible, Mishna and Talmud?" *Tradition* 17 (Summer 1978): 74-85; Naomi G. Cohen, "Women and the Study of Talmud", *Tradition* 24 (Fall 1988): 28-37. The problems would appear to persist in some sectors as evidenced by a recent symposium on that topic: "Symposium on Women and Jewish Education," *Tradition* 28 (Spring, 1994): 5-38.

10. Sylvia Barack Fishman, *A Breath of Life: Feminism in the American Jewish Community*, New York: Macmillan, 1993: ch. 8. Contrary to all our expectations, some women were educated in a formal setting. Glueckel, in her memoir, does mention going to *heder*. *The Memoirs of Glueckel of Hameln*, Beth-Zion Abrahams, trans, New York: Yosselof, 1962: 14. See also Shoshana Pantel Zolty, *And all Your Children Shall Be Learned*: 212-213.

11. Rabbi Yehiel Yaacov Weinberg, in *Sridei Eish*, 3:93. Quoted in Getsel Ellinson, *Ha-Isha Ve-Ha-Mitsvot*, vol. 1: 179.

12. Feinstein maintains this distinct role for mothers in his explanation of *beit ya'acov* Exodus 19:3. *Darash Moshe*, New York: Moriah, 1988: 55. See note 42.

13. (OH 246, 19) translated by Deborah Weissman in "Education of Jewish Women", *Encyclopaedia Judaica Year Book 1986/87*, Jerusalem: Keter: 31.

14. Deborah Weissman, "Bais Yaakov: A Historical Model for Jewish Feminists", in Elizabeth Koltun, ed, *The Jewish Woman: New Perspectives*, New York: Schocken, 1976: 139-148.

15. Weissman, *Encyclopaedia Judaica Yearbook 1986/87*: 34.

16. See Barack Fishman, *A Breath of Life*: 277.

17. Places of learning for adult women include; *Drisha Institute* and *Machon Nishai Torah* in New York, *Ma'ayan* in Boston and many in Israel such as *Matan*, *Nishmat*, *Yakar*, *Midreshet Lindenbaum*, *Pardes*. Blu Greenberg includes a list in "Is Now the Time for Orthodox Women Rabbis?" *Moment* 18,6 (December 1993: 53. Netty C. Gross, "Studying For Their Own Sake", *The Jerusalem Post Magazine* (February 5, 1993): 8,10,12. Vanessa Ochs describes her own experiences in Jerusalem in *Words on Fire: One Women's Journey into the Sacred*, New York: Harcourt Brace Janovich, 1990; she lists some female Judaic scholars in "Jewish Feminist Scholarship Coming of Age", *Lilith* 15 (Winter 1990): 8-12; see Toby Klein Greenwald, "Wise Women", *Kol Emunah* (Winter 1991): 10-14.

18. For an excellent overview of women's experience of America in the twentieth century see Charlotte Baum, Paula Hyman and Sonya Michel, eds, *The Jewish Woman in America*, New York: Dial Press, 1976. Chapter four gives an indication of the importance attributed to education in general. Certainly Jewish women have taken advantage of the availability of educational opportunities and are reaching a level equal to the male Jewish population in higher public education. See Calvin Goldscheider, *Jewish Continuity and Change*, Bloomington: Indiana University Press, 1986: 131-133. In a markedly different context, the fiction of Anzia Yezierska depicts the educational fervor of immigrant women. Specific stories of women's accomplishments are reported in Irving Howe and Kenneth Libo, eds, *How We Lived: A Documentary History of Immigrant Jews in America 1880-1930*, New York: New American Library, 1979: 123-150, 191-214; and in Jacob Rader Marcus, *The American Jewish Woman: 1654-1980, A Documentary History*, 2 vols, New Jersey: Ktav, 1981.

19. Feinstein delineates the obligation to buy a lulav and etrog even for a young child in *IM OH 3:95*. There he develops the halakhic argument and also explains that in the past this may not have been the common practice due to the poverty of our predecessors only.

20. Jacob Katz notes many examples of this phenomenon in *Exclusiveness and Tolerance: Jewish-Gentile Relations in Medieval and Modern Times*, New York: Schocken, 1969.

21. Obviously, this responsum pertains to the accepted custom of sending young children away from home to boarding schools. In England, and other parts of Europe it might reflect a general cultural norm. However, the scarcity of proper Jewish educational facilities plays a significant role.

22. See the discussion of *IM YD 3:80*. If *af im* is taken to mean even though, then Feinstein is conceding that in the previous generations schools were not necessarily located in separate areas. Although this interpretation corresponds to the most common use of those words and fits historical data, there is still a minor doubt as to his real meaning. The uncertainty stems from his wording in *IM YD 2:102* in which he contends that in the days of the talmud girls were modest and still they maintained distant locations.

23. Notably, the undergraduate school of Yeshiva University for women, Stern College for Women, teaches talmud to the female students. The distinguished Orthodox leader of the rabbinical seminary of YU, the late Rabbi Joseph Dov Soloveitchik, Z"TL, would teach the opening talmud class to

the students at Stern.

24. His attitude towards these denominations is briefly discussed in chapters 3 and 4.

25. Lawrence Kaplan presents an interesting discussion of this concept. "Daas Torah: A Modern Conception of Rabbinic Authority", in Moshe Sokol, ed, *Rabbinic Authority and Personal Autonomy*, New Jersey: Jason Aronson, 1992: 1-60.

26. See note 22.

27. For a comparison of the differential treatment of male and female teachers, see the analysis of *IM EH 4:65.18*.

28. Astonishingly, he has limited *yihud* in these two texts in terms of the home based teacher which had been the primary basis for prohibition. In the following responsum, he eliminates it in a public school building precisely because it is public and hence, not liable to the suspicion present in the home environment. Both sets of decisions enable female teachers fuller access to the educational market. Yet the halakhic basis of these three pieces is contradictory. He picks carefully amongst the sources in arguing each case. Remarkably, in these two (*IM EH 4:65.13, .18*) he never once refers to the earlier decision permitting women to teach in public buildings.

29. In this responsum, as in others on education, Feinstein's role as *posek*, decisor, is partially revealed. He is more than an interpreter of ancient legal precedents. Even in his application of those principles, he acts creatively and with a critical awareness of current social standards and needs. For an interesting discussion of these issues see articles by Aaron Kirschenbaum and Jonathan Sacks in Moshe Sokol, ed, *Rabbinic Authority and Personal Autonomy*.

30. See below and conclusion.

31. See the responsum of Rabbi Hayyim Hirschenson, *Malki Ba'Kodesh*, vol. II: 209-215, in which he permits unmarried men and women to teach because schools are open public buildings and children go by themselves to school, parents do not take them. Quoted in Yehezkel Cohen, ed, *Ha-Rav Hayyim Hirshenson: Ha-Torah Ve-ha-hayyim*, Tel Aviv: *Ha-kibbtz Ha-dati*, 1988: 113-114.

32. In a subsequent responsum, Feinstein does allow a celebration in the synagogue proper in honor of her birthday which might involve her recital of words of Torah. (*IM OH 4:36*)

33. It then continues: (to find) a man of Torah, marriage and a life of good deeds.

34. The laws of tithing are obligatory, so are those ordering fathers to pay for their son's education. One cannot discharge both obligations with the same act. If a man cannot use his tithes to pay for his daughters education, Feinstein has created an area of correspondence in male-female education.

35. In that sugya, the discussion allows that a father is obligated to train both his sons and his daughters. It also raises the possibility of a mother's shared obligation. See Menahem Elon, "The Shared Obligation and Merit of Fathers and Mothers to Train their Children", (Hebrew) in Dr. Aryeh Strikovsky, ed, *Nashim Ve-Limud Torah*, Jerusalem: Tarbut Toranit, 1993: 2-4.

36. The interpretation of the phrase *tiflut* (trifle , trivial, obscene) in relation to women and the study of Torah has generated weighty rabbinic debate as well as feminist polemic.

37. It is interesting that he finds it necessary to give a reason here, but more important to note that he does not quote from the *Hafetz Hayim* on this issue and only relies on Maimonides.

38. Similarly, in his responsa on school separation, he does not even mention the fact that many Orthodox schools do not have separate buildings. In that case the issue is too important for him to allow sociological considerations to be entertained.

39. The letter was written to Rabbi Meir Fund on Rabbi Feinstein's official stationary. Rabbi Mordechai Tendler was Feinstein's main assistant and frequently responded to questions in his grandfather's name. Undoubtedly, he always consulted first with Rabbi Feinstein. Rabbi Feinstein does officially and publicly mention his grandson's work on his behalf in the introduction to the last volume of *Iggerot Moshe* and in EH 4:18. There is little question, then, as to the legitimacy of this permission.

40. In many of Feinstein's responsa the distinction between male and female roles is maintained. However, he does not contend that the difference rests on a qualitative distinction. Thus, although the purpose of their education differs, their capacity for knowledge and particularly Torah knowledge, is not disparate.

41. Gateshead, England in this particular case.

42. See *Darash Moshe*: 55. English translation of the biblical verse taken from *Tanakh*, Philadelphia: Jewish Publication Society, 1985: 114. On the topic of women as the first teachers of their children see *Iggerot Ha-Teshuva* (72) and *Shnei Luhot Ha-Berit* (335) as quoted in Menahem Elon in Dr. Aryeh Strikovsky, ed, *Nashim Ve-Limud Torah*, Jerusalem: Tarbut Toranit, 1993: 2.

43. Feinstein's attitude towards both the Conservative and Reform movements will be referred to in the subsequent chapters of this dissertation. He is consistently concerned lest they influence Orthodox Jewish practice and belief. According to his conviction they are heretics and their ways are as alien and unacceptable as those of non-Jews.

44. This is the reasoning employed by Rabbi Israel Meir Ha-Kohen in his classic decision permitting Sara Schenirer to found the Beth Jacob Schools for Girls.

45. Recently an Orthodox woman applied to Yeshiva University's rabbinical school in an attempt to pursue her Judaic training on a theological level. Haviva Krasner-Davidson, "Why I'm Applying to Yeshiva U.", *Moment* 18,6 (December 1993): 54-55, 97.

Haym Soloveitchik interprets the shift as follows: "While the religious practice of both men and women had in the past been mimetic, their educational paths had diverged: male instruction had been predominantly textual, female instruction predominantly mimetic. The disappearance of the traditional society and the full scale emergence of the text culture could not fail then to impact on women's education." Soloveitchik, "Rupture", *Tradition* 28 (Fall 1994): 104.

### Chapter 3. SEPARATE SPHERES: PARTITIONS IN THE SYNAGOGUE

#### I. MEHITSA: The historical context

The separation of men and women in public places has a long and complicated history.<sup>1</sup> Biblical stories of women as singers, dancers and mourners attest to their presence at communal events.<sup>2</sup> Other sources also indicate that women were participants at Temple public celebrations.<sup>3</sup> The subject of this chapter is not the question of their presence but rather of their place in the synagogue, which has been the focus of public ceremonies since before the destruction of the Temple.

At present, a variety of seating arrangements exists, ranging from mixed pews to balconies and separate rooms. Many presume the separate seating model to be a replica of ancient patterns. However, as Professor Shmuel Safrai indicates, much more research must be done before anyone can conclusively date the use of a structural barrier between the sexes for the purpose of prayer.<sup>4</sup> Of course, the absence of a *mehitsa* (barrier) does not automatically imply the existence of mixed seating. It could mean that men and women sat separately without a barrier or that no evidence of one remains. Others conclude that women did not attend synagogue.<sup>5</sup> However, since the evidence available does indicate that women frequently did attend services,<sup>6</sup> no absolute statement on seating arrangements is plausible. Whether its origin was in biblical, late antique or medieval times, the *mehitsa* has become a symbol of denominational allegiances and policies in the



twentieth century.<sup>7</sup> This chapter focuses on the debates in this century and on their use of ancient sources and texts in claiming authority and legitimacy.

According to rabbinic tradition there was an *ezrat nashim* (Women's Court) in the Second Temple. Men and women did congregate there. Talmudic references indicate that it became necessary to separate men and women for one specific celebration during Sukkot, namely *Simhat Beit ha-Sho'eva* (the Water-Drawing Festival). The reasons given for this restriction or restructuring is the presence of *kalut rosh* (light headedness). The sages understood this as frivolous or lewd behavior, the prevention of which becomes the key factor in later halakhic pronouncements and developments.

As clouded as the archaeological and historical records are, the halakhic issues are equally ambiguous. Questions remain about the requirement that the sexes be separated for prayer (with or without the *mehitsa*) as well as for all public occasions.<sup>8</sup> The wording of the Talmudic texts is unclear, and the codes nowhere explicitly require a *mehitsa*.<sup>9</sup> There is neither a direct prohibition nor a direct requirement; there are merely a few references to the *ezrat nashim*, indicating that there was such a thing.<sup>10</sup> Maimonides refers to the women's section in his compilation of laws dealing with the Temple and not in the section dealing with prayer and synagogue.<sup>11</sup> Other medieval texts specifically mention using a partition for public occasions such as the rabbi's lecture.

The *Mordekhai*, a thirteenth century German rabbinic authority, states specifically (Shab. 311) that a screen could be set up for such a purpose even on Shabbat. (One might question whether this permission to erect something on the Sabbath, an ordinarily forbidden act, might not indicate the absence of a permanent *mehitsa* in the synagogue.) It was not until the modern period, when the Reform Movement first removed the *mehitsa* and later instituted family pews, that responsa explicitly requiring a *mehitsa* for prayer services were written. Orthodox decisors today all agree that one can only pray in a synagogue with separate seating and a *mehitsa*. No matter what the historical record, the talmudic account of the Temple pattern of that one day has thus been extended by these rabbis to the synagogue permanently.

The halakhic process surrounding this one issue involves many levels of interpretation, differential weighing of sources, a variety of reasons, and a serious difference of opinion concerning women's "disturbing" presence during prayer. In the last 150 years, the issue of a separation has taken on political overtones that impinge on the legal ones.

The legal questions raised are fascinating and begin with the ambiguous sources relied upon. The primary text is the Talmudic discussion of the Mishna Suk. 5:2, which states that on *Simhat Beit ha-Sho'eva* they went into the *ezrat nashim*, and made a great improvement (repair) or a major enactment (*U'matkinim sham tikkun gadol*).<sup>12</sup> There are other Mishnaic

references such as Middot 2:5, and Sanh. 1:5, which add to the picture, but the Talmudic discussion in TB Suk. 51a,b- 52a is the most elaborate.

What exactly was the "new enactment"? The legal decision to separate the men and women is clear in the Talmudic discussion in TB Suk. 51a-52a, but the questions as to how, why and when remain. Was this reform, according to the Talmud, only for that one holiday, when levity reached a level that moral laxity was feared? Or does the Talmudic use of the text of Zech. 12:12-14,<sup>13</sup> which relates that men and women were separated for mourning indicate a known policy on the separation of men and women? What is the legal relationship of that text to other biblical texts in which men and women mingle at public celebrations?<sup>14</sup> Furthermore, if men and women were separated for mourning, how is it that women still performed officially as wailers?<sup>15</sup> Is that text, then, extendable to all moments of holiness such as prayer? How did the Sages institute something new for the Temple? Even with the agreement of a special court of seventy-one,<sup>16</sup> how could any changes be made when 1 Chronicles contains the injunction *ha-kol be'khtav* (all this in writing),<sup>17</sup> which prohibits any change to the Temple structure? Given even that a physical structure is necessary, will only a balcony suffice? And finally, what does *kalut rosh* mean, what causes it, and are we to avoid it only during a prayer service?<sup>18</sup>

Consideration of all of the above questions, plus other

factors such as the equation of synagogue with Temple and the authority of biblical law versus rabbinic law, play a major role in the decision-making process of today's rabbinic authorities. As one of the major Orthodox rabbinic authorities of the twentieth century, Rabbi Moses Feinstein's views and decisions on this issue are significant.

For Feinstein, separation of the sexes is mandatory and is *mi-de-oraita* - having Torah authority. He deals directly and indirectly with *mehitsa* in at least sixteen separate *teshuvot*. Many responsa in the collection *Iggerot Moshe* deal with the ways and means of separating men and women. For Feinstein, gender separation is essential in order to preserve biblically mandated morality. He strives to maintain this pattern in many different aspects of daily Jewish life, not just in the synagogue. As shown in the previous chapter, a large number of his decisions require separate schools for boys and girls even at the primary level. Having taken such a consistently strong position on male-female separation, it is understandable that he will legislate a strict position on *mehitsa*. It is interesting to focus on how he maintains the position, what sources he uses, what conditions he requires, and what leniencies he allows. Although he has a definite personal position, he still must develop it through the traditional legal process, so that his use of sources, and the interpretations and emphases he uses to justify his position, become key signposts for us in understanding the role of

*mehitsa* in American Orthodoxy. The need to stay within the legal parameters, to find halakhic precedents and decisions, and to respond to the social conditions of the community, create a very interesting balance in his work.

I hope this analysis will shed light on the halakhic process in the Orthodox world in general and, specifically, on how this particular issue has become the hallmark of the divisions that exist among American Jewry.

## II. Text Treatment

### II. 1. GLOSSARY OF TECHNICAL TERMS

*de-oraita* ... a concept or word derived from biblical sources,  
as opposed to rabbinic, having Torah authority.

*erva* ... lit. nakedness, the sexually forbidden.

*ezrat nashim* ... women's section.

*hirhur* ... lewd or distracting thoughts.

*kalut rosh* ... lit. light headedness, referring to frivolity  
or lewd behaviour.

*kofrim* ... deniers, heretics.

*kra be-divrei kabbala* ... scripture as understood by  
tradition, post-Mosaic scripture.

*meguleh* ... uncovered, exposed.

*mehitsa* ... a partition or barrier used in synagogues to  
separate men and women.

*nikar*... literally recognizable.

*paru'a* ... hair that is unbound, uncovered or flowing loose.

*tikkun* ... a physical or spiritual repair or improvement.

Legally it can refer to a major enactment.

*yihud* ... lit. coupling, unity or privacy, often used to refer  
to the prohibition preventing unmarried men and women from  
any possible intimate contact.

II. 2. Primary Source

IM OH 1:39

1945

CONCERNING THE MEHITSA THAT IS NECESSARY IN THE SYNAGOGUE  
BETWEEN MEN AND WOMEN AND THE HEIGHT REQUIREMENTS

To Rabbi David Stern, principal of Yeshivat Torah Ve-da'at.

TEXT translation

The question concerning the *mehitsa*, that must separate men and women in the synagogue and its legal height, arises due to the fact that there are many in this country who no longer use the *mehitsa* (as a separation between men and women) in the synagogue - which remains our "little sanctuary". It is possible that these people are acting out of ignorance rather than wilful intent to break the law. Therefore, according to your request, I will explain the law, its origins, stringent requirements and obligatory minimum height.

The essence of the law is that even if men and women sit separately, it is forbidden to be without the *mehitsa* and that is *de-oraita*, a Torah law, in my humble opinion. Confirmation comes from Sukkah page 51, wherein the Talmud questions the establishment of the balcony in the women's court. It was instituted the evening after the festival, in order to place women upstairs and men downstairs. Since it is written in scripture "All this in

writing," it is clearly forbidden to add anything to the structure of the Temple or to the courts. Rav attempts a solution to this apparent conflict based on a different biblical verse that specifies the separation of men and women. This is explained in Rashi, *ad loc.* Quite simply the solution is that the text referred to indicates that a projecting balcony was known to be required. It was not necessary for it to be specified by Gad the seer and Nathan the prophet, who had been informed by God concerning the building plans. In any case, this is included in the original ban (against additions) of "All this in writing."

Besides, if this had only been a rabbinic prohibition, then it would not have been possible or necessary to claim that it was included in "all this in writing". Obviously, there was no need for it to be biblical because even a biblical prohibition cannot override the biblical ban of "all this in writing".

Furthermore, a rabbinic ban cannot override the ban of "all this in writing" which has Torah authority. This is clarified in the talmudic discussion in Hullin about 'blood in the Temple, which shows that a rabbinic decree cannot override the prohibition of "all this in writing." Therefore, one must say that the ban is biblical (Torah), and that the requisite balcony was included in the original plan of "All this in writing" and did not need



a specific prophecy.

Further support is found in the Jerusalem Talmud Sukkah 5:5. The question is raised concerning the source for this improvement that was added to the building. The response specifies the words of the Torah, *ad loc.* Consequently, it is known as Torah material. And even though it is only "post Mosaic scripture", it is proper to learn from it. After all, the text is not establishing a new prohibition, which would not be proper. Rather, the verse reflects a known (pre-existing) tradition -namely, that men and women should be separate for mourning. We have already learned many rules from the deeds of the Prophets, Judges and Kings as they are recounted in "post Mosaic scripture".

Another source is found in *Tosaphot* of *Zevahim* page 33. There it is specified that nothing can be added as a result of a rabbinic ban. That case involved a rabbinic requirement to inspect certain sacrifices, which would violate the biblical ban on separating the "laying on of hands" from the actual ritual slaughter of the animal, by adding too many intermediary steps. Nonetheless, it is permitted since it is considered to be included implicitly in the biblical verse, *ad loc.* Therefore, if that case had involved just a rabbinic source it would not have been possible to add anything. Similarly, in our case, the balcony was required and in any case, included

in the biblical verse "all this in writing".

Nevertheless, it is necessary to inquire into the work of the *Maharsha* who gives a different explanation of the *Gemara's* use of that verse. Perhaps the addition was not part of the worship service - having to do with removal from prohibited sexual contact - in which case it would not have involved the ban of "all this in writing". Thus, his interpretation is that the verse "all this in writing" only applies to the Temple service itself, and not to other side issues. It would appear that the *Rosh* in *Middoth* 2:3, as cited in the *Kesef Mishnah* to chapter 5 of the (Laws of) *Beit Ha-Behirah*, rule 3, supports his view. The problem concerns erecting a fence on the Temple mount so that objects could be carried on the Sabbath. Again it is pertinent to "All this in writing", for how could they add the fence to the structure. It is not possible to use the same argument as before - namely, that since it is necessary to carry, the fence must have been implicit in the verse - because there is no ban on carrying in Scripture. Thus, it is possible to argue that the verse "all this in writing" only applies to the actual service and not to related problems, as the *Maharsha* claims. In which case, it is not arguable that the ban is biblical, since even if it is rabbinic it would not contravene the ban of "all this in writing."

But it is not possible to claim this, because our

previous case of "blood covering" which was not involved in the Temple service, was included by the Gemara in the ban on "all this in writing." Furthermore, why would Rav (in the original Gemara) have had to locate the source in a biblical verse. According to this line of reasoning, the rabbis could have added something to the structure as long as it did not relate directly to the service. Even without a verse, they would have had to make the addition, just as they had to add the fence. It is not necessary to use this verse to instruct us on the prohibition of frivolity with women. In any event, the rabbinic origin is sufficient, not in need of this verse, which means that my original explanation - namely that the *mehitsa* separation is biblical - must hold. In any case, it was as if Gad the Seer and Nathan the Prophet were told to make the balcony.

Moreover, the question should not arise concerning the scriptural source for women's presence. Clearly, the law of *hakhel* compelled women and men to be there together thus, requiring the balcony. In any case, it was permitted to build the balcony on every holiday because of *Simhat Beit ha- Sho'evah*.

Examine the R'Yavetz who explains that every question concerning "all this in writing," referred only to the supports, which were permanent. The balcony itself posed no problem. And even if it is not as claimed by the

R'Yavetz, i.e. that the ban only refers to permanent fixtures - which is the intimation of the earlier "blood covering" item - it follows that if it is permissible to make this addition, it is not valid to distinguish between different days; it is permitted at all times.

As to the Rosh and the question of the fence, it is necessary to bring in a new element. The prohibition against adding anything new to the Temple - derived from "all this in writing"- did not apply to the external area. Thus, the fence was permitted as it was outside the designated area of the temple which included the women's court. However, the women's court is included in the ban of "all this in writing" which is expressed clearly in the Talmud thus requiring Rav to specify a biblical verse.

Even though it would appear that the women's court and the surrounding area have the same biblical rules, nonetheless there is support for their separation. Thus, the dispute among the early sages concerning the ban of building wooden structures is testimony to this possibility. Maimonides (*Beit Ha-Behirah* 1:9) according to Ra'vad, and Ra'vad himself - *Avoda Zara*, ch.6 - both agree that it is prohibited to build in the women's court. The Ra'vad explained that the wooden stage that was erected for the king - *TB Sotah* 41 - was permitted because it was only temporary. Similarly, the balcony

platform that was erected in the women's court for *Simhat Beit ha-Sho'evah* was only temporary. However, *Ra'vad*, in *Beit Ha-Behirah*, is not of the same opinion. Thus, in his commentary, he maintains - in *Tamid* 1:27 in the name of *Tos. Tsarfat* in the name of R. Elhanan son of R. Isaac and R. Isaac his father - that there is a ban on building wooden structures even in the women's court. Therefore, it was necessary to find an explanation for the construction of the king's wooden stage. He justified it by claiming that only that which resembled a tent was forbidden - pitching of a tent for shade, *ad loc*. If this is so, it raises a serious question for the interpretations of *Tos. Tsarfat* in the name of R. Elhanan and R. Isaac his father, and Maimonides and *Ra'vad*, in the laws of *Avoda Zara*, concerning the wooden fence, as explained by Rashi in *Yoma* 16, and also according to R. Shemaya and *Ra'b* in *Middot* 2:43, and *Kesef Mishna* in *Beit Ha-Behirah* 5:3. And in none of these sources is there a dispute. The only source where there would be no question (concerning the tent) was in the *Ra'vad* in *Tamid*. The latter explanation only concerned permanency and *Ra'vad* does not raise any questions there. Therefore, it is necessary to claim that only in the women's court does the strict ban on wooden structures apply. Consequently, it was permissible to build the fence in the rest of the Temple area. Accordingly, "all this in writing" applies

specifically to the women's court and not to the rest of the Temple area.

Even according to the opinion of Ra'vad in *Tamid* that only the tent is forbidden - which contradicts the opinions of Maimonides who specifies that the ban refers to wooden structures, and also those of Ra'vad himself in two other places, *Kesef Mishna* and *Tos. Tsarfat* - still there is a distinction between the women's court and the rest of the Temple area. Thus, even Ra'vad will concur, since the ban of the tent applies only to the women's court, and he prefers this interpretation instead of the fence. In other words, the law of "all this in writing" applies just in the women's court and not the rest of the Temple area. Therefore, they could build the fence as it did not fit in the category of "all this in writing". Consequently, even if *Rosh* is in agreement with Ra'vad (*Tamid*), which would mean that there is no support from the ban of wood, it is still possible to maintain that the women's court is distinct in terms of "all this in writing."

Consideration must be given to the comments of R' Yavets in *Sukkah* where he compares the ban on wooden buildings with the ban of "all this in writing." He wrote that the Talmudic question concerning "all this in

writing" involved the permanent supports and not the platform. The platform was only temporary and would therefore, be permitted in the context of the prohibition of wooden structures. His equation relies on Ra'vad in *Avodah Zara*. If the two bans are comparable regarding permanency, then they should be comparable for locality also. Although Ra'vad (in *Beit ha-Behirah* variation) maintains that both the stage and the platform in the women's court in any event are not included in the ban on wooden structures. Nevertheless, the ban of "all this in writing" is applied. Furthermore, since the other early authorities (*Rishonim*) separate the women's court from the rest of the Temple area in reference to the ban of wooden buildings, it is reasonable that they would also separate the areas in reference to the ban of "all this in writing". Since the two laws are equatable, they should be comparable in terms of locality, just as they were comparable in terms of constancy for the *R'Yavetz*. Even Ra'vad in *Beit Ha' Behirah* might agree to the separate category of the women's court in terms of "all this in writing" while maintaining that there is no distinction in terms of the ban on wooden structures. The exact wording requires careful analysis but it indicates that he agrees that in some rulings there is a difference between the two areas but not in terms of wooden structures. Therefore, he specifies the similar

scriptural permission in reference to the altar of God.

The reason for the distinction is found in the stricter (more stringent) holiness of the women's court as established in Kings 1:48. Even though the law recalled there forbidding the "recently immersed" from entering the area is based only on a rabbinic decree (TB Yevamot 7), nevertheless, it is reasonable to claim that the elevation of holiness is of biblical origin. However, it does not apply to the biblical laws of expelling the ritually impure. After all, one who is impure from contact with a corpse is expelled just from the *Shekhinah* camp. One who has a "flow" is expelled from the entire Temple area. Thus, in terms of expelling individuals, the women's court is equal to the others, even though it does have a higher standard of holiness from the rest of the Temple area. And this is because it is not part of a *Shekhinah* camp, while the rest of the Temple area is a camp for Levites. Thus, Rashi in Yoma 44 quoting from Rav Ada son of Ahava, appears to claim that all the steps have the same biblical quality - as learned in Kaylim chapter 1 - and that the external area is of a different sacred quality than the Temple mount and the women's court is different from the external area. Rashi maintains that the ban of the 'recently immersed' in the women's court is rabbinic as is the ban on the 'death



defiled' in the external area. {Maimonides appears to disagree on the rabbinic origin of the bans. However, it is possible to explain that the reference to 'recently immersed' in the Bible is only as interpreted by the scribes and not *mi-de-oraita*. Thus, it can still be considered a rabbinic decree. Moreover, the ban of the 'death defiled', lacking any biblical clue, must be considered rabbinic, too.} The Tosaphot question Rashi's claim that the steps of the external area and of the women's court are *mi-de-oraita* - biblically designated. The solution is that according to Rashi the degree of holiness of the court (*azara*) is greater than the external area and that designation has Torah authority. This is so even though the differentiation in holiness is not reflected in the laws of expelling a ritually impure person. Rashi is very careful in his language concerning the gates of Nicanor, *ad loc*. In terms of death, the area is comparable to the rest of the Temple area, since the ban on death is only in the area designated as the 'camp of the *Shekhinah* . Even Maimonides would agree (as to the biblical origin of the holiness of the women's court); he claimed that only the ban of the "recently immersed" was an interpretation of the scribes, and not the essence of holiness.

Therefore, since the holiness of the women's court

is stricter, it is not possible to draw an analogy from the different bans nor to conclude that they apply equally. Thus, the fence was of wood and Rosh could maintain that "all this in writing" did not apply to the external area. The ban on wooden structures applying to the women's court is derived from the fact that in the Mishna it is called *azara* and in scripture - *hatser*. (Tos. TB Pesahim 92, Beraita, Tamid 28).

Accordingly, there is no support for the view of the Maharsha that "all this in writing" refers only to functional distinctions. Rather, it is as previously explained, that there was an explicit requirement to build the balcony. Perhaps Maharsha does agree (with Feinstein) and is merely speculating on that which is not explicitly stated in the building plans. The newly built invites discussion but not those elements which were already forbidden. Furthermore, if something was necessary for the Temple, even if it was known to be necessary, it still had to be commanded.

Moreover, the discussion in the Talmud Sukkah indicates that even if there is a *mehitsa* but it is one that allows for levity, the biblical requirement is not satisfied. The discussion there indicates that originally the women were inside and the men outside. Rashi clarifies that the women were in the women's court and the men were in the open area of the Temple and the

external area. There was a proper *mehitsa* between them, but as they had to stand near the open gates in order to see, the *mehitsa* did not prevent the levity. Since this situation was prohibited by Torah law, building the balcony was permitted and this is further evidence of its Torah authority (*mi-de-oraita*).

It is not correct to assert that the prohibition is dependant on the biblical laws of (forbidden) intimacy, fearing that a man may enter there. Firstly, this would be the opposite of Rav Kahana. In TB Kiddushin 81, Rav Kahana maintains that it is preferable to have women inside and men outside. In the *baraita* (Sukkah) men were inside and women were outside which agrees with the Mishna of Kiddushin. In this case, the decision of both is contravened. It is, moreover, not worthwhile to dispute the explication of Rav. Furthermore, when there are many women present, as at *Simhat beit ha-Sho'eva*, there is no suspicion of (forbidden) intimacy according to both Maimonides and Rashi. (Maimonides; *Isurei Bi'a* 22:8, Rashi *Helkat Mehokek* EH 22:110). In fact, the suspicion of intimacy cannot apply in these two places as they are open - people can walk through at all times from area to area, which is certainly preferable to a private house with an opening to the public domain. Thus, it is obvious that the prohibition is only due to levity.

Initially, the levity was blamed on the fact that the men had to look in the direction of the women. But looking was not the issue; it was comparable to the permissibility of seeing women who are covered properly as long as the intent is not to receive pleasure. Hence, it was permitted since it was not known that this arrangement would lead to levity. When it became clear that it did lead to levity, to increased talking and touching, they changed the pattern and put the women outside and the men inside, so that the men would not have to look at the women (Tos. Sanhedrin 20). Nonetheless, levity continued to be a problem because since there was no *mehitsa* across the gates, the women had to look via the men and that led to their levity. Hence, a complete *mehitsa* is needed, not just a separation, to prevent mixing of men and women that leads to levity. It was thus clarified that according to Torah law a balcony was necessary with women upstairs and men underneath for only then they are not considered as mixed - as seen in the language of the Mishna Middoth. Maimonides also rules in this vein (*Beit Ha-Behira* 5:9) Consequently, although they had been initially separated with a *mehitsa* that was sufficient for other requirements, it was not enough in this case and they were considered as if they were mingling. Since this is forbidden by Torah law, it is as if the law requiring a

balcony was specified.

The outcome of the above, is that even in a synagogue where men and women come to pray, it is better to have a balcony. If for some reason it is difficult to make a balcony, then it is necessary to install a full *mehitsa*, one that will prevent frivolity. It is not enough to have one with open gates for it will not work. Clearly, one that is only ten *tefahim* from the ground is insufficient to prevent levity as people can continue to talk and touch, all of which is forbidden. This permits the greatest degree of levity; it is as if they were mingling - and is, therefore, forbidden by the Torah. Such a low *mehitsa* is worse than the more substantial one that was still considered insufficient in the Temple. It is necessary to construct a *mehitsa* that is high enough to prevent levity.

In my humble opinion, a *mehitsa* that reaches above shoulder height is sufficient. It has already been noted that the *mehitsa* was not established because of a ban on viewing. Even in the original arrangement, it was understood that men and women would be able to see each other and that was still permitted. Indeed, after the great improvement is instituted, only the balcony and its boards are mentioned, and a balcony does not necessarily

imply a *mehitsa*. (TB Eruvin 87; Tos. 86; Maimonides *ad loc.*) Since the balcony was not curtained, the women were visible at least to those men in the center of the court and it was not a problem.

Although in his commentary on the Mishna of Sukkah, Maimonides wrote "so that the men will not look at the women", *ad loc.*, it is still not possible to explicate it in terms of a ban on viewing, as explained above. Also, if the women are above, they are visible since there is no mention of a *mehitsa* around the balcony. One would be hard pressed to solve this problem by contending that the only ones who could see the women were the dancers in the center who were known to be pious men and, therefore, not suspect (TB Ber. 20, story of Rav Gidel). After all, not all pious men were so elevated as Rav Gidel (TB Ketuvot 17, story of R. Aha). On the contrary, Abaye warns that with sages it is necessary to be more cautious (TB Sukkah 52) and Rabbi Meir and R. Tarfon (Kiddushin, end) were in the habit of being stricter with themselves than even the simple people, never trusting their piety or Torah knowledge. In fact, the common folk were also in the center as there is no indication that people were restricted from the dance area.

The language of Maimonides' commentary conveys that

the men were not literally underneath the balcony. He wrote that they established a place for men and a place for women, and the place for women was above the place for the men. He did not use the same language as Ra'b, namely that they placed women above and men below, which indicates underneath the balcony. Rather, the implication is that the men were not below the women, but their place was on the floor below and the women were above on a higher level. That is also the implication of his language in *Lulav*, ch.8 law 12.

The solution lies in a different commentary of his (*Middot* 2:5) in which Maimonides explains that it was surrounded with solid arches (lintels) that were used to make some kind of steps so that the women would be able to see the Israelites entering for the *Simhat beit ha-Sho'eva*, *ad loc.* His proposal - unlike Rashi - is that the wall did not have supports on which to place a platform. Thus, the platform was on top of an earth fill and not on a wall. Since the word arches (*sh'kufim*) is cognate to the word to look (*hashkafa*), Maimonides' interpretation is that the steps were built on the side of the area (*azara*) so that the women could stand there and look. In fact, there was no room under the balcony (in contradiction to Rashi), in which case according to Maimonides the women were visible to all the men. It is

necessary to assume that the visibility mentioned in his commentary on Sukkah refers to the kind that leads to levity because women are on the same level or behind a low *mehitsa* which is likened to mingling (mixing). Obviously, he thinks that visibility can lead to levity (as does *Tos. Yom Tov*). Surely, men looking at women leads to frivolity. However, the prohibition only applies when it definitely leads to levity and not when the women are on a balcony or on the same level with a shoulder high *mehitsa*. If there is no opportunity for levity then visibility is not a concern, even according to Maimonides in his commentary on Sukkah. His legal decisions limit the issue to mixing (*Beit ha-Bekhira* 5:9; *Lulav* 8:12), which accords with my explanation that without a high *mehitsa* it will be considered as if they were mixing which leads to levity. Visibility in and of itself is not the problem.

It would be wrong to interpret Maimonides' words (in *Middot*) - *sh'kufim atumim* - as referring to windows similar to the Temple windows (Rashi, *TB Menahot* 86) that were wide inside but narrow on the outside. Here it would be reversed so that the women could see and not be seen. This would explain his meaning in Sukkah concerning visibility. However, this explication does not correspond to his exact language and moreover, there is no mention



of windows. Accordingly, it is necessary to explain as before.

Hence, an above shoulder *mehitsa* which will prevent levity is permissible. The height should be 3 *amot* which is 18 *tefahim* (TB Shabbat 92, cf Rashi and Tos., Tos. TB Eruvin 48, and Tos. TB BB 100). Even though the *Rashbam* is lenient and permits 17 *tefahim*, which would be just at shoulder height, it is proper to insist on 18 *tefahim* following *Tosaphot*, since *Rashbam's* view is surprising. There will be no threat of levity with 18 *tefahim* even though their heads will be visible when they stand. Those who wish to be stricter and keep the *mehitsa* even higher - so that not even heads will be visible - will be blessed. This is especially so since, in this country, many women are not careful about covering their hair. But, legally the 18 *tefahim* is permissible even if there are women present with uncovered heads (lit. disheveled). According to the ruling of *Arukh ha-Shulhan*, it is permissible to pray in the presence of such women - in these times and because of our many sins there are many - and it is not necessary to object. However, it is forbidden to pray with a *mehitsa* that is less than 18 *tefahim* high and strong objections must be raised. Even if the requirement were only rabbinic, it would require strenuous objection; how much more so since, in my humble

opinion, the origin is in the Torah, as I have established above.

It is arguable that the Torah basis of the ban - based on the (biblical) requirement of reverence; "My sanctuary you shall revere" - applied only in the Temple since levity contravenes the state of reverence. If that is so, extending the ban on levity to the synagogue might only be rabbinic and there are no conditional exemptions (TB Meg. 28, S"A OH 151:11). However, during prayer and when mentioning God's name, words of Torah and other holy things, it is reasonable to claim Torah authority (*de-oraita*). After all, the sacred category was applied to the synagogue as Ran (TB Meg. 26) explained the synagogue was designated for the recitation of words of holiness, *ad loc*. And if the laws of holy matters do not devolve on words of holiness, there would have been no need to enact the sanctity of the synagogue because of them. Therefore, since during prayer the biblical laws of holiness apply, the ban on levity during prayer must also be considered biblical (*de-oraita*).

But it is somewhat necessary to argue that this law - with Torah authority - applies in all cases of public gathering. Since in the case of the future mourning mentioned in the Bible, there is no indication that it

will take place in the Temple. If that biblical prohibition is due to concerns for modesty in general, then how is it possible to learn a ban of Torah authority for the Temple? Rather, in the ordinary sense the prohibition applies in all cases where men and women gather; they are not to assemble without a *mehitsa* which prevents frivolous behaviour. However, even though mourning rites concern modesty in general, nonetheless, there is support in that it involves levity. Therefore, the ban in the Temple has biblical authority because of the laws of reverence. The application to synagogue would then be rabbinic, except during prayer when it (the prohibition) would have Torah authority. However, it is more logical to posit that the ban is of Torah authority in all places of assembly.

When there was no cause for an assembly in the sanctuary, then it was permitted as in the case of Hannah who prayed next to Eli the priest, as she was distressed and entered the holy place (TB Kid. 52, Tos. ad loc). Women were permitted to enter the *azara* even when not in distress and even when many men were present. However, during required assemblies such as *Simhat Beit Ha-Sho'eva* and the future mourning ceremonies, then the biblical law requires a separating *mehitsa*. Consequently, even in our synagogues where people gather to pray a *mehitsa* is

required. The *mehitsa* must be able to prevent levity, which means it must be a balcony, with women above and men below even if the women are visible, or an above shoulder height *mehitsa* of 18 tefachim.

FORM

- I. Date and Greeting
- II. B'HA / statement of case
  - a. naming the problem
  - b. placing it in context
    - 1) socially in the Jewish world
    - 2) legally: lack of knowledge
  - c. his purpose: clarification
- III. V'HINEI / presentation of law and sources
  - a. statement of law
    - 1) absolute *mehitsa* requirement
    - 2) biblical origin
  - b. Talmudic discussion
    - 1) source1: TB Sukkah 51
    - 2) question from biblical verse: ( 1 Chronicles 28:19)
    - 3) talmudic solution
      - a. biblical verse (Zechariah 12;12)
      - b. referred to Rashi
    - 4) repeat biblical origin
  - c. Feinstein's explanation
    - 1) biblical origin implicit
    - 2) principle of law invoked: rabbinic decree vs biblical prohibition
    - 3) source2: TB Hulin 83
    - 4) restate biblical origin (sans verse)
  - d. Further proof
    - 1) source3: Jerusalem Talmud, Sukkah 5:2
    - 2) principle of legal interpretation invoked (post Mosaic scripture and tradition)
      - a. rule 1
      - b. rule 2
    - 3) rule 1 applied to Zechariah verse
    - 4) further justification
  - e. another proof
    - 1) source4: TB Zevahim 33
    - 2) restate principle of law
    - 3) restate biblical origin
- IV. OMNAM / a different possibility
  - a. biblical prohibition applied to service (function) only.
    - 1) source5: MAHARSHA
  - b. support from different case
    - 1) source6: ROSH, Midot 2:3. in KESEF MISHNA 5:3
    - 2) principle of law invoked
  - c. possibility remains
    - 1) the law is not necessarily of biblical origin
- V. AVAL / disproof of MAHRSHA
  - a. source refutation
    - 1) previous case
    - 2) primary case

- b. logical inconsistency
- c. repeat biblical origin
- d. establish facts
  - 1) women present
  - 2) biblical source
- e. possible new distinction
  - 1) source7: R'Yavetz (Emden)
  - 2) rule must be applied consistently
- VI. U'KIDAY/ another possibility
  - a. harmonize sources: ROSH (source6)
    - 1) a new interpretation
    - 2) apply ban to structure differentially
  - b. affirm primary interpretation
  - c. RISHONIM dispute
  - d. support for structural differentiation
    - 1) source8 MAIMONIDES , BEIT HA'BEKHIRAH 1:9
    - 2) source9 RA'VAD, AVODAH ZARA ch.6
    - 3) source10 TB SOTAH 41
  - e. conflict; source11 RA'VAD, TAMID ch.1 p.27
  - f. opposing sources
    - 1) source12 RASHI, TB YOMA 16
    - 2) source13 R. SHEMAYA & RAV in MIDDOT 2:43
    - 3) source14 KESEF MISHNAH in BEIT HA'BEKHIRAH 5:3
  - g. question of permanency
  - h. affirm legality of structural separation
  - i. reaffirm separate status of women's court
  - j. dispute reviewed and harmonized
    - 1) source8 & 9 versus source11
    - 2) all agree on structural separation
  - k. conclude: harmonize ROSH and RA'VAD
- VII. Ve-AYAIN/ a new problem
  - a. source15; R'Yavetz (Emden), SUKKAH ad.loc.
    - 1) depend on RA'VAD source9
    - 2) conflict with RA'VAD source11
  - b. solution
  - c. reaffirm principle of separate areas
- VIII. VE-TA'AM/ reason
  - a. separate category
    - 1) biblical source16: Kings 1:48.
  - b. rabbinic distinctions
    - 1) source17: TB Yevamot 7
  - c. clarification of category distinctions
    - 1) source18: Rashi, TB Yoma 44.
    - 2) conflict source19: Maimonides, BEIT HA'BEHIRAH 17
      - a) source20 TB NAZIR 45
      - b) source21 TB SOTAH 20
    - 3) resolved via explication of biblical category
  - d. problem with source18, Rashi
  - e. reaffirm solution a.
    - 1) attend to language of source21, RASHI
  - f. all sources agree on primary distinction
- IX. VE-LAKEN/ linguistic clarification

- a. problem
- b. reinterpret ROSH
- c. linguistic solution
  - 1) source23, TOS. TB PESAHIM 92
  - 2) source24, TB TAMID 28
- X. U-LIFIY/ refutation
  - a. Refute MAHARSHA
  - b. affirm previous position
  - c. harmonize
- XI. U-MIMEYLEH/ the partition
  - a. reference to Talmudic discussion
  - b. purpose of partition
  - c. original pattern
    - 1) based on RASHI
  - d. additional support for biblical origin
- XII. VE-AYN/ reasons for law
  - a. refute reason 1: intimacy
    - 1) source25, TB KID. 81
    - 2) source1, TB SUKKAH
    - 3) original view of RAV
    - 4) legal principle of intimacy not applicable
      - a) quantity, many present
        - 1. source26 Maimonides ISUREI BIAH 22:8
        - 2. source27 Rashi HELKAT MEHOKEK EH 22:110
      - b) structure, open area
  - b. reaffirm primary reason: levity
  - c. refute reason 2: visibility
    - 1) overview of law of visibility
    - 2) definition of levity : talking and touching
    - 3) removal of visibility no solution
      - a) source28 TOS. TB SANHEDRIN 20
  - d. affirm need for complete mehitsa
  - e. reaffirm biblical base of balcony
    - 1) to prevent mingling
    - 2) source MISHNA MIDDOT
  - f. explain change
  - g. reaffirm biblical requirement
- XIII. HA-YOTSEH/ application
  - a. preference; balcony
  - b. permitted; proper partition
    - 1) no open gates
    - 2) more than ten tefahim
    - 3) no possibility of talking or touching
    - 4) no mingling
  - c. height requirements
    - 1) above shoulder height
    - 2) visibility not the issue
    - 3) balcony need no partition
      - a) source29 TB ERUVIN 87
      - b) source30 TOS. 86
      - c) source31 Maimonides ad loc.
    - 4) women visible to men

- d. problem with Maimonides
  - 1) source31
  - 2) reinterpret the wording
  - 3) disallow special category of persons
    - a) source32 TB BER. 20
    - b) source33 TB KET. 17
    - c) source34 TB SUKKAH 52
    - d) source35 TB KIDDUSHIN, end
  - 4) linguistic clarification
    - a) source36 R'AB
    - B) source37 LULAV 8:12
- b. solution
  - 1) different proposal
    - a) source38 MAIMONIDES on MIDDOT 2:5
    - b) unlike Rashi
  - 2) differentiate logical link and legal requirement
    - a) agree with source39 TOS. YOM TOV
  - 3) application of prohibition
    - a) height requirement
    - b) platform requirement
  - 4) legal decisions
    - a) source40 BEIT HA'BEHIRAH 5:9
    - b) source37 LULAV 8:12
  - 5) critical factor
    - a) mixing
    - b) levity
    - c) not visibility
- c. linguistic clarification
  - 1) Maimonides' words
    - a) source38 TB MIDDOT
    - b) source41 RASHI, TB MENAHOT 86
    - c) source34 TB SUKKAH
- d. reaffirm original explanation
- XV. VE-LAKHEN/ physical specifications
  - a. permitted height
    - 1) source42 TB SHABBAT 92, RASHI & TOS.
    - 2) source43 TOS. TB ERUVIN 48
    - 3) source44 TOS. TB BB 100
  - b. discrepancy
    - 1) source45 RASHBAM, ad loc.
  - c. reaffirm standard height
  - d. permission to extend height
    - 1) praise the strict
    - 2) bemoan the lax
  - e. reaffirm legal standard
    - 1) source46 ARUKH HA-SHULHAN
  - f. reaffirm primary ruling
- XVI. VE-HINEI/ one more problem
  - a. new argument
    - 1) different biblical verse
    - 2) applies to Temple only
    - 3) extension to synagogue rabbinic



- a) source47 TB MEG. 28, S'A OH 151:11
  - b. clarify biblical category
    - 1) apply to synagogue
  - c. new reason for original claim
  - d. reaffirm biblical base
  - f. a complication from the original biblical verse
    - 1) reason
    - 2) spatial application
    - 3) question
  - g. general nature of ban
  - h. reapply new reason
  - i. bifurcate synagogue categories
  - j. reaffirm biblical base of general ban
- XVII. *U-VE-LO* / a final clarification
- a. case for permissiveness
    - 1) biblical story
    - 2) source48 TB KIDDUSHIN 52, TOS. ad loc.
    - 3) general principle for women
      - a) conditions
  - b. condition for necessary separation
  - c. extension to synagogue
  - d. restate primary ruling with all conditions

## ANALYSIS

In this most difficult responsum, Feinstein's argument touches upon issues that are crucial to him and his purpose. Firstly, the *mehitsa* and lack thereof are hallmarks of American Judaism. In confronting the necessity for it, and the general disregard of it, he exposes his own program for American Judaism. Jews must be separated, and the arena of concern is the synagogue.

Next, this responsum is a key piece in the delineation of women's place and the problems associated with their presence. Most definitely, women do belong in synagogue. There is no room allowed to argue that their absence would provide a satisfactory solution to any problem. In fact, he is unambiguous in removing obstacles to their presence. In another responsum on reading of the *megillah* on Purim (*IM OH* 4:126), he insists that the girls in a school be included in the formal congregational service, even if it takes longer or is more complicated to arrange. He cites biblical and legal precedent for their presence and involvement. He forcefully removes barriers to their presence such as visibility. They belong in synagogue, behind a *mehitsa*. The problem is not inherent in women. They are not at "fault". Rather, the problem arises when men and women mix. The solution lay in their separation. The purpose of *mehitsa* and of separation in general, is not to keep women in the back, as a sign of their secondary status, but to prevent a specific behaviour pattern

of which men and women are equally guilty. He does not address women's role in and obligation to prayer. He assumes they pray as they are obligated to. He also implies that their words of prayer require the same conditions of holiness as any words of prayer. But men and women must be separate for that holiness to be possible. However, it is also true that Feinstein calls the men's section the *beit k'neset*, the synagogue proper. The women's section is always the *ezrat nashim* in this text and never the *beit k'neset*. There is a clear and consistent distinction being made. Women belong in the synagogue but the real synagogue is located in the men's section.

Finally, this responsum approaches one of the most serious legal and religious issues for Feinstein, namely, change. Since the words of the Mishna clearly state that the sages instituted a great innovation or improvement, Feinstein must grapple with the implications of that statement. Does Jewish law change and what is the basis of such changes? How are enactments enacted? His explication of this factor makes this responsum very important.

Rabbi Moses Feinstein makes two radical and unique assumptions that guide the entire responsum. Firstly, he reinterprets the mishnaic statement so that he can argue that there was no change; that the improvement was based on a known and pre-existing rule. Thus, there is nothing new here. Secondly, and most significantly, he locates this "known, unwritten, pre-existing rule" in scripture. Thus, he assures

its inviolate and decisive authority.

Feinstein is unique among his colleagues in arguing for the biblical base of *mehitsa*. Most maintain that the separation of the sexes is biblical but that the mandate for a physical barrier - a *mehitsa* - is rabbinic. Only Feinstein is insistent on requiring Torah authority for this "innovation". Incidentally, few are aware of this distinction and of its importance to Feinstein. Historians of American Jewish life maintain that the separation of the sexes is considered by Orthodox Jewry to be biblical but the requirement for *mehitsa* is considered within Orthodoxy as rabbinic. Furthermore, careful reading of his original text and of the translation in *The Sanctity of the Synagogue*, edited by Baruch Litvin (translator unknown), indicates that even his colleagues and disciples were not always aware of the importance and complexity of his argument on this issue. Yet, his concern was such that he wrote a special letter to the editor of this book in order to clarify his position. In that letter dated June 17, 1957, the Hebrew and English versions of which do not correspond, he requests that the editor fix the English translation of the responsum, which uses the term "mixed pews" frequently to specify "without *mehitsa*". He states (in the Hebrew), "...it is just because of this (confusion) that I needed to expand and specify (in the responsum) that the prohibition in the Torah applies even when they are not mixed but do not have the necessary *mehitsa*

between them."

Feinstein is forced to claim *de-oraita*, Torah authority, because of several critical considerations. It is not just a feeling of nostalgia or even a simple fear of change, but rather emanates out of his whole approach to modernity and to his understanding of the halakhic process and his role in it. It also reflects his concern for the community of American Jews.

As stated in his opening paragraph, he wishes to show American Jews how severe is the prohibition and how serious is their transgression. He is not willing to disregard all those Jews who pray without a *mehitsa*. He feels it is incumbent upon him as a leader and teacher to convince these people to change their ways. His message is for all Jews. Orthodox Jews especially need to hear that separate seating is not sufficient and that the Torah requires a *mehitsa*. Conservative and Reform Jews who have abandoned even separate seating need to be educated on the whole issue since their leaders have misled them. Thus, their leaders are consigned to the category of "heretics", but the common folk retain a special place. They are redeemable and he is convinced that if only they understood the severity and the origin of the ban then they would keep the law. "Perhaps they err" motivates him to show beyond a shadow of a doubt that the law is biblical, i.e. has Torah authority. And it is that authority that he wishes to invoke as the only remedy powerful enough to persuade the

people. He understands, and even accepts, that to pin the argument on rabbinic authority is not sufficient to convince the populace whom he wishes to save. The authority of God must be invoked. This is not written for the elite. There is no heroic standard here, it is necessary for all. On this level, his concern for all American Jews is attached to his appreciation of the power of Torah authority and of his role as rabbi.

Added to that perspective, is his understanding of *de-oraita* in general and the building of the Temple in particular. The design of the Temple was to be done according to explicit divine directives. Due to the way in which he understands and accepts this, Feinstein is forced to question the mishnaic description in which the text specifies "and they instituted a great new innovation." For him the pressing question is how could the sages institute anything that was not previously specified. How could they add anything new? He is concerned about innovation and the role of the rabbis then as well as today. Thus, he is forced to claim a pre-existing known fact. The source must remain biblical; it cannot be rabbinic. The rabbis do not institute new customs, they merely preserve and apply the existing standards.

Furthermore, his whole notion of legal process and hierarchy would be violated if the literal meaning of the mishnaic text was left standing. According to halakhic procedure, rabbinic decrees cannot override biblical

prohibitions. The statement in Chronicles 1:28 that "all this is written" leads to the conclusion (cited in TB Sukkah 51b) that there is a prohibition against changing the structure of the Temple. A rabbinic decree concerning frivolous behaviour cannot appear to override this structural ban. Rav's solution in the Talmud, namely that the biblical verse in Zachariah indicates separation of the sexes, is not sufficient for Feinstein. There are too many ambiguities and contradictions. Most importantly, Rav's statement gives a basis for separation but not necessarily for *mehitsa* and not clearly for the innovation of a balcony. Thus, Feinstein's complicated analysis of all possible sources that might indicate rabbinic authority to make changes in the Temple building. He is compelled to harmonize all the sources in such a way that the *mehitsa* retains its Torah authority and all the rabbinic decisions concerning the Temple fit into this model.

In this responsum, Feinstein is not interested in an elementary *pesak*. It would have been a simple matter for him to require a *mehitsa* in all situations and leave the matter there. He does not cite various rabbinic authorities; there is no investigation of the codes nor of later decisors. The absence of these sources is noteworthy. Instead, he explores the confusing but for him critical issue of the basis for this structural innovation. He focuses on the commentaries and relevant talmudic discussions of changes in Temple structure and function. The critical issue is rabbinic powers versus

biblical pronouncements. The passages are explored not for their ruling precedent but for their underlying concepts and decisive arguments. His view is of a harmonious balance in which all relevant sources interact in a coherent way. It is not that debate or difference of opinion is unacceptable to him, but that the conceptual unity of the Talmud on this issue of law is necessary.



### II. 3. Secondary Source

"On the Law of Mechitzah," by Rabbi Moshe Feinstein in *The Sanctity of the Synagogue*, edited by Baruch Litvin 1962.

English: pp. 118- 124.

Hebrew: pp. 11-19.

The English appears to be an abridged translation of his responsum appearing in *Iggerot Moshe* OH 1:39, dated 1945. There is no indication in Litvin as to who translated and condensed the original.

At the back of the book there is a much briefer Hebrew section. There is likewise no indication of editor other than Litvin. The Hebrew section in Feinstein's name is closer to the original *IM* OH 1:39, but displays evidence of editorial work. The complicated talmudic argument is abridged or eliminated and the language is significantly changed in certain sections.

#### English TEXT, synopsis:

The text begins with the statement that many in this country no longer use a *mehitsa* to separate men from women. Feinstein allows that this is due to ignorance rather than willful intention which is for him a significant legal distinction. He therefore sets out to explain the law; its origins, stringency and minimum height.

He begins with the declaration that a *mehitsa* is

necessary and is a biblical injunction. The first text cited is Sukkah 51a which mentions the building of a balcony for women on the second day of Sukkoth. The Talmud raises the question that it was forbidden to add anything to the Temple structure (1 Chronicles 28:19). Rab responds that it was known from Zechariah (12:12) that it was necessary to separate men from women. Feinstein refers to Rashi here.

Feinstein is arguing that the balcony was built in accordance with known biblical law and does not presuppose an innovation. Since there was no special instruction given to those with knowledge of the divine plan, namely Gad the seer and Nathan the prophet, and since Zechariah imposes the separation of men and women during mourning, then it is "obvious" that the separation with a balcony must have been by biblical law. No rabbinic law, Feinstein continues, could have overridden that biblical injunction of 1 Chronicles forbidding altering the structure as is clarified in Hullin 83.

"Therefore, if a balcony was required to separate the men from the women, that too must have been by biblical law." (p. 119)

In the light of two biblical verses specifying that men and women must be separate and that no changes were to be added to the Temple structure, Feinstein understands the Talmud Sukkah 51a to imply that a

mehitsa is biblically ordained.

Quoting from the Jerusalem Talmud, Suk:5,5, Feinstein claims that the prohibition dealing with separation is not learned from the Zechariah text, but that it is "implicit in the verse as a pre-existing Scriptural law." (p.120)

Feinstein is claiming that the verse in Zechariah is not introducing any new material. Rather, it is giving evidence of an older and known standard. He appears to feel forced into this position since the verse referred to is found in the latter section of the Bible, and there is an accepted principle that prohibitions do not originate from those sections.

"...for the verse does not seek to originate any prohibition, but merely requires that mourning be observed in accordance with {apparently pre-existing} Scriptural law - men separate and women separate." (p. 120).

In *IM OH 1:39* this argument is the most central and critical. In this version its uniqueness is not highlighted.

Further proof that the Mishna in Sukkah cannot be in reference to a rabbinic injunction only is found in *Tosaphot of Zebahim 33*.

The editor adds three dots here and leaves out the beginning of a most complicated analysis of all relevant talmudic citations brought in *IM OH 1:39*.

Feinstein then goes back to TB Suk. 51a to indicate the purpose of the *mehitsa*. Following Rashi's description of the various permutations of "women within and men without", he argues that the separation had to be sufficient to prevent any state of levity from developing.

Parts are again left out in which he clarifies the basis of the prohibition.

Levity is not the same as *yihud* and Feinstein is adamant that the two issues should not be conflated.

Specifically, the issue is not 'viewing'. At first, the men had to see the women in order to look upon the inner court. Then, when women were placed outside, and the males did not look at the females, which was a better arrangement according to Feinstein, (TB Sanhedrin 20a and *Tosafot ad loc*) they still were frivolous.

"It becomes clear, then, that a balcony was necessary by original biblical law, so that the women would be above and the men below, and then they would in no sense mingle or communicate." (p.122)

For proof he quotes from the Mishna Middoth (2,5) which states explicitly that the balcony was built so that the women would be able to see things from above the men from below but they would not be able to intermingle.

"This proves that originally, though they were

separated by an adequate *mehitsa*, they were considered as if commingling; such a situation violated biblical law, which implicitly demanded, then, a balcony." (p.122)

Feinstein, then, draws the parallel to the synagogue (where men and women gather to pray) and requires a balcony there too. If it is too difficult to build a balcony, then a proper *mehitsa* above shoulder height is required. Thirty six inches is not sufficient as it allows people to continue to chatter even when seated, which leads to the forbidden state of levity.

Again visibility is not the issue according to Feinstein. The first arrangement permitted it and the balcony, having no screen or curtain, did not prevent it.

"And so, if women are on an upper level, even without a screen or curtain, or if they are below, but behind a veritable, high *mehitsa*, so that there need be no fear of levity, it is of no consequence if the women are visible." (p.123)

Here again elements of the original are eliminated.

However, the height, as indicated in TB Shabbat 92, must be three *amot* or 18 handsbreadth which translates to about five and one half feet, or 65 inches. Feinstein explains that women's heads will still be visible and those who wish to have a higher barrier will be blessed. Nonetheless, relying on the *Arukh ha-Shulhan*, he rules

that one may pray in the presence of women whose heads are uncovered. A *mehitsa* of 65 inches is sufficient. Anything less is unacceptable as a biblical law is at stake.

Again small sections are eliminated.

Having shown the biblical nature of the *mehitsa* for the Temple, Feinstein now argues that the extension to synagogue is not just rabbinic but is biblical also. Essentially, he claims that since the prayer of *kedushah* was instituted for synagogue prayer (by R. Nessim in his *Novellae to Megillah, folio 26*), biblical laws of holiness must apply. "Frivolity during prayer would then be proscribed by Scripture." (p.124) Finally, he applies the law of separation to any occasion where people gather, relying on the quote from Zechariah (12:12).

His final sentence reiterates his primary ruling; prayer can only be conducted in synagogues which have either a balcony or a proper *mehitsa*.

Interestingly, the Hebrew allows that any balcony is fine even if the women are visible. The English version eliminates this leniency but only at the end.

#### SEPARATE TEXT

In a personal communication dated June 17, 1957, Rabbi Feinstein wrote to Mr. Litvin emphasizing that the

essence of the biblical law is not merely the separation of male and female but that the prohibition to pray without a proper *mehitsa* of 65 inches is also "a biblical law." (p.125)

ANALYSIS

Rabbi Feinstein has two "articles" in this book, one in English with an added short letter and one in Hebrew with an added short letter. The one in Hebrew is very close to his original responsum of 1945. The English one is a precis of the arguments in Hebrew. It is not clear who wrote the English version, although in the Hebrew letter, he mentions "therefore, I wrote (above) in the English language..." (p.19 Hebrew). However, the English letter begins "In reference to what is written in my name" (p.125). It is highly unlikely that he wrote the long English translation. It is possible that he wrote or directed the writing of the English letter. The clarification in the letters is essential for him. It is also not clear what year these new versions were written, probably between 1955 and 1957, the date on the letter.

Feinstein initially assumes that those who no longer use a *mehitsa* do so out of ignorance. It is a very important distinction for him to make in terms of his legal conclusion. Motive is always an important factor in his responsa. In those cases where he assumes that the intention of the individual or group is to transgress the law, in open defiance of God and Torah, then he is very harsh in his condemnation and his decision will be on the strict side. But when he assumes the practice in question is the result of ignorance and not rebellion, as in our case, then he will write a careful and



detailed responsum whose purpose is to educate, persuade and set the record straight. In such cases there will be certain room for leniency. For example, his responsum on the balcony (*IM OH 2:43*) that must remain because he judged the women's motive to be rebellious, while in this one he permits a non-balcony solution. There is no explicit information by which to detect why he ascribes innocuous or rebellious motives to individuals. As in other cases, he appears to posit that women, Conservative and Reform rabbis have the worst motive. His use of the word *kofrin* (lit. deniers, heretics) to refer to them is sufficiently indicative of his attitude.

This decision is full of references and inferences that argue to one point, namely that the law of *mehitsa* is without question biblical. From his perspective, interestingly, rabbinic decree is not enough. That would have been easy to demonstrate. Rather, Feinstein wishes to declare unconditionally that the law has scriptural authority and sanctity. Why is he so insistent? Why will he not be satisfied with rabbinic authority.

There are two possible explanations. Synagogue practice and affiliation is an important issue in American Jewish life. Feinstein is unalterably opposed to Reform and Conservative practice. However, he does not blame the lay person. Rather, his condemnation is reserved for the leadership who know better. Accordingly, his task is to educate the ordinary Jew so that they will repent. He conceives his task to be

informative; Jews will accept the law once they know and understand. Praying without a *mehitsa* is wrong. Moreover, he wishes to indicate that this is not simply a matter of an added rabbinic ruling that might be treated lightly. It is law mandated in the Bible. Finally, by claiming biblical authority, Feinstein removes the possibility of an historical explanation that would, according to some, eliminate the need for a *mehitsa*. Since there is greater leniency in rabbinic rulings, he feels he must prove a biblical foundation. He wants to impress upon these sinners how serious is their straying and how obvious is the source forbidding their actions. Thus, he must convince them that this is a direct ruling from God.

On the other hand, his insistence must emanate out of his understanding of the legal texts. Within the context of his halakhic argument, he is forced to posit a biblical source. According to his view, the rabbis did not have the authority to change the structure at all unless there was a previous biblical requirement for separation. As we will see later, they still created something new in the balcony that does not seem to contravene Feinstein's understanding of the prohibition in Chronicles.

At any rate the proof for a biblical basis is complicated and quite indirect. Feinstein quotes the Mishna in Sukkot that states the rabbis made a great innovation and built a balcony for the second night of Sukkot. Following the talmudic

discussion, it is clear that nothing new could be added to the Temple building. If something such as a balcony were added, then it is obvious that it was biblically ordained and so the verse from Zachariah that men and women must be separate is referred to. He assumes that there was a known biblical law and that it is implied in our texts. What then is the great innovation of the rabbis? As Feinstein interprets Rashi, it would appear that the balcony was the innovation, but the need for a physical structure to separate was biblical. However, on page 119, he writes: " it is as if the projecting balcony had been explicitly ordained," obviating the need for a specific prophetic set of instructions. The Talmudic discussion indicates that the Bible mandates the separation of the sexes but does not necessarily indicate that the Bible mandates a *mehitsa*.

Feinstein's purpose here is to convince and educate. He uses eight sources in the English version to indicate how serious and strong is the mandate. In the original, he argues in a very detailed and complicated way to show the following:

1. It is prohibited to pray without a *mehitsa* under all circumstances.
2. Separate seating is not sufficient.
3. The law of *mehitsa* is biblical.
4. It must be inferred from the discussions in the Talmudic texts in conjunction with the one source in the Bible.
5. Rabbinic law is not sufficient to override a biblical

prohibition.

6. Frivolity or levity (and not *yihud* or seclusion) is the forbidden state.

7. Therefore, the *mehitsa* must be sufficient to prevent such a state from developing.

8. The optimal structure is a balcony.

9. Ten handbreadth or one yard does not satisfy the prohibition.

10. Shoulder height, that is three *amot* or 18 handbreadth or 5 1/2 feet is sufficient.

11. Those who make it higher will be blessed.

12. Viewing is not the issue, and does not prevent prayer.

13. For matters of prayer, biblical laws of holiness apply to the synagogue, making the *mehitsa* in a synagogue a biblical proscription.

14. Men and women should always be separated so as to prevent any levity.

Conclusion: A *mehitsa* of 65 inches is a biblical requirement without which it is not possible to pray.

The letters offer an interesting addition. In them we can glimpse Feinstein's vital concern. He corrects the English and Hebrew texts, claiming they were not clear enough on, for him, the two central points. Firstly, the English apparently uses the language of separate seating without the required specification of a *mehitsa*. It is necessary to have separate seating with a *mehitsa* at all times; there is no permission

for separate seating without a *mehitsa*. Secondly, and most importantly for Feinstein, the requirement of *mehitsa* has full and direct Torah authority. In the Hebrew letter, which is longer and more effusive, he adds "it is only due to this, the need to clarify the Torah prohibition of prayer without a *mehitsa*, that I had to write so extensively" (p. 19 Hebrew). Clearly, Feinstein is announcing that his whole purpose even in the original responsum, was to use all available sources to convince everyone that the requirement is biblical. This point is his unique perspective.

Underlying the argument is his preoccupation with issues of change and no change. This theme as well as his constant concern with separation mark many of his decisions. He is opposed to any authority that allows gender integration and overt change in tradition. In this responsum, he focuses on mixing that leads to frivolity. It differs from other instances wherein mixing leads to breaches of modesty or explicit sexual transgressions. The other requirements for separation are derivative from Scripture operating in areas of modesty and sexuality. Though the latter appear to be more severe, according to Feinstein it is the requirement for separate seating that is imbued with direct Torah authority.

In the Hebrew text, he makes a further distinction. Women and men are not to be in close contact during certain types of communal or social gatherings such as prayer and mourning. Citing the biblical story of Hannah and Eli, wherein females

are legitimately present, Feinstein concludes that the separation does not entail keeping women hidden.

The most remarkable aspect of this English text is that it is in English. In a separate responsum (*IM YD 3:91*), he unequivocally forbids the translation of his decisions into the vernacular. "Even if the translation is worthy," he will not allow it.<sup>19</sup> His formal position, undated, is that no one is permitted to make his decisions available to the general public in English. He is, of course, not concerned with copyright principles, but with issues of control, misinformation and misuse of the material. He is distressed by the attempt to popularize his work and apprehensive about giving the unlearned easy access to it. All of which becomes irrelevant in this edition of the Litvin book. It is quite clear that Feinstein gave permission for the English and Hebrew translated and condensed versions to appear in the book. It is not possible to posit that those texts were included without his permission. The letters at the end of each entry offer a clarification particular to each version which indicates his familiarity with the book texts. Thus, the two letters are incontrovertible evidence of both his permission and of his acquaintance with the texts as they appear in the book.

Why then does he make an exception here? It is possible to argue that the magnitude of the project was such that he would not be left out. But why allow an English version? Why

not just a Hebrew text? It is probable that the cause of separate seating is so important to him that he conceivably violates his own principles because of it. His responsa leave us in no doubt as to his position on the seriousness of this issue. At all costs, under all conditions, men and women must sit separately with a *mehitsa* while at prayer. That is a primary ruling for him. It is a crucial part of his separation strategy; keeping men and women separate and Orthodox Jews separate from all those who are not. However, it is not necessary to view the translation of his responsum as a violation but rather as a continuation of his policy. He forbids translations in general because he does not want the public to misuse the information nor to be misled. However, in the case of *mehitsa* according to him, the public are already misled by the Conservative and Reform leadership. His opening to the responsum indicates that he believes if the people only knew the severity and source of the ruling, they would repent. Thus, the translation is part of his educational scheme in this one case. The people are already sinning; only a publication in the language they know will convince them of their error. His persuasive argument must be offered directly to the populace. The English then must be in a simple format without a very convoluted argument and requiring no Talmudic expertise. The simplified translation is manifestly part of his overall strategy.

II. 4. MEHITSA IN THE RESPONSA OF RABBI M. FEINSTEIN:

ADDITIONAL TEXTS

IM OH 1:40-44

IM OH 2:40, 43

IM OH 3:23, 24

IM OH 4:29-32, 91.6

IM EH 2:20

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The following is a brief summary and analysis of the remaining responsa on *mehitsa* in *Iggerot Moshe*. The cumulative effect, as will be argued below, is to guarantee the isolation of a distinct group of Jews who pray in a ritually structured location. The overall strategy maintains the *mehitsa* as a "great divide"; enforcing the division of men and women and that of Orthodox Jews from all others.

The issues raised include: biblical law, rabbinic law, sanctity of the synagogue, Temple structure and worship, proper human behaviour, gender segregation at public functions, visibility and invisibility, hair covering, the difference between frivolous behaviour and sexual transgression, distinctions between preferred and permitted practice, and a "heroic" ethic for the most pious.



IM OH 1:40

1955

CONCERNING THE BAN ON LOOKING AT WOMEN

TEXT Summary

In this responsum, Feinstein addresses the prohibitions that surround looking at women. He quotes from the classic halakhic sources in order to differentiate the complicated components of both intentionality and cultural custom. To look at a woman with the intent of receiving pleasure is absolutely forbidden. Without intent there is no uniform violation. There is a halakhic difference contingent on what part of the female is exposed. Specific areas must always be covered. Moreover, looking at any part of the female anatomy that is "usually" covered is also forbidden. On the other hand, looking at a woman who is dressed appropriately is also forbidden if the purpose is to receive pleasure.

Feinstein argues further that it is possible to be stimulated sometimes even without intending it. Therefore, there is an obligation on all men to look down at the street and not gaze at women when in a public place, especially the marketplace. Speaking from his own practice, he adds that even when a woman comes to a rabbi for advice, he should try to avoid looking at her so that he might not come to have pleasure from her.

However, Feinstein is careful to point out that none of these laws form the basis for the obligation to have a *mehitsa* in the synagogue and at public gatherings. The *mehitsa* obligation is due to the issue of frivolity only. Looking at women is a private and personal affair, but frivolity is a recognizable {nikar} issue which must be publicly dealt with. Nevertheless, he concedes it is best to be strict and have a high *mehitsa* that will restrict all visibility.

#### Analysis

This teshuva is interesting in its analysis and separation of legal factors. Though he prefers men did not look at women in all circumstances, he insists on separating the absolute area of prohibition from the preferred advice. Furthermore, he will not allow anyone to confuse the issues nor to argue for *mehitsa* on incorrect legal grounds. The visibility of women will not invalidate public prayer. Avoiding looking at women is a private obligation incumbent on men that acknowledges personal differences and cultural custom. Men are everywhere and always advised to refrain from looking at women. Prayer, on the other hand, requires a *mehitsa* so that men and women cannot mingle. Frivolity is a community issue for men and women that depends upon public behaviour patterns in specific contexts. Only under certain conditions and at specific times must men and women be physically separated. The *mehitsa* is present in order to

prevent both men and women equally from engaging in frivolous behaviour at times when respectful awe is required. Gazing is not the issue: mingling is.

This responsum contains a slight tug of war between Feinstein and the questioner. It appears that Rabbi Friedman, the questioner, tried to show that he knew the sources better and attempted to prove Feinstein wrong in his earlier responsum (*IM OH 1:39*). Feinstein's opening paragraph is, therefore, a run through of the sources, showing his familiarity with them and knowledge of their intricate meanings. It is a display of his own expertise and is to be taken as proof positive that he knows the material intimately. He further delves into tricky nuances to further prove his prowess. Accordingly, in the conclusion he holds his ground; the other rabbi is wrong. And while he allows that the other rabbi is working for the "sake of heaven," he reminds him that they both know that Feinstein's ruling was correct according to halakha and also written "for the sake of heaven." This responsa gives us a glimpse of a little one-up-manship coupled with a serious personal vindication.

IM OH 1:41

1952

CONCERNING THE *MEHITSA* BETWEEN MEN AND WOMEN: COMMENTS ON MY PREVIOUS ANSWER

TEXT Summary

This responsum deals with the measurements of the *mehitsa* and the parallel between Temple and synagogue. The *mehitsa* must run the full length of the women's section at 18 *tefahim* high. If the women sit on a platform that is higher, it is not necessary to have a *mehitsa*. A railing around the platform is necessary so that they will not fall or be in any danger.

Feinstein then argues with the questioner who seems to believe that there are two separate reasons for the partition; frivolity and mingling. Sources are quoted to prove that they are in fact one and the same. In order to prevent mingling a *mehitsa* of 18 *tefahim* is required. Once the mingling is stopped, there will be no frivolity, which is the forbidden deed (*kalut rosh*). According to Feinstein, then, frivolous behaviour occurs only when there is mingling. He frequently restates his opinion that the legal issue is not one of visibility. Mingling, which leads to frivolous behaviour, is a distinct legal prohibition under certain conditions.

Feinstein also endeavors to prove that there was no *mehitsa* on the Temple balcony {*gazuztra*}. Although there

might have been a gate for protection, once the women were on a different level, no physical partition was needed. In this context, he raises the possibility of two different readings of the text.

To the issue of comparability of synagogue and Temple service, Feinstein also stands firm. The questioner seems to have implied that during prayer service one need not worry about frivolity. Since people come to synagogue with a serious intent to pray, they would not get frivolous. Preoccupation with a mitsva obviating the need for a *mehitsa*. Feinstein's response is that people entered the Temple in awe and also for the purpose of mitsva. If in the Temple which required the greatest degree of caution frivolity was feared, then obviously the synagogue cannot be exempt. Furthermore, he argues that the sanctity of *kedusha* applies in the synagogue as it did in the Temple due to the specific prayers recited.

More importantly, Feinstein insists, the reference to mourning in Scripture (Zechariah) demonstrates the need for separating men from women at all obligatory public gatherings. Since women were permitted in the *mikdash*, as seen in the story of Hannah, he maintains the *mehitsa* separation is not to be understood as a ban on women in holy places. The ban of mingling applies only in obligatory assemblies wherein "awe of God" is a

requirement.

Feinstein then moves on to the question of women's presence in the azara for the Passover sacrifice. He claims that women did not enter this restricted area in numbers. Rather groups of men and women would gather and appoint one representative to offer the sacrifice. That one representative was most frequently a male. Even if there were cases in which a woman would bring the sacrifice for others, it would not necessitate a *mehitsa*, since the partition was only required for large gatherings and not for individuals. Here again, Feinstein is compelled to point out, is a significant difference in the rulings on *mehitsa* and *yihud*. The former is concerned with mingling in groups only, the latter with individuals.

It is clear according to Feinstein that a *mehitsa* is required in public gatherings that are mandatory. However, in public gatherings that are *reshut*, (permitted but not obligatory) such as with weddings, Feinstein states that it might not be necessary to have a partition. As an example he discusses the case of the Passover meal. From his reading of the sources, no *mehitsa* was required even though men and women of different families ate the Paschal sacrifice together. Thus, a *mehitsa* is not required at a wedding nor for the public festive eating of the Paschal offering. Feinstein

then returns to his primary point: it is absolutely required to have a *mehitsa* in the synagogue for all prayer services. In his conclusion he clarifies a minor point about the structural supports of the balcony.

### Analysis

This responsum is very interesting on three counts. Firstly, because Feinstein is so intent on differentiating prohibitions. He contends that the ruling for *mehitsa* depends on mingling and not on the ban of *yihud*. *Yihud*, restricting all forms of intimacy because of the suspicion of sexual transgression, keeps individuals of the opposite sex apart. *Mehitsa*, a physical barrier during prayer, is necessary only in the presence of a crowd. It prevents frivolity which is independently forbidden. Though both would appear to serve the same function, keeping men and women apart, the two rulings are determined by different categories of biblical law and apply in different situations. In fact, as he promptly points out, they operate in opposite circumstances. The edict for separation during prayers is of concern only when there is an assembly. The laws restricting male-female contact apply only in private contexts when there is a concern for inappropriate sexual intimacy. He is adamant about relying on the correct legal footing and will not permit the law to be extended to situations inaccurately.

The second area of interest is the glimpse offered of Feinstein's approach to sexual segregation. In this early

responsum (1952) he allows that men and women can be together at a wedding or for that matter at a public gathering. He does not insist on separation at all celebrations. The division between genders is necessary only under very restricted conditions. In public assemblies that do not require "awe", that are elective rather than obligatory, there is no fear of mingling with its attendant frivolity. Even some obligatory events do not require a *mehitsa*. Thus, Feinstein mentions the requisite eating of the Paschal offering at the Temple during which different families joined together without benefit of any partition between men and women. It would seem that this being an obligatory semi-public event a partition might be required. But the meal was not a ritual involving the element of *kedusha* that would require a *mehitsa*. Only when frivolity is inappropriate, in situations resembling *Simhat Beit Ha-Sho'eva*, is a physical separation necessary. He is carefully mapping out the contours of a vision of communal standards for male and female interaction .

Finally, Feinstein's comments on women's participation and presence at ritually significant events is also illuminating. He acknowledges that Hannah's presence at the altar is more than mere story. It indicates that women are not to be restricted from holy places. He takes this to mean that, contrary to popular opinion, the *mehitsa* does not indicate an exclusion of women per se nor does it invalidate or discredit women's participation. In support of this position he reminds



the reader that women fully participated in the Paschal sacrificial celebrations without any separations. He also allows that, although unlikely, a woman might have represented the group in bringing the offering to the priest. Just as with Hannah, a women's presence in a holy place is not forbidden and clearly not the issue of *mehitsa*. The requirement for a partition rests upon both the presence of a group of men and women and obligatory public rituals specifically requiring *awe*.

IM OH 1:42

1955

IN THE MATTER OF THE MEHITSA BETWEEN WOMEN AND MEN IN THE  
SYNAGOGUE

TEXT Summary

In this responsum, Feinstein discusses *mehitsa* in terms of the visibility of female hair and arms in relation to the category of *erva*, indecency or nakedness.

His initial statement is that it is good to have a high *mehitsa*. Moreover, since "because of our many sins" women come to synagogue with bare heads and arms, and we cannot stop them, the higher the partition the better. But, he firmly and unequivocally restates his decision that the required height is eighteen *tefahim* only.

Thus, the basic rule is that a *mehitsa* must be shoulder height which will prevent men from seeing women's exposed arms. Even though it is possible to see women's uncovered hair under these conditions, it is still permissible to say the *Shma* and hear words of Torah. This leniency is possible because of extenuating circumstances and follows the rulings of both the *Rif* and the *Rambam* that hair is not *erva* in terms of the requirements for *Shma* and the Torah reading. The mitigating factor is that even though forbidden, most women appear in public places with their heads uncovered.

Feinstein then quotes the *Arukh Ha-Shulhan* (75) to support his ruling. Since it is not the custom of women to cover their heads today, their exposed hair is not unconditional *erva* and hence does not invalidate public prayer. Married women are still forbidden to appear in public without head coverings but hair is not comparable with other parts of the body that must be covered at all times. According to Feinstein's reading of these sources, hair is never to be considered the same as those parts of the body that must always be covered. The ruling relies substantially on women's custom.

At this point he cites the biblical proof-text used by Rav Sheshet to indicate that the hair of a woman is *erva* (TB Ber. 24). Since the text used is post-Mosaic scripture (from Song of Songs), Feinstein argues that Rav Sheshet merely offers a rational argument to elucidate that hair (which is praised in the text) can be a source of temptation, as explained in Rashi. Feinstein finds that by not relying on the Mosaic verse (dealing with Sotah), the ruling on hair cannot be placed in the category of unconditional *erva*. Uncovered hair is prohibited but Torah authority (Mosaic scripture) is not used. Therefore, it cannot be in the category of *makom mekhuseh*, "those parts of the body that must always be covered". Augmenting the argument, he notes that it is not forbidden to recite the *Shma* in the presence of the

hair of an unmarried girl according to the *Shulhan Arukh*, since they are accustomed to go about bareheaded. Consequently, just as there is no prohibition in terms of prayer in the presence of unmarried women because of their custom, so too there can be no prohibition (regarding prayer) when the custom of married women is to appear with uncovered heads. Therefore, according to Feinstein, since married women today regularly appear in public with uncovered hair, even though it is forbidden to do so, it does not constitute *erva* for the purpose of prayer.

Feinstein allows that people have gotten used to women's uncovered hair and due to the exigencies of living here, he relies on the lenient ruling. However, leniency is not for those who are most pious. They are advised to turn their heads or close their eyes so as to avoid seeing a married woman's hair.

He also requires that any curtain used as a *mehitsa*, must be woven so as to prevent seeing the absolutely forbidden arms of any woman. Finally, he mentions the requirements for a balcony partition. The laws of *mehitsa* as understood by Feinstein do not necessitate a physical partition in the case of a balcony. But if women sit in that balcony with their arms visible, then a *mehitsa* would be necessary because of the laws of *erva* and not the concerns of "mingling".

His final comment suggests that the questioner turn with these details to the local Rav, who is well known for his learning.

### Analysis

Feinstein recognizes that "in our day" and because of "our many sins," most women, even married ones, go about with uncovered heads. Although it is prohibited and he would rather all married women covered their hair properly, he will not use this ban out of context. Furthermore, he allows that there is a definite element of cultural relativism in the category of *erva*. Accordingly, since it is not their custom to cover their heads, women's uncovered hair cannot be considered *erva* or nakedness. The prohibition to say the *Shma* and words of Torah depends on the *erva* as determined by public custom and not the personal prohibition of uncovered hair. In other words, the legal decision in this case is determined by what the people are accustomed to. Thus, he recognizes both social custom and the ensuing changes in categories of "decency".

Significantly, this ruling is dependant upon the cultural norms of fashion and styles of clothing. There is a clear appreciation of the relationship between custom and sexual temptation. Since clothing styles change over time, prevention of distraction and seduction will have both a fixed and a relative component. If one is used to women's hair being covered, then an uncovered head is an unacceptable distraction or "indecenty". If, on the other hand, women are seen daily

with their hair uncovered, then the sight of hair in and of itself cannot annul religious services, even if Jewish law still requires women to cover their hair. Erva for public prayer is culturally conditioned, but the prohibition against uncovered hair of married women is not. Thus, an uncovered female head in synagogue is not condoned but her presence does not preclude prayer.

Feinstein's reasoning and use of sources in this short piece is fascinating. He uses a Talmudic piece (Ber 24a) in which hair is clearly being placed in the category of *erva* especially in terms of the recitation of the *Shma*. He argues that since Rav Sheshet did not use a mosaic text, the door is open to culturally determined norms of decency, rather than establishing an absolute standard. This style of argument, relying on what is not said, falls well within classic talmudic discourse. However, an examination of the talmudic text raises interesting questions. The amoraic discussion is unequivocal in placing hair as well as voice in the category of "indecent". Moreover, both items are presented by sages who quote from the Song of Songs. Yet, Feinstein does not present voice as a culturally conditioned prohibition. He also relies solely on the Rav Sheshet segment ignoring the rest of the pericope in which all appear to agree that hair is *erva* and therefore, a man cannot say the *Shma* in the presence of his wife's exposed hair. This is also the clear ruling in the *Shulhan Arukh*. Feinstein appears to be stretching for the

lenient ruling.

Claiming the exigencies of the times, he relies explicitly on the lenient rulings, as he labels them, of the Rif and the Rambam who allow that hair is not *erva* for the purposes of the requirements of *Shma* and Torah recitation. Feinstein uncharacteristically, also mentions the argument as presented by the *Arukh Ha-Shulhan* (OH 75) to support his claim that exposed hair, although forbidden, is not to be considered *erva*. This leniency is permitted in his view because of the social climate. Namely, "because of our many sins" we live in a place where the custom is one of bare headedness creating a situation of "in extremis" which justifies a lenient position.

However, he is quick to amend the rule for those "God fearers" who can observe the strictest sense of the law. These pious people should avert their eyes during prayer. There is no argument of "in extremis" for them as they can maintain a stricter standard. He is also quite firm that exposed arms are everywhere forbidden and must not be seen by men under any circumstances during prayer. Interestingly, in the previous responsum (*IM OH 1:41*), he argues that a balcony does not require a *mehitsa* whereas here he requires it. But, of course, he is quick to differentiate the reasons for the requirement.

In this relatively short piece, Feinstein manages to cover some very complicated points. He explicates and isolates different prohibitions, allows room for social climate, rules

leniently and creates a separate standard for the elite.



IM OH 1:43

1956

CONCERNING THE MEHITSA FOR THE WOMEN'S SECTION WHOSE UPPER PORTION IS GLASS

TEXT Summary

Feinstein agrees that from a purely legal point of view a *mehitsa* whose upper portion is glass fulfills all of the requirements for separation of men and women during prayer services. Even though women go to synagogue bareheaded, it is still possible to say the *Shma* and hear words of Torah in their presence. This decision follows the *Rif* and the *Rambam* who do not forbid the recitation of the *Shma* in the presence of an uncovered female head. Even though Rabbi Karo and others forbid this, Feinstein follows the ruling in the *Arukh Ha-Shulhan* that states because of contemporary lawlessness uncovered hair does not fall under the category of *erva* for these prayers. Supporting evidence is cited from talmudic statements (TB Ber 24; Ket 72). He firmly states that *erva* is not attached to hair but is dependent on the current custom.

Permission is given reluctantly for a *mehitsa* that is 1/3 glass because women dress improperly with their arms visible. Recitation of the *Shma* is forbidden in the presence of bare arms. Feinstein would prefer that the women dress appropriately but if they do not, the congregation will have to avoid looking at that section,

which seems a bit impractical. Feinstein offers as a solution that the congregation use one sided glass. The women are allowed to see the men; men may not look at women. Both must be separated for prayer.

### Analysis

In Feinstein's estimation, the principle of *mehitsa* requiring separation for prayers affects males and females equally. The forbidden state of frivolity occurs when men and women socialize. Thus, preventing this state must affect both sexes in the same manner. This is a ruling dependant upon place and numbers rather than upon individual attributes. Although many women feel that the *mehitsa* itself reflects the inferior status of women and many Jews believe it exists to protect men from women, clearly Feinstein does not agree. *Mehitsa* protects men and women from frivolity which is forbidden during prayer and which effects them equally. Neither gender is more responsible than the other.

On the other hand, the concepts of *erva* and of modesty have differentiated characteristics, affecting males and females distinctively. Following traditional assumptions, Feinstein does allow that in some cases men do need to be protected from women, or from the sight of certain parts of their anatomy such as arms. Thus, although he has ruled that prayers may proceed if men can see women's hair, in this responsum he endorses a system wherein women may see the men but the men would not be able to see the women. Feinstein

gives no reason for this difference. It would seem that men need greater protection to control their thoughts (*hirhur*), or are more susceptible under these conditions. He is not saying that women are oblivious to temptation, just that the context differs.

In *IM EH 1:69*, he discusses men's and women's thoughts and temptations in the framework of *hirhur*. There he explains that there is also a prohibition of *hirhur* for women though it differs from the concerns and regulations for men. Both men and women must refrain from thoughts that are promiscuous. However, with women there is no concern for viewing (*histaklut*) since there is no possibility of "wasting seed" which is the source of the prohibition for men. Thoughts do lead to acts and that is the context of these rulings. However, while in some circumstances such as prayer women must be restricted to protect the men, in others men must learn to control their thoughts. Thus, in *IM EH 1:56* he does allow men to be in difficult environments for the sake of work.

There is an aspect that applies only to women in the added prohibition of *dat yehudit* forbidding women from *pritsut* (TB Ket. 72), degenerate acts. Interestingly, the regulations of *dat yehudit* apply only in cases of individual acts. However, if the custom of all the women in the city is to act (or dress) in a certain way, then it is not necessarily considered *pritsut*. Thus, as in the case of the *mehitsa*, if married women do not cover their hair, that mode of dress

becomes non-erotic. However, Feinstein claims that although one cannot count this accepted pattern of dress as immoral, nonetheless it is preferable to stop it due to standards of additional modesty and *hasidut*. This decision (*IM EH 1:69*) is congruous with his rulings and preferences concerning prayer and the visibility of women's hair. It is also consistent for him to use moral pressure to ensure an additional and uncompromising standard of modesty. Nonetheless, he does not refrain from including patterns of cultural custom in his reasoning and ruling accordingly.

In both of these responsa, Feinstein is substantiating a clear difference between men and women. As a result, sexual temptation and gender interaction is differently enacted in his decisions.

In this responsum on *mehitsa*, *IM OH 1:43*, it is clear that for Feinstein the ruling to prevent men from seeing women does not follow from the laws of *mehitsa*. In fact, in the talmudic discussion it is obvious that men and women could see each other. Rather, Feinstein's advice to limit female visibility appears to emanate from the laws of *erva* and the fear of *hirhur* which effects prayers only in some instances and men and women quite distinctively.

IM OH 1:44

1954

IN A PLACE WHERE THEY HAVE BROKEN THE LAW OF MEHITSA BETWEEN  
MEN AND WOMEN AND NOW SOME WANT TO HAVE MIXED SEATING

TEXT Summary

The case involves a synagogue that has separate seating without a *mehitsa*. Part of the congregation, including the rabbi, presented an argument in favor of mixed seating. They claimed that since the rules were already broken by not having a *mehitsa*, there would be no difference if they switched to mixed seating.

Feinstein rules that mixed seating is much worse than separate seating without a *mehitsa*. When people transgress in a minor issue, it is forbidden to encourage them to transgress in a more serious area. In fact, he claims that the proper procedure is to convince a mixed seating congregation to at least sit separately. His source is the *gemara* in *Sotah* (48). His premise is that people must do the best they can even if the ideal is not attainable. He is certainly opposed to loosening the standards and thereby encouraging greater sin.

Analysis

It is noteworthy that Feinstein will not use the term *rav*, Hebrew for rabbi, in this responsum. Instead he transliterates the word rabbi. This is a consistent pattern of his when dealing with rabbis in the Conservative and Reform

movements. By using the English word transliterated he signifies his convention of non recognition.

His decision in this case is somewhat startling given his previous rulings. In all the other responsa on *mehitsa* he allows no division between the issue of separate seating and the need for a physical partition. Unlike his colleagues, he insists that the law requiring separate seating is the same as the one requiring *mehitsa* and both are of Torah authority. Here he allows a differential weighing of the requirements. Moreover, he calls the *mehitsa* a minor or lighter matter than separate seating. It is a striking shift for which he gives a moral justification but no legal accounting. He does not refer back to his other statements nor does he in any way try to harmonize them. Neither does he extend this position nor in any way repeat it elsewhere.

IM OH 2:40

1959

IS IT PERMISSIBLE TO PRAY IN A ROOM SET UP ACCORDING TO THE LAW IF THE ROOM IS IN A SYNAGOGUE THAT DOES NOT COMPLY WITH THE LAW

TEXT Summary

The case concerns a synagogue with mixed seating that has set aside a room for those who wish to pray with a *mehitsa*. Feinstein rules that one cannot enter such a place to pray, especially if it is not known that there is a separate minyan. His main reasons are those of suspicion (*hashad*) and appearances (*mareet ayin*). His argument is twofold: one should not do anything that will bring suspicion upon oneself and one should never allow the appearance of one's actions to be misinterpreted thereby leading others astray. Due to the latter, he concludes that even if it is widely known that there is a room for proper prayer, it is better to be strict and avoid that place.

Further complications requiring a strict ruling involve questions of a shared entrance way and ownership of the room itself. Feinstein concludes if there is only one entry point and if the room is owned by the synagogue, then it is prohibited to pray there. Ownership means that the synagogue will benefit both financially and morally by being able to claim that they satisfy all

needs.

For all of the above reasons, some of which are halakhic and others social, Feinstein prohibits praying in a such a room, even though it has a *mehitsa*.

### Analysis

Feinstein again displays his disdain for all things non Orthodox. In this discussion his concern is not with proper acts nor with individual motive, but rather with the effect of one's acts on others. Will the act of praying in a proper room somehow lead others to doubt the individual or worse to be led astray. Moreover, he is worried lest the use of the room by Orthodox Jews somehow benefit the non-Orthodox.

In a number of responsa, Feinstein has permitted behaviour that he would normally not allow, but has justified it on the basis of current practice in this country. Thus, uncovered hair of a married woman is no longer in the category of *erva*. However, in this case, Feinstein restricts conduct that might arguably be proper because of the changes in communal standards. Given a *safeg*, a doubt, he rules that the act is prohibited in this instance precisely because of the changes in community behaviour patterns. There are too many sinners; too many people are lax about separate seating and so he will not allow even the appearance of accepting such a synagogue. He acknowledges that from a purely legal perspective, it would be appropriate to be lenient. However, in a tactic reminiscent of *IM OH 1:39*, he wishes to teach the



people the gravity of the prohibition.

Moreover, he absolutely will not tolerate any situation in which the actions involved will benefit the non Orthodox. The argument is similar to that of the teacher from an Orthodox school working in a Conservative one. In a series of decisions (*IM* YD 1: 139; YD2:106,107), he contends that parents might assume that their children would be getting the same education in both places since the teacher is the same. This miscalculation would benefit the Conservative school and lead some parents astray. Although he acknowledges the good a teacher might accomplish in such an environment, he frowns upon it and focuses on the negative possibilities. Here too, he sees the problems and confusion and rules on that basis.

IM OH 2:43

1959

IS THERE AN OBJECTION TO CHANGING THE WOMEN'S SECTION FROM A BALCONY TO THE MAIN FLOOR WITH A MEHITSA

TEXT Summary

The case involves a synagogue with a balcony. The women have asked to be allowed to have a women's section with a proper *mehitsa* on the main floor. Feinstein rules that although it is proper to have a women's section on the main floor with a *mehitsa* of 18 *tefahim*, it is preferable to maintain a balcony as is described in TB Sukkah 51. Thus, he decides, they should not change from the most desirable situation to another even a permissible one.

After the ruling, Feinstein adds a comment on the intention of the women that is very important. He claims that it is known (*nikar*) that the women really want to eventually have mixed seating. They are beginning with the easier change, but their agenda is to do away with separate seating completely. Their strategy, according to him, is to first obtain permission for the legitimate modification. Once that is accomplished, they will agitate for the unacceptable switch to mixed seating. Therefore, "God fearers" must prevent even this change.

The claim of the women that it is difficult to climb the stairs is quickly discounted as an untruth. The women

have previously climbed without complaining, and they would climb higher for physical pleasures according to Feinstein. He adds that for the "sake of heaven" there is no hardship in climbing stairs. The real issue is the women's desire to belittle the *mehitsa* and change the traditions of the people. He does indicate that for acceptable reasons, such as lack of sufficient seating, the change would be permissible.

Finally, Feinstein allows that if the Rabbi might lose his job over the issue (*parnasa*), then he can have a *mehitsa* built on the main section which after all is still according to the law.

### Analysis

Again we find that Feinstein's responsa have many layers of permissible and of extenuating circumstances. Mixed seating is the worst, separate seating is minimally better. A *mehitsa* of 65 inches is permitted: higher is better, lower - of 58 inches - is barely tolerable. A *mehitsa* on the main floor is allowed, a balcony is better. Mingling and frivolity are absolutely forbidden. Furthermore, if one can, it is good to prevent visibility but it is not absolutely required for prayer to take place. All of these decisions are presented as law emanating directly from the Torah, but even here there are layers of direct and indirect inference.

One of the critical differentiating factors is the role of intent or motive. Feinstein attributes certain motives to

the persons involved in the case. His decision varies according to those motives. In this responsum, the needs and motives of the women are suspect. The financial needs of the rabbi are always a serious consideration as are the spatial requirements.

There are no explicit details as to why Feinstein so quickly discounts the request of the women. He immediately discredits their claim and attaches the basest motives. His statement about their willingness to climb the stairs for physical pleasure is very problematic. His apposition of this alleged motive to that of acting "for the sake of heaven" further indicates his low esteem of the women involved. It implies a very negative valuation of women and a disregard of their needs, which is not consistent with many other compassionate responsa to individual women. However, when confronted with changes that appear to emanate from, or attempt to emulate the Conservative movement, his judgement is very harsh. Moreover, there is a similarity to his famous *NASHIM HA-SHA'ANANOT* (*IM OH 4:49*) in this dismissal and rejection of the women's requests.

On the other hand, Feinstein's basic assumption is that women do go to synagogue regularly and should continue to do so. In stating the reasons for not accepting the change, he notes that there is sufficient room in the balcony for all the women and this has been the custom of the place. However, in presenting the case in this manner, there is an indication

that if the balcony space were to limit female attendance he would immediately grant the request.

There are no sources quoted that bear directly on the case. Feinstein only briefly refers to the talmudic discussion of the Temple balcony and to an unrelated talmudic discourse on acting incorrectly. The actual ruling is quickly and directly stated without any lengthy legal argumentation or specific textual references on changes in structure. His previous responsa on *mehitsa* appear to equate the balcony with the *mehitsa*. This decision shows a preference for the balcony which raises questions about his earlier unsupported equivalence of balcony with barrier.

More than half of this short responsum denies the legitimacy of the request not its legality. By focusing on the women's alleged motives as the basis for the decision, he allows us to see the very important role motive plays in his rulings. In fact, the inclusion of two valid reasons for such a modification of the synagogue seating, is further proof of his reliance on human motivation as a significant factor in the *halakhic* system.

Significantly, this responsum is addressed to Baruch Litvin, the man who sparked the *mehitsa* debate in the United States. It was written in 1959. Litvin's famous book *The Sanctity of the Synagogue* was published in 1962, but the articles in it were written earlier. Feinstein's main responsum on *mehitsa* was written in 1945 but the abridged

version found in the book was written before his supplementary letter of 1957. Thus, this responsum is later than the substance of Litvin's book. It is possible that Feinstein's negative evaluation of the motivations of the women involved in this request for a change from the balcony emanates from his previous dealings with Litvin. In addition, the legal simplicity of the responsum can be understood in terms of both the frequency with which he has addressed this issue and the talmudic erudition of the addressee. Litvin successfully resisted an attempt to remove the *mehitsa* in his synagogue. Apparently, Feinstein felt this request to eliminate the balcony was merely one step in that same strategy aimed at eventual mixed seating.

IM OH 3:23

1971

PERTAINING TO THE MEHITSA BETWEEN THE WOMEN'S SECTION AND THE  
MEN

TEXT Summary

The necessity of *mehitsa* and its biblical origin is again restated by Feinstein, referring the questioner to his earlier responsum (IM OH 1:39). *Mehitsa* is necessary to avoid frivolity which includes or is defined by too much conversation with women. Feinstein adds that avoiding physical contact with women (*negia*) is also a reason for the barrier.

He also allows a different minimum height. The basic rule as discussed earlier, is 18 *tefahim* or 5 1/2 feet, as defined by Rashi and Tosafot. Rashbam allows 17 *tefahim*. Feinstein uses the endorsement of Rashbam to allow the lower height of 60 inches (5 feet) by claiming that women are shorter today.

Thus, Feinstein maintains that the absolute minimum is five feet both for reasons of frivolity and for *erva* of uncovered arms. Uncovered hair is forbidden but not *erva* according to *Arukh Ha-Shulhan* and the *Rif* and *Rambam* (as he previously ruled, IM OH 1:42). He notes with distaste that many women regularly go to synagogue with bare arms. He cites the Talmudic source (TB Ber. 25) and the *Shulhan Arukh* (75.5) forbidding prayer in the

presence of *erva*. As a result, he concludes that a glass *mehitsa* is fine for reasons of *mehitsa* (as he previously ruled, *IM OH 1:43*) but not of *erva*. Therefore, he prefers an opaque partition of shoulder height.

Furthermore, he claims those synagogues that have raised the floor of the women's section but not the *mehitsa* are not acting appropriately even if the women all dress modestly. It is still possible to reach a frivolous mood with more talk and touching. He does not forbid such an arrangement but is not comfortable with it. He understands that some lay leadership push for this arrangement and so does not forbid it but reiterates his preference for at least 66 inches (on the men's side) or even better high enough to block all visibility.

### Analysis

Feinstein adds a number of interesting elements in this compact responsum. Most significantly he defines *kalut rosh* or frivolity as both excessive talk with women and having the opportunity for physical contact. This is not the first time he specifically mentions verbal communication as the main factor to be avoided. Only the initial responsum on *mehitsa* specifies talking and touching (*IM OH 1:39*). Although talking may have been presupposed in all of the other discussions, physical contact was indicated as a factor only once. The whole question of *negia* is rather enigmatic. There are a number of responsa in which he forbids all contact even



handshaking (*IM OH 1:113, 4:35; EH 1:56, 4:32.9*). On the other hand, he allows that in certain situations men and women would be able to mingle and that they might come in contact with each other (*IM EH 2:14*). Most importantly, in these responsa on *mehitsa*, Feinstein clearly differentiates prayer services from other communal events in which mingling with its attendant possibilities for physical contact is not forbidden.

He maintains a consistent policy on the issue of *erva* and of looking at women. It is possible to pray in the presence of uncovered hair. In those instances, Feinstein claims that the hair is not in the category of *erva* and therefore the sight of a married woman's hair does not prevent prayer. On the other hand, he regretfully comments on the dress of contemporary women who do not cover their arms. That "uncovering" is certainly *erva* and would prevent prayer. Therefore, Feinstein prefers a *mehitsa* that is not glass. However, he allows that if women in the congregation dress appropriately it is permissible. The decision on glass rests on the factor of *erva* and not on the requirements of preventing frivolous behaviour. It would seem that the type of *mehitsa* is determined by two elements, frivolous behaviour and visibility of women. Initially, Feinstein had claimed that there was only one consideration as the talmudic discussion indicates. However, since prayers cannot be uttered in the presence of "nakedness" the rules of *mehitsa* are clearly affected by those dictates.

Two sets of regulations unite, one dealing with *mehitsa* and the other with prayer, to necessitate a specific *mehitsa* structure.

In this deliberation, Feinstein maintains his dual standard. Although he prefers a high non transparent partition, he allows the minimum both in height and visibility for those who are pressured by congregational insistence. He also insists on separating absolute legal requirements from recommendations and preferences. Feinstein uses every opportunity to clarify what the actual law entails and necessitates.

While he accepts the bare minimum in this case, he will not allow synagogues to trifle with those measurements. Feinstein condemns those who raise the women's section a bit without raising the partition. A different floor level does not equate with a balcony. He prefers at least a four and a half foot *mehitsa* from the women's side and five and a half feet on the men's side but relents to allow one of five feet. But this is his bottom line permitted only in cases of pressure from the congregation. Feinstein believes that in order to prevent mingling the partition cannot be any lower. His concluding remarks indicate his clear preference for a *mehitsa* that completely blocks the sight women. As always he operates with a permissive stance for those who require it but recommends a more exacting standard for those who can live up to it.

His comments on women being shorter today will be discussed in the following responsum.

IM OH 3:24

n.d.

CONCERNING A MEHITSA IN THE WOMEN'S SECTION

TEXT Summary

This responsum merely repeats the substance of the previous one. Feinstein cites the basic sources including his own decisions. He allows even 58 inches due to the shortness of women today, but maintains that the norm is shoulder height. He further acknowledges that some synagogues have a raised floor so that the *mehitsa* is sixty inches on the men's side but only four feet on the women's side. Though that does not violate *mehitsa* rules, he claims it is not advisable and if women dress inappropriately prayers of *Shma* and *Torah* could not be uttered.

Analysis

Feinstein repeatedly takes the time to clarify the minimum height for the *mehitsa*. He cites all the relevant sources again relying on the lenient rulings of the *Rashbam*. His patience and effort in these repetitious responsa can only be explained by his intense concern and desire to ensure compliance with the standards he has endorsed. The number of letters and the nature of his responses indicate the importance of this issue both for him and within the Jewish community in the fifties and early sixties. His attempts at leniency combined with his insistence on a biblical base

suggests a keen desire on his part to persuade the general population to accept the partition and with it Orthodoxy.

His understanding of the community's mood is also significant. He allows the shortest *mehitsa* based on Rashbam's estimation of seventeen *tefahim* because of popular pressure. He understands that many Jews are not willing to accept a very high barrier and that many synagogues already have permanent partitions that do not meet his highest standards. His response is to set a bare minimum and try to encourage compliance. Feinstein uses the legal justification of *she'at ha-dehaq, in extremis*, although not everyone would agree with his use of this principle. Yet for him there clearly is a crisis. He fears the growth of the Conservative movement and sees the crisis in those terms. Undoubtedly, Jewish communities in the fifties were torn between Orthodox and non Orthodox synagogues and the *mehitsa* loomed large as a catalyst in that debate.

Nonetheless, he has a firm bottom line and will not deviate from it. Given some basis in the halakhic process, Feinstein will allow that some things are negotiable, others are not. He can accommodate uncovered hair in the synagogue. Some patterns of *erva* are responsive to communal practice and custom. But many standards are not. Even if all the women appear in public with bare arms it still would not be possible to pray in their presence, according to him. Feinstein claims that arms are permanent *erva*.

His reasoning in allowing fifty-eight inches in these last two responsa is perplexing. He permits a lower than sixty-five inch partition because women are shorter today. The basis for this pronouncement is missing. There are no medical or social factors cited. None are known to me. He merely asserts that it is known that women are shorter today and, therefore, gives his permission for a partition of only sixty inches when sixty-five is closer to the required eighteen tefahim. In fact, he states that since the average woman's shoulder reaches five feet or less, even fifty-eight inches is tolerable. Most probably, Feinstein is equating the metaphoric expression of *gadol* with physical attributes. The term *gadol* is used to signify the greatness and accomplishments of past generations. It is an accepted pattern to claim that the ancestors were great whereas the present generation is insignificant in comparison. The standard rabbinic argument is that in ancient times not only were the sages greater, but the produce was larger. Accordingly, Feinstein transposes the quality of greatness to a corporeal component. Perhaps they were great in all things even height.

IM OH 4:29

1966

DIMENSIONS OF MEHITSA IN THE WOMEN'S SECTION

TEXT Summary

In this case, the *mehitsa* is fifty inches topped by open windows of thirteen inches. Feinstein claims that it is better not to pray there. He recommends covering the open windows completely with a curtain especially since the congregation has many "God fearers" and should not use any leniencies.

Analysis

In this extremely short piece, Feinstein reiterates his preference for an impenetrable partition. He allows that it is not necessary to prevent prayer under such circumstances, but still it is not fitting to pray with these open windows. His double standard again emerges in his assessment of the congregation. Since the people are "God fearers" it is best to adhere to the strictest guidelines. They should not be allowed to rely on leniencies since they are capable of more exacting standards.

It is interesting to note that this series of responsa dealing with height are from the sixties. The issue is still of concern to congregations and to Feinstein and continues to be so in the seventies.

IM OH 4:30

1969

AGAIN PERTAINING TO THE DIMENSIONS OF THE MEHITSA IN THE  
WOMEN'S SECTION

TEXT Summary

Feinstein responds that he has already explained that the *mehitsa* must be shoulder height. He repeats the ruling based on *Tosafot* requiring eighteen *tefahim* and on *Rashbam* allowing only seventeen *tefahim*. Again the height is restated as not less than sixty inches minimum. The practice of using a lower *mehitsa* and sitting two *amot* away from the *mehitsa* is not justified according to him. His final ruling is that they must add six inches to the fifty-four inch partition.

Feinstein ends with a warm salutation to the writer, the congregation and the rabbi of the congregation. In it he comments that he hopes the people will wish to follow the laws of the Torah and that there will be peace amongst them.

Analysis

Feinstein again defends his minimum standard and insists that there is no more room to adjust it. All forms of further compromise violate his interpretation of the requirements and he will not allow it. It is interesting to observe his patience though it appears to be wearing thin in this text.

The degrees to which communities attempt to subvert the



sixty inch *mehitsa* is quite fascinating and perhaps indicative of its importance in synagogue affiliation and politics. His concluding remarks confirm that the height of the *mehitsa* has been a divisive factor in this congregation and in American Jewish synagogue life.

IM OH 4:31

1969

MORE ON THE DIMENSIONS OF THE MEHITSA IN THE WOMEN'S SECTION

TEXT Summary

Referring to his previous responsum Feinstein again declares that the minimum is 18 tefahim. He then briefly cites the sources used from Tosafot and Rashi in TB Shabbat 92a and the divergent view of Rashbam BB 100b. Feinstein cites the talmudic discussion on shoulder height that was focused on the Levite's carrying of the ark. He notes that Rashbam's position remains a minority opinion that would not ordinarily be acceptable. However, he argues, in difficult circumstances it is possible to rely on a solitary opinion. The difficulty rests with the congregation's aversion to a higher mehitza. Hence he accepts Rashbam's determination of 17 tefahim and, therefore allows a partition of sixty inches as the minimum. Feinstein also mentions that Nahmanides agreed with Rashbam so he is not relying on a solitary opinion. Moreover, he suggests that women are possibly shorter today. Finally, he presents the calculations of the appropriate height in the descriptions of a mikvah. Feinstein shows that there are two ways to determine the tefahim/inch equivalence. He allows the shorter height because of the urgency of the situation.

Feinstein then states that he would never allow a

*mehitsa* of thirty inches on the women's side even if it measures seventy inches on the men's side. He explains that many things are conveyed in his name that he never said. He firmly restates his commitment to a partition of not less than sixty inches but is quick to absolve the local rabbis who have accepted less than the minimum standard. He understands that their position might be compromised because of their jobs. Furthermore, he allows that some may honestly believe that by agreeing to a lower *mehitsa* they are saving the congregation from joining the Conservative movement.

He then says that he does not want to comment on this (after he has) since he was not asked. The congregation in question, however, wants to do the right thing and must therefore have a *mehitsa* of at least 60 inches.

### Analysis

Feinstein appears to be tiring of repeatedly responding and justifying himself in terms of his ruling on the height of the *mehitsa*. He states that he is answering this particular letter out of respect to the rabbi and also in order to clarify how he reached his decision. Intriguingly, he refers to the previous responsum on this issue by mentioning the name of the rabbi to whom it was addressed. He does not give its textual reference. It is possible that he wishes to emphasize that the current questioner should have known of Feinstein's

previous work and not needed to ask again. Since the referred-to text was written after the questioner wrote his letter, Feinstein's reference to it is perplexing. Most probably, Feinstein is tiring of the need to constantly repeat the same advice and ruling. Presumably, he is also unhappy about constantly having to justify his decisions on this matter. At the end of the detailed explanation, he states that "you probably did not see what I wrote." The message is, of course, to the questioner to be more careful and read the responsa themselves. Feinstein pointedly says that people, should not rely on what others say in his name. The total impact of these comments appears to be a gentle reprimand to the rabbi.

This relatively short text actually contains the most complete reference to the original discussion on eighteen versus seventeen *tefanim*. It also contains the first mention of Nahmanides' view corroborating that of Rashbam. In addition, the discussion of measurements from *mikvah* texts is also remarkable. Thus, although he treats this as totally repetitious, it is not.

Feinstein is also very careful in this text to explain the basis for such a lenient ruling. It is especially interesting in light of his original comment in *IM OH* 1:39, "Rashbam's view is surprising." Clearly, the urgency of the situation weighs upon him. He fears the overwhelming presence of non-Orthodox options and continuously wishes to encourage allegiance to tolerable standards of Orthodox law.

Nevertheless, he will not allow less than sixty inches. He is, thus, sympathetic to the local rabbi who allowed a shorter partition perhaps out of a desire to prevent a congregational switch to Conservative. But Feinstein will not allow it. His concluding remarks reveal his appreciation of the divisive power of the issue and his hope for a peaceful conclusion. However, there is a bottom line and it appears to be sixty inches.

IM OH 4:32

1976

MORE ON THE DIMENSIONS OF THE MEHITSA FOR THE WOMEN'S SECTION

TEXT Summary

Feinstein received a request to rule on a particular type of woven wooden partition. His decision is that a wooden mehitza which has perforations for beautification is permissible as long as the height is sixty inches on the women's side.

Feinstein adds that he hopes the rabbi will endeavor to convince the married women to cover their heads at least in the synagogue even if they won't at home. He notes their unwillingness to cover their heads regularly but is hopeful they will heed the rabbi as is seen in his statement: "Surely they will listen concerning the synagogue."

He concludes with an unusual plea to the rabbi to try to bring the people closer to belief in God, which is the primary purpose of the rabbinate always and "especially in our country and our times."

Analysis

Feinstein briefly notes the permissibility of the woven mehitza. It is clear that for him the issue is height over style and even visibility. He explains that with these holes it is not possible to reach the prohibited frivolity. Height remains the critical factor in preventing the undesired

mingling.

His appeal to the rabbi to encourage women to at least attend synagogue services with their heads covered is noteworthy. He understands that women disobey the legal requirements of head covering in their daily pursuits. He understands but does not accept. In this plea he displays his amazement that they do not dress differently for synagogue. There is an obvious implication of a double standard in his comments. At the minimum, he expects women to cover their heads in synagogue, which is the current practice of many Orthodox women. As, indeed, men who ordinarily don't cover their heads do so in synagogue. He also is hopeful that the congregation will listen to the rabbi's admonition.

In his final statement, he diverges from the topic and appears to be encouraging or instructing the rabbi. In an unusual aside, Feinstein pronounces that the essential mission of all rabbis is to persuade the congregation to firmly believe in God. There is no clue as to why he uttered this comment at this point. His concern for "our time and place" is consistent with his general approach to life in America and his fears of its sinful effect on people.

There is one distinctive feature of this document. In it Feinstein says : " *mehitsa* that divides the women's section in the synagogue from the men's area". True to his usual pattern, he asserts that the *mehitsa* comes to divide the men from the women. In his opinion, it is not a device for merely

restricting women but rather a separator of the sexes. However, this is the first time he has specified that the women's section is in the *beit ha-kneset*, synagogue proper. Although it obviously is, many statements in the Litvin book especially imply that the men's section is the synagogue proper and the women sit in another area. That impression is supported by constant references that disassociate the women's section from the synagogue. The overall effect is that what men do really counts and the women are present as observers. Feinstein does not frequently yield to that kind of presupposition and herein specifies his understanding of the synagogue as consisting of both sections.



IM OH 4:91.6

1972

IS IT PERMISSIBLE TO CONDUCT A MINYAN IN A NON-KOSHER  
SYNAGOGUE

TEXT Summary

Feinstein determines that is inappropriate to hold kosher services in a room in a Conservative synagogue because it is tantamount to entering a community of *kofrim* (deniers). Even though some of the congregation might not know any better, and were led to this by their parents and community, still it is best to avoid them. Feinstein briefly cites a number of sources dealing with various punishments for heresy and concludes that it is forbidden to pray in a separate room in their building.

However, he continues, it is possible to hold such a separate minyan in an Orthodox synagogue that is not completely correct. Even if the Orthodox congregation uses a microphone or does not have a proper *mehitsa*, they are not considered *kofrim*. They are just *mizalzilim*, disrespectful of this one domain. They believe in all the commandments of the Torah. Avoidance is not required. It is possible, according to Feinstein, to conduct proper services in a separate room. He concludes with a warning against appearing to pray with these worshippers. He cautions that if they will listen, it is possible to tell them the error of their ways. However, if there is no

hope then it is better to leave them in the legal designation of unintentional sinners.

### Analysis

Feinstein's position in this brief responsum is no surprise. Given the exact same situation in different contexts, his decisions are diametrically opposite. In the previous responsum, he acknowledges that solely on the basis of the law, prayers could be held in a separate room in a Conservative synagogue. But he does not allow it. Here too he forbids it because the synagogue members are *kofrim*, deniers of the law. He is unyielding on this point even if some of the members err out of ignorance.

On the other hand, in an Orthodox synagogue, even one that is not kosher, one that violates the same laws violated by the Conservative synagogue, all is permitted. The two similar infractions are use of a microphone and absence of a *mehitsa*. Feinstein readily concedes that context and commitment override legal particulars in this case.

Affiliation with a Conservative institution in and of itself is the offence. The movement represents denial of the basic tenets of halakhic Judaism according to Feinstein. The choice to associate with it signifies a probable acceptance of their position. At best, it encourages others to join. The whole enterprise reeks of heresy for him. Following this logic, any connection with an Orthodox institution manifests intentional acceptance of Orthodoxy. The mere fact that they

belong to an Orthodox institution indicates that they believe in the mitsvot. They are not deniers by association, merely lax in certain statutes.

Interestingly, Feinstein uses the same classification for both situations. He allows that in both cases some of the people might be *shogigim* (errant). They sin by mistake, in ignorance of the law. But those who do so in the context of Orthodox institutions are excused. He gives them the full benefit of the doubt. Those who are members in a Conservative institution are culpable.

To be sure Feinstein is not condoning praying in a synagogue without a *mehitsa* or with a microphone. He rigorously requires a *mehitsa* in a separate room without any microphone. The room must have a separate entrance and these circumstances should be public knowledge. All he is granting is the rental of such a room in a nominally Orthodox building.

His final comments are noteworthy. Feinstein grants that it is proper to try to convince the Orthodox synagogue members to change their mode of prayer. However, he warns it is permissible to do so only if there is a chance that they will comply. If not, he advises, it is better to leave them in ignorance of their errors. This is not a case of ignorance is bliss, but rather a known halakhic principle that ignorance of the law is preferable to intentional violation.<sup>20</sup>

As in all of the above responsa, Feinstein's position on the necessity of a *mehitsa* is unwavering. In order for Jews to

conduct proper public prayer services, men and women must be separated. That is the law of Sinai according to Feinstein. In the last two responsa, Feinstein develops a position on *mehitsa* that additionally ensures the separation of Orthodox Jew from non-Orthodox. That is the requirement of life in America according to Feinstein.

IM EH 2:20

1962

CONCERNING A SCRIBE WHO VIOLATES THE SABBATH IN ONE RESPECT ONLY FOR HIS LIVELIHOOD BUT OTHERWISE IS FAITHFUL TO THE LAW, IS HE QUALIFIED TO WRITE A *get* FOR AN *IGUN*

TEXT Summary

In this case Feinstein is faced with an inquiry about a scribe who is a cantor in a Conservative synagogue. The questioner wants to know if this cantor can write a kosher *get* as he is the only scribe available. After a very long and intricate responsum, Feinstein rules that it is permissible for the cantor to write the document. The reasoning involves questions of *kashrut*, of degrees of heresy and of simple transgression. The argument presented is that the scribe is not to be considered a *kofer*, heretic, even though he uses a microphone and prays in a mixed seating congregation. He is known to keep all the other laws of the tradition including all the laws of Shabbat except those of microphone. His excuse is his job. He has transgressed in order to earn a living, not out of an absence of belief in God. The category of *kofer* can only apply to one who knowingly and formally denies God. There are many proofs brought and texts referred to in this text.

Analysis

For the purpose of this treatise, the significance of this responsum lies in the attitude of Feinstein to someone who is a clergy in a mixed seating congregation. He explicitly does not sanction the circumstances nor give permission to remain in that post, but he does declare the cantor kosher as a scribe. Earning a living does not excuse all but it is a powerful alibi. Those who violate the Sabbath for the purpose of income but are known in all other matters to keep the laws of Torah, are not classified as apostates by Feinstein. On the other hand, those who are not known to be *Shomrei Torah*, faithful to Torah law, and violate these laws are classified as apostates.

In this case, even though he prays in a mixed seating congregation which is a great prohibition, the scribe is still not considered a heretic. The fact that he officiates in a forbidden context is not sufficient to remove his certification as a scribe. Permission is given for him to write the *get*, but he is admonished to publicly affirm that he is doing it in their names and on their behalf.

In this long responsum of thirteen columns, Feinstein is challenged to permit that which he might predictably want to forbid. He consistently condemns and renounces the Conservative movement and anyone working within it. For example, in other responsa he acknowledges that a teacher may accept a job in a Conservative school but then advises the Orthodox school to refrain from ever hiring someone who has

worked in such a school (IM YD2: 106,107). He does not allow an Orthodox minyan to take place in a Conservative building (IM OH 2: 40) and he forbids answering amen to the blessings of a Conservative rabbi (IM OH 3:21). More directly, he does not allow a man to be accepted as a *shohet* because of his job in a Conservative synagogue (IM YD 2:12). Yet here, he argues that the cantor in a Conservative synagogue can be qualified as a kosher scribe. His main argument is *in extremis*, due to the urgency of the situation. Therefore, the case for extenuating circumstances is stated at the outset. The scribe took the job of cantor before the synagogue was "spoiled" and became Conservative. He remained only in order to earn a living. In all other matters he is careful to follow the law. Moreover, he is the only one available who has the requisite skills to write a *get* document.

Then follows a very serious and complex legal argument citing many sources. There are two halakhic issues to be justified. Using a microphone on Shabbat and praying in a mixed seating congregation. Only one paragraph deals with the issue of *mehitsa*. The rest of the justification focuses on the microphone. On both issues Feinstein argues that the man involved is not rebelling against all of Torah and, therefore, though in violation of certain laws, he is not to be considered a heretic. (Interestingly, he links this category with gentile status.)

In this responsum, Feinstein is very careful to limit his

approval of this scribe. He refuses to accept the suggestion from the questioner that in the nineteenth century Rabbi Shick permitted an Orthodox man to remain as cantor in a Reform congregation. Although that reference might have strengthened this responsum, it in fact goes further than Feinstein would allow. The permission is thus stated with all kinds of special conditions and is a very limited acceptance of the situation. The cantor is qualified as a scribe but not as a cantor. Praying in a mixed seating congregation remains a very serious violation of biblical law for Feinstein.<sup>21</sup>

This responsum appears to be a repeat of an earlier and much shorter one. In *IM EH* 1: 121, written in 1957, Feinstein allows the scribe to write a *get* even though he is a *shamash*, a beadle in a Conservative synagogue. The 1957 letter is written to the same rabbi as the 1962 one. The only discernible difference is the purported clergy job of the scribe. The earlier letter is one column in length; the later one takes up thirteen columns of intricate legal argumentation.

Both responsa indicate Feinstein's extreme disapproval of those who work in congregations that do not use a *mehitsa*. They also demonstrate his care in separating legal matters and in setting boundary markers. Although the man in question has violated the law, he has not left the binding connection to the law and to Orthodoxy. He is not to be classified with those in the Conservative and Reform movements who are



heretics in Feinstein's estimation. Furthermore, both texts illustrate his use of *in extremis* to permit that which he does not condone and would rather not countenance. Finally, both texts unambiguously demonstrate Feinstein's acceptance of financial motives.

### III. Discussion

#### III. 1. Change and no change

Underlying the argument in Feinstein's collection of decisions on *mehitsa*, is the Orthodox concern with change, with the ways and means of remaining traditional in a changing and disruptive world.<sup>22</sup> The perspective accepted is that the laws of God are immutable and therefore, Orthodoxy brooks "no change." This is the foundation of its argument with the Conservative and Reform Movements. It is precisely in this arena of synagogue structure that the argument has found its symbolic image. Orthodox synagogues maintain separate seating, whereas Conservative and Reform congregations allow men and women to sit together. Since the *mehitsa* has become the physical symbol of the difference between Orthodox and non-Orthodox Judaism, the arguments for and against it have taken on quite serious implications.

In Feinstein's *mehitsa responsa*, the argument has special significance, as it embraces three critical and fundamental themes: (1) the problem of change within Jewish legal categories, (2) the need to separate men and women, and (3) the relationship of his Jewish community to the world of Conservative and Reform Judaism. Given the underlying implications for Feinstein and for Orthodoxy, the arguments, and not just the decisions are illuminating.

In brief, Feinstein's decision is not only that men and women must sit separately in the synagogue but also that there

must be a wall, a *mehitsa*, separating them - a wall that may not be less than, and is preferably higher than, sixty inches. A balcony is even better, as it provides the best defence against mingling and frivolous behavior. Finally, all this must be seen as emanating from the immutable law of Sinai, as derived from biblical texts.

### III. 2. Torah Authority

Each piece of the above summation is repeated in several different responsa, but none is argued more uniquely than that the law is *mi-de-oraita* - of Torah authority.<sup>23</sup> The case for a biblical foundation is complicated and indirect. It is best seen in *IM, Orah Hayyim* (OH) 1:39 and in the two articles (Hebrew and English) that appear in *The Sanctity of the Synagogue* by Baruch Litvin<sup>24</sup>. Feinstein uses the Talmudic source in TB Suk. 51a,b - which clearly states that the sages instituted a great innovation - to prove that there was no change, that the separation of the sexes with a *mehitsa* did not constitute a change from Temple practice. Even the balcony that was built on the second night of Sukkot is considered *mi-de-oraita*; though indirect or implied, for Feinstein, it is nonetheless immutable Torah law.

*IM OH 1:39* is a remarkable text. In it, Feinstein struggles with two purposes: to issue a decision concerning *mehitsa* and to clarify a complicated Talmudic text in such a manner that all the texts are harmonized so that there is no possibility of a dissenting opinion. He chooses the biblical

statement from 1 Chronicles, "all this in writing"<sup>25</sup> to be the focal point of interpretation and the primary text to be developed. That text means that nothing in Temple practice, procedure, or structure can be changed, and that this principle rests on the absolute sanctity and authority of Scripture as understood by tradition. All possible relevant sources are then viewed as explicating and implementing that statement. In arguing for the conceptual unity of the Talmud and for the biblical basis of *mehitsa*, Feinstein indicates through both form and content the seriousness of this issue for him.

Given the clear biblical text forbidding changes to the physical structure of the Temple, and the absence of any special instructions to those in charge of the building, Feinstein reasons that there must have been a known requirement for a physical separation (*IM OH 1:39*). No rabbinic law or amendment could have overridden the injunction of 1 Chronicles (as is clarified in *TB Hul. 83*). He sees the *mehitsa* as "implicit in the verse as a pre-existing...Scriptural law."<sup>26</sup> In other words, it is *mi-de-oraita* by default. Only a Scriptural command could override the prohibition of change. Since the change was made, there must have been a known law.<sup>27</sup>

"It becomes clear, then, that a balcony was necessary by original biblical law, so that the women would be above and the men below, and then they would in no sense mingle

or communicate. As the Mishnah states:(the wall of the women's court) was smooth at first, and then a balcony traversed its length, so that the women would see (the festivities) from above, and the men from below, and they would not be intermingled (Middoth 2;5). This proves that originally, though they were separated by an adequate *mehitzah*, they were considered as if commingling; such a situation violated biblical law, which implicitly demanded, then, a balcony."<sup>28</sup>

The biblical source of the *mehitsa* is of such importance to Feinstein that he writes a separate letter to Litvin clarifying that the biblical law does not just prohibit mixed pews but that it prohibits prayer without a proper *mehitsa*.<sup>29</sup>

Why is Feinstein so insistent on the biblical base of the law when his Orthodox rabbinic colleagues do not make the same claims?<sup>30</sup> It is possible to see the source of his claim in the ambiguous texts themselves. It is also possible to understand his perspective in twentieth-century America. His sense of the Jewish world is one of a world in chaos, losing its hold on tradition. He frequently makes disparaging comments about America, such as "in this country, because of our many sins...". In that context, when a group of Jews appear - known as Conservatives - who change some of the rules, claiming their intent is to save Judaism and Jews, Feinstein needs to delegitimize their claims at every turn, especially in the realm of public synagogue practice.

Therefore, it is important for him to show that they are violating Torah, i.e., biblical law, and not just rabbinic law. He also wishes to indicate to those who follow these leaders just how greatly they err. In the introduction to the Litvin essay, he assumes that many pray without a *mehitsa* out of ignorance. He thus tries to impress upon them how serious is their straying and how obvious and sacred is the source forbidding this.

His claim for a biblical basis also emanates from his understanding of rabbinic authority and function. No rabbi can change any aspect of Torah law. If there was no biblical base for a balcony, then no one could have built it. He sees himself as well as others as faithful interpreters and not innovative legislators. The rabbinic task is to preserve the immutable law of Moses in contemporary world and not to make *takkanot*, radical changes .

Having shown the biblical requirement of having a *mehitsa* in the Temple, Feinstein argues that the extension of the *mehitsa* to the synagogue is not just rabbinic, but has Torah authority also.<sup>31</sup> "Frivolity during prayer would then be proscribed by Scripture."<sup>32</sup> Feinstein's equation of Temple with synagogue is not new, as many rabbinic authorities (using the text of TB Meg. 29a) have so ruled.<sup>33</sup> What is new is his insistence on the biblical foundation of *mehitsa* in synagogues. He equates the service in the synagogue with the service in the Temple during which *kalut rosh* was forbidden.

One questioner went so far as to imply that people enter synagogues for the purpose of *mitsva* and therefore do not need separation. His response (*IM OH 1:41*) is that people entered the Temple in awe and for the purpose of *mitsva* and still, physical separation was required. Both synagogue and Temple are equatable in function and, therefore, in structure.

He then must clarify what kind of structure. The Temple had a balcony, and that is therefore preferable (*IM OH 2:43*). Interestingly, he does not make any case for the transferability from balcony to partition. Somehow he assumes that it is permissible to use a partition as it does prevent mingling. He writes many *teshuvot* on their required height, though not on their permissibility. The minimum height required as indicated in *TB Shab. 92a* (see *Rashi* and *Tosaphot ad.loc*) is three *amot* or 18 *tefahim* (handsbreadth).<sup>34</sup> Feinstein rules that five and one half-feet, or sixty-five inches, is a satisfactory translation of those ancient measurements (*IM OH 3:23, 4:31*). However, because we live in difficult times, Feinstein allows himself the leniency to use the solitary opinion of *Rashbam* (*TB BB 100b*), supported by *Nahmanides*, that requires only 17 *tefahim*. Thus, he permits sixty inches (*IM OH 3:23, 4:29-31*) and in one place even allows fifty-eight inches because women are shorter today (*IM OH 3:24*)!<sup>35</sup>

### III. 3. Separating men and women

For Feinstein the whole discussion of height is

intelligible only in the context of the reasons given for separation. If we know why we must separate - what it is the separation must prevent - then the decisor can respond accordingly. The most intricate part of his whole approach lies in his understanding of why; why does the Bible require a *mehitsa*.

*Kalut rosh*, translated as frivolity, is the forbidden state. Feinstein claims that frivolity occurs when women and men are able to talk, to communicate in any fashion (*IM OH* 1:39). The partition must therefore be high enough to prevent the communication and mingling that bring with them frivolity (*IM OH* 1:41). Several rabbinic decisors add visibility.<sup>36</sup> Feinstein, however, insists that only verbal and physical contact are classified as mingling and are, therefore, forbidden (*IM OH* 1:39, 3:23).

The issue of physical contact is very intricate and involves many different considerations. In the series of *mehitsa* decisions, he only once explicitly includes physical contact as constituting a key element of the forbidden frivolity. He does not advance any legal reasons for his limiting *kalut rosh* to matters of verbal and/or physical contact. On the other hand, he does permit men and women to sit together on public transportation on the way to work (*IM EH* 2:14). He also allows men and women to sit together at a wedding without any *mehitsa*. Finally, he reminds his readers that men and women who were not related did sit together to



eat the Paschal sacrifice in the Temple service for Passover (IM OH 1:41). However, in other decisions, Feinstein is determined to prevent physical contact between men and women. In three separate responsa, he prohibits handshaking as an unacceptable form of greeting since it involves a show of affection (IM OH 1:113, EH 1:56, 4:32.9). Mixed dancing is roundly condemned as are the synagogues that permit it (IM OH 4:35, 2:30). Generally, in order to maintain moral standards, Feinstein would keep men and women from all forms of contact. His concern is to control sexual impulses. However, he does not overuse the legal basis for such prohibitions nor tolerate a confusion of grounds. Frequently he resorts to moral exhortation. On the other hand, he supports contact situations that have a purpose and do not violate any direct regulations. As much as earning a living is a powerful alibi, it is also a prime requirement. Going to work shifts the context and meaning of many acts. Thus, he permits and indeed encourages people to do their jobs even under trying circumstances (IM EH 1:56). However, according to Feinstein the ban on physical contact during prayers rests on distinctive biblical requirements that brook no violation.

### III. 4. Differentiating personal and public standards of morality

Feinstein further explains that these acts are matters of public behavior, recognizable (*nikar*), and thus of a different genre from other experiences that require separation (IM OH

1:40). In fact, he is very careful to distinguish the laws of *mehitsa* from other laws that appear similar but are due to reasons of personal moral laxity such as those that fall into the category of *erva* (nakedness, see below), *hirhur* (lewd or distracting thoughts) or *yihud* (the prohibition that man and woman, other than husband and wife, not have the opportunity for intimacy). *Mehitsa*, he insists, is not required to prevent men from seeing women.<sup>37</sup> "The obligation of the *mehitsa* is due to frivolity and not gazing" (*IM OH* 1:40). Therefore, a glass partition fulfills the legal requirements of *mehitsa* - though perhaps not of *erva* (*IM OH* 1:43, 3:23). A balcony, which inherently prevents mingling, does not require a partition such as a curtain (*IM OH* 1:41). However, if women's arms are exposed then a curtain that would block the view of the men might be required (*IM OH* 1:42). His reasoning is quite consistent and rests on the talmudic discussion of the seating arrangements in the Temple. At first the men were outside and the women were inside. Then the men were inside and, according to Feinstein, unable to see the women, but there was still a problem with levity that required the balcony.

"And so, if women are on an upper level, even without a screen or curtain, or if they are below, but behind a substantial, high *mechitzah*, so that there be no fear of levity, it is of no consequence if the women are visible."<sup>38</sup>

### III. 5. Hair covering: prohibitions and confusions

In a series of responsa, Feinstein examines the prohibition involved in looking at women. The laws of *erva* prohibit a man from looking at a woman if his intent is to receive pleasure; but intent is not the only determining characteristic (*IM OH* 1:43; *EH* 1:56, 69). Equally important is the nature of the exposed area. Certain areas are never to be publicly exposed while other parts depend upon public dress codes. If the exposed area is usually covered, then it is prohibited for a man to look and he cannot pray under such circumstances. On the other hand, if women usually appear with this area uncovered and if it is not of the permanently covered parts, then it is not *erva* and prayer is not prevented. The Talmud warns that the hair of a woman contains an erotic element that requires covering.<sup>39</sup> The same is true for a woman's shoulders and arms. For Feinstein, as well as for a significant segment of Orthodox Jewry, these warnings have been translated into a specific dress code. A married woman must cover arms, shoulders and hair. Problems arise, however, in pinning down the legal consequences of these warnings. Even though the law, as Feinstein acknowledges, requires married women to cover their hair at all times, especially in the synagogue (*IM OH* 4:32), he rules that it is permissible to pray, to say the *Shma*, and hear the Torah read even if men can see the uncovered hair of married women (*IM OH* 1:42).<sup>40</sup> This ruling is very difficult to understand given the talmudic position (*TB Ket* 72a, *Ber* 24a) and the clarity of

the prohibition in the *Shulhan Arukh* (OH 75: 1-4). Feinstein does not write a comprehensive responsum explaining his position in light of all these sources. In *IM* OH 4:112, he briefly discusses the issue, and in passing refers to the opinions of Rabbis Karo and Isserles in justifying that hair is not necessarily *erva*. He does rely on the legal reasoning of the *Arukh Ha-Shulhan* which is unusual for him. Feinstein contends that since it is not the custom of women today to cover their hair, it cannot be considered *erva* or nakedness. However, he maintains, shoulders and arms are of a different nature and require absolute coverage. Hence, the *mehitsa* must be at least shoulder height, covering the arm and shoulder areas that are still *erva*, but allowing for the visibility of hair.<sup>41</sup>

Feinstein's rulings on hair covering in general are intriguing. In accordance with the major decisors, he rules that all married women must keep their hair covered in all public encounters. He does not like the wig (*sheitel*), but will allow it if women insist (*IM* EH 2:12, 4:32). The critical factor for him is that a married women's hair be totally covered, allowing only a little (of two fingers width) to be exposed (*IM* EH 1:58). On the other hand, he permits certain women to go bareheaded. In *IM* EH 1:57 he allows a widow to work in the public sector without covering her hair. In an unusual decision, Feinstein states that he was once asked if a widow could be allowed to work in an office without covering

her hair. She needed the job in order to support her children, and it appears to have been a condition of employment. He replied that in a case of great need it was permissible. In this case, he is persuaded that her employment and advancement is at risk if she does not dress like the others. A head covering is too conspicuous and, therefore, limiting in the expected conformity of the business world. Since she is the sole support of her family, and since for Feinstein financial motives are acceptable, his leniency is understandable.

His ruling rests on a distinction between Torah law and rabbinic injunction. According to Feinstein, Torah law forbids a married woman from appearing in public without the proper covering. That law is inviolate. Some rabbis extended it to widows but the extension is contained in the category of custom (*dat yehudit*). He then explicates an ambiguous reference in Rashi on the lawlessness of the act. The interpretation of Rashi's language leaves room for some confusion. Feinstein declares that in the case of a married woman the doubt raised imposes an outright prohibition that can not be mitigated by concerns of complete financial loss because the law directly emanates from Torah. The reverse applies in the case of the widow. Here the doubt leads to a lenient position as the violation incurs an abrogation of *dat yehudit* only. For Feinstein the specter of custom leaves room for leniency.

The important distinction is the complicated legal

question of whether hair covering for a widow involves a prohibition or an obligation. The former would brook no breach no matter what the difficulty. The latter would allow a leniency in the case of serious financial loss. He uses the distinctions in legal categories and linguistic ambiguities in an effort to accommodate the woman's needs. The law for a married woman is of a different order than for a widow. Different categories of law create room for different types of response. He does not apply law in a vacuum. All married women must cover their hair. All formerly married women should cover their hair. The distinction in terminology reveals a different legal base that allows him to use his discretion in this ruling. The source of the law as well as the current social pattern both affect his ruling.

In a similar case, Feinstein is asked whether a divorced woman might be able to appear in public bareheaded. In this case (*IM EH 4:32.4*), the young woman wants to be able to meet men for matrimonial purposes. She is afraid that a head covering will automatically indicate that she is currently married and therefore not eligible for marriage. Feinstein is persuaded that her motive is legitimate and so allows her to remove her head covering. But, he warns, there are conditions. She must inform the man as soon as possible that she is divorced. He would not allow her to mislead a man, just to dispel incorrect first impressions so that she might eventually marry. She must also continue to cover her hair

when not dating. This ruling ironically appears to contradict the basic premise of head coverings. If women must cover their hair so as to avert any sexual temptation, here we have a case in which she does not have to cover her hair specifically in those situations of possible sexual encounter and attraction.<sup>42</sup>

Again one could argue that she is not actually married at this point. Certainly, these two examples of his lenient position occur only with women whose marital status is ambiguous, or more accurately non-existent. This legal distinction is a crucial factor in his responsum for the widow. Additionally, he looks to the particulars of motive - earning a living and future marriage - in order to permit women who ordinarily should cover their hair to appear uncovered. In fact, he insists that when they are removed from the particular circumstances permitting bareheadedness, they should again cover their heads. Thus, in his analysis, the laws requiring hair covering for married women are still operative for these two women. However, because of specific circumstances he will allow them to remove that covering temporarily. Although temporary, this unusual permission is significant and he does not use the formulary of *in extremis* or "because of our many sins".

This inquiry is further compounded by his position on the consequences of a married women refusing to cover her hair. In a very interesting responsum (*IM EH 1:114*), Feinstein

concludes that a man cannot divorce his wife for refusing to cover her hair. He reaffirms this judgment in IM EH 4:32. His only given reason is that "nowadays" the normative pattern is to be bareheaded. Most women, even those who are observant, do not cover their hair. Under such circumstances, a woman's refusal to cover her hair cannot be categorized as lawlessness or rebellion.

The importance of this brief passage is the role given to social reality in determining legal policy. Women's behaviour as a group is unacceptable to him, but has no punitive consequences. He readily recognizes changed social behaviour and his responsa reflect his accommodation to even that of which he disapproves. The phrase "nowadays" is a powerful concept that he does not evade.

Interestingly, all his responsa on hair reflect this acceptance despite disapproval. He does not offer long explanations or legal argument to permit, he merely acknowledges the prevailing custom and rules accordingly. He makes no apology for accepting the social environment. Although he objects to the women's behaviour, he will not allow the law to be misapplied in an effort to persuade them or control the objectionable behaviour. Moral suasion is proper; inappropriate use of legal penalties or jurisdiction is not.

Given these cases, plus his ruling on reciting the *Shma* in the presence of uncovered female hair, one must conclude



that for Feinstein hair covering is not automatically or absolutely *erva* despite the talmudic references. Social custom and public habit play a major role in these personal issues of modesty and morality.

Thus, the legal decisions in these cases are determined to a degree by public custom. However, in the decisions on *mehitsa* public behaviour and custom are not the only determining factors. Feinstein is very careful to maintain an absolute fixed standard as well as insist on keeping distinct the categories of law. Looking at women, deriving pleasure from that act, involves a personal code of modesty and license and affects men and women differently (*IM EH 1:69*).<sup>43</sup> *Mehitsa* applies to public behavior and to men and women equally (*IM OH 1:43*). Though he prefers that men never look at women, he rules that female visibility does not enter into the category of *kalut rosh* and that *erva* is not the reason for *mehitsa* (*IM OH 1:40*). Despite his preferences, Feinstein will not allow anyone to confuse the issues or to argue for *mehitsa* on the wrong halakhic grounds.

### III. 6. Diverse standards

Though halakhic flexibility and leniency emerge from careful definitions and separation of issues, Feinstein is not satisfied with the minimum standard. His ideal design forbids all forms of contact between the sexes, either visual or verbal. Thus, after stating that visibility does not prevent prayer, he is quick to add that it is best to be strict and

have a high *mehitsa* that will prevent all visibility (*IM OH* 1:40). He is especially careful to warn all those capable of higher standards, the "God fearers," to look away and never gaze at women (*IM OH* 1:40, 42; 4:29). To reinforce his division between minimal practices and the preferred ideal, he always prefaces statements of acceptance of lowered standards with such expressions as: "because of our many sins", in *extremis*, "in this country", "in our day". He is not an idealist, although he presents an ideal standard. He does not like the exigencies of daily living, but he understands them and writes with practical concerns.

In one case dealing with separate seating without a *mehitsa*, his decision indicates his constant practical approach combined with his view that there are layers of possible, preferred and prescribed patterns. Thus, he rules that mixed seating is a graver sin than prayer without a partition but with separate seating (*IM OH* 1:44).<sup>44</sup> He reasons that if people transgress a minor law, they should not be encouraged or allowed to transgress in a more serious arena. In fact, he claims that the proper procedure is to convince a mixed seating congregation to at least sit separately. This is the first and only indication that, for Feinstein, separate seating is a more serious matter than *mehitsa*.

In this matter, as in many others, Feinstein's approach is that if the ideal is not possible, we must do what we

can. In one related area, however, he insists on a consistent standard. One must not pray or attend any service in a non-Orthodox congregation.<sup>45</sup> A synagogue that is Conservative is considered a community of *kofrim* (deniers) even if they do not know any better. He extends this category to Reform congregations and rabbis in other responsa. It is, therefore, forbidden to pray in their building (*IM OH 4:91.6*). Even if they establish a special room with an acceptable *mehitsa* for those who wish it, it is still forbidden to pray there (*IM OH 2:40*). Feinstein argues that one cannot do anything that will bring suspicion (*hashad*) upon one's self, nor do anything whose appearance might be misinterpreted, thereby leading others astray (*mareet ayin*). Entering the building of such a synagogue falls into these categories. If someone is seen entering a Conservative synagogue, he or she will be suspected of being Conservative, or will lead others astray by example. In his terms the non-Orthodox synagogue benefits both financially and morally, as it can claim that it satisfies all needs. For both halakhic and social reasons, then, Feinstein prohibits praying in such a room, even if it has a proper *mehitsa*. However, if the same arrangement exists but the synagogue in question considers itself Orthodox, he permits praying in a separate room with a *mehitsa* (*IM OH 4:91.6*). If the Orthodox congregation uses a microphone or does not have a proper partition (and there are some), they are not considered *kofrim*. They have accepted the *mitsvot*,

commandments, and are just disrespectful in this one area. Avoidance is therefore not required.

### III. 7. The motive factor

Intent and motive play a significant role in his halakhic scenario in general, but especially so in *mehitsa* cases. The *mehitsa* must separate men from women and Orthodox from non-Orthodox Jews.<sup>46</sup> Anyone who tampers with this division comes under suspicious scrutiny. His or her motives might stem from a desire to cross these sacred boundaries. Even if the act might be halakhically permissible, it becomes forbidden in this context of interdenominational polemics.

Women, even those who keep the commandments, fall under the blanket of suspicion when they ask for any change in this arena. Thus, when a group of women requested a change from a balcony to a kosher *mehitsa* on the main floor, Feinstein prohibits it. He explains in his responsum that we know (*nikar*) that the women really want mixed seating and this is only the first part of their campaign. The claim of the women that they find climbing the stairs difficult is quickly discounted as an untruth. He states that the women would willingly climb the stairs for physical pleasure. If they were acting "for the sake of heaven," there would be no difficulty.<sup>47</sup> He insists that the women only wish to change the traditions of the people, and that is forbidden (*IM OH* 2:43). Since the attributed motive is unacceptable, the act becomes illegal.

There is no internal evidence as to why Feinstein discredits the women's request. He neither provides halakhic evidence for this decision nor explains why he assumes the women have "wrong" motives. Only the fact that the responsum is written to Baruch Litvin (discussed later) could explain his presumption of their motives. The responsum is very brief, a statement of opinion rather than a legal brief with precedents. In fact, he mentions that for legitimate reasons the change can of course be made. More space for the women might be such a legitimate reason. The rabbi's job security is another acceptable justification. If he might lose his job, then Feinstein allows the change that is, after all, well within halakhic requirements. Earning a living does not excuse all but it is a powerful alibi (*IM OH 3:12*). In a different case, Feinstein permits a man who is a cantor in a Conservative synagogue to write a *get* (Jewish certificate of divorce). He has transgressed, he has prayed in a place of mixed seating with a microphone, but only in order to earn a living. The category of *kofer* can only be applied to one who knowingly and willfully denies God (*IM OH 3:12*). This man, according to Feinstein, has not denied God as evidenced by his continued observance of the Sabbath. All he has done has been in order to earn a living. Feinstein does not give him permission to remain in his post, but he does declare him a kosher scribe especially due to the circumstances of the lack of any other scribe in the vicinity (*IM EH 2:20*). However,

earning a living does not excuse all. Feinstein does not allow an Orthodox congregation to hire a cantor because the man works in a Conservative synagogue (*IM OH 3:13*). Similarly, he disqualifies a man who is a ritual slaughterer because he also works in a Conservative congregation (*IM YD 2:12*). He also advises an Orthodox congregation to refrain from engaging a man to teach Torah to the adults if he is employed by the Conservative community (*IM YD 2:108*).

In those cases where he assumes that the intention of the individual or group is to transgress the law, in open defiance of God and Torah, Feinstein is very harsh in his condemnation and his decision is on the strict side. However, when he assumes the practice in question is the result of ignorance, emergency conditions or economic need, and not rebellion, then he writes a careful and detailed responsum whose purpose is to educate and set the record straight. In such cases there is room for leniency. Some changes are permitted, some motives are acceptable; those that appear to breach sacred borders are quickly denied.

### III. 8. Mehitsa: Symbol of necessary separations

Feinstein's purpose is to promote and preserve Jewish separateness. Separation of the sexes is part of his strategy. Part of it also involves separating the elite "God fearers," those capable of extra effort, from ordinary Jews.<sup>46</sup> For Feinstein, the most significant battle is waged to separate not Jew from non-Jew, but Orthodox Jews from Conservative and

Reform Jews. The *mehitsa* is the symbol of this separation and the focus of this battle. Feinstein's commitment to *mehitsa* - and in this he is typical of all Orthodoxy - is also part of his campaign against all things Conservative or Reform.<sup>49</sup> Truly the *mehitsa* is the "great divide," separating male from female, elite from ordinary, and Orthodox from Conservative and Reform.

For the past 150 years, all Orthodox responsa have consistently maintained the *mehitsa* requirement.<sup>50</sup> In Europe, when the Reform Movement removed the *mehitsa* while still retaining separate seating, the response of Orthodox rabbis was swift and condemning.<sup>51</sup> However, when the Reform Movement instituted mixed pews in America, the Orthodox Movement for the most part ignored the action and kept to itself.<sup>52</sup> On the other hand, when the Conservative Movement moved to change seating patterns a generation later, the Orthodox entered the debate. Between the two World Wars, some Conservative congregations began to be built without separations. Though one of the two synagogues at the Conservative movement's Jewish Theological Seminary continues to have separate seating, it is not the policy of most member congregations. By 1955, Marshal Sklare could write that mixed seating was the practice in the majority of Conservative congregations.<sup>53</sup>

It was not until the 1950's that the debate became a central focus of the denominational divisions, and stands that were taken became frozen principles of faith.<sup>54</sup> For

Conservative Jews, the mixed pews were accepted as the way of the people that did not require formal responsa. According to the Conservative Movement's position, the absence of a codified requirement for *mehitsa* allowed for re-evaluation. Therefore, "No official responsum has ever been issued to justify this move."<sup>55</sup> Robert Gordis, a professor at Jewish Theological Seminary explained that this was a real case of custom overcoming tradition.

"No halakhist has thus far been able to validate the family pew from traditional sources, nor has it ever been adopted as a *tagganah* by a recognized rabbinical body. The tacit surrender of the segregation of the sexes in synagogues of all tendencies is another example of *minhag* triumphing over accepted law. In this instance, it is *minhag America*." <sup>56</sup>

Certainly, the Orthodox polemic against the Conservative community points to this absence of responsa permitting mixed seating. In Orthodox terms, the Conservative stance remains illegitimate and unjustified. On the other hand, from the Conservative point of view, there are no recorded laws specifying the *mehitsa* in ancient times; "if a prohibition is not specifically mentioned and promulgated as such by the Talmud or Codes, the restriction is, at best, a *minhag* or local ordinance of regional validity."<sup>57</sup>

The halakhic issue aside, the debate became one of denominational polemic that reached its peak in the 1950's in



America.<sup>58</sup> At that time, there were Orthodox congregations that had mixed seating. The Orthodox Movement's Yeshiva University even allowed rabbinical students to accept posts in mixed seating congregations, with the hope that they would influence their congregants to change. Both those practices are no longer permitted.<sup>59</sup>

Legal battles were fought in the 1950's in America, as Jews used the civil courts to force one or the other practice.<sup>60</sup> One of the most famous cases was the Mt. Clemens case, in which one man, Baruch Litvin, sued his congregation for depriving him of his rights by changing the seating to mixed pews. The court ruled in his favor and the *mehitsa* remained. This case became an important element in the hardening of the Orthodox position.<sup>61</sup> Litvin collected various rabbinic sources, statements and responsa in the book, previously cited, *The Sanctity of the Synagogue*. Although Orthodox responsa forbidding mixed pews had been written before, after the publication of Litvin's volume all Orthodoxy became defined by this one practice. Today, an Orthodox congregation is largely defined by the presence of a partition.

The *mehitsa* is now the symbol of one's communal allegiance. Therefore, the debate today over women's place and position in synagogue practice is seen as threatening the denominational borders that were drawn by the *mehitsa* debate. In this context, Feinstein's suspicion of the women's motives

regarding the balcony becomes understandable if not acceptable. "Ultimately, observance of the law becomes secondary to correct ideology and political loyalty."<sup>62</sup> The debate is, of course, voiced in legal rhetoric, but the conflict is political. Feinstein and most of his Orthodox colleagues wish to suppress pluralism within the Jewish world. The question remains; why is the *mehitsa* - which restrains women and even removes them visibly - the issue chosen through which to suppress pluralism.<sup>63</sup> There are, of course, other areas of conflict and dispute. Thus, in one responsum (*IM OH* 1:104), Feinstein forbids a Bat Mitsva, because the idea comes from the Conservative Movement. Thus, the opposition to things non-Orthodox is the determinant, but in the process, women are effectively suppressed.

### III. 9. On restricting women

Furthermore, problems arise with the reasoning process underlying the debate, and also with the attitudes the *mehitsa* appears to engender. Does *mehitsa* indicate that women are irrelevant to the service? Usually, the men's section is called the *beit kneset*, the synagogue, by Feinstein. In one text (*IM OH* 4:70.5), Feinstein specifically equates the men's section with the sanctuary proper, the *beit kneset*. In ruling on a prayer recited in English by a woman, his description clearly distinguishes between the women's section and the sanctuary where the men sit. There is only one text (*IM OH* 4:32) in which he speaks of the "women's section in the

synagogue proper." The use of the term *beit kneset* to invariably refer only to the men's section occurs consistently in Litvin's book.<sup>64</sup> Is the *ezrat nashim* not in the *beit kneset*? That impression is further supported by a subtle shift of terminology in the titles of the individual responsa in *Iggerot Moshe*. There is no clear indication of who is responsible for the titles,<sup>65</sup> but they do not reflect accurately Feinstein's language in the texts themselves. In his first decision on this topic Feinstein clearly speaks of the "mehitsa that is necessary in the synagogue between men and women." For the rest of his responsa he either uses that long formulation, comments on the "mehitsa between men and women", or merely mentions *mehitsa*. Sometimes the titles reflect that. However, many of the titles are listed as "Concerning the *mehitsa* for the women's section" (*IM OH* 4:29-32). Is the *mehitsa* there only for the women? The overall effect of the shift in titles is that the partition is there to limit or eliminate women's presence in the sanctuary.

Are women too distracting to the men? What about men being distracting to the women? Feinstein and his colleagues would be quick to deny any attributions of secondary status to women. In fact, Feinstein repeatedly refers to the lessons of Hannah and of women's presence at the Paschal sacrifice. In both those instances, Feinstein insists, the message is that women are clearly not to be restricted from holy places. Moreover, Feinstein insists that seeing and distraction are

not the primary problems; however, he does prefer that men should not look at women. And even though he claims *mehitsa* applies equally to men and women, he is only concerned about men looking at women (*IM EH 1:69*). So the problem remains that the *mehitsa*, though not necessarily established to limit women<sup>66</sup> nor to treat them as irrelevant or secondary, nonetheless, sometimes leads to these ends. For Feinstein the purpose of the *mehitsa* is not to eliminate women. But it does.

As a great divide, *mehitsa* would appear to be the restricting factor in women's participation in synagogue life. This is not necessarily so. It is possible to construct a synagogue such as the Hebrew Institute of Riverdale, New York, wherein the partition splits the room exactly in half. The women have theoretical access to both the *bimah* and the ark. This structure would appear to fit Feinstein's perspective of *mehitsa* being a communal obligation equal for men and women. Under such circumstances, it is possible to speak of women sitting separately as Jews before God - on their own, not as adjuncts to the men in their lives - protected from the distractions of any male presence. The laws and customs that limit women do not result from the requirement of a *mehitsa*. Restrictions on women's ability to be called to the Torah or to serve as prayer leaders are derived from other laws and customs. However, *mehitsa* has become the symbol of women's limited participation.

As the separation of men and women became linked with

political ideology and practice, the limits on women's participation appear to have increased. The great divide stands as Feinstein envisioned it: Separating men and women, elite from ordinary, and Orthodox Jew from Conservative and Reform Jews .

## NOTES

1. Louis Epstein, *Sex Laws and Customs in Judaism*, New York: Ktav, 1967 [1948]: ch. 3, 67-103.

2. Miriam led the women in song and dance, Exodus 15:20,21; Deborah sang her song of victory to the assembled armies, Judges 5; Hannah prayed in the Sanctuary, I Samuel 1; women were professional public mourners, Jer.9:16; women participated in the choral services of the Temple, Ezra 2:65.

3. Women were included in the public reading of the Bible, known as *Hakhel*, TB Kid. 34a; they were present at *Simhat Beit ha-sho'evah*, see *infra*; they were permitted to participate in the laying on of hands (*s'mikha*), part of the sacrificial ritual, TB Hag. 16b; and women were obligated to participate in the Passover sacrificial meal, TB Pes. 91b. For a general discussion of women and early Israelite sanctuaries see Susan Grossman, "Women and the Jerusalem Temple", in S. Grossman and R.Haut, eds, *Daughters of the King*, New York: JPS, 1992: 15-38. See S. Berman, "The Status of Women in Halakhic Judaism", *Tradition* 14 (Fall, 1973): 5-28, for interesting examples of women's obligations.

4. S. Safrai, "Was there an *Ezrat Nashim* in the Ancient Synagogue?" (Hebrew) *Tarbiz* 32 (1963): 329-338 .

The Talmud records the use of different types of temporary partitions - jugs and reeds - that were used when men and women gathered. (TB Kid. 81a: "Abaye made a partition of jugs; Raba made a partition of canes." trans. H. Freedman, London: Soncino Press, 1966. Baruch Litvin, in B.Litvin, ed, *The Sanctity of the Synagogue*, New York: Litvin, 1962: 231 cites sources claiming that these barriers were used to separate men and women other than in the synagogue, implying that there was always a permanent *mehitsa* for prayers. The Talmud, however, is unclear as to when these barriers were used and nowhere specifies the use of a partition for prayer. Even Litvin (*ibid*: 230) must include the reference from *The Jewish Encyclopaedia* (1916) that there is no mention in "the old sources" of the separation of the sexes in the synagogue and that the archaeological record is obscure on this point. Epstein, *Sex Laws*: 81, argues that the temporary barriers were in use only when the synagogue was used for a general public assembly, at which times women came in large numbers. He claims that they were not used for regular worship as women did not frequently attend. However, there are many sources that indicate women did attend services and were active in synagogue life; for example, see B. Brooten, *Women Leaders in the Ancient Synagogue*, California: Scholar's Press, 1982. See also n.6 *infra*.

5. Litvin, *The Sanctity*: 225.

6. TB Ber. 17a, Sot. 22a, Lev. R. 9,9 , Sofrim 18:6. Solomon Schechter, in "Women in Temple and Synagogue", *Studies in Judaism* vol 1, Philadelphia: Jewish Publication Society, 1911: 313-325. Hannah Safrai, "Women and the Ancient Synagogue", in Grossman and Haut, eds, *Daughters of the King*: 39-49.
7. Jonathan Sarna, "The Debate Over Mixed Seating in the American Synagogue", in J. Wertheimer, ed, *The American Synagogue: A Sanctuary Transformed*, New York: Cambridge University Press, 1987: 363-394.
8. Litvin, *The Sanctity*: 139-40. Some of the rabbis treat the requirement for separate seating differently than the requirement for *mehitsa*. Rabbi J.B. Soloveitchik claims that separate seating is a "Pentateuchic injunction (*issur de-oraita*)", having Divine provenance, while a *mehitsa* is only a rabbinic ordinance. This article by Rabbi Soloveitchik is a reprint of a letter to Rabbi Lapidus originally published in *Conservative Judaism*, v.11 (Fall, 1956): 50-51. As we shall see later, Rabbi Feinstein does not accept such a bifurcation of the law.
9. Litvin, *The Sanctity*: 145,167.
10. Medieval European synagogues definitely had a separate women's section, frequently called the *Weibershul*. This area, sometimes a room or annex, was so separate that some women, called *firzogerin*, would lead the others in prayer. The communities in Worms and Frankfort built separate buildings for the women. *Encyclopaedia Judaica*, s.v. *mehizah*, 11:1235, and *ibid*: 192, 226.  
The *Be'er Hetev* in his commentary on the laws of reading the *megillah*, notes that some young women went to the women's synagogue, *beit ha-knesset nashim*. *Shulhan Arukh*, OH 689.
11. Cited in Litvin, *The Sanctity*: 98, 209.
12. The word *tikkun* might simply refer to a physical alteration, a repair. It might also imply a major halakhic enactment.
13. "And the land shall mourn, every family apart: The family of the house of David apart, and their wives apart;...All the families that remain, Every family apart, and their wives apart." (Zech. 12:12-14).
14. 2 Samuel 6:22; Exod. 15:20; Judg. 16:27, 21:21; Jer. 31:12.
15. Jer. 9:16. Women as official wailers raises interesting questions about the prohibition of *Kol Ishah*, the voice of a woman. 2 Chronicles 35:25 also lists women as official singers

at funerals.

16. Sanh. 1:5. According to legislative procedure, no additions could be made to the city or the courts of the Temple without a *Bet Din* (court) of seventy-one sages. It is unclear whether a balcony would require such a rabbinic process or whether it was part of the original plan.

17. 1 Chronicles 28:19. "All this in writing, as the Lord hath made me wise by His hand upon me even all the works of this pattern."

18. The literal meaning is light headedness, but different decisors vary on the conditions that bring it about, from gazing to physical mingling.

19. This decision will be referred to in the conclusion.

20. TB Beitsa 30a, BB 60b.

21. In two different responsa, Feinstein forbids a man from working as a *shohet* or mentor if he holds a job in a Conservative synagogue. *IM YD* 2:12, 108.

22. Many studies confirm this concern, such as: D. Ellenson, "Jewish Legal Interpretation: Literary, Social and Ethical Perspective", *Semeia* 34 (1985): 93-114; J. Gurock, "Resistors and Accommodators: Varieties of Orthodox Rabbis in America, 1886-1983", *American Jewish Archives* 35, (October, 1983): 100-130; N. Joseph, "The Traditional Denial of Change: Women's Place in the World of Rabbi Moses Feinstein", *Journal of Religion and Culture* 2 (1987): 190-201; I. Robinson, "Because of Our Many Sins", *Judaism* 35 (Winter, 1986): 35-46. In Litvin, *The Sanctity*: 43, Saul Bernstein claims that the Oral Torah is "unchanging and unchangeable..."

23. *Mi-de-oraita* is best translated as having the authority of Torah. Many scholars use the words biblical, Scriptural or Pentateuchal as acceptable translations. However, there is a definite difference between the concept *mi-de-oraita* and the genre of the written Torah, *Torah she-bikhtav*. They are not necessarily equatable. Rabbi Feinstein uses the word *mi-de'oraita*. Although the English translators in Litvin's book, *The Sanctity*, use the word Biblical, I think it is not justified. The words do not necessarily have to be written in Scripture in order to have the authority of Torah as long as it is derived from the Bible. For Feinstein, separate seating with a *mehitsa* is derived from the Bible, though it does not explicitly say so. Rather, he presents a long argument to prove that *mehitsa* is implied in the Torah and, therefore, can qualify as *mi-de-oraita*. In the process, Feinstein adds a new mode of *mi-de-oraita* by allowing the later part of the Bible



and not just the Pentateuch to provide the source for this category. I am indebted to Jack Lightstone for this clarification.

24. See n.4.

25. 1 Chronicles 28:19. see n. 17.

26. Feinstein, in Litvin, *The Sanctity*: 120.

27. Alan Yuter also describes Feinstein's reasoning and originality on this issue. "Mehitsa, Midrash and Modernity: A Study in Religious Rhetoric", *Judaism* 28 (1979): 152.

28. Feinstein, in Litvin, *The Sanctity*: 122.

29. Feinstein, *ibid*: 125.

30. See n.8.

31. Feinstein, *ibid*. 124; cf. R. Nessim in his *Novellae to Meg.*, folio 26; TB Meg. 29a.

32. Feinstein, in Litvin, *The Sanctity*: 124.

33. *Ibid*: 98, 169-173.

34. An *amah* (*amot* pl.) is an ancient measurement. Translated as a cubit or an ell, it measures between 446-521 mm. (EJ s.v. "weights and measures" 16:379.) Feinstein takes it to be approximately 22 inches.

35. This statement is not based on any empirical evidence but rather derives from his acceptance of a twofold meaning for the word *gadol* - great, large. The ancients were *gadol*, greater than we are today. We are less in stature, both spiritually and physically. It is unusual for a play on words to have halakhic consequences, although distinctions based on physical differences between "now" and "then" is a consistent Orthodox strategy.

36. There are some who claim that viewing women is definitely part of the problem, see Rabbi Aaron Kotler in Litvin, *The Sanctity*: 125-139.

In 1876, a group of seventy rabbis led by the author of the *Kitzur Shulhan Arukh*, Rabbi S. Ganzfried, declared that a proper *mehitsa* must prevent men from being able to see the women. The most authoritative sources for this position include: *Responsa Maharam Shick* OH 77; *Zichron Yehuda* OH 62; *Sha'arei Halkha U'Minhag* of the Lubavitch Rebbe vol. 1 pp. 198; *Orah Mishpat* of Rav Kook in the section on synagogues; *Tzitz Eliezer* vol. 7,8; *Taharat Yom Tov* of the Satmar Rebbe

vol. 6 pp. 28-60. See *Issues in Practical Halacha*, issue number 2, compiled by Melbourne Kolliel Lubavitch, @nysernet.

37. Those rabbinic authorities who rule that a *mehitsa* must be high enough to prevent the men from seeing the women at all would not allow a *mehitsa* whose top third is glass as Feinstein does. see note 33.

38. Feinstein, in Litvin, *ibid*: 123.

39. TB Ber. 24a; Ket 72a; *Sh'A* EH 21:2; OH 75:2.

40. The distinction between *minhag* and law, as well as the weight given to social reality and public custom is at the heart of an interesting debate on the similarities between hair covering practices and *mehitsa* requirements. Marc Shapiro, "Another Example of 'Minhag America'", *Judaism* 39:2 (Spring 1990): 148-154. Michael Broyde, "Further on Women's Hair Covering: An Exchange", *Judaism* 40:1 (Winter 1991): 79-94. Leila Leah Bronner, "From Veil to Wig: Jewish Women's Hair Covering", *Judaism* 42:4 (Fall 1993): 465-77.

For Feinstein the distinctions are clear: *erva* is a concept whose legal applicability is redefined in some instances by social custom. *Kalut rosh* has no such variability. Moreover, he is quite adamant that while he allows prayer to be said in the presence of married women's uncovered hair, he does not permit the women to go about bareheaded. They violate the law by their behaviour. The only issue his rulings address are the consequences of that violation. The distinction between prohibition, permission and disapproval is quite important in this debate.

41. This distinction creates an interesting problem for Feinstein. A balcony does not require a *mehitsa* since mingling cannot occur, but it does require a curtain if the women come to synagogue with bare arms because of the laws of *erva*. (*IM* OH 1:42)

42. One further complication; Feinstein rules that a wig without a hat on top of it is proper even though to all appearances it is uncovered hair. In one part of that responsum (*IM* EH 2:12), he notes that even if the men do not recognize it as a wig the women will. This is indeed a strange comment given the purpose of female head covering is clearly to avoid all erotic thoughts in men not women.

The wig itself has a long history of dispute. Many rabbinic authorities opposed it although the *Rema* permitted it (*SH* OH 75:2). Contra to Feinstein's position on both wigs and saying the *Shma*, Rabbi Jacob Emden went so far in his disapproval as to forbid a man's prayers in the presence of a woman whose head was covered by a wig only. Leila Leah

Bronner, *Judaism* 42,4: 472.

43. see my discussion of this very point and text in the section on *IM OH* 1:43.

44. In this he comes closer to the ruling of Rabbi Soloveitchik (see n. 8 supra) who differentiates between separate seating, without a partition, and segregated seating with a *mehitsa*. For both of them separate seating is a grave matter that cannot be overturned under any conditions.

45. Rabbi Soloveitchik also takes an uncompromising position on prayer in a Conservative or Reform synagogue. He rules that it is preferable to pray alone even on Yom Kippur rather than enter a synagogue where there is no separation. (Litvin, *The Sanctity*: 110.)

46. Feinstein restricts contact with Conservative or Reform institutions in a number of responsa. He even forbids answering "amen" to a Conservative rabbi's blessing. *IM OH* 2:50,51; *OH* 3:21,22. See Robinson, "Because of Our Many Sins": 40-41.

47. This is consistent with other rulings concerning women's increased ritual participation. If they were righteous women, their motives would be for the sake of heaven, and therefore, the acts which are nowhere forbidden, would be permitted. See further the discussion of motive in *IM OH* 4:49, and a responsum written with his approval by his grandson, 4 Sivan 5743; unpublished.

48. Robinson, "Because of Our Many Sins": 38.

49. *Ibid*: 40-41,44. Yuter, "Mehizah, Midrash and Modernity": 153-154.

50. Litvin, *The Sanctity*: ch.2, 147, includes letters from many representative groups within Orthodoxy as well as the statements of Chief Rabbi Isaac Halevi Herzog, Rabbi Abraham Isaac Kook, Rabbi Joseph B. Soloveitchik, Rabbi Moshe Feinstein, and Rabbi Aaron Kotler. "One could go on, page after page, enumerating all the similar responsa, without a single dissenting orthodox legal opinion, which appeared over the last 150 years."

51. Litvin, *The Sanctity*: ch.3, 142-220, especially, 193, 198. The sharpest condemnation of the Reform Movement in the nineteenth century came from Maharam Schick, Hatham Sofer, and Rabbi Eliyahu Guttmacher.

52. David and Tamar De Sola Pool, *Old Faith in a New World*, New York: Columbia University Press, 1955: 100. Towards the end of the nineteenth century there was an unsuccessful movement in Shearith Israel, the leading Sephardic synagogue in New York, to remove the balcony and institute family pews. Many women protested against such radical innovations.

53. Cited in Sarna, "The Debate over Mixed Seating": 380.

54. Ibid: 378. Sarna commented: "In time, 'separate seating' and 'mixed seating' became shorthand statements, visible expressions of differences on a host of more fundamental issues that lay beneath the surface." His article offers an excellent analysis of the history of mixed seating in the American synagogue.

55. Lawrence Kaplan, "The Dilemma of Conservative Judaism", *Commentary* (Nov. 1976): 145.

56. R. Gordis, "Seating in the Synagogue: Minhag America", *Judaism* 36 (Winter, 1987): 53. see note 39.

57. A. Yuter, "Mehizah, Midrash and Modernity": 151. The Conservative position is presented in a special edition of the journal, *Conservative Judaism* 11 (Fall, 1956).

58. The debate continues to split congregations to this day.

59. Litvin, *The Sanctity*: 340-341; Rabbi Soloveitchik states that even though some members of the Rabbinical Council of America occupy pulpits in congregations with "improper seating arrangements," it is still against halakhah. Ibid: 141. See also Lamm's article in *ibid*: 311-338.

60. Jonathan Sarna in "The Debate over Mixed Seating": 381-86, has shown that in the Reform and Conservative Movements the issue of *mehitsa* was presented on the basis of family togetherness, women's equality and the modernity of Judaism. In the Orthodox world the debate focused on a dissociation from all things Reform and Conservative which were seen as ultimately being imitations of Church patterns.

61. Lawrence Schiffman, "When Women and Men Sit Together in American Orthodox Synagogues", *Moment* 14,7 (Dec. 1989): 48-49.

62. Yuter, "Mehizah, Midrash and Modernity": 158.

63. Sarna notes that only American Orthodoxy defines itself by the *mehitsa*. British Orthodoxy separates itself from the non-Orthodox world through its position on mixed choirs, German Orthodoxy on the use of an organ and Hungarian Orthodoxy on

the position of the pulpit. Ibid, Wertheimer, *The American Synagogue*: 394, note 109.

64. See n. 4 supra.

65. In the preface to his last volume, Feinstein seems to indicate that this editorial work was done in the later years by his grandson, Rabbi Rappaport.

66. The pattern of separation of the sexes might be embedded in social etiquette and would not necessarily indicate a desire to limit women for fear of their sexuality. See Epstein, *Sex Laws and Customs*: ch.3, 69-83.

## Chapter 4. SEPARATE SPHERES: RITUAL PARTICIPATION

### I. Introduction: Exemptions and exclusions

"To exempt is to exclude  
 to exclude is to debar  
 to debar is to demote  
 to demote is to demean"<sup>1</sup>

In several significant ways, Jewish law treats men and women similarly.<sup>2</sup> Certainly, in all manner of criminal law there is no difference whether the culprit or victim is male or female. The same can be said for much of civil law, although matters of marriage, divorce and inheritance are definitely gender designated with women's roles confined. Some of the legal distinctions in marital matters revolve around a woman's freedom to act on her own both in terms of vows and finances. Of consequence to Feinstein's responsa, and consistent with traditional norms, is the practice wherein a woman follows the custom of her husband (*IM OH 1:158*). If she is used to Sephardic ritual, but he is Ashkenazi, she must adapt to his pattern. In some instances, such as her desire to follow the custom of her mother and wear a wig, Feinstein allows her to do so despite the husband's disapproval (*IM EH 2:12*). On the other hand, he does not allow her to shave her hair if her husband disapproves since, according to Feinstein, that specifically infringes on her husband's prerogative (*IM EH 1:59*). He defends the consistency of these decisions in *IM EH 4:32* always insisting that these rulings are not indicators

of inferiority or lack of respect<sup>3</sup>.

In matters of inheritance, many of the statutes have been reinterpreted to allow women to receive "gifts" and maintenance from their father's and husband's estates. The continuing disparity in matters of divorce remain a source of grave inequity. Feinstein wrote many decisions, some quite controversial, in order to release women from the fetters of this legal trap. Although he expanded the use of some rabbinic powers and limited the necessity for a Jewish divorce under certain conditions, he worked solely on individual cases and, as was his custom, did not address the problem globally.

Predominately, it is in the realm of ritual law, of obligations, exemptions and prohibitions that the gender distinctions are so evident.<sup>4</sup> Men and women are equally obligated to a myriad of rules and regulations. Within that profusion, women are exempt from fourteen rites.<sup>5</sup> The Mishna in TB Berakhot (20a) exempts women from *Shma* and *tefillin*, but obligates them in prayer, *mezuzah*, and grace after meals. The discussion in TB Kiddushin (33b-34a) of the pattern for exemptions specifically lists *sukkah*, *lulav*, *shofar*, *tsitsit*, *tefillin*<sup>6</sup> as those rituals from which women are released because they are positive acts that are limited as to time. These exemptions have been rabbinically defined and refined.<sup>7</sup> Many remain in the category of choice (*mutar*), some acts have reverted to obligations while others somehow became forbidden.

Feinstein's decision compelling a father to pay for his

daughter's education is an engaging example of the shifts that have taken place in the sphere of women's ritual obligations and exemptions. Educating females, initially listed as an exemption, was once considered a prohibition by many. Today, it is considered an obligation and a right by many Jews especially in the Orthodox community. Similarly, we can trace other exemptions that have become mandatory if not complete legal obligations. For example, Rabbi Joseph Karo author of the *Shulhan Arukh*, refers to the necessity for women to say the *Shma* prayer (OH 70:1), even though the Talmud (TB Ber. 20a) exempts them.

Throughout history, there have been shifts in women's performance of some of these rituals. Many have entered the repertoire of pious women so much so that memory of the exemption status is fading. Thus, for centuries women have gone to considerable lengths to hear the *shofar* on Rosh Hashannah. Many decisors, including Feinstein have permitted the *shofar* to be carried home on the holiday, something normally forbidden, in order for a woman to hear the requisite sounding of the horn. Some have argued that the legal category has shifted to one of obligation based on the behavior of women.<sup>8</sup> Rabbinic authorities have in fact required women to perform certain previously exempted rituals. Thus, the *Magen Avraham* explicitly expects women to count the *omer* between Passover and Shavuot (OH 489:1) and there are interesting correlations between a woman's custom to perform these acts



and the force of religious vows.

However, there has been a great deal of confusion and misinformation in this area of exemptions. The current interest in women's participation in religious life, especially public ceremonial, has compounded the predicament. Some people argue that women are exempted from these fourteen because of their competing responsibilities on the domestic scene. Since the Talmud (TB Kid. 29-33) presents some of the exemptions under the category of positive time bound commandments, rabbinic theorists posit the domestic role as the competition for a woman's time. Reliance on this principle as generating the exemptions is rejected by the Talmud itself (TB Kid. 34a). In fact, many of the exemptions do not correlate with the talmudic principle of positive acts that are time bound. Thus, women are equally obligated to fulfill the commandment of *kiddush* for the Sabbath (TB Ber. 20b; *ShA* OH 291) and holidays as well as of matzah on Passover (TB Pes. 43b), both of which are very specific as to time elements. Moreover, women are exempt from Torah study which has no time qualification. However, some of the exemptions do correlate with a domestic\public divide. Women are exempt from those rituals that are the central focus of public prayer, especially *tallit*, *tefillin*, *aliyot*. In the Orthodox world, they do not constitute the quorum of ten for prayer, thus keeping women away from the public performance of these rites and preventing them from standing as representatives of the

communal group via their performance. Moreover, their exemption from the world of Torah study has left the prized public sector of Judaism open to men only.

One of the most ironic elements is that women are considered exempt from the procreative commandment (TB Yev. 65b). Clearly, this exemption has never been equated with a prohibition. Indeed, many contemporary portrayals of women's religious responsibilities often emphasize their procreative\domestic role to the exclusion of other roles. This form of reasoning flies in the face of strict legal decrees while clearly complying with the design of Judaic family patterns. Undoubtedly, this exemption undercuts any attempt to equate exemptions in general with prohibitions, as well as repudiating any simplistic public\domestic explanation of the exemptions themselves.

The above distinctions generate confusion and ambiguity. No one paradigm can fully explain all the exemptions nor delineate all the concomitant functions<sup>9</sup>. Aside from the technical question of whether women may perform any of these acts, there remains the legal question of the permissibility of reciting the associated benedictions. The appropriate blessings all contain the formulary "who has commanded me." The rabbinic controversy focuses not only upon the performance of these optional rituals, but also upon the suitability of saying that one is commanded to perform what is in truth only at best optional.<sup>10</sup>

As will become evident in the following discussion, Feinstein is sometimes explicit and at others quite cryptic. All his responsa on women's education disregard the history of prohibitions and exemptions and assume a stance of appropriateness and even obligation. There are a number of his texts that treat the issue of women's recitation of blessings within the variable categories of responsibility and obligation. Despite the relative importance of the topic in the American Jewish community, there is only one text that considers women's appropriation of exempted rituals in general.

One important distinction of qualifying to perform ritual acts is the assumption of adult status. Only adults are ritually active, fully responsible. The puberty ritual for boys known as Bar Mitsva is directly a public celebration of male ritual responsibility. For Feinstein the question of a girl's Bat Mitsva provokes his concern for a different and to him a much more serious consequence than her private or public assumption of ritual activities. His preoccupation with separating men from women, Orthodox Jews from non-Orthodox and with repelling modernity all come into play in his decisions on women and ritual responsibility.

## II. Ritual Participation: Bat Mitsva

Rites de passage<sup>11</sup> for women in Judaism, other than marriage and death, have been minimal and most often celebrated privately.<sup>12</sup> Daughters were named in the synagogue in a ceremony that usually involved the father only. Puberty rituals, for the most part, were absent. In the latter part of this century there has been an increase in the public celebration of a girl's "coming of age". Bat Mitsva ceremonies, paralleling Bar Mitsvas for boys, have increased in popularity, allowing some women to take a central role in public synagogue rituals. Usually Reform, Reconstructionist and Conservative congregations have welcomed this opportunity to include women and to allow them an opportunity to participate publicly in and be the center of communal celebrations. Even segments of the Orthodox world have included some form of ritual recognition for twelve year old girls. The terms Bar and Bat Mitsva refer to one who is subject to the law and connotes membership in the community. Thus, the Bat Mitsva celebration is seen as an entry point for women into the Jewish world today, a valid rite of passage that marks the transformation of the individual from one status in society to another. In this context it has been viewed as an important vehicle for learning, commitment and identity.

Precedents are scarce, since even the Bar Mitsva celebration is relatively new<sup>13</sup> and was never legally

mandated. One need not have a "Bar Mitsva" celebration in order to be a Bar Mitsva.<sup>14</sup> Moreover, the biblical age of majority is most usually twenty. Only in the Talmud do we find the ages of twelve and thirteen as signifiers of adulthood. The Talmud (TB BM 96a, Kid. 16b, Nid. 45) advances the concept of a male and female age of maturity as a juridical status, referring to a person who is no longer a child and may legally act as an adult. For a woman this involves acting on her own behalf, no longer dependant on her father, mother or brother in marital arrangements. The category depends on two criteria: age and physical signs. Having attained one or both of these measures, boys and girls are then considered to be of age: persons who are obligated to observe the precepts of Judaism. There is no discussion of any related ritual celebration. Boys are labelled Bar Mitsva in their fourteenth year and girls Bat Mitsva in their thirteenth year (Rashi on "children" TB Yoma 82a). The term Bar Mitsva appears five times (TB BK 15a, BM 96a, San. 84b, Men. 93b) and Bat Mitsva only once in the Talmud (TB BK 15a). The Mishna (Avot 5:21) asserts that thirteen is the year of commandment. In a different section, it specifies (Nid. 5:6) that the vows of a girl who is twelve and one day are valid. The Talmud (TB Kid. 16b) clarifies that a boy is of age when physical signs appear after he is thirteen plus one day. Maimonides (Yad, Ishut 2:9-10) stipulates that a girl's signs of adulthood are those that appear only after her twelfth birthday plus one day. The

concern exhibited in the cited texts is for the clarification of legal autonomy and obligation of the individual. There is only one hint of a public ceremonial recognition of this change in status for a boy of thirteen who is blessed by the elders (Soferim 18:5). In fact, some claim that there is no description of any ceremonial act before 1400 and even then, it is only described in the lands of Ashkenaz (Central and Eastern Europe).<sup>15</sup> In the sixteenth century there was still no evidence of a Bar Mitsva celebration among Sepharadim (communities originating in Spain). The celebration for the male that develops in the medieval period focused on his participation in the realm of public prayer: *tefillin* (phylacteries), *aliyah* (participating in the public reading of the Torah), and *minyan* (prayer quorum). There is no reference to any similar pattern for a female. The earliest mention of a celebration for a girl is found in nineteenth century Germany under the authority of R. Jacob Ettlinger and in Iraq in the *Ben Ish Hay* by Joseph Hayyim b. Elijah.<sup>16</sup>

Despite this initial nominal approval, the contemporary responsa literature remains divided on this topic. Some rule against any celebration: others limit the context, and still others are more accepting of the concept. For the halakhists, there are major questions to be settled before innovative practices such as celebrating a Bat Mitsva may take place in synagogues. All acknowledge that girls over the age of twelve and one day have attained religious adulthood. Subsequent to

that day a girl is a Bat Mitsva, a person obligated in all areas of Jewish law. There is no ceremony required to achieve this transition; the same applies to males. That ceremony is merely a recognition of the change that has automatically occurred on the appropriate birthday. Instituting a new and optional ceremony for women raises many legal questions, simply because it is not necessary and has no liturgical location.

The central issues include what a woman may do or say on this occasion, where it may take place, who can participate, and what are the legal and liturgical responsibilities that ensue. Equally important is the question of where this idea originated and who introduced it. For some, the entire project is tainted because of its source in the non-Orthodox sector. There is also an underlying concern, frequently unstated, that public ceremonies such as a Bat Mitsva celebration will lead the community to unacceptable actions and to a loss in the accepted pattern of Jewish life if women take on new roles.

For R. Moses Feinstein the latter concerns weigh heavily upon his decisions.

II. 1. GLOSSARY OF TECHNICAL TERMS

*bar da'at* ... one having legal competence, a "normal" male or female of age of majority.

*bima*... pulpit, the central platform from which location the liturgy is led.

*derasha*... a formal homiletic address or lesson.

*milim* ... literally words, herein referring to a minor speech probably with Torah content.

*nikar* ... literally recognizable, herein referring to a formal recognizable distinction.

*kiddush*... sanctification of the calendrical holy day by blessing over wine, sometimes including a variety of edibles.

*reshut*... permission to act, but the act remains optional as opposed to mandatory.

*se'udat mitsva* ... ritual commemorative prescribed feast often used to celebrate the successful fulfillment of a personal legal obligation, having very specific legal parameters and rules.

*simha* ... literally joy, it most frequently refers to a joyous occasion, a celebratory event in recognition of a personal achievement. This popular term is applied widely to joyous events, but it has no legal canons.



II. 2. TEXT Treatment

IM OH 1:104

1956

CONCERNING BAT MITSVA

TEXT translation

The question concerns those who wish to conduct some kind of service and celebrate with their daughters when they become Bat Mitsva. This should not be done in the synagogue on any account, not even in the evening. The synagogue is not a proper place for optional acts, even if it was built for these purposes. The Bat Mitsva ceremony is definitely just an optional (permitted) thing, merely vanity (worthless), and there are no grounds for allowing it in the synagogue. Moreover, since the origin for this (the Bat Mitsva ceremony) is in the Reform and Conservative (movements, it has no basis). Only if the father wishes to have a *simha* (celebration) at home, is it permitted. Nevertheless, it (the home celebration) has no real standing and should not be considered as commanded or constituting a *se'udat mitsva* (prescribed feast). It is merely the *simha* of an ordinary birthday. If I had the power, I also would cancel the celebration of Bar Mitsva for boys in our country, since it is obvious that it does not bring anyone closer to Torah and Commandment, not even the boy himself, not even for one hour. Moreover, in most places it causes many to

violate the Sabbath and other prohibitions. In any case, that which is already customary and emanates from a commandment is difficult to eliminate. However, even though there is no prohibition with respect to a house ceremony, it would be better not to start something new for girls that is not derived from any commandment. But, to do this in the synagogue, even at night when they are not praying, is forbidden.

The text then goes on to another topic, that of dishwashers.

FORM

1. Date and Greeting
2. *Be-Davar* ... the question + *Hineh*... the decision
3. *Ki*.. reasons 1 and 2
4. *Ve-Rak* ... concession with restriction
5. *Ve-'I*... personal preference + objection
6. *Al*... practical resolution + advice
7. *Aval*... repeat decision
8. *U-Be-Davar* ... next topic

The text is short and the decision is clear. It consists of one paragraph of twenty one lines. There are no sources mentioned. Although Feinstein speaks of sources that permit and prohibit, he does not specify any nor present an argument based on them. The letter merely affirms his prohibition. There is no argument. He is very careful to differentiate the halakhic categories of permissible (*mutar* or *reshut*), exempt (*patur*), obligatory (*hayav*) and prohibited (*assur*).

A primary ruling is issued. Then a preference is stated that allows a practice, which he does not consider advisable. Finally, the whole Bar/Bat Mitsva endeavor is demeaned and viewed as a waste even if not decisively prohibited.

ANALYSIS

In this first responsum on Bat Mitsva celebrations, Feinstein sets out his ruling and his preferences very clearly. A Bat Mitsva ceremony for girls in a synagogue is absolutely forbidden. He sees no benefit gained from any such celebrations, even for boys. In fact, he only sees possible violations of law. But he recognizes that he cannot stop the Bar Mitsva celebrations and so he does not argue that an act which leads one to sin, by violating the Sabbath, is prohibited. Undoubtedly, if he thought the act directly violated the law, he would issue an explicit ruling prohibiting such a ceremony. Nonetheless, Jewish legal categories might allow for such a prohibition based on the resulting violations. Instead he allows the custom to stand. Yet, in yielding to the prevalent system he manages to sustain his disapproval. It is possible that he is using this opportunity to indicate to the elite that even for boys the ceremony is problematic. He states his doubts and his preference, but does not issue a ruling because he is not confident that anyone will stop the boys' celebrations. He asserts that it is too difficult to suppress. This statement is a very interesting acceptance of the limit of his power or authority in a document whose ruling is presented solely on the basis of his authority.

When referring to celebrating the Bat Mitsva, he writes as if he is on firmer ground and therefore, he argues with

full command. As mentioned, the decision is based on personal authority and is not developed from legal precedent or source analysis. His uncompromising ruling is that any such celebration in the synagogue at any time is forbidden. By including "not in the evening", "not even when they are not praying" and "not even if it was built for these things", he steers clear of any possible rejoinders or requests for compromise. There is no discussion, nor is there an explanation - the decision remains resolute: in the synagogue - never!

Furthermore, Bat Mitsvas should not be celebrated at home because they represent something new and that is not advisable. Although he recognizes and accepts the cultural practice of celebrating birthdays, he does not wish to allow something novel in the context of a religious celebration. Feinstein is especially opposed to this practice, because it emanates from the Reform and Conservative movements. Consistent with his desire to separate Orthodox Jews from any shared pattern with non-Orthodox, he advises that even where it is permitted, the celebration should not take place.

He clearly declares that "It is never to be considered a prescribed feast nor a commanded act." He thus insists unequivocally that it is never of the same genre as a boy's. According to Feinstein, the Bar Mitsva ceremony is at least derived from a commanded act, but he never clarifies to which commandment he refers. Significantly, he reveals very little

of his legal thinking in this responsum.

Three words appear in the Hebrew text in Yiddish: ceremony, Reformer and Conservativer. Feinstein's use of Yiddish here is intriguing. Sometimes his use of Yiddish or English reflects a difficulty in finding an appropriate Hebrew word, such as with the word dishwasher (in the next section of this document). At other times, he uses transliteration to separate categories and distance himself from the vernacular, such as using the transliterated word "rabbi" for Conservative clergy. There exists an appropriate Hebrew word for the above term; his use of transliteration, however, manages to preserve his disapproval. Perhaps his use of Yiddish maintains that disapproval for the ceremony, according to Feinstein, is an American invention, new and not indigenous to the Jewish way. The Conservative and Reform movements are clearly American and therefore, in Feinstein's estimation, are not to be given the status implied by the use of legitimate Hebrew words. His use of Yiddish for these categories can be seen either as his common language pattern or as a sign of remoteness. Language, form and content support his unequivocal disdain for the institution of a Bat Mitsva ceremony.

Thus, this short text is quite revealing of his opinions, preference and advice. He does not like these ceremonies and sees no benefit in them. Although he recognizes the girls' attainment of juridical adulthood as a joyful occasion, *simha*, he does not see any value in any type of

ceremony. Moreover, he does not like anything new, even when there is no clear prohibition. Interestingly, he acknowledges that girls do become Bat Mitsva although he presents no sources for this.

This responsum displays different levels of his own authority and its limitations, as well as his preferences. He would like to prevent all forms of puberty celebrations, but feel that he can only stop the Bat Mitsva. The Bar Mitsva pattern is so ingrained in America that even he cannot control it. However, the Bat Mitsva is new and his advice is being sought. Here he is in control. In his clear opposition to the celebration both because of its newness and its link to Conservative and Reform patterns he further indicates his desire to separate boys and girls and Jews from Jews. His task is to preserve tradition. Nonetheless, at the same time he does accept certain North American patterns such as birthdays and Bar Mitsvas.

IM OH 2:97

no date (1959?)

A QUERY ABOUT MY DECISION IN IM OH 1:104 CONCERNING A FESTIVE MEAL FOR A BAT MITSVA

TEXT translation

You, honorable rabbi, ask why the feast for a Bat Mitsva, on her attaining twelve years, is not considered prescribed (in the same manner) as with a boy, since she now becomes bound by the commandments. The question can be added to and intensified. Even though there is no merit if a girl would deliver a *derasha* (a formal homiletic address), because she is exempt from the obligation to study Torah, nonetheless, on the day that a boy becomes Bar Mitsva the meal is considered a *se'udat mitsva* even if he does not deliver the *derasha*. {As is found in the *Magen Avraham* 225:4 and in the *Dagul Mervava* YD 391:2 in the name of R. Solomon Luria as is found in the *Yam Shel Shlomo*.} Similarly, with a daughter, on the same day that she completes twelve years and one day, it should be considered a prescribed feast. It is incorrect to claim that the absence of any previous mention (of a feast) is sufficient (to reject the feast). Examine *Pri Megadim* in *Eshel Avraham* 105 who raises the question of not making the (parental) blessing of release at a girl's Bat Mitsva (which is done on the occasion of a Bar Mitsva) but does not question the absence of a feast. The



rationale for the feast as stated in *Eliyahu Raba* 104 and *Mahatsit Hashegel* is that the deed is of greater consequence when performed by those obligated. This argument applies to the girls also (who become fully obligated on their twelfth birthday). This is a serious question.

The proper answer, according to my humble view, rests with the fact that there is no recognizable practical distinction - *nikar* - with a girl when she achieves majority. It is not the same with a boy, since it is more obvious as he is included in all things that require a quorum of ten or three. Merely on the basis of legal competence, in the absence of any practical distinction, we do not celebrate by means of a prescribed feast and a *simha*, even though, essentially, there is the same joy. In TB BK 87, Rabbi Yosef says that he will declare a feast day if someone will resolve that the law is not according to Rabbi Yehuda. This passage is the source for the prescribed feast on the occasion of a Bar Mitsva as reported in *Mahatsit Hashegel* quoting from Rabbi S. Luria in the *Yam Shel Shlomo*. It is necessary to add that there was a practical distinction. It is not a question of claiming that a blind person is exempt and therefore not included in the quorum, because it is possible that he would be included while exempt on the basis of having reached a legal competence, *bar da'at*. It

is also (not a question of claiming that) with a great man such as Rabbi Yosef they would honor him with the prayers and allow him to help others fulfill their obligations. After all, if he is exempt he may not represent others and he would not be able to lead prayers no matter how great. Examine TB Pes.116 which relates that Rabbi Yosef led his family in the reading of the *Haggada* on Passover eve. Therefore, this must have been a case of recognizable practical difference in which case he could celebrate with a prescribed feast. Thus, when there is no distinctive act, there is no obligation to make a festive meal.

FORM

1. U-Ma ...state question
2. Ve-Yesh... intensify problem with sources + observation
3. Ve-Ayein... additional difficulty
4. Ve-Ha-Nahon ...solution + reason
5. U-Ma ...talmudic passage + exegesis + resolution
6. Aval... final ruling

There is no date, greeting, or signature for this responsum. I have tentatively assigned it to 1959, as it appears to be one of a group of three. The first text was written in 1959 and has his usual greeting including the questioner's name. The second document (*IM OH 2:97*) begins with the conjunction "and," as though in the midst of an ongoing conversation, and is directed to a respected colleague. Only the last piece has a closing signature.

The text consists of two paragraphs totaling 36 lines. It presents a legal analysis of text and is not a decision with direct consequences. This responsum stems from an earlier ruling. Eight sources are referred to, although not all are explicitly cited.

ANALYSIS

In this responsum, Feinstein rules that there cannot be a prescribed feast to celebrate a girl's Bat Mitsva. He is clearly not arguing against all forms of celebration for this occasion. He is merely concerned with one specific category, the prescribed feast. Notably, he concedes that the Bat Mitsva is an occasion for *simha*, although the usage of the word *simha* is unclear. He states that it is not the *simha* associated with a *se'udat mitsva*, but it has the essential quality of the *simha*. He is at least signifying that some level of celebration and happiness is part of the Bat Mitsva experience.

Feinstein unquestionably acknowledges that girls become Bat Mitsva when they are twelve and one day. The only point at issue here is whether this day can be celebrated by an obligatory festive meal. There is no polemic in this responsum against any practices or groups, merely a legal analysis of one aspect of the celebration. However, this feature is the most important one for Feinstein and the majority of halakhists. Not having a prescribed meal in honor of a girl changes the whole nature of the celebration. In ritual law the absence of that category diminishes the significance of any ceremony. The importance of the *se'udat mitsva* is highlighted in this text by the format of, as well as by the substance of, the responsum. The question is stated and then escalated indicating its seriousness and interest for Feinstein. The

focus here is not on a specific case. Rather, it is a theoretical analysis of a rabbinic concept with legal significance. Feinstein is particularly intrigued by the sources concerning the realm and applicability of the *se'udat mitsva*. His decision rests on his unique analysis of diverse texts both in refining the question and in the answer itself. The question is as long and as serious as is the answer. If a girl becomes obligated to all the laws that a woman must comply with on her twelfth birthday, then, asks Feinstein, why shouldn't she celebrate with a prescribed feast. He then goes on to sharpen the question and in the process claims that two possible reasons for denying the feast are not valid. Thus, it has nothing to do with lack of precedent nor with the formal homiletic oration known as a *derasha*. He even raises the possibility that the feast was known and accepted in medieval times. Since one source questions the applicability of a certain prayer to the Bat Mitsva day, he intimates that the absence of any question concerning the feast itself might indicate its acceptability. Evidently, Feinstein considers this a serious and complex question requiring careful talmudic exegesis. Interestingly, he does not rule on the above cited prayer, which seems to concern some of his colleagues as much as the applicability of the prescribed feast.

The negative ruling is argued through an unusual interpretation of the talmudic texts and related commentaries. The classical source for the prescribed feast is the story of

the blind Rabbi Yosef as found in TB BK 87 and Kid. 31. Being blind, he is concerned with his status as an adult male, and questions whether he is obligated to participate in public prayer. Rabbi Yehuda asserts that a blind person is exempt (like a woman), whereas Rabbi Hanina taught that the required performance is preferred to the voluntary.<sup>17</sup> Rabbi Yosef declares that he hopes the law is not according to Rabbi Yehuda. Undoubtedly, he would prefer to be considered fully obligated rather than exempt, in which case his acts would receive the reward and status of a fully competent male.<sup>18</sup> If so, he vows to make a feast for the sages. Although the text is concerned with exemptions and obligations only, later commentaries develop the tangential subject of the feast. Rabbi Solomon Luria advances the idea that the Bar Mitsva is in fact a perfect *se'udat mitsva*. Those who oppose the application of that category to the Bat Mitsva must examine the talmudic references for the grounds. Feinstein insists that the story is problematic and there is only one possible way to understand the sources. His interpretive key is the added criteria of *nikar*, of an act that is publicly recognizable. He explains that Rabbi Yosef is able to make the feast because his change of status to one obligated in public prayer automatically includes a public element. Thus, the talmudic reference to Rabbi Yosef's leadership role on Passover eve indicates that he is considered fully obligated and can now represent and release others of their obligations.

Consequently, Feinstein claims, if there is no obvious public distinction, there can be no *se'udat mitsva*. Since there is no recognizable change in a female's public performance of ritual, there can be no prescribed feast. Although there is clearly a change in her ritual obligations, which in fact is the essence of the concept Bat Mitsva, her public participation does not change. Women do not publicly participate in ways that he would call recognizable. By basing his decision on this category, he can forbid the association of a *se'udat mitsva* with all its attendant significance, while maintaining that the event is a *simha*, with equal status at that level.

He does not rest his case on innate differences between boys and girls, nor on the tactic of forbidding new practices. In fact, he states quite clearly that we cannot argue against the practice simply on the basis of not finding explicit permission for it. He also circumvents the thorny issue of *bar da'at*, full legal competence. Rather, he develops a notion of what constitutes a prescribed feast and then carries that idea through his ruling. There are other decisors who rule, as he does, that there is no prescribed feast associated with a Bat Mitsva, but he is the only one who develops the criterion of *nikar*. A straightforward examination of the text does not yield any link with this requirement for public change. In fact, some decisors have ruled that a Bat Mitsva is entitled to celebrate with the prescribed feast as it is explained in

the work of Rabbi Luria. Feinstein looks at the same texts, acknowledges the legitimacy of the Bat Mitsva status, but rejects the concomitant feast. It is conceivably due to his refusal to accept the same celebration for males and females that he is obliged to develop this legal distinction.

This responsum is noteworthy in its acceptance of the joy of the occasion as well as the unobtrusive statement that we cannot forbid something just because it was not done. As in the previous ruling there is an implicit recognition and acceptance of the Bat Mitsva status. However, this responsum is distinguished by the absence of a polemic against the Bat Mitsva ceremony which persists in later decisions. The most significant element in this text is his singular understanding of the talmudic texts and his ensuing legal justification.



IM OH 4:36

1959

THE CELEBRATION OF A BAT MITSVA IN THE SYNAGOGUE

TEXT translation

Concerning the celebration of a Bat Mitsva, there is no matter of (it being) a prescribed feast; it is merely the joyous occasion (*simha*) of a birthday. Such celebrations are (*reshut*) permissible but optional, and optional feasts are not allowed in the synagogue, even though it was built for such purposes. However, it is quite permissible to celebrate by sponsoring a *kiddush* in the synagogue since that is the custom for all such joyous occasions in this country. This *simha* is not of less import than any other such event. Moreover, the girl is permitted to say some "words" (*milim*) in honor of her *simha*. It is reasonable to assume that this will fulfill the function you attribute to it (a Bat Mitsva ceremony). However, she should not speak from the pulpit (*bima*) but instead from near the *kiddush* table.

In the matter of the Bat Mitsva that has already been scheduled, if you can change it in such a way as not to cause you any embarrassment nor any great debate, then change it to a *kiddush*. But if it will cause too much trouble or embarrassment to change it, then leave it the way it was planned. But in the future just allow a regular *kiddush* as is done for all such human

celebrations.

As to the positive gains you wrote about, I see only damage such as the violation of the Sabbath and more. Even with boys, I have not seen benefits such as greater commitment to Torah and commandments. Besides, even if with one exceptional girl you have seen some benefit, for the majority there is just damage. Therefore, it is incumbent on us to distance ourselves from these new practices without controversy, as discussed above.

FORM

1. Greeting
2. *Be-davar*...problem + ruling + reason
3. *Aval* ...alternative + reason + additional allowance + condition
4. *U-be-davar*... specific case + prohibition + permissible circumstances
5. *Aval*... repeat preferred alternative
6. *Ve-ha-to'elet* ... opinion + observation + resolution

This short responsum contains 24 lines. There is no reference to any sources. He repeats the essence of his previous answers on this issue with significant variation. His technique is to use different words to change the nature of the prohibition.

ANALYSIS

In this responsum Feinstein maintains his original prohibition but reverses himself in a significant way. There can be no *se'udat mitsva* but the celebration can take place in the synagogue, which practice he initially banned. As long as the celebratory meal is not called a *se'uda*, a different type of meal, a *kiddush* is permitted in the synagogue. By using a different word for the celebration, Feinstein permits that which he had previously forbidden. It is not insignificant that this text allows a ceremony to take place in the sanctuary, in the public communal domain. Moreover, *IM OH 4:36* paves the way for a new ritual format without any announcement and with a remarkable absence of any misgiving about this innovation. His acceptance of both the prevailing custom and the congregation's demand for a public ritual is startling, and it effectively eliminates any mention of home centered ceremonies. Nonetheless, this amended decision maintains the distinction between boys and girls for this puberty celebration. At the same time, he manages to insist that the girl's moment is a *simha* just like any other one and can be celebrated.

In fact, he goes further by allowing her to take an active part and deliver a speech. Thus, he grants that she can say some "words", apparently meaning words of Torah. According to the text, these *milim* are supposed to "fulfill the purpose you (the rabbi) attribute to it," that is greater commitment

to Torah. Therefore, it is most likely they are to be words of Torah. Moreover, since her "words" are to be in honor of the *simha*, it is probable that in Feinstein's lexicon the words referred to are Torah inspired. Again his position is sustained by not permitting her *milim* to become a *derasha* and by insisting that she not speak from the pulpit. Location and language are the tools he uses for preserving essential distinctions. Initially, the location could not be the synagogue; now it is reduced to banning the *bima*. But he persists in refusing to apply the words *se'udat mitsva* and *derasha*. Thus, by using different categories of ritual involvement and celebration, Feinstein paves the way for the new while perpetuating his critical boundaries. The result is that girls can celebrate their Bat Mitsva even in the synagogue. Feinstein has found a way to permit that which he forbade and, indeed, perhaps continues to dislike.

This responsum is particularly interesting in exploring his continued distaste for the whole enterprise, even for boys. He does not see any great benefit to either boys or girls and is quick to discount exceptional cases. Nonetheless, he understands enough about American Jews to find a way to satisfy their needs in this regard. He also knows and is concerned with the amount of trouble this continued prohibition might bring to local rabbis. He repeatedly advises the rabbi to avoid all forms of debate and embarrassment. His decision, thus, blends a resistance and an acquiescence to the

needs and customs of North American Jews. The ruling also highlights his unwillingness to treat girls as inferior or less worthy than boys while at the same time, maintains the legal and ceremonial difference between them.

Finally, he consistently shows a concern for the local rabbi who has to implement the decision. Although he disagrees with the rabbi's original plan, he is courteous and gentle and even allows the plan to prevail, if it is too difficult to cancel. Whatever that original plan (it is never disclosed in the responsum), there was nothing prohibited in it or Feinstein would not be so tolerant. Barring any outright violation of halakha, the rabbi's authority and respect must remain intact.

IM OH 2:30

1961

CONCERNING A SYNAGOGUE WITH PARTIES AND FORBIDDEN DANCING

TEXT OF PARAGRAPH FOUR translation

In my book on OH 1:104, I have already written about the meal and celebration held for a Bat Mitsva. It is not in any way prescribed and is merely an optional celebration like any birthday. It is not to be held in the synagogue. However, if it (the synagogue) was initially built to house forbidden parties, it would not have the requisite sanctity for a synagogue, as stated above. Then it would be possible to hold festive meals and celebrations that are optional. Since it would be simply a hall of common status. Nonetheless, they (the parties) should be proper and without any of that forbidden dancing.

**FORM**

1. *Ve-seuda*... reference to topic + source + ruling + reason
2. *Akh* ... permission + reason + qualification

The text consists of two sentences, with eight lines. Only one source is mentioned. It is a simple statement without any argument. Reasons are given for the prohibition and the subsequent permission. Two words are transliterated into Hebrew: parties and hall.



ANALYSIS

The main responsum forbids praying in a synagogue which was established for both prayers and parties. If the synagogue was initially dedicated just for prayers and only later were the parties added, then Feinstein maintains that prayer is possible as the *kedusha*, holiness was firmly in place from the beginning. But in the former situation, the dual mission is such an abomination that public prayer there is not possible.

It is clear that Feinstein is speaking of parties that are held in the sanctuary itself. In paragraph two he specifies that even if the ark with the Torah scroll is removed from the room it is still considered a sanctuary and a party may not be held there. Synagogue always means the sanctuary, explicitly the place of male public prayer. He is not referring to synagogue buildings with separate rooms which he transliterates as "halls". He opposes all forms of social dancing, but in this case he is forbidding prayer in a location that has been "desecrated" by any secular event. Even if the goal of the "party" - again a transliterated term signifying disdain - is to raise money for charity, the form of the event, a party, would itself profane the synagogue area so that prayer would not be acceptable.

In the final paragraph, he refers to Bat Mitsva celebrations. He repeats his original disclaimer (*IM OH 1:104*) that the festive meal has no relation to a prescribed feast. The celebration is purely an optional one, similar to any

other birthday and should not be held in the synagogue. However, if the room was established for both prayer and parties, then he permits having a festive meal to celebrate the occasion. The room then does not have the sanctity of a synagogue; it is merely a social hall. He concludes with a cautionary note warning people that the celebration should be conducted in a fitting (kosher) manner without those forbidden dances.

This minor reference to the Bat Mitsva is important only in so far as it clarifies his position. Only obligatory events are to be celebrated in a synagogue and by the word synagogue, he means the sanctuary specifically. Celebrations of a kosher kind are not forbidden in social halls. His main concern is to protect the synagogue and to preserve its functional domain. It is a place for prayer or commanded acts only. Consistent with his general approach, items with distinct purposes and disparate legal categories must be kept separate. Mixing categories only leads to confusion and dissolution and that is to be avoided at all costs.

Interestingly, he is not forbidding all festivities surrounding a girl's twelfth birthday. His intent is to keep categories of obligation and option separate, especially in the context of public communal institutions such as synagogues. He also insists on differentiating the boys' Bar Mitsva from the girls' Bat Mitsva. The legal categories involved are quite similar, and he does not refrain from

calling the girl's experience a Bat Mitsva. He does not condemn the idea and does grant that it is a *simha*, a joyous event. This ruling does limit its location and denies its equation with the very different male ceremony. Significantly, Feinstein allows the celebration to take place in a public arena.

This text differs from the one cited (*IM OH 1:104*) in two ways. In the original responsum, Feinstein forbids the use of a synagogue even if it was built for the dual purpose of parties and prayer. In our text, he considers the dual purpose so problematic as to remove the sanctity of the place and hence to render prayer there not possible. Given this interpretation, the room is no more than a hall and proper celebrations are permitted. Included in this permission is the girl's Bat Mitsva birthday party. This represents a significant departure from the original responsum where Feinstein grudgingly allows a party only in the privacy of the family home. This text expands the location and the context by permitting a public venue. It also differs from *IM OH 4:36*, in which he allows a limited ceremony in the sanctuary itself. Yet, he makes no reference to it in this brief discussion which focuses on the proper use of the synagogue.

IM YD 3:14.4

1977

The reason for not saying the blessing *sheheheyanu* on the assumption of obligations.

TEXT translation

A boy of 13 who becomes obligated to commandments and likewise a girl of 12, do not recite the prayer *sheheheyanu*. The reason being that they (the sages) decided that the blessing *sheheheyanu* is only said on the occasion of a renewal of an obligation. It does not apply when there is no time renewal but rather (applies only at a time of) personal growth. Since there is always an element of obligation, even for minors, emanating from the receiving of the Torah by our ancestors for all eternity, there really is no personal renewal. As soon as the exemption disappears due to the youth (of the person), the obligation applies.

FORM

1. *Ha-Ta'am* ... ruling + reason + explanation

This paragraph of eight lines is part of a series of unconnected decisions in one large responsum. There are no sources cited or referred to.

ANALYSIS

In this brief paragraph, Feinstein states his reasons for not requiring (or allowing) the special blessing *sheheheyanu* to be said by a boy or girl upon reaching the age of maturity. Without any reference to legal precedents, Feinstein issues his decision. There is no argument, no disagreement and the matter is simply and briefly dealt with. Of significance is his inclusion of the girl with the boy. The issue affects both equally. Furthermore, it is clear in this responsum that he considers girls of twelve to be obligated under the law, as are boys of thirteen. In this context, girls, at the age of twelve, undergo the important personal growth necessary to become a legally competent adult.

The underlying view of exemptions and their removal is as interesting as the substantive decision. According to this responsum, all Jews from birth on, are fully obligated under the law. In certain circumstances, they may be considered exempt. Those exemptions can be temporary and therefore, removable. At age thirteen and twelve, the exemption of youth disappears for boys and girls respectively. They then assume the full burden of Jewish ritual law. This approach differs from one that views the Bar/Bat Mitsva as the actual onset of ritual obligation.

### III. Discussion

In the above five texts, Feinstein consistently demonstrates his recognition of Bat Mitsva as a juridical category while maintaining his dislike for the Bat Mitsva ceremony. His stance shifts slightly over the few years the texts span, but his overall position is one of resistance. Within that realm of disapproval, however, there are subtle distinctions that are significant. Especially important in the context of this dissertation is his disavowal of any implication that women's celebrations are forbidden or less important because women are somehow inferior. Despite the very real legal differentiation, with which he does not wish to interfere nor diminish, he maintains that there is the same *simha* involved for a girl as for a boy.

The legal categories are very clear and unyielding. Girls become Bat Mitsva at age twelve. There is no hesitation in using that nomenclature; in fact no sources are deemed necessary, and no legal argument is presented for its use. Furthermore, the attainment of Bat Mitsva might be cause for a *simha*, a joyous celebration of some sorts. His concern and disapproval is related to the location, source and method of celebration. These are the only topics of discussion. Without any vacillation Feinstein rules that the ceremony does not enter the realm of a ritual commemorative prescribed feast, a *se'udat mitsva*. His discussions center on the permissibility of optional celebrations. How, where, and what are the issues

that concern him.

Feinstein's first responsum, *IM OH 1:104*, written in 1956, is the most negative. Nothing can be done in the synagogue. Any such celebration or service is "worthless" since it is optional and all optional acts are forbidden in the sanctuary. There is no element of *mitsva*, religious duty involved. He then gives grudging permission for some celebration in the home, but even so his disapproval is apparent and he warns that it cannot attain the significance of a prescribed feast. Interestingly, he includes Bar Mitsva celebrations in his condemnation, indicating that the worthiness of the female is not the issue, nor is her status as a juridically obligated Jew questioned. Only the ceremony, with all its attendant improprieties, is unworthy. Ultimately, he concedes that there are no prohibitions regarding a home celebration, but he would rather not permit something "new". Finally, he forbids any form of celebration in the synagogue, even when it is not being used as a synagogue. His disapproval of the celebration, of the stimulus and source, and of anything innovative, has led him to oppose the whole enterprise in general.

The second text, *IM OH 2:97*, from 1959, makes no substantive changes. In it Feinstein presents some sources and establishes the reasons for not applying the category of *se'udat mitsva* to the Bat Mitsva celebration. He also clarifies key elements of his position. A girl reaches the



status of a Bat Mitsva when she is twelve and one day, and on that day she becomes fully obligated under Jewish law. The difference between boys and girls with respect to this category of celebration rests on the distinctive nature of male-female ritual participation. Boys become men who are counted in the quorum. When a boy turns thirteen, his change of status has a public face to it. When a girl turns twelve, her change of status remains private, invisible, and is not readily apparent in any communal form.<sup>19</sup> For Feinstein the issue is not of singular rituals like *tefillin* or *aliya*. The issue is one of public representation which confers significance upon the act. The boy/man stands up to be counted: he can represent the community in prayer and, therefore, has a *se'udat mitsva*. On the other hand when a girl becomes obligated in Jewish ritual law there is no discernible change of communal status and, therefore, there can be no equivalent celebratory ritual feast.<sup>20</sup>

In the course of this responsum, Feinstein makes two interesting comments. He affirms that there is the same *simha* for a girl as for a boy. His usage of the word *simha* is interesting if ambiguous. It refers to both an emotional state as well as an event in which that state of joy is formally expressed. By applying the category of *simha* to the Bat Mitsva, Feinstein concedes that it is a proper occasion for a celebratory format that would express the emotional state. He allows that there is a great sense of joy experienced by the

girl and her family on this occasion equal to that of any similar event. Moreover, in accepting the American pattern of celebrating family and personal events in the synagogue, he is compelled to permit a synagogue format precisely because he is not willing to treat the female experience as a less worthy event. Thus, despite the very real difference in structural significance, he seems to believe that there is no difference at the communal and affective level.

He also makes a legal observation that is quite striking yet is not developed. He mentions that it would not be correct to prohibit the festive meal simply on the grounds that there is no known source specifically permitting it. In other words, each case must be presented on its own legal merits, and prohibitions cannot be derived from absent sources. This is a very significant aspect of his legal reasoning, mentioned in this text merely as an aside that would seem to contradict the first text. In *IM OH 1:104*, Feinstein argues against allowing even a private party in the home, because it is new. In this responsum, Feinstein says that we cannot claim that the *se'udat mitsva* is prohibited simply because we have not heard of it before. Newness is not in and of itself sufficient in *halakha* to create a prohibition. Consequently, although he lets us know in no uncertain terms that he does not like the novelty of the Bar and Bat Mitsva, nonetheless, he will not forbid it. He is consistent. Ultimately, Feinstein does not forbid a celebration, nor does he argue against it on the

basis of its novelty. Rather, he limits and prohibits on specific legal grounds such as *se'udat mitsva* and sanctity of the synagogue. He manages to keep what he believes the law dictates separate from his personal preference.

The next text, *IM OH 4:36*, dated 1959, reveals an interesting shift. He restates the prohibition and then amends it. By using certain words he manages to permit that which had been forbidden and questionable. A ceremony - no; an obligatory meal - no; in the synagogue - no; at any time - no; in the home -preferably not: this had been his position. The new responsum permits a *kiddush* in the synagogue in celebration of a girl's Bat Mitsva. He further permits her to say some "words" at the table, in the synagogue. There are no sources presented, no argument advanced, merely a change of terminology. A girl then, cannot have a Bat Mitsva ceremony in the synagogue; but she can celebrate her twelfth birthday there. There can be no festive meal; but they can have a feast. She cannot deliver the traditional *derasha*, formal learned discourse, but she can make a speech that will honor the occasion. In Feinstein's world, since words of Torah are the appropriate vehicle of such a commemoration, *milim* most likely refers to a speech that contains some Torah insight. And all this is done without any recognition that it in any way contradicts previous decisions. Nor is there any acknowledgement that women who are exempt from the study of Torah are now learned in words of Torah. In *IM OH 1:104*, he

mentions women's exemption from study. A known fact. Here he recognizes and gives implicit approval to women becoming learned, thereby disregarding any earlier prohibitions. This is of course consistent with his entire position on the education of females: the significance here is the tacit acceptance that an exemption is not a prohibition.

Despite all this understated acceptance, he repeats his dislike of the whole puberty ritual, male or female. Thus his attitude to the "why" of a Bat Mitsva ceremony remains consistent. It is a *simha* like any other joyous occasion, but the ceremony has no religious significance. There is no *to'elet*, purpose, to a synagogue ceremony for either a boy or a girl. Furthermore, he adds that although some exceptional individuals may benefit from the celebration, the majority do not. Rather, for most the ceremony involves desecration and, therefore, should be eliminated. The claim of the individual is secondary to the requirements of the majority and he does not create a separate category for the elite, which he does in other situations.<sup>21</sup> Finally, his condemnation does not extend to the rabbi who, it appears, would like to allow some celebration to be scheduled.<sup>22</sup> As in previous responsa, his concern for the local rabbi's position, honor and authority, as well as his desire to avoid local controversy, yields a somewhat flexible text. The significance of the responsum as a legal document lies in its consistent rejection of anything new that nonetheless results in substantive changes.

The fourth source, *IM OH 2:30*, dated 1961, is not directly concerned with the Bat Mitzva. The main text focuses on the proper use of a synagogue. A sanctuary must be built for prayer and not for parties. Prayer requires a place dedicated exclusively to holiness. For Feinstein, synagogue means sanctuary and not a social hall. In a separate responsum, *IM OH 4:35*, he discusses the use of other rooms in the synagogue building. He declares that they do not have any sanctity and therefore, all general activities are permitted. However, he is firm in prohibiting cards, bingo and mixed dancing. For Feinstein, the synagogue has special sanctity only if it is devoted to prayer. Any other activity is inappropriate and renders it invalid as a place of prayer. Nonetheless, there are proper uses for rooms in buildings that also house prayer rooms.

In the final paragraph of *IM OH 2:30*, he turns to the question of celebrating a Bat Mitzva in the synagogue. Since it does not involve an obligatory meal, it cannot be held in the synagogue proper. If, however, the "synagogue" is one of those dedicated to both prayer and parties, then it has the status of a social hall and not a sanctuary and a proper celebration with a festive meal can take place. In other words, if the synagogue is not "kosher," then a proper Bat Mitzva celebration can take place there.

Again, by emphasizing intent and changing words - synagogue to "hall"- Feinstein increases the possibilities for

a public celebration when a girl reaches majority. While expanding the possibilities, this decision appears to contradict the previous one. Is it only a *kiddush* that is allowed in a proper synagogue? In *IM OH 4:36*, Feinstein specifies that in the synagogue, the designated location of prayer, no optional feast - *se'udat reshut* - can take place. But a *kiddush* can be held even in the sanctuary. In this text, it would appear that a festive meal and Bat Mitsva celebration can take place only in a place not dedicated primarily to prayer. Combining the two positions, it seems that a girl's twelfth birthday can be celebrated only with a *kiddush* and *milim* in the synagogue proper. A different type of celebration can take place in public buildings sometimes associated with synagogues, but he never specifies what such a ceremony would look like or be named. This responsum confirms the shift from *IM OH 1:104*. In the former, no synagogue involvement was allowed. Now a *kiddush* can be held in a proper synagogue and a festive meal can be held anywhere. In the first decision, no public celebration was permitted and, even one in the privacy of the home was discouraged. Now a celebration in the public arena has two possible venues.

In the final document, *IM YD 3:14.4*, dated 1977, Feinstein rules on the requirement for the recital of a special thanksgiving blessing, *sheheheyanu*. For our purposes, its main significance is that he treats boys and girls alike in this ritual act. Boys who are thirteen and girls who are

twelve are not renewing their obligations; rather, they have reached a level where their previous exemptions no longer apply. Therefore, they do not recite this blessing of renewal.<sup>23</sup> Both males and females reach a level of growth where they are no longer exempt by virtue of age, even though women are categorically exempt from specific ritual obligations. Nonetheless, in principle women are like men, at the proper age they become juridical adults, responsible for the corpus of Jewish law. The Bat Mitsva, according to Feinstein's legal interpretation, is on some grounds equal to, though on others different from, the Bar Mitsva.

### III. 1. Sources and legal reasoning

Rabbi Moses Feinstein bases his entire argument on two primary legal distinctions or judgments. One concerns the proper use of the synagogue and the other involves the required conditions for obligatory celebrations. His legal reasoning is sound and consistent given those two premises. He claims that a synagogue may be used only for prescribed activities; it cannot be used for merely permitted functions. Accordingly, a festive meal, even one for a charitable benefit, cannot take place in the synagogue (*IM OH 2:30*). The distinction is not between the permitted and the forbidden; obviously an event to raise money for charity cannot be considered forbidden. The legal issue revolves around the location of the event and the categories of what is permitted and prescribed. Things may be permitted, though they cannot

take place in certain locations. For Feinstein *reshut* has no place in the *beit kneset*. In an earlier responsum, *IM OH* 1:45, he does admit that *hasidim* do permit optional celebrations to take place in the synagogue, but he forbids it without presenting any argument or grounds. On the other hand, a meal such as a *se'udat mitsva* can be held in the sanctuary. He does not refuse a *Bat Mitsva* ceremony because it is a ceremony for girls but because it remains in the optional realm: not being prescribed, it cannot take place in the sanctuary.

Within this consistency, one glaring exception must be mentioned. Feinstein acknowledges that a *kiddush* is permitted in the sanctuary - even one in honor of a girl's birthday. If that is arguably in the realm of obligatory Sabbath and holiday ritual for it allows the community to recite the required blessings over wine and cake, what is the argument for allowing her to say words of Torah? After all, according to him it is not a *derasha* which would establish a *se'udat mitsva*. It is merely optional, since a girl is not obligated in Torah study. Why is this optional item allowed in the sanctuary? Moreover, why if the *kiddush* is permitted can it not be transformed into a authoritative festive meal? Feinstein never entertains these questions.<sup>24</sup> For him, items with distinct purposes and disparate legal categories must be kept separate and different words help keep the necessary separations.



The primary problem with his ruling is finding the rabbinic sources for it and discerning his reason for restricting the prescribed category and its application. Feinstein never once mentions any sources to corroborate his assertion. It is merely stated, as though all agree. At the outset, there are serious halakhic positions that forbid any food in the sanctuary (TB Meg. 28; ShA OH151:1). Yet there is no mention of this prohibition nor of the complex exemption for a *se'udat mitsva* (TJ Sanh. 8:2) None of his responsa ever allude to the debate over food as the basis for the distinction between a prescribed event and a "merely" permitted one. Feinstein does not explain why a *kiddush* may be held in the sanctuary. Nonetheless, he is very deliberate in his choice of words. He does allow food in a synagogue dedicated to prayer in honor of a Bat Mitsva while refusing to bestow on it the classification of a *se'udat mitsva*. Why? More importantly, from where does he generate this discrimination of the optional and its concomitant exclusion from the synagogue? There are sources discussing the prohibition to eat and drink in the synagogue when the celebration does not emanate from a commanded act.<sup>25</sup> Why does he not refer to them? He does not even refer to his own earlier responsum which raises some of these issues (*IM OH 1:45*). His decisions on synagogue practice - such as *IM OH 2:30* - advance an evident standard that forbids the permissible and this must be seen as the paramount halakhic enigma. What about permissible

acts or ceremonies that do not involve eating? His discussion of the Bat Mitsva ceremony always hinges on its status as a *se'udat mitsva*. What if there were to be no food involved? Finally, the definitive contradiction in this sector resides in Feinstein's stated disapproval of Bar Mitsva ceremonies in light of his categorizing them as prescribed and therefore authorized. In an earlier responsum, he questions whether the Bar Mitsva actually retains the classification of a prescribed event (*IM OH 1:45*). Without ever engaging the major sources that codify the Bar Mitsva as a *se'udat mitsva* (he does fleetingly list them in *OH 2:97*), he shifts his position of doubt to a definitive stand. In the above texts the Bar Mitsva ceremony has undeniably become obligatory in Feinstein's classification.

His second major justification depends on the category *nikar*. A boy may legitimately celebrate his Bar Mitsva in a public synagogue ceremony because his change of status is publicly in evidence. Here he is not referring to the rabbinic discussion of visible growth, of having those physical signs that we all associate with adulthood. It is quite clear in the discussions in the Talmud and Maimonides, that the rabbis also considered the female signs of physical maturity as significant and determinative of Bat Mitsva adulthood. His distinction between a boy's ceremony and a girl's ceremony lies in the realm of *minyan*, the quorum for public prayer. Both boys and girls, upon reaching their respective age of

majority, have a personal obligation to pray. However, communal halakhic prayer is the preferred mode of fulfilling that obligation<sup>26</sup> and only males constitute that quorum. Males are counted in the public obligatory quorums of ten and three.<sup>27</sup> That is *nikar*: a public ritual recognition which entitles the boy of thirteen to a synagogue celebration. It is the absence of any equivalent position that prevents the female ceremony from taking place in the synagogue according to Feinstein.

Where is the support for this ruling? The distinction based on publicly evident traits or actions is certainly well established in Jewish law. The question rests with Feinstein's use of it in this case. From where does the equation of *nikar* with obligatory celebration come? He argues that it emanates from the talmudic description of Rabbi Yosef who was blind (TB BK 87a). This story forms the basis of the laws of *se'udat mitsva*. The question arose as to whether Rabbi Yosef was exempt from public prayer because of his blindness. Prayer and attendance at public service are two obligations incumbent upon the "normal" male. Normalcy is usually defined in terms of competence derived from possessing all of one's faculties. Hence, the question arose concerning Rabbi Yosef because of his blindness. The decision that he was obligated allegedly pleased him immensely in light of R. Hanina's ruling that commanded acts are preferred to merely voluntary ones. In appreciation he declared a festive day for the sages.

Feinstein claims that the only way to understand that section is through the application of *nikar* as the distinctive and hence qualifying criteria that permits a *se'udat mitsva*. Rabbi Yosef was able to perform certain rituals on behalf of others (Pes. 116). Hence, as a representative of others, his status was *nikar*, worthy of a *se'udat mitsva*. Rabbi Ovadia Yosef criticizes the use of *nikar* in this fashion as having no foundation in law (Yehaveh Da'at 2:29).

Furthermore, what is to be considered *nikar*? The talmud clearly discusses that a twelve year old female must fast on Yom Kippur. Does that occur in the public realm? For Feinstein that ritual does not comprise a sufficient distinction. He is consistent in that, in his view, neither the male rituals of *aliyah* nor *tefillin* are sufficiently distinctive for the *nikar* status either. A woman's other ritual obligations, notably candle lighting on Sabbath and festivals, take place in the domestic realm. But one change seems quite *nikar*; after her twelfth birthday, a girl may betroth herself. She is no longer dependant on her father or brothers. In legal terms she is now a person.<sup>28</sup> Even this change which is a very distinctive change of status, is not sufficient for Feinstein. The only absolute difference is that the boy/man now stands in a quorum; he has not just entered the community, he represents it and can perform, or contribute to the performance of a communal ritual obligation.

Feinstein's rejection of a Bat Mitsva ceremony relies

totally on his singular determination of the *se'udat mitsva* category. Although quite a few contemporary decisors rule that a girl's twelfth birthday is a cause for a *se'udat mitsva* (R. H. Grossberg, R. Y. Nissim, R. O. Haadaya, and R. Ovadia Yosef), Feinstein refuses to apply that category. Yet, even he recognizes that according to the general use of the term, it would appear that a Bat Mitsva might justify a *se'udat mitsva*.

The clearest description of the criteria for a *se'udat mitsva* is found in the sixteenth century *Yam Shel Shlomo* (TB BK 7:37) written by Rabbi Solomon Luria. The Bar Mitsva is considered an especially appropriate justification for this prescribed festive meal, since it provides an opportunity for praise to God on the occasion of the boy's attainment of his complete ritual obligation. The discussion revolves around the talmudic concept of the obligatory being preferred to the voluntary; *gadol metsuveh ve'oseh*, discussed in TB BK 87a and Kiddushin 31a. Rabbi Ovadia Yosef, in two responsa (*Yehaveh Da'at* 2:29, 1978; *Yabia Omer* 6:28.4, 1986), claims that the same is true for the female. At age twelve and one day a girl enters the world of adulthood precisely because she becomes obligated to all the laws that are incumbent upon a female. She is thus no longer voluntarily fulfilling her ritual role, but acting as commanded. She is now *metsuveh ve'oseh*, obligated and hence can have a *se'udat mitsva* to celebrate the attainment of this status. For R. Yosef there can be no distinction between the girl and the boy in the application of

this halakhic category. Feinstein absolutely disagrees. He then must rely on this unused category of *nikar*, that which is evident in the public ritual sphere, to prevent the equation of male and female celebrations.

His reasoning is as follows:

- Only obligatory or prescribed events can take place in the sanctuary/synagogue.
- A *se'udat mitsva* confirms an event as obligatory or prescribed.
- At a boy's thirteenth birthday the change in his status has a public recognizable element.
- This *nikar* factor establishes this as a *se'udat mitsva*.
- The Bar Mitsva is a legitimate cause for a *se'udat mitsva*.
- A girl enters the world of obligations and is "commanded" at age twelve.
- There is equal *simha* value in the occasion.
- There is no recognizable change in her public life, as she can never represent the community.
- Without *nikar* there is no *se'udat mitsva*.
- There can be no *se'udat mitsva* for a girl.
- Hence no Bat Mitsva ceremony or celebration may take place in the synagogue proper.

Given this intricate legal argument it is worth noting not only how he argues but also what he neglects. In the absence of a clear definition or legal delineation of the *se'udat mitsva*, it is difficult to understand Feinstein's

application of the term. According to him, the Bar Mitsva ceremony can be labelled a *se'udat mitsva* because the boy's entry into adulthood is *nikar*. Does a marriage dictate a *se'udat mitsva* because the change is publicly evident? In what way? What about the celebration with a groom before his wedding which Feinstein allows is a *se'udat mitsva* (*IM OH* 1:45)? What about that experience is "recognizable"? Just as there is no methodical use of sources to generate this concept, there is no systematic development of the term with a classificatory design. It is unclear how and when its use is necessary.<sup>29</sup> Is it only used here to prevent the female celebration from taking place in the synagogue? No, since Feinstein does allow a *kiddush* and "words" in the sanctuary in honor of the Bat Mitsva. Yet, *nikar* is used conveniently to differentiate the male from the female ceremony; to ensure that there is no analogy; to establish that the celebrations are not indistinguishable; and to safeguard the separation.

Interestingly, Feinstein ignores the issue of the type of ceremony and the style of the "party". In one aside he indicates that it must be modest and proper (*IM OH* 2:30), but he again does not elaborate. In contemporary America, the debate is precisely over this issue of content, which he disregards. The ceremony is in fact an evolving distinguishing mark between the denominations. His only relevant comment is to repudiate the idea of a Bat Mitsva because of its having originated in the non-Orthodox world. Not only does he

overlook the contemporary debate, he also makes no reference to the scholarly debate concerning the traditional parental blessing of release made at this time. Although he does rule that the child does not make the blessing *sheheheyanu*, he is silent on the formulaic *barukh she-pitarani*. These lacunae can be explained somewhat by the type of questions to which he is responding. But since he frequently goes beyond the limited focus of a question, the ignored items can be clues to his major preoccupation. Rabbi Moses Feinstein's general, consistent pattern is to focus on protecting the sanctity of the synagogue, preventing any non-Orthodox pattern from being established in Orthodox synagogues, and promoting the separation between male and female.

### III. 2. Maintaining Separations

In these five short texts, Feinstein manages to maintain the aforementioned standard. His overall disapproval remains constant, as does his equation of male and female value. Girls are Bat Mitsva on their birthday, as are boys. Some form of celebration can be held in a public arena, even the synagogue. Food can be eaten, words of Torah can be spoken, even by the girl herself. But men are public figures with communal responsibilities, and women are different. Those differences must be reflected in the ritual and all separations must be maintained.

His Bat Mitsva responsa confirm and continue his policy of keeping the Orthodox world uncontaminated by non-Orthodox



communities. In the first document, he rejects the idea easily, especially since it emanates from the Conservative and Reform. Without any serious analysis of the motivation for a celebration, or of the sociological background, he merely alludes to its source, implying that is enough to automatically disqualify anything. In contrast, Rabbi Jacob Weinberg, author of the *Sridei Esh*, writing specifically about Bat Mitsva celebrations (3:93), states that the source of the idea is irrelevant in determining permissibility. The difference between the two decisors is one of attitude and not legal reasoning. In fact, both forbid use of the sanctuary for the celebration. The difference lies in the tone of the decisions and the approach used. Feinstein looks with disfavor on the whole endeavor, fighting any similarity or shared environment with the non-Orthodox. Weinberg discounts the Conservative and Reform source and looks instead to the psychological and emotional motivations. Both operate within the same legal tradition but from different standpoints *vis a vis* their community. Weinberg is concerned with the individual, with her feelings of religious inclusion and sense of well being. Feinstein is concerned with communal boundaries. As just noted, one of Feinstein's goals is to keep the Orthodox world separate from the non-Orthodox. Yet he does not forbid the celebration because of its source. His prohibition is based on his interpretation of the legal use of a sanctuary. Rather, in the course of responding, his

evaluation of the source colors his approach. Furthermore, he uses the decision to continue his barrage against all things Conservative and Reform. He can find no good in the proposed celebration, especially since it comes from "them".

His ruling in this case is consistent with his general policy of making distinctions and keeping firm boundaries. The synagogue too must be protected in order to keep its distinct character and sanctity. It can be used only for the purpose of *mitsva*, commanded or obligatory ritual expressions. Dedicated to prayer, it can be used for rituals such as a *se'udat mitsva*, but not for optional celebrations. Thus, a Bat Mitsva ceremony which may come under the heading of things permitted, but will always remain in the realm of *reshut*, optional, is categorically forbidden in the sanctuary. It would appear that the ruling is not based on the fact that it is a girl's celebration, but rather on the gender distinction that the girls' celebrations are optional and not obligatory, permitted not prescribed. For Feinstein the ruling depends on the place and not on the content of the ritual. He assumes that only "proper" acts will be performed. At its core, his ruling is quite simple. Stripped of all his asides and personal views, the synagogue's sanctity and dedicated purpose frames the legal argument and determines the decision. The synagogue - the place of prayer, of a commanded male quorum - is not to be misused. Boys becomes males who are part of that obligatory quorum. Their celebration may take place in the sanctified

synagogue. Social halls, which may be located in close proximity to the sanctuary, are fine for permitted optional celebrations. Bat Mitsva celebrations of a kosher kind may take place there. Despite all his misgivings and personal preferences, his legal ruling sticks to the juridical domain of synagogue function always keeping distinct the optional and obligatory, as he delineates them.

Keeping the categories of permitted and prescribed separate also necessitates differentiating between boys and girls. Boys and girls are equally considered responsible adults, while they are differently obligated, and their position in the community differs. According to the vision of Rabbi Moses Feinstein, they are of equal value and worth, but their ritual and communal environment is distinct and that must be maintained. The girl is Bat Mitsva, a fully obligated female, just as a Bar Mitsva is a fully obligated male<sup>30</sup>. Notably, he insists the celebration quotient, the *simha* level, is the same. Boys and girls are of equal value, and their birthdays, especially this one, is worthy of equal festivity. As in *IM OH 4:49*, he is insistent that there is no ascription of inferiority involved in the distinction. But the distinction cannot be avoided. Boys celebrate their Bar Mitsva in the sanctuary and the feast is considered prescribed. Boys become men who are communal representatives in public prayer. Women can never attain that status. Their ceremony is optional, never mandated. Initially, he forbids the synagogue

location but eventually permits a public venue for the Bat Mitsva. But its liturgical value can never equal the Bar Mitsva. He is unwavering in affirming that males and females are equal, different and must be kept separate in the realm of ritual.

### III. 3. In America

The emphasis on Bar/Bat Mitsva ceremonies is recent, characteristically North American, and symbolic of a major shift in the modern practice of Judaism. In the pre-modern era Jewish celebrations focused on historic and communal events. Rites de passage were minimal for the most part. Certainly, they did not focus on the individual in the way in which today's life cycle ceremonies do. Bar Mitsva celebrations were festive communal occasions for emphasizing the integration, if not submersion, of the individual into the community. The contemporary counterpart is a celebration of the individual as individual, focusing on her/his accomplishment and singularity. This shift naturally fits into the cultural context of American individualism. It is a personal experience that is not privatized. It may take place in the community, in the public sphere, but its purpose is the glorification and display of the individual, not the collective. The battle for the Bat Mitsva becomes comprehensible in this changed environment. Opportunities for personal public ritual participation and support were once unavailable to women and unimportant for both men and women. The changed emphasis in

the general Jewish community, has resulted in a shift to increase women's involvement and responsibility specifically.

Feinstein rejects not only the increased public participation of females, he dislikes the entire shift and would even eliminate the Bar Mitzva. He calls the Bat Mitzva worthless (*hevel bealma*, *IM OH 1:104*), insinuating that since there is no purpose or function served by the Bat Mitzva, there is no reason to start something new. His attitude is consistent, as he adds that the Bar Mitzva is in no way beneficial (*IM OH 4:36*). He admits quite plainly that if he could, he would stop the entire custom, even though it originates in a religious duty. In both texts he mentions the deleterious effects of the ceremony since it frequently causes people to violate the Sabbath. Thus, instead of celebrating and embracing God's law, it ultimately involves a desecration. Feinstein is so overwhelmed by this infraction, that he can see no value in the celebration. He argues with his questioner (*IM OH 4:36*) on just this point. There is no increased commitment or devotion "not even for one hour" (*IM OH 1:104*). In all these comments his sense of outrage is apparent and his disapproval is resolute. He is focused on the totality of the celebration and sees only desecration. Others like Rabbi J. Weinberg have concentrated on the individual. For many rabbis and educators the celebration offers many benefits. The person who experiences this moment of public support, affirmation and inclusion is often changed in subtle and everlasting ways.

Feinstein's measure is one of immediate actions; he is not measuring long term identity or psychological factors. As a decisor, he responds to his perception of the immediate act, rather than long term intangibles. At one point, he even admits that an exceptional girl might benefit in some way from the celebration. But because the majority will not only not improve but will in fact disgrace the community standard, the act must be banned. The needs of the individual are submerged in the necessity to protect the group. In this discourse, unlike some other arenas of his work, Rabbi M. Feinstein does not advocate or yield to the prevailing American arrangement. He disagrees with those in the community who firmly believe that there are notable and vital benefits. The shift to highlight an individual as Jew does not reverberate in his decisions. He responds to individuals all the time: that is the nature of responsa. He is neither unconnected nor unfeeling. In private matters such as birth control, he takes special care to consider all the needs, physical and emotional, of the individual. But in writing decisions for the entire community, he is compelled to a juridical standard that serves the collective and maintains the historical pattern as he defines it. He also reacts to the perceived threat of modernity with its violation of the Sabbath and collapse of all barriers. His method is to enforce separations, keep legal categories protected, maintain distinctions, strengthen boundaries, and decry unchecked change. His goal is firmly

fixed on group preservation and solidarity.

### III. 4. Change and no change

Nonetheless, he does allow a different configuration to emerge. Given his dislike of the entire process and his initial ban on synagogue usage, his final decision is quite startling. Under the guise of opposition, of prohibiting any "new" ceremonial, Feinstein in fact opens the door to a new format with a synagogue celebration of the Bat Mitsva. In *IM OH 1:104* he specifically states that nothing can take place in the synagogue and, furthermore, it is better not to start something new, even if there is no prohibition involved such as with a party at home. But by *IM OH 4:36* he has shifted the discussion with a change in terminology. By using precise categories and specific words, his decisions do not appear to require innovative legal reasoning. They appear to permit the established pattern to continue. The synagogue *kiddush* is a well established tradition. Historically, it was recited Friday night after services. Feinstein's application refers specifically to the North American custom of a Saturday morning recitation combined with a communal social event. Claiming its applicability to the girl's twelfth birthday requires no justification according to him. It is merely a case of permitting the permissible without requiring extra judicial explanation or authorization. The introduction of this ritual to honor a female goes unnoticed as an innovation, as does his acceptance of the Saturday morning congregational

*kiddush*, and the institution of birthday celebrations in the synagogue. While resisting one aspect of American culture, he readily accepts another. There is *simha* on this occasion and we designate such joyous events with a *kiddush* in synagogue. Hence, we mark the girl's birthday with this customary synagogue ritual. No change in law has ostensibly transpired, but the result is a definite change in practice. Whereas in previous eras there was no mention of a girl's Bat Mitsva, no celebration in home, school or synagogue, Feinstein, while maintaining his disapproval, has paved the way for two types of synagogue celebration. Thus, a girl can have a celebration with a *se'udat reshut* in the social hall of the synagogue building. She can also consecrate the moment in the sanctuary itself with a *kiddush* and with a speech. Innovation is permitted under the posture of preservation, and those who appear to oppose modern innovations, often provide the vehicle of accommodation.

According to Feinstein's responsa, a girl who is Bat Mitsva can be honored in the sanctuary and there can be a public recognition of her attainment of majority. The form of the ceremony is not similar to the Bar Mitsva for males, and it must signify their respective distinct legal capacities. More importantly perhaps, the format will not approximate the Reform or Conservative custom. The distinctions he is so concerned with have not been eroded. However, a liturgical location has been found for this rite of passage, and it is in



the public domain of the synagogue. Without losing the critical thread of continuity and tradition, without embracing all of American modernity, something new has entered the ritual program and it has the potential to change the face of the community.

#### IV. Ritual Participation: a direct responsum

The responsum *Ha-Nashim Ha-Sha'anot* (IM OH 4:49) is in some ways a focal document of this thesis. It is the only one in seven volumes of *Iggerot Moshe* in which Rabbi Moses Feinstein talks specifically about women's desire for greater involvement in the rituals of Judaism. It is possible that this represents a significant divergence from his enigmatic avoidance of the issue (as in IM OH 4:70 which raises the question of women reciting prayers in English in the synagogue) or merely reflects the lack of questions on this issue. Curiously, although he does not avoid mentioning women's desire for greater ritual participation, his decision is quite ambiguous on precisely the issue of which rituals they may appropriate. Moreover, it is rare in that he explicitly states his notion of female-male equality in Judaism. It is the only text in which he makes mention of the women's movement but does not consult with any of the women. In it he reveals his perceptions and mindset towards women, the secular world and towards the threat of change.

Feinstein also includes a brief account of the powers of rabbinic authorities in formulating new ordinances. His usual stance is one of "no change." He as rabbi is mere interpreter. He maintains that attitude in both his introduction to the first volume of *Iggerot Moshe* as well as in this text. Questions of rabbinic authority and his in particular appear intermittently in his responsa and it is clear that he is not

comfortable with assumptions of personal based power. However, in the context of individual decisions, he does not hesitate to assume the full range of his authority as decisor.

This *teshuva* is a response to a letter from another rabbi who has directly asked for Feinstein's opinion of women who are feminist and also for guidance as to how this rabbi should act towards them. The responsum is an intriguing blend of a dismissive attitude toward the women and gentle consideration for their predicament.

IV. 1. Glossary of Technical Terms

*assur*... forbidden

*dat yehudit* ... rabbinic regulations customarily incumbent on women

*hayav* ... obligated

*havdala* ... lit. separation, refers to the ceremony separating the Sabbath from the everyday

*kavana* ... intent, motive

*kedusha* ... holiness, sanctity

*kiddush* ... sanctification of holiday with ritual drinking of wine

*kofrin* ... heretics

*mashgi'ah* ... supervisor of ritual suitability usually refers to dietary laws

*meshubad* ... responsible to, see note 53

*minhag* ... custom sometimes having the force of law

*minyan* ... quorum of ten adults, conventionally men

*patur* ... exempt

*psak* ... rabbinic ruling

*reshut* ... permitted, optional as opposed to mandatory

*sha'anatot* ... pleasant, confident

*shomrot torah*... faithful to the Torah, keepers of the law differentiated from the higher level of those who "fear God"

*tallit* . . . prayer shawl

*tefillin* ... phylacteries

*tsitsit* ... ritual fringes worn on four cornered garments,

most specifically prayer shawls

IV. 2. Primary Source

JM OH 4: 49

1976

CONCERNING THE NEW MOVEMENT OF CONFIDENT AND IMPORTANT WOMEN  
*Ha-Nashim Ha-Sha'ananot Ve-Ha-Hashuvot*

TEXT translation

This concerns the overconfident/complacent and important women who, on issues of worldly affairs, are involved with that movement of women battling the nations of the world. These women who are observant of the Torah wish to carry their battle even into the arena of some of the laws of Torah. Some of them even wear prayer shawls (*tallit*) during prayer and do other similar things. You (the questioner) want me to express my thoughts on the nature of the issue and on how you should conduct yourself.

Initially, one must know from the principles of our pure faith that all of the Torah, whether written or oral, was given by The Holy One Blessed Be He Himself, on Mount Sinai to Moses our teacher, of blessed memory. Therefore, it is impossible to change any part, no matter whether one wants to make it easier or more stringent. However, we were commanded, when there is a need to legislate preventive measures (fences) that it was the responsibility of the Sanhedrin and the Sages to amend the laws, to restrict or to obligate, as long as all was

done with rabbinic notification as an amendment or a fence. With our dispersion amongst the nations, we no longer have the power to make global amendments. We can only make local and temporary regulations. In any case, the Torah itself exempted women from those obligations that are positive and time bound. Even the rabbis did not obligate the women for they saw no purpose to it. Quite the contrary, they understood the need to exempt the women for the very same reasons as are in the Torah's release. Besides, even though there are reasons of the Torah that are unknown to the ordinary folk and even to the great sages, we are nonetheless obligated to believe that God has reasons. There are also reasons that are obvious to all such as that since ordinary women are not rich, they are left with the responsibility of raising their boys and girls, which is by far the most important job according to God and the Torah. Moreover, God created every animal species in nature in such a manner that the females will raise the children. And human beings are no exception to this rule. The nature of women is better suited to raising children. For this reason, God eased their responsibilities in the arena of Torah study and in respect to obligations that are positive and time bound. Thus, even if social patterns change for all women or for all wealthy women in history, and even if it is possible to hand over childrearing to other men and women, as in

our country, nonetheless, the laws of the Torah and of the rabbis have not changed. No battle can succeed because there is no power to change the law even if everyone were to agree. Those stubborn women who wish to wage war are considered deniers of the Torah (heretics). See Maimonides chapter three, the section beginning with: three that are called heretics, one who says even about one word (of the Torah) that Moses said it on his own (and not from God), one who rejects an interpretation that is the Oral Torah, and one who says that something was reversed (exchanged), all three are heretics and their judgement is that they do not have a part in the world to come. Although the language of Maimonides indicates that (the heretic) is the one who says that God changed this commandment, clearly this is just to add (to the category). Thus, if even those who claim that the change comes from God (are included), then obviously, those who claim men can make the desired changes (are included). No matter what the reasoning, all these claims are essentially contravening Biblical texts that claim the Torah is eternal, as is explained in the *Kesef Mishnah*.

To be sure, permission is given to women to perform *mitzvot* (ritual obligations) that are not obligatory in the Torah. They can even be considered to have a duty and a reward in the performance of these obligations. In



fact, according to the ruling of the *Tosaphists* they are entitled (authorized) to make the appropriate blessing. It is our custom for the women to observe the commandments of *shofar* and *lulav* and even to make the appropriate blessings. From this one would think that *tsitsit* (ritual fringes worn on four cornered garments, most specifically prayer shawls), could apply to a woman who wishes to wear such a garment, as long as it is different from the male garment. This garment would have the necessary four corners and the proper fringes attached and would be used to fulfill this obligation. It is only in connection with *tefillin* (phylacteries), that the *Tosaphists* raised certain questions. In tractate *TB Erubin* 96a beginning with the word *Michal* there is a discussion of whether one must prevent women from wearing *tefillin* or not. Since this garment requires diligence either in terms of a clean body or in terms of concentration, even men who are obligated are not allowed to wear them all day long and are therefore, limited to the short time span of morning prayers. This is the judgement in the *Rama* OH:38.3. The *Targum of Jonathan*, in reference to the biblical text on male garments which are forbidden to women, states: women shall not wear *tsitsit* and *tefillin* for they are male garments on women. This view is not in accordance with the *Tosaphists* whose opinion simply does not agree with *Targum of Jonathan*.

Plainly, they (the *Tosaphists*) are dealing in a situation wherein the woman's soul desires to perform a *mitsva* even though she is not commanded. However, since (in our case) it is not for this purpose, rather the desire comes out of a rebellion against God and his Torah, it cannot be an act of *mitsva* at all. On the contrary, it is a forbidden act, forbidden as a heresy that expects a change in the laws of the Torah and as such must be dealt with as a very grave matter.

Secondly, one must know that it is not because women are inferior to men in levels of sanctity, *kedusha*. In matters of *kedusha*, they are equal to men: (specifically) concerning the relevance of the obligatory commandment relating to sanctity, there are specific commandments for Israel. Furthermore, women are included in all those biblical verses dealing with sanctity. Whether in those verses describing the conditions for receiving the Torah "And you shall be for me a treasured people and a holy nation" , in which the words "house of Jacob" refers to the women and "tell it to the children of Israel" refers to the men, or whether in those chapters and verses of *Mishpatim*, *Shemini*, *Kedoshim*, and *Re'eh*, in all the places where the sanctity of Israel is relevant women are included. Therefore, women also must make the blessing saying "who has sanctified us in his commandments" just as the men do, even on rituals from which the women are

exempt. Thus, it (the exemption) is just a leniency from God who, for some unknown reason, wished to lighten the burden of women. It is certainly not due to inferiority. Even in the realm of the obligations between a husband and wife, there is no difference, the obligation of respect applies equally. And many of the women who were prophetesses were ruled by the same regulations of prophecy as the men. Furthermore, in many cases, women were praised even more than the men in the Bible as well as in the words of the sages. There is no disrespect in their exemption from the study of Torah and from precepts that are valid at a fixed time. And there is no reason to be angry. You, my respected colleague, must explain this every time, be firm and strong for these are the unchanging sacred customs of our Torah. Prevent these women, who after all this will remain steadfast in their sinful and twisted (stubborn) ways, from changing any sacred customs of Israel.

I shall conclude with a blessing for peace and truth for you and for all who are with you and to the entire holy community of men and women and children.

FORM

- I. Date and Greeting
- II. *Hinei Be-Davar* /statement of case
  - a. naming the problem
  - b. placing it in context
    - 1) socially: in the world at large
    - 2) legally / ritually: in the Jewish world
  - c. the question
- III. *Ve-Hinei* / statement of key concepts
  - a. statement of primary principle of faith
  - b. explanation of structural pattern for change
    - 1) historical background
    - 2) legal terminology
    - 3) restrictions on that process
  - c. possible reasons for rule of exemptions
    - 1) repeat source of exemptions
    - 2) reason unknown/accepted on faith
    - 3) economic and social reason
    - 4) natural reasons
      - a) nature of species
      - b) women's inner nature
    - 5) no reason sufficient cause for change
    - 6) no power to change
  - d. categorizes those seeking change
    - 1) legal term
    - 2) source1: Maimonides
      - a) three types
      - b) principle of faith invoked
    - 3) source2: *KESEF MISHNAH*
- IV. *'Ibra* / presentation of key legal concepts
  - a. Statement of law
    - 1) permission for act
    - 2) permission for blessing
      - a) source3 : *TOSAPHOT*
    - 3) custom practiced
  - b. Hypothetical conclusion, emanating from a.
    - 1) subcase1: conditions
    - 2) subcase2:
      - a) source4: TB ERUBIN 96a *TOSAPHOT*  
two reasons
      - b) source5: *RAMA* OH 38;3  
ruling
      - c) source6: *TARGUM JONATHAN*
      - d) disallows source6 based on source4
  - b. New information (motive): two possibilities
  - c. Final decision
    - permission denied because b. brings in the application of source1.
- V. *Ve-Shenit* /persuasive argument
  - a. Statement of principle (Equality in sanctity)
  - b. Homiletic proof of principle
    - 1) Hermeneutic guideline

- 2) Five Biblical texts cited
  - c. Proof in ritual (prayer)
  - d. Reiterate reason for difference
  - e. Further proof / obligatory marital mutual respect
  - f. Further proof / women as prophet
  - g. General rabbinic statements adduced
  - h. Dismisses reason for original case (complaint)
  - i. Admonition to questioner
    - 1) to teach and remain steadfast
    - 2) reiterates denigration of those who wish change
- VI. *U-Vaze* / closing comments
- a. Conclusion
  - b. Salutation

**ANALYSIS****Note on the Title: *Ha-Nashim Ha-Sha'ananot Ve-ha-hashuvot***

In the title and in the body of the text, Feinstein refers to the women as *Ha-Nashim Ha-Sha'ananot*. Translating that idiom provides the knowledgeable reader with a clue to Feinstein's intent and conclusion.

The title refers to Isaiah 32:9 in which the prophet warns the people, especially the women, who are overconfident. The verse reads as follows:

Rise up, ye women that are at ease, and hear my voice  
Ye confident daughters, give ear unto my speech.

...  
Tremble, ye women that are at ease;  
Be troubled, ye confident ones;...<sup>31</sup>

Feinstein uses the biblical word *sha'ananot* which is translated as "at ease" in the text. The range of possibilities includes complacent, prideful, trusting, secure, and confident. The context in Isaiah indicates that the best translation would be overconfident. For the prophet, as for Feinstein, these women are not behaving "properly" and their confidence is misplaced. It is a confidence in themselves and their ideas rather than in God's ways and spokesmen. As the text indicates, these women should be the opposite of confident; they should be worried. Thus, for Feinstein, although he calls these women important and acknowledges that they are faithful to the Torah or keepers of the law (*shomrot torah*), nevertheless their confidences, as their claims, are

unjustified. Yet, in naming them *ha-sha'anatot* and also *hashuvot*, he allows the statement to retain an element of a polite compliment. These women are part of the holy congregation. His careful presentation of the impossibility of change as well as of the equality of women indicates his patience. He is in a persuasive mode more than one of condemnation. However, his legal judgement places them in the category of heretics, and he states towards the end that their minds are set on an evil path. This oscillation between respect and scorn is symptomatic of the entire responsum.

The opening paragraph is quite revealing. It presents the critical code words for his argument. By way of both title and phrasing, Feinstein lets us know that he is opposed to the claims of women who wish to bring a feminist challenge to Judaism. In stating at the outset that their argument is external, arising out of the affairs of state and out of a general movement of women in the world, he lays the groundwork for rejecting the requests. The demands come from the external world and are not integral to Judaism or Jewish law; hence they are not for us, not "kosher".

By establishing the illegitimacy of the source of the request, he claims that this group of women, even though religious and *shomrot torah*, are not motivated by piety. And motivation plays a decisive role in this responsum. Their desire, according to Feinstein, is not to perform *mitsvot* (commandments) but to fight against Judaism using principles

from the outside alien world. In fact, they wish to bring the battles of the outside secular world into Judaism. For Feinstein these women are part of that outsider group.<sup>32</sup> And yet, he includes them in the category of holy congregation and even labels them important, *ha-hashuvot*. The use of that word in a text restricting ritual activity for women is curious. The Talmud creates a separate category of women who are *hashuvot* (TB Pesahim 108a). Normally, married women are exempt from the obligation to lean at the commemorative retelling of the exodus on Passover. However, the Talmud expounds, if a woman is *hashuvah*, important, then she must lean. In a revealing gloss to the law as stated in the *Shulhan Arukh*, Issereles notes that "all our women are considered *hashuvot*" (OH 472.4). Feinstein's use of that term is surely enigmatic. It is difficult to presume that he was unaware of the legal association of the term. At any rate, he certainly uses it in a positive context. To that degree, then, the women in this case are insiders. The fluctuation of attitude comes from his rejection of their cause coupled with his respect since they are within the category of religious Jews. He would like to persuade them to desist from their battle; he finds that battle threatening and illegal. He exerts a great deal of energy to convince them that Judaism respects women and in the arenas that count treats them equally. He doesn't want them to be angry with God or with the Torah and its decisors. Though he rejects their claims, he hopes they won't reject his



arguments. Yet, knowing their stubbornness, his realistic expectation is to convince the rabbi and give him the necessary support to convince the congregation to remain steadfast in opposition to the demands of these women.

The teshuva is unusual in that it contains two major statements of principle. Both his rejection of change and acceptance of the equality of women are significant clues to his standards and the reasoning processes that guide all his decisions. As well, they are both significant indicators of his reaction to and appreciation of life in America. The form of the text is one of a persuasive moral discourse. The sparse legal section, sandwiched between the two larger statements of principle, is equivocal and does not appear to form the basis of his decision. His use of biblical sources is more homiletic than juristic. Feinstein's statement on change is an *apologia* in the formal sense.

He begins with a statement of a primary principle of faith. All of Torah, whether written or oral, was given by God to Moses on Mount Sinai. Grounding the discussion against change in divine authority is essential for Feinstein. He calls upon all the code words of immutability in his opening salvo; pure faith, Torah, written and oral, God, Sinai, Moses. Thus the stage is set, as far as he is concerned, with indisputable authority and irrefutable sources in defense of his position against change. The following statement even admits that personal desire, whether one wants to be lenient

or strict, has no place in the decisor's argument. Perhaps he is saying that he wishes he could permit or be lenient but that the issues are so basic that he cannot no matter what his personal inclination. Certainly, he is establishing the grounds for refusing the women's requests, no matter how serious or urgent: no personal plea or rabbinic will can change the God given laws involved.<sup>33</sup>

Having begun with philosophic claims for immutability, he must now justify that in the context of known halakhic procedures. In that vein, he explains the method that did exist for rabbinic innovation or modification and then shows that it is no longer available. There was a time when rabbis could make global legislative amendments, but not today. Now all rabbinic power is focused on local and temporary applications of ancient legal principles. In response then to these women, he is claiming that it is out of his hands or anyone else. In fact, he claims that the specific exemptions being disputed are established with direct Torah authority. Accordingly, no rabbinic judgement would or could eradicate that status. The "no change" attitude of his is tremendously strengthened by attributing it to original Torah authority, but he never adduces any source or support for such an affirmation.

Interestingly, he finds it necessary to explain the reasons for the exemptions and to reaffirm their lasting relevance. Feinstein begins with a declaration that God has

reasons and we are frequently not privileged to know them. Thus, the escape clause when presenting rational grounds for *mitsvot* falls back on human inability to comprehend the ways of God. This belief reinforces his legal position. Even if he fails to convince anyone with the ensuing reasons, nonetheless we are bound to God's law as it stands.

Especially important is his declaration that although we do not understand the reasons for the differential levels of obligation, we are nonetheless obligated to accept them and believe that they emanate from God. This attitude is well within the traditional norm. Reasons, known as *ta'amei ha'mitsvot*, are interesting but they should have no effect on the law. We can know them as plausible or even probable, but the law is not adjusted to follow reason's path.<sup>34</sup> He does not want to be put in the position of professing understanding nor of holding one particular explanation, yet he does try to give reasons. He is clearly not satisfied to state the law without trying to explain the reasoning. Yet none seem to satisfy and he presents a sequence of possibilities.

Feinstein initiates the discourse with the conventional "natural" explanation for women's position in society. Women mother; that is their job. Their nature is better suited to it. It is the way of all the species. Feinstein is obviously unaware and unconcerned with the feminist counter-arguments. He believes that he advances his argument by adding that what women do is the most important job. The fact that one would be

hard pressed to prove this from traditional sources does not phase him. But he continues to offer suggestive reasons for the differential obligatory status perhaps because these do not satisfy. He is definitely aware of the social and economic changes that have taken place in the American household. Thus, his next step is to acknowledge that even if there are social changes, ie that women are not fully occupied with mothering - if they ever were<sup>35</sup> - nonetheless, the law stands. No battle, no argument based on social context can succeed in dislodging the law.

Feinstein's analysis of the ritual difference between men and women contains contradictory attitudes. He claims that Torah exempted the women and that the rabbis saw no need to obligate the women. He goes on to declare that the rabbis understood the need to exempt because of the very same reasons found in the Bible. In the very next sentence, he admits that reasons are unknown and not important in this context. He then lists and analyzes some of the reasons usually advanced, accepting and rejecting them as he writes. Finally, despite these known or unknown reasons, he acknowledges that women may perform the acts, say the blessing and receive the relevant rewards.

In this segment of the responsum, Feinstein has stated that change is not possible and then argued that although change was once possible, rabbis today are unable to create new legal standards. Feinstein also contends that we cannot

know God's reasons but then proceeds to adduce reasons, concluding by saying that even if the sociohistorical motivations have changed, the law cannot change. The overall message of "no change" is quite forceful, but the path to it is rather circuitous if not contradictory.

All of this is prelude to his legal position; namely that those who argue for change, especially in today's world, are *kofrim* (heretics). It is in this section that he is able and willing to bring in sources. His discussion of heresy relies on Maimonides' classification. Given the three categories of heresy, Feinstein argues that Maimonides' conception of one who says God changed the law is an expansion of the basic three and would obviously encompass those who claim that the rabbis can change the law according to their will. Feinstein's argument is a broad based attack on any statement that appears to contravene the declaration that the Torah is eternal. It would appear that he considers the women's desire for greater ritual participation to be of the same genre as, according to him, the Conservative movement's overall heretical stance on law and history.

Remarkably, Feinstein's other major statement in this text is an articulate declaration of female equality in Judaism. This claim is essential to his whole argument. In a rather large and interesting paragraph, he uses textual, legal, moral and homiletic means to prove that Judaism is "just" in its treatment of women. His implicit argument runs

as follows; women want to change the law because they feel that Judaism is unfair and treats women as inferior. However, he continues, these women have been misled. Judaism is perfectly fair and treats women with equal dignity and respect. He then brings all manner of proofs.

He establishes his position within the crucial area of holiness. Women are in no way inferior in matters pertaining to *kedusha*, holiness. Feinstein quotes biblical passages to show that in all places where the sanctity of the people Israel is relevant, women are included and their inclusion is specific not merely inferred. Parenthetically, Feinstein uses this argument to permit the "commanded us" formulary of blessings to women for whom the specific ritual act is optional. He argues that since women are in the sanctified category, when they choose to perform a given ritual, even those from which they are exempt, they must say "who has sanctified us in his commandments" just as the men do. Presenting the blessing issue within this category of inclusiveness supports his posture on equivalence.

From this point, he proceeds to declare that the exemptions themselves are no more than mere favors from God. This interpretation is in addition to his previous list of reasons. God recognizes the work of women and wishes to lighten their burden. For Feinstein, as well as many others, these exemptions are not restrictions but gifts from God. He does not try to argue the specifics of these gifts, nor show

why one burden can be removed but another cannot.

Continuing with his list of equivalences, Feinstein notes that husbands and wives have equal obligations to respect and honor each other. Relying heavily on biblical material, he resorts to pointing out the correspondence between male and female prophets. Moreover, he recounts that women were praised for their righteous deeds sometimes even more than men. For Feinstein, all of the above demonstrate that exemptions cannot signify disrespect. Since that is the coin of his consideration, he rests his case. Women are not inferior, they are respected. Hence, there is no reason to be angry.<sup>36</sup>

Feinstein's argument is quite straightforward. Since it is so obvious that in the important arenas Judaism is equal - though not egalitarian - in its treatment of Jewish females, there is consequently no need to change anything and the women have no cause for their anger. Thus, although he denies the legitimacy of their request for change, demeans their motives, and even goes so far as to call these observant women heretics, he does acknowledge the validity of their underlying need for equality in certain realms. Arguably, his argument is predicated on an appreciation for the underlying feminist position of the women. Equality, that is the absence of inferior/superior inferences and the search for equal respect and dignity, is a value that is commensurate with Jewish ideals according to Feinstein. The Americanization of his argument is apparent; separate, distinctive and equal is

possible and even preferred.

At this point, it seems appropriate to mention what he does not do. Feinstein may use the charge of heresy, but he does not apply the full legal weight of that category. He neither treats these women nor their desire to be included as heretical. Moreover, although he disapproves, Feinstein does not permanently or absolutely forbid the assumption of certain ritual acts by women. He does not develop specific legal arguments to forbid the use of a tallit and he undeniably leaves the wearing of tefillin by women in an ambiguous category.<sup>37</sup> In the crucial yet brief paragraph wherein the legal precedents and issues of tallit and tefillin are actually discussed, there is no clear *issur*, prohibition, of those two acts. His halakhic integrity prevents him from allowing flimsy arguments to prohibit even undesirable actions. Instead, Feinstein paradoxically presents the argument for permission. He notes that these two ritual acts fall into a category of other optional *mitsvot*. In that grouping, are *mitsvot* that women not only can perform but are encouraged to do. Feinstein goes so far as to say that women have a duty and reward in the performance of these *mitsvot*.

Specifically, he enumerates *lulav* and *shofar*, two very popular acts that women although exempt have been performing for a long time. He says quite specifically that it is our custom for them to do so.<sup>38</sup> The use of the word *minhag* is an interesting juxtaposition. Custom here qualifies law. Though



they are exempt by law, our women do these acts and are rewarded for this. Obviously, according to Feinstein, there is no violation of Torah law in their assumption of ritual activity. The pronominal reference to the women who wish to perform rituals incorporates them into the community of the righteous preventing any indirect censure. By linking the questionable acts of *tallit* and *tefillin* with rituals that women have a right to perform and even receive a reward for, Feinstein is perhaps leaving the door open. His statement "From this one would think that *tsitsit* could apply to a woman who wishes to wear such a garment," contains the intimation of the complexity and absence of absolute surety. By the end of the text, he does not demonstrate why women cannot wear such garments. On the contrary, instead of prohibiting all women from *tsitsit* or *tallit*, he disqualifies just these particular women.

In fact, he dismisses arguments for the prohibition of *tefillin* using both the talmudic pericope on Michal and refuting *Targum Jonathan*. His real purpose and argument is against the possibility of external influences bringing change into the world of Torah, not to outlaw any specific deeds. In fact, the legal groundwork is presented for arguing that though this group of women is forbidden by this responsum, women in general are not prohibited from performing many and perhaps even all of the exempted acts. The prohibition here is not on the basis of optional versus commanded. It is also

clearly not on the basis, used by others, that these ritual objects are biblically forbidden to women because they are in the category of male clothing. Feinstein then, rejects all intrinsic legal reasons - other than motive - for forbidding women from increasing their religious activity. He even allows that some women in the past increased their religious observance out of a legitimate religious/spiritual need. Their "souls" desired to perform the *mitsva* and it was permitted. What is forbidden here is the performance of a ritual act as an act of protest against God. The implication in this section is that when one is dealing with women, they constitute a group whose motives are suspect.

Nonetheless, as noted above, Feinstein, following the ruling of the *Tosaphists* (TB Kid. 31a), states that women can say the blessing which includes the formulaic "who has commanded us." This blessing is a matter of some dispute by rabbinic authorities.<sup>39</sup> Allowing women to say it might be construed as a step of inclusion, that is of including women in the community of obligated, or of encouraging women to view themselves as obligated. Feinstein is not troubled by that. He most definitely does include women in the *kahal ha-kadosh*, the sanctified community as is evidenced in his concluding line.

The only reason these acts are forbidden by Feinstein in this responsum is due to the motives of the women involved and not because of any inherent legal problem. The legal argument, therefore, is somewhat contradictory. In it Feinstein presents

all the precedents for women assuming greater ritual responsibility. He dismisses reasons most frequently cited for prohibiting the rituals and then forbids these very same acts in a general decree because of who the women are rather than because the acts are forbidden. This responsum, then, is politically rather than analytically resolved, since other than purely textual considerations have been determinative.

It is important to note that he does not accept the premise of women bound to the house as mandatory. That may once have been the critical factor, but it clearly does not operate today. However, though women's market value has changed and though that may once have been the reason for differential obligations, the change of economic role and public lifestyle has no bearing on changing their ritual status. Thus, his argument against change is very specific. Women's role has changed occupationally and socially. Not only does he not bemoan these changes, he welcomes them. However, those new American lifestyles have no relevance to Torah living, at least as far as the demands of this specific group.<sup>40</sup> One cannot use any of the talmudic arguments of analogy or draw parallel patterns according to Feinstein. From his perspective, it is essential to claim *de-oraita* (Torah authority) status for the original customs so that no human reasoning power can argue for change. For Feinstein the theological issues involved are extremely important, and though he couches them in legal terms, he relies heavily on

his powers of moral authority and persuasion.

At the conclusion of the responsum, the convoluted style leaves its mark. The purpose of responsa is to issue a *psak*, a decision. What is the *psak* of IM OH 4:49? What specifically was the request or desire of the women? What exactly did Feinstein forbid? Did he give permission for anything? Usually at the end of each responsum, there is a discernible indication of his final ruling. In fact, he typically repeats his decision within the core of the text. However, in this one the enigma persists. Feinstein tells the rabbi to explain to the women that they have no cause to be angry. The rabbi should remain firm in his own belief that it is according to the Torah to prevent these stubborn and sinful women from changing any of the customs of our holy people. Which customs? The opening paragraph mentions that these religious women wear prayer shawls and do "other similar things". Does the question then focus on women wearing prayer shawls? In the context of the responsum, Feinstein makes it clear that some women can, just not these women. What similar things, *tefillin*? We do not know exactly what the women wanted nor can we be sure which ritual or custom Feinstein is actually forbidding. His closing statement alludes to any changes in custom but his internal argument commends those women who did change custom by performing optional *mitsvot*. Is he implicitly permitting women with the right motive to increase their performance of rituals?

Ultimately, Feinstein forbids acts of protest. He acknowledges that some women can be sincere and desire greater ritual activity for the right reasons, "for the sake of heaven". However, he censures this particular group, finds their reasons external and therefore rebellious, and subsequently forbids them everything. That is the decision of *IM OH 4:49*.

#### IV. 3. Motive of the women

One of the most intriguing and problematic aspects of this responsum is his argument based on the motive of the women involved. Having presented all the legal reasons for permission, he forbids the practices because of the motivation behind the request. In ritual matters, motives are sometimes a determining factor.<sup>41</sup> For example, there is a concept of *yohara*, excessive pride which might invalidate certain ritual acts.<sup>42</sup> The tractate *Nazir* (TB 23a) presents a discussion of the importance of motive and vows. In TB *Berachot* 33b, there is an interesting deliberation on performance and motive. If the leader repeats certain words his allegiance is questioned and he is not permitted to continue. This closely approximates Feinstein's decision in this case. The women involved are prevented from further ritual activity because their allegiance is suspect. There is no indication as to why other than his opening comment that they have been influenced by the current women's movement.

But intent and motive are not so easy to ascertain nor do

they always determine the decision. Often they are considered irrelevant. Moreover, there is a general notion that at times the ritual act itself can generate the appropriate intention (*Mi-tokh she-lo li-shma, ba li-shma*). But Feinstein has determined in this case that the women are not working "for the sake of heaven," but are rebellious and therefore, they are like heretics. This decision is similar to his refusal to allow a proper *mehitsa* to be substituted for a balcony (*IM OH 2:43*). In that case, he decides that the women only requested the change in order to prepare the groundwork for the removal of all partitions. He does explain that if the request for a change of structure was based on the need for more space or to protect the rabbi's livelihood, then the change would be permitted. Permission is dependent on the motives of those involved.

His ruling in *IM OH 4:49* is sometimes linked to the controversy surrounding separate women's prayer groups.<sup>43</sup> In a 1983 unpublished letter written in his name by his grandson, Feinstein makes the same kind of distinction. If the women were righteous, acting "for the sake of heaven" then no one would stop them. However, women today it appears are all implicated in this contempt toward Torah authority and are to be prevented from proceeding. The letter was written by Rabbi Mordecai Tendler to Rabbi Meyer Fund. It begins with a quote from *IM OH 4:49*:

"However, since (in our case) it is not for this purpose,

rather the desire comes out of a rebellion against God and his Torah, it cannot be an act of *mitsva* at all. On the contrary, it is a forbidden act, forbidden as a heresy that expects a change in the laws of the Torah and as such must be dealt with as a very grave matter.

The letter then goes on to claim that it is difficult to find an instance in which this attitude of rebellion is not present. Hence, Tendler in the name of Feinstein denounces any "women's *minyan*." However, he goes on to speculate that with a group of righteous women whose intent would clearly be just "for the sake of heaven," without any hint of dissension, then theoretically such a prayer group would be permitted. In fact, he says, "why would it be appropriate to stop them from praying together?"

Remarkably, the text continues to specifically permit reading from the scroll of the Torah as long as it is not done in a fashion that emulates the public congregational reading. Thus, the blessings should not be done publicly. After leaving the details in the hands of local rabbinic authorities, he adds a decisive postscript declaring that there is absolutely no ban preventing a menstruant from touching or reading from a Torah scroll.

The weight of motive is perhaps stronger in this text. No matter who the women are, the letter implies, they might not operate "for the sake of heaven." All women today are discredited by the rebelliousness of the women's movement. Any

request for greater involvement is suspect and, therefore, condemned. Yet, there are ambiguities in this too. Is this a decision to forbid all prayer groups? Why add the theoretical permission? Again, as in the published text, there is an acknowledgement that some women do hunger for *mitsvot*. These are the righteous women known to the *Tosaphists*. Is Feinstein claiming that there are none today, or only that those who would ask for any change are *ipso facto* not righteous?

In a subsequent communication Rabbi Tendler clarifies that his grandfather does not "commend or actually condone the establishment of women's prayer groups."<sup>44</sup> Rabbi Avraham Weiss argues that although the message is clear, finding righteous women is difficult, nonetheless, Feinstein nowhere forbids women's prayer groups.<sup>45</sup> Although remote, the possibility exists of finding qualified women who will pray in an halakhically permissible way with a Torah scroll. Both opponents and supporters of women's prayer groups have used Feinstein's original responsum and these subsequent letters.

Again, as in the original responsum, Feinstein has not discussed this with any of the women themselves. Most of the groups do not use the designation *minyan* precisely because of halakhic problems. Most rabbinic responses to women's prayer groups have missed this point completely.<sup>46</sup> It is not possible to speculate as to Feinstein's decision had he known the women or that they do not consider themselves a *minyan*.

Despite all the ambiguities and misinformation,



Feinstein's unpublished letters, like his published responsum, dismiss the halakhic arguments of those who would forbid women's increased ritual activity. As usual, he will not allow misuse of halakhic categories even to prevent that which he denounces. In the responsum, Feinstein exposes the flaws in the argument restricting tallit or tefillin based on the claim that those items being male garments are biblically forbidden to women. He also notes that exemptions are not to be considered permanent prohibitions. He even understands that some women may have good reasons to increase their ritual participation. In this letter, he specifically rejects those who would argue that women cannot see or touch a Torah scroll. Furthermore, he dissociates any such claims from any link to the category of menstrual taboos despite local customs. Moreover, he lays the groundwork for the permissibility of women's prayer groups. All that is missing is correct motive. Otherwise, the concept is acceptable. Finally, he rejects any opinion that unconditionally condemns women's ritual activity as a valid halakhic option.

Evidently, motive is a critical factor. Even the sanctity of the synagogue depends upon the initial intent of the builders. The essential sanctity of a synagogue depends on unmodified and absolute dedication to prayer exclusively. Therefore, Feinstein allows certain types of activities in synagogues that were built for the purpose of parties (*IM OH* 2:30, 4:35). He claims that they do not have the sanctity of

a building that is built only for the purpose of prayer. Hence, he permits Bat Mitsva celebrations in such unspecified locations.

#### IV. 4. Motive: Individual and group parameters

Feinstein customarily determines the intent of an individual or group without any indication as to how he reached that deduction. Often, his assumptions vary depending on gender. In a responsum on dieting, *IM HM 2:65*, Feinstein, while permitting both men and women to diet, attributes very different motivations to each group. Since asceticism is frowned upon, denial of food like other pleasures (*TJ Kid. 2:65*) must have a valid reason. In Feinstein's view men diet in order to improve their health or to prevent illness. They do not stop eating merely eat differently. Thus, their suffering is counteracted by the pleasure of good health. Women on the other hand, diet in order to appear more beautiful. Their goal is to attract men. Unmarried women seek a partner, and married women wish to be more beloved of their husbands. Their denial is either only of sweet foods or at times of food in general but is still offset by the pleasure of greater beauty. Feinstein pigeonholes both genders seemingly without any substantiation.<sup>47</sup> His views are firm and compelling for him. On this gender differentiated basis he issues his decisions.

In addition to gender distinctions, in many cases, Feinstein is more suspicious of a group's motives than an

individual. Individual's can be under duress, or plead ignorance. Many of his responsa show great understanding and compassion for the particular Jew. Furthermore, there are other factors that determine his assumptions concerning proper purpose.

Any act that appears to be motivated by a desire to imitate Conservative or Reform practice is prohibited. Thus, his initial ban on Bat Mitsva celebrations of all types specifically denounces them because of the influence of the Conservative movement (*IM OH 1:104*). This is obviously reminiscent of the legal principle banning any imitation of non-Jewish ways (*Leviticus 18:3*). For Feinstein, the need to separate from non-Orthodox practices is at least equal to the requirement to remain distinct from non-Jews. Unlike others such as Rabbi Y.Y. Weinberg who discusses the personal desire of the female for greater religious expression,<sup>48</sup> Feinstein only sees the danger of the Conservative influence. He maintains this distrust in most of his decisions. Remarkably, permission is denied to build a kosher *mehitsa* instead of a balcony because Feinstein believes that all the women really want is the mixed seating of a Conservative synagogue (*IM OH 2:43*). All things Conservative or Reform are staunchly denounced. Their rabbis are heretics because their motivation is to deny God's sovereignty and the eternal validity of halakha. Thus, he continuously invalidates their rabbinic acts and does not use the term *rav* in referring to them (*IM OH 2:*

50,51, 3:21,22; EH 1:76,77, 2:17,20). In one of his most daring moves, he invalidates a marriage conducted by either Reform or Conservative rabbis. His argument again relies on intent not only of the clergy but also of the couple. He decides that marriage must be contracted not just for the purpose of *ishut*, matrimony, but also with the specific intent of *kiddushei torah*, Torah sanctification (IM EH 3:23,25). If the couple sought out a Conservative or Reform environment, then they obviously reject the validity of halakha. Their intent must be according to the law and indicate complete acceptance of the law. This decision is representative of just how significant a factor motive is for Feinstein.

Motive is not just a factor in prohibitions. Great leniency is extended to those whose financial needs impinge on their observances. Men do not need to wear a head covering, a widow or divorcee can remove her head covering and an Orthodox person can teach in a Conservative school. Feinstein frequently tells local rabbis that although he recommends a certain course of action, they need not follow his advice if it threatens their jobs (IM OH 2:43). Earning a living is so powerful an alibi that a man who acts as cantor in a Conservative synagogue is not deemed a heretic, despite Feinstein's usual treatment of Conservative clergy, and is allowed to function as scribe (IM EH 2:20).

Significantly, financial considerations are more than merely admissible. They frequently operate as a critical

factor for Feinstein. He is quite willing to be as lenient as possible as with the case of the widow (*IM EH 1:57*) in order to accommodate life in the contemporary marketplace. It is pertinent to note his continuing acceptance of women's full and equal presence in the public marketplace. There are no apologies, few distinctions and no special warnings about sexual impropriety. On the other hand, Feinstein is consistent in that he also permits men to go to work without the traditional head covering, *kippah*, if necessary for the sake of employment or financial gain (*IM HM 1:93, OH 4:2*).<sup>49</sup>

Moreover, although he discourages most forms of physical contact between men and women - even handshaking (*IM OH 1:113; EH 1:56, 4:32*) - nonetheless, he insists that it is proper for a male on his way to work to use public transport and sit next to a woman (*IM EH 2:14*). This notable decision on public transportation hinges on the issue of intent and purpose. For Feinstein the genders must be separate under certain conditions but physical contact poses a more serious problem. The rules banning all forms of contact were established to prevent any sexual transgression. Travelling to work is so important and physical contact so routine that Feinstein does not hesitate to grant his permission. On the other hand, handshaking could be perceived as pleasurable or indicative of emotional involvement. Thus, although many consider it a ritual greeting devoid of personal content, Feinstein does not. He is most unwilling to condone it. Even though he cannot

bring himself to criticize those who "fear the Lord", he does not agree to their acceptance of the custom. In *IM EH 4:32*, he posits a possible excuse - the woman extended her hand first forcing the Orthodox man to respond. But Feinstein quickly adds his misgivings. Shaking hands is too intimate, too susceptible to be permitted. On the other hand, sitting next to someone on the bus is not. For him, public transport is just too public. People travel to work, their goal is not interpersonal contact. Though shaking hands may occur in the public domain, the purpose is to make personal contact. His concern is not simply to forbid all forms of physical contact. Only that which usually leads to or expresses affection or pleasure is proscribed.

For Feinstein this issue of intent and social purpose makes all the difference. Given motives that fit his vision, he can accept or accommodate the distinct and various needs of some. In *IM EH 1:57* he permits a widow to appear without any headcovering for professional advancement. In *IM EH 4:32.6*, he permits a divorcee to uncover her hair also, but the motives differ. In the latter text he explores the similarities of these two cases. The question concerns a young divorced woman who wants to appear in public without covering her hair in order to meet potential husbands. Feinstein sets the stage for a permissive ruling by first dealing with the ethical question of deception. He posits that it is not possible to deceive as everyone in her community knows she was married and will tell

the prospective groom once he starts asking questions. In addition, her previous marital state will become apparent via the registration at City Hall. Thus, he posits that her motives are clearly not improper. Rather, she merely wishes to have a chance to "find favor in someone's eyes" before they know about the divorce. Feinstein concurs with her that her divorce status could be an impediment to future marital prospects. He then compares this case to *IM EH 1:57*, in which he permitted a widow, the sole support of her children, to remove her head covering for financial and career reasons. Similarly, in this case, he permits the divorcee to be bareheaded in order to improve her marriage prospects. This concession to social reality is limited, however. When she is not in a social situation, she must cover her head. He also clarifies his leniency in this area of law by claiming that the requirement for a divorcee to cover her head is only *dat yehudit* - custom- and not *de-oraita* - Torah law. This argument is identical to the responsum for the widow.<sup>50</sup> It is very brief and he refers only to his own earlier related decision. There are no other sources relied on or referred to.

His permissiveness in this area of head covering is consistent. He would wish that every married woman always covered all her hair, though preferably not with a wig (*IM EH 2:12*, and section 10 this responsum). But he is quite aware of the social realities that face even observant Jews. Finances and marital prospects are both important enough to him to

bring about a lenient decision. He is also quite aware of the prevailing American pattern. Women in the United States do not wear any head gear. It makes perfect sense to him that in order to advance financially one would have to look the part. Similarly, in order to attract a husband, a young woman must also look the part. Thus, his acceptance of American norms and styles of dress is an important factor in these responsa. It enables him to appreciate rather than disparage the motives of those involved. Furthermore, in specific responsa on prayer and synagogue, he rules that it is permissible to pray in the presence of women whose heads are not properly covered (*IM OH* 1:42). Again, his recognition of the custom of most Americans including Jewish women is apparent and operative.

His easy acceptance of the motives of the two women involved, the widow and the divorcee, is not insignificant. Her purpose is to marry again, not to deceive a man. The widow must support her children. He does not advise her to seek employment elsewhere, nor does he caution her about the slippery slope of immodesty. Her motives are clear, forthright and proper. Feinstein does not doubt either woman. In other cases, he doubts women as a group (*IM OH* 4:49, *OH* 2:43), positing unsubstantiated motives that render their request unacceptable. In *IM OH* 4:49, he notes that the women are faithful to the ways of the Torah, *shomrot torah*, but their motives invalidate their request and he labels them heretics. In a curious contrast (*IM EH* 2:20), Feinstein claims that



since the male cantor in a Conservative synagogue is a keeper of the law, he cannot be classified as a heretic and, therefore, can function as a scribe. Practicing the law does not protect the women from the label of heretic. The cantor's attributed financial motive coupled with the dire need for a scribe, does. Thus, these two cases indicate distrust of women as a group and the overriding power of motive. But combined with the previous responsa, they also indicate that male and female individuals are not categorized so easily as the "other." Individual women receive considerate and often permissive replies. Most significantly, in a few responsa (*IM YD* 3:75, 78), women as a group are included in that elevated category of *yirei Hashem*, those who "fear the Lord."<sup>51</sup>

It still remains difficult to discern Feinstein's attribution of motives to women. At times, it is apparent that he is aware of American social patterns and goals. In other cases, his suppositions do not appear to fit known social representations. In *IM OH* 4:49 this fluctuation is evident. He is clearly suspicious of the motives of this group of women and, therefore, forbids whatever they wish. But he knows that not all women operate with similar attitudes. In fact, he appears to encourage the assumption of optional rituals by women. In one intricate text, *IM OH* 3:94, Feinstein permits the proscribed carrying of the *shofar* or *lulav* from synagogue to house, in order for women to fulfil these rituals. Even though these are optional acts for women, he finds a way to

override the ban on carrying in order to facilitate a woman's taking part in the holiday rituals. Contrary to the sentiments articulated in *IM OH 4:49*, in this text Feinstein specifically mentions that this is for women whose motivation is for the sake of *mitsva*.<sup>52</sup> Thus, Feinstein acknowledges that women today are capable of proper motivation in the search for greater ritual performance. In Feinstein's view some women are to be trusted, some are not, and he gives us no clue as to his explicit criteria of distinction and judgement.

## V. Ancillary Sources

In a variety of different contexts, Feinstein extends his deliberations on women's specific ritual activity and participation. In general, the assigning of eligibility to utter a blessing is considered an important type of religious act. As seen above, he permits women to say the proper blessing when they choose to perform optional *mitsvot*. Throughout his collected responsa, there are numerous texts detailing the conditions under which women may, may not, or must say certain prayers.

In one troublesome case, Feinstein denies permission to a woman to say a prayer in English (*IM OH 4:70.5*). An Orthodox rabbi had permitted a woman to enter the men's section and recite an English prayer. Feinstein is amazed that a rabbi would allow such a thing. Is it possible, he asks, that given the questionable desire to have a prayer in English, no man could be found who could read it in English? His scorn is evident as he asserts that having a woman do this is antithetical to increasing reverence for God. This brief section of a responsum is merely an aside and contains no sources or halakhic argument. It is unclear as to what is specifically forbidden. Is it the prayer in English? Is the issue that the woman left the women's section and entered the area reserved for men, or that she appeared to be leading the men, or that her voice was heard by men? Probably every element of the package was anathema to Rabbi Feinstein. His

supposition that all that was sought was inclusion of an English prayer and not the opportunity for a woman to actively participate allows him the opportunity to avoid the critical issue. It is interesting to note this skirting of the issue given the ambivalence found in *IM OH 4:49*.

In a previous section, Feinstein permits individuals to use the published English prayers in private and silent prayer. He does not like the use of English in general and insists on Hebrew for the congregation. Thus, his disavowal of what occurred in this case occurs at every level. But he also manages to avoid dealing with the increasing desire of women for some participatory role. Moreover, Feinstein's language is rather suggestive. He states that the woman left the women's section and entered the sanctuary proper (*beit ha-knesset*). As noted previously, the question of identification is concentrated in and constricted by terminology. That women cannot enter the men's section is one issue; that the place women pray in is not considered the sanctuary bespeaks a whole new set of impediments.

In a contrasting case, Feinstein insists on women's inclusion in the public ritual. Their inclusion, however, remains passive and silent. The question of *IM OH 4:126* concerns reading the *Megillah* (the Scroll of Esther) on Purim with the aid of a microphone. Apparently, the principal of a girl's school in Israel is requesting Feinstein's permission to use a microphone so that the girls in the balcony will be

able to hear. Rabbi Posen has suggested that all the males will be close enough to the reader to hear the words directly.<sup>53</sup> This suggestion, which is based on the notion that men take precedence over women in this ritual, is quickly refuted by Feinstein. Women and men are equally obligated in the reading of the *Megillah*.<sup>54</sup> There are many imbedded legal issues in this direct ruling. If men and women are equally obligated can women then perform the ritual on behalf of men? Can the men listen to the voices of women chanting the *Megillah*? Can women constitute part of the quorum or *minyan* for this obligatory ritual? Are women obligated to hear or read the scroll? Despite the complex rabbinic controversy, Feinstein refrains from entertaining any of these questions.

In this case, the problem focuses on the fact that there are too many people for everyone to fit into one location and hear every word directly. The solution, according to Feinstein, is to continue as in the past. The evening prayers must be said at the proper time, with everyone in attendance in the synagogue. Then everyone is to help clean up the dining room. At that point, the group can split into two, and the reading can take place in both the synagogue and the dining room. Each location requires its own *minyan* (quorum of ten males) and reader. This decision would appear to assume a negative response to the above questions.

As in other responsa, Feinstein is quick to refute any unnecessary suggestion of gender inequality. In this case the

obligation is equal, and he will not allow the implication that male participation takes precedence or requires greater consideration. He also insists that everyone share the task of preparing the dining room and does not suggest that the men can go ahead without waiting for the women. The school is one community, all equally under the same obligation the discharge of which should be carried out with the same care, concern and time element even if the location is fractured. Apparently, he does not consider the fact that only the males read and constitute the *minyan* as discriminatory.

In some situations men and women have different responsibilities and different roles. That is legitimate as long as it is within the *halakhic* system. But Feinstein is loathe to add to those distinctions for fear of allowing notions of inequality that he does not subscribe to. Difference is acceptable; perhaps gender preference is not.

In various responsa he continues to rule that where women are obligated they must make the appropriate blessings. Some of these decisions advance or clarify the arguments surrounding the issue of women's obligations and exemptions. In *IM OH* 4:100, Feinstein declares that women are obligated to say *kiddush* on the holidays as on the Sabbath.<sup>55</sup> In a very elegant exercise, he links the wine ritual of holidays to the Sabbath one and suspends discussion of other rituals, such as the separation of *havdala*, whose obligatory status is questionable. Feinstein demonstrates that women are not exempt

because the Sabbath laws are classified as containing both positive and negative elements. Thus, the principle of exemption which is limited to positive commandments does not apply. He also adds that there is further support for their inclusion in this responsibility deriving from the laws of Passover.

However, as in the previous example, Feinstein's concept of fulfillment of obligations does not necessarily indicate active vocal performance. His recommendation is for the husband to recite the blessing on her behalf.<sup>56</sup> As in other areas of ritual, answering Amen to a blessing is sometimes indicative of inclusion and fulfillment. Presumably, her drinking of the wine is integral to the ritual. This solution is notable since Feinstein is permitting the man who has already said the *kiddush* to repeat it. Repetition which involves a possible violation of the commandment not to take God's name in vain, is usually forbidden. It is curious that Feinstein does not suggest that the woman herself say the prayer. That, however, is not to say that he forbids it. There is no indication of the specific question which might have dictated this response. Significantly, it is not possible to depend on this text for his opinion on women themselves reciting both prayers referred to in this responsum, *kiddush* and *havdala*. In *IM OH* 4:101.2, it becomes clear that women can and must say *kiddush* for themselves at certain times. The question remains as to why Feinstein did not recommend this

course of action in this responsum and thus avoid the problematic repetition of a blessing.

The discussion of women's obligations for both prayer and *kiddush* in *IM OH 4:101.2* is illuminating. The focus is on the sequence of the morning prayers, breakfast and the requirement for *kiddush* on Sabbath and holidays. The question is raised as to both the content of women's prayers as well as to the prohibition of eating before the prayers are completed. In this case, Feinstein reluctantly accepts an interpretation that women are not obligated to the "eighteen benedictions" and therefore, are lax in the ban on eating. He is perplexed by this exegesis and notes that determining the actual law requires further study. Nonetheless, he continues with the primary question about *kiddush*. If some women are permitted to eat before the prayers, it is incumbent upon them to satisfy the requirements of *kiddush* on Sabbath and holidays. However, Feinstein declares that married women do not have to say it for they are "responsible" to their husbands' mealtimes. Since it is obviously not yet their mealtime because the husband still has to pray, then she can eat without the *kiddush*. But if the man has finished his prayers and is for some reason not yet ready to eat, she may eat and must say the *kiddush* herself. Unmarried women, even girls who still reside in the parental home, must always recite the *kiddush* before eating anything. They are not *meshubad*, responsible to their parents and do not form any unit with them. The correct order of the



proceedings is to pray and then eat. On the Sabbath and holidays the order includes *kiddush* before the meal. There is only this one exception for married women under certain conditions. This ruling, while containing the problematic concept of *shibud*,<sup>57</sup> or dependency, clarifies Feinstein's position on women's obligation and ability to recite the relevant prayers. Women can and must say the appropriate blessings. However, for Feinstein as for many rabbinic decisors, the males performance supersedes that of the females especially if they are married.

Nonetheless, there are situations which call for women to perform rituals for themselves. In *IM HM 2:47.2*, Feinstein deals with women's ability and obligation to say the appropriate blessings for *havdalah*. Women are responsible to perform this ritual of separation for themselves. He extends the permission to include not just the agreed upon blessings over the wine and fragrances, but also the candle. This inclusion rests on an important distinction. If some sources indicate that women are not obligated to perform the ritual, Feinstein insists on clarifying that the absence of an obligation is not tantamount to denial of permission. As in *IM OH 4:49*, he maintains that in situations where women were exempted from certain rituals, it is plausible to argue that they may voluntarily perform those rituals. He further recalls the sources that permit women to voluntarily perform rituals and make the appropriate blessings. The only item to be

disputed is whether they may make a blessing that specifically refers to being commanded. As noted earlier, Feinstein permits women to consider themselves in the community of the commanded and hence to recite the blessings.

In this responsum, Feinstein permits women to perform the complete ritual of separation. In the process he clarifies issues of exemption and permission, as well as the related problem of the appropriate blessing. He then delineates the concept of time bound rituals from which women are sometimes exempt. His conclusion is that women must perform the ritual and say the proper blessing. Similarly, in *IM OH 3:94*, Feinstein extends this policy in order to allow certain ritual objects to be brought home to women so that they may participate in the full compliment of holiday rituals. Given his ambivalence in matters of ritual additions for some women, his consistency on this point is significant.

## VI. Addendum: Supplementary Source

Despite his decision in *IM OH* 4:49, Feinstein is not opposed to women's increased ritual activity in principle. More importantly, in *IM YD* 2:45, he allows a woman to assume a position of ritual responsibility and authority. This text is an undated letter written to the editor of the journal *Hamaor* defending an earlier decision.

In a previous responsum,<sup>58</sup> Feinstein allowed a widow to replace her husband as the Supervisor of Dietary Laws, *mashgiah*, following his death. In that responsum he argues through the major sources involved and then gives her permission citing the extenuating circumstances of *parnasa* income.

This letter is germane because of its permissive presentation of women in positions of authority. It also offers a glimpse of Feinstein's defensive style. Moreover, it includes his view of the responsibility of a rabbinic decisor towards the larger community especially those who violate halakhic norms.

Allusions throughout the text indicate that the editor of the journal printed a very strong critique of that first ruling. Feinstein begins by acknowledging the appropriateness of halakhic objection and discussion. On this point he quotes himself in *IM OH* 109. He then adds that he himself is not personally bothered by disagreements from a *talmid haham* (rabbinic scholar) and, therefore, wishes to speak to the

issue only. Having said this, the rest of the responsum is filled with a rebuttal that is often personal. It is apparent that the criticism did upset him and that he feels he must discredit the scholarship of those who oppose him. In defending his position so vehemently, he implies that there was no need for the public criticism of his decision. He claims that his opponents used the sources incorrectly and often applied legal reasoning improperly. Pointing to their lack of sophistication in understanding rabbinic processes, he claims that all the customs of the people were recorded by the sages and that there were always variations and disagreements. He even questions their motives. He raises point after point in a continuous argumentative attack. His final charge affirming that women are indeed Bat Mitsva, asserts that his opponent is not careful in his use of language, which is quite a serious charge.

There appear to be three distinct parts to the responsum. Part I includes his introduction and sets out the pattern of the argument entertained. In the first three paragraphs he uses prose to argue for his position. He is not yet arguing about the responsum itself nor using legal sources as defense. Rather, in the style of a standard discursive argument he posits his view of the role and responsibility of the *posek*. Part II encompasses his use of a variety of sources to prove his mastery and, therefore, legitimacy as an authority. This section is replete with source references, acronyms, Aramaic

and formulaic language. This section is much more demanding, full of allusions to Talmudic texts and styles of reasoning. Again, it does not address his ruling directly, but displays his knowledge of all the surrounding issues and obscure sources. This part, containing seven paragraphs, is the bulk of the responsum. It embodies his personal defense by displaying his superior halakhic ability. Part III concludes with a return to the discursive style for three paragraphs. In this section, he does not focus on the details of his opponents use of sources, but on their faulty style of legal reasoning. It is in this section only, that he finally specifies and defends his ruling.

#### TEXT Summary

In the opening paragraph, Feinstein refutes the claim that by questioning Maimonides' position in his earlier decision he has led some Jews astray. Maimonides understands the biblical statement "a king and not a queen" to generate a ban on any women in position of authority. The critique obviously claimed that Feinstein's decision could pave the way for a female president of Israel. The attack then is that he is violating the biblical ban on "placing a stumbling block in the path of a blind person."

Feinstein's retort is unequivocal. "We are not responsible for the conduct of the government of Israel.. . ." The appointment of a woman as president of that state

in no way depends upon the words of rabbis. Those who govern the state do so without any consideration of Jewish law. Even if the prohibition to appoint a woman was clearly written and agreed upon (which it is not), those deniers would not concern themselves with it. Thus, he maintains, his ruling cannot be a "stumbling block." On the other hand, those who follow Torah law, will not appoint a woman to any post, specifically in the synagogue, without consulting with a proper rabbinic authority. Thus, Feinstein disavows any responsibility that his responsum might lead someone astray. His final strategic point, in this section, is that clarification of law can never be considered an obstacle or hindrance.

Turning the tables, he uses sources from Maimonides and others to advance the principle that the appointment of deniers is in all cases unacceptable and against the law. In this context, Feinstein claims that the appointment of a proper (kosher) woman, is not as serious an issue and falls into the realm of legal doubt. A woman can, in fact, inherit a position and even become queen. Moreover, he argues that if there is an unavoidable choice to be made between a suitable woman and a male who is a Godless sinner, then one must promote the election of the female.

Continuing his attack, Feinstein claims that the stumbling block criticism is a moot issue. Those who

originally used it to discredit his views were not working for "the sake of heaven". Accordingly, he questions the judgement of the editor for publishing their views. He reiterates that the problem of creating an obstacle does not exist in his responsum.

Having discarded the main critique, he then goes on to state an important principle of law. Feinstein claims that one is obligated to clarify and explore the law even if the possibility arises that fools will be led astray. Unusually, he then quotes the talmudic source at length. Again repeating that his teshuva contained no stumbling block.

After defending himself in general terms, he then goes into a complicated analysis of the sources. The specific issue is the eligibility of women for office and the analysis rests on the rabbinic interpretation of the biblical text "a king and not a queen," *melekh v'lo malka*. The sages disagree on the legal ramification of that principle. Some agree with Maimonides that it applies to all offices. Feinstein lists and explains - and agrees with - the views of the others such as *Rashi*, *Tosaphot*, *Rosh*, *Ran*, and *Ramban* who claim that the text is specific to the monarchy and not extendable. He then discusses the precedent of Devorah as judge and leader according to the *Rashba*. Feinstein examines the various elements of the prohibition. It either involves a woman's

inability to be a witness, her lack of coercive power or her inability to function as queen. Feinstein concludes that this source (*Rashba*) is too ambiguous to be used in support of Maimonides. Rather, the opposite is possible. Besides, the *Tosaphists* rule that women can be appointed to all offices except to the monarchy. Thus, Feinstein is marshalling his forces, listing authorities that disagree with Maimonides and casting doubt on the understanding of the sources as developed by his accusers.

He then points out the weakness in their methods of analysis and approach to text. When the text says male, according to Feinstein, it does not intend to exclude the female. The context is essential. In reality, he claims, even a superficial examination of the chapter indicates that the word male designates the specific exclusion of a non-Jew. He even relies on the excuse of textual variation to eliminate one of their claims. Moreover, he refutes their method of claiming greater legitimacy for an early source as "empty words." He admonishes them for their approach and says that they did not advance their case by adding names to their list since he has already accepted that some authorities rule according to Maimonides. However, his point remains that not everyone rules that way.

Feinstein continues to build his case by exposing the flaws in the position of his opponents. By a simple



reading of the rest of a source, he even manages to turn one of their points around as a support for his interpretation. He then displays his own expertise in interpreting a difficult Rashi accepting that there might have been different texts available. He concludes, however, by maintaining that the Rashi poses no problem for his ruling.

He continues again attacking their method of interpretation and developing a very important point of law. The text specification of King cannot be seen as applying to or creating a general category. Rather, the biblical statement is intended to note the exception to a rule rather than the rule. Feinstein explains that one cannot apply that exception without a specific text.

Continuing to demolish his opponents reasoning, he states that the latter's a *minori ad majus* (inference from a minor point to a major one), is empty and worthless. Moreover, he states that opinion based on autonomous reasoning is not acceptable and certainly not the way of the sages.

Finally, he states and explains his previous ruling. There are sufficient authorities who differ from Maimonides to allow a permissive ruling, especially in the case of financial hardship. However, he prefers not to depend on a disputed judgment. Therefore, he explains that he found a compromise solution that avoids the whole

debate and does not contradict Maimonides.

### ANALYSIS

The above text shows Feinstein to be eminently capable of justifying his judgements. He uses every tool of argumentation including derision. But the text also confirms his ability to control complex sources, tease out their subtle possibilities and harmonize the variations. In addition it demonstrates his courage and his ambivalence.

This text is the strongest display of legal resources allowing women to assume positions of ritual responsibility and authority. Significantly, the woman's ritual capabilities are assumed. There is no echo of a doubt that she can function skillfully as a supervisor. Feinstein accepts that she knows all the necessary laws. After all, her husband did. The ability to inherit her husband's job seems to intimate that she also inherited his knowledge of that job. As in his decisions on women teaching boys, Feinstein does not doubt a woman's ability to learn and achieve expertise.

However, he does not choose to promote women as experts in general. Nor does he unconditionally favor women in positions of leadership and authority. He certainly does not endorse women as presidents of their congregations or of any other political body. Thus, even though he has presented all the legal texts to permit, and he actually does permit, a woman to be a ritual supervisor, he qualifies his ruling. This particular woman inherited her job from her husband. She is a

widow and desperately needs the income to survive. Accordingly, this is a case of extenuating circumstances. These limitations on the general applicability of the ruling are topped off by his final compromise. She gets the job but is not nominally the expert of record.

## VII. Conclusion: Ritual Responsibilities

This last text, as the previous ones, reveals Feinstein's vacillation. He courageously determines conditions under which individual women can function fully in America while maintaining their adherence to strict halakha. Widows can uncover their hair and assume their husbands' jobs. However, his opposition to change prevents his open endorsement of all women assuming ritual authority. America offers many possibilities but it also embraces many traps. Some women operate for the sake of heaven, many do not. Suspicious of women's motives, Feinstein is careful to keep the boundaries firm. He completely endorses the battered American standard of separate and equal. Even in this ruling (*IM YD 2:45*), his approval hinges on a form of gender segregation. Thus, he clarifies that there is no fear of *yihud* since most of her work is with other women. (The question arises about her husband who worked in this same female dominated environment.)

Maintaining his theoretical justification of separation, Feinstein argues in *IM OH 4:49* that men and women are "naturally" different. Thus, even if there are sociological changes and philosophical correspondences, the genders must remain distinct. Rituals then that might appear to be practiced in identical manner should be done with some characteristic difference. Even if a woman might be allowed to wear a *tallit*, and the garment cannot be considered forbidden

for its resemblance to a male item of clothing, nonetheless, Feinstein requires that the shawl not be identical to the one traditionally worn by men. He consistently advances this argument.

Distinctiveness does not mean superiority or subordination according to Feinstein. He tries to promote this principle in *IM OH 4:49* by presenting biblical sources about holiness and women's inclusion. He also claims that husbands and wives are equally responsible to respect each other. In some instances a woman is considered part of her husband's household and must, therefore, follow his custom or pattern. But that is not the overriding consideration. Some customs depend upon her determination. His rulings on *kiddush* illustrate this fluctuation. In another responsum (*IM YD 3:101*), Feinstein decides that a mother has the right to name her baby. Here again he does not consider the wife as subject to her husband's authority completely. Separate and equal are operative categories within his halakhic system.

These texts also promote the theme of separation in his constant denunciation of all things non-Orthodox. If women appear to be motivated by a need to copy the Conservative or Reform examples, then they are labelled heretics along with the clergy of those groups. However, individual women, "our" women, assuming greater ritual activity, such as with *shofar*, *lulav*, *kiddush* and *havdala*, are commended. They need not be separated in any of these acts nor do they perform them

differently. Moreover, although men and women sit separately for the reading of the *megillah*, he does not allow the separation to be extended to imply a lesser degree of observance. Women are definitely part of the holy congregation, included in that context when their motives are for the sake of heaven.

They must also avoid copying the non-Jewish world. Thus, if their desire for greater ritual expression is linked to the women's movement, then they are denied a place amongst the righteous. Conversely, if they need to earn a living, then acceptance of non-Jewish standards of the workplace is legitimate.

Preeminently, the decisions in all the ritual cases demonstrate his suspicion of all forms of change. Change poses a threat to the communal pattern that he is dedicated to preserving. He uses the format of a responsum in *IM OH* 4:49 to present a philosophical renunciation of change. He goes so far as to decide that all those who argue for change are heretics. At the same time, the very same group of responsa substantiate the legal basis for accepting some of those changes. *Shofar* and *lulav* become the code words for ritual change that is not only permitted but encouraged. And they are performed with the inclusive blessing. Some changes then are acceptable. Some are even approved. Especially interesting is his acceptance of women's changed socio-occupational roles. His condemnation of women influenced by the contemporary women's movement does not

extend to women being motivated by the market economy.

Feinstein's ambivalence in these texts mirrors his attitude toward life in America. He is suspicious of elements of American culture and the influence they have had on women specifically. But he appreciates American standards of work and even of socializing. Feinstein's legal decisions weave a path through the minefield of accommodation and resistance in the domain of religion. The result is a confusion of denial, acceptance, concession, manipulation and qualified endorsement.

## NOTES

1. Cynthia Ozick, "Notes toward Finding the Right Question", reprinted in Susannah Heschel, ed, *On Being A Jewish Feminist: A Reader*, New York: Schocken Books, 1983: 126.
2. This statement is admittedly an equivocation. Feminists have argued intensely about the treatment of women in Jewish Law. Scholars such as Judith Hauptman, Judith Romney Wegner and Rachel Biale have tackled the problem from a variety of fascinating perspectives. There are cases of similar and dissimilar treatment throughout the thousands of legal rulings. Judith Plaskow argues that Jewish law, *halakha*, assumes the "otherness" of women. She also claims it is not a female mode of expression. However, legal rulings cannot easily be generalized about. Thus, there are arenas of equal treatment, appreciation, protectionism, restrictions, invisibility and even disdain within the full range of Jewish legal pronouncements.
3. Feinstein considers a wife subject to her husband in some respects. But the husband is also responsible to her or dependant on her in others. For a description of his use of the term *meshubad* as denoting the disparate responsibility of husband to wife and vice versa see endnote 57, this chapter.
4. Rachel Adler, in an early essay, argued that the exemptions were so many that Jewish women were denied positive religious associations. Accordingly, all that was left to them were the negative commandments. Although factually inaccurate, she expressed the perception and sentiment of many Jewish women. See "The Jew Who Wasn't There", *Davka* (Summer, 1971): 6-11, reprinted in Susannah Heschel, ed, *On Being A Jewish Feminist*, New York: Schocken, 1983.
5. Eliezer Berkowitz, *Jewish Women in Time and Torah*, Hoboken, NJ: KTAV Publishing House, 1990; Saul Berman, "The Status of Women in Halakhic Judaism", *Tradition* 14 (1973): 5-28. (Reprinted in E. Koltun, ed, *The Jewish Woman*, New York: Schocken Books, 1976); Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources*, New York: Schocken Books, 1984: 10-43.
6. See also TB Eruvin 96.
7. See the interesting argument put forward by Eliezer Berkowitz in *Jewish Women in Time and Torah*, New Jersey: KTAV, 1990. He posits that many of the discriminatory regulations and exemptions were only Torah tolerated and not Torah taught.



8. Arlene Pianko, "Women and The Shofar", *Tradition* 14:4 (Fall 1974): 53-62.

9. Many have tried. See the discussion in Saul Berman, "The Status of Women in Halakhic Judaism", *Tradition* 14:2 (Fall 1973): 5-28.

10. Rabbenu Tam decrees that women may assume ritual acts and say the appropriate blessing (TB Kid. 31a, Tos.). Maimonides also gives permission for the voluntary assumption of these ritual acts but prohibits the relevant blessing (*Hilkhot Tsitsit* 3:9). Subsequent responsa are split on this issue frequently along Sephardi Ashkenazi lines. Thus, Rabbi Karo (*Shulhan Arukh* OH 589:6) prohibits women from saying the blessing but Rabbi Isserles (*Rama* OH 589:6) permits. For a list of the differing opinions see Getsel Ellinson, *Ha-Isha Ve-Ha-Mitsvot* vol. I: 53-58. For a new look at the Sephardi position see R. Hayim David Halevi, *Mekor Hayyim*, Tel Aviv: 1983: 39-41.

11. Rituals marking the transition from one stage in the life cycle to the next, most notably found at birth, death, marriage and puberty. Arnold van Gennep was the first anthropologist to note the importance of these rituals in his book *Les Rites de Passage*, 1909. His phrase *rites de passage* has become a part of the language of anthropology and sociology.

12. Maimonides mentions special celebrations involving a first time bride. In his *Hilchot Ishut* (10:13, 16:25), he mentions special celebrations the groom held in honor of the bride; 7 days for a virgin, 3 days for a widow. Some of the customs involved special clothing and there was an element of communal involvement.

13. Byron Sherwin disputes this theory of the late innovation of the ceremony. He claims dates for parts of the ritual well before the fifteenth century. However, even he concludes: "The exact origin of the bar mitzvah ceremony is indeterminable." At times the dispute is more a factor of a confusion between the legal concept of Bar Mitsva and the ceremonial celebration of that status. "Bar Mitzvah, Bat Mitzvah", in *In Partnership with God*, Syracuse University Press, 1990: 153.

14. Feinstein is so uncomfortable with the celebration of even Bar Mitsva that he states quite clearly "If I had the power, I also would cancel the celebration of Bar Mitsva for boys in our country." *IM* OH 1: 104.

15. Zvi Kaplan, "Bar Mitzvah, Bat Mitzvah", *Encyclopedia Judaica*, vol. 4: 243-247.

16. Getsel Ellinson, *Ha-Isha Ve-Ha-Mitsvot*, Jerusalem, 1977: 180; J. David Bleich, *Contemporary Halakhic Problems*, vol.1, New York: Ktav: 78; R. Ovadia Yosef, *Yabia Omer*, vol 6: 28, 29 and *Yehaveh Da'at*, vol 2: 29.
17. This principle of Jewish law is a basic factor in the Feminist critique of Judaism. If women are exempt, does Jewish law rank their act as less valued than those of obligated males? Furthermore, can those who are exempt voluntarily choose to perform those rituals? In this text, it would appear that there is no problem with voluntarily assuming the obligation, even if not receiving the same accreditation. However, in *IM OH 4:49*, Feinstein does not refer to this text and he leaves the matter ambiguous. Finally, at what point will voluntary choices reach the level of obligated acts? In what ways can women attain full adult status equivalent to male adulthood? For an interesting analysis of this point, see Arlene Pianko, "Women and the Shofar", *Tradition* 14,4 (Fall 1974): 53-62.
18. Feinstein accepts Rabbi Yosef's desire to be fully obligated without questioning his motives. On the other hand, in *OH4:49*, he demeans the motives of women who wish to fully participate in the ritual practice of Judaism.
19. Feinstein never refers to the visible absence of girls from the men's section after their Bat Mitsva.
20. Feinstein's unique development of the *se'udat mitsva* concept is discussed later in this section.
21. Ira Robinson, "Because of Our Many Sins", *Judaism* 35 (1986).
22. Regrettably, there is no indication of what the rabbi had permitted.
23. Interestingly, the *Ben Ish Hai* determines that a father should buy a twelve year old girl new dress so that she might say the *shehehiyanu* blessing. Thus, he uses the new article of clothing to give the girl an opportunity to say this blessing on the occasion of her Bat Mitsva.
24. Feinstein's refusal to accept a woman saying an English prayer in the synagogue (*IM OH 4:70*) might be offset by this approval of *milim* from a girl in synagogue.
25. For a different approach see *Yehaveh Da'at* 3:10 in which R. Ovadia Yosef cites many of the sources including Feinstein's earlier one.

11. Moshe Meiselman, *Jewish Woman in Jewish Law*, New York: Ktav, 1978: 135.
27. In fact, women are counted in the quorum of three women for grace and ten people for megillah and martyrdom. However, the primary quorum is the one for public prayer.
28. Judith Romney Wegner, *Chattel Or Person? The Status of Women in the Mishnah*, New York: Oxford University Press, 1988.
29. Feinstein does address the use of the term in two other documents, OH 1:157 and OH 2:12. In both texts, he expands on the obligation to have a *se'udat mitsva* after completing the study of a specific text corpus. However, even in these, he does not clarify the full concept nor explore the range of application.
30. Interestingly, he affirms the status of a female adult as a Bat Mitsva, ritually responsible, in his ruling on a woman as a *mashgiah* (IM YD 2:45).
31. Isaiah, Soncino edition: 152.
32. Note that he does not include them here in the category of *yirei hashem* (God fearers). He does so elsewhere but such terminology in referring to women as a group is rare.
33. This statement of his clearly challenges the current popular quote attributed to Blu Greenberg: "Where there is a rabbinic will, there is a halakhic way." *On Women and Judaism: A View from Tradition*, Philadelphia Jewish Publication Society of America, 1981. See the debate on this statement of hers in *Shma* 13: 257, 258.
34. The fine line distinctions in this position are difficult to explicate. In his decision permitting female teachers for male students, he uses an interesting argument. The reason for the original prohibition still stands, prevention of any opportunity for sexual intimacy. The surrounding environment has changed so the ruling can change. Knowing the reason behind the original proscription and its inapplicability today, Feinstein is free to permit. In this text, the reasons may have changed, but the act is still forbidden. But it is only forbidden based upon motives. The whole format of this argument is intricate and perplexing.
35. Ann Dally, *Inventing Motherhood: The consequences of an ideal*, New York: Schocken, 1983.

36. Not having availed himself of a direct contact with these women or with their concerns he cannot know that he has missed their aim for participation, responsibility and stature.

37. It is odd that in this discussion of granting women greater ritual participation, Feinstein does not explicate or rely on the talmudic discussion of *nashim somhot reshut* in TB Hagiga 16b, Rosh Hashanna 33a and Eruvin 96a. Although he mentions the discussion about Michal and tefillin in Eruvin 96a, he does not refer to this phrase or the subsequent debate surrounding it. The talmudic references are specifically about permitting women to place their hands on the Temple sacrifices but they are understood to entail the definitive debate about women assuming optional rituals. His only reference to it is tangentially in *IM OH* 3:94.

38. Despite the talmudic debate concerning the permissibility of women blowing the *shofar*, the *Shulhan Arukh* permits the act but denies permission for the blessing. *SH OH* 489.

Most Ashkenazic authorities do allow women to use a *lulav* and sit in the *Sukkah*. The debate amongst them concerns the permissibility of saying the blessing. Rabbi Ovadia Yosef follows Maimonides and forbids Sephardic women from saying the blessing. He also appears to ban their holding the *lulav*. *Yabia Omer I OH* 40,42; *V OH* 43.

39. See note 10.

40. Of course, many of his responsa do indicate clear changes in Torah living because of sociohistorical realities. Widows can remove head covering at their place of business, women can teach boys and men, men can sit next to women on public transport, and Torah scholars should have sexual relations with their wives twice a week instead of the once prescribed in the Talmud.

41. There is continuing debate on the place of motive in performance of *mitsvot*. There are many references to this topic in the Talmud indicating both its importance and complexity as well as a difference of opinions. TB *Pes.* 114b; *Ber.* 13; *Eruvin* 95; *Rosh Hashanna* 28; *Sukka* 42.

42. In his gloss on the statement in the *Shulhan Arukh* that women are exempt from *tsitsit* (*OH* 17:2), Isserles notes that although women may perform the ritual it appears as *yohara*, excessive pride and therefore, should be discouraged.

43. For a variety of opinions and descriptions see Avraham Weiss, *Women at Prayer*; Eliezer Berkovitz, *Jewish Women in Time and Torah*; Susan Grossman and Rivka Haut, eds, *Daughters of the King*: 274-; Sylvia Barak Fishman, *A Breath of Life*, New York: The Free Press, 1993: 143-180.

44. Quoted in Avraham Weiss, *Women at Prayer: A Halakhic Analysis of Women's Prayer Groups*, New Jersey: Ktav, 1990: 109.

45. *ibid.*

46. Moshe Meiselman, *Jewish Woman in Jewish Law*, New York: Ktav, 1978; Abba Bronspiegel, "Minyanim Meyuhadim le-Nashim", *Hadarom* 54 (Spring 1985): 51-53; Hershel Schachter, "Ze'i Lakh be-Ikvei ha-Zon", *Beit Yizhak* 17 (1985): 118-134.

47. Feminists might wish to argue against such facile stereotyping and claim that men today frequently diet for beauty's sake and women are as conscious of health as are men. However, a recent study of dietary patterns amongst Canadians confirms Feinstein's social perception. "Men are more likely to lose weight to improve their general health than women. Women are more likely to do so to look attractive." Quoted by LuAnn LaSalle, "Despite warnings, Canadians getting fatter: studies," in *The Gazette*, Montreal, Wednesday August 24, 1994, page A2.

48. As in his famous responsum on women singing Sabbath songs (*Sridei Aish* 2:8), Rabbi Weinberg's responsum on Bat Mitsva (*Sridei Aish* 3:93) focuses on the personal motivation and attributes valid personal religious goals to women in general. He claims that the source of the custom is irrelevant, and the ban on imitation of non-Jewish ways does not enter into the discussion. Like Feinstein, Weinberg's endorsement is dependent on motivation. But unlike Feinstein, he allows that the girls' motivation can be "for the sake of mitsvot". He decries the discrimination between boys and girls and permits a celebration of sorts. Ironically, Feinstein's final decision on Bat Mitsva is more permissive than Weinberg's.

49. Of course, there is a significant difference in the reasons and legal basis of head coverings for men and women. Thus, Feinstein's position of leniency in this area emanates out of very different texts and categories. However, in both cases, it is the need to earn a living that is the mitigating factor. It is interesting to note how much Feinstein is swayed by that motive as well as how keenly aware and accepting he is of the marketplace economy in America that discriminates against certain styles of dress.

50. In both texts, Feinstein does not cite the biblical source. It is unclear why he considers head covering Torah law. The traditional sources appear to leave all female head covering in the category of *dat yehudit*.

51. For an exploration of his use of this category see Ira Robinson, "Because of Our Many Sins: The Contemporary Jewish World as Reflected in the Responsa of Moses Feinstein", *Judaism* 31,1 (Winter 1986): 35-46.

52. It is odd that *nashim somhot reshut* is only tangentially mentioned here. It would appear to be the critical clause in developing a position about women's greater ritual activity, yet Feinstein does not expound upon the debate in the Talmud in TB Hagiga 16b, Rosh Hashanna 33a and Eruvin 96a. But he does use it here to confirm that women can have proper motives.

53. It is unclear where the boys come from. Perhaps they are in an associated school.

54. TB Megillah 4a, Arakhin 3a; *Shulhan Arukh* OH 689:1. For a thorough discussion of some of the legal issues see Avraham Weiss, *Women at Prayer*: 48-51. See also Rachel Biale, *Women and Jewish Law*: 23-24; Eliezer Berkovitz, *Jewish Women in Time and Torah*: 92-100.

55. Men and women are equally obligated for the *kiddush* of Sabbath. TB Ber. 20b; SH OH 271.

56. Eliezer Berkovits links the obligation of *kiddush* with *megillah* and recommends that since men and women are equally obligated women can recite the blessings or read the scroll on behalf of the men present. This view is certainly not congruent with Feinstein's. Feinstein's legal analysis in this text would indicate that he reads the sources quite differently from Berkovits. *Jewish Women in Time and Torah*: 92-100.

57. The concept of *shibud* is difficult to explicate. The translation of the word is as confusing as is the legal category. Various renderings include: oppressed, enslaved, mortgaged, subject, subjugate, obligate, pledge, bound to, responsible. Conceptually, it probably indicates her ritual dependance on him. They are one unit ritually and certain acts which must be performed for that unit should be done only once. Feinstein would not wish that word to be translated as

enslaved, but the linkage is semantically and halakhically present. Although the woman does light the Sabbath candles for that unit, her husband would not be considered *meshubad* to her. On the other hand, when discussing a woman's sexual needs, Feinstein claims that the husband is *me-shubad* to his wife (*IM EH 3:28*). "Responsible to" appears to be the best translation.

58. He does not give the reference to it, but it is the immediately preceding text (*IM YD 2:44*). I have focused on *YD 2:45* since it explores the relevant texts and his defense of his decision is illuminating.

## Chapter 5. CONCLUSION

### I. Feinstein's authority: substance and form

Rabbi Moshe Feinstein's hundreds of responsa are directed primarily to individuals. This woman may use birth control for two years; this man should use public transportation in order to get to work; that widow may remove her head covering at work; that rabbi cannot force his wife to renounce her mother's style of head covering; a particular rabbi's widow may be a *mashgiah*; another woman who has had an affair with her boss may go back to work. The assortment is intriguing and suggestive as the preceding analysis claims, but its specificity cannot be overlooked. A different analysis could yield an appreciation of the varieties of personal problems encountered by Jews and even a broader characterization of the communal life of American Orthodox Jews. Responsa are first and foremost non-transferable answers to specific individual questions. For Feinstein, the primary function of decisor compels him to respond to the particular person no matter how reluctant he might be to accept the position of authority and control.<sup>1</sup>

Feinstein is well aware that responsa function to produce and reflect a shared reality. Thus, he uses this mode to reinforce and sustain his vision of a circumscribed religious community. In the process, his own central role and authority is reinforced. The documents themselves represent Feinstein's



realization that his written texts, no matter how specific and personalized, would be publicized and become precedent in other cases.<sup>2</sup>

Paradoxically, given the mark of authority that comes with the publication of these seven volumes of responsa, his approach is nuanced with an aversion to the authoritative written format and a resistance to easy accessibility. The inner conflict between personal guidance and public assertion in the bulk of his work emanates from his personal modesty and the needs of the community for a decisive authority. As well, this pattern of publicizing personal responses for use by other experts creates its own difficulties for Feinstein. Issues of control, jurisdiction and deference are manifest. There is a tension between his desire to generate and reinforce a particular Jewish lifestyle and community while sustaining the place of local experts within it. As a result, he is both resolute and judicious. He frequently defers to local rabbinic authority and, at times, appears loathe to exceed his narrow sphere of influence. His humility, as evidenced in the repeated formulaic "in my lowly/humble opinion," is a constant.

In his introduction to the first volume of *Iggerot Moshe* he entertains the question of his own worthiness to act as decisor. He frames the dilemma within conventional norms, stating his weakness as a Torah scholar especially in contrast to the great sages of the past.<sup>3</sup> He thus, modestly admits his

deficiency and then specifically questions the use of the printed format "wherein my views become available to all." He also notes that this public format establishes his decisions as authoritative, as directives for all. He is thus bothered enough by his chosen task and the correlated method to use this introduction to justify himself. He does so by quoting relevant biblical and talmudic passages that demonstrate the viability and diversity of legal opinion. Debate and minority opinions are integral to the system. The primary requirement is that the decisor uses the proper method of investigation and attempts to do his best for the sake of Torah. He warns that the decisor must acknowledge that there is no guarantee of absolute or final validity to his rulings. Undoubtedly, Feinstein claims, God gave the Torah to Israel expecting that the Jews would fulfill their obligations according to their understanding of the law. Given his initial hesitation, he reaches a startling conclusion; Feinstein as a learned specialist is obligated to use his knowledge and education to decide matters of practical law. He cannot shirk from this responsibility. He must respond, after proper perusal of sources, according to his ability and insight.

Thus, despite his stated reluctance to assume an authoritative role, and his constant claims of humility, his decisions indubitably indicate an acceptance of the full responsibility of leadership. He is noted for having been willing to decide issues affecting all aspects of contemporary

life. Even though he frequently advises questioners to check with their local rabbinical authorities and often leaves room for a local rabbi to proceed with a different solution (*IM OH* 4:36, 31), once in the decisor role he can be very imposing. Indeed many of his responsa include sharp rebuttals of those who would object to or attack his positions (*IM YD* 2:45, *OH* 2:11).<sup>4</sup>

Moreover, as indicated throughout this dissertation, many responsa are presented in an abbreviated format, without reference to sources or any legal argument. The result of this format, whether intended or not, is that the decision must be accepted solely on the basis of Feinstein's personal authority. In fact, one could argue, this perfunctory style of ruling lends greater authority to the decisor. As he uses this style more frequently, which he does towards the latter part of his career, the pattern of accepting his word as authoritative is reinforced. On the other hand, there are moments when he acknowledges the restraint of communal consent as limiting his authority. In his responsum prohibiting a Bat Mitsva (*IM OH* 1:104), he admits "If I had the power, I also would cancel the celebration of Bar Mitsva for boys in our country." Interestingly, this accepted limitation of his power is embedded in a document whose ruling is presented solely on the basis of his authority.

Thus, despite all his hesitations, he feels compelled to assume the complete role of an authority and make decisive

rulings. Within Feinstein's frame of reference, his obligation to serve the community implicitly includes a prescription to make his decisions publicly available. The correlated practice of publishing the responsa is assumed but never rationalized within the context of that responsibility.<sup>5</sup> However, this manifestation of accessibility is not unrestricted. In a pivotal responsum (*IM YD 3:91*), Feinstein decisively limits access to his work. This responsum is not in the standard format of a reasoned legal argument. It is an urgent brief letter written after having been informed that someone was already in the process of publishing a codification and translation of his selected responsa.<sup>6</sup> There are no sources mentioned. Feinstein simply announces the ban and gives his personal reasons for prohibiting the publication of any translations and codification of his books.<sup>7</sup>

The reasons given are revealing. He is expressly opposed to the particular translator, claiming that the man is known to have made mistakes. But Feinstein goes on to claim that it is inappropriate to make these decisions available in the vernacular to the unlearned. He fears that they too will make mistakes. Principally, these decisions cannot be understood nor applied without proper instruction and background explanation. His distrust of the populace and of popularizing his work is evident. Thus, although he knows that his work is cited by many and that he is considered a major authority in the general community, he is willing to trust only those who

'know', the initiated who are "true scholars" (*talmedei hahamim*). Unlike the lay population, they will not misuse or misunderstand his meaning. The rest of the population must learn to accept the traditional transmission of law from their rabbis who by virtue of their learning have access to the books and even (especially) to Feinstein. This decision demonstrates that *responsa* in Feinstein's view are part of a hierarchical system reserved for those who are proficient. The uninitiated must rely on their experts and their texts. Only the rabbis -and he reserves the title *rav* for his kind of rabbi - are the legitimate expositors of God's divine law. Thus, Feinstein's deference to local rabbinic authorities is rationalized as an integral element in his promulgation of authoritative texts.

Viewed within the context of the increasing use of English in American Jewish communication and publishing, this interdiction can be seen as having a complex social function.<sup>8</sup> Feinstein's refusal to allow this translation is an attempt to prevent a social transition to a new style of interaction between Jew and rabbinic authority.<sup>9</sup> Restricting the language clearly keeps the process to a one on one system in which the individual Jew must rely on and relate to his or her own rabbi. They cannot read the *responsum* of some other author and then decide on their own what path to follow. Nor can they use the decision to question the authority of their own local rabbi. English changes the relationship of the Jew to rabbinic

decision making and to the process of promulgation of law. It is catholic as well as democratic. In some ways it is the opposite of the case specific system. Prohibiting translation retains control in the hands of the few yeshiva trained individuals and keeps the process similar to pre-modern patterns.<sup>10</sup>

On the other hand, publishing the responsa appears to promote the opposite tendency. Published books are available to a larger audience than the original letter. Thus, although the language restricts access it certainly does not totally limit availability, especially since so many more are able to read the Hebrew and are familiar with text study. Feinstein's own broad based permissive attitude towards universal Jewish education, including boys and girls, cramps his restrictive pose. In effect then, while the prohibition to translate does not fully limit access it does control the degree of popularization possible. But, the access to education, itself part of a significant social transition, means that the restriction is only for the truly uninitiated. In addition, Feinstein's frequent use of a format that does not demonstrate legal precedent or introduce source analysis enables non-yeshiva trained Hebrew readers easier access.<sup>11</sup> The initiated, and there are many more now, are able to read his work, own sets of his books, peruse them and ultimately, decide on their own. In fact, the more common pattern today is for learned initiates to approach (some say attack) their

local rabbi and contradict or undermine his authority by quoting from *Iggerot Moshe*. The popularity of his decisions and their inclusion in the discussions of a learned lay population is deserving of explicit sociological deliberation. This social transition is taking place aided by access to education and Feinstein's responsa style rather than by a change in text language. Control, especially of the general population, is maintained but change and transition continues.

Indeed, some of Feinstein's work does appear to have been translated into English with his approval. Certainly, the English text appearing in Litvin's book on the *mehitsa* is fully approved by Rav Moshe.<sup>12</sup> In fact, it was edited for the English speaking population in a direct attempt to persuade the uninitiated. In addition, edited collections and pamphlets have appeared periodically on a variety of topics containing English summaries and partial translations of his decisions.<sup>13</sup> All of these carry the stamp of Feinstein's approval. After his death, the Feinstein family authorized an English translation of his homiletical work *Darash Moshe*.<sup>14</sup> An English topical index was also published posthumously, probably with family endorsement, making access to his decisions relatively easy.<sup>15</sup> Despite these exceptions, Feinstein's opposition to translation and easy accessibility stands. The preface to the index - it actually is labelled a "warning" - specifically describes and subscribes to this concern. It warns: "Knowledge of Reb Moshe's decisions does

not qualify a person to decide issues of Jewish law - even for himself. Do not under any circumstances utilize the Igros to decide actual cases." The warning then goes on to state that it was published for the "mature Talmudic scholar... to increase knowledge of Torah."<sup>16</sup> Obviously, there is an inner circle whose access is to be facilitated in any way possible. Furthermore, there are times when public access is desirable. Thus, the ban on translations is selective; used when necessary to retain appropriate communal standards and rabbinic interaction.

This production of authoritative texts allows religious units to develop as autonomous groups and religious virtuosi to gain acceptance and authority within them. In this light, Feinstein's responsa carry forward his program of defining the boundaries of the religious community of Jews. Each text produced for an individual is still part of the process of creating or affirming group solidarity as well as boundedness. For Feinstein, responsa texts become the vehicle of communal unity and shared standards.<sup>17</sup> The text style and language, as well as the specific decisions, reinforce the autonomy of the group, its separateness and its reliance on its own leadership. The cumulative process of text formation and publication attests to the authority of the recognized posek and his acceptance by a community of like-minded individuals. For Feinstein, the style of his leadership, as seen in his published responsa texts, reinforces his goal of community



separateness while the literary and rhetorical style of the responsa further his ability to define concentric circles of believers, adherents, readers, teachers and interpreters. Responsa research can further the descriptive understanding of the interaction of leader, text and community while elaborating on the analysis of various leadership styles, policies and agendas.

## II. Separation as a strategy

Judaism is built upon a system of separate and distinct spheres. As proclaimed in Ecclesiastes, there is a set time for everything. Life is frequently organized into an ordered set of mutually exclusive patterns. Religious regulations encompass food, dress, marriage, sex, worship, war, planting, reaping, baking, resting, mourning and more. The world of Orthodoxy is arranged into a classificatory system that is purported to be inviolate; mixing is anathema. Jews do not mix with non-Jews, milk is not mixed with meat, linen is not woven with wool. As Jews entered the modern world, especially in America, marked differences between their neighbors and themselves started to evaporate. Keeping their self-perception of being a nation apart required diligence.<sup>18</sup> Given that context, Rabbi Moses Feinstein appears to focus his responsa upon three areas that, in his view, require special effort and jurisdiction in modern times. Jews must be distinct from non-Jews and protected from the pervasive influence of modernity; men and women must be separate in specific environments; and, most importantly, Orthodox Jews must be isolated from Conservative and Reform Jews. There is a proper pattern for all interactions that must be maintained and Feinstein's role as decisor is to guarantee the integrity of these distinctions.

Listing the three dichotomous categories in conjunction, Jew from non-Jew, Orthodox from non-Orthodox, men from women,

implies or at least raises the question of a shared base or equivalent valuation. Is the comparison of Jew to non-Jew similar to male versus female?<sup>19</sup> If Orthodoxy is better than non-Orthodoxy, are Jews better than non-Jews? Are men better than women? What can be extrapolated from the similarity of decisions on these issues in *Iggerot Moshe*? Does Feinstein treat women the same way that he treats Conservative rabbis? It is clear that there are many parallels in his treatment of the three categories. The question for investigation is what valid claims can be drawn from those parallels. Lists can include many similar but not identical items. It is possible to cite talmudic lists that link women with children and extrapolate from such classifications an equation based on the lack of public obligation and responsibility that pertains to both groups. However, it is not necessarily the case that when the Talmud lists women and the deaf or the imbecile in the same discussion that there is an equation being made. In each case, the grouping may or may not imply identification. In each case, careful analysis is required before conclusions can be drawn.

## II. 1. Jew from non-Jew

Feinstein's goal is to sustain Judaism as he knows it and to safeguard the survival of the community. In order to accomplish that, he develops a safe model for interaction with "others". His method is to erect boundaries that create social distance in very controlled situations. Consequently, his map

of the world consists of a series of concentric circles whose circumferences are sometimes, but most often not, permeable. The largest circle separates Jew from non-Jew.<sup>20</sup> Its perimeter is a veritable wall when it comes to matters of marriage, worship, education and worldview.<sup>21</sup> Remarkably, the separation totally disappears when it comes to the marketplace. There Jew and non-Jew interact in every conceivable way. As bad as America is, as dangerous to the moral fibre of the Jewish community, as menacing to the sexual mores and familial stability, business is the domain of America that is deemed safe for interaction and necessary for survival.

Feinstein's responsa on education offer a good illustration of his separatist agenda. Judaism is the true religion and Jews should not teach or study about other beliefs unless absolutely necessary. Thus, if one teaches in a state school and must cover a curriculum that includes Greek and Roman history, Feinstein advises the teacher to avoid or belittle the idolatrous religions (*IM YD 2:53, 111*). Jews should not go to conferences with Christians for fear of missionary activity (*IM YD 2:43*). Jews should not mix with non-Jews. In resistance to the prevailing American pattern, Jewish schools should be open on Sundays (*IM YD 3:84*) so that in no way do Jews act like non-Jews.<sup>22</sup> This brief responsum epitomizes his attitude. In it he claims that the closing of the schools is a prime example of the forbidden *bitul torah*,

a waste of Torah time. Significantly, he also claims that it will damage the children. Finally, he forbids it because it is a proscribed slavish imitation of non-Jewish ways which results in a corruption of Jewish practices. In the next text, he forcefully and irrevocably forbids any vacation on "their" holidays. In a brief piece from 1963, Feinstein advises Jews not to plan any parties on "their" holidays so as not to appear to be celebrating with them. He even recommends avoiding Thanksgiving (*IM EH 2:13*). His demand for total separation from American cultural patterns is embedded in these decisions.

The world of America is full of immorality and terrible sins in Feinstein's view. Sexual immorality is pervasive, secular education is full of blasphemy (*IM YD 3:73*) and the non-Jewish government is guilty of tempting Jews to stray from their true and good tradition. In these terms, Jews are better than non-Jews and Judaism is the only true path to worship of the one God. Jews must go to separate Jewish schools, not just to learn about Judaism but to be kept separate from "them" and "their" ways.

In substantiating a father's obligation to pay for the education of his female children, Reb Moshe likens going to an American public school to the child's being kidnapped. It is both his commitment to the education of girls as well as his desire to remove Jewish children totally from the effect of an American education that prompts him to create a new standard.

However, only a very negative appraisal of American culture and a firm commitment to a separatist agenda could have allowed his radical use of a precedent from medieval kidnapping regulations. This evaluation is confirmed with a review of his decisions on secular education in the Jewish schools.

In a pivotal responsum (*IM YD 3:82*), Feinstein emphatically states that there is no place for secular studies in a real yeshiva. Even if no heretical subjects are taught and even if the studies are not coeducational, still he forbids taking time and energy away from Torah studies.<sup>23</sup> The issue is not a matter of forbidden practices, but of forming and training a cadre of (male) Torah scholars. For them any study that is not Torah is a waste of their energy and 'steals' their time. Any excuse such as studying general subjects in order to earn a living is unacceptable for the elite. One thing will lead to the next; they might even end up in college where the evil inclination would take over and their ability to become Torah scholars would be shattered.

Of course, this is not a new message nor does he apply it to all Jews. Feinstein definitely has varying standards for even the religious community. Those who "keep the Torah", but are not of the elite "God fearers", are permitted some form of general studies. Yet, his condemnation of American education continues and reaches even those who are not of the elite. In another decision (*IM YD.3:83*), written in 1970, Feinstein

limits the time and place of secular subjects in the regular parochial schools. Secular subjects are only taught because of government regulations, and should be reserved for the last part of the day when students, specifically male students, cannot concentrate. When the government requires general studies, he permits limited compliance. If Jewish schools were to teach these topics in the morning, it would be a tacit agreement of the overall importance of general studies.<sup>24</sup>

Significantly, this does not hold for female education. The girls can be taught secular subjects in the morning and their Judaica in the afternoon to suit the financial needs of the teachers (*IM YD 2: 106, EH 3:40*). In this instance, the barrier is permeable for females. Nonetheless, his overall message is the removal or limiting of contact with American secular knowledge for both boys and girls. He goes so far as to recommend tearing out sections of text books that are not acceptable (*IM YD 3:73.3*). He publicly regrets the government requirement to teach general studies and admittedly proclaims his task to minimize its significance. He then adds an interesting addendum. Concerned that some might misread his intolerance for secular subjects to mean that they should not be taught in buildings dedicated to Torah study -which might legitimately be understood from the previous selection- he is quick to disabuse educators of that thought. The children must be kept within the system. If the schools do not satisfy state regulations, the children will be forced to go to public

schools where they will mix with non-Jews and learn their ways. This decision is consistent with his ruling on paying for a daughter's education. His fear is so strong that he likens the state requirements for public education to a kidnapping where a girl might be forced to convert and that is the reason for his separatist agenda. It is an agenda that obviously maintains that Jews must never marry non-Jews but that is not his sole motivating purpose. Unlike the majority of North American Jews, his primary fear is not intermarriage but acculturation.

The barriers disappear when we look at some key decisions impacting on the business world. Feinstein's message of distinction and strategy of separation is controlled and overridden by his appreciation of the necessities of economic survival.<sup>25</sup> The business world is rendered neutral and behavior that is elsewhere prohibited is permitted there. Female-male propinquity, so feared in the synagogue, is not a problem on the subway. Mistrust of the moral degeneracy of America is replaced by an appreciation and acceptance of the American work ethic. For the sake of business Jews can wear American style clothing (*IM YD 1:81*); men can remove their head covering (*IM HM 1:93, OH 4:2*); widows can remove their head covering (*IM EH 157*); and men can dye their hair (*IM YD 2:61*).

He assumes and accepts that in the marketplace Jews will work with non-Jews; will have daily intense contact; will



follow similar patterns of work and dress; will have an analogous work ethic, and that there is nothing wrong with that. In fact, he does not promote any precautionary measures to limit that contact. In the integrated world of business there is no attempt at isolation nor a sense of "better than". He allows and even encourages living in this modern world of work for both men and women.

## II. 2. Orthodox and non-Orthodox

Feinstein develops a more forceful approach to the separation of Orthodox Jews from those who are non-Orthodox. If Jews can sometimes associate and work with non-Jews, there is no such permission for shared experiences with the non-Orthodox establishment. Orthodox Jews must be kept isolated from all things Conservative and Reform, even at times in matters of employment. Orthodoxy is the only proper Judaism, all else is heresy or ignorance. In *IM YD 2:6*, he specifically equates "keepers of the Torah" with the word (transliterated) "orthodox." According to Orthodox principles, Jewish law is divinely revealed and properly trained rabbis are the only legitimate expositors of that law. The rabbis are linked directly to Moses "our rabbi." Their decisions are part of a continuing chain of tradition all of which is still part of Torah. Anyone who dissents from that basic tenet is not legitimate and their positions are *ab initio* unacceptable. Feinstein translates that perspective into a denial of all legitimacy, and even the appearance of extending legitimacy,

to Conservative and Reform institutions and rabbis. He does not examine their particular positions for a halakhic base or violation. He renders all that emanates from them unfit because of the source and not necessarily the content. Nothing can even appear to be the same. Joint meetings are frowned upon (*IM YD 2:100*), shared facilities are unacceptable.

Non-Orthodox Jews are like non-Jews in this equation.<sup>26</sup> A Jew may not enter the "house of worship" of the "other". Feinstein forbids attending a wedding (*IM EH 2:17*) or a kosher prayer service in a building that is known to be Conservative or Reform (*IM OH 2:40, 4:91.6*). He argues that even if one were to pray in a separate room with all the requisite standards, it is still not permissible. His two reasons are quite illuminating. Firstly, he claims one's own reputation would be sullied if one were seen entering a non-Orthodox establishment. Just as earlier authorities would take as evidence of apostasy attendance at a church service, Feinstein is intimating that attendance at non-Orthodox services might give rise to suspicions of one's integrity as a proper Jew. Furthermore, he argues that if an Orthodox Jew enters a Conservative synagogue, other Jews might be led astray. Again, he intimates the application of a legal principle, conveyed metaphorically by the biblical verse, "Do not place a stumbling block in front of a blind person." Most clearly, he refuses permission on the grounds that if Orthodox Jews attended services at either Reform or Conservative

establishments, those groups could claim that they legitimately satisfy all communal needs. And it is precisely on this issue of legitimacy that he resists and protests.

In one interesting responsum, an (Orthodox) Jewish male, requested permission to teach in a Conservative school. With certain clear provisos about what he would teach, who would supervise him and even an admiration for this opportunity to teach "correct" knowledge to those who otherwise would be lost, Feinstein gives permission. The overriding need to earn a living provides this man with a good motive which according to Feinstein's vision leaves room for leniency. However, Rabbi M. Feinstein then turns the tables. He advises local Orthodox schools not to hire teachers who also teach in Conservative schools. The individual is given permission; his motives are correct. The institution is denied permission on any level to appear to have joint or shared resources. Appearance is the restricting factor. What would it look like if both school systems used the same teachers? Would it not appear to imply that the same learning takes place in both buildings? He even advises against using a textbook written by a non-Orthodox Jew no matter what the content (*IM YD 2:105*). The children might learn to trust the authorship of Conservative Jews. Could parents not assume that their children in Conservative schools were getting the same education as Orthodox schools? No one in Feinstein's world would want to allow those assumptions to stand, and therefore, Orthodox schools should not hire

teachers who teach in non-Orthodox institutions! The separation is thereby extended to matters of image and implication that have no basis in halakhic matters.

Conservative and Reform rabbis are "kofrim" - heretics (*IM* EH 3:23) who are knowingly leading their congregants astray. An Orthodox Jew may not even say "Amen" to their blessings. He does not blame or castigate the ordinary member, only their leaders. In his responsum on *mehitsa* (*IM* OH 1:39), he tries to educate those who attend services with mixed seating, the normative pattern in most non-Orthodox synagogues. His assumption is that they do not know the law or its source and therefore are not attending a proper synagogue service out of ignorance and not rebellion. He gently tries to persuade them. In sharp contrast, his tone is one of condemnation and mistrust for the rabbis. He refuses to use the Hebrew term *rav* for these rabbis (*IM* EH 1:77) and he claims that a Conservative rabbi is not a valid witness (*IM* EH 2:17). Both of these decisions reveal his total rejection of the Conservative clergy. In a very controversial and decisive move, he ruled that a Reform wedding does not constitute a Jewish marriage and, therefore, does not require a Jewish divorce (*IM* EH 1:76, 77; 3:23, 25). Their rabbinate is thus totally disqualified in the world according to Feinstein. He further disqualifies their teachers and anyone who works in their institutions (*IM* YD 2:108). In a carefully calculated move, he disqualifies a *shochet* because he has another job at

a Conservative synagogue as beadle (*IM YD 2:12*).<sup>27</sup>

Not only does he refuse to recognize their clergy, or to legitimate their services, he even refuses to allow ideas or rituals that might otherwise be permissible if they emanate out of the Conservative or Reform communities. Thus, in his initial responsum on Bat Mitsva (*IM OH 1:104*), he forbids any celebration, no matter the design or its halakhic viability on the grounds that it is a custom instituted in the Conservative world. The implication is that the rabbinic ban on "imitating the ways of the gentiles" also applies against non-Orthodox Jews. This parallel lends credence to the equation of non-Jew with non-Orthodox in his field of operations.<sup>28</sup>

### II. 3. Men and Women

The inquiry into the significance attributed to parallel binary classifications is much more complex in the arena of gender difference. There are ways in which the distinction between men and women in no way approximates that between Jew and non-Jew or Orthodox and non-Orthodox. Everywhere in Feinstein's responsa it is clear that women are Jews, even "keepers of the Torah". In rare instances, he includes women in the inner circle of those who "fear the Lord" (*IM YD 3:75, 78, 80*). Yet, from another perspective there are clear similarities, with women as the quintessential "other", mistrusted like the non-Jew or non-Orthodox.

Feinstein operates with a specific and distinct set of assumptions concerning the nature of women, their proper

position in Jewish society, their motives, and the effects of modernity on them. He emphatically believes that they are "equal", that is in no way inferior or less important than men. He forcefully argues this position in "The lovely/overconfident women" responsum (*IM OH4:49*). Yet, he also treats them separately from men in ways that at times intimate fear and mistrust, and, at other times, in ways that guarantee second class treatment.

Clearly, many of Feinstein's decisions emanate out of his acceptance of both a "natural" distinction between men and women and a functional one. Men and women are created by God differently with distinct missions. His clearest statement and defense of this position is in *IM OH 4:49*. He elaborates the differences and then allows that although there have been social transformations, nonetheless the halakhic distinctions must be maintained. However, the practical repercussion of this distinction is never enumerated. In fact, women are encouraged to perform rituals originally reserved for men such as *shofar* and *lulav*. The distinction appears to be maintained in only a few ritual realms such as *aliyah* and *minyan*. The impact of these decisions is to encourage women's greater participation in the ritual life of the community, but to maintain a male face to leadership, authority and representation.

Provocatively, it is this very document in which he expounds on the difference between men and women that he

attacks women who wish change and calls them *kofrin*, heretics. This nomenclature is the same used by Feinstein for the Conservative clergy. In both cases, he uses the legal argument of Maimonides as support for assigning the category. In this aspect, women are like the non-Orthodox clergy. As with the clergy, women's motives, as a group, are always suspect requiring complete refutation, dismissal and expulsion. This suspicion of motives has tremendous significance in his ruling on any joint enterprises with Conservative congregations. In the case of women, the word *kofrin* has only minor halakhic ramifications. These women are not to be treated as heretics; but their requests are to be dismissed. Thus, despite the absence of a concrete excommunication status, women's motives are questionable and when women as a group ask for a change, the request is rejected even when halakhically permissible.<sup>29</sup> Paradoxically, in this same responsum, Feinstein clearly indicates that women are not outsiders, like non-Jews or even non-Orthodox. He specifically claims that in matters of *kedusha*, sanctity, women are equal to men. Unlike non-Jews and non-Orthodox, Feinstein definitely includes women in the community of believers, of insiders.<sup>30</sup>

Many of Feinstein's responsa follow a pattern of distinctions emanating out of the concept of different natures. Thus, his decisions regarding diet (*IM HM 2:65*), clothing (*IM EH 4:62.4*, *OH 4:75.3*) and even the purpose of education fit this mode. Men diet for health; women for good

looks. Men are more easily attracted to and distracted by women. Ironically, the consequence of this particular distinction traditionally depends upon restricting women's clothing and behavior rather than men's. Finally, girls must be educated for faith and good deeds. Their nature and mission dictate a distinctive curriculum and allows all sort of variation in the educational program. Significantly, Feinstein does not contend that the difference between boys and girls is a qualitative one. Women are not less capable as students or teachers; they just need to know different things. Thus, although the purpose and content of their education differs, their capacity for knowledge, particularly Torah knowledge, is not disparate. Women can even be Torah teachers of boys. Despite that equation, in practical terms, women are certainly denied the kind of training that would render them halakhic authorities.

The focus on (illicit) sexuality in conjunction with accepted gender distinctiveness generates the apprehension over gender interaction. By far the most substantial basis for male-female separation is to be found in the traditional concern for prevention of sexual transgressions. Feinstein's fear of the pervasive sexual immorality in America forces him into an expansion of this policy of separation. It is only in this light that his insistence on separate school buildings can be defended. In the past, education regulations limited female teachers and contact between parents and teachers.



Feinstein acknowledges that sexual intimacy is not the issue in public buildings. Thus, he can justify hiring female teachers. His concern is more comprehensive and reflects the changed environment of America. In order to avoid the American pernicious norm of sexual freedom, Feinstein believes all children must grow up in gender segregated environments. He initiates separate classrooms at the earliest possible stage, before children are considered halakhically liable for these sexual transgressions. There is no suspicion of *yihud* with children under the age of majority, but Feinstein insists that they must learn to accept segregation as commonplace. Thus, his insistence on separate classrooms and even separate buildings becomes understandable in his onslaught against the moral climate of North America. In this, he is not limiting women, just gender interaction. The changes of the social context have forced a shift in the parameters of rulings regulating prohibited sexual contact. For Feinstein, Jewish law must reflect and respond to these realities.

Contrary to past standards, Jewish men and women as adults today have constant contact in the market place and school environment. They appear to be able to maintain sexual propriety in these public endeavors. However, Feinstein is still concerned with adult contact and socializing. Optimally, he believes that the only way to prevent adults from breaching the sexual boundaries is to keep men and women separate in all possible formats. He consistently cautions against any

contact, even handshaking. In a series of responsa, he states that one cannot shake a woman's hand in the customary form of greeting (*IM OH* 1:113, *EH* 1:56, 4:32.9). The intent of the handshaking is innocent but the act is itself the problem. The supposition is that all intentional touching is forbidden because of the possible consequences. Handshaking, no matter what the cultural context or meaning is suspect as are all forms of touching. He finds no reason to allow it, no extenuating circumstances to situate it in a different category. It is not a neutral greeting but a potential and unnecessary stimulation. It is important to mention that his concern is not with pollution regulations or ritual impurity but rather with sexual transgression.<sup>31</sup> Even in cases where the law might permit contact, such as a school or at a wedding, he advises those capable of a more pious lifestyle to refrain from all possible encounters.

There is also an intriguing distinction in sexual stimulation and capacities. Feinstein delineates a distinct pattern of *hirhur*, distracting thoughts, for men and women (*IM EH* 1:69). Both are liable for controlling their thoughts but men require greater restraints because of the ban on wasting their seed.<sup>32</sup> With women there is no concern for gazing (*histaklut*) since there is no possibility of wasting seed. But there is a prohibition of *dat yehudit* forbidding women from dissolute acts, *pritsut*.<sup>33</sup> The regulations of *dat yehudit*, which apply to individual acts, are correlated with social

custom. If all the women in the city act (or dress) in a particular way then it is not considered *pritsut*. Thus, consistent with talmudic sources, Feinstein accepts the notion that men have a greater capacity for distractions and need more restraint. Women can see men in synagogue; it is better if men do not see the women (*IM OH 1:43*). The laws guarding against sexual temptation are applied differently for men and women because their "natures" differ.

However, the ban on physical or verbal contact during prayers in synagogue rests on distinctive biblical requirements fundamentally different from concerns for sexual transgressions. The *mehitsa*, the prime symbol of the separation of men and women, is grounded in the mandate to maintain awe and eliminate frivolity during prayers. It does not emanate out of any concern for *yihud*, potential for sexual intimacy. In fact, *yihud* is a private matter, whereas *mehitsa* is a requirement associated with the public experience. Feinstein is very careful to distinguish the laws of *mehitsa* from other laws that result in the same gender separation but are due to reasons of personal moral conduct such as *erva*, *hirhur*, *pritsut*, *yihud*. Significantly, unlike the latter restrictions, the *mehitsa* applies both to public behavior and to men and women equally (*IM OH 1:43*). However, the distinction does not fit any public/private dichotomy. Men and women cannot dance together in public because of *yihud*. Moreover, concerns for the personal realm of *erva* can

determine the height of the *mehitsa*. Feinstein is adamant in keeping the legal categories separate. It is noteworthy that for Feinstein the *mehitsa* is non-negotiable while some of the requirements for sexual restrictions vary depending on the social and historical context. The result of his distinctions is to transpose the absolute requirement for gender separation to an arena in which the issue is not violation of the sexual standards of the Bible. In the synagogue male and female separation is inviolate, and even biblical, having nothing to do with sexual immorality.

The only place these considerations are not found in Feinstein's world is in the marketplace. Men and women can travel together to work (*IM EH 2:14*); men can be lifeguards where women swim (*IM EH 4:62*); and women can continue to work in offices where sexual transgressions have occurred (*IM OH 4:117*). Concerns for the potential of sexual intimacy appear to disappear in the public realm of the marketplace.

Significantly, financial considerations are more than merely admissible. They frequently operate as a critical factor for Feinstein. He never takes them for granted and is quite willing to be as lenient as possible in order to accommodate life in the contemporary marketplace. It is pertinent to note his continuing acceptance of women's full and equal presence in the public marketplace. There are no apologies, few distinctions and no special warnings about sexual impropriety. In an unusual responsum (*IM EH 1:57*),

Feinstein states that a widow can work in an office without covering her hair. Her need for the job in order to support her children renders her request and action permissible. This decision is important in its awareness of the prevailing standards in the work place and its acceptance of financial motives. Feinstein consistently disapproves of the contemporary pattern of married women being bareheaded in public. Yet, he does not use the law to restrict or persuade. He uses the distinctions in legal categories and linguistic ambiguities in an effort to accommodate her needs. The law for a married woman is of a different genre than for a widow. His legal style is consistent. Different categories of law create room for different types of response. All married women must cover their hair. All formerly married women should cover their hair. The distinction in terminology reveals a different legal base that allows him to use his discretion in this ruling. The source of the law as well as the current social pattern both affect his ruling. This ruling is predicated on an understanding of the difficult conditions of life for a widow and the realities of marketplace norms. He does not advise her to seek employment elsewhere, nor does he caution her. Her motives are evident, explicit and appropriate, unlike the motives of the women who ask for greater ritual inclusion. Ironically, the once worrisome marketplace creates the context for trusting the women.

There are frequent times when Feinstein's claims for

equal treatment in Jewish law are accurate. His purpose is to maintain distinctiveness, not subservience. In educational and ritual arenas women have a greater responsibility in contemporary Orthodoxy and even at times authority over husbands, such as in naming a baby (*IM YD 3:101*). Nonetheless, men are the primary performers in Feinstein's ritually circumscribed world.<sup>34</sup> Although he frequently refers to Hannah and to women's presence in Temple worship, he does not establish a world of balanced participation. The divisions between men and women, especially in the realm of synagogue which has come to be associated with the locus of religion, retain a male supremacy. Even though the *mehitsa* is applicable to men and women equally, it remains the symbol of women's limited participation and restriction.

In many ways then, women are the outsiders, even their section of the synagogue is not consistently referred to as being in the sanctuary. The *responsa* method furthers that impression, since women are talked about but never heard from or addressed face-to-face. The silence of women is guaranteed by law<sup>35</sup> and procedure and engenders a posture towards woman as "other". In the final analysis, though, women are not outsiders like non-Jews; they are marriageable. And although they usually must follow the custom of their husbands, there are times when their customs, expertise and traditions remain intact. Significantly, in profound ways, they are not like non-Orthodox. They are "keepers of the faith" and those who

"fear the Lord." They are part of the holy community, the *kahal kadosh*. Conspicuously, they are insiders who cross boundaries. Hence, women's "separation" is maintained in those same spheres where Feinstein insists on absolute separation from non-Jews and non-Orthodox, namely, in synagogue and family/sexual contexts. Correspondingly, separation of women is relaxed specifically where separation from non-Jews and non-Orthodox is eased, namely in the course of business and for the principle of education.

Separation is Feinstein's stratagem. His central concern is preservation of a traditional community; his main method is to work out strategies of distinction. Some borders are permeable, others are not. The most comprehensive border separates Jew from non-Jew but even that wall disappears in the endeavor to earn a living. Jews who are Orthodox must avoid Conservative and Reform Jews in all, but especially religious, contexts. Men and women should be separated, but often are not. The world of correspondence and divergence subtly pervades his agenda.

### III. The Americanization of an Orthodox rabbi

There are a number of interesting ways in which Rabbi Moses Feinstein has been Americanized. Most obviously, America is the environment in which he and his community live and against which he most frequently is reacting.<sup>36</sup> It poses all the moral dangers from which he must protect his community. In this largely negative respect, American culture can be said to be shaping or directing his responsa.

#### III. 1. America the bad

Feinstein repeatedly decries American standards and values. He uses many legal ploys to prevent contact with and absorption of those values into his community. In general, he is opposed to incorporating secular values and knowledge and is loath to allow the teaching of general subjects in the academies (*IM YD* 3;82,83). Conceivably, it is his distrust of all things American that frequently controls or shapes his decisions. The oft repeated phrase "in this country" presages a negative reality that he unhappily feels forced to accept. He uses it in the same tone and format as "because of our many sins" and even links the two at times. This attitude is manifest in many responsa. Nonetheless, it is my opinion that American values and precepts have entered into his "vocabulary," have become accepted and acceptable, and have significantly effected his priorities and judgements.

In other words, Feinstein both accepts and rejects elements of the North American social environment and cultural



norm. He accepts the technological, educational, political and financial realities of life in America.<sup>37</sup> He most clearly rejects the moral climate of the larger society. In one responsum dealing with education and the need to separate boys and girls, he condemns America and its rampant sexual permissiveness (*IM YD 2:102, 3:80*). In another, he compromises on a fundamental objective, the separation of boys and girls' schools, in order to allow the very young to study together (*IM YD 2:104, 3:73.2*). In the latter case his permission was in extenuating circumstances; it was not possible for the community to establish a separate school and so rather than allow the girls to go to an American school, the very young may study together. The greater good that requires this concession is the need to keep the girls out of their - the American- schools.

Nonetheless, he is ready to deal with the reality of increased sexual currents affecting his community. At the end of one remarkable responsum dealing with the nature and frequency of the obligation for sexual intercourse that is incumbent on a Jewish male who is a religious scholar (*IM EH 3:28*), Feinstein agrees with his colleagues that the requirement has changed to twice a week rather than the Talmudic once a week. In that document he explains that the original obligation was dependant upon the woman's desires. Because of the immoral climate today, her desires have increased. Therefore, the *talmid hakham* -Jewish scholar- is

"advised and obligated" to satisfy his wife twice a week. Feinstein recognizes and regrets the pervasiveness of the immoral American climate. He is realistic enough to know when he can isolate his community from it completely and when he must adjust some legal requirements in tacit acceptance of the changed environment. He does not like it, but will deal with it and control it. The responsum is not a diatribe against sexuality, or against women's increased needs. Interestingly, Feinstein is concerned with the effect of the moral climate on women and does not comment on the men. One could argue that this is an indication of the low esteem in which he holds women. However, I do not think that is warranted. In the language of Jewish law, a man is obligated to satisfy his wife sexually. It is one of the arenas of the marital arrangement which is determined according to her needs and not his. In this responsum, Feinstein uses the word *meshubad* - accountable to - to describe the relationship. "He is bound to her."<sup>38</sup> Thus, her desires and needs are the deciding factors of the necessity to accommodate practice to social reality. He is not saying that men are not affected by the moral climate, but for legislative purposes he is only concerned with the wife. He would prefer that no one was forced to live in this problematic environment, and he understands its pervasive effect on even the "true" believers. But he also recognizes that absolute avoidance is not possible, and is able to legislate accordingly. His role as decisor is to apply

existing laws to contemporary conditions. He does not assume that he is changing law; rather he is implementing the legal system of Judaism, its rulings and principles, to current social problems in order to help people live and function in this world.

On the other hand, he is absolutely unwilling to accept the notion of religious pluralism. Other religions are worthless, faulty or misguided. He also rejects the non-Jewish culture of American secular society. That the world of non-Jews is prepared to leave Jews alone, to allow them to "do their own thing" is fine with him. But he is unwilling to accept integration with the non-Jewish world. Sundays are not part of a weekend. They are school days and Jewish children should not be released from their educational task (*IM YD 3:84*). Likewise, Americans take vacation on Christian holidays which Feinstein prohibits. Clearly, he is not alone in refusing to allow Jews to appear to celebrate Christmas. However, he goes one step further and forbids taking a vacation from December 26 through January (*IM YD 3:85*). In that responsum, he argues that even though the reason is the convenience of the fathers who do not have work then, still it might lead to the children enjoying and appreciating those days. American patterns are quite simply not to be emulated, and contact with the non-Jewish world is to be contained. In an ingenious responsum, he goes so far as to equate having a daughter in an American public school with the child's being

kidnapped (*IM YD 2:113*). Though adaptation is expected, integration is not desired, and intense contact is to be avoided.

Significantly, his rejection of American religious pluralism also means that he is not willing to accept other branches of Judaism. In a whole series of responsa, Feinstein denounces both Conservative and Reform branches of Judaism. He rejects their leadership, disowns their institutions, and repudiates any formal contact with them. They are *kofrim*, deniers, and their acts are by definition illegitimate. Unquestionably, amongst his reasons for distancing Orthodox Jews from the non-Orthodox is the commandment to avoid emulating non-Jewish ways. In his estimation, Conservative and Reform Jews are comparable to non-Jews; they have chosen to deny Jewish principles and imitate the way of the non-Jew. One cannot pray with them, say Amen to their blessings (*IM OH 2:50, EH 2:20*), be married by them (*IM EH 3:25*) or have any ritual contact. Jews - his kind- cannot appear to copy them in any way (*IM OH 1:104*). He will not even call their clergy *rav*; instead he writes the English word *rabbi* in Hebrew letters, thus avoiding appearing to acknowledge their rabbinic training and leadership (*IM OH 2:50, EH 3:25*). It is part of his task to keep Jews separate from all others, even other Jews. He rejects American norms of coeducation, implications of historical development, popularization of religious authority, and endorsement of anything and everything that is new.

Accordingly, for Rabbi Moses Feinstein, the world of America is a welcome haven but it is viewed with constant suspicion and often detachment.

### III. 2. The good in America

However, it is possible to argue that, for Feinstein, there are significant positive aspects of this Americanization. He has internalized norms and standards that are uniquely American and they have become self evident for him. Whether consciously or not, far from rejecting everything American, Feinstein has accepted key American principles and allowed them to influence his decisions. Aside from his responsa that clearly reflect a keen awareness and appreciation of American technology, it is interesting to find basic American norms permeating some of his most creative and innovative decisions. It is especially informative to find in these responsa a break with crucial traditional - European-accepted norms. His decisions on women in the business world, their educational opportunities, and their position in synagogue and related matters, all show an Americanization effect. Is this body of responsa part of the formation of a new type of Judaism called *minhag America*?<sup>19</sup>

### III. 3. A Special Case : The Marketplace

The most glaring acceptance of an American pattern is found in Feinstein's responsa dealing with women and the business world. There once was a time, the early middle ages, when rabbinic responsa limited or prohibited women's presence

in the marketplace. In *Iggerot Moshe*, the basic premise is that women are to be found in the world of business. They work there and that is normative. Feinstein is certainly not the first decisor to permit women to enter the world of business. What is distinctive in his responsa is the acceptance of the neutrality of the marketplace. Women and men go to "work". They meet there, talk together, and even may sit next to each other and come into physical contact. All his efforts at segregating men and women, all his concerns for the moral fiber of society are directed elsewhere. The business world is so pervasive and necessary, that it is not threatening. In one case (*IM OH 4:117*), he is presented with a woman who had an "affair" with a coworker. Clearly, that place of business was not outside the realms of sexual stimulation and sinning. Yet he does not forbid her re-entry into the workforce. He deals with her need for repentance and adds a most curious cautionary note. He advises that if she shall have daughters, she should try to make sure that they do not work in such an office. He does not use this case as an example of the moral degeneracy of the marketplace. The deed is evil, but it does not provide him with an opportunity to forbid women from entering the business world. Even in that cautionary addendum, he does not forbid or restrict: he advises. Furthermore, the caution applies only to that kind of an office, not to the work place in general.

In effect, he has declared the marketplace to be a non

erotic environment: the categories of *yihud* and *hirhur* do not uniformly apply. Men can sit on subways next to women, some women can remove their head coverings, men and women can study together; none of which would be permitted in the context of the synagogue.

Most significantly, women in the work force are neither absent nor silent. Their presence is more than accepted or tolerated; it is necessary and good. In one responsum (*IM OH YD 2:44*), he justifies hiring a woman as a *mashgiach*, a position usually reserved for men. When criticized for that permissive ruling, he responds (*IM YD 2:45*) with a strong defense of his position as a decisor as well as a defense of the decision itself. In that latter document, he develops the sources that would allow women to assume leadership roles in the political or business world. His most telling remark is that it is incumbent on the rabbis to issue permissive rulings in the face of financial hardships. Moreover, women can be ambitious and move up the salary scale, and their motives are not questioned. The widow who wishes to remove her wig in order to get a job promotion is given permission. Incredibly, given his responsa prohibiting women from increasing their ritual participation or changing their seating arrangement to a kosher *mehitsa* because he suspects their motives, Feinstein does not doubt her reasons. Income, *parnasa*, is a powerful alibi and an acceptable motive. This neutralization of the marketplace, and the total acceptance of women in it, is a

clear indication of Feinstein's Americanization. It also can explain in part his acceptance by an American audience.

### III. 4. The World of Education

Rabbi Moses Feinstein's rulings in the arena of education most clearly indicate that he has embraced the American ideal of a universal education. Girls are to be formally instructed in the ways and traditions of Judaism, not just boys as had been the European pattern. Girls must go to school, the community must provide an appropriate place, and fathers must pay for it. None of these are patterns from the past. They all signify a change in practice which, I maintain, is due to the Western ideal of public education for all, regardless of race, gender or class. Feinstein never argues to persuade us that Judaism accepts or requires female education. He merely and incredibly accepts the fact that there is no problem. Feinstein's concern, found in his earliest responsum as well as his last one, is the necessity for segregating the sexes (*IM YD* 1:137, 2:104). Boys and girls must be in separate buildings while they are studying. In all of the various arguments and discussions the basic unquestioned premise is that girls must receive a formal public education (*IM YD* 2:104).

To be sure , other rabbinic decisors have ruled on the permissibility of educating girls. From the Talmud through to the codes there were great debates concerning the legitimacy of teaching women Torah. There were great debates and



disagreements as to who would be allowed to study, who would teach them, and what they should be allowed to learn. But universal education, for all girls and not just a few individuals, was not entertained until our century. Again, there were rabbinic decisors who gave their permission, most notably, the *Hafetz Hayyim*, R. Samson Raphael Hirsh, and the *Hazon Ish*. What distinguishes Feinstein's work is the total absence of any doubt, debate, legal argument or hint of previous decisions on this issue. The convention of educating females is so self-evident for him that it needs and receives no justification.

The Americanization of our decisor goes even further. Firstly, he accepts education for all no matter what their talent (*IM YD 2:104*). The European model not only excluded women but it allowed only the elite, those of exceptional intellectual ability. Feinstein accepts women, all women. He even accepts women as teachers; and not just teachers of girls or young boys, but women who can be expert enough to teach *limudei kodesh*, sacred subjects to males (*IM YD 3:73*). His concern remains separation of the sexes: prevention of sexual immorality. Yet, even while maintaining that priority, he has accommodated to an American pattern of hiring female teachers by declaring the public space of a school non erotic. Accordingly, he has limited the scope of a prohibition and used an historical evaluation of the conditions to permit what was once prohibited. As in the business world, he has declared

this public arena to be neutral, not conducive to sexual license. This would appear to be a reversal of a previous standard.

By focusing on sexual contact, he avoids giving any consideration to the sexist notion that women are incapable of learning difficult subjects or to the rabbinic notion that they do not "need" to know this material. There is a limit to what they may learn because of talmudic injunctions that he does not explain or override. But within that context, women are deemed qualified (*IM OH 4:67*)).

Secondly, the purpose of girls' education is their moral development and their Jewish identity. By going to a Jewish school the girls will remain Jewish and be kept separate from the non-Jewish world. They will learn how to be Jewish in school!<sup>40</sup> The *Hafetz Hayyim* argued similarly, but Feinstein's responsa go a few steps further in relying on the educational environment and the educator. In fact, the teachers themselves must be models of proper Jewish living for the girls to follow (*IM YD 3:73.4, 75*). The *Hafetz Hayyim* and others understood the need to teach the future mothers of future Jews. They were concerned with content, the girls needed to learn the elements of being Jewish so they could teach it to their children. Feinstein is operating on a different premise. He is not concerned primarily with these girls as future mothers. He is interested in the girls themselves (*IM YD 1:137*). The educational process is the vehicle he will rely on, like most

Americans, to keep his children good, committed to their group (or nation), and identified with that group. Jewish schools for girls is simply necessary and sufficient for their lives as Jews (*IM YD 2:106*). Thus, the American idea that education is a panacea for raising children and developing adults, has permeated his thinking.

Obviously, Feinstein's acceptance of the education of girls as normative must be understood in the context of American policy. The education of all minors is compulsory. If the girls do not go to a Jewish day school, they will be forced into the public school system. Given that, the presence or absence of favorite formularies is indicative of his attitude. He does not say "because of our many sins" we are forced to send our girls to school. He never presents an argument that we must establish girls' schools because that is how they do it "in this country." He does not even use the argument of the *Hafetz Hayyim*: "in extremis" to permit female education. Although he uses those phrases in the education responsa, they are limited to other problematic areas, never to the core issue of whether to educate girls. Finally, nowhere does he justify it retroactively - which he has done with other questionable practices (*IM YD 3:73*)- by writing a responsum on "Concerning the education of girls in this country and no one prevents it." Neither in content, style nor language is there any indication that Feinstein views the education of girls with any disfavor. He even praises their

schools. Quite simply, it is proper and good to educate females.

One final indication of Feinstein's Americanization is found in his responsum on school vacations (*IM YD 3:85*). Though forbidding the school to close at that particular time, he does not oppose the idea of a school vacation.<sup>41</sup> The norm of school holidays, of children and teachers and even parents requiring a 'break' is not anathema. Nowhere does he argue that a vacation is *bitul Torah*, a waste of Torah time. The classic response would have involved this concept of wasteful time, of being required to spend every minute on Torah. Certainly, his argument to these day schools would have been bolstered had he simply relied on that notion of *bitul*. But he does not. He does maintain that the schools may not close on Sunday because that would be too much like "them" and there he does argue *bitul*. Undoubtedly, Feinstein has been influenced by the American pattern of school vacations. Additionally, Feinstein appears to have accepted the merit of vacations in general. In *IM EH 4:32.8*, Feinstein permits taking a vacation during the festival of Succot in order to tour the country. This concession is substantial since it was given with the knowledge that the couple will not be able to celebrate the holiday with the appropriate ritual means. Again, this ready acceptance of an American pattern adds to his popularity with an increasingly Americanized Jewish religious population. In conclusion, the corpus of responsa on education give a clear

indication that Feinsein accepts the common notion of education and the importance of it even for girls.

### III. 5. The Locus of Religion

The American vision of a society in which people are free to exercise their respective religions accommodates Feinsein's convictions. Accordingly, the American ideal of separation of church and state remains a firm and unchanging principle in his landscape. The arena Feinsein works so diligently to keep pure, separate, unchanged and uncontaminated is the world of synagogue and ritual. These are clearly the domains of sacred space that must be protected from all encroachments. And this is the arena America has defined as "religion". For American society religion is church centered, and it can be argued that Feinsein has accepted that designation.<sup>42</sup> In Europe, one could claim that religion was equally practiced in the home or the academy. Most probably, it seems not to have been centered primarily in the synagogue. Yet, in America religion is centered in the synagogue and Feinsein appears to have accepted that into his demarcation framework. Conceivably, as a result of this, his responsa are most restrictive of women in the domain of the synagogue. He is afraid of America, and it is in the synagogue that he will exert his influence and control modernity's impact. Women will not be doubted in business, but their motives will be questioned in synagogue related matters. Women will be encouraged in education, but they will be discouraged

in the world of religion that is dominated by the synagogue.

Feinstein's stance on *mehitsa* can be seen as the hallmark of this Americanization. It is in America that *mehitsa* has become the defining symbol of the separation between Orthodox and non-Orthodox, men and women. The lines are drawn differently in Europe.<sup>43</sup> Moreover, it is this focus on separation in the synagogue that can be viewed as *minhag America*, although Feinstein and his colleagues would not approve this terminology. Ironically, that term was first used by Rabbi Isaac Mayer Wise, a nineteenth century Reform rabbi, as the title for his English prayerbook, one of the first in America.<sup>44</sup> In 1937, Robert Gordis wrote of mixed seating as *minhag America*. Gordis writes of *minhag* triumphing over accepted law,<sup>45</sup> an expression that would be anathema to Feinstein.<sup>46</sup> The separation of men and women during prayer services has defined Feinstein's agenda for Orthodox synagogues as it has marked American Jewish denominational affiliation. Conspicuously, neither Feinstein nor any other Orthodox leader ever opposed the use of American civil courts in the battle to maintain separate seating. When the Mount Clemens case came to court and Baruch Litvin collected responsa and articles in support of the case, no one chastised him for turning to American secular courts. No one required, as they do today with increasing pressure in the *haredi* community, that Orthodox Jews rely exclusively on rabbinic courts for all matters of adjudication between Jews. The

powerful influence of America is illustrated in this tacit acceptance of civil procedures.

Although Feinstein would not accept a *minhag* of mixed pews in the synagogue, there is an arena in which American custom plays a decisive role. In 1990, Marc Shapiro wrote of "Another Example of 'Minhag America'".<sup>47</sup> In it he argues that the common practice amongst married women to leave their hair uncovered is an example of *minhag* America that is supported by Feinstein. The debate this article stimulated on *minhag* and law is substantial but for the purpose of this inquiry the significant factor is the easy acceptance of hair covering as yielding to the category of *minhag* and, therefore, being subject to American social custom and standards. For Feinstein the legal requirement for hair covering is marked by the concern for *erva* which, under certain circumstances, is culturally determined. *Minhag* does have a place in determining practice; *minhag* America accommodates to many married women appearing in public, despite the prohibition, even in the synagogue, with their heads uncovered.<sup>48</sup>

It is surely a sign of Americanization when Feinstein acknowledges that head covering can be a handicap in business for both men and women. He also understands that dating in America requires a different pattern of familiarity. Hence the divorcee can uncover her hair in order to meet a man. This pattern of meeting a man and getting to know him is not anathema to Feinstein. He appears to accept the idea that men

and women need to know each other before marriage and does not advise relying on a matchmaker.<sup>49</sup> The American norm of dating as a means to finding an appropriate marriage partner appears to be part of his cultural vocabulary.

Finally, Feinstein's eloquent argument in defense of Judaism in *IM OH* 4:49 reveals two American standards. The first is the notion, no longer officially held in America after the Civil Rights movement, that separate but equal is appropriate. Gender segregation may have been idealized or practiced at times in Jewish history, but it was not vindicated through any association with equality. (It is unlikely that justification was ever required.) Thus, this need to justify as well as his faith in this form of equality are Americanisms. Secondly and most profoundly, Feinstein's endorsement of the principle of equality, specifically gender equality, is an American phenomenon. Naturally, he locates his claim within traditional sources, but those sources do not address themselves to notions of equality. Feinstein translates Judaic concerns for human dignity and respect into the jargon of American feminism.<sup>50</sup> He defends Judaism to these rebellious women by trying to convince them that Judaic tradition always treats men and women with equal respect and dignity. The argument is supported by his claims that women are in no way inferior in matters pertaining to holiness. Inclusion and absence of disrespect inform his notion of equality. As noted previously, the Americanization of his



argument and reasoning is unmistakable.

#### IV. The Denial of Change

The conclusion suggested by this research is that within the framework of a denial of change and affirmation of the immutability of law, alteration and modification is taking place. Extending this judgment to other decisors and community patterns is a prospect for the future. The responsa of Rabbi Moshe Feinstein present an interesting and significant map of legalized shifts in practice and perception accepted as forced upon the community by life "in this country" and "because of our many sins." It can be read as a description of the tensions between and the accommodations made by a traditional sectarian community to modernity.

Feinstein's strategy is predicated on the need to preserve traditional systems and patterns of behavior while recognizing and dealing with present practical concerns. His method often relies on a *postiori* rulings rather than a *priori* legislation. His purpose is to strengthen Jewish distinctiveness and separateness while accepting the need to live and work in this world. His method is to argue the legal case of the permissible and the prohibited while developing a moral argument on the practiced and the preferred. Within this framework, women's place elicits a unique series of responsa that illustrate the process of continuity and change in a religious community.

Feinstein cautions against innovation in general (*IM OH* 2:108) and in America specifically (*IM YD* 1:13). Certainly,

the argument of *IM OH 4:49* is predicated on his resistance to change and to those who would opt for it. In his decisions on education, in which modernization appears to have created a thoroughly new standard and structure, he presents the alterations under the guise of preserving the past and applying known laws to new social situations. Fathers must pay for their daughters education, women can be teachers, women can aspire to Torah knowledge, all radically new precepts issued in the name of preservation and tradition.

This opposition to transformation is so firmly fixed that a talmudic reference to an innovation in Temple structure must be reinterpreted to indicate a pre-existing immutable Torah law. The pronouncement of biblical origins for *mehitsa* can certainly be understood in terms of this strategy. Paradoxically, even in situations where he genuinely is opposed to a new practice, Feinstein authorizes a variation by using different words to describe the celebration. He opposes a Bat Mitsva ceremony especially because it emanates from branches of Judaism that officially welcome change. But by calling it a *simha* and permitting a *kiddush* and a speech in the synagogue, by extending male patterns established in American Orthodox synagogues to females, he has created a vehicle for a "traditional" Bat Mitsva celebration. The complexity of his argument and design is best seen in his decisions on ritual participation. In the very same document in which he labels women who wish to change synagogue practice

heretics, he boldly announces that it is a good thing for women to increase their ritual responsibility. In the above situations Feinstein appears to be permitting the permissible and, thus, avoids extra judicial justification. No change of law has been legislated; Feinstein is a preserver and even an augments, but not an innovator. The result of such decisions, however, is a definitive change in the practice of Orthodox Judaism and the location of women within that sphere. Placing these in the context of other decisor's rulings needs to be undertaken in order to further develop an appreciation of Feinstein and of his vision of separate spheres.<sup>51</sup>

Rabbi Moses Feinstein does not consciously or purposefully discriminate against women. Unmistakably, he does not intend to treat them as other. However, his attitudes evince a pervasive and implicit standard of sexual segregation. At the same time, these postures are permeated with American standards and values of equality, enfranchisement and democracy. It is in his rulings about women that we can see his accommodation to and argument against American modernity.

American Judaism is different from all previous configurations in large part due to the changed role of women in both the educational and religious spheres.<sup>52</sup> Many different authors have described or alluded to this process.

"The transformation of the religious role of women has been among the most far-reaching results of the Jewish

tradition's encounter with American culture. Thousands of years of tradition were radically reshaped on American soil." <sup>53</sup>

They have also noted that the changes that took place occurred mostly in the realm of the synagogue, especially as concerns the Reform and Conservative communities but also affecting the Orthodox world. The previous male realm of synagogue became the arena of the battle for equal rights.<sup>54</sup> In the more recent period, the Orthodox community, particularly but not exclusively, has concentrated on the world of text study as a critical expression of devotion and piety.<sup>55</sup> Again that shift has been accompanied by increased female access and acceptance of the text culture by women as a central form of worship. Associated with these important and ground breaking shifts to include women is a consistent and regrettable demeaning or ignoring of the realm of ritual activities in which women were traditionally experts.<sup>56</sup>

Does the demand to be accepted into a predominantly male sphere affirm women as Jew or mask their femaleness? Does it yield equality, invisibility or sameness? Many in the Orthodox world are attempting to keep an emphasis on home based religion. However, this frequently occurs in the context of a troublesome and unthinking contention that women belong in the home. I believe the challenge remains for Feminist Jews to find a way to claim women's place in the public spheres of Judaism while reclaiming and retaining women's expertise in

personal and family centered practice. The vital participation of female Jews in all aspects of the religious life of the community is crucial and imminent.<sup>57</sup> Rabbi Moses Feinstein, while trying to prevent any comprehensive change and certainly opposed to basic feminist claims, nonetheless, can be seen to have been a significant factor in authenticating some of this transformation.

## Notes

1. There are times when he indicates that he would rather answer the question orally and directly to the person. Aside from concerns over publicizing certain decisions, especially lenient ones, this attitude reflects his sincere sense of responsa being responses to individuals in need. *IM EH* 1:58, 2:18, 4:40.

2. It should be noted that Feinstein, with help from his family, personally published his responsa. Obviously, he was not reluctant to publicize his work. However, in certain responsa, he does indicate that he would rather have kept the communication private and allows publication only when pressed. *IM EH* 1:58, 2:18.

3. *She-ain bi torah ve-hakhma ka-ra'uy.*

4. He allows that disagreement is an appropriate part of the process, but claims that in each of the cases the respondent has misunderstood the texts or Feinstein. Paradoxically, his rebuttal is often personal. The overall effect is to defend his position and his authority.

5. He does mention the practice of the great sages publishing their decisions as in *IM EH* 1:58.

6. There is no indication of the author of this collection. The only English source book on Feinstein's responsa from the appropriate time is the privately produced Hebrew-English *The Published Responsa of Rabbi Moshe Feinstein*, by Aaron Rakeffet-Rothkoff. It was published by the author in Israel in 1978. The Hebrew section is a rough index. The English essay is a condensation of his various decisions in the first five volumes of *Iggerot Moshe*. I do not know if this is the banned book.

7. Given this decision, I would assume that he would not approve of this project. However, as will be discussed further on, he did approve and allow a number of translations.

8. The incredible availability in English of traditional and esoteric texts has been intensified by the Orthodox publishers of Art Scroll series. For a critical view of Art Scroll see B. Barry Levy, "Our Torah, Your Torah, and Their Torah: An Evaluation of the Artscroll Phenomenon", in H. Joseph, J. Lightstone, and M. Oppenheim, eds, *Truth and Compassion: Essays on Judaism and Religion in Memory of Rabbi Dr. Solomon Frank*, Waterloo: Wilfred Laurier University Press, 1983: 137-189.

9. The common practice in Reform and Conservative law committees is to draft decisions in English. This shift both reflects and creates a changed pattern of interaction between rabbi, rabbinical organizations and congregant.

10. It should be noted that decisors were frequently communal officials or responsible to individual congregations. Feinstein is neither. His position is that of a *rosh yeshiva*. There has been a significant increase in the power and *psak* authority of the *roshei yeshiva* in the Orthodox community today. Haym Soloveitchik, "Rupture and Reconstruction", *Tradition* 28 (Summer 1994): 104.

11. It must be noted that Feinstein's language style and usage make understanding his responsa somewhat difficult for those untrained in rabbinics.

12. *The Sanctity of the Synagogue*: 118-125.

13. Such as A. Y. Finkel, *The Responsa Anthology*; F. Rosner, *Medicine and Jewish Law*; F. Rosner and M. Tandler, eds, *Practical Medical Halacha*; M. Goldberger, *A Practical Guide to the Mitzvah of Bitochon*, New York: Goldberger, 1982.

Other books, published after his death, do not appear to heed his ban. Thus, Zomet, publishers of current halakhic material, has published two volumes containing translations and summaries of Feinstein's responsa. Ezra Rosenfeld, ed, *Crossroads: Halacha and the Modern World*, v.I, 1987: 129-136; v. II, 1988: 59-64.

14. *Darash Moshe*, translated by Rabbi Avrohom Rosenberg, adapted by Rabbi Eliyahu Klugman and Pinchos Rohr, New York: Mesorah Publications, 1994.

15. Daniel Eidenson, *Yad Moshe*, New York: Daniel Eidenson, 1987.

There is a directory at the back of each volume that lists each and every document.

16. *ibid*, cover of index.

17. This normative function, authentic to the responsa process, significantly emerges out of documents that are written originally for distinctive and individual circumstances.

18. See Haym Soloveitchik, "Rupture and Reconstruction", *Tradition* 28,4 (Fall 1994): 76-81.

19. A question raised by Judith Plaskow in *Standing Again at Sinai: Judaism From A Feminist Perspective*, New York: Harper and Row, 1990: 103.



20. This strategy is of course not new. It follows the biblical and talmudic pronouncements to avoid walking in "their" ways, a reference to the prohibition of idol worship, which has been interpreted by Feinstein and others as a warning to refrain from imitating foreign customs.

21. He would have been quite shocked to learn of any respect accorded his word in that non-Jewish world. The following unverified, and perhaps whimsical, anecdote is conceivably illustrative of that deference. A Jewish (Orthodox) psychologist in Pittsburgh, specializing in addiction, had a patient who was an alcoholic. The patient was a priest and wished to find a way to avoid drinking wine during mass. The therapist suggested grape juice. The bishop asked on whose authority grape juice was being substituted for wine. The priest mentioned Rabbi Feinstein's permission to substitute grape juice for wine on ceremonial occasions. The bishop checked with his superiors at the Vatican. The verdict was that Feinstein's authority, in this matter, was sufficient. This anecdote was recently told to my husband by Professor David Berger.

22. This is a case in which Feinstein initiates the discussion by writing a public letter to professional educators.

23. This position is, of course, an application of the traditional warning against *bitul Torah*, wasting Torah time.

24. This argument is briefly repeated in *IM EH* 3:40.

25. His decisions on interaction due to business require separate attention.

26. This attitude of Feinstein's corresponds with the position of many nineteenth century Orthodox rabbinic leaders who opposed all Reform actions. See David Ellenson, "A Response by Modern Orthodoxy to Jewish Religious Pluralism", *Tradition* 17,4 (Spring 1979).

27. This deligitimation of those who work for a Conservative synagogue is not consistent. In *IM OH* 3:13, in a response to an Orthodox congregation, he forbids hiring a cantor who once led services in a Conservative service. However, as noted in chapter 3, in *IM EH* 1:121 and 2:20, Feinstein permits a man who is a scribe but also an official in a Conservative synagogue, to write a kosher divorce document. The only discernible difference is that in the above cases there was a great need for a scribe. Extenuating circumstances however, are not the only argument. Feinstein does allow that the financial need of the scribe to earn a living is also an admissible excuse. In the texts under consideration here, the concern is for the community standard. No individual need can

displace the requirement for complete separation.

28. A fuller analysis of his position vis a vis the non-Orthodox requires an examination of responsa on marriage, divorce, conversion, and joining community organizations.

29. Feinstein uses the same approach with Conservative rabbis. Namely, when an act might be halakhically valid, it is invalidated by Feinstein because of the actor's disqualifying motives. In *IM OH 3:12*, Feinstein attempts to differentiate the halakhic ramification of the category *kofer*. A man who keeps the law but is a *kofer*, may not have an *aliyah*, although a violation of the law does not disqualify one from this ritual performance. In *IM OH 2:50* he declares that all Conservative and Reform rabbis are *kofrim* and cannot lead the assembled in a blessing, even if it is recited according to halakha.

30. There is an fascinating ambiguity in *IM OH 4:49* on the insider/outsider status of the women. He calls these lovely/overconfident women "keepers of the law," a reference to Orthodoxy but not to the elite insider level of those who "fear the Lord." On the other hand, he unequivocally declares that these women are part of our community. Furthermore, he places them squarely in the *kahal kadosh*.

31. Although he does mention menstruation in these rulings, his use of the category is dependant on the law forbidding sexual contact with a menstruant and not laws of ritual pollution. The concern is not *tuma'at nidah*, ritual impurity, but rather *isur nidah*, the sexual prohibition. Whereas this prohibition has been applied to married couples in the halakhah, Feinstein is now applying it to those married and not married. The reasoning might be as follows: do not touch a married woman for fear of adultery, and do not touch an unmarried woman for fear of violating the sexual restrictions of the menstrual laws. This reading is supported by the wording in *IM OH4:35*, prohibiting dancing since all available young women are forbidden due to menstrual regulations. Specifically, they menstruate and have not yet gone to the *mikveh* to become permissible. In fact, the rabbis forbade unmarried women from using the *mikveh* so as to prevent to all forms of sexual deed. The issue then of touching is based on sexual regulations and not pollution taboos, though they do emanate out of the ancient biblical menstrual taboos.

32. Predictably, it is women who are restrained so that men will not fall victim to this sin.

33. *TB Ket. 72.*

34. Hence the whole distinction in Bar/Bat Mitsva celebrations.

35. The laws prohibiting a man from listening to the voice of a woman singing are paradigmatic. A woman's voice, like her hair, is considered to be sexually enticing. Men might be distracted and tempted to hear her. Thus, because of fear of sexual indiscretions and men's inability to control themselves, women are silenced. In addition, it is precisely in the realm of synagogue participation and prayer that this restriction renders women silenced, hence religiously invisible.

36. Pinchas Peli calls Feinstein "an American rabbi" noting how he was open to the realities of American Jewish life and felt a strong responsibility for American Jews. Peli contends that Feinstein's responsa reflect faithfully the social reality of American Jews and that *Iggerot Moshe* is a good source of American Jewish history. "Rabbi Moshe Feinstein: An American Rabbi," *Hadoar* 65, 3 (April, 1986): 8-12.

37. It would be interesting to examine his acceptance of modern technology especially in medical and Sabbath matters.

38. See note 57 in chapter 4.

39. See further in the section on the locus of religion.

40. This shift supports the claims made in Haym Soloveitchik, "Ruptures", *Tradition* 28 (1994).

41. In Europe, there were vacations called *bayn ha-zmanim*. Also, many religious Jews did "take the waters" at Marienbad and similar places. However, the underlying premises appear to have been different. In addition, Feinstein has nothing to say about the long summer break. His only concern appears to be the timing of this vacation and not its length or frequency of school breaks.

42. It is necessary to clarify that Feinstein's concept of being a religious Jew is certainly not limited to the synagogue. His decisions affect all aspects of life, because Judaism must inform the total human endeavor. However, I am claiming that his decisions indicate an extreme caution when it comes to synagogue patterns and that response is the result of American shifts in conceptualizing religion. See Goldscheider and Zuckerman, *The Transformation of the Jews*, Chicago University Press, 1984, especially p. 75, for an excellent description of the effects of modernity on the practice, image and location of religion. Feminists have been similarly influenced. Jewish feminists have consistently argued for greater inclusion into the realm

of synagogue in their advocacy of religious equality. Additionally, as the shift to a text centered practice of religion evolved, Jewish women have entered that study realm also.

43. Sarna in Wertheimer, *The American Synagogue*: 394, note 109. See my note 63 in chapter 3.

44. The book was published in 1856. It was not used as the basis for the Union Prayer Book. Wise wanted to establish a single ritual format for the American Jewish community. *Encyclopedia Judaica*, v. 16, Jerusalem: Keter, 1971: 563-565.

45. See note 56 chapter 3.

46. Feinstein has a number of responsa on the relationship between *minhag* and law. In his decisions, local custom plays a significant role. However, he would not subscribe to a policy that eagerly looks to override law on the basis of *minhag*, whether it be personal or individual. *IM* YD 1:136, 3:100, OH 1:158, 2:83, 4:17, 33, EH 4:100.

47. *Judaism* 39,2 (Spring 1990): 148-154. see note 40 chapter 3.

48. See the discussion of Feinstein's specific accommodations in chapter 3 of this dissertation.

49. It is worthwhile to compare the premise of this decision with Feinstein's permission to a bridegroom to read a marriage manual so that he would know what to do on the night of his wedding. *IM* EH 1:102.

50. Obviously, he neither intends this nor knows the feminist argument from direct contact.

51. In this study, comparison to other decisors was sporadic and necessarily superficial. The section on Bat Mitsva gives a modest indication of the possibilities inherent in a comparative approach.

52. In many ways, and for a significant part of the population, these two categories should be combined and not be analyzed separately.

53. Ann Braude, "The Jewish Women's Encounter with American Culture", in Reuther and Keller, eds, *Women and Religion in America: The Nineteenth Century*, New York: Harper and Row, 1981: 150.

54. Cynthia Ozick eloquently described the pain of being left out of the synagogue realm in "Notes Toward Finding the Right Question", *Lilith* 6 (Spring 1979).

55. See Haym Soloveitchik, "Rupture and Reconstruction", in *Tradition* 28, 4 (Fall 1994): 64-130.

56. Riv-Ellen Prell describes the way in which early Reform moves to make women equal in the synagogue also "made women invisible as they made women equal." "The Dilemma of Women's Equality in the History of Reform Judaism", *Judaism* 30, 4 (Fall, 1981): 418.

57. See my "The Feminist Challenge to Judaism: Critique and Transformation," in Morny Joy, ed, *Plotting the Path Forward: The Future of Women in Religious Studies*, Wilfred Laurier University Press, forthcoming.

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