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Roberta Rosenthal Kwall

DePaul University College of Law

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RESPONSE TO ZADOFF ON KWALL*

In *The Cultural Analysis Paradigm: Women and Synagogue Ritual as a Case Study*,¹ I demonstrate that a cultural analysis of *halakhah* views the norms of female ritualistic participation concerning being called to, and reading from the Torah as the result of environment, conditioning, history, and context, rather than as an unalterable mandate.² To my knowledge, the idea that *halakhah* should be understood through a cultural analysis lens has not previously been explored in either the legal or Jewish studies literature. The paradigm developed in the Article was based on an extensive review of the cultural analysis literature and represents an original attempt to identify the major themes in the writings of those scholars who rely on a more culturally nuanced approach to the law.³ Toward that end, I identified five factors that explain the relationship between law and culture.⁴ The last factor, the interrelationship between law and culture, illustrates that law and culture are deeply intertwined and cannot be separated from one another.⁵ In fact, the Article emphasizes that this factor is “the most all-encompassing characteristic” of my cultural analysis paradigm, and it features an extensive analysis of this interconnection in the context of women publicly reading from the Torah and receiving *aliyyot*.⁶ Surprisingly, however, this

* © 2013 Roberta Rosenthal Kwall, Raymond P. Niro Professor; Director, DePaul College of Law Center for Intellectual Property Law and Information Technology; Co-Director, DePaul University College of Law Center for Jewish Law & Judaic Studies.

¹ Roberta Rosenthal Kwall, *The Cultural Analysis Paradigm: Women and Synagogue Ritual as a Case Study*, 34 CARDOZO L. REV. 609 (2012).

² *Id.* at 656.

³ *See id.* at 618–26.

⁴ The five factors are: 1) power relationships; 2) contextualization; 3) contestation; 4) multiplicity of values; and 5) the interrelationship between law and culture. *Id.* at 619.

⁵ *See id.* at 645.

⁶ *Id.* at 624.

fundamental premise did not resonate with Mr. Zadoff in his critique.⁷ Instead, he claims that my assessment classifies “the cultural as *something external to the law*.”⁸ To set the record straight, my Article argues that the cultural and the legal are deeply embedded with one another.⁹

In Zadoff’s view, the Article is flawed because it accepts a “social culture of bygone eras” as an explanation for a gender bias in *halakhah* without providing a more rigorous differentiation of cultural circumstance.¹⁰ Moreover, as a historian, Zadoff seems particularly perturbed that I find the present day situation “more complex” regarding gender issues given the nuance his response provides concerning the cultural views of women in prior eras.¹¹ Yet, the historical examples Zadoff furnishes regarding women’s cultural and sociological roles in society¹² essentially are beside the point. Why? Because in the world of the Jewish tradition, *halakhah* has developed in a uniform manner on the subject in question despite the explicit acknowledgment on the part of even some Orthodox authorities that this aspect of the *halakhah* is based on historical, sociological and cultural factors.¹³ Further, and particularly relevant, the issue of whether women can engage in the activities that are the subject of discussion was never addressed directly until the latter half of the twentieth century by any movement.¹⁴ Although the tradition does contain a *theoretical* basis for an alternate application, a basis that derives from Talmudic times, the normative practice that has developed across time and space was constant, and in Orthodox circles remains so.

On the *halakhic* issue that is the focus of the Article, I indeed posit that “the broad cultural premises with which the legal negotiates and interacts remains a constant and coherent structure.”¹⁵ Zadoff may see this as a problem because as an historian he questions “the methodological value in developing a broad paradigm of law and culture that spans hundreds, if not thousands of years of historical circumstance.”¹⁶ In contrast, I focus on the reality of women’s experience with respect to this

⁷ Ethan Zadoff, *Zadoff on Kwall: A Historian’s Critique*, 2013 CARDOZO L. REV. DE NOVO 214.

⁸ *Id.* at 218.

⁹ See generally Kwall, *supra* note 1.

¹⁰ Zadoff, *supra* note 7, at 223.

¹¹ See *id.* at 223–24.

¹² See *id.* at 219–20.

¹³ See Kwall, *supra* note 1, at 609, 651 (discussing the views of Rabbi Saul Berman and other authorities).

¹⁴ See *id.* at 614 n.18, 615 n.21, 617 n.31.

¹⁵ Zadoff, *supra* note 7, at 220 (quoting *The Cultural Analysis Paradigm: Women and Synagogue Ritual as a Case Study*).

¹⁶ *Id.*

aspect of synagogue ritual and therefore am happy to “take judicial notice” of this reality and the pertinent power structure that has produced this status quo.

Thus, Zadoff may disagree that the past “is a uniform, stagnant structure,”¹⁷ but when it comes to the normative *halakhah* in this area the historical normative practice suggests otherwise.¹⁸ Even today, when there are more opportunities for increased advanced Torah learning for women, to date no female “Torah scholars in the true sense of the term” have been produced, and “there is still a long way to go” before this possibility becomes a reality.¹⁹ The absence of this influence is a major obstacle for progress on the topic of increased participation for women with respect to public Torah reading and substantiates the existence of the uniform stagnation Zadoff would like to dispute.

Similarly, Zadoff argues that my failure to recognize the lack of insularity in Jewish life prior to the Enlightenment “is a critical flaw in [my] wide-ranging argument.”²⁰ In support of this claim he quotes (out of context) an excerpt of my Article containing the following sentence: “Prior to the Enlightenment, the Jewish community manifested a *degree of insularity* that minimized to some degree the nature and level of contested discourse.”²¹ Here, Mr. Zadoff is fixated on an issue that essentially is irrelevant to my analysis. My Article is about one particular facet of *halakhah* with implications specific to the Jewish community. Further, from a historical standpoint, prior to the twentieth century, Jewish communities typically were insular in a way that *is* distinct from today.²²

My Article is part of a larger book project about cultural analysis and Jewish law,²³ in which I devote the better part of several chapters to the intersection between the Jewish tradition and those of the majority cultures in which the Jews have lived throughout the centuries. In these

¹⁷ Zadoff, *supra* note 7, at 223.

¹⁸ See generally Kwall, *supra* note 1.

¹⁹ Esti Rosenberg, *The World of Women's Torah Learning—Developments, Directions and Objectives: A Report from the Field*, 45:1 TRADITION 13, 34 (2012). As a result, there still has been no influence on “the world of men’s Torah learning.” *Id.*

²⁰ Zadoff, *supra* note 7, at 224.

²¹ *Id.* at 221.

²² See, e.g., JACOB KATZ, *OUT OF THE GHETTO: THE SOCIAL BACKGROUND OF JEWISH EMANCIPATION, 1770–1870*, at 213–214 (1973) (discussing the period in Europe between 1770–1870 and noting that even by the end of this period, Jews still adhered to the practice of maintaining “exclusively Jewish family ties”).

²³ ROBERTA ROSENTHAL KWALL, *AUTHENTICITY OF THE CHOSEN: A CULTURAL ANALYSIS OF JEWISH LAW* (forthcoming 2015).

chapters I discuss how the Jews typically adapted the customs of their respective majority cultures to suit their unique Jewish communities, institutions and patterns,²⁴ and show how this reality of adaptation provided an important foundation for the creation of a unique Jewish subculture in the areas in which they lived.²⁵ For purposes of this particular Article, however, such a discourse was neither necessary nor even possible given the page constraints of law review publications.

Zadoff also raises the point that I neglected to elevate the texts of the laws.²⁶ I do not understand this claim. The relevant texts *are* discussed and summarized for the purpose of establishing the central thesis of the Article: despite normative *halakhah*, there *is* a theoretical basis in the tradition for a different approach. Although not everyone would agree that the tradition furnishes such a basis, there are Orthodox authorities who do so claim.²⁷ The Article amply illustrates how “the great pool of our tradition”²⁸ contains a theoretical basis for a different approach, with has provided the certainty claimed by the Orthodox authorities discussed in the Article for their *halakhic* interpretations. There was no need for me to reinvent the “*halakhic wheel*” when the *halakhic* position on which I am relying was so eloquently articulated by Professor Daniel Sperber and others.²⁹

I appreciate that Zadoff desired to invest time and energy in writing a response to my Article and my reflections on his response should in no way be understood as a commentary on his own scholarly agenda or his capability as a scholar. With respect to his critique of this Article, however, I believe his comments miss the mark. There is a remarkable consistency of application throughout history and in distinct cultural environments. This consistency, even as it exists today, speaks for itself and suggests the need for an honest assessment of the impact of the cultural realities on the *halakhah* in this area.

²⁴ IVAN G. MARCUS, *THE JEWISH LIFE CYCLE: RIGHTS OF PASSAGE FROM BIBLICAL TO MODERN TIMES* 4, 8 (2004) (calling this process “inward acculturation” and noting that it has repeated itself throughout history and across the globe).

²⁵ David Biale, *Preface: Toward a Cultural History of the Jews*, in *CULTURES OF THE JEWS*, xv, xx, xxi. (David Biale ed., 2002).

²⁶ See Zadoff, *supra* note 7, at 225.

²⁷ Such authorities include Daniel Sperber and Mendel Shapiro, whose views are discussed in detail in my Article.

²⁸ Asher Lopatin, *What Makes a Book Orthodox?*, 4:2 *THE EDVAH JOURNAL* 2004 (reviewing STEVEN GREENBERG, *WRESTLING WITH GOD AND MEN: HOMOSEXUALITY IN THE JEWISH TRADITION* (2005)) (critiquing Greenberg for failing to play sufficiently with the *halakhah* in a creative way in order to arrive at solutions to the issues posed by the tradition’s ban on homosexuality).

²⁹ See Kwall, *supra* note 1 (referencing Daniel Sperber throughout).