

Review Essay: *Mah She'elatech Esther Vate'as*, Ohr Torah Stone 2014
Responsa written by HaRabbanit Idit Bartov & HaRabbanit Anat Novoselsky

by Rabbi Johnny Solomon

For over twenty years I have been deeply interested in the contemporary Responsa literature as a source of halakhic discussion and development, as well as a window to the developing Jewish world. During this same period I have closely followed the steps towards the greater inclusion of women in Jewish learning and Jewish leading, and I have specifically taken an interest in the contributions of women to halakhic discourse.

In 1998 we saw the publication of *Jewish Legal Writings by Women* which broke new ground as the first book 'by observant women writing on Halakha'¹ and which was considered to be proof that 'halakhic scholarship is no longer a male-only bastion'². Since then, there has been a steady stream of articles written by women on matters of halakha as well as a few books written by women addressing matters of halakha.³ However, there is a marked difference between halakhic articles and responsa (halakhic rulings). As Norma Baumel Joseph observed, 'in terms of responsa specifically, women ask the questions and live with the decision, but they do not create – and have no part in the creation of – the legal text.'⁴ Therefore, when I read about the publication of the first volume of halakhic Responsa written by women⁵ - 16 years after the publication of Halpern and Safrai's book - I was keen to get my hands on a copy.

The 85-page hebrew booklet called '*Mah She'elatech Esther Vate'as*'⁶ (literally, 'what is your question Esther and it shall be fulfilled'), was published in Sivan 5774 (June 2014) by the Ohr Torah Stone network of religious education institutes. It contains five responsa and one article written by HaRabbanit⁷ Idit Bartov (IB), and two responsa written by HaRabbanit Anat Novoselsky (AN).⁸ The respondents, who are graduates of the five-year ordination course at the Susi Bradfield Women's Institute for Halachic Leadership at Midreshet Lindenbaum, were ordained by Rabbi Shlomo Riskin and Rabbi Yehoshua (Shuki) Reich in 5771 (2011) and awarded with a *heter hora'ah* – a license to answer questions in areas of kashrut, Shabbat and festivals, family ritual purity and mourning practices.⁹ This background is entirely necessary because:

¹ *Jewish Legal Writings by Women* (ed. Micah D. Halpern and Chana Safrai), Jerusalem: Urim Publications 1998, p. 6

² *Ibid.* p. 6

³ For example, Deena Zimmerman's *A Lifetime Companion to the Laws of Jewish Family Life*, Jerusalem: Urim Publications

⁴ Norma Baumel Joseph, 'Searching for A Woman's Voice in Responsa Literature', *Shofar: An Interdisciplinary Journal of Jewish Studies* Vol. 16 No. 4 (Summer 1998) p. 41

⁵ See <http://www.ipost.com/Jewish-World/Jewish-News/Orthodox-women-launch-book-on-Jewish-law-360598>

⁶ This is an abridged version of Esther 7:2, chosen both given the presence of the hebrew word '*She'elatech* - your question' which is clearly fitting for a volume of Responsa, but also because the booklet is dedicated to a former Lindenbaum student and Israel activist Esther Karish z'l, who passed away in March 2013.

⁷ I specifically refer to both respondents as 'HaRabbanit' as this is the title used throughout *Mah She'elatech*. Rabbi Riskin explains elsewhere that 'we opt.. not to use the title "rabbi" for our graduates because, especially in smaller congregations through the Diaspora, the rabbi is expected to read from the Torah and lead the congregation in prayer, functions that we believe women may not discharge for congregations consisting of both men and women'. Rabbi Shlomo Riskin, 'Heter Hora'ah: From Women Pleaders to Women Leaders', *JOFA Journal*, Fall 2013 (Kislev 5773) p. 18.

⁸ The booklet is divided into three categories: I) Shabbat & Festivals (4 responsa), II) Society & State (1 article) & III) Niddah & Purity (3 responsa).

⁹ See Rabbi Shlomo Riskin, 'Heter Hora'ah: From Women Pleaders to Women Leaders', p. 18. For the biographies of HaRabbanit Bartov and HaRabbanit Novoselsky, see *Mah She'elatech* p. 85.

‘While important Torah articles by female *Talmidot Chachamim* have previously appeared that have addressed halakhic topics, nonetheless...this is the first time where women, who have been ordained to decide halakha ([through] *semicha* which is traditionally known as a ‘*beter hora’ab*) have written halakhic responsa as opposed to articles. [Thus, in contrast to previous publications], behind the writing [of these responsa] stands [the] halakhic authority [of the two respondents] who have accepted the responsibility to teach the people of Israel the way that they should go’.¹⁰

This statement, printed on the back cover *Mab She’elatech*, clearly distinguishes this work from all previous articles written by women on halakhic matters in that, unlike articles that examine primary sources, *Mab She’elatech* is itself a primary source written by respondents who have the authority to determine – rather than merely examine – Jewish law. While Norma Baumel Joseph was correct that until now, ‘women ask the questions and live with the decision, but they do not create – and have no part in the creation of – the legal text’, *Mab She’elatech* is a watershed moment wherein women create – and in fact are the sole creators of - the legal text.

Moreover, in addition to this ‘historic entry of learned women to the halakhic conversation,’¹¹ the fact that there are two respondents included in this volume also points to a further innovation. As Rabbi Shuki Reich explains in his introduction:

‘Someone might say, “look at this new phenomenon! Women involved with the word of God, ie. halakha!”’. But [the fact is that] this isn’t a new phenomenon. [In fact], we find that there have always been special women who have studied, taught and ruled [on halakhic matters]. What is a new phenomenon is that here, in our study hall, *the women sit, study and teach not as individuals, but as a group* (emphasis mine – JS). Moreover, they respond to those who turn [to them for halakhic rulings] from within their own learning [environment].’¹²

What Rabbi Reich *does not* say is that the responsa were written collaboratively.¹³ However, what he *does* say is that the process of writing these responsa included discussion between peers. This is important because, as Aviad Hollander has pointed out, a successful and accepted halakhist takes the opinion of his - or her - peers into consideration.¹⁴ Thus, while there have been individual women in the past who have ‘studied, taught and ruled’, the very fact that women are now learning *together*, talking *together* and consulting *together* on halakhic rulings is of great significance.

¹⁰ *Mab She’elatech*, back cover.

¹¹ Ibid.

¹² *Mab She’elatech* p. 5

¹³ Nb. it is not clear from this volume why there is an unequal ratio of answers by HaRabbanit Idit Bartov (5 responsa) and HaRabbanit Anat Novoselsky (2 responsa) or how each respondent receives the questions they receive. For example, are these specific questions that have been posed to each specific respondent, or are these questions posed to the Women’s Institute for Halachic Leadership and then chosen by or assigned to each respondent?

¹⁴ See Aviad Yehiel Hollander, ‘The Relationship Between Halakhic Decisors and their Peers as a Determining Factor in the Acceptance of their Decisions: A Step in Understanding Interpeer Effects in Halakhic Discourse’, *Jewish Law Association Studies XX: The Manchester Conference Volume* (ed. Leib Moscovitz), The Jewish Law Association 2010 pp. 96-108

Yet, despite the uniqueness and historical significance of this volume, I believe that the most important consideration regarding any volume of responsa should concern the quality of the responsa rather than just the gender of the respondents. There is much more to these responsa than the fact that they have been written by women, and as with *Jewish Legal Writings by Women*, while these responsa are ‘written by women... they are as relevant for men as for women’¹⁵.

<p>SHABBAT & FESTIVALS</p> <p>Bathing and smoking on Yom Tov (IB)</p> <p>The use of a solar heated water tank on Shabbat (IB)</p> <p>The lighting of Shabbat candles in a hotel (AN)</p> <p>The duty of women to be happy on a festival (AN)</p> <p>SOCIETY & STATE</p> <p>Can a woman be appointed as a <i>Dayenet</i> (ie. female rabbinic judge)? (IB)</p> <p>NIDDAH & PURITY</p> <p>Delaying the night of immersion (IB)</p> <p>The ascent of women to the Temple Mount (IB)</p> <p>The immersion of single women for the purpose of holiness (IB)</p>

Translated table of contents of Mah She’elatech

As is evident from the table of contents, two of the seven responsa in *Mah She’elatech* are non-gender specific. The first, answered by HaRabbanit Bartov, addresses the question of whether it is permitted to smoke on Yom Tov,¹⁶ and the second, also answered by HaRabbanit Bartov, addresses the question of whether hot water which has been heated by a ‘*dud-shemesh*’ – a solar heated water tank – can be used on Shabbat. However, even though the other five questions and one article address matters of Jewish law as they apply to women, they would not be out of place in any other ‘traditional’¹⁷ responsa work. In order to demonstrate this, I will briefly analyse aspects of each responsum in terms of their style, substance and sensitivity. Regarding the specific content and conclusion of each responsum, the reader is encouraged to procure a copy of *Mah She’elatech*.¹⁸

I. SHABBAT & FESTIVALS

1. Bathing and smoking on Yom Tov (IB)

I have previously noted that the question being addressed here only concerns smoking on Yom Tov. However, Rabbanit Bartov also chooses to discuss the topic of bathing on Yom Tov in order to ‘shed light on the question being examined’¹⁹ by drawing a comparison between the question of bathing and that of smoking. By doing so, Rabbanit Bartov not only illustrates how responsa can be used as a vehicle for halakhic education, but also demonstrates her deep understanding of the halakhic process. The Rosh famously explained that a halakhic decisor must

¹⁵ *Jewish Legal Writings by Women* p. 7

¹⁶ While the title of this first question is ‘Bathing and smoking on Yom Tov’, the question itself only addresses smoking on Yom Tov and HaRabbanit Idit Bartov is clear in her response that her examination of bathing on Yom Tov is in order to ‘shed light on the question being examined’ (*Mah She’elatech* p. 7)

¹⁷ In this case, I am using the word ‘traditional’ to mean ‘written by a man’. However, as will be evident from my comments later on, *Mah She’elatech* is, and should be viewed as being no less ‘traditional’ than all other contemporary responsa works. In fact, both in terms of its style and method, *Mah She’elatech* may be considered as being far more traditional than other responsa works that have been published in recent years!

¹⁸ To order a copy of *Mah She’elatech*, call Esti at Midreshet Lindenbaum: 02-671-0043

¹⁹ *Mah She’elatech* p. 7

be able to be *'medameh milta le-milta'* – able to draw comparisons in reaching halakhic decisions.²⁰ A reason why this skill is so important is because 'the practice of analogical reasoning reflects the ongoing dialectic between deference to early authorities and creative innovation... a spur to creativity, but equally a motive for restraint.'²¹ Thus, by (successfully) drawing such a comparison, HaRabbanit Bartov demonstrates her familiarity with not only halakhic sources but also the halakhic process.

2. The use of a solar heated water tank on Shabbat (IB)

Rabbanit Bartov begins her responsum on the use of a solar heated water tank on Shabbat by explaining what such an appliance is and how it operates. From these introductory remarks it is clear that Rabbanit Bartov does not rule simply because she is a halakhic authority. Instead, she rules because she is intimately familiar with the particular system being examined no less than she is familiar with the relevant halakhic sources. At the same time, the use of water from a solar heated water tank on Shabbat is not an open and shut case. There are those who adopt a stricter stance, while others are more permissive. It is therefore in the final paragraph of this responsum that we get a glimpse of Rabbanit Bartov as an adjudicator of halakhic positions:

'In conclusion – we can state with certainty that there are many more reasons to be lenient [than to be strict] regarding the usage of a solar heated water tank on Shabbat, given that the majority of decisors consider there to only be a possibility of a rabbinic transgression, and thus, with the addition of further reasons (*tziruf heterim*) to permit its use, it leads us [to the conclusion] that those who permit prevail [in] permitting its use (*bachra'at habeter*), and this is certainly the case on a Friday night when the water has already been heated while it was still day (ie. prior to the onset of Shabbat). Moreover, in cases of necessity (*b'makom tzorech*), [the hot water can also be used] for the purpose of cleaning dishes, washing your face, hands and legs.'²²

While this paragraph offers clear guidance about the use of water heated by a solar heated water tank on Shabbat, it is also littered with rabbinic terms which are solely used when adjudicating between halakhic positions. Whether consciously or not, by employing these terms Rabbanit Bartov demonstrates her ability to employ classic halakhic processes in order to reach a halakhic conclusion.

3. The lighting of Shabbat candles in a hotel (AN)

In this question, HaRabbanit Novoselsky is asked for her halakhic guidance concerning a situation in which the questioner is staying in a hotel over Shabbat that only allows guests to light candles in the hotel lobby (as opposed to the dining room). The questioner writes that, 'I know that we need to light in the place where we are eating. So what should I do in this situation? Do I fulfil my duty to light candles [if I light them] in the lobby?'²³

In contrast to the previous question, this situation does not require any particular explanation. Therefore, HaRabbanit Novoselsky begins her responsum by presenting three distinct reasons why we light candles on a Friday night. It is clear from her comments that through understanding the rationale for lighting candles, we can establish whether someone who lights candles not in the proximity of the Shabbat meal has fulfilled their duty.

²⁰ *Teshuvot HaRosh, Klal* 55:9 and 78:3.

²¹ Dayan Yehuda Warburg, *Rabbinic Authority: The vision and the reality* Jerusalem: Urim Publications 2013 p. 54

²² *Mah She'elatech* p. 18

²³ *Mah She'elatech* p. 19

Following her detailed examination including a discussion of whether the use of electric lights or a flashlight prior to the onset of Shabbat itself fulfils the duty of ‘candle lighting’, HaRabbanit Novoselsky offers three different suggestions to the questioner, each of which shows an understanding of the halakhic requirements to light candles as well as the pragmatic considerations for a hotel guest. Rather than telling her questioner what to do, HaRabbanit Novoselsky explains what can be done, and leaves it to the questioner to decide what best suits her situation. By employing this technique, it would appear that HaRabbanit Novoselsky understands the writing of Responsa as being a partnership between the *shoel* (questioner) and the *meishiv* (respondent), and given that her questioner is familiar with many aspects of Jewish law, she simply lays out the different halakhic opinions for her questioner to choose from.

4. The duty of women to be happy on a festival (AN)

The second and final responsum of HaRabbanit Novoselsky illustrates her extensive halakhic knowledge as well as her profound sensitivity towards the questioner. While this responsum lasts 11 pages and involves a highly detailed study of whether women have an independent duty to be happy on a festival, it is already evident from the initial question, reply and clarification why this is a delicate question:

‘QUESTION: One year ago I became a widow after being married for 35 years. Before every festival, my husband zt’l made sure that he bought me a gift, and each time he gave me the gift, he would say: ‘It states in the Talmud: “A woman’s husband should make her happy,” and truthfully, I was very happy. Now that I am alone, what should I do? Am I obligated to be happy on a festival?’²⁴

In response to this, HaRabbanit Novoselsky seeks to clarify the question itself:

‘QUESTION TO THE QUESTIONER: I would like to try to respond to your question. Between the lines I understand that it is difficult for you to be happy given the loss of your husband which it completely understandable, especially around the festival period when your loss is most pronounced (literally, ‘shouts out’). However, notwithstanding this, it is important for you to continue to be happy specifically on the festivals and you don’t know whether you should, and how you should express this happiness without your husband. Have I understood you correctly?’²⁵

‘ANSWER OF THE QUESTIONER: You have understood me correctly. I invest a great amount of energy in order to continue in my daily routine and also enjoy life, and I don’t want the festivals to turn into days of mourning, especially given that there is a commandment of “ושמחת בהגך” (‘and you shall be happy on your festival’)^{26,27}

²⁴ *Mah She’elatech* p. 25

²⁵ *Ibid.*

²⁶ Devarim 16:14

²⁷ *Mah She’elatech* p. 25

In her responsum that follows, HaRabbanit Novoselsky traces the Amoraic debate regarding whether women do (R' Zeira)²⁸ or do not (Abaye)²⁹ have an independent duty to be happy on a festival through the Rishonim and Acharonim, providing further footnotes with additional source material that goes beyond the specific discussion, and after presenting a clear conclusion that every woman is independently required to be happy on the festival, she concludes by stating:

‘and you, my dear questioner, go and find the way in which you can make yourself happy in the best way possible, and [by doing so] you shall have the merit of fulfilling the commandments of ‘and you shall be happy on your festival... and you shall only be happy’^{30,31}.

It is clear, both from the clarity of her presentation and the empathy shown in her response that HaRabbanit Novoselsky has provided an insightful and sensitive responsum. Moreover, and as before, HaRabbanit Novoselsky, tells her questioner what her legal duties are while leaving her to ‘find the way’ which makes her happy in the best way possible.

II. SOCIETY & STATE

5. Can a woman be appointed as a *Dayenet* (ie. female rabbinic judge)? (IB)

In contrast to the responsa found in *Mab She'elatech*, this is a lengthy halakhic article (23-page article with a further 6 page appendix) written by HaRabbanit Bartov in order to examine the halakhic propriety of appointing women as female rabbinic judges. As with her responsa, HaRabbanit Bartov provides a thorough examination of the halakhic issues, specifically focussing on the question of whether women can hold positions of authority and whether woman can testify in a *Beit Din* (rabbinic court). At the same time, HaRabbanit Bartov also identifies the non-halakhic reasons that have previously been cited as justification of the policy against the appointment of women as female rabbinic judges, clearly yet forcefully rebutting each of them. It is clear from her article that HaRabbanit Bartov believes that routes should be provided for the training and appointment of women as *Dayanot*, and it is therefore noteworthy that, in 2013, Oh Torah Stone launched a *Dayanut* track for women who have completed the *heter bora'ab* program.³²

III. NIDDAH & PURITY

6. Delaying the night of immersion (IB)

It is perhaps to be expected that a work such as *Mab She'elatech* contain at least one question concerning the laws of Niddah given that the respondent is both qualified to answer her question as well as fully acquainted with the practical and emotional challenges of the laws of Niddah. In particular, the question posed to HaRabbanit Bartov is certainly not rare regarding its occurrence. However, what we see in the response, as demonstrated by HaRabbanit Novoselsky in her responsum concerning the duty of women to be happy on a festival, is an understanding that is unlikely to be expressed with a male respondent. HaRabbanit Bartov is asked:

‘Based on my calculations, I will need to immerse [in the mikveh] this week on a Friday night at the time when my husband is praying [in synagogue]. Given that I have a number of young children to deal with,

²⁸ See Talmud Bavli, Rosh Hashanah 6b

²⁹ See Talmud Bavli, Kiddushin 34b

³⁰ Devarim 16:14-15

³¹ *Mab She'elatech* p. 35

³² <http://ots.org.il/program/susi-bradfield-wihl/>

it is very difficult for me to get to the mikveh around the time when the community is entering and exiting the synagogue when there is no one available to supervise my young children. In addition to this, I suffer greatly when I am in the cold, and the walk home after immersion is very difficult for me. Beside all this, immersing on a Friday night, especially during the winter, when Shabbat comes in early, puts an impossible burden and pressure on me throughout all of Friday while I am preparing for Shabbat and dealing with the children, in addition to the preparations [necessary] for immersion. What results from this is that my immersion is performed while I feel tense and angry and when I am feeling tired and weak. The kallah guide that taught me [the laws of Niddah] emphasised that it is forbidden to delay immersion, and I have also heard this from my friends who also learnt this in their kallah guidance classes prior to their weddings. But in a situation such as this I feel that this is beyond my capabilities, and I would prefer to delay [my immersion] until Saturday night after I have rested over Shabbat.³³

In her response, HaRabbanit Bartov begins by stating that there are practical ways to find a way for the questioner to immerse on a Friday night such as asking a friend to watch over her children. She then continues to explain how, in situations such as this, the sharing of the burden for Shabbat preparation is itself part of the preparation for immersion, and that the questioner should encourage her husband to play a greater role in preparing for Shabbat. However, after these preliminary comments, HaRabbanit Bartov examines the specific question. Unlike her previous responsa, she is unable to find precedent for an equivalent case. However, through her examination of responsa material concerning similar cases, as well as a presentation regarding *Mitzvat Ona'ah* (the mitzvah of sexual intercourse between husband and wife), HaRabbanit Bartov rules that in this situation the questioner may delay her immersion until Saturday night. From this responsum we see further evidence of HaRabbanit Bartov's deductive logic, thorough analysis and empathetic halakhic approach.

7. The ascent of women to the Temple Mount (IB)

In this responsum, HaRabbanit Bartov is asked to rule whether a woman can visit the Temple Mount and if so, what preparations are necessary prior to the visit. In her response, HaRabbanit Bartov addresses both the halakhic and ideological issues involved in such a visit, noting that her halakhic rulings are based on rulings by Rabbi Yisrael Ariel, Rabbi Hillel Ben-Shlom and her mentor, Rabbi Yehoshua Reich. She then proceeds to discuss the value of visiting the Temple Mount, making specific reference to the statements of former Chief Rabbi Shlomo Goren. It is clear from her responsum that HaRabbanit Bartov is more than comfortable in endorsing a visit to the Temple Mount and that any minor halakhic concern which may have been raised by other poskim is more than surmountable. Moreover, HaRabbanit Bartov believes that visits to the Temple Mount are religiously (as well as politically) beneficial.

8. The immersion of single women for the purpose of holiness (IB)

In light of her previous responsum concerning visiting the Temple Mount, HaRabbanit Bartov was asked about the propriety of single women visiting the Temple Mount given that this would require them to immerse prior to their visit. While this may seem uncontroversial, this would conflict with the ruling of the Rivash who forbade the immersion of single women for fear that this may encourage pre-marital sex. Thus, the question posed by HaRabbanit Bartov is whether the spiritual benefit of visiting the Temple Mount overrides the concerns brought about by single

³³ *Mah She'elatech* p. 67

women immersing. Having examined considerable material on this and related subjects, HaRabbanit Bartov concludes that it is indeed permissible, especially in order to visit such a sacred place.

Conclusion

The significance of *Mab She'elatech* as the first volume of responsa written by women cannot be diminished. However, there is much more to *Mab She'elatech* than the fact that the two respondents are women. This volume contains thoroughly researched responsa which are written with clarity. Especially given the proliferation of pseudo-responsa in recent years such as those that appear on popular 'Ask the Rabbi' websites, it is refreshing to read contemporary halakhic issues that are treated both seriously and thoroughly. It is clear that both respondents are unafraid to employ their halakhic authority that has been bestowed on them. At the same time, *Mab She'elatech* contains responsa that seek to educate rather than merely legislate and, especially as evident from the responsa of HaRabbanit Novoselsky, there seems to be a desire to empower questioners with both halakhic knowledge and, where appropriate, halakhic choices. In responsa that address emotional as well as halakhic issues such as 'The duty of women to be happy on a festival (AN)' and 'Delaying the night of immersion (IB)', we find a unique blend of pragmatic empathy which may not have been possible were the respondent to be a man. At the same time, this pragmatic empathy did not imply any misplaced compromises. Instead, *Mab She'elatech* demonstrates the familiarity of both respondents with a wide range of halakhic sources and methods which have been used within traditional responsa literature to determine halakha for centuries. Clearly, some may continue to regard works like *Mab She'elatech* with suspicion, claiming that women's responsa is just not, well, 'traditional'. HaRabbanit Bartov concludes her article on whether a woman can be appointed as a *Dayenet* by quoting Eliyahu Rabbah which states: 'I call Heaven and earth to witness that, whether Israelite or non-Israelite, whether man or woman, whether male or female slave, the Holy Spirit rests upon a person according to his deeds.'³⁴ *Mab She'elatech* is proof that this is the case.

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³⁴ Eliyahu Rabbah Ch. 10