Rabbi Yechiel Mechel Epstein and the Arukh Hashulhan

Rabbi Yechiel Mechel Epstein (Lithuania, 1828-1908) was the author of the Arukh Hashulhan (AHS), a compendium of Jewish law (halakhah) that as its name implies is a restatement of the laws as formulated in the sixteenth-century Shulhan Arukh of R. Yosef Karo and R. Moshe Isserles. Epstein’s work is one of the great achievements of recent halakhic codification. Professor Fishbane’s collection of studies focusing upon AHS as well as other writings of Epstein is for that reason a welcome addition to the library of research into recent halakhic literature. Whether it offers a significant contribution to the state of that research is more difficult to say. My hesitations can be grouped under two major headings.

The first of these concerns Fishbane’s comparison of the halakhic methodologies of AHS and the contemporaneous Mishnah Berurah (MB) of Rabbi Yisrael Meir Hakohen Kagan (1838-1933, also of Lithuania). The difference between these works, he finds, lies not only in form—MB presents itself as a commentary upon the Shulhan Arukh rather than a restatement of it—but in halakhic substance: Epstein, the community rabbi, considers the social, economic, and political reality of his time when making halakhic rulings while Kagan, who headed the yeshivah of Radin, bases his rulings “solely upon the writings of earlier authoritative rabbinical authorities” (p. 52 and n. 8 ad loc.). The halakhah in AHS is thus rooted in the actual life of the Jews of its community while that of MB reflects the “ivory tower” in which its author flourished (p. 53). This conclusion contains far-reaching implications for our understanding of developments in contemporary halakhic decision making and Orthodox Jewish life. But those implications have already been advanced and convincingly argued by Haym Soloveitchik in his seminal essay “Rupture and Reconstruction.”[1] It is Soloveitchik who speaks of Orthodoxy’s transformation from a mimetic culture, one in which social and religious norms are absorbed from family and from surrounding culture, to an intellectual one, in which norms are learned and transmitted through study of the canonized corpus of halakhic literature. AHS is emblematic of the former, while MB is the prime exemplar of the latter. Soloveitchik’s argument, if correct, helps to solve a longstanding puzzle in halakhic historiography: just why is MB generally considered more “authoritative” than AHS in contemporary Orthodox circles? It also portrays Epstein in a very different light. Where Fishbane (p. 61) describes him as possessing the “boldness … to accept and incorporate [into his rulings—MW] the changing social reality,” Soloveitchik presents him as an essentially conservative spokesperson for the general halakhic understandings of his time and place. By contrast, it is Kagan’s MB that demonstrates “boldness” in its determination to ignore widely accepted customs and social reality in favor of a more text-based approach to halakhic decision. Fishbane mentions none of this; in fact, he largely ignores Soloveitchik, making but one laconlc reference to the latter’s article (p. 150, n. 10). This regrettable omission may result from this book’s nature as a collection of
previously published essays, some of which were written at about the same time that Soloveitchik’s piece appeared in *Tradition*. Still, one wishes that Fishbane had updated his material for its current republication. His failure to do so, and therefore his failure to engage with Soloveitchik’s incisive argument, is a glaring weakness of this book.

My second hesitation has to do with some of Fishbane’s interpretations of Epstein’s statements and rulings. This is especially true with regard to his fourth chapter, “The Role and Status of Women in Jewish Law as Expressed in the *Arukh Hashulhan*,” where Fishbane advances the thesis that Epstein, basing himself upon the “social reality” of his time, displays a “cognizance of, and sensitivity toward, women” that distinguishes *AHS* from “(m)ost rabbinical authorities of late 19th century Eastern Europe” (pp. 61-62). Fishbane offers some “representative cases” (p. 62) in support of this view. Take, for example, *AHS Orah Hayim* 38, paragraph 6, where Epstein explains the exemption of women from the obligation to don *tefillin* (*tefillin* require a “clean body”; it is difficult for both men and women to maintain the requisite state of hygiene; why then should women, who are not Toraitically obligated to wear *tefillin* in the first place, risk running afoul of this requirement?). Fishbane contrasts this theory favorably to that offered for the same rule in *MB* (38, n. 13: women are not careful to maintain the proper hygiene) and concludes that “Rabbi Epstein does not accept the rationale that in this case women are inferior to men.” Perhaps. Yet some of Fishbane’s other examples are not so clear-cut. In particular, his reading of *AHS Orah Hayim* 75, paragraph 7 (p. 67: “[Epstein] was thus prepared to rule that exposed women’s hair is not an impropriety”) is forced, especially when one reads the entire paragraph in *AHS* rather than the excerpt quoted by Fishbane. One gets the impression that Fishbane tries too hard to prove Epstein’s progressive attitudes toward women. A case in point is his suggestion (p. 61) that Epstein did not accept the traditional Talmudic view that women are “lightheaded” (*nashim da’atan kalah/kalot*; *B. Shabbat* 33b and *B. Kidushin* 80b). On the other hand, a CD-Rom database search reveals that Epstein cites this statement eight separate times in *AHS* as the rationale for laws mandating different treatment of women. Fishbane, in other words, may be on to something when he speaks of Epstein’s uncommon sensitivity toward women, but there would seem to be less here than meets his eye.

This raises a more general concern, and that is the tone of tendentiousness and apology that surfaces through parts of the book. Phrases like “The Boldness of an Halakhist” (the book’s title) and “The Courage of a Religious Adjudicator” (the title of chapter 5), along with the assertion that Epstein “demonstrates the personality of a caring, independent and unique rabbinical authority” are arguably out of place in a work of academic scholarship. Fishbane genuinely admires Rabbi Epstein, and that’s okay, but his expression of that admiration could be jarring to the reader seeking a balanced portrait.

With all that, however, Fishbane does succeed in focusing our attention upon the life and work of a leading halakhist. Those interested in the history of contemporary halakhic literature and culture owe him a debt of thanks, and all subsequent studies of Epstein and *AHS* will of necessity engage with this book.

**Note**