

## THE STATUS OF WOMEN IN JUDAISM: FROM EXEMPTION TO EXCLUSION

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"Few aspects of Jewish thought and life illustrate so strikingly the need of reconstructing Jewish law as the traditional status of the Jewish woman. In Jewish tradition, her status is unquestionably that of inferiority to the man. If the Jewish woman is to contribute her share to the regeneration of Jewish life, and if in turn Jewish life is to bring out the powers for good that are in her, this status must be changed. She must attain in Jewish law and practice a position of religious, civic, and juridical equality with the man, and this attainment must come about by her own efforts and initiative. Whatever liberal-minded men do in her behalf is bound to remain a futile and meaningless gesture. The Jewish woman must demand the equality due her as a right to which she is fully entitled . . . There is no reason why the Jewish civilization should persist in treating her in this day and age as though she were an inferior type of human being."<sup>1</sup>

"There is no time to waste. For too many centuries, the Jewish woman has been a golem, created by Jewish society. She cooked and bore and did her master's will, and when her tasks were done, the Divine Name was removed from her mouth. It is time for the golem to demand a soul."<sup>2</sup>

Most Jewish men may not be guilty of beating their wives, but they may well be guilty of ignoring them. They have ignored them precisely in those areas of life they have cherished the most — scholarship and participation in the religious community. The Jewish woman — wife and mother — took great pride in the intellectual and spiritual accomplishments of her husband and sons. In eastern Europe she frequently supported her husband financially so that he might study. The Jewish woman may have been, for her time, liberated in the sense that her responsibilities included providing for the household's material needs in ways generally associated with men's work. In this context, it is interesting to note that the feminist movement is not as new to Judaism as one might think. The "Papers of the Jewish Women's

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<sup>1</sup>Mordecai Kaplan, "The Status of Woman in Jewish Law", in *The Future of the American Jew* (New York: Macmillan, 1949), p. 402.

<sup>2</sup>Rachel Adler, "The Jew Who Wasn't There: Halakhah and the Jewish Woman." *Response*, 18, (Summer 1973), p. 82.

Congress" held in Chicago, September 4-7, 1893, included a call for women rabbis.<sup>3</sup>

Nevertheless, despite the legitimate claim to pride the woman might make for her accomplishments, the highest value — as defined by the men — lay not in what she did but in the scholarship and spiritual creativity of the men. And the woman was systematically excluded from such areas of activity.

Granted that one can and should take pride in anything one does well, no matter how lowly it may be viewed by others, when a society treats scholarship and religious creativity as the highest human endeavor, what claim to fulfillment could a woman make? She could take pride in her husband and sons. But what about herself — what about her fulfillment as a human being in terms of those activities which her male-oriented society posited as expression of divine commandments (*mitzvot*)?

Jewish men have frequently placed their women on a pedestal. They lovingly refer to them, in the words of Proverbs, 31, *eshet hayil*, as women of valor. But in the words of the early Zionist Leo Pinsker, one "who must be put on a footing stands but weakly."<sup>4</sup>

The task therefore is to determine what can and should be the status of women in Judaism. As Jews faithful to an ancient tradition, we must attempt to formulate our values within a Jewish context, out of authentic and valid Jewish teachings. As citizens of the modern world, we must be open to legitimate and valid human needs, even if these challenge our traditional assumptions.

The Talmud states: "Any man who has no wife is without happiness, without blessing, and without goodness. . . . Any man who has no wife is not a man."<sup>5</sup> In normative Judaism a man is thus not regarded as fulfilled without a woman. But what about the woman — what is her status, what is her fulfillment?

Before dealing with what the status of women in Judaism can and should be, it may be helpful to review what their status has been over the years.

In this case, as in so many others, when we study our literature and history we find diverse and even opposite points of view concerning the status of women.

This ambivalence of attitudes towards women goes back to the

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<sup>3</sup>Ray Frank, "Women in the Synagogue," in *Papers of the Jewish Women's Congress*, (Philadelphia: Jewish Publication Society, 1894), pp. 52-65.

<sup>4</sup>Leo Pinsker, *Auto-Emancipation*, 1882. Translated by D. S. Blondheim (New York: Masada Press, 1939), p. 16. Pinsker also wrote: "Like the Negroes, like women, and unlike all free peoples, they (i.e. the Jews) must be emancipated." (p. 12).

<sup>5</sup>Yevamot 62b-63a.

Bible. In some respects women were regarded as men's equals. "Honor your father and your mother," is the fifth commandment (Ex. 20:12, Dt. 5:16). "Any person who curses his father or his mother must surely be put to death" (Lev. 20:9). "A person must revere his mother and his father" (Lev. 19:3). When a man and woman committed adultery, they were equally liable to the death penalty (Lev. 20:10). The owner of an ox is responsible for it, and no distinction is drawn between a male or female victim of goring (Ex. 21:28).

Men and women were equally responsible to maintain Israel's covenantal relationship with God. Idolatry by a man or woman was a capital offense (Dt. 17:2-5, 29:17). The commandments applied equally to men and women, even though in Hebrew (which lacks a neuter), they were addressed to "you" in the masculine. One could scarcely argue that monotheism, as expressed in the "Shema" ("Listen, Israel, the Lord our God is one Lord," Dt. 6:4) in a second-person masculine singular imperative, applies only to males. Interestingly, the fourth of the Ten Commandments, concerning the observance of the Sabbath (Ex. 20:10, Dt. 5:14) commands "you (masculine singular), your son and your daughter, your male slave and your female slave, your cattle and the stranger who is within your settlements." Where is there mention of the woman? Is she not entitled to rest on the Sabbath? In fact, it is precisely the omission of reference to the woman that manifests her equality before the law in this instance. All the classical commentators (Rashi, Ibn Ezra, Nachmanides, and Sforno) follow the *Mekhilta* in understanding the reference to the children as meaning minors, whose observance of the law is the responsibility of the parents to enforce. (One is similarly responsible for actions of one's slaves and animals.) Ibn Ezra explicitly states: "There is no doubt that the term *ata* (you – masculine singular) applies to anyone who is *ben mitzvah* (a major, liable to observe the law)."<sup>6</sup> Thus, if the woman were explicitly singled out here as the children are, it would imply that the *mitzvot* (commandments) in general do not apply to her. Therefore, she is simply included here, as elsewhere, in the *ata*, there being no neuter form of expression that could be used.

There are no Biblical references to separation of men and women for cultic or public purposes. Indeed, Deuteronomy 31:12 has: "Gather the people, the men, women, children and aliens among your gates, that they may listen and they may learn, so they may revere the Lord your God and observe and do everything of this Torah." Many years later, Ezra also gathered the men and women together: "Ezra the

<sup>6</sup>Ibn Ezra on Exodus 20:10.

priest brought the Torah before the community, men and women, whoever understood and comprehended." (Neh. 8:2) Nevertheless, we do know that in later years, in the time of the second Temple, the men and women were separated in two courts in the Temple compound, which may be the origin of the *mehitzah*, the barrier between men and women in traditional synagogues.

And yet, despite this seeming equality of women in Biblical Israel, there were many distinct inequalities. A man could divorce his wife at will; she had little or no protection against his capricious whim. But the woman could not (and to this day cannot) divorce her husband (Dt. 24:1-4). A man could sell his daughter, but not his son, into slavery (Ex. 21:17), although he could not force her in to prostitution (Lev. 19:29). A woman's ability to become a Nazirite (Num. 6:2) or to make a vow (Num. 30:4-16) was subject to her father's or husband's approval.

Despite the fact that we read in Genesis 2:24 that man and woman "become one flesh," after eating the forbidden fruit, woman is told (Gen. 3:16): "your desire is for your husband, and he will rule over you." The author of Genesis 2:18 depicts God as creating woman for man as "a helper, opposite him." The rabbis, playing on the word *k'negdo*, opposite him, said: "If he is worthy, (she is his) helper. If he is not worthy, (she is) opposing him in strife."<sup>7</sup>

Strangest of all is the fact that after childbirth, a woman's period of impurity is double for a female child what it is for a male child (Lev. 12:1-8). Such medieval commentators as Nachmanides and Sforno attempt to explain this peculiarity by asserting that the birth of a female child entails more difficulties and the expulsion of greater quantities of fluids, thus requiring a longer period of purification and cleansing.<sup>8</sup> One wonders if the commentators were convinced by their own reasoning.

The ambivalence in attitude towards women that we have seen in the Biblical period continued in the rabbinic period. Jewish identity is traced by the mother and not the father. Some rabbis have attempted to prove that this shows the centrality of the woman in Judaism, since the mother at home really transmits values to the children more effectively than the father who is absent many hours of the day. Others, somewhat less romantically, have simply suggested that Jewish identity follows the mother and not the father since the maternity of the child is not subject to the same doubts as its paternity.

Fundamental to the status of women in Jewish law is the fact

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<sup>7</sup>Rashi on Genesis 2:18.

<sup>8</sup>Nachmanides and Sforno on Leviticus 12:1-8.

that women are categorized along with children and slaves in terms of their legal responsibility.<sup>9</sup> Women are required to observe all negative precepts, things which all Jews are forbidden to do, as well as those positive precepts which are not bound to any particular time of the day. Women are exempt from positive precepts, the observance of which is related to a particular time of day (such as the recitation of the Shema in the morning and evening).<sup>10</sup>

With few exceptions, such as matters of personal status and condition, women's testimony is regarded as unreliable, and therefore, like gamblers, loan-sharks, and slaves (as well as children), they are not permitted to serve as witnesses in a court of law.<sup>11</sup> One who cannot serve as a witness can also not serve as a judge. Thus women are excluded effectively from holding any juridical or governmental position in Jewish law, despite such exceptional women as Deborah and Queen Salome who did hold positions of authority. It is presumably this categorization of women with children and slaves for legal purposes that precludes their being included in the *minyan*, the quorum of ten adult (free) males required for various public assemblies such as the reading of the Torah.

We are told that the rationale behind this categorization of women is to exempt them from any obligations which would interfere with their primary responsibilities to their families in the home. Far from regarding family responsibilities as beneath respect, we are told that the exemption of women from time-bound positive precepts indicated the high regard in which women were held traditionally. Their duties are so important in the life of the family, which is so central to Judaism, that they actually take precedence over other *mitzvot*. To require a woman to engage in time-bound positive precepts in addition to her family obligations would be an unfair burden. By exempting her from such observances, we demonstrate that hers is a privileged position. No matter how lowly her duties may seem to others, she knows that she is doing something even more important and meritorious than the men.

And yet, this rationale, no matter how sincere and well-meant, is at the same time inaccurate and belied by the rabbis' own statements.

It is inaccurate, because the exemption of children and slaves is temporary. A male-child grows up and assumes the full responsibility of observing the law. A slave, upon obtaining freedom, similarly becomes a full-fledged citizen with all the rights and obligations of

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<sup>9</sup>Berakhot 20b.

<sup>10</sup>Berakhot 20b, Kiddushin 29a.

<sup>11</sup>Mishnah Rosh Ha-Shanah 1:8; also see Bava Kama 88a, Mishnah Hagigah 4:1.

citizenship. But what of the woman? She can never escape her status. We all know that children have a privileged position of favor in most societies, that they are exempt from any responsibilities of citizenship. And yet, how many of us would want to cling to the privileges of childhood at the expense of our free, first-class participation in citizenship, with all the rights and obligations, privileges and duties that citizenship entails?

That rationale is also inaccurate because in fact the woman's status in Jewish law has nothing to do with family responsibility. She gains this status when she is born, long before she has any family responsibilities. She keeps this status even if she remains unmarried or childless. And, even after all her children are grown and out of the house, her position remains unchanged. If it is true that the exemption of women from observance of positive time-bound precepts is based on family responsibilities, it should be a temporary exemption dependent on her exercising such responsibilities. Her exclusion from the obligations of citizenship in Jewish law, and from the *minyan* which would enable her to take an equal place in public Jewish life, in the synagogue, community, and courts, like her exemption from the positive time-bound precepts, would have to be temporary. But it is not. A child can look forward to the rights, responsibilities, and obligations of adulthood. A slave can look forward to his liberation. To what can a woman look forward?

The rationale behind the woman's status in Jewish law is belied by the rabbis' own words. The women's exemption from many of the responsibilities of Jewish citizenship frequently became prohibition, either in law or in custom which has the weight of law. One might argue the case for exempting women; what is the justification for prohibiting them from participating actively and equally in public areas of Jewish life such as the synagogue, community, and courts? Let us review some of the rabbis' statements.

Women are exempt from the study of the Torah (a great ideal for the men), even though study is not a time-bound precept, because the Torah says "teach them to your sons." (Dt. 11:19) The rabbis interpret *banim* to mean only the sons, and not "children" in the more generic sense that the term usually bears. Here we see how an exemption easily led to exclusion and even prohibition: "Rabbi Eliezer said: whoever teaches his daughter Torah is as if he had taught her lewdness (*tiflut*)."<sup>12</sup> Therefore, incredibly enough, we find a significant difference in the blessing invoked over a new-born boy and a new-born girl. One prays that the boy may be raised *l'torah, l'chupah*,

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<sup>12</sup>Mishna Sota 3:4.

*u'l'ma'asim tovim*, to the Torah, the wedding canopy, and good deeds. But for a girl, one prays that she may be raised only *l'hupah*, *u'l'ma'asim tovim*, to the wedding canopy and good deeds — and not to Torah. This formula is used in all traditional liturgies. Interestingly enough, the only exception to this exclusion of Torah for girls in traditional liturgy is in *Nusah Ha'ari*, the rite adopted by the Hasidim.

A further example of exemption leading to prohibition is *birkat ha-mazon*, the blessings of thanks recited after a meal. The Mishnah<sup>13</sup> states quite clearly that women are obligated to recite *birkat ha-mazon*, since this is not a time-bound precept. Anyone who is obligated by law to fulfill a given commandment can lead the public in fulfilling their obligation to that commandment (*motzi et ha-rabim yedei hovatan*).<sup>14</sup> Nevertheless, despite this principle and the fact that the Mishnah requires women to recite *birkat ha-mazon*, the Gemara states: "The sages said: Cursed be a man whose wife or children recite the blessing for him."<sup>15</sup> Women are also excluded from leading the congregation in prayer (*tefillah*) even though prayer is obligatory for women as well as for men.<sup>16</sup>

Similarly, on the Sabbath any Jew, including women and children, could be called up to the Torah for the weekly reading. But again, "the sages said, a woman should not read from the Torah because of *k'vod tzibbur*, the honor of the congregation."<sup>17</sup>

Exactly how the honor of the congregation is at stake by having women read from the Torah is by no means clear, nor do the traditional commentators explain or justify it. (Perhaps they regarded this statement restricting an explicit right of women as *aggadic* — homiletical — and not *halakhic* — legal — in nature. *Aggadah* being non-binding expression of opinion, it would not require explanation as would *halakhah* — law.) In any event, since the Torah scroll cannot be defiled, the statement cannot refer to a woman defiling the Torah by her approaching it during her menstruation, as some have argued. What we see here is how considerations that are not legal, but reflect the social attitudes of the day (in this case against women) caused an exclusion of women from a central feature of Jewish worship where no such exclusion was required by law. The law clearly permits women to read from the Torah on the sabbath. Later social attitudes against women transformed an exemption — which presumably had

<sup>13</sup>Mishnah Berakhot 3:3.

<sup>14</sup>Berakhot 20b; Mishnah Rosh Ha-Shanah 3:8.

<sup>15</sup>Berakhot 20b.

<sup>16</sup>Mishnah Berakhot 3:3.

<sup>17</sup>Megillah 23a.

the best interests of women, however poorly defined, in mind – into blatantly anti-feminist discrimination.

Rabbinic logic sees the *mitzvah* of procreation applying only to the men, because in Gen. 1:28 the Torah says “Be fruitful and multiply and fill the earth and conquer it.” Only men, according to the rabbis, engage in conquest, and therefore obviously procreation similarly is a *mitzvah* only for the men. The women, presumably, are merely the instruments of the men’s fulfilling their *mitzvah*.<sup>18</sup>

A man traditionally praises God, in one of the first *berakhot* of the day, for “not having made me a woman” (*shelo asani ishak*). We are told that this is because the man is grateful for the opportunity to observe all the *mitzvot* from which a woman is exempt (or is it really prohibited?). But judge the *berakhah* in light of the rabbinic attitude: *nashim da’atan kalah aleihen*, women have weak minds.<sup>19</sup>

As bad as the attitude towards women often was in the Talmudic period, it was at least as bad in the Middle Ages. The greatest medieval French Bible and Talmud commentator, Rashi, explains that children are exempt from putting on *tefillin* (phylacteries) because a child does not know how to guard his body against involuntarily breaking wind.<sup>20</sup> Tosafot, the commentators following Rashi, extend that judgment to women “since *tefillin* require a clean body, and women are not diligent at being careful.”<sup>21</sup>

Maimonides, perhaps the greatest Jew of the Middle Ages, may possibly be excused for his contempt of women as fools, since he was an intellectual elitist who regarded most people as fools. But what of his statement that a wife may be beaten by her husband with a rod for not performing such duties as washing his face, hands, and feet?<sup>22</sup> Maimonides’ opponent, Rabbi Abraham ben David of Posquieres wrote on this point: “I have never heard of corporal punishment for women.” But then he adds: “He should rather diminish her needs and food until she yields.”

Now it is true that many Jewish institutions were, in their day, progressive and quite radical, and provided a great improvement for the women of that time. Levirate marriage (*yibbum*) (Dt. 25:5-10) as well as polygamy may well have provided husbands and homes for women when there were not enough men to go around. And yet every Biblical situation of polygamy is described as an unhappy one. The *ketubah*, the marriage contract, was revolutionary in guaranteeing the

<sup>18</sup>Yevamot 65b.

<sup>19</sup>Shabbat 33b, Kiddushin 80b.

<sup>20</sup>Rashi on Berakhot 20b, at top.

<sup>21</sup>Tosafot on Eruvin 96a, at bottom.

<sup>22</sup>Mishneh Torah, Nashim, Hilkhot Ishut 21:3, 23:10.



woman rights and sustenance if her husband chose to divorce her. When he married her he agreed by contract to provide for her in the event of divorce. Even the Biblical trial by ordeal of a *sotah*, a woman suspected of infidelity by her husband (Num. 5:11-31) may have been a way in which a woman could prove herself and require her husband to end his groundless suspicions.

And yet, times change, but Jewish law has not changed. I do not know what changes can and should be made in Jewish law to alleviate the situation of women. Some problems may ultimately be easier to solve than we presently think. A friend of mine, Rabbi Moshe Adler, is working on a formulation of *tena'im*, conditions, which would be agreed to by a couple at the time of their wedding, to the effect that if the husband does not fulfill the conditions of their wedding contract, the marriage is annulled automatically. This would preclude the need for divorce, since if a man refuses to grant his wife a Jewish divorce she can never remarry according to Jewish law. It would also eliminate the problem of *agunah*, the woman whose husband has disappeared. (Since his body was never found, he may not be dead, and therefore she cannot remarry — possibly for the rest of her life).

If we insist on giving women the rights that they actually already have by Jewish law, their status will be immeasurably improved over what it is today. As I understand Jewish law, the questions of including women in the *minyan*, the separate seating arrangement in the traditional synagogue, and women's participating actively in the service, for instance reading from the Torah, are distinct and unrelated to each other. As has already been mentioned, the exclusion of women from the *minyan* seems to follow from their classification with children and slaves for legal purposes, and the separate seating seems to follow from the segregation of the sexes in the second Temple.

A change in the status of women in these matters might entail a radical change in the *halakhah* (Jewish law), and changing *halakhah* is a terribly difficult problem that transcends the women's question, and may not be possible within the limits of *halakhah* as it has classically evolved. The most pressing of these problems — women's active participation in the service and being honored by *aliyot* to the Torah — probably is the easiest to solve, since as we saw, women have the obligation to pray, and the earlier rabbis specifically said that women may read from the Torah on the Sabbath. In this matter, the *halakhah* itself may not require change. But we would have to change social attitudes and people's mentality — which might prove even more difficult.

I believe we must insist that women's needs and claims to equal-

ity be taken absolutely seriously by men. The honor of the Jewish community is truly at stake here. Jewish statements against women reflect not on the women but on the men who make the statements. For as long as women are unfulfilled, their men can claim no true fulfillment. Oppression is more the problem of the oppressor than of the oppressed. Therefore what is at stake is not women's liberation but human liberation.

The problem of women is not confined to the orthodox community. Even among so-called "liberal" Jews, we find many men who, while not themselves abiding by *halakhah*, invoke its authority against women. These men find meaning only in negating the worth of women, and not in positing any worth of their own.

To the extent that the men in the Jewish community do not absolutely live by the standards of *halakhah*, they can scarcely require the women to do so.

But even if the community, or a segment of it, does truly commit itself to *halakhah*, to the extent that women actually have rights according to Jewish law, there can be no more justification in withholding these rights. Exclusion and prohibition cannot fairly be substituted for exemption.

To the extent that various historic interpretations of Jewish law have reflected a prevalent anti-feminist bias, and not actual authentic legal principle, we must replace such interpretations with our own interpretations consistent with the social conditions of our own day. If social conditions previously tainted our interpretations with bias against women, they must now be re-interpreted in favor of women.

To the extent that we cannot reconcile Jewish law, however favorably to women it is interpreted, with the legitimate and valid needs of women, I fail to see how we can ask women to support and live by a system of law in which they have no say.

They are certainly many Jewish women in Orthodoxy, as well as other approaches to Judaism, who are genuinely happy with their status, who feel their lives to be meaningful and fulfilled. This is fine. But there are increasing numbers of Jewish women who are not satisfied or happy with what Judaism has offered them. The question is not whether every woman wants equality; the question is whether women, like men should have the freedom to choose. It is one thing to have a right not to exercise it. It is something entirely different and unacceptable in an age when we are supposed to take democracy seriously, to be denied that right.

The time is long overdue for Jewish men to abide by God's instruction to Abraham, "Whatever your wife says to you, listen to her." (Gen. 21:12) Maybe then the words of the prophet Hosea, who lived so long ago, will finally come true: "Ve-haya bayom hahu ne'um Adonai tikre'i ishi ve-lo tikre'i li od ba'ali." "On that day it will come to pass, says the Lord, that you will call (me) *ishi*, my husband, and you will no longer call me *ba'ali*, my master." (Hos. 2:18)

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