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THE STATUS OF WOMEN IN HALAKHIC JUDAISM

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The strident voice of an intelligent, energetic and well-organized minority can often completely overshadow the real expression of the large constituency whom the spokesmen claim to represent.

Jewish women are not an organized constituency: they have no elected spokesmen, no leaders designated to interpret their beliefs and feelings to the rest of the world. Any attempt to generalize about their condition, particularly about a matter as internal as their religious state, is fraught with multiple dangers, not least among which is the ascription to them all of the views of a minority among them.

We would indeed fall prey to this particular danger were we to assume that the voices calling for the liberation of Jewish women from their enslavement by Jewish law and Jewish society, were in truth the expression of the majority of Jewish women today. We may rather assume, certainly within the Orthodox community, that most observant women have been able to discover a life of fulfillment and religious growth within the existing patterns of *halakhah*.

However, relegating the excited voices to a minority does not mean that we can safely, or ought morally and religiously, simply ignore them. Minorities of one generation have a strange way of becoming the majorities of the next.

The purpose of this paper will be threefold. First, I would like to describe the sources of discontent, the issues which have given rise to the public campaign to change the position of women in Jewish law. Second, I would like to offer an analysis of the legal components of the

status which Jewish law assigns to women. Third, in the light of my analysis I will attempt to evaluate the justice of the complaints and make some modest proposals for confronting the problems. Given the great complexity of the general area of the status of women in Jewish law, and the paucity of reasoned studies of the matter, I will not presume to offer a comprehensive analysis of the status, nor a thorough proposal as to what changes might ultimately be possible in this area of Jewish law.

As I have read or heard them, the basic issues around which the discontent centers are three in number. First, and perhaps most important, is the sense of being deprived of opportunities for positive religious identification. This concern goes beyond just the demand for public equality through being counted to a *minyán* or being given the right to be called up to the Torah. The focus is more significantly on the absence of even private religious symbols which serve for men to affirm the ongoing equality of their covenant with God. The fact that Jewish women are relieved of the obligations of putting on *tallit* and *tefillin*, of praying at fixed times of the day, and even of covering their heads prior to marriage, and have traditionally been discouraged from voluntarily performing these acts, has left them largely devoid of actively symbolic means of affirming their identities as observant Jews.

An interesting byproduct of this absence of covenant affirming symbols is the emphasis which Orthodox outreach groups have placed on dress standards. Not wearing slacks has been treated as if it were a revealed *mitzvah*, equivalent to *tzitzit* as a sign of one's commitment.

The sense of injustice which arises out of the first issue is intensified many fold by the disadvantaged position of women in matters of Jewish civil law, particularly areas of marriage and divorce. From her complete silence at the traditional wedding ceremony, to the problem of *agunah*, the law seems to make women not only passive, but impotent to remedy the marital tragedies in which they may be involved.

The feeling of being a second-class citizen of the Jewish people is almost unavoidable when the awareness exists that men are almost never subject to the same fate, that a variety of legal devices exist to

assure that they will be free to remarry no matter what the circumstances of the termination of a prior marriage, and despite the will of the first partner.

The third issue has less to do with specific Jewish laws, but is more related to the rabbinic perception of the nature of women and the impact that it has had on the role to which women are assigned. No objective viewer would claim that Jewish women are physically or socially oppressed. However, Jewish women have been culturally and religiously colonized into acceptance of their identities as "enablers."

Jewish society has projected a unidimensional "proper" role for women which denies to them the potential for fulfillment in any area but that of home and family. The Psalmist's praise of the bride awaiting the moment of her emergence to be married to the King, "All glorious is the King's daughter within the palace" (Psalms 45:14), has been taken as if it mandated her remaining "within" her home. Our apologetics have relegated women to the service role; all forces of the male dominated society were brought to bear to make women see themselves in the way most advantageous to men.

The blessing recited by men each morning thanking God "for not having made me a woman," is seen as simply symptomatic of a chauvinistic attitude toward women, intentionally cultivated by the religious system as a whole. Part of that process involves the citing of statements out of context, such as "women are light-minded" (Shabbat 33b).

Taken together, these three issues—deprivation of opportunities for positive religious identification, disadvantaged position in areas of marital law and relegation to a service role—are at the heart of a growing dissatisfaction with their religious condition by an ever-increasing proportion of young Orthodox women.

How are we to respond to this dissatisfaction and implied threat of disaffection?

The first step is to call a moratorium on apologetics. It is one thing to recognize the problems and to attempt to understand the theological, halakhic, economic, and cultural factors which produced them. It is a completely different matter, both dishonest and dysfunctional, to attempt through homiletics and scholasticism to transform problems into solutions and to reinterpret discrimination to be beneficial.

To suggest that women don't really need positive symbolic *mitzvot* because their souls are already more attuned to the Divine, would be an unbearable insult to men; unless it were understood, as it indeed is,

that the suggestion is not really to be taken seriously, but is intended solely to placate women. Could we really believe that after granting women this especially religiously attuned nature, God would entrust to men—with their inferior souls—the subsequent unfolding of his will for man as expressed in the *halakhah*?

It is time to admit that we have attempted through our apologetics to make a virtue of social necessity. We have striven to elicit voluntary compliance by women to a status which men need never accept. It is becoming increasingly difficult for Jewish women to accept the idea that their own religious potential is exhausted in enabling their husbands and children to fulfill *mitzvot*.

It is time to stop talking about the reluctant husband-*agunah* problem and to do something about resolving it. Many women feel that if that same problem affected men, the *halakhah* would long ago have made some ameliorating provisions. The attempt to suggest that refusal by women to pliantly accept the fate to which they are subjected demonstrates a lack of faith in the divine will, would be more convincing if the evil decree fell more equitably among both men and women.

Apologetics will only serve to exacerbate the problem and to convince increasing numbers of women that the rabbis are engaged in an all out battle to keep women subjugated.

The distinguishing line between apologetics and explanation is exceedingly thin. Despite this danger, and while recognizing it, it is vital for us to examine those laws and social practices which seem to be unjust to women.

It has often been suggested that the ethical strength of a legal system and its jurists may be gauged by their treatment of the powerless: the poor, the alien, the widow and the orphans. By any such test, Jewish law and its rabbinic jurists would stand high, if not at the very pinnacle, among the legal systems of the world. It is difficult to conceive of these same jurists setting out with malice aforethought to subject their own mothers, wives and daughters to the most blatant forms of injustice and inequity. It is crucial, therefore, for us to see these laws and practices through their eyes if we are ever to achieve a Jewish perspective as to how to proceed in the future.

II

Any serious attempt to understand the condition of women in Jewish law must begin with the recognition that womanhood does not merely

represent membership in a group like doctors or merchants. Womanhood, within Jewish law, constitutes an independent juristic status, shaping to varying degrees every legal relationship and being characterized by a special set of rights and duties determined extrinsically by law rather than by contractual agreement.¹

This fixing of the rights and duties of a group through conferring upon them a separate legal status was never an accidental or random occurrence in legal history. The function of status conferral was usually both for the protection of the individual members of the class and for the more comprehensive purpose of determining the basic structure of society and protecting this structure from disturbance.² But these purposes can sometimes be so broad as to make impossible the formulation of a single descriptive principle to encompass the reasons for the existence of the status as well as the particular modifications of rights and duties through which those goals would be achieved.³

Indeed, the Talmudic sages made not a single attempt to formulate a general principle governing the status of women. The closest they come is in the attempt to define under a single heading the affirmative precepts from which women are exempt. Thus, the Mishnah states:

All affirmative precepts limited as to time, men are liable and women are exempt. But all affirmative precepts not limited as to time, are binding upon both men and women.⁴

Even this principle, so extensively cited by subsequent Jewish jurists, is found by the Gemara to be inadequate as a general principle.⁵ The Gemara rather found that there were affirmative precepts limited as to time which were yet incumbent upon women,⁶ and, on the other hand affirmative precepts not limited as to time from which women were exempt.⁷ Thus, the statement that, "Women are exempt from affirmative precepts limited as to time," is found to be descriptive of some⁸ of the laws regulating the status of women, but is inaccurate as a general description, and is certainly not a useful predictive principle.

Having thus entered into the question of women's exemptions from obligations, let us pursue this matter further. Maimonides lists a total of fourteen positive commandments from which women are exempt.⁹ Of those, only eight are affirmative precepts limited as to time,¹⁰ while the other six are not so limited.¹¹ But beyond these, the Talmud identifies at least six more affirmative precepts, equally limited as to time, from which women are not exempted,¹² to which may be added four

affirmative precepts of rabbinic origin, also limited as to time, as to which women are also equally obligated with men.¹³

These facts make it impossible to explain women's exemptions exclusively in terms of the absence of need for time conditional commandments.¹⁴ Women are obligated to fulfill as many positive precepts limited as to time, as the number from which they are exempted. Some other principle or principles must have been operative in determining the specific set of obligations and exemptions which constitute the legal status of women.

As is evident from what I said earlier about the significance of status conferral to the total structure of society, it would be folly for me to attempt to encapsulate the determinants of the status of women in Jewish law in a single principle. There are, aside this, two other major sources of complexity in the treatment of these issues.

The first source of additional complexity is the fact that the Talmud itself records serious debate as to whether women are indeed exempt from the individual positive time-bound precepts. The significance of these debates lies in the implication that for many of the Talmudic sages, neither the world view of Torah, nor the social order of Jewish society, would be totally disrupted by the adoption of what came to be the dissenting opinions. Indeed it was with apparently complete equanimity that the scholars were able to discuss the possibility that women were truly obligated to wear *tefillin* and *tzitzit*, and to recite Shema at the appointed times. Despite the breadth of consequences adoption of such dissenting opinions might have had, the positions were neither written out of the literature,¹⁵ nor attacked as subversive of the accomplishment of divine will. This makes our attempt to define the status of women much more complex.

A second source of complexity in attempting to define the status of women in Jewish law, is the nature of the changes that have been experienced within the law itself. For example, it would appear that during the Tannaitic period there were three distinct positions as to the relationship of women to the *mitzvah* of *talmud Torah*. While the Mishnah¹⁶ reflects the extreme positions of Ben Azzai arguing for obligation,¹⁷ and Rabbi Eliezer propounding that it is prohibited to teach Torah to women,¹⁸ the Tosefta¹⁹ suggests an intermediate position in which women are not obligated to study Torah, but would not be prohibited from doing so. Amoraic discussion already reflects only this intermediate stance, clearly indicating the absence of obligation²⁰ but not pursuing the prohibitive character of the position of Rabbi

Eliezer.²¹ This centrist stance would equate the study of Torah with other *mitzvot*, such as *shofar* and *lulav*, in regard to which women, though not obligated, remained free to fulfill them voluntarily.

However, this position fades during the period of the *Rishonim*, to be replaced with variants of the more extreme position of Rabbi Eliezer.

Among the *Aharonim*, two divergent approaches have manifested themselves. On one hand, the stringencies have been carried even further to the point of serious consideration being given to the possibility that it is even prohibited for women to study the Oral Law by themselves,²² and for men to teach them even the complexities of the Written Torah.²³ On the other hand, two more permissive lines of thought have also begun to emerge. One such line constructs its case for permission to teach women both Written and Oral Torah on a purely functional base. Thus the Hafetz Hayyim and others have argued that the fact that Jewish women are beneficiaries of a secular education makes it mandatory for us to assure that their knowledge of Scripture and rabbinic thought be sufficient to preserve their identity as Jews.²⁴

A second line of opinion developing among the *Aharonim* is even more interesting because for the first time since Ben Azzai it speaks in terms of an obligation of women to study Torah, albeit a limited one. Rabbi Joseph Karo suggests that women are obligated to study those laws which pertain to them.²⁵ But it is Shneur Zalman of Liadi who formulates a broad principle by which women are obligated to study all laws of the Torah, both Biblical and rabbinic, except those concerning *mitzvot* which they are not obligated to perform.²⁶

The flux thus evident in the history of Jewish law makes it a quixotic task to describe in simplistic generalities the position of women within Jewish thought. Indeed, because of the vastness of the material and the paucity of basic legal analyses, much of what I will say in the coming section of this paper will be quite tentative in character.

Despite the inherent difficulty of defining the precise social function of any legal status, and despite the special complexities inherent in debate and legal development, certain broad patterns seem evident as to the status of women in Jewish law. The most striking of the patterns is the absence of a specific role definition for women. Had the Torah intended to preclude for women all roles but that of wife-mother-homemaker, the means of doing so were easily at hand. Much as the law clearly prescribed the obligations of a husband to his wife,²⁷ the

obligations of a father to his child²⁸ and the obligations of children to their parents,²⁹ the law could have made mandatory for women not only marriage and procreation but also the entire range of household duties which would have defined an exclusive role for them.

The law ends up mandating for women, neither marriage, nor procreation, nor specific household duties. Jewish law does not then define with any precision whatsoever a "proper" or "necessary" role for Jewish women. While not demanding adherence to one particular role, it is nevertheless clear that since for most of our history, our continuation as a people depended upon the voluntary selection by women of the role of wife-mother-homemaker, the law would and did encourage the exercise of that choice.

Indeed, the Torah modified the civil and religious demands it made upon Jewish women, to assure that no legal obligation could possibly interfere with her performance of that particular role. If a woman elected to discover her fulfillment in the relation to her husband and children and in the shaping of a home, no law would stand in the way of her performance of that trust. It is for that reason, I believe, that the primary category of *mitzvot* from which women were exempted were those which would either mandate or make urgently preferable, a communal appearance on their part.

In the light of this proposition, we can understand why there was complete unanimity as to the Torah's having exempted women from the *mitzvot* of *sukkah*, *lulav* and *shofar*. These acts were of necessity performed outside of the home. We may likewise understand why it was necessary for the Torah to specifically inform us that women were obligated to attend the reading of the Torah at *Hakhel*, and why it was so obvious that they were included in the mandatory restrictions of Yom Kippur. Finally, we may now better understand the reason for the debates as to whether women are exempted from such *mitzvot* as *tefillin*, *tzitzit* and the reading of the Shema. For while obligations such as these need not involve communal appearance, and can adequately be fulfilled at one's own home, their very association with communal worship would create, and indeed has created for men, a powerful religious preference for their performance within the context of communal presence.

The underlying motive of exemption would then be neither the attempt to unjustly deprive women of the opportunity to achieve religious fulfillment, nor the proposition that women are inherently more religiously sensitive. Rather, exemption would be a tool used by

the Torah to achieve a particular social goal, namely to assure that no legal obligation would interfere with the selection by Jewish women of a role which was centered almost exclusively in the home.

It is admittedly very difficult for an American raised with almost a sense of sanctity of individual rights, to accept a stance which gives not only primacy to the social goal, but then assigns to the individual a status which would encourage the achievement of that goal. Yet, that is exactly what Jewish law seems to do. Placing its emphasis on the communal need for the maintenance of strong family units as the central means of the preservation of the Jewish community both physically and spiritually, the law assures that nothing will interfere with that goal.

We now arrive at the second element of our proposition as to the status of women, that the exemption from obligations results in a loss of rights. While not self-evident,³⁰ it is clear in rabbinic literature that the exemption of women from obligations of participation in communal worship results in their disqualification from being counted to the quorum necessary to engage in such worship. For each member of the *minyán* must stand equal in obligation and capable of fulfilling the obligation on behalf of the entire *minyán*.³¹

Similarly in civil matters, the fact that women are relieved of the obligation to testify,³² results in their inability to be part of the pair of witnesses who bind the fact-finding process of the court.³³ The law begins with the desire to exempt women from mandatory public appearances and therefore deprives the courts, in effect, of subpoena power over women. But, in turn, the inability of the court to compel her presence results in the correlative loss on the part of women of the power to compel the court to find the facts to be in accord with their testimony.³⁴

III

Much remains to be written on these matters and hopefully some of it will come by the hands of women dealing creatively with the corpus of Jewish law. But if my analyses have been appropriate and I have not overstepped the boundary into apologetics, then we are in a position to at least reach some modest conclusions as to directions in dealing with the problems raised at the outset of this paper. In a status-oriented legal system, the basic laws are those which assure the social interests

through status conferral. However, those laws are then modified to assure the highest possible level of individual rights achievable in consonance with the desired social goals.

Thus, in Jewish law, while the goal of family stability seems to be the motive force behind many of the elements of the status of women, the law recognizes that women are disadvantaged by that position and attempts to compensate to the extent possible.

The corrective process is reflected in the assignment of power to the court to act on behalf of a woman in compelling her husband to issue a divorce to her. These steps indicate very clearly that the accomplishment of the underlying social purpose of a particular status should not be viewed as a *carte blanche* for imposing on members of that class all disabilities which flow from their status. Rather, any side effects which are disadvantageous and also are not necessary for the achievement of the social goal, are to be eliminated by secondary legislation.³⁵

In the light of this analysis we may suggest that on one hand, the exemption from communal presence seems to be a central element of women's status in Jewish law, necessary to ensure that no mandated or preferred act conflict with the selection of the protected role. But, on the other hand, many of the elements of the three areas of problems delineated at the start of this paper, are accidental side effects of the status conferral, which in themselves contribute nothing, and may ultimately interfere with, the attainment of the central social goal. If such be the case, it is the unavoidable responsibility of religious leaders to do all within their power to eliminate these detrimental side effects.

First, it is vital for religious leadership to recognize the reality of the religious quest of Jewish women. While the law assigns them a distinct status, it does not suggest that their essential religious condition stands at a level any different from that of Jewish men. If a rabbi is concerned with whether a man has prayed three times each day, he must be equally concerned with the daily prayer of women. Women must be made to feel that their own religious development is a vital concern to communal leadership, and that the community will seek out means of enhancing their religious growth.

A small number of religious women have begun donning *talit* and *tefillin* daily, and have, in so doing, discovered a vital source of religious expression and strength.³⁶ It seems to me very unlikely that that particular form of religious observance will become widespread among Jewish women. However, constantly increasing numbers of

women are attending synagogue services with some regularity, and that trend can be expected to intensify with the increasing liberation of women from the home and with the spread of *eruvim* in religious communities. Under these circumstances, relegating women to the back of the synagogue, both physically and spiritually, will only assure their gradual disappearance from religious life. Building committees must be sensitized to the necessity of designing structures which demonstrate that in the appearance before God, men and women are equal. *Mehitzot*, while crucial for the achievement of proper prayer, must not constitute insurmountable barriers to the approach to the divine presence.

These structural concerns must be accompanied by changes in the expectation from religious women by communal leadership. There is no reason why unmarried women should first make their appearance at some point toward the end of the Torah reading, nor is there any reason why rabbis should be more permissive of talking in the women's section than they are of such demeanor among the men. Lesser demands reflect only one thing: less significance to the endeavor.

Equal in significance with prayer is another mode of worship, Torah study. If Torah study is to occupy such an important place in the lives of Jewish men, how can we expect it to play no role whatsoever in the lives of Jewish women? Whether justified on principled or purely functional grounds, it is clear that when the intellectual development of a Jew in secular areas exceeds his or her intellectual development in Jewish knowledge, it leads at best to fragmented personalities performing mechanical religious duties and at worst to total disillusion and disaffiliation. Aside from this danger to the Jewish identity of women, the failure to educate women Jewishly deprives Jewish scholarship of most valuable resources which we cannot afford to lose.

Most important of all in this area, we must encourage women to develop in a creative fashion whatever additional forms they find necessary for their religious growth. I would not presume to know what new religious developments could emerge from Jewish women's consciously setting for themselves the task of discovering customs expressive of their religious feelings in contemporary society. Their practices might involve their own form of public worship to follow and supplement the standard service, but expressive of women's sensitivities. It might involve the creation of new religious artifacts or of new patterns of communal study. Only one thing is certain, and that is that the

creative religious energies of Jewish women remain a major source of untapped strength for the Jewish community as a whole, and those energies must be freed.

The second problem area is that of the position of women in matters of civil law. In the absence of Jewish political autonomy (outside Israel), most issues of this sort are moot. However, the problem of the *agunah* of the reluctant husband continues to plague Jewish ethical sensibilities.

Indeed, this area almost more than any other, cries out for rectification. If it is true that Jewish legal process is completely stymied by this problem, a premise which I am most reluctant to accept, then that still does not absolve religious leadership of their responsibilities. If neither the conditional *get*, nor the conditional *ketubah* are halakhically acceptable, then perhaps we ought to turn to the civil courts to solve our problem for us. Perhaps at this time, every Jewish couple who marry should sign a standard form contract under which both parties agree that in case of dissolution of the marriage by either civil divorce or annulment, each will consent to and execute the issuance and acceptance of the Jewish divorce. If the legalization of such an antenuptial agreement would require enabling legislation, then that course of action is certainly possible.

The third problem area is in one regard the most sensitive of them all: the creation of a preferred role for women. First, there is a critical distinction between a mandated role and a preferred role. Jewish law specifically refrained from mandating for women the exclusive role of wife-mother-homemaker. It may very well be the case that throughout most of human history there were no alternatives practically available. But are we to assume that the Torah did not foresee the current developments and therefore simply failed to make adequate provisions to further eliminate such choices when they would become possible? On the contrary, it would seem to me that we would be compelled to conclude the exact opposite, that the Torah specifically intended to keep alternative options open in expectation of a time when they might become possible.

If such be the case, then we must not wantonly foreclose such choices. Indeed, perhaps we ought to look more closely at the potential for enrichment of the traditional role which becomes possible through its supplementation with meaningful engagement outside the home. It may behoove us as a community to provide for our young women alternative role models to help them integrate the realization

that being a good Jewish woman does not mean forgoing creativity and fulfillment beyond the context of the role of homemaker.

On the other hand, the law does protect and thereby indicate a preference for the more traditional role which has home and family as its dimensions. Since society now allows for the election of radically different roles, it becomes increasingly vital for creative religious minds to offer meaningful expositions of why this preferred role ought to be chosen over all other available options. It may very well be the case that the investment of one's total personality in the endeavor of shaping the soul of growing Jewish children is the most fulfilling way in which a person's energies may be used. It may also be the case that women are either inherently or by socialization more capable of making the kind of total commitment necessary for the maintenance of constant love and devotion which form the religious character of a child. All this may be true, but women will have to be convinced—not compelled—to submit to its logic.

Furthermore, we will have to communicate more clearly that election of the traditional role does not mean self-relegation to the service role or the role as enabler. The achievement of the social goal of family stability is not to be at the expense of the souls of Jewish women. Their integrity as religious personalities will have to be emphasized more forcibly both to men and to women themselves.

These steps, small though they be, may lead in the direction of a more fulfilled Jewish womanhood of the future, and as a result, a more perfected total Jewish society.

Notes

1. See G. W. Paton, *A Text-Book of Jurisprudence*, 2d ed. (London: Oxford Press, 1951), pp. 319–24.
2. Julius Stone, *Social Dimensions of Law and Justice* (Sydney, Australia: Maitland Pub., 1966), pp. 138–41. We cannot, however, totally exclude the occasional function of status as a means of exploiting the weak rather than protecting them. See Paton, *op. cit.*, p. 321 and pp. 252–53. Despite the absence, as yet, of systematic studies on this issue in Jewish law, I would suggest that this motive is not present.
3. This difficulty would not arise in relation to the status of the mentally incompetent. There, the protective purpose and the disabilities related thereto could be relatively easily formulated into descriptive principles. The status of the minor might be an intermediate case.
4. Mishnah Kiddushin 1:7 (29a).
5. Kiddushin 33b–34a.

6. E.g. eating *matzah*, rejoicing on festivals, and *Hakhel* (assembling).
7. E.g. study of Torah, procreation and redemption of first born sons.
8. E.g. *sukkah*, *lulav*, *shofar*, fringes and phylacteries.
9. *Sefer Hamitzvot*, end of affirmative precepts. These, out of the 60 which are always incumbent upon each individual.
10. 1. Reading Shema.

2. Binding *tefillin* on the head.
3. Binding *tefillin* on the arm.
4. Wearing *tzitzit*.
5. Counting the *omer*.
6. Living in the *sukkah*.
7. Taking the *lulav*.
8. Hearing the *shofar*.

11. 1. Study of Torah.
2. For the King to write a Torah for himself.
3. For *kohanim* to bless the people.
4. Procreation.

5. For a groom to celebrate with his wife for a full year.
6. Circumcision of sons.

12. 1. Kiddush on Shabbat. See Berakhot 20a.
2. Fasting on Yom Kippur. See Sukkah 28a.
3. *Matzah* on Pesah. See Kiddushin 34a.
4. Rejoicing on festivals. See Kiddushin 34a.
5. Assembling once in seven years. See Kiddushin 34a.
6. Sacrificing and eating the Pascal lamb. See Pesahim 91b.

13. 1. Lighting Hanukkah lights. See Shabbat 23a.
2. Reading Megillat Esther on Purim. See Megillah 4a.
3. Drinking four cups of wine on Pesah. See Pesahim 108a.
4. Reciting Hallel on the night of Pesah. See Sukkah 38a.

14. Rabbi Emanuel Rackman, "Arrogance or Humility in Prayer," *Tradition* 1 (1), Fall 1958, p. 17. Cf. Rabbi Norman Lamm, *A Hedge of Roses* (New York: Feldheim, 1966), pp. 75–6.

15. Of course the recording of these dissenting opinions assured that none would confuse them with the approved majority positions, as well as preserving them for the possibility of future adoption by the majority of some subsequent Great Sanhedrin. See Mishnah Eduyot 1:4–6.

16. Mishnah Sotah 3:4 (20a).

17. The texts of both the Jerusalem Talmud and the Babylonian Talmud would seem to support the position that according to Ben Azzai, women are equally obligated with men in the study of Torah. (cf. *Tosafot Sotah* 21b s.v. Ben Azzai, straining the reading of J.T. Sotah 15b.) This position is further supported by Mishnah Nedarim 35b.

18. The Amoraim lend an aggadic quality to the statement of Rabbi Eliezer through the addition of the word "Keilu" ("as if"), Sotah 21b. (See my comments on the usage of "Keilu" in *Encyclopedia Judaica*, vol. 10, p. 1484, in article entitled "Law and Morality.") The misogynistic tendencies here implied are made more specific in J.T. Sotah 16a.

19. Tosefta Berakhot 2:12.
 20. Kiddushin 29a. cf. Berakhot 22a and the manner in which it omits the references to women's study implied in its source, Tosefta Berakhot 2:12.
 21. See Sanhedrin as an instance of women studying Torah in relation to which Rabbi Eliezer's objection is not raised by the Amoraim. Many other such instances reflect the rejection of the position of Rabbi Eliezer.
 22. Elijah Gaon, commentary to *Shulhan Arukh, Orah Hayyim*, ch. 47, comment 18.
 23. David Halevi, TaZ to *Shulhan Arukh, Yoreh Deah*, ch. 246, comment 4.
 24. Hafetz Hayyim and others cited in *Responsa Tzitz Eliezer*, Rabbi Eliezer Waldenberg, vol. 9, no. 3, p. 32. Indeed the authorities cited limit the distinction between Written and Oral Torah, and function essentially in terms of what is necessary to counter the effects of the society to which Jewish women are exposed.
 25. *Beit Yosef to Tur, Orah Hayyim* ch 47, s.v. Vekasav. His alleged sources are elusive. See Waldenberg, op. cit., p. 31.
 26. *Shulhan Arukh HaKav, Laws of Talmud Torah*, 1:15. The *Beit Halevi* (vol. 1, responsum no. 6), while affirming the possibility of an obligation resting on women to learn all laws necessary for their proper fulfillment of *mitzvot*, denies that such study would constitute a fulfillment of the *mitzvah* of *talmud Torah*.
 27. Exodus 21:10. Ketubot 47b.
 28. Kiddushin 29a.
 29. Kiddushin 30b-31a. Ketubot 46b.
 30. This entire area, including the supposed duty orientation of Jewish as compared to Roman law, and the nature of right-duty correlatives in relation to the community, begs further analysis.
 31. Based on Mishnah Rosh Hashanah 3:8 (28a). See David M. Feldman, "Woman's Role and Jewish Law," *Conservative Judaism*, vol. 26(4), Summer 1972, pp. 35-6.
 32. Leviticus 5:1, Sifre to Leviticus, ch. 11, law 3, *Sefer Hahinukh, mitzvah* 122, indicating exemption from obligation. cf. *Minhat Hinukh* ad. loc.
 33. Tosefta Shavuot 3:5. Maimonides, Code, Law of Witnesses 5:1-3 and 9:1-2, indicating emphasis on disqualification from the "kat" ("pair") rather than general loss of reliability.
 34. The essential function of the "pair" of witnesses is to bind the fact-finding process, unless they are directly contravened. See Maimonides, Code, Law of Witnesses, 5:3, 19:1, and 22:1.
 35. Further illustration of this process is to be found in legislation "Mipne darke shalom" (Mishnah Gittin 5:8-9) eliminating incidental injuries resulting from status as a non-Jew.
 36. For precedent see Eruvin 96a. The practice was approved by Tosafot ad. loc. s.v. *Mihal*; but disapproved by Rama to *Shulhan Arukh, Orah Hayyim*, 38:3. cf. David Feldman, op. cit. note 58, at p. 36.

A MODEST BEGINNING

Esther Tickin

At a recent conference at which representatives of various "new" Jewish communities (like *havurot*, *batim*, Ezrat Nashim, Fabringen) as well as "new" Jews struggling alone, gathered for mutual support and stimulation and the possible formulation of a vital ideology for our day, a number of us ended up saying that it may be time to start thinking and talking about a "new *halakhah*." We were fully aware of the immense obstacles in the road for even the beginning of such an undertaking. No one had any easy answers to such questions as: *halakhah* for whom? By whom? By what criteria? On what authority? Along what lines of continuity? And yet we all felt that there already exists a new religioethical consciousness, waiting and ready to be brought forward in clear words and deeds. There are values by which many of us live or try to live, clearly Jewish values, though unacknowledged by the rabbinic authorities of our day. But we are timid and hesitant about them because we have not as yet committed ourselves to them as *halakhah*—as the logical outcome of our tradition and our historical experience.

Instead of first trying to make my way through the morass of theoretical issues, I am going to make a beginning by jumping into a concrete problem and proposing four new *halakhot* for our consideration. They deal with an issue close to my concerns: the entry of women into the congregation of Israel as full and equal partners, and what men must do to help bring this about. I chose to begin with these four *halakhot*, not because they are the most important issues for Jewish women today, nor even for women's participation in Jewish religious and