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THE JEW WHO WASN'T THERE:

Halacha and the Jewish Woman

It is not unusual for committed Jewish women to be uneasy about their position as Jews. It was to cry down our doubts that rabbis developed their pre-packaged orations on the nobility of motherhood; the glory of childbirth; and modesty, the crown of Jewish womanhood. I have heard them all. I could not accept those answers for two reasons. First of all, the answers did not accept *me* as a person. They only set rigid stereotypes which defined me by limiting the directions in which I might grow. Second, the answers were not really honest ones. Traditional scholars agree that all philosophies of Judaism must begin with an examination of Jewish law, Halacha, since, in the Halacha are set down the ways in which we are expected to behave, and incontestably our most deeply engrained attitudes are those which we reinforce by habitual action.

Yet scholars do not discuss female status in terms of Halacha—at least not with females. Instead, they make lyrical exegeses on selected Midrashim and Agadot which, however complimentary they may be, do not really reflect the way in which men are expected to behave toward women by Jewish law. I think we are going to have to discuss it, if we are to build for ourselves a faith which is not based on ignorance and self-deception. That is why I would like to offer some hypotheses on the history and nature of the “woman problem” in Halacha.

Ultimately our problem stems from the fact that we are viewed in Jewish law and practice as peripheral Jews. The category in which we are generally placed includes women, children, and Canaanite slaves. Members of this category are exempt from all positive commandments which occur within time limits.¹ These

1. Kiddushin 29a

commandments would include hearing the shofar on Rosh HaShanah, eating in the Sukkah, praying with the lulav, praying the three daily services, wearing tallit and t'fillin, and saying Sh'ma.² In other words, members of this category have been "excused" from most of the positive symbols which, for the male Jew, hallow time, hallow his physical being, and inform both his myth and his philosophy.

Since most of the mitzvot not restricted by time are negative, and since women, children and slaves are responsible to fulfill all negative mitzvot, including the negative time-bound mitzvot, it follows that for members of this category, the characteristic posture of their Judaism is negation rather than affirmation.³ They must not, for example, eat non-kosher food, violate the Shabbat, eat chametz on Pesach, fail to fast on fast days, steal, murder, or commit adultery. That women, children, and slaves have limited credibility in Jewish law is demonstrated by the fact that their testimony is inadmissible in a Jewish court.⁴ The minyan—the basic unit of the Jewish community—excludes them, implying that the community is presumed to be the Jewish males to whom they are adjuncts. Torah study is incumbent upon them only insofar as it relates to "their" mitzvot. Whether women are even permitted to study further is debated.⁵

All of the individuals in this tri-partite category I have termed peripheral Jews. Children, if male, are full Jews *in potentia*. Male Canaanite slaves, if freed, become full Jews, responsible for all the mitzvot and able to count in a minyan.⁶ Even as slaves, they have the b'rit mila, the covenant of circumcision, that central Jewish symbol, from which women are anatomically excluded. It is true that in Jewish law women are slightly more respected than slaves, but that advantage is outweighed by the fact that only women can never grow up, or be freed, or otherwise leave the category. The peripheral Jew is excused and sometimes barred from the acts and symbols which are the lifeblood of the believing community, but this compliance with the negative mitzvot is essential, since, while he cannot be

2. *Ibid.*, but see also Mishna Sukkah 2:9 and Mishna Brachot 3:3

3. Kiddushin 29a

4. Sh'vuot 30a. See also Rosh HaShanah 22a

5. Sotah 20a

6. It must be admitted that Canaanite slaves were only to be freed if some overriding mitzvah would be accomplished thereby. The classic case in which Rabbi Eliezer frees his slave in order to complete a minyan is given in Gittin 38b.

permitted to participate fully in the life of the Jewish people, he cannot be permitted to undermine it either.

To be a peripheral Jew is to be educated and socialized toward a peripheral commitment. This, I think, is what happened to the Jewish woman. Her major mitzvot aid and reinforce the life-style of the community and the family, but they do not cultivate the relationship between the individual and God. A woman keeps kosher because both she and her family must have kosher food. She lights the Shabbat candles so that there will be light, and hence, peace, in the household. She goes to the mikva so that her husband can have intercourse with her and she bears children so that, through her, he can fulfill the exclusively male mitzvah of increasing and multiplying.⁷

Within these narrow confines, there have been great and virtuous women, but in several respects the tzidkaniot (saintly women) have been unlike the tzaddikim. Beruria, the scholarly wife of Rabbi Meir, the Talmudic sage, and a few exceptional women like her stepped outside the limits of the feminine role, but legend relates how Beruria came to a bad end, implying that her sin was the direct result of her "abnormal" scholarship.⁸ There is no continuous tradition of learned women in Jewish history. Instead there are many tzidkaniot, some named, some unnamed, all of whom were pious and chaste, outstandingly charitable, and, in many cases, who supported their husbands. In contrast, there are innumerable accounts of tzaddikim, some rationalists, some mystics, some joyous, some ascetic, singers, dancers, poets, halachists, all bringing to God the service of a singular, inimitable self.

How is it that the tzaddikim seem so individualized and the tzidkaniot so generalized? I would advance two reasons. First of all, the mitzvot of the tzadket are mainly directed toward serving others. She is a tzadket to the extent that she sacrifices herself in order that others may actualize themselves spiritually. One has no sense of an attempt to cultivate a religious self built out of the raw materials of a unique personality. The model for the tzadket is Rachel, the wife of Rabbi Akiva, who sold her hair and sent her husband away to study for twenty-four years, leaving herself beggared and without means of support; or the wife of Rabbi Menachem Mendel of Rymanov (her name incidentally, goes unremembered) who sold her share in the next world to buy her husband bread.

7. Mikva is not itself a mitzvah. It is a prerequisite to a permitted activity, just as shechita is prerequisite to the permitted activity of eating meat. See Sefer HaChinuch, Mitzvah 175.

8. Avoda Zara 18b. See Rashi.

Frequently there is a kind of masochism manifest in the accounts of the acts of tzidkaniot. I recall the stories held up to me as models to emulate, of women who chopped holes in icy streams to perform their monthly immersions. A lady in the community I came from, who went into labor on Shabbat and walked to the hospital rather than ride in a taxi, was acting in accordance with this model. Implicit is the assumption that virtue is to be achieved by rejecting and punishing the hated body which men every morning thank God is not theirs.⁹

Second, as Hillel says, "an ignoramus cannot be a saint."¹⁰ He may have the best of intentions, but he lacks the disciplined creativity, the sense of continuity with his people's history and thought, and the forms in which to give Jewish expression to his religious impulses. Since it was traditional to give women cursory religious educations, they were severely limited in their ways of expressing religious commitment. Teaching, the fundamental method of the Jewish people for transmitting religious insights, was closed to women—those who do not learn, do not teach.¹¹ Moreover, expressions of spiritual creativity by women seem to have been severely limited. Religious music written by women is virtually non-existent. There are no prayers written by women in the liturgy, although there were prayers written in Yiddish by women for women who were unable to pray in Hebrew.

It was, perhaps, most damaging that the woman's meager mitzvot are, for the most part, closely connected to some physical goal or object. A woman's whole life revolved around physical objects and physical experiences—cooking, cleaning, childbearing, meeting the physical needs of children. Without any independent spiritual life to counterbalance the materialism of her existence, the mind of the average woman was devoted to physical considerations; marriages, deaths, dinners, clothes and money. It was, thus, natural that Jewish men should have come to identify women with *gashmiut* (physicality) and men with *ruchniut* (spirituality).

The Talmudic sages viewed the female mind as frivolous and the

9. In the Traditional Prayerbook see the morning blessing, "Blessed are You, Lord our God, King of the universe, who has not created me a woman."

10. Avot 2:5

11. Exactly this expression is used in Kiddushin 29b, where it is asserted that the mitzvah of teaching one's own offspring the Torah applies to men and not to women.

female sexual appetite as insatiable.¹² Unless strictly guarded and given plenty of busywork, all women were potential adulteresses.¹³ In the Jewish view, all physical objects and experiences are capable of being infused with spiritual purpose; yet it is equally true that the physical, unredeemed by spiritual use, is a threat. It is therefore easy to see how women came to be regarded as semi-demonic in both Talmud and Kabbalah. Her sexuality presented a temptation, or perhaps a threat which came to be hedged ever more thickly by law and custom.¹⁴ Conversing with women was likely to result in gossip or lewdness.¹⁵ Women are classed as inadmissible witnesses in the same category with gamblers, pigeon-racers and other individuals of unsavory repute.¹⁶

Make no mistake; for centuries, the lot of the Jewish woman was infinitely better than that of her non-Jewish counterpart. She had rights which other women lacked until a century ago. A Jewish woman could not be married without her consent. Her ketubah (marriage document) was a legally binding contract which assured that her husband was responsible for her support (a necessity in a world in which it was difficult for a woman to support herself), and that if divorced, she was entitled to a monetary settlement. Her husband was not permitted to abstain from sex for long periods of time without regard to her needs and her feelings.¹⁷ In its time, the Talmud's was a very progressive view. The last truly revolutionary ruling for women, however, was the Edict of Rabbenu Gershom forbidding polygamy to the Jews of the Western world. That was in 1000 C.E. The problem is that very little has been done since then to ameliorate the position of Jewish women in observant Jewish society.

All of this can quickly be rectified if one steps outside of Jewish

12. Kiddushin 80b contains the famous statement, "The rational faculty of women weighs lightly upon them." Interestingly enough, the Tosafof illustrate this with an ancient misogynistic fable whose written source is the Sarrvicon of Petronius Arbiter. See also Sotah 20a.

13. Mishna Ketubot 5:5

14. This is the context in which one may understand the statement of the Kitzur Shulchan Aruch, "A man should be careful not to walk between two women, two dogs, or two swine." Gansfried, Rabbi Solomon, Code of Jewish Law I, trans. Hyman E. Goldin, 2nd ed., New York: 1961, p. 7.

15. Avot 1:5. See also the commentaries of Rashi, Rambam, and Rabbenu Yonah.

16. Rosh HaShanah 22a.

17. Mishna Ketubot 5:6

tradition and Halacha. The problem is how to attain some justice and some growing room for the Jewish woman if one is committed to remaining *within* Halacha. Some of these problems are more easily solved than others. For example, there is ample precedent for decisions permitting women to study Talmud, and it should become the policy of Jewish day schools to teach their girls Talmud. It would not be difficult to find a basis for giving women aliyot to the Torah. Moreover, it is both feasible and desirable for the community to begin educating women to take on the positive time-bound mitzvot from which they are now excused; in which case, those mitzvot would eventually become incumbent upon women. The more difficult questions are those involving minyan and mechitza (segregation at prayers). There are problems concerning the right of women to be rabbis, witness in Jewish courts, judges and leaders of religious services. We need decisions on these problems which will permit Jewish women to develop roles and role models in which righteousness springs from self-actualization, in contrast to the masochistic, self-annihilating model of the post-Biblical tzadiket. The halachic scholars must examine our problem anew, right now, with open minds and with empathy. They must make it possible for women to claim their share in the Torah and begin to do the things a Jew was created to do. If necessary we must agitate until the scholars are willing to see us as Jewish souls in distress rather than as tools with which men do mitzvot. If they continue to turn a deaf ear to us, the most learned and halachically committed among us must make halachic decisions for the rest. That is a move to be saved for desperate straits, for even the most learned of us have been barred from acquiring the systematic halachic knowledge which a rabbi has. But, to paraphrase Hillel, in a place where there are no menschen, we may have to generate our own menschlichkeit. 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.¹⁸

Postscript: "The sort of *piskei halacha* requested in the text of this article are *genuine* decisions based on sources and understanding of the halachic process made by people who understand and observe the Torah. Rationalizations will not do." [R.A.]

18. There is a famous folk tale that the scholar Rabbi Loewe of Prague created a golem or robot, using the Kabbalah. The robot, formed from earth, came to life and worked as a servant when a tablet engraved with the Divine Name was placed in its mouth. When the tablet was removed, the golem reverted to mindless clay.