

Rabbi Meiselman previously served as Professor of Mathematics at the University of the City of New York and is now a *Rosh Yeshivah* at the Yeshivath Brisk in Chicago.

## WOMEN AND JUDAISM: *A Rejoinder\**

### INTRODUCTION

The feminist critique of contemporary society is one of the most powerful attacks on Western culture that has appeared in many years. At this point it is still too early to see how society will change in response to this revolution, but it will surely do so. Simultaneous with the rise of the feminist movement there has arisen a Jewish feminist movement which has demanded a readjustment of Jewish law and values. The literature of this movement has ranged from the polemical to the scholarly. Up to this point, Rabbi Saul Berman's article<sup>1</sup> "The Status of Women In Halakchic Judaism"<sup>2</sup> is the only article by an Orthodox rabbi that has appeared. It is to this article that I wish to respond. Many aspects of this article were vague and were subject to a variety of interpretations. My response is to the way that I and most people that I know have interpreted the article. If the author meant otherwise, then my article is to be regarded only as a statement of my own position on the matter of feminism and Judaism.

Rabbi Berman asks for a moratorium on apologetics. However, the essential problem is to define exactly what is meant by apologetics and to state why apologetics are undesirable. Apologetics is not the attempt to appreciate the deep insight that the Torah had into the human personality. Some contemporary "de-

fenders of the faith" feel that unless one is *modeh bemiktsat* to every criticism of Judaism, he is an apologetic and hence his statement need not even be considered. They seem to forget the fundamental halakchic principle that a *kofer hacol* has more credibility than a *modeh bemiktsat*.<sup>2</sup>

To the best of my understanding, the approach of "whatever you can do, I can do better" to Judaism — you are liberal, Judaism is more so; you like ecology, Judaism likes it better, etc. *ad nauseam* — is what apologetics is all about, i.e. *trying to justify the Torah in the structure of another value system*. This approach — popular among many anti-apologists — is short-sighted for a variety of reasons. First of all, it is dishonest. For, Judaism is not just a series of legal dicta, but an entire self-justifying and self-defining axiological system and for any honest understanding of a segment of the legal data within Judaism, one must view it from within its native axiology. Secondly, it is sterile. For to view Judaism within a foreign context is to strip Judaism of its vital force, if not completely to castrate it; and last but not least, it just doesn't work. This is how I view apologetics and why I consider it to be undesirable.

Apologetics is not what Rabbi Berman seems to say it is. Trying to understand the underlying motif of Jewish law and to see its beauty is not apologetics. If Rabbi Berman feels that the motif given by a certain author is incorrect, then his complaint is not about form but about substance. But as for the form itself, i.e. to understand the motif behind a portion of Jewish law and to present it in a positive light, pray tell me Rabbi Berman "Why is it undesirable?"

Rabbi Berman identifies two basic sources of discontent. The first one is the demand for public equality. The author then proceeds to analyze the problem when he says that "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." Who are these apologists and what are the forces of the male dominated society of which Rabbi Berman speaks? They are none other than the Almighty Himself and the divinely inspired Psalmist, David, King of Israel. When God spoke to Adam he told him

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"It is not good for man to be by himself. I shall make for him a help meet like himself."<sup>8</sup> The verse in Psalms says "The entire glory of the king's daughter is on the inside."<sup>9</sup> The entire talmudic and midrashic explanation of these verses have combined with three thousand years of male chauvinistic rabbis and they have used the Jewish religion as a means of suppressing Jewish womanhood. Rather than making an honest attempt at an analysis of the talmudic and midrashic emphasis on the private nature of women's role, we are told that the law does not mandate any "proper" or "necessary" role and that the law only guaranteed her *right* to stay at home. All else is apologetics — i.e. a dishonest attempt by dominant male society to use Judaism to force women into a position most desirable for men. I, as a believing and practicing Jew, cannot accept this analysis. I feel that the true picture must lie elsewhere.

The Jewish people are called by the name Israel. But, why of the four names given to the patriarchs was Israel selected? The answer, I believe, lies in the meaning of the name Israel. In Genesis we read

And Jacob was left by himself and a man fought with him until dawn. And he saw that he could not defeat him and he smote him on his hip. And Jacob's hip was dislocated while fighting with him. And he said send me for the dawn is rising, and Jacob said I will not send you until you bless me. And he said no longer shall you be called Jacob but Israel for you have fought with God and with man and emerged victorious.<sup>5</sup>

The last verse is very puzzling. What does it mean to fight with God? Onkelos translates "for you have fought before God and against man." The name Israel indicates before whom one acts and to which audience one attaches significance. When Abraham and Isaac reached their moral heights and played their roles at the *Akedah*, they did so in front of no audience but the Almighty Himself. Though Abraham and Isaac had been accompanied on their trip by Ishmael and Eliezer, when he and Isaac approached the mountain, he told them "You stay here, Isaac and I have to be alone."<sup>6</sup> When Joseph achieved his moral heroism we read "and no member of the household was there in the house."<sup>7</sup>

When the High Priest on *Yom Kippur* entered the Holy of Holies we read "and no man may be in the Tent of Assembly from when he comes to atone in the Holy Place until he leaves."<sup>8</sup> When Jacob struggled with the angel we read "and Jacob was left alone."<sup>9</sup> How different is this from the Greek hero! Probably the most glaring example of this is the contrast between the *Akedah* and Iphigenia at Aulis. While Abraham sacrificed Isaac to God, for God, and before God alone, Agamemnon sacrificed Iphigenia for Greece and in the presence of Greece. The essence of the Greek heroic act lay in its public appeal and public nature. There is no glory of inner heroism, but only of public display and public approval. Far from the shores of Aulis was the Jewish hero! To the Jew, moral victory is what one does for God and before God. Jewish tradition always frowned upon public display. For the moment a human being is put in public, his motivation can be tainted with other considerations.

R. Yochana said a covenant has been drawn up that he who toils in his Torah study in private does not quickly forget as it says in Proverbs<sup>10</sup> "and to the private people is granted wisdom."<sup>11</sup>

The essence of the religious moral act is its privacy, far from the approval of the crowd. It is in this light that we understand the classic Jewish legend that it is in the merit of thirty-six hidden saintly persons in each generation that the world is maintained. For, the highest achievement is that of the hidden saintly man who toils his whole life for God's approval alone.

The Midrash<sup>12</sup> says that an aspect of women's creation was to take one aspect of man's personality and develop it to its heights and this trait was the capacity for *Tzeniut*.<sup>13</sup> The root *tzena* is mentioned twice in the Bible, once as we have already seen in the verse "that he who toils in the wisdom of Torah in private, will achieve wisdom."<sup>14</sup> And secondly in the verse in Micah: "He has told you man what is good and what the Lord demands from you nothing else but to do justice, love kindness and to walk privately with your God."<sup>15</sup> When one serves God, he must concentrate on the inner dimensions of his personality. *Tzeniut* is the inner dimension of one's striving, which is the essence of the Jewish tradition. It is this trait of personality

that woman was enjoined to develop to its highest degree. Thus woman was created from a part of the body which is private in two senses — first that it is generally clothed and second that it is located beneath the skin.

But, hidden from public view, does not imply inferiority in the Jewish context. It is thus in Genesis that when the angels visited Abraham and asked him where is Sarah your wife, that Abraham answered “in the tent,”<sup>16</sup> to which Rashi cites the comment of the Rabbis “Sarah was a private person.” Yet, on a spiritual level, we find that Sarah achieved greater stature than Abraham. A few chapters later we read that God instructed Abraham “all that Sarah tells you, hearken to her voice,”<sup>17</sup> to which Rashi comments, “This teaches us that Sarah was superior to Abraham in prophecy.” Although in their life together, Abraham took the public role, this implied absolutely nothing about personal importance or spiritual greatness. For the Jewish hero is the hero of the inner stage, not one of the public stage. Thus, the verse “The entire glory of the daughter of the king lies on the inside”<sup>18</sup> is absolutely non-pejorative. This verse which underlies much of the Jewish attitude toward the female role has been used in rabbinic literature in a dual sense. First, it has been viewed as a statement of the private nature of the female role,<sup>19</sup> secondly as a panegyric of the private nature of the religious experience in general.<sup>20</sup> The Midrash unifies the two interpretations and sees the same underlying thread running through both applications of the verse — that true achievement is always in the private sphere, hidden from the public eye.

“And God spoke to Moses in the Wilderness of Sinai,”<sup>21</sup> before the Tent of Assembly was erected, He spoke to him from the bush . . . and afterwards in the land of Egypt . . . and afterwards in Midian . . . and afterwards at Sinai . . . but after the Tent was erected He said “How beautiful is *tzenut* (privacy)!” as it says “and to walk with God in privacy”<sup>22</sup> and therefore He spoke with him in the Tent. And so too did David say “The entire glory of the daughter is clothed in golden garments”<sup>23</sup> the daughter of the king is Moses, who is the king of Torah, the one clothed in gold is Aaron.<sup>24</sup> Hence<sup>25</sup> is it said that a woman who is private in her life<sup>26</sup> even if she is an Israelite is deserving to marry a priest and give birth to high priests. This is what the Holy One said “It is my glory to speak on the inside.”<sup>27</sup>

Public exposure, very often, is a handicap in the spiritual dimension rather than an asset. Before I proceed, let me emphasize that the categories of public and private role are not exclusive categories, but rather different points of initial emphasis and that in woman one role is emphasized while in man the other role. Thus both roles are present in each individual.

It is therefore no surprise when we come to the role definition of a woman as given in the Biblical version of creation, “And Adam called his wife’s name Eve for she was the mother of all life.”<sup>28</sup> Marriage and family are integral parts of the Divine plan of creation. They are not arbitrary and unnatural institutions foisted upon the human situation, but rather lie at the very essence of human nature. “Therefore shall man leave his father and his mother and cleave unto his wife and they shall be one flesh,”<sup>29</sup> follows immediately upon the creation of Eve. The Ravad interprets the passage beautifully,

It is for this reason that God saw fit to change the order of creation when he came to man. For had He created both man and woman from the earth, independent of each other, each one would go his own way. Husband and wife would not be designated one for the other, to live together, for they would have been created separately. But rather God created woman from man so that they should live together as one unit in marriage, each one needing the other.

However, to mandate an action means that one must perform that action under all circumstances without exception.<sup>30</sup> To mandate a specific role would mean that without exception one must perform that role. Had the Torah mandated any specific role for all women or all men it would have lost touch with reality. Life situations are too complex. But this does not mean that certain roles are not viewed as being the proper ones for both men and women. That family and marriage are the proper roles for women is an idea that begins with Eve and goes through the entire Bible and Talmud. But, essentially it goes back to the Divine plan of creation.

## II

We must be honest with ourselves! Judaism *did* advocate a

more private role for women than for men. But, this is because Judaism placed so much emphasis on the private experience. Private roles may seem secondary in 20th century America because of its superficial insistence on show and glitter. Apologists would tell us that Judaism approved of, nay encouraged, public roles for women, because Judaism must be made to fit the times. Unfortunately an honest reading of the data tells us differently.

The second focus of complaint is the "absence of even private religious symbols which serve for men to affirm the ongoing quality of their covenant with God. The fact that women are relieved of putting on *Tallit* and *Tefillin*, of praying at fixed times during the day, and even of covering their heads prior to marriage and have been discouraged from voluntarily performing these acts, has left them largely devoid of actively symbolic means of affirming their identities as observant Jewesses." (While Rabbi Berman states this only as a complaint by Jewish feminists, he implicitly throughout his article seems to accept it as valid.)

Are women really lacking the means of affirming their identities as observant Jewesses? Am I to believe that three thousand years of Jewish womanhood lacked the means of affirming their identities until women began to put on *Tallit* and *Tefillin* in 1974? I have known too many deeply religious women who did not put on *Tallit* and *Tefillin* to take your statement on its face value.

*First of all*, let us remember that negative commandments also contain within themselves a great potential for affirmation. The *Mechilatah* tells us

"Saying" this teaches us that the Jews answered yes to the positive commandments and to the negative commandments they answered no. These are the words of Rabbi Yishmael. Rabbi Akiva taught that on the positive commandments they answered yes and on the negative commandments they also answered yes.<sup>31</sup>

The essence of Rabbi Akiva's answer to Rabbi Yishmael is that there exists affirmation within the negative commandment also.

Let us turn to the positive commandments. Women are required to pray at least twice daily.<sup>32</sup> They are allowed to pray

three times daily. They have *never* been discouraged from doing this. Women are bound by the Sabbath in the same way as men. In addition they have been given the additional *mitzvah* of lighting the candles. Women are obligated in the Passover symbolism in the same manner as men. Though exempt from *Shofar*, *Lulav* and *Sukkah*, most women perform these *mitzvot*. They have never been discouraged from performing them. As for covering the head prior to marriage, I have never heard that women were demanding this. Maimonides<sup>33</sup> requires it and Yemenites observe it, but I have never met this as a complaint among feminists. If anything, they resent covering their hair after marriage more than they demand to cover it before marriage. Really all we're talking about is *Tallit* and *Tefillin*!

Let us be honest! Are *Tallit* and *Tefillin* your primary means of religious affirmation? Probably not! Secondly, you write that "a small number of religious women have begun donning *Tallit* and *Tefillin* daily, and have, in so doing, discovered a vital source of religious expression and strength." In a footnote you write "For precedent see *Eruvin* 96a. The practice was approved by *Tosafot* . . . but disapproved by *Rama*." A glance at *Tosafot* will convince anyone that he does not simply approve.<sup>34</sup> Furthermore, the *Rama* is not just another authority for Ashkenazic Jewry. He is the authority. In effect for a woman to don *Tefillin* in 1975 is to do something forbidden. In addition to the *Rama*, the strictures of *minhag* also forbid it.

But how are we to react to someone who finds "Vital sources of religious expression and strength" in forbidden activities? If his/her goal is to establish a relationship with God, it would serve him/her well to remember that the establishing of a relationship is a bilateral act reflecting both the nature of God and man. While other activities besides those commanded by God may inspire one, if they have been rejected by God as valid means for establishing a relationship with Him, I do not see how they can function toward that end. In this context, it makes no difference whether it is forbidden *midoraita*, *midirabonon*, or because of *minhag*.<sup>35</sup> In the final analysis it is forbidden. A relationship presupposes the willingness of both parties. Someone who finds meaning in his life through his relationship with God must of

necessity find meaning in those acts which God has accepted as being valid means for establishing such a relationship.<sup>36</sup> A Jew who chooses to use other means than those accepted by God cannot be said to be attempting to establish a relationship with Him. His activities may be viewed as spiritual self-stimulation, but nothing more. This is the essence of the sin of Nadav and Avihu. It is the Divine command, and only that, that endows specific rituals with their meaning. If the wearing of *Tefillin* by women is forbidden, then it is impossible to consider it a vital source of religious expression and strength.

### III

The next basic issue (whose validity Rabbi Berman seems also to accept) is that we have told women to pursue content without form. Is this really true? I see no justification for this. As we have said before, women are required to perform virtually all *mitzvot*. With the exception of *Tallit* and *Tefillin*, they are allowed to perform all *mitzvot*. In contemporary society, women are allowed and encouraged to continue their Jewish education.

Another basic issue (to whose validity Rabbi Berman seems to assent) is the denigration of women in Judaism by their being cast in the role of "enablers" rather than "doers." I feel that Rabbi Berman has failed to grasp the essential difference between oriental and Jewish spirituality. The Eastern mystic concentrates totally and completely on his own spirituality. Self involvement is an essential ingredient of Eastern spirituality. To a Jew — male and female — spirituality and religious fulfillment lie in "service." *Chesed* is a major component of the Jewish religious act. Both Rabbi Akiva and his wife achieved greatness as "enablers." The Talmud strongly criticizes the pursuit of the "*Torah sheanoh shel chesed*," he who is intent exclusively on his own spirituality. In fact the very essence of God's greatness is his role as an enabler. Maimonides says,<sup>37</sup> "he who gladdens the heart of the downtrodden is like the *Shechinah* as it says, 'He gives life to the spirit of the low and gives life to the heart of the oppressed.'" <sup>38</sup>

Enabling is a fundamental Jewish act. The Talmud tells us

"The enabler of an act is to be praised more than the doer."<sup>39</sup> While the application of the specific statement does not mention the female role specifically, the *Aruch HaShulchan*<sup>40</sup> applies the concept to the female role on the basis of the Talmud's statement: "Greater is the reward granted to women, than the reward granted to men."<sup>41</sup>

In formulating a response to these basic issues, Rabbi Berman proceeds with an analysis of the place of the woman in Jewish law and life. Before entering into a detailed analysis of his statements, I would like to question his entire approach. He states: "The fixing of 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." This may be absolutely valid in dealing with common law or any other humanly devised legal system. The system begins with specific social goals and then devises a means to ensure the maximal achievement of that social order. The validity of the system is then judged by the degree to which it furthers the social system it set out to ensure. However, this has no application to the *Halakhah*. Each individual *Halakhah* has its own individual validation and derives its validation from the fact of its Divine origin rather than its efficacy as a means to some social, moral or religious end. One can evaluate *post facto* the sociological results of the system, but this is always *post facto* and can never become the basis for any evaluation of a specific *Halakhah* or of a complex of *Halakhot*. Furthermore, there is no necessity for the existence of any such system. Finally, whereas the Talmud concludes *lo darshinan taama dikroh*,<sup>42</sup> that one cannot make practical conclusions from a *post facto* evaluation of *Halakhah*, whatever results that may ensue from analysis such as that of Rabbi Berman's can never provide the basis for a program of action.

In his search for a principle underlying women's exemption from specific commandments, Rabbi Berman rejects the *Mishnaic* rule of

All affirmative commandments 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.<sup>43</sup>

Instead he substitutes his own rule that: The primary category of *mitzvot* from which women are exempted were those which would either mandate or make urgently preferable a communal appearance on their part.

Before evaluating the merits of Rabbi Berman's rule, it would be wise to note that we have here two distinct types of rules. The *Mishnaic* rule is a legal principle. Rabbi Berman's is not. The *Mishnaic* rule is a legal one because it tells us something precise and without exception: Women are exempt from all affirmative precepts limited to time, and only those, unless there is a specific mandate to the contrary. Thus a specific *pasuk* is not required to exempt women from the *mitzvah* of *Shema*. A specific principle is required to obligate her in the *mitzvah* of *kiddush*. Not being a legal principle, Rabbi Berman's principle must be considered only as a *post facto* evaluation of the social impact of the exemption of women from *mitzvot*.

Finally, I would question the validity of Rabbi Berman's analysis. He claims that the *Halakhah* exempted women from those *mitzvot* that would "either mandate or make urgently preferable a communal appearance on their part." Why would her reciting the *Shema* require her to leave the home any more than her praying? Her exemption<sup>44</sup> from the counting of the *Omer* certainly does not fit into this scheme. While it is certainly true that there are many *Halakhot* which ensure a woman's right to stay at home, it is a little far fetched to see this as the basis for their exemption from time-bound positive commandments. As a legal technique, it seems far fetched and, in addition, it does not fit the data better than the *Mishnaic* principle that Rabbi Berman rejects.

## IV

Rabbi Berman attaches great significance to the fact that the Talmudic sages debated the issue of woman's obligations freely. However, he has made two serious mistakes. Firstly, the world view of Torah and the social order of Jewish society is something

that one determines *post facto*, after he has completed a *halakhic* discussion. As we have discussed above, this is essential to the entire *halakhic* process. Secondly, and more importantly, there is a crucial difference in debate before an authoritative decision is made and after one has arrived at such a decision. Previous to the authoritative decision, every consideration was in order. After the *Sanhedrin* came to a vote, anyone who acted in a contrary manner was a sinner and anyone who ruled in a contrary manner was a *zaken mamreh*.

Rabbi Berman has uncritically accepted David Feldman's thesis that women cannot combine to form a *minyan* because they are not obligated in public prayer. This thesis is incorrect. Feldman's proof from the Ran<sup>45</sup> in *Megillah* is not a valid proof. The requirement for *Megillah* is not that of an *edah* necessary for a *davar shebikedushah* but rather that *pirsum hanes* take place in public. Hence the Ran says that a woman can be counted. This does not imply that the reason a woman cannot be counted to a *minyan* is because she is not equivalently obligated. Similarly, while the Rambam<sup>47</sup> says that there is a doubt whether women are obligated in *birkat hamazon midoraisa* or *midirabanon*, there is no doubt as to the fact that they cannot under any circumstances form a *minyan* for *zimun*. As I pointed out in my article in *Sh'ma*,<sup>48</sup> the Rosh permits one child or one slave and nine adult males to combine to a *minyan* for the purpose of *zimun*. Ten slaves do not form a *minyan*. The Rosh is also of the opinion that a slave is completely obligated in *birkat hamazon*. If we see anything from these facts it is that we cannot simply say that "Each member of the *minyan* must stand equal in obligation and capable of fulfilling the obligation on behalf of the entire *minyan*." This statement is baseless and it is contradicted by the legal data.

## V

What conclusions can we draw from our above analysis and how are we to respond to the issues that Rabbi Berman has raised? It goes without saying that we must be concerned with the religious quest and observance of women. It also goes with-

out saying, something that Rabbi Berman implicitly seems to deny, that this has always been true of religious leaders throughout the millennia. However, we must always be cognizant of what is a legitimate religious quest and what is not. We must not allow ourselves to be dishonest in our *halakhic* decisions because of the demands of every new group. Judaism has remained the perennial counterculture because it has remained consistent in its *halakhic* and general value decisions. To pray three times a day is a legitimate religious quest for women. To don *Tallit* and *Tefillin* is not.

Rabbi Berman opens up an entire new area when he says "we must *encourage* (my italics) women to develop in a creative fashion whatever additional forms they may find necessary for their religious growth." I must say that I disagree with his entire posture. The implicit assumption of his statement is that there is not ample opportunity for religious growth for women within the current structure of Orthodox Jewish practice. I find this unfounded, untrue and totally libelous. As I said in the beginning of the article, I have known and do know too many deeply religious women to accept such statements. Rather, I feel that we must show women how to channel their religious quest towards allowable and acceptable methods and means, most of which have already been developed. While Judaism provides great opportunity for religious creativity, this creativity, though, requires great knowledge. To tantalize the masses with *their* ability to create "valid new forms, types of service and religious artifacts" is something that both Rabbi Berman and myself realize is to be dishonest with them. The knowledge necessary to create new *valid* forms of worship is vast. Any person undertaking such a task must be intimately familiar with the entire structure of Jewish prayer in a detailed and comprehensive manner. Divine service is a serious matter and "not all of those who wish to act in the name of God are allowed to do so."<sup>49</sup> I am often reminded, nowadays, of the famous story<sup>50</sup> of Hillel and the gentile who approached him wishing to convert on the condition that he be appointed High Priest. Hillel acceded to his request but told him that the High Priest must be a learned man. The convert began to learn Torah seriously. When he approached the verse that

said "And the non-priest who performs the Temple service shall be put to death."<sup>51</sup> The convert asked the question "To whom does this refer?" Hillel answered him that it refers to all non-priests including David, King of Israel himself. The convert understood now the foolishness of his initial desire and worshipped God in the manner appropriate for himself. In like manner, many current ideas for new forms of worship are equivalently silly to the learned and well informed. We must encourage people to understand the depth of our forms of worship rather than encouraging them to create new forms.

It is regarding the issue of role definition that I find myself disagreeing most vehemently with Rabbi Berman. It is true that "there is a critical distinction between a mandated role and a preferred role." However, to say that it was preferred only because there were no alternatives practically available,<sup>52</sup> is, to the best of my understanding, to misread the entire Jewish tradition. As we discussed earlier, the role of the women is preferably that of the builder of the Jewish home. This is preferred because the tradition views it as the role which is intrinsically valuable for the woman. All other roles are secondary in value. The legal mechanism for such a non-mandated preference is developed in detail in my forthcoming book on Judaism and feminism.

## VI

The final paragraphs of Rabbi Berman's paper puzzle me. He seems to switch audiences in midstream. The initial part of the article seems addressed to a general modern Orthodox reader struggling with the problems of Judaism and feminism. In the last few pages he seems to be switching orientation and audience. On page 23, he says "The Torah specifically intended to keep alternative options open in expectation of a time when they might become possible." If I read this correctly, he is telling the general audience that the alternative roles share with the role of homemaker intrinsic value from the Jewish point of view. On page 24, he switches tone and addresses the leadership of modern Orthodoxy to communicate to their constituency the intrinsic significance of the homemaker's role. He furthermore seems to say

that they have not done this successfully. If so, his ending is out of line with the rest of his article. Also I tend to doubt whether or not *TRADITION* is the proper forum for such a petition to fellow rabbis.

I have skipped over two points that Rabbi Berman has made — those of *Agunah* and of Torah study for women. The problem of *Agunah* is one that has engaged the minds of scholars ever since Sinai. One could not do justice to the entire topic in the short space of this article. However, one thing is clear. One does not arrive at solutions as quickly and as easily as Rabbi Berman suggests. His form of antenuptial agreement, I have been told,<sup>53</sup> would not be upheld in court. A secular court cannot enforce a contract to perform a religious act. While there are countless varieties of antenuptial agreements that could be drawn up, I seriously tend to doubt that most people would sign them. I think that a more realistic solution is the use of the *Kethubah* itself in secular court in place of any other antenuptial agreement. This already been upheld<sup>54</sup> in the courts and may provide a more potent tool in the future.

As for the area of Torah study for women, I could not agree with Rabbi Berman more. Furthermore, it is a stance that I think is advocated not only by Rabbi Berman, but also by the overwhelming majority of the contemporary rabbinic leadership. It is hardly new. The existence of high quality Torah education for women in all segments of the contemporary Orthodox community is ample testimony to this fact.

The proper response to the feminist critique of Judaism is not to readjust Jewish values or laws. We do not need to create new forms and values but only to educate our men and women so that they will find within the forms and values of Judaism the proper means of religious self expression. It is only in this manner that Judaism will continue to survive in an authentic manner.

## NOTES

1. "The Status of Women in Halakhic Judaism", Saul Berman. *TRADITION*, vol. 14, no. 2, Fall 1973.

2. *A kofev ha'col* is one who denies completely the claim against him. *A modeh bemiktat* says that part of the claim is valid and part invalid.

3. Genesis 2:18.
4. Psalms 45:14.
5. Genesis 32:25-29.
6. Genesis 22:5.
7. Genesis 39:11.
8. Leviticus 16:17.
9. Genesis 32:25.
10. Proverbs 11:2.
11. *Yerushalmi Berakhoth* 5:1.
12. *Bereshith Rabbah* 18:2.
13. There are two aspects to *tzniuth* — personal privacy and bodily privacy. We are concerned here only with personal privacy.
14. Proverbs 11:2.
15. Micah 6:8.
16. Genesis 18:9.
17. Genesis 21:12.
18. Psalms 45:14.
19. See *Shevuoth* 30a; *Leviticus Rabbah* 20:11; *Numbers Rabbah* 1:3; *Tanhuma Bamidbar* 3; *Tanhuma Yayishlach* 6.
20. *Tanhuma Bamidbar* 3; *Numbers Rabbah* 1:3.
21. Numbers 1:1.
22. Micah 6:8.
23. Psalms 45:14.
24. This refers to the eight golden garments worn by the high priest.
25. This is based on a dual interpretation of the above verse in Psalms. The first one translates the words *כְּבוֹשֶׁת הַזָּהב כְּמוֹשֶׁת* as "more so than he . . ."; the second interprets as saying, "her garments will be the priestly golden garments."
26. And hence plays Moses' role by emphasizing private religious experience.
27. *Numbers Rabbah* 1:3.
28. Genesis 3:20.
29. Genesis 2:24.
30. The *Magid Mishnah* at the end of *Hilchoth Shechainim* explaining why the *mitzvah* of *kedoshim tihiyu* and *ve'asia hayashar vebatov* were not given in detail by the Torah says that a *mitzvah* has absolute demands under all circumstances and the very essence of the above two *mitzvot* is that they must be made flexible to fit a whole variety of human circumstances.
31. *Mekhilat* to Exodus 20:1.
32. See *Berakhoth* 20b. In most texts.
33. Maimonides: *Issurei Biah* 21:17.
34. The Talmud in *Eruvin* 96a records that the sages did not protest when Michal donned *T'fillin*. Tosafot quotes the *Pesikta* that they did protest. Tosafot does not decide between the two sources. The Vilna Gaon points out in *Beur HaGra* to *Orach Hayim* 38:3 that the disagreement is not between the Talmud and the *Pesikta*, but rather between the separate sages. The Talmud quotes the sage who is of the opinion that they did not protest for a

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side reason, but did not decide in favor of that sage. Hence, he says, R. Yosef Karo in *Bait Yosef* and Ramah could decide in favor of the opinion that the sages disapproved. But it is impossible to say that Tosafot approved.

35. *Minhag* itself is an integral part of Jewish law and has the power to forbid and compel.

36. The topic of variant forms of worship is discussed in my forthcoming book on Judaism and feminism.

37. Maimonides: *Hilchoth Megillah* 2:17.

38. Psalms 51:15.

39. *Baba Bathra* 9a.

40. *Aruch HaShulchan* to *Yoreh Deah* 246.

41. *Berakhoth* 17b.

42. *Baba Mezi'ah* 115a.

43. *Kidushin* 29a.

44. Maimonides exempts her from counting the *Omer*. Nachmanides obligates her in this *mitzvah*.

45. David M. Feldman, *Woman's Role and Jewish Law*, *Conservative Judaism*, vol. 26, no. 4, Summer 1972, pp. 35-36.

46. End of first chapter of *Megillah*.

47. Maimonides; *Hilchoth Berakhoth* 5:1.

48. Moshe Meiselman, "Jewish Law Expresses Jewish Faith," *Sh'ma* 4/70, March 22, 1974.

49. *Berakhoth* 16b.

50. *Shabbath* 31a.

51. Numbers 1:51.

52. Rabbi Berman says this on page 23 of his article, lines 25-28.

53. I would like to express my thanks to Rabbi Colman Ginsparg for the many hours he has given me, clarifying the legal background of divorce settlements and antenuptial agreements.

54. See *TRADITION*, vol. 13, no. 2, Fall, 1972, p. 132.