

Saul Berman and Shulamith Magnus

## ORTHODOXY RESPONDS TO FEMINIST FERMENT

*Rabbi Saul Berman, a scholar on Jewish law, has been widely recognized as a "progressive" in Orthodox circles on matters of special concern to Jewish women. In 1973 he published an article in Tradition that examined complaints voiced by Orthodox women and feminists, as well as prospects for accommodating those complaints within the framework of Halachic Judaism. Shulamith Magnus, cofounder of a traditional women's minyan in Washington Heights, explores with Rabbi Berman the issues initially raised in the Tradition article and changes that have occurred since then.*

### Three Areas of Discontent

Q: In the fall of 1973, your article on the status of women and Halachic Judaism appeared in *Tradition* magazine. At that time you isolated three areas of discontent that many Jewish women were raising: (1) the lack of opportunities for religious and ritual expression; (2) disabilities which women suffer in Jewish civil law, particularly marriage and divorce law; and (3) dissatisfaction with being relegated to a service role, in which women enable men to learn Torah and function communally, but in which women are denied the opportunity to do so themselves. There has been considerable ferment and development since 1973, so I was wondering how you would analyze the situation today and whether you would isolate the same three areas in the same ways that you did then. What changes would you say have occurred in the last seven years in the Orthodox community?

A: Well, I would still certainly divide the areas of discontent amongst those three major categories and, to a certain extent, I think there has been substantial movement in each area. Still not sufficient movement, but movement enough to indicate that the Orthodox rabbinate and the Orthodox community have begun to take this issue much more seriously and have begun to adjust to a new reality. Perhaps we could in an introductory fashion look at each of the areas. Let me take them in sequence. First on the issue of lack of opportunity for positive religious expression.

There are two levels on which I see the religious community as having begun to adapt to a new reality. One is in its general attitudinal framework. I see that the community no longer views with either distrust or disdain groups of women gathering for Tefilla [prayer], nor the individual woman wearing a Tallit [prayer shawl] at a service in Shul [synagogue]. I think that previously the community just did not understand what all this was about and why it was happening. There is now a much greater degree of understanding. While people aren't necessarily happy with the directions that these events are moving in, they're nevertheless cognizant of the reasons for such movement. They're aware that such movement is not only inevitable, but ultimately desirable as well.

On a particular level, I think adaptation is indicated by a number of developments. First, there has been significant growth of women's Minyanim [prayer quorums] gathering together on a regular basis to share the experience of Tefilla. Either unofficial groups of women have begun to do this, or others have done it under the aegis of synagogues. In many major communities all across the U.S., there are such groups gathering, and they no longer excite the kind of opposition they did five or six years ago when such groups first began to gather.

I don't think in the future we will see men's Minyanim and women's Minyanim. Personally, I see women's Minyanim as a stage in the process which will ultimately involve a greater degree of participation and involvement by women in the service. That will mean significant adjustments in what we see today as congregational and liturgical life, but I think that such adjustments can take place fully within the structure of Halacha [Jewish law].

Q: What specifically can you envisage women doing in a Halachically mixed Minyan?

A: I could see, for example, the development of a supplement to the readings. We currently read from the Torah and the Prophets weekly. We do not, at this point, read from Ketuvim [Writings of third section of the Bible after the Torah and Prophets]. I could very well see the development of a liturgy of Ketuvim correlated, as are the readings from the Prophets, with either the major theme of the Parsha [weekly Torah reading] or with the special character of a particular day, with those selections from Ketuvim to be done by women.

Q: Why would that be acceptable and why would it not be acceptable for women to participate in the reading of the Torah and the Haftorah [Prophets' portion]?

A: Well, the Halachic problems involved in having women read from the Torah, while not necessarily insurmountable, would undoubtedly be substantially divisive, and so I wouldn't see anything of that sort happening, at least not in the foreseeable future. The Halachic problems involved in having an independent set of readings done by women are essentially minimal. The only serious Halachic objection anyone could raise would be a problem of Kol Isha [the traditional prohibition against a woman singing]. Given the structure of most of our synagogues today, that is either a problem which the community has decided is not a serious one, or is a problem which the community has managed to Halachically overcome. The reality is that, in most Orthodox synagogues today, women's voices can be heard during the course of Tefilla, including their voices being heard at various points of singing. So the community has practically—if it has not yet formulated it as such—overcome the problem of Kol Isha. Therefore I don't see any other significant Halachic problem in the institution of formal readings from Ketuvim. The introduction of such a new practice would not, so to speak, threaten the existing domains.

There are a variety of other things that could happen, that could eventually even allow women to participate in the pacing of the service, which is

fundamentally the role of the Cantor today, from the Ezrat Nashim [women's section in the synagogue]. That too, however, is something which would, from what I see of the community, come somewhat later. Or to put that differently, I see a gradual process which I think will eventually lead to a significantly different pattern of involvement of women in liturgical practice. I don't think it's going to happen overnight, and I think were it to be attempted as a sudden change it would only set back that kind of advancement.

I see the acceptability of women's Minyanim as a stage in that direction. By the same token, there are things that have happened which at first glance don't seem to be necessarily even related to this issue, but which are, in fact, significant. For example, in many communities women themselves recite Kaddish upon the death of a relative for whom Kaddish should be recited. I remember, not that long ago, when no woman would even think of saying Kaddish. It would generally be suggested that she hire someone to say it for her. Over the past five years or so women have begun increasingly to say Kaddish, and their recitation of the prayer is responded to by the community. Not only when there are men saying Kaddish, but even when the woman is the only one saying Kaddish, the community responds to her Hazmana [literally: invitation, recitation of a prayer calling for a congregational response]. This has a tremendous amount of significance, just in terms of the woman mourner and her ability to give expression to her mourning within the standard context of such expression during Tefilla. More significantly, the community is gradually becoming accustomed to the idea that the woman is her own person in relation to the liturgy. Saying Kaddish is not something she has to farm out; she has the right of equal direct address to God as does any man. Her recitation of the Davar ShebiKidushah [pertaining to prayers requiring a Minyan] commands as much response from men as does the invitation issued by a man. Now that's something that's happened very quietly. I don't know of any communication among rabbis which has encouraged this particular pattern, and yet it has happened, and I think in a very significant way.

A further development I see which again is not at first blush significant, but ultimately is very significant, is the spread of Eruvim [boundaries constructed around a community whose presence makes carrying on the Sabbath Halachically permissible]. The very fact that communities are making it possible for women with small children to come to Shul, that it's not only the experience of Tefilla, but really the whole experience of Shabbat which is being addressed, has made the community much more aware of the independent religious needs of women than it had been heretofore. Precisely because the Eruv is established, synagogues are having to establish babysitting arrangements at Shuls so that children brought to Shul under those circumstances can be cared for.

That accommodation is itself generating some ancillary consequences. For example, today more than ever before, men and women divide child care on Shabbat in communities where there are no Eruvim to assure that both are able to go to Shul. Increasing numbers of people will split their time so that one may

go to an early morning Minyan and the other to a Minyan at a regular time.

### Marriage and Divorce

In relation to the second area, the disabilities with regard to marriage and divorce, there has still been not much more movement toward a solution. On the level of consciousness of the problem, and of initial steps toward solution, I think there has been tremendous effort. At this point, for example, the Rabbinical Council of America has had a commission working on the problem of Agunot [literally: chained women, or wives who cannot obtain a divorce] of reluctant husbands for almost a year now. They stand together with the Bet Din [rabbinical court] of the Rabbinical Council on what seems to be the verge of one approach to a solution to the problem.

Q: Are you at liberty to disclose what that solution might be?

A: Well, it will be some form of prenuptial agreement.

Q: This solution, if it's reached, would pertain to marriages being contracted from that time onward. What about Jews who are already married and have already become potential Agunot?

A: Well, within some of the designs that are currently under deliberation, as I understand it, both within the Rabbinical Council of America and within Agudas Yisrael [a major traditional Orthodox Jewish body], there are possibilities of making such adjustments even for marriages already in progress. Now, whether the design will operate purely within Halacha or will significantly involve the use of civil authorities is one of the issues still at stake. The way things are moving at this point, however, I would foresee a relatively rapid solution to the problem, perhaps six months to a year.

### Women's Service Roles

The third area is the question of women's relegation to service roles. There, I think, the realities of American society are simply catching up with Jewish family life. Increasing numbers of women, long married, are going into the work force. An increased percentage of women, currently in their college years, expect that they will devote themselves in part to a career. The notion that a woman's prime, her time commitment, and lifelong sustained devotion will be exclusively to her husband and children is being overcome by the realities of American life. And the religious community is changing in that respect very rapidly. When the vast majority of observant women identify themselves with a career, the ideology of the community will shift to validate such identification to a much greater extent than it now does.

Q: What would you recommend to concerned women or men within the Orthodox community who would like to see changes come about?

A: I would say, as I have said before, that people ought to battle as hard as they can for the implementation of change in the various areas as rapidly as such change is feasible, but with an awareness that those changes may not come

as rapidly as people might think they ought to. People have to recognize that these concerns are not the only ones on the agenda of the religious community. They have to balance their concern with these issues with their concerns for the general viability and character of the religious community in total.

### The Marriage Ceremony and the Get

Q: One of the issues that women raise in relation to marriage, aside from the problem of Agunah, is the total passivity of the woman in the Jewish marriage ceremony. Is there anything that could change in the ceremony so that a woman might participate in the act of her own marriage?

A: Yes, there is a great deal that *could* change. Indeed, at certain periods of time there may well have been more active participation by women in the marriage ceremony. The Ketubah [marriage contract] itself, as we have it today, records extensive discussion by the husband in the course of marriage. It has the witnesses affirm that they have heard the groom say all sorts of things which in our marriage ceremony today are not said. They appear *in* the text of the Ketubah but are never actually spoken. Similarly, the Ketubah indicates the wife's acceptance of her husband's offer of marriage. The Ketubah does not indicate *how* that acceptance is manifested, though in our current practice it is manifested only through her physical acceptance of the ring. There is certainly no need for that to be the only way in which she manifests acceptance. Nothing prevents statements on the part of the bride, equivalent to those made by the husband in former times, through which she would more actively manifest her acceptance of the offer of marriage.

Q: But it would still be her reaction to his initiative, rather than her partaking equally in marrying him.

A: Yes. The contractual form of the marriage in Jewish law requires both an offer and an acceptance. Conceptually, neither one of those is more or less active than the other, since full consciousness, awareness, and consent are necessary on both sides. It's no different from any other contract in which the standard form calls for one party to be identified as party of the first part and the other to be identified as party of the second part. There is no implication of second-classedness, so to speak, in the identification of one of those parties as party of the second part. If you were to describe that as passivity, all right, I'll accept the terminology of active and passive, but I think that's really more a matter of emphasis than of substance. The fact that, in technical legal terms, the man makes the offer and the wife accepts it is not of any particular substantive significance for the character of either the ceremony or the marriage.

Q: But doesn't the Ba'al [husband; literally: master, owner] have certain prerogatives within the marriage that a woman doesn't have, particularly in property and inheritance?

A: No, I don't think that's the case. If anything, in the Jewish law of marriage, the wife has the upper hand in almost all matters. Indeed, the Ketubah itself or, for that matter, the Torah itself, only spells out the obligations of a

husband in marriage, not the obligations of a wife. In the Talmud, virtually all the obligations in marriage are conceived of as fundamentally mutual. Did you have something specific in mind?

Q: Well, I would have to bone up on property law, but isn't the fact that the man contracts the marriage with the woman the heart of the problem of Agunah? He's the only one who can dissolve a marriage he had made.

A: No, that's not the heart of the problem of Agunah. Indeed, the Agunah problem is a mutual problem. Since the time of Takkanat [the ordinance of] Rabbenu Gershom, which dates back a thousand years or more, a woman cannot be compelled to accept a Get [bill of divorce]. The Agunah situation can cut both ways.

Q: But there is an out for a man who wants to divorce a wife who refuses to receive the Get. [Interviewer's Note: One hundred rabbis may override Rabbi Gershom's prohibition against polygamy to enable a man whose wife refuses a Get to marry a second wife without divorcing the first. There is no analogous loophole for the Agunah.]

A: Not necessarily. There may be an out, depending on the circumstances, but not always.

Q: In effect, however, are there many male "Agunim"? Is that a problem?

A: Oh, it most certainly is. At this point, for example, the Bet Din and the Rabbinical Council of America see close to the same number of situations in which men cannot deliver a Get as those in which women cannot obtain them. One of the worst aspects of this problem is that it's at least twice as great as people realize. It affects both women *and* men. Unfortunately, the consequences of not obtaining a Get are different for men and women.

Q: What's the difference?

A: Well, if a woman remarries without a Get, then the children born of the second marriage have the legal status of Mamzerim [those born out of Jewishly sanctified wedlock]. For the man who remarries without a Get, his children are *not* Mamzerim. He stands in violation of a prohibition against taking a second wife, but that doesn't affect the status of the children. These differences in consequences are not a result of a fundamental inequality in the relationship between husband and wife within the context of the marriage. Certainly in terms of economic and service issues, the Halacha has struggled very hard and, I think, succeeded in achieving substantial equality in the marriage relationship.

Q: Is there a notion of a "rebellious husband" analogous to that of a "rebellious wife"?

A: There is within the context of the circumstances under which a Bet Din can compel a husband to accept a divorce from his wife, or to issue a divorce to his wife. Within an integral community governed by Jewish law, the problem of a husband refusing to issue a Get to his wife is virtually nonexistent, or it *should* be virtually nonexistent, because a variety of mechanisms exist in which a Bet Din can *compel* a husband to issue a Get. Indeed, it is the wife who has the upper hand. A Bet Din cannot compel a wife to accept a Get; all it can do is

authorize the husband to remarry, whereas a court *can* compel a husband to issue a Get. But, unfortunately, ours is not an autonomous community governed by Jewish law. Because of the absence of judicial autonomy, this process of compulsion does not function. This leads to a problem of a husband being able with impunity to refuse to issue a Get.

Q: Just to clarify, you're saying that the fact that it is a man in Halacha who contracts the marriage with the woman, who performs the act of Kinyan [purchase, acquisition] which establishes the marriage . . .

A: No, the man does not perform the act of Kinyan. In the acquisition of *property*, one person performs an act in relation to an object. In marriage, there's a contract between two contracting parties: one of those parties makes the offer, the other accepts the offer. But that does not in any way indicate any superiority.

Q: Do you see, as a possibility, Halachically acceptable forms of a woman participating verbally in the marriage ceremony, let's say, under the Hupah [marriage canopy]?

A: Yes, certainly. But that doesn't mean, of course, that anything goes under the Hupah. There *are* still legal restrictions.

Q: Could a woman say, "Harey atah mikudash" ["You are hereby sanctified," words traditionally spoken by the groom to the bride]?

A: She could. The specific problem that's created by double rings, though, is a conceptual one. The ring is currently designed to be a consideration for the contract. It is a manifestation, through it being offered and accepted, of the commitment of both parties to the contract of marriage. Where there is exchange of rings it could simply lead to the conclusion that there has not been an acceptance of the offer, but simply an exchange. That is, "you offered me one thing, I offered you something else, we accept the offering." That would undermine the degree of clarity necessary in the inception of marriage. However, even without that kind of exchange, the breadth of flexibility in terms of what language the bride might use under the Hupah is quite extensive.

### Exemption and Its Consequences

Q: I want to turn for a minute to one of the points you made in the article, that nowhere in Jewish law is a specific role *mandated* for women with absolute clarity. Rather, a certain role, the domestic one, seems to be preferred for women. The exemption of women not so much from positive time-bound religious obligations, as from obligations which require *communal presence*, is enacted in order to enable the woman to fulfill a domestic role. Since for most of her life a modern woman is not overwhelmed by domestic responsibility—certainly before she is married she is not, and after her children leave the home she is not—I was wondering why the status of not being obligated couldn't itself be a time-bound or a voluntary one. It could be an option which a woman who finds herself with heavy domestic responsibilities could opt for and a woman without those responsibilities could opt against. If the woman opted *not*

to be exempted from those Mitzvot, could she not then have the status which Halacha accords to people, Jews, who are obligated—so that she may be counted in a Minyan and at the Mezumin [quorum for saying a part of grace after meals]? The precedent I have in mind specifically is that of the Onen. The Onen is someone who has just lost an immediate member of the family. Like women, he is relieved of the obligation of public prayer and other positive observances like Motzi [blessing over bread], Birkat Hamazon [grace after meals], and Sukkah [requirement to eat in the booth during Sukkot], out of consideration of his circumstances. After the burial, when the circumstances change, the Halachic status of the Onen changes. Since there are distinct and serious disabilities which ensue to women as a result of nonobligation, couldn't they be permitted to choose to be obligated to communal Mitzvot when family obligations are not pressing?

A: Well, if your question is, theoretically, could a system be designed which would allow for that kind of variability, my answer would have to be, "Probably yes." If on the other hand your question is whether the Halachic structure as we know it can in the foreseeable future allow for that, my answer would have to be, "No." The reason I say that is because of a fundamental distinction I attempted to make in the article, between legal systems which define the obligations of persons on the basis of contract, as opposed to legal systems which define the obligations of persons by virtue of status. For whatever reasons, the Torah functions with the latter; it defines the functions of persons in most areas by virtue of their *status* rather than by virtue of their contracting to have or not to have certain obligations. Why the Torah does that is the subject of a great deal of speculation. You might argue that it does so in order to achieve certainty of obligation and objectivity of obligation in order to eliminate the massive gray areas that would invariably arise were religious obligations, *per se*, to be premised on a contract arrangement.

Certainly, one could easily foresee the massive difficulties that could arise were the obligation of, let's say Yeshiva BaSukkah [the Mitzvah of sitting in the Sukkah], to be contractually oriented rather than status oriented. What then of the man who, as a widower, finds himself responsible for the care of children? Would he then be relieved of the obligations? What then of the woman whose obligations are not for her children, but who is responsible for the care of two elderly parents? What then of the obligation of a man whose job circumstances are such that he is just overwhelmed by the amount of work he has to do? In other words, the problems I would see as inherent in contractual arrangement relative to religious obligation are so massive as to undermine the possibility of operating a stable society. Now while the status alternative has certain disadvantages, I think the advantage of stability, of certainty, weighs very strongly in the balance that Jewish law makes.

Given the particular status orientation of Jewish law, it seems to me that the design you described is not completely feasible. It is partly feasible, in the sense that there are areas in which women may voluntarily assume certain obligations, and their voluntary assumption of those obligations may be influ-

ential in terms of communal expectation and, as a result, influence communal acceptance of their involvement. Whether those consequences would also open doors to the correlative rights, I'm simply not sure.

### Domestic and Religious Responsibilities

Q: On the question of the preferred role of women, the domestic role, and their exemption from certain Mitzvot of a public communal nature, one might agree when you say, as you did in the article: "The underlying motive of exemption is not to unjustly deprive women of the opportunity to achieve religious fulfillment." However, aren't the lack of means of religious expression, the civil disabilities which women suffer, *and* the relegation of women to a service role, the direct consequences of woman's exemption in order that she might fulfill the preferred domestic role? Aren't the three problem areas, which you yourself defined, the direct consequences of the exemption of women from these Mitzvot?

A: No, at least insofar as they are not the necessary consequences. As to whether in fact they *are* the consequences, my own feeling is that the social history of Jewish society has had infinitely more impact upon these three problem areas than have virtually any particular legal provisions. We are now in an era in which the position of women is totally novel. It is an era which simply has *not* been known before to Jewish society. The position of women in the cultures within which Jewish society existed has had a much greater impact on these problems than has any particular law, even those laws which exempt women from specific Mitzvot. I say that because, as I see it, there is no necessary correlation between exemption from certain Mitzvot and the problems which we've described. Exemptions from Mitzvot do not create problems of Agunah. Exemptions from Mitzvot do not create the problems of lack of opportunity for religious expression. Indeed, the opportunities for religious expression, as Poskim [recognized rabbinic authorities] have acknowledged, I think, existed on a voluntary basis, and *could have* become more firmly established within the lives of Jewish women had the *social* reality been different. The preference for the domestic role did feed into the sense that women's function was to serve others. Their exemption from certain Mitzvot merely helped to relegate them to that service role.

Q: I would think specifically of the nonobligation of women to Sukkah and Lulav. What *is* the celebration of Sukkot, if not the obligations of Sukkah, Lulav, and Etrog? What I see in traditional society is that the women cook a lot, serve the men who sit in the Sukkah, Bench [bless] Lulav if they choose, and go to Shul if they're not too terribly tired from their exertions in the home. But what is the *religious* content of this holiday, if women are not obligated to those Mitzvot which are central to the celebration of this holiday? And doesn't *that* then create the same problem which you yourself delineated, the lack of religious expression?

A: Let me ask you a question on two levels. First of all, I think you're

quite right in asking: What is Sukkot without Sukkah, Lulav, and Etrog? By the same token, what is Rosh Hashanah without T'kiat Hashofar [sounding of the ram's horn]?

There is no question in my mind that it is precisely those perceptions which have created the reality which I think is at some variance from what you've just described. First, I don't know of any women who do not take special measures to assure that they are present for the sounding of the Shofar on Rosh Hashanah. I do not know of women within the religious community who do not sit in the Sukkah and who do not exert themselves to take Etrog and Lulav. My perception is that you're right in the sense that there is a perceived lack in the fullness of the religious experience of these holidays without the behavioral Mitzvot. As a consequence, Jewish women have made an attempt to experience these behaviors, even though they are not obligated to do so.

That does not mean that the experience of Sukkot ends up being the same for a woman as it is for a man. There is no doubt in my mind that a price is paid for the exemption from certain positive Mitzvot. There *are* religious consequences to the nonparticipation in such events, but that's precisely where my contention of the preference for the domestic role enters the scene.

My contention essentially is that the price paid through exemption is necessary for the achievement of some other social goal. I don't think the Rabbis debated lightly questions of whether women are obligated in certain Mitzvot or not. They debated those questions with full awareness of the significance of the outcome of their debates. They were quite aware that reaching a conclusion that women are *not* obligated in the certain Mitzvah was not simply some theoretical discussion, but that it would affect the character of the religious experience of women, and that they would not reach a conclusion of exemption unless they felt that that conclusion was necessary as a matter of legal process and of social goals. In effect, the desired social goal, to encourage the election of the domestic role, was one which had a price.

Let me give an analogy, the situation you mentioned before, the Onen. The Onen is not randomly exempt from a Mitzvah; he is exempt because it is assumed that he ought to be engaged at that point in the preparations for the burial of his relative. Now, what the law is saying in that situation is: yes, it is true you should be obligated to do Mitzvot, but there is, at this point in time, an overriding concern. That overriding concern may have deleterious consequences to your religious identity for this period of time. However, the social concern is simply more important and, in effect, calls on the individual to identify with that social concern and respond to it. I think, in a similar fashion, the law identifies the preference for a domestic role as a vital social concern; still not one which is mandated, but one which must be preserved.

Q: But the huge difference between the Onen and the woman, of course, is that the Onen's status lasts for a few days and the woman's status lasts from birth to death.

A: That's true.

Q: So for her entire lifetime, she has to struggle if she wants to have reli-

gious expression. It's not something for which she gets support from the system.

A: You can't look at the Mitzvot from which women are exempt in isolation. In other words, if it were the case that women, in order to achieve this particular social goal, were exempt from all Mitzvot, that would be one thing. But we're not talking about a situation of exemption from all Mitzvot. We're talking about an exemption from some fourteen Mitzvot out of a total of 613. I don't see that as a total denial of all religious expression. I'm not belittling the areas of exemption, they are significant areas of exemption; but I think they have to be seen within the context of a total religious life. When all is said and done, there *is* Shabbat, and there *is* Kashrut, and there *is* Matzah. There are 599 Mitzvot which remain *mandatory* and which still shape the religious character of the Jewish woman. I don't think it's appropriate to overstate the case, as if those exemptions had, themselves, deprived her of *any* vehicle of religious expression.

Q: It's not only the individual exemptions though, it's what nonobligation does to her status in Jewish law. It's the consequences of nonobligation, as well as the *individual* exemptions.

A: But there too I don't see those consequences really as significant as you do. The only area of significant consequence is the area of liturgical practice and I, again, don't think that the area of liturgical practice should be *so* overwhelmingly emphasized as to belittle the vast areas of her religious expression that continue to exist. I'm not saying that the loss of correlative rights is insignificant. It *is* significant, but it has to be seen in context. Opportunities *do* exist for religious expression. One should not simply isolate a particular element of practice which has taken on much greater significance than it ever had before, but is still only a part of the processes of religious life.

### Egalitarian Judaism

Q: I'd like to follow up on your point that Jewish law does not mandate a domestic role for women, but that it prefers and encourages one because of the preeminent importance of the family for Jewish survival. I don't think anyone would contest the family's importance for Jewish survival, but the assumption that it is primarily the *woman's* role to raise the children is what modern social scientists would call a "patriarchal" assumption. A "matriarchal" society, for example, might also elevate children and family to preeminence, but assign the domestic role to men. Jewish society is and always has been patriarchal in nature, but surely the assumptions of patriarchalism are not, in and of themselves, religious values. Or are they? The question is: Can you take patriarchalism out of Judaism and still have Judaism?

A: I can certainly say that certain elements of patriarchal assumptions are not necessary elements of Jewish practice. Indeed, it would be exceptionally worthwhile for the religious community to provide even greater emphasis on the need for fathers to play a much more significant role in raising their children and in general household responsibilities than has been the general

practice. It would be an exceedingly healthy development if Jewish men would realize that it may be more important for them to spend more time with their wives and children instead of earning an extra few thousand dollars a year working overtime.

Q: How about in preference to learning? Or to Minyan?

A: They come within the mix as well, in preference to learning and in preference to Minyan. When all is said and done, Minyan is at best an obligation of questionable source; that is, the obligation of praying in a Minyan and learning Torah in the sense that the amount of time one spends in learning Torah has always to be balanced against the totality of one's obligations. That totality of obligations has not sufficiently as yet taken into account the needs of the relationship between husband and wife, let alone the needs of the relationship between a father and his children. On the overall pattern, whether Jewish law could accommodate itself to matriarchal assumptions . . .

Q: I'm not suggesting that would be a preferable alternative to patriarchal assumptions; I'm just pointing out that, while the importance of the family to survival is what you could call a "neutral value," the assignment of that role to women is a patriarchal value.

A: And what I'm pointing out is that while the assignments within that role could be more equally shared, and indeed ought to be more equally shared, within the current structure of Jewish law, that would not, for a very long period of time, affect the distribution of religious obligations. Whether eventually it would, would depend not only on an isolated Jewish community, but also on the patterns which developed within society as a whole.

#### **The Future: Female Poskim?**

Q: Can you envisage women ever participating directly in the Halachic process and as Talmidot Hachamot [major Talmudic scholars], rabbis, Poskim?

A: There is no doubt in my mind that in the relatively near future women *will* be active participants in the process of shaping Halacha. Increasing numbers of women are developing their competencies with specializations in various areas of Halacha. As they begin to write publicly, they will begin to influence the Halacha. I would foresee, certainly within the next decade, the existence of women initially with specializations in Halacha of particular concern to women, areas such as the Laws of Niddah [time of monthly separation] where women will become the primary Poskim. It will take somewhat longer for that to spread generally, but I certainly foresee a time when women will be active participants in the process of determining Halacha.

Q: Would their recognition as Poskim be effective—would it ever be accompanied by Smicha, rabbinic ordination?

A: Smicha in and of itself has no legal consequence. There is no authority in Jewish law which is vested in the individual by virtue of Smicha.

Q: But there's no such thing as a Posek without Smicha today.

A: Even today there are many Poskim who never received Smicha from anyone.

Q: But they're men; they don't have the hurdle of overcoming the . . .

A: No, I don't think that Smicha will be a significant issue. I think the significant issue will be twofold: (1) the significance of women's contribution to the literature of Halacha; and (2) the degree to which other people accept their Halachic decisions.

Q: And you don't feel that a woman would be at a disadvantage in having her Halachic opinions accorded recognition and acceptance?

A: Of course she could be at a disadvantage. There's no question that the struggle will be difficult.

Q: That's why I'm pushing about Smicha.

A: But Smicha would be irrelevant to it. Indeed, if anything, her receipt of Smicha would make it, in the contemporary situation at least, even more difficult for her, rather than easier.

Q: Why is that?

A: Simply because she would become, by virtue of her Smicha, an object of social opprobrium within the Orthodox community today. Simply as a matter of issuing Piskei Halachic [rabbinic decisions], I don't see it as a problem. You see, even as purely as a technical Halachic matter, for a woman to function as a Dayan [rabbinic judge] would be Halachically problematic. On the other hand, for her to function as a Posek of Halacha would not be nearly as problematic, simply because the process of P'sak Halacha is fundamentally a process of Birur Halacha, of the exposition and clarification of existing Halacha.

Q: Where would a woman get the extensive legal training necessary to become expert in specific areas of Jewish law?

A: I would assume their training would be largely through private tutoring, to some extent through formal training in Talmud and Halachic literature in graduate schools. Not in Yeshivot.

Q: Thank you, Rabbi Berman.