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# Women and Judaism

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At the risk of frustrating reader and writer alike, I should like to explore the subject at hand exclusively through questions, the first of which is: Why questions? One answer is, quite simply, that the questions present themselves, almost endlessly. At every turn, paradoxes and inner contradictions virtually leap off the hallowed page. These very contradictions highlight a central fact: no single definition of the role or status of women in Judaism can be extrapolated from the sources. Instead we find both equality and hierarchy, respect and condescension, deference and disability, compassion and callousness. Indeed, examining the tradition through the veil of new values for women is a far more complex enterprise than we had imagined at the outset.

A second answer to "Why questions?" is that questions have a remarkable quality, a flexible resonance that allows them to be heard in many different ways. A question for one becomes an answer for another, rhetoric for a third, dilemma for a fourth. Thus, each individual reader can find the proper resting spot for the questions, as befits a work of essays on theology.

Let us begin at the beginning, with creation of humankind. The Book of

Genesis offers two different accounts: both male and female created in the image of God, symbolizing equality (ch. 1); and male created first, with female fashioned from his rib, suggesting hierarchy (ch. 2).

How else do the accounts differ? The first pericope is divine oriented, replete with overtones of sacredness, perfection, majesty, and mystery. This is life as it exists in its ideal form. The second story is earthy, physical: Human life is born of dust and ashes and returns thereto. It is a poignant tale, recording human vulnerability and existential loneliness. Yet a theme of romance dominates, with the phrase "bone of my bones, flesh of my flesh" (Gen. 2:23) heightening the sense of human sexuality. Nevertheless, the second creation account is also derivative: man loves and needs woman, but woman is derived from man, and he has the power of naming her.

What is the relationship between the two stories? Is the first a description of male and female as they exist (as equals) in the eyes of God, while the second is one of male and female in their (unequal) human relationships? If so, why is the human-relational version framed in a creation story? If, on the other hand, this too is primarily the tale of God's creation, does it imply that a difference in status between male and female was divinely conferred—that it is God's will that male and female be ranked, with the significant sex alone rendering vows null (Num. 30), constructing and severing marriages (Gen. 24:51, Deut. 24:1), and sufficing as the whole count of the people Israel (Num. 1)? Did God create male and female with the intention that they relate to each other within the confines of a hierarchy? Does being ranked in relation to each other mean also to be ranked in the eyes of God? In other words, is one sex preferred, more special, more chosen by God?

Or should we instead understand the rib pericope, as some have, to be an indication of women's superiority: woman, created last, is highest on the phylogenetic scale; and unlike man, she is not dependent upon the full complement of *mitzvot* to keep her good and honorable.<sup>1</sup>

Or is the whole purpose of this creation story to serve as a backdrop to the single most romantic verse in the Bible: "Hence a man leaves his mother and father and clings to his wife, so that they become one flesh" (Gen. 2:24)? In this passage we find elements of privacy, intimacy, sexuality, procreation, and a long-standing commitment—essentials of a good marriage. How, then, shall we read this story?

In another relational pericope, in the Fall from the Garden of Eden, woman emerges as temptress and the source of evil. Never mind the snake. Never mind that Eve learned of the prohibition secondhand (she had not yet been created when God instructed Adam regarding the tree). The fact

is, Eve sinned, brought down Adam with her, and begs punishment for it. Her punishment is bound up with her function as wife and mother: "I will make most severe your pangs in childbearing; in pain shall you bear children. Yet your urge shall be for your husband, and he shall rule over you" (Gen. 3:16).

How does a contemporary woman relate to the verse "and he shall rule over you"? Is it intended as paradigm for all male-female relationships, or is it punishment for Adam and Eve alone? If a paradigm, was this the verse that resonated when Maimonides ruled that a woman who refused to wash her husband's feet could be chastised with a rod (MT Hil. Ishut 21:7-10), and that a woman could not leave home to visit her parents without securing her husband's permission?<sup>2</sup> If so, why did this same halakhist—and, indeed, the majority of scholars—ignore this clearcut message of male dominance when they legislated punishment for the grave offense of wife beating?<sup>3</sup> Can we read with our right eye the scriptural verse "and he shall rule over you" and with our left the talmudic statement that enjoins a man to consult with his wife in all matters (B1 BM 59a)?

Perhaps we should understand this verse not as paradigm but rather as a curse to be set aside as we strive toward perfection. And yet if we interpret God's words here, "and he shall rule over you," as nonparadigmatic, must we also similarly interpret the adjacent phrase, "yet your urge shall be for your husband"? Surely the acknowledgment in Jewish tradition of women's sexual passions was far more progressive than the attitude of most other religions. Judaism alone has a law of *onah*—the formal obligation of a husband to sexually satisfy his wife (Ex. 21:10).

Does the proximity of the two phrases in Genesis 3:16 imply that a man must recognize and satisfy his wife's sexual needs, yet simultaneously maintain the dominant edge? Is the first hint of sexual politics to be found in this verse of the Torah? Does later rabbinic legislation of the optimal sexual posture—the man on top—echo, even remotely, these original verses in Genesis (Sh. Ar. OH 240.5)?

What predisposed one rabbi to deduce from this verse a notion of female sexual modesty, to wit, "A man initiates with words, a woman with her heart . . . and this is a fine quality in women" (B1 Eruv. 100b), while another rabbi deduced from it female passion, that is, that a woman longs for her husband when he goes out on the road and therefore it is his obligation to remember this and satisfy her before he takes his leave of her (BT Yev. 62b)?

Or is the entire pericope not primarily about men and women but about

the power, omniscience, and compassion of God—a God who takes pity on these two poor souls, Adam and Eve, sews them a garment of leather, and dresses them as a great, loving, nurturing, caring God must do?

Another mystery: woman is blessed with the greatest of all blessings—to bear new life. Not surprisingly, the punishment of woman takes the form of a diminution of this great gift: menses, pregnancy, and childbirth will henceforth be attended by pain.

Given the fact of female biology, it seems highly incongruous that the rabbis interpreted the *mizvah* of *peru u-revu*—"Be fertile and increase, fill the earth and master it" (Gen. 1:28)—as applying to men only. Even though the talmudic discussion openly acknowledges that God was addressing Adam and Eve, the ruling remains that procreation is not a woman's *mizvah*. And why? Because the commandment applies to those whose nature it is to "master." Further confirmation lies in the spelling of the word *ktivshuha* ("and master it"): Though its reading is plural in form, its spelling is truncated, as if to signify the omission of women from this commandment (BT Yev. 65b).

But one must probe the sources more deeply to understand the law's intent. Elsewhere, we find these rationales: Since it is a woman's natural tendency to procreate, she needs no mandate; and inasmuch as pain and danger accompany childbirth, a woman cannot be commanded to do that which would bring harm to her person.<sup>4</sup> These are not merely rhetorical flourishes but are in fact the theological bases for female contraception and abortion.<sup>5</sup>

Nevertheless, *mizvah* is not only obligation, it is also reward. We count our actions and the passage of our lives in terms of *mizvot*. And a staple of Jewish philosophy is that the heavenly court counts as well. Surely a rabbinic concept such as *pikuah nefesh*—where lifesaving takes precedence over performance of a *mizvah*<sup>6</sup>—would adequately have covered those situations in which conception or birth would endanger a woman's life. In sum, then, while magnanimity and logic are apparent in these halakhic deliberations, they are not of adequate measure, for the question remains: Why were women not included in the *mizvah* of *peru u-revu*?

Jews are members of a covenantal community, as the word *brit* (covenant) implies: Circumcision (*brit mila*) is the ritual that celebrates the fact that this community stands in special relationship to God. A *brit* affirms that this newborn is the child not only of a particular biological family but also of all of the Jewish people: a child who enlarges the community by one.

Circumcision is one sign of the covenant, Shabbat another, Torah another. Women, of course, were obligated to observe the *mizvah* of Shab-

bat. Women experienced the revelation at Sinai; the Torah is theirs too. The question then becomes: Are women members of the covenantal community? If so, how did they achieve that special status—simply through birth, without attendant celebration, ritual, and fanfare? Is it higher to be automatically included than to require a ritual to enter the covenant? Or do we celebrate communally the addition of males to the covenant because males are inherently more precious, more valuable to the community? Or more vulnerable, as we experienced in the Holocaust?

Is a covenantal ceremony of circumcision suitable for males only because their reproductive organ is external to the body while female circumcision—still practiced in primitive cultures—would diminish sexual pleasure in women? If the emphasis is covenantal and not surgical, why has no covenantal ceremony for women developed over the course of four thousand years? And did the silent, unritualized accession of women to the covenant have a domino effect on other areas of women and community, on self-perception, and on the celebration of other rites of passage for women as Jews? Was women's passivity at the onset of Jewish maturity (*bat mizvah*) or their silence in the marriage ceremony (another covenantal relationship) merely a replay of their passive entry at birth into the covenantal community? Is there any connection between women's covenantal status and their loss of community healing in the experience of reciting *kaddish* (the mourner's prayer)?

Let us trace one instance of this domino effect upon the notion of community. The grace after meals (*birkat ha-mazon*) is convened by a quorum of three males. Why men only? Because embedded in the grace is the verse, "We thank You . . . for the covenant which you have signed in our flesh."<sup>7</sup> Is inclusion of that verse sufficient for excluding women from the quorum (community) that convenes the grace—women who have likely prepared and served the meal for which all now give thanks, yet who instantly become nonpersons because of the phrase "in our flesh"?

And yet it is also true that while males may be partners in the covenant, women are the pivotal figures in the earliest formation of the covenantal community. Isaac carries the blessing not because of circumcision but because he marries a woman of the covenantal family, while his brother Ishmael marries the daughters of Enar and Eshkol. Jacob takes the blessing not because he buys it from Esau but because he, too, marries two sisters who carry in their blood the covenantal line. Rabbinic law defined a Jew as one born to a Jewish mother. Is there some perfect symmetry here? Men perform the covenantal roles while women carry the covenantal genes? Or was matrilinear descent simply a function of the fact that maternity could

always be ascertained, while paternity could not? What, then, is the relationship of women to covenant—half in, half out?

With regard to the issue of property, scriptural and rabbinic law teach that a wife may not inherit her husband's property (BT BB 109b, 111b; BT BK 42b; BT Ket. 83b). Considering the emphasis placed on the family as a unit, this law seems anomalous. Could its function be to teach community responsibility and compassion for—and at the expense of—widows? Or did the law serve to ensure, as did the laws of Jubilee, an equitable distribution of land among the twelve tribes so that no one household, through bonds of marriage, could amass great landholdings while others became impoverished? If this latter function were served on native land in the days of the First and Second Commonwealth, why did the law persist into rabbinic times when there was no longer a tribal confederation to be equitably preserved? And how do we reconcile this law of noninheritance by wives with other legal structures by means of which wives most assuredly did inherit their husbands' property? For example, the *ketubah* (marriage contract) contained provisions for continued maintenance or for lump sum settlements for a surviving wife; whole parts of an estate could be bequeathed to a wife in the form of a gift, if not an inheritance.<sup>8</sup>

Daughters and property were a slightly different matter, thanks to the plea of Zelophehad's daughters. Zelophehad died, leaving five daughters and no sons. As the law required, his property reverted to his brother's family. The five daughters protested (the first feminist protest regarding property). So complex an issue was it that Moses saw fit to consult the Ultimate Arbiter. God ruled in favor of the daughters of Zelophehad: When there are no male heirs, females inherit (Num. 27).

The story is remarkable not so much in its outcome as in its telling. Why, one wonders, is the story told in the first place? Were every law in the Torah to be accompanied by historical development or anecdotal background, we would need fifty Books of Moses, not five. Is the story told with real-life characters—five vulnerable orphaned daughters—so as to make it more palatable to a patriarchal folk? Or is the Torah's purpose to show that justice and truth can reside in a female plea?

The Talmud gives more detail on matters of property. When a man died, his sons were to inherit his estate. However, from this estate the sons were required to maintain and support their sisters (BT BB 139b). Thus at the same moment that a man acquired capital on which to build his own small or large fortune, his sister became daughterlike to him. And yet how can we categorically describe this system as inequitable when the mishnah teaches us that if an estate was small, that is, insufficient to support both sons and

daughters, then the daughters were given the entire estate and the sons had to go begging (M. BB 9:1)?

In matters of torts and damages, Israelite women enjoyed great equity. In contrast to other civilizations, including our own, where the value of a person is more often based on earning power than on his or her essential being, Jewish law compensated men and women equally.

Although the cry of "chattel" has recently been raised by feminists regarding women in ancient Israel, the law tells a different story. A woman could not be sold into slavery, as could a man, to pay off her father's debts. If she was "sold," it was to become the master's wife or his son's wife, and she was treated accordingly. If the husband no longer desired her, she was to be set free, unencumbered by debt, and could not be passed on to another (Ex. 21:7–11). But then how do we account for a law such as this: If two men fight and a pregnant woman nearby is struck, resulting in miscarriage, the culprit pays the fine for the loss of the fetus to the father (Ex. 21:22)? Does this suggest that any of the wife's products—whether wrought through work or through pregnancy—are the property of her husband?<sup>9</sup> Or shall we view this law more benignly—that damage to a woman's person, and even to her fetus, may not go without some sort of retribution?

With regard to marriage, the Torah states that a man "takes" or "gives" a woman in marriage (Deut. 24:1–5). What do these terms mean? Not acquisition, the rabbis explained, but *kiddushin* (BT Kid. 2a ff.). A woman is sanctified, set aside, for this man only. The transfer of an item of value or a deed may look like a purchase, but it merely symbolizes her changed status to wifehood. Why was there no similar setting aside of a man solely for his wife? Because polygyny was permitted, but polyandry was not, an answer that begets another question to which we will shortly return: Why polygyny?

Rabbinic law states that a woman may not be married without her consent. The rabbis based this on the scriptural account of Rebecca, who was asked by her brother, Laban, if she wished to go with the servant of Abraham to be Isaac's wife (Gen. 24). One cannot help but wonder: Close readers of the text that the rabbis were, how could they have read the passage the way they did? Rebecca was asked if she wished to go only after the marital agreement had been negotiated and the bridal price transferred from Eliezer to Laban. This manner of marriage is confirmed in the story of Rachel and Leah, whose father determined who married whom, and when. What possessed the rabbis to misread the text? Was it to ensure women's autonomy in the choice of marital partner—for the sake of romantic love?

If tradition valued romance and love and not merely procreation, how

can we begin to understand polygyny? Did it have more to do with demographics and wars than with a differential value attached to men or women? Was it to ensure Jewish survival through more births? Or was it, in fact, a protection for women, so that no woman would remain single for life, no woman forever be deprived of having a child?

If the reproductive urge in women was more powerful a force than the humiliation of sharing a husband or the existential loneliness of remaining single and childless, how do we translate this into contemporary life, with a demographic imbalance of several hundred thousand more females than males? How do the options of divorce and serial marriage, or having children without the bonds of marriage, compare with that of polygyny, as we consider the new status of women? And yet if polygyny had any redeeming features at all for human relationships, why did it taper off in biblical times? Or, of greater sociohalakhic curiosity, why did Jewish law as it evolved in close contact with other religions continue to legitimate polygyny in Oriental and Islamic societies but forbid it in Christian ones, where even monogamous sexuality was barely countenanced?

A Jewish marriage is terminated by either death or the giving of a *get*, the writ of divorce. "And he shall write her a writ of divorce and give it to her in her hand" (Deut. 24:1). Until the *get* is tendered, a Jewish man and woman are considered married, regardless of whether they may have parted through formal or informal procedures, by accident or by design.<sup>10</sup> Rabbinic tradition formalized the *get* proceedings, the essence of which is the husband's declaration, "I release you and you are now free to become the wife of any other man."

Not some remote theoretical or historical issue, traditional Jewish divorce law is today a matter of immediate and pressing concern. The problem grows not so much out of the transfer of the divorce writ—which may even lend a needed point of psychological closure to divorce proceedings—but rather with its unilateral initiative: Only a husband has the power to serve the *get*. This can relegate the woman to the limbo status of *agunah* (anchored wife), anchored to a husband who is either unable (for reasons of disappearance, insanity, or illness) or unwilling (for reasons of spite or blackmail) to deliver the *get* and release his wife from the marriage.

It behooves us to ask whether the unilateral initiative was the essence of biblical law or whether the *get* was the essence, and whether who gives the *get* to whom was merely a matter of form. Further, why did rabbinic tradition interpret loosely the biblical phrases "he shall write," "he shall give," and "in her hand,"<sup>11</sup> yet remain unswerving in interpreting male initiative—and this despite the rabbis' great compassion for *agunot*?<sup>12</sup> If the

answer lies in the rationale that since man created the marriage bond he must also be the one to sever it (BT Kid. 9b), how can we resolve the problem of recalcitrant husbands without also disturbing the ancient and binding laws and customs of Jewish marriage?

And most painful of all, how are we to view those currently in positions of authority who can say, in the face of thousands of tragic *agunot* today, that their hands are tied? Are these religious authorities models of faithfulness and piety, or ineffectual and misguided leaders?

We move now to the even more difficult subject of women and rape. In all societies, since time immemorial, laws concerning rape have been insufficient. They convey a lack of understanding of the total traumatization of the victim, and consequently fail adequately to punish the perpetrator.

Biblical law distinguishes between the rapist of a married woman and the rapist of a virgin. The former is put to death; the latter pays a fine and is required to marry his victim—that is, if she is willing to have him (Deut. 22:23–29). Was this law a protection for a woman who, having lost her virginity, would no longer be desirable or marriageable? Did the laws have more to do with issues of property and spoiled merchandise, as payment of fines to the virgin's father would indicate? Does the meager punishment hint at complicity, that most heinous of accusations of the violated?

And yet what legal system can be compared to the rabbinic tradition, which explains and expounds the Torah: A woman's subjective judgment is accepted as the sole criterion of whether or not she was raped; concepts of indignity and psychological pain are introduced; suspicion and the taint of complicity are virtually eliminated (JT Sot. 4:4). And how can we not marvel at a system that forbade marital rape two thousand years before the concept was even debated in Western societies (BT Eruv. 100b)? Still, why is the rapist of a virgin punished by a monetary fine in Jewish law, and why is it paid to her father?

With regard to other legal matters, with very few exceptions, rabbinic law explicitly disqualifies women from giving testimony in a Jewish court of law (JT Sanh. 3:9). This ruling is based on the scriptural verse "A case can be valid only on the testimony of two witnesses [masc. pl.] or more" (Deut. 19:15). Setting aside for a moment the fact that elsewhere—in many other places—the masculine plural noun is interpreted generically and exclusively, we must still probe the question, Why is women's testimony disqualified?

Shall we understand it, as some do, that women were protected in the private sector and thus could not be summoned forth into the public courts, in much the same way that they could not be required to perform certain

public *mizvot*?<sup>13</sup> Does it mean anything at all that the disqualification of slaves as witnesses derives from the law concerning women as witnesses, and that other unsavory and unreliable types such as usurers and pigeon racers were also disqualified (BT BK 88a)? Or is the disqualification merely a technical one, the proof being that credible statements, in contrast to witnessed testimony, are sufficient in ritual matters and are accepted as equally valid and reliable from woman or man?<sup>14</sup>

Is it possible that women were disabled because they were thought to be given to imprecision?<sup>15</sup> Did the seemingly innocuous description elsewhere of women as lightminded leave its impact on rabbinic consciousness, only to be exercised when the question arose in the house of study as to who may or may not testify?<sup>16</sup> (BT Shab. 33b–Kid 80b). Or is it possible, as some scholars believe, that women at one time in our history were empowered to witness, but that this power receded in subsequent generations?<sup>17</sup> Or could the whole matter be reduced to very practical factors: that women were excluded from ownership of property, and therefore must necessarily be excluded from the judicial processes related to such matters?<sup>18</sup>

What does the law say today about women's evaluative powers? Do we have a record, anywhere, of women of previous generations feeling a sense of injustice? Can we use the precedent of Deborah, who served as a judge, to say a fortiori that if a woman could serve as a judge certainly she could act as a witness? But why did the rabbis who asked themselves this perplexing question answer it by saying that Deborah was not a judge but rather served to guide the people and instruct the judges in the law?<sup>19</sup> Was *judge* merely a term equivalent to *political leader*? Could a woman be a political leader and not make civil or religious judgments? What was the process whereby Deborah became a judge or leader in a patriarchal society?

Confronting the issue of women and ritual leads us down yet another path. Who would have imagined, some two thousand years ago, that issues of devotion in a particularist community would be raised in the twentieth century under the rubric of broad notions of equality for women? Yet facts that lay quietly for centuries now demand analysis. The study of Torah, communal prayer, the performance of time-bound positive commandments—women's exemption from obligation in these areas is difficult to fathom with our new awareness of women's potential.

The scriptural peg for releasing women from the study of Torah comes from the Torah's central affirmation of faith, the Shema "And you shall teach them [the words of the Torah] to your sons" (Deut. 11:19). Why did the rabbis exclude women from this commandment, when they so often understood *vanevha* as "children" and not only as "sons"? Was it because

Jewish society was so constructed in their time, or was it nuanced from Sinai to mean "sons" and not "daughters" (BT Kid. 29b)? And why did the opinion of Rabbi Eliezer condemning women's study of Torah prevail over the opposite view of his colleague, ben Azzai (M. Sot. 3:4)?

Were women truly perceived to be lightheaded when it came to sustained study of Torah and Talmud? Or was it that Talmud Torah, the study of Torah, was the route to leadership and authority, and therefore the interpretive keys were withheld from women? Is it less than just, honorable, and dignified to throw sacred study out of the realm of the holy and into the ring of politics? Or was the giant *mizvah* of Talmud Torah given to men as compensation for being deprived of the great blessing and sacred task of childbirth?

Rabbinic literature offers no reason for female exemption from time-bound positive commandments; thus, we can only conjecture. Does the exemption suggest that a woman's time is not her own, and that time spent in study or religious obligations would be time stolen from primary tasks as wife, mother, homemaker, and enabler?<sup>20</sup> Or was the exemption from formal structured communal prayer a halakhic response to women's choice of opting out of this formidable obligation in favor of a lesser, personal, private, individualized prayer mode?<sup>21</sup> Or is the domino effect operating here—were women, not being full-fledged members of the covenantal community, by extension denied equal access to the spiritual congregation? Or does this exemption have nothing at all to do with time, but rather with place—a man's place in the public sector of synagogue, courts, and house of study, and a woman's place in home and family?<sup>22</sup>

If, in fact, women's role is secondarily sacramental and primarily procreational and nurturant, why was this not openly celebrated in the tradition? In truth, the three *mizvot* associated with women—*niddah* (laws of family purity), *hallah* (baking Sabbath bread), and *nerot* (lighting candles)—represent the powerful role that women played in family, religion, and society: *Niddah* governs sexual relations and procreation; *hallah* suggests observance of *kashrut* (the dietary laws) in the home, and *nerot* is a symbol of the Sabbath and the holidays—three significant areas of a Jew's life entrusted to women's care and attention<sup>23</sup>—three areas as important as prayer and Talmud Torah, yet never acknowledged in the sacred sources for what they are and what they remain.

On the other hand, women of all the generations before ours were encouraged and enabled to fulfill themselves in these roles—and felt fulfilled by them as well. Perhaps the new questions for today are: How can we reverse the diminished value placed on woman as childbearer-nurturer?

How will we counterbalance social forces that incline women to deny or sublimate this biological orientation? Does not the tradition have much of value to teach us regarding distinctive roles of male and female?

The questions about women's role in traditional Judaism seem endless, but a sufficient number has been raised to allow us to draw certain conclusions. Nevertheless, we must still ask the most basic question of all: How can a faithful, loving daughter of the tradition raise any questions at all? And yet, how can she not?

We have been challenged by a new and prevailing set of values for women. We are impelled to address the questions and we must do this with truthfulness. I would have liked nothing better than to cite only the positive statements of the tradition, which, happily, outweigh the negative ones. Regarding the latter, I feel great temptation to cover, apologize, protect, defend, rationalize. But I cannot do so with integrity. Moreover, I have come to understand that a faithful daughter of the tradition can engage both a critical eye and a loving heart at one and the same moment. Raising questions is not tantamount to challenging the word of God. On the contrary, I have to believe that Torah and tradition are stronger than any human critique and that they will, in fact, emerge even stronger from any examination. Let us, then, draw several conclusions from all this questioning.

The tradition is exceedingly vast—a rich, thick vein to mine and then to mine again. "Delve into the Torah again and again, for everything can be found there" (M. Avot 5:22).

The tradition regarding women runs somewhat like a crazy quilt. It is magnanimous, fair, and biased—sometimes all three on the same sacred page.

The status and role of women in Jewish tradition are not static. Ethical, social, and cultural considerations have all left their impact on Jewish law.

There seems to be at times a certain arbitrariness and at other times a brilliant consistency in rabbinic codification of women's roles. What is in or out, incumbent upon women or not, is not always predictable. Moreover, seemingly illogical explanations may contain a profound rationality and sensitivity, while that which appears to be perfectly logical is not necessarily congruent with reality—for example, the exemption of women from recitation of the Shema but their inclusion in the obligation to recite the *Megillah* (scroll of Esther), or the differential application of the laws pertaining to rape.

The traditional sources clearly do not show the fine hand or voice of women. Interpretation of the law is made about the class of women, or about individual women, but not by women. Had the reverse been true, Jewish divorce law would have developed differently. Had women had a say

in the process, they certainly would not have written themselves out of the *mitzvah* of procreation.

Considering this very lack of input by women and the concomitant powers of interpretation vested exclusively in male authorities, there is a considerable balance, benevolence, and deference to women throughout the sources. This fact should not be taken lightly, and should affect the tone with which we approach the sources.

Finally, everything points to the impossibility of rewriting history. We should study the sources well, with an open heart and with good will; and we should not dissipate energy railing at past inequities, become enmeshed in a storm of rhetoric, or expend vast amounts of time in trying to reconcile the paradoxes and inconsistencies regarding women and Judaism. Our central focus should be on finding solutions to the real problems that remain.

Thus, we should begin with the proposition that the lot of Jewish women was in the tradition quite good; that there are sufficient precedents of equality upon which to build a sturdy structure for the future, consistent with rabbinic Judaism; that tradition and patriarchal Judaism need some mid-course correction but have much to teach us—men and women alike—about being human; and that we are fortunate to live in a time when equality for women and commitment to Jewish tradition are not mutually exclusive alternatives but rather can enhance each other—and ourselves—in the process of joining together.

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1. See, for example, S. R. Hirsch, *The Pentateuch*, vol. 1: *Genesis* (1971), 33.
2. This is derived from the *baraita* in BT Kid. 30b. See also Maimonides' Commentary to the Mishnah, ad loc. Kid. 1:7.
3. Maimonides, MT Hil. Hovel u-Mazzik 4:16-18. Some believe Maimonides derives this from BT BK 8a or BT Ket. 55b. Cf. *Hagahos Maimonios and Kesef Mishneh on Maimonides*, ad loc.
4. For a succinct discussion of the issues, see David M. Feldman, *Birth Control in Jewish Law* (1968), 53-56. See also BT Yev. 65b-66a for rulings in real situations where women wanted the full *ketubah* and release in order to remarry a man who is able to give them children.
5. Abortion is legitimated in the tradition only in the event of danger to a woman's life (M. Oho. 7:6).
6. With the exception of three commandments that require martyrdom rather than transgression, murder, incest, and idol worship.
7. The reasoning takes a somewhat circuitous route. Because women did not undergo *brit* or inherit "the good land which You gave to our fathers," theirs is a lesser obligation in reciting the *birkat ha-mazon*. Consequently, they cannot

- call others to fulfill the obligation. See Tosafot and also Rashi, ad loc. BT Ber 20b.
8. See Moshe Meiselman, *Jewish Women in Jewish Law* (1978), ch. 15. See also Zev Falk, *Jewish Matrimonial Law* (1973). Falk traces the development of salutary inheritance laws through medieval times.
  9. There are sources that would indicate such, particularly M. Ket. 6:1.
  10. Civil divorce, separation, disappearance, and even the suspected but unverified death of a spouse during dangerous travels—none of these constitutes a Jewish divorce.
  11. A scribe or others, including the woman herself, may do the writing; an agent may deliver and receive it (M. Git. 2:5, 3:2, 3:3-4, 6:1); in her hand—in her workbasket or thrown onto the parapet where she stands (BT Git. 77a-79a, M. Git. 8:3, 8:1).
  12. See especially BT BB 168a, where the rabbis legislate that a woman may pay the scribe in order not to delay her release. See also BT Git. 3a, where the laws of testimony are altered in order to prevent her *agunut*; and BT Yev. 106a, on the principle of *kofin oto*, "we force him until he says I want to [divorce her]."
  13. See BT Shev. 30a and BT Git. 40a. The scriptural peg cited in the Talmud in instances of release or exemption of women from certain obligations is, "The honor of the king's daughter is within (her home)" Songs 45:14.
  14. See Meiselman, *Jewish Women in Jewish Law*, ch. 13.
  15. See, for example, Yal. 1:82 on Gen. 18:16, "Then Sarah denied," which comments that the reason women were invalidated as witnesses is because Sarah did not tell the truth. Even as contemporary and well-intentioned a scholar as Gersel Ellinson compares women's and men's testimony along the lines of imagination versus precision. See Gersel Ellinson, *Women and the Mizvot* (1974), 185.
  16. BT Shab. 33b; contrast this with the opposite theme, that women have an extra measure of understanding, BT Nid. 45b.
  17. Boaz Cohen, *Jewish and Roman Law* (1966), 128f.
  18. See Ellinson, op. cit., 184-88, including the contemporary suggestions that the law be amended to admit women's testimony in pecuniary matters.
  19. See, for example, Tosafot on BT Nid. 50a, "Kol hakasher ladun."
  20. See *Sefer Abudraham Hashalem* (1959). Weekday prayers, morning blessings. See also Judith Hauptman, "Images of Women in the Talmud," in Rosemary Radford Rueher, ed., *Religion and Sexism* (1974), 197-200.
  21. On this theme see Meiselman, *Jewish Women in Jewish Law*, chs. 20-24.
  22. Saul Berman, "The Status of Women in Halachic Judaism," in Elizabeth Koltun, ed., *The Jewish Woman* (1976).
  23. The Lubavitcher Rebbe has often sounded this theme of a broad interpretation of women's *mizvot*.

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