



LIBRARY COPYRIGHT NOTICE

www.huc.edu/libraries

Regulated Warning

See Code of Federal Regulations, Title 37, Volume 1, Section 201.14:

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

THE WEIGHT OF WOMEN'S WORDS

NORA ELIZABETH E. FEINSTEIN

Submitted in Partial Fulfillment of Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion
School of Rabbinic Studies
Los Angeles, California

Date: May 11, 2020
Adviser: Rabbi Dvora Weisberg, Ph.D.

I. Abstract

This text immersion began as an exploration of *Edut Nashim*, or the testimony of women. At the outset, it is important to note that this project explores two interrelated concepts stemming from the overarching notion of *Edut Nashim*. The first is a woman's ability to serve as a witness. The second is a woman's ability to provide testimony. Now, while a witness may and often does provide testimony as part of their sanctioned duties, one can also provide testimony outside the bounds of service as an official, kosher witness. Official, kosher witnesses are, to the rabbis of the Mishna, Talmud and later halachic decisors, exclusively observant men.

One's eligibility to serve as witness for others indicates broader trends in Judaism regarding whom the community deems suitable for full-fledged participation in ritual. Moreover, one's eligibility to serve as a witness relates directly to the question of whose words can be trusted and whose cannot, according to Jewish legal tradition. Consequently, in this paper I proceed from an analysis of the sources related to *edut* and women's (in)ability to serve as witnesses to an examination of how modern-day responsa utilize those sources in conversations about constituting and conferring Jewish identity during weddings, conversion and divorce. From there, I look at other sources under the umbrella of texts that confront the weight of women's words. These sources deal primarily with oaths, vows and women's accounts of their own changing or changed status. In returning to those rabbinic sources, I found that while women are not necessarily able to serve as witnesses by dint of their gender, there are contexts in which their testimony is believable and trustworthy. The question animating my text immersion is the following: is Jewish tradition's general unwillingness to accept women as valid witnesses to others' status and reporters on their own lives about some quality inherent in women's nature or does it reflect men's need to control women?

This paper contains three sections: first, a review of women as witnesses and trustworthy reporters through generations of Jewish text and a discussion of implications for today; second, a similar examination of sources dealing with women's speech and speech acts; and third, reflective writing in response to the texts studied.

II. Women's Testimony and Trustworthiness: Investigating *Edut Nashim*

העדות נוהגת באנשים ובנשים?

Historically, the witness has played a significant role in judicial systems as well as ritual observance in Judaism. The concept of *edut* impacts many areas in which contemporary rabbis work: both serving as witnesses to changes in personal and familial status and also in their capacity as judicial and ritual authorities. *Edut* it is intimately related to questions of כבוד הציבור (honoring the community) and understanding the evolution of שינוי העיתים (the changing times) that require thoughtful engagement with halachic precedent. Unpacking the halachic concept of עדות/*edut* or witnessing/testimony is key to understanding the divergent paths of Reform and Conservative Judaism with respect to the roles women were historically allowed to occupy, as witnesses, rabbis and beyond. While both movements are now egalitarian denominations, their path to recognizing and permitting the testimony of women diverges significantly. The concept of עדות נשים *edut nashim*, or the testimony of women, represents a point of distinction in the evolution of these egalitarian movements and also symbolizes a quagmire when entering into a conversation with the broader notion of כלל ישראל or *Klal Yisrael* and the boundaries that constitute Jewish identity, community and peoplehood.

In 1944, Reform Judaism declared women “equal in all legal religious matters to men.”¹ This expansion of women's roles included the ability for women to serve as witnesses, thereby

¹ Solomon Freehof, “Reform Jewish Practice,” New York: 1944, vol. 1, p. 52. There may be earlier sources attesting to women's ability to serve as witnesses for *gittin*, *ketubot* and *giyur* explicitly (in other words, rescinding the general prohibition against women as witnesses) but I am not sure at this point. While 1944 is relatively recent for the permissibility of women to be witnesses on equal standing with men, it is also lightyears ahead of the Committee on Jewish Laws and Standards (CJLS), which passed a responsum permitting women to be witnesses in these areas in 1974 but well into the 21st century was still debating its validity. 1944 is also decades before women were ordained as rabbis, pointing to a fascinating relationship between women's full participation as witness and full participation as rabbinic authority. This relationship should be investigated more deeply in responsa from both movements.

overturning the general rabbinic prohibition against women's testimony.² Allowing women to serve as witnesses may not seem radical. Compare the Reform movement's stance, however, with the observation of Conservative rabbi, Mayer Rabinowitz, over forty years later that, "This issue [*edut nashim*] more than any other issue concerning the role of women has created serious problems in our movement."³ Why? What is it about women's testimony and women witnesses that created such consternation for the Conservative movement?⁴

To answer these questions, I will begin by analyzing the one Torah source that provides a foundation for the rabbinic restrictions on *edut nashim*.⁵ From there, I will present two sources that address *edut nashim* and purport to forbid/permit women serving as witnesses, respectively. The selection of sources forbidding women's testimony come from *Sifre Devarim*, m. Shevuot 4:1 and BT Shevuot 30a. They stand in contrast with the *takkanah*, or rabbinic ordinance, that establishes "a woman's right to testify in limited circumstances," in a *mishna* from Eduyot.⁶ This *takkanah* grounds subsequent tradition for the permissibility of *Edut Nashim*.

By engaging in this brief scan of the *tannaitic* canon, my hope is threefold. First, to expose the way in which rabbinic literature broadly takes עדות נשים as generally prohibited *d'oraita*, with some exceptions; second, to underscore the prevalence of that halachic precedent to this day; and third, to point to the possible implications of that norm entering into conversation with women's

² The general rabbinic prohibition comes with some notable exceptions. These exceptions deserve attention which are beyond the scope of this particular paper. I look forward to addressing them in the course of my text immersion next year.

³ Conservative Judaism, vol. 39, no. 1 (Fall, 1986): 7.

⁴ Perhaps probing that tension might provide fruitful. There may be, in existing documents, fodder for discussions around the potential of *edim* to constitute/shape Jewish communities as their members mark significant ritual moments.

⁵ It is important to note that while there are no explicit Torah restrictions against women serving as witnesses, the rabbis are very careful to assert that the restriction comes *d'oraita*.

⁶ Masechet Eduyot, though sharing a common root with the concept of Eduyot, does not address itself to witnessing and testimony. Rather, it is a collection of halachic testimonies attributed to different sages. There is no tractate in the Talmud that deals with giving testimony exclusively.

changed social status, implicit trustworthiness as community members, and increasing leadership roles within modern day egalitarian Judaism.

In order to begin our survey, it is important to examine the Torah verses upon which the halachic framework of *edut nashim* rests. There is no biblical verse that explicitly disqualifies women from being witnesses. That being said, one of the verses that underpins rabbinic literature on *edut* generally and *edut nashim* specifically is Deuteronomy 19:15:

”לֹא-יָקוּם עַד אֶחָד בְּאִישׁ, לְכָל-עוֹן וּלְכָל-חַטָּאת, בְּכָל-חֹטֵא, אֲשֶׁר יִחָטֵא: עַל-פִּי שְׁנֵי עֵדִים, אוֹ עַל-פִּי שְׁלֹשָׁה עֵדִים--יָקוּם דְּבָר”

”A single witness may not stand against person [man] regarding any guilt or blame for any offense that may be committed: [only] on the testimony of **two witnesses** or three witness will a case stand.”

Note that the verse does not explicitly say that the witnesses are men. Though “witnesses” in the original Hebrew text is a masculine plural form of the noun, the masculine plural form is the default for groups of mixed gender. Consequently, this term need not be explicitly or exclusively male. Nevertheless, in *Sifre Devarim*, the rabbis employ a גזרה שווה – *gezera shava*—or biblical analogy. A *gezera shava* generates a legal ruling or understanding based on the appearance of the same word (or root) in two verses, even if those verses are far apart in the Tanakh and/or are referring to unrelated matters. Here, the *gezera shava* ties together this verse with Deuteronomy 19:17 through those verses’ shared mention of two [witnesses/people]. Verse 17 reads as follows:

”וַעֲמְדוּ שְׁנֵי-הָאֲנָשִׁים אֲשֶׁר-לָהֶם הָרִיב, לִפְנֵי יְהוָה, לִפְנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים, אֲשֶׁר יִהְיוּ בַיָּמִים הָהֵם”

Then **the two men**, between whom the controversy exists, shall stand before God, before the priests and the judges that shall be in those days.

This verse does not mention witnesses, but rather seems to reference men, specifically men who are involved in a dispute that they are bringing before a court. Though the Hebrew word for men can also be the default for a mixed gender group, many rabbis understand the verse to address men

exclusively and therefore not women. By connecting the mention of two witnesses in verse 15 to the two men in verse 17, the fourth century *tannaitic* compilers of *Sifrei* write as follows:

“We may think that women are also acceptable to testify, but we read here (Deut. 19:15) “[by the testimony of] two [witnesses],” and we read there (Deut. 19:17) “[and the] two [men shall stand]” just as the two referred to there were men and not women, so the two referred to here must be men and not women.”⁷

The above interpretation enters into the rabbinic and halachic psyche. Its line of reasoning goes as follows: lest one think that women can serve as valid witnesses, that person should be aware that the Torah itself only permits men to serve as witnesses.⁸ This approach enters later Talmudic discourse in BT Shevuot 30a. The first mishna in that *sugya*, from m. Shevuot 4:1, explicitly states, “The oath of testimony applies to men and not to women.” An additional *baraita* is brought which closely follows the *midrashic* interpretation of the verse above, teaching that the only way to interpret two witnesses is as two men.

Intriguingly, the above verses from Deuteronomy also include the notion of a single witness. Generally, a single witness is not valid for testimony. There are, however, certain cases which allow for a single witness. Indeed, “in civil or criminal cases and in matters relating to sexual prohibitions, women’s testimony was forbidden, but regarding *issurim*, ritual prohibitions, where a single witness was believed, the Rabbis allowed a woman to testify.”⁹ Hence, in the halachic framework, women can be sole witnesses in certain, very limited, scenarios.

In addition to women’s permission to testify regarding ritual prohibitions, a whole body of rabbinic literature springs up around the permissibility and believability of a woman attesting to

⁷ Sifrei Devarim 19:17. Translation from Myron S. Geller, “Woman is Eligible to Testify,” Committee on Jewish Law and Standards of the Rabbinical Assembly, HM 35:14:2001a. https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/geller_womenedut.pdf: 5.

⁸ Indeed, this is Maimonides’ explanation that grammatically, the biblical source is speaking of men, not women in the verses from Deuteronomy. See Mishneh Torah, Hilchot Edut 9:1.

⁹ Geller, 5-6.

the death of her husband.¹⁰ To that end, a mishnaic *takkanah* that becomes the foundation for the cases in which *edut nashim* stands as valid:

“[...] A woman who comes from abroad and testifies, “My husband has died,” may remarry, and the law of levirate marriage applies. The School of Hillel said: “We have heard this only when she comes from the harvest.” The School of Shammai said to them: “The law applies whether she comes from the harvest or the olive grove or from abroad; the harvest was mentioned only because it is the usual situation.” The School of Hillel reconsidered and adopted the view of the School of Shammai.”

This *takkanah* travels through the mishnaic canon, affirming women’s limited ability to serve as believable or trustworthy witnesses.¹¹ Consequently, the solo woman emerges as a valid witness only in certain settings, particularly with respect to her own ability to remarry and, as mentioned, to serve as a witness to ritual prohibitions. Overall, however, women are disqualified from witnessing, even without an explicit biblical prohibition, as demonstrated above.¹²

It is important to note that disqualifications of witnesses (פסולי עדות) include but are not limited to gender. Besides women,

“There are three general types excluded from providing testimony by the Mishnah: those who derive economic benefit from occupations that are considered unacceptable and bordering on theft, relatives of the litigants and those with an interest in the matter being adjudicated.”¹³

These restrictions appear in m. Sanhedrin 3:3-4 and are repeated and connected to women explicitly in m. Rosh Hashanah 1:8. This latter Mishna, which addresses who may testify to the emergence of the new moon, reads as follows,

¹⁰ Thereby enabling her to remarry and not become an agunah.

¹¹ See, for example, m. Eduyot 6:1 and 8:5 and m. Yevamot 16:7.

¹² Further mishnayot addressing the disqualifications of women appear in m. Niddah 6:4, where an inability to witness parallels an inability to judge, and this disqualification buttresses prohibition against *edut nashim*.

¹³ Ibid, 8. You shouldn’t use Ibid. unless the previous footnote used the same source, which doesn’t seem to be the case here.

“And these are they which are not qualified [to be witnesses or judges]: a dice player, a usurer, pigeon racers, or traffickers in Seventh Year produce and slaves. This is the general rule: any testimony for which a woman is not qualified, they too are not qualified.”

Drawing attention to the last sentence, an intriguing possibility emerges: if there are areas of testimony for which a woman is not qualified (along with these certain classes of men), then there must be additional areas for which a woman *can* provide testimony. Those areas where a woman is believable, where she is trustworthy – נאמנת – include those scenarios mentioned (the death of her husband and certain areas of ritual prohibition) as well as certain contexts of women’s experience (spheres in which women are exclusively with women).

In understanding the meaning of a woman’s believability or trustworthiness, at issue is not women’s authority, or lack thereof. Rather, the issue is about the availability of valid witnesses. By default, the rabbis require kosher, male witnesses. When those kinds of witnesses are not available, in other words, in places where there are no men, women are the non-ideal, albeit occasionally acceptable, substitutes. It bears repeating that it is in only a very few contexts that women, trustworthy women, are deemed acceptable to provide testimony. They are nearly never able to serve as ritually and judicially kosher witnesses in the rabbinic worldview and corpus. That said, it is worth exploring when and how the rabbis allow for trustworthy women to provide their testimony.

The Mishna explicitly mentions trustworthy women in m. Sotah 6:2, m. Ketubot 2:6 and m. Gittin 2:7. All three of these cases address “women’s concerns” and women’s contexts. From a cursory review of the Mishna, therefore, it appears women are not permitted to provide testimony regarding judicial concerns or rituals of men and/or mixed groups. Nonetheless, the fact that women are described as witnesses elsewhere and in other contexts questions the veracity of *Sifrei’s* claim, based on analogy, that the role of witness exclusively equates to man (or rather, two men).

It is tempting to consider women's trustworthiness, or perceived lack thereof, as the basis for their extremely limited ability to provide testimony and their near total exclusion from serving as witnesses. Generations of commentators have taken this approach.¹⁴ The interpretation of the *mishnayot* and the rabbinic agenda must not stop at a pat acceptance that women would not have been trustworthy witnesses. Were women really not capable of trust in other areas of religious testimony? Or, were the rabbis perhaps obfuscating the lack of explicit biblical basis for forbidding women as witnesses across the board? And/or, were women perhaps not able, given the social milieu, to serve as witnesses in communal institutions or settings (i.e., courts) in the same way as men? Judith Hauptman argues for the third option. In her book *Re-reading the Rabbis*, Hauptman contends that women's inferior social status at the time of the compiling of the rabbinic and halachic corpus helps to explain how generations of rabbis were able to argue that women were compromised in their ability to serve as witnesses.¹⁵ One wonders, however, whether there is a bit of a chicken or egg phenomenon at play. Were women prohibited from witnessing because they were generally of inferior social standing and reliant upon men? Or, were women inferior in social standing because of their prohibition from "equal participation in religious matters," including but not limited to witnessing?

Some may argue that these questions are anachronistic. Others would maintain that they resonate to this day. Even now, in certain egalitarian Jewish settings, there exists discomfort with accepting women as witnesses, particularly when it comes to questions of personal status, specifically during marriage, divorce and conversion ceremonies. This discomfort stems from an

¹⁴ Including, but not limited to discussions in the gemara, later halachic codes and arguably modern responsa. As an example from the codes, Shulchan Aruch: HM, 35 seems to disqualify women on account of [mental] deficiency. Whether or not one considers this tradition misogynistic or apologetic is open to discussion; regardless of one's interpretation it is worth mentioning that there is a robust tradition of questioning women's status as valid reporters of events and therefore invalidating them as witnesses and potential authorities.

¹⁵ Judith Hauptman, *Rereading the Rabbis: A Woman's Voice*, Boulder: Westview Press, 1998, p. 184.

awareness of and a cleaving to the normative halachic system. That system reflects a particular zeitgeist and social realities vastly different than the world in which women, men and people of other gender expressions exist today. Nevertheless, even with the changing of times (שינוי העיתים) which includes changing gender roles, people have very different understandings of ways that those changes intersect with כבוד הציבור (honoring the community) and specifically honoring the entire Jewish community. Indeed, in the Conservative movement, certain rabbis – including female rabbis -- worried and worry about the legitimacy of women witnessing *ketubot*, *gittin*, and conversion (*giyur*) documents. Despite the fact that there exists support and responsa for women serving as witnesses within progressive Jewish spaces, to this day, there are female rabbis who will not sign those documents, in deference to the notion of *klal yisrael*. In other words, certain female rabbis who are already deemed as disturbing the status quo of the more observant precedent within the Jewish community are themselves taking on a further stringency in hopes of protecting their congregants from non-acceptance by other, namely Orthodox, Jews.¹⁶

In many ways, *edut nashim* has been the canary in the coal mine of egalitarian Judaism, documenting when and how the Jewish community is prepared to accept women as fully participating members and communal authorities. Witnesses play crucial roles at ritual moments of identity change in the Jewish community. Indeed, “The Hebrew word for ‘witness,’ *ayd*, shares a common root with the word *od*, meaning ‘duration’; a witness gives permanence to human activities that are transitory.”¹⁷ Defining who can be a witness is part and parcel of understanding

¹⁶ For more, see Rabbi Joseph Prouser’s dissenting opinion of the CJLS, “On Women Serving as Witnesses—A Dissent”. There are also those who urge for a model of “informed consent,” as in Myron S. Geller’s “Woman is Eligible to Testify,” p. 24.

¹⁷ SR Hirsch, *Horeb* (London: Soncino Press, 1973), 533

the bounds of the Jewish people. Perhaps one day העדות נוהגת באנשים ובנשים – we will be accustomed to testimony of male and female witnesses within egalitarian spaces.¹⁸

¹⁸ Riffing on BT Shevuot 30a

III. The Weight of her Words: Women and Speech Acts

Women's ability to serve as witnesses points to a broader theme in the rabbinic corpus: the weight of women's words and their trustworthiness. Undergirding the entire premise of this investigation is an assumption in much of the literature which might be difficult for the contemporary egalitarian reader. When we speak of women's believability, even separated out from women's ability to provide testimony or to serve as kosher witnesses, we bump up against potentially uncomfortable questions: who ascertains women's trustworthiness? Who chooses whether or not to believe them? For rabbinic texts, the answer to both of these questions is men, and specifically men of the rabbinic variety. When exploring the rabbis' opinions on women's words, the modern reader needs to remember that the authors of these texts both lived in a different context and also set precedent for laws and customs that persist to this day.

The rabbis, at least in their minds and their texts, set the official standard of perceived believability and trustworthiness among women. To some extent, even today, traditionally observant Jewish communities default to this stance. Women are believed and trustworthy in circumscribed ritual roles, stemming from the rabbinic corpus and its conception of what is or is not *d'oraita* -- which acts the Torah obligates, permits or prohibits. And, distasteful though it may be for a modern-day reader to absorb the following claim, to some extent certain Jewish communities still default to this stance: men determine the standard for women's believability and trustworthiness.

As discussed previously, according to m. Shevuot 4:1, there appears to be a deficiency in the nature of women, such that women are disqualified from witnessing for most cases per the legal tradition. Given that women are grouped with other disqualified categories of witnesses,

women are understood to be non-trustworthy in those roles, with a few exceptions.¹⁹ The rabbis, as documented above, are willing to make exceptions to this norm when it comes to issues of women's status. In some of those cases, women are deemed trustworthy reporters.

Broadly speaking, however, women are categorically incapable of serving as witnesses. The modern reader may imagine that the rabbis assumed women either ignorant about the wider world or know just enough about the world and the Jewish legal tradition so as to be dangerous to themselves and to others around them. The rabbis' exclusion of women from serving as witnesses might be a reflection of women's status at the time. Perhaps the rabbis could not envision a situation in which a woman would testify in court beyond a very limited set of cases. Nevertheless, their exclusion has long-term ramifications. Regardless of the rabbis' original intent, as a result of their interpretation women, to this day, are not considered kosher witnesses, *d'oraita*. We will return this topic below, in a review of secondary sources. Before getting there, however, I will return to the Torah in order to identify contexts in which women are able to speak on their own in contradistinction to the myriad times when women's speech is circumscribed by their relationship to men. By tracing how these verses have been interpreted in later texts, I also aspire to address why these cases are acceptable to rabbis over the generations. Just as the exceptions to the rules of testimony can shed light on the world of women and their limited power, so too can the exceptions to the rules of making oaths and vows.

In Numbers 30:4-17, the Torah addresses women's vows and whether they may/must be upheld or annulled by her male kin. These verses are concerned with the correlation between a

¹⁹ Dealing with her own status or that of another woman's ketubah/ability to remarry (*need to review sources from Ketubot and Yevamot*). The rabbis are interested in affording women the ability to marry and remarry, arguably in the name of their physical safety and also, perhaps more provocatively to some, to enact boundaries on her ability to act as a free agent. By privileging women's presence in the home of a father and husband, the rabbis not only sought to protect women from the dangers outside the household, but also to protect others from the potential power and speech acts of a women acting as her own agent.

woman's vows and her relationship with a male guardian – either her father or her husband. Whereas men and certain “independent” women—emancipated daughters, divorcees and widows— must carry out their verbal commitments, women who are dependents, either as daughters or wives, can have their oaths and vows annulled or upheld by their fathers or husbands, respectively.²⁰ Upon marriage, a father's right with respect to his daughter transfers to the daughter's new husband.²¹

The relevant verses in Numbers 30 address the vows of four categories of women: a daughter making a vow in her father's house, a married woman making vows in her husband's house, a divorced or widowed woman making a vow prior to the dissolution of her marriage and a divorced or widowed woman making a vow. The Torah itself distinguishes between the vows of a married woman and the vows of a divorced or widowed woman (Numbers 30:10). The Torah does not involve itself in categorizing the divorced or widowed woman's vows in terms of temporal minutiae, i.e.: whether the vow was made before or after the partner's divorce or death.²²

It is worth taking a moment to clarify a few concepts and assumptions in order to understand the import and impact of these verses as the rabbis interpret them. Vows and oaths have distinct connotations in the rabbinic corpus. A vow is conditional, whereas an oath is a promissory speech act which is meant to take force irrespective of a particular intermediate step or outcome. Additionally, a modern reader ought to note that the Torah imagines most women will be either unmarried daughters or wives. As discussed, men are more powerful than women in the world of the rabbis, and generally husbands are more powerful than fathers. Grown women's words have

²⁰ Numbers 30:10 deals with the vows of widows and divorced women whose vows stand. The men who are fathers or husbands to women in their households have the power to uphold or annul the vows and oaths of their daughters and wives, respectively (Numbers 30:14). For more on the three categories of dependent women and their three counterparts of autonomous women under Mishnaic law, see Judith Romney Wegner. *Chattel or Person? The Status of Women in the Mishnah*. Oxford University Press, New York, 1988, 14.

²¹ M. Ketubot 4:4-5.

²² These distinctions are important in later strata of rabbinic literature.

limited weight when they are widows or divorcees outside the context of a man's home. These women are, as it were, like a man in the eyes of halacha. Women in moments of transition between roles, relations and by extension, households and dependencies, threaten the rabbis' halachic categories.²³

At issue here is a woman's relationship to men. A woman's relationships dictate whether her speech has consequences, how her time is allocated, and where her financial resources reside. Building upon the Torah's textual precedent, the *mishnayot* in Nedarim chapters 10 and 11 examine women's vows in connection to the various permutations of male relationships (father, husband and fiancé – chapter 10), and then analyze various types of vows in order to discern which take force and how (chapter 11). These *mishnayot* offer a fascinating lens into rabbinic anxiety over their extent of men's influence and the potential for women to disrupt that influence through the power of language.

Before examining the Mishna, we will jump ahead to 11th century to see just how engrained the need to control women's words was, to tether that precedent to a biblical (read: divine) mandate and to associate women with a subordinate status. Below is an example of Rashi's comments on the verses from Numbers 30. Numbers 30:4-6 reads

”וְאִשָּׁה כִּי־תִזְכֹּר גִּזְרֵה לַיהוָה וְאָסְרָה אֶסֶר בְּבֵית אָבִיהָ בַּנְּעֻרֶיהָ:

²³ In her exploration of the role of rabbis' daughters in literature, Wendy Zierler depicts these women as occupying “border space.” She borrows the term from feminist critic Gloria Anzaldúa. Anzaldúa writes, “Borders are set up to define the places that are safe and unsafe, to distinguish us from them. A border is a dividing line, a narrow strip along a steep edge. A borderland is a vague undetermined place created by the emotional residue of an unnatural boundary. It is in a constant state of transition. The prohibited and forbidden are its inhabitants ... those who cross over, pass over, or go through the confines of the normal.” This quotation is helpful in thinking about the risk posed by women outside of boundaried homes as wives and daughters. Women who are independent or in transition exist in “border space.” Gloria Anzaldúa as quoted by Wendy Zierler, “The Rabbi's Daughter in and out of the Kitchen: Feminist Literary Negotiations,” *Nashim* 5 (Fall 2002) 85.

וְשָׁמַע אָבִיהָ אֶת־נִדְרָהּ וְאַסְרָהּ אֲשֶׁר אָסְרָה עַל־נַפְשָׁהּ וְהִחְרִישׁ לָהּ אָבִיהָ וְקָמַוּ כָּל־נִדְרֶיהָ וְכָל־אֶסֶר אֲשֶׁר־אַסְרָה עַל־נַפְשָׁהּ יָקוּם:

וְאִם־נָתַן אָבִיהָ אֶת־הָבְנוֹם שָׁמַעוּ כָּל־נִדְרֶיהָ וְאַסְרֶיהָ אֲשֶׁר־אַסְרָה עַל־נַפְשָׁהּ לֹא יָקוּם וַיִּהְיֶה יִסְלַח־לָהּ כִּי־נָתַן אָבִיהָ אֶת־הָבְנוֹם:

(4) If a woman makes a vow to God or assumes an obligation while still in her father's house by reason of her youth, (5) and her father hears of her vow or her self-imposed obligation and offers no objection, all her vows shall stand, and every self-imposed obligation shall stand. (6) but if her father restrains her on the day he hears, none of her vows or self-imposed obligations shall stand, and God will forgive her since her father restrained her.

Rashi's exegesis of these verses emphasizes that a father's authority over his daughter extends beyond the physical bounds of his/their house

בבית אביה : ברשות אביה ואפילו אינה בביתו

In her father's house: under her father's aegis, even if she is not in his physical house.

From this defining comment, Rashi launches into a very detailed analysis of the meaning of “youth” in verse four and how that impinges upon the vows the young woman in question takes and whether or not those vows take effect. Rashi details the moment of transition from girlhood to womanhood and the relationship to the vows of the “youth” in question.

What Rashi's comments here and later on in the chapter highlight is the way in which a man's authority over a girl/woman, including his authority over her speech, is implied within the physical domicile. Moreover, Rashi indicates that the “domain” of the man over the woman, here a young woman, not quite a young girl but not yet a woman, but in later examples older, married women, extends far beyond the physical home. A woman's words and speech impact and are

impacted by the men under whose sway she finds herself living. Indeed, much of the rabbinic responses to the issue of women's words are attempts to answer the question, "What happens when women leave the protection and supervision of their home and family?"²⁴ Or, put slightly differently, what happens when a woman is no longer under the auspices of a male protector?

In the *mishnayot* of Nedarim 10 and 11, as in Rashi's commentary on Numbers 30, there is a focus on the exact moment in which a woman attains majority and, by extension, some level of selfhood and capacity to express herself and make vows/oaths, whether or not they take force. Like Rashi's later comments on the same verses, the rabbis distinguish נערה from בגרות. A נערה, or young woman (between twelve and twelve-and-a-half years old) is one who is no longer considered a female minor (קטנה) but is not yet an adult. A woman is called a בגורת beginning from age twelve and a half. According to the scholar Judith Wegner, בגורת can also be translated as an emancipated daughter. Translation aside, from this developmental stage on, a woman is an independent adult, which means that her father is not able to act on her behalf.

The rabbis seem rather keen to avoid situations wherein a youthful woman takes vows on her own without a male relation able to annul them.²⁵ During בגרות, grown women are able to have ownership/authority over their vows and property, which may be quickly limited by entering into marriage and relinquishing control of financial and verbal resources to their husbands.²⁶ There was not room in the ancient world for two full agents in marriage; a woman's self-expression and agency were subsumed into that of her husband and male relatives.²⁷

²⁴ Dvora Weisberg, "Desirable but Dangerous: Rabbis; Daughters in the Babylonian Talmud" in *Hebrew Union College Annual*, Cincinnati, OH: Hebrew Union College-Jewish Institute of Religion, 2005, 148.

²⁵ Rashi on Numbers 30:4.

²⁶ Wegner, p. 14.

²⁷ Rachel Adler's work on Hosea 2 and the prophetic marriage metaphor in *Engendering Judaism* offers a different vision than the legal version handed down through the rabbis. While discussing marriage metaphors is beyond the scope of this paper, it bears mentioning that for the contemporary reader, there are different interpretative traditions related to marriage. Since many of these sources have to do with the transition into and out of marriage, this

The *mishnayot* in these chapters explore various permutations of a woman's vows given her family relationships. They delve into more gradations and greater detail than in the Torah verses themselves. Strikingly, for example, in m. Nedarim 11:1, the rabbis proclaim that a woman's vows of abstention can be annulled by her husband. Even vows that involve a woman denying something to herself are regarded as being in the purview of her husband, for her choices might impact her ability to provide what he is owed under the conditions in her ketubah. The modern reader imagines that in the world of these rabbis, a woman making a vow of self-denial would perhaps be attempting to exercise what little control she could.

As a second illustration of the tension between a woman's agency and that of her male kin, m. Nedarim 11:4, records that a woman who vows to be in service to another male relation from her family makes a commitment which her husband cannot nullify, even though she is still obligated to provide for her husband as well. This mishna highlights disagreements about the extent to which a woman's husband can intervene on behalf of her spoken words, unless he's being directly impacted. There is not universal consensus on the tipping point at which a woman's words reflect upon or impact her husband, but it is clear that the rabbis are concerned about the power of a woman's words to affect her (male) next of kin.²⁸

Judith Wegner identifies three classes of women who are autonomous and whose vows take force according to mishnaic law: "(1) the legally emancipated daughter who has outgrown her father's jurisdiction; (2) the divorcée; and (3) the normal widow."²⁹ We have looked at the moment in which a daughter grows into adulthood and discussed the rabbi's eagerness to avoid

perspective merits inclusion. For more, see Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics*, Philadelphia: Jewish Publication Society, 1998.

²⁸ See also m. Nedarim 11:11.

²⁹ By normal widow, Wegner is distinguishing between a woman who is widowed and able to remarry and a levirate widow (yevama) who has to engage in the process of halitzah in order to remarry. For more, see Wegner, 14.

the scenario in which the emancipated daughter acts as a free agent. We turn now to a text dealing with a widow in order to explore how the rabbis grapple with the words of another category of ostensibly autonomous women.

In Bavli Gittin 34b-35a, the rabbis investigate the case of a widow seeking to collect her ketubah payment from the orphans who inherited their father's estate, either her children or her husband's children by another wife. This text connects the exceptional category of widow with her words, threading together the Numbers and m. Nedarim sources.³⁰ With a few anecdotes, the text in Gittin underscores just how dangerous women's speech can be. It asserts that women make poor assumptions about the truth and that they do not understand just how precise and serious oaths and vows are. In response to women seeking to use their speech to pursue their legitimate rights, the rabbis exhibit concern that, in their quest to secure their own interests, women may be flagrant with their spoken words. They may unwittingly commit damaging speech acts that hurt not only themselves, but also endanger others as well.

Generally speaking, in many sources women unable to secure a ketubah payment after being widowed are considered dangerous. The rabbis prefer women to collect the payment due to them as stipulated in their ketubah rather than invite curses and peril that could stem from a woman who, after she finds herself unable to collect said payment, directs her wrath outward, knowingly or unknowingly. The rabbis fear women without clearly defined dependence and subservience to men because their words can have power that men cannot reign in unilaterally.

In light of these sources, one could argue that halacha is designed precisely to avoid women's speech overall. Nevertheless, elsewhere the rabbis pen aggadot in which God responds

³⁰ The reluctance to accept women at their word in the Talmud text also connects back to the earlier sources on witnesses inside the courts and outside of them.

to women's prayers, a form of speaking and self-expression.³¹ What about the connection to the divine allows the rabbis to acknowledge women's capacity for self-expression with respect to God but disallow or profoundly limit those same powers of communication in the human domain? How is it possible that the rabbis allow women to be recognized by God and not recognize their full participation as autonomous agents in the world?

While on the one hand, the rabbis seek to limit the cases in which women's speech acts have legal force, on the other hand, they also seek to expand the cases in which women's speech acts can be controlled and censored by the male heads of their households. Extrapolating from the test case of oaths and vows, there is a way in which the words of women are less potent and less potentially harmful when they are dependents. When women are dependents of a man, their ability to make oaths or vows also depends on that man, their husband or father. Consequently, their power is curtailed. Reflecting on the sociocultural realities of the time in which the Torah, Mishna, and subsequent commentaries were written, one acknowledges that women existed in a patriarchal society which bound their physical safety and their identity to their relationship with a father and/or husband. In the interstitial spaces of transition between statuses of daughter to wife and wife to divorcee or widow, women were, perhaps counterintuitively, less safe physically but in terms of their own self-expression, most free. True, women's physical safety is protected by marriage and/or the protection of parents. Dialectically, patriarchy and the male interests it champions, are protected by securing and controlling women.³²

³¹ See Dvora Weisberg, "Men Imagining Women Imagining God: Gender Issues in Classical Midrash" in Marc Lee Raphael, ed. *Agendas for the Study of Midrash in the Twenty-First Century*, Williamsburg, VA: The College of William and Mary, 1999, p. 63-84.

³² Hauptman calls the rabbinic patriarchy "nuanced" or even "benevolent," p. 5. She asserts that the rabbis make progress as compared to the Toraitic precedent. She demonstrates the veracity of this statement in other realms of rabbinic innovation. I attempted to show, however, that when it comes to witnessing, it is not entirely clear that the rabbis' delimiting of the definition of who can serve as a witness actually serves to progress Judaism. While their constraints might have been created in response to the exigencies and patriarchal norms of their day, in ours, we still

In her study of women in the rabbinic worldview, Judith Hauptman writes that “the religious legal system is bound by a commitment to maintain continuity with the practices of the past and accept the authority of the texts of the past,” ascribing divine origin to both practices and texts.³³ She stresses that the rabbis of the Talmud advanced the status of women beyond their status in the Mishna, which was beyond their status in the Torah. Arguing against scholars Tal Ilan and Judith Wegner, who assert that the rabbis limited and reduced the ritual freedoms of women over time as compared to the status of women according to the Torah, Hauptman sees incremental progress in the innovations of the rabbis. She argues that Ilan and Wegner’s assumptions that women had greater freedom to practice Judaism in the time of the Torah’s compilation have no basis in the biblical texts themselves.³⁴ Hauptman may be correct that women at the time of the canonization of the Torah possessed less freedom to practice Judaism than women in the rabbinic period. Nevertheless, by formalizing practice through the canonization of rabbinic text, by limiting the ritually acceptable practices of women in that text and by ascribing the divine origin to those practices and texts, functionally women have far less freedom to express themselves verbally through testimony, vows and other speech acts as a result of rabbinic intervention.

In his essay on multiculturalism, theorist Charles Taylor writes,

“...our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being.”³⁵

grapple with the reverberations of their choices and the implications for who can serve as witnesses and whose words, names and presence matter in constituting Jewish identity and by extension, Jewish community.

³³ Hauptman, p. 4.

³⁴ Hauptman, p. 238, 240. Wegner, p.147.

³⁵ Charles Taylor, *Multiculturalism*, Princeton, NJ: Princeton University Press, 1994, p. 25.

Women, it appears, were captive to circumstances not of their own making at the time of the rabbis.³⁶ One wonders the extent to which women are still captive to these circumstances centuries later, even with oaths and vows not in force in the same way, certainly not in more progressive Jewish communities. That said, women's voices, and the voices of those who do not identify or cannot pass as straight white men, are less likely to be heard, trusted, amplified and canonized to this day.

³⁶ See BT Gittin 45A as interpreted by Dvora Weisberg in "Desirable but Dangerous: Rabbis Daughters in the Babylonian Talmud" in *Hebrew Union College Annual*, Cincinnati, OH: Hebrew Union College-Jewish Institute of Religion, 2005, p. 121-159.

IV. Reflection

At the outset of this text immersion, I hoped to study the evolution of the halachic concept of -- עדות *Edut* or witnessing/testimony. Testimony plays significant roles in the development of judicial systems as well as ritual observance in Judaism. Initially, the latter category interested me as a direction with which to take my reading and investigation. The concept of *Edut* impacts much of the areas of scholarship that rabbinical students engage and the professional fields in which rabbis work.

Through this immersive project, I sought to gain a stronger and deeper grounding in the textual tradition. Through my study of *Edut*, I encountered discussions of women as witnesses and thought about the potential of *edim* and *edot* to constitute/shape Jewish communities as they mark significant ritual moments. That research led me, with the guidance and direction of Dr. Weisberg, to wonder about the power of non-male Jews to attest to experiences – their own and those of others. From there, I spent time learning about women’s ability to make oaths and vows recounted in other sites in the canon. Taken together, I explored whether and how tradition considers women as reliable reporters.

I imagined this project having two goals, one primary and one secondary. The primary goal was to immerse in rabbinic texts, first about women as witnesses and then about the weight of women’s words. The secondary goal was to apply that learning forward. I found myself desirous of encounter with texts that some in progressive circles might dismiss as irrelevant or find offensive. In the pages that follow, I attempt to integrate the primary texts we studied with more contemporary secondary literature.

In retrospect, I am intrigued by the choice Dr. Weisberg and I made to engage in a text immersion in a topic that lacks a Talmudic tractate and concentrate on a topic – witnessing – that

by its nature in the rabbinic understanding excludes women. The fact remains that the understanding of עד in the Mishna and consequently in the Talmud is only as a male witness.³⁷

This understanding is, as Judith Hauptman writes, “axiomatic.”³⁸

As noted above, Hauptman suggests that it is not that women are inherently less reliable or that they are understood by the rabbis to be less reliable than men. Rather, she argues that women’s lower social status and inferiority, coupled with their dependence on men, disallows women from being generally accepted as providers of testimony.³⁹ She disqualifies prevailing explanations of these sources, first that women should not provide testimony as doing so is an affront to their dignity, and second, that women, by nature, were viewed as less reliable in the rabbis’ eyes. Rather, like the discussion of oaths and vows above revealed, Hauptman argues that women were disallowed from serving as kosher witnesses because their social status frequently tethered them to a man whose dignity could have been compromised by her testimony. A woman could, according to the rabbis, give testimony in certain cases, but she could not be a witness qua witness in all ritual or judicial settings.⁴⁰ A woman will almost never be a kosher witness because she will never be a free, observant man.

Women, argues Judith Wegner, were excluded from participation in nearly all public religious ritual in Mishnaic law. She identifies four themes that lead to the women’s status as largely non-participatory in public ritual 1) that men perform religious duties on behalf of other household members (including women); 2) a view that women’s domain was the private sphere; 3) understanding that women, since they are not obligated to perform religious duties are therefore

³⁷ See Rambam’s *Hilchot Edut* 9:1-2 which summarizes and reiterates the rabbinic understanding of the d’oraita precedent for who is/is not a kosher witness. Rambam compiled and canonized many laws in his *Hilchot Edut* of the *Mishneh Torah*.

³⁸ Hauptman, p. 196.

³⁹ Hauptman, 209.

⁴⁰ Hauptman argues that those cases have to do with resolving another woman’s indeterminate marital status and thereby returning her to a more clearly defined relationship to men. See Hauptman, p. 197.

not to carry them out for others; and 4) fear of women's endangering men or distracting them from "intellectual and spiritual pursuits."⁴¹ While other scholars take issue with elements of her analysis, the fact remains that there is a distinction between women's personhood in the private domain and women's lack of personhood in the public domain.⁴²

Many scholars view study and communal worship as the "heart and soul of traditional Judaism," and yet, for generations women were excluded from full, equal participation in these activities that occurred in the public domain.⁴³ Like many other examples of discrimination in human history, separateness is not equality. Witnessing rituals and speech acts are pivotal moments in which personal identity intersects with the Jewish public sphere. Those who are testifying or taking vows can put others at risk if they are not wholly aware of the gravity of the words they are saying or the texts they are signing.

In the Mishna, there is no concept of a non-male witness, with one exception in Tosefta Ketubot 2:3. In the Talmud, those scenarios in which a woman can provide viable testimony by and large relate to confirming or rejecting the reported experience of another woman. Women are believable in spaces and contexts where they are the only available reporters, and in those very limited situations they are granted trustworthiness. Yet, the fact that women are believed, are able to provide testimony, are able to take vows in certain restricted situations/life stages, prove that by their nature women are capable of enacting these religious roles.

As we have demonstrated, there is precedent, albeit limited, for women's speech taking force and for women serving as witnesses. In both examples, the Torah does not explicitly prohibit women from participating in the communal Jewish project as witnesses or vow-takers. In fact, as

⁴¹ Wegner, p. 148.

⁴² Wegner distinguishes between women as people (at home) and women as chattel (in the public domain).

⁴³ Paula Hyman, "The Other Half: Women in the Jewish Tradition," in *The Jewish Woman*, ed. Elizabeth Koltun (New York: Schocken, 1976), 107.

we have seen, there is Toraitic precedent for women taking vows. Moreover, an omission in the text does not mean that women were necessarily prohibited from serving as kosher witnesses. We cannot ignore the fact that, as Elliot Dorff puts it, the “particular case of the role of women in Jewish life, the norms in our tradition are based on custom rather than law.”⁴⁴

Now, for many Orthodox Jews, custom has come to be legally bearing in ways that make it almost unimaginable to shift the paradigm. Progressive communities, however, that purport to see and support egalitarianism might have some explaining to do for not accepting women equally in all ritual roles. In many Reform and Conservative communities to this day, perceived relevance of oaths and vows and the legal framework surrounding them has fallen away, we still utilize עדים in moments of ritual significance. In this day and age, when women are full participants in the egalitarian Jewish project, it is fascinating to observe that some, even women, even women rabbis, are unwilling to grant women equal standing as witnesses. Consequently, the role of women’s basis in custom rather than legal precedent, “should affect how we treat” women.⁴⁵ According to this line of thinking, just as women were not allowed to participate equally in public religious rituals but can now study and pray with men, so too should women be allowed to serve as עדות/עדים.

In many ways, as inheritors of a textual tradition and a particular linguistic heritage, the definition of “עד” struggles to encompass any individual, irrespective of gender. Hebrew’s gendered language does not allow a woman in the rabbinic worldview to embody the role of a true, kosher witness. For many, עד still connotes a male witness. Language has power and linguistic conventions are sticky. Inheriting and utilizing language and customs which do not make space for us is not only a question of confronting antiquated androcentrism. Language and customs which do not allow for equal participation for all committed, adult Jews in an egalitarian framework cause

⁴⁴ Elliot Dorff, *For the Love of God and Man*, Philadelphia, PA: Jewish Publication Society, 2007, p. 253.

⁴⁵ Ibid.

harm. They prompt us to question our own authority, our own identity, and our own worth. This is what the philosopher Miranda Fricker refers to as “epistemic injustice.”⁴⁶ According to this concept, in an epistemically unjust society, an individual is wronged in her capacity as a knower and thereby questions her ability to both be a communicator of knowledge (testimonial injustice) and her ability to understand herself socially (hermeneutical injustice).⁴⁷ When we cut off women as knowers, we cut off sources of knowledge. More than that, when we cut off women as communicators of knowledge through witnessing and speaking, we damage women in their capacity as knowers, as credible witnesses of their own experiences, the lives of others and of the world more broadly.

True, we are not living in the time of the rabbis, yet we are still influenced in the Jewish public sphere by rabbinic precedent. Nonetheless, we must admit that women are not full people in the public and private spheres if they are not allowed to be heard or trusted in ritual moments. We know, even the rabbis knew, women could be heard and, in certain circumstances, trusted. Why, in egalitarian spaces, can we not broaden the scope to adjust for changes in custom and changes over time? Why can we not trust women as fully equal participants in the Jewish communal project?

While discussing the implications of halacha of witnessing, testimony, vows and oaths for gender non-conforming individuals is beyond the scope of this project, I am interested to explore whether and how ongoing issues with non-men serving as witnesses stems from a tacit assumption of their inauthenticity or the lack of availability of tenable linguistic choices. To this day, we still

⁴⁶ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, New York, NY: Oxford University Press, 2007, p. 7.

⁴⁷ Ibid.

bump up against the uncomfortable reality that women and non-men, in many spaces, Jewish and non-Jewish, public and private, are still less frequently believed, trusted and viewed as credible.⁴⁸

⁴⁸ For more, see Wegner, p. 148.

Bibliography

- Adler, Rachel. *Engendering Judaism: An Inclusive Theology and Ethics*. Philadelphia: Jewish Publication Society, 1998.
- Dorff, Elliot. *For the Love of God and Man*. Philadelphia: Jewish Publication Society, 2007.
- Freehof, Solomon. *Reform Jewish Practice Volume I*. New York: Hebrew Union College Press, 1944.
- Fricker, Miranda. *Epistemic Injustice: Power and the Ethics of Knowing*. New York: Oxford University Press, 2007.
- Geller, Myron S. "Woman is Eligible to Testify." *CJLS* (HM35:14.2001a)
https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/geller_womenedut.pdf.
- Hauptman, Judith. *Rereading the Rabbis: A Woman's Voice*. Boulder: Westview Press, 1998.
- Hyman, Paula. "The Other Half: Women in the Jewish Tradition." In *The Jewish Woman*, 105-113. Edited by Elizabeth Koltun. New York: Schocken, 1976.
- Rabinowitz, Mayer. "Towards a Halakhic Guide for the Conservative Jew." *Conservative Judaism* 39, no. 1 (Fall 1986): 7-33.
- Taylor, Charles. *Multiculturalism*. Princeton: Princeton University Press, 1994.
- Wegner, Judith R. *Chattel or Person? The Status of Women in the Mishnah*. New York: Oxford University Press, 1988.
- Weisberg, Dvora. "Desirable but Dangerous: Rabbis' Daughters in the Babylonian Talmud." *Hebrew Union College Annual* 75 (2005): 121-161.
- Weisberg, Dvora. "Men Imagining Women Imagining God: Gender Issues in Classical Midrash." In *Agendas for the Study of Midrash in the Twenty-First Century*, 63-84. Edited by Marc Lee Raphael. Williamsburg: The College of William and Mary, 1999.
- Zierler, Wendy. "The Rabbi's Daughter in and out of the Kitchen: Feminist Literary Negotiations." *Nashim* 5 (Fall 2002): 83-104.