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WOMEN IN THREE JEWISH SYSTEMS

by

Beverly J. Lerner

Thesis submitted in partial fulfillment
of the requirements for Ordination

Hebrew Union College - Jewish Institute of Religion
Cincinnati, Ohio

June, 1979 Referee, Professor Alvin J. Reines

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DEDICATION

To my parents - for their constant, loving support which has been invaluable to me during my five years of study at the college.

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INTRODUCTION

Since 1972, many articles and several books have been written about women in Judaism. They have included works on the portrayal of women in the Bible, on the status of women in Jewish law, and on the role of women in ritual and ceremonial life. This sudden surge of literature has been due in part to reactions to the new policy of the Reform movement to ordain women, but it is related even more to the impact of the feminist movement. Just as women are beginning to question, analyze, and respond to their traditional roles in secular society, so too are they beginning to evaluate and respond to the traditional roles assigned them in their religious communities. Although this effort at evaluation and response has been somewhat sporatic and ill-defined, still it is clear that many women have attempted to redefine the role of the Jewish woman, while others have busied themselves with defending the traditional view.

Unfortunately, these attempts to analyze and redefine the role of the Jewish woman have been largely unsuccessful in providing a clearly defined identity for Jewish women despite raising the consciousnesses of Jewish women in particular and of the Jewish community in general. Articles on women in Jewish law have pointed to the unequal treatment of men and women in talmudic literature. Books on various women in Jewish history tell us about the roles and characters of our female predecessors. Yet none of the current

literature has succeeded in placing these isolated bits and pieces into the operational framework of the Jewish systems as they are actually practiced. An examination of talmudic law does not, for example, define the status of the woman in the present Orthodox system. Rather, it is the current Orthodox interpretation of talmudic law which defines the woman's role in today's Orthodoxy.

Before a woman can justifiably accept, reject, or change her status in her religious community, she must first understand the philosophical and theological principles of the community that underlie that status.

Thus, this study has been written with the aim of providing an examination of such principles, as well as an inquiry into the stated rules, regulations and procedures based on these principles. In sum, the purpose of this thesis is to determine, philosophically and practically, the status of women in three Jewish systems: Orthodoxy, Conservative and Reform.

Chapter I

Laying the Foundations

The determination of the status of any individual within a given community is dependent upon the rights and duties ascribed to that individual, and upon the authority of the community to enforce the observance of these rights and duties. It is therefore essential for our study that we first define the terms "right," "duty," and "authority"; and second, that we examine the nature of authority in the Orthodox, Conservative and Reform communities. This will consequently provide us with an understanding of the philosophical and theological foundations of the three Jewish systems.

A. Definition of Terms:

"Right," "Duty" and "Authority"

1. "Right" is here defined as a capacity residing in a person of controlling, with the assent and assistance of the community the actions of others.[1]

2. "Duty" is here defined as the "correlative of right. Thus wherever there exists a right in any person, there also rests a corresponding duty of obligation upon some other person or upon all persons in general."[2]

3. "Authority" has two basic meanings. Authority may be the power to enforce obedience upon others to a set of commandments and/or the right to enforce obedience upon others to a set of commandments.[3]

There are many different bases for authority, but four bases are particularly important for understanding the authority structures of Orthodox and Conservative Judaism. According to Dr. Reines, these include authority by power, authority by right, authority by consent and authority by power and right.

> a. Authority by power: If the authority of an entity (whether, for example, a person, a group of persons, or a religious institution) is based upon superior strength, so that others are compelled by reason of this strength to obey the entity, even against their will, the authority is termed authority by power. The "superior strength" of authority by power means the ability, ultimately, and if necessary, to bring coercion, either physical or psychological, to bear.
>
> b. Authority by right: If the authority of an entity is based upon morally justifiable grounds so that control over others is exercised by reason of these moral grounds alone, the authority is termed authority by right.
>
> c. Authority by consent: If the authority of an entity is based upon the consent of the one over whom it is exercised, the authority is termed authority by consent. The consent, of course, must be given freely, by a person possessed of competent knowledge and sound psychic faculties.
>
> d. Authority by power and by right: If the authority of an entity is based both upon superior strength and morally justifiable grounds, so that others are compelled by reason of this strength and morality to obey the entity, even against their will, the authority is termed authority by power and by right.[4]

B. The View of Authority in Orthodox, Conservative and Reform Judaism: The Philosophical and Theological Foundations

1. Authority in Orthodox Judaism

Authority in Orthodox Judaism is of the kind previously described as authority by power and by right. According to the definition that has been laid down, authority by power and right exists in a person or community of persons that understands itself as morally justified in requiring the obedience of other persons to its will or commandments, whether these other persons consent or not. In Orthodox Judaism, the Orthodox rabbinic heirarchy is the entity understood to possess such authority, and this heirarchy in turn receives its authority through a "true tradition" (kabbalah).[5] This "true tradition" ultimately verifies the occurrence of the revelation at Mt. Sinai described in Exodus 19ff. and Deuteronomy 5ff.

In this revelation which consisted of the Written and Oral law (the Penteteuch and the Talmud), the legal system which is obligatory upon all Jews for all times, according to Orthodox Judaism, was laid down in principle and in detail.[6] And since this legal system was divinely and directly revealed, it is considered infallible. It is also considered immutable inasmuch as Moses received the Law in a revelation which is generally viewed as superior to all who came before and who will ever come after him.

2. Authority in Conservative Judaism

The Conservative rabbinate, or more precisely, the Rabbinical Assembly (RA),[7] also understands their authority to be authority by power and by right. They, as do the Orthodox, believe the penteteuchal law is obligatory upon all Jews and must therefore be observed. Also as in Orthodoxy, they believe the Mosaic revelation is eternally correct and therefore immutable. But the Conservative rabbinate also maintains that the spirit of the law legitimizes change through interpretation. They, therefore, apparently claim that the law is both mutable and immutable at the same time. As one researcher has observed, however, "Immutable and mutable do not mix at all even when using the seemingly disarming term 'spirit' as was done in the case of the Jewish Theological Seminary Association preamble (1883)."[8] Such a notion either makes legitimate any individual's interpretation of Mosaic law or negates the validity of all interpretation of Mosaic law."

Whereas the Conservative rabbinate claims to have authority by power and by right, in reality they do not, for authority by power and by right must be based upon infallible and immutable law, and the Conservative rabbinate by its notion of "spirit" and its actions of repealing sections of the law show that in fact, the law is neither infallible nor immutable. Thus their only real base of authority is authority by consent, defined earlier as the authority of an entity which is "based upon the consent of the one over whom

it is exercised..."[9] When therefore, the people choose to submit to the authority of their Conservative rabbinate, only then the rabbinate has authority over them.

3. Authority and Reform Judaism

The Reform rabbinate, represented by the Central Conference of American Rabbis (CCAR)[10], has made no attempt to exercise authority.

Unlike the Orthodox heirarchy and the Conservative rabbinate, the Reform rabbinate does not consider the Penteteuch to contain an infallible and immutable law. The Reform rabbinate formally denied the infallibility and immutability of the Penteteuch in its statement of principles at the Pittsburgh conference of 1885: "We recognize in the Mosaic legislation a system of training the Jewish people for its mission during its national life in Palestine, and today we accept as binding only its moral laws."[11] Inasmuch as Reform Judaism considers the Penteteuch as fallible and therefore, mutable, the Penteteuch cannot be used as a source morally justifying authority by power. Inasmuch as the Reform movement has been unable to establish any other justification for authority by power, authority by power and by right, consequently, cannot be shown to exist in Reform Judaism.[12] Every member of the Reform community is free to determine which beliefs and practices he or she wishes to follow.

C. Inherent Problems in the Use of the Sources

All of the positions of the Orthodox, Conservative and Reform movements are based upon statements made by rabbis from these movements. But in each case, these "formal" positions do not necessarily reflect actual practice.

1. The Problem in Orthodoxy

The discrepancy between theory and practice in Orthodox Judaism is caused 1) by the various interpretations of the rabbis on a given subject and 2) on the inability of the rabbis to enforce their decisions.

Since every Orthodox rabbi considers himself a "viceroy" of the deity, each reserves the right to interpret the law as he understands it. This inevitably leads to a wide range of opinions on any given topic, which in turn leads to a wide range of practices. This will become clear in Chapter II.

It is even difficult to determine the prevalent practices in the Orthodox community. Although we can distinguish between the majority and minority opinions of the Orthodox rabbinate (and the majority opinions are here considered the "formal" Orthodox positions) we cannot as easily determine the common practices since the Orthodox rabbinate does not have the power to enforce its decisions. It is widely known that there is a great difference between the practices of the Orthodox rabbis and the practices of their congregants, i.e. in regard to Kashrut and Sabbath observances.

2. The Problem in Conservative Judaism

The discrepancy between theory and practice in Conservative Judaism is caused by 1) the silence of the RA on certain matters of Jewish law and 2) the inability of the RA to enforce its resolutions.

The Conservative rabbinate maintains the infallibility of the Penteteuch and acknowledges the authority of the Talmud, but they retain the right to reinterpret these laws. The problem with this logic was discussed earlier. But in any case, this position implies that the Conservative rabbinate has either affirmed or reevaluated every traditional precept. Yet they are silent on several issues, i.e., polygamy, maintenance, dowry. Many Conservative rabbis would say that neglect of a law automatically voids the law in question. While this would explain many Conservative practices, or non-practices, such reasoning is contrary to the accepted philosophy of the Conservative movement. Thus, for the purpose of this study, in order to remain philosophically consistent, we will assume that if the RA is silent on a subject, it is tacitly in agreement with the Orthodox position.

Another problem lies in the recording of RA proceedings. First, the journals of the proceedings are not indexed. And while each journal was reviewed there is a possibility that some important statements were missed. The possibility of inadvertant exclusion is increased by the fact that references to women are sometimes found within the body of

an article which appears, by its title, to be unrelated to women's issues. Second, the resolutions passed by the Committee of Laws and Standards are not always accepted by the RA as a whole, yet this is often not clarified. Third, the RA will sometimes pass a resolution to act on an issue at the following meeting, as in the case of abortion; yet there is no record of any subsequent discussion.

3. The Problem in Reform

The discrepancy between the formal statements made by Reform rabbis and Reform practice stems from the absence of both a formal and practical authority structure within the movement. While the CCAR does not, for example, consider the laws of Kashrut binding, there are still many members of the Reform community who do adhere to the traditional laws of Kashrut.

Chapter II

The "Formal" Positions of the Three Jewish Systems on Various Aspects of the Role of the Jewish Women

The "formal" positions of the three Jewish systems delineate the rights and duties of men and women within these systems. They consequently provide us with the means to determine the "formal" practical status of women in Orthodox, Conservative and Reform Judaism (see "Inherent Problems in the Use of the Sources," pp.8-10).

This chapter will be divided into three sections. The first will deal with various aspects of the role of women in and related to marriage, the second will address various aspects of women in ritual; and the third will deal with the issues of women as witnesses and women as rabbis.

These divisions are by no means arbitrary. Marriage, in Jewish teaching, is viewed as the ideal human state. The rights and duties of men and women within this institution therefore form a basis for an understanding of the status of women in the three Jewish systems. For this reason, the first section will focus on marriage and it will be the most detailed and lengthy. In it we will examine the qualifications for marriage, the nature of the relationship between the husband and wife, and the consequences of the dissolution of this bond - both through separation and death of one of the partners. Yet we must point out that while this treatment of marriage is detailed, it is by no means exhaustive.

We will not, for example, discuss in detail the conjugal rights of the husband and wife. We will, however, review many of the major aspects of the marriage relationship and this will give us a fairly accurate overview of the status of men and women within this institution.

While this examination of marriage serves as a basis for our study, it reflects only the status of women within the three Jewish systems, in their private, family lives; it does not provide us with any information about their status within the religious community. The second section therefore focuses on the latter by examining the role of women in ritual. Here we will be dealing with issues which have drawn a great deal of attention in current literature. Women in all three systems have noticed the traditional lack of participation of women in ritual and have begun to argue for equal participation and for the creation of new rituals which address their particular needs, i.e., a ceremony upon the birth of a child. This section will provide a means to judge the validity and relevance of their arguments in light of the stated positions of their respective religious communities.

The third section on women as witnesses and women as rabbis is treated separately because 1) the two issues are interrelated; 2) they involve aspects of both the private and public ritual status of women within the three Jewish systems; and 3) "women as rabbis" is currently a controversial issue. The Reform movement is now ordaining women, the

Conservative movement is examining the possibility of ordaining women and the Orthodox movement is presenting arguments against the ordination of women. This section will help clarify the reasoning behind the respective positions.

Each issue within the three sections will be treated as follows: the Orthodox halakhah will be stated and then compared to the related talmudic laws; then the Conservative and Reform positions will be noted along with an analysis of any apparent inconsistencies in the logic of the respective movements.

This format will 1) point out any deviations of the Orthodox halakhah from the simple meaning of the corresponding Talmudic laws and clarify whether or not these changes have benefited or further restricted the rights of women within the Orthodox community; 2) It will clearly show the differences between the three systems and 3) It will provide a ready means of determining whether or not the three systems are consistent in their approach to women's issues.

Part I

Marriage

A. Valid and Invalid Unions

1. Child Marriages
2. Incest
3. Bigamy and Polygamy
4. Rape
5. Statutory Rape

B. Illegitimate Children (Mamzerim)

C. Marital Obligations Between Husband and Wife

1. Maintenance
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E. Obligations of the Husband and Wife Upon the Death, Divorce and Separation of the Spouse

1. Custody of the Children
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3. Levirate Marriage and Chalitza
4. Divorce
5. Agunah

A. Valid and Invalid Unions

According to the Talmud, a union is either 1) permitted and valid, 2) prohibited but valid, or 3) prohibited and void. A union is prohibited and considered void if the union is incestuous or if one partner is not Jewish. Since such a marriage is not recognized as valid, its dissolution does not require a bill of divorce (a "get"). A union is prohibited but valid if it is prohibited for any reason other than incest or union with a non-Jewish partner. In this case, a "get" is necessary to dissolve the marriage. Valid unions are defined as all unions not included in the other two categories.

In this section, we will discuss cases which fall into each of the three categories and outline any penalties which are associated with them as they pertain to each of the three Jewish systems.

1. Child Marriages

a. Child Marriages In Orthodox Judaism

Although our civil law sets a minimum age for marriage, Orthodox halakhah does not.

According to the Talmud and post-talmudic authorities, a male child (legally defined as under the age of 13) may contract a marriage on his own behalf (Yev. 112b; Sh. Ar., EH 43:1). And although no one may contract the marriage for him, a father may arrange for the marriage of his daughter without her consent. (Kid. 44b and Rashi, Tur and Beit Yosef EH 37); Sh. Ar., EH 1:3). There was, however, some objection to child marriages in talmudic times, so the Talmud states a dissenting opinion which reads "it is forbidden for a father to give his minor daughter in marriage until she has grown up and can say: 'I want so and so'." (Kid, 41a). But the salient point here is that in any case, child marriages are possible and considered valid.

(It is interesting to note that the above prohibition against a father arranging for the marriage of his daughter without her consent was not accepted as halakhah in Medieval times. The uncertainties of life in the Diaspora made parents reluctant to delay their daughter's marriages until they had grown up. (Tos. Kid. ibid; Sh. Ar. EH 37:8). The observance of child marriages was considered a mitzvah. (Maim. Ishut, 3:19, Sh. Ar., EH 37:8).[2]

But in practice, the Orthodox generally follow civil law in regard to the minimum age for marriage. But if a child marriage is nevertheless contracted it is considered valid in the eyes of the Orthodox rabbinate. This same "practice" is followed in Israel.

The (Israeli) National Rabbinical Conference of 1950 adopted a takkanah which forbids a man from contracting a marriage with a girl under 16, or for her father to give her in marriage. But if the law is defied, the marriage cannot be nullified because it is still valid under Jewish law.

The Marriage Age law was then amended in 1960 to make it an offense punishable by imprisonment of fine or both for any person to marry a girl under the age of 17 or to celebrate or to assist in the celebration of such a marriage in any capacity - whether a rabbi or cantor or for a father, guardian, or relative to give the girl away in marriage.

There are two exceptions to the law. The court may grant permission for a person to marry a girl under the age of 17 if 1) the girl has had a child or is pregnant by her intended and 2) when there are extenuating circumstances (as defined by the court).[14]

Note that the Israeli laws and Orthodox halakhah makes no mention of a minimum age for males.

b. Child Marriage In Conservative Judaism

Since the RA has been silent on this subject we must assume that it agrees with the Orthodox position. In practice, however, the Conservative rabbinate follows civil law concerning the minimum age for marriage.

c. Child Marriage In Reform Judaism

The Reform follow civil law in regard to minimum ages for marriages, as well as for all other legal aspects concerning marriage.

2. Incest

a. Incest In Orthodox Judaism

According to Orthodox halakhah, the prohibition against incest applies to the following degrees of consanguinity: parents (Lev. 18:7); mother-in-law (Lev. 20:14); stepmother (Lev. 18:8); sister and half-sister (Lev. 18:9); granddaughter (Lev. 18:10); aunt (Lev. 18:12-13); wife of the father's brother (Lev. 18:14); daughter-in-law (Lev. 18:15); brother's wife (Lev. 18:16); step daughter and step granddaughter (Lev. 18:17); and the wife's sister during the lifetime of the former (Lev. 18:18). By analogy, these Biblical laws have been extended to include, in the ascending and descending line, the husband's grandmother and great grandmother, the wife's grandmother and so forth upward the grandson's wife and so forth downward; and the son's or daughter's granddaughter, the grandfather's and grandmother's sisters and the paternal grandfather's brother's wife (Kid. 67b, Ker. 3a; Sanh. 74a; Yev. 21a; Maim. Yad, Ishut 1:6).[3]

The important points to note here are that an uncle may marry a niece, but an aunt may not marry a nephew; although a brother is forbidden to marry his brother's wife, he may do so if his brother died and left no children.

The penalty for incest is death and/or karet (divine punishment). But capital punishment is imposed only when the parties involved have been previously warned in the presence of witnesses (Yad. Issurei Bi'ah 1:2-3).[4] Yet

since such warning is unlikely to take place, and since the death penalty can only be imposed by the civil courts, the Orthodox have in effect reduced the punishment for incest to karet.

Orthodox Halakhah vs. The Talmudic Law

While the Orthodox follow the Talmudic degrees of consangerinity, they differ significantly from the Talmudic laws concerning the appropriate punishment. According to the Talmud, incest with the mother, step-mother and daughter-in-law are punishable with death by stoning (Sanh. 7:4); incest with the stepdaughter, stepgranddaughter, mother-in-law, daughter and granddaughter are punishable with death by burning; and all other offenses of incest are punishable with karet or flogging. There is no mention here of capital punishment being imposed only upon those who had been previously warned.[5]

An Interesting Sidelight

The codifiers' great ignorance of women and female psychology is eptiomized in their discussion on whether or not a woman should choose death rather than engage in incest.

Rashi and Isserles believe the woman is a passive partner and therefore may submit to incest rather than be killed (Rashi to Yoma 82a; Isserles, Y. D. 157:1). And others felt that the female's enjoyment is tantamount to the male's action (Tos., B. K. 32a) constituting "an overt act" for which her punishment is flogging.[6]

b. Incest In Conservative Judaism

Because of their silence on this issue we must assume that the RA follows the Orthodox halakhah on incest. In practice, however, Conservative rabbis follow civil law.

c. Incest In Reform Judaism

The Reform follow the civil law in all matters relating to incest. Thus the corresponding Orthodox and Conservative halakhoth are inoperative in Reform.

The Reform rabbinate was motivated to follow civil law in part in an effort to bring about equality for women. Thus, in a discussion on Kohler's article on the "Harmonization of Marriage and Divorce Laws", Rabbi Abram Simon says: "The equality of women calls for an equality of law and what is permitted the uncle or denied him must be correspondingly permitted the woman or denied her."[7]

3. Bigamy and Polygamy

a. Bigamy and Polygamy in Orthodox Judaism

According to Orthodox halakhah, polygamy is forbidden for both the man and the woman.

Orthodox Halakhah vs. Talmudic Law

The Orthodox position is contrary to Talmudic law. The Talmud does prohibit a woman from having more than one husband but it permits a male to have more than one wife.

The woman is prohibited from marrying more than one man because the Kiddushin with the first husband makes her the property of that husband. In other words, she no longer owns herself and thus cannot marry another since she would theoretically be selling property she does not own - which is prohibited. The woman's "property" status in a marriage is also the reason why only a man can divorce his wife and not vice versa.

As the Talmud states: "A woman cannot be the wife of two men." (Kid. 7a).

If she does contract a second marriage she is considered an adultress and she becomes subject to the death penalty and is prohibited to both men forever and she must get a "Get" from both of them. Even though the marriage to the second man in invalid, a "get" is required mi-de-Rabbanan (according to rabbinical enactment) so that people won't get the idea that the second marriage is valid. (Yev. 88b and Rashi; Maim., Yad. Gerushim 10:5, Sh. Ar. EH 117:56).

On the other hand "a second marriage for a man is valid and therefore can only be dissolved by death or divorce." (Yev. 65a).

Polygamy for men was in fact permitted without restrictions until the 10th century (Piskei ha-Rosh to Yev. 65a; Sh. Ar., EH 1:9) when the herem de-Rabbenu Gershom was issued. This takkanah states that "a man cannot take additional wives unless specifically permitted to do so on special grounds by at least 100 rabbis from three countries (or districts).

Because of this takkanah, the codifiers formulated laws to discourage polygamy, but they could not make it illegal because of the Talmudic laws.[8]

<u>according to the codes:</u>

A man may not take a second wife if he has specifically forbidden himself to do so in the ketubbah (Sh. Ar., EH 76:8).

Taking a second wife is also forbidden wherever monogamy is the local custom since such a custom is deemed an implied condition of the marriage (Sh. Ar. EH 1:9; Beit Shemu'el, ibid., 20; Hilkat Mehokek, ibid, 15, 76:8).

Generally, the husband can only be released from this restriction (the herem) with his wife's consent (loc. cit.; Darkhei Moshe, EH 1:1, n. 8; Sh. Ar., EH 76).

Since the first wife is not obliged to live with a zarah ("rival") she may also ask that the court order (but

not compel) the husband to give her (the first wife) a divorce (Sh. Ar., EH 154: Pithei Teshuvah. 5; PDR vol. 7 pp. 65-74, 201-6).

If the husband refuses to give his first wife a divorce he is still obligated to provide her maintenances, even if they are living apart, since he is preventing her from remarrying. (Knessit ha-Gedolah EH 1; Tur 16-17; PDR vol. 7 p. 74).[9]

Bigamy And Polygamy Today

In modern times, the takkanah is assumed to be in force, whether or not it is written into the ketubbah. If it is written into the ketubbah, it is considered to be a clerical error (Knessit ha-Gedolah EH 1, Tur 17; Arukh ha-Shulhan, EH 1:23).

It is important to note, however, that the herem did not extend to those countries where it was apparent that the takkanah had never been accepted (Sh. Ar., EH 1:10) - In general, it can be said that the herem has been accepted as binding among Ashkenazi communities, but not among the Sephardis and most of the Oriental communities.[10]

Conditions For The "Heter", Permission To Take A Second Wife

Permission, or Heter, for a man to take a second wife is granted: 1) a wife becomes insane in which case the wife is incompetent to accept a get, (Bah EH 119; Sh. Ar. EH 1, Beit Shemu'el 1, n. 23; 119, n. 6; Helkat Mehokek ibid., 10-12; Ozar ha-Posekim, EH 1:72, 19). If that wife recovers,

the husband is supposed to divorce her and not the second wife. If the first wife refuses to accept the get then the husband is free from his obligation to maintain her and is required only to pay her ketubbah. (Sh. Ar., EH 1; Beit Shemu'el, ibid, Ozar ha-Posekim, EH 1:72, 17-18; PDR 3:271). and 2) when a man's wife refuses to accept a get from him despite court orders (e.g. in the case of adultery) (Sh. Ar. EH 1:10; Hilkat Mehoket ibid, 16; Ozar ha-Posikim EH 1:63, 7).

After the court has decided that a release from the herem should be granted, the matter is referred to 100 rabbis of three countries (Ozar ha Posekim, EH 1:61, 9) for approval; and if so approved, the hetter takes place. The husband is required to deposit a get with the court for the first wife. The deposited get is usually only delivered if the first wife is in danger of becoming a deserted wife or agunah (Arukh ha-Shulkan, EH 1:26; Ozar ha-Posekim, EH 1:72, 30-31).[11]

b. Bigamy and Polygamy In Conservative Judaism

Since the RA is silent on this subject, the Conservative rabbinate evidently accepts the Orthodox position on polygamy. But in practice, they follow the civil law in such matters.

c. Bigamy and Polygamy In Reform Judaism

According to CCAR resolutions Reform Judaism forbids polygamy for a man or woman because 1) the harem issued by Rabbenu Gershom in the 10th century prohibits it and 2) because it contradicts the "idea of marriage".

> 1) No Jew is allowed to marry several wives because of the synodical dictum of Rabbi Gershom (adopted by the Braunschweig Conference of 1844 from the French Synhedrin of 1807.[12]
>
> 2) "Polygamy contradicts the idea of marriage. The marriage of a married man to another is as little possible as the marriage of a married woman to another man and must be considered null and void."[13] Regardless of these resolutions, however, the Reform movement would not recognize polygamy since it follows civil law in all matters pertaining to marriage.

4. Rape

a. Rape In Orthodox Judaism

In practice, the Orthodox in the U. S. leave matters of rape up to the civil courts. But since the Orthodox authorities have not specifically declared the Jewish laws on rape (from Talmud and codes) null and void, we must assume that they still consider them valid.

According to Orthodox halakhah, rape is defined as follows:

1. When (forced) intercourse takes place where a woman's cries for help cannot be heard. (Deut. 22:25, 27). But when it happens in a place where she could have been heard, but there are not two witnesses to her cries, then it is presumed that she consented to the intercourse. This cannot then be considered rape. (Ibid. and Sif. Deut. 242:5 and commentaries; Yad. Na'arah Betulah 1:2, and Hassagot Rabad thereto)
2. When intercourse takes place while a woman is asleep, then it is assumed she was raped.
3. Intercourse with a female minor is always considered a rape since she has no will of her own. (Yev. 33b, 61b; Sh. Ar. E. H. 178:3; and Beit Shemu'el, no. 3 thereto)
4. When intercourse began as a forcible violation, but terminated the woman's consent, she will

> nevertheless be regarded as having been raped since in such circumstances her passions and nature have compelled her to acquiesce. (Ket. 51b; Yad, Issurei Bi'ah 1:9)[14]

Consequences of Rape

The consequences of rape depend upon the status of the woman - whether she is a na'arah, a bogeret, a married or unmarried adult woman.

The Rape of a Na'arah (a girl between the ages of 12 and 12-1/2 years)

> If a man rapes a na'arah he must pay a fine (equivalent to 50 shekels) and must pay for the pain and shame he has caused the girl. He is also required to marry her unless she or her father refuses to allow the marriage. (Deut. 22:28-29, Yad. Na'arah Betulah 2:1-6; Yad. ibid., 1:3; Sh. Ar., EH 177:3).[15]

The Rape of a Bogeret (a girl older than 12-1/2 years)

If a man rapes a bogeret he need not pay a fine or marry her since the Penteteuchal law laying down the liability for a fine for rape applies only to the na'arah. He must however compensate monetarily, for the pain and shame he has caused her. (Ket. 39a; Yad, ibid, 1:3, 1:8, 5:7; Resp. Radbaz no. 63; Tur. EH 177).

If the bogeret is already married she is permitted to stay with her husband unless her husband is a priest. In that case he must divorce her unless it cannot be proved that she had been raped. If no proof exists, and the priest and his wife remained married, upon the death of the priest,

his widow may not marry another priest because of doubt. (Yev. 56b; Yad. Ishut 24:19, 21; Sh. Ar., EH 6:10, 11).

In Israel these laws remain in effect with a few alterations. The purely civil-law aspects such as the question of compensation are governed by the general law of the state, i.e. the Civil Wrongs Ordinance of 1946. On the other hand, the halakhah concerning the effect of rape on the marital relationship between the victim and her husband is governed by the rabbinical courts.

And the Israeli rabbinate has changed this aspect of the law in one respect. They have declared as unenforceable the provision that a person must marry the na'arah he has violated by the provisions of the Marriage Age Law of 1950 as amended in 1960.[16]

Consequences of the Halakhah on Rape for the American Orthodox Community

One final note: Although the American Orthodox authorities leave matters of divorce up to the civil courts, it is conceivable that the Orthodox community would force a Kohen to divorce his wife if it is known that she has been raped.

Orthodox Halakhah vs. Talmudic Law

There are two major discrepancies between the Orthodox halakhah and the Talmudic laws on rape. The first surrounds the marriage of the na'arah to her violator and the second surrounds the marital status of a raped woman whose husband is a priest.

Whereas the Orthodox follow the Shulchan Aruch and declare that a na'arah or her father may refuse to marry the violator, the Talmud states that she must marry him.

Again, the Orthodox follow the Shulchan Aruch when they state that a priest need not divorce his raped wife if the rape cannot be proved, even though the wife declares she has been raped. Although after the priest dies, his widow may not marry any other priest because of doubt. (Sh. Ar. EH 6:11, 13). Against this, the Talmud states that the priest must divorce her. (Yev. 56b).[17]

In Conclusion

Rape in all cases, is understood to be a minor offense on the part of the violator since at most he pays a fine (assuming that the raped woman would refuse to marry him).

The raped woman, on the other hand, from no fault of her own, may be forced to be divorced by her husband - if he is a Kohen.

One must also take note of the fact that the marital status of the violator is of no consequence, nor is the status of his own marriage placed in jeopardy. This follows from the law that a man may have more than one wife and in no case can he be labeled an adulterer.

b. Rape In Conservative Judaism

The RA is silent on this issue. Thus, we must assume the Conservative rabbis agree with the Orthodox position on matters concerning rape. In practice, however, they accept the judgement of the civil courts.

c. Rape In Reform Judaism

In Reform, rape is seen solely as a criminal offense, (and consequently the Jewish laws on rape are not considered binding) and has no bearing upon the marital status of those involved. The matter is left in the hands of the civil courts.

5. Statutory Rape

a. Statutory Rape In Orthodox Judaism

According to Orthodox halakhah, as established in the codes, if a man seduces a na'arah (a girl between 12 and 12-1/2 years old), he must pay the same fine as that prescribed for rape. But he is not in this case required to marry her nor is he liable for the compensation for pain and suffering, because the na'arah consented. (Yad, Za'ar and Betulah 2:16).

If a man seduces a bogeret (an adult woman, older than 12-1/2 years of age) he is exempt from all financial liability toward her since, having consented to the intercourse, she is presumed to have waived all such claims (Ket. 42a; Yad, ibid; Ber Yosef. WH 177). He is also exempt from marrying her, as he is if he had raped her.[18]

One must also take note of the fact that according to both talmudic and Orthodox law, a woman suffers no corresponding penalty for seducing a man unless she is married. If she is married, she is considered an adultress and is subject to the penalties ascribed to an adultress.

b. Statutory Rape in Conservative Judaism

Since the RA is silent on this issue, we must assume that Conservative rabbis adhere to the Orthodox laws pertaining to statutory rape. In practice, however, they ignore these laws and leave all such matters in the hands of the civil courts.

c. Statutory Rape and Reform Judaism

Since the Jewish laws pertaining to seduction fall into the category of criminal law and since the Reform rabbinate leaves all matters of cirminal law in the hands of the civil courts, the Jewish laws on statutory rape are inoperative in Reform.

B. Illegitimate Children

The definition of an illegitimate child is different in Jewish law than in civil law. In civil law, an illegitimate child (one whose status or rights are impaired) is defined as a child born out of wedlock. In Jewish law, the mere fact that a child is born (or conceived) out of lawful wedlock does not make him or her illegitimate or a mamzer. A mamzer is a child born to a Jewish woman and sired by a man with whom she cannot contract a legal marriage, i.e., a divorcee who has a child by a priest or Kohen.

In this section we will examine the status of the mamzer in the three Jewish systems.

1. Mamzerim In Orthodox Judaism

According to Orthodox halakhah, as established in the Talmud and codes, a mamzer is only allowed to marry another mamzer; and the offspring of a mamzer and a "legitimate" Jew are also mamzerim. In all other respects, the mamzer retains his or her rights as a Jew, e.g., in regard to inheritance rights and the ability to hold public office.

Orthodox Halakhah vs. Talmudic Law

The Orthodox halakhah is in basic agreement with talmudic law. The relevant texts include the following:

> If she (the woman) cannot contract a legally valid marriage to this man, but can contract a legally valid marriage to others, her offspring (from the former) is a mamzer. Such is the case when a man has sexual relations with any of the ervot (the forbidden) in the Torah (Kid. 3:12; cf. Yev. 4:13).
>
> A mamzer shall not enter the congregation of the Lord (marry a "legitimate" Jew). (Deut. 23:3).
>
> A marriage between two mamzerim is permitted (Yev. 45b; Kid. 69a, 74a; Maim. Yad., Issurei Bi'ah, 15:33; Sh. Ar., EH 4:24), so also is a marriage between a mamzer and a proselyte (Yev. 79b; Kid. 67a and Rashi thereto, 72b-73a; Maim. Yad, Issurei Bi'ah 15:7; Sh. Ar. EH 4:22).
>
> "Mamzerim...are forbidden and forbidden for all time, whether they are males or females," (Yev. 8:3), and the rule is that in the case of a prohibited union the offspring follows the status of the "defective" parent (Kid, 3:12).
>
> The offspring of a union between a Jew and a gentile takes the status of the mother. Thus a child born of a mamzer and a gentile woman will be a gentile, and not a mamzer. If the child converts, he or she will acquire the status of a legitimate proselyte and the fact that

the father was a mamzer will be wholely irrelevant (Kid. 67a, Rashi; Maim. Yad, Issurei Bi'ah 15:3; Tur and Beit Yosef, EH 4; Sh. Ar., EH 4:20).

The mamzer's right of inheritance are equal to those of any other heir. (Yev. 22b, Maim. Yad, Nahalot, 1:7; Sh. Ar., HM 276:6).

The mamzer's birth releases his or her mother from the obligation of levirate marriage and halitzah.[19]

Implications of the Orthodox Halakhah on the Mamzer

It is important to note the consequences of the Orthodox laws regarding mamzerim. A Jewish divorcee who marries a Kohan, (which is considered a prohibited union) will give birth to mamzerim. Whereas a Jewish woman who marries a gentile will give birth to "legitimate Jews." Thus the law is telling a woman that it is better for her to marry a gentile than a Jew who is prohibited to her by Jewish law - at least in regard to her children.

Note also that the female mamzer is doomed to give birth only to mamzerim. This is true whether she marries a gentile or Jew since the status of the child follows that of the mother and because in any prohibited union (i.e., between a mamzer and legitimate Jew) the offspring follows the status of the defective parent. In sum, a female mamzer can never break the chain of mamzerut. This is not so for the man. If he marries a gentile his children will be considered gentile. But his offspring have the right to convert and become "legitimate" Jews. Thus, by marrying a gentile,

he can break the chain of mamzerut.

2. Mamzerim In Conservative Judaism

The RA is silent on this subject. We must therefore assume that it theoretically accepts the Orthodox position of mamzerim. But in practice, the Conservatives do not follow the Orthodox law in this area.

In Conservative Judaism and Jewish Law, Seymour Siegel states: "We do not, in fact, practice the exclusion of mamzerim because it is an unfair law."[20]

This is a surprising statement since if Siegel's reasoning were carried to other "unfair laws", the Conservative would have abandoned, for example, the laws concerning the Agunah. Such discrepancies in Conservative law and practice epitomizes the inconsistent, illogical position of Conservative Judaism.

3. Mamzerim and Reform Judaism

The Jewish laws concerning mamzerim are inoperative in Reform since the Reform movement does not consider them "morally binding".

C. Marital Obligations Between Husband and Wife

When a man and woman marry, they take on certain responsibilities to one another. Acording to Maimonids' paraphrase of the Talmud:

> When man marries a woman, whether virgin or non-virgin, whether adult or minor, whether a daughter of Israel, a proselyte, or an emancipated 'bondswoman' he obligates himself to her for ten things and is in turn entitled to four things.

> Of the ten, three are found in the Torah: her food, her raiment, and her conjugal rights (Exod. 21:10). Her food signifies her maintenance; her raiment what the term implies; and conjugal rights, sexual intercourse with her according to the way of the world.
>
> The other seven are of Scribal origin, and all of them are conditions laid down by the court. The first of them is the statutory ketubbah; the rest are called "conditions contained in the ketubbah." They are the following: to treat her if she falls ill; to ransom her if she is captured; to bury her if she dies; to provide for her maintenance out of his estate; to let her dwell in his house after his death for the duration of her widowhood; to let her daughters sired by him receive their maintenance out of his estate after his death, until they become espoused; to let her male children sired by him inherit her ketubbah, in addition to their share with their half-brothers in his estate.
>
> And the four things he is entitled to are all of Scribal origin namely the following: he is entitled to her earnings, to anything she finds, and to the usufruct of her estate during her lifetime. And should she die in his lifetime, he is her heir, with precedence over anyone else as to her estate.[21]

These obligations fall into four general categories 1) maintenance provided by the husband for his family; 2) conjugal rights 3) the husbands rights to his wifes property and earnings and 4) inheritance rights.

In this section we will examine aspects of each of these categories. The first will deal with "maintenance"; the second will examine the laws of niddah, since they have a direct bearing upon the nature of conjugal rights; the third will outline the contents of the dowry, since the dowry specifies the rights and duties of the husband in regard to his wife's property and earnings; and the fourth will examine the general topic of inheritance rights.

1. Maintenance

a. Maintenance Requirements of the Husband & Wife in Orthodox Judaism

According to Orthodox halakhah, these are the obligations of maintenance between the husband and wife, as defined in the codes:

1. A husband is obligated to maintain his wife by virtue of his marriage (Yad, Ishut 12:2, Sh. Ar. EH 69:2).
2. He must supply her with at least the minimal needs for her sustenance in accordance with local custom and social standards (Yad, Ishut 12:10 Sh. Ar. EH 70:3).
3. The wife, on the other hand, is entitled to be maintained at a level not lower than what she was used to before her marriage. (Ket. 61a; Tur EH 70).
4. But the husband is not required to maintain his wife at a level higher than her premarital status even if he can afford it. (Yad, Ishut 12:11 Sh. Ar., EH 70:1, 3 and Hilkat Mehokek thereto n. 1.)
5. In return, the husband is entitled to his wife's "surplus handiwork". (Ma'arh Yadiha).
6. The wife may keep her surplus earnings if she waives her right to her weekly allowance (Sh. Ar. EH 70:3, Helkat Mehoket thereto no. 7).
7. Any unspent money given to the wife belongs to the husband since he is only required to give her an amount sufficient for her needs. (Ket. 65b; Yad, Ishut 12:3; Pithei Teshuvah, EH 70 n. 1) unless she spent less than she requires for her own needs. In the latter case, the wife is entitled to keep the money to do with as she pleases. There is, however, a contrary opinion that such money always remains in the husband's hands (Rima, EH 70:3; Pithei Teshuvah EH 70, n. 1; PDR 2:229-289).
8. And even if the wife is capable of maintaining herself she is not obliged to do so and she is not required to help her husband fulfill his obligation to her. (Sh. Ar. loc. cit., Pithei Teshuvah, EH 70 n. 2; PDR 1:97 101f).[22]

Separated Parties

In general, the husband is only obliged to maintain his wife as long as she lives with him or if he is not respon-

sible for them being separated (Rema, EH 70:12).

When the Husband Leaves the Home

In this case the husband is responsible for maintenance of his wife (Ket. 61a, Mordekhai, Ket. n. 273).

It is however, assumed, that in such a case, the husband has left his wife with sufficient means to support herself for the first 3 months of separation (Ket. 107a, Sh. Ar. EH 70:5). The wife cannot, therefore, be awarded maintenance during this time unless she can bring proof that the husband did not leave her with sufficient funds. (Rema EH 70:12 Beit Shemu'el 70 n. 11, Hut ha-Mishullash 1:6, 4)

The husband is not entitled to demand that his wife work and support herself out of her earnings during his absence unless she has expressly or by implication consented to do this (Yad, Ishut 12:20; Maggid Mishnah thereto; Sh. Ar. EH 70:9; Hilkat Mehokek 70, n. 33).

But if the husband returns and can prove that his wife has been supporting herself he has the right to demand that she repay all amounts she has recovered out of his property for the purposes of her maintenance. Nor is he obligated to repay her for her maintenance, if he had not provided it. (Yad, Ishut 12:16; Sh. Ar., EH 70:5).

When the wife is entitled to maintenance but her husband leaves her without sufficient means and she does not maintain herself our of her earnings she has the right to borrow for her maintenance and to hold her husband liable for the repayment of such a loan. (Ket. 107b, Yad, Ishut

12:19, Sh. Ar. EH 70:8).

In the event that the wife has sold some of her own property to support herself, she will be entitled to recover its value from her husband unless she has waived this right, (Rema, EH 70:8; Beit Shemu'el 70 n. 29; PDR 2:289, 291f).

A husband is exempt from paying maintenance if 1) for reasons beyond his control he is unable to work and earn money (Pithei Teshuvah, EH 70n 2; Peusha HM 97 n. 41) and 2) if the husband needs to repay regular debts, since they take precedence over his obligations to pay maintenance.[23]

In The State Of Israel

If the husband refuses to comply with a judgement of the court for the payment of maintenance, he may be imprisoned for a period not exceeding 21 days for every unpaid installment (Executive Law 5727-1967).

When The Wife Leaves (see above)

If the wife has halakhically justifiable means for leaving - meaning she has justifiable grounds for divorce - then her husband is required to provide her with maintenance.

Maintenance Obligation of the Husband & Wife Towards Their Children

> The father is legally obligated to maintain his children until they are six years old (male or female) (Ket. 49b; Sh. Ar. EH 71:1). Above this age the obligation flows from the laws of Zedakah but he must do everything to satisfy the needs of his children even

after this age. (Ket. 49b, 65b, Sh. Ar. EH 71:1 Yad, Ishut 12:14, 15:21:17, Maggid Mishnah; Sh. Ar. YD 251:4)

Since this law did not provide adequate protection for children, a takkannah was issued by the Chief Rabbinate of Palestine in 1944 which states that the father must maintain his sons and daughters until the age of fifteen, unless they can support themselves. (A.H. Friemann, in: Sinai, 14 (1943/44) 254-62).[24]

The mother has no legal obligation to maintain her children.

Maintenance of the Children Out of the Deceased's Estate

The father's obligation to maintain his son ceases upon his death. The obligation is not transferred to any of the heirs. The sons are, however, entitled to a rightful share of the estate (BB 139a, Sh. Ar. HM 286:1).

Daughters are excluded from succession rights to their father's estate. But they do have the right to be maintained from the estate until they are considered adults or until marriage - whichever comes first. Maintenance in this case is to be provided to the same extent as they were entitled during their father's lifetime (i.e. in accordance with their needs. (Ket. 52b, 53b; Sh. Ar., EH 112:16).

This right of the daughter stems from the conditions of her mother's ketubbah as her independent right and therefore she cannot be deprived of it, without her own consent, neither by her father's will nor by her mother's waiver of the respective condition of the ketubbah in an agreement with the father, and it remains in force not withstanding the divorce of her parents (ket. loc. cit., Yad, Ishut 12:2; 19:10; Rema, EH 112:1).

If the assets of the estate are not sufficient to satisfy both the daughter's right of maintenance and the heir's rights of succession, the daughter's right takes preference (Ket. 108b; Sh. Ar., EH 112:1).

CONSEQUENCES OF THE ORTHODOX LAWS OF MAINTENANCE BETWEEN HUSBAND AND WIFE

In the marital relationship, the wife is not obligated to provide for her own maintenance or for her husband's. The burden of financial support falls solely upon the husband.

But this system can cause a greater hardship on the wife in the event of separation. If a husband leaves he is required to provide her with maintenance. But if he has accumulated debts, he must first repay them before he can give his wife any money. In the event that his wife cannot work, she will be left totally destitute, unable to provide herself with food and shelter.

Talmudic vs. Orthodox Halakhah

The Talmud makes no mention of a husband's exemption from providing maintenance to his wife in the event that he leaves her. Yet Orthodox halakhah does provide for such an exemption.

Maintenance of the Children

The husband is totally responsible for the maintenance of the children.

Talmudic vs. Orthodox Halakhah

According to the Talmud, the father is only obligated to maintain his children until they are six years old.

The Orthodox extended this obligation by accepting the 1944 takkanah of the Chief Rabbinate of Palestine which states that the father must support his children until the

age of fifteen, unless they can support themselves.

Maintenance of the Children Out of the Deceased's Estates

Sons are required to maintain themselves out of their share of the estate.

And since the daughters are not legal heirs, their maintenance must be provided by the heirs. Their right to maintenance takes precedence over the heirs right of succession. So when funds are limited, the daughters receive maintenance while the sons are left to fend for themselves.

b. Maintenance in Conservative Judaism

Due to their silence on this subject, we must assume that the Conservative rabbinate follows the Orthodox halakhah of maintenance. But in practice, they follow the civil law concerning the financial responsibilities of the husband and wife.

c. Maintenance in Reform Judaism

The Reform follow civil law in regard to maintenance rights. They do not follow the Orthodox halakhah, partly because they reflect a belief in the husband's superior authority.

As Kaufman Kohler stated in his article "Harmonization of Marriage and Divorce Laws": "The husband should not rule over the wife or the wife over the husband."[25]

But generally, the Reform movement always leaves the legal matters of marriage in the hands of the civil courts.

2. Niddah

a. Niddah ("The Menstruous Woman") in Orthodox Judaism

According to Orthodox halakhah, a woman is forbidden to have intercourse or any other physical contact with her husband from the time she expects her period to start until she has ceased passing blood for seven days. Since the minimum length of a mensus is considered to be five days, the minimum period of separation is 12 days. At the end of this separation, the woman is required to immerse herself in a mikvah, or ritual bath, before she and her husband can resume sexual relations.

If, however, blood appears at any time this is considered menstruous blood and the woman is required to separate again from her husband until seven clean days have passed.

These are, in brief, the laws of niddah as codified in the Shulcahn Aruch and accepted by the Orthodox.[26]

The Orthodox Halakhah vs. The Talmudic Laws of Niddah

The Orthodox definition of menstruous blood and the subsequent requirement of the woman to observe seven clear days are contrary to Talmudic law.

According to the Talmud, there are several types of blood, some of which are considered menstruous or unclean, and others which are distinguished as clean or non-menstruous blood. Only the appearance of menstruous blood requires the woman to refrain from sexual relations with her

husband until she has observed seven clear days and has purified herself in a mikvah.

But the sages' definitions of menstruous and non-menstruous blood could not be corroborated by later medical findings. So, in order to remove any doubt about when a woman should observe seven clean days, the codifiers simply declared that all blood passed by a woman in menstruous.

And this ruling remains in force in Orthodox Judaism even though modern medical science is capable of determining the exact nature of the blood.[27]

Consequently, a woman who habitually spots between her normal periods is forbidden to her husband for a minimum of nineteen days out of each month!

The Psychological Implications of Niddah

According to Orthodox authorities, the laws of niddah serve to enhance the marital relationship. As Meiselman states in his book, Jewish Woman in Jewish Law: "The laws of family purity, humanize and elevate sex by enabling the partners to relate to each other as people rather than as sex objects."[28] And to support his position, Meiselman cites the Talmudic passage in Niddah 31b which says:

> R. Meir used to say: Why did the Torah say that a menstruating woman is forbidden for seven days to her husband? For, since the husband is accustomed to his wife he may begin to find her unpleasing. Therefore the Torah said to let her be forbidden for seven days so that she will be as dear to him as the day of his marriage. [29]

He also adds that freedom from sexual pressures allows "frank discussions" between the couple which might otherwise

be hindered by the pressures of sexual anticipation and that there is medical evidence which indicates that women who observe niddah suffer less from cervical cancer.[30]

In sum, Meiselman states that a woman should not feel a loss of self-esteem or feel she is taboo or unclean as a result of the laws of niddah since they are psychologically and physically beneficial to her.

And in response to those women who do not feel they are so benefited, he says that "since the laws are divine commands, the response to negative reactions must be education and not abrogation."[31]

But the fact remains that the menstruating woman is considered unclean and taboo to her husband by the Talmud and post-talmudic literature, and no amount of education or study can remove this stigma.

The Talmud says that "a menstruous woman who passes between two men, if she is at the beginning of her menses, causes one of them to be killed and produces strife between them if she is at the end of it (Pesachim 111a).

And Nahmonides states in his commentaries to Genesis 31:35 and Leviticus 12:4 and 18:19 that "if a menstruous woman looks for a long time in a mirror, red drops resembling blood appear on it. She pollutes the air in her proximity, and is regarded as sick and even as affected with plague."[32]

Any possible psychological benefits resulting from the observance of niddah are consequently undermined by such

negative images of a woman's normal biological processes.

And we must also note that the Talmud requires a man to take a ritual after any seminal discharge (in order to be ritually pure again for prayer or study of the Torah (B.K. 82 a, b) but the Orthodox do not require him to do so. In this case, as well as in the case of a woman, the man is rendered unclean by a normal biological function. But today, only the woman is required to purify herself.

The observance of one law and not the other is logically inconsistent and prejudicial against the woman.

b. Niddah in Conservative Judaism

Since the RA is silent on this subject, we must assume that they accept the Orthodox halakhah on Niddah. But in practice, very few Conservative women strictly follow the rules.

c. Niddah and Reform Judaism

The Reform Movement has made no statements specifically concerning Niddah. But the 1885 Pittsburg Platform states that "we accept as binding only the moral laws, and maintain only such ceremonies as elevate and sanctify our lives, but reject all such as are not adapted to the views and habits of modern civilization."[33] Since "Niddah" is not a moral law, all legislation pertaining to it are inopreative in Reform.

In practice, however, there are a few Reform women who choose to observe the purity rites.

3. Dowry

a. The Dowry in Orthodox Judaism

According to Orthodox halakhah, as established in the codes, all property of whatever kind brought by the wife to the husband upon their marriage is considered her dowry. (Yad. Ishut, 16:1 and Maggid Mishnah thereto). But in its restricted and common meaning, the term "dowry" is intended to refer to those assets of the wife which she of her own free will entrusts to her husband's responsibility, the equivalent whereof the husband of his own free will undertakes in the ketubbah and in a sum of money specified therein as the nedunyah, to restore to his wife upon dissolution of their marriage (Maggid Mishnah, Ishut 16:1; Tur., EH 85; Sh. Ar. 66:11a and 85:2, Isserles gloss; 88:2).

There are 3 categories of property which a woman may bring into a marriage 1) Zon Barzel, 2) Zon Melog and, 3) property which does not fall into the previous categories.

1. Nikshei Zon Barzel (lit. "the property of iron sheep").

   This is property a wife gives to her husband for ownership but under his responsibility. This property is his to do with as he pleases but he is responsible for returning the initial value of the property back to his wife upon dissolution of the marriage - as stipulated in the ketubbah. If the actual property given to the husband at the time of the marriage is still in existence in the event of a divorce, then the wife is entitled to the return of that property. Any benefits or losses accrued from the property durung the marriage must be absorbed by the husband. (Tur and Sh. Ar. EH 85:2)

2. Nikshei Melog (lit. "plucked property").

   This is property which the principal remains in the wife's ownership but the fruits thereof are taken by

the husband so that he has no responsibility or rights in respect to the principal; both its loss and gain being only hers. (Rashbam BB 149b; Haggahot Maimmoniyyot Ishut 16:1), and upon dissolution of the marriage such property returns to the wife as it stands.

3. Property which is neither Zon Barzel nor Melog:

This is a wife's property of which the husband has no rights at all, neither as to the principal nor the fruits thereof. This includes property acquired by her after the marriage by way of gift, the donor having expressly stipulated that it be used for a specific purpose or that it be used for any purpose of her choice without her husband having any authority thereover (Yad Zekhiah 3:13, 14; Sh. Ar. EH 85:11), or property given to her as a gift by her husband, he being considered here to have waived his rights to the fruits thereof in terms of the rule "whoever gives, gives with a generous mind" (BB 52b and Rashbam thereto; Sh. Ar. EH 85:7).[34]

The Husband's Rights to the Principal

Since the Zon Barzel and Melog property belong to the wife, the husband is not entitled to sell it or do anything with it without his wife's permission. (Sh. Ar. EH 90:13, 14; Rema to 14; Beit Shemu'el 90, n. 48; Resp. Ribash no. 150). The ruling is different however, where money is concerned. The husband, in this case, may invest it and suffer losses or benefit from gains through it. He does not have to get the consent of his wife. He is merely responsible for returning the initial amount in case of divorce or dissolution of the marriage. (Helkat Mehokek 8.5, n. 4; Resp. Ribash no. 150).

Income from the Wife's Property

All fruits of the wife's property, i.e. all benefits derived from her property in a manner leaving in tact the principal and its continued capacity to provide benefits - such as natural or legal fruits, e.g.

> rental or the right of occupation or stock dividends - belong to the husband (Sh. Ar. EH 69:3, 85; 1, 2, 13). In accordance with the regulations of the sages he is entitled to these in return for his obligation to ransom her should she be taken captive in order to avoid the ill-feeling that would arise between them if he received no help from her (Ket. 47a-b and Codes.). The wife cannot forego her right to be ransomed at her husband's expense with the object of depriving him of his right to the fruits of her property, lest she remain unransomed and become absorbed among the Gentiles (Sh. Ar. EH 85:1)[35]

For the same reason, the husband does not escape the obligation to ransom his wife by renouncing the fruits from her property.

The husband cannot, however, use the fruits for his personal advantage. Since it is the object of the halakhic rule that the fruits of the wife's property is "for the comfort of the home" (Ket. 80b) or to ease the burden of maintaining the household (Yad. Ishut 22:20 and Maggid, Mishnah thereto). If the husband misuses his right then the wife's property is considered a part of her nikhsei milog, of which the fruits only may be taken by him, to be used for the comfort of the home. (Tur, EH 85, Persihah n. 51; Derishah n. 2).

For the same reason the husband's creditors, i.e. in respect of debts unconnected with the upkeep of the household, may not seize the fruits and recover their debt from the proceeds thereof since this would preclude them from being used for their assigned purpose (Sh. Ar. HM 97:26; commentaries to E.H. 83:17).

On the other hand, since the fruits belong to the husband, the wife must not do anything to deprive him of his right. She cannot therefore sell the property without her

husband's consent (Sh. Ar. EH 90:0,13) with regard to the fruits. The wife may sell the principal, but the fruits of that principal (even if it no longer belongs to the wife) are still the husband's. If the husband then dies, the fruits are given to the purchaser (Rema EH 90:9, 13; and Helkat Mehokek 90, n. 29). If the wife dies first, the husband may seize the principal from the purchasers. (Ket. 50a, Rashi and Codes).

The rule that "whatever the wife acquires, she acquires for her husband" means that he acquires fruits but not the principal of the property (Git 77a and Rashi; Sh. Ar. HM 249:3).[36]

In Sum

Upon marriage, a woman brings into the relationship three types of property 1) Nikshei Zon Barzel; 2) Nikshei Melog and 3) property falling outside the above two categories.

1. With regard to Nikshei Zon Barzel, the wife gives up ownership and control of her property to her husband. The initial worth of the property itself will be returned to her only upon dissolution of the marriage. The Nikshei Zon Barzel is thus considered to be the bride's dowry. The husband can lose his right to dowry if he uses it for personal gain and not for the household. In such a case the property changes status from Zon Barzel to Melog.

2. In regard to Nikshei Melog, the woman retains ownership of the principal but any interest gained from it or losses suffered because of it are the husbands, which are solely under his control. The principal is returned to the wife upon dissolution of the marriage.
3. All property given to a woman as a gift or donation after her marriage is hers - both its principal and fruits. (This comprises only a small part of a woman's property).

On the other hand, the husband transfers none of his property to his wife upon marriage - either the principal or fruits from that property.

And all property and monetary gains acquired during the marriage are the property of the husband and solely under his control.

The Implications of the Dowry for the Orthodox Jewish Woman

In the event of divorce or dissolution the woman must invariably come out of the marriage with less than she brought into the marriage since 1) all accrued wealth during their union belongs to the husband, 2) the woman gave up ownership of part of her property to her husband as part of the marriage contract and 3) the amount of property she receives as gifts (which she consequently owns) is, in practice, minimal.

The only exception to this state of affairs is when the husband and wife have made a prior agreement (formulated in the ketubbah) that the wife may keep the fruits of her own labor, if and when she works. But few Orthodox women are aware of this option, so few incorporate it.

b. The Dowry in Conservative Judaism

Since the RA is silent on this issue, we must assume they adhere to the Orthodox laws concerning the dowry. But in practice, these laws are not followed. Matters of property rights are handled by the civil courts.

c. The Dowry and Reform Judaism

The halakhic laws concerning the dowry are inapplicable in Reform since Reform leaves all legal matters concerning marriage in the hands of the civil courts.

4. Inheritance

a. Succession in Orthodox Judaism

According to Orthodox halakhah, these are the laws of inheritance as they relate to 1) the husband as heir to his wife; 2) the wife as heir to the husband; 3) the sons and the 4) daughters; and 5) the debts of the deceased.

The Husband as Heir to His Wife

1. The husband is heir to his wife and takes precedence over all her other heirs. (Yad Nahalot 1:8; Sh. Ar., EH 90:1 and Beit Shemuel thereto, n.1).

2. He is heir to his wife even if their marriage was a prohibited one - as a priest to a divorcee. (Yad, Nahalot 1:8) - provided they are still married at the time of her death. (Tur EH 90).

3. And even if the husband was planning to divorce his wife at the time of her death, he is the rightful heir to her estate unless he had claimed that his marriage was a mistake due to a blemish or other defect in his wife. In this case he has forfeited his right of inheritance. (Teshuvot Maimoniyyot, Ishut, no. 35). As the aharonim said:

> The mere admission by the husband concerning his wife's defect does not dissolve the marriage, but for the purposes of inheritance the husband's admission is like the testimony of 100 witnesses and therefore upon the death of the wife her husband will not be regarded as one who is heir to his wife's estate (Helkat Mihokik, EH 90, n. 15).

And according to some scholars, even a mored (a husband who has refused to cohabit with his wife) due to his vow forfeits his right to inherit her estate (Rema EH 90:5).

4. The husband only inherits the part of his wife's estate in her possession at the time of her death and does not take her place in inheriting her contingent inheritance. (Sh. Ar., EH 90:1)

5. If the wife became entitled to an inheritance during her lifetime but she died before gaining possession of it, the inheritance will be considered in her possession and it will pass to her husband (Maharashdam Resp. EH no. 98).[37]

Since these laws prevent the wife's relatives and heirs from receiving anything, various takkanot were made to give the wife's heirs more rights and the husband less.

a. Ketubbat benin dikhrin (Ketubbah for male children). In this case the husband still inherits his wife's estate upon her death but if there are sons left behind, then these sons receive their mother's ketubbah and dowry along with their portions of their father's estate when he dies "in order that all men might thereby be encouraged to give to a daughter as much as to a son". (Ket. 52b; Sh. Ar. EH 111) - so that the father should not heistate to give his daughter a large dowry since it would remain in the hands of his descendents and not with his daughter's husband.

b. 1. "In geonic times, the need for this takkanah fell away and it was abolished, since it had become customary for fathers to give more to their daughters (Tur. EH 111)."

2. Later many of the posekim sought to revive the validity of this takkanah but its abrogation was confirmed by Isserles (Rema, EH 111:6)

3. In the period of the rishonim various takkanot were made to limit the husband's right to inherit his wife's estate. In some communities, if the wife died without issue, it became customary for the whole of the dowry given to her upon marriage to be inherited by her father or his heirs, and in other communities for the dowry to be divided between the husband and the wife's heirs on the paternal side (Sh. Ar. EH 118:19, Teshuvot Maimoniyyot, Ishut no. 35)

In France and Germany one of the ordinances known as the takkanat Shum (Speyer, Worms, Mainz) came to be widely accepted. The effect thereof was to oblige the husband to return whatever remained of his wife's dowry - save for deduction of burial expenses to the donor thereof or to her heirs, if she died childless within a year of her marriage; the second part of the ordinance laid down that upon the death of either husband or wife within the second year of their marriage, half of the dowry was to be returned to the heirs of the deceased if there were no surviving children (Rema, EH 52:4). In Spain similar takkanot were made. The most important of these the takkanah of Toledo, laid down that if the wife was survived by her husband and any children of their marriage, her estate was to be shared equally between them; if there were no surviving children, her estate was to be divided between her husband and those who would have succeeded to her estate had she survived her husband. The object of the takkanah was to prevent the entire inheritance of the wife's family from going to her husband, and in this manner the scholars restricted the husband's rights as legal heir to his wife-in the option of some of the posekim even in accordance with the Pentateuchal law (see above) and afforded him only one-half of her estate (Rosh, resp. 55:1, 6; Rema, EH118:8).[38]

6. A husband's renunciation of his right to his wife's estate is valid if made prior to their marriage but not after (Ket. 9:1, 83a).[39]

The Wife's Rights to Her Husband's Estate

1. The wife is not a legal heir to her husband's estate (BB 8:1).

2. The widow receives from her husband's estate the ketubbah obligations, the dowry increment, and her own property brought into the marriage and maintenance until her death or remarriage.

Important changes were introduced by the takkanot of Toledo and Molina with regard to the widow's rights to the estate of her deceased husband. These had no object of strengthening the hand of the husband's heirs against the widow's claims upon the estate, and laid down that if the husband was survived by any children the wife might claim no more than one-half of the total value of the estate toward payment of her dowry, kettubah, and its increment. Thus the husband's heirs were afforded the option of settling the widow's claims in full - as was usually done when the total amount thereof did not exceed one-half of the estate-or settling her claims by paying one-half of the value of the estate, even if less than due to her. If there were no childern and the widow's claims were directed against the other heirs to her husband's estate, the latter would first return to her whatever remained-in specie, at the time of her husband's death - of the dowry she had brought him, and from the remainder of the estate she would recover her ketubbah and its increment in an amount not exceeding one-half of the value of the estate, the option as above mentioned again residing with the heirs (Rosh, resp. 50:9, Sh. Ar. EH 118:1, Beit Shemu'el ad. loc. no. 1).

In a takkanah of Castile it was laid down that a wife surviving her husband, without any children of their marriage, might take from the estate everything proved to have been brought by her as a dowry and remaining in specie at the time of her husband's death, and from the rest of the estate one-quarter, with three-quarters going to the husband's heirs (Rashba, resp., vol. 3, no. 432.).[40]

The Sons Rights of Inheritance

1. Since the law of succession follows a paternal line, upon the death of the father, his son inherits his estate. If there are no sons, the daughter inherits. Next in line are the deceased's father and his descendents and then the father's father and his descendents and so on. (BB, 8:2, Palestinian Talmud, BB 115a-b).

2. Even if the son (and daughters if there are no sons) is born out of wedlock or of an invalid marriage (making him a mamzer) he is considered kin and a legal heir, unless he is the child of a bondswoman or a non-Jew. (Yev. 2:5; Sh. Ar. HM 276:6).

3. If a son is the first-born son, he is entitled to a double portion from the estate of his deceased father (Deut. 21:16-17), but he is not entitled to a double portion from his mother's estate or from the estate of any other relative. (Yad. Nahalot 2:8).

4. When the sons inherit the estate of their father they or any other heirs cannot renounce the inheritance because it is automatically considered under their property. If they wish to more evenly distribute the proceeds to their sister, for example, they can do so only by means of a business transaction - a formal transfer of property. The only exception to this rule is the double portion received by the firstborn son. He cannot renounce his ordinary share of the inheritance but may renounce the additional portion - (Tur GM 278; Sh. Ar., HM 278:10).

5. And if the son predeceases his father, the son's children are the first in line for the inheritance of the father's estate upon his death. (BB 115a, Yad. Nahalot 1:35).

6. If the firstborn predeceases his father, the double share which he would otherwise have inherited from his father's estate is taken by his heirs (Sh. Ar. HM 277:15).

7. If the firstborn is born after his father's death (or in the case of twins) he does not receive a double portion (BB 142b).

8. Just as he takes a double portion, so the firstborn is obliged to defray a double portion of the outstanding debts owed by his deceased father (BB 124a).

9. A son born after the death of the father is not entitled to any of the inheritance (BB 142b).[40]

Inheritance Rights of Daughters

1. "If a man died and left sons and daughters, and the property was great, the sons inherit and the daughters receive maintenance; but if the property was small, the daughters receive maintenance and the sons go a-begging." (Ket. 4:6; 13:3; 9:1).

2. Daughters are entitled to maintenance out of their deceased father until they reach the age of majority or become betrothed. (Ket. 4:11: 53b).

3. The daughter's right to maintenance stems from the ketubbah of her parents and cannot be refused or rejected regardless of any statements made by the deceased to the contrary. (Ket. 68b; Sh. Ar., EH 112:10).

4. If the father has no sons, the question of maintenance of the daughters is irrelevant since the daughters inherit his estate. (Sh. Ar., EH 112:18).

5. But the law of the firstborn receiving a double portion of the deceased father's estate does not apply to daughters who inherit in the absence of sons. (Sif. Deut. 215).

6. Sons are obligated to give their deceased father's daughters part of his estate as a dowry, as if the father were alive - "issur nikhasim" (Sh. Ar., EH 113:1, based on Ket. 68a).

(Note: according to some scholars, a daughter is also entitled to receive a dowry out of her mother's estate (EH 113:1) but this is disputed by other scholars (Rema EH 113:1).)

7. The father however may deprive his daughter of her dowry by testamentary instruction since the parnasat ha-bat is merely an assessment of the father's disposition (Ket. 68b).

8. Although the daughter's dowry is recoverable at the time of her marriage the court may earlier decide on what she should be given upon her marriage (Beit Yosef & Darkhei Moshe EH 113).

9. Debts incurred by the deceased himself as well as the obligations for the ketubbah of his widow and maintenance for the latter and her daughter, take preference over the daughter's dowry (Ket. 69a; Sh. Ar., EH 113:56).

Shetar Hazi Zakhar. In post-talmudic times it became customary in the Askenazi communities for a father to allot to his daughter one-half of a son's share in his estate, for which purpose there was evolved a special deed known as the shetar hazi zakhar ("deed for half of the male child's share"). The deed was written by the father - and sometimes by the mother too (Nahalot Shivah, no. 21, n. 1) - in favor of the daughter or her husband. It was generally written at the time of the daughter's marriage, the father undertaking to pay his daughter a specified sum of money, generally a very high amount, to fall due for payment one hour before his death, with a condition exempting his sons from liability for such debt after his death if they should give the daughter one-half of a son's share in his estate (Rema, HM 281:7). This development was an important step toward the regulation of the daughter's right of inheritance in Jewish law (for further details see Assaf, bibl.)[41]

10. A daughter born after the death of the father is not entitled to any of the inheritance. (BB 142b).[42]

DEBTS OF THE DECEASED

1. The heirs are compelled to pay the debts of the deceased if they inherit land. If they inherit land and movable property the heir may pay the debts out of either source. (Sh. Ar., HM 107:1).

2. A daughter is given her dowry only from the land left by the deceased (Sh. Ar., EH 13:2).

3. Payment of debts is always recovered from the poorest quality land (Sh. Ar., HM 108:18) unless stated otherwise earlier by the deceased (ibid.).

4. If the heirs inherit nothing, they are not required to pay the deceased's debts from their own property. (Sh. Ar., HM 107:17).

5. Heirs are not liable for the debts which exceed the value of their inheritance (Rema HM 104:16).

6. Debts owed to the deceased at the time of his or her death are considered assets of the deceased (Rosh. resp. 36.3).

7. Generally, debts cannot be recovered from minors (Sh. Ar., HM 108.3). There are three major acceptions:

   A. The debtor had before his death and from his sickbed admitted such indebtedness.

   B. The loan was for a fixed period and not yet due for payment and

   C. The debtor refused to make payment notwithstanding a judgement of the court, maintaining his refusal until death.[43]

A Brief Summation

According to Orthodox halakhah, family members receive unequal shares of the deceased's estate. When the father dies, the first son receives a double portion and the remainder is divided equally among the other sons. The wife and daughter(s) are not considered legal heirs and are entitled only to maintenance and a dowry, in the case of the

daughter. If there are no sons the daughters inherit the entire estate to the exclusion of her mother. And the first born daughter does not receive a double portion as in the case of the first born son. If there are no children, the estate goes to the husband's relatives.

When the mother dies, her husband inherits her estate, even if their marriage was prohibited and even if the husband was planning to divorce her.

Methods of Circumventing the Law

A father or husband can circumvent the laws of succession by transferring his property to whomever he wishes through a legal contract or will. But if such actions have not been taken, his property must be distributed according to the laws of inheritance.[44]

The Orthodox vs. The Talmudic Laws of Inheritance

The Orthodox are in basic agreement with the Talmudic laws of inheritance - at least in theory. In practice, however, upon the death of the father, the rabbis exact a more equal distribution of property than the simple meaning of the law would dictate. But since they do not keep detailed records of their decisions, it is impossible to analyze their reasoning.[45]

b. Succession in Conservative Judaism

Since the RA is silent on this issue, we must assume that the Conservative rabbis adhere to the Orthodox laws of succession. In practice, however, they leave such matters in the hands of the civil courts.

c. Succession and Reform Judaism

The Jewish laws of succession are not considered "morally binding" by the Reform rabbinate. They are consequently inoperative in Reform.

D. Childbearing

According to traditional Judaism, the primary purpose of marriage is to enable the husband to fulfill the commandment to be fruitful and multiply. Raising a family is considered so important that a man may divorce his wife, and is encouraged to do so, if his wife has not given birth after the first ten years of marriage.[46] And the wife in turn is discouraged from doing anything which would interfere with conception or with the birth of a child already conceived. Jewish law, consequently, restricts a woman's right to use contraceptives and to have an abortion.

In this section, we will examine the positions of the three Jewish systems on birth control and abortion. We will also look at the current responsa on artificial insemination, as this new technique, like birth control and abortion, interferes with the natural process of reproduction.

1. Birth Control

a. Birth Control in Orthodox Judaism

According to Orthodox halakhah, birth control is permitted only when conception would endanger the life of the mother or child. And even then, the method of birth control should be one that does not interfere with the pleasure of sexual intercourse - with "normal" intercourse.

There is a great deal of responsa literature on this subject, as evidenced in David M. Feldman's book Birth Control in Jewish Law. It would be impossible to present all the opinions here. But such a presentation is not essential for the purpose of this discussion. We are interested primarily in any differences between Talmudic law and Orthodox Halakhah.

Orthodox Halakhah Vs. Talmudic Law

The Orthodox halakhah is essentially in agreement with the Talmudic laws on birth control. The key talmudic passage states (Yev. 12b & 100b, Ket. 39a, Nid. 45a, Ned. 35b)

> "R. Bebai recited before R. Nahman: Three (categories of) women must (or may) use a mokh (a vaginal contraceptive device comparable to a diaphram) in marital intercourse: a minor, a pregnant woman and a nursing mother: the minor, because (otherwise) she might become pregnant and die; a pregnant woman, because (otherwise) she might cause her foetus to become a sandal; a nursing woman because (otherwise) she might have to wean her child prematurely, and he might die. And what is a minor? From the age of eleven years and a day until the age of twelve years and a day. One who is under or over this age carries on her marital intercourse in the usual manner - so says R. Meir. But the (other) Sages say: The one as well as the other carries on her marital intercourse in the usual manner, and mercy be vouchsafed from Heaven for "(Scripture says in Psalms 116:6) "The fool preserveth the simple."[47]

The implication here is that a woman under eleven years old has not reached puberty and is therefore unable to conceive. Thus, there is no risk of her being endangered by a pregnancy. And a woman older than twelve is considered physically mature enough to conceive and to carry a baby full term without any complications. But a woman between eleven and twelve is physically in a transitional phase and consequently is in greater danger if she conceives.

This passage is interpreted liberally by most authorities to mean that any woman may use birth control methods if it is known that she or a child will be endangered if conception occurs.

But when a woman does use any method of birth control, there is a question as to whether or not the husband is "spilling his seed in vain" - which is prohibited. (For "he who destroys his generative seed commits murder acts like a beast which takes no heed what he does (Massekhit Kallah) cannot receive the Sh'khinah, the Presence of God' (Nid. 13b), stands 'under the ban' (e.g. excommunication) and is guilty of autoerotic indecency (ibid., Kallah)").

But when the contraceptive is used for therapeutic reasons the husband is not violating the principle of spilling his seed in vain (hash-hatat zera) because he is fulfilling the mitzvah of "onah," of cohabitation with his wife. Onah is his conjugal duty whether expressly for procreation or not. (TB Yevamot 62b; P'sahim 72b).[48]

As far as birth control methods are concerned, those which interfere the least with the pleasure of intercourse (normal intercourse) and which constitute minimal physical danger are considered the least objectionable methods. Thus, coitus interruptus is inappropriate because it prevents both the fulfillment of the mitzvah to be fruitful and multiply and it prevents the couple from receiving the most pleasure from the sexual act. This then could be called an act of hash-htat zera. The diaphram is the most acceptable means since there is no vaginal obstruction and constitutes no danger to the woman. The use of the condom, spermicides, douches, the IUD's and the "pill" are more controversial methods. It is questionable whether the condom permits normal (pleasurable) intercourse. The douche is considered ineffective and the IUD and the "pill" may adversely affect the woman.[49]

Vasectomies would generally be permitted only if the man's health was at stake. He would otherwise be unnecessarily endangering his own health.[50]

An additional note:

No mention is made of permitting birth control for the sake of the foetus or a nursing child because baby formulas are now available or provide for a nursing child if the mother's milk dries up and there is no medical evidence to support the belief that normal intercourse will harm a pregnant woman.

b. Birth Control in Conservative Judaism

The Conservative position does not vary significantly from the Orthodox position.

In 1939, the Rabbinic Assembly passed a resolution stating, "Birth control is permitted when the health and life of the mother are involved."[51] And their position has not since changed.

c. Birth Control in Reform Judaism

Reform Judaism permits birth control without qualification. The ruling is based more on sociological rather than halakhic considerations. (This accounts for the 1977 CCAR resolution encouraging Jewish couples to have MORE children for the sake of the perpetuation of the Jewish people.)

This is reflected in the CCAR resolutions concerning birth control. They are:

> 1. "We recognize the need of exercising great caution in dealing with the delicate problem of birth regulation in view of the widespread disregard of the old sanctions affecting the institution of marriage and of the family. We earnestly desire to guard against playing into the hands of those who would undermine the sanctity of these time-honored institutions through reckless notions and practices. We are especially mindful of the noble tradition of obtaining among the Jewish people with respect to the holiness of domestic relations. But, at the same time, we are keenly aware of the many serious evils caused by a lack of birth regulation among those who by reason of lack of health or of a reasonable measure of economic resources or of intelligence or all of these, are prevented from giving to their children that worthy heritage to which all children are entitled. We therefore urge the recognition of the importance of intelligent birth regulation as one of the methods of coping with social problems." Adopted by the CCAR in 1930.[52]

2. "Be it resolved that the CCAR desiring to implement the above resolution goes on record as favoring the inclusion of Planned Parenthood services in hospitals and other agencies where this service should be given, and be it further resolved that favorable policies be sought from Boards of Directors and other Managements of said agencies to permit their professional staff members in such health and welfare agencies to make maximum use of these services as a community health resource, and be it further

Resolved that a copy of this resolution be sent to the Planned Parenthood Federation of America". This resolution was adopted by the CCAR in 1947.[53]

3. "While Reform Judaism approves birth control, we also recognize our obligation to maintain a viable and stable Jewish population. Therefore, couples are encouraged to have at least two or three children."[54]

2. Abortion

a. Abortion in Orthodox Judaism

Orthodox halakhah condones therapeutic abortions but there are different opinions concerning the definition of "therapeutic".

Some authorities include danger to both the mental and physical well-being of the mother, while other authorities argue that abortion is justified only when the physical health of the mother is at stake. The more liberal view, however, is generally followed.

The Orthodox Halakhah vs. Talmudic Law on Abortion

The Orthodox halakhah is in agreement with talmudic law. According to the Talmud Ohalot 7:6,

> "A woman that is having difficulty in giving birth, it is permitted to cut up the child inside her womb and take it out limb by limb because her life takes precedence. If the greater part of the child has come out, it must not be touched because one life must not be taken to save another."[55]

This permission to destroy the child to save the life of a mother is cited in all the codes and is finally fixed as law in the Shulchan Aruch. (HM, 425:2).

The ruling is based on the fact that a foetus is not considered a "nefesh", a human being, until it is born.

As Rashi says in his commentary on the Ohalot passage: "as long as the child does not go forth 'into the air of the world', it is not considered a nefesh, and therefore, may be slain to save the mother."[56]

Joshua Falk (16th-17th Century) in his classic commentary M'iras Enoyim to the Chosen Mishpot passages affirms Rashi's statement. He says that a foetus is not considered a nefesh because of the Torah passage which cites the case of a man who strikes a pregnant woman and destroys her unborn child. The man must pay damages but is not deemed a murderer which would be the case if the foetus were considered a nefesh.[57]

Similarly, in Arakin 7a, we find a passage which states that if a pregnant woman is condemned to death, she was smitten in front of her body so that the child should die before she was executed. This, too, would indicate that it is no capital crime to slay an unborn child.[58]

But according to the Talmud, in Sanhedrin 57b, a non-idolatrous non-Jew is forbidden to destroy a foetus. It is a capital crime if he does it.[59]

The Tosfos to Chullin 33a says that this indicates that a Jew is not to be put to death, as a Ben Noach is, if he or she destroys a foetus. Nevertheless, continues the Tosfos, while it is not a capital crime for a Jew, it is still not permitted for him or her to do so.[60]

This contradiction between the permission and prohibition of destroying the foetus is the basis for the varying Orthodox views.

Ben Zion Uziel, the late Sephardic Chief Rabbi (in Mishpetei Uziel III, 46 and 47) concludes that an unborn

foetus is actually not a nefesh at all and has no independent life. "It is part of its mother and just as a person may sacrifice a limb to be cured of a worse sickness, so may this foetus be destroyed for the mother's benefit." In response to the statement in Tosfos in Chullin 33a that a Jew is not permitted to destroy a foetus although such an act is not considered murder, Uziel says one may not destroy anything without purpose but if there is a worthwhile purpose it may be done. (The specific case before Uziel was a woman who was threatened with deafness if she went through with pregnancy.)[61]

In the case of a pregnancy resulting from adultery there are different rulings in responsa literature as to the legality of an abortion.

Yair Chaim Bachrach of Worms, 17th century says that it is true that the foetus is not considered a nefesh but adds in this case an abortion is not permitted because it would encourage immorality. Thus he follows the Tosofos in Chullin which forbids a Jew from destroying a foetus, even though such an act would not be considered murder.[62]

But Jacob Emden (Yabetz I, 43) of the 18th century says a pregnant adultress may have an abortion. He argues that if we were still under our Sanhedrin and could inflict capital punishment, such a woman would be condemed to death and her child would die with her anyhow. Then he adds that perhaps we may destroy a foetus even to save a mother excessive physical pain.[63]

But, again, the more liberal view is generally followed.

b. Abortion in Conservative Judaism

The RA is in basic agreement with the Orthodox position on abortion. The only difference is one of emphasis. The RA states that abortion is permitted for therapeutic reasons, yet stresses the belief that abortion for any other reason is morally wrong. The Orthodox rabbis, on the other hand, defend their position primarily by citing Law and refrain from debating the question of morality.

The two resolutions passed by the RA on abortion are:

> "...abortion is morally wrong. It should be permitted only for therapeutic reasons." (Implied here is that a woman cannot have an abortion in order to terminate an unwanted pregnancy - unless the pregnancy resulted from an adulteress union.)[64]

> "Be it resolved that the Committee on Jewish Law and Standards of the RA review its previous on matters pertaining to abortion, and issue a statement for public information setting forth the traditional Jewish view on therapeutic and non-therapeutic abortion. (This view is to be presented as the official position of the Rabbinical Assembly and of Conservative Judaism to offset previous statements made by lay representatives of the movement.)[65]

c. Abortion In Reform Judaism

According to resolutions passed by the CCAR, a woman may have an abortion for physical or mental reasons. The choice for or against the operation is left up to the woman.

1. According to Solomon B. Freehof,

> "if there is strong preponderence of medical opinion that the child will be born imperfect physically or even mentally, then for the mother's sake (i.e. her mental anguish now and in the future) she may sacrifice that part of herself."[66]

2. In 1967, the CCAR ruled that abortions should be permitted when either the physical or mental well-being of the mother was at stake.

   1. The CCAR considers as religiously valid and humane such new legislation that:

      a. recognizes the preservation of a mother's emotional health to be as important as her physical well-being; and

      b. properly considers the danger of anticipated physical or mental damage; and

      c. permits abortion in pregnancies resulting from sexual crime, including rape, statutory rape, and incest.

   2. We strongly urge the board liberalization of abortion laws in the various states, and call upon our members to work toward this end.[67]

   3. In a further statement concerning abortion the CCAR passed the following resolution:

      "Be it further resolved that recognizing the role of the UAHC and CCAR in promoting freedom of choice we call on the UAHC and CCAR to support the Religious Coalition for Abortion Rights on a national and statewide level.[68]

3. Artificial Insemination

a. Artificial Insemination in Orthodox Judaism

Recent responsa by Orthodox authorities have ruled that artificial insemination is permitted but there is a dispute as to whether the husband's seed alone may be used or whether either the husband's or a stranger's seed may be used.

Chayim Fischel Epstein in his Teshuva Shelema (Even Hoezer #4) says that the seed of a stranger may not be used because there is the danger that the child may some day, unknowingly, marry a blood relative who is forbidden to him or her. But he would permit the use of the husband's own seed if that is the only way the wife can be impregnated by her husband.[69]

Ben Zion Uziel of Tel Aviv, the Chief Rabbi of Palestine in his Mishp'te Uziel Part II, Even Hoezer, Section 19, also ruled that artificial insemination from the seed of the woman's husband is permissible while according to earlier authorities the woman would not be considered immoral and the child would be Kosher.

He also would permit, though hesitantly, a woman to use the seed of a stranger, if she can be impregnated in no other way. He adds that the child would not be considered the child of the donor as to inheritance and chalitza.[70]

These two authorities based their rulings on rabbinic discussions surrounding accidental artificial insemination.

In Talmud Babli Chagiga 14b, the question is raised whether a virgin who became pregnant is allowed to be married to a High Priest. One of the possibilities suggested is that she was impregnated in a bath from seed deposited there by a man.

In Beit Shemu'el (Samuel ben Uri Phoebros) it says that a menstruous woman may lie on the sheet of her husband but not on that of a stranger lest she become pregnant from the seed of a stranger. But why, he asks, should she not be afraid of becoming pregnant from the seed of her husband while she is menstruating and thus producing a child of a menstruous woman which is prohibited.

Shemu'el's answer is that since there is no prohibited intercourse, the child is entirely kosher, even if she became pregnant by a stranger, since Ben Sera was kosher. Yet, if it is a stranger we have to be cautious (about being on his sheet) because of the possibility that the resulting child might marry his own sister by his father (whose identity is unknown). Beit Shemuel concludes from this note that the child resulting from such an insemination is that of the emitter of the seed, in every respect.

Thus a child born as a result of accidental artificial insemination and the implied willful artificial insemination is "kosher" in every sense and no sin or blemish is attached to the mother. But artificial insemination by a stranger's seed is discouraged since the father is unknown and there is

a possibility that the child might later marry someone who is prohibited to him or her, e.g. a blood relative.

There is also another problem with using a stranger's seed. As Uziel later points out, if a stranger willfully donates his seed, he is considered a "sinner" because he has spilled his seed without the intention of personally fulfilling the commandment to be fruitful and multiply. And if the woman accepts his seed, she might also be called a "sinner" since she has put a "stumbling block" in the way of the stranger by causing him to sin. She would be violating the commandment: "And if a stranger sojourn in your land, you shall not wrong him (Lev. 19:33, Lev. 19:14).[71]

b. Artificial Insemination in Conservative Judaism

According to a resolution passed by the RA in 1949, artificial insemination is prohibited for Conservative Jews.[72]

In 1952, an RA member called for a reevaluation of the 1949 position. But I could find no further statements in the RA proceedings on this subject.

Yet we must assume that the Conservative position has since changed in favor of the procedure since recent Orthodox responsa have generally condoned artificial insemination and because the Conservatives never take a stricter view of halakhah than the Orthodox.

c. Artificial Insemination in the Reform Movement

The CCAR has not yet passed any resolution concerning artificial insemination. But two of its members, Rabbi Solomon B. Freehof and Rabbi Alexander Guttman have written responsa on the question. Freehof says it should be permitted regardless of the origin of the seed and Guttman refrains from making a definitive statement.

According to Rabbi Solomon B. Freehof, artificial insemination should be permitted because "the possibility of the resulting child marrying one of his or her own close blood kin (which is prohibited by the Talmud) is not very probable and because according to Jewish law the wife has committed no sin and the child is kosher."[73]

Rabbi Alexander Guttman hesitates to sanction artificial insemination because he can find no backing for it in Jewish teachings. He points out that we only find discussions on accidental artificial insemination and not willful artificial insemination.[74]

E. Obligations of the Husband and Wife Upon the Death, Divorce and Disappearance of the Spouse

A broken marriage changes the status, (rights and duties) of the surviving party or separated parties. In this section we will examine some of these changes as they affect, 1) the custody of the children in the case of divorce and death of a partner; 2) the widow and widower; 3) including the laws of levirate marriage and chalitza, 4) the divorced couple and 5) the wife whose husband has disappeared (the Agunah).

1. Custody of the Children

a. Custody in Orthodox Judaism

Custody of the Children in Case of Divorce

According to Orthodox halakhah as established in the codes, the mother has the exclusive right to the custody of all children when they are under six years of age. When the children are older than six years of age, the father has the right to the custody of the boys since it is his obligation to education of his sons (Ket. 102b, 103a; Yad, Ishut 21:17. Sh. Ar., EH 82:7). On the other hand, the mother has the right to take custody of the girls since they are to be instructed in the ways of modesty.

If, however, it is not in the best interests of the child to follow the above guidelines, the courts will decide where the children are placed. (Rema, EH 82:7, Pithei Teshuvah ad. loc., n. 6 in the name of Radbaz; Kesp. Maharashdam, EH 123; PDR, 1:103-7, 173-8).[75]

The Relation Between Custody Rights and the Duty of Maintenance

The father is obligated to maintain the children even though the children are living with their mother. But if his son is older than 6 years old and is living with his mother - contrary to the law and without the father's consent, or court's permission, then the father can refuse to pay for the boy's maintenance for any period he is not with him.

On the other hand, the mother is not legally bound to accept custody of the children - at any age - since the duty of maintenance falls upon the father alone. Therefore the mother can legally refuse to accept custody, in which case the father must take care of the children himself.[76]

Visitation Rights

If the father has custody of the children, male and/or female, he cannot deny the mother access to the children nor can he deny his children access to their mother (EJ "Parent and Child", p. 98).

The same holds true for the mother. If she has custody of the children, she cannot deny their father access to them nor can she deny her children access to their father.[77]

Custody in Case of Death of Either or Both Parents

In the principle, a surviving parent and relatives have no special custody rights. The courts will award custody on the basis of the best interests of the children (see above).

If, for example, the father dies and the mother has no means to educate her son in Torah, then the court can place the son under another's custody regardless of the son's or mother's wishes, since Torah study is considered paramount for the son.

Upon the death of both parents, custody of the child will generally be given to the grandparents on the side of the parent who would have been entitled to custody had both

of them been alive. This means that the paternal grandparents would get custody of all male children above six years of age while the maternal grandparents would get custody of all children under six years of age and all female children above six years of age. (REma EH 82:7 and Helkat Mehokek ad. loc., n. 11; Resp. Radbaz no. 123.)[78]

The Orthodox vs. The Talmudic Laws on Custody

According to the Orthodox, the rabbinical courts may give the father custody of both his sons and daughters, if they feel it is in their best interests. But such a practice has no specific Talmudic basis. According to the Talmud, custody is determined by the age and gender of the children. If they are under six years of age they should be placed with the mother; if they are older than six years of age, the sons are to be placed with the father and the girls with the mother. But the Talmud makes no case for placing both the sons and daughters with the father (assuming that the mother is alive and has not refused custody).

So in order to justify their position, the Orthodox draw upon the codes and modern practice. According to the codes the father is required to provide for the maintenance of the children even after the age of six (the Talmud limits this obligation to children under six years old - see "Maintenance in Orthodox Judaism".) Since the mother is not so obligated, the rabbinical courts could grant the father custody on these grounds alone. Yet there is another law

which supports the father's case. According to the Talmud and the Orthodox authorities, the father is obligated to provide for the religious education of his sons. But today it is customary to also provide for the religious education of the daughters. Thus, say the Orthodox, the father's obligation to educate his sons is extended to his daughters as well.

These extensions of the law have effectively undermined the mother's rights to custody. She must now resort to purely emotional appeals to the court. She may, for example, argue that it is in the best interests of the mental health of her children that they remain with her. But since, according to halakhah, the children's religious education is paramount and because the father, not the mother, is responsible for such schooling, the father will generally be awarded custody.[79]

And if the mother rebells and refuses to follow the court's decision the father is not required to provide maintenance for her and the children.

Of course, it is important to note here, that the civil courts alone have the legal authority to grant custody. The rabbinical courts can only suggest to the parties involved that they follow the Orthodox halakhah. And if an Orthodox man or woman accepts a civil court decision which is contrary to Jewish law, the Orthodox authorities can punish them only by banning them from the Orthodox community. But such punishment is rarely if ever executed.

b. Custody in Conservative Judaism

Since the RA is silent on this subject, we must assume that they theoretically accept the Orthodox position on custody. In practice , however, they follow the decision of the civil courts.

c. Custody in Reform Judaism

The Reform community follows the decision of the civil courts in all matters relating to separation and divorce - including the awarding of the custody of the children.

2. The Widow and Widower

a. The Widow and Widower in Orthodox Judaism

According to Orthodox Halakhah:

1. A widow is generally free to marry any man except a high priest (Lev. 21:14); if she marries the latter, she becomes a halalah (Lev. 21:14; Kid. 77a; Sh. Ar., EH 7:12).

2. She is entitled to the same standard of maintenance she was entitled during her husband's lifetime. (Ket. 48a & 103a; Sh. Ar. EH 94:1, 5).

Since, however, she is alone, her requirements are reduced. She is no longer to occupy the whole of her apartment, for example, because being alone, she does not need it even in order to maintain her social status (Sh. Ar. EH 94:1, Rema ad. hoc., and commentaries PD 19 pt. 2 (1965), 338).

Neither can she transfer the ownership of the apartment to others nor let part or all of it, since she is just entitled the use of it and may not profit from it. (Sh. Ar., loc. cit.)

3. If the widow survives with small children of the husband, both boys and girls, and the estate is insufficient to maintain all of them, her right prevails.

4. If the young children surviving with her are either all boys or all girls, they all take equally (Ket. 43a and Tos.)

5. The heirs are entitled to the widow's earnings in consideration of her maintenance (Sh. Ar., EH 95:1).

The heirs are not, however, entitled to the income from her property, as is the husband to the income of his wife's property - since it is due to the husband in consideration of redemption only. Consequently the heirs have no obligation to ransom her if she is held captive (Ket. 52a; Yad, Ishut 18:5 and 8; Sh. Ar., EH 78:8, 94:7, 94:4)..

6. The widow is entitled to maintenance only as long as she is entitled to her ketubbah, i.e. until she receives payment of it from the heirs or if she remarries (Ket. 45a; Sh. Ar., EH 93:5; & Hilkat Mehokek, n. 13).

7. The heir cannot deprive her of her maintenance (by forcing her to accept the ketubbah payment) against her wishes (Ket 54a & Tos. ad. loc., Yad. Ishut 18:1, Sh. Ar., EH 93:3).

But since economic conditions during marriage may so change that the estate might be insufficient to provide both for the maintenance of the widow and for inheritance of the heirs, many authorities are of the opinion that it is proper to make a takkanah permitting the heirs to deprive the widow of her maintanance by payment to her (against her will) of her ketubbah ((Rema EH 93:3) Pithei Teshuvah thereto). In Israel for example the Sephardi follow the Shulchan Aruch which prevents the heirs from ridding themselves of the obligation for her maintenance against her wishes. The Ashkenazi however, say it is permitted to force her to

accept payment (but the heir cannot evict her from her marital home). (Pithei Teshuvah nos. 5 & 6 to Sh. Ar., EH 93: Sha'arei Uzziel 2 (1946) 244 nos. 14, 15; Beit Me'ir EH 93:3; 94:1).[80]

In Summary

A widow is prohibited from marrying a kohen. She is not the heir to her husband's estate but is entitled to maintenance from the estate. And is some cases, the widow may even be deprived of this maintenance by being forced to accept payment of her ketubbah instead, although such action is contrary to Talmudic law. And finally the widow cannot keep her own earnings but must give it to the heirs.

Orthodox Halakhah vs. Talmudic Law

The Orthodox halakhah is basically in agreement with Talmudic law. The only major difference is abrogation of the Talmudic prohibition against the remarriage of a woman twice widowed due to her husband's natural deaths. If a woman has been widowed twice and if the husbands died of a natural death, she may not marry again. (Yeb. 64b). (Maim. Responsa 146). ("Harmonization of Marriage and Divorce Laws" by Rabbi Abram Simon, CCAR, vol. 25, 1915, p. 391).

It is also important to note that the widower suffers none of the liabilities of the widow since he is the legal heir to his wife's estate.

b. The Widow and Widower in Conservative Judaism

The Conservatives theoretically follow the Orthodox halakhah concerning the rights and restrictions of widow with one exception. They now permit a widow to marry a Kohen. But in the event of such a marriage, the man must accept disqualification for himself and for his children in terms of status as Kohanim.[81]

The Conservatives justify their position by saying that the talmudic prohibition is based upon the assumption that a divorcee is somehow "tainted", an assumption which is no longer acceptable.

"The prohibition of a Kohen marrying a proselyte or a divorcee is based on two assumptions: One is that a Kohen may not marry a divorcee because he 'brings to the alter the bread of god' (Lev. 21:7), That is, the kohen is to be considered a special individual because of his service in the Temple. The other assumption is that there is something tainted in a divorcee or a convert. The two assumptions are not acceptable today. Whatever deference is paid to the kohen flows from historical memory and historical anticipation. But this is only of symbolic value, and should not touch upon the lives of private individuals. Nor do we accept the notion that a divorcee or a convert is so tainted that she is not worthy of marrying a kohen..."[82]

The Contradiction in the Conservative Position

If the Conservatives no longer consider the Kohen a special individual because of his service in the Temple, then they should logically deny him special privileges in the synagogue. But they do not so deny him for reasons of nostalgia:

"We still retain some deference for the Kohen. He officiates at the redemption of the first born. He is called first to the Torah reading. He leads in the saying of grace. It is the genius of Judaism to seek to preserve ancient institutions about which so many historic reminiscences cluster. Jewish life would suffer a certain impoverishment were the special status of the Kohen altogether discarded. At the same time the very prerogatives left to the Kohen stand a vital reminder of the immense progress made in the democratization of Judaism."[83]

Although such reasoning sounds very noble, it is suspect since it cannot be applied to all Conservative practices. Take for example, the Rabbinical Assembly's decision to permit women to be called up to the Torah. In this case, their arguments were based upon Talmudic passages and on some minority opinions and practices of Medieval Jewish authorities. But if they had followed the logic they used for retaining the status of the Kohen in the synagogue, they would have denied women aliyoth in order "to preserve ancient institutions about which so many historic reminiscences cluster." After all, haven't women historically

been denied aliyoth and would not allowing them such a privilege cause Jewish life to "suffer a certain impoverishment"!

c. The Widow and Widower in Reform Judaism

Since the Reform follow the civil laws on divorce and inheritance rights, the Orthodox halakhah concerning the rights and restrictions of the widow are inoperative.

3. Levirate Marriage and Chalitza - Definitions

A levirate marriage is a marriage between a widow whose husband died without offspring and the brother of the deceased. The former is called a "yebamah," and the latter, a "yebom", or "levir". The yebamah and the levir are required by Biblical law to marry.

A chalitza is a formal, legal release from the obligation of levirate marriage given to the yebamah by the yebom.

The ceremony itself is very offensive. The yebamah takes a special chalitza shoe off the foot of her brother-in-law after he declares he is unwilling to fulfill his obligation of levirate marriage. Then she throws the shoe down, spits on the floor in front of him and then declares "So shall it be done unto the man that does not build up his brother's house, and his name shall be called in Israel, beit haluz ha-na'al (the house of him that had his shoe loosened).[84]

a. Levirate Marriage and Chalitza in Orthodox Judaism

According to Orthodox halakhah, chalitza takes priority over levirate marriages. Therefore, the deceased husband's brother is required to give the widow a chalitza, freeing her to remarry whomever she wishes.

In practice this translates into a prohibition against levirate marriage.

When Rabbi Isaac Meyer Wise insisted that a man be permitted to marry his deceased brother's wife, arguing that

it is a biblical commandment, the Orthodox rabbinate prohibited it on the grounds that "we no longer practice it."[86]

While levirate marriage is prohibited, if a man and woman wish to ignore the prohibition and marry, their marriage is still considered valid. And if the deceased husband's brother refuses to give the widow a chalitza, he places the woman in a state of agunah, making it impossible for her to legally remarry under Jewish law.

It is important to note the inconsistancy of the Orthodox position. If levirate marriage is prohibited in all cases, then chalitza should also be prohibited.

Chalitza is a release from the obligation of levirate marriage. If there is no longer an obligation to contract a levirate marriage, then chalitza becomes inane. Chalitza is important only levirate marriage is possible. Yet the Orthodox still retain chalitza.

The Orthodox Halakhah vs. Talmudic Law on Levirate Marriage

The confusion no doubt arises from the ambiguity of the Talmud's treatment of the subject. As mentioned above, the Talmud states that levirate marriage is an obligation. (Yev. 2:5, 22B, Nid 5:3). But in another place, it also says that "the widow and the levir are exempt from the levirate tie if their union would be incestuous" (Yev. 3a). Now according to other passages in the Talmud (Kid, 67b; Ker. 3a; Sanh. 74a; Yev. 21.), the marriage of a widow to her deceased husband's brother is ipso facto incestuous.

Herein lies the difficulty. The rabbis are left to reconcile the prohibition of a man marrying his brother's wife (Lev. 18:16) with the command of levirate marriage.[86]

Before the herem of Rabbenu Gershom, the rabbis interpreted the Talmud to mean that levirate marriage has priority over chalitza. Only after the herem was issued, thus prohibiting polygamy, did the rabbis reverse their decision, giving chalitza priority over levirate marriage. In otherwords, levirate marriage was prohibited when the deceased husband's brother was already married and permitted if he was not. Under such conditions, chalitza still had a function.

But today, as reflected in the case with Isaac Meyer Wise, the Orthodox prohibit levirate marriage even when the deceased husband's brother is not married and the widow wishes to be married to him. Since levirate marriage is an impossibility, there is no reason at all to perform Chalitza, yet the Orthodox insist on retaining the ceremony.

b. Levirate Marriage and Chalitza in Conservative Judaism

Conservative Judaism's position on levirate marriage and chalitza is officially the same as in Orthodox Judaism. But in practice, very few Conservative rabbis insist on chalitza when it should be performed.

Recognizing this reality, many Rabbinical Assembly

members have attempted, unsuccessfully, to argue for the abandonment of chalitza. In their discussions they point out that:

1. Precedents exist in rabbinic literature for eliminating chalitza.
2. Chalitza is based upon the belief that women are the property of their husband, a belief which no longer exists and
3. Rabbis have in the past, abrogated institutions which have lost their acceptability.

1. Precedents in Rabbinic Literature for the Elimination Of Chalitza

   a. Rav Sherira Gaon forbade the marriage of a childless widow without Chalitza even if the surviving brother was an apostate.

   b. Rabbi Joseph Karr agrees with the authorities who make chalitza necessary, but in Rabbi Moses Isserles commentary on Karo's ruling, he speaks in behalf of those women who are in distress because of the necessity of chalitza (Eben ha-Ezer 157:4). And it is Isserles' discussion which becomes the basis for all later takanoth.

   c. Rabbi Israel of Bruen issued a takkanah which said that during the marriage, the husband should stipulate with a "double stipulation" that should his wife become liable for levirate marriage with

an apostate brother, the present marriage should become null and void.

d. The Turei Zahab adds that the same law (as above) applies in the case of a brother who has disappeared.

e. The Bet Shmuel comments that though normally we adhere to the principle that no stipulation has any effect in the marriage in cases of distress, (as the one under consideration), we do not apply the rule.

f. The City of Prague instituted a regular formula into the marriage ceremony that eliminated the necessity for chalitza.

g. The Bayit Chadash cites the case of the city of Neustadt where after a great massacre such a procedure was instituted.[87]

2. Objections Based Upon the Rabbinic View of Women as Property

a. Chalitza cannot be accepted today because more than any other institution it attests to the fact that women are regarded as property.[88]

b. The law could be considered null and void because it no longer has any validity. Since the concept of woman as property is completely and utterly out of consonance with the moral foundations of our society, we can no longer abide by it.[89]

3. A Call for Eliminating Chalitza as an Institution

a. The rabbis developed a complicated system of interpretation of the Bible through hermeneutical laws whereby to all effects and purposes they abrogated any institution which they found no

longer acceptable, e.g. when the rabbis refused to carry out the death penalty for a rebbelious son.[90]

b. By Jewish law, Yebum comes first. That is the natural condition. Only if he refuses to perform Yebum does he give chalitza. Now today Yebum is prohibited. The brother cannot marry the widow even if he wants to. Therefore, Chalitza ceases to exist because its existence is dependent on the possibility of performing Yebum.[91]

c. Levirate Marriage and Chalitza in Reform Judaism

Levirate marriage and chalitza are inoperative in Reform Judaism. These institutions were officially abandoned at the 1871 Augsburg Conference, a position which was later affirmed by the first CCAR conference in 1890.

The decision was based upon the irrelevance of such practices in modern times.

> "The biblical precept concerning chalitza has lost its importance since the circumstances which made the necessary levirate marriage and the chalitza no longer exist. The idea underlying this observance has become estranged from our religious and social views."[92]

> "The command to marry the brother-in-law, and in case of his refusal to take off the shoe, etc." (chalitza), has lost for us all sense, all importance and all "binding force".[93]

4. Divorce

a. Divorce in Orthodox Judaism

According to Orthodox halakhah, the husband has the sole authority to grant a divorce ("get"). Although the wife may legally demand a divorce because of her husband's physical defects or misconduct to her, she cannot force her husband to give it to her. Her only recourse is to bring her case before a Beit Din. And if the court feels her demands are justified, it can apply pressure on her husband to give her the get (Ket 77a). But the court does not itself have the power to grant divorces. Again, this power to divorce is solely in the husband's hands. So in the case where the husband refuses to grant his wife a get he places his wife into a state of agunah - she cannot remarry under Orthodox law even though she might have obtained a civil divorce.[94]

The Right of the Wife to Demand Divorce for Physical Defects

1. The wife is entitled to a divorce if she is childless and claims that she wishes to have a child by her husband is not capable of impregnating her. (Yev. 117a and codes; Resp. Rosh 43:2; PDR 1:364, 369).

But the wife must satisfy the court as a precondition to divorce on this ground that she is not seeking divorce for pecuniary reasons or because she has set her eyes on another (Yev. 117a and Codes; Resp. Rosh 43:2; PDR 1:364, 369).

And she must prove her claim that her husband is the cause of her childlessness; the lapse of ten years from the time of her marriage without her becoming pregnant (Yev. 64a and codes; PDR 1:5, 9, 10, 369).

If, however, the husband claims that the cause does not lie with him, he may demand that the matter be clarified by submission of himself and his wife to a medical examination; if his claim is established he is exempted from paying his wife's ketubbah (Yev. 65a; Resp. Rosh 43:12; Sh. Ar. EH 134; Beit Shemuel 134, n. 14).

2. The wife may also demand a divorce by claiming her husband is impotent - regardless if there are children or if the period of impotence is less than 10 years. (Yev. 65b and codes; PDR 1:5, 9, 55, 59, 82, 82.5:154)

But if there is a possibility that the husband will recover from his impotency, the court will refrain from requiring the husband to give his wife a get (Yev. 65b and codes; PDR 1:81, 84-89, 5:239).

In principle, the wife's claim about her husband's impotence is accepted as trustworthy in terms of the rule that she is believed in matters between her husband and herself; however, corroboration of her statements is required. (Rema EH 154:7, PDR loc. cit.).

But should the wife have married her husband with knowledge of his defects or if she acquired such knowledge after their marriage and nevertheless continued to live with him, she is considered to have waived her objections unless

she can show that the defects became aggravated to an extent which she could not have foreseen (Ket. 77a and codes; PDR 1:5, 9; 2:188, 192; 6:221, 223).

And the wife cannot demand divorce because of any defect no matter how serious, if it does not prevent intercourse unless she can prove she did not know of it and claims a divorce within a reasonable period of time after becoming aware of it. (Ket. 77a and codes; Resp. Rosh 42:2; Maggis Mishnah Ishut 25:11, Beit Shemu'el 154, n. 2; PDR 1:5, 11, 65, 71).[95]

3. Even if a man married, while in full possession of his senses and afterwards became a deaf mute, or insane, he can never divorce his wife...for a man cannot divorce his wife except by an act of free will. (Yev. 112b).[96]

Conduct of the Husband as Grounds for Divorce

1. Unjustified refusal of conjugal rights on the part of the husband entitles his wife to claim a divorce (Sh. Ar. EH 76:11).

2. A wife may claim a divorce if her husband unjustifiably refuses to maintain her when he is in a position to do so, or could be if he was willing to work and earn an income (Ket. 77a).

If the husband is unable to provide her with the minimum requirements, some authorities are of the opinion that he can be compelled to divorce her, whereas others hold that there is no room for compulsion even if his default is due

to circumstances beyond his control. (Yad, Ishut 12:11; Sh. Ar. EH 70:3 and commentators PDR 4:164; 166-70).

But the husband will not be forced to give his wife a divorce if he maintains her to the best of his ability even if this be in accordance with the rule that "a poor man in Israel" and not in accordance with the rule that "she rises with him but does not go down with him" (Sh. Ar., loc. cit.; PDR loc. cit).

3. Unworthy conduct of the husband - which causes the wife pain - is grounds for divorce since "a wife is given in order that she should live and not to suffer pain." (Ket. 61; Tashbez 2:8).

The grounds established when his conduct amounts to a continued breach of the duties laid down as a basis for conjugal life - "let a man honor his wife more than he honors himself, love her as he loves himself, and if he has assets, seek to add to her benefits as he would deal with his assets and not unduly impose fear on her and speak to her gently and not given to melancholy nor anger" (Yad, Ishut 15:19, based on Yev. 62b).

4. If the husband is unfaithful, the wife has grounds for divorce. (Sh. Ar., EH 154:1 and commentators; PDR 1:139, 141).

5. If the husband "transgresses the Law of Moses" for instance when he causes her to transgress the dietary laws knowing that she observes them, or if he has intercourse

with her against her will during her menstrual period (Niddah, Rema EH 154:3; PDR 4:342), the wife may also demand a divorce.[97]

The Right of the Husband to Demand a Divorce (Defects and Unworthy Conduct) Defects to the Wife

1. If the wife is rendered incapable of having intercourse with her husband (Nid. 12b; Yad, Ishut, 25:7-9; Resp. Rosh 33:2, Sh. Ar., EH 39:4 and 117:1, 2, 4; PDR 4:321; 5:131, 193), he may divorce her.

If the husband was aware of such defects prior to the marriage or later became aware - or could have become aware that they had existed before the marriage but still continued to cohabit with her he will be considered to have condoned them and they will not avail his as grounds for divorce (Ket. 75 and codes; PDR 1:66; 5:193).

A defect which becomes manifest in the wife only after the marriage does not provide the husband with a ground for divorce unless she is afflicted with a disease carrying with it mortal danger, such as leprosy or she has become incapable of cohabiting. (Ket. loc. cit. and codes; PDR 2:129, 134-6; 5:131, 194).

2. The husband may also demand a divorce if his wife has failed to bear children within a period of 10 years of their marraige, and he has no children (even from another woman) provided that he persuades the court of his sincere desire to have children (Rema EH 1:3; Sh. Ar. EH 154:1; Ozar ha-Posekim EH 1, n. 13-60; PDR 4:353).[98]

Conduct of the Wife as Grounds for Divorce

The husband may claim a divorce if his wife shows habitual immodesty or deliberately slights her husband's honor, as when she curses or assaults him and generally any conduct on her part tending to disrupt normal family life in such manner as to convince the court that no fault lies in him.[99]

b. Divorce in Conservative Judaism

The Conservative halakhah is theoretically the same as the Orthodox halakhah concerning divorce except in the case of the agunah, (see "Agunah in Conservative Judaism").

c. Divorce in Reform Judaism

Reform Judaism accepts the decision of the civil courts in matters of divorce. The use of the get, or religious divorce, has been abandoned.

The CCAR adopted this position at their first Conference in 1890. Their justification at that time was not that the get was discriminatory against women but that "divorce from a Mosaic and rabbinic standpoint has always been considered a purely civil act, which never received religious consecration."[100]

It is also interesting to note that in spite of the fact that the above resolution was adopted in 1890, discussions on divorce continued for the next twenty-five years. The problem was not that members wished to reinstate the use of the get. All agreed that the civil courts should handle divorces. But the rabbis were concerned about the lack of uniformity in state divorce laws. Many states were granting divorce on what the rabbis considered were questionable grounds. Some rabbis therefore recommended that rabbis countersign the civil divorce papers when they felt the grounds for divorce were justified and Kaufman Kohler advised that every rabbi examine civil divorce for sufficient cause

before they officiate at the remarriage of any two parties.

In essence, these suggestions called for the religious approval or disapproval of civil divorces. But since this is in direct conflict with the 1890 resolution which states that divorce is a "purely civil act," it is no wonder then that these recommendations were never universally accepted.

Nevertheless, some rabbis either out of conviction or ignorance continued to issue gittin. This prompted a CCAR member to recommend that "Rabbinical Divorce be discontinued and opposed; and that concerted effort be taken to advise out brethren throughout the land of the action of this Conference."[101]

And even today, despite the Conference's abandonment of the use of the get, there are persons who request a Reform get for psychological reasons (since they could not procure an Orthodox get) and for questionable religious reasons (they feel that their divorce should be officialy sanctioned by the Reform since their marriage was religiously sanctioned).

The issuing of such Reform gittin, although occasionally issued by well-meaning rabbis, are discouraged as not conforming to the spirit of Reform.

"Precursors to the 1890 CCAR Resolution on Divorce"

In 1944 the Braunschweig Conference adopted the following resolution from the French Synehdria of 1807: "(Jewish) divorce is permissible, but only with the consent of civil law."[102]

In 1869, these resolutions were placed before the First Synod at Leipzig. 1) The bill of divorce (the Get), according to its chaldic form and its contents is not adopted to our age. It ought, therefore, to be adapted to our age. (ibid, p. 106). 2) If a woman has accused her husband of infidelity or desertion and has received on this account a divorce from a court of law, but her husband refuses to give the bill of divorce (a Get) she can marry after a year without a Get. (ibid). 3) A remnant of the former subjection of the Jewish congregations, rabbinical jurisdiction in matters of divorce is to be set aside. Divorces of Jewish marriages belong to the civil courts.[103]

1890 CCAR Resolution as Adopted from the Philadelphia Conference of 1869

From the Mosaic and rabbinical standpoint divorce is a purely civil act, which never received religious consecration; it is therefore valid only when it proceeds from the civil court.[104]

Statements Reflecting the Dissatisfaction with Civil Divorce Procedures

A divorce given by the civil courts is valid in the eyes of Judaism if it appears from the judicial documents that both parties have consented to the divorce, but when the court has decreed a divorce against the wish of one or the other of the couple, Judaism for its part can consider divorce valid only when the judicial reason for granting the divorce has been investigated and found of sufficient weight in the spirit of Judaism. It is recommended that before deciding the rabbi obtain the opinion of experts.[105]

At the 1912 CCAR Conference, it was recommended that Rabbinical Divorce be discontinued and opposed; and that concerted effort be taken to advise our brethren throughout the land of the action of this Conference.

Rabbis should, however, countersign divorce papers issued by the courts. And a fee for service may be demanded at the discretion of the Rabbi.

The Rabbi shall, in every instance, investigate the grounds upon which divorces have been granted to divorces or divorcees who ask him to remarry them.

No divorce decree shall become absolute until a period of six months has elapsed after its issuance.[106]

Kaufman Kohler stated in 1914 that:

> The so-called Get has no validity whatsoever for us and that the civil court is the only legal authority for us to issue a divorce bill.
>
> The dissolution of marriage by a civil court is also valid in the eyes of Judaism if it can be ascertained from the judicial documents that both parties have given their consent to the divorce. Where, however, the court issues a decree against one or the other party by constraint, Judaism recognizes the validity of the divorce only where the cause is found sufficient in accordance with the spirit of the Jewish religion. It is recommended, however, that the rabbi who is to officiate at the remarraige of any of the two parties, obtain the concurrence of competent colleagues.[107]
>
> Until the uniform code (of divorce) has been adopted by the various states of the land, the rabbi must by all means withhold his approbation of the court divorce bill until he and his colleagues have ascertained that the same has not been granted on loose grounds and for flimsy causes such as absence for a time less than five years of willful desertion.[108]

5. The Agunah

a. The Agunah in Orthodox Judaism

If a married woman is separated from her husband either because she cannot obtain a divorce from him or because it is unknown whether he is dead or alive, she is called an "agunah" (literally "tired") and she cannot remarry. This term is also applied to a yevamah ("a levirate widow") if she cannot obtain chaliza from the levir or if it is unknown whether he is still alive. (Git 26b, 33a; Yev. 94a; Poseskim).[109]

When a woman is an agunah as a result of her inability to obtain a divorce or chalitza, she can be freed to remarry only by her husband or the levir (respectively). In the case of a missing husband, the courts will permit the woman to remarry if there is at least one witness (male, female, Jew or non-Jew) who can testify that they saw his body (Yev. 16:7); or (Yev. 121b, 122a) if written documents exist that testify to the husband's death (Sh. Ar. EH 17:11), or if the husband has allegedly drowned in limited waters, i.e. a lake or river. (Yev. 16:4; 121a). But such proof of death is often unavailable, leaving the agunah tragically bound to a single life.

And if an agunah chooses to ignore the law and remarries, she is considered an adultress and all her children from this second marraige are mamzerim.

Recognizing the hardships suffered by the agunah, the rabbinical authorities have used certain schemes to circumvent the law. Some have used a conditional get, others have implemented a type of conditional marriage, and still others have issued a takkanah which makes the kiddushin conditional.

The conditional "get" is used in times of war. This "get" becomes effective only if the husband does not return by a specified date, at which time the wife becomes a divorcee and is entitled to marry another man without having to undergo levirate marriage or chalitza. Such an arrangement is prescribed in the Talmud (Het. 9b) and in the Shulchan Aruch (E.H. 143).

A conditional marriage is one in which a stipulation has been made to the effect that in certain circumstances the marriage should be considered retroactively void, for instance if the husband should fail, without his wife's permission to return to her after a long absence of specified duration and should refuse, despite her demand to grant her a get; or if he should die childless leaving a brother who refuses to fulfill the obligations of a levir, etc. (Hatam Sofer E,H, 1:111).

And finally, the conditional kiddushim is one which may be annulled retroactively by a takkanah upon the happening or non-fulfillment of certain specified conditions, such as the husband being missing or his willful refusal to grant a get. Such a takkanah is based on the rule that "a man takes

a woman under conditions laid down by the rabbis...and the rabbis may annul his marriage" (Get 33a).[110]

Unfortunately, none of these schemes are without halakhic difficulties and are therefore not widely accepted. Thus the problem of the agunah remains unresolved.

It is also important to note that a man can never be subjected to such hardship, since polygamy is condoned in the Talmud. (see "Polygamy and Bigamy").

b. The Agunah in Conservative Judaism

In order to obviate the problem of the agunah, the Joint Law Conference of the Rabbinical Assembly and the Jewish Theological Seminary adopted a takkanah (an enactment) in 1954 to be inserted in the ketubbah (the marriage document). It states:

"And in solemn assent to their mutual responsibilities and love, the Bridegroom and Bride have declared: As evidence of our desire to enable each other to live in accordance with the Jewish law of marriage throughout our lifetime, we, the Bride, and Bridegroom, attach our signatures to this Ketubbah, and thereby agree to recognize the Beth Din of the Rabbinical Assembly and The Jewish Theological Seminary of America, or its duly appointed representatives, as having authority to counsel us in the light of Jewish Tradition, which requires husband and wife to give each other complete love and devotion and to summon either party at the request of the other, in order to enable the party,

so requesting to live in accordance with the standards of the Jewish law of marriage throughout his or her lifetime. We authorize the Beth Din to impose such terms of compensation as it may see fit for failure to respond to its summons or to carry out its decision."[111]

By signing a ketubbah (in a prescribed manner) with this clause, the bride and bridegroom consent to give the Beit Din the authority to release the wife from the state of agunah if such a situation arises.

This takkanah was not, however, unanimously approved. Thus each Conservative rabbi has the option to use or not to use the enactment. While most have accepted the relatively new ruling, there are several rabbis who refuse to adopt it because they feel it is not halakhically justified.

The debate (which became an issue in the RA as early as 1938) has centered around the interpretation and application of the rabbinic principle that whatever is established by rabbinic sanction can be dissolved by rabbinic sanction.

Rabbi Louis M. Epstein, the principle author of the takkanah argued that this principle can be applied to marriage and divorce and consequently can be applied to release the agunah.

> Even those who maintain that Rabbis have no power to undo a Biblical law, grant that they have the power to undo a Biblically valid marriage, There are 5 such cases recorded in the Talmud. Two fall under the category:
>
> 1. "He (the groom) acted improperly, hence the rabbis treated him likewise and annulled his marriage.

a) "In Naiash, a girl married a minor. On reaching majority, she was set by her husband on a nuptual throne. Thereupon came another man and snatched her away. The second man's marriage to the girl was annulled.(Yeb. 110a)

b) While, under certain conditions, a sale executed under pressure is valid, a marriage executed under pressure is annulled by the rabbis. (B.B. 48b)

2. The second principle employed is 'Marriage is established by rabbinic sanction and is dissolved by the same sanction.'

c) As a matter of policy, a divorce cannot be cancelled on the grounds that unforseen conditions have arisen (Ket. 3a).

d) A divorce cannot be recalled by the husband without the knowledge of the wife or of the messenger who carries it in accordance with Gambel's enactment. (Git. 33a)

e) As a matter of policy, a divorce made by a person at the time of his illness on the assumption that he is dying remains valid even if he recovers. (Git. 73a)

The Talmud also recognizes these last three cases as distinct rabbinic legislation, for according to Biblical law these divorces would not be valid.

To validate or invalidate a divorce you must apply the principle that marriage is established by rabbinic sanction and can be dissolved by the same sanction. To validate or invalidate a marriage it is sufficient to say that the manner of the marriage formalities is not approved by the rabbis and with that alone, the marriage is annulled.[112]

The arguments against Rabbi Epstein's takkanah are many. But they usually center around the Conservative position that the Talmud, which prescribes the laws dealing with the agunah is the divinely revealed law. As such it is infallible and cannot justifiably be amended. This argument is also used by the Orthodox rabbinate.

It is true that Epstein's proposal is based on Talmudic passages, but they are obscure passages which have been taken out of context. When viewed as a whole, the Talmud could not be used to justify the "conditional" marriage. This approach, of using obscure passages in rabbinic literature to justify a liberalization of Jewish law is used often by the RA, e.g. in their arguments for allowing women to have aliyoth and to be counted in a minyan (see "Minyan" and "Aliyoth" in Conservative Judaism).

c. The Agunah In Reform Judaism

The problem of the agunah is irrelevant in Reform Judaism since Reform does not recognize levirate marriage or religious divorces and because it leaves the question as to whether a husband or wife is to be declared dead after a lengthy disappearance up to civil law.

> A final decision of the courts concerning the identity of a deceased person and a judicial decision declaring the missing person to be dead have also sanction for ritual cases.[113]

> A decision of the question as to whether, in doubtful cases, the husband or wife is to be declared dead after lengthy disappearance is to be left to the law of the land.[114]

Part II

The Role of Women in Ritual

A. Aliyah

B. Bar vs. Bat Mitzvah

C. Minyan

D. Mohalim

E. Shochtim

F. Tallit

G. Tefillin

A. Aliyah

1. Aliyah in Orthodox Judaism

According to Orthodox halakhah, a woman may not be granted an aliyah (allowed to read the Torah or Torah blessings in public).

Orthodox Halakhah vs. Talmudic Law

The Orthodox base their position on a B'raita quoted in Megillah 23a which states that "Anyone may ascend (for an aliyah) for the seven honors, even a minor, even a woman, but the sages have said that a woman shall not read in public because of K'vod Hatzibbur (the dignity of the congregation)." Now the Talmud does not define K'vod Hatzibbur, nor does it explain the nature of the offense of a woman reading the Torah in public. Yet the Orthodox rabbis interpret the passage as a general prohibition against women reading in public without qualification since 1) Women distract men from their prayer and study (It is interesting to note that they never state that a woman might be distracted by a man); 2) Women are not obligated to study Torah, so they should allow men who are obligated to fulfill the mitzvah to have the aliyah; 3) A woman who is exempt from performing most of the positive, time-bound commandments, should not say a blessing which states "...who has commanded us..." as in the case with the Torah blessings; 4) A woman may unknowingly be impure because of her menstrual period and in which case she should not be allowed to touch the Torah.[115]

In order to support their view, the rabbis selectively quote from rabbinic literature. They are, for example, 1) Bar Kappora of the Palestinian Talmud, who says that the text implies that a man should read the Megillah for women and children, and 2) the Tosefta which asserts that women are "exempt" from reading and therefore cannot fulfill the publics' obligation to hear the Megillah reading.[116] By analogy, the Orthodox rabbis claim that if a woman cannot fulfill the public's obligation to hear the Megillah, she cannot likewise fulfill the man's obligation to read the Torah by reading it for him. Thus a man should always be given the aliyah, in order to fulfill his own obligation as well as the obligation of the other men in the congregation.

But the fact remains that the Talmud does not specifically prohibit a woman from reading the Torah in public and there are precedents in rabbinic literature (which the Orthodox rabbis ignore) which permit her to do so.

R. Joshua b. Levi interprets the Mishnah as implying that women are obligated in the reading of the Megillah - and are therefore eligible to read Torah (Meg. 4a; Erk. 2b, 3a). And Rashi adds that this obligation makes women eligible to read (the Megillah in public, and to enable men to fulfill the mitzvah, (Rashi on Erk. 3a). Karo himself confirms Rashi's ruling in the Shulchan Aruch (OH 689:2) when he states that only "some" hold that a woman cannot enable men to fulfill the mitzvah of hearing the Megillah.[117]

But more important than these statements concerning the Megillah reading are references to women who were actually permitted to read from the Torah.

Rabbi Meir of Rothenberg (1220-1293), in one of his T'shuvot wrote "In a city whose men are all Kohanim and there is not even one Israelite among them, it seems to me that one Kohen takes the first two aliyot and then women are to be called for 'all may ascend...'" (Responsum OH 108).

And in Hagaot Maimounity, we read that "In a city where all are Kohanim which has no women or slaves or minors, the Torah may not be read at all."[118]

In sum, despite the present day objections of the Orthodox rabbis, women were at one time given aliyoth. According to Israel Abrahams, women's participation was probably common until the thirteenth century, when separation of the sexes became an issue.

> In the separation of the sexes, the synagogue only reflected their isolation in the social life outside. The sexes were separated at Jewish banquets and home feasts no less than in synagogues. If they did not pray together, neither did they play together. The rigid separation of the sexes in prayer seems not to have been earlier, however, than the 13th century. The women had their own "court" in the Temple, yet it is not impossible that they prayed together with the men in Talmudic times (Abrahams cites as his authority for his statement Low, Monatsschrift, 1884, pp. 314, 463). Possibly the rigid separation grew out of the medieval custom - which induced men and women to spend the eve of the Great Fast in the synagogue.[119]

Qualifications for Aliyah

According to Orthodox practice, a man may without qualification be called up to the Torah, even though he may

be a known "sinner", or transgressor of the law.

Orthodox Halakhah vs. Talmudic Law

This Orthodox halakhah is in agreement with talmudic law which also places no restrictions upon a man in regard to aliyah. Yet there are recorded instances where a male was prohibited from having an aliyah.

Simon ben Zemach Duran (14th-15th Century, Tashbitz II:261) says that any man who has reached adulthood (13 years of age) is permitted to be called up to the Torah. And even sinners are not forbidden from being called up. But a congregation, says Duran, may forbid certain groups to come up in order to make "a fence against evil."

Ephraim Margolies the famous scholar of Brody (1762-1828) wrote a book dealing specifically with the questions involved in the reading of the Torah (Sha'are Ephraim). He bases most of his discussion around two passages in the Shulchan Aruch which deal with the subject.

In Orah Hayyim 128 we learn that if a priest has committed certain crucial sins such as marrying a divorced woman or wilfully defiling himself with contact with the dead, then if he is not repentant, he is not permitted to bless the people.

In a Yore Deah passage (334) we also learn that a man who is under ban may not be counted to the minyan.

Ephraim Margolies concludes that a man who is known to have taken bribes should not be called up the passage deal-

ing with justice and laws and a man whose wife neglects the mikvah, etc., should not be called up to the passage which deals with these matters; on fast days a man who is not fasting is not called up to the Torah (Sh'are Ephraim I:17).

But Margolies adds that we might want to call these people up to the Torah because "If we call him up and some indignant worshipper scolds him, the embarrassment may lead the sinner to full repentence."

Jacob Emden, in response to the Yore Deah passage says as long as a sinner has not been officially under ban, he may still be counted for the minyan. He also adds that being called up to the Torah is less important than being counted to the minyan since according to the Talmud, women and children, although they may not be counted to the minyan, may nevertheless (Megilla 23a) be called up to the Torah. So it is possible says Emden that a sinful man may be excluded from the minyan yet called up to the Torah.

> The commentator Sha'are Kachamim to this passage in Margolies adds another leniency: Although it is not permissable to call a blind man to the Torah, nevertheless we do call up blind people and illiterates because we rely upon the reading by the official reader. Thus, he continues, we can call up sinners who should not be permitted to read to Torah (themselves) because nowadays, we count on the reading by the official reader. [120]

In conclusion, the Orthodox rabbis have relied upon rabbinic literature to place greater restrictions on the woman's right to an aliyah that a simple reading of the Talmud would permit yet have ignored the same literature which would qualify the rights of a man to an aliyah.

2. Aliyot in Conservative Judaism

The RA, based on lenient position of the rabbis of allowing women to read the Megillah, permit women to have aliyot.[121]

Their reasoning is as follows:

1. The Mishnah proper makes no reference to a woman's right to an aliyah.

   The B'raita quoted in Meg. 23a states that "anyone may ascend (for an aliyah) for the seven honors, even a minor, even a woman, but the sages have said that a woman shall not read in public because of K'vod hatzibbur (the dignity of the congregation.") But many of the things which offended K'vod Hatzibbur in Talmudic times, no longer offend us. Therefore there is no breach of K'vod Hatzibbur in calling a woman to the Torah.

   There are five other references to K'vod Hatzibbur in Talmudic literature.

   1. "A naked person may not read from the Torah because of K'vod hatzibbur." (Meg. 24b).

   2. "one who is clad in rags may not read from the Torah because of K'vod hatzibbur:. (Meg. 24b).

   3. "One may not roll up the Torah scroll in public (referring to the High priest on Yom Kippur) because of K'vod hatzibbur". (Yoma 90a)

   4. "The cantor may not disassemble the ark in public because of K'vod hatzibbur." (Sotah 39b).

   5. "One may not read from a printed Penteteuch in the synagogue because of K'vod hatzibbur." (Gittin 60a).

Number 1 and number 2 are offenses to the congregation because the person reading is improperly dressed to officiate in public. Number 3 and number 4 are offenses because they delay the congregation unecessarily. Number 5 is an offense because it is considered improper or undignified for the Torah reading to be conducted from anything less than a complete and valid scroll.

> From these five cases, it is implied that a woman is denied the privilege of an aliyah because it is considered to be offensive or improper. But these sentiments are no longer valid today. "To continue to act as if they were still valid is the height of folly' since the woman works side by side with her husband for the welfare of the synagogue and the Jewish community, who is active in the UJA, in Zionish effort, in both Jewish and secular education, whose sense of social responsibility usually is "keener than that of her husband." Thus she deserves equality of status in the synagogue.[122]

A woman's participation in synagogue affairs is no longer considered an offense to K'vod hatzibbur.

There is therefore justification for changing the halakhah just as the rabbis did for other practices, such as Sh'mittah, Sotah and punishment the rebellious son.[123]

The Conservative rabbis therefore, do not accept the Orthodox interpretation of the K'vod hatzibbur. They feel that the objections the Orthodox raise to allowing women to have aliyot are unjustified, given the usages of the phrase in the text.

But in order to strengthen their position, the Conservative rabbis analyze and refute each Orthodox argument.

1. As for a woman distracting the men the Conservatives point out that the Megillah is to be heard by all-together. The Talmud makes no mention here of separating the sexes.

2. According to the Orthodox, since a woman is not obligated to study Torah, she should allow the men, who are so obligated to fulfill the Mitzvah by having an Aliyah. But the Conservatives argue that "If they (the women) wish to place themselves under the yoke of the law that is their privilege, and no one may interfere."[124]

This position, say the Conservative rabbis, has precedent in law. The following T'shuvah is reported in the

name of Rabbi Issac Halevi, one of the teachers of Rashi (1040-1105).

"Rabbi Issac Halevi taught that one does not prohibit women to recite a b'rachah over the Succah and the Lulav. For when we say that women are exempt from all positive mitzvoth which are contingent (for their performance) upon a specific time, this means only that they are not obligated. But if they wish to place themsleves under the yoke of the mitzvot that is their privilege and no one may interfere with them. They are no different than anyone who is not obligated but still performs a mitzvah. Furthermore, since they wish to observe the mitavah it cannot be done without a b'rachah. Therefore when we say that all may ascend for an aliyah to the number of seven, even a woman, though she is exempt from the mitzvah of Talmud Torah, she may ascend, she may recite the b'rachot and there is no suggestion of b'rachach l'vatala (an unecessary b'rachach)."

2. The Orthodox say that a woman should not recite the Torah blessings because she is not obligated to study Torah yet the blessing reads "...who has commanded us..." If the woman does say the b'rachah, one might consider it a brachal l'vatala (an unnecessary b'rachah). But in the quotes of Rabbenu Tam and Abudaraham in Rosh Hashanah 33a we read that Rabbenu Tam says that a woman may ascend and recite the b'rachah of the Torah because "the b'rachot for the reading of the Torah are not in observance of the mitzvah of Talmud Torah." The purpose of the b'rachah at the reading of the Torah is "To honor the Torah." And Abudarham says: R. Judah of Barcelona said in the name of Rav Saadya Gaon that the b'rachah before the reading of the Torah in public was designed to honor the Torah. And it is not a b'rachah l'vatala."

   And it must be pointed out that in no place does the law indicate that a woman is forbidden to recite the b'rachot. "Quite the contrary...in enumerating those portions of the morning service which a woman is required to recite, the Shulchan Aruch states very clearly 'Women are required to recite the b'rachot to the Torah.' (Which are part of every morning's prayers.)" (Orach Chayim, 47:14).

3. The Orthodox hold that a woman can be denied contact with the Torah because she might be unclean due to her menstrual period. They base their opinion on a passage in Hagaot Maimunyiot, which reads: "Rama states, 'There are some who have written that a menstruating woman may not enter a synagogue or pray or mention the name of God or touch a Sefer. Others say that she is permitted all of these and this is law, (Rashi, Helchot Niddah)." However, the Minhag in these lands follows the first opinion.[125]

While the Orthodox follow this Ashkenazi ruling, the Conservative rabbis point out that according to Rabbi Judah ben B'teira, whose view in the Talmud is accepted as standard and operative, "the Torah is immune to being rendered unclean by contact."[126]

3. Aliyoth and Reform Judaism

Since men and women may participate equally in all aspects of Reform worship, both may be given aliyoth - without qualification.

Yet it is interesting to note that Rabbi Solomon B. Freehof, in a responsa concerning qualifications for aliyot says:

> A man of dubious reputation should not be called up for certain specific passages where his character contradicts the reading. Nor should a man who is notoriously evil be allowed to shame the congregation by being called up to the Torah. But in general, in less heinous offenses as long as the man has not been excluded or ostracized by the community, we should not shut the door in his face. We should always consider the honor or the congregation, yet be lenient and avoid complete exclusion.[128]

Freehof's responsa is reminiscent of Medieval rabbinic responses (see Aliyah in Orthodox Judaism: Qualifications for Aliyah). Yet while we can find examples of men being

denied aliyoth in Orthodox Judaism because of unethical conduct, we cannot find any such recorded examples in Reform practice.

B. Bar and Bat Mitzvah

1a. Bar Mitzvah in Orthodox Judaism

According to Orthodox practice a boy should have a Bar Mitzvah ceremony when he reaches 13 years of age. The ceremony is a public announcement that the boy has reached adulthood and is now obligated to observe all the Orthodox mitzvoth.

Orthodox Halakhah vs. Talmudic Law

The ceremony has no Talmudic basis and the Law (talmudic) does not say that a boy attains adulthood automatically at the age of thirteen.

The term "Bar Mitzvah" appears in the Talmud (BM 96a) to describe one who is subject to the law but its usage to denote the occasion of assuming religious and legal obligations does not appear before the 13th century (Sefer Zeyyoni of R. Menahem Zeyyoni to Gen. 1:5).

There is, however, a tradition recorded in talmudic literature (Sof. 18:7 ed. M. Higger, 1937) which alludes to the fact that in Jerusalem, during the period of the second Temple, it was customary for the sages to bless a child who had succeeded in completing his or her first day at 12 or 13.[129] But again, no mention is made of a ceremony.

And adulthood is not acheived, according to the Talmud, until a boy reaches the age of thirteen and two pubic hairs have appeared. In otherwords, adulthood is contingent with the onset of puberty (Nid. 5:6; Nid. 52a). If the signs of

puberty do not appear at the age of 13, the person retains the status of a minor until the age of 20. After that age, if signs of impotence developed, thus accounting for the absence of secondary sex characteristics, the person is considered an adult (Nid. 5:9). If such signs did not develop, the person retains the status of a minor until the age of 35, which is considered the major portion of a person's life span (Nid. 47b).

An examination is supposed to be made at each stage in order to determine if puberty has been attained. If, however, an examination is not made, it is presumed that a minor who reaches the age of maturity (13 years) has developed the necessary signs (Nid. 46a).[130]

Since the Orthodox do not make the examinations they follow the latter ruling and presume the pubic hairs have appeared. Thus an Orthodox boy upon reaching 13 years of age is automatically considered an adult, at least religiously speaking.

1b. Bat Mitzvah in Orthodox Judaism

There is no Bat Mitzvah ceremony in Orthodox Judaism.

Orthodox authorities cannot, of course, argue against such a ceremony on talmudic grounds, since the Bar Mitzvah ceremony does not have talmudic origins. They could however, argue halakhically against the type of Bat Mitzvah ceremony used in Conservative and Reform Judaism. They could point out that a woman cannot pray with the men in one

of the regularly scheduled services because she might distract the men. They could argue that a woman is prohibited from reading form the Torah, etc. But they cannot justify omitting some type of Bat Mitzvah ceremony, except on non-halakhic, emotional grounds. Here are the three such "emotional" responses.

Moses Feinstein, the leading Orthodox authority in America that this ceremony was established by the Conservatives and the Reformers and that is reason enough to avoid any such celebration.[131]

Moses Stern, formerly rabbi of Debcezin, now of Brooklyn, (see his responsa collection Be'er Moshe, I #10), forbids an Orthodox Jew from attending such a celebration because it is a new ceremony, not established by our learned predecessors. He adds that there is a distinction as to the respective responsibilities pertaining to a son and a daughter as is evidenced by the fact that the blessing which the father says at the Bar Mitzvah (Baruch sh' 'torani) was not ordained to be said for a daughter.[132]

The Pri M'gadim to Eshel Abraham (OH 225, end of par. 5) says that the reason the father does not recite the blessing for the daughter, even though he is in duty bound to train her to (observe) the mitzvos, is because the daughter, being a woman, has many less mitzvos to observe than the son.[133]

There is at least one Orthodox rabbi who would approve

of a Bat Mitzvah ceremony, but his view is not generally accepted.

Obadiah Joseph, the Sephardic Chief Rabbi (in his Yabia Omer, #29) approves of the ceremony and suggests that the father recite the same blessing that the father does for a Bar Mitzvah, and even considers the meal celebrating the Bat Mitzvah as a religious meal, providing, of course, that words of Torah are spoken on the occasion.[134]

2a. Bar Mitzvah in Conservative Judaism

The Conservative rabbis basically follow the Orthodox practice concerning the Bar Mitzvah.

2b. Bar and Bat Mitzvah in Conservative Judaism

The purpose and nature of the Bar Mitzvah ceremony in Conservative Judaism is the same as in Orthodox Judaism. But, unlike the Orthodox, most Conservative congregations also have Bat Mitzvah ceremonies.

According to a 1931 statement in the Rabbinic Assembly Proceedings "the Bar Mitzvah ceremony for the girl corresponds to the Bar Mitzvah ceremony for the boy. After a year of training and study of Hebrew, the girl upon reaching the age of 12 or 13 is called up to the pulpit after the Haftarah, reads in Hebrew and English the prayer: 'Make pleasant we therefore beseech Thee,' then reads a portion of the Bible in Hebrew and English, which in some congregations is followed by a brief original address which the Bat Mitzvah has written herself."[135]

Although the exact nature of the ceremony has changed in recent times, the fact remains that most Bat Mitzvah candidates are forbidden to read directly from the Torah - as all congregations have not accepted the RA ruling that women may have an aliyah. This practice necessarily makes the Bat Mitzvah ceremony different from the Bar Mitzvah ceremony. Of course, this difference reflects the different status of female adult's responsibilities and a male adult's responbilities." An adult woman is not halakhically required to study Torah. This explains why the Bat Mitzvah does not usually read from the Torah.

But this aside, the whole Bat Mitzvah ceremony appears to be a contradiction in terms. First, according to the Talmud, a girl reaches her majority at the age of 12-1/2, not 12 or 13. From the age of three to the age of 12, a girl has the status of a minor. She then becomes a na'arah, a young woman, for the next six months. And only then, at the age of 12-1/2 does she become a bogeret or adult (Nid 5:7); and then only if she has grown two pubic hairs. And even though the examination for the pubic hairs is no longer practiced, a young woman, at the age of 12 years and one day is still not talmudically considered an adult. So how can a girl celebrate her adulthood at the age of 12 years and one day when she cannot in any sense be considered an adult?

Second, since an adult woman is not obligated to pray the morning, afternoon, or evening services, since she is

exempt from all positive time - bound mitzvoth, how can her participation in one of these time-bound services (e.g. Erev. Shabbath) reflect her assumption of any of her newly acquired responsibilities. The same dilemma applies to her reading from a printed Bible (since she is not obligated to study Torah). It seems that the Bat Mitzvah ceremony, as it is practiced, would have little meaning for her.

If the Bat Mitzvah ceremony has been instituted to show that the woman has equal status with a man, it fails to do so. The girl usually has a less active and less important role in her ceremony as compared to the boy in his. And the fact remains that her religious status is not equal to the male's. If the Conservatives wish to use the "separate but equal" philosophy, they should institute a separate, entirely different Bat Mitzvah ceremony, a ceremony which would show or symbolize that she has assumed her new obligations, e.g. ceremonially performing the mitzvah of hallah or lighting the Sabbath candles.

3. Bar and Bat Mitzvah in Reform Judaism

According to Solomon B. Freehof the Bar and Bat Mitzvah ceremonies have no roots in law and are therefore only a formal participation in the public Torah reading. The "Bar Mitzvah" as referring to the coming of legal age has no force in Reform.[135]

Historically, Reform attempted to abolish the Bar Mitzvah ceremony because it was a "survival of Orientalism"

which had lost its meaning and because it discriminated against women. They, consequently attempted to replace the Bar Mitavah, and later, the Bat Mitzvah, with a Confirmation service.

In 1912, a CCAR member stated that "the Bar Mitzvah rite ought not to be encouraged by any Reform rabbi, as it is a survival of Orientalism like the covering of the head during the service, whereas the Confirmation, when made as it should by the rabbi an impressive appeal to the holiest emotions of the soul and a personal vow of fealty to the ancestral faith, is a source of regeneration of Judaism each year, the value of which none who has the spiritual welfare of Israel at hear can afford to underrate or to ignore.[136]

In the same year, the CCAR adopted a report on Responsa which decried the inequity of the status to men and women as reflected in the Bar Mitzvah ceremony.[137]

But the efforts to abolish the ceremony were never completely successful. In fact, the Bar Mitzvah celebration experienced a revival in the 1950's.

> In response to this revival, the CCAR published a responsum which stated, "The innovation has met with little opposition, since we are all eager to strengthen and enrich our Sabbath worship by all means we can muster. And, indeed, however disturbing some of its aspects, the restored ceremony has tended to enhance, in some measure, the spirit of worship on the Sabbath Day".[138]

The growing popularity of the Bar Mitzvah ceremony caused another problem. Many of the Bar Mitzvahs immediately dropped out of religious school and consequently

began to take the significance out of the Confirmation service. In order to counteract this movement, the Bat Mitzvah ceremony was introduced and both ceremonies were considered a stepping stone to the Confirmation Service.[139]

This explains the present Reform practice of providing equal ceremonies for both boys and girls.

C. Minyan

1. The Minyan in Orthodox Judaism

According to Orthodox halakhah, a woman may not be counted as part of the minyan - the quorum of ten persons necessary for public worship and certain ceremonies, i.e. the wedding ceremony.

Orthodox vs. Talmudic Law on the Minyan

The Orthodox base their exclusion of women upon the Shulchan Aruch and not upon the Talmud.

The Talmud merely states that all passages of kiddushah in prayer, all passages that fit under the rubric of "holiness passages" (i.e. the shema, haftorah, etc.) may be said only if a quorum of ten is present. (Ber. 21b, Meg. 23b). It does not specify that these 10 must be males.[140]

Yet, Karo, in his Shulchan Aruch does define a minyan as a quorum of ten <u>males</u> (Orah Hayyim 55:1). And the Orthodox accept Karo's definition as <u>the law</u>.[141]

2. The Minyan in Conservative Judaism

According to a recent resolution passed by the RA (August 29, 1973), a woman may be counted as part of the minyan as long as she has the approval of her congregation.

Such action was taken due primarily to a responsum on the subject written by Phillip Segal. In the responsum, Segal gives the following arguments for including women as part of the minyan.

1. Women are obligated to pray. (Mishnah RH 3:8, Babylonian RH 29a; Mishnah Ber 3:3, B. Ber 20b; Maimonides Mishnah Torah Hilkot Tefilah 1:2, 6:10; Sh. Ar. O.H. 106:2)

2. Various segments of the halakhah give women the right, equally with men, to participate publically in a wide variety of rituals, e.g., a woman can be one of the seven that ascend to the Torah or that can sound the shofar.

3. Isserles speculated that when a woman participated in the quorum for the reading of the Megillah it was a correct quorum for the town (Sh. Ar., OH 282.3).

4. The 13th century Mordecai cited an earlier scholar, R. Simhah, who said that a woman may be included in the minyan for prayer and when ten are required for grace after meals for purposes of including the name of God in the formula. (Mordecai on Ber. 173).

5. A number of categories of persons who suffer from certain halakhic restrictions or disabilities such as a mamzer may be counted in a minyan. To disqualify women from sharing in the right to constitute an assembly or a worship community is to offend them without reason.

6. Even if we categorize the disqualification of women to constitute a quorum as minhag, it is a minhag which has lost its reason and its appeal. It is a minhag which often runs counter to the best interests of Jewish communities, especially the small ones not only on Friday nights buy on Saturday mornings at daily services and in houses of shivah. When a minhag is no longer of spiritual benefit it may be modified or abolished. Although Moses Isserles was firm about preserving a minhag, he held that when circumstances change the minhag may be modified to suit current standards. In the sources referred, we find that the commentators hold that the strength of minhag obtains where there is some support for it in the Torah. But when there is no support for it in the Torah, to preserve an absolute minhag is merely to err in logic, or in other words, to be toeh b'shikul' ha'da'at. (Magen Avraham, note 22, and Ber. Hetev, note 15, on Karo OH 690:17).[142]

In sum, the Conservatives allow women to be counted as part of the minyan because the Torah and Talmud

do not prohibit them from being counted, because some authorities say they may be included and because their exclusion is no longer spiritually beneficial.

3. The Minyan and Reform Judaism

Reform rabbis do not require a minyan for worship and do not differentiate between the duties of men and women in worship. Thus the problems facing the Conservatives and the Orthodox in regard to the minyan are nonexistant in Reform.

D. Mohalim

1. Mohalim in Orthodox Judaism

The Orthodox halakhah states that the Mohel, or circumciser, should be a pious Jew who is skilled in the operation, e.g. Jewish physicians.

The Conservative rabbis interpret "pious" to mean a "pious" Jewish male, since there are no female Mohalim.

Orthodox Halakhah vs. the Talmudic Law

This ruling, however is contrary to Talmudic law. According to Avoday Zara, 27a, Rav Yochanan says that a woman may serve as a Mohel. In the same passage, Rav argues against Rav Yochanan's position and but there is no definitive statement of the law. Yet in disputes between Rav and Rav Yochanan, Yochanan's view is generally followed. Thus, according to the Talmud, a woman may be a Mohal.[143]

Joseph Karo, in Yoreh Deah 264:1 seems to remove any doubt about the meaning of the Talmudic passage by stating that "all are eligible to perform circumcision, even a minor, even a slave, even a woman, and even an uncircumcised Jew, provided that there was a medical reason for the circumciser not being circumcised."

Isserles, however, adds that "a man should seek around for the best and most pious male mohel," so the Orthodox halakhah follow Isserles.

But in a later responsa we find a ruling which contradicts Isserles: In his Hagahas Asheri to the Rosh b. Avoda

Zara 27a, Israel of Kremsier (14th century) says: "All prohibitions against using Gentile physicians apply only if the healing by a physician is done by an amateur and without pay, but if done by a professional and for pay, it is absolutely permitted."[144] According to Israel, piety is not a requirement for a Mohel.

Thus the exclusion of women from serving as Mohalim has no solid rabbinic basis. Nevertheless the Orthodox do not accept female mohalim.

2. Mohalim in Conservative Judaism

Conservative Judaism seems to follow the Orthodox practice, but it is not clear whether female physicians are allowed to perform the surgery.

In 1964 the RA passed a resolution which states: "If a mohel is not available, a physician of the Jewish faith may perform the circumcision, if he is sensative to the values of Judaism who will himself offer appropriate prayers."[145]

Since a "male" physician is not specified, we must assume that a "female" physician may also perform the rite. But this author knows of no such cases in which a female physician has been used during a Conservative circumcision ceremony.

3. Mohalim and The Reform Movement

According to the Reform Movement, circumcision has no bearing at all upon the status of a Jew, and is therefore not required. It was moved by Dr. L. Adler at the First

Synod at Leipzin, 1869, that:

1. A Jew, who from any reason has not been circumcised, is entitled to be called to the Seifer Torah and his oath is just as good as that of any other righteous Jew.[146]

2. While the Synod presupposes that the high significance of the circumcision as undoubted in Judaism, it nevertheless, declares in answer to the question addressed to it that a boy who was born of a Jewish mother is to be regarded as a Jew, even though he had not been circumcised, the reason for the neglect of circumcision having no bearing at all on the fact of his being considered a Jew to all intents and purposes in all ritual relations.[147]

3. The male child of a Jewish mother is no less than her female child - in accordance with a never-disputed principle of Judaism - to be considered a Jew by descent even though he be uncircumcised.[148]

Because of this ruling, there are of course no restrictions on who may perform a circumcision on a Reform Jewish child. The circumciser may be a Jew or Gentile, male or female.

E. Shochtim

THE SHOCHET IN ORTHODOX JUDAISM

The Orthodox do not issue kabbaloth, (licenses to slaughter) to women.

Orthodox vs. the Talmudic Laws on Shochtim

The refusal of the Orthodox to issue kabbaloth to women is contrary to talmudic law and the codes.

According to the Talmud (Hullin 1:1; Zebahim3:1) "all may slaughter and what they slaughter is kosher, except a deaf mute, an imbecile and a minor."; "...slaughtering is valid if it is done by those who are not priests, by women or by bondservants..." and Maimonides (Hil. Schechita 4:4); the Tosafot (Hullin 2a; Zeb. 31b; Kid. 36a; etc.); Rabbi Meir of Rothenburg (Responsa Maharam ed. Prague p. 286); the Rosh (Comm. to Hullin 2a) and the Shulchan Aruch (Y.D. 1:1) all agree that women may be shochtim.

But Rama, the Ashkenazic commentator to the Shulchan Aruch says "Some are of the opinion that women may not slaughter and it already has become a rule that they do not..."[149]

Thus the Orthodox follow Rama even though we have evidence that women were shochtim in Yemen and Italy.

2. The Shochet in Conservative Judaism

Since the Orthodox rabbinate controls the licensing of

shohtim, the RA is silent on the laws of shehitah. We must therefore assume that they accept the Orthodox position on Shochtim.

3. The Shochet and Reform Judaism

The laws concerning shechitah are not "morally binding" and are therefore inoperative in Reform.

F. The Tallit

1. The Tallit in Orthodox Judaism

Orthodox women have the option of wearing the tallit, but it is discouraged.

Orthodox Halakhah vs. Talmudic Law

The Talmud does not prohibit a woman from wearing a tallit but neither does it command her to do so (although there is a Baraita in Menachos 43a which says that women are required to wear the tallit). The wearing of the tallit falls under the category of those of a positive time-bound mitzvah from which a woman is exempt since it is to be worn only during the day. (Shulchan Aruch, Orah Hayyim 17:2).

But Isserles adds in his commentary on the Shulchan Aruch that women do not put it on because it would appear to be a show of extra pride of piety.[150]

Moshe Meiselman, in his Jewish Women in Jewish Law, follows Isserles' lead and says that before a woman puts on a tallit she should make sure she is:

> truly motivated by a desire to adhere to the devine command will first make herself absolutely proficient in more basic areas before moving into the more esoteric and optional ones (such as the tallit).

And as a further discouragement, Meiselman ends his discussion by adding:

> Finally, it should be remembered that according to a group of authorities mentioned above (in the Targum of Yonatan ben Uziel to the verse 'No male garments shall be placed on a woman or female garments on a man' (Deut. 22:5)) states that 'Tzitzit and tefillin which

> are male garments, should not be placed on a woman.[151] A woman's wearing of a tallit is thus an infraction of the biblical injunction against a woman's wearing a man's clothes.[152]

2. The Tallit in Conservative Judaism

The Conservatives follow the Orthodox position that a woman may wear a tallit. But in practice, most women do not choose to do so.[153]

3. The Tallit in Reform Judaism

Reform Jewish women may, without exception, wear a tallit if they wish.

This decision reflects the Reform attitude for religious equality for men and women. As Solomon B. Freehof says,

> ...in our Reform movement, while special emphasis is placed upon the religious equality of men and women, there can be no real objection to young women putting on the tallis when they participate in the service.[154]

G. Tefillin

1. Tefillin in Orthodox Judaism

Orthodox women are not allowed to wear tefillin.

Orthodox vs. the Talmudic Laws on Tefillin

The above prohibition is based on responsa and not upon talmudic law. The Talmud states in Eruvim 96a that Michal, King Saul's daughter "put on tefillin and the Sages did not protest." And Hizkiyahu in the name of R. Abahu said: "the sages protested." But no final decision is made.

From this passage, one might think that women have the option to wear tefillin. But the Orthodox follow the opinion of R. Meir of Rothenberg (1276) who says the wearing of tefillin is not optional. R. Meir claims that the whole discussion in the Talmud revolves around Michal, whose position was unique.

> Michal, a woman noted for her piety, wife of a king, and incapable of having children, was unique because her acceptance of the mitzvah of tefillin implied that she would wear them absolutely on a regular basis without exception. Other women are not in a position to make such an absolute commitment, and thus, he claims they were excluded from tefillin by all authorities.[156]

The law today is as codified by Isserles who says (REMA to Shulhan Aruch, O.H. 38:3) "we do protest women laying tefillin and therefore it is prohibited to them."[157]

Thus the Orhtodox follow the Ashkenazic ruling.

It must be noted, however, that there are women who claim to be Orthodox who do lay tefillin. But they do so

only in the presence of other women. - as in the case of the women's minyan in Jerusalem, Israel.

2. Tefillin in Conservative Judaism

Because of their silence on this issue, we must assume that the RA follows the Orthodox position concerning a woman laying tefillin.

3. Tefillin in Reform Judaism

The wearing of the tefillin is optional for men and women in Reform Judaism. This is consistent with the Reform philosophy which calls for the equality of men and women in ritual.

In practice, however, very few members, both male and female choose to lay tefillin because they do not find it enhances their religious experience.

Part III

A. Women as Witnesses

B. Women as Rabbis

A. Women as Witnesses

1. Women as Witnesses in Orthodox Judaism

In Orthodox Judaism, women are not considered competent to serve as witnesses. Two major reasons are given for their exclusion.

1. By Gezara Shava it is derived from Scripture that only men are competent witnesses. In otherwords, since all the references to witnesses are in the masculine form, it is implied that only male witnesses are acceptable. (Sif. Deut. 190; Shev. 30a; Sh. Ar., HM 35:14; Yad, Edut 9:2);

2. The Talmud says that the place of the woman is in the home and not in the court (Shev. 30a; Git. 46a), as the honor of the king's daughter was within the house (Ps. 45:14). *(Note: the Tur HM 35 omits women from the list of incompetent witnesses.).

Exceptions to the Rule

Women are accepted as competent witnesses:

1. In matters within their particular knowledge, on customs or events in places frequented only by women (Rema HM 35:14; Darkhei Moshe HM 35; Beit Yosef ibid. n. 15; Terumat ha-Deshen Resp. no. 353)
2. In matters of their own and other women's purity (Ket. 72a; Ket. 2:6)
3. For purposes of identification, especially of other women (Yev. 39b)
4. Or in matters outside the realm of strict law (BK 114b).

And in post-talmudic times the testamony of women was

often admitted where there were no other witnesses available (cf. e.g. Resp. Maharam of Rothenburg, ed. Prague, no. 920, Resp. Maharik no. 179) and in matters not considered important enough to bother male witnesses (Resp. Maharik no. 116).[158]

Orthodox Halakhah vs. Talmudic Law

The Orthodox's refusal to accept a woman's testimony has no basis in Talmudic law. Although the Talmud says a woman's place is in the home and not in court, it does not specifically prohibit the courts from accepting her testimony.

As Meiselman himself states, the real reason why the codifiers disqualify a woman's testimony remains a secret. It also remains a secret why the Orthodox blindly follow the codifiers![159]

2. Women as Witnesses in Conservative Judaism

Since the RA has not passed a resolution on this subject, we must assume the Conservative rabbis follow the Orthodox position concerning the qualifications for witnesses.

3. Women as Witnesses in Reform Judaism

Reform Judaism accepts the testimony of women.

Of course, the opportunity to serve as a witness in Reform is limited primarily to the marriage ceremony since the Reform do not have Batei-Din.

This no doubt explains why the CCAR has not made any official statements on the subject. Custom has dictated the law.

I could only find one mention of female witnesses in all the CCAR yearbooks. It was made by Kaufman Kohler in 1914 in his article titled "The Harmonization of Marriage and Divorce." Here Kohler says:

"A woman should be regarded as equally fit for witness at the (marriage) ceremony as man if she wishes to function as such."[160]

As noted above, Kohler's position is the common practice.

B. Women as Rabbis

1. Women Rabbis and Orthodox Judaism

According to Orthodox halakhah, a woman cannot become a rabbi: 1) because she is exempt from performing most positive time-bound mitzvoth and 2) because she is unable to serve as a judge.

Since women are exempt from performing most positive-time-bound mitzvoth (Kid 1:7) they cannot act as the religious leader or representative of the congregation. This follows from the rabbinic principle that one who is not personally obligated to perform a certain duty cannot perform that duty on behalf of others and certainly cannot represent the congregation in the performance of such duties. (RH III, 8, Ber. 20b).[161]

A woman's inability or ineligibility, to serve as judge (Rabbi) is founded on a prohibition stated in the Palestinian Talmud, and on an implied prohibition given in the Babylonian Talmud.

The Palestinian Talmud says:

> We have learned that a woman cannot act as a judge, e.g. cannot render decisions of law. (a Baraita in the Pal. Talmud, Shev. IV, 1. 35b. and Sanh IV 10, 21c).

And the Babylonian Talmud assumes that a woman cannot be one of the three who form a tribunal or Beth Din to pass upon the correctness of a bill of divorce or any other document. (see also "Witnesses in Orthodox Judaism).

And all Medieval Jewish authorities agree with these rulings.[162]

2. Women Rabbis and Conservative Judaism

At present, the Jewish Theological Seminary (JTS) refuses to admit female, qualified applicants into the rabbinical school. The RA, however, has recently (Feb., 1979) passed a resolution (11 to 3) which has recommended to the JTS that it admit female rabbinical candidates beginning this fall. The resolution was presented as a result of a two-year study by an RA commission which concluded that there is no prohibition of women as rabbis in Jewish religious law. The final decision is now in the hands of the faculty of the seminary.[163]

There is some doubt however, that the faculty will approve the resolution. As the study noted "there are commitments to conscience among those who favor ordination of women which are as strong as those among opponents of that decision. The reality is that the Seminary faculty, irrespective of what it does, is going to give rise to some uneasiness in some quarters."[164]

It is important to note that the RA passed the resolution based primarily on the fact that the Talmud does not specifically prohibit women from becoming rabbis since the role of the rabbi evolved through social need and custom. Their 1977 resolution which established the commission to study the problem reflects what the RA sees as the social needs and customs which have prepared the way for women

rabbis.

> WHEREAS the Conservative movement initiated educational policies of equal intensive Jewish education for our daughters and our sons, and
>
> WHEREAS the Conservative movement pioneered the ceremony of Bat Mitzvah to accord ritual expression to women, and
>
> WHEREAS The Rabbinical Assembly has supported equal status of women within the synagogue, and
>
> WHEREAS two major rabbinic seminaries now ordain women, and
>
> WHEREAS we recognize the enormous potential for enhancing our people by utilizing the wisdom and commitment of our people, regardless of sex, and
>
> WHEREAS Article III of the Constitution of The Rabbinical Assembly provides that all "upon whomever the title of Rabbi has been duly and properly conferred by a recognized rabbinical seminary or by Semikha; provided, however, that they have the secular training equivalent to the requirement for a college degree" shall be eligible for membership.
>
> BE IT RESOLVED that the Rabbinical Assembly encourages the Jewish Theological Seminary of America to consider and admit to the Rabbinical School all qualified candidates regardless of their sex.[165]

These statements seem to ignore the overall view of the halakhic material which ascribes rights and duties to women which would preclude them from becoming rabbis. It seems that the RA commission put blinders on to these stumbling-blocks. But we should reserve judgement until a thorough analysis of the study has been made.

3. Women Rabbis in Reform Judaism

Reform Judaism, in keeping with its principle of equality between men and women with regard to religious observance, ordains women. Curiously, however, the first

woman was not ordained until 1972. Sally Priesand, who was the first to be so honored, gives us a comprehensive history of the Reform movement's position on women as rabbis and gives us some insights into the reasoning for the delay.

In keeping with this principle, the Central Conference of American Rabbis (CCAR) issued the following statement in 1922:

> The ordination of woman as rabbi is a modern issue, due to the evolution in her status in our day. The Central Conference of American Rabbis has repeatedly made pronouncement urging the fullest measure of self-expression for woman, as well as the fullest utilization of her gifts in the service of the Most High, and gratefully acknowledges the enrichment and enlargement of congregational life which has resulted therefrom.
>
> Whatever may have been the specific legal status of Jewish woman regarding certain religious functions, her general position in Jewish religious has ever been an exalted one. She has been the priestess in the home, and our sages recognized her as the preserver of Israel. In view of these Jewish teachings and in keeping with the spirit of our age and the traditions of our Conference, we declare that woman cannot justly be denied the privilege of ordination.

In 1956, a committee formed to consider the ordination of women reaffirmed this resolution and urged that the Hebrew Union College-Jewish Institute of Religion admit female rabbinical students. It further recommended that any woman who satisfactorily completed the prescribed course of study be ordained and accepted as a member of the CCAR.

Martha Neumark was the first woman rabbinical candidate at the Hebrew Union College. In 1925, The Jewish Tribune published some of her thoughts:

> I have always wondered why I was imbued with the idea of becoming a rabbi. The first distinct recollection I have of a definite feeling toward communal work is connected with my confirmation service. I was one of those who read from the Torah in Hebrew, and the recitation of those ancient words crystallized a vague restlessness of mine into a desire to serve my people. The easiest way to enter that field was to enter the

> Hebrew Union College and become a rabbi! My youthful impetuosity was not concerned with the difficulties of such an undertaking. The doubt never entered my mind as to whether I, a girl, would be ordained. I wanted to serve Judaism and Jews. What other requisite was necessary for admission to the rabbinate?

The Board of Governors did not agree with Martha Neumark - or with the CCAR, for that matter. Eight members were present at the meeting where the question of women in the rabbinate was discussed. The two rabbis who were there voted in favor of the ordination of women; the remaining six members voted against.

Martha Neumark left the Hebrew Union College and her rabbinical studies in the middle of her junior year after almost eight years of study. She felt, nonetheless, that women were probably better fitted for the rabbinate than men. She suggested that congregations hire a male rabbi and a female rabbi and divide the responsibilities between them. After all, men and women compose a congregation; why shouldn't men and women serve a congregation's needs? She emphasized the need for a change in attitude:

> The present attitude of some of the laity is to be regretted, in view of the fact that woman rabbis will benefit them incalculably. Women can aid in the solution of the problem by devoting themselves to Jewish study, by fitting themselves for ordination. The general community can help by showing a willingness to accept women as their spiritual leaders.

Those opposed to ordaining Martha Neumark were afraid that the ordination of women might threaten the authority of Reform rabbis as a whole. They did not believe that there was any need for making such a "radical departure" from Jewish tradition. Neither did they believe that women would raise the standards of the rabbinate. Dr. Jacob Z. Lauterbach summarized their position:

> Nay, all things being equal, women could not even rise to the high standard reached by men in this particular calling. If there is any calling which requires a whole-hearted devotion to the exclusion of all other things and the determination to make it one's whole life work, it is the rabbinate. It is not to be considered merely as a livelihood. Nor is it to be entered upon as a temporary occupation....One must choose it for his life work

and be prepared to give to it all his energies and to devote to it all the years of his life, constantly learning and improving and thus growing in it. It has been rightly said that the woman who enters a profession, must make her choice between following her chosen profession or the calling of mother and homemaker. She cannot do both well at the same time. This certainly would hold true in the case of the rabbinical profession. The woman who naturally and rightly looks forward to the opportunity of meeting the right kind of man, of marrying him and of having children and a home of her own, cannot give to the rabbinate that wholehearted devotion which comes from the determination to make it one's life-work. For in all likelihood she could not continue it as a married woman. For, one holding the rabbinical office must teach by precept and example, and must give an example of Jewish family and home life where all the traditional Jewish virtues are cultivated. The rabbi can do so all the better when he is married and has a home and a family of his own. The wife whom God has made as a helpmate to him can be, and in most cases is, of great assistance to him in making his home a Jewish home, a model for the congregation to follow.

In this most important activity of the rabbi, exercising a wholesome influence upon the congregation, the woman rabbi would be deficient. The woman in the rabbinical office could not expect the man to whom she is married to be merely a helpmate to her, assisting her in her rabbinical activities. And even if she could find such a man, willing to take a subordinate position in the family, the influence upon the families in the congregation of such an arrangement in the home and in the family life of the rabbi would not be very wholesome. Not to mention the fact that if she is to be a mother she could not go on with her regular activities in the congregation.

And there is, to my mind, no injustice done to woman by excluding her from this office. There are many avenues open to her if she chooses to do religious or educational work. I can see no reason why we should make this radical departure from traditional practice except the specious argument that we are modern men and, as such, we recognize the full equality of women to men, hence we should be thoroughly consistent. But I would not class the rabbis with those people whose main characteristic is consistency.

Professor David Neumark, father of Martha Neumark, disagreed with his distinguished colleague:

> As to the practical question of the advisability to ordain women at the Hebrew Union College, I do not believe that the Orthodox will have any additional reason to object. They themselves employ women in their schools as teachers and readers, and more than this our woman rabbi will not do. In fact the entire question reduces itself to this: Women are already doing most of the work that the ordained woman rabbi is expected to do. Buy they do it without preparation and without authority. I consider it rather a duty of the authorities to put an end to the prevailing anarchy by giving women a chance to acquire adequate education and an authoritative standing in all branches of religious work. The practical difficulties cannot be denied. But they will work out the same way as in other professions, especially in the teaching profession, from the kindergarten to postgraduate schools. Lydia Rabinowitz raised a family of three children and kept up a full measure of family life while being a professor of bacteriology. The woman rabbi who will remain single will not be more, in fact less, of a problem than the bachelor rabbi. If she marries and chooses to remain a rabbi, and God blesses her, she will retire for a few months and provide a substitute, as rabbis generally do when they are sick or meet with an automobile accident. When she comes back, she will be a better rabbi for the experience. The rabbinate may help the women, and the woman rabbi may help the rabbinate. You cannot treat the Reform rabbinate from the Orthodox point of view. Orthodoxy is orthodoxy and reform is reform. Our good relations with our Orthodox brethren may still be improved by a clear and decided stand on this question. They want us either to be reform or to return to the fold of real genuine Orthodox Judaism whence we came.

Despite the tremendous amount of controversy and discussion that took place in the 1920's and the handful of women who subsequently pursued the rabbinic course of study, the Hebrew Union College-Jewish Institute of Religion did not ordain a woman until 1972 when I became a rabbi. I was not truly the first woman rabbi, however:

> Regina Jonas finished her theological studies at the Berlin Academy for the Science of Judaism in the middle 1930's. Her thesis subject was: "Can a

> Woman Become a Rabbi?" Of course she set out to prove the affirmative.
>
> The faculty accepted her dissertation, but the professor of Talmud, the licensing authority, refused to ordain her.
>
> The Rev. Max Dieneman, of Offenbach, however, did ordain her, and she practiced till 1940, primarily in homes for the elderly.
>
> The Germans then dispatched her to the Theresienstadt Concentration Camp where she died of natural causes or was sent to the gas chamber.

I was actually the second woman rabbi, then, although I was the first to be ordained by a theological seminary.[165]

Chapter III

Conclusions

A. The Status of Women in Orthodox Judaism

When we review the Orthodox positions presented in Chapter II, we find that in most cases 1) men are given more rights and fewer duties than women and 2) the authority granted to men by these rights is greater than the authority granted to women by their rights. (Thus a simple listing of the rights and duties of men and women would be deceiving. This explains why such a listing has been omitted in this study). In the case of divorce, for example, the husband has the right to divorce his wife, but the wife does not have the right to divorce her husband, even though she has the right to demand a divorce on several grounds. In other-words, the husband has the more authority to enforce his rights than the wife has to enforce hers. From our analysis we must therefore conclude that women, objectively, have an inferior status to men in the Orthodox system.

The question we must now ask is: "Why are the rights and duties distributed as they are? Although unfortunately, we do not have any sources which explain the psychology or philosophy of the codifiers. Unfortunately, the codifiers themselves have not left us with an explanation, but there are certain attitudes reflected in the laws which could partially explain the distribution.

1) Women are often treated as property. A wife, is, for example, considered to be her husband's possession. This explains why she is not free to divorce him or to take a second husband. This also explains why she does not inherit her husband's estate upon his death and why, in the case of rape, only damages must be paid and even those go to the husband or father and not to the woman. The treatment of women as property is also reflected in the laws pertaining to child marriages and the agunah. A marriage may be arranged for a girl by her father without her consent, yet no such arrangement is possible for a boy without his consent. And since a woman whose husband has disappeared is still considered to be his property, she is not free to remarry until the husband returns and gives her a get or some evidence can be brought to prove his death.

2) Childbearing and rearing are considered the primary functions of a woman. Any other pursuits, such as Torah study or public prayer are considered secondary and unimportant for the woman herself and for the Jewish community in general. This would explain why women are not obligated to study nor encouraged to do so. It would also explain why the woman is exempt from and not encouraged to observe the positive time-bound mitzvoth - i.e., attending public worship, wearing a tallit, etc.

These are the two most obvious attitudes which have influenced the talmudic and subsequently the Orthodox laws

affecting women.

Even though the Orthodox system is blatantly prejudicial against women, there are many Orthodox men and women who claim that women are not inferior but rather have a separate but equal role in the Orthodox community. They often argue that the woman rules the household and raises the children. As the emotional and physical comforter of her husband and as the teacher and guide to her children the woman, they say, holds a different but equally exalted position as does her husband. And when questioned why women have fewer duties than men, they respond with the statement that the women are exempted from the positive time-bound mitzvoth in order to free them to better fulfill her household responsibilities. This is the position inherent in the Lubavitch's book A Woman of A Valor, in Moshe Meiselman's Jewish Woman in Jewish Law, in G. Schwartz and B. Wyden's The Jewish Wife and many others. And it is the view expressed in article after article by Orthodox laypeople. In them we find such statements as: "Man is neither the rival nor the enemy threatening women's true identity and fulfillment. The real enemy and greatest threat to woman's self-respect and fulfillment is the erosion and destruction of her natural God-given characteristics and inclination, namely compassion, modesty and being an Ezer, a helpmate and partner to her man."

This apologetic stance ignores the property status of

women in halakhah and presupposes that men and women are inherently unequal in abilities and that the alleged difference in ability implies a difference in social function and that one of the main tasks of the Orthodox halakhah is to ensure that the individual performs his or her social function.[1]

By commanding men and not women to study Torah, for example, we must assume that a woman's intellectual capacity is inferior to a man's. If confronted with this proposition, this author doubts that many Orthodox women would agree - nor does modern science confirm such a premise.

One might argue that women are not intellectually inferior to men but because they are superior to men in their ability to raise a family, they must sacrifice their intellectual pursuits in order to adequately manage the household. But this premise that men are not as capable as women to raise a family is also a myth. A woman's ability to bear children does not necessarily equip her with superior attributes for raising children. In some cases, Jewish women have been known to batter their children. In such cases, are these Jewish women exhibiting their natural, God-given, superior child-raising characteristics! Would not the husband possibly be a better child-raiser in this instance!

We have no biological proof that intelligence and behavior are determined by sex even though the Orthodox system would like us to believe so. Thus the separate but

equal argument is a weak defense for a woman accepting her role as expressed in Orthodox halakhah.

Some Orthodox women recognize the weakness of the separate but equal argument and have recognized their oppressed state within the Orthodox system. Some have consequently abandoned Orthodoxy, while others have chosen to remain in the system and advocate change. Blu Greenberg, for example, recognizes that the Orthodox system, as it stands, is psychologically detrimental to women. In her article "Judaism and Feminism," she says: "Sensitive halakhists must recognize that the general effect of the prayer exemption conditions women to a negative attitude toward prayer. Women hardly ever pray at home; thus prayer becomes a function of intermittent synagogue attendance alone-hardly in insentive to serious prayer." And in reference to education, she calls for training of women posekim who would be "more likely than men to find sympathetic solutions to problems for women's problems for they share and experience them in the most intense and personal way..." And she goes on to add that "the notion of women rabbis must be accepted in all branches of Judaism, for women can make a contribution to the spiritual growth of the Jewish community.[2]

> Greenberg is, in effect, advocating "liberal feminism." The main thrust of the liberal feminists' argument is that an individual woman should be able to determine her social role with as great freedom as does a man..[3]

Yet such freedom of determination has no basis in Orthodox halakhah. To grant such freedom is to totally undermine the

present Orthodox system which claims that its laws are divinely revealed and therefore immutable.

Thus while Greenberg and others like her state that they are advocating change within the system, they are, in effect, calling for a negation of that system. The Orthodox system, as it stands provides no avenue for substantial changes in the status of women within the Orthodox community.

B. The Status of Women in Conservative Judaism

The identity of women in Conservative Judaism is ill-defined in terms of ascribed rights and duties.

As seen in Chapter II, Part I, the role of the Orthodox woman is defined primarily in her role as mother and wife. This is consistent with the traditional emphasis on the family. Now the Conservative movement maintains that it adheres to these traditional values. Yet the conspicuous absence of RA statements in regard to almost every asepct of the marriage relationship (except in regard to abortion and the agunah) would lead us to believe otherwise. And a survey of the current literature on women from member of the Conservative movement also reveals a relative dearth of information about the role of the Jewish woman in the family. Most of the literature, falls into the category of women in ritual, as do most of the RA statements on women (see Chapter II, Part II).

And even within the category of women in ritual, the status of woman is unclear. In the discussion on "Bat Mitzvah in Conservative Judaism," for example, we learned that the Conservative rabbis view the ceremony as an equivalent to the Bar Mitzvah ceremony for boys. But the degree of a woman's participation in the ceremony is not equal to a man's. And the whole Bat Mitzvah ceremony symbolizes a negation of the traditional, Orthodox view of the woman. A woman, in Orthodox Judaism, is exempt from attending the three daily services (shachrit, minhah, and ma'ariv) and from studying Torah. The service implies that a woman's new responsibilities on achieving adulthood include the latter. Yet a woman's new responsibilities, her new rights and duties, are traditionally centered around the home. This is not at all reflected in the Bat Mitzvah ceremony.

This confusion about the identity of a woman in Conservative Judaism reflects the inability of leaders in the movement to define the principles and goals of Conservative Judaism. Bruce Kahn in his rabbinic thesis "Concepts of Authority in Conservative Judaism," points to no less than nine different concepts of authority operating within the movement. No wonder there is confusion!

Just as Conservative Judaism is ill-defined, so too is the role of women within Conservative Judaism ill-defined. And it is ridiculous to speak and argue about the possible changes in the status of women in the Conservative community when we do not have any definition of her formal role as it

now exists.

C. The Status of Women in Reform Judaism

As we have already mentioned in the opening pages of this study, Reform rabbis claim no authority over their laypeople. The very essence of Reform Judaism, as implied in the Pittsburgh Platform, precludes the establishment of any authority structure and gives every Reform Jew the right to define his or her Judaism. This leads to a variety of practices, a variety of Judaisms, within the Reform movement. As Dr. Alvin Reines has explained, Reform Judaism is a polydoxy, a composite of many forms of Jewish expression. The only binding principle or law which seems to exist is a "freedom covenant."[4] Each person is free to define his or her Judaism in any manner desired as long as that expression does not impinge on the freedom of others.

In sum, Reform Judaism is the only Jewish system in which women have an equal status with men. She is given the same right, the same freedom, as a man to define her role.

Abbreviations

BB	Bava Batra (talmudic tractate)
Ber.	Berakhot (talmudic tractate)
BK	Bava Kamma (talmudic tractate)
CCAR	Central Conference of American Rabbis
CCARY	Central Conference of American Rabbis Yearbook
Deut.	Deuteronomy
EH	Even Ha-Ezer
Git.	Gittin (talmudic tractate)
HM	Hoshen Mishpat
Ker.	Keritot (talmudic tractate)
Ket.	Ketubbot (talmudic tractate)
Lev.	Leviticus
Maim., Yad.	Maimonides, Mishneh Torah (Yad Hazakah)
Meg.	Megillah (talmudic tractate)
Ned.	Neddarim (talumdic tractate)
Nid.	Niddah (talmudic tractate)
OH	Orach Hayyim
PD	Piskei Din shel Bet ha-Mishpat ha-Elyon le-Yisrael (1948 ff.)
PDR	Piskei Din shel Battei ha-Din ha-Rabbaniyyim be-Yisrael.
RA	Rabbinical Assembly
RAP	Rabbinical Assembly Proceedings
Resp.	Responsa
RH	Rosh Ha-Shanah (talmudic tractate)

Sanh.	Sanhedrin (talmudic tractate)
Sh. Ar.	Shulhan Arukh
Shev.	Shevi'it (talmudic tractate)
Shevu.	Shevu'ot (talmudic tractate)
Sif. Deut.	Sifrei Deuteronomy
Tos.	Tosafot
YD	Yoreh De'ah
Yev.	Yevamot (talmudic tractate)

Notes

Chapter I

1. Adapted from Black's Law Dictionary, p. 1486, which defines "right" as "a capacity residing in a person of controlling, with the assent and assistance of the society the actions of others."

2. Black's Law Dictionary, p. 595.

3. Alvin J. Reines, "Elements In A Philosophy of Reform Judaism" (Cincinnati: Institute of Creative Judaism, 1976), p.1.

4. Alvin J. Reines, "Introduction To A Philosophy of Reform Judaism" (Three parts unpublished; Cincinnati: Hebrew Union College - Jewish Institute of Religion, 1970), Part II, pp. 33-35.

5. Joseph Albo, Sefer ha-'Ikkarim ed. I. Husik (Philadelphia: Jewish Publication Society of America, 1929-1930). Ch. IV ff.

6. G. F. Moore, Judaism, 3 vols., (Cambridge: Harvard University Press, 1927), I. p. 5.

7. The Rabbinical Assembly is the official organization of Conservative rabbis, founded in 1901 in New York as an alumni association for graduates of the rabbinical school of the Jewish Theological Seminary of America. Its membership is also open to rabbis of other accredited theological schools who have accepted the tenets of Conservative Judaism.

8. Bruce Kahn, "Concepts of Authority in Conservative Judaism," rabbinic thesis, Hebrew Union College - Jewish Institute of Religion, 1974, p. 14.

9. See p. 4.

10. The Central Conference of American Rabbis (CCAR) is the national association of Reform rabbis. It also includes Reform and Liberal rabbis who serve congregations in Argentina, Australia, Brazil, Curacao, France, Guatamala, Israel, Netherlands, South Africa, United Kingdom, and the Virgin Islands.

11. Central Conference of American Rabbis Yearbook, (CCARY) 1(1890), pp. 120-125.

12. Much of the Reform rabbinate does not, for example, follow the laws of Kashrut and Shabbat, and therefore it considers the Penteteuch fallible and consequently mutable.

Notes

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2. Ben-Zion Schereschewsky, "Child Marriages," EJ, 1974 ed.

3. Haim Hermann Cohen, "Incest," EJ, 1974 ed.

4. Ibid.

5. Ibid.

6. Ibid.

7. Rabbi Abram Simon, "Harmonization of Marriage and Divorce Laws." Central Conference of American Rabbis Yearbook, (CCARY), 25 (1915), p. 385.

8. Ben-Zion Schereschewsky, "Bigamy and Polygamy," EJ, 1974 ed.

9. Ibid.

10. Ibid.

11. Ibid.

12. "Resolutions of Past Conferences, "CCARY, 1 (1890), pp. 80 & 82.

13. Ibid., p. 119.

14. Ben-Zion Schereschewsky, "Rape," EJ, 1974 ed.

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

19. Ben-Zion Schereschewsky, "Mamzer," EJ, 1974 ed.

20. Phillip Sigal, "Women in a Prayer Quorum", in Conservative Judaism and Jewish Law, ed. Seymour Siegel (New York: The Rabbinical Assembly, 1977), p. 288.

21. Moses Maimonides, The Book of Women, trans. Isaac Klein, ed. Saul Lieberman and Harry A. Wolfson (New Haven and London: Yale University Press, 1972), pp. 73-74.

22. Ben-Zion Schereschewsky, "Maintenance," EJ, 1974 ed.

23. Ibid.

24. Ibid.

25. Kaufman Kohler, "Harmonization of Marriage and Divorce Laws," CCARY, 25 (1915), p. 350.

26. Israel Moses Ta-Shma, "Niddah," EJ, 1974 ed.

27. Ibid.

28. Moshe Meiselman, Jewish Woman in Jewish Law (New York: KTAV Publishing House, Inc.; Yeshiva University Press, 1978), p. 126.

29. Ibid., pp. 126-127.

30. Ibid., pp. 127-128

31. Ibid., p. 128.

32. Israel Moses Ta-Shma, "Niddah," EJ, 1974 ed.

33. "Resolutions of Past Conferences," CCARY, I (1890). p. 80ff.

34. Ben-Zion Schereschewsky, "Dowry," EJ, 1974 ed.

35. Ibid.

36. Ibid.

37. Schmuel Safra, "Succession," EJ, 1974 ed.

38. Ibid.

39. Ibid.

40. Ibid.

41. Ibid.

42. Ibid.

43. Ibid.

44. Schmuel Safra, "Wills," EJ, 1974 ed.

45. Dr. Ben Zion Wacholder. Personal interview. January 1979.

46. David M. Feldman, Birth Control in Jewish Law (New York: New York University Press; London: University of London Press Limited, 1968), p. 33, 40.

47. Ibid. pp. 169-170.

48. Ibid., p. 64.

49. Ibid., pp. 227-234, 246.

50. Solomon B. Freehof, Reform Responsa for Our Time (Cincinnati: Hebrew Union College Press, 1977), p. 209.

51. "Committee on Jewish Law," RAP, 7 (1940), p. 30.

52. Harry J. Stern, "Report on the Committee on Resolutions," CCARY, 57 (1947), p. 219.

53. Ibid., p. 220-221.

54. Jonathan M. Brown, "Position Paper on Jewish Family Planning," CCARY, 87, (1977), p. 48.

55. Siegel, p. 258.

56. Solomon B. Freehof, "Report on the Committee on Responsa," CCARY, 68 (1958), p. 121.

57. Ibid.

58. Ibid.

59. Ibid.

60. Ibid.

61. Ibid., p. 122.

62. Ibid.

63. Ibid.

64. Isaac Klein, "Teshuvan on Abortion," in Conservative Judaism and Jewish Law, (New York: The Rabbinical Assembly, 1977), p. 261.

65. "Committee on Jewish Laws and Standards," RAP 37 (1975).

66. Solomon B. Freehof, "Report on the Committee on Responsa," CCARY, 68 (1958), p. 120-122.

67. Sidney H. Brooks, "Report on the Committee on Resolutions," CCARY, 77 (1967), p. 103.

68. Hillel Cohn, "Report on the Committee on Resolutions," CCARY, 85 (1975), p. 71.

69. Solomon B. Freehof, "Report on the Committee Responsa," CCARY, 61 (1951), p. 124.

70. Ibid.

71. Ibid.

72. "Committee on Jewish Law and Standards," RAP 16 (1952), p. 49.

73. Solomon B. Freehof, "Report on the Committee on Responsa," CCARY 61 (1951), p. 125.

74. Ibid.

75. Ben-Zion Schereschewsky, "Parent and Child," EJ, 1974 ed.

76. Ibid.

77. Ibid.

78. Ibid.

79. Solomon B. Freehof, Current Reform Responsa (Cincinnati: HUC Press, 1969), p. 195.

80. Ben-Zion Schereschewsky, "Widow," EJ, 1974 ed.

81. "Committee on Jewish Laws and Standards," RAP, 17 (1953), pp. 40-41, 25 (1961), p. 191.

82. Siegel, p. 128.

83. "Report on the Joint Law Conference," RAP 17 (1953), p. 56.

84. Louis Isaac Rabinowitz, "Levirate Marriage and Chalitza," EJ, 1974 ed.

85. Rabbi Isaac Klein, "The Problem of Chalitza Today," RAP, 15 (1951), p. 154.

86. Louis Isaac Rabinowitz, "Levirate Marriage and Chalitza," EJ, 1974 ed.

87. Klein, pp. 146-148.

88. Rabbi Henry Fisher, "The Problem of Chalitza Today," RAP, 15 (1951), p. 151.

89. Ibid., p. 152.

90. Ibid., p. 151.

91. Ibid., p. 153.

92. "Resolutions of Past Conferences," CCARY, 1 (1890), p. 113.

93. Ibid., p. 120.

94. "Divorce," EJ, 1974 ed.

95. Ibid.

96. Rabbi Henry Berkowitz, "Report on Committee on Responsa," CCARY, 29 (1919), pp. 88-89.

97. "Divorce," EJ, 1974 ed.

98. Ibid.

99. Ibid.

100. "Philadelphia Conference," CCARY 1 (1890), p. 119.

101. Dr. Kaufman Kohler and Dr. D. Neumark, "Report on the Committee on Responsa," CCARY, 23 (1913), p. 154.

102. "Resolutions of Past Conferences," CCARY 1 (1890), pp. 80-82.

103. Ibid., p. 108.

104. Ibid., p. 119.

105. Ibid.

106. Dr. Kaufman Kohler and Dr. D. Neumark, "Report on the Committee on Responsa," CCARY, 23 (1913), p. 154.

107. Kaufman Kohler, "Harmonization of Marriage and Divorce Laws," CCARY, 25 (1915), p. 354.

108. Ibid., p. 357.

109. Ben-Zion Schereschewsky, "Agunah," EJ, 1974 ed.

110. Ibid.

111. Rabbi Louis M. Epstein, "Marriage Annulement," RAP, 18 (1954), pp. 67-68.

112. Ibid., pp. 71-72.

113. "Resolutions of Passed Conferences" (adopted by the CCAR), CCARY, 1 (1890), p. 113.

114. Ibid., p. 119.

115. Aaron H. Blumenthal, "An Aliyah for Women," in Siegel, pp. 273-279.

116. Phillip Segal, "Male Chauvinism in Halakhah," Conservative Judaism, 24 (Spring 1975), pp. 240-241.

117. Ibid.

118. Ibid., pp. 275-276.

119. Ibid., p. 276.

120. Solomon B. Freehof, "Report on the Committee on Responsa," CCARY, 72 (1962), pp. 123-124.

121. Segal, p. 242.

122. Segal, pp. 265-268.

123. Segal, p. 269.

124. Blumenthal, p. 279.

125. Ibid., pp. 273-278.

126. Ibid., p. 295.

127. Solomon B. Freehof, "Report on Committee on Responsa," CCARY 72 (1962), p. 124.

128. Ibid.

129. Zvi Kaplan, "Bar Mitzvah," EJ, 1974 ed.

130. Aaron Rothkoff, "Puberty," EJ, 1974 ed.

131. Solomon B. Freehof, Reform Responsa For Our Time (Cincinnati: Hebrew Union College Press, 1977), p. 21.

132. Ibid.

133. Ibid., p. 23.

134. Ibid., p. 24.

135. Solomon B. Freehof, Recent Reform Responsa (New York: KTAV Publishing House, Inc., 1973), p. 27.

136. Dr. Kaufman Kohler and Dr. D. Neumark, "Report on the Committee on Responsa," CCARY, 23 (1913), p. 173.

137. Ibid., pp. 183-185.

138. Israel Bettan, "Report on the Committee on Responsa," CCARY, 63 (1953), pp. 156-157.

139. Freehof, Reform Responsa, p. 80.

140. Phillip Sigal, "Women in a Prayer Quorum," in Siegal, p. 285.

141. Ibid.

142. Sigal, pp. 286-288.

143. Freehof, Reform Responsa, pp. 93-94.

144. Ibid.

145. Rabbi Ben Zion Bokser, "Brit Milah," adopted by the RA on Oct. 15, 1963, RAP, 28 (1964), pp. 273-274.

146. "Resolutions of Past Conferences," (adopted by the CCAR in 1890), CCARY, 1 (1890), p. 106.

147. Ibid., p. 115.

148. Ibid., p. 120.

149. Blumenthal, p. 278.

150. Solomon B. Freehof, "Report on the Committee on Responsa," CCARY, 80 (1970), p. 56.

151. Meiselman, p. 149.

152. Ibid., p. 154.

153. David M. Feldman, "Woman's Role and Jewish Law," in Siegel, pp. 298-299.

154. Solomon B. Freehof, "Report on the Committee on Responsa," CCARY, 80 (1970), p. 57.

155. Meiselman, p. 150.

156. Ibid.

157. Ibid.

158. Haim Hermann Cohen, "Witnesses," EJ, 1974. ed.

159. Meiselman, pp. 73-80.

160. Kohler, CCARY, 25 (1915), p. 347.

161. Jacob Z. Lauterbach, "Shall Women be Ordianed as Rabbis," CCARY, 32 (1922), pp. 157-158.

162. Ibid.

163. Richard Yaffee, "Seminary to Decide Women-Rabbis Issue," JFC Bulletin, 15 Feb., 1979, pp. 1 & 34.

164. Ibid., p. 34.

165. "Committee on Jewish Laws and Standards," RAP 39 (1978), p. 139.

166. Rabbi Sally Priesand, Judaism and the New Woman (New York: Behrman House, 1975), pp. 62-67.

Notes

Chapter III

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2. Blu Greenberg, Judaism and Feminism," in The Jewish Woman, ed. Elizabeth Koltun (New York: Schocken Books, 1976), pp. 182-183.

3. Jaggar; pp. 6-7.

4. Reines, "Elements In A Philosophy of Reform Judaism," (Cincinnati: Institute of Creative Judaism, 1976), pp. 18-19.

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