

WOMAN SUFFRAGE FROM THE HALACHIC ASPECT

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CHAPTER I

INTRODUCTION

Although years before the world war, Palestine Jews felt the urge to organize themselves into a kind of representative assembly, entitled to speak on their behalf, it was not until the close of the world war at which time the Balfour Declaration was issued, that the urge produced fruitful results. Spurred on by the Balfour Declaration, and the minority rights granted at that time to Jewish communities, in several countries of Eastern Europe, Jewish leaders of the Palestine community, in 1919, called for an "assembly of Deputies" (פ'גוסה אגודת) to be elected on the basis of equal voting rights and proportional representation.⁽¹⁾ This assembly was to chose a permanent National Council (מ'גוסה אגודת) which was to act on the authorized representation of Palestine Jewry in local affairs. However, a bitter and unexpected struggle arose which not only partly delayed for several years the commencing of the National Council but also threatened to destroy the very unity of the Palestine Jewish community. I refer to the intense fight, waged by the women, for the right of woman suffrage in the All Palestinian Jewish Community (מ'גוסה אגודת) as well as for the rights of representation within the urban Jewish community organization (Mehillot) and the local councils of the older Jewish villages. This struggle was initiated by the women's Equal Rights League, organized in 1919, as the first country-wide women's organization of Palestine. Aligned with the women in this struggle were all the liberal and labor elements, while on the opposing side were ranged the old Yishuv both Ashkenazim and Sephardim, the Agudath Israel and the Mizrachi (orthodox Zionist group).

This struggle, in a land where self government was to play such an important part in the general life of the Yishuv, engaged even the attention of the League of Nations. (2)

The general Zionists never regarded the question of female suffrage as a *shvach* (ritual question) as, from its very inception the Zionist organization was completely democratic and the women received full suffrage rights. Thus, since the former Zionist assemblies were the precursors of a national Jewish Parliament in Palestine, there was no reason for the General Zionists to deny the women the vote in Palestine. (3)

If the opposition of the old Yishuv and the anti-Zionistic orthodox world organization "Agudath Israel," was to be expected, owing to their interpretation of the Jewish law, the position assumed by the Mizrachi was very odd in view of the fact that its delegates had sat with women in Zionist Conventions and Congresses without demur for over a quarter of a century. The Agudath Israel remained consistently adamant in their opposition and, hence, not only refused to participate in the vote for the First National Assembly but likewise refused to sanction the General Referendum sponsored by the Mizrachi on the ground that the whole question of woman suffrage was an *shvach* absolute prohibition.

Labeling their struggle against the franchise for women a

shvach they decided to issue a *psak* (ban) on the assembly. (4) Finally it broke completely with the "Kneset Yisroel" (*shvach*) and constituting

itself a separate minority organized itself as a minority community completely independent of the general all Jewish community. (5) However, they number only a small proportion of Palestine Jews -- hardly more than five or ten percent, living for the most part in the old cities of Jerusalem and Safed. (6)

The struggle for female suffrage was bitter and was contested every inch of the ground. Time and again the elections to the National Assembly had to be postponed, and still further delays occurred between the holding of the elections and the convening of the ~~Assembly~~^{Assembly}. The first elections held in 1919 yielded fifteen women delegates out of a total of three hundred and fourteen. The Assembly, when it finally convened a year and a half later, granted full active and passive suffrage to all women of the "Kneset Yisroel." Notwithstanding this, in the first Assembly no delegates from the orthodox wing and from the Mizrachi took part, hence what should have been the end of the fight was only the beginning. Thus the second assembly could not be convened until 1925.

At this assembly some of the delegates of the Mizrachi attended.

In the meantime, the Women's Equal Rights League supported by their sisters of the diaspora (*אידע*) and in Palestine carried on the fight for *צו זעהן אירע זאכן* *זעהן זיך* by centralizing the women of the Kneset and calling upon each and every one of them to vote for the Second Assembly. Not only were they encouraged by liberal Jewish

women the world over, but Carrie Chapmann Catt in a beautiful letter addressed to the members of the league urged them to carry on the fight for equality even though it involved suffering. "Do not forget that women all over the world suffer for their ideals! Continue your fight and do not retreat." (7) Not to be outdone, the Mizrachi, which objected to the extension of the franchise to women on religious, moral and ethical grounds, were busily engaged in stirring up the opposition and threatened to leave the assembly if women were participating. Chief Rabbi Kook even suggested as a solution the establishment of two assemblies -- (one for the orthodox and one for the general Zionists) to conduct the political affairs of the community, while in the fields of agriculture and social endeavor they were to work together. (8) This proposal was rejected. Despite the fact that many of their own leaders (9) urged them to compromise and to judge the question impartially on the grounds, ^{"? וְהָיָה כִּי יִשְׁמַע ה' בְּקוֹל יִשְׂרָאֵל וְיִשְׁמַע ה' בְּקוֹל יִשְׂרָאֵל" (9)} in order not "to divide the ranks of our nation" the Mizrachi persistently urged a general referendum on woman suffrage in which the women themselves should not be entitled to take part. For a while it seemed as if a stalemate had been reached. Weitzman and Ussishkin proposed a temporary postponement of the elections and even some of the more liberal friends of the women suggested that they "refrain just this once, for the sake of unity and peace, from exercising their rights." The women flatly refused, declaring that they are not imitating the suffragists of the world but that they sincerely wished

of the rabbis
maxim
"Do the men only
then need
life and
rest
the women"

to help in ^{the rebuilding of the land} (S. 100 / 192) The Nation of Israel
(S. 100 / 192) needs both its men and women.

Elections were finally held and at this time twenty-five women delegates were chosen out of a total of two hundred twenty-one. (10) It is interesting to note the diminished total vote cast for the Second Assembly as evidenced by the decrease of ninety-three delegates. This may be attributed, in part, to the boycott of the Mizrachi and also to the fact that many women were willing to compromise (by refraining from casting a ballot) for the sake of peace within the Yishuv. The twenty-five elected women delegates, although representing different parties, all united for the betterment of the status of woman in Jewish law.

But the victory of the women "had a bitter sting" (11) for their presence served as pretext for the non-participation of the very orthodox elements of the Mizrachi. Nevertheless, the Second Assembly formally declared that the women were entitled to all civil, political and economic rights and called upon the British government to grant them full equality before the law.

Notwithstanding this provision, as late as 1928, after the women had practically doubled their representation in the Second Assembly, and the National Council had already convened, the Mizrachi made one final unsuccessful effort to negate the right of passive suffrage through the medium of their press. (12) But, by the time the Third Assembly convened (in 1931) the women voted in the elections without

interference and even ran their own ticket. The orthodox elements, observing that they were unable to prevent the Assembly from meeting, and thus were only forfeiting their own prestige and influence decided as a matter of expediency to participate in the Third Assembly. Thus "time was on the side of the women"⁽¹³⁾ and the representatives of the Mizrachi are now sitting with women delegates in the Jewish National Council (*הוועד הלאומי*) elected by the Assembly of Deputies (*הכנסת*).

During these dozen years a similar struggle was waged to secure for the women the right to sit in the local community councils of the cities and older villages. Such a problem never arose in the labor colonies since there the women had equal rights of representation from the start.⁽¹⁴⁾ Whereas Haifa was the first city to give the women the vote for the Kehillah, a bitter struggle ensued in Tel Aviv and Jaffa. Rishon Le'Zion was the first of the settlements (*היישוב*) to grant them the franchise.⁽¹⁵⁾ By 1932 almost every community had been gained for female suffrage.

In 1927, when the Kneset Israel was finally recognized by the British Mandatory Government as a legal body with taxing powers, the right of women to vote was confirmed indirectly by the British Government, that is to say, the right to elect and to be elected was not qualified by sex.

Until two decades ago, Jewish history appears to have been free from the issue of woman suffrage as we understand the term today. However, with the success

of the suffragist movement in many countries of Europe, and in the United States during the first quarter of the present century, there was aroused a similar desire among the women of Palestine for the right to vote and to hold office.

The intense agitation that ensued led to the appearance of a large number of *Ḥiṭṭot* (Responsa) on this question of political equality for women. These Responsa came to constitute a new and distinct body of Jewish law, which assumed two aspects. The first concerned itself with the granting of the the passive vote, or the right to be elected to office, whereas the second dealt with granting of the active vote,⁽¹⁶⁾ or the right to vote for officers. This paper will concern itself solely with a discussion of this body of Jewish law which comprises the legal or Halachic aspect of the struggle for complete woman suffrage, waged for thirteen years within the autonomous

II

HISTORICAL OUTLINE

Before I proceed with the main phase of this dissertation it is necessary to present an historical sketch wherein an attempt will be made to outline the position occupied by the Jewish woman of the past in the civic and religious life of her nation. This survey does not profess to be a completely adequate or comprehensive study of this vast subject as that would necessitate a thesis for itself. The purpose of this outline is merely to provide a brief historical background of the subject in order to facilitate the comprehension of the legal phases with which this paper is primarily concerned.

The Bible as the depository of the rules of life which governed our people from the very beginnings of its nationhood, is the oldest source of our knowledge of the Jewish woman. Hence it is interesting to observe that it is evident from the Pentateuch, Prophets, and Writings that from the time of the building of the Tabernacle (*יְבִנֵּנוּ*) until the destruction of the Second Temple women did participate in the affairs of the state and religion of the community. (16a)

From the very inception of our nation, the women stood side by side with the men in the great moments of Jewish religious history. (17) Thus it was at the Revelation of Sinai (18) where the rabbis comment (19) (*בְּהַר שִׁנַּיִם הָיָה יִשְׂרָאֵל*) "the House of Jacob refers to the women of Israel," implying by this that the women as well as the men participated in this historic event. So, too, when Moses just before his death, renewed God's covenant with Israel, he addressed himself to both the men and women, (20) and likewise no sex distinction is made by Moses in his charge to the Levites who were to read the Law

"at the end of every seven years" to the assembly made up of the men and the women of Israel. (21^A) Likewise, Joshua (22^A) and Ezra (23^A) read the Torah of Moses to all the men and women who were assembled to hear it. We read in Scriptures that not only did the women make special gifts of decorative character for the Tabernacle, but in addition a free will offering unto the Lord was brought by "every man and woman whose heart made them willing." (24^A)

The earliest allusion to woman's participation in public worship is that (in Exodus 38⁸) to the women who assembled to minister at the door of the "tent of meeting" (25^A) of whose mirrors the ~~l~~^overs of brass were made. It is very interesting to note that in the Scriptural passage (26^A) which is concerned with religious assemblies and the bringing of burnt offerings to specially designated places, whereas the daughters and maid servants are specifically mentioned in the exhortation "to rejoice before the Lord" the term "women" is omitted. This appears, to me, to be significant for surely if the daughter and maid servant were "to rejoice before the Lord" the wives and mothers were not meant to be excluded. Hence, I advance the suggestion that the masculine form "ye" used here (27^A) is really a generic term that likewise includes the women of Israel. (28)

Prof. Finkelstein states in an interesting study on Public Worship in Palestine (28^A) that "assembly" and "convocation" continuously used in connection with festivals and holy days suggests religious gatherings for purposes of worship and women were present at these convocations. (30a)

"The Shunamite woman visited the prophet. Apparently it was the usage to visit the prophet on holy days for the purpose of religious instruction and to obtain heavenly assistance." (30a.)

Although the presence of women was not required on the three annual festivals, Pesach, Shabuot and Sukkot (31) this did not bar women from attendance. (32) At the time of the so-called second tithe there was a family feast in Jerusalem and women were included. (33) Despite the fact that there is mentioned a "Women's Court" in connection with the Temple, it is not to be interpreted in the modern sense of an exclusively separate partition for the women. Rather was it a sort of general forecourt wherein waited those people who brought sacrifices of purification. (34) The larger number of these persons may have been women for while the women could not enter the "inner court" of the Temple (35) we do know that in biblical times men occasionally entered and worshipped in the "Women's Court", (36) as can be evinced from the Talmudic statement (37) describing the ceremony of the March through the Court of the Women, occurring on the night of the first day of Succoth.

In later times the rabbis confined the women exclusively to a separately enclosed balcony. However, this strict and complete separation of the sexes in public worship seems to have come not from any inherent

opposition to women's participation in public worship but "as a precaution against the kind of levity to which the enthusiasm of the hour incited." (39~~4~~)

Judaism also had its ^{Female} political leaders as can be evinced from the many names found in the annals of our people. The most outstanding was Deborah, heroic judge and leader of her people. A very novel and interesting opinion can be derived from several biblical passages (40~~4~~) which concern Joab, the Captain of David's army. In all these instances the terms (~~חכמה~~ , חכמה) "wise, and in her wisdom" are used to describe both the women of Tekoa who attempted to make peace between David and Absalom and the women who slew Sheba, the son of Bichri. Thus it appears that by this time there may have been a caste of women who, because of their wisdom and understanding played a definite role in the civic and political life of the people.

We read also in Scriptures (41~~4~~) of Athalia who, despite the fact that she came to the throne by way of ghastly murders, did rule over the kingdom of Judah for six years, and Later in Post Biblical times we read of Salome Alexandre (42~~4~~) the great queen who inherited the throne from her husband, Alexander Jannai. We read in the Apocryphal Book of Judith of the ^{elders} ~~ancients~~ of the city who came to consult with her regarding the affairs of war (43~~4~~) long before she was acclaimed a deliverer and heroine of her people because of the miracle of Holoferness's death. All these aforementioned instances tend to prove that women did participate in the national and religious life of

her people while they still lived on their own soil.

With the destruction of its nationhood there naturally occurred a complete change in the political and social set-up of the Jewish people. The dispersed nation now came into contact with various civilizations whose impact had far-reaching effects on the new social and political inner life of the Jews. Naturally, the status of the Jewish woman reflected the effect of this upheaval. The loss of their native land resulted in a changed attitude towards the women. For instance, in the diaspora, family purity and sexual morality was more emphatically stressed and more rigidly enforced than ever before^(44f) as this was an eminently effective means of national preservation. The influence of these eugenic and moral considerations on the expounders of rabbinic law as contained in the Talmud can be observed in many of the statements contained herein.^(45f) The negligible role played by women, at this time, within the synagogue^(46f) may be largely traced to this wish of the rabbis to maintain strict moral discipline through the complete separation of the sexes. The separation of the sexes in the synagogue only reflected their isolation in the social life outside. The sexes were separated at Jewish banquets and home feasts not less than in the synagogue. "If they did not pray together, neither did they play together."^(47f) In their own sections the women were led by female precentors some of whom acquired considerable reputation.

It was the desire of the rabbis to center women's activities upon her home that evidently was the motivating

cause for the Talmudic principle "women are exempted from positive commandments which are dependent for their performance upon a stated time", (48¹) which resulted in their being able to devote more time to housework. Nevertheless some women attended daily services and large numbers attended the Sabbath and holy day services.

It is relevant to point out that while the Talmudic standard of morals may have been prejudicial to the political and religious status of the Jewish woman, it did have great value for the preservation of the nation's physical and moral strength. (49¹)

Although the Talmud reiterated the biblical ~~apothegm~~ ⁽⁵⁰⁾ apothegm "The king's daughter is all glorious within the ~~place~~ ^(51^a) (but not outside of it); a woman could be active in public life and occasionally a woman distinguished herself as communal leader -- especially in the field of charity where the women seemed to have had charge of the widows, orphans, poor brides and sick people. Several wealthy Patronesses were rewarded with the distinguished title "mater synagogae" ^(51a) and as such acted as heads of the women of the respective community. Since the Jews no longer constituted a political entity living in their own land there was no longer a need for women to serve their people in a political capacity, as now Jewish life centered solely around the Torah. Learning dominated the Jewish scene.

Now it is very difficult to formulate a clear cut opinion regarding the education of women from the Talmudic sources, for the Talmud "being a work too varied and too

divergent in its elements"(52) makes this a well nigh impossible task. "However the picture cannot be painted if the significant and insignificant are given equal prominence."(53) All the sources should be equally examined but one must know how to select. For while it is true that there are isolated texts which do not show a high regard for woman's intelligence and capabilities surely one cannot accept these individual opinions as representing the consensus of opinion, for there are an equal number of opinions which elevate her.(54)

It is true that while opinion was divided on the topic of female education, in the main it was not stressed and preference of "higher education" was given to the boys. Since the Jewess married early her education was of a practical nature the purpose of which was to make her a good Jewish housewife and mother. However she was well trained in those duties of Jewish ritual whose performance was incumbent upon her, as the wife and mother in the Jewish home.

In point of fact there were many rabbinic statements(55) which encouraged her learning in the field of the oral and written law. In one place the Talmud(56) states that "it is wise to marry the daughter of a learned man, thereby implying that she is apt to be taught well and thus even if her future children are at any time left fatherless she could help to educate them.

There is one famous instance in the Talmud of a woman who was well-versed in both the written and unwritten law. I refer to Beruriah, the wife of Rabbi Meir, who is said to have even given opinions on points of law and on one such, "Rabbi" approved her decision though it went counter to the

prevailing opinion of the learned. (57~~d~~)

Thus one can venture the opinion that while no universal disability existed in Talmudic times regarding female education, we do find that the general spirit of the Talmud favored the rearing of girls as Jewish housewives rather than Jewish scholars. This is not a surprising attitude when one considers the social and political background of society at large in those days, wherein the Jews lived.

In conclusion, I quote from ^{an} ~~Rev. P. Mendee~~
^{observation of one with}
informative ~~study~~ (58~~d~~) "From the close of national life in Judea to modern days, women's position in law and custom demands less of our attention. Her position in Jewish law had become fixed; and if it has varied in Jewish custom, it is only because Jewish custom has been modified by outside influences."

CHAPTER III

WOMAN SUFFRAGE IN RELATION TO JEWISH CUSTOM.

(C' d / ~)

While it is true that never in the past did women vote within the Jewish community, this in itself does not constitute a valid legal argument (as some authors would have us believe)⁽⁶³⁾ against the extension of the franchise to women. For it is not strictly accurate to claim that in the past women were denied the right to vote or even to claim that legal disabilities as such were imposed upon them. It would be more accurate to suggest that historical phenomena and the concomitant habits and customs of the community, whether of society generally, or the Jewish People in particular, were responsible for the non-voting of women. Thus the existence of such practice is purely a historical or social phenomenon and as such does not give rise to any legal validity. As one author⁽⁶⁴⁾ so aptly put it, "From the legal viewpoint there is no direct prohibition (וְאִם יִשְׁמְעוּן הָעָם וְיִשְׁמְעוּן הָעָם) and the opposition of the masses may be ascribed to pure custom which the opponents attempt to justify." However others⁽⁶⁵⁾ claim that the very fact that it is a custom is an indirect proof versus the extension of the franchise to women. Consequently, it is pertinent to pose the following important and decisive questions, namely, as

to what constitutes a custom (ענין) in Jewish law and what is the authoritativeness of a custom in Jewish law.

In the very cogent and brilliant Responsum on this subject Professor Tchernowitz (66) collates many of the later rabbinic sources which attempt to describe the character of a ענין . According to several of these sources (67) a particular act must not only be continuously, consistently and permanently practiced, but it must also be familiar to all of the members of that community where the act is performed. Another commentator (68) declares that the act must have originated out of a conscious (בדעת) desire for permanence and, elsewhere, he further adds that unless a custom has its basis in the Torah it is as if an irrational conclusion motivated its origin. ($\text{אם לא נאמרה בנביא או בנביא או בנביא}$)

(69)
(24) At this point I quote from a very interesting volume/containing two Responsa devoted to a thorough and analytical reply to Dr. Tchernowitz. One of the authors⁷⁰ (25) attempts to refute Dr. Tchernowitz's application of the^{aforementioned} quotation from the 'סוּמָא ~~ה~~ regarding the aforementioned prerequisite of a custom. The author, Rabbi Kasher, states that since we read in the 'סוּמָא ~~ה~~ the expression "at the time, he began to observe the act, if it was his intention to observe it forever..." (26) (ע"פ דברי ר' יצחק הכהן קאשר) it referred only to an individual practice and not to the whole community. Thus, Rabbi Kasher concludes by stating that had this commentator been concerned with a communal practice as well, he would have expressly stated or implied so in the language of the text.

It is my opinion that while Rabbi Kasher's observation is technically correct it is a too literal and attenuated argument; as it overlooks the propriety sanctioned by the Talmud ^{of} by generalizing from particulars. In other words, while he correctly refutes the actual language of the quotation he neglects to take into account the historical and logical inference drawn by ^{Prof.} Tchernowitz. Rabbi Kasher agrees with the additional statement of the 'סוּמָא ~~ה~~ which states that a custom must have its basis in the Torah. He, however, is counted among those who maintain that the non-voting of women does have such a basis and hence is a custom.

(c) Dr. Tchernowitz also adduces a statement from ^{R.} Moses Isserles⁷² (27) which declares that the custom must

be consciously ⁷²intentionally (⁷³נאמרה) accepted by the community from its very inception. If we accept Dr. Tchernowitz's contention it is evident that the absence of woman suffrage in post Jewish History cannot be classed as a ⁷⁴נאמרה as the non-participation of women originally was not derived or based on a conscious or express desire to exclude them from voting. It was a hisorical social phenomenon which endured as long as no one thought of anything different.

Rabbi ~~de~~ Kasher refutes this simply by claiming that women were in the past always consciously excluded from the community (⁷⁵נאמרה) (⁷⁶נאמרה) (I shall delay further detailed discussion of this aforementioned refutation until after the completion of the specific question now before us, at which time, an analytical study will be made regarding the relation of woman to the community (⁷⁷נאמרה)

Several of the Responsa (⁷⁸נאמרה) liken the act of women's voting to that of the teaching of the Law (⁷⁹נאמרה) to the women of Israel. Just as in the former case so here there is found in the Bible no direct prohibition (⁸⁰נאמרה) against the teaching of the law to the women of Israel. However, neither do we find an express commandment to instruct the daughters of Israel in the Law. (⁸¹נאמרה) As has been already pointed out the Talmud has been subjected to both friendly and adverse criticism on this topic. Controversial statements can be submitted supporting or negating this practice (⁸²נאמרה) (⁸³נאמרה) Most of those statements which regard the teaching of women with disfavor appear to rest on moral grounds rather than intellectual

logic; for the conservative attitude of many of the rabbis was due in large measure to their strong desire to maintain ^{the Jewish ideal of home life} ~~sexual propriety~~ within the community.

Now, while the tenor of most of these conflicting citations implies that women were not supposed to study the Torah we know of many exceptions prevalent even in the families of the great rabbis. ⁷⁷ (35)

Another interesting exception to this point of view is to be found in the granting to the women the right to read the portion of the Law. This is admitted by all the codes including the sixteenth century code of Joseph Karo. ⁷⁸ (36)

Although no specific instance is reported, we may assume from the very fact that a woman might have read a portion of the Law that some were competent to do so. ⁷⁹ (37)

These exceptions in themselves prove that there was neither a definite prohibitory law (~~halak~~) nor a consistently practiced custom against the teaching of the Law to the women of Israel which was accepted by all. One can draw the logical inference that just as in the case of the active vote, so here women were not encouraged to study the law because of contemporary social and economic conditions and not because of any direct or express prohibition.

Another authority, Rabbi David Hoffman, compares the non-voting of women in the past to the non-wearing of the Tefillin by the women. He cites the Talmudic passage ⁸⁰ (38) where it is related that despite the fact the women were expressly exempted by Jewish law from the performance of this

religious duty Michal the daughter of Saul did wear them and the rabbis did not protest. Still another authority⁽⁸¹⁾ likens the non-voting of the women of Israel to the interesting exception made for the women by the sages in regard to the law of the "imposition of the hands upon the burnt offerings"⁽⁸²⁾⁽²⁸⁾

. Since this rite was performed in the Inner Court of the Temple from which place the women were denied entrance, they were expressly exempted from observing this ^{דבר} ^{הזה} ^{הזה} ⁽⁸³⁾ ⁽²⁹⁾.

However, we read in several rabbinic sources of a case reported in which the sacrificial animal victim was taken out into the Women's Court in order to grant them the pleasure or satisfaction (^{הנאה} ^{הנאה}) of performing the ^{הקדש} ^{הקדש} (^{הקדש} ^{הקדש}).⁽⁸⁴⁾⁽³⁰⁾

All of these aforementioned Responsa attempt to prove an existing similarity between the past exempting of women from voting and the exempting of the women from the performance of the specified religious duties. In all these instances the fact was emphasized that whereas the women were expressly exempted from all these duties, the rabbis did not actively oppose or even protest the women's observing them. (~~their performance by the women.~~) In fact at times they granted them the privilege of performing certain^{אין} of these religious duties if the women so desired.⁽⁸⁵⁾⁽³¹⁾ Consequently, whether the non-voting of women is compared to the teaching of the Law (^{הוראה} ^{הוראה}) to the women or to the performance of the cited religious duties from which duties they were expressly exempt from observing no justification from either analogy can

be advanced for the express denial of the active vote to the women of Israel. Our intention is directed by Dr. David Hoffman⁸⁶ (42) to several unusual contemporary exceptions to the general practice of women not voting.

Two reliable witnesses informed him that in two Galician communities the right to vote was granted to those women who paid taxes. However, no instance is reported of any woman taking advantage of this privilege due no doubt to their unwillingness to cast their ballots in the same place and at the same time as the men. Dr. Hoffman even ventures to suggest that perhaps even a greater number of communities in Galicia would have acted likewise had there but been more women therein sufficiently wealthy to pay taxes. Evidently, in these two communities lived several wealthy women.

The author who is against the extension of the passive vote but favors the granting of the active vote to women adduces an interesting series of statutes found in the records of the orthodox Kehilla Jeshurun in Frankfort an Maine in which statutes a clear differentiation is made between the extension of the passive vote and that of the active vote. The particular statute⁸⁷ (43) which extends the active vote to all eligible males is the only one of this series⁸⁸ (44) which by express provision is subject to amendment by a general vote, the remaining statutes including the one describing the prerequisites for office holding are immutable.

Another unusual instance is related to the author by Dr. Meir Monk of Lemberg, Austria, who cites the case of an

Austrian Jewish community statute of 1892 which emulating the Austrian governmental plan extended the active vote to all -- including women who paid taxes to the community. However, here too, the women refrained from taking advantage of the privilege.

Though Dr. Hoffman does not attempt to derive from these exceptions the existence of any Halachic opinion favoring or sanctioning the extension of the active vote to women, he does point out that had a definite opposing existed, no community would have presumed to violate such a

There is a well known axiom in Jewish tradition⁽⁸⁹⁾ which declares " (ל)ב ארץ ישראל חוקה ". "A custom of Israel is Torah" or in other words, a custom of Israel possesses the same authority in Jewish Law as the Torah.^(89a)

This axiom is quoted extensively in those Responsa whose authors contend that the non-voting of women in the past constitutes a custom. Though all of the authorities agree in the main with this principle, nevertheless many dispute the fact that this practice of non-voting on the part of the women may be classified or termed a , a custom. According to their viewpoint (as evidenced by the preceding arguments) withholding of the vote from the women neither constituted a conscious permanent act which originated out of a communal desire to withhold for them this right, nor was it expressly denied to them by either the scriptural or rabbinic literature.

CHAPTER IV

THE PARTICIPATION OF THE WOMEN OF ISRAEL
IN THE COMMUNITY LIFE.

I now revert to the opinion supported by Rabbi Koshier and others⁽⁹⁰⁾, that the women of Israel were at all times excluded from the community.

As a fundamental basis for this viewpoint the thesis is advanced that the Scriptural terms, *עַם יִשְׂרָאֵל*, *בְּנֵי יִשְׂרָאֵל*, *יִשְׂרָאֵל* all of which refer to the Jewish people as a group or in the aggregate, always excluded women, as can be evinced from the following significant instances.

(1) The census taken for the purpose of levying a tax of half a shekel (*שֶׁקֶל חֲמִישִׁית*) for the atonement offering unto the Lord. Although the term "Children of Israel" (*בְּנֵי יִשְׂרָאֵל*) is employed here⁽⁹¹⁾ the Bible explicitly states "then shall give every man a ransom for his soul... from twenty years old and upward" thus implying that women were excluded.

(2) For the second census taken for the express purpose of war duty⁽⁹²⁾ the Scriptures uses the term "the congregation of the children of Israel" (*קְהִלַּת בְּנֵי יִשְׂרָאֵל*) despite the fact that only the males from twenty years and upward were numbered.

(3) The fulfillment of the punishment whereby all the congregation (*קְהִלַּת*) were to perish in the wilderness. Although the term "congregation" is used in the threat⁽⁹³⁾ we read in another verse⁽⁹⁴⁾ describing the consummation of the threat, "when all the men of war were consumed and dead from among the people.

(4) In the description⁽⁹⁵⁾ of the sin of the

Golden Calf the term "the people" is written despite the fact that Aaron is supposed to have addressed himself exclusively to the men. "Break of the golden rings which are in the ears of your wives, of your sons and of your daughters."

Prof. Tchernowitz's⁽⁹⁶⁾ explanations for the exclusion of the women in all these instances are very interesting.

Regarding the first three instances he observes that since the census for military service applied to males upward of twenty years of age, and since the half shekel levy and the description of the dead in the wilderness also applied to the males upward of twenty years of age, the inference can be advanced that all these instances were concerned with military affairs and thus it was only logical that women should be excluded.

As for the fourth instance Prof. Tchernowitz maintains that the women here too were not included among the "people" (*עַם*) for a definite reason as the sages expressly comment⁽⁹⁷⁾ that the women refrained from giving their jewelry for the Golden Calf.

Rabbi Kqsher⁽⁹⁸⁾ disagrees with Prof. Tchernowitz on one important fact, namely, he contends that the half shekel tax had no connection ~~whatever~~ with military purposes. The Bible explicitly states⁽⁹⁹⁾ the half shekel was collected as atonement money to be appointed for the "service of the tent of meeting" and the Talmud further declares⁽¹⁰⁰⁾ that this particular tax was later adopted for the communal sacrifices

[*קרבנות ציבור*] and for the repairing of the Temple.

He concludes by stating that women were not taxed, simply, because they were not considered as members of the community.

This criticism apparently coincides with the Biblical and Talmudic texts but I do not agree with his conclusion for we read in the Talmud⁽¹⁰¹⁾ that while women were exempted from paying the half shekel their money was accepted, if they desired to contribute. It is my suggestion that women were exempted from the tax not because of any inherent opposition to their membership in the congregation but due to prevalent social and economic conditions which made it unlikely for women to possess their own property, a special tax contribution was not demanded of them.

Rabbi Ritter⁽¹⁰²⁾ directs our attention to the verses found in the Bible⁽¹⁰³⁾ where the term "congregation" (קָהָל) is used and then immediately following we read "that even those men died before the plague." From this he infers that קָהָל designates men exclusively. Likewise Dr. Ritter concludes that the term אֲנָשִׁים , "men", found in the verse⁽¹⁰⁴⁾ which reads "Surely there shall not one of these men, even this evil generation see the good land" refers exclusively to the men of that generation.

In refutation Dr. Hoffman⁽¹⁰⁵⁾ asks this significant question, namely, if the terms קָהָל and אֲנָשִׁים exclude the women in these cited verses, are we to believe that the women did not complain against Moses and that they alone of that "evil generation" were permitted to see the good land?

The Bible expressly declares⁽¹⁰⁶⁾ "Your little ones (פְּנֵינֶם) ... them will I bring in and they shall know the land which ye have rejected." Hence he logically concludes that in these aforementioned cases the terms "congregation", and "men" are to be interpreted in their generic sense including the women as well as the men, in contradistinction to the term "little ones" which referred to the new generation which was to enter the Promised Land.

Another proof cited by many authorities⁽¹⁰⁷⁾ for the exclusion of women from the community is the verse found in the Book of Deuteronomy which refers to the appointment of "wise men" (אֲנָשִׁים חָכָמִים) as assistants to Moses. The Sifre⁽¹⁰⁸⁾ commentary on the presence of the specific word "men" (אֲנָשִׁים) in the text asks "and if the word 'men' was omitted would it ever have occurred to us to appoint women?" thereby implying that never were women part of the community, and thus the term "children of Israel" found in a preceding verse in this chapter refers only to the men of Israel. One authority⁽¹⁰⁹⁾ infers from this that whenever Moses spoke to the "children of Israel" he addressed himself only to the men unless the women were specifically included.

Dr. Hoffman⁽¹¹⁰⁾ refutes this by proving that the term "children of Israel" includes in many instances⁽¹¹¹⁾ men and women. In fact in this very case in question the women are implied in the designation "children of Israel" for surely the women as well as the men of Israel encumbered Moses with their burden and strife.⁽¹¹²⁾ If Dr. Fitter's viewpoint

is followed it must be inferred that only the men were burdensome and complaining. While Dr. Hoffman agrees that there are many citations where "children of Israel" exclude women there are in his opinion an equal number which include them and hence he suggests that wherever "children of Israel" is used in reference to the observance of certain laws, in most cases it excludes women, whereas when it refers to historical events in the life of the people or nation it usually applies to the women as well as to the men. (113)

Prof. Tchernowitz adduces several other instances wherein the women are implied. In the Scriptural verse (114) which discusses the wearing of the Tzitzith the term "children of Israel" therein used is interpreted by the Sifre (115) to include the women as well as the men. (וְכָל־בְּנֵי־יִשְׂרָאֵל יִצְּתוּ) Rabbi Kqsher answers this by maintaining that this phrase in the Sifre is merely an introduction to the main argument as to whether or not women are obligated to wear them. According to him, this phrase "the women also are to be understood" merely implies that there is a prevalent theory that women also are included in this וְכָל־בְּנֵי־יִשְׂרָאֵל, but despite this, Rabbi Simeon exempted them from observing this religious duty.

It is my humble opinion that logic is on the side of Prof. Tchernowitz for the original law did include women and the only reason they were exempted was because it was a "religious duty dependent upon a definite time for its performance." The very fact that we read in the Sifre that Rabbi Simeon exempted them is sufficient proof that originally

the term "children of Israel" also included the women in this case.

Replying to Prof. Tchernowitz's conclusion that the term (*עדה* 'עדה, יחד') "congregation of the children of Israel" does not always exclude women as can be adduced from the significant verses which refer to the free will offering brought by every man and woman for the building of the Tabernacle despite the fact that Moses addressed himself to the (*עדה* 'עדה, יחד') congregation, Rabbi Kasher claims that since this verse refers to a voluntary offering, it is not a valid proof. Here the "children of Israel" refers only to those men and women who desired to contribute and not to those who as a group are subject to a command or duty imposed by law.

However, this in itself is an important counter-argument to the opposition who would deny the women the active vote. For if the "children of Israel" may designate women as well as men in a voluntary act, surely in this question of the active vote, which is a right granted to those who wish to avail themselves of it, and thus, as such, is not a religious obligation, the women should be included in the children of Israel" and as such should be permitted to vote if they so desire.

Another rabbi observes that the Targum Rav Joseph in the Aramaic translation of the passage found in the Book of Micah(116) which refers to "Moses Aaron and Miriam" adds

and "Miriam was teaching the women" (*וַיְהִי מִרְיָם מְלַמֶּדֶת אֶת הַנְּשִׂאִים*) and likewise Rashi⁽¹¹⁷⁾ states that Miriam taught the women, thus implying that the women constituted a separate community with its own leaders. This is an irrelevant argument for it merely implies that women studied under female teachers and not under male. ^(117a) This is not an unlikely situation even in contemporary times and thus is not a sufficient proof to warrant the assumption that women were consistently excluded from the congregation at all times.

A very interesting and significant discussion revolves around the term *קְהִלָּה* "congregation" found in the Scriptural passage⁽¹¹⁸⁾ which reads "Congregation! one statute shall be for you" (*"קְהִלָּה אֶחָד חֹק יִהְיֶה לָּךְ"*)

Those authorities⁽¹¹⁹⁾ who are of the opinion that women were not consistently excluded from the congregation offer as support of this viewpoint the commentary of the Sifre⁽¹²⁰⁾ on this verse which states that in this instance the women were included in the "congregation" (*"? | 'N P' E J*). However, those⁽¹²¹⁾ opposing this view utilize the very same commentary of the Sifre to uphold their opinion for they contend that the very fact that the Sifre opens with the words "The congregation designates only men hence whence do we know women are included here?" (*P' E J K K J ' J ' K J K J*) proves that usually the women were excluded from the "congregation" except in those cases where they were specifically included.

One authority⁽¹²²⁾ who maintains that *קְהִלָּה* excludes women offers a novel explanation for the interpretation found in the Sifre.⁽¹²³⁾ He offers the suggestion that since in an earlier verse⁽¹²⁴⁾ in the same chapter the "children of Israel" are enjoined to prepare a fire offering unto the Lord "when ye shall have come into the land of your habitation which I have given unto you" the term "children of Israel"

must of necessity apply only to the men only for only the men of Israel had a part in the division of the land and hence they were only ones of the entire people who were given the land. Thus he concludes that the Sifre had to specifically include the women as otherwise we would be compelled to infer that only the men ^{were} addressed for the verse specifically declares "the land of your habitations which I have given unto you" and only the men were the possessors of the land.

It is apparent that many citations can be adduced to prove either viewpoint for neither the Scriptures nor rabbinic commentaries are consistent in the application of all the aforementioned terms which designate community. It is evident that no set rule can be made but only logical deductions and inferences can be drawn from each particular case. It is relevant to quote a few significant sentences from the Malbim⁽¹²⁵⁾ who gives his interpretation of the disputed term *Sifre* $\frac{1}{2}$. The term "children of Israel" at times excludes women and strangers from the community but this is not a general precept for while the term "children of Israel" always excluded heathens (פ"י 138) it did not always exclude the stranger and women. There is no fixed interpretation set down by the rabbis in reference to the exclusion of the women from the "children of Israel". At times the term is to be interpreted in its strict narrow sense that is, specifically limiting its designation to "the sons of Israel" and at other times in its broader sense applying to all of the community including the women,

slaves and strangers. In the early chapters of Scriptures before the children of Israel became a nation the term is to be interpreted literally as in the verses which tell of the sons of Israel going down to Egypt to secure food, however later on when the children of Israel developed into a nation the term is to be interpreted in many cases in its generic sense, that is, it includes all those who attached themselves to the nation in the same sense that בְּנֵי אֲמֹן בְּנֵי אֲמֹן , the children of Ammon refers to the whole people. Hence one can suggest that in many instances the context of the verse and the subject matter to which the term "children of Israel" relates, would furnish a clue to the content or application of the term. The same interpretation can be utilized for the other terms in Scriptures בְּנֵי יִשְׂרָאֵל , בְּנֵי יִשְׂרָאֵל , בְּנֵי יִשְׂרָאֵל which designated the Jewish people as a group.

It is apparent therefore that since the terms are not universally limited to males no argument against the exclusion of women from the community can be constructed on the basis of the use of those terms in the Scriptures.

After the biblical period the terms בְּנֵי יִשְׂרָאֵל , בְּנֵי יִשְׂרָאֵל were replaced by the rabbinic or Talmudic term בְּנֵי יִשְׂרָאֵל to designate the Jewish community (126).

There are a number of rabbinic citations brought forth in the Responsa which aim to prove each side of the question as to whether or not women were consistently excluded from the community (בְּנֵי יִשְׂרָאֵל).

Among the most important arguments adduced by

those favoring the positive view, namely, women were excluded from the community, are the following Rabbinic statements.

(1) In the Talmud⁽¹²⁷⁾ we read concerning the obligation of women to wear the phylacteries that one rabbi said in the name of another "Ulla holds that women are a separate (independent) people (*אנשים נפרדים*) and as such are ranked as a separate people,⁽¹²⁸⁾ thereby implying that women are a distinct group within themselves and as such are excluded from the community.

(2) When three or more men over thirteen years of age eat together one of them according to the Mishneh⁽¹²⁹⁾ says grace after the meal for all. However, women may not be included for the common Grace⁽¹³⁰⁾ though a Baraitha (Berachoth 45b) teaches that three women may in a like manner choose a leader and recite the grace for themselves. This would lead to the inference that women are separate from the community and thus some authorities⁽¹³¹⁾ attempt to derive from this implication a valid justification to exclude women from all communal participation.

It is my humble opinion that in both cited instances, women were not denied those privileges because of inherent opposition to their sex, but because of the desire

of the rabbis to relieve them from many religious duties because of demands of the home and family. ^(131a) For that reason they were regarded as "distinct from the men" in the performance of certain positive religious duties which were more or less dependent upon a time element. [131b] ^(131b)

(3) The very fact that in the Talmud (132) we have only one instance where women were to bring a communal sacrifice (⁽¹³²⁾ ⁽¹³²⁾), namely, the Passover sacrifice, proves that in all other cases women were never counted as part of the community. This exception indicates that usually women were never included in communal affairs. (133)

(4) Nearly all the authorities cite as proof the interesting statement found in the Talmud (134) which reads "Just as the communal sacrifice applies to men so the individual sacrifice likewise does" (⁽¹³⁴⁾ ⁽¹³⁴⁾). From these words these Responsa infer that this statement applies to all communal events and hence they would have us believe that the community includes only the men of Israel, as here we have a definite basis for the exclusion of the women of Israel.

It is apparent if one reads the entire passage that the inference is fallacious for the text is concerned solely with communal sacrifices and this precept was never accepted by the sages as applying to all communal life.

Both the last mentioned arguments can be refuted simultaneously. For it was only natural that women were excluded from all of the communal sacrifices as these sacrifices

with the exception of the Passover Sacrifice, were derived from the money collected by the half shekel levy from which levy women were exempted due to the prevalent contemporary economic status of the women.

(5) A subtle argument is advanced by one rabbi⁽¹³⁵⁾ who discovered in the Biblical reference to the *ye noo* and the Talmudic commentary to this injunction, a basis for the exclusion of women from the community.

In Scriptures we read⁽¹³⁶⁾ if "any man whatever should be unclean by reason of a dead body" he shall prepare the Passover lamb unto the Lord on the fourteenth day of the second month instead of the fourteenth day of Nissan the first month. The Talmud⁽¹³⁷⁾ however, comments that if the majority of the community is unclean then the sacrifice is not to be postponed and is thus to be offered on the fourteenth day of the first month as the Bible originally enjoined. The conclusion reached by this rabbinical authority is derived by analogy. He contends that since there is a statement in this Talmudic passage which declares that women who were unclean were not counted for the majority and since the majority (*217*) constitutes the community (*123*) women are hence not counted in the community.

It is my belief that this is a misleading conclusion as we have a definite Talmudic statement⁽¹³⁸⁾ in another passage wherein we read that women are counted in the majority (*217*). In the Talmudic passage which is concerned with only the Passover lamb, the question whether or not women were

to be considered as part of the majority (רוב) hinges solely on the decision as to whether or not the offering of the Passover lamb was a privilege (זכות) or an obligation (חובה) for the women. For if it merely constituted a privilege (זכות) for the women it would not have been logical or fair to consider them in the same category as the men who were definitely obligated to bring the Passover sacrifice. However the presumption is that otherwise the women were counted to make up the majority (רוב).

Prof. Tchernowitz brings forth very significant Talmudic passages⁽¹³⁹⁾ to prove the other side of the question, wherein we read "The Holy Writ equalised woman and man in respect of all penalties (decreed) in the Torah."

"The Holy Writ equalised woman and man in respect of all civil laws in Scripture."

"The Writ placed woman on par with man in respect of all death sentences (decreed) in Scripture."

Certainly this is a cogent refutation to the contention that women were completely excluded from the community and as such constituted a separate entity. While it is true that women were exempted from communal positive religious duties for reasons already discussed in this paper, it would be an anomalous conclusion to infer that they were consistently excluded from communal affairs in the light of these Talmudic quotations.

Prof. Tchernowitz agrees with the Malbim, that the sages never were consistent in their opinions regarding

the exclusion of women from communal duties. In fact as he points out in one discussion in the Talmud(140) we have two opposing decisions rendered in the same passage which interprets the Scriptural verse(141) "and ye may make them an inheritance for your sons, after you." The Talmud infers from this verse the law of the son's precedence in inheritance, because of the specific use in the Bible of the term "sons". The question is then posed "But in that case does 'That your days be multiplied and the days of your sons'(142) also mean your 'sons' and not your'daughters'?" It is different in the case of a blessing" concludes the Talmud for a blessing would include both sexes though elsewhere the term "sons" may apply only to males.

Hence it is apparent that the inherent differences found both in the subject matter of each case in discussion and the resultant opinion rendered, make it impossible to arrive at a consistent and definite conclusion regarding the application and non-application to the women of Israel (in scriptural and rabbinical law) of the terms which designate the Jewish community.

CHAPTER V. (a)

THE ARGUMENT BASED ON THE BIBLICAL COMMAND
"THOU MAYEST INDEED APPOINT A KING OVER THEE"

we now arrive at one of the main legal bases for the denial of the passive and active vote to the women of Israel. Up until now the discussion has centered mainly around the granting of the active vote, that is, the right to elect officers, but the following explicit Scriptural and rabbinic sources emerge as the chief support of those Responsa (143) which ^{could} oppose the granting of the passive vote, that is, the right to hold office. Judging by the literal meaning of these sources, it appears that the burden of proof rests on those authorities (144) who would attempt, through various interpretations of these selfsame sources, to justify the holding of political office by women.

The most prominent source is to be found in the Book of Deuteronomy (17:15) which refers to the manner of appointing a king to rule over the people and the rabbinic commentaries on this verse. The first part of the Biblical verse reads, "Then mayest thou indeed set a king over thee"

"לָךְ מֶלֶךְ יִשְׂרָאֵל יֶחֱדָה"

The Sifre commenting on the word "king" declares "a king but not a queen". "לָךְ מֶלֶךְ וְלֹא מַלְכָּה"

(2) The second part of the verse continues by stating "thou mayest not set over thee a foreigner a man"

"לֹא תִּתֵּן עַל עַמְּךָ אִישׁ זָר וְלֹא תִּתֵּן עַל עַמְּךָ אִשָּׁה זָרָה"

The Sifre commenting on this tautological expression "foreigner man" "לֹא תִּתֵּן עַל עַמְּךָ אִישׁ זָר" says, "We learn from this

(tautology) that we are not to appoint a supervisor (שׂוֹרֵר) who is a foreigner over the community unless his mother is

an Israelite." The Sifre further refers to the Talmudic passage (145) which enjoins that all appointments made must be selected "from thy brethren" only, but a man is considered as "from thy brethren" if his mother is an Israelite. The Sifre does not mention the appointment of women in this paragraph.

However, another rabbinic commentary known as the Pesikta Zutrata interprets this tautologous phrase "a man, a foreign man" אִישׁ זָר as expressly excluding women and thus we read therein, "a man and not a woman thus we learn that a woman is not to be appointed as a supervisor ($\text{שׂוֹרֵט} \text{ } \text{עַל} \text{ } \text{הַקָּהָל}$) over the community" ($\text{וְלֹא} \text{ } \text{יִשְׂרָאֵלִית} \text{ } \text{לִשְׂרֹט} \text{ } \text{עַל} \text{ } \text{הַקָּהָל}$).

Later Maimonides (146) basing his decision on these sources declares "all appointments are to be given only to the men and not to the women."

Prof. Tchernowitz (147) makes some striking observations in regard to the cited rabbinic commentaries on this scriptural verse. He claims that the text of the Pesikta is difficult to comprehend both from the viewpoint of language and that of logic. For firstly, the very word שׂוֹרֵט "female supervisor" this feminine form of the Hebrew word שׂוֹרֵט is not found in any other place in rabbinic literature and hence is a peculiar and strange form, and secondly, from the logical point of view a literal translation of the phrase "a man and not a woman" $\text{אִישׁ וְלֹא} \text{ } \text{אִשָּׁה}$ in the Pesikta necessitates this interpretation, namely, that while "thou mayest not set over thee a man a foreigner but a foreign woman thou mayest."

Then, too, how does the Pesikta arrive at the far-reaching and irrelevant conclusion that from this tautology one learns that we may not appoint a woman supervisor over the community? It is Prof. Tchernowitz's opinion that there is a corruption in the text of the Pesikta and thus perhaps the text originally read "From this (tautological phrase 'על שם ה' (148)) we learn that a woman may be appointed as a supervisor but not a queen" or perhaps it merely stated "a strange man thou mayest not set over thee but a strange woman thou mayest". (This would be similar to the injunction found in the book "וישם ה' ידיו על יואב" (148) regarding the Ammonite man in contradistinction to the Ammonite woman). The latter interpretation would explain the anomalous case of Beheboam whose mother was an Ammonite-- a non-Israelite -- and yet he was accepted as the ruler of the kingdom of Judah (149).

Prof. Tchernowitz further suggests that the ancient scribes may have confused the allusion in the Sifre to the appointment of a non-Israelite as a supervisor 'על שם ה' and that of the Pesikta regarding "a foreigner, a man and not a foreign woman" and by combining the two arrived at the irrelevant conclusion in the Pesikta concerning the appointment of a female supervisor.

He likewise believes that the tautology occurring in the bible serves only to emphasize that all officers are to be Jewish and not just the king. In any case since we have no explicit statement in reference to all appointments being denied to women in either the Bible or the Talmud, he contends that it is not valid to base a decision solely on the Pesikta and on

the Sifre. Maimonides himself⁽¹⁵⁰⁾, in reference to another question, rendered a decision contrary to the Sifre on the grounds that there was no substantiating source in either of the Talmud or in the Tosefta.

Prof. Tchernowitz believes that "Maimonides arrived at his decision in regard to all female appointments through an analogy namely by comparing the texts in the Sifre regarding a 'king but not a queen' and the Talmudic statement in Kiddushin (66b) which prohibited all appointments to the stranger or foreigner."⁽¹⁵¹⁾

In refutation Rabbi *Meir Don Raphael* ⁽¹⁵²⁾ claims that this tautological language found in the biblical verse does not serve as Prof. Tchernowitz maintains, to emphasize that all appointments are to be granted only to Israelites, but is proof that there is contained within the biblical verse an implicit double meaning which the Pesikta expressly states, namely, (1) do not set over thee a foreigner who is not thy brother, (2) the additional word "man" teaches that a woman is not to be appointed as a supervisor *נשיא* over the community.

He further denies that the Pesikta is illogical for in the interpretation he renders of the phrase *איש ואיש* "a man and not a woman" the negative inclusive aspect of the conjunction "and" is stressed and he reads it thusly "a man and (also) not a woman foreigner thou mayest not set over thee."

It is my opinion that this interpretation is

incongruous and contradicts his first contention concerning the word "man" in which he contends that this term excludes a woman. In one argument he emphasizes the exclusive aspect of the tautological term "man" and in the other the inclusive aspect.

He doesn't even attempt to refute the statement made by Prof. Tchernowitz concerning the lack of an explicit statement prohibiting the appointing of women to office in either the Bible or the Babylonian Talmud for he makes the unarguable assumption that the appointment of women to all offices is forbidden by the Torah and by the rabbis

Another explanation of the same rabbinic sources is given by Dr. David Hoffman⁽¹⁵³⁾ who accepts Maimonides' injunction against all female appointments, as a valid basis for denying them the passive vote. Although he arrives at a different conclusion from that of either of the aforementioned Responsa, he also attempts to determine the reason for Maimonides' opinion.

He interprets the commentary of the Pesikta in the following manner, "The ^{tautologous} term ^{ע"ל}, "man" specifically excludes woman hence from this we learn that a woman may not be appointed as supervisor of the community."

He believes that originally the entire text was in the Sifre and must have read "From this (tautology) we learn we do not appoint a woman as supervisor over the community." The copyist observing for the first time this strange feminine form of the hebrew word ^{אֶלְמָנָה}, changed it to the masculine and now the Sifre simply states "Thou shalt not appoint a supervisor unless his mother is an Israelite."

The reason for both the Pesikta and the Sifra inferring that "supervisor" סגן , was intended in this latter part of the biblical verse and not only "king", is the complete absence of any mention of a king in this latter phrase which reads "Thou mayest not set a man, a foreigner over thee who is not thy brother." They understood this sentence to include in addition the "supervisor" as the first part of the verse had already explicitly mentioned "king".

Maimonides, states Rabbi Hoffman, must have concluded from his observation of all these sources that the term סגן , supervisor, applies to all appointments and thus, he derived his opinion regarding all appointments being denied to women.

The next question one may posit is the following: Assuming that the sources are not corrupt and that the decision of Maimonides is accepted, does his injunction regarding all appointments נִינְיָן exclude woman from every office no matter what its character be.

There are many varied interpretations given of Maimonides' opinion in the different Responsa.

Prof. Tchernowitz maintains that the very term "appointments" נִינְיָן refers only to autocratic or executive positions which carry with them disciplinary powers and not to legislative positions which are merely advisory in character, as the members of the Assembly of Deputies now meeting in Palestine. He adduces many sources (154) to prove that every office (including such minor offices as the irrigation super-

they refer to the "פנינין" (155) wherein it is stated that although a woman may not be appointed a queen she may inherit the throne. In fact, he even goes further and says she may inherit any office which is subject to the laws of inheritance. It is relevant to note that from this very citation Prof. Tchernowitz infers that if a woman is qualified to inherit even the chief executive position of the nation surely she should be eligible to serve in a legislative office.

A very interesting inference can be made from this opinion of the author of the "פנינין" regarding the eligibility of women to inherit office which was even then at this late time (thirteenth century) a debatable issue. It proves that the sages had not accepted dogmatically the prohibition of "all appointments" (פנינין) laid down by Maimonides.

As further proof that women could inherit the throne the names of Queen Athalia⁽¹⁵⁴⁾ and Queen Salome Alexandre⁽¹⁵⁷⁾ are offered, both of whom reigned over the kingdom of Judah⁽¹⁵⁶⁾. (I will take up the case of Athalia in a later discussion where the validity of her reign will be treated fully. However, at this juncture, I should like to pause to discuss the very interesting exception of Salome Alexandre who inherited the throne from her husband Alexander Jannai.

A great rabbi observes⁽¹⁵⁸⁾ "It is a remarkable fact that the Sifre never mentioned the exceptional case of

Queen Salome Alexandra, sister of the great Pharisaic leader Simeon ben Shetach who reigned over Judae during the years 76 - 69 B.C.E.

Many astute explanations are given in the various responsa which attempt to reconcile the apparent violation of the injunction $\text{לֹא יִמְלֹכָה נָשִׁי}$ "A king and not a queen" with the popular and peaceful reign of Salome Alexandra. Rabbi Hoffman in particular presents a very elucidating explanation of this anomalous phenomenon, which explanation is cogently refuted by Prof. Tchernowitz.

It is Rabbi Hoffman's (159) contention that Salome was never appointed by the people, but was directly charged by her husband, Alexander Jannai to take over the throne upon his death. However, this would not explain away the difficulty raised by several authorities (160) regarding the eligibility of a woman to inherit the throne. (This problem of inheritance will be treated following the completion of this topic).

He answers this criticism by pointing out that Alexander Jannai was a Saducee, who, during his reign harassed and persecuted the Pharisees. Hence it is not surprising that he completely disregarded this Pharisaic law of $\text{לֹא יִמְלֹכָה נָשִׁי}$ by bequeathing his throne to his wife Salome.

However, Prof. Tchernowitz significantly observes (161) that even after the death of Alexander Jannai, when the Pharisees had gained the royal favor, they willingly accepted her as their queen and we have no historical data which alludes to either

any overt or ^{Covert} ~~open~~ manifestation of opposition on the part of the Pharisees against Salome. On the contrary, we know that her reign was looked on with favor by the Pharisaic party. (162)

Hence, Prof. Tchernowitz is inclined to believe that either the prohibition of $\text{נָסִיחַ כִּסֵּי מַלְכֵי יִשְׂרָאֵל}$ was not known at this time or if it was known, it was not scrupulously observed by the people.

In refutation, Rabbi Hoffman (and others (163)) asserts that despite the fact that the Pharisees were now apparently protected by the Queen, their newly acquired position was not sufficiently strong to warrant any objection on their part to the queen; hence their silence.

I agree with Prof. Tchernowitz who refutes this last claim on the basis of logic and history. It is impossible to conceive that the Pharisees would have accepted Salome as a legitimate ruler despite the law of $\text{נָסִיחַ כִּסֵּי מַלְכֵי יִשְׂרָאֵל}$ for reasons of political expediency and physical self preservation. Rather must we admit history proves the contrary. Despite the cruel persecutions of Alexander Jannai the Pharisees would not compromise with their religious beliefs, and thus, we find that they denounced with reckless indignation the king as an unworthy High Priest because he refused to pour the contents of the ewer of water upon the altar as Pharisaic tradition demanded. For this act thousands of them paid with their lives.

It is evident that the injunction of $\text{נָסִיחַ כִּסֵּי מַלְכֵי יִשְׂרָאֵל}$ was not universally known in this era, for in the face of such martyrdom it is unfair to accuse the Pharisees of conceding,

merely because of a lack of temerity to the presence of Salome Alexandra on the throne of Judae.

Prof. Tchernowitz brings as further evidence to prove that this law was not then familiar the case of Moacha, the wife⁽¹⁶⁴⁾ of John Hyrcanus I who, like Salome, was charged by her husband to succeed him. However, unlike Salome, she was deposed, though none of the historical sources ascribe her downfall to the religious opposition of the Pharisees. If it were not for the political intrigues of her son Aristobulus who conspired against her, she also could have reigned as queen over the kingdom of Judae.

Rabbi Hoffman refers to the historian Josephus⁽¹⁶⁵⁾ in an attempt to prove that Salome was queen in name only and that the actual power was ceded by her to the Pharisees. While we know that Salome like the other Hasmoneans was advised by the Great Council we also read that Josephus himself⁽¹⁶⁶⁾ praised her as an exemplary ruler "who was sagacious in her ambition of governing." Although Josephus does say that the Pharisees had power he emphatically states in the same paragraph that Salome herself "did take care of the affairs of the kingdom." Prof. Tchernowitz maintains that Josephus only intended to imply that the Pharisees were now favored with party patronage by the queen and thus when we read in Josephus⁽¹⁶⁷⁾ "and the Pharisees had the authority" we must interpret it as meaning that no longer were the Sadducees in power but now the Pharisees had acquired ascendancy in the Great Council.

Another historian⁽¹⁶⁸⁾ states "her authority

was so greatly respected by neighboring princes that they did not dare to make war with Judae". He also read⁽¹⁶⁹⁾ that she ordered coins to be struck bearing the same emblems as her predecessors, with the Greek inscription "Queen Alexandra". All this data leads me to believe that Salome was a wise and powerful ruler who in order to gain their favor was sufficiently clever to consult with the Pharisaic leaders of the Great Council in reference to religious and political affairs of the country.

However, the degree of sovereign authority possessed by the Queen is irrelevant for this discussion as the injunction of the Sifre against מלך "a king and not a queen" is directed against the crowning of a woman as a ruler regardless of the power she wields. Hence we cannot deny that had the Pharisaic prohibition of מלכה been familiar to the people at this time, the crowning of Salome would have constituted a deliberate violation of the law.

Rabbi Hoffman admits that while the case of Salome Alexandra was a violation of this prohibition it was an exceptional case the result of the actions of her husband Alexander Janai who deliberately rejected this Pharisaic law by naming Salome to succeed him.

In my humble opinion, this is a weak explanation, for we know that at the time of his death, Alexander regretting his past behavior towards the Pharisees, counseled his wife Salome to make peace with them. ^(169a) In the light of his changed

attitude, it appears unlikely that he would deliberately alienate them by naming Salome to the throne. Rather must we argue with Prof. Tchernowitz who states⁽¹⁷⁰⁾ "It is evident that as late as the time of the Second Temple a woman was qualified to reign over the people."

In addition to this interesting discussion between these two outstanding scholars there are other explanations advanced which likewise attempt to account for the presence of Queen Salome Alexandra on the throne of Judaea. Several of the authorities⁽¹⁷¹⁾ maintain that Salome is not a valid exception, for the whole Hasmonean dynasty which was founded by John Hyrcanus I declared themselves the rulers and were not appointed by the people. One authority⁽¹⁷²⁾ goes farther and completely rejects the entire dynasty, for, in his opinion, they violated the Biblical commandment found in Genesis 49:10 which states "The sceptre shall not depart from Judah";

(דָּבָר נִסְכָּה לְעַלְיוֹתָא) and, likewise, the traditional objection⁽¹⁷³⁾ to the sovereign uniting in himself the sacerdotal and secular functions of the country was ignored, when John Hyrcanus I designated himself both High Priest and head of the Judean Commonwealth.

Although historical sources substantiate these objections, the fact remains that Salome Alexandra was recognized by the Pharisees as queen, even after the powerful Sadducees had been defeated. Now that the Pharisees exercised great influence in the high Council of State it would have been easy for them to oppose her sovereignty had it constituted a violation of traditional law.

Still another authority⁽¹⁷⁴⁾ would attribute the success of her reign to the Pharisaic leader Simeon ben -hetach, the queen's brother, who advised her in religious and political affairs.

The historical data found in the works of Josephus⁽¹⁷⁵⁾ vitiate this contention as they conclusively prove that she herself was a recognized leader of great executive ability.

It is further suggested⁽¹⁷⁶⁾ that we cannot accept the case of Salome Alexandra as sufficient proof that women are eligible for office as she constituted an exceptional case (*שאלה*) in our history. This single case is not a valid basis for generally assuming that women possess ability to rule.

It is interesting to note, that a woman publicist and hebrew scholar of reknown⁽¹⁷⁷⁾ answers this last objection in a strikingly logical manner. She maintains that a careful study of our legal history will reveal that there existed amongst our sages a tendency to practice this very thing which is so objectionable to Rabbi Hlotnick, namely, they based many a law on individual cases (*הנהגת חכמים על דברי יחידים*). This is known in Talmudical dialectics as the principle of generalizing from the particular.

In concluding, it is pertinent to repeat the keen observation made by a legal authority⁽¹⁷⁸⁾ who says "In the light of Queen Salome Alexandra's reign which evinced praise even from the Pharisees, it is small wonder then that the Mishneh of Rabbi Jehuda did not include the law (*אין נשים עדים*) of *אין נשים עדים* and likewise it is not included in the laws of the Talmud."

Many of the Responsa (179) disagree with the broad interpretation presented by the aforementioned authorities concerning the application of the word "appointments" ה'נ'ע'נ
 In refutation they adduce many sources to prove that "^{all} ~~the~~ appointments" ה'נ'ע'נ embraced every office whether of permanent, temporary or inherited character and no matter what aspect it assumed (i.e., legislative or executive).

In many cases the same sources are utilized to prove the opposing viewpoint. Thus we observe that Rabbi Kasher refers to the same Talmudic passage (Kiddushin 76b) as did Prof. Tchernowitz but he sets forth a different interpretation. Rabbi Kasher observes that this Talmudic commentary on the Biblical verse concerning the command not to appoint a "king who is not of thy brethren" states, "that not only the king but all appointments (ה'נ'ע'נ) must be made from thy brethren." Hence he makes the following analogy, namely, that since a woman and a foreigner are both declared ineligible for the kingship by the sages, so likewise we may infer from this Talmudic passage that a woman like a foreigner is ineligible for all appointments (ה'נ'ע'נ).

It is my belief that this is a fallacious analogy for while it is true that the Sifre expressly declared women ineligible for the kingship and the Pesikta declared them ineligible for the office of supervisor (ה'נ'ע'נ) neither the Torah nor the Babylonian Talmud expressly forbade women from holding office whereas the stranger was expressly prohibited from the office of kingship by the Torah and later

from all offices by the Talmud. Other authorities⁽¹⁸⁰⁾ join Rabbi Asher in his contention that the expression "all appointments" employed by Maimonides includes every office. For just as the Talmud expressly states that even the minor position of the irrigation superintendent is denied to the stranger (*גֵּר*) and thus is under the category of "appointments" (*מִינוּחַ*) and similarly, Rashi⁽¹⁸¹⁾ says that even the smallest office is classed as an appointment, so too Maimonides must have intended that the phrase "all appointments" (*מִינוּחַ*) included each and every office; consequently, women are excluded from every office regardless of character.

These authorities evade the issue, for Prof. Tchernowitz likewise agrees that all these cited positions (and many more which he adduces⁽¹⁸²⁾) are termed "appointments" (*"מִינוּחַ יֵשׁ"*) but he maintains that all of these positions, even that of the irrigation superintendent, are administrative in character and as such they are distinct from legislative offices which are advisory in character and are therefore not enumerated in the Talmud.

Rabbi Ritter in an effort to prove that Maimonide's injunction embraced every position directs our attention to the fact that the word "king" [*מֶלֶךְ*] is written twice in the same Biblical verse in Deuteronomy 17:15. From this repetitious wording he infers that the Bible intended to imply that all appointments were to be denied to those "not of thy brethren". Similarly "all appointments" were to be denied to the women of Israel.

It is my opinion that this observation constitutes an argument in support of Prof. Tchernowitz's view, to wit, that "all appointments" refer only to those appointments which are executive. The occurrence of the word "king" twice in the same verse, appears to me to emphasize the executive and autocratic aspect of the term "appointment" and as such confirms Prof. Tchernowitz's viewpoint.

Another Responsum⁽¹⁸³⁾ refers to the biblical verse found in Deuteronomy 1:13, mentioned previously in this paper, which in describing the appointment of Moses' assistants states "Get you wise men" [פ'נאנא פ'נאנא]

The Sifre⁽¹⁸⁴⁾ commenting on the word "men" asks "And if the word 'men' were omitted would it ever occur to us to appoint women?" thereby implying that women never were considered eligible for any office. Hence, Rabbi Teckushinsky maintains that Raimonides' merely restated and re-emphasized an established precept, namely, that women were ineligible for "all appointments".

Several of the Responsa likewise reject the claim of Prof. Tchernowitz and Rabbi Levinsohn regarding the eligibility of women to inherit the throne. Many sources are presented to confirm the view of these Responsa, of which the most important are the following:

(1) Rabbi Teckushinsky⁽¹⁸⁵⁾ redirects our attention to the commentary of the Sifre on the Biblical verse in Deuteronomy 17:15 which states "Thou mayest indeed appoint a

king over thee."

רש"י פ'ע"ב פ"ב

The Sifre interprets it thusly:

"Thou mayest indeed appoint": If thou appointest a king and he dies, appoint another one in his place :פ'ע"ב פ"ב

וְאִם יָמָּוּת הַמֶּלֶךְ וְיָמָּוּת הַמֶּלֶךְ "a king" a king and not a queen.

וְאִם יָמָּוּת הַמֶּלֶךְ וְיָמָּוּת הַמֶּלֶךְ

He now makes a very keen observation regarding the text of the Sifre. He noticed that the Sifre first refers to the death of one king and the appointment of his successor and continues immediately by directing a "king and not a queen"

וְאִם יָמָּוּת הַמֶּלֶךְ וְיָמָּוּת הַמֶּלֶךְ Thus, he derives the opinion that the Sifre intended the latter phrase, concerning the ineligibility of women to rule (וְאִם יָמָּוּת הַמֶּלֶךְ וְיָמָּוּת הַמֶּלֶךְ) to also apply in the case of royal succession thereby disqualifying a woman from even inheriting a throne.

(2) A statement is adduced from the works of Maimonides (186) which declares.

"Since David merited the crown of kingship at the time he was anointed, behold the kingdom belongs to him and his children, the males, forever" (187) וְאִם יָמָּוּת הַמֶּלֶךְ וְיָמָּוּת הַמֶּלֶךְ

וְאִם יָמָּוּת הַמֶּלֶךְ וְיָמָּוּת הַמֶּלֶךְ

One authority Rabbi Raphael emphasizes the fact that Maimonides made no distinction between inherited positions and appointed positions. Women were disqualified for both as Maimonides explicitly states "the kingdom belongs to him and his male children." The conclusion of the explicit word "males" implies that daughters do not merit the crown and hence

pretation of the statement found in the Sifre which reads

"a king and not a queen." מלך ולא מלכה He observes that in the entire bible the hebrew noun מלכה (queen) is not

employed in reference to a sovereign queen. When the Bible in II Chronicles 11:4 refers to Athalia the only queen mentioned in the bible, who possessed actual sovereignty, it uses the term

מְלִיכָה the active present participle form of the hebrew verb מָלַךְ (to rule). It is Rabbi Mirshensohn's opinion that

this word מְלִיכָה is to be regarded as a noun form, and, as such is the biblical word for a reigning queen, in contradistinction to the noun מַלְכָּה which indicates or designates the queen consort, the wife of a reigning king who is queen in name only.

While he admits that the Bible does refer to the queen of Sheba as מַלְכָּה (191), an objection raised by several authorities (192), he explains this exception in the following manner: (1) She may have been only the wife of a sovereign and not the actual reigning ruler of her country. (2) Since the possessive form of the noun מַלְכָּה is used it is not a valid example as it cannot be definitely determined whether the scribe

originally intended מְלִיכָה or מַלְכָּה (192).

After dismissing this difficulty, he now advances the very novel suggestion, namely, the expression "a king and not a queen" מלך ולא מלכה found in the Sifre, refers merely to the appointment of a royal wife for the sovereign king, thus implying that although the people were directed to

set a king over them they were not compelled, as in the case of the High Priest, (193) to choose a wife for their king.

The Sifre expressly employed the form וַיִּשָּׂא and not $\text{וַיִּתֵּן$ in order to clarify the biblical command regarding the appointment of a king. Unlike the King of Persia Darius (195) who was advised by his councillors, immediately after the death of Vashti, to secure a new wife who would replace her, the King Of Israel was not compelled to be married. (196) Hence the Sifre merely intended to stress the fact that the king was not obligated to marry. It did not prohibit the appointment of a female sovereign for had this been its purpose it would have read thusly: " $\text{וַיִּתֵּן אֶל הָאֶרֶץ מֶלֶכָּה}$ ". Rabbi Hirshensohn maintains that it would be most difficult to reconcile the biblical allusion to Athalia "reigning over the land" (197) if the commentary of the Sifre is accepted as implying that no woman was to be appointed to rule the country. This would necessitate the anomalous conclusion that the people deliberately violated the command (198) "Thou mayest indeed set a king over thee" $\text{וַיִּתֵּן אֶל הָאֶרֶץ מֶלֶכָּה}$ "a king but not a queen." $\text{וַיִּשָּׂא אֶל הָאֶרֶץ מֶלֶכָּה}$

Many of the authorities (198) rejected this interpretation, on the grounds that Athalia was a usurper who became the royal ruler only through bloodshed, and, hence, she cannot be accepted as a legitimate ruler. Also since she usurped the throne and was not appointed by the people, the injunction regarding "a king and not a queen" ($\text{וַיִּתֵּן אֶל הָאֶרֶץ מֶלֶכָּה}$) was not violated ($\text{וַיִּתֵּן אֶל הָאֶרֶץ מֶלֶכָּה}$) by the nation. (199)

Another objection raised was the difficulty of determining the meaning of הַיּוֹדֵעַ . Although Rabbi Hirshensohn accepts it as a noun another authority, Rabbi Michlin, (200) insists that it signifies the present tense. The Bible specifically used this present participle form in order to indicate a continued act, consequently we are not to read "and Athalia reigned" but "while Athalia was reigning."

Rabbi Hirshensohn rejects this opinion (201) as he claims it is very difficult to distinguish the active present participle form of a verb and its noun derivative, for in many cases the both forms are similar.

Another authority (202) in an attempt to explain the exceptional case of Queen Athalia, refers to the verse found in II Chronicles 23:3 which reads: "And he (Yehoyada the priest) said unto them, 'Behold the king's son shall be king as the Lord hath spoken concerning the sons of David'". Since this verse alludes to the boy king Joash, the only surviving Davidic descendant, who was crowned king unbeknown to Athalia, Rabbi Techeshinsky concludes that Athalia was a deliberate usurper who occupied the throne for six years as an illegitimate ruler thereby violating the biblical command that only the sons בְּנֵי of David were to rule.

Rabbi Prial (203) sees in the very strangeness of the Hebrew form הַיּוֹדֵעַ , a clue to an entirely different viewpoint. He suggests that the very fact that this form

appears here only in the entire bible, indicates that Athalia was an exceptional case and as such secured the throne in an exceptional manner, namely, by usurption.

Many other authorities⁽²⁰⁴⁾ likewise contend that Athalia was a usurper and as such cannot be adduced as a valid exception to the injunction of appointing "a king and not a queen."

מלך וְלֹא מַלְכָּה

It appears to me that although Athalia did usurp the throne, the fact that she was able to reign for six years is evidence that the people did recognize her as sovereign. In fact the revolt against her was instigated chiefly because there still remained alive one son of the murdered "seed royal" of the House of David, who was the legitimate heir and not because she was a woman (although this may have been a contributing cause).

Rabbis Michlin and Prial⁽²⁰⁵⁾ point to several rabbinic sources⁽²⁰⁶⁾ which in referring to reigning queens use the Aramaic form מלכה thus we have מלכה / רב (207) Salome Alexandre and מלכה / רב (208) Zenobia, Queen of Polmyra. Rabbi Hirshensohn refutes⁽²⁰⁹⁾ this by declaring that it is not fair to compare Aramaic terms with Hebrew terms as the grammar is different in both languages. However, Rabbi Prial insists that if Rabbi Hirshensohn's thesis were correct the form מלכה would have been used and not מלכה.

Rabbi Hirshensohn's theory is a very original one but I doubt if historical sources would substantiate its tenability.

Another very interesting explanation of the Biblical and rabbinic sources regarding the duty of appointing a king is that given by Rabbi Levinsohn who attempts in his responsum⁽²¹⁰⁾ to justify the granting of the active and passive vote to the women.

He observes that the Biblical injunction in Deuteronomy 17:15 $\text{יִשָּׁרְךָ מֶלֶךְ יִשְׂרָאֵל}$ expressly employs the masculine singular form of the verb פלע . He is thus led to infer that the command "to appoint a king" must have applied exclusively to the male members of the nation, for had the Bible intended to obligate both men and women in the performance of this religious duty, the masculine plural form of the verb פלע would have been used, thereby embracing, by verbal implication, the women as well as the men. It is his contention that since this singular form expressly excludes the women from the performance of the religious duty of appointing a king, they are likewise exempted from the injunction of the Sifre which states "a king and not a queen." However, although they are not obligated to perform this religious duty they may observe it, if they so desire, just as she was permitted to place on the phylacteries⁽²¹¹⁾ or even to take part in the pilgrimage festivals⁽²¹²⁾. It is a purely optional act on her part.

Thus, Rabbi Levinsohn suggests that similarly in this case while she is not compelled to vote, she can vote if she wishes, and not only may she vote but she is likewise

permitted to vote for women, as the prohibition regarding women appointees does not apply to those who are not obligated to perform this biblical commandment of *פָּרַד פָּרַע*. If women are elected by women to serve as officers the men have the right to waive their objections to them⁽²¹³⁾ and accept their authority if they so desire. In this manner, Rabbi Levinsohn would justify the holding of office by women and the right to vote by women in Palestine.

Thus far I have marshalled all the arguments presented in the various Responsa regarding the application of the phrase "all appointments" in reference to the passive vote; or the right to hold office (*מִיִּנְיֵנָה*). However, despite the fact, as one learned authority⁽²¹⁴⁾ states, "There is a direct prohibition in the Sifre and in Maimonides' injunction, against women holding office but there is no direct prohibition within the Biblical and rabbinic literature against the right of women to vote for officers of the community," some of the more conservative Responsa⁽²¹⁵⁾ likewise attempt to derive from these selfsame aforementioned sources indirect implications and analogies as a basis for the denial of the active vote to the women.

The most conspicuous source set forth by these Responsa is the statement found in the *פְּרָק הַמֶּלֶךְ* (216) concerning the appointment of a king which states, "The religious duty of appointing a king is one of those religious duties which rest upon the community all of them, rest on the male members of the community."

These Responsa derive the opinion that just as the injunction of the Sifre regarding the appointment of "a king and not a queen" is taken by Maimonides to include "all appointments" so, likewise, this statement of the

"כִּי יִשָּׂא" applies not only to the appointing of a king but to all appointments. Hence, women are not to participate in the appointing of any office holder of the community.

One can reply by suggesting that even if this religious duty (דִּיּוּקָן) of appointing a ruler does not "rest upon" the women, surely they are not directly prohibited from performing it. Consequently, they can, if they so desire, observe this religious duty just as they were permitted to perform other religious duties which were not obligatory for them. (217)

One authority (218) presents a very casuistic argument to prove that women may not vote. He quotes from the commentary of R. Moses Isserles in the Shulchan Aruch (219) which states "that a woman is prohibited from making or preparing the Tzitzith for others, as it is a religious duty from which she is exempt."

Now he infers that since she is not permitted to hold office, it is likewise impossible for her to vote for office holders, as this act would constitute a violation of this prohibition of R. Isserles.

This is a very misleading argument and is entirely untenable for the interpretation is fallacious. R. Isserles

specifically states that there are only some amongst the more
 חסידים אחרונים, orthodox, who would not permit her to make the
 Tzizith, however, he does not expressly forbid her from
 performing this act. In fact, the Shulchan Aruch itself
 explicitly declares that women are (ומה שכתבנו לעיל)
 religiously qualified to prepare the Tzizith (220).

I have already implied several times previously,
 that this religious duty of delegating officers for the
 community ק'ר פ'ען פ'ע is analogous to that
 of the wearing of the phylacteries or studying of Torah both of
 which duties were not obligatory for women (221).

I now intend to discuss the relationship of this
 religious command of appointment of officers ק'ר פ'ען פ'ע
 ("Thou mayest indeed set a king of thee") to those religious
 duties which are known as (כח) פ'ען פ'ען
 positive religious duties which are dependent upon a time
 element, and which duties women were exempt from performing.

CHAPTER V. (b)

THE RELATION OF THE BIBLICAL COMMAND
TO THE "POSITIVE COM ANDS LIMITED TO TIME"

The Mishnah definitely states "that every positive religious duty which is limited to a time element, women are exempt from performing." (222) אין צורך להעלות נשים לזמן

Since election of officers occur at certain specified times a number of authorities (223) are inclined to include this duty of פירוש פירוש, appointment of rulers, in this category. Support for this viewpoint can be further found in the statement of the Tifre (224) which expressly states as regards this biblical command of פירוש פירוש "This is a positive command." אין צורך להעלות נשים

However, Prof. Tchernowitz (225) significantly observes that in practice this Mishnaic ruling is not a set and fixed rule for there are many such duties which women are obligated to perform, as the lighting of the Hanukah lights. (226) In an attempt to reconcile this apparent inconsistency Prof. Tchernowitz offers the following suggestion. He points to the fact that all those religious duties which women are obligated to perform, despite their dependence on the time element, are national in character as can be evinced from the following instances: (1) the lighting of the Hanukah lights, (2) the eating of the unleavened bread on Passover, (3) the listening to the reading of the Megillah, (4) the Paschal lamb. All these religious duties (אין צורך להעלות נשים) are obligatory for the women as well as the men of Israel. (227)

The distinction is thus made between national religious positive duties, observed by the whole community since

observing, and still the sages did not protest. ^(פ'מאן דפ'מאן דפ'מאן) In fact, some of the commentaries⁽²³¹⁾ declared that women were permitted to recite a blessing on any of those positive religious duties, if they observed them, and the blessing would not be considered a religious violation of the

^{ה'לל ד'לל} (blessing in vain). Hence, one can infer that the sages approved the voluntary observance of these duties by the women despite the explicit provision exempting them from these religious obligations limited to a time element. These authorities⁽²³²⁾ further suggest that even if this duty of ^{פ'מאן פ'מאן} "appointment of officers," is not considered as belonging to this category of "religious duties limited to time," women nevertheless should be permitted to perform it if they so desire. Surely, they argue, if she can observe duties from which she is expressly exempted, how much more so is it permissible for her to observe this duty from which she never was directly or indirectly exempted from performing. And surely there is no religious duty (^{ד'לל ד'לל}) of stronger national significance than that of voting upon which rests the political welfare of the country.

As further justification for the right of women to vote Prof. Tchernowitz refers to the religious rite of "the imposition of hands upon the victim of the sacrifice

(^{ד'לל ד'לל}) which women were explicitly forbidden to observe⁽²³³⁾. Now despite this express prohibition, there is a tradition⁽²³⁴⁾ to the effect that the sages brought the animal

out to the Women's Court in order to give the women the spiritual satisfaction derived from the performance of this custom ($\text{נִתְּנָה$). Thus Prof. Tchernowitz reflects if they were permitted to observe this religious duty which was directly prohibited, surely they would be allowed to observe this religious duty of $\text{פְּעֻלַּת הַמִּשְׁכָּן}$ appointing of rulers, from which duty they never were enjoined not to perform. Certainly this would give to them that great spiritual satisfaction ($\text{נִתְּנָה$) which our ancient sages were thoughtful enough to consider when they brought the sacrifice out to the Women's Court.

These arguments presented by Prof. Tchernowitz have not been successfully refuted although several authorities⁽²³⁵⁾ attempted to do so. The arguments presented in their Responsa completely evaded the main issues of the question. Instead of refuting the conclusions presented, they are concerned mainly with an impertinent discussion dealing with the origin of the various religious duties adduced by Prof. Tchernowitz as mere illustrations of his arguments. These authorities indulged in speculative and irrelevant explanations which shed no light on the subject in question.

An authoritative conclusion is presented by Rabbi Hoffman⁽²³⁶⁾ who, though opposed to women holding office, declares in reference to the right of women to vote, "Even if you would accept the view that women are exempted from the observance of this religious duty ($\text{נִתְּנָה$) they may if they wish, perform it, if the community decides to grant them the active vote."

CHAPTER VI

IS WOMAN ELIGIBLE TO JUDGE?

offered in an attempt to reconcile Maimonides' prohibition with Deborah's holding office.

At the very outset, it is pertinent to redirect the reader's attention to the previous chapters wherein it was shown that some of the authors of the Responsa⁽²⁴¹⁾ made a distinction between legislative^{or advisory} and executive offices. Hence according to these men the case of Deborah does not constitute a violation of Maimonides' prohibition as she served merely in a legislative capacity. They interpret the injunction of Maimonides as applying only to executive and administrative positions.

As further proof that Deborah's position did not contradict Maimonides' injunction, a statement of Solomon Ibn Adret (רמב"ם) (242) is adduced in which he explains that Deborah never really acted as a judge but she merely directed or guided the people. *והיה להם לנשיא ולישועה כדכתיב ויבחרו להם נשיא ויבחרו להם נשיא*

Some of the Responsa interpret this statement as meaning that Deborah was not appointed by the people to act as judge but she just guided the people in the teachings of the law. She was sort of a free lance judge to whom the people came for advice. The רמב"ם seems to imply that although she could not be appointed to an office she was permitted to ^{conduct herself} act as a judge *והיה להם לנשיא ולישועה* (244). It is my humble opinion that here the רמב"ם hints at a distinction between an executive position and a legislative position.

Prof. Tchernowitz interprets the statement of

as implying that there is a difference between appointing a woman to hold the office of a judge and that of merely accepting her judicial verdicts because of her knowledge of the law. (245)

Another responsum⁽²⁴⁶⁾ interprets the ל"ז thusly. She was not a judge who actually decided cases but she merely led the people as a judge (ל"ז). The author of this Responsum agrees with the ל"ז in that Deborah was not appointed to act in a judicial capacity as that would have violated the prohibition of Maimonides but he goes further by claiming that she was a judge similar (ל"ז) to the other judges found in the Book of Judges. They too were not appointed by the people to serve as jurists; they merely served as temporary military leaders over Israel because of the exigencies of war.

Other sources⁽²⁴⁷⁾ are likewise adduced to prove that Deborah was not appointed to serve office.

In the discussion to follow regarding the ineligibility of women to adjudicate cases it will be shown that the ל"ז, in an attempt to reconcile Deborah as judge with the Talmudic⁽²⁴⁸⁾ prohibition against women judging, presents another explanation for this exceptional case. From this explanation one may evince that the ל"ז regarded the judgeship of Deborah as an extra legal office, for he never thought that she was appointed by the people to hold office.

Rabbi Nissenbaum⁽²⁴⁹⁾ points to the fact that

even as late as the era of the Tosofosts both the prohibition of Maimonides and that of the Talmud Jerusalem were evidently not consistently accepted and fully understood, for the very discussions of the Tosofosts who attempted to explain this anomalous case of Deborah, proves that they did not completely accept these prohibitions as binding.

However, others assert⁽²⁵⁰⁾ that the very fact that this case was discussed by the Tosofosts proves that it was regarded as an exceptional case. Hence, it had to be explained since law and tradition prohibited women from holding office and from serving as jurists.

I personally regard it as a most singular fact that the earliest quoted explanations of this special case of Deborah do not date earlier than the twelfth century of the common era⁽²⁵¹⁾. This fact leads me to suggest that as late as this time the aforementioned prohibitions were not definitely accepted as binding.

As further substantiating evidence that it was not until later times that these prohibitions were generally practiced I refer the reader to a remarkable Midrash which Rabbi Dr. Deutch of Furth⁽²⁵²⁾ brings from the Midrash Rabba on Koheleth. The Midrash commenting on the words "וְיָשְׁבוּ שְׁפָטִים" found in Koheleth 2:8 interprets it thusly "וְיָשְׁבוּ שְׁפָטִים זָכָר וּנְקֵבָה" "men judges and women judges."

The Midrash takes it that Solomon installed for himself female judges as well as male judges.

At this point the question may be raised as to just how the Midrash derived from the words *וְיָשִׁיעוּ* the term "judges". The *ד' יו"ב ו' יא' נ'* commenting on this Midrashic phrase explains that it is derived from the same root as the word *יָשַׁע* "adjudication" which is found in the Talmud (Kesuboth 94a). The relation of the word *וְיָשִׁיעוּ* to *יָשַׁע* led the editor to infer that Solomon appointed male and female judges despite the fact that *וְיָשִׁיעוּ* according to biblical dictionaries means "mistresses". (253)

The derivation of the term *וְיָשִׁיעוּ* is really irrelevant, for the important observation to note is that the idea of women serving as judges was not a foreign one even as late as the time of the compilation of the Midrash Rabba.

Rabbi Hoffman (253a), however, believes that the author of this Midrash merely meant to imply that Solomon appointed women to serve in a judicial capacity only over his many wives and concubines whose disputes no doubt demanded arbitrators.

I shall now discuss the many explanations set forth in the various Responsa which aim to reconcile Deborah the woman Judge in Israel with the prohibition in the Talmud (Jerusalem) against women acting as judges.

It is curious to note that all of the Responsa including those who earlier⁽²⁵⁴⁾ in this dissertation declared that Jewish tradition did not favor women studying the Torah, now readily admit that whereas a woman cannot act as judge

she is permitted to teach the law. To substantiate this viewpoint the following sources, which claim that Deborah taught the law but did not actually judge the cases, are quoted.

1. The Tosofots in several places⁽²⁵⁵⁾ state "that Deborah did not actually adjudicate, she only taught the laws" (לפי שהיה צורך אלא מלמדת להם בדין).

2. Prof. Tchernowitz adduces a very significant opinion of the (256) קצת דברי יוסף who says "Even though a woman is inelligible to judge she is permitted to teach the law" (למורות הוראה).

3. The Tur (ח"ט ס' ז') likewise states "a woman cannot judge but Deborah did not judge, she taught the judges." (אלא מלמדת שופטים ישיבם).

4. The "מנחת חינוך" (ח"א קנ"ג) is also referred to by Prof. Tchernowitz for it too declares that a wise woman is fit to teach the law⁽²⁵⁷⁾.

Many of the Responsa⁽²⁵⁸⁾ again refer to R. Solomon Ibn Adret⁽²⁵⁹⁾ for he too likewise implied that whereas she did not judge she was consulted for advice on the law. (והיו נשקפים דבריה)

As further evidence that she was consulted for advice another commentator (רמב"ם)^(259a) of the Talmud is quoted who also claimed that Deborah did not judge but the people consulted her, and her advice aided them in their discussions with each other. (ואם אמת, שאלוהי ישראל היה נאמן בה)

Prof. Tchernowitz stresses the opinion of the

ל"ג (likewise agreed to by the |") (260)) for even if a woman is regarded as ineligible to serve as a judge, we may derive from this statement that in addition to teaching the Law, she is permitted to serve, like Deborah, in an advisory capacity.

Thus, it is his opinion that it is perfectly valid for women to be elected to sit in the National Assembly of Palestine, for here too she is not giving legal decisions but merely is discussing with the men questions of law and policy⁽²⁶¹⁾.

One particular Responsum⁽²⁶²⁾ in refuting this opinion definitely objects to Prof. Tchernowitz's use of the hebrew phrase (אין היא יכולה להכריע בעניני מלכות) in reference to women being allowed not only to teach laws but also "to act as compromisers in judicial matters."⁽²⁶³⁾ He refers to the "ענין חנוכה" (ש"ח) who definitely maintains that while she (Deborah) may have discussed the law with the people, decisions could not be expressed by her.

(שלא היה לה
לומר דבר)

Now this Responsa and others⁽²⁶⁴⁾ who would deny the women the right to hold office in the National Assembly claim that since the National Assembly may not only discuss questions of policy but may also make laws for the community it would be contrary to Jewish Law to permit her to serve as a member of this body.

Another Tosofost explanation⁽²⁶⁵⁾ for Deborah is the view expressed that she was permitted to judge because of a Divine Decree (כי ה' צוה). According to this

interpretation whereas Deborah was a special case by virtue of the Divine permission all other women remain ineligible to judge.

Rabbis Levinsohn and Hoffman⁽²⁶⁶⁾ see in the Hebrew word נָבִיאָה (prophetess) found in the Biblical verse (Judges 4:4), alluding to Deborah, a basis for this view of the Tosofists. Both these men suggest that because she was a "prophetess" she merited the Divine permission enabling her to act as judge.

However Prof. Tchernowitz⁽²⁶⁷⁾ cleverly refutes this suggestion by pointing out that the prophets of Israel did not usually act as lawmakers or as adjudicators and even prophets were not allowed to institute new changes in law and custom. If at times prophets did serve as Judges they were compelled to render their decisions according to the Torah and not thru the inspiration of divine prophecy (נִבִּיאִים לֹא יִשְׁפְּטוּ) Thus he concludes that at the time Deborah judged the children of Israel, she was not acting under the inspiration of prophecy. She was a judge in the full sense of the word.

Another original explanation offered in Rabbi Levinsohn's responsum is based on the biblical phrase (Judges 4:4) ~~וְהָיָה~~ וְהָיָה Deborah judged Israel "in that time". Herein there is a hint pointing to the suggestion that Deborah judged only temporarily solely because of the exigencies of "that time". In other words while women are usually ineligible to judge, at special extraordinary occasion when existing conditions warrant, exceptions to this rule are made⁽²⁶⁸⁾.

The Tosofists again are referred to because of a third explanation which they offer for Deborah. Some claim⁽²⁶⁹⁾ that

Deborah was accepted by the people because of the fact that the Divine Presence rested upon her (*ה' נשכן עליה*).

Rabbi Levinsohn⁽²⁷⁰⁾ sees in the biblical statement (Judges 4:5) "*וַיֵּלֶךְ יִשְׂרָאֵל אֵלֶיהָ*" "and the children of Israel went up to her for judgment" supporting evidence for this opinion of the Tosofots. This statement in the Bible appears to imply that the people voluntarily accepted her, despite the fact that she was a female judge.

Now the *ק"ק* and the *ר"ן* ⁽²⁷¹⁾ (R. Solomon ben Adret and R. Nissan) like the Tosofots also stated that the people voluntarily accepted her but they were the first to use this term of (*קבלה*) "acceptance" in its strict legal sense. That is, - they based their interpretation on that special provision in Jewish Law⁽²⁷²⁾ which extends to litigants the right to waive their objections to a judge, who is either related to one of the litigants, or is ineligible on other grounds (except undesirable character) to serve as judge.

Now it is to be noted that there is a sharp distinction between the opinions of the Tosofots and that of the *ק"ק* and the *ר"ן* . According to the former Deborah judged because of Divine favor and thus she is a special case and as such no conditions are imposed upon her. However, if a woman is permitted to act as judge merely because the people waived their objections to her, then she must conform to all the legal restrictions imposed upon her under such conditions.⁽²⁷³⁾

Those authorities⁽²⁷⁴⁾ who would permit the women to sit in the National Assembly base their opinion on this inter-

pretation of the (ע"ז) and the (נ"ד). As further evidence Prof. Tchernowitz refers to the "Gesein jein" (נ"ד) wherein it states that a whole community can waive their objections and accept upon itself an entire Beth Din whose members do not conform to all the prerequisites of Jewish law (that is, if their characters are satisfactory.

In refutation Rabbi Raphael (275) claims that this can be effected only in a community where there are no eligible men. In times of emergency (i.e. war) a community is permitted to appoint judges, who were not eligible to serve in the Beth Din, but surely if there are eligible men in the community it is prohibited to appoint ineligible appointees. (276) In this particular case, he argues, we are not facing such an emergency for there are sufficient eligible men to serve as officeholders of the community.

The rabbis maintain that if the people of the Palestinian community will waive their objections and accept the women as legislators, it is perfectly valid for women to hold office in the National Assembly. Some suggested that a referendum be submitted to the people in order to determine if the majority of the men would waive their objection to women holding office in the National Assembly.

This suggestion led to much discussion for some authorities (277) maintained that the referendum had to be unanimous while others submitted authoritative statements to prove that a majority was sufficient (278). The contention was

made that whereas the referendum may be regarded as a valid means for one particular election, it could not thereafter be accepted permanently for that would constitute a violation of Maimonides' prohibition regarding the appointment of women.⁽²⁷⁹⁾ Hence, the counter-suggestion was made that a referendum was to be held at each election. Another reason offered for this viewpoint was that fact that at each election some girls would reach their majority and a referendum must be provided which would also include them.

Still others⁽²⁸⁰⁾ claimed that the whole principle of "acceptance" ^{is} was irrelevant in this case. To them the crux of the problem was not the right of the community to waive their objections to the women, but the right of women to help make laws which they claimed was the chief purpose of the National Assembly. Rabbi Spitzer⁽²⁸¹⁾ even went to so far as to emphasize that this "right of acceptance" is valid only in cases of advisory positions and not in this case where the National Assembly not only makes but aids in enforcing laws.

A rather unusual argument is offered by Rabbi Hoffman who holds that a ¹ does not only refer to one who judges cases but like ¹se refers to such minor officers as charity distributors, who are compelled to judge the legality of each charity request. It is Rabbi Hoffman's opinion that all offices are prohibited to women for all of them possess some aspect of judicial character.⁽²⁸²⁾ As for Deborah, he merely refers to the many explanations of the

Tosofosts. To him she was an exceptional case and as such cannot serve as a basis for granting the women the right to serve as members of the National Assembly.

It is my humble opinion that all the opposing Responsa fail to reconcile successfully the unalterable and glaring Biblical example of Deborah who served her people as a Judge in Israel and "to whom the people came up for judgment."

As Prof. Tchernowitz so well observes⁽²⁸³⁾, "No matter how artfully one attempts to circumvent the text, the irrevocable fact remains that Deborah did act as judge in Israel." There is nothingⁱⁿ the text which proves that she was an exceptional case in her day.

From a historical point of view it is interesting to note that R. Isaac ben Samuel of Dampierre⁽²⁸⁴⁾ made an interesting and very liberal comment in reference to the Talmudic statement⁽²⁸⁵⁾ which reads ע'כ'ל דע'ל פ'מ'כ'ל ד'ל'ל ד'ל'ל ד'ל'ל "Scriptures has thus made woman and man equal regarding all the judgments of the Law."

The '") stated, that logically it should follow from this Talmudic statement that women should also be considered as equal to men regarding the rendering of judgments. Surely, if they are equal regarding the judgments of the Law, they should likewise be permitted to render judgments.

Although it is not Halachic in character, I cannot refrain at this point from presenting a very pertinent and striking Midrashic comment which Rabbi Nissenbaum⁽²⁸⁶⁾ derived

a similar Talmudic statement⁽²⁸⁷⁾ which reads הן הן כן

הן הן כן
הן הן כן

"Scripture has thus made woman and man equal regarding all the penalties of the Law."

Instead of this text Rabbi Nissenbaum interpreted it thusly הן הן כן

"Life in the Diaspora has made woman the equal of man regarding all the penalties of the exile." Hence, why do we not now in

הן הן כן make her the equal of man regarding all the privileges and rights of the new life?

Thus far the discussion centering around Deborah's judgeship has been concerned solely with the right of women to hold office, or the right of women to possess the passive vote. However, those authorities who would deny her the active vote as well, attempt to derive support for this denial^(287a) from a statement of the הן הן כן (287b) who declared "that they who are delegated to attend to the needs of the community are like judges and thus it is forbidden to include amongst them those who are ineligible because of wickedness" הן הן כן

הן הן כן ["הן הן כן"] No doubt the implication is that those who vote for officers of the community are regarded as those who attend to the needs of the community and hence all those who are ineligible to judge are ineligible to vote.

Even if we accept this implication which I personally believe is not tenable, it appears that the הן הן כן intended merely to exclude only those who are ineligible because of undesirable characters (הן הן כן). If he had intended to exclude

all who do not conform to the prerequisites of judgeship
he would have no doubt had concluded the statement with the
phrase "כלם כיוצא" (all are like him)

A statement is brought from the "פני משה" (Pnei Moshe) who said that "if all the members of a congregation gather to elect a rabbi, all of them are regarded as judges" thereby likewise implying that the electors are similar to the elected for they too must render decisions. Since women are ineligible to render decisions they should be ineligible to vote. (288)

The "פני משה" (289) went further and declared all communal officers are likened in authority to the members of the Beth Din and thus the conclusion derived from this opinion is that just as women are ineligible to judge and are likewise ineligible to appoint judges, so too they are ineligible to be elected or to elect any communal officer -- even one who serves in a mere advisory capacity.

Rabbi Ritter (290) submits as further basis for his opinion against the right of women to vote the statement made by the "פני משה" Responsa wherein we read that a "שופט", a judge who is ineligible (כיוצא) cannot appoint another judge to replace himself. Now, asks Rabbi Ritter, how can women who are ineligible for judgeship appoint others to serve in their stead?

Rabbi Hoffman answers this objection by contending that Rabbi Ritter misunderstood the implication for surely it is ridiculous to imply that if a man is ineligible to serve for a certain office (i.e. President) he is likewise ineligible

to vote. Had this been the purpose of the *אזכרה* (Azchrah) then neither the stranger (*גר*) nor any relative of a candidate up for election would have the right to vote for officers of the community. The *אזכרה* referred only to a judge who was declared ineligible to render decisions because he was a relation (*קרוב*) of one of the litigants as he may have been tempted to appoint another judge who would favor his relation.

In conclusion, it should be observed that here too as in the previous arguments based on the biblical command of *אזכרה* (291) while some justification may be found in Jewish law for denying the Jewish woman the passive vote because she has been declared ineligible to judge, there is absolutely no explicit or implicit prohibition against women possessing the right to vote for officers of the community. Strong evidence for this contention is brought by Rabbi Hoffman who directs our attention to two strictly orthodox Kehilloth in Germany⁽²⁹²⁾ whose statutes make a sharp distinction between the granting of the Passive and Active vote to their members. Everyone who is of age possesses the right to vote but as for holding office many religious requirements must first be fulfilled.

CHAPTER VII

ARGUMENTS BASED ON MORAL GROUNDS -

In addition to the disputes which centered around the previously discussed legal arguments a bitter fight was waged from the moral aspect of the question. The strictly orthodox of the Yishuv regarded the extension of the franchise to the women as a *פנייה בצדק של חילול מצוות* "a breach in the moral code of the daughters of Israel." (293)

The rabbinical authorities of this group offered many halachic sources to prove that this innovation was definitely contrary to the Jewish traditional conception of woman's place in society, namely, in the home. Does not the Bible (Psalm 45:14) expressly declare: *כל כבודך דומה כבוד מלכה בלתי* "All glorious is the king's daughter within" from which our rabbis inferred that the modest Jewish daughter stays within her home? (294)

One of the most significant Responsa was that written by Chief Rabbi Cook (295) who stressed chiefly the moral basis for the denial of suffrage to the women, as can be evinced from the following *שלא להאמין כבודן בקצתן*

ולא יתנו חסדן כבודן "The spirit of the nation is by its very character and purity completely opposed to this modern innovation."

Rabbi Cook likewise asserted that the duty of the Jewish woman was to uphold the sanctity of the home and family but if we sanctioned her appearance in public (*לשואת הדרגה*) it would be impossible for her to fulfill this duty. "All this would result not only in a breach in the moral purity of the home but it would also destroy the peace of the home" (296)

(לפניו של ה'ת') for surely if the husband and wife would disagree on the merits of the various candidates either a rift would ensue or the wife would be compelled to cast a false vote in order to retain her husband's affection. Thus they would be violating that Talmudic precept (חילוקי ק"א .) which states: "חשובה ה' שלום בית" "Important is the peace between man and wife."

One rabbi(297) favored the granting of the active vote but opposed the right of women to hold office, because he believed that the duties connected with the latter would conflict with the woman's home duties. Surely, he declares, if the Torah exempted her from the performance of "positive religious duties dependent upon a certain time"

(כי כחמה שיהיה לה עניני חולין) because of her many family duties, we today must exempt her from these public duties. Another rabbi(298) refers to sources(299) which definitely prove that the sages maintained that "because the Jewish woman is subservient to the wishes of her husband, her time is not her own (כי כחמה שיהיה לה עניני חולין) for at the very hour when she may wish to perform a certain חולין, he may demand her services. Hence, she was exempt from these religious obligations."

This argument can be refuted by pointing to the fact that the women were "exempt" but not prohibited from the performance of these positive religious commandments. In fact, as one authority(300) states, "According to the older authorities (הרמב"ם) if the women desire to be

stringent in their religious life they are allowed to perform these duties if they so wish without fear of violating the biblical injunction regarding

בְּיָמֵי פְּנֵי מֶלֶךְ

Thus though the women may be exempted from the duty of holding office logically she should not be prohibited from performing this duty.

Another Responsum(301) contends that woman's chief function according to the Bible (Gen. 2:18) is to be her husband's helpmate (**עֲזָרָה כְּנֶסֶף**) and she can best aid him by attending to her home and family duties. Does not the Talmud (Yeb. 63a) definitely state that "a woman can best help her husband if she grinds his wheat and spins his flax?"

Elaborating on this theme Rabbi Meir Dan Raphael points to the fact that the Bible (Proverbs 31:10) in describing the home life of a "woman of valor" declares, **יָדוּעַ אֶתְּ מַלְכוּתָא** "Her husband is known in the gates when he sitteth amongst the elders of the land," thereby implying that it is the husband alone who attends to public and communal affairs.

Rabbi Raphael is astonished at those who favor the granting of suffrage to the women of Israel, for do they not realize that by bringing the women out to the **רְחֵק מִן הַבַּיִת** public highways they are threatening the very existence of the Jewish home for the Talmud(302) explicitly grants the husband the right to obtain a divorce without returning the marriage contract (**אֵין מְשַׁלְּם**) to his wife if she speaks to a strange man.

Rabbi Prial(303) answers this by suggesting that for voting purposes we can resort to separate voting booths for men and women to be used at specified times by either the men or women. However, Rabbi Minzberg is definitely against giving the women the right to vote in any case, for they may be tempted to vote for women and that would be calamitous. Evidently, he does not have a high regard for either the integrity or intelligence of the Jewish woman for he goes to great length to prove that they are lightheaded, talkative, prone to be foolish and are unable to concentrate their thoughts on one subject.(304)

Other Responsa(305) claim that their reasoning is weak and that their wisdom consists merely in knowing how to spin.(306)

It really is amusing to observe to what absurd lengths these Responsa went in attempting to give a picture of woman's abilities.

At this point, I wish to emphasize again that all of these aforementioned Responsa were firmly convinced that dangerous results would accrue to the Jewish community if free social intercourse of the sexes was sanctioned.

However, it is interesting to note that none of these Responsa which stressed this moral angle were written by American rabbis who no doubt realized the futility of these arguments. The general advance made by the women of America not only in the political world but in every field of the social and economic life of the country was sufficient for

the American rabbis to vitiate the validity of these arguments. The other authorities actually believed they were protecting the Jewish community from the threatening danger of placing its destiny in the hands of those who do not possess proper judgment and understanding, namely, the women.

One of the most novel and likewise most biased arguments offered against permitting men and women to work together on behalf of the nation is presented by Rabbi Minzberg⁽³⁰⁷⁾. He refers to the "פירוש רש"י (פרק ח"ה)" wherein we read that one is not to harness an ox and ass together when ploughing. The reason being that since both animals possess entirely different characteristics it would constitute an act of cruelty to animals.

Rabbi Minzberg infers that here, too, we cannot expect two persons possessing completely opposing natures to work together. Surely, we cannot "harness the energies of men and women together for the performance of any task." It is inconceivable to permit such an unnatural thing to occur.

Further elucidating on the status of woman he refers to a Talmudic statement (Yeb 117b) which declares, "whenever one eligible witness comes first even one hundred women are regarded as one witness." We can infer from this, claims Rabbi Minzberg, that the testimony of one eligible male can negate that of a hundred women. Hence, how can we be expected to accept her opinion on such important matters as questions of law and policy of the Yishuv?

Rabbi Hirshensohn⁽³⁰⁸⁾ attempted to refute those moral objections against men and women talking to each other by directing our attention to the fact that the Bible specifically declares (Deut. 31:10 ff) that the priests were to read the Law before all Israel "Assemble the people the men and the women." Surely, the priests were not struck dumb in the presence of the women and likewise we read in the Talmud (Hagigah 3b) that the king also at specified times read the law before the men and women who assembled and, here too, we read of no objection to the women's presence.

Rabbi Hirshensohn posits the following question regarding R. Meir to whose school a certain woman used to come in order to hear him expound the Law.⁽³⁰⁹⁾ Did R. Meir close the doors of this school to this woman even though she incurred her husband's wrath? Surely not! The Talmud [Jer. Sofer 30a] expressly states that he even humiliated himself in order to restore peace in her household.

As further proof for his viewpoint Rabbi Hirshensohn refers to Moses himself who also spoke to the women of Israel. The Midrash,⁽³¹⁰⁾ commenting on the Biblical verse (Exodus 19:3), in which Moses is commanded "to say to the House of Jacob and tell the children of Israel"

כִּי הָיָה תַּחֲנוּן רַבִּיךָ יִשְׂרָאֵל וְהָיָה רַבִּיךָ יִשְׂרָאֵל
interprets the "House of Jacob as the women of Israel" חֲתָנוּת

יִשְׂרָאֵל רַבִּיךָ יִשְׂרָאֵל Thus the Midrash does not hesitate to declare that Moses spoke to the women of Israel.

An original but rather untenable interpretation

of these selfsame sources is given by Rabbi Raphael⁽³¹¹⁾ who maintains that the Midrash specifically included the women at this time because of a definite purpose. Moses was especially commanded to address the women in order to instruct and warn them that they were not to cohabit with their husbands for three days prior to the giving of the Law. The Midrash wished to stress the importance of the explicit prohibition which we read in a later verse (15) of the same chapter "that no man was to approach a woman for three days prior to the giving of the Law."

We may infer from this, says Rabbi Raphael, that the most sacred attribute of the Jewish home is its sexual purity and the chief duty of the Jewish woman is to maintain this purity through her own exemplary conduct.

Another reason of a somewhat moral character offered as support for the denial of suffrage to the women of Israel, is that of the consistently practiced policy of avoiding the ways of the non-Jew (פשוטות פניו ודרכיו) (312). These Responsa maintain that the granting of the vote to the women and its concomittant social changes (i. e. social intercourse between the sexes) constitutes even if not deliberate, a violation of this practice of non-imitation of the statutes of the non-Jew.

It is interesting to observe with what ardor these rabbis attacked the problem of the moral danger which they were convinced would be wrought by the extension of the franchise to the women. With true missionary zeal one of

these rabbis⁽³¹³⁾ issues an appeal to the women of Israel.

"Therefore ye peaceful women hear ye my voice... Do that which the Lord requires of you and avoid that which is contrary to His holy will -- namely the Active and Passive Vote. Cherish your birthright, your motherhood and your strong influence over your husbands and sons... It is for our good as well as your own for you to be perfect and modest in your manners so that we will be through your influence upright and honest men... We must be careful lest we make a breach in the moral code which our sages made for our sakes. This is the very foundation of the beautiful sanctity of our family life."

CHAPTER VIII

SUMMARY AND CONCLUSION

and political conditions compelled these orthodox groups to modify their objections. Strange as it may seem, this very instinct of self-preservation which at first impelled them to oppose the franchise for women, in the end forced them to acknowledge that they must bow to the inevitable demands of their contemporary surrounding world. With the exception of the Agudas Yisroel, all of the groups recognized the right of the Jewish woman to vote.

I have attempted to present in this study a summary of the copious Halachic material written at this time both by the opposition and proponents of woman suffrage. Looking back today, after twenty years have elapsed, the whole turmoil may appear very archaic and obsolete, but even a cursory perusal of all the Responsa will show that in those days this question constituted a vital aspect of the ^{social and political} welfare of the Yishuv.

Notes

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P. 194 (New York, 1935)
2. Salo Baron, "The Social and Religious History of the Jews"
Vol. III, P. 149 (New York, 1937)
3. Lily Tobias, "Socialist Review" - Article
V. 16 - 1919
4. *ה'אבות' (נח) ירושלמי, פסוקים, חזקוני*
5. A. Revuvsky - op. cit; P. 194
6. Ibid
7. *ה'אבות' חזקוני, חזקוני, חזקוני*
8. *ה'אבות' חזקוני, חזקוני, חזקוני*
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9. Ibid Vol. 19-21, P. 3 - Nissenbaum
Esther Rubenstein - Vol. 45 - 49
- 9a. Kiddushin 34a
10. *ה'אבות' חזקוני* op. cit; P. 28
11. Lotta Levensohn, "The Jewish Woman of Palestine", P. 432 in
Jewish Library, Third Series, Edited by Leo Jung, N. Y. 1934
12. *ה'אבות' חזקוני, חזקוני, חזקוני*
13. See note 11.
14. See note 10.
15. *ה'אבות' חזקוני, חזקוני, חזקוני* op. cit;
16. "Passive" - term used in all the contemporary Hebrew
literature - English equivalent of Hebrew *ה'אבות' חזקוני*
"Active" - English equivalent of Hebrew *ה'אבות' חזקוני*
17. Rev. Dr. B. Jacob, "Jewish Women in the Bible", P. 12-17
Jewish Library - op. cit;
18. Exodus - 19:3
19. Mechillta - Exod. 19:3

20. Deut. 29:10
21. Deut. 31:12
22. Joshua 8:34
23. Nehemiah 8:2-6
24. Exodus 35:26
25. Cf. Samuel I 2:22
26. Deut. 12:11-12
27. Cf. Term "thou" found in Fourth Commandment - Exod. 20:10
28. See also Ibn Ezra - Exodus 20:10
29. L. Finkelstien, "Origin of the Synagogue", Proceedings of American Academy for Jewish Research 1928 - 30, P. 49-50
30. Deut. 23:4
- 30a. See note 29
31. Deut. 16:6
32. Erubin 96a
33. Deut. 14:28-29
- See also: Emily Solis-Cohen Jr., "Woman in Jewish Law and Life"
Philadelphia, Pa. 1932 - P. 47
34. Ibid P. 48
35. George Foote Moore, "Judaism" - Cambridge, Mass. 1927
Vol. II, P. 130, Note 5
36. Emily Solis-Cohen - op. cit; p. 48
37. George Foote Moore, "Judaism" - op. cit; p. 46 ff.
38. ^{Sukkah} Succot 61b
39. Emily Solis-Cohen, op. cit; p. 49
40. II Samuel 14:2, 20:16, 22.
41. II Kings 11:3
42. Josephus, "Antiquities" Book 13, Chapter 16:2

43. Judith 8:18
44. Salo Baron, "A Social and Religious History of the Jews"
N. Y. 1937, Vol. I, pp. 272-273
45. Succot 51b; Sanhedrin 82a; Yebamoth 62b
B. Mezia 59a; Sabbath 22a, 22b
46. Salo Baron, op. cit; Vol. I, p. 273
47. I. Abrahams, "Jewish Life in the Middle Ages"
Phila. 1903, p. 25
48. Mishneh Kidd. 1,7
49. Salo Baron, op. cit; Vol. I, p. 273
50. Yebamoth 77a
- 51a. ~~S. Shechter~~, "Titles Found in Ancient Epitaphs"
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55. Baba Basra 119 Maimonides - Yad H a c H
Sota 21b Yeb. 63b T T 1.13
56. Pesachim 49b
57. Tos. Kelim II 1,6
58. H. P. Mendes, "Position of Jewish Woman in Jewish Law and
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מאמר זה - "מלחמת מצור" חלק ב'
מאמר זה - "מלחמת מצור" חלק ג'

אברהם ז"ל שטיבלר - "גדנ'ן זכור הנשים" (כתובת יצחק)
הוצאת הוצאת "היוג" יצחק הוצאת "היוג"
104. כונקפנט תור"ה

64. Cf. "מלכי גת, דן, ויזע" (הלך רזיצה) - הל' ימות מכתבים
פ"פ הירושלמי נאיה }
P. 179 "גשערי" op. cit. }
מאיה, רזיצה, תר"ז" }
65. See above note 63
66. "גשערי" op. cit. p. 179
67. (1) "מלכי" (3) רשעים חייב מ' מ'
ר"ב "מקום שנהא"
(2) הנמ"א במו"מ מ' של"א
68. "מלכי"
ר"ב הנועליק
69. op. cit; געת הירושלמי
חלק"א וחלק"ב
70. Ibid p. 30
71. "מלכי"
ר"ב "מקום שנהא"
72. op. cit; p. 179 גשערי" ל' י'
73. op. cit; p. 28 געת הירושלמי
74. Rabbi David Hoffman, "Jeshurun" Vol. 5-6
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75. "Pedagogics of the Talmud", op. cit; p. 11
op. cit. "האש"ח חזקת"ס חוב"ה
S. Dickstein "האש"ח חזקת"ס חוב"ה
p. 14
76. Kidd. 29b, 30a
Kidd. 34a - Women are exempt from the commandment to
study the law.
76a. Baba Bathra 119a yoma 66 b M. Sotah 3, 4
Sotah 21b, ju. Sotah 19a
77. Beruriah Pesachim 62b Tos. Kelim II 1,6
Yalta - wife of R. Nachman Gitt. 67b
Ber. 51b. Sabbath 54b
78. Cf. Tos. Megillah 4 (3) 11 Megilla 23a
also G. F. Moore, op. cit; Vol. II, p. 131
79. G. F. Moore, op. cit; Vol. II, p. 128

80. Erubin 96a
81. "י'י' פ' י'רעז" op. cit; p. 178
82. Levit. 1:4
83. Hagigah 16b
Cf. Sifra - Chapter 2 (ed. Weiss p. 4b)
84. Hagigah 16b
85. Erubin 96a
86. Hoffman in "Jeshurun" op. cit; p. 519
87. Statute # 5
88. Statutes 4, 11, 12, 27 cannot be amended
89. "י'י' פ' י'רעז" op. cit; p. 176
- 89a. "א'י' פ' י'רעז" "A custom supersedes the Law"
T. Jerus, Yebamoth י'י' פ' י'רעז
B. Meziah י'י' פ' י'רעז
90. "י'י' פ' י'רעז" op. cit;
Kaher, p. 32
91. Exod. 30:12
92. Numbers 1;3
93. Numbers 14:36
94. Deut. 2:16
95. Exodus 32:1
96. "י'י' פ' י'רעז" op. cit; p. 177
97. "י'י' פ' י'רעז" op. cit; p. 34
98. "י'י' פ' י'רעז" op. cit; p. 34
99. Exod. 30:12 ff
100. Shekalim (Jer.T) י'י' פ' י'רעז of Mishnah Shekalim I, 5
101. Shekalim (Jer.T) י'י' פ' י'רעז of Tlishneh Shekalim I, 5
102. Ritter, "Jeshurun", op. cit; p. 443
103. Numbers 14:26ff

104. Deut. I;35
105. Hoffman, "Jeshurun", op. cit; p. 517
106. Numbers 14:26 ff
107. (1) "האזנה חזקת ישיבה"
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 p. 10
- (2) Ritter, "Jeshurun", op. cit; p. 448
108. Sifre - Deut. I v. 13 "האזנה חזקת ישיבה"
109. Ritter, "Jeshurun", op. cit; p. 448
110. Hoffman, "Jeshurun", op. cit; p. 520
111. Exodus 14:2, 3, 15, 17:1 19:1
112. Deut. I:12
113. Hoffman, "Jeshurun", p. 520
114. Numbers 15:38
115. Sifre - Numbers 15:38
- 115a. Tekushinsky, op. cit; p. 15
116. Targum Jonathan - Hai Gaon apparently regarded Joseph its author as he cited passages in Joseph's name.
117. Rashi - Micah 6:4 ר' נ cf also Malbim "האזנה חזקת ישיבה"
- 117a. See Kidd. 82a "Nor may a woman be an elementary teacher"
118. Numbers 15:15
119. "האזנה חזקת ישיבה" op. cit; p. 177
 Hoffman, "Jeshurun", op. cit; p. 446
120. Sifre to Numbers 15:15 "האזנה חזקת ישיבה"
121. "האזנה חזקת ישיבה" op. cit; p. 38
 Raphael - "האזנה חזקת ישיבה" - op. cit; p. 12
 Ritter, "Jeshurun", op. cit; p. 447
122. "האזנה חזקת ישיבה" op. cit; p. 12
123. Sifre, Numbers 15:15 "האזנה חזקת ישיבה"
124. Numbers 15:3

125. Malbim "התורה והמצוה" 5" 100"
126. Ritter, "Jeshurun", op. cit; p. 449
127. Sabbath 62a
128. Jeshurun, op. cit;
Rabbi Ritter finds Halachic support for this. He discovered in the Vilna ש"ס that one of the editors gives as basis for the opinion in Sabbath 62a that women are a separate congregation the Biblical verse Genesis 14:16
'פרו ורבו' אין ה' יצא את ארץ מצרים, 'פרו ורבו' wherein פ' is distinguished from 'פרו'.
129. Ber. VII, 1
130. Ber. VII, 2
131. Teckushinsky, op. cit; p. 15
Ritter, "Jeshurun", op. cit; p. 449
Israel Zea/Minzberg - "אורח חיים" Jerusalem 1920, p. 20
- 131a. "אורח חיים" 101
Further quotations found in "אורח חיים" - note 42 42 Exod. 13:9
132. Pesachim 79a, 91b
1933. Ritter, "Jeshurun", op. cit; p. 449
134. Zevachim 75a
135. "התורה והמצוה" op. cit; p. 25
136. Numbers 9:9 ff
137. Pesachim 91b
138. Horayoth 5b
193. Kidd. 35b
140. Baba Bathra 110b
141. Levit. 25:46
142. Deut. 11:21
143. Hoffman, op. cit; Teckushinsky, op. cit; Kasher, op. cit;
Ritter, op. cit; Minzberg, op. cit; Prial, op. cit;
Spitzer, op. cit;

144. Tchernowitz, op. cit; Levinsohn, op. cit; Hirshensohn, op. cit;
S. Dickstien, op. cit;
145. Yebamoth 45a
146. ה'כ"א מלך ישראל "כ"א" (ה'כ"א)
147. "קטל ער" p. 179, op cit;
148. Aaron Ha Levi מלך "ספר היחזק" Barcelona - 13th cent.
149. I Kings 11:42
I Kings 12:18 ff
150. "קטל ער" op. cit; p. 180
151. Ibid.
152. מלך מלך op. cit; p. 23
153. Hoffman, "Jeshurun", op cit; p. 519
154. מלך מלך מלך מלך
מלך מלך מלך מלך
מלך מלך מלך מלך
155. מלך מלך מלך מלך
156. 2 Kings 11:3
157. Josephus, "Antiquities" Book XII, Ch. 16
158. Hoffman, op. cit; p. 446
159. Ibid.
160. See below notes 184, 187, 188.
161. "קטל ער" op. cit; p. 183
Note 2 bottom of page
162. Josephus, "Antiquities" Book XIII, Chap. 15-16
163. Teckushinsky, op. cit; p. 22
164. Josephus, "Antiquities", Book XI, Ch. I
165. Josephus, "Antiquities", Book XIII, Ch. 15
166. Ibid. Book XIII, Ch. 16 end.
167. See above note 165.
168. H. Graetz, "History of the Jews" Vol. II, p. 40 ff.

169. Ibid.

169a. Josephus, "Antiquities", Book XII, Ch. 15

170. פ' ע' ע' ע' p. 180

171. Teckushinsky, op. cit; p. 22
מלחמת מדינה op. cit; p. 18

172. מלחמת מדינה op. cit; p. 19

173. "כוריות פ' ע' ע' ע'
מלחמת מדינה op. cit; p. 18
מלחמת מדינה op. cit; p. 22

174. R. Zlotnick
מלחמת מדינה op. cit; p. 22

175. See above, notes 157, 162, 165, 166

176. See above note 174

177. "מלחמת מדינה" op. cit
45-47 Esther Rubenstein

178. S. Dickstein in "מלחמת מדינה" op. cit;

179. Teckushinsky, op. cit; Ritter, op. cit; Hoffman, op. cit;
Kasher, op. cit; Raphael, op. cit;

180. Ibid

181. "מלחמת מדינה" op. cit
מלחמת מדינה op. cit; p. 181

182. פ' ע' ע' ע' op. cit; p. 181

183. Teckushinsky, op. cit; p. 23

184. Sifre - Deut. 1:13

185. Teckushinsky op. cit; p. 23

186. מלחמת מדינה op. cit; p. 181

187. Cf. 2 Chron. 13:5

187a. "מלחמת מדינה" op. cit; p. 33

188. See above note 183

189. See above note 125

190. מלחמת מדינה op. cit; p. 196-7
מלחמת מדינה op. cit;
110.

191. I Kings 10:1
192. Letter of R. Wachtvogel to R. Hirshensohn in "עצ'ק'ט" op. cit; p. 138 נ"ח נ"ח
- Elizer M. Prial תעודת פריאל "תעודת" op. cit; p. 263
Jerusalem 1929
193. Levit. 16:16
Yoma 2a
194. Sifre Deut. 17:15, p
195. Esther 2:2
196. Letter of R. Hirshensohn to R. Wachtvogel in "עצ'ק'ט" op. cit; p. 139
197. 2 Kings 11:3
198. Deut. 17:15
- 198a. Wachtvogel letter, op. cit; p. 138 נ"ח נ"ח
Letter of Rabbi Michlin in "עצ'ק'ט" op. cit; p. 110
E. Prial "תעודת" op. cit; p. 263
199. Teckushinsky, op. cit; p. 22
"עצ'ק'ט"
200. Letter of R. Michlin, op. cit; נ"ח נ"ח
201. עצ'ק'ט, נ"ח נ"ח op. cit; p. 197
202. Teckushinsky, op. cit; p. 26
203. Letter of Rabbi Prial to Rabbi Hirshensohn in op. cit; p. 106 נ"ח נ"ח
204. Teckushinsky, op. cit; Kasher, op. cit;
205. Letters of Rabbis Michlin and Prial to R. Hirshensohn in עצ'ק'ט op. cit; p. 106, 110.
Prial - "תעודת" op. cit; p. 262
206. נ"ח נ"ח, נ"ח נ"ח
נ"ח נ"ח, נ"ח נ"ח
207. Ta'anith 23a cf Pesachim 57a also Sifra Levit. 26:4
נ"ח נ"ח נ"ח נ"ח
208. Jer. Ter: VIII 46b bottom See also Jastrow sub "נ"ח נ"ח"
209. Letters of R. Hirshensohn in עצ'ק'ט op. cit; p. 196
210. נ"ח נ"ח op. cit;

211. Erubin 96a
212. Ibid
213. ר"ג"א - אגדות פק"ג
See also |ר"ג - Shukroth p. 30a
214. Hoffman, "Jeshurun", op. cit; Vol. Vi, p. 262
215. Teckushinsky, op. cit; Kasher, op. cit; Raphael, op. cit;
Israel Zeav Minzberg, op. cit;
216. "ספר החינוך"
מנהגי תפילה
217. Erubin 96a
Kidd. 34b
218. מלחמת מדינת op. cit; p. 18
219. מלחמת מדינת
14.1 אורח חיים
220. מלחמת מדינת
Text 14.1 - אורח חיים
221. M. Kid 34a
Erubin 96a
See above p. 66
222. M. Kid. 34a
223. Tchernowitz, op. cit; Levinsohn, op. cit;
224. Sifre - Deut. 17:15
225. קלעני' ר"ג op. cit; p. 178
226. Ibid
227. Ibid
228. D. Hoffman, op. cit; Levinsohn, op. cit; Dickstein, op. cit;
229. Levinsohn, op. cit;
230. Erubin 96a.
231. Tos. Rosh Hashonah 33a
Tos. Erubin 96a
232. D. Hoffman, op. cit; Vol. V, p. 462
S. Dickstein, op. cit;

233. Kidd. 36a
234. Hagigah, 16b
Sifra, Levit. 16:16
235. מלחמת מצור op. cit;
זרע הרקנים op. cit;
236. Hoffman, "Jeshurun", op. cit; Vol. VI, p. 263
237. הלכות מלכים^{נ"ח} ז"ל
238. Sanhedrin פ"ג פ"ג
Shuvuoth פ"ג פ"ג
239. M. Nidah (49b) VI. 4
240. Shuvuoth 30a
241. Tchernowitz, Levinsohn
242. תנאים שזוהר רישבין
שקלא תלמודא
13th cent. Talmudic Commentator
243. Spitzer in op. cit;
Raphael in op. cit;
244. Levinsohn in op. cit; p. 15
245. Tchernowitz in op. cit; p. 182
246. Raphael in op. cit; p. 17
247. י"ד פ"ג הבלכות
אבות שנים גזירות
מזבא קדמי יוסף - חנ"מ ס' 5
248. See above note 238
249. (יו"א מנח"י)
Warsaw Vol. 45-49
250. Kasher in op. cit; Raphael in op cit;
Spitzer in op. cit
251. R. Solomon Ibn Adret (1235-1300) רשב"א
R. Nissim of Barcelona (1320-1380) ר"ן
Tosofots
15th cent. ר"ב אבן-רמב"ם יוסף
פ"א אגרות
252. Jeshurun Vol. VI, p. 500

253. Gesinius
 "זע", breast
 "זע", mistress concubine
- 253a. "Jeshurun", Vol. VI, p. 501
254. Raphael in op. cit; Kasher in op. cit;
 Teckushinsky in op. cit;
255. Gittin 88b, Niddah 50a, Baba Kamma 15a, Shuvuoth 29a
256. חו"מ סי' י"ג
257. Tchernowitz in op. cit; p. 182
258. Tchernowitz, Levinsohn, Kasher in op. cit;
259. See above note 242
- 259a. רמב"ם ג' אורח חיים
260. See above notes 242, 247
261. Tchernowitz in op. cit; p. 182
262. Raphael in op. cit; p. 18
263. Tchernowitz in op. cit; p. 182
264. Kasher, Raphael, Teckushinsky, Ritter and Prial in op. cit;
265. Niddah 50a, Baba Kamma 16a, Gittin 88b
266. חו"מ סי' י"ג P. 11
 "Jeshurun" Vol. VI, p. 501
267. Tchernowitz in op. cit; p. 183 note
268. חו"מ סי' י"ג P. 11
269. Shuvuoth 29a
270. חו"מ סי' י"ג P. 12
271. Shuvuoth 29a
272. חו"מ סי' כ"ב וסי' י"ג
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273. חו"מ סי' כ"ב, אורח חיים
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274. Tchernowitz, Levinsohn

275. *דברי חובות* y. cit; P. 13
276. Shulchan Aruch *ד"ו*
Sanhedrin 7b
277. Prial, in op. cit; p. 261
278. Levinsohn in op. cit; p. 12
See also Horayoth 3b
ד"ו מ"ו כ"א י"
279. *ד"ו מ"ו כ"א י"*
280. Kasher, Raphael, Ritter
281. In Rosenheim Jubilee, volume op. cit;
282. "Jeshurun", Vol. VI, p. 504
283. Tchernowitz, in op. cit; p. 183
284. Tosofosts, Baba Kamma 15a
285. Baba Kamma 15a
286. *ד"ו מ"ו כ"א י"* op. cit;
287. Baba Kamma 15a
- 287a. Raphael and Teckushinsky in op. cit;
- 287b. *ד"ו מ"ו כ"א י"*
288. Prial in op. cit; p. 261
289. *ד"ו מ"ו כ"א י"*
290. "Jeshurun" op cit; vol. V, p. 446
291. Deut. 17:15
292. K. Adath Yisroel in Berlin
K. Jeshurun in Frankfort on Main
293. Teckushinsky, Rapael, Kasher, Spitzer in op. cit;
Chief Rabbi Kook in *"דבריו"* May 28, 1920 - New York.
294. *Shuvuoth 3/a*
295. Kook in op. cit,
296. *idem* cf *דברי חובות*
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297. R. Zlotnick in "ה'נח"ן אכ"ל" Vol. 35
298. Spitzer in op. cit; p. 37
299. See above note 131a and "ה'נח"ן אכ"ל" Note 42. Exod. 13:9
300. Hoffman in op. cit;
301. Teckushinsky in op. cit;
302. Kesuboth 72a
303. Frial in op. cit; p. 261
304. Minzberg "ה'נח"ן אכ"ל" op. cit; see Yoma 66b, Sotah 21b
305. Spitzer in op. cit; p. 15
306. Yoma 66b
307. Minzberg "ה'נח"ן אכ"ל" op. cit; ~~see~~
308. "ע"ז ק"ל" op. cit; p. 139
309. See Hirshensohn letter in "ע"ז ק"ל" - op. cit; p. 96
of T. Jer. Sotah 3"ד א"ד and Numbers Rabboh II:19
310. Mechilta to Exod. 19:3
311. ~~in~~ "ה'נח"ן אכ"ל" op. cit; p. 15
312. Spitzer in op. cit; p. 40
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314. R. Michlin in letter ^(*) to R. Hirshensohn
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