

Responsum on the Status of Women: With Special Attention to the Questions of *Shaliah Tzibbur*, *Edut* and *Gittin*

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A motion was passed on November 7, 1984 by a vote of 13-2 to table this paper. However, unlike other papers which are submitted to the Committee but not adopted, the motion stipulated that this paper would be printed in these Proceedings. Members voting in favor of the motion: Rabbis Kassel Abelson, Isidoro Aizenberg, David M. Feldman, Morris Feldman, David H. Lincoln, Judah Nadich, Mayer E. Rabinowitz, Barry S. Rosen, Joel Roth, Morris M. Shapiro, David Wolf Silverman, Henry A. Sosland and Alan J. Yuter. Members voting in opposition to the motion: Rabbis Phillip Sigal and Gordon Tucker.

Note: "On the Ordination of Women: An Advocate's Halakhic Responses" by Rabbi Mayer E. Rabinowitz and "On the Ordination of Women as Rabbis" by Rabbi Joel Roth, appear in The Ordination of Women: Studies and Responsa, edited by Rabbi Simon Greenberg, published by the Jewish Theological Seminary, 1988.

The preferred path for the Rabbinical Assembly Committee on Jewish Law and Standards in this era would be to issue a comprehensive resolution, a *takkanah* that would serve as an halakhic ERA. This would state that women are to be considered equal with men in all aspects of Judaic religious life, that no prior statement of the Torah, rabbinic literature, medieval or modern commentaries and compilations, whether aggadic or halakhic, should be construed in any manner as valid to prejudice this equality.

Since I am aware that such a visionary *takkanah* is not pragmatically possible, and since it is an impossible undertaking to anticipate here all possible particulars concerning every question of women's rights in the rites of Judaism, it will have to suffice to deal with three themes of

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

contemporary social and synagogue interest.

SHE'ELAH

- (1) May a woman serve as a *shaliah tzibbur*, a cantor or leader of public worship?
- (2) May a woman serve as a witness on a religious document such as a *get* or *ketubbah*?
- (3) May a woman issue a *get* to her civilly divorced husband?

TESHUVAH¹

Introduction

The three subjects encompassed in these multifaceted questions will constitute the bulk of this paper. But prior to directing my attention to these specific questions, it is important to set in place two related aspects. First, we must review the background in regard to where we presently stand with *hilkhot nashim* (halakhah related to women). Second, we must establish the substratum of theology or halakhic philosophy that underlies the halakhic preferences here expressed. At times these will overlap. At times it will be necessary to call for paradigm shifts. But without this introductory semi-halakhic discussion, the actual halakhic material will be *poreah ba'avir* (merely soaring in the air). Every halakhah must be rooted in a historic precedent and be justified by a theological or halakhic philosophical theory. Yet, at times the historic precedent will be one of spirit rather than letter, and the underlying halakhic theory will be a radical shift from the past. The basic creative rabbinic principles that legitimize this have all been transmitted to us in the classical texts, and it is only for us to have the mind to understand, the eyes to see and the ears to hear² (Deut. 29:3). The challenge might be issued that we have no right to claim that we are the first generation to understand how to approach *hilkhot nashim* and introduce radical innovations. But, that a particular generation becomes the first to perceive God's word has been legitimated by the Torah, for Israel is told it did not have the mind (heart) to understand, the eyes to see and the ears to hear *ad hayom hazeh* (until this day). Isaiah found his generation once again with minds, ears and eyes that would not function (Is. 6:10), and the erosion of Judaic commitment in the twentieth century, and the weakening of theological, intellectual and halakhic integrity, call for renewed efforts to understand, hear and see on a wholly new level.

In this regard this responsum will also contain aggadic perceptions

relevant to the halakhah, a process which is not unknown in the Talmud and among medieval and early responsa authors. Aggadah serves as an underpinning and rationale for halakhah, and in itself thereby takes on halakhic potency. It is recognized, for example, by a recent student of Maimonidean materials that Maimonides was prone to sprinkle aggadic midrashic comment throughout his austere halakhic Mishneh Torah. Above all, Maimonides was opposed to literalists who did not know how to interpret formulations of halakhah flexibly and indicted them as ignorant.³ Similarly, we must avoid the temptation to be literalists in relation to medieval and early modern *posekim*, decisors, or even to rely upon the contemporary decisors who are styled sociologically or denominationally as "orthodox." Thus, this paper is written within the context of a halakhic perspective that does not rely on the views of these scholars. This is so for two reasons: first, because comprehensive consideration and critique of all the sources would make this responsum unwieldy and disproportionate to its immediate functional purpose; second, because it is my conviction that it is our contemporary task to get back to classical sources and to leap-frog over the constraints and pietism written into the halakhah under the conditions of a closed medieval society and perpetuated by those *posekim* since the eighteenth century who either did so out of fealty to precedent or in polemic against the reforming movement since the eighteenth century.

Aspects of Past *Hilkhot Nashim*

The vast array of halakhah in which women suffered certain disabilities undoubtedly proceeds from a pre-Israelite society and the general subordination of women. The prominence of Genesis 2 in the argument is well - known, and that Gen. 2:16 ("he will rule over you") is the source of the problem has been thoroughly discussed. It is clear throughout the Torah that men are at an advantage in the halakhah. Fathers could sell their daughters, who did not enjoy the six-year limitation on their servitude as did men (Ex. 21:7). Occasionally, women were equal under the law. For example, when a master injured a slave the female slave enjoyed the same right of emancipation as did the male (Ex. 21:27). But daughters were subject to fathers, and later to husbands, on many levels of halakhah. Space and the purpose of this paper prohibit entering into further details until specific discussion calls these forth below in the limited themes to be examined.

But while there was a vast area in which women suffered subordination, there were also a number of matters in which women either already enjoyed equality or were in the process of evolving out of their disabilities. The daughters of Zelofhad are a case in point. They received inheritance rights,

but they were limited by two restrictive principles. First, women inherited only if there were no sons; second, they were not permitted to marry out of their tribe (Num. 36:8). Historical conditions changed and so did these limitations, and again aggadah had its impact upon halakhah. We, however, must eschew discussion about civil and criminal law and confine ourselves to matters of ritual and domestic relations relevant to the contemporary American experience.

There was virtual fluidity in the halakhah. In the process of female evolution out of halakhic constraint in rabbinic Judaism, women were very early permitted to serve as *shohetim*, ritual slaughterers of animals for kosher consumption.⁴ Nevertheless, while tannaitic and amoraic halakhah permitted women to slaughter, the medieval decisors set the clock back by opposing it. They declared that it is a *minhag* that they not do so and since *minhag mevatel halakhah* (a custom annuls a halakhah), it is therefore not to be permitted.⁵ This prohibition was not always observed, and evidence exists that in some places and in some eras women served as *shohetim*. A parallel exists in the case of *milah*, for which there is no reason that women were not to function as *mohalot* (circumcisers). Yet, in the course of time, the right to do so was taken from them.⁶

Under the category of *mitzvah shehazeman geramah* (mitzvot that are to be performed at a given time), women were barred from some and included in others. The Mishnah states:

...as regards a mitzvah determined by a specific point in time, men are obligated, women are exempt; but when a mitzvah is not determined by a specific time element, men and women are equally obligated....

The Tosefta includes donning tefillin in the morning as an example of a mitzvah determined by a point in time, while returning a lost article to its rightful owner is cited as an example of a mitzvah which is not determined by time.⁷ But it has too long been ignored that there is a vast difference between not being "obligated" and being "prohibited." Women were *peturot* (exempt) from certain rituals, but not prohibited, and were always allowed freely to participate in those rites that men have zealously guarded as their own prerogatives.⁸ The Amoraim saw clearly that the principle that women were exempt from mitzvot dependent upon time was inoperative, pointing to the eating of matzah, which was obligatory only on the first night of Pesah, yet which pertained to women equally with men.⁹ I have argued in the past that *tefillah*, at least in its technical sense (the *Amidah*), is obligatory upon women and that it is to be prayed at public worship, which is mandatory for women equally with men. Admittedly, this has been debated, but in my view, this is the simple meaning of the Mishnah, and this obligation for public worship places women in an halakhic posture to

have equal rights with men and to be included in the quorum that makes that public worship possible. This position -- that women are equally obligated to participate in public worship -- finds its primary seed in the recognition that women were included in the mitzvah of *hakhel* (assemble--Deut. 31:12). Some might argue that the Torah's context refers only to Sukkot in the sabbatical year, but then one might argue as well that men too are only obligated to hear the Torah read once in seven years. Instead, we have affirmed the custom of reading the Torah publicly even though no command appears in the Torah other than this one to read it on Sukkot every seventh year.¹⁰

Similarly, the Amoraim argued that women were not obligated to perform every mitzvah which was not determined by time. Thus, they argued, men and not women were enjoined to study Torah, to reproduce and to redeem the firstborn.¹¹ Certain anomalies arose. Women were exempt from reciting the *Shema* as a mitzvah determined by time, but obligated to recite the *tefillah*, which was also determined by time; exempt from donning tefillin, determined by time, but obligated to recite Grace After Meals. Although Grace is clearly related to time, by rabbinic fiat it was declared not to be. In this and many other particulars, the principle of "mitzvah determined by time" -- and its reverse -- became a patchwork of contradictory halakhot and cannot serve as a rational basis for contemporary practice.¹²

The time is long past to have to consider seriously certain of the aggadic aspects which have been responsible for the subordination of women in Judaism. Nobody outside of some extremist ultra-orthodox circles would subscribe any longer to the unfortunate proposition of otherwise astute ancient Sages that women were *kalot da'at*, in some way mentally, psychologically or temperamentally inferior to men.¹³ Actually, the case given in one instance is that a man may not be alone with two women because women are so constituted as to submit to a man even when there are two women together.¹⁴ From our modern experience, we know that in some cases this is true. But we also know that two men might take tragic advantage of one woman and this would refute the Mishnah's second clause that one woman may be secluded with two men. Furthermore, since it is the man who will presume to tempt the two women in the first case, we ought to really conclude that men are equally sexually embroiled and are also to be described as people whose minds are *kalot*. In any event, the halakhah is not furthered by these tenuous statements. One case where the expression is used, for example, relates to whether or not a woman can withstand torture.¹⁵ It should be clear that neither can all men, and if women are to be excluded from certain rights under the halakhah on such grounds, then so should men. The point here is that this obsolete aggadic evaluation of women should not enter a modern discussion, and yet since it

is there and has been used by halakhists down through the centuries, it must be rejected. It is perhaps illustrative of the desire to curtail advances in the status of women that the Talmud discusses R. Eliezer's negative view, but does not comment upon Ben Azzai's affirmative view, that "a person is obligated to teach his daughter Torah."¹⁶ The attainments of R. Meir's wife, Beruriah, apparently had no special effect upon women in general. Despite certain sentiments that urged tender treatment of women, the caution toward male-female interaction suggested by Yossi ben Yohanan of Jerusalem seems to have prevailed, as is seen in the extreme inference of other Sages that women could lead one to Gehinom, and consequently they had to be kept in place.¹⁷ The philosophy of R. Eliezer pervaded amoraic and medieval halakhah and continues to inform contemporary groups styled "orthodox." It all boils down to R. Eliezer's view that women should stick to their distaff.¹⁸

Over the past century, many of the inequalities endured by women were modified. Thus, very early in the history of the Conservative movement mixed seating and equal educational opportunity were offered to women and this was followed by equal rights in the governance of synagogues. Bat Mitzvah and *aliyyot* became common, although the latter was not normalized until the late 1950's. The problem of the *agunah* was solved and women were included in the count for a minyan during the 1960's and 1970's, respectively.¹⁹ These were all serious innovations and departures from tradition. Other inequalities related to women fell into desuetude without halakhic action, such as the entire complex of menstrual halakhah.²⁰

In truth it should no longer be necessary to expound upon the questions of a woman serving as a *shaliah tzibbur* to lead a congregation in public prayer or whether she has the right to serve as a witness, for example, on a *ketubbah*. Although, like its position on Yom Tov Sheini and other innovations, these have been well-kept secrets, for the Committee on Jewish Law and Standards is already on record as of June 10, 1974 by a minority vote of six that women may serve as witnesses and by a minority vote of three that they may serve as cantors. In any event, since both questions continue to remain in dispute, they are here considered anew.

Like the question of the study of Torah, the right of a woman to give testimony is significantly related to the contemporary question of the ordination of women.²¹ As far as a woman giving testimony is concerned, it is clear that under certain very special circumstances, some ancient rabbis were inclined to oppose their more conservative colleagues and allow the testimony of an *agunah*.²² These rabbis undoubtedly were uncomfortable with a blanket prohibition against allowing women to testify, since there was no basic source for this in the Torah. It was based rather on midrashic understanding set into concrete as halakhah, the product of male preference.²³ As we wrangle with issues of equal import as the *agunah*,

namely, the granting of equal dignity and social justice to women, we too can set aside other halakhot, as they did, in order to create a sweeping new one in tune with the *aggadah* of feminine equality that prevails today. After all, the rabbis who permitted a widow to testify as the sole witness to the death of her husband did so contrary to the Torah, which prohibited any matter which relates to sin to be settled by one witness. For the good of society, they even allowed second-hand testimony from one who was not an eyewitness. True, R. Eliezer and R. Akiba attempted to abort the innovation attributed to Gamaliel I, but this is only expressive of the consistent tension that prevailed in rabbinic halakhah and not concrete evidence that women ought not to be accepted as witnesses.²⁴

The third theme to be explored below is the right of a woman to issue her own *get*. There is no question that she is allowed to write it, give it to her husband and then receive it back from him in accordance with the halakhah of transmittal of *gittin*.²⁵ And yet, again, as in the cases of *shehitah* and *milah*, women have effectively been barred from the profession of *sofer* (scribe). But more important, the requirement that a *sofer* write the *get* in the antiquated style of centuries ago and the perpetuation of obsolete halakhot of transmittal, all dating to an age lacking in our technology and telecommunications, must come under renewed scrutiny.²⁶

May A Woman Be A *Shaliah Tzibbur*?

By the term *shaliah tzibbur*, we have in mind the person designated by a quorum of worshippers to lead in the fulfillment of a mitzvah, such as reading Megillah, reading Torah, sounding the shofar, leading Grace, Kiddush or Havdalah, and leading public worship as cantors. Although women were subject to the same civil and criminal code as men, they were not permitted to hold judicial office or give testimony, and were similarly denied equal privileges in the area of religious rites.²⁷ However, the participation and leadership of women in all facets of public worship is of utmost contemporary interest.²⁸

It is clear from our sources that at one time women read from the Torah before the public. This is the only meaning that can be attached to the tannaitic source that informs us that women are eligible as participants in the quorum of seven that are called to the Torah on the Sabbath. Only later were women declared ineligible to read from the Torah "out of respect for the congregation," and yet there were some medieval scholars who conceded that there is no real impediment to their reading before the public.²⁹

In this same way, in the halakhah governing sounding the shofar, earlier leniency was replaced by escalating restrictiveness as time progressed. The

shofar question might even be regarded as a paradigm. The Torah tells us nothing. It is axiomatic, however, that women are obligated to observe the holy days listed in Leviticus 23. Thus, it can be said that women are included in the mitzvah of the sounding of the shofar (v. 24), just as they are included in the command to do no work (v. 25). This proposed exegesis runs afoul of the notion that women are included in all prohibitions but not in all positive precepts. But this should not disqualify this exegesis of the verse. As a matter of fact, in the other source establishing the first day of the seventh month as a day of sounding the shofar (Numbers 29:1), the prohibition on work and the command to sound the shofar are recorded in tandem, and there is every reason to include women in the latter if they are included in the former. If anything, therefore, one might legitimately conclude from the Torah that women are included in the mitzvah of the shofar and are therefore also eligible to sound it.

Even if we do not proceed by my exegesis of Numbers 29:1, it appears to be the position of the *Tosefta* that women may sound the shofar. The *Tosefta* reads: "One prevents neither women nor children from sounding the shofar on Yom Tov." This is understood by some Amoraim, and is so explicated by Rashi, as being a logical deduction from the fact that even if women are exempt from a given mitzvah it is not prohibited.³⁰ The immediate example given is the mitzvah of *semikhah* (the laying on of hands upon a sacrifice). Leviticus 1:2 speaks of the *benei yisrael*, which is translated literally as "sons," and it is therefore interpreted as saying that when males bring an *olah* they lay on the hands (1:5), but females do not. Yet, some sages maintained against this exegesis, that even if women were not included in the mitzvah of *semikhah*, they were allowed to do so as a matter of *reshut* (a voluntary acceptance of the mitzvah). The natural inference from such a statement is that if women choose to sound the shofar, first, they may do so; second, they may do so on terms equal with men, which means they too may recite the required *berakhot*.³¹ Furthermore, although R. Gamaliel said that a *shaliah tzibbur* enables the congregation to discharge its obligation in the context of sounding the shofar, it curiously remained a long-lasting debate as to whether this applied only to the *berakhot* of the shofar (*Malkhuyot*, *Zikhronot* and *Shoferot*) or to the year-round *Amidah*.³² The point is that some Sages refused to accept the notion that anyone can be a surrogate worshipper for others. Thus, Alfasi expounded the text by indicating that in year-round prayers everyone who is competent is individually obligated and his obligation cannot be discharged through a prayer leader. The *shaliah tzibbur*, therefore, was seen by some only to be enabling the discharge of obligation on the part of those who could not pray themselves.³³

In this way, too, it should be understood that if a woman is eligible to recite the *berakhot*, she is also competent to enable those who are unable to

do so for themselves to discharge their obligation.³⁴ In addition, there is no explicit prohibition placed upon a woman to keep her from enabling the public to fulfill its obligation (even in a context where this could have been done) when, for example, a deaf mute, an imbecile and a minor were so barred.³⁵ On the other hand, when the *baraita* says *hakol*, everyone is obligated to the sounding of the shofar -- and then lists many categories of people, but not women -- there need be no inference that they were prohibited from shofar. It is merely informing us that they were not obligated and, as in the case of *semikhah*, there is open for them the option of sounding the shofar as a matter of *reshut*. But again, once they have accepted the obligation, they may recite the *berakhot*, and become eligible to enable others to discharge their obligation.³⁶ It was not the tannaitic or amoraic sources that prohibited women from sounding the shofar, but later *posekim* who escalated restrictiveness in the matter. Yet, some later commentators gave us a foothold for innovation when they held that because women have intelligence, and the capacity to make deliberate commitments, they may include themselves in an obligation from which they have been exempt, and by so doing they can recite any *berakhah* for any *mitzvat aseh*. Isserles affirms this, although only on a private level, and is silent about enabling the public to discharge its obligation.³⁷

The outcome of our discussion of shofar is that although prevailing opinion seemed to maintain that women were not explicitly originally included in the *mitzvah*, they were not prohibited, but rather enabled to accept it as *reshut*. Some Sages took this to mean that if they acted on this and included themselves voluntarily in the *hiyyuv*, they were also entitled to recite the *berakhot*. One need not have much imagination to take this a step further and argue that once they were included in the *hiyyuv*, they also acquired the power to enable the public to discharge its obligation. Indeed, so too can the limited advice of R. Asher -- to teach women the art of shofar sounding -- be expounded to teach it to them in order to enable them to function in that capacity in our synagogues.

The paradigm of shofar is reinforced by what we know regarding other rituals. It should be applied to the question of *shaliah tzibbur* not only in its limited capacity of leading worship, but in all situations in which one person recites before a congregation, whether *Birkat Hamazon* or *Birkat Hatanim*, Kiddush, Havdalah, and the like.

Thus, women were eligible to read the Megillah on Purim since the Mishnah explicitly stated *hakol* --everyone is eligible except a deaf-mute, an imbecile and a minor. Obadiah of Bertinoro was careful to explicate that this did include women. In this case, Bertinoro was simply echoing a talmudic precedent, and ignoring the opposing view recorded in the Palestinian Talmud.³⁸ In this, as in almost all other cases, we find a diversity of views. But most important, as in the case of a woman reading

the Torah in public, we find that the earlier halakhah was more amenable to the rights of women while the later halakhah was more stringent.

We have here two instances in which women were originally eligible to lead a public worship gathering: the reading of the Torah and the reading of the Megillah. The reason this right was not similarly extended from the beginning to leading a gathering in prayer or sounding the shofar can only be guessed. It might be argued that hearing the reading of the Torah and the Megillah were different because they were held by some to be an obligation of women as well as of men, and women were therefore eligible to enable others to discharge their obligations, but that this would not hold true for prayer.³⁹ One medieval scholar, the fourteenth-century commentator R. Nissim, argued that since women are obligated for fulfilling the mitzvah of Megillah and can enable men in the congregation to discharge their obligation and since minyan is required for its public reading, a woman can be included in the minyan for reading of the Megillah.⁴⁰ It is, however, possible that there was an entirely different reason for barring a woman from leading worship. Reciting *berakhot* and a text were perhaps held by some to be a non-musical form within the acceptable limits of listening to a woman's voice, but chanting a worship service or playing upon a musical instrument might have been thought of as banned because women were not to lead singing groups.⁴¹ It certainly was not because women are not obligated for *tefillah*, because they are. And since they are obligated, they should be eligible to enable men to discharge their obligation.⁴² This problem becomes more complex since it turns on the question of whether women were also obligated to participate in public worship. If they were not, then they would not be eligible to enable others to discharge their public worship obligation.⁴³ This question has been debated and need not detain us here. The Law Committee has in any case already resolved that "men and women should be counted equally for a minyan."⁴⁴ This practice is now widespread and can be considered an established *minhag* approved by an overwhelming majority of the Conservative movement. Thus, in accordance with the principle that *minhag* is halakhah, since women have accepted their obligation as part of the public worship process, they can also enable men to discharge their obligations.⁴⁵ The opposite will be argued by those who oppose this innovation, that one must not depart from the *minhag* of the past, but it is also established that when a *minhag* has lost its force it is no longer operative. Furthermore, our practice in North America should not be considered from the point of view of whether it will cause diversity in international Judaism or repel visitors, because *minhag hamakom* is a valid concept.⁴⁶ By design or by inaction, the Law Committee has allowed the views against hearing a woman sing to fall into desuetude, and these views no longer stand as a barrier to a woman serving as either a *shaliah tzibbur*

or cantor. Within the context of modern society, it is irrelevant to dwell on the distinctions between *hazzan*, cantor, and *shaliah tzibbur*.⁴⁷ Whatever other duties may devolve upon any person holding these titles, our discussion concerns whether a woman under any of these three titles may lead a congregation in worship as she may read the Torah and Megillah.

The problem of who can be a prayer leader, however, is also bound up with the question of whether the leader actually enables the worshipper to discharge his or her obligations, or put more strongly, whether he or she is even competent to do so. The weight of halakhah points in the direction of the inability of anyone today to fulfill the obligation of others. This is largely because every worshipper today is able to fulfill his or her own obligation, prayerbooks being available and translations into the vernacular accessible.⁴⁸

The problem of whether or not a woman may serve as prayer leader is complicated by an intricate network of related halakhic principles concerning which Amoraim, medieval commentators and *posekim*, both *Rishonim* and *Aharonim*, exercised a great deal of dialectic and *pilpul*. None of this is considered here because of the fundamental conviction that the way in which the modern halakhic process should operate is to cut through the thicket of encrusted *pilpul* and get back to radical halakhic statements. When we do this, we find nothing in the Torah or in tannaitic literature to prohibit a woman from serving as public prayer leader. In the absence of a clear halakhic prohibition in the early primary sources, it is apparent that later prohibitions drawn from extraneous principles such as *mitzvot aseh shehazman geramah, hiyyuv*, and whether the *hiyyuv* is Torahitic, rabbinic, or self-imposed, were rooted in aggadah related to male psychology, cultural conditioning and historical circumstance. Thus, beginning with such statements as "Do not increase conversation with a woman," through "The *yetzer hara* only has dominion over what the eyes see," "Satan was created along with woman," "The voice of a woman is *ervah* (a source of lewdness)," the escalation went on until some sages declared an *issur* upon gazing at a woman's little finger.⁴⁹ Indeed, one can cite numerous sayings praising the piety and dedication of women, the tender respect of God for women, even of their primacy in the giving of the Torah and in the covenanted assembly.⁵⁰ But none of this carried over into later halakhah or practice. The sum of our discussion is that contemporary social reality impels a new aggadah in which a new halakhah is rooted. This aggadah would be one of utter equality between men and women in all phases of life, and the halakhah must therefore allow to women every right and privilege allowed to men and deny to men any right or privilege it denies to women. We must never forget in dealing with either an individual or a whole segment of society, in this case women, that a pervasive factor in rabbinic creativity that evolved ancient halakhah was the humanitarian

approach.⁵¹ If this did not always motivate a progressive process in their halakhah related to women as it did, for example, in their consideration for the poor or in regard to selecting leniency over stringency, this can only be attributed to their cultural conditioning. In consideration of all the above, the right of a woman to serve as a *shaliah tzibbur* should be affirmed. Further, the obligation of our congregations to begin forthwith the implementation of this *heter* by training and rotating male and female prayer leaders when a professional cantor is not the leader, should also be affirmed.

May A Woman Testify?

There is no Torahitic prohibition against women serving as witnesses. Any view propounded to the effect that there is, is a rabbinic view stating that something is Torahitic when in fact it is not. Not even the *gezerah shavah* upon which the rabbis based their view that a woman may not serve as a witness is irrevocable.⁵² Any contemporary scholar seeking to flesh out the rabbinic view into a Torahitic one is only compounding the problem. Talmudic citation of verses to support the banning of female testimony is only an effort to rationalize the socially conditioned halakhah.⁵³ Maimonides offers the rather lame argument that the Torah's command that a matter be established by two witnesses is given in the masculine gender. It is axiomatic that the masculine form of the Torah's commands in the area of civil and criminal law all apply to women.⁵⁴ For that matter, if one were to take Maimonides seriously, one would prohibit wives from the celebration of Sukkot or Shabbat, for Deuteronomy 16:14 and Exodus 20:10 (par. Deut. 5:14) are given in the masculine and include everyone in the command to rejoice and to rest, respectively, except the wife of the male addressed. Similarly, one would infer from the masculine gender of Deuteronomy 16:19 prohibiting bribery, among other things, that a woman may bribe.⁵⁵ It is also apparent from rabbinic sources that women were accepted as witnesses in various situations.⁵⁶

Why women were generally banned from giving testimony can only be speculated, but unquestionably it was a matter of cultural conditioning. The rabbis were hard put to deny equal rights to women in this matter in the face of the principle that men and women were equal in all matters pertaining to *dinin*.⁵⁷ It would imply that if they are subject to the laws of torts, then fairness requires that their testimony be accepted; that if they are subject to all *onshin* of the Torah and to the death penalty equally with men, then equity demands that they be accepted as witnesses.⁵⁸ The ban on their testimony weighed heavily upon the rabbis and unfortunately they struggled to justify it. We actually have no way of knowing whether the women of

Israel were earlier permitted to give testimony equally with men, but we can make two inferences that they were. First, the silence of the Torah as to a prohibition indicates they were not prohibited, and when the Torah originally said that a matter should be established by two witnesses, it was sexually neutral. Second, assuming cultural conditioning on the part of the Torah, as well as the rabbis, earlier Torahitic provisions might be seen in the light of other Near Eastern practices. The weight of scholarship seems to indicate that women served as witnesses under old Babylonian law.⁵⁹ Undoubtedly, the masculine form in which ancient laws were phrased was due in part to a male sense of superiority seeking to subordinate a class of society, but also in part simply because civil and criminal laws were generally more relevant to men. Although some women did, the overwhelming mass of women did not mix in the arena of business, commerce and finance.⁶⁰

The rabbis thus held women in both high esteem and low esteem, and it is probably better to say "some rabbis" rather than "the rabbis" and to qualify the entire matter by saying that the ambivalence and lack of consensus yielded a discriminatory halakhah. Clearly, the humanitarian factor intervened when they permitted one witness, even a woman, and even the widow herself, to testify concerning the death of a missing person, and thus ameliorate the *agunah* condition.⁶¹ This very waiving of their own restrictions and the Torah's requirements indicates that the rabbis were perfectly aware of the inequity of the ban on female testimony. But more important, as they abrogated a whole array of halakhot because of the *agunah*, we can abrogate a whole array of halakhot because our attitude to the character and the position of women in our society is a new one.

In his in-depth analysis of the possible options we have in the matter of disqualifying the rabbinic ban on female testimony, Joel Roth is concerned that a *gezerah shavah* is "ultimately Sinaitic..." based "...on Divine exegeses which the Sages merely conveyed, but did not originate."⁶² The sages certainly did not originate them because some were already known to Hellenistic rhetoric.⁶³ That the view derived by a proto-rabbi or a rabbi from a *gezerah shavah* should be considered of divine origin is at the very heart of our philosophy of halakhah. I have no objection to considering rabbinic halakhah as the fruit of the revelation of the holy spirit and as a conveyance of that revelation.⁶⁴ However, we must insist that this same power of the spirit resides in our work. The rabbis felt free to abrogate even what was in the Torah, and we should feel as free to abrogate obsolete rabbinic restrictions that are no longer justified by our socio-cultural orientation and philosophy of life.⁶⁵

The argument has been offered that rabbis felt free only to abrogate a Torahitic precept in a negative way, that is, by doing nothing to carry it out, but this is rather specious. It has been correctly pointed out by others that

when the rabbis allowed a woman to testify in the case of an *agunah*, they were abrogating what they declared to be a Torahitic precept in a very active way by acting contrary to what they claimed the Torah said. The view of Tosafot, therefore, that the rabbis do not have the power to abrogate a Torahitic precept by a positive action taken contrary to what the Torah requires is palpably a misreading of the ancient principle, although to the credit of the Tosafist, he guardedly retreats from that position to allow for exceptions.⁶⁶

In his analysis, Joel Roth raised the question of the reaction of other segments of the Judaic spectrum.⁶⁷ If we use women as witnesses on *ketubbot*, *gittin* and conversion documents, for example, will these documents be accepted by the traditionalists of our own movement, by those who style themselves "orthodox," and by the Israeli rabbinate? Roth's confidence that these groups would accept halakhic decisions of the Seminary faculty when they do not accept Law Committee decisions is obviously a phantasm. His appeal for the faculty to abrogate the prohibition against women serving as witnesses is a disservice to many competent halakhists and *posekim* who are not faculty members. The myth that authentic scholarship reigns only in academia is offensive and we should be the last to give it credence. In any event, while our traditionalist colleagues might or might not have availed themselves of the Lieberman *ketubbah*, those who style themselves "orthodox" and the Israeli rabbinate certainly did not. Furthermore, it is utterly unacceptable to me and, I am confident, to a large segment of our colleagues and constituency, to adopt the obsolete concept of *halakhah ve'ein morin kein*. But what is most significant is that once we declare a matter to be halakhah, we can certainly follow it and even if the faculty connivingly declared *ve'ein morin kein*, this would not placate the opponents of all that our movement does halakhically; for every *ketubbah*, *get* and conversion document would be brought under suspicion in their eyes. Much more apt is Roth's view that the concern for the unity of *klal Yisrael* is a two-way street, and the recalcitrance of others would be as much to blame for schism as our innovations.⁶⁸

In light of the foregoing, the Committee on Jewish Law and Standards should declare that the prohibition against women giving testimony is abrogated, or alternatively, that the testimony of women will hereafter be accepted equally with that of men in all instances where the halakhah requires witnesses.

May A Woman Give Her Husband A *Get*?⁶⁹

The giving of a religious divorce document remains a desideratum for the

Conservative movement. Just as we begin marriage under the auspices of religion, marriage should be terminated under the auspices of religion.⁷⁰ But the machinery involved in securing a *get* is cumbersome and leads to great reluctance on the part of many to subject themselves to the complex arrangements. What has been missing from the agenda of Judaic halakhic scholarship concerning *gittin* is a profound reconsideration of the whole institution from its roots.

There is a great need to reconstruct the entire halakhah governing *gittin*, and now is the time to do it, when the question of whether a woman may issue a *get* is a pressing one. The ancient right of the husband to divorce his wife is only the major issue to be considered. In truth all aspects of the halakhah must be modified and even largely abolished.⁷¹ Although many ameliorations were made to the original harshness embodied in the power of the husband -- for example, the granting to the woman of the right to sue for divorce under a variety of circumstances -- this basic obstacle to a woman's free access to severance of her marriage has never been removed.⁷² The Rabbinical Assembly's *tenai bekiddushin*, which empowers a *beit din* to annul the marriage in the event that a husband or wife procures a civil divorce and the recalcitrant husband refuses to issue a religious divorce, is not a solution but rather a circumvention. True, it offers hitherto unavailable kindness to the woman, but it remains a patronizing embodiment of male domination.⁷³ Earlier ameliorations during medieval times were significant for their day, but for today, those and the *tenai* are inadequate. All that has been accomplished over the centuries is that the rabbis allowed for certain limitations upon the husband's initiative. Through many centuries of halakhic evolution with projections of liberality and reasonableness at times, the halakhah governing *gittin* retained one persistent historic shortcoming still applicable today. This is the inequity whereby the husband has the sole power to order the execution and delivery of the *get*.

There is no need here to discuss the moral legitimacy of the institution of divorce in Judaism. The biblical view presupposed both the right to terminate a marriage and the right for the severed partners to remarry with others. The recognized way to sever the marital relationship was evidently for the husband to write a *sefer keritut*, a term which in this context had the same meaning as the Latin *divortere* (to separate from), whence we derive our English term "divorce."⁷⁴ There is not a shred of evidence to indicate what this severance document contained, how it was written, what procedures were followed in executing and delivering it, or whether there was any religious ceremony involved. There is no hint of any method used to safeguard against falsification. There is no evidence that the husband was in any way involved with elders, judges, witnesses, priests or Sages. The silence of the Torah on these and other matters is eloquent. It informs

us that what we have is the evolution of post-Torah halakhah and reminds us of our own right to engage in the process. Actually, while the Torah superficially appears to have institutionalized male power, the very institution of *gittin* must be seen as a radical revolution on the part of the Torah in the long process of the emancipation of women, analogous to the rights of women to inherit their father's estate where there are no sons (Num. 27:1-11). Prior to the introduction of a formal severance document, the husband was free to summarily discharge his wife, throw her out of his home and doom her to destitution. This documentary evidence of her divorce, however, gave her the right to remarry and seek a new life. The very need to collect himself, furthermore, after a fit of impulsive anger, in order to execute a written document might serve to compel him to rethink his intention and to preserve the marriage.

Thus, the *get* in its origin can be seen as protection of the woman against high handed tyranny of a dominating male in an ancient patriarchal society. That *gittin* were designed for the benefit of women is further seen in the ongoing increase of restrictions placed upon the husband and the extension of the rights of the wife. In general, as the sages provided changes in the halakhah, these changes were rooted in the philosophical base of *tikkun ha'olam* (the improvement of the world, the public good or humanitarian concern).⁷⁵ It was in line with this general tendency to mitigate the husband's power that the *ketubbah* was introduced. Although we are no longer able to determine when this took place, it was certainly pre-rabbinic, since it is alluded to in apocryphal literature (Tobit 7:14). This was another revolutionary document that had wide ramifications for the emancipation of women rooted in economic independence. Although no manuscript evidence for it is available, it is attested by reliable sources that a significant step forward was taken by a takkanah of R. Gershom in the late tenth or early eleventh century in which he banned any divorce without the wife's consent.⁷⁶

The tendency in halakhah to alleviate the hardship of divorcee came to a dead end in pre-modern times. The numerous minutiae that were developed connected with the right to issue a *get*, the manner of writing it and transmitting it, became technicalities protected by the aura and mystique of "tradition." Our energies in recent generations were expended in the struggle to conserve *forms*, often forms empty of religious significance. In certain modern countries, the courts are neither "Jewish" nor "non-Jewish," but belong to all citizens and operate on a secular basis. The category called "gentile courts" in the rabbinic tradition that were to play no role in *gittin* has no bearing on our halakhic considerations. In modern society, where church and state are separate and Jews are integrated into society, divorce is a civil matter and it is the civil divorce that functions in our lives, not a religious one. Consequently, the principle of *dina demalkhuta dina*

would be adequate to allow remarriage with only a civil divorce. This might be suggested as one way to overcome the challenge of radically restructuring *hilkhot gittin*.⁷⁷ But in my view, it is not the abolition of *gittin* that is required but a radical restructuring of divorce procedures.

There are many aspects of the tradition that call for courageous, imaginative and innovative adaptation. The Mishnah teaches that a *get* may be written on any material and with any substance that leaves a permanent mark.⁷⁸ There is no reason why we should not allow a *get* to be written by hand in an indelible ink, produced in calligraphy, typed, produced on a word-processor, or in whatever form we choose, on vellum or bond or whatever paper we select, and in the English language. There is simply no reason to perpetuate the traditional need for parchment or especially heavy white paper, a quill, and specially concocted ink with a trained scribe copying an exact form of Hebrew block lettering, beginning over again each time he commits a minor error. The *get* could be mass-produced with spaces available for names, places and dates, in the same way as the *ketubbah* is mass produced. It could be executed in a rabbi's study by husband or wife with the rabbi and two witnesses, just as a *ketubbah* is filled out.⁷⁹

The mystique of the *get* should be punctured. It is, in reality, like the *ketubbah*, a superfluous document. It has symbolic value only. The *get* settles no property rights and establishes no obligations. Nevertheless, because we deem symbolic value to be a potent element of religion, we would preserve it. This, however, does not justify the perpetuation of the halakhic minutiae and restrictions involved in the particulars of the procedures related to materials, writing, delivery and the complications of *hilkhot shelihut*. A case in point is the complex approach to the problem of a person's accurate Hebrew name. Our lives function according to our legal names and these are accurate and registered. Since the *get* has only symbolic value, the Hebrew names as used on the *ketubbah* might be used without concern for accuracy while the legal secular name would also be used.⁸⁰ If the wife were empowered to issue the *get*, all the *shelihut* requirements related to the husband's order to write or deliver the *get* would be removed. The modern postal service is eligible to deliver a certified or registered letter to the husband or the wife, as the case may be, in order to avoid all the constraints of *shelihut* from either side. The requirement that an expert be the *sofer* of the *get* is a relatively late development which is probably no earlier than the late second or early third century, since it appears to be a tradition attributed to Samuel, and not yet universally accepted at a later date.⁸¹ As long ago as 1972, I wrote in this connection :

"...it should not be impossible for her [the wife] to appear before the rabbi by whom she seeks her remarriage to be blessed, and to receive

from him an appropriate document severing the religious bond of *kiddushin*...."⁸²

Nothing that I have come across in *hilkhot gittin* since then has led me to change my mind. Any person, including the woman who was a party to the *get*, and even an imbecile, could write a *get* as long as a *bar da'at* supervised it. Obviously, this requirement would be fulfilled if the Rabbinical Assembly Law Committee issued a standard document. The important phase in the process is the attestation of the document by two competent witnesses.⁸³ The ancient sages recognized that times change and social styles involving documents and procedures also change. When they encountered such changing times, they accepted reality with equanimity and introduced new halakhic arrangements. In this way too, we can trust a standard *get* form which would be executed in a rabbi's study in an unaltered manner. We can rely upon the trustworthiness of the postal service regardless of the religion of the carrier; and we can rely upon a *beit din* of our colleagues to properly adjudicate any problems that might arise from either a husband's or wife's allegations that there were any improprieties.⁸⁴

The historic reality is that blank forms of *gittin*, *tofsei gittin*, existed prior to the third century. They were eliminated by a fanciful exegesis of Deuteronomy 24:1 in which there was seen an injunction to a husband to write a total *get*, and not merely fill in blanks, for "her" (for this *specific* woman), obviating the storing of blank forms designed for anyone who might require them.⁸⁵ But if one is to be such a literalist, one might just as legitimately interpret that verse to mean that the husband himself must write it, and all the halakhah concerning scribes would be null. Furthermore, with such literalism all the non-Torahitic halakhah concerning materials, writing, witnessing and delivery would fall to the ground since the husband is given no direction as to how to write, what to write and how to transmit. He is merely authorized to write a severance document of his own choosing and he, himself, is to deliver it to his wife. Obviously, literalism will never do in the halakhic process.⁸⁶

The foregoing indicates that the simpler procedure I am calling for has legitimate and venerable sanction in the halakhah. A modern text for a religious bill of divorce should be devised with the necessary blanks for the crucial information, as in a *ketubbah*. It would be executed by a rabbi upon request of either the husband or the wife, a copy delivered to both partners of the marriage and one copy deposited in a central Rabbinical Assembly archive. If either person is not present, the delivery to the absentee would be by certified or registered mail and special delivery. What R. Solomon Kluger of Brody in Galicia was willing to do in the nineteenth century to modify the stringencies of the halakhah regarding the use of the postal

service in regard to *gittin* can now be somewhat extended.⁸⁷ The postal service is not acting as *shaliah* in a religious matter. It is merely a means of conveyance of a document. As Kluger understood over a hundred years ago, there is no need for the person who delivers the document to be a "believer" in what he is participating in, as there might be for a witness, for he does not even know what is in the envelope and has no interest in the matter. It is an indefensible anomaly in our time to require that a *beit din* be set up in Los Angeles to receive a *get* for a woman there when that *get* was written in Philadelphia or New York. The post office and mail carrier merely serve in the mechanical role of transporting an article. As agents of the United States government, they are neither Jewish nor non-Jewish, and as transporters are not the senders. The sender is the rabbi, and because the document would be registered he would receive a receipt, and this is as if he delivered it by hand. Because the husband or wife would sign for it, they are direct receivers. The entire *shelihut* middle-person category is removed.

The *Even Ha'ezer* lists one hundred and one items in the procedure of *gittin*, from the reminder that divorce proceedings customarily are not conducted on Friday to the caution that if we are not careful, we might bastardize children. Between these opening and closing items we have a melange of other particulars, some repetitious, some made wholly obsolete by the printing press and computer word-processor, departments of vital statistics, civil divorce courts, marriage licenses with detailed information, and other aspects of the social milieu of the twentieth century.⁸⁸

Approaching *hilkhot gittin* from a radically new direction, namely, the abandonment of the complex web of post-Mishnaic halakhah and returning to a simpler halakhah as here suggested, obviates the need to apply such principles of the halakhah as *afke'ihu lekiddushin minei*. When civil termination of the marriage has already been effected, rabbinic annulment is rather artificial. On the other hand, *kol demekadesh ada'atah derabbanan mekaddesh* would be a valuable asset. We need not annul a marriage which has already been severed by a civil divorce, but because all marriage is conducted in consonance with rabbinic intent, that intent can include the right of the wife to sever the marriage religiously once it has been terminated civilly. Most important is the principle of rabbinic power *la'akor davar min haTorah*.⁸⁹ We have the power to interpret Deuteronomy 24:1 in the light of the current milieu that, when a husband and wife have found that their marriage must be terminated, either may undertake to write a *get* to the other, or, they may do so in concert.

In conclusion, in order to preserve the credibility of the halakhic process as one through which Torah experiences viability under entirely new socio-economic, political and cultural circumstances, the Rabbinical Assembly Committee on Jewish Law and Standards declares inoperative the halakhic

constraints and restrictions that impede a woman from issuing a *get* to her husband. The Committee further undertakes to formulate new guidelines for the dissolution of marriage.

CONCLUSION

The foregoing should be perceived as a prolegomenon to a new approach to halakhah. This approach should embrace the best underlying principles of the rabbinic methodology, and a new aggadic underpinning which recognizes the realities of our society and the intellectual orientation of contemporary culture:⁹⁰

- * Such institutions as *yibbum* and *halitzah* must be declared inoperative.
- * The use of the term *ger* in a *ketubbah* must be abolished; the entire traditional wording should be scrapped and a new *ketubbah* which reflects mutual commitment should be created.
- * The different approach to a virgin and a widow in the *ketubbah* must be removed.
- * Sexist terminology in prayers must be altered.
- * The *harei at* of the wedding ceremony must be formally equalized for men and women, while a mutual *ketubbah* should be exchanged under the *huppah* rather than be presented by the groom to the bride.
- * The glass should be broken by bride and groom together.
- * The *aufruf* must be officially and formally made into a joint experience.
- * The naming of a boy must be transferred from the circumcision to the synagogue and equalized with the naming of a girl, in each case to be done with the infants and both parents at the Torah.
- * The ceremony of redemption of the firstborn must be abolished or made equal for boys and girls.

These and many other particulars require urgent attention in order to prove our honest fidelity to the principle of equality of the sexes. All of these matters and others remain as unfinished business. This paper, nevertheless, has only considered three specific questions. Following is a reprise of the responses:

- (1) A woman may serve as *shaliah tzibbur*.
- (2) A woman may serve as a witness on all religious and secular documents, or in oral testimony.
- (3) A woman may issue a bill of divorce to her erstwhile husband.

May the blessing of God be upon our work as we move forward to

remove unhappy inequities and indignities from a faith which upholds the dignity of the human person, male and female alike created in the image of God (Genesis 1:27).

NOTES

1. Several caveats should be made at the outset. This responsum does not link the question of whether a woman may be ordained as a rabbi to that of the permissibility for a female rabbi to serve as a *shaliah tzibbur* or as a witness. Hence, it is regarded as appropriate to include the question concerning *gittin*. Here, too, one might relate the question to whether a woman rabbi may, under certain circumstances, serve as a witness to a *get*. But this responsum is intended to deal with these questions for all women and not only for a female rabbi. When halakhic equality is extended to all women, it will not matter whether the woman is a rabbi or not. The papers by Rabbis Simon Greenberg, Robert Gordis and others cited below collected in *On the Ordination of Women as Rabbis, Position Papers of the Faculty of the Jewish Theological Seminary*, unpublished, were useful and are here acknowledged. (These papers are now available in *The Ordination of Women*, edited by Rabbi Simon Greenberg, and published by the Jewish Theological Seminary.)

2. See Phillip Sigal, *New Dimensions in Judaism: A Creative Analysis of Rabbinic Concepts* (Jericho, NY, 1972).

3. Isadore Twersky, *Studies in Jewish Law and Philosophy* (New York, 1982), p. 52. The entire chapter, "Some Non-Halakhic Aspects of the Mishneh Torah," pp. 52-118, is instructive.

4. M. *Hullin* 1:1; M. *Zevahim* 3:1; *Zevahim* 32a.

5. See Tosafot, *Hullin* 2a, s.v. *Hakol*. This negative view is incorporated by Yosef Karo, *Yoreh De'ah* 1:1. One might here and elsewhere apply the view of *Sof.* 14:18 that when a *minhag* is not supported by a verse of the Torah, it might be no more than an error in judgment. The question of *minhag*, itself, needs a fresh in-depth analysis. Too often simplistic generalizations are made about this very complex subject. On obsolescence of *minhag*, see *Magen Avraham*, n. 21 and *Be'er Hetev*, n. 15, to Moses Isserles on Shulhan Arukh, *Orah Hayyim* 690:17. While Isserles cites prior opinion that no *minhag* is to be annulled, and makes no comment, the other commentators dispute that view and cite *Sof.* 14:18.

6. This was true, for example, in Renaissance Italy. See Phillip Sigal, *The Emergence of Contemporary Judaism: The Dawn of Contemporary Judaism*, Vol. 3 (Pickwick Press, 1986). See the Chapter on the

Renaissance. For the question of circumcision, see *Avodah Zarah* 27a; Maimonides, *Hilkhot Milah* 2:1; Isaac Alfasi, *Shabbat* 61b, toward the end of the 19th chapter; Yosef Karo, *Yoreh De'ah* 264:1 and the note of Isserles there. As in the case of *shehitah*, the woman was deprived of her right to serve as a *mohel*. See also the note of Elijah of Vilna on this text. Isserles as effectively cut out women from *milah* as Tosafot (n. 5 above), eliminated *shehitah*.

7. M. *Kiddushin* 1:7, T. *Kiddushin* 1:8; *Kiddushin* 33b, 34a, 35a; *Eruvin* 27a; M. *Berakhot* 3:3; *Berakhot* 20b. We will return to the question of *zeman geramah* in the matter of *shaliah tzibbur*. I render the term *geramah* as spelled with a *hey* rather than an *aleph* at the end in accordance with Louis Ginzberg, *A Commentary on the Palestinian Talmud* (New York: KTAV, 1971), II, 158, n. 38.

8. See my fuller discussion of this whole problem in "Elements of Male Chauvinism in Classical Halakhah," *Judaism*, 24:2 (1975), pp. 226–244.

9. See *Eruvin* 27a; matzah: *Pesahim* 43a considering Exodus 12:18; rejoicing on Festivals: Deuteronomy 16:11, 14; assembly: Deuteronomy 31:12. cf. *Sotah* 41a. See further below on the use of Deuteronomy 31:12.

10. See also Phillip Sigal, "Women in a Prayer Quorum," *Judaism*, 23:2 (1974): pp. 174–182. For Torah reading more regularly we fall back on historically unverifiable *takkanot* by Moses and Ezra. In M. *Berakhot* 3:3 there is no exemption from public worship and no need to invent one.

11. *Eruvin* 27a; see n. 7 above. See also *Yevamot* 65b; *Kiddushin* 29a. The rabbis erred concerning redemption of the firstborn, for this is in actuality related to time, the 31st day (Numbers 18:16). True, if it is not done at its appropriate time, one can do it later. But one might argue the same for circumcision, and say that it is a mitzvah unrelated to time, and therefore the obligation of the mother. But even more so, tefillin can be donned over a wide space of time and a woman could have been held obligated to do so when through with her domestic chores. For the teaching of Torah to women: M. *Sotah* 3:4, which contains the halakhic tension both for and against; *Sotah* 21b.

12. Concerning Grace and the *Shema*: M. *Berakhot* 3:3; See also J.T. *Berakhot* 6b, where a reason other than "mitzvah determined by time" is given; citing Deuteronomy 11:19, it is argued that only *banim* and not *banot* are to be taught and that recitation of the *Shema* is the same as Torah study. See Ginzberg, *op. cit.*, pp. 133f., where he argues that the Palestinians did not endorse the Babylonian view on time-determined mitzvot and would exempt women only when they could locate a verse to support such exemption. Cf. *Sifrei Devarim*, 46.

13. *Shabbat* 33b; *Kiddushin* 80b: *nashim da'atan kalot alehen*. Actually,

the Talmud is citing a tannaitic midrash; see n. 14.

14. M. *Kiddushin* 4:12; *Kiddushin* 80b; *Tanna debe Eliyahu* 23; for easy access, see edition of William Braude, Israel Kapstein (Philadelphia: JPS, 1981), 303f.

15. *Shabbat* 33b.

16. M. *Sotah* 3:4.

17. M. *Avot* 1:5; see also *Avot de R. Nathan* (ed. Solomon Schechter), Version A, 7; p. 35; Version B, 15, p. 34f.

18. *Yoma* 66b, where R. Eliezer relies upon Exodus 35:25 not as a historical statement, but as prescriptive for a halakhah of female containment.

19. Although it is often reiterated (for what purpose I have no idea) that my responsum on counting women in a minyan was not "adopted" by the Committee on Jewish Law and Standards, the historic fact remains that it was the paper at hand for a lengthy discussion on August 29, 1973, at which time the overwhelming majority voted for inclusion of women in the prayer quorum. (Editor's Note: In a letter to the members of the Rabbinical Assembly dated October 5, 1973, Rabbi Seymour Siegel notes that two other members of the Committee, Rabbi Aaron Blumenthal and David M. Feldman, submitted materials which also served as the basis for the discussion on this subject at the August 29, 1973 meeting.)

20. This responsum would be unnecessarily expanded if the sources and critiques of all of these advances were offered here. They are on record in the Rabbinical Assembly Law Archives.

21. For Torah study, see n. 12 above.

22. M. *Yevamot* 16:7; 15:8; *Yevamot* 13b; 114b. The rabbis who permitted an *agunah* alone to testify to the death of her husband, and even on hearsay, did so contrary to the Torah, which required two eyewitnesses in all cases (Deut. 19:15). They flew in the face of other contemporary rabbinic halakhah that declared a person to be related to himself/herself and therefore ineligible to offer witness relative to oneself, *Sanhedrin* 10a.

23. *Sifrei Devarim* 190; M. *Rosh Hashanah* 1:8.

24. Deuteronomy 19:15; M. *Yevamot* 16:7.

25. *Even Ha'ezer* 123:1.

26. See my earlier discussion of this in *New Dimensions, op. cit.*, pp. 133-153.

27. *Kiddushin* 35a-b. See further on the question of giving testimony, the section below, "May a Woman Testify?"

28. See my "Male Chauvinism" (n. 8 above), pp. 235-243. A representative catalogue of what a female is obligated to do or is exempt from doing is found, e.g., at M. *Berakhot* 3:3; *Kiddushin* 1:7-8; T. *Sotah* 2:8; *Berakhot* 20b; *Kiddushin* 33b, 44a.

29. T. *Megillah* 3:11; *Megillah* 23a; cf. R. Nissim to Alfasi 13a on this

text, who maintains that women may read, as does Hasdei David to the Tosefta, *op. cit.*

30. T. *Rosh Hashanah*, ed. Lauterbach, 2:10; ed. Lieberman, 2:16; at 2:12 in standard texts printed with Talmud manuscripts; cf. *Rosh Hashanah* 33a; the *baraita* cited by the Babylonian Sage from T. *Rosh Hashanah* 2:10 is found in *Eruvin* 96b as "'one does not prevent children from sounding the shofar,' but one does prevent women," thus reflecting another point of view. *Eruvin* cites the mishnaic source, M. *Rosh Hashanah* 4:8, and adds its own inference. J.T. *Rosh Hashanah* 59c does not mention women at all. Cf. *Arakhin* 2b.

31. *Rosh Hashanah* 33a. See also R. Asher to the text, 4:7, who cites other Rishonim as affirming that in all matters of *reshut*, it is perfectly appropriate for women to say the required *berakhot*. Regarding shofar, R. Asher's view is contrary to Maimonides, *Hilkhot Shofar* 2:1f. R. Asher magnanimously adds that women who do wish to sound the shofar should be taught to do so.

32. M. *Rosh Hashanah* 4:9; *Rosh Hashanah* 34b-35a.

33. Alfasi 12a, to the text in *Rosh Hashanah* 34b.

34. For the rule that "a person not obligated in a matter cannot enable the public to discharge its obligation," M. *Rosh Hashanah* 3:8; Maimonides, *Shofar* 2:2.

35. M. *Rosh Hashanah* 3:8.

36. *Rosh Hashanah* 29a.

37. *Orah Hayyim* 589:2, 3; cf. 589:6, a woman may sound the shofar but does not say the *berakhah*. Isserles to 589:6; see also *Ateret Zekeinim* to 589:3.

38. M. *Megillah* 2:4; see Bertinoro to text; *Megillah* 4a; *Arakhin* 2b, 3a; P. *Megillah* 73b. See further "Male Chauvinism," pp. 240f.

39. See *Magen Avraham* to Shulhan Arukh, *Orah Hayyim* 47:14. See also M. *Rosh Hashanah* 3:8; *Megillah* 4a on the question of *hiyyuv*. On the other hand, T. *Megillah* 2:7 rejects this position and exempts women along with slaves and minors, and specifies that they cannot enable the public to fulfill its obligation. The same differences about the rights and ineligibilities of women persist among medieval *posekim*. No purpose would be served by listing those enrolled on both sides of the issue.

40. See R. Nissim to Alfasi on *Megillah* 19b; Alfasi, 6b, R. Nissim, s.v., *Hakol*, first comment to the Mishnah text.

41. *Sotah* 48a. Perhaps the shofar was extrapolated from other instruments, the latter possibly leading to the forbidden female and male choruses. Cf. *Berakhot* 24a, "the voice of a woman is *ervah*," best translated as "leads to sexual excitement" or "is a source of lewdness."

42. M. *Berakhot* 3:3; *Berakhot* 20b; J.T. *Berakhot* 6b.

43. See Phillip Sigal, "Women in a Prayer Quorum," *Judaism*, 23:2

(1974); pp. 174-182.

44. August 29, 1973. See RALA. The resolution was circulated by then-Chairman Seymour Siegel in a letter to members of the Rabbinical Assembly dated October 5, 1973.

45. J.T. *Shevi'it* 35d, *hi minhag hi halakhah*.

46. M. *Pesahim* 4:1-5; J.T. *Pesahim* 30d; *Pesahim* 51a. As noted earlier, the subject of *minhag* in all of its ramifications deserves a separate monograph. See my *New Dimensions* (n. 2 above), pp. 100-104; that *minhag* nullifies halakhah: J.T. *Bava Metziah* 11b; see Isserles on *Orah Hayyim* 690:17; *Sof.* 14:18.

47. See, e.g., M. *Yoma* 7:1; *Sotah* 7:7; T. *Megillah* 3:13; *Sukkot* 4:6; *Ta'anit* 1:14.

48. I need not here go over the ground briefly summarized by Mayer E. Rabinowitz, "On the Ordination of Wome: An Advocate's Halakhic Responses," in *On the Ordination of Women* cited in n. 1 above. Cf. Maimonides, *Hilkhot Tefillah* 9:3, 9.

49. M. *Avot* 1:5; *Sotah* 8a; *Bava Kamma* 17a; *Kiddushin* 70a; *Berakhot* 24a. On distinguishing Torahitic and rabbinic *hiyyuv*, see *Berakhot* 20b; *Sukkot* 35a. See n. 41 above.

50. See Mekhilta, ed. Lauterbach, II, 201, 206; Exodus Rabbah 28:2; Deut. 31:12.

51. *New Dimensions*, pp. 75-84.

52. Joel Roth's statement, "...though the specific manner of the derivation of the prohibition may vary from source to source, all sources clearly indicate that the prohibition is *deoraita*," is rather uncritical. See his paper, "On the Ordination of Women as Rabbis" cited in n. 1 above, p. 30. *Sifrei Devarim* 190 derives the ban on women as witnesses from a *gezerah shavah* of the use of the word *shenei* in Deut. 19:15 and 19:17. But this is a flawed *gezerah shavah* because the two *anashim* of v. 17 are not witnesses; furthermore, a *gezerah shavah* does not truly make something *deoraita*, for it is clearly a rabbinic hermeneutic that reinforces a rabbinic halakhah. *Shevuot* 30a does not improve the case by trying to prove that *anashim* does refer to witnesses. Cf. *Shevuot* 35b for another *gezerah shavah*. Cf. also Maimonides, *Hilkhot Mamrim* 2:1 for overturning a decision based upon the hermeneutical principles. Finally, we always have the principle that the rabbis have the right to abrogate a Torahitic matter.

53. *Shevuot* 30a; Cf. *Sifrei Devarim* 190; J.T. *Sanhedrin* 21c.

54. Maimonides, *Mishneh Torah*, *Hilkhot Eduv* 9:2 in reference to Deut. 17:6. Cf. Deut. 19:15; one might argue that since this verse states "one witness shall not prevail against a man," it would be sufficient to have one against a woman. This merely serves to highlight the deficiency of Maimonides' argument. The Kesef Mishneh on the text of Maimonides refutes Maimonides with the stricture that the entire Torah is written in

masculine form. Cf. *Bava Kamma* 15a for equality of women in all civil and criminal matters.

55. This is subsumed under the principle enunciated in *Bava Kamma* 15a.

56. *Rosh Hashanah* 22a; *M. Yevamot* 15:8; 16:7; *Yevamot* 13b; 114b.

57. *Bava Kamma* 15a; *Terumah* 2b; *Kiddushin* 35a.

58. *M. Bava Kamma* 1:3 refers only to *nezek*, torts, but the *beraitot* in *Bava Kamma* 15a include *onshin* and *mitot*, and are undoubtedly prior to the Mishnah, the Mishnah being a selective compilation out of the much vaster repository of extant halakhah.

59. See G.R. Driver and John C. Myles, eds., *The Babylonian Laws*, 2 vols. (Oxford: Clarendon Press, 1952), I:198, n. 5, citing J. Kohler, P. Koschaker, A. Ungnad, *Hammurabi's Gesetz*. In the Code of Hammurabi, as in the Torah, the masculine form is pervasive. Cf. *ibid.* p. 301, n. 9 for women as witnesses in matrimonial cases -- not as extraordinary as *agunah*.

60. Cf. above for the stereotype that "women were light-minded"; they also argued that women were garrulous, greedy, unreliable and even lazy (contra *Prov.* 31:10-31), *Kiddushin* 49b; *Genesis Rabbah* 45:5.

61. See n. 56 above.

62. Roth, *ibid.*, p. 43.

63. Sigal, *Emergence* I, pt. 2, p. 88, n. 17; see especially David Daube, "Rabbinic Methods of Interpretation and Hellenistic Rhetoric," *HUCA*, 22 (1949): 239-264; see also the chapter "Rabbinic Interpretation of Scripture" in Saul Lieberman, *Hellenism in Jewish Palestine* (New York: 1950), 47-82, especially pp. 59ff., 78.

64. See my paper presented at the Rabbinical Assembly Convention in Dallas, May 1983, "Some Reflections on Rabbinical Assembly Halakhah: Past and Future," *Proceedings of the Rabbinical Assembly* XLV (1983): pp. 93-104; see p. 94; cf. *Gittin* 64b-65a; that the holy spirit functioned in the rabbis: *Bava Batra* 14a; *Yoma* 39b; *J.T. Sotah* 16d; *J.T. Shevuot* 38d; *J.T. Horayot* 48c; *Leviticus Rabbah* 9:9; *T. Pesahim* 1:27.

65. For rabbinic abrogation of Torahitic halakhah the basic passage is that of *Yevamot* 89b-90b. See Tosafot on *Nazir* 43b, s.v., *Vehai*, for justifying the active abrogation of a Torahitic precept when there is good reason. What better reason is there than our new perceptions on the role, function, nature and rights of women? In discussing a *kohen's* right to defile himself for a *met mitzvah*, Tosafot offers another case where active abrogation of the Torah is justified.

66. Roth, *op. cit.*, 449.

67. Roth, *op. cit.*, 59.

68. Roth, *op. cit.*, 63.

69. See my chapter "The Future of Religious Divorce" in *New Dimensions*, *op. cit.*, 133-153. This section of my responsum will at times

differ with what I wrote in 1972, but on the whole what I thought then remains my basic approach and is reflected here.

70. For this reason, I will not here discuss the pros and cons of placing *gittin* under *dina demalkhuta dina* and thereby allowing for the sufficiency of a civil divorce.

71. Deut. 24:1-3.

72. M. *Nedarim* 11:12; M. *Ketubbot* 5:5, 6; 7:2-5, 10; *Ketubbot* 77a. Other grounds were added later, summarized in the Shulhan Arukh, *Even Ha'ezer* 156.

73. A selection of sources that illustrate male authority and that stand behind the halakhah of marital termination, as well as ameliorations to protect the wife from the husband's absolute power to divorce at his pleasure and convenience follow: Deut. 22: 13-19; 22:28-29; M. *Yevamot* 14:1; M. *Ketubbot* 4:9; M. *Gittin* 7:1; 8:2; *Gittin* 67b, 78a; *Yevamot* 112b, 113a; J.T. *Terumot* 1:1; *Nedarim* 91a; *Ketubbot* 63a, 77a; M. *Ketubbot* 7:10.

74. Deut. 24:1. See Boaz Cohen, *Jewish and Roman Law* (New York: 1966), 387.

75. See M. *Gittin* 4:2-7, 9; *Gittin* 32-48; 59b.

76. See Moses Isserles on the Shulhan Arukh, *Even Ha'ezer* 119:6; Responsa of R. Asher, no. 42. On the early origin of the *ketubbah*, see *Ketubbot* 10a; cf. *Yevamot* 89a.

77. See n. 70. As a matter of record, our colleague Arnold M. Goodman made such a suggestion in a responsum in 1967. His suggestion was limited to cases of a recalcitrant husband in which instance the rabbi would accept the civil divorce as fulfilling the biblical intention of Deut. 24, and three rabbis would issue a *petur*.

78. M. *Gittin* 2:3.

79. Barring the use of the pen is a modern restriction, as is the barring of the use of the typewriter or printing machine, all without foundation.

80. M. *Gittin* 6:6, *Gittin* 66a; *Kiddushin* 41a-b; *Nazir* 12b; *Nedarim* 72b; *Bava Batra* 169b. For example, the traditional halakhah and the text of the *get* insist upon the use of the year "since the creation of the world, the era according to which we are accustomed to reckon in this place." The whole line is palpably unacceptable. We neither believe in the accuracy of that reckoning nor do we reckon by it.

81. *Kiddushin* 13a.

82. *New Dimensions*, p. 145.

83. M. *Gittin* 2:5.

84. M. *Bava Batra* 10:3; *Bava Batra* 168a.

85. M. *Gittin* 3:2; *Gittin* 26a-b; J.T. *Gittin* 44d.

86. Cf. Maimonides on literalism, n. 3 above.

87. Kluger's responsum is easily accessible in Solomon Freehof, *The*

Responsa Literature (Philadelphia: 1955), 138ff.; who cites Solomon Kluger, *Sheyarei Tohorah* (Zolkiev: 1852), responsa 1 and 2.

88. Shulhan Arukh, *Even Ha'ezer* following Chapter 154. Cf. notes of Isserles. See Appendix for a suggested form for a standardized *get*.

89. For these various principles, see, e.g., *Gittin* 33a; *Ketubbot* 3a; *Yevamot* 110a; *Bava Batra* 48b; and parallels.

90. See *New Dimensions*, *op. cit.*, for further exposition, as well as my articles: "Unfinished Business," *Judaism*, 26:3 (1977): 309-321; "Toward a Renewal of Sabbath Halakhah," *Judaism*, 31:1 (1982), pp. 75-86; "Some Reflections," *Proceedings of the Rabbinical Assembly*, *op. cit.*

APPENDIX

Suggested English Text for a *Get*

Being of sound mind and under no constraint, mindful of the civil divorce we have mutually accepted, thus effectively terminating our marriage, hopeful that each of us will be blessed with a meaningful new life, I _____ hereby release you, _____, from your religious marriage bonds with me under the halakhah of Judaism.

With this document, I affirm your right within Judaism, and secure for myself the same right, to remarry under the auspices of the synagogue and Judaism.

Person issuing the *Get*

Witnesses: _____

Rabbi: _____

Place: _____

Date: Secular: _____

Lunar: _____