

## **Woman is Eligible to Testify: A Concurring Opinion**

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*This paper was submitted in February, 2001, as a concurrence to "Woman is Eligible to Testify," by Rabbi Myron S. Geller. Concurring and dissenting opinions are not official positions of the CJLS.*

All men are created equal. The legal tradition of the time reflecting deep seated cultural values, limited to those who were equal to free males, Christian property owner. For over 200 years, more and more categories have been brought into the tent of those regarded as equal: non-Christians, women, non-property owners and all ethnic and social groups changed cultural values obviously impacted upon the law.

While at one level existing law seems to create cultural norms, the truth is that at any given moment, the law reflects cultural realities. As these realities change, there is obvious pressure upon the law to accommodate to these new developments.

What is true of civil law is no less true of Jewish law. Halakhah was never decided in a cultural vacuum, and every halakhic dictum reflects what was — or is — an existing cultural value. As a movement, our respect for halakhah is not diminished by our efforts to ascertain the values upon which it is built and to strive for change where there has been sufficient shift in cultural values. Halakhic changes are never a result of knee jerk reaction to cultural realities; change has been mandated only after considerable discussion and intense debate.

Rabbi Geller's teshuvah, "Woman is Eligible to Testify," forces us to confront our egalitarian commitment. As a movement we have invested a great deal of our intellectual, spiritual and emotional energy on the role of women. It's been a long road from the first Bat Mitzvah to the present day.

Early on, it was always a Friday evening in a ceremony in which the Torah was never removed from the Ark, much less read. Once we advocated that girls receive a similar Jewish education to boys, the demand for Bat Mitzvah grew until it was treated no less differently than a Bar Mitzvah. Thus, eventually, Bat Mitzvah moved to Shabbat mornings, but with the father receiving the maftir aliyah. Today the prevailing practice in most of our synagogues is for the Bat Mitzvah to read from the Torah, and often also serving as Hazzan. Bat Mitzvah participation is thus no different then that of the Bar Mitzvah.

Then as the Bat Mitzvah girl grew and matured and reached adulthood, she began to ask why she could no longer receive an aliyah or to read Torah or to serve as a shlichat tzibbur. Little by little we have seen the expansion of the role of women, and today they are not only equal participants but are counted into the minyan and often wear tallit and tefillin.

As the full participation of women in our Services continued to evolve, it was inevitable that the Seminary would be confronted with the challenge to admit women into Rabbinical School. In the seventies this demand intensified and was supported by more and more RA members. This led to the Seminary Commission, and after the faculty tabled the Commission's recommendations, there followed two major debates at the 1982 and 1983 RA Conventions to accept Rabbi Beverly Magidson, a JIR, HUC, YIR graduate into the RA. Since over 70% of those present voted a ballot of her acceptance this was a factor which finally led to the faculty decision in October 1983 to accept women into Rabbinical School and grant them ordination.

The unresolved issue before us today is *Edut Nashim*. The 1974 minority vote on Rabbi Aaron Blumenthal's paper made it possible for colleagues to accept women as witnesses on all documents attesting to personal status (*Kiddushin, Gittin, Giyur*). What is missing is a clear statement of our rationale to permit this change and which is affirmed by a majority vote of the CJLS. Rabbi Geller has written a well reasoned teshuvah challenging us to do just this.

Rabbi Geller traces the history of women being excluded from serving as *edot* and indicates the areas where a woman was believed in matters where women would have expertise and in the case where a woman testified as to the death of her husband. Rabbi Geller has demonstrated to my satisfaction, and I suspect to that of the majority of the CJLS, that the exclusion of women was not Biblical but based on Rabbinic interpretation reflecting the assumptions and the values of a patriarchal society.

#### **Issues raised by the Geller responsum and in the subsequent debates are:**

- a. Is the ban on *Edut Nashim Gzerat haMeMelech* or Rabbinic? If the latter is *Shinui Haitim* a rationale for permitting *Edut Nashim* whether by a new *Takkana* or by extending existing *Takanot*.
- b. The danger is that this will cause a major break with Orthodox and cut off any hope for dialogue and rapprochement with its moderate leaders.
- c. Whether in light of the above, should an acceptance of *Edut Nashim* be phased in approving it for *Kiddushin*, but not for *Gittin* or *Giyur*?
- d. Our responsibility to female colleagues who at present are restricted by an existing majority decision forbidding them to serve as *edot* thereby compromising them in the full functioning of their Rabbinat.
- e. The necessity for this new teshuvah since the 1974 Blumenthal teshuvah, albeit a minority one, does empower women to serve as *edot*.

#### **The Ban — Biblical or Rabbinic?**

I concur with Rabbi Geller that the overwhelming consensus of the scholarship in our Movement is that the ban on *Edut Nashim* is Rabbinic. Even if it were deemed Scriptural, the record is clear that Talmudic authorities did relax the ban under certain circumstances. The Talmudic decisions permitting women to testify should be enhanced and expanded to account for the cultural realities of our day. To quote Rabbi Mayer Rabinowitz [Geller p. 22]: “We must reclassify the status of women vis-a-vis *Edut* based upon the realities of our era. The general criteria established by the Rabbis whereby one is to be and judged qualified to serve as a witness may very well remain the same. What has changed is the reality which now enlarges the number of those who meet the criteria.”

#### **Orthodox Responses**

While we consistently make the point that we are not concerned about Orthodox reaction to our work, all too often we find ourselves proclaiming our independence and our right and responsibility to legislate on behalf of our movement. Over and again we have made the point that we are responsible for and to the Conservative Movements. True, we ought to be careful not to create a situation that negatively affects Clal Yisrael, but should we permit Orthodox reaction to determine the norm for world Jewry?

The reality is that the Orthodoxy Rabbinat places no credence on any of our decisions. Whenever possible, they have re-converted our converts; and when asked to officiate at a wedding of a man or woman divorced by our *Gittin*, they have insisted upon a new *Gett* that meets their requirements. Thus it will make little -- if any — difference on Orthodox acceptance of a *Gittin* or *Giyur* whether a woman is one or both of the *Edim* or part of a *Beth Din*.

Orthodox leadership will accept or not accept our documents and our teshuvot and our Torah as they deem appropriate for themselves. This is their right and this is the responsibility they have to their constituents. If we deem that a halakhic position is correct then we must do what our conscience dictates is right.

The Orthodox have, as a rule, not challenged our Kiddushin despite the fact that we are not makpid that the witnesses be Shomrei Shabbat or even when we have used a ketubah with the Lieberman clause. I doubt if they would begin to challenge our Kiddushin if women were Edot. Yet, it is not our responsibility to gauge Orthodox response when making halakhic decisions that are we are convinced or are warranted by our interpretation and understanding of halakhah.

The moderate within Orthodoxy willing to enter into private or in camera dialogue with us always tread lightly. The inner drive that motivates them to reach out to us will not dissipate. Should this happen, it will be an unfortunate casualty of our decision; it is a price to be paid if we are to follow our collective conscience on this issue.

### **The Phased Response**

Some among us would go less than the full way on this issue. Their argument is that many of our egalitarian advances have been incremental steps, and we should move slowly on this issue. There is the concern that a woman signing on a gett would invalidate the document thereby denying its acceptance by the Orthodox world. Perhaps Atlanta is not typical of the rest of the Jewish world, but we find that our gittin issued by our Batei Din in Los Angeles or New York are not accepted by our local Orthodox colleagues. Whenever our gett is presented to them, they insist that a new one be prepared and issued by their Beth Din. I suspect that this is the case in most communities and certainly so where there is a strong Orthodox presence.

I thus disagree with the proposal that we adopt an incremental approach and continue to deny women to serve as edot on the gett. If we accept the halakhic validity of the Geller teshuva and agree that there is no longer basis to deny women the right to serve as edot, then we should permit women to be edot l'chol davar.

There is also a pragmatic as well as a moral basis why we should reject the proposal that we accept Edot Nashim for Kiddushin but not for Gittin: the pressure upon the CJLS to expand Edot Nashim into all areas will not disappear. The voices of those in favor of full acceptance will not be stilled until we will have followed through on what we accept as the halakhic basis for women to be accorded full acceptance as witnesses.

A vote for an incremental change is most assuredly an invitation to continue the debate tomorrow — a debate which will continue until what we refuse to do today will be done tomorrow.

### **Full and Equal Power to All RA Members**

The faculty debates on the ordination of women focused quite correctly on the halakhic limitations of Edot Nashim. Both those who supported and those who opposed the ordination of women understood that Rabbis are called upon to serve as witnesses and as members of a Beth Din. In 1983 most of the faculty sought to duck the issue.

The reality, however, is that our female colleagues function with limitations which while not uncomfortable from a male point of view, are often quite painful for the women involved.

The ongoing practice of not permitting female colleagues to serve as edot or on Beth Din compromises them as Rabbis. They may study with a potential Jew-by-choice; they may ready him for his/her appearance before the Beth Din; they may accompany him/her to the Beth Din; but they cannot participate in the ritual/halakhic process that culminates the process of giyur. Not only that but when the certificate is signed, the names of the one colleague above all who has labored on behalf of the convert is missing.

As long as we permit this situation to exist we have limited our female colleagues. Yet by agreeing to the ordination of women, I believe we have affirmed that women can be Rabbis l'chol davar; and any ongoing discrimination of our colleagues on the basis of gender is inappropriate.

Rabbi Rabinowitz argues that the 1974 acceptance of the Blumenthal teshuva - albeit as a minority decision - has given women the right to serve as edot since that time. He thus argues that there is no need for a new teshuva at this time. I respectfully disagree. The Geller teshuva, if accepted, will be a true mandate giving

full validity to our female colleagues and also empowering all women

In 1974 Rabbi Blumenthal was on the cutting edge on egalitarian issues. The majority of our colleagues at that time were not in agreement with his far out positions. Since that time the role of women in the Jewish world has undergone great change. There is a world of difference in coming before our Movement and the overall Jewish community with a document that bears the seal of a majority approval and one that is a minority decision which was reached at a time when the Law Committee hardly operated in the manner that it does today.

The decision to ordain women makes it imperative that the CJLS unequivocally grant to our women colleagues, by majority vote, the power enjoyed by our male colleagues: to testify that religious law has been followed in matters of kiddushin, giyur - and gittin. . Our female colleagues should have the chizuk that comes not from an existing minority decision, but from an overwhelming majority decision. If we accept the arguments in the Geller teshuva that there is no halakhic basis to continue denying women the right to serve as edot, we can - and should - do no less.

### **Conclusions**

1. I concur with the reasoning and conclusions of the Geller teshuva and vote for its acceptance.
2. I reject the proposal that we continue to place a limit on Edot Nashim but advocate a full acceptance in all areas.
3. The only caveat to full acceptance of Edot Nashim is that in the situation where any witness has been historically disqualified, these disqualifications will obviously pertain to women as well.