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On Women Serving As Witnesses — A Dissent

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This paper was submitted as a dissent to, “Woman is Eligible to Testify,” by Rabbi Myron S. Geller and “Edut Nashim K’Edut Anashim,” by Rabbi Susan Grossman. Dissenting and concurring papers are not official positions of the CJLS.

Any discussion reconsidering the halakhic status of women as witnesses must, indeed, give weighty consideration to the principle of *shinui ittim*, the dramatic changes in societal conditions characterizing the realities of the twenty-first century. When theoretical debate is to be translated by Rabbinic decision-making into practical action, the responsibility of the decisor to consider the impact of new realities increases exponentially.

Rabbis Geller, Grossman, Mackler, and Spitz have all, with considerable erudition and persuasive force, documented the dramatic changes in the role of women in society since that point in our history when the Sages first understood Scripture to preclude women from legal testimony, subsequent exceptions to that disqualification notwithstanding. Without minimizing the nuanced differences among the respondents, Rabbi Mackler states the case concisely: “The societal realities of our day do not correspond to the ‘reality’ described by Talmudic and medieval rabbis. Accordingly, with *shinui ittim*, women may generally be accepted as witnesses.”¹

The principle of *shinui ittim* must be applied not only to the societal standing of women. It must also, alas, be applied to the relationships among diverse segments of the Jewish People, now too often characterized by religious triumphalism and political intransigence. We may long for the days of Hillel and Shammai, when divergent practices impacting personal and marital status were no obstacle to mutual respect and legitimacy, or even to marriage — the very action seemingly precluded by the halakhic standards of the opposing Schools.² Sadly, “the societal realities of our day do not correspond to the ‘reality’ described by the Talmudic... rabbis.”

Rabbi Geller draws practical conclusions from the current culture of religious exclusivism: “The institutional bias of the vast majority of those who reject our movement is, sadly, well-known and at the present time widely imposed.... If our congregants are not so aware, we should alert them to the possible effect of their action, so that we may act with their informed consent.”³ To date, such informed consent could quite honestly be secured by assuring aspiring *gerim*, divorce(e)s, brides and grooms of the following, as I did many times as director of a regional Basic Judaism Institute,⁴ providing for the academic needs of aspiring converts to Judaism:

The procedures conducted under our auspices and rabbinic supervision are in keeping with the stringencies of halakhah; in fact, they are substantively identical to those prescribed by Orthodox authorities. They are authentic and beyond reasonable reproach. Nevertheless, for political or institutional reasons — which we consider misguided and dishonorable — there are those who will refuse to accept or recognize

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our actions as having any effect or legal standing ‘even when we act according to the halakhah as they define it.’⁵ While we will understand if those seeking a change in personal status would thus opt to do so under Orthodox supervision, we will not be deterred from offering our services; we will not be deterred from unambiguously authentic halakhic behavior simply because we have been slandered. We will not, for example, relinquish the mitzvah of loving and welcoming converts. Furthermore, when our converts or re-married divorcees are pronounced non-Jews and adulteresses in the name of Jewish law, that, too, is slander unworthy of ‘halakhic’ Jews.

Our “disclosure” of the political reality in order to secure informed consent would be incomplete without noting that we applaud the efforts of those who, though they may reject our theology and methodology, and, often our conclusions, nevertheless have refused summarily to reject us and our actions, and indeed, who speak out against those who deny our authenticity:

It is to be regretted that halakhah, as it is understood today, rather than contributing its share to the striving for Jewish unity, only deepens and fortifies the fragmentation.... This finds its expression especially in the area of marriage and divorce as well as in that of conversion. In Israel, non-Orthodox rabbis are not permitted by the law of the state to perform any functions in those fields; in the Diaspora, their activities in them are usually dismissed as having no halakhic validity.... To insist that this is so is a prejudice; *it is insisting on an untruth that, as such, is a violation of important biblical commandments*⁶.... Nor should one take it for granted that belonging to the Orthodox group automatically bestows upon one the precious treasure of *Yirat Shamayim*.⁷

With the introduction of women as witnesses to our halakhic procedures, *however sound our Halakhic reasoning, however valid the mechanism of change, and however morally compelling our motivation*, we dramatically alter the terms of our self-disclosure. Informed consent would require recognition that even those who would not reject our procedures merely on the basis of political or institutional bias, may *reasonably* do so when these procedures are predicated on the testimony of women. It is we, after all, who have overturned a law of biblical authority... and we have effected this momentous change on the strength of what amounts to a “minority opinion” officially supported by less than half the voting members of the Committee on Jewish Law and Standards.⁸ We have done so with full knowledge that our action is well beyond the ability of significant numbers of serious, sensitive halakhic Jews and rabbinic authorities — both within and outside of our own movement — in any way to accommodate... on far more than institutional or political grounds. Heretofore, depictions of our *gerei tzedek* as non-Jews, of our divorces as leading to adultery and *mamzerut*, and of our marriages as illicit liaisons were sinful slanders with no real basis in a vital halakhic system. The action of the CJLS authorizing women to serve as performative witnesses elevates these accusations to the level of “legitimate halakhic debate” — *makhloket l’shem shamayim*. Will we indeed “be richer for the balance of male and female voices”⁹ arising from this change?

Let us, rather, choose a different course, no less rooted in *shinui ittim*:

It is our conviction that halakhah has to be stretched to its limits in order to further Jewish unity and to better mutual understanding. In the Orthodox camp there are

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certain psychological impediments that have to be overcome. It is time that Orthodox rabbis face without dogmatism the issue of their relationship to rabbis of non-Orthodox denominations.¹⁰

We in the Conservative movement are no less bound to stretch to the limits our shared personal ideals, hopes, and aspirations in the cause of Jewish unity, despite any indignities we have, or may continue, to suffer. Rabbi Mackler, whose paper the CJLS did not accept, correctly states that “for women to serve as witnesses for documents regarding personal status would present problems for the unity of the Conservative movement and the Jewish People (*klal Yisrael*). While these problems are the most severe in the case of witnesses to a *get*, because of the specter of *mamzerut*, halakhically *defensible* allegations of adultery and illicit liaisons — as, too, of illegitimate conversions — are matters of the most profound religious and moral gravity. It is time for us “to face without dogmatism” our relationship with those with whom we disagree among our Rabbinical Assembly colleagues, and with Jews beyond the narrow boundaries of our religious movement. It is time “to face without dogmatism” the profound impact of our dramatic action on those who — on the basis of long-standing practice rooted in a law of biblical authority... and which our ability legitimately to overturn is a matter of considerable debate — are compelled to affirm the traditional exclusion of women from testimony. “Our movement would violate traditional norms and weaken the Jewish community if we were to contribute to the splintering of the Jewish community by pushing moderate Orthodox¹¹ rabbis away.”¹²

I will — on behalf of the individuals and community who are my religious charge, even at their principled and earnest request — take no action which can reasonably — even by standards widely held in the Conservative movement — be argued to render their relationships adulterous or otherwise illicit when it is *kiddushin* they are seeking... or their religious status unchanged when it is entry into Judaism they are seeking. I cast my vote against each of the Responsa permitting women to serve as witnesses because I cannot in good conscience support a halakhic ruling I believe will create such a culture of reasonably contested personal status in *klal Yisrael*.

The pluralism and halakhic fluidity of the era of Hillel and Shammai do not characterize the Jewish People of our day, nor our leaders. *Shinui ittim* demands that — for the sake of *Klal Yisrael* — we *refrain from acting on the permission granted by the CJLS to accept women as witnesses for gittin, kiddushin, and conversion*.

Our commitment to following “our own consciences and our own best abilities to discern what is authentic and appropriate Jewish practice”¹³ means that we do not require the consent or support of other religious movements before rendering halakhic decisions. Nevertheless, we are duty-bound carefully to consider that changes in personal status — and in the procedures effecting these transitions — have an impact on the unity of *klal Yisrael* far beyond that of halakhic innovations in other areas of Jewish life, such as synagogue ritual or whom our Seminaries may ordain. The rabbi’s role as arbiter of matters pertaining to personal status thus requires a selfless restraint in the exercise of the personal autonomy which otherwise characterizes the Conservative movement’s understanding of *marā d’atra*.

If in the Rabbinical Assembly’s Committee on Jewish Law and Standards is vested with the power “to uproot a law of the Torah,” certainly it — and those who turn to it for halakhic guidance — can find the strength to refrain from an action which, though welcomed by many, ill serves the cause of unity in the Conservative movement and the Jewish People. May this strength guide us in our actions.

1 Rabbi Aaron L. Mackler, “Women as Witnesses,” p. xxx.

2 B. Yevamot 14b. See also B. Eruvin 13b. For a full discussion of this golden age of Jewish religious pluralism, see David Dishon, “Tarbut ha-Machloket b’Yisrael” [Hebrew], Jerusalem: Schocken, 1984, esp. pp. 83-107.

3 Rabbi Myron S. Geller, “Woman Is Believed,” pp. xxx-xxx.

4 "A Course in Basic Judaism," serving Connecticut and western Massachusetts, 1993-2000.
5 Geller, p. xxx.
6 Emphasis added.
7 Rabbi Eliezer Berkovits, "Not in Heaven: The Nature and Function of Halakha," New York: Ktav, 1983, p. 107.
8 Rabbi Geller's paper; Rabbi Grossman's paper secured less than a third of the available votes, but nevertheless,
in excess of the six votes required for acceptance.
9 Rabbi Elie Kaplan Spitz, "Women as Judicial Equals," p. xxx.
10 Berkovits, p. 107.
11 And, we would add once again, not a few Conservative rabbis.
12 Mackler, p. xxx, n. 29.
13 Rabbi Susan Grossman, "Edut Nashim K'Edut Anashim," p. xxx.