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## **Woman Is Eligible to Testify**

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### **שאלה**

Is a woman eligible to serve as a witness in matters governed by halakhah?

### **תשובה**

#### ***Edut Nashim*<sup>1</sup> in Scripture and Rabbinic Texts**

The Bible describes certain exemplary females as reliable and heroic but generally legislates a legal status for women that is inferior to males. While individual women may be commendable, as a class, females are afforded neither the same social or economic standing nor do they enjoy the same legal advantages or religious obligations as men. In determining the halakhah on women's testimony, the Rabbis reflected the contradictory attitudes to females which emerge from the narrative and legal portions of Scripture. They imposed a general exclusion based on their interpretation of biblical sources but identified circumstances in which the ban could be relaxed.

#### **A. The Scriptural Setting**

The Bible relates many stories of women who are models of strength, competence and leadership. Although God speaks often to Abraham but possibly only once to Sarah,<sup>2</sup> the Patriarch is advised by Adonai, "Whatever Sarah tells you, do as she says."<sup>3</sup> God certainly speaks to Rebecca who follows a Divine prediction in choosing Jacob over her elder son, Esau, and in so doing, defines the future of Israel.<sup>4</sup> Miriam saves the life of Moses<sup>5</sup>, and later, serves as a prophetess at his side.<sup>6</sup> Deborah demonstrates more leadership skills than Barak, bringing inspiration, prophecy and judgment to Israel,<sup>7</sup> while Yael the Kenite, takes the life of the enemy commander, Sisera.<sup>8</sup> Hannah provides a model for prayer,<sup>9</sup> Elijah and Elisha are sustained by pious women on whose behalf the prophets perform miraculous acts of resurrection,<sup>10</sup> and Esther saves the lives of her people scattered across the Persian Empire.<sup>11</sup> Many other women of strength, vision and religious inspiration people the pages of Scripture and inspire the Rabbis, creators of the *Midrashim*. It is no surprise that the central event in the creation of the Jewish nation, the Exodus from Egypt, was ascribed by the Rabbis to the righteous women of that generation.<sup>12</sup> Biblical law is another matter, however. The Torah places the words that predict or legislate, depending on how one interprets the verse, the domination of husbands over wives, in God's mouth.<sup>13</sup> Marriage is described as a transaction in which a male acquires a female.<sup>14</sup> Polygamy is available

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*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.*

exclusively to males,<sup>15</sup> as is the authority to initiate divorce.<sup>16</sup> A man who engages in an extra-marital sexual relationship with an unmarried woman is not an adulterer but a woman in the same circumstances may be charged, and if convicted, is subject to capital punishment.<sup>17</sup> The vow of an adult male is binding, while that of a female is subject to the approval of her father, when she resides in his household, and of her husband, after marriage.<sup>18</sup>

Scripture obligates males without mentioning women when it legislates several mitzvot central to Jewish religious and ritual life. Circumcision is the symbol of the covenant between God and Abraham and Sarah's descendents, to be carried on their flesh, only by males.<sup>19</sup> The mitzvah of visiting the central religious shrine on pilgrimage festivals, is likewise a male's obligation.<sup>20</sup>

Indicative of the place women are assigned by Scripture in the social and economic order is the mission God gave to Moses to undertake a census of Israelite males in anticipation of the distribution of real property in Canaan.

שאו את ראש כל עדת בני ישראל מבן עשרים שנה ומעלה לבית אבתם כל יוצא  
צבא בישראל.

Take a census of the whole Israelite community from the age of twenty years up, by their ancestral houses, all Israelites able to bear arms.<sup>21</sup>

It is possible that the census enumerated only males because its primary purpose was military in nature, however, this consideration had profound and long-term economic consequences. The census became the basis for land distribution in *Eretz Yisrael*, with the result that real property was assigned only to male householders, while women were excluded.<sup>22</sup> In response to a protest by the daughters of Zelophehad whose family consisted only of female heirs, about the elimination of their father's name from family rolls, God allowed them to be assigned a portion of land. The purpose of their protest was not, however, to redress the exclusion of women from property ownership, nor was that the intent of the divine solution. The women were required to marry exclusively within their own tribe, so that in a generation, the tribal allocation of the land and the exclusively male ownership of real property, would be restored.<sup>23</sup>

## B. The Rabbis' Interpretation of Scripture

The Rabbis read and interpreted the Bible or a particular phrase, or even a single word or letter of it, in ways that could expand the original intent of the text, override its plain meaning or even support original legislation. In the Mishnah, the Rabbis established a general rule about women's participation in mitzvot which, though not explicitly stated in Scripture, was ascribed to biblical sources. The Mishnah asserted the principle:

כל מצות עשה שהזמן גרמא אנשים חייבין ונשים פטורות וכל מצות עשה שלא  
הזמן גרמא אחד האנשים ואחד הנשים חייבין וכל מצות לא תעשה בין שהזמן  
גרמא בין שלא הזמן גרמא אחד האנשים ואחד הנשים חייבין.

Positive commandments limited to time, men are liable and women are exempt. But all positive commandments not limited to time are binding upon both men and women. And all negative commandments whether limited to time or not limited to time, are binding upon both men and women.<sup>24</sup>

The Gemara rooted the exemption of females from all positive commandments limited by time in a generalization with *tefillin* and excluded women from an obligation to don *tefillin* by a *heqesh* (an analogy) between *tefillin* and what they understood to be the explicitly restricted obligation of *Talmud Torah*,<sup>25</sup> a

mitzvah essential for living an informed religious life and for transmitting it to the next generation.<sup>26</sup> Utilizing this complex hermeneutic methodology, the Rabbis greatly reduced the number of positive mitzvot for which women were bound, adding to Scripture's omission of women's obligation in certain religious ceremonies and categorizing these derived restrictions on women, as *d'oraita*, scriptural.<sup>27</sup>

The Bible's exclusion of women from the distribution of land in *Eretz Yisrael* was also understood by the Rabbis to have possible consequences for women's ritual obligations. The Rabbis were unsure if women were included in the biblical injunction to recite *Birkat Hamazon* or if their obligation was only rabbinic.<sup>28</sup> The basis of the uncertainty is not clarified in the Gemara but Rashi suggests a reason. The passage ואכלת ושבעת וברכת, "When you eat and are satisfied you shall bless Adonai your God," (Deut 8:10), would seem to assert a biblical obligation for women to recite *Birkat Hamazon* because it is not מצות עשה שהזמן גרמא, a time bound positive precept from which women are free. But because the verse continues על הארץ הטובה אשר נתן לך, "for the good land which He has given you," the women were excluded from the gift of *Eretz Yisrael*, their obligation to recite *Birkat Hamazon* might be only rabbinic.<sup>29</sup> Those Rabbis who believed that women's obligation was rabbinic, understood the passage to impose the mitzvah only upon males to whom Scripture had assigned legal title to land and to their same gender descendants forever, even if they had not personally inherited land, even when they lived outside the land or it was in the hands of foreign rulers. They were not persuaded by the fact that some women had in fact received title to land and these women, presumably, would have been obligated to *Birkat Hamazon*. They might have determined from this circumstance that all women were included in the mitzvah, but they did not do so. Others, who chose to include women along with men in the *d'oraita* mitzvah, read the verse more loosely as a statement of historical fact about a gift given by God to all of Israel.<sup>30</sup>

The Rabbis also developed and extended certain of the Bible's legal concepts about women. Scripture uses the term, יקח, the acquisition of a woman by a man, to describe a marriage.<sup>31</sup> The Mishnah follows the biblical lead in describing a man's obtaining a woman in marriage as האשה נקנת, placing women first in a hierarchical catalog of properties along with slaves, Jewish and Gentile, animals and property, real and movable, over which owners exercise different levels of control and enjoy various kinds of rights.<sup>32</sup> Despite the plain meaning of the text, the Rabbis asserted that the very first commandment to Adam and Eve, that they be fruitful and multiply, applied only to males but not to females.<sup>33</sup> They believed that by contracting marriage a husband acquired a right to his wife's services, primary among them, that of sexual relations. Husbands took on responsibilities described in the Bible as ועתה ועתה, "her food, her clothing and her conjugal rights."<sup>34</sup> To this the Rabbis added only the obligation for the *ketubbah*.<sup>35</sup> Women, however, became responsible for a wide range of specific obligations that emerged not from any explicit Bible text, but from rabbinic legislation that likely reflected social patterns prevalent at the time.<sup>36</sup>

The Rabbis asserted that Scripture authorized a limited principle of equality between men and women in all judgments of the law.

ואלה המשפטים אשר תשים לפניהם השווה הכתוב אשה לאיש לכל דינין  
שבתורה.

These are the laws that you shall place before them, (Ex. 21:1). Scripture makes women the equal of men in all laws of the Torah.<sup>37</sup>

Nevertheless, this principle was applied only to דיני ממונות, torts, and was patently inconsistent with the tone and letter of both biblical and rabbinic law.<sup>38</sup>

### C. Women in Rabbinic Society

The Talmud records a debate among the Rabbis whether women are a separate

people.<sup>39</sup> Certainly from the perspective of a good deal of rabbinic law, women were a community set apart from men. The Rabbis idealized the separation of women from male society, tracing the concept to a biblical verse, *כל כבודה בת מלך פנימה*, “The King’s daughter is glorious within.”<sup>40</sup> Removing the verse from its original context, the Rabbis used it to prescribe and glorify women’s modesty in dress and their social isolation.<sup>41</sup>

The creation of Eve from Adam’s rib was explained by R. Joshua of Siknin in the name of R. Levi as follows: “*ויבר* is written, signifying that He considered well, *התבונן*, from what part to create her. Said He: ‘I will not create her from [Adam’s] head, lest she be swelled-headed; nor from the eye, lest she be a coquette; nor from the ear, lest she be an eavesdropper; nor from the mouth, lest she be a gossip; nor from the heart, lest she be prone to jealousy; nor from the hand, lest she be light-fingered; nor from the foot, lest she be a gadabout; but from the modest part of man, for even when he stands naked, that part is covered.’ And as He created each limb He ordered her, ‘Be a modest woman.’”<sup>42</sup> This injunction was understood to apply not only to women’s apparel but to their withdrawal from public places and the society of men.

Resh Lakish compared the matriarch Leah to a harlot because Scripture records that she “went out” to greet her husband Jacob. In the words, *ותצא לאה לקראתו* (Gen. 30:16), Resh Lakish discovered evidence, not present at all in the text, that when Leah welcomed Jacob from his day’s work in the fields, she was “adorned like a harlot.”<sup>43</sup> The biblical passage is part of a long and moving narrative about the mutual jealousies of the matriarchal sisters, Leah despairing over her unloving mate Jacob and his preference for his second wife Rachel, and Rachel anguished over her own barrenness while her sister had borne many male children. When Leah received a gift of mandrakes from her son, she bartered with her childless sister for Jacob’s conjugal attentions. She explained to Jacob in heartrending tones, that he was obligated to come to her because she had hired him for the night. And indeed, God responded with compassion to Leah’s ‘going out’ so she became pregnant and bore Jacob a fifth son. Resh Lakish, however, overlooked God’s sympathetic response to Leah, because he was intent on making another point, not about the text, but about the place he wished women would occupy in his own time.

In the same way, he explained Scripture’s identification of Dinah, raped when years later, she too “went out in public,” as *בת לאה*, *ותצא דינה בת לאה* (Gen. 34:1). She was, in the view of Resh Lakish, the immoral as well as the biological offspring of her mother. Commenting on this verse Tanhuma writes, “...a women should not walk much in the marketplace.... If she does so, she will eventually come to a bad end, to lasciviousness. So it was with Dinah, the daughter of Jacob. When she remained at home she wasn’t destroyed by sin but when she went out into the marketplace, she was the cause of her own ruin.”<sup>44</sup>

Women who were expected to remain indoors did not commonly engage in economic pursuits and had no need for personal property. The Rabbis extended the biblical ban on women’s title to real property in *Eretz Yisrael* by transferring ownership of any earnings she might have to her husband.<sup>45</sup> Acquisitions made by a woman were given to her husband<sup>46</sup> and income from any property brought to marriage by her belonged to him. The Mishnah stipulates that a husband inherits from his wife but she cannot be his heir.<sup>47</sup> This rule was derived in the Gemara from a series of interpretive readings of various biblical verses, so removed from the plain meaning of the text, that they were derided by at least one of the participants in the discussion.<sup>48</sup> Nevertheless, the conclusion stood. In effect, limits were imposed by the Rabbis on women’s ownership of personal property, that exceeded those of Scripture.

So too regarding political activity, public service and community leadership. *Sifre* interprets the verse *שש תשיע עליך מלך* “You shall be free to set a king over yourself” (Deut. 17:15), to exclude a queen. It makes no such comment about the appointment of a prophet, although here the text appears to be even more restrictive. *נביא מקרבך מאחוך כמוני*, “The Lord your God will raise up for you a prophet from among your own people, from your siblings (or possibly “brothers”), like myself (Deut. 18:15).” An observation *נביא ולא נביאה*, buttressed by Moses’ assertion that all future prophets would be like him, was never made by any of the Rabbis. Since God appointed prophets and in fact, chose certain woman for this function, the Rabbis did not

interpret the text to exclude them. But they might have concluded that since Scripture's use of a masculine noun for 'prophet' was not gender specific and included females, the same might be said of the Bible's term 'king'. They decided otherwise. This is particularly surprising since the Hasmonean Queen Salome Alexandra, reputed to be the sister of Rabbi Shimon ben Shetah and a great supporter of the Pharisees, having reigned for a period of nine years during the Second Temple period, was well known to the Rabbis.<sup>49</sup> Their opposition to women in a leadership role was so firm that the Rabbis not only interpreted Scripture to bar woman from the throne of Israel but also from the investiture of any tradesman who had ever done business with them, as king or High Priest.<sup>50</sup>

The Mishnah rules, "whoever is eligible to act as judge is eligible to testify," which was understood to exclude women from serving as either judge or witness.<sup>51</sup> It would seem necessary, therefore, to explain the Bible's explicit statement that Deborah the Prophetess functioned as a judge in Israel.<sup>52</sup> Although the Rabbis did not do so, *Tosafot* suggests that Deborah may not have been a judge at all, only a conduit for Divine rulings, or that she was merely a teacher of judges. Alternatively, *Tosafot* suggests that Deborah was different from other women because she was accepted by the community. These are novel ideas that set aside the plain meaning of the Bible text to resolve a contradiction between it and the Rabbis' restriction against women judges.<sup>53</sup>

An end result of rabbinic legislation regarding women was to keep females at home as much as possible and out of public life. To accomplish this, the Rabbis extended what they took to be Scripture's explicit and implicit limits on women's legal rights, interpreted the Bible to support their social and political marginalization and imposed upon them additional religious restrictions and economic dependency.

#### D. The Rabbis Read Biblical Sources to Ban Edut Nashim

Scripture makes no explicit or unambiguous prohibition of women's testimony, nevertheless, the Mishnah stipulates that *שבועת העדות נוהגת באנשים ולא בנשים*, "The oath of testimony applies to men and not to women."<sup>54</sup> The Gemara cites a *b'raita* where the general principle banning *edut nashim* is derived from a superfluous phrase in a biblical verse.

מנהני מילי דת"ר ועמדו שני האנשים בעדים הכתוב מדבר אתה אומר בעדים או  
אינו אלא בבעלי דינין כשהוא אומר אשר להם הריב הרי בעלי דינין אמור הא  
מה אני מקיים ועמדו שני האנשים בעדים הכתוב מדבר.

The Rabbis taught: "And the two men shall stand," (Deut. 19:17). The verse refers to witnesses. You say it refers to witnesses; but perhaps it refers to the litigants? When Scripture says: "between whom the controversy is," the litigants are already mentioned; hence, how do I explain "and the two men shall stand," that the verse refers to witnesses.<sup>55</sup>

The *Sifrei*, in an earlier rabbinic *midrash*, contemplated the possibility that a woman's testimony, like a man's, might be acceptable, but then, using a *גזרה שוה*, an analogy between the verse cited above and a prior verse in the same passage, barred it.

יכול אף אשה תהיה כשירה לעדות' נאמר כאן שני ונאמר להלן שני מה שני  
האמור להלן אנשים ולא נשים אף שני האמור כאן אנשים ולא נשים.

We may think that women are also acceptable to testify, but we read here (Deut. 19:15) "[by the testimony of] two [witnesses]," and we read there (Deut. 19:17) "[and the] two [men shall stand]" — just as the two referred to there were men and

not women, so the two referred to here must be men and not women.<sup>56</sup>

*Yerushalmi* rejected women's testimony based on its interpretation of yet a third biblical source. It draws an analogy between the "two" witnesses whose testimony is required before a court may rule and the "two" males, Eldad and Medad, who failed to appear at the *Ohel Moed*.

מה להלן אנשים ולא נשים אף כאן אנשים ולא נשים ולא קטנים.

Just as there (Num. 11:26) men [are referred to] and not women, so too here (Deut. 19:15) men [may testify] but not women or minors.<sup>57</sup>

While there is universal agreement in the rabbinic literature that עדות נשים is prohibited, the Rabbis found no explicit biblical source for this. The prohibition of women's testimony was a hermeneutic development based on various passages of Scripture, but the Rabbis could reach no consensus in identifying the text which validated the ban.<sup>58</sup> The prohibition confirmed, however, and provided legal force for the stereotype of women as outside the arena of commerce, unaware of legal protocol and inattentive to the normal transactions of economic engagement.

### E. Edut Nashim in the Codes

Rambam deemed the exclusion of female witnesses דאורייתא, scriptural, including women among the ten types of persons whose evidence is unacceptable in court.<sup>59</sup> Strangely, he did not base this on any of the scriptural proof-texts cited by the Rabbis, proposing instead a new reason,

שנאמר על פי שנים עדים לשון זכר ולא לשון נקבה.

Scripture reads 'according to the testimony of two witnesses,' using the masculine gender and not the feminine.<sup>60</sup>

Karo was incredulous that Rambam abandoned the analogy used by the Gemara to justify the prohibition of women's testimony with a grammatical proof.

והראיה שהביא אינה נוחה לי שהרי כל התורה בלשון זכר נאמרה.

His proof is unacceptable to me because all of Scripture is written in the masculine gender.<sup>61</sup>

Nevertheless, Karo, without asserting a biblical basis for the exclusion, ruled like Rambam, that a female's testimony is unacceptable. In the *Shulhan Arukh* he divided עדות פסולי, those barred from testifying, into three main groups: relatives,<sup>62</sup> sinners<sup>63</sup> and those with a social, physical or mental impediment.<sup>64</sup> He placed women, along with minors, Gentiles, slaves, the blind, deaf-mutes, idiots, certain epileptics, fools, the androgynous and hermaphrodite, into this last group.<sup>65</sup>

The Tur, however, did not include women in his enumeration of עדות פסולי.<sup>66</sup> Also, and of particular interest, is the notation by Isserles in his gloss on Karo,

וכל זה מדינא אבל י"א דתקנת קדמונים הוא דבמקום שאין אנשים רגילין להיות כגון בבה של נשים או בשאר דבר אקראי שאשה רגילה ולא אנשים כגון לומר שבגדים אלו לבשה אשה פלונית והן שלה ואין רגילין אנשים לדקדק בזה

This is the law but there are some who hold that there is a *takkanah* of the ancients that in places that are not frequented by males such as a women's bath house (or possibly, the women's section of the synagogue, the Hebrew abbreviation is ambiguous) or regarding certain transient matters that are the concerns of women but not men such as to say that certain garments were worn by a particular woman and they belong to her, a matter about which men would pay no heed, women are believed.<sup>67</sup>

Isserles confirmed the ban on women's testimony without ascribing it to Scripture. He then recorded the opinion of some, that an ancient *takkanah* overrides the law in special circumstances, regarding location or subject. In places where males are not to be found and women are likely to be the only witnesses present, or even if males and females are both present, if the subject would not elicit interest from males, but women would be sufficiently attentive to the facts, women may testify.<sup>68</sup>

### Ameliorating Some Aspects of Women's Legal Status

The Rabbis attributed biblical legislation and most of their own halakhic creativity to God's authority, to explain the permanence and immutability of the law. Nevertheless, they understood that as social conditions changed or intellectual perceptions shifted, new circumstances were created in which certain older laws were no longer applicable.

#### A. Changes in the Laws of Inheritance

Changes introduced by the Rabbis in the laws of inheritance demonstrate that they could abandon even a biblical mandate to replace it with new halakhah. The Bible designated sons as their father's heirs and only in the absence of male offspring could daughters, with the single stipulation that they marry within their tribe, inherit real property from their fathers.<sup>69</sup> The reason is explicitly stated: "Every daughter among the Israelite tribes who inherits a share must marry someone from a clan of her father's tribe, in order that every Israelite may keep his ancestral share. Thus no inheritance shall pass over from one tribe to another, but the Israelite tribes shall remain bound each to its portion."<sup>70</sup> The *Sifra* contends that the requirement for tribal inmarriage applied only to the generation that participated in the original division of Canaan.<sup>71</sup> Samuel asserts that the daughters of Zelophehad were only given good advice by Scripture but could actually marry anyone they chose.<sup>72</sup> Regardless whether these claims are true or not, they support the notion that subsequent rabbinic legislation to liberalize the law did not actually abrogate biblical statute. However, by the end of the second century when the Mishnah was codified, a complex system of inheritance law and the institution of wills had been sanctioned by the Rabbis, to circumvent and to repress the effect of the older biblical standard. The Rabbis accomplished this through the mechanisms of dowries and wills. By requiring the payment of a dowry by the estate of a bride's deceased father, the Rabbis voided the outcome of inheritance exclusively by male heirs.<sup>73</sup> They also encouraged fathers to create wills naming daughters as heirs along with sons.<sup>74</sup> The Gemara raises a provocative question about the authority of the Rabbis to disregard a divine mandate recorded in the Torah.

ומי איכא מידי דרחמנא אמר ברא לירות בריתא לא תירות ואתו רבנן ומתקני  
דתירות בריתא.

Is it possible that the All Merciful ruled that a son is to inherit but not a daughter and the Rabbis come and legislate a *takkanah* that a daughter inherits?

The response is not equal to the force of the question and makes it clear that the Rabbis did intend to transform the law of inheritance despite the Torah's rule to the contrary. Judith Hauptman writes of this discussion:

The weak scriptural support that they bring to support a daughter's "inheritance" reveals that this rule is not even hinted at in the Torah. In fact, the opposite is true: the rabbis clearly intend to circumvent the Torah's disenfranchisement of women in inheritance law. The Gemara's barely relevant Jeremiah proof-text indicates that this is an after-the-fact attempt to support a bold legislative initiative. The message of this passage, stated very bluntly, is that rabbis may come along and introduce legislation that frustrates Torah law, provided their goal is worthy.<sup>75</sup>

Ephraim Urbach sums up his analysis of rabbinic changes in the biblical laws of inheritance as follows:

These three developments — that a daughter who inherited was not restricted in her choice of husband, the institution of the will in its various forms and the possibility of disinheriting sons — are all the result of a process which commenced at the end of the Second Temple period and reached clear and sometimes extreme fruition in the Usha period while absorbing foreign legal elements.... As we have indicated above, the fixed order of inheritance was undermined by changes in the tribal nature of society in Israel and by economic problems intrinsic to that order, but it was only developments in the theory of reward and punishment and that of the fate of the soul which deprived the order of significance. What reason could there still be to limit the marriage of a daughter who inherits to a member of the same tribe? Why, in the light of the new doctrine, should a father be restrained from disinheriting a profligate son? The achievement of a portion in the world to come did not depend on the perpetuation of a man's name on his ancestral property but on his earthly deeds by which he could merit such a portion.<sup>76</sup>

## **B. The *Takkanah* to Allow *Edut Nashim***

In addition to women, there are three general types excluded from providing testimony by the Mishnah: those who derive economic benefit from occupations that are considered unacceptable and bordering on theft, relatives of the litigants and those with an interest in the matter being adjudicated.<sup>77</sup> Giving testimony about the appearance of the new moon is barred to suspect persons and also to slaves.<sup>78</sup> The Mishnah then provides a general rule: "Any evidence that a woman is not eligible to bring, these [men] are not eligible to bring."<sup>79</sup> That is, compromised males are not to be more acceptable as witnesses than females. While suspect males are not to be considered inferior to women in the eyes of the law, the Mishnah implies that circumstances exist when a woman may testify. The existence of a *takkanah* permitting the testimony of a woman is reported in the Mishnah in the following exchange:<sup>80</sup>

These are the subjects on which the School of Hillel reversed itself and taught according to the School of Shammai. A woman who comes from abroad and testifies, "My husband has died," may remarry, and the law of levirate marriage applies. The School of Hillel said: "We have heard this only when she comes from the harvest" [to be explained shortly]. The School of Shammai said to them: "The law applies whether she comes from the harvest or the olive grove or from abroad; the harvest was mentioned only because it is the usual situation." The School of Hillel reconsidered and adopted the view of the School of Shammai.<sup>81</sup>

The background for this dialogue and the account of the promulgation of the *takkanah* is provided in the Gemara:

What are the facts of the incident? R. Judah said in the name of Samuel: “It was at the end of the wheat harvest, and ten men went to harvest the wheat. A serpent bit one of them, and he died. His wife came and reported this to the court, which investigated and found that it was true. The Rabbis then declared: A woman who testifies, ‘My husband has died,’ may remarry, and the law of levirate marriage applies.”<sup>82</sup>

This is reported by the *Amoraim* as an actual case in which the Rabbis learned upon investigating a woman’s story that she was reliable to observe the facts and to remember them accurately. Mindful of that, they promulgated a *takkanah* allowing any woman, to remarry based on the testimony of one female witness, even herself. The exchange between Bet Hillel and Bet Shammai reported in the Mishnah referred to this *takkanah* which it confirmed and established as the universally accepted law.

During the second century, the *takkanah* was revalidated by a group of Rabbis who established both its antiquity and its provenance. R. Judah ben Bava testified to the existence of the *takkanah*, and his contemporary R. Akiva, in the name of Nehemiah of Bet Deli, gave further witness. This is reported in these *mishnaic* sources:

Rabbi Judah ben Bava testified about five precedents: ...that a woman may remarry on the testimony of a single witness....<sup>83</sup>

R. Akiva testified in the name of Nehemiah of Bet Deli that a woman is allowed to remarry on the evidence of one witness.<sup>84</sup>

R. Akiva said: “When I went down to Neherdea to ordain a leap year there, I met Nehemiah of Bet Deli and he said to me: ‘I have heard that in *Eretz Yisrael* none of the Sages, except R. Judah ben Bava, allow a woman to remarry on the evidence of one witness.’ I replied, ‘That is so.’ He said to me, ‘Tell them in my name: You know that the country is in commotion because of raiding troops, I received a tradition from Rabban Gamaliel the Elder that a woman is permitted to remarry on the evidence of one witness.’ And when I came and reported this to Rabban Gamaliel (grandson of Gamaliel the Elder), he was happy and said, ‘We have found a companion for R. Judah ben Bava.’ Then Rabban Gamaliel remembered that certain men were killed at Tel Arza and Rabban Gamaliel the Elder allowed their wives to remarry on the testimony of one witness.”<sup>85</sup>

According to these sources, Rabbi Judah ben Bava had heard about the *takkanah* in general terms, while Rabbi Akiva learned about it in Babylonia from Nehemiah of Bet Deli. When Rabbi Akiva returned to *Eretz Yisrael* and reported what he had learned, his claim was authenticated by Rabban Gamaliel, who recalled the incident involving his grandfather, Rabban Gamaliel the Elder.

Originally, the *takkanah* was not promulgated until, as Samuel reported, the Rabbis had investigated the circumstances and proved the accuracy of the woman’s report. The Rabbis were then convinced that the testimony they had heard was reliable and legislated a *takkanah* to accept the testimony of any woman in similar circumstances. Once that was established, the Rabbis proceeded to expand the areas where *Edut Nashim* was acceptable and to develop a general principle to explain it.<sup>86</sup>

Normally, when the testimony of two witnesses was required as in civil or criminal cases and in matters relating to sexual prohibitions, women’s testimony was forbidden, but regarding *issurim*, ritual prohibitions,

where a single witness was believed, the Rabbis allowed a woman to testify. This principle was derived by the Rabbis in the following way. The Torah permits a *zava*, a woman experiencing a vaginal flow, to count for herself, seven clean days.<sup>87</sup> Rabbi Hinena bar Kahana in the name of Samuel, the latter already having expressed his faith in women's reliability, generalized that a *niddah*, a menstruant, was equally reliable and her husband might depend on her testimony that she was clean, to resume sexual relations.<sup>88</sup> This then became the basis for the axiom *עד אחד נאמן באיסורי*, "One witness is sufficient in ritual prohibitions," even a woman.<sup>89</sup>

The Mishnah's decision that a single witness, man or woman, bringing a *get* from abroad is believed, was justified in the Gemara on this principle. But a distinction was then made between ritual prohibitions where there was no *prima facie* ground for a prohibition, *דלא איתחזק איסורא*, and the case where we know that the woman involved was married. In the latter circumstance, two witnesses should be required to prove the termination of the relationship. In fact, this objection does not raise the more serious difficulty that this case is not about a ritual but a sexual prohibition, and the testimony of a single witness should not be allowed at all. The response to the first problem was, *משום עיגונא אקילו בה רבנן*, "on account of the danger of the woman becoming a deserted wife, the Rabbis made a concession."<sup>90</sup> That the more difficult issue was not raised indicates that the Rabbis accepted a woman's testimony when circumstances warranted, even when two witnesses should have been required, even in contravention of *גזרת הכתוב*.

In his code, Maimonides justifies the admittance of women's testimony in these cases because they would not lie about matters that may eventually come to light from other sources.<sup>91</sup> By framing the issue of *edut nashim* in this way, Rambam does not appear to question women's reliability in perceiving events or recalling them, only their truthfulness or lack of it. He seems to follow the conclusion of the Rabbis in the report of Rabbi Judah in the name of Samuel cited above, that established a presumption of reliability about women's testimony, accepting their perception and recollection of events as accurate to the facts, and allowing it in special circumstances, when their truthfulness was not in doubt.

### Women in Conservative Judaism

During the last half century, the place of women in Jewish religious life has been the subject of extensive discussion and has undergone a radical transformation. Conservative Judaism has been an active participant in this revolution and has moved towards egalitarianism in incremental steps.

#### A. Responding to Feminist Issues

As early as 1944, Reform Judaism formally permitted women's testimony in Jewish law as part of a general policy favoring gender equality. Solomon Freehof wrote, "The Reform movement completes the process of the increasing rights of women and declares women equal in all legal religious matters to men."<sup>92</sup> Three and a half decades later, Isaac Klein writing for the Conservative movement, gave no indication that a broader halakhic issue existed than the traditional ban he recorded on women's testimony, and the leniency permitting even a single female to testify, when the *aguna* concern was present.<sup>93</sup> In fact, Rabbi Aaron Blumenthal had five years earlier, in 1974, submitted a comprehensive *teshuvah* on "The Status of Women in Jewish Law" to the Committee on Jewish Law and Standards in which he blamed Roman jurisprudence for the concept that women suffered from "lightness of mind," dismissed the charge that women demonstrated innocence and naivete because of their exclusion from society, as no longer applicable in our day, and ruled "that a woman may serve as a witness in all matters equally with a man." The authoritative opinion that emerged from the close vote of seven opposed, six for, established the legitimacy of women serving as witnesses in legal proceedings within Conservative Judaism, including the signing of *ketubot*, *gittin* and *giyur*, a ruling that stands to this day.<sup>94</sup>

This *teshuvah* was presented at a time when feminists had already begun to urge reconsideration of the wide range of ritual and halakhic inequalities that women in the Jewish community experienced. At the 1972 Rabbinical Assembly convention, *Ezrat Nashim*, a prominent Jewish feminist group, had called for the equal-

ization of religious rights for women. Paula Hyman, an *Ezrat Nashim* member, objected to the sex-role differentiation which characterized patriarchal Judaism, excluding women from the *minyan* and time bound positive *mitzvot* and imposing upon them a dependent legal status.<sup>95</sup> But David Feldman felt that sex-role differentiation and concerns over sexual distraction were intrinsic factors in halakhah and practical changes would have to be based on that rather than civil rights objectives.<sup>96</sup> The psychological implications of sex-role differentiation in Jewish ritual life was the subject of a major symposium conducted by the Seminary in 1974 and of responses to the presentations a year later.<sup>97</sup> In August 1973, the CJLS responded with a *takkanah* that allowed women to be counted in the *minyan* but left it to each rabbi and congregation to decide whether to follow tradition or apply the new rule. This decision had the incidental effect of reviving interest in a teshuvah of 1955 that had little practical implementation to that time, to permit *aliyot* for women.<sup>98</sup> Now, egalitarian initiatives to advance women's participation in ritual life resulted in their wider inclusion in the *minyan* at Conservative synagogues and eventually, their participation in *aliyot* to the Torah.

Discussions on feminist issues within the Conservative movement during the second half of the decade of the '70s shifted to increased leadership roles for women. The Rabbinical Assembly, at its 1977 convention, petitioned the Chancellor of the Jewish Theological Seminary "to establish an interdisciplinary commission to study all aspects of the role of women as spiritual leaders in the Conservative Movement."<sup>99</sup> The subject of halakhah would become a key element in the deliberations of the Commission and its final report took note of the attention paid to the following issues:

- (1) According to some sources, women may be ineligible to be appointed to any office of communal responsibility in the Jewish community.
- (2) Women are exempted from the obligation to study Torah (except for the acquisition of knowledge concerning obligations they do have), although there is no problem presented by their voluntarily assuming that obligation.
- (3) Women are exempted from positive time-dependent commandments, with a few notable exceptions. The most relevant commandments under this category for purposes of this Commission are those relating to public worship, for exemption from performance raises problems concerning eligibility to discharge the obligation of another person who cannot claim exemption.
- (4) Women are traditionally ineligible to serve as witnesses in judicial proceedings, including the execution of documents determining personal and familial status.
- (5) Women are, by virtue of (4) above, considered by most traditional authorities to be ineligible to serve as judges.<sup>100</sup>

Nevertheless, the Commission, recognizing that halakhic impediments to women's ordination barred functions that were only ancillary to the rabbinate, recommended that qualified women be ordained as rabbis in the Conservative movement. Some of its members also favored action to undo the impediments. A minority report opposing ordination focused on halakhic problems that in its view, were unresolvable. Among them was the awareness that ordained women would inevitably be called upon to perform functions undertaken by Conservative rabbis, barred to them by halakhah. Lifting these restrictions, the minority report argued, particularly that on women as witnesses, would divide the Jewish community beyond and within the Conservative movement, creating intolerable division in areas relating to marriage and divorce.<sup>101</sup>

## **B. Edut Nashim and Women's Ordination**

A central halakhic issue in the debate over the ordination of women was the question of *edut nashim* and it elicited responsa pro and con. Since the halakhic tradition was clear that *edut nashim* was generally forbidden,<sup>102</sup> those who opposed any change in the ban, generally objected to ordination. While it was acknowledged that women's ordination did not necessarily impose witnessing upon them, female rabbis might find themselves in the peculiar situation of arranging a marriage ceremony at which they were not allowed to

sign the *ketubbah*. Or they could train a convert to Judaism but be barred from the *Bet Din* at which the conversion took place. And if they were to participate in the forbidden activity, they might impose grave consequences on those they sought to help. David Novak explained his opposition to the ordination of women in this way:

The authoritative role of a judge is related to the role of a witness as a public representative of the society as a whole. The latter is the *conditio sine qua non* of the former. As the Mishnah states, “whoever is fit (*kasher*) to judge is fit to witness; but there are those who are fit to witness and are not fit to judge.” The halakhah is clear that, with the exception of areas where a woman’s testimony is indispensable and without which domesticity would be impossible, a witness (*ed*) may only be a man. A judge, moreover, requires the requisite learning over and above the gender and moral requisites of a witness. The exclusion of women from the role of witness is considered explicitly Scriptural (*gezerat ha-Katuv*) and is, therefore, beyond repeal; *a fortiori*, the exclusion of women from the essential rabbinical role of judge (*dayyan*). Jewish legal proceedings where women function as either witnesses or judges are invalid, and the consequences for those who are dependent on these proceedings for clarification of their Jewish status could be tragically irreversible. Hence, at the halakhic level, the feminist challenge to traditional Judaism finds itself at an absolute impasse.<sup>103</sup>

Novak did not address the ethical nature of the feminist objective, the remarkably changed social circumstances in which women lived today, or the long history of the amelioration of women’s status contained in halakhah. He concluded that Jewish feminists should be satisfied with becoming the best teachers and scholars of the movement but should abandon efforts to change this halakhah.

Among those favoring ordination, a number of respondents followed the lead taken by Rabbi Blumenthal that social reality had changed, that women could no longer be excluded from testifying because they were rendered incompetent by exclusion from public life. Robert Gordis, adding an ethical imperative, observed, “for modern halakhah to perpetuate this status in a society where woman participate in all areas of life is unconscionable,” and that continuing the ban on women’s testimony was “morally repugnant and sexist.” Long ago, the Rabbis allowed even a single woman to testify on her own behalf to prevent her becoming an *agunah*. “When considerations of humanity were at stake, the Rabbis were prepared to suspend the three fundamental principles (the ban on women’s testimony, the requirement for two witnesses and the inadmissibility of testimony about oneself) out of a sense of compassion. We should do no less in the interests of justice.”<sup>104</sup>

Simon Greenberg, making much the same case, cataloged anti-female rulings in the halakhah, tracing them to contemporary sociological and psychological factors impacting on the Rabbis, rather than scriptural mandate. The Rabbis’ diligent efforts to find biblical roots for much of their legislation about women resulted in connections that were tenuous at best. He concluded:

The indisputable fact that faces us today is that within the ranks of the Conservative Movement there is probably no one who would publicly or even in private subscribe to the dicta regarding the nature of women which underlie the halakhot that govern the status of women within the halakhic structure. Surely no one in the Western democracies today accepts them as valid. Moreover, the present status of women in American society in particular has its theological roots in the biblically grounded conceptions of the dignity and sacredness of the individual regardless of race or gender. It is, therefore, altogether congenial to our biblically rooted tradition and can be integrated into the Halakhah in accordance with halakhically valid principles. We ought not to be

among those who would impede such integration, but rather among those who encourage it.<sup>105</sup>

Mayer Rabinowitz, in an omnibus effort to extend women's roles into areas limited by halakhah, suggested that even if the ban on women's testimony were biblical, יש כח ביד חכמים לעקר דבר מן התורה, "The sages are empowered to abrogate even a biblically rooted norm." Rabbi Rabinowitz did not call for an abrogation of the ban, however, as he was inclined to view it as *d'rabbanan*, rabbinic in origin, with sufficient qualifications to allow women in our day, no longer economically dependent on males or limited in general education or social experience, to be accepted as witnesses. Rabinowitz wrote,

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 adjudged 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.

It may well take time before the acceptance of women's testimony will be legitimized in traditional Jewish law. In any event, the politicized religious establishment in Israel would negate any position and denounce any action by the Conservative movement in the field of halakhah. This fact has not stopped Conservative Judaism from acting in such areas as conversion and divorce. It should not stop us in the area of *edut* — or in the area of women's ordination.<sup>106</sup>

Rabbi Rabinowitz was aware, as were the authors of the minority report and others, that removing the ban on *edut nashim* might further divide the Jewish community, but he was determined that this should not inhibit the Conservative movement's course of action.

Rabbi Joel Roth's extensive analysis of *edut nashim* emerged from his dedication to maintaining standards of halakhic procedure and his dual convictions that, (1) hermeneutics creating the ban were entirely in keeping with the Rabbis' general methodology, and (2) their opposition to female witnesses was certainly *d'oraita*. Maimonides asserted that the ban was biblical, it was universally accepted in this way and so ought it be treated presently. Roth made a very useful distinction, however, between two types of *d'oraita* bans, one based on *gezerat ha-katuv*, a scriptural decree expressing the inscrutable divine will, and another, an exclusion for cause.<sup>107</sup> Since there were many situations where women's testimony was accepted by the Rabbis, Roth felt that the *d'oraita* ban on female witnesses was likely, of the second type, for cause. Then, as many others had done, he argued that times had changed, and even if the rabbinic perception of women may have been accurate in their day, it was neither valid nor desirable in the present. However, those who were serious about halakhah could not justify removing the ban until a rationale for eliminating a precedent of millennial antiquity and the threat of division in the community, which would result from any change, were considered.

Roth suggested three approaches to the problem, none of them completely satisfying to him:

- (1) Leaving the prohibition intact but adding additional exclusions permitting witnessing a *ketubbah* or *get*, to those created by the Rabbis.
- (2) Invoking an obscure and never used authorization by Maimonides to overturn the interpretation of the verse in Deuteronomy which served as the basis for the ban, to refer, as its plain sense indicated, to the litigants and not to the witnesses. Doing so would be justified by the change between the Rabbis' perception of women and ours.
- (3) Utilizing the authority tradition grants the Rabbis, in limited circumstances, to abrogate even a biblically rooted norm, יש כח ביד חכמים לעקר דבר מן התורה.

Roth rejected any consideration of gender equality or ethical concerns about discrimination in his halakhically focused analysis. He recommended that the faculty of the Seminary exercise “the ultimate systemic right of the learned who are committed to the halakhah to openly and knowingly abrogate the prohibition against women serving as witnesses. This is the ultimate halakhically warranted act. It is not a non-halakhic act.”<sup>108</sup>

### C. The CJLS and Edut Nashim

The Roth recommendation that the JTS faculty issue a *takkanah* made no reference to the fact that halakhic decisions of the Conservative Movement, for better or worse, are made by the CJLS rather than the scholars of the Seminary staff. The first attempt by the CJLS to address *edut nashim* had already occurred, as noted, in 1974, and resulted in an authoritative opinion that permitted women to witness all matters including *ketubot* and *gittin*. A decade later, amidst continuing and divisive debate, “A Responsum on the Status of Women: With Special Attention to Questions of *Shaliah Tzibbur*, *Edut* and *Gittin*,” by Phillip Sigal, was tabled at the CJLS by the very substantial vote of 13-2. Nevertheless, the paper was published, as the tabling motion had stipulated, in the CJLS Proceedings.<sup>109</sup> Sigal preferred that a *takkanah* be issued “which 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.” He was resigned, however, to seek a more modest, but, as the tabling vote ultimately showed, an equally unachievable goal.

Sigal joined those who took the ban on *edut nashim* to be rabbinic and he dismissed all *midrashic* efforts to link it to Scripture as revocable. Nevertheless, he agreed with Roth that the *gezera shava* was ultimately Sinaitic, asserting that this perception of rabbinic *midrash* was at the very heart of the Conservative philosophy of halakhah. Sigal’s effort to argue that the ban was at once rabbinic and Sinaitic was the logical weakness of his paper. Among its strengths was its recognition that the very same Rabbis who believed that the ban was biblical were prepared to override it in many instances and for various reasons. “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 free to abrogate obsolete rabbinic restrictions that are no longer justified by our socio-cultural orientation and philosophy of life.”

Rabbi Roth’s suggestion that the Seminary faculty issue a *takkanah* was rejected not only as a violation of movement governance but as a doomed effort to win support among the traditionalist wing of the Conservative movement, the Orthodox and the Israeli rabbinate. Sigal concluded: “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.”<sup>110</sup>

Sigal demonstrated that biblical use of the masculine gender did not exclude females from *lavin*, negative commandments, which are stated in the Torah as interdictions to males but are understood, without any dissent, to apply equally to females. The rabbinic ban on *edut nashim* was in Sigal’s view, “a matter of cultural conditioning.” It weighed on the rabbinic conscience and “the humanitarian factor” intervened when they permitted one witness, even a woman, and even a widow herself, to testify to prevent an *agunah* situation.

### D. After a Decade of Change

After a decade of sharp division and remarkable change in Conservative Jewish practice, Mayer Rabinowitz proposed in his “Towards a Halakhic Guide for the Conservative Jew,” as others also had, that a systematic presentation of halakhic thinking, opinions and guidelines of the movement should be published as an aid to congregations in their decision making.<sup>111</sup> The author incorporated a section on *edut nashim* in a

model chapter reviewing the role of women in Jewish ritual. There he outlined the view of those who would allow women to serve as witnesses:

- (1) The *takkanah* has a long history of addressing changing circumstances and the new role of contemporary women warrants a legislative enactment.
- (2) If the ban is only rabbinic, the reasons for its institution are no longer valid.
- (3) If the ban is biblical it should be overturned because the Rabbis are empowered to do so.
- (4) The ban is based on cultural conditioning of the Rabbis, not on Scripture.

Those who opposed a change in the restriction against women's testimony felt:

- (1) The prohibition is an immutable biblical law even if it is based on rabbinic exegesis.
- (2) The Rabbis allowed women to provide evidentiary testimony, גלי מלטה, in some cases, but did not accept affective testimony which would establish the validity of an act such as marriage or divorce.

Rabbi Rabinowitz identified the difficulty our movement faced when he wrote:

This issue more than any other issue concerning the role of women has created serious problems in our movement. Since 1974 some rabbis have permitted women to serve as witnesses at weddings while others have refrained from doing so. Those who do not accept the testimony of women will not accept documents signed by them. This of course creates problems when people move from one community to another.<sup>112</sup>

A year later, Ben Zion Bergman speaking to the RA convention on "A Conservative Approach to Halakhah," identified the "result-oriented" exegesis in the Sifrei which led the Rabbis to ban *edut nashim*. "Why," Bergman asked, "did the Rabbis want to bar women from testifying? If motivated only by negative views of feminine nature and character, they should have enacted far harsher legislation." The factors motivating the Rabbis, Bergman suggested, were (1) women's perception and memory were not reliable because they were not familiar with society and the economic sphere; and (2) their domination by father or husband made their objectivity questionable. Rabbi Bergman writes: "The implication of this is that in today's world, wherein women are increasingly independent and increasingly active in worldly matters, the presumptions regarding women's credibility and lack of worldly knowledge would be invalid. The same Rabbis who created an exegesis to disqualify women would probably not do so today."<sup>113</sup>

### **E. Masorti Responsa from Israel**

The Vaad Halakhah of the Rabbinical Assembly of Israel also dealt with *edut nashim* in the context of the ordination question.<sup>114</sup> The most forceful opposition to lifting the ban came from Abraham Feder who rejected the moral/ethical concerns of Rabbis Gordis and Greenberg about gender inequality in favor of sex-role differentiation as a positive element in Jewish religious life and law, and rejected also the three solutions suggested by Rabbi Roth, especially the radical one Roth favored, as filled with dangers, particularly for the minuscule minority in Israel who accept the rulings of non-Orthodox rabbis. David Golinkin, who favored the ordination of women, despite his conviction that egalitarianism was not an absolute value and too new to be judged either among Jews or in the larger world, was unequivocal that the ban in the eyes of the Rabbis was *d'oraita* and he would require a signed statement from female candidates for the rabbinate that they would refrain from serving as witnesses for *gittin* or *kiddushin*. He favored this because the divisions within the Conservative movement and between the Conservatives and the Rabbinate in Israel would cause great harm in matters of status for individuals.<sup>115</sup>

Among those in Israel who favored lifting the ban, the most frequently cited reasons were the rejection of its *d'oraita* character and the changes in women's lives in the modern world and in Israeli law. Reuven Hammer wrote:

ברור לי שלפחות בשאלת העדות' כבר עבר הזמן שנוכל להרשות לעצמו מצב מוזר זה וחיבב הדבר לבוא לידי פתרון' אם על ידי הבנה חדשה של ההלכה או על ידי תקנה.

I am certain that on the question of *edut* the time is already passed that we should allow ourselves to be in this bizarre situation and the matter needs to be resolved either through a new understanding of the halakhah or by a *takkanah*.

Michael Graetz and Gilah Dror were both persuaded by an unpublished paper by Naama Kelman, *האם נשים פסולות להעיד? סקירה הלכתית מראשית הפוסקים עד ימינו*, that the *Sifrei midrash* barring women's testimony followed the school of Rabbi Akiva. However, they preferred another *midrash* on the same verses from the school of Rabbi Yishmael, unearthed by Kelman, which did not mention women, and they favored a *takkanah* based on this more lenient *Tanaitic* view. Dror rejected any hesitancy out of concern for the Orthodox because she abandoned hope of ever winning its approval, *את ההכרה הפומבית של הממסד*, האורתודוכסי לא נקבו לעולם. Graetz appended a suggested text for a *takkanah* and urged the accumulation of 200 signatures from members of the RA, so that the ruling would gain legitimacy in the eyes of the public.<sup>116</sup>

#### F. Recent Conservative Voices

An original approach was taken by Elliot Dorff who acknowledged that his concern was not for “the texts and legal arguments that have come down to us because they were all *post-facto* reflections of what was determined by custom in the first place.”<sup>117</sup> Dorff would have us be neither bound by the restrictions of the halakhah nor disingenuous in rereading its restrictions as permissive. He would prefer if we simply waited while those rabbis guided by the old restriction and those abiding by the 1974 CJLS leniency vie for acceptance in the Jewish community. In time *minhag*, custom, would tell which position should be established as the halakhah.

Rabbi Dorff explained that his approach to Jewish law was significantly different from Mordecai Kaplan's both in its presumption of a supernatural, commanding God, rather than a deistic force of nature and in its assertion that halakhah has the authority of law and is therefore to be interpreted with legal methodologies, rather than Kaplan's view that Jewish ritual has the authority and methodologies of folkways. Dorff asserted that law and custom continually interact and do so in distinct ways, among them, custom may fill in when there is no law and thus become the source of new law or custom may undermine current law and lead to changes in the law. He argued that the halakhic ineligibility of women to serve as witnesses was historically created by custom in the former mode of interaction with law, and we should therefore take no action until it is changed by custom in the latter mode of interaction with law.

I would guess, then, that any changes in this matter will arise not primarily from legal argumentation, but simply by an increasing number of rabbis recognizing women as valid witnesses in practice. This will occur when male rabbis agree to be part of a court (*bet din*) with female rabbis in matters of conversion or divorce, and it will occur more pervasively when rabbis increasingly permit couples they marry to have significant women in their lives sign their wedding contracts, if they so choose.

Such acts, of course, will officially not be in keeping with the law as it has come down to us. A minority opinion of the Committee on Jewish Law and Standards approves of permitting women to be witnesses, but it was not justified with a formal paper.<sup>118</sup> It is therefore important to note that, contrary to the claim that legal formalists might make, allowing women to serve as witnesses in practice is not civil disobedience or, worse, an abandonment of the law. It is, instead, a use of one of the sources

of the law, namely, custom, to lead the way.<sup>119</sup>

Rabbi Dorff's affinity for gradualism and custom left him opposed to the institution of a *takkanah* to equalize the status of men and women on *edut nashim*. "That should happen only in some future time, if ever, for it would be justified only if and when the customs of our community have totally, or at least overwhelmingly, become egalitarian."<sup>120</sup>

Judith Hauptman's *Rereading the Rabbis* included an important chapter on *edut nashim*, which explored the motives behind the rabbinic ban.<sup>121</sup> She identified the contradictory record of the Rabbis on legislation about women but rejected the oxymoronic explanations that women were excluded from testifying because they were both too good and too bad for it, that it was an imposition upon their dignity to hail them to court, and they were by nature shallow and unreliable. Instead, she developed Rabbi Bergman's hypothesis that the issue was not נאמנות, trustworthiness, but that women's subordinate social status relative to men, whether father or husband, compromised their freedom and ability to tell the truth.<sup>122</sup> Hauptman also suggested that a consequence of women's subordinate status was their exclusion from testifying in cases concerning men, where they might compromise men's dignity, and that the Rabbis would allow their testimony only about women. However, when the Rabbis wanted testimony to forestall an *aguna*, the ceremony of the *sota*, or the *egla arufa*, they welcomed evidence from women, because they were considered competent and truthful. Hauptman concluded:

A review of all of these passages on testimony highlights the difficulty of the issue. Had the rabbis excluded women totally, we would have much more easily understood their motivations. The mix of inclusions and exclusions, however, perplexes the reader and demands a far more nuanced explanation than simply saying that the rabbis did not consider women trustworthy. The theory presented here—that social status issues play a role in rabbinic thinking about women and testimony—seems to offer the most reasonable reading of all the sources on the subject.

We may be tempted to credit the rabbis with a fundamental concern for women's welfare. For this reason they allowed women to testify in certain cases. However, we must keep in mind that as real as their concern for women's welfare may have been, they were able to express it in those cases without great difficulty because the testimony they accepted from women was offered on behalf of other women only. No men were involved. It is not surprising that social structures, patriarchy in this case, should play a role in developing the rules of fit witnesses.<sup>123</sup>

The diverse views held by those cited here, mirror divisions on *edut nashim* among the membership of the Rabbinical Assembly. In 1992, the RA convention considered and adopted a resolution I had submitted calling for gender equality in halakhah. The resolution, with revisions and amendments, follows:<sup>124</sup>

GENDER EQUALITY IN HALAKHAH (As Revised and Amended by the Convention)

WHEREAS the Rabbinical Assembly, after long consideration and open discussion voted to welcome as members in good standing duly ordained rabbis regardless of gender, and

WHEREAS the Faculty of the Jewish Theological Seminary, after intensive study and collegial discussion, has determined to ordain as Rabbis and Teachers in Israel, regardless of gender, all worthy students successfully completing the course of study at the Rabbinical School, and

WHEREAS the United Synagogue of Conservative Judaism accepts as candidates for positions as Rabbi and Spiritual Leader of its member congregations duly ordained rabbis regardless of gender, and

WHEREAS congregations affiliated with the United Synagogue of Conservative Judaism include appropriate persons of the Jewish faith among the Minyan and *Olim LaTorah* without regard to gender,

THEREFORE BE IT RESOLVED that the Rabbinical Assembly, in Convention assembled, encourages all branches of Conservative Judaism to support full equality of all Jews, regardless of gender, in every area of religious and community life, and

BE IT FURTHER RESOLVED that the Rabbinical Assembly, in Convention assembled, urges the Committee on Jewish Law and Standards to further gender equality in religious life by study and welcoming *teshuvot* on the following:

THAT qualified Jews, without regard to gender, may serve as witnesses in all matters governed by halakhah, and

THAT qualified Jews, without regard to gender, may serve as members of a Bet Din in all matters governed by halakhah where lay participation may be accepted, and

THAT all duly ordained rabbis, regardless of gender, may witness *Kiddushin*, *Gittin* or *Giur* and participate fully in a Bet Din.

I have no information on the attitudes of lay members of Conservative synagogues on this issue. I am not aware of any statistics on how widespread the use of female witnesses is among the rabbis in our movement. Nor am I aware of the reaction of rabbis opposed to *edut nashim* when they encounter individuals whose *kiddushin*, *gittin* or *giyur* were formalized by female witnesses. However, I have participated with a number of female rabbis on *batei din* for *giyur* and found that some refuse to serve as witnesses, functioning only as observers at the *mikvah*, while others refuse to serve as observers unless they can sign as witnesses on the *bet din*'s documents.

### Discussion

We confront biblical and rabbinic records that are complex and contradictory and it is not clear that the facts can be determined. Excellent scholars demonstrate that the ban on *edut nashim* is *d'oraita*, while others prove to their satisfaction that it is *d'rabbanan*. To my mind it seems that nothing is gained by this debate and in any case, it is aside from the point. It is worth noting that Hauptman does not address this question at all. That the Rabbis, despite the lack of a clear biblical source, used various texts, sometimes out of context or with little regard for *pshat* to support their assertion that the Torah barred *edut nashim*, only proves the depth of their conviction that the ban on women's testimony was *d'oraita*. The argument by Roth, Dorff, Golinkin and others that we must acknowledge the record for what it is and not engage in reinterpretations of the Rabbis that falsify that record, is persuasive to me. Some who argue that the ban may be *d'rabbanan* such as Rabinowitz and Sigal, maintain a *d'oraita* contingency and the distinction is ultimately irrelevant to their conclusions. The discovery, so essential to the *teshuvot* of Graetz and Dror, of a permissive, alternative *Tanaitic midrash* on the Deuteronomic text from which the Rabbis learn to exclude women's testimony, even if this understanding of that text is accurate, cannot easily displace the almost two millennia of acceptance enjoyed by the interpretation of the School of Rabbi Akiva is compelling. As Conservative Jews we cannot disregard the historical record in which the ban on *edut nashim* was almost universally considered *d'oraita*.

There is general agreement about the patriarchal nature of that record, which many no longer find attractive. However, there also exists a sensitivity about the divine component and the historical tradition which bind us to its dicta. David Novak finds the divine will explicit and beyond repeal. Most of us would want to

consider the motivations of the Rabbis. Perhaps they simply followed the biblical lead or they may have been influenced by Roman law, as Blumenthal and others suggest. The Gemara claims that women's modesty was honored by the Rabbis when they excluded them from court but women were also believed to be shallow, lacking in awareness and therefore, unreliable. Or, as Bergman speculates, women may have been perceived as unreliable, not because of any inherent psychological or mental deficiency or because their perceptions of the facts or their recall were undependable, but because of their social and economic isolation and more importantly perhaps, because throughout their lives they were controlled by men who might now exercise inappropriate influence over their testimony. Hauptman theorizes that women were excluded from testifying for much the same reason that they were denied *aliyot*, משום כבוד הציבור, for the sake of the dignity of the community of men who didn't want to be confronted or testified about in court, by their social inferiors.

Whatever it was that convinced the Rabbis to deny *edut nashim*, there is almost no disagreement at all, even among those in our movement who seek no change, that these reasons or rationalizations are, at the present time, no longer valid. Traditional reasons for the ban's enactment are no longer offered as justification for its continuance. Feldman and Feder believe that at the present time, the exclusion defends sex-role differentiation, in their views, a fundamental aspect of Jewish religious life. Or, the ban is defended because of political and social sensibilities about problems that might be generated between individual Jews or among movements, if women were allowed to testify. However, those who would revoke the ban consider שני העתים, the radical change in social reality and the status of women, to be sufficient grounds for change.

Very early on, likely as early as R. Gamaliel the Elder, despite their firm conviction that its origins were *d'oraita*, the Rabbis limited the application of the ban on *edut nashim*. They interpreted the Bible text or created a *takkanah* as they did in other areas, most apposite, that which transformed the biblical laws of inheritance, to legitimize women's testimony in daily ritual life and in other specified circumstances. Authorization to testify about *issurim* was justified by biblical exegesis. This should not be passed over lightly. Testimony about *kashrut*, setting aside *hallah* or the tithe, *nikkur*, ritual slaughter, *taharat hamishpakhah*, the removal of *hametz*, were all entrusted to women. Women could also testify about matters of which they had special knowledge or about events occurring in places where men were not present. Most revolutionary, however, was the legitimacy the *takkanah* created for women to testify in certain situations where *mitzvot d'oraita*, biblical injunctions, positive and negative, were or might be violated. The Rabbis permitted the cancellation of a *sotah* or *egla arufa* ceremony based on the testimony of a woman! Men were involved in these rituals, not only women and the obligation to observe them was *d'oraita*, yet the Rabbis, because they preferred that these rituals be suppressed, allowed a double violation of what they believed was the divine will specified in Scripture. And the Rabbis permitted a woman to testify so that she or another woman could remarry even when a *prima facie* ground for prohibition existed. And when she testified in her own behalf, each sexual relationship in which she engaged, would in the event the testimony was false, be an intentional *במזיד* violation of a prohibition subject to capital charges.<sup>125</sup>

### A. Changing Halakhah about Women

Conservative Judaism prides itself on its reverence for tradition, scholarship and change. I believe these traits are synonymous with our appreciation for the historical record and the usages of the past, the scientific study of our literature and history, and responsiveness to contemporary social reality and ethical standards. Each is, no doubt, important to our Conservative self-awareness but when they conflict one with another, as they often do, we are hard-pressed to find any direction. The question before us compels a choice among these goods and our ranking of them is likely to determine our preferred course of action. Those overwhelmed by a perceived ethical violation in banning testimony of fully competent women, have no need for halakhic justification in seeking redress. Others downplay the ethical issue but will allow *edut nashim*, if a systemically correct procedure can be discovered within the halakhah. Some are compelled by their devotion to the past to prefer inaction or even to affirm the traditional practice as preferable to gender equality. Everyone

is aware that revocation of the ban may exacerbate already existing divisions within *Klal Yisrael*. I do not believe any *teshuvah* on the question of *edut nashim*, regardless of the direction taken, can satisfy all these contradictory expectations or forestall future problems.

Nevertheless, despite similar concerns, the Conservative Movement and the CJLS have over more than four decades considered and undertaken other steps to advance the personal status of women in Jewish life, in the synagogue and in the rabbinate. In this we are not alone. Other streams of Judaism, having already been transformed by the Enlightenment and Nationalism, two universal revolutions of modern times, continue to address a third, feminist initiatives over the status, rights and role of women. In areas where we believed traditional limits on women's participation could no longer be justified, our movement has accepted changes that are now normative. At first, they occasioned great dissension, today they are accommodated within our pluralistic movement and have created a remarkable transformation in our laity and rabbinate. These changes both reflect and advance the transmutation of women's status in Jewish law and life.

There are some who fear what they perceive to be a general erosion of respect for the binding nature of biblical law and point to recent papers considered by the CJLS affirming earlier decisions to override *d'oraita* rulings. A 1953 *teshuvah* of Rabbi Ben Zion Bokser permitting marriage between a *kohen* and a divorcee was affirmed<sup>126</sup> as was the 1967 *teshuvah* of Rabbi Isaac Klein permitting rabbis to solemnize marriage between a *kohen* and a convert.<sup>127</sup> *Mamzerut* has been rendered inoperative because evidence about it will not be considered, while permission for Jews to marry any other Jew and for rabbis to perform their marriage ceremonies, regardless of the sins of the parents of groom or bride, has been given.<sup>128</sup> In fact, the recent *teshuvot* do not address new issues or seek a sudden rush of *d'oraita* violation. Instead, they reflect a half century of halakhic change that has already occurred, mirroring a metamorphosis of the social and religious habits and ethical perceptions of contemporary Conservative Jews. They redress limits imposed by Scripture on members of our community that we no longer find viable. To suggest that it is now not possible to redress the situation of women as witnesses because of the fear of a general erosion of *d'oraita* laws, would be to ask females to accept restrictions we can no longer justify, even as we have chosen to loosen them on certain others over a considerable period of time.

Moreover, I do not share the concern that the acceptance of *edut nashim* could cause a general decline in respect for biblical law. The reverence in which the Conservative movement holds halakhah and the reticence of the CJLS to abandon tradition except in circumstances that are absolutely compelling and when buttressed by persuasive *teshuvot*, are sufficient restraints on our action. Only when it is deemed justified, has halakhic adaptation to change been integrated by the CJLS and the Conservative movement into our ritual and practice. This was done in 1974 to allow women's testimony in Jewish law, a course of action affirmed in this *teshuvah* by its attempt to provide more current documentation and a halakhic basis for *edut nashim*.

The status of women in the world at large and certainly within our movement, has radically changed in the last quarter century. The daily practice and custom of Jewish people worldwide is to accept the testimony of women in every venue; only ritual usage lags behind. In the past, law, custom, halakhah were of a piece. Ritual law was not separated from any other category of jurisprudence and the woman who could not sign a *ketubah* also could not testify about civil or capital matters, unless the Rabbis specifically granted an amnesty. At the present time, women testify daily on myriad matters touching on every area of life and that is also the law, in America and in Israel and in almost every country in the world. For this reason I cannot accept Rabbi Dorff's narrow consideration of the customs of Jewish marriage and divorce in justifying his call for inaction. By considering only this very specific circumstance, the few thousand cases in which females might witness ritual documents, he overlooks the millions of transactions in which the practice of our day is truly apparent and is clearly other than he perceives it to be. Dorff's suggestion would therefore accomplish the very opposite of what he intends, by disengaging halakhah on *edut nashim* from what is usual and wedding it to the unusual. We ought not separate the laws and usages by which most Jews of every denominational persuasion now live, both in Israel and the Diaspora, which are essentially egalitarian, and in which women's testimony is unquestioned

and identical with that of males, from the far narrower world of ritual law on *edut nashim*.

The State of Israel itself, despite strictures imposed by halakhah but not without the participation and consent of religious leaders and parties, has adopted legislation to transform the status and rights of women. The Women's Equal Rights Law of 1951, passed while the National Religious Party was part of the coalition government, stipulates, "A man and woman shall have equal status in respect to any legal act. Any provision of law which discriminates with regard to any legal act against women shall be of no effect."<sup>129</sup> While this law contradicts the halakhah in several areas, specifically, *edut nashim* in civil and criminal cases, the appointment of women to public office and the equalization of inheritance, the only objection raised by the NRP was about military service for women. As a result of this law, the rabbinical courts in practice, treat women equally with men in regard to competence to testify.<sup>130</sup> The law also rendered irrelevant the rabbinic teaching that כבודא כבודא פנימה and any *halakhot* derived from it. Israeli women have the vote and hold leadership roles in politics and government, culminating in the premiership of Golda Meir. The NRP elected its first woman to the Knesset in 1959. The subsequent passage of the Succession Law in 1965 nullified yet another category of halakhic discrimination against women. It is fair to say that these laws have replaced the relevant halakhah in Jewish life because they embody political, social and ethical beliefs of contemporary Israelis, secular and religious, which halakhah had failed to integrate. Halakhah is not advanced but undermined, abstracted and made irrelevant when it is disengaged from the principles which define our contemporary Jewish lives.

## B. Edut Nashim and Halakhah

Can the removal of the ban on *edut nashim* be consistent with halakhah? Those who favor this course of action generally call for the promulgation of a *takkanah*, one of three approaches entertained by Rabbi Roth as satisfying halakhic procedural strictures and it is the one he favors most.<sup>131</sup> In my view, this approach is less desirable:

- (1) It rejects the *teshuvah* of Rabbi Blumenthal, calling into question the acceptance of *edut nashim* by some rabbis for almost three decades;
- (2) It is the most radical approach and should be employed, therefore, only as a last resort. A *takkanah* is extra-halakhic and should not be promulgated when a halakhic solution is available.

Rabbi Roth considers another possibility, retaining the ban but adding the witnessing of *ketubbot* and *gittin* to the exclusions already included in the rabbinic *takkanah*. Doing this would be justified since these matters are now in the public domain and women are therefore competent about them. Roth feels that women would still be barred from testifying in capital cases but that is a theoretical observation since virtually no rabbinic courts exercise capital jurisdiction and in Israel, the rabbinate, despite its insistence on maintaining the halakhic tradition, has acquiesced in transferring control over these matters to state judicial authorities where women's testimony is as competent as that of males. Roth believes that this approach does the least damage to tradition but has the disadvantage of leaving intact the premise that women as a class are unreliable. It has the additional disadvantage of correcting only the problem of testimony that is גילוי מלחמה, evidentiary, intended to establish fact, as was the case in which the Rabbis issued their *takanah*. But it provides no relief for the witnessing of *kiddushin* or *giyur* or the delivery of *gittin*, testimony that is affective in nature, establishing status or constituting a religious ritual, from which females would continue to be excluded.

Rabbi Roth's concern that expanding the list of exceptions to additional cases would leave the premise that women are unreliable intact, seems overstated to me. The historical record is plain, at one time Jewish law did not allow *edut nashim* because women were deemed unreliable. But 2000 years ago, precisely because they were convinced that in specific circumstances *edut nashim* was reliable, the Rabbis lifted the ban in a limited way. Now, when we are convinced that changes in social reality are such that there is no reason to doubt *edut nashim* in any circumstances, that women are completely reliable no less than men to give testimony in all situations, we should assert what we know to be true. We may use the existing *takkanah* as a paradigm to expand the list of exceptions from the original ban to all areas governed by halakhah.

Rabbi Roth's second concern about the existence of limits to which an expansion of the list of exclusions could be applied, that only evidentiary testimony would be acceptable while affective testimony would still be excluded, would only be justified, it appears to me, if the original ban on *edut nashim* were גזרת המלך, an immutable divine law. That is not at all clear. It is possible, likely even, that the scriptural exclusion of women's testimony perceived by the Rabbis, was for a socially based cause only. Roth made this distinction himself and wrote:

Indeed, if the prohibition were classified as a *gezerat ha-katuv* (an inherently inexplicable biblical injunction), one would not expect to find any exceptions at all, unless the exceptions themselves were spelled out in Scripture. Yet, it is well known that there are exceptions to the prohibition. Certain types of testimony are even referred to as *edut she-ha-isha ke-sherah lah* (testimony that a woman may legally give). Exceptions to a blanket prohibition beg for some explanation on the underlying reason for the prohibition.<sup>132</sup>

Some light may be shed on this by Menachem Elon. In a case in Israel before the Rabbinical Court of Appeals, testimony was brought that the claimant had been married to a decedent and was the heir to his estate. The marriage had taken place without clergy because the couple were *kohen* and *divorcee* so the ceremony was forbidden *ex ante* but valid *ex post*. The husband's heirs argued that the witnesses to the marriage whose testimony was affective in nature, were habitual sabbath violators and therefore the marriage was invalid. Since only religious marriages are legal in Israel, the invalidity of the ceremony should make the claim defective. The court denied the arguments of the decedent's heirs, affirming the validity of the marriage and accepting the competency of the witnesses. Rabbi Uziel wrote for the court:

With regard to the question of whether the witnesses are not competent to testify because of their violations of the law as between man and God, one must take into consideration that under present circumstances — in which, due to our own sins, and to factors which are worldwide, disregard of the obligations of religion has increased and become widespread — these types of transgressions do not impair the credibility of the witnesses. During the present condition of such profound withdrawal of God's presence from the world, they are virtually in the category of unintentional transgressors. The disqualification of transgressors to be witnesses rests on the suspicion of perjury, and is based on reason, not simply on a Scriptural fiat [lit., a decree of the King without a rationale].... Indeed, the rule that religious transgressors are incompetent to testify is not based on biblical law. Therefore, in such matters, assessment of the credibility of witnesses depends in large measure upon the conditions of the time and place. If the court is convinced that a particular person is not likely to commit perjury for gain, he should be accepted as a competent witness.<sup>133</sup>

Elon is unhappy with the transcription which is based on a summary rather than the full opinion. He notes:

This additional argument is surprising in view of the fact that the disqualification of a transgressor to be a witness is biblical in origin; see S.A. H.M. 34:2-3. It seems likely that Rabbi Uziel's original opinion was incorrectly copied. ...The original does not state that transgressors are disqualified as witnesses only according to rabbinic law, but rather that the reason why they are incompetent is that they are suspected of testifying falsely; and it is not a "decree of the King," i.e., a Scriptural fiat. ...See, e.g.,

Urim ve-Thummim, S.A. H.M. 28, Urim, subpart 3: “The reason a transgressor is incompetent to testify is that it is suspected that he will testify falsely; it is not merely fiat-a ‘decree of the King without a rationale.’”

...In actuality, it is a widespread and accepted practice in the rabbinical courts to accept the testimony of all witnesses, even though many do not fulfill the religious commandments and therefore, according to the law in the Shulhan Arukh, their testimony should not be accepted.<sup>134</sup>

Rabbi Uziel’s decision demonstrates that, although perceived to be *d’oraita*, the exclusion of testimony by a member of a halakhically unacceptable class of witnesses is not an immutable גזירת המלך, scriptural fiat. It is based on reasonable concern about the accuracy and reliability of the testimony given, not the status of the witness. When because of שני העתים, changes in social conditions, the original warrant for the exclusion no longer applies it is abandoned, and even affective testimony by a witness in this class is accepted. Uziel’s ruling further demonstrates that when the ban is lifted, it may be done without the need for a new *takkanah*.

The original ban on women’s testimony was likewise, not scriptural fiat, גזירת המלך, the only issue was credibility. In our day, when there is no legitimate suspicion about the accuracy and reliability of a woman’s testimony, there is no reason to bar it. If we are able to make a case, which I believe is unquestioned, for שני העתים, there is simply no basis for continuing any exclusion of women’s testimony, either evidentiary, to establish the facts, or affective, to constitute a religious ritual or individual status.<sup>135</sup>

The early *Tanaitic* enactment of a *takkanah* permitting women to testify when they were competent, had knowledge of the facts and were not excluded for social reasons, recognized that the biblical injunction against *edut nashim* was not גזירת המלך but socially rooted. In relaxing the ban on *edut nashim*, the Rabbis acknowledged the שני העתים that had transpired between the period of the original exclusion and their day, when in their view, women could be counted on to provide testimony about certain limited matters. This *takkanah*, a precedent universally accepted by *Klal Yisrael* for almost two millenia, can serve as a paradigm at the present time to allow *edut nashim* without restriction to all of halakhah. The place of women in the political, social and religious order and their education and economic experience are so altered since the days of the Rabbis, that as a class, they are the legal and social equals of males in all areas and there is no general assumption that they may be incompetent or provide false testimony. We therefore, reject any residual ban on *edut nashim* as inoperative and authorize women to provide evidentiary and affective testimony in any matter governed by halakhah.

### C. Edut Nashim and Klal Yisrael

A decision that may result in the wider acceptance of *edut nashim* among Conservative Jews is likely to discomfort some within our own movement and may exacerbate already difficult relationships between our movement and certain others in the Jewish community. Further, it could invite endless problems for some among those whose marriages, *ketubot*, *gittin* or *giyur* would be witnessed by women. This would be particularly true in the case of *gittin* witnessed by women, because there would be no way to correct a challenge of *mamzerut* that may eventuate, should a birth occur following a woman’s remarriage. It has been suggested that doing what may be the right thing for a certain group of women, may impose irreversible harm on others, the legitimacy of whose marriages, divorces or conversions, as well as the Jewish credentials of their descendants into the indefinite future, may be clouded, possibly with charges of *mamzerut*, and who may therefore be rejected as suitable partners in marriage by some in the Jewish community. While these arguments should elicit our deepest concern and, like the motives of those seeking redress, are based on halakhic and moral concerns, I do not find them sufficient to reject *edut nashim* throughout our movement or to justify the adverse effect on the professional function and legitimacy of female colleagues who have established their rabbinic authority over a period of more than twenty years.

It is my sincere hope that rabbis and laity within our movement will be persuaded by this *teshuvah* and the support it may receive from the CJLS, that *edut nashim* is acceptable in our day, within the framework of halakhah. Some colleagues may not welcome such a decision immediately and two different practices may be observed in our movement for some time. Rabbis should then inform their congregants about the diverse practices within Conservative Judaism regarding *edut nashim*. We need not entertain fears, however, that future marriages within our movement will be compromised over charges of *mamzerut*, because we generally will not accept such testimony.<sup>136</sup>

I believe, that like other rulings of recent decades in our movement that have welcomed women for *aliyot*, into the *minyán* and the rabbinate, realities now widespread among us and certainly viewed by all as legitimate alternatives in Conservative Judaism, the acceptance of *edut nashim* is likely to expand in time and acquire near universal legitimacy. In the meantime, some in our movement may reject *edut nashim* about marriage, divorce or conversion. The majority, lay and rabbinic, is likely to welcome a current decision of the CJLS that is grounded in halakhah and affirms the long standing *teshuvah* by Rabbi Aaron Blumenthal permitting *edut nashim*, and will adapt its practice in conformity to it.

There are some in the larger Jewish community who will be distressed and for this we grieve. However, we must weigh this hurt, against that inflicted by our inaction on members of our congregations, women and men, on female rabbis ordained by our movement who are frustrated, and male colleagues troubled by what they perceive to be a moral wrong. Adequate reasons already exist for those who reject our understanding of halakhah, in our position on *mamzerut*, our permitting marriage between a *kohen* and a *giyoret* or a divorcee, the issuing of *hafkaot kiddushin*, and in our general attitude to much else in tradition, to doubt the legitimacy of our halakhic rulings. Those who do, reject our ritual actions at the present time, constitutive or otherwise, when they are so inclined, even when we act according to the halakhah as they define it, even when no halakhic issues are at stake.<sup>137</sup> Others, who attempt to reach an accommodation with us although they reject our approach to halakhah, and whose cooperation is extremely valued by us, do in fact accept our enactments when they conform to their halakhic standard, and they are no less likely to do so in the future. Nor is it unreasonable to expect that this latter group, already impacted in many ways by changes in women's role and function in its own religious life, will appreciate the logic and halakhic basis of our decision. However, the institutional bias of the vast majority of those who reject our movement is, sadly, well known and at the present time widely imposed and unlikely to be impacted by any position we may take on *edut nashim*.

Moreover, individuals seeking the guidance of Conservative rabbis are generally not concerned about the attitude of our critics towards their actions and may already be aware of the possible consequences of their choice. 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.<sup>138</sup> We should, in fact, do so when we use male testimony for our *kiddushin*, *gittin*, *giyur*, or *hafkaot kiddushin* because these actions may also be dismissed by certain religious authorities and lay persons. Surely, no rabbi would impose any witness on a hesitant principal, in a halakhic matter requiring *edut*. However, we ought not feel compelled to maintain the traditional ban on *edut nashim* out of paternalistic concern for the welfare of our congregants, against their wishes. Their legitimate expectations about who may witness their religious ceremonies ought not be superseded by our anxiety over the disposition some in the rabbinate or general community may make in the future about the rights of their yet unborn descendants.

The CJLS, as presently constituted, is the legitimate authority for determining halakhah for Conservative Judaism. It is no less to this generation of Conservative Jews than was Samuel to his generation. How ironic it would be, if we who do not accept testimony about *mamzerut*, would justify the retention of a ban on *edut nashim* out of concern that at some future date, some rabbis may impose this status on people descended from participants in *gittin* issued by our rabbinate and attested to by women. What we should seek is the fully informed consent of our communities and the individuals who want our rabbinic leadership in ceremonies governed by our understanding of halakhah. If at this time, we are convinced of the halakhic legitimacy of *edut*

*nashim*, we should support and encourage those in our communities who share this view, rabbis and congregants, to welcome it.

### Summary and Conclusion

There is no specific verse in Scripture banning *edut nashim*, nevertheless, the Rabbis treated the exclusion as *d'oraita*, basing it on the exegesis of various biblical texts. However, they did not perceive the disqualification of women's testimony to be based on גזרת המלך, an immutable divine ruling, but on social factors that might impinge on a woman's accuracy or truthfulness during court proceedings. These were the standards for validating all testimony, accuracy and veracity. And when the Rabbis observed that a certain woman's testimony was in fact accurate and truthful, they generalized from that case to limit existing restrictions on *edut nashim*. An ancient *takkanah* was promulgated and accepted by the *Tannaim* to grant women the right to provide testimony in diverse areas governed by halakhah. By doing so, the Rabbis recognized the conditional nature of the older ban on *edut nashim* and retained only those restrictions that were based on social constraints still perceived to be valid in their day. Implicit was permission for women to testify on other matters of halakhah, when additional social constraints were removed and greater equality among women and men would be achieved.

*Shinui haitim*, a changed social reality, was the basis of a *teshuvah* by Rabbi Aaron Blumenthal that permitted women's testimony in all matters governed by halakhah and it was approved as an authoritative opinion of the CJLS in 1974. Since then, a remarkable egalitarian transformation of Conservative Judaism has occurred, the participation of women in every aspect of our religious life equally with men is all but universal, and the ordination of women and their functioning as rabbis in our congregations is almost two decades old.

Revolutionary changes that have occurred in every area of contemporary Jewish life, even in the traditional community, have resulted in the acceptance of *edut nashim* where only recently, it was excluded by halakhah. Women's testimony in civil law cases once governed exclusively by halakhah and from which women were barred, is now universally accepted, even by the most traditional elements of Jewish society. In light of *shinui haitim*, the passage of millenia and radical shifts in the cultural and social climate since the days of the *Tannaim*, restrictions on *edut nashim* retained by the Rabbis have no application at the present time. Women are no longer excluded from social or economic pursuits nor are they subservient to male dominance. The competence, truthfulness and reliability of women's testimony is no longer questioned and their moral claim to be accepted as witnesses in Jewish law equally with men, is overwhelming.

Nevertheless, for some part of *Klal Yisrael*, the original ban on *edut nashim* in matters determining personal status such as *kiddushin*, *gittin* and *giyur* is retained at the present time and likely to be so in the future. Participants in these halakhic ceremonies should therefore, be made aware of the role played by witnesses in constituting status, so that informed decisions about the use of *edut nashim* can be made. Women are trustworthy and possess the good judgement to respond appropriately to specific circumstances.

### Conclusion

The ancient *takkanah* of the *Tannaim* establishing a woman's right to testify in limited circumstances, when she had knowledge of the facts and was not excluded for social reasons, is a paradigm permitting us to eliminate restrictions on women serving as *edim* because there is no reason to doubt their *ne'emanut* at this time. Women as a class, are today the legal and social equals of males and are competent and reliable to serve as witnesses. Any residual impediment to *edut nashim* is inoperative. An otherwise qualified woman is eligible to serve as a witness in all matters equally with a man, for *kiddushin*, *gittin*, *giyur* or in any capacity governed by halakhah, evidentiary or affective.

## NOTES

- 1 Prof. Judith Hauptman informs me that the term *edut ishah* generally refers to testimony given by a male on behalf of a woman, usually that she is free to remarry. In one case, Ketubot 13b, in a minority Talmudic usage, the expression *edut ishah b'vitah*, seems to mean testimony given by a female about her daughter, whether she was raped in captivity or not. *Edut nashim* is a new term that does not appear in rabbinic literature but conveys the notion of testimony provided by women.
- 2 Genesis 18:15. See Targum Yonatan, ומר מלאכה, and Or Hahayim, לא כי צחקת, where the antecedent of the ambiguous pronoun in the second clause is identified either as one of the visiting angels or Abraham but not God. The rabbinic commentaries would like to resolve any misunderstanding in the *pshat*, that certainly can be read differently than they do. The Matriarch is, however, remembered by God in Genesis 21:1.
- 3 Genesis 21:12.
- 4 Genesis 25:28.
- 5 Exodus 2:4.
- 6 Exodus 15:20.
- 7 Judges Ch. 4.
- 8 Judges 4:17-22.
- 9 I Samuel 2:1-10.
- 10 Elijah is sustained by a widow woman whose story and that of her son is found in I Kings 17:8-24. Elisha repeats his mentor's experiences with small variations as related in II Kings 4:5-37.
- 11 Esther.
- 12 B. Sotah 11b. See Rashi, who cites the explanation of צדקניות נשים also for Israel's triumph in Persia and again during the Maccabean revolt.
- 13 Genesis 3:16.
- 14 Leviticus 20:14, Deuteronomy 22:13, 24:5.
- 15 Abraham, Jacob, David, Solomon and possibly Moses are among the males whose polygamous marriages are recorded in the Bible. No women are so involved. Also see Deuteronomy 21:15.
- 16 Deuteronomy 24:1 allows a husband to initiate divorce because of ערות דבר which was variously understood by the Rabbis to refer to sexual indiscretions on the part of the wife, incompatibility, or even the discovery by the husband of a more desirable partner. See Boaz Cohen, "Concerning Jewish Law of Domestic Relations," in *Law and Tradition in Judaism* (New York, Jewish Theological Seminary, 1959).
- 17 Leviticus 20:10 stipulates that a woman engaging in an extra-marital sexual relationship is subject to capital punishment. A man is equally culpable if he engages in sex with a married woman but since he may have more than one wife, there is no capital crime involved in an extra-marital sexual relationship with an unmarried female. Encyclopedia Judaica, Vol. 2, cols. 313-316.
- 18 Numbers 30:2-17.
- 19 Genesis 17:10.
- 20 Exodus 34:23 and Deuteronomy 16:16. Deuteronomy 12:12, 18 and 16:11, 14 do not exclude women but impose no obligation. See Hagigah 6b and Rambam *Yad*, Hagigah 2:1 where women are excluded by the Rabbis.
- 21 Numbers 26:2.
- 22 Numbers 26:53.
- 23 Numbers 27:1-11, 36:1-12.
- 24 M. Kiddushin 1:7.
- 25 Deut. 11:19. The text may be read to include women despite its use of בניכם, that however, would disregard the Rabbi's understanding of the *pshat* which excluded females.
- 26 Kiddushin 34a. R. Eliezer went even further suggesting that whoever teaches his daughter Torah encourages her to be lascivious. Ban Azai disagrees, believing that one is obligated to teach his daughter Torah. The tradition followed the more restrictive view and determined that women were not obligated (M. Sotah 3:4).

- 27 The 613 mitzvot of Judaism are divided into 248 positive and 365 negative commandments. When the Rabbis increased the number of mitzvot, a further division was made between *mitzvot d'oraita*, based on Torah law, and *d'rabbanan*, of rabbinic origin, also called מדברי סופרים. See Menachem Elon, *Jewish Law: History, Sources, Principles*, (Philadelphia, Jerusalem: Jewish Publication Society, 1994), pp. 207-223.
- 28 Berakhot 20b.
- 29 loc. cit. Tosafot is not satisfied with Rashi's explanation because no question is raised about Kohanim and Levi'im, or apportioned land. The suggestion is made that women may be excluded from *Birkhat Hamazon* because women have neither *Brit* nor Torah and they are not included in either the clause of the passage על בריתך שחתמת עליה על בריתך שלמדתנו שבשרנו ועל תורתך שלמדתנו, "for the Covenant sealed in our flesh and for the Torah which You have taught us." This is a startling argument since the text of *Birkhat Hamazon* is not fixed in Scripture and it certainly postdates the obligation to thank God.
- 30 Y. Berakhot 3:3 is clear about the Biblical nature of the mitzvah.
- 31 Above, n. 13.
- 32 M. Kiddushin 1:1. In the Codes this idea is clarified further. Rambam writes in *Yad, Ishut* 3:1, והאיש הוא שאומר, דברים שמשמען שקונה אותה לו לאשה והוא שיתן לה הכסף, "It is the male who must speak the words that mean that he purchases her for himself as his wife and it is he who must convey to her the purchase price." Rambam adds that if the female took the initiative to speak the words or convey the purchase price, the marriage is invalid.
- 33 Kiddushin 35a. The traditional exemption of women from the obligation to procreate permits greater flexibility regarding the reproductive rights. It should be noted that the CJLS has sought to overcome the traditional limit on women's procreative responsibility. Ben Zion Bosker writes, "There is another biblical injunction bearing on the subject which tradition held as directed to the woman as well as the man. This is the statement in Isaiah 45:18, 'He did not create it to be a waste; He formed it to be inhabited.' God created the world to be a home for human life, and it is incumbent on man and woman to further God's plan by procreating, by bringing children into the world and raising them to continue the work of creation," (David Golinkin, ed., *PCJLS 1927-1970*, Jerusalem: Rabbinical Assembly, 1997, vol. III, p. 1451).
- 34 Ex. 21:10.
- 35 Ketubot 39b states that "the Rabbis instituted a *ketubbah* in order that the man might not find it easy to divorce her." So too, Yevamot 89a. However, Ketubot 110b and 10a, see Tosafot, *amar Rav Nachman*, where the origin of the *ketubbah* is debated.
- 36 Ketubot 59b. The Mishnah is quite detailed: "The following are the kinds of work which a woman must perform for her husband: grinding corn, baking bread, washing clothes, cooking, suckling her child, making ready his bed and working in wool."
- 37 Bava Kama 15a where three verses are cited to justify specific areas of equality but not a general parity. דיניי is employed here as a technical term referring only to torts, punishment/atonement and manslaughter. See also Tosafot where another reading of the verse contradicts the conclusion cited here.
- 38 For a fuller discussion of women in biblical law see Eliezer Berkovits, *Jewish Women in Time and Torah*, Hoboken: Ktav Publishing House, 1990.
- 39 Shabbat 62a: הן עומות, "Rabbi Joseph said: Ulla holds that women are a separate people (nation)."
- 40 Psalm 45:14. Ibn Ezra explains כלה נראית לכל ולא היתה בארמונה ולא היתה נראית לכל, "She remained indoors in her palace and was not visible to all." For a discussion of this concept see Susan Grossman and Rivka Haut, eds., *Daughters of the King: Women and the Synagogue*, Philadelphia: Jewish Publication Society, 1992, preface.
- 41 J. Yoma 1:1.
- 42 Gen. Rabbah 18:2.
- 43 Gen. Rabbat 80:1.
- 44 This point of view is codified by Maimonides: "...every woman may go out to her father's house to visit him or to a house of mourning or celebration to do good deeds for her friends or relatives so that they will reciprocate. She is not confined in a prison that she may not come and go. But it is shameful for a woman to be about constantly, now



- 64 *Ibid*, 35.
- 65 *Ibid*, 35:14.
- 66 Hoshen Mishpat 35.
- 67 *loc. cit.*
- 68 See *Meirat Einayim* on 35:7 who explains the exclusion of a convert's testimony about a matter observed prior to the conversion כי שבהיותו עכו"ם לא הוי רמיא עליה ומלתא דלא רמיה עליה אמר ולא אדעתי "because when he was a Gentile, this matter was not an obligation of his and he spoke of a matter that was not an obligation and to which he paid no heed." See also *Baer Heitev, loc. cit.*, who justifies the ban on testimony by an emancipated slave about observations made while still enslaved in the same way. Apparently, the testimony of these witnesses would have been accepted had there not been a presumption about their inattention.
- 69 Numb. 27:1-11, 36: 6-9.
- 70 Numb. 36:8-9. Urbach, *op. cit.* p. 226, suggests that it is not a matter of tribal jealousy but הקמת שם perpetuating the name of the landholder through his male descendants' title to his land.
- 71 Sifra, Emor 4:3.
- 72 Bava Batra 120a.
- 73 Ketubbot 68a.
- 74 Ketubbot 52b.
- 75 Judith Hauptman, *Rereading the Rabbis: A Woman's Voice*, Boulder: Westview Press, 1998, p. 184.
- 76 See Urbach, *op. cit.*, pp. 219-231 for a full discussion of the subject, p. 226 for the passage quoted.
- 77 Sanhedrin 3:3-4. It is possible that women are not listed because the category of slaves and minors or those who are physically or mentally handicapped into which women are generally placed is not identified here.
- 78 Rosh Hashana 1:8.
- 79 *Ibid.*
- 80 For a discussion of the history of the *takkanah*, see Elon, *op. cit.*, pp. 522-530. Also, ישראל שציפנסקי, התקנות בישראל' ירושלים: מוסד הרב קוק' תשנ"א כרך ב עמ' שז-שיג' וכרך א' אמ' שמא. 81M. Eduyot 1:12.
- 82 Yevamot 116b.
- 83 M. Eduyot 6:1.
- 84 M. Eduyot 8:5.
- 85 M. Yevamot 16:7.
- 86 See אנציקלופדיה תלמודית' כרך "אשה" כרך ב' עמ' רנ"ב-רנ"ג which provides a comprehensive list.
- 87 Lev. 15:28, וספרה לה.
- 88 Ketubbot 72a.
- 89 Gittin 2b, Ketubbot 72a, *Yad, Gezela* 6:15, Shulhan Arukh, YD 127:3.
- 90 Gittin 3a.
- 91 *Yad, Gerushin* 13:29.
- 92 Solomon Freehof, *Reform Jewish Practice*, New York: 1944, vol. 1, p. 52.
- 93 Isaac Klein, *A Guide to Jewish Religious Practice*, New York: 1979, p. 451.
- 94 David R. Blumenthal, ed., *And Bring Them Closer to Torah: The Live and Works of Rabbi Aaron H. Blumenthal*, Hoboken: 1986, p. 35.
- 95 Paula E. Hyman, "The Other Half: Women in the Jewish Tradition," *Conservative Judaism*, vol. 26, no. 4, summer, 1972.
- 96 David M. Feldman, "Women's Role and Jewish Law," *Conservative Judaism*, vol. 26, no. 4, summer, 1972. Also, "Some Problems Ahead," *Judaism*, vol. 33, no. 1, winter, 1984.
- 97 The proceedings of the symposium are published in *Conservative Judaism*, vol. 29, no. 1, fall 1974 and responses in no. 3, spring 1975.

- 98 Blumenthal, *op. cit.*, pp. 11-24.
- 99 Gordon Tucker, "Final Report of the Commission for the Study of the Ordination of Women as Rabbis," in Simon Greenberg, ed., *The Ordination of Women as Rabbis*, New York: 1988, p. 5. See also, Anne Lerner, "On the Rabbinic Ordination of Women," *Ibid*, pp. 103-104. For a history of the subject see Rober Gordis, "The Ordination of Women - A History of the Question," *Judaism*, vol. 33, no. 1, winter 1984.
- 100 Greenberg, *op. cit.*, p. 15.
- 101 *Ibid*, p. 29.
- 102 Whether the exclusion was *d'oraita* or *d'rabbanan* would soon become the subject of a vigorous debate. See below pp. xxx-xxx.
- 103 David Novak, "Women in the Rabbinate?," *Judaism*, vol. 33, no. 1, (winter, 1984): 42.
- 104 Greenberg, *op. cit.*, Robert Gordis, "The Ordination of Women," pp. 55-56. A very similar case is made by David Aronson, "Creation in God's Likeness," *Judaism*, vol. 33, no. 1, (winter, 1984). He writes, "The challenge of the radically changed ethical standards of our day, recognizing the just claim of women to equal rights, make a discussion of the details of the traditional rules restricting women's rights quite irrelevant. To argue that today's women are less qualified than men to act as witnesses is absurd. The old rules simply have no basis in reality in either the Jewish or the general society of our day. Instead of pursuing an enexhaustible or a prolonged process of interpretation and reinterpretation of the previous restrictions which had been imposed upon the woman, let us present the ordination of women as a *takkanah* required by the ethical standards of our day. Tradition never limited the authority to make *takkanot* to any moment in history. On the contrary, it is the right and responsibility of every generation of rabbis when the needs of the time require it."
- 105 *Ibid*, Simon Greenberg, "On the Question of the Ordination of Women as Rabbis by the Jewish Theological Seminary," p. 88.
- 106 *Ibid*, Mayer Rabinowitz, "An Advocate's Halakhic Responses on the Ordination of Women," p. 119.
- 107 Rabbi Aaron Mackler has suggested that the distinction between an absolute *d'oraita* ban and a limited one can also be found in Rabbi Roth's work on organ donation. While המת הלנת is forbidden *d'oraita*, it is permitted by the Mishnah for המת כבוד. If the ban were absolute, however, it would permit no exception. This is analogous to the distinction made here, which identifies different levels of איסור דארייתא.
- 108 *Ibid*, Joel Roth, "On the ORdination of Women as Rabbis," p. 171.
- 109 *PCJLS 1980-1985*, p. 269.
- 110 *Ibid*, p. 282.
- 111 *Conservative Judaism*, vol. 39, no. 1 (fall, 1986): 7.
- 112 *Ibid*, p. 20.
- 113 *PRA*, 1987, vol. 99, p. 52.
- 114 תשובות ועד ההלכה של כנסת הרבנים בישראל' כרך ה' תשנ"ב-תשנ"ד.
- 115 Abraham Feder, *ibid*, pp. 70-83; David Golinkin, pp. 37-69.
- 116 Reuven Hammer, *ibid*, pp. 13-16; Michael Graetz, pp. 17-26; Gilah Dror, pp. 27-36.
- 117 Elliot N. Dorff, "Custom Drives Jewish Law on Women," *Conservative Judaism*, vol. 49, no. 3 (spring, 1997): 3.
- 118 The meaning of this is not clear. Blumenthal made an extensive presentation on the status of women in Jewish law to the CJLS on June 10, 1974 and each issue was voted on separately. Subsequently, his report was reitten as an article or *teshuvah*. The paper as it now reads is brief but formal and is presumably the substance of what Blumenthal presented that day.
- 119 *Ibid*, p. 11.
- 120 *Ibid*, p. 17.
- 121 *Op. cit.*, chp. 9.
- 122 *Ibid*, pp. 196-197.
- 123 *Ibid*, p. 216.
- 124 *PRA* 1992, vol. 54, pp. 316-317. The Proceedings do not record the vote, but David Golinkin reports that 53 favored the resolution and 51 opposed it. He credits his father, Noah Golinkin, for reporting the vote to him.
- ד תשובות ועד ההלכה של כנסת הרבנים בישראל' כרך ה' תשנ"ב-תשנ"ד, pp. 53, 61.

- 125 Rabbi Avram Reisner points out yet another Talmudic precedent. I paraphrase his words. The Talmud (Berakhot 47b) determines that it is improper to recite *Birkhat Hamazon* counting an *am ha'aretz*. Tosafot there states that at the present time we are not precise about this but accept an *am ha'aretz* for *zimun*. It refers the student to Hagiga 22a where tosafot suggests that the reason for the change is *mishum ayva*, reluctance to provoke class hostility. This is based on a statement of R. Papa that testimony of an *am ha'aretz*, originally excluded, was accepted in his day *mishum ayva*. If the exclusion of *edut nashim* like that of *amai ha'aretz* was social, as this paper argues, then removing the bar to women's testimony could be justified on the same basis. R. Papa's advantage was that the change had happened already, organically.
- 126 Arnold Goodman, "Solemnizing the Marriage Between a Kohen and a Divorcee," approved by the CJLS on March 12, 1996, by a vote of 12 in favor, 4 opposed and 2 abstentions. *Responsa 1991-2000*, pp. 593-598.
- 127 Arnold Goodman, "Solemnizing the Marriage Between a Kohen and a Convert," approved by the CJLS on March 12, 1996, by a vote of 15 in favor, 0 opposed and 3 abstentions. *Responsa 1991-2000*, pp. 599-601.
- 128 Elie Kaplan Spitz, "Mamzerut," approved by the CJLS on March 8, 2000, by a vote of 15 in favor, 3 opposed and 3 abstentions. *Responsa 1991-2000*, pp. 558-586.
- 129 For an extensive discussion of this subject, see Elon, *op. cit.*, pp. 1656-1660. On the Succession Law see pp. 1671-1683. Also, Aaron Blumenthal, "Halachic Changes OK'd by Religious Party," *Jewish Post and Opinion*, May 31, 1974, reprinted in Blumenthal, *op. cit.*, p. 160.
- 130 Elon, *op. cit.*, p. 1684, n. 270.
- 131 Roth, *op. cit.*, p. 160.
- 132 Roth, *op. cit.*, p. 151. Roth does not mention *giyur* but in fact his argument would apply in that case, too. It is essential that the distinction between signing a *ketubbah* or *get*, acts which are evidentiary in nature, and the witnessing of *kiddushin* or *הגט מסירת*, the delivery of the *get*, which are affective, changing the status of the individuals who are observed, be noted.
- 133 Elon, *op. cit.*, vol. IV, p. 1602. The original material is in Warhaftig, *Osef Piskei ha-Din*, pp. 137-138.
- 134 *Ibid*, n. 70, 71.
- 135 Rabbi Roth calls to my attention *Mishpetai Uziel*, vol. 4, Hoshen Mishpat, no. 20, where Uziel writes a *teshuvah* on the use of women as witnesses, concluding; "But all that I have said applies only to monetary matters, but as far as witnessing *kiddushin* or *gittin*, or matters of *ervah*, it is forbidden to make such an enactment, and even if a community made it, it is null and void." Rabbi Uziel's negative conclusion about women's testimony for *kiddushin* and *gittin* is neither surprising nor determining for us. By allowing women's testimony in monetary matters, Uziel asserts his confidence in the accuracy and reliability of *edut nashim*. His ruling that habitual sinners, as a class barred *d'oraita*, may testify in our day, providing affective testimony that establishes marital status, because the Torah's standard for allowing testimony is accuracy and reliability, is convincing. It is precisely on that basis that the original *takkanah* allowing women's testimony in limited circumstances was enacted by the *Tannaim*. That *takkanah* is a paradigm permitting us to eliminate restrictions on women serving as *edim* because there is no reason to doubt their *ne'emanut* at this time.
- 136 See n. 128, p. xxx.
- 137 It may be noted that those who reject our *gittin* and create a hypothetical issue of *mamzerut* would likely solve the problem by rejecting our *kiddushin* also.
- 138 Informed consent is a concept widely used in the relationship between doctor and patient. A physician may explain the advantages and disadvantages of a particular procedure and may implement it upon determining that the patient comprehends the explanation, is competent, and consents. In doing so, the physician and the patient are aware that the decision taken may impact on others and even on those not yet born. The psychiatrist recommending Prozac to a pregnant woman cannot guarantee that fetal abnormality will not result. If the patient has been advised of the possibility, chooses this form of therapy over others and accepts the risk to her unborn child, the doctor may prescribe the medication based on the informed consent of the patient. Informed consent is not absolute and a contra-indicated mode of therapy cannot be justified by a patient's agreement. However, the patient has the right to choose a course of action that may involve some risk both for herself and for others who are not party to the decision. Our situation is analogous. Individual who use a female witness in matters governed by halakhah may impact the lives of other people who are not immediate participants or even alive. The level of risk is uncertain; there may be no risk at all. Rabbis who do not believe that *edut nashim* is intrinsically unacceptable should allow individuals to make that informed decision.