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Response to Rabbi Bradley Artson's Teshuvah on Breast Feeding in Public - A Dissent

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This paper was submitted, in June 2005, as a dissent to "The Woman Took the Child and Nursed It: A Teshuvah on Breast Feeding in Public," by Rabbi Bradley Shavit Artson. Dissenting and concurring papers are not official positions of the CJLS.

While I find myself in agreement with Rabbi Artson's conclusion I disagree wholeheartedly with his argumentation. In fact I think he does a disservice to our sages and to the halakhah by casting a negative and inaccurate explanation on their attitude to women and prayer.

On Page 5, Rabbi Artson writes, "Our use of rabbinic sources becomes an act of translation, from one context into another, and of creative transformation, in which essence is distilled from application and then- out of loyalty to that sacred essence-applied in new contexts today."

His argument is that we distill the principle and apply it appropriately to a changed situation in modernity. Rabbi Artson then tries to argue that all issues of modesty are described from the male perspective, where modesty is merely a way of preventing men from becoming inappropriately aroused by women. Therefore, he says, on page 6, "in the Talmudic period a man might choose to wear headgear or not, but for a woman, the consideration of modesty and male arousal made the issue obligatory." In point of fact, modesty is used as a device for limiting inappropriate lust. While it is true that most such references are in the context of men being attracted to females, it is not exclusively so as I will show below where modesty is invoked even when no one but the individual is present.

Furthermore, in our modern secular and religious world, where we have accepted egalitarianism, and where men and women function in the public work place on an even basis, and in the post sexual revolution and post Woman's Movement, women have been "freed" to be as sexually open as men. They in fact have similar opportunities of being inappropriately aroused by the opposite sex. Visual cues from men affect women, as well as the other way around.

Our actions therefore, should be, not to rectify an injustice from the past, but rather to be inclusive of the principles of the past in applying them to the real situation of the present. That is to say, we should learn from this that modesty is to be applied to men as much as it is to women; and that is the way in which it should be "applied in new contexts today." Therefore, the conclusion should be to expand the rules of modesty to be inclusive of men. Appropriate modest dress for men in the synagogue, as well as women, should be the focus of our attention.

If, as I understand, tight jeans worn by men with a good physique, are a source of visual turn on to females, it would stand to reason, then, that we should be inclusive of prohibiting that kind of dress in the house of study or in the temple, during worship service. This, in fact, would be the "act of translation, from one context into another, and of creative transformation in which essence is distilled from application, and then -out of loyalty to the sacred essence,- applied in the new context today."

Therefore, in response to page 8, where Rabbi Artson says,

"What is needed is a clear premise that problems raised by male arousal, are best addressed by changing how men behave, by how they relate to women, or by shifting the consequence of male behavior back to the men," is in fact, misdirected. As I stated above, modesty is the obligation of both sexes, who need to be aware of their potential for opposite gender arousal; thus we have a mutuality of concerns for Tzniut. This could have applications beyond even the synagogue and house of learning.

An increasing societal problem is sexual tension in the workplace; and the value of modesty being observed by both sexes would probably be very helpful to the modern world.

The issue of prayer and nudity revolves around the issue of distraction. When one is saying the Shema, one needs to be at the highest level of concentration, and in a non-egalitarian community, where the frequency of observing women was limited, any part of their body would be seen as a distraction.

The citations of Rabbi Joseph Haim of Baghdad have no relevancy here.

If the passage is referring to synagogue, it might have had bearing on our discussion, but because it goes without saying that the woman would be on the other side of the mehitzah, it is not germane or relevant to our situation, where the woman may well be sitting right next to a male stranger.

If in fact he is discussing something taking place at home, the husband would be used to seeing his wife nursing, and at the time of her nursing, her breasts are not a sexual stimulant or attraction, then his statement would make sense. There is something very much non sexually arousing for most men, about a woman nursing. In that context, breasts become a feeding tool and are not a source of sexual arousal.

And, in any case, the passage quoted relies on the permissibility with all the limitations, only in "shaat hadechak." One cannot learn a general principle from something which is quoted as after the fact if it was in an emergency situation.....

On page 12, Rabbi Artson reiterates that a woman's modesty was important to be observed, for the sake of allowing man to preserve his Kavana,

"so he could fulfill his obligation, she was to keep under wraps."

Again Rabbi Artson is arguing that there is a male dominance of the female who is sacrificing at all times for the man's religious needs. He calls this (Page 13), "the Patriarchal and sexist context.... We need to find a rabbinic way to evaluate female nudity... without seeing her through patriarchy's eyes."

He reaches the peak of his argument in the quote and in a term from Professor Aryeh Cohen, that states,

"Rabbinic percolations on male nudity are clean: they see the male body from a male perspective as something normal and unthreatening."

Yet, I would challenge that statement as an appropriate understanding of the Rabbis' view of the male body. All nudity was deemed to be inappropriate during the time of prayer. Nudity, unrelated to the sexual arousal of the female, is also forbidden possibly out of concern for the distraction of auto-eroticism.

The law establishes the fundamental principles of a man to not pray while exposing his genitals. In the

Shulhan Arukh in Hilchot Hinhagat Adam Baboker, 2:1, it says, "

שולחן ערוך אורח חיים סימן ב סעיף א

ש חלוקו מיושב (טור) אלא יקח חלוקו ויכניס בו (ראשו) וזרועותיו בעודנו שוכב, ונמצא כשיקום שהוא לא ילב

מכוסה.

" he should not put on his cloak while seated, rather he should take his cloak and put his head in and his limbs while still reclining, so when rising he is dressed."

The passage here is talking about how you get dressed in the morning, and it goes into a discussion about how to put your garment on and that you shouldn't do it while you're seated; rather you should do it while you're lying down. This way, your body is covered by the sheet that you were sleeping under, so that you will not expose your nakedness, even to yourself.

In 3:2, a man is told to "observe tzniut, even in the washroom, and he is not to uncover himself until he is seated on the commode. Men should not go together, nor should they talk to each other, and they should shut the door to keep each other apart. All this is quoted for the purpose of Tzni'ut. "

שולחן ערוך אורח חיים סימן ג סעיף ב

הכסא ולא יגלה עצמו עד שישב. הגה: ולא ילכו שני אנשים ביחד, גם לא ידבר שם ויסגור
יהא צנוע בבית
הדלת בעדו, משום צניעות (אור זרוע).

If not exposing yourself to another male or to yourself in the act of getting dressed or in the bathroom, is an act of modesty, it follows that modesty, when praying, would certainly be a high value, and here we're talking about a male by himself, and two males together.

שולחן ערוך אורח חיים סימן ד סעיף כג, 4:23

ת ידים, אלא לק"ש ולתפלה, אבל ברכות דשחרית יכול לברך קודם נטילה, אא"כ הוא ישן על מטתו
לא תיקנו נטיל
ערום, שאז אסור להזכיר את השם עד שינקה אותם.

with regards to washing before prayer, "one needs to wash one's hands in the morning before saying the Shema or the Amidah; but for other blessings, one can chant them before washing; except, if he is lying on his bed, naked. For then, it is forbidden to mention God's name, until he cleans himself."

In Hilchot Kriyat Shema, section 74:1, שולחן ערוך אורח חיים סימן עד סעיף א

בטליתו, צריך לחוץ בטלית על לבו ואז יקרא, משום דלבו רואה את הערוה אסור. הגה: וה"ה
היה ישן ערום
אם לבו רואה ערות חבירו, אסור (טור).

"if one was sleeping naked under his tallit, he is required to make a division using his covering, putting it over his heart, before he can say the Shema, for it is forbidden for his heart to see his genitalia. The Ramah adds that 'if his heart sees his male friend's genitalia it is forbidden'"

שולחן ערוך אורח חיים סימן עד סעיף ב, 74:2

במים צלולים ורוצה לשתות, יכסה בבגד ממטה ללבו, כדי שלא יהא לבו רואה את הערוה כשיברך.
הרוחץ ערום
, אבל בידים לא הוי כיסוי. הגה: וה"ה אם מכסה ראשו בידיו לא מיקרי כסוי הראש. וע"ל סי' צ"א
ודוקא בבגד
ן בשם א"ז). ואם היו המים עכורים, שאין איבריו נראין בהם, מותר לקרות והוא בתוכו, והוא שלא
(תרומת הדש
יהא ריחן רע. (ואם אין לבו בתוך המים רק למעלה מן המים, אף בצלולים שרי) (ד"ע).

" if someone is bathing naked and wants to drink, he needs to cover himself with some clothing below his heart, so that his heart will not see his nakedness when he makes the blessing over the water. And they say specifically, "it must be with a garment and not with his hands; for his hands would not constitute being covered..... But, if the water is muddied so that his genitalia are not seen, then it's permitted."

And there is also an opinion added that

"If his heart is not in the water, but above it, then even if the water is clear, he is permitted."

מגן אברהם אורח חיים סימן עד ס"ק ה (6)

למעלה מן המים - כיון שענינו חוץ למים ואינו מסתכל בערוה (ב"י רשב"א ע"ס ע"ה):

“It is permissible above the water, as the eyes are above the water and they do not look down at his genitalia.”

שולחן ערוך אורח חיים סימן ר"ו סעיף ג' 206:3 in Hilchot Brikat Haperot

וּס, עַד שִׁכְסָה עֵרוֹתוֹ; בְּמָה דְבָרִים אֲמֹרִים בְּאִישׁ, אֲבָל אִשָּׁה יוֹשֶׁבֶת וּפְנִיהָ שֶׁל מִטָּה טוּחוֹת בְּקִרְקַע, וְלֹא יִבְרַךְ עַר

סָה עֵרוֹתָהּ (וְעַל לְעִיל סִימָן ע"ד סְעִיף ד'); וְאִפִּילוּ אִם אֵינוֹ עָרוֹם, אִם לְבוּ רֹאהָ אֶת הָעֵרוֹה אוֹ שְׂרָאֵשׁוּ כִּי בָזָה מֵתַכּ מְגֹלָה, אֲסוּר לְבָרֵךְ.

it states that “a naked person should not make the blessing until he covers his genitalia.” And of whom are they talking? A man!...”

So clearly, nudity for males, even by themselves, is inappropriate for prayer. In fact, there is greater leniency for female nudity, while praying.

In Section 75:1, שולחן ערוך אורח חיים סימן עה סעיף א'

דּוֹקָא בְּאִשְׁתּוֹ, אֲבָל בְּאִשָּׁה אַחֶרֶת אִפִּילוּ פָחוֹת מִטַּפַּח הוּי עֵרוֹה הִגְהוֹת מִיִּמּוֹנֵי פ"ג. וְנִרְאָה מְדַבְּרֵי הִגָּה: וי"א

טַפַּח בְּאִשָּׁה עֵרוֹה, אִפִּילָא לְאִשָּׁה אַחֶרֶת, רַק שֶׁבַעצְמָה יִכּוֹלָה לְקִרְוֹת אַע"פ שֶׁהִיא עָרוֹמָה, כְּדִלְעִיל סִי' ע"ד. הִרְא"ש ד'

The Ramah says (regarding nudity and saying the shema) “ some say specifically with one’s wife, if one tefach is revealed of skin, then he may not pray in that amount of nudity. Some say it’s specific to his wife, but another woman, even less(would prohibit him from praying). But it appears from the Rosh that even one hand breath of nudity in the presence of another woman, would disqualify prayer; but if she’s by herself, she can pray even though she is naked, within the limitations of Section 74:4”

In fact that passage states,

שולחן ערוך אורח חיים סימן עד סעיף ד'

רִ' שֶׁהַנְּשִׂיִם יִכּוֹלוֹת לְבָרֵךְ וְלִהְתַּפֵּל כִּשְׁהֵן לְבוּשׁוֹת הַחֲלוּק, אַע"פ שֶׁאֵינָן מְפַסְיָקוֹת לְמִטָּה מֵהֵלֵב. הִגָּה: יֵשׁ מִי שֶׁאָמַר

צְרִיךְ שֶׁתִּהְיֶה עֵרוֹה שֶׁלֵּהֵן טוּחוֹת בְּקִרְקַע אוֹ שִׁיּוֹשְׁבוֹת עַל שֶׁאֵר דָּבָר, דָּאז אֵינָן לְבָן רֹאהָ עֵרוֹה שֶׁלֵּהֵן. וְאִם הֵן עָרוֹמוֹת, מֵה שֶׁאֵינָן כַּךְ בְּאִישׁ (ב"י בִּשְׁם א"ח וְעִינָן לְקַמְן סִי' ר"ו סְעִיף ג').

“there are those who would permit a woman to be able to pray, when they have a garment on over them, which does not differentiate or divide between the upper and the bottom parts” ; and an additional note states, (they would permit them to pray) if naked, provided that their bottom part is covered with earth or clay or they are sitting in some way that they are covering up their bottom half and they can pray by themselves, because their heart does not see the genitalia , which is different for the man, who doesn’t have this leniency. “

So, in the end, the issue is not about women being put down because of the way in which men see their bodies. It’s not about a male filter because men have no self control; rather it’s about the appropriateness

of nakedness and prayer, in general. And, in particular, about public nudity and prayer which in all cases would be deemed to be inappropriate by male and/or female.

The issue today of breast feeding in synagogue is one of privacy and distraction. If a woman can breast feed discreetly, with no possibility of exposure, and it does not interfere with the people around her, then it might be permitted. Absent the above limitations, it should be prohibited.