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Edut Nashim K'Edut Anashim: The Testimony of Women is as the Testimony of Men

RABBI SUSAN GROSSMAN

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שאלה

Should women serve as witnesses in all matters governed by *halakhah*, including when two witnesses are required, and for witnessing acts and documents affecting personal status, such as those for marriage, conversion and divorce?

תשובה

I. Scriptural Sources

The role and status of women in Scripture have been subjects of much discussion, most of which falls outside the purview of this *teshuvah*.¹ Sources on women's role in Scripture as they relate to women's involvement in the Israelite legal system are relevant however, and therefore worthy of some discussion here.

In the Torah, men and women were equally culpable before the law for crimes.² However, women were not granted equal rights under the law. Except when male heirs were lacking, women could not inherit.³ While the plain (*peshat*) reading of Scripture nowhere specifies restrictions on the role of a woman as a witness (see below for the Rabbinic reading of Scripture), Scripture does restrict a woman's autonomy over oaths she may make. The oaths of married women and those still living in their father's home could be annulled by their husbands and their fathers, respectively.⁴ The vows of widowed and divorced women, however would stand, presumably because no man had authority over them.⁵ The Biblical source specifically refers to voluntary oaths, binding the oath taker to some voluntary obligation, and does not specify whether such restrictions on women's oaths also applied to other forms of oaths, for example, an exculpatory oath proving the defendant's innocence or an oath of testimony.⁶ A key determinant may have been whether the particular woman in question could function as an autonomous individual in society, based upon whether her actions and the produce of her hands were subjected to the discretion of a husband and/or father, or independent of them.⁷

For our purposes here, it would be worthy also to note that the Book of Judges records that the prophet Deborah served not only as a judge in the political sense of the term, serving as the political leader and commander in chief of her people, but as a judge in the judicial sense as well, for Scripture tells us:

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.

Deborah, wife of Lappidoth, was a prophetess; she judged (*hi shoftah*) Israel at that time. She used to sit under the Palm of Deborah, between Ramah and Bethel in the hill country of Ephraim and the Israelites would come to her for judgements (*Imishpat*).⁸

Throughout history there have been extraordinary women, like Deborah, who have been able to rise above the social, religious and legal constraints in place upon the women of their time.⁹ The very nature of her unusual status makes it methodologically difficult to extrapolate assumptions about the role and status of Israelite women during her age. However, Deborah does stand as an example that a woman could serve as a judge, in the judicial sense of the term. (The rabbinic view of Deborah will be discussed below.)

II. Rabbinic Sources¹⁰

It is commonly assumed that women could not serve as witnesses under rabbinic law. The Rabbis derived this prohibition from the Torah, seemingly granting it thereby not only time honored but immutable sanctity as a *d'oraita* (Toraitic) prohibition.

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

Might a woman, too, be fit to serve as a witness? Scripture here¹¹ uses the word *shenei* [two], and there¹² uses the word *shenei* [two]. Just as in there, the reference is clearly to men, and not women, so too, here, the reference is to men and not to women.¹³

The Midrash is using the hermeneutical rule of the *gezerah shava*: since the word *shenei* in verse 17 appears in a context referring to two men, then the appearance of the same word elsewhere (verse 15) carries with it the contextualized meaning from the other location.

The Midrash seems to ignore the *peshat*, the literal meaning of the verse. Commenting on the Mishnah, “The oath of testimony applies to men and not to women,”¹⁴ the gemara brings a series of three *b'raitot* which use this same midrash as refutation of the objection that the Scriptural phrase of v. 17, “*shenei haanashim*,” refers to the litigants, literally the parties of the dispute, not the witnesses, according to the plain meaning of the text. As Rabbi Joel Roth points out, because the internal logic of reading the verse as referring to witnesses is disputable, the Gemara relies on the *gezerah shava* as an alternative source to derive the prohibition.¹⁵

Not all traditional sources agree that the Toraitic source for the prohibition of women as witnesses derives from a *gezerah shava*. Pirke de Rabbi Eleazer attributes the disqualification of women’s testimony to one of the consequences of Adam and Eve’s sin, along with menstruation and painful childbirth, etc.¹⁶ *Yalkut Shemoni* on Gen. 18:9-16 attributes the disqualification to Sarah denying that she laughed upon learning she was to bear a child.¹⁷ Apparently unconvinced by any of these suggestions, Maimonides bases the disqualification of women’s testimony on the Torah’s reference to witnesses in masculine rather than feminine language, an approach other commentators find surprising since the Torah is generally written in the masculine form.¹⁸

The fact that the Rabbis do not agree on any one Toraitic source leads us today to question whether a prohibition on women’s testimony was indeed a *gezerat HaMelech*, an immutable command from God our Sovereign, or whether it was the best effort of our Sages to try to understand God’s will, as expressed in the Torah, given the realities of the sociological, political, and economic conditions under which they lived. In any event, the sources cited above assume that the origin for the prohibition on women’s testimony could be

derived from a Toraitic (*d'oraita*) source, even if they could not agree on which source.

It has been posited that we cannot be sure which came first, the practice or the *midrash halakhah* grounding the practice in a biblical proof.¹⁹ Mielziner has argued that the use of a hermeneutical application of biblical verses as proof-text for a particular practice merely indicates that such a practice was grounded in accepted and sanctified tradition, not that it reflected an actual Toraitic tradition which could be traced back to the highest legislative authority, i.e., Moses at Sinai.²⁰

While some may argue for the biblically derived nature of the prohibition on women's testimony and others reject such an application, all can agree that the prohibition on women's testimony reflected a practice ancient enough to be taken as a given by the Rabbis, regardless of its specific derivation.

However, rabbinic literature is seldom monolithic and here, too, we see that the Talmud and latter sources permit women's testimony in a number of circumstances. In all such situations, there is no concern that a biblical injunction is being compromised.

The general rule appears in the Mishnah:

אלו הן הפסולין המשחק בקוביא ומלוי ברבית ומפריחי יונים וסוחרי שביעית
ועבדים זה הכלל כל עדות שאין האשה כשירה לה אף הן אינן כשירים לה.

These are they that are ineligible (*pasulin*) [to serve as witnesses for the new moon]: a dice player, a usurer, pigeon fliers, traffickers in seventh year produce, and slaves. This is the general rule: all testimony that is not fit (*kasher*) for a woman, is not fit for them.²¹

In other words, there were types of testimony that women were permitted to bring, referred to in the Talmud as *edut ishah*, woman's testimony.²² Certain classes of men were similarly restricted to these categories of testimony.

Based upon this Mishnah, a number of scholars have reasoned that the Rabbis disqualified women as a class from some forms of witnessing based upon the rabbinic perception that women's characteristics or conditions were in some ways analogous to those classes listed in this Mishnah, thereby rendering women unreliable as witnesses.

A. Women's Reliability

The first class of prohibited witnesses include gamblers and those selling prohibited merchandise: disreputable characters whose engagement in sinful activities led the Rabbis to suspect them of being willing to bring false testimony. While it is true that Rabbinic literature is not monolithic in its approach to women's character,²³ and includes many laudatory comments about individual women and women as a class,²⁴ there are also passages which show that the rabbis attributed to women, in general, characteristics that would make women suspect of being willing to bring false testimony, if not motivated by a desire for illicit gain, then by a desire for vengeance or meanness, or simply by what was seen as their weak mindedness (and therefore vulnerability to manipulation and coercion).

Midrash Rabbah states: The Sages say that four traits apply to women: They are greedy, eavesdroppers, lazy, and jealous.... Rabbi Yehoshua bar Nahmani adds: querulous and garrulous. Rabbi Levi adds: thieves and gadabouts.²⁵ Elsewhere Midrash Rabbah states: "Women are not dependable that they will accurately report what was told them."²⁶ In these negative perspectives of women's character (of being willing to lie on one hand, or being lightheaded²⁷ or just too ill informed, on the other), the Rabbis reflected the views of the larger Roman society in which they lived, whose historians and thinkers also referred to women's nature in

similar ways.²⁸

However, rabbinic legal materials seem to make an effort to apply such assumptions more discretely, to the case of an individual woman whose self-interest would be served by lying, much like a relative who is disqualified as a witness not because he is always disqualified but because the particular case involved an issue of self-interest. Such is the nature of many of the cases in chapter 15 in *Maseket Yevamot*, for example, which try to determine under which conditions a particular woman could be believed (*neemenet*), while others could not, in testifying that her husband was really dead and she should be permitted to remarry.²⁹ *Yevamot* deals with the realities of human self-interest, jealousy and vindictiveness, for example in its discussions of whether co-wives are trustworthy witnesses to each other or whether an individual woman who was held captive can serve as a witness to her own status.³⁰ These discussions question the trustworthiness of a particular woman's testimony under specific circumstances rather than cast into doubt all testimony by all women as a class.

The Rabbis could not reasonably make a general rule that women were untrustworthy (i.e., that they would, as a class, readily lie) because the Rabbis had to rely on women's trustworthiness in (what was for them) the serious areas of ritual purity: *niddah*, *hallah*,³¹ and *kashrut*, the first relegated to women's discretion because of the realities of biology, the other two because of the social realities of gender role differentiation in the rabbinic period concerning food preparation.³² The Rabbis had no reasonable choice but to rely on women's word in these areas.³³ Yet, the Rabbis were also willing to rely on women's testimony when such testimony served to determine the facts of a case, albeit in situations in which the Rabbis determined that one witness was sufficient.³⁴

Furthermore, women's testimony became accepted whenever men's testimony was unavailable, or whenever women's knowledge of the subject was superior to that of men's. The ruling to permit a woman to testify to the death of a husband³⁵ (even her own³⁶) is only the most striking example.³⁷ A midwife is to be believed as to which twin was firstborn,³⁸ she being knowledgeable and present where men normally would not be. Women captives were permitted to testify for each other, though they could have been suspected of collusion.³⁹ Similarly, Rava transfers an oath from a female litigant based upon the testimony of his wife, Rav Hisda's daughter, whom he trusts to be knowledgeable in these matters.⁴⁰ While the human tragedy of a woman bound to a dead husband probably lent impetus to the Rabbis permitting a woman to remarry on the strength of a woman witness, the Rabbis nevertheless follow the same guidelines in other cases, as above, for obviously no man's testimony was available at the time, and the woman in question was knowledgeable about the situation.

These same guidelines are codified in a citation by Rema as an ancient *takanah*: that in places in which men's presence was uncommon, or in subjects about which women, rather than men, were more knowledgeable or attentive, women are to be relied upon as witnesses:

י"א דתקנת קדמונים הוא דבמקום שאין אנשים רגילים להיות' כגון בב"ה של נשים וא בשאר דבר אקראי שאשה רגילה ולא אנשים' כגון לומר שבגדים אלו לבשה אשה פלונית והן שלה' ואין רגילים אנשים לדקדק בזה' נשים נאמנות.

... There is a *takanah* of the ancients that in a place in which it is not usual for men to be, for example in the women's (section of the) synagogue or regarding other things about which women are familiar and not men, for example, about the clothes that a certain woman wore, that they are hers, and men are not usually particularly attentive about this, women are to be believed . . .⁴¹

We see, therefore, that what first appears to be a blanket prohibition on women's testimony ultimately is

modified to accept women's testimony in a number of circumstances, notably whenever women, rather than men, are available and/or whenever the subject at hand is one in which women are knowledgeable.⁴² It is worth noting that the Rabbis who accept women's testimony in such circumstances do not present themselves as violating or uprooting Toraitic prohibitions, nor are they considered to be doing so by others.⁴³

In light of this ruling permitting women's testimony in a variety of circumstances, we can turn back to the rabbinic record and ask what conditions or considerations may have led the rabbis to prohibit women's testimony in general and categorize women with gamblers, traffickers in illegal produce, slaves and minors in defining categories of prohibited witnessing.

B. The Private Nature of Women

Some modern Orthodox authors understand the general prohibition of women witnessing as based upon what they see as God's commandment that women not function within corporate society as public beings. They rely for their proof-text on the rabbinic commentary to the verse from Psalms: "*kol kevudah bat melech penimah*," "The King's daughter is all glorious within,"⁴⁴ which the Rabbis used to justify their position that women's appropriate place was in the home, rather than in public.⁴⁵ Such Orthodox advocates as Moshe Meiselman suggest that God excluded women from witnessing not because women were unreliable but as a way of protecting them from having to enter the public stage, which would compromise what some contemporary Orthodox writers see as women's God-ordained and mandated modest nature.⁴⁶

However, while the Talmud reflects an ambivalence consistent with the mores of their times to the exposure of women to public scrutiny in the courts, as will be discussed below, the Talmud itself rejects the idea that *kol kevudah* is the proof-text for the general prohibition of women as witnesses.⁴⁷

C. Women's Knowledge

Interestingly, the Talmudic record shows that women did indeed attend court, as litigants, defendants, observers and even as witnesses.⁴⁸

There is a style of rabbinic material that records anecdotes about actual court proceedings concerning "a certain woman," *hehi itta*,⁴⁹ that indicate that women not only were able to resort to rabbinic courts as litigants, but were even summoned as defendants.⁵⁰ In one late case, Amemar, in summoning a woman to court, required her to follow him from his seat in Nehardea to Mahoza, with no concern for the private nature of her gender.⁵¹ Such cases are not surprising since women enjoyed equal protection and culpability before the law.⁵²

While these sources show that individual women attended court, it is reasonable to consider that such cases were highlighted in the Talmudic corpus for their unusual nature and that women were much less likely to go to court than were men.⁵³ R. Shimon ben Gamliel, for example, states, *ein darkah shel isha lhzor al batei dinin* "It is not the way of women to turn to court."⁵⁴

Such perspectives reflect the reality of women's role in larger Roman society. Roman women were generally represented in Roman courts by a guardian and did not usually attend courts themselves:

Guardians are appointed for males as well as for females, but only for males under puberty, on account of their infirmity of age; for females, however, both under and over puberty, on account of the weakness of their sex as well as their ignorance of business matters.⁵⁵

R. Eleazar seems to reflect the same sensibility when he states that men do not want their women exposed to the publicity of the court.⁵⁶ R. Eleazar is referring to women coming as litigants. In such cases, it

would be preferable for the woman to send a representative or a guardian, rather than appear herself.

When women did resort to court, the Talmudic record seems to indicate that women as a class in the rabbinic period generally lacked familiarity with the issues of business and public dealings. In one source, the Talmud assumes that women are not familiar with the legal intricacies of transferring ownership of moveable property.⁵⁷ In *hehi itta* cases dealing with issues of land ownership, women seem to have been unfamiliar with the legal requirements for taking possession of property. We find two cases in which a woman comes to court as a litigant crying out for justice, in proving ownership of immovable property, and the rabbinic judge apologizes that he cannot help the woman since the method by which she thought she had taken possession was faultily executed.⁵⁸ Another source seems to indicate that women did not usually travel on business: R. Ashi notes that R. Kahana wrote out a *petiha* (a warrant to appear in court)⁵⁹ against a woman for the day following the one on which she failed to appear. Replying to the question why he did not hold by R. Hisda's view that a defendant appears on the following market day (Monday/Thursday), R. Kahana replies that such a grace period does not apply to a woman because she is in the town and failure to appear is considered tantamount to disobedience (of a court order)⁶⁰

It is always difficult to draw sweeping conclusions about the level of knowledge about any particular group of people. Any study of women must recognize that individual women have always stood out as exceptions to the conditions experienced by the large group of women in their historical and cultural milieu. Given these caveats, the rabbinic record nevertheless seems to indicate that the Rabbis expected Jewish women in the rabbinic period, as a class, to have little experience and familiarity with business affairs. It is understandable, therefore, that women would not be considered reliable to witness in situations touching upon business dealings or contract law. As we saw above, however, where women could be assumed knowledgeable, they were relied upon.

D. Women's Autonomy

There is another important issue of social realia that reflects on our question that can be elucidated by exploring the equation between the testimony of women and that of slaves in the Mishnah Rosh Hashanah source with which we began this discussion.⁶¹

Meiselman makes an interesting point when he suggests that the ability to testify and the obligation to testify are interrelated: if one is not obligated to testify, then one is not permitted to testify. Meiselman offers the analogy of a king who cannot serve as a witness because he cannot be forced to offer testimony.⁶²

While the discussion above has shown the flaws in Meiselman's application of the analogy to the Rabbis' concern for a woman's modesty, the suggestion that one who cannot be forced to testify cannot testify is apt for a different reason: A woman may not be obligated to testify because she did not necessarily have the personal autonomy to do so for, according to rabbinic law, she would be dependent upon the will (and whim) of her husband or father. This is the same reason the Talmud exempted a married woman from the obligation to honor her father and mother, because she is under the authority of her husband.⁶³ Similarly, according to Abudraham, she was exempt from positive time bound commandments, "because she is subservient to her husband to fulfill his needs."⁶⁴ In this light, the rabbinic equation of a woman's testimony with that of a slave may be in response to the context of a social reality in which woman, like slaves, did not have full personal autonomy. Just as slaves were limited by their master's directions, so too women's movements could be limited by their husbands or fathers and therefore they were not necessarily available to testify.⁶⁵ (Such lack of personal autonomy for women in the rabbinic world is also evident in the laws restricting a woman's general ability to make a binding oath, for her father or husband could countermand it.⁶⁶)

Similarly, Prof. Judy Hauptman suggests that, just as slaves were vulnerable to intimidation by their

masters, women's dependent status made them so vulnerable to persuasion and intimidation by their fathers or husbands as to compromise their reliability.⁶⁷

The issue of autonomy also has another and even more significant implication for the rabbinic restrictions on the acceptance of women as witnesses. Hauptman observes that women in the Talmudic record are never allowed to give testimony on behalf of a man. She argues that women's social status vis a vis men was such that it was inconceivable that a woman would supersede a man or have sway over him.

This social reality is reflected in Talmudic sources that suggest that for a woman to engage in a particular act, either on her own behalf or that of her husband, would impinge upon the honor of her husband or of the male congregation. For example, the Talmud tells us a man is to be cursed if his wife reads the grace after meals⁶⁸ or Hallel⁶⁹ for him. Women are equated in both these sources with minors and slaves. Similarly, women are barred from being honored with going up to (read) the Torah, because it would be considered an affront to the honor of the (male) congregation.⁷⁰

In such a social milieu, the idea that women could certify documents binding a man to certain legal obligations would seem unacceptable if not inconceivable.⁷¹ This social reality of women's status helps explain why the Rabbis (from the Talmud through Rema and beyond) were willing to relax the ancient rules prohibiting women's testimony but only where men's testimony was unavailable (either because no men were present or because the subject matter was of no interest to men and/or of particular interest to women) and never to make effective documents which would bind men to certain responsibilities or change their status.

This distinction may also help explain why the Rabbis seemed willing to accept women for evidentiary testimony, proving a point of fact (*edut rayyah*) referred to as percipient testimony in American jurisprudence, for which one witness was acceptable in place of two witnesses, but were unwilling to accept women for what has been identified as witnessing which served to make an act or document valid and legally binding, which I will call effective witnessing (*edut kium*) which is referred to as performative utterances or formal testimony in American jurisprudence, such as that required for *kiddushin*, for which two witnesses were required and from which women were historically excluded.⁷²

For all their efforts to ameliorate the vulnerable status of women (as for example in ensuring that women were adequately supported and could not easily be unilaterally divorced at the whim of their husbands), the Rabbis could not conceive of equating the authority of a woman with that of a man nor — perhaps most significantly — could they conceive of giving a woman authority over a man, as symbolized in a woman effectuating documents binding upon, and thereby restricting a man. The social stigma of a woman impinging upon a man's honor was so great that even in cases in which women's testimony was accepted, a woman's testimony would not stand against a man's testimony, and one male witness would override even two or more female witnesses.⁷³

This sociological explanation is particularly attractive because the distinction between evidentiary and effective witnessing is otherwise somewhat specious. The role of the witnesses to a document of marriage or divorce served, somewhat as do notaries today, as evidentiary, to testify that the partners of the agreement were who they were purported to be and the agreement was duly executed before them as reflected in the nature of the document. The names of the witnesses on the document served as a substitute for personally delivered testimony which might be difficult to procure and therefore proved the legitimacy of document and the act to which it attested.⁷⁴

E. Women as Judges

Up until this point we have been discussing the role of women as witnesses. The issue of autonomy raises a corollary issue: that of women serving as judges. This is an important point because, if a class of people

is permitted to serve as judge, those people can also serve as witnesses.

מתני' כל הכשר לדון כשר להעיד' ויש שכשר להעיד ואינו כשר לדון.

Whoever is eligible to act as judge is eligible to act as witness, but one may be eligible to act as witness and not as judge.⁷⁵

There is one case in Scripture, referred to above, that therefore created a difficulty for the Rishonim: that of the prophet and judge Deborah, about whom Scripture specifically states, that the people came to her for judgment.⁷⁶ The Rishonim point out the dilemma: since women could not serve as a witness,⁷⁷ they certainly could not act as a judge.⁷⁸ (Conversely, if a woman could serve as a judge she could serve as a witness.) Furthermore, Tosafot understood the Torah's statement "set a king over yourself,"⁷⁹ to mean specifically a king and not a queen, i.e., that women could not rule over men. (See below for further discussion on this point.)

Tosafot debate how Deborah could serve as judge for the people if ancient Jewish law held that women could not serve as judges and that the Israelites should be ruled by men and not women. Tosafot offer several particularly forced explanations, suggesting that perhaps Deborah, as a prophetess, merely transmitted Divine will, either directly to the people or through male judges, rather than serve as a judge or leader herself.⁸⁰ Alternatively, Tosafot offer a more reasonable explanation: Devorah could serve as a judge because she was accepted by the community as such.⁸¹ Tosafot are uncomfortable with the precedent this could set and therefore suggest that Devorah should not be seen as a precedent permitting women to be judges because perhaps the only reason the community accepted her was that she was imbued with the presence of the Shekhinah.⁸²

Other Rishonim are clearly troubled by Tosafot's approach, for while the ancient community of Israel might have been willing to accept a woman in the highly unusual role of judge at that time due to the respect they held for her as a prophet, Devorah's role as prophet could not justify her role as judge, for a prophet was not above or outside of God's own laws.

Rashba and the Ran offer a different explanation as to how Devorah could serve as a judge in a way consistent with Jewish law: *shofetet v'danah, shehayu mkablim otah kh'derekh sh'adam mkabel ehad min hakrovim*; "She judged and decided (i.e., served as a *dayan*) for they accepted her just as a person accepts one of the (other litigant's) relatives."⁸³

Rashba and the Ran both insist that Devorah actually served as a judge both as a *shofet* (a religious leader) and as a *dayan* (judging actual cases). Like Tosafot, they suggest that she could function in these roles despite the general rule prohibiting women to serve as a judge (and therefore a witness) because the community accepted her as such. However, unlike Tosafot, their explanation draws on a general rule of rabbinic jurisprudence which can serve as a precedent and paradigm applicable elsewhere: Rashba and the Ran argue that there is rabbinic precedent in Maseket Sanhedrin for accepting as a witness or judge an individual who is part of a class of people otherwise disqualified as long as the litigants agree:

אמר לו נאמן עלי אבא נאמן עלי אביך נאמנין עלי שלשה רועי בקר רבי מאיר
אומר יכול לחזור בו וחכמים אומרים אינו יכול לחזור בו.

If one suitor says, "accept my father as trustworthy," or "I accept your father as trustworthy," or "I accept three herdsmen as trustworthy," R. Meir says: He may retract. But the Sages say: He may not retract.⁸⁴

Citing this source, Rashba and the Ran understand that a woman can serve as a judge (or, by extension, a witness) when the people accept her. Rashba and Ran argue that this was the case for Devorah. By extension, any woman who would find such acceptance within the community would also be acceptable as a judge, and therefore a witness, just like relatives who can be accepted by both parties though otherwise disqualified, and once accepted they would thus serve and their testimony or decisions would be binding with the conclusion and acceptance of the decision or transaction.⁸⁵ That it would have been rare for a woman to find such acceptance in the pre-modern world should not be surprising for us.

F. The Relevance of the Changing Nature of Women in Society

Most traditional sources through the Middle Ages could not conceive that women could have authority over men. Maimonides writes:

אין מעמידין אשה במלכות שנאמר עליך מלך ולא מלכה' וכן כל משימות
שבישראל אין ממנים בהם אלא איש.

A woman is not appointed to the kingship, as it is said: "Set a king over you," (Deut. 17: 15-16) and not a queen; similarly (to) all offices in Israel none but men are appointed.⁸⁶

Although Maimonides does not cite sources in his Mishneh Torah, he could find justification for his position in the statements of the Midrash on Deut. 17: 15-16: "a king and not a queen,"⁸⁷ and those of Rav, who held that Torah and royal rule do not apply to women or slaves.⁸⁸ Regardless of the historic precedents to the opposite (for example, Queen Salome Alexandra and Devorah, as discussed above), Maimonides applied this restriction broadly to all areas of communal leadership and official communal positions. This general restriction held for centuries, reflective of the limited role of women in leadership positions in general as well as Jewish society.⁸⁹

But this position began to falter by the 1940s as women in general society slowly began to enter jobs traditionally reserved for men and became more financially and legally independent. Rabbi Uziel, basing himself on the Shulhan Arukh, although discouraging such an action, acknowledged that theoretically women could vote and be elected to communal positions since existing social conditions were such that women and men interacted in business transactions on a more regular basis. (In other words, times had changed.)⁹⁰ Rabbi Moshe Feinstein, in a decision permitting a woman to take over her deceased husband's *mashgiach* business, ruled that Maimonides had based his exclusion of women from public office on his own logic, since Talmudic objections to the appointment of women refer only to the monarchy.⁹¹

In Israel, this was partially resolved by the Women's Equal Rights Law of 1951, adopted when the National Religious Party was a member of the ruling coalition, that equalized treatment of women in inheritance as well as other areas of civil and criminal law, including serving as witnesses in civil and monetary cases.⁹² The fact that the National Religious Party has included women among their representatives in Knesset indicates that the principle of excluding women from public office (either because of *kol kevudah bat melech penimah* or *a king and not a queen*) no longer holds sway. Indeed, women even sit as judges in Israeli courts, including on the Supreme Court, alongside judges from the Orthodox parties. As will be discussed below in even greater detail, women are much more widely accepted in roles of authority over men than would have seemed conceivable in the pre-modern world. The willingness of the community, even the Orthodox community in some cases, to accept women in roles of authority in Jewish corporate life opens the door to revisit the positions of

Rema, Rashba and the Ran to see how they should be applied today.

III. Applying the Rabbinic Sources to Today

We have seen that the Rabbis considered women trustworthy for purposes of determining matters of fact but otherwise unreliable, and therefore unqualified as witnesses, because they considered women unknowledgeable about business and the conditions of public transactions and susceptible to control and intimidation due to their lack of personal autonomy. Although there were always exceptions to the rule, sources seem to indicate that such a perception reflected the wider social reality for the majority of women in the rabbinic and medieval periods.

That is no longer the case. Women today serve in all areas of the business world, transact their own business, own their own businesses, populate law schools and legal practices, and sit as judges on the civil and criminal benches in many nations, including the United States, Canada and Israel. In today's society, women can be assumed to be familiar with and knowledgeable about business practices, and especially in issues relating to the laws of personal status and family law, notably the areas dealing with marriage, divorce, and child custody. Therefore, the areas in which the rabbis from ancient days through the Codes, accepted women as eligible witnesses, i.e., areas in which they were knowledgeable or had a particular interest, now has broadened to include all the aspects for which a witness could be called upon to witness, and especially the aspects of personal status and family law, with which women as a class are as equally familiar as, if not more familiar than, would be a man.

In addition, women in most Western nations are now legally autonomous as adults in all areas of business and civil law and much less likely to be a victim of intimidation. Even though family violence unfortunately still continues to exist, changing societal norms provide women with a greater ability to support themselves and their families. In addition, support services and other options are now available to those who seek to leave abusive situations which were not available to the pre-modern woman. Changing societal norms have changed the reality which could have made women as a class unreliable due to intimidation in the pre-modern world.

It has been argued that this is all very fine and good when one witness was permitted, even when two witnesses were normally required, for percipient (evidentiary) testimony but it is not sufficient to justify using women when two witnesses would be required for performative (effective) testimony, notably for actions and documents determining personal status. Here Dr. Hauptman's argumentation is compelling: in pre-modern society women were barred from performative (effective) testimony because social conditions could not warrant a woman having sway over a man in these areas. However, today, women are not only legally autonomous from men but even have legal authority over men, for example as bosses, political leaders, and judges. Women judge and witness in all areas of criminal and civil law today, something that simply was not true in pre-modern times. Therefore, the record our traditional texts present of the discomfort the rabbis had with women validating legal actions or documents that held binding authority over men (e.g., to make effective an act or document such as *kiddushin* through a *ketubbah*, or a *get* or document of *giyur*), is no longer operative. In other words, there is no longer any basis to distinguish between evidentiary and effective testimony vis a vis women who could otherwise be considered eligible witnesses on the basis of credibility, reliability and familiarity.

The social reality of political and legal equality between men and women therefore no longer supports the need to distinguish between percipient (evidentiary) and formal or performative (effective) testimony vis a vis the role a woman's witnessing plays regarding a man's status because the honor of a man is no longer compromised by acknowledging the authority of a woman over him. Therefore, a woman's witnessing should in all respects should be like a man's witnessing in Jewish matters as it is in civil and criminal matters.

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As early as 1974, the Committee on Jewish Law and Standards acknowledged this change in the social realities of a women's credibility when it approved by a minority vote the position forwarded by R. Aaron Blumenthal that women could serve as witnesses in all forms of witnessing, including *ketubbot*, *gittin*, and *giyur*. Under the rules then pertaining to the CJLS, that position received the necessary three votes to become an acceptable position for our colleagues.⁹³ It is upon this decision that those colleagues who accept women as witnesses rely.⁹⁴

Now standing at the cusp of the twenty first century, the situation is even more pointed, as women sit on the United States and Israeli Supreme Courts, and serve as MKs, Members of Parliament, Congressional and local Representatives, Senators and Governors in Israel, Canada and the United States, and throughout the Diaspora. Women comprise a significant percentage of law school classes, work regularly in all levels of business and serve as successful business owners, and have equal legal rights regarding property in most states. Women fill top ranking professional and lay leadership positions within the organized Jewish community. Within our own Movement, women now comprise a significant percentage of those eligible for ordination in Conservative Movement rabbinical schools and serve as pulpit rabbis in Conservative congregations across to the United States, Israel, South America, etc., as well as serve on the Executive Committee and Committee of Jewish Law and Standards of the Rabbinical Assembly.

As discussed above *infra*, Rema codified an ancient practice, already reflected in the Talmud, that women could be relied upon as witnesses, even where two witnesses were required, even when Biblically proscribed matters were at stake, whenever qualified men were not available (either because no man was physically present to have been a witness to the incident or to give testimony to the judge) or because the subject was such that women were more knowledgeable about the subject than were the available men. As Rabbi Aaron Mackler has pointed out, the Rabbis of the Talmud and Codes who accepted women's testimony in these circumstances did not present themselves, nor were they seen by others, as violating or uprooting Toraitic prohibitions.

Rabbi Myron Geller has elsewhere cogently argued that Rema's source can serve as a paradigm for including women as witnesses today in all forms of witnessing.⁹⁵ I agree. Today when women as a class are as knowledgeable as men and therefore just as reliable, and since we live in a time when a man's honor is not compromised by being under a woman's authority, women's testimony should be like a man's testimony in all cases, including for acts and documents which bind a man to certain responsibilities or change his status, as in *kiddushin*, *gittin* and *giyur*. Indeed, in situations in which a particular woman is more knowledgeable or observant than a particular man, and therefore makes a more reliable witness or judge, a woman should not only be accepted as an eligible witness or judge, but would be preferable to potential male witnesses who may all be unobservant. This is particularly true in far flung Jewish communities in which it is often the woman rabbi, a rabbinic spouse, or a knowledgeable lay woman who might be the most reliable witness or judge, given her level of knowledge of and commitment to Jewish tradition and observance. In such a situation, a decision to allow women to serve as witnesses, or as judges, for acts and on documents of personal status would simply be following rabbinic paradigm that a woman's testimony can be accepted when women are known to be knowledgeable and reliable and their testimony would not be perceived to impugn the honor of a man (which in our day and age it would not). As R. Mayer Rabinowitz has pointed out, the qualifications the Rabbis set for an eligible witness have not changed. What has changed are the social realities which have broadly increased the number of those qualified.⁹⁶

The Conservative Movement is built upon the balance between tradition and change. Therefore, it is understandable that there are those in our Movement who will be uncomfortable with changing an ancient precedent of rabbinic practice, which some see as of Toraitic origin (i.e., prohibiting women from signing

documents of personal status), by relying on the argument of *shinnui ha'ittim*, that the sociological reality of the times have changed, as consistent as such an argument is with how many in the Conservative Movement understand the evolving process of Jewish law.⁹⁷ Some may be hesitant to rely on the paradigm codified in Rema because it was never actually applied in rabbinic precedent law to performative (effective) testimony.

For those who are hesitant to rely solely on *shinnui ha'ittim*, especially because they may be concerned that accepting women's testimony may pose a challenge to a Toraitic prohibition, there are still other substantive rabbinic paradigms that can be relied upon to allow women today to serve as witnesses in all areas of Jewish law.

The Rishonim Rashba and Ran offer a general rule permitting the use of women as judges, and by extension witnesses, whenever the appropriate conditions exist that indicate that the community accepts the woman or women in question to serve in those roles. Rashba and Ran rely on the Talmudic precedent that both parties to a dispute can agree to accept an otherwise disqualified witness or judge. Under that precedent, decisions concluded, commitments made and documents signed by these otherwise disqualified (*pasul*) judges and witnesses who were accepted by both sides, would be binding once concluded and accepted. In its narrowest application, for example, the bride and groom at a wedding could agree to accept a particular woman as a witness, and such a witness should be acceptable without compromising the validity of the *ketubah* or the *kiddushin* to which women witnessed.

Rashba and the Ran's understanding of Deborah also provides us a broader paradigm that we can apply specifically to female rabbis. While female rabbis are neither prophets nor the daughters of prophets, they, like Deborah, are accepted as the religious leaders and halakhic decisors of the communities in which they serve. This role is consistent with how Rashba and the Ran explain why Deborah's role as judge was consistent with Jewish law, i.e., that when a particular woman is accepted by the community, she can function as judge (and by extension a witness) for that community.

R. Joel Roth has argued that a rabbi serves in a congregation based upon the very acceptance of the community of his or her leadership and authority. Therefore a female pulpit rabbi has, by the nature of her role as congregational rabbi, such acceptance of her local community and could thus serve as judge.⁹⁸ Based upon the rabbinic position that all who can judge can witness, a woman congregational rabbi, who would be authorized to serve as judge, could therefore also serve as a witness. One might posit this would hold true only in her congregational community. However, the Conservative Movement, as a Movement, has accepted women as rabbis, thereby accepting their authority for our Movement, so one could and rightly should extrapolate that all women rabbis, by the nature of their ordination, and the authority the Conservative community vests therein, would be considered authorized to serve as a judge and therefore as a witness. (As discussed above, Mishnah Sanhedrin supports this by accepting that even those who would normally not be considered fit to serve as judges or witnesses can be accepted as such with the permission of the interested parties.⁹⁹)

(It is worth noting that a number of women colleagues have refrained from serving on *batei din*, which creates a hardship for other colleagues who provide coverage on community *batei din* for conversions, etc. Hopefully this *teshuvah* will serve to convince women colleagues that they can in good conscience begin fulfilling equal responsibility with their male colleagues for maintaining such Movement panels by serving as a rabbinic judge.)

Furthermore, the view of the Ran and Rashba could logically be extrapolated to include all women as acceptable, not just women rabbis. Once we recognize that Rashba and the Ran rely on Mishnah Sanhedrin to understand that the acceptance of an otherwise unacceptable witness could be undertaken communally (i.e., the acceptance of Deborah was undertaken by the community collectively rather than by each party of each case presented to her, as Rashba and the Ran would interpret it) then the community could be equally empowered to decide that all women, not just women rabbis, were acceptable to serve as witnesses and judges.

Along these lines of reasoning, once the Conservative Movement, through the good offices of the CJLS, decided to find women acceptable as witnesses and judges, their actions in those roles would be valid because of communal acceptance of their role. Individual attestation of acceptance of each woman in each case would not be necessary. Neither would we need to limit such acceptability to women rabbis by virtue of their congregational role or Movement accreditation. Our decision as a community can embrace all women (who then would be eligible based on the same requirements as those holding for men). The reasoning sounds circular, but it is not so, because the authority for finding acceptability rests, according to Rashba and the Ran, in the community's will. For the Conservative Movement that will is determined by a decision of the CJLS and its practical application by rabbis and lay people in the field, or "Catholic Israel" as Solomon Schechter would define it.

The question of *Klal Yisrael* is often raised when we consider that documents signed by women would not be accepted by other segments of the Jewish community within and outside of the State of Israel at this time and in the foreseeable future. One could raise the concern for the potential thereby of a woman remaining an *eshet ish*, a married woman, and increasing the number of children considered *mamzerim* (in the case of women signing *gittin*), or simply not Jewish (in the case of women signing documents of *giyur* for a woman). Such concerns have not stopped us from offering *hafkaat kiddushin* when we believe it is necessary nor from pursuing our own programs for conversion, despite the fact that these actions are also not accepted by other segments of the Jewish community. We have long ago realized that we prefer "to our own selves be true," and that we, as a Movement, need to follow our own consciences and our own best abilities to discern what is authentic and appropriate Jewish practice for our communities.

Nevertheless, with those who seek our help, whether for a conversion, wedding, or a divorce, Conservative rabbis should practice a form of "informed consent,"¹⁰⁰ explaining to our congregants the political and religious implications of their Conservative status, for example, what it might mean for them and any future children that their Conservative conversion is not fully acceptable in Israel or in segments of the Orthodox world. When utilizing women as witnesses on documents, such "informed consent" is particularly necessary, as some even within our own Movement may still refuse to accept such documents.¹⁰¹

In principle, the acceptability of women's testimony should apply to all areas of Jewish law and all types of documents. In practice, however, women witnessing to *gittin* present special problems. A conversion can be redone, if necessary, under Orthodox direction. Children borne by a female not considered a kosher convert by the Orthodox can later be reconverted under Orthodox auspices. Children born to a marriage not considered legitimate under Orthodox definitions are still considered Jewish and are permitted to marry other Jews. However, if a *get* is considered faultily executed (*pasul*), the woman could be considered an adulteress if she remarries and any subsequent children born of the second marriage could be considered by some as *mamzerim*, a state that would offer, in most cases, no remediation.¹⁰² It has been argued that, in such situations, informed consent of the parties involved would not be sufficient because of our responsibility to do our best to avoid the potential for harm that may be caused to our congregants or their progeny and because the progeny who could be affected are clearly in no position to give informed consent.

Some have suggested that we consequently cannot afford to accept women as witnesses. However, while our concern for our congregants is real, the answer is not to ask women to refrain from serving as witnesses on all forms of documents, for that would adversely affect the regular practice of female colleagues who supervise such ritual events as marriage and conversion on a regular basis and adversely affect our congregants who desire that a particular female friend or rabbi serve as a witness on a *ketubbah*, especially when it will be framed for prominent display, or that the rabbi who trained and guided them toward conversion serve on the *bet din* authorizing their formal entry into the Jewish community.

Given the gravity of the possible consequences of women signing *gittin* in some segments of the

Jewish community, others have suggested that either we place a moratorium on women serving as witnesses for *gittin* or rule that women colleagues voluntarily refrain from signing *gittin*. Such formal and official restrictions should be considered unnecessary, though, given the fact that our women colleagues are trustworthy and will possess and exercise good judgement to know how to respond judiciously when dealing with *gittin* in a way which will not jeopardize the well being of future generations entrusted into their care by virtue of their role as rabbinic advisors. To assume otherwise would undermine our very position that women today are credible, knowledgeable and reliable.¹⁰³ Relying on the sage discretion of our colleagues is particularly appropriate because as a practical matter, most rabbis (male or female) in our Movement may guide their congregants about matters of Jewish divorce but do not themselves complete *gittin*. Instead they refer the divorce to the Joint Bet Din and the limited number of colleagues around the country recognized by our Movement as *mesedrei gittin*. There is no reason to assume that a broad-based acceptance of women witnesses would place undue pressure on the Joint Bet Din to include women as witnesses on *gittin*, for while the use of women witnesses on any and all of our documents should be considered kosher within our Movement, the acceptance of women witnesses does not necessitate the use of a woman witness on each and every document the Movement or individual rabbis produce.

Furthermore, the decision if and when to include women as witnesses in the *get* process and as *mesaderei gittin* can be considered a policy decision which rests with the Joint Bet Din, according to their rules and procedures. Consequently, the previously approved authorization for women to serve as witnesses for all forms of *edut*, as set forth by Blumenthal and affirmed by vote in the Law Committee, can stand, with no need for a moratorium, exclusions, or exceptions, even as it is hoped that the above stated clarifications and delegation of policy decisions to the Joint Bet Din will put at ease enough colleagues who are concerned about the status of the recipients of our *gittin*, and of any potential future offspring, to garner wider support, in general, for women serving as witnesses.

IV. Summary of Conclusions

The conditions under which women's testimony was not analogous to men's testimony have changed. Therefore, the ruling of this *teshuvah* is as follows: A woman's testimony is to be treated the same as a man's testimony in all areas of Jewish law. Therefore, a woman's witnessing a religious act and a woman's signature on a religious document makes effective and valid that religious act and/or document, e.g., *ketubbah*, *get*, and document of conversion.

Similarly, women, especially women colleagues, may serve as religious judges on *batei din* and documents generated by the *bet din* carrying their signature are to be considered valid.

This *teshuvah* delegates the question of utilizing women as witnesses in *get* procedures to the Joint Bet Din as a matter of their internal policy.

For those who remain unconvinced by the broadest application of the argumentation of this *teshuvah*, I hope they will at least accept a narrower application of the paradigm set forth by the Rema in codifying the *takanah* of the ancients to utilize knowledgeable women, even when two witnesses would normally be required, whenever qualified men are lacking. Alternatively, or in addition, they can rely on Rashba and the Ran who, basing themselves on Mishneh Sanhedrin, decide that a woman can serve as a judge (and by extension a witness) when she is accepted by her community, i.e., accepted by the interested parties. Therefore, in its most limited application, parties to a religious act or transaction, such as at a wedding, could jointly agree to accept a particular woman as a witness. More broadly: all women congregational rabbis would be permitted to serve as judges and witnesses in all cases of *halakhah* due to their acceptance by their community. Broader still: all women rabbis, regardless of whether or not they hold a pulpit, would be permitted as judges and witnesses

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due to their acceptance as rabbis within our Movement.¹⁰⁴

In light of the above discussion, it is hoped that even colleagues who may not themselves be comfortable *lhathilah* initially utilizing women as witnesses and judges will nevertheless honor *bdeavad* the *kashrut* of actions and documents taken within our Movement that carry the names of women as witnesses and judges.

Henceforth, may it be broadly taught and applied throughout our Movement that *edut nashim k'edut anashim*, the testimony of women is as the testimony of men.

1 See for example, Alice Bach, ed., *Women in the Hebrew Bible* (NY: Routledge, 1999); Carol Meyers, *Discovering Eve: Ancient Israelite Women in Context* (NY: Oxford, 1988); and Susan Grossman, "The Role of Women in the Jerusalem Temple," in Susan Grossman and Rivka Haut, eds., *Daughters of the King: Women and the Synagogue* (Phil.: JPS, 1992), pp. 15-20, 29-32, n. 1-34.

2 Num. 5:6. The Talmud gives an alternative source in Ex. 21:1, cf., BT Kid. 35a.

3 Num. 27:1:8.

4 Num. 30:4-16.

5 Num. 30:10.

6 Ex. 22:6-10; cf I Kings 8:31. The Rabbis obligated a woman to take an exculpatory oath, e.g. BT BM 42b but exempted women from the oath of testimony, M. Shev. 4:1 (BT Shev. 30a), cf. BT Shev. 29b and discussion *infra*.

7 Cf., Adeline Fehribach, "Between Text and Context: Scripture, Society and the Role of Women in Formative Judaism," in *Recovering the Role of Women: Power and Authority in Rabbinic Jewish Society*, ed., Peter Haas (Atlanta, GA: Scholars Press, 1992), pp. 39-60.

8 Judges 4:4-5. See below *infra* for a discussion of how the Rabbis and later Jewish commentators read these verses.

9 Another woman worthy of note for our purposes, though post-Biblical, was the Hasmonean Queen Alexandra Salome, sister of Shimon ben Shetach and supporter of the Pharisaic party. The time of her reign was praised in almost messianic terms in rabbinic literature, e.g., Sifra Behuqotai 1.1, ed. Weiss 110b, cf. B Taanit 23a (which ascribe the time to Shimon ben Shetach rather than Queen Salome Alexandra). Compare Josephus, who castigates her, Ant. XII, 417, 431-2.

10 I want to express my appreciation to R. Miriam Berkowitz and the librarians of the Jewish Theological Seminary of America, notably Sarah Diament, for their technical assistance checking and copying a number of the below citations.

11 Deut. 19:17: "(19:16) If a man appears against another to testify maliciously and give false testimony, (17) the two parties to the dispute shall appear..." Scriptural translations, unless otherwise specified, are from the JPS Tanakh.

12 Deut. 19:15. "A single witness may not validate against a person any guilt or blame for any offense that may be committed; a case can be validated only on the testimony of two witnesses or more."

13 Sifrei Devarim, piska 190, p. 230, ed. Finkelstein and cf. Sifra Vayikra 7.1, p. 150, ed. Finkelstein.

14 BT Shev. 30a (the first Mishnah in Perek Revii).

15 Joel Roth, "On the Ordination of Women as Rabbis," in Simon Greenberg, ed., *On the Ordination of Women as Rabbis* (NY: JTS, 1988), pp. 149-50.

16 PRE (Chap. 14).

17 Yalkut Shemoni on Gen. 18:9-16. See Moshe Meiselman, *Jewish Women in Jewish Law* (NY: Ktav and YU, 1978), p. 187, n 29a.

18 Mishneh Torah, Edut 9:2. Keshef Mishnah, ad. loc. refutes Maimonides' proof, arguing that the Torah usually uses the masculine form to include both men and women. However, see Roth, p. 185, n. 99, who offers a defense of Rambam's reasoning. The Shulhan Arukh does not attribute the prohibition to any biblical injunction (Shulhan Arukh HM 35:14), although one can argue that it is not the nature of the Shulhan Arukh to cite sources. However, see Mayer Rabinowitz, "An Advocate's Halakhic Responses on the Ordination of Women," in Greenberg, ed., p. 118.

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19 David Weiss Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, MA: Harvard, 1986), esp. 18-21, and Rabinowitz, *ibid*.

20 Moses Mielziner, *Introduction to the Talmud* (NY: Bloch, 1968), 151-2, who explains *ein adam dan gezerah shavah b'atzmo* (Pes. 66, Nid. 19b) to mean not that the *gezerah shava* is only used when transmitting an ancient tradition which can be traced back to the highest legislative authority (i.e. Moses at Sinai) but rather that a *gezerah shava* can only be used to offer biblical support for a practice which already had the sanction of tradition.

21 M. Rosh Hashanah 1:8, BT RH 22a.

22 Eg., women could testify as to whether or not a woman was defiled (M. Sotah 6:4); as to who the murderer was of an unidentified corpse (M. Sotah 9:8); and as to the bringing a *get* (ritual divorce) from overseas (M. Gittin 2:5-7). See below, *infra*, for a discussion of other examples of women's testimony.

23 See, e.g., Judith Hauptman, "Images of Women in the Talmud," in Rosemary Radford Reuther, ed., *Religion and Sexism: Images of Woman in the Jewish and Christian Traditions* (NY: Simon and Schuster, 1974), p. 197.

24 To give just a few examples: women are praised for their piety (J. Tan. 1:6; BT Sotah 22a), credited with the redemption from Egypt (BT Sotah 11b); granted efficacy in prayer (BT Tan 23b) and influence over a husband for good (Bereishit Rabbah 17:7). Particular women are praised for the solicitous care of their husbands (BT BM 84b, BT Ket. 67b); their commitment to facilitate their husband's or son's ability to study (BT Ket. 62b-63a, referring to Rachel; J. Yev. 1:6, referring to Rabbi Dosa ben Harkinas's mother); their generosity (BT BM 59b, referring to Imma Shalom; BT Ket. 67b, referring to Mar Ukba's wife, which engenders a miracle on her behalf) and piety (BT Tan 24b-25a, referring to Rabbi Hanina Ben Dosa's wife), etc.

25 Bereishit Rabbah 45:5, Theodor Albeck ed., pp. 452-453. Cf. the discussion in Roth, *op. cit.* p. 153.

26 Bamidbar Rabbah 10:5, on Judges 13:12 explaining why Manoah asked to speak directly to the angel. Cf., the discussion by Simon Greenberg, "On the Question of the Ordination of Women as Rabbis by Jewish Theological Seminary," in Greenberg, ed., *Op. Cit.*, p. 75.

27 In several places in the Talmud, women are considered unreliable because they are of insufficient moral fiber, being by nature lightheaded, "*nashim daatan kalah*," e.g., Shab 33b and Kid 80b.

28 On ancient authors on women, cf. Sarah Pomeroy, *Goddesses, Whores, Wives, and Slaves: Women in Classical Antiquity* (NY: Schocken, 1975), xi and Gillian Clarke, *Women in Late Antiquity* (Oxford: Clarendon, 1994), esp. p. 119. On the influence of Hellenism on the Rabbis, cf. Saul Liebermann's studies, *Greek in Jewish Palestine* (NY: JTS, 1942) and *Hellenism in Jewish Palestine* (NY: JTS, 1950).

29 Judith Hauptman provides an interesting discussion of Mishnah Yevamot, chp. 15 in *Rereading the Rabbis* (Oxford: Westview Press, 1998), pp. 197 ff.

30 Cf. also BT Sotah 31a (specifying that female in-laws and co-wives are believed regarding the guilt of a *sotah*).

31 Cf. M. Shabbat 2:6.

32 On women being responsible for food preparation, cf. BT AZ 38a-b (which interestingly allows women to leave the kitchen to attend prayer services) and BT BK 48a.

33 BT Ket. 72a.

34 E.g., M. Ker. 3:1 (accepting a woman's testimony as to someone eating *helev*, prohibited fat), cf. BT Ker. 11b. Maimonides concurs: MT Shegogot 3:2, cf. MT Sanhedrin 16:6, in which he delineates the types of cases in which one witness is sufficient.

35 M. Yev. 16:7.

36 M. Yev. 15:1-3, cf. 15:10.

37 It is striking because the Rabbis showed a willingness to relax the ancient practice prohibiting women witnesses even when erroneous or disqualified testimony could result in the violation of a clear biblical injunction (i.e., adultery), which biblically at least, was considered a capital offense for the woman, and carried the serious ramification that any subsequent children born as a result of a liaison with a man other than the woman's husband would be considered *mamzerim*. For a discussion on the possible evolution of this ruling, cf. Hauptman, *RR*, 201-2.

38 BT Kid. 73b.

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39 E.g., M. Ket. 2:6.

40 BT Ket. 85a. See Hauptman *RR*, 212-213. Interestingly, Rava accepts his wife's testimony specifically about the reliability of another woman, which supports Hauptman's argument that the Rabbis were willing to accept women's testimony about other women but not over men. See discussion, *infra*. Also refer to the rest of the *sugyah*, in which Rava refuses to accept the testimony of Rav Papa as a sole witness in a different case.

41 Rema SA HM 35:14, cf. Hiddushei HaTam, op. cit. (Rema cites this as a countervailing opinion to his first comment that even where men are not available, otherwise prohibited witnesses should not be relied upon.) Rambam permits a woman to serve as witnesses also in business matters as long as the woman is considered credible to the judge. MT San. 24:1. On translating *bb"h shel nashim* in Rema as a reference to the women's section of the synagogue, cf. *Sheilot vTeshuvot HaRashba* 2:182 (*bmkomot shehanashim yoshvot b'bet haknesset*). On examples of women's sections being separate from the rest of the synagogue, cf., Taitz in Grossman and Haut, 64-5.

42 Similarly Maimonides will accept the testimony of a woman even when it concerns an issue regarding *mamzerut* or *neuf* on the assumption that people do not lie about an issue which can come to light. (Hilkhot Gerusin 13:29). This seems to indicate that Maimonides holds that the issue in question is one of a woman's credibility. If Maimonides, who considers the prohibition on women's testimony as deriving from a Toraitic commandment (*doraita*), is willing to accept women's testimony in such a situation, then even Maimonides seems willing to move beyond a strict application of the prohibition on women's testimony whenever women's credibility can be guaranteed. I express my appreciation to R. Ben Zion Bergman for this point.

43 My appreciation to Rabbi Aaron Mackler for this point.

44 Psalm 45:14.

45 Eg., Orthodox writer Moshe Meiselman, *Jewish Women in Jewish Law* (NY: Ktav, 1978), p. 79. For a critique of this position, see Susan Grossman and Rivka Haut, "Preface," in *Daughters of the King*, pp. xxii-xxv, xxvii, n. 2-8. Cf. BT Shev. 30a.

46 Meiselman, *ibid*. Similarly, the more liberal Orthodox rabbi Avi Weiss, citing *Sefer Abudraham*, argues that women cannot form a woman's minyan because by definition "the home is virtually the only place in which women may function." and therefore women cannot form a corporate reality because women are ordained to be private beings. Avraham Weiss, *Women at Prayer: A Halakhic Analysis of Women's Prayer Groups* (Hoboken, NJ: Ktav, 1990), 45, esp. n. 12. While such restrictions on public expressions of religious involvement continue in the Orthodox world, restrictions on the involvement of women in the public secular arena has eased somewhat in the Orthodox world as Orthodox women have entered the world of politics and the judiciary in Israel and the Diaspora. See below, *infra*.

47 BT Shev. 30a, cf. Tos. ad. loc. *kol*. See the discussion in Hauptman, *RR*, 215.

48 There is even some evidence that women of the rabbinic class were present during court proceedings and their comments were considered in the case. See BT Kid. 12a and BT Ket. 85a (see n. 40 above, *infra*.)

49 The literary genre and formulations of Talmudic materials that can be identified as court cases is mainly discussed in two sources: Jacob Neusner's *A History of the Jews of Babylon* (1970), vol 5, pp. 245-342; and Isaiah Gafni's article, "Maasei Bet Din B'Talmud HaBavli in *Proceedings of the American Academy of Jewish Research* 49 (1982), pp. 23-40, both of which deal with the literary genre of *hahu gavra* anecdotes. Of the 50 *he hi itta* anecdotes in the Babylonian Talmud (60 if one includes variants), 29 follow the literary formulation identified by Gafni as indicating an actual court case. These show women participating in the rabbinic courts as plaintiffs and defendants in a range of subjects from inheritance (BT Ket.69a), property rights and agency (e.g., BT BB 169b), bonds and debts (eg, BT Ket 85a), and damages (eg. BT BK 48a), to recovering her *ketubah* (eg, BT Yev. 65b), etc. See my study, "Women in the Rabbinic Courts in the Talmud," presented at the International Conference on Women in Halakhah, Jerusalem, December 1986 and scheduled to be published in Pnina Peli, ed., *Halakha and the Jewish Woman* (Jason Aronson).

50 BT RH 31b and BT BK 113a.

51 BT RH 31b.

52 Salo Baron, *Social History*, vol. 2, pt. 2, pp. 236-238; Hauptman p. 194. Cf. BT Kid. 35a.

53 For example, BT Gittin 52 b brings a case in which the Rabbis permit the mother of an orphan to dispose of land, presumably because no male heir or guardian was available to act on behalf of the child, which serves as an exception to

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the general rule that women should not function as guardians cited on BT Git. 52a.

54 BT Gittin 41a.

55 Ulpian, *Rules* 5.8-10;11.1 Rome, 3rd century CE, tr. S.P. Scott, in Mary Lefkowitz and Maureen Fant, *Women's Life in Greece and Rome: A Source Book in Translation* (Baltimore: John Hopkins, 1983), p. 193.

56 BT Ket. 74b. While R. Meir holds the opposite view, that a man is willing for his wife to be exposed to the publicity of the court, R. Eleazar's view seems to dominate, cf. BT Ket. 97b.

57 BT Git. 20b: "*isha lo yadah laknyu*" "...a woman does not know how to make over things [temporarily]..."

58 BT Eruv. 25a about land. In BT BB 54a the woman loses rights to the produce because she did not establish her claim properly. My appreciation to Dr. Isaiah Gafni for suggesting that these cases might reflect upon rabbinic attitudes towards women.

59 Some scholars consider the *petiha* to carry with it the punishment of excommunication. See Rashi BT RH 31b, cf. Neusner, vol 5, 269.

60 BT BK 113a.

61 M. RH 1:8. Women and slaves are equated in many other rabbinic sources as well, perhaps the most notable example being M. Ber. 3:3. See also, e.g., M. Yev. 16:7, M. Suk. 3:10, BT Ber. 20b, BT Kid. 23b, BT Git. 52a, although cf., BT Men. 43b.

62 Meiselman, p. 78. It is a positive commandment to testify, Rambam no 178. However, testifying is also a negative commandment, no. 297 according to Rambam, to which women should be obligated since women are obligated to all negative commandments. For example, the Rabbis, citing Exodus 21:1, 28, read Scripture to include a woman's culpability for murder as well as financial crimes (BT Kid 35a).

63 BT Kid. 30b.

64 Sefer Abudraham (Jer.: Usha, 1962) 25. The issue here is clearly not responsibility for child care, but to be available to serve the husband. For a discussion of Abudraham's position, see Emily Taitz, "Women's Voices, Women's Prayers: The European Synagogues of the Middle Ages," in Grossman and Haut, ed., p. 69 n 3.

65 For example, Rambam writes about the right of a husband to restrict his wife's activities outside the home. Mishneh Torah, Hilkhot Ishut 13:11.

66 Chapters 10 and 11 of Mishnah Nedarim are devoted to discussing the authority of fathers and husbands to annul the vows of the women under their care.

67 Judith Hauptman, *Rereading the Rabbis* (Boulder, Co.: Westview, 1998), p. 211. The Midrash assumes that the husband ruled over his wife, eg., BT Meg. 12b, PRE 49. The degree of physical intimidation is unclear. There is little evidence of wife beating in the Talmud, though see BT Pes. 49 b, which refers to an *am haaretz*. However, Maimonides and others permit a husband to beat his wife to discipline her, MT Ishut 21:3, 10; cf. Rema Darkei Moshe, Tur, Even HaEzer 154:15. For a full discussion about wife beating in Jewish law, see, Naomi Graetz, *Silence is Deadly: Judaism Confronts Wife beating* (Northvale, NJ: Jason Aronson, 1998), esp. pp. 84-85. Wife beating and other forms of abuse were formally prohibited by our Movement in a responsum by R. Elliot Dorff, approved by the CJLS, 1995. While one might argue a woman was always free to leave a coercive relationship, the option to leave a marriage under the woman's own volition was limited in a society in which, as even the Sages of the Talmud acknowledged, a single woman would have great difficulty supporting herself honorably (BT Git. 12a.), which is perhaps one reason the Rabbis sought to exempt women from religious obligations so that they would not have to choose between their obligations to their Maker and to their husbands.

68 BT Ber. 20b.

69 M. Sukkot 3:10.

70 BT Meg. 23a.

71 Tosafot states that there is no equation between the disqualification of women and the disqualification of slaves as witnesses, Tos. Zev. 103 a, sv *ain*. The argument Tosafot gives is that women are obligated Jews and slaves are not. However, Tosafot misses the point that women are not fully obligated Jews and not equated with free Jewish men, because they were subservient to men and therefore traditionally exempt from time bound *mitzvot*, as were slaves, in order

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to serve the will of their master and husbands. See n.63, above.

72 Rashba, Shaalot u-Teshuvot ha Rashbah ha Meyuhasot leha Rambam, no. 74. See discussion in Meiselman, p. 74.

73 BT Yev. 117b, JT Yev. 15:6, 15d. See the discussion in Hauptman RR, 207-9.

74 Cf.: M. Git. 4:3. Cf. M. Git. 2:5, BT Git. 21a, 22b-23a.

75 BT Nid. 49b. See Greenberg, *op. cit.*, p. 84.

76 Judges 4:5. (See the brief discussion in the Biblical section above.)

77 They cite the Mishnah Shev. 4:1 (BT Shev. 30a): “The oath of testimony applies to men and not to women.”

78 Tos. BT BK 15a sv *asher*.

79 Deut. 17:15, based on Midrash Sifre Shoftim 157.

80 Tos. Shev. 29b, sv *shevuot*, BK 15a, sv *asher*; Tos. Nid. 50a, sv *kol*.

81 Tos. Shev. 29b, sv *shevuot*, BK 15a, sv *asher*. See the discussion in Roth, pp. 164-166.

82 Tos. BK 15a.

83 Rashba, Shev. 30a and Ran Nov., Shev. 30a.

84 M. San. 3:2; Cf. BT San. 24b.

85 Cf. Shev. 30a on limitations on retractions (or appeals) under such circumstances.

86 MT Hilkhhot Melachim 1:5.

87 Sifre Shoftim 157.

88 BT Ber. 49a.

89 The ancient synagogue may have been an exception to this rule, for epigraphic evidence seems to indicate women held lay leadership positions in the synagogue according to Bernadette Brooten, *Women Leaders in the Ancient Synagogue* (Chico, CA: Scholars Press, 1982). See also Hannah Safrai, “Women and the Ancient Synagogue,” in Grossman and Haut, pp. 41-42.

90 Mishpetei Uziel on HM no. 6, and p. 292.

91 Iggeret Moshe to YD part II, sections 44-45.

92 For a discussion of the relationship of Israeli legislative law to Jewish religious law, notably regarding the Woman’s Equal Rights Law, see Menachem Elon, *Jewish Law: History Sources, Principles*, trans., Bernard Auerbach and Melvin J. Sykes (Phila., JPS, 1999), pp. 1653- 1663, 1683-1684, 1760-1762, 1818-1826, 1824-1826. My appreciation to R. Miriam Berkowitz for these citations.

93 Cf. David Blumenthal, ed. *And Bring them Closer to Torah: To the Life and Works of Rabbi Aaron H. Blumenthal* (Hoboken: 1986).

94 CJLS Decision recorded in the minutes of June 10, 1974 (061074B).

95 “Woman is Eligible to Testify” passed by CJLS Oct., 2001.

96 Rabinowitz, p. 119. The issue of women and *edut* obviously served as an important topic for discussion surrounding the decision to ordain women. A survey of the discussion can be found in Myron Geller, “A Woman Is Believed.” A full discussion can be found in the papers collected in Greenberg’s anthology, *Ordination op. cit.*

97 For a discussion on the reliance on changed sociological realities in framing changed halakhic positions, see Joel Roth, *The Halakhic Process: A Systematic Analysis* (NY: JTS, 1986), pp. 251, 257-265. For a popular statement on the application of *shinnui ha'ittim* as part of Conservative practice, see David Golinkin, *Halakhah for Our Time: A Conservative Approach to Jewish Law* (NY: United Synagogue, 1991), pp. 21-28. Interestingly, he cites a number of changes made by the rabbis to accommodate a class of people so they would not feel embarrassed. (M. Bikurim 3:7; BT Moed Katan 27 a-b) The examples are pointed, for many women colleagues would contend that refusals to accept women as witnesses for marriage and conversion documents similarly embarrasses women as a class.

98 Roth, *op. cit.*, p. 165.

99 It has been objected that Mishnah Sanhedrin allowing the parties to appoint otherwise unacceptable witnesses refers to monetary rather than ritual cases. While it is true that the general content of Mishneh Sanhedrin deals with civil

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and criminal cases, Rashba and Ran saw no problem relying on this source to justify Devorah's role as judge with no restrictions on which type of issues she dealt, whether ritual and/or monetary. Furthermore, the distinction between monetary and ritual matters is somewhat specious. For example, the ketubah required for the ritual of marriage is a contract including monetary considerations.

100 For a discussion of informed consent as it applies analogously in the medical field, see, Ruth R. Faden and Tom L. Beauchamp, *A History and Theory of Informed Consent* (New York: Oxford University Press, 1986), esp. p. 308. My appreciation to R. Aaron Mackler for bringing this citation to my attention.

101 My appreciation to R. Aaron Mackler for framing the issue in this way and suggesting appropriate language.

102 The argument that *mamzerut* no longer holds deleterious consequences in our Movement is only true for those who accept the CJLS decisions on this issue. (CJLS 062370B, 021577, Elie Spitz, "Mamzerut" EH 4.2000a.)

103 Approach suggested by Dr. Anne Lapidus Lerner.

104 The broadest application, as discussed above, *infra*, would accept all women.