

Sh'ma

a journal of Jewish responsibility

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(This issue of Sh'ma and the next are devoted to our continuing discussion of the nature of halacha as revealed by responses to the challenges of Jewish feminists. The three articles which follow here deal essentially with the theoretical question. As they were in preparation, discussions began in these pages on the questions of Orthodox women's prayer groups and the beginning of the ordination of Conservative women rabbis. We return to the practical themes in our next issue.—E. B. B.)

Rackman on "borowitz on soloveitchik"

Emanuel Rackman

All who are interested in Jewish theology are, indeed, grateful to Professor Eugene B. Borowitz not only for his published personal reflections but also for his clear exposition of the thought of others. In his book *Choices in Modern Jewish Thought; A Partisan Guide* he deals with a dozen "systematized positions" that seem to cope with the challenge of modernity to Judaism. An entire chapter is devoted to the theology of Rabbi Joseph B. Soloveitchik who is the undisputed leader among those who are totally committed to the *halacha* and its process and yet are very much at home in the realm of western thought and society. The chapter ends with what Borowitz deems "an unexpected issue" which "provides the crux of the dispute between revelation and modernity, namely, the question of equality of women in Judaism." Since it is my intention to question whether the dispute is really crucial I must quote Borowitz's challenge in full. Moreover, it is not Rabbi Soloveitchik alone who would deem the challenge one with which he can cope but even less brilliant and less charismatic figures in modern Orthodoxy than he can do so as well. I do not deny that there is a challenge

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and I do not deny that there is a reluctance among many Orthodox *halachists* to solve the problems that beg for solution. However, the *halacha* itself is not to be faulted—rather most of those who claim to be its standard-bearers.

The Faulty Bases of an Alleged Dilemma

The following is Borowitz' statement of the challenge to Rabbi Soloveitchik.

"Being obligated to *do* the *halacha* has been seen as the hallmark of Jewish responsibility. If so, the substantial difference Jewish law assigns to the duties of women and men seems to make women not only separate but also a religiously unequal group. Is God the ultimate source of these distinctions or are they essentially human enactments? For all its problems, western civilization has claimed ethical attention by universalizing the biblical doctrine of the equality of all people—a matter of no small importance to a clan as despised and segregated as the Jews once were. Against apparently ethical social pressures, shall faithful Jews not stand firm behind the present interpreters of the unbroken chain of Sinaitic tradition and affirm that Jewish women, as such, must have a different standard of religious obligation? Or is the Torah, for all its sublimity, an expression of the human spirit responding to God, whose sanctifying teachings of one age may need to be rethought in radically changed social circumstances?"

I cannot accept the assumptions of Borowitz. My commitment to equality does not require that all persons have identical obligations to themselves, to others, to government, to society or to humanity. Neither logic nor ethics requires this conclusion. Indeed, the opposite is true. Rare, indeed, is the democracy which requires identical obligations from males and females in war. And the *halacha* takes the same position. I know of no feminists who insist that their mission is not fulfilled until this differentiation is abandoned.

History also Affects Jewish Duty

The physical nature of both sexes does not warrant the inequality and certainly metaphysically speaking, their souls are of equal worth before God. But history has yielded a phenomenon which few societies want to change. And the *halacha* saw no point in changing it either. From Sinai there was ready acceptance of much human usage as long as the more important aspects of equality were not jeopardized, such as equality before the law. And while the Oral Law widened the gap between obligations of men and the obligations of women in war, it narrowed it in the matter of equality before the law in marriage and divorce.

All of this Rabbi Soloveitchik accepts. History rather than metahistory influenced this development and still does.

One can say the same about the inequality of males and females with respect to their obligation to reproduce the human race. And this is an obligation which Sinai imposes on all mankind—not only Jews. I can visualize that a day may come when women will be penalized for not having children—even if unmarried. There is no reason other than history or usage that prevents this obligation from being imposed upon them now. And Sinai approved of this. And the ideal of equality is not flouted because thus far the obligation is only that of males.

I selected two illustrations from the literature of the *halacha* but from the present practice of societies and governments I could cite many others. The obligations of citizens in states and members of society are rarely identical. And the ideal of Marxism—"from each according to his ability"—assumes inequality in obligation. Here the ideal of equality is reflected only in the formula that all have an equal obligation to give according to their ability, which obligation is fulfilled unequally.

As a modern and a supporter of much that feminists want to achieve I have no difficulty logically or ethically in maintaining this position. And that is all the *halacha* mandates.

The Limits to Change and Development

Of course, women can assume more obligations than are theirs if they so wish. But Jewish society and the Jewish state did not demand it. And the obligations which they may not assume are few—and designed to retain what Sinai did posit as an ideal—the communal role of males and the domestic role of women. Individual women may reject that role. But societies and legal orders frequently have norms which they deem immutable, and even though they tolerate deviations, the few limitations that are preserved keep the ideal before us all the time. Such, for example, is the ideal of heterosexuality. Though homosexuals ought not be punished or discriminated against, we cannot approve of homosexuality as an equally acceptable form of sexual behavior. We must maintain our commitment that heterosexuality fulfills a desideratum of nature while homosexuality does not.

Sinai has done similarly with respect to the roles of males and females in society and only a few rules—still unchanged—attest to it. Women can pray together and do virtually all that men do except for a few prayers—as if, so to speak, this is

the reminder of the Sinaitic ideal. Perhaps one day—great sages, male or female—will find ways of altering or modifying even this (I once suggested a possible way)—but thus far the rule stands. And I experience no difficulty in reconciling my "modernity" with this limitation. Indeed, I would hardly deem this an adequate reason for regarding Rabbi Soloveitchik's philosophy inconsonant with modernity.

The fact that Rabbi Soloveitchik resorts to metahistory in much of his philosophy does not mean that he does not reckon with history in *halacha*. I must add that former Chief Rabbi Shlomo Goren of Israel also reckons with it. From the lips of both men I have heard assurances that there is no problem in Jewish family law that cannot be solved today except perhaps for the prohibition that a *Kohen* (one of priestly descent) marry a divorcee. But both men have been silenced by the exponents of halachic rigidity. Here is the crux of the problem—not the *halacha* but the intransigence of most of its champions. Often the intransigence can be justified even to moderns for reasons historical

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and metahistorical. Often it cannot be so justified. However, modern Orthodoxy can cope with the problem of the equality of women. In the process there is resort to reason and experience which means history, but there is also a teleology which is revealed and which it seeks to fathom and apply all the time. Man alone is not the measure of the Law. God also plays a part in halachic development. Moderns have a right to resent only the false claim that man has no role. □

Borowitz on Rackman on feminism

Eugene B. Borowitz

Emanuel Rackman generously pays my book the high compliment by offering a critical response to it. That already indicates his unparalleled role in contemporary Orthodoxy. Refusing to abandon Modern Orthodoxy as many of his rabbinic colleagues have done, he stands almost alone in publicly defending it. And by his courageous criticism of the excesses of the Orthodox right he has won the admiration of many Jews everywhere.

Rackman can enter into discussion with a liberal Jew such as me because he acknowledges, indeed insists upon, the role of "man" in the development of *halacha*. He systematically compares the development of Jewish law to that of societies and states. He does not deny that "God also plays a part in halachic development." But, I take it, being surrounded by people who regularly utilize Divine sanction to suppress argument about halachic change, he emphasizes the humanity of Jewish law.

Aside from Eliezer Berkovits, I cannot document another Orthodox thinker who shares this unusual stance. However, my efforts among liberal Jews to ground personal autonomy in God and Covenant is similarly uncommon. At least, then, our discussion can avoid the extremists at either side of this issue: liberals who as good as say "Man alone is [read, "people alone are"]... the measure of the Law," and Orthodox Jews who say only Jezebels would want to change the *halacha* given us by God.

Rejecting Passivity before History

I differ with Rackman on two issues. He argues that the lessons of history and the experiences of society justify his acceptance, within limits, of the *halacha's* different roles for men and women. If anything, his line of reasoning confirms me in my opposing stand. As I see it, society's long accepted

EUGENE B. BOROWITZ, who edits this journal, appears in its pages like all other authors, speaking only for himself.

distinctions are a treacherous basis for validating formal distinctions between human beings. Then too, he does not consider altering women's religious role to be one of "the more important aspects" of the Jewish "ideal of equality." I do. Let us consider the issues in turn.

Consider, for example, an argument based upon social experience which I feel certain Rackman would utterly reject. Until only a century or so ago, most societies found it useful to institutionalize people's differing economic competencies. Since then we have tried eliminating such legal distinctions. But the successes of capitalism have not eliminated the problem of an economic underclass which feeds off the economically capable. Considering the long experience of societies with formal differentiation, should we not then return to the old established social/economic roles, particularly as humanized under Torah law, and reinstitute slavery? (Or, if you prefer, consider the same sort of argument in the mouths of Christians and Moslems for restoring Jewish disabilities.)

This argument from long standing social practice must be rejected on ethical grounds. Societies have often tolerated very much more injustice than any Jew should be comfortable with. And where the Torah does not explicitly proscribe their iniquity, contemporary Jews have easily identified it from Judaism's teaching about the high dignity of all human beings.

When Segregation Degrades

Rackman does not consider equal Jewish religious roles to be among the "more important aspects" of equality. After all, he reminds us, women can assume more obligations if they wish and in a group "they can do all that men do except for a few prayers." I cannot forget the rabbinic dictum that "one who does but is not commanded to do so is not like one who is commanded and does." With obedience to God's law a major virtue in our faith, being able to do certain central religious acts only as a volunteer not only differentiates but degrades.

I also find it odd that Rackman gives so little emotional weight to the "few prayers" women cannot say. A woman who finds only nine men in *shul* when she goes there for *kaddish* cannot even voluntarily join in; and ten women cannot constitute a *minyan* to pray as men do and memorialize their relatives. That hurts. And so do the lifelong indignities that come in the wake of your father's discovery at your birth that he cannot now fulfill the *mitzvah* of circumcision and does not have a *kaddishel*.