

Camp

Fifth Avenue Synagogue

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New York, N. Y. 10021

RABBI'S STUDY

בקורת השם

June 12, 1974

Rabbi Norman Lamm
The Jewish Center
131 West 86th Street
New York, N. Y.

Dear Norman:

The next dinner meeting of our Berman - Bartel group will be held on September 4th. As agreed, it will be a longer meeting - from six to ten. The place is yet to be designated.

From the discussion at the last meeting it appeared to me that there were four problem areas, as follows:

1. Halachic problems which pertain directly to the laws of marriage, divorce, and sexual relations.
2. Halachic problems which pertain to the status of women in the Synagogue, in the community and in civic, judicial, and political experience.
3. The sociological and psychological impact of the Women's Liberation Movement.
4. What can be done to save the family in the face of those changes which cannot be resisted without total ghettoization as with the Amish.

I would very much appreciate your undertaking to prepare the working paper for Problem #1.

I am counting on you.

Warmest personal regards and best wishes from house to house for the summer.

Yours as ever,

Mendy

DRAFT FOR PAPER ON HALAKHAH AND WOMEN

I. General Policy.

In formulating our ^{response} ~~Responses~~ to the various critiques of the Halakhah by a variety of feminists, we find that there are four possible options as to general orientation, ~~which are~~ available to us, within the context and limitations of our ideological commitment. These alternatives are as follows:

A) The feminist attack is all a fad, a stylish symptom of the rising Middle ^{class} ~~Class~~, new-found affluence, undigested leisure, social displacements, and unspent counter-culture anger. As a fad, it is unworthy of our serious attention, and if we just carry on heroically for a while, other fads will take its place, and it will disappear into the backwash of history's cultural obsolescence.

B. The ^m ~~Feminist~~ Movement is a more or less permanent feature of our cultural landscape, and will not simply disappear by our wishing it so ^{by} ~~and~~ labelling it a fad. However, the critique it levels at the Halakhah, ~~and the~~ ^{is} ~~vehemence with which it is articulated,~~ are both the result of misinformation and misunderstanding. The excessive ^{vehemence} ~~passion~~ with which its protagonists advocate this feminist critique, is not only ^{characteristic of} ~~motivated by~~ the generally strident rhetoric of all liberationist movements, but is also the result of genuinely felt complaints ⁿ by some women (and men) who feel

bound by the ^{Jewish} Halakhah and traditions, but are deeply perturbed

by the moral problems of ^{any} ^{one encounter in Halakhah with} ~~quality raised by the feminist~~

^{implementation in Jewish life} ~~criticisms~~. However, since their point of view is substantively

incorrect, our task becomes one of Hasbarah, of explanation,

and, essentially, public relations.

C. Some of the arguments presented by the critics are correct.

We are indeed beset by a number of ~~imoral~~ moral dilemmas. However, our commitment to Halakhah takes precedence over all other commitments, and therefore we have no choice but to endure it all -- in contemporary political parlance, to "stonewall" it.

D. There are many valid points in the feminist critique, and something can indeed be done about it. If we find that individual arguments are morally correct and can be rectified in the Halakhah, then it becomes our responsibility to "lobby" for such halakhic remedies, unpopular though they may be with "right wing."

My own bias is against exclusive use of any of these four approaches. I believe that the criticism with which we are concerned is multi-faceted, and cannot be treated uniformly. Each of these ^{above} approaches has definite merits with regard to certain arguments.

← In outlining the halakhic areas where we meet such criticism and such problems, I will not offer solutions, but simply a comment or two about what ^{I think} the approach ^{ought} is to be. It is understood that all this is in the category of a preliminary reaction, without documentation and without ^{benefit of} serious research. It is offered primarily as a ^{spring board} starting point for our group discussion.

II. The Problem Areas.

A. Civil Law. Here I refer primarily to the Halakhah concerning inheritance. By Torah Law, only sons inherit, daughters do not. Does this not imply an inequality between males and females?

Suggestion for approach: here I believe we ought to avail ourselves of methods B and D above. Where the Halakhah can remedy the situation, its creative power ought to be invoked. Hence, there were a number of takkanot issued by the Chief Rabbinate of Israel during the incumbency of the late Rabbi Herzog^e. However, when feminists raised this issue, it is not so much that they feel aggrieved by financial losses, as they are upset by the status problems. Whether one or the other, I believe there is also a great deal of misinformation. What has to be brought to their attention is that women receive something much more financially secure and important than direct inheritance, and that is the guarantees of the Ketubah. The Ketubah implies a lien on the husband's property, which inheritance does not. By and large,

an analysis of the Halkhah as it applies to real life situation, will reveal that the Ketubah guarantees are far superior to inheritance rights. *(Perhaps this is time for us to revitalize the Ketubah as an effective legal instrument, instead of keeping it as a ritualistic embellishment of the wedding ceremony.)*

B. Criminal Law. Ihheav refer to the disqualification of women as witnesses in most cases. Obviously, our critics are here not primarily concerned with the practical ramifications of the law as they are with the "insult" of categorizing women with minors and slaves.

To some extent this is a result of misunderstanding. What has to be explained is the difference between a technical disqualification (Gezerat ha-katuv) and *lack* of credibility. A slave, a gambler or a Rasha ^{is} ~~are~~ disqualified because of lack of credibility. However, a woman is credible but disqualified technically -- in the same way as is a relative, even, as the Talmud says, if Moses comes to testify about Aaron. Nevertheless, referring the problem to a Gezerat ha-katuv is not a solution, it merely defers ^{it} ~~it~~. Does it mean that Scripture itself took a dim view of women's character? If genuine responses ^{are} ~~is~~ unavailable, we shall have to combine means B and C in ^{reacting} ~~responding~~ to this problem.

C. Sex. A number of women writers, and I here refer to the more hysterical and less educated ones, have written about the

halakhic attitude towards sex in a manner that is characterized by profound ignorance proclaimed in ever ^{increasing} larger decibals.

Some of the articles I have read ^{attending to the} about "family purity" range from the libelous to the silly. If anything, we stand on extremely firm ground with regard to "family purity" and ^{the} halakhic conception of female sexuality and its concern for it, such as in the laws of Onah. Some of the writings of the

femininist group on sexuality, the kind that have made the most intimate anatomy and physiology of sex part of our contemporary dining room conversation, ^{of} ^{Woman Libbers} ~~has~~ infiltrated into ^{the writing} the Jewish ~~writers~~. For these latter, the only responsible answer is along the lines of ^A above.

C. Marital Laws. Here we face our greatest problem.

I. Problems of image, morale, and status. Marriage is referred to as Kinyan, and this implies the "acquisition" of the wife by the husband. Does this mean that woman is considered mere chattel in the eyes of the Halakhah? Furthermore, divorce can be initiated only by the husband, not the wife. Does this not re-^einforce the conception of woman as the property of man?

II. Practical problems. Emerging from the above although in some ways unconnected, is the basic problem of the Agunah, specifically the kind which results from a recalcitrant husband who has given his wife a civil divorce, but refuses her a Ghet.

How shall we respond to these criticisms? I believe that it would be dishonest of us to consider this a fad. ~~That~~ ^{that} It certainly is not. There is, to be sure, a large degree of misunderstanding and misinformation. ^{Thus,} A semantic problem arises with the use of the word Kinyan. Here we must explain the halakhic nature of the term and its special applicability to marriage. Furthermore, we must ~~clarify~~ that contracts in Jewish law are always unilateral, whereas in secular law they are bilateral. (I recently read a manuscript by an author who is unknown to me, who makes the following valid points: contracts involving transfer of property are always unilaterally written, in the Halakhah, by the seller rather than the buyer. If, now, marriage were this kind of contract, where the wife's person is transferred as property to the husband, then the kinyan of marriage should be effected by a Shetar written by the wife to the husband. In fact, it is just the reverse. This is clear proof that the kinyan of marriage is not that of transfer of property.) Furthermore, it has to be clearly established that the Halakhah can in no way ^{transfer} ~~give~~ the responsibility for dissolving a marriage into the hands of the state or court or any independent agency, but must ^{insist that it} be kept in the hands of the couple itself. In some ways, method D must be invoked. There are things that we can do that we have not yet done to

alternatively
~~help avoid~~ the Agunah problem of which we spoke. Professor Berkovits' proposal, as described in his book on the subject, has not at all be taken seriously by our decisors. I personally do not think that the Conservative innovation ~~is~~ of a clause to the Ketubah, proposed about fifteen years ago is halakhically valid or has proven practically feasible. But I believe that the Berkovits proposal is a healthy one, an effective one, and a valid one. It is our responsibility to pressure our leading authorities to consider it more seriously. Until this is done, we have no choice but to "stonewall" in the face of criticism.

D. "Ritual" Laws. I refer here to a whole list of problems: the basic principle that women are not obligated to positive commandments that are time conditioned; that they are not obligated to the study of Torah; that they are not permitted (if indeed they are not) to wear tzitzit and tefillin; that they are not counted in a minyan; that they do not count as part of a mezuman in the saying of Grace; that they do not recite the Kaddish.

Here we must invoke all four of the methods I have outlined. For one thing, we have to establish that, contrary to the feminist argument, we most certainly advocate ~~sex~~-role distinctions. It is crucial to the whole of ~~H~~alakhah; even if

ex it were not, we should argue for it on psychological and moral grounds. The demand for more obligation on the part of women who do not already fulfill the obligations they have according to the halakhah, comes ^{with} ~~in~~ ill grace and is nothing more than a faddist clamor. There is also some misinformation -- the lack of awareness of the importance placed upon family and the women's role in the family, and its creative aspects. I do not think that we dare, at any time, yield to exhibitionism simply because it becomes popular "with the youth." However, where the argument is real, and where the Halakhah does offer remedies, we might be ^abit more bold. I am myself doubtful as to whether we should permit women to lay tefillin, although that could be done without shaking the whole halakhic structure. I certainly think we have made a good deal of progress, even if we can make more, on the teaching of Torah to women. But we ought to inform women of their right, if not obligation, to recite the grace in a mezuman of three women. Also, they ought to be urged to recite the Kaddish. There is not reason why they should not.