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About Yeshivat Maharat

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Introduction

Holy Doubt: On the Utility of Uncertainty in the Faithful Life

Rabbi Dr. Erin Leib Smokler, *Editor*

I've been thinking about doubt for a very long time. Ages ago, back when I was in college, I very proudly wrote a senior thesis for the philosophy and religion departments, humbly titled: "Making Difficulties Everywhere: Objective Uncertainty in [Kierkegaard's] *Concluding Unscientific Postscript*." I was obsessed with uncertainty — with the ways that it destabilizes, undermines, undoes one's sense of security or wholeness. And the ways that it compromises faith, renders it shaky, toothless. But Kierkegaard, the 19th century Danish existential philosopher (1813–1855), approached doubt in an altogether novel way and I was deeply compelled by his orientation. For Kierkegaard, writing under the pseudonym Johannes Climacus, doubt or "objective uncertainty" is not the antithesis of faith.[1] On the contrary. It is actually constitutive of it. "If I want to keep myself in faith, I *must* continually see to it that I hold fast the objective uncertainty," he wrote in 1846.[2] One does not cognitively arrive *at* faith via rational certainty, he argued, but lives *in* faith precisely in the throes of uncertainty. Faith is not an epistemological project, but a relational one based on an awareness of the limits of epistemology. To be in faith, for him, is to be in a relationship with God that is predicated upon the continual awareness that one cannot know God.

"Objective uncertainty," on Kierkegaard's scheme, is rooted in the recognition that I cannot know with certainty (1) that God exists; (2) that God existed in time (a crucial doctrine for the Christian believer that he was); or (3) that

1. Soren Kierkegaard, Concluding Unscientific Postscript to Philosophical Fragments. Translated and edited by Howard V. Wong and Edna H. Wong. (Princeton: Princeton University Press, 1992).
2. Ibid., 204.

either propositions 1 or 2 should actually matter or personally implicate me at all. Given these severe limitations on human understanding, Kierkegaard's assertion that uncertainty is not just descriptive of faith, but a requirement of it is perplexing. How could that which seems to undermine faith effectively bring it about? How could the unknowability of God foster and feed a relationship with God? Kierkegaard argued that one must continuously "hold fast" the objective uncertainty, that it may never, indeed ought never, be overcome in faith. How can faith be conceptualized such that doubt is a constitutive, even nourishing, part of it?

I want to share with you some of my journey into these questions since those heady college days — a journey that took me from existential philosophy deep into the heart of Hasidism, a Jewish mystical movement that predated Kierkegaard and yet echoes some of the same concerns with doubt and holiness, faithlessness and faithfulness. My focus will be on the dialectic between faith and doubt, as articulated by three Hasidic thinkers, but I hope along the way to offer a glimpse into an often overlooked thread of Jewish thought and practice that is existentially alive, spiritually rich, and deeply resonant, I believe, for the contemporary seeker.

Let us begin with a *midrash* from Midrash Tanchuma (Ki Tissa). Regarding the grand revelation at Sinai, the Torah reports that Moshe stood on top of the mountain for 40 days and 40 nights (Ex. 24:38). The *midrash* asks, "How could there have been night, or darkness, in the presence of God? Wasn't it all light all the time?" The *midrash* answers rather cryptically that "40 days" refers to the Written Law and "40 nights" refers to the Oral Law. Interpreted literally, this would mean that during the day, God dictated to Moshe the words of the Torah, what would become The Five Books of Moses. And during the night, God dictated the seemingly less holy books of the Mishna and Gemara. But there's a deeper metaphor here and a broader statement about the nature of Torah, or spirituality, broadly construed.

The Jewish tradition offers at least two paths: Torah of the day and Torah of the night. Torah of the day is bright and clear. It contains the word of God, presumably from on high, received and embraced by people. It seems to come with its own authority and its own veracity. It presents itself as the unambiguous dictates of the unmistakable God… But then there's Torah of the night, the rest of the story. Not the words dictated by God to people, but the words that people have used over time to try to find their way through the fog toward divinity, toward clarity. This Torah is not clear and it is not clean. It is

muddied, blurry, ambiguous, miss-able. It's where doubt reigns, where questions and uncomfortable uncertainties reside. Yet this too was at Sinai, the *midrash* indicates. This laborious, sometimes clumsy, process of grappling in the dark for truths has its roots in the holy of holies. This too is how revelation unfolds. Perhaps we toggle between day and night. Or perhaps we live predominantly on either side of the divide. But this *midrash* asserts that both clarity and unclarity, certainty and uncertainty comprise revelation itself.

I've always been drawn to the Torah of the Night and I have found its greatest expression in the works of Hasidism, a tradition that grapples explicitly with the underside of being human, that asks how one might seek light, God, and truth not in spite of, but in and through, the muck of life — through love and loss, exhilaration and alienation, vitality and numbness, conviction and resistance.

* * *

We begin at the beginning, with the founder of Hasidism, Rabbi Israel ben Eliezer, better known as the Baal Shem Tov (or Besht), the Master of the Good Name. Living in Ukraine, from 1698–1760, the Besht was known as a healer and mystic. He believed in a highly democratic model for divine encounter — or *devekut* — available to anyone, anywhere, through just about any means. Most importantly for our purposes, the Baal Shem Tov believed that every part of every person ought to be used in the service of God, and that means even, or precisely, those parts that we often wish to discard or ignore in pursuing loftier ends. *Machshavot zarot,* literally "foreign ideas" — or distracting ideas, ideas that take one away from God — were to him both necessary and providential. They contribute to the fullness of a person's humanity and can actually be used as tools for spiritual development. Referencing Noah's ark that contained so much diversity, he argued that *everything* belongs on the arks of our lives. Every word, every letter, every thought, every feeling has a place. Even doubt. Even distraction. We need leave nothing behind if we are to have integrity and authenticity as our guides.[3]

3. See *Tzavaat HaRiVaSh,* 75.

Rebbe Nachman of Breslav (1772–1810)

The grandson of the Baal Shem Tov, Rebbe Nachman of Breslav, born in 1772 and dubbed by Professor Art Green "the Tormented Master," truly developed a Torah of the Night on the varieties and contours of doubt, and the ways that one might make use of it in the course of a faithful life. A primary site for this exploration is *Likkutei MoHaRaN,* chapter 64.

First, some preliminary kabbalistic concepts:

1. *Tzimtzum* (self-contraction) — According to Kabbalah, the first act of creation was Divine self-contraction. God had to step back in order to make space for finitude in the midst of God's infinitude. The space left over from the contraction is what's called the *challal hapanuy,* the vacant space or void. Into that void, the world was born.
2. *Shevirat ha'kelim* (the breaking of the vessels) — In the process of creation, too much Divine light was channeled into the material vessels of the world and they shattered. The result is that sparks of light were distributed amidst the shards, and hence there was "a sort of divinization of the material created order" (152).[4]

Rebbe Nachman uses the kabbalistic notions of *tzimtzum* and the resultant Void not just as a myth of origins, but as a metaphor for a deep paradox at the heart of the world. The paradox, as he understands it, is the following: God's presence is necessary for creation itself to take place. But God's absence is necessary for creation to be maintained. There couldn't be a world full of God and there can't be a world absent of God. This paradox of absence and presence anchors Rebbe Nachman's treatment of doubt.

He begins by distinguishing between forms of doubt, or what he calls "*apikorsut*" (a word that is often translated as misbeliefs or heresies but is better understood in context as doubts).

The first kind of doubt is that which stems from *shevirat ha'kelim,* the breaking of the vessels. The root of this image is overabundance, too much God-presence, or Godliness gone haywire. This form of misbelief reflects mischanneled divinity, divinity that has overflowed from its legitimate expression into illegitimate forms and thus destabilizes one's hold on truth. Any form of

4. Alon Goshen-Gottstein, "Speech, Silence, Song: Epistemology and Theodicy in a Teaching of R. Nahman of Breslav." *Philosophia* 30, 143–187 (2003), p.152.

competing religious belief, or any wisdom that does not negate Divine reality, but rather presents it through an alternative system, would be viewed as an expression of this type of challenge. Examples he offers include witchcraft and idolatry. I wonder if, in modern parlance, scientific data might fit in this category as well. All point to God, for Rebbe Nachman, but in and through means that appear alien, confounding, or undermining of faith.

To the challenges that arise from these places, there are answers to be found, he argues. They might not be easy, but they are available, since the divine spark, the reality of God or at least of mystery, is still maintained in these philosophies. It just needs to be interrogated and reordered. Speech, which lies at the root of the biblical notion of creation, is still an avenue that is open. The letters must just be re-sequenced, so to speak, to bring these uncertainties into alignment with already-accepted notions of truth.

But there is a second category of doubt for Rebbe Nachman and it is one which stems from the *challal hapanuy*, the Void, that mythical place from which God has withdrawn. As Professor Shaul Magid points out, this is not the problem of the absence of divine presence, but the presence of divine absence. That is, not that I feel distant from God, but that I feel God's nonexistence. Magid writes: "The anguish and anxiety that permeated [Rebbe Nachman's] life as well as his discourse suggested that his experiences were not of the absence of God's presence, but the presence of God's absence; the void is not a lacuna between the two dimensions of God, but the possibility of the nonexistence of the transcendent God, which makes the immanent God an illusion" (Magid 503).[5]

What kinds of questions are grounded in the Void? Any doubt concerning the existence of God; Any doubt concerning the creation vs. eternality of the world; The problem of theodicy or evil; And finally, since for Rebbe Nachman the goal of creation was "the manifestation of Divine compassion, anything that offers contrary indication might also be viewed as stemming from the vacant space."[6]

Of the emotional experience of the *challal hapanuy*, Rebbe Nachman writes:

"Inside of the Void, there is heavyheartedness [*kevedut lev*]… because one

5. Shaul Magid, "Through the Void: The Absence of God in R. Nahman of Bratzlav's *Likkutei MoHaRaN*," *The Harvard Theological Review* (October 1995), p.503.

6. Goshen-Gottstein, p. 159.

stays in utter perplexity regarding God, and one cannot find God, as God has removed God's divinity from there in order to enable creation to exist" (LM 64:6). The experience of the Void is total depression. One has fallen into a Godless pit and there is no easy way out.

How might one respond to a question from the Void? In the words of Alon Goshen-Gottstein: "…no question can be answered that is grounded in the vacant space. There is no possibility of overcoming *consciously* the paradox of God's simultaneous existence and non-existence. There is no way of giving verbal articulation, and hence of thinking, in a field in which there is no speech, since it antedates the linguistic creative process."[7] The kabbalistic myth of self-contraction all happens before God speaks the world into being. The Void is thus a pre-linguistic space, not accessible to rational thought or language itself. Its doubts can be traversed, but *they cannot be linguistically resolved*. Indeed, Rebbe Nachman points to God's response to Moshe in the Talmud, in Tractate Menachot 29b, when God is confronted by Moshe's own theodical doubts as he witnesses the great sage Rabbi Akiva flayed alive. Moshe asks, "*zo Torah v'zo sechara*?" This is the Torah and this [torture] is its reward? How could that be? God responds: "*Shtok. Kach ala bamachshava*." Be silent. So it arose in my mind.

For Rebbe Nachman, silence is everything. Silence is the response to the Void. It is not the negation of speech, but a transcendence of thought into a higher state of being. "*Kach ala bamachshava*." This is how you raise your consciousness, says God. In the words of Goshen-Gottstein, "Moses is [thus] told that there is no way of reasonably answering the enigma presented by R. Akiva's fate. The only thing to do is to rise to a higher state of consciousness that transcends speech, and therefore the conscious articulation of the problem. This ascent of consciousness is not an avoidance of the question. Rather it is an ascent to its metaphysical root of being. The question can be tackled — not answered — only on the level of being, and not on the level of thought".[8]

This pregnant silence is itself a kind of faith. A faith that crosses over the Void but does not flatten it. A faith that incorporates the Void, without violating it, without answering it, without running away from it. It's a faith that honors the ways in which doubt is itself constitutive of creation itself. It's

7. Ibid., p. 158.
8. Ibid., p. 165.

embedded in the very fabric of the universe. It's foundational to our myth of existence. Indeed, the Void at the heart of doubt is also the very life-force that enables the world to come into being. Our creativity, generativity, productivity all rest on the paradox that is the *challal hapanuy*.

For Rebbe Nachman, Jews, known as *ivrim,* have a unique capacity *la'avor* — to pass over the Void. We're known as a rather talkative bunch, and yet we are endowed with a legacy of deep silence, of an ability to sit with uncertainty. We might do this through *shtika* (quiet) or, says Reb Nachman, we might do this through *niggun,* through wordless song, for it too is meta-linguistic or supra-rational. We can sometimes find our way to other side of irresolvable doubts by singing our way there.

In sum, again I quote Goshen-Gottstein: "When detached from its cosmological and kabbalistic moorings, R. Nachman still offers us a teaching. It is a teaching that admits the impossibility of adequate intellectual solutions to fundamental religious paradoxes. It is a teaching that speaks of being, rather than thinking. Most of all, it is a teaching that speaks of process. For it is only through the transformation of consciousness and the gradual entry into the mode of being that is attained through faith that one can discover another way of being, that does not provide answers to the deepest questions of human existence, and yet in its own way is itself their answer."[9]

This is Torah of the Night. It is a theology and a cosmology and an anthropology that makes room for the fullness of the complicated human experience. It is an orientation toward faith that does not whitewash doubt, but instead lifts it to center of the faithful life. To contend with God and to contend with the world demands that one contend with the paradox, the void, the unintelligible parts of life that render us speechless. And we need not respond to all of that with more and more words, or more and more easy answers. We don't have to explain it all away. Because we can't explain it all away. We can sit silently or sing softly, as we behold and make space for that which flouts language and defies thought. The willingness to own those realities (as supra-rational phenomena) and to live with them gently: that is Rebbe Nachman's gift of faith.

9. Ibid., p. 176.

Rabbi Mordechai Yosef Leiner of Izbica (1801–1854)

Rebbe Nachman died in 1810 in Uman, Ukraine. In 1801, another Hasidic Rebbe was born in Izbica/Izbitz, Poland, who would go on to found a dynasty of his own, the Izhbitzer-Radziner dynasty. This was Rabbi Mordechai Yosef Leiner, a student of the great Rabbi Menachem Mendel of Kotzk (1787–1859). He would become known for, and as, his most famous work of Hasidism called the *Mei HaShiloah* (translated as The Living Waters). As we further our exploration of holy doubt, I'd like to share with you another paradigm offered by this Ishbitzer Rebbe.

The first of the Ten Commandments reads as follows:

אָנֹכִי ה' אֱלֹהֶיךָ-יךָ אֲשֶׁר הוֹצֵאתִיךָ מֵאֶרֶץ מִצְרַיִם מִבֵּית עֲבָדִים:

> "I am the Lord your God who took you out from the land of Egypt, the house of bondage." (Exodus 20:2)

God introduces Godself to the Jewish people at Sinai as the one who redeemed them from slavery. The *Mei HaShiloach* points out poignantly that in doing so, God used a particular form of the word "I" — *Anochi,* in place of the more conventional *Ani*. He writes:

> The text does not say "*Ani*," for if it had done so, it would have suggested that the Holy Blessed One revealed all of His light to Israel, in its fullness, and that thereafter they would not have been able to go deeper in His words, for He had already revealed everything. Thus the [letter] *kaf* [separating *ani* from *anochi* — ed.] teaches that it was not in its fullness, but rather an image, a likeness, of the light that God will reveal in the future. (*Sefer ha-Zemanim* 19f.)

What lies between the words *anochi* and *ani* — both meaning I — is one small Hebrew letter, *kaf…* but what an important letter it is! *Kaf,* or the sound *ki* or *chi,* is a prefix in Hebrew, meaning 'like,' or 'as if.' Just adding that one letter before any word changes its meaning from the thing in itself to *like* the thing itself. So in introducing Godself in this way, at the moment of greatest intimacy, says the Ishbitzer, God was actually communicating to the people only a likeness of God. *Ki-ani,* or *kmo-ani*. It's *as if* God revealed Godself, when in fact there was only partial disclosure.

Indeed it seems that this tiny, crucial gap between *ani* and *anochi* was itself

the revelation. At the very moment when God seems most close, most unmistakably clear, the *kaf* comes to halt us from certainty, to stave off unchecked access. Alas, we cannot know the *ani,* the selfhood, the essence of God. We must always stand at a remove (as the Jews did at the foot of Mount Sinai). We must always contend with ambiguity and uncertainty. To be in an honest relationship with God *is to* truly understand that one cannot be in an unmediated, unclouded, uncompromised relationship.

Perhaps it is for this reason that when Moshe approaches God — Moshe who is identified by the Torah as the human being with the most access to God — we are told in Exodus 20:18:

וַיַּעֲמֹד הָעָם מֵרָחֹק וּמֹשֶׁה נִגַּשׁ אֶל־הָעֲרָפֶל אֲשֶׁר־שָׁם הָאֱלֹהִים׃

…Moshe approached the thick cloud where God was.

To truly encounter God at Sinai, Moshe had to enter the *arafel,* the fog, the place without flashing lights and crashing sounds. The place of cloudiness, maybe even a little darkness. Maybe in the absence of seeing, space opened up for more authentic vision. Moshe entered the fog because "*sham ha'Elokim*," there God could be found, in the in-between space, in the domain of opacity, of uncertainty, in the blurry space of not fully knowing and not fully seeing.

The Ishbitzer Rebbe makes clear that this *arafel* reflects both a truth about God and a necessity of spiritual growth. God gifted us with the mists of misunderstanding so that we might "go deeper in His words." Through incomplete revelation, human beings are left to disclose and disclose some more, ever-searching for greater understanding and greater intimacy. But that search will always be asymptotic. For only *Anochi,* or *ki-ani,* may be found on the other side.

Contemporary rabbi (and Maharat teacher) R. Herzl Hefter calls this "The Theological Uncertainty Principle." He writes:

> Total comprehension of the Divine leaves no room for human development and is a distortion of the revelation. This is because God and [God's] Will are infinite and we mortals are finite with limited capacity to understand. Insisting upon perfect knowledge of God and [God's] Will is necessarily idolatrous in that the "perfect perception," at the end of the day, turns out to be but a projection of ourselves. We will be guilty of creating God in our own image….

He continues:

> The ramifications of the Ishbica[10] approach are monumental on both the individual-religious and national-narrative planes. On the individual-religious plane, prior to this approach we [might have] equated certainty and steadfast faith as being more "religious". In fact, according to the "Theological Uncertainty Principle" of the Mei HaShiloah [and R. Ya'akov Leiner] the exact opposite is true. Uncertainty is an essential part of the God-created spiritual topography which we inhabit. It is precisely in the landscape of uncertainty where we develop as religious beings.
>
> On the national-narrative level, Ishbica teaches us that a system with pretensions to explain all in the most certain terms must be naïve and ignorant of the complex and constantly changing world in which we live. The Theological Uncertainty Principle renders a Jewish tradition not obsessed with reconstructing eras of perceived perfection, [but] rather engaged in the constantly changing present with its infinite possibilities and surprises. But even more importantly, the uncertainty principle provides an opening for authentic humility and a more profound faith in God.[11]

Here we have yet another compelling Torah of the Night that anchors uncertainty at the root of faith. Revelation is but an intimation of a God who can only be known through a cloud "as if." And so doubt is actually, in a sense, correct theology. It is also humble practice that bolsters spiritual growth. Uncertainty then is not something to be overcome. It is not even something to be traversed a la Rebbe Nachman. As Kierkegaard said, we must actively, willfully "hold fast to the objective uncertainty" if we are to abjure idolatry and embrace the holy *Anochi*.

Rabbi Kalonymus Kalman Shapira (1889–1943)

There is one final Hasidic rebbe to present, a more contemporary figure dear

10. An alternative spelling of Izbica/Ishbitz.
11. See http://www.har-el.org/2014/06/02/i-am-the-lord-your-god-thoughts-about-divine-revelation-for-shavuot-rabbi-herzl-hefter/.

to my heart, Rabbi Kalonymus Kalman Shapira of Piaseczo, the Rebbe of the Warsaw Ghetto. Born in Grodzisk, Poland in 1889 and executed by the Nazis in 1943 in the Trawnicki labor camp, Rabbi Shapira, or The Piaseczner Rebbe, led his community of Hasidim through some of the darkest hours of modern Jewish history. Despite or maybe because of the increasing threats around him, as he lost his entire family to the Holocaust, he continued to teach and preach amidst the horror of the Holocaust. He collected his weekly wartime sermons (from 1939–1942) — which he titled "Torah Novellae from the Years of Fury" (*Chidushei Torah m'shnot ha'zaam)* — and buried them in a milk can before he was deported. They were found in the rubble of the ghetto after the war by a Polish construction worker and later printed in Israel (in 1960) as *Esh Kodesh*, or *Sacred Fire*. This Rebbe surely knew a thing or two about doubt. His whole book, in fact, could be read as one long, varied meditation on the nature of doubt (and suffering) and how to live with it. I will share just one small teaching, a teaching that, like the Ishbitzer's, hinges on that one Hebrew letter, *kaf*.

This teaching is dated April 13, 1940, on the occasion of the Torah portion of Metzora from the book of Vayikrah read on that Sabbath. Metzora concerns some rather obscure, arcane, arguably bizarre material, detailing laws around *tzaraat*, usually translated as leprosy. This ailment could apparently strike not only human bodies, but also garments and homes. The Torah is quite concerned with the sins that give rise to these conditions and the states of impurity that result from them. Priests (*Kohanim*) would need to be deployed to purify afflicted subjects. Rabbi Shapira's interest was in *tzaraat ha'bayit*, leprosy of the home.

The Torah states in Vayikra 14:33–35:

> וַיְדַבֵּר ה' אֶל־מֹשֶׁה וְאֶל־אַהֲרֹן לֵאמֹר: כִּי תָבֹאוּ אֶל־אֶרֶץ כְּנַעַן אֲשֶׁר אֲנִי נֹתֵן לָכֶם לַאֲחֻזָּה וְנָתַתִּי נֶגַע צָרַעַת בְּבֵית אֶרֶץ אֲחֻזַּתְכֶם: וּבָא אֲשֶׁר־לוֹ הַבַּיִת וְהִגִּיד לַכֹּהֵן לֵאמֹר כְּנֶגַע נִרְאָה לִי בַּבָּיִת:
>
> 33 The LORD spoke to Moses and Aaron, saying: 34 When you enter the land of Canaan that I give you as a possession, and I inflict an eruptive plague upon a house in the land you possess, 35 the owner of the house shall come and tell the priest, saying, "Something like a plague has appeared upon my house." ["*ki'negah nir'ah li ba'bayit*"].

Upon entering the Land of Israel, the Israelites were destined to experience this phenomenon of afflicted homes. The language of verse 34 is subtly prescriptive to this effect. It refers not to a situation that *might* arise in response

to human behavior, as the other cases of *tzaraat* indicate, but to one that will arise, seemingly regardless. "When you to come to the land," says God, "I [will] place a lesion."

Picking up on this surprising prescription, Rashi offers the following *midrashic* explanation (from *Vayikrah Rabbah* 17:6):

> "And I place a lesion of *tzaraat*." This is [good] news for them that lesions of *tzaraat* will come upon them, because the Amorites had hidden away treasures of gold inside the walls of their houses during the entire forty years that the Israelites were in the desert, and through these lesions, [the priest] will demolish the house and find them. (Rashi on Lev. 14:34)

In contrast to the other forms of *tzaraat* that announce the presence of sin, *tzaraat ha-bayit* actually announces blessing. The homes that the Israelites would come to inhabit were treasure troves, says Rashi, filled with the riches of their previous inhabitants lodged deep in their walls. The hidden goods would only be revealed though through the destruction that *tzaraat ha-bayit* demanded. Hence its presence was a "*besorah tova*," a great tiding, offered by God to the Jewish people.

To clarify, regarding this form of leprosy, the journey from diagnosis of impurity to purification involved many steps. First, an individual who suspected that his or her home was afflicted would report to the priest: "*ki'negah nir'ah li ba'bayit* " "Something like a lesion has appeared to me in the house" (Lev. 14:35). Then, after clearing out the home to avoid contamination of its objects, the priest would come to ascertain its status. If indeed it appeared to contain *tzaraat,* he would quarantine the house for 7 days. After this week, he would assess the spread of the affliction. If it had continued to spread, all stones affected would be removed and replaced. Then another 7 day waiting-period would be observed, after which the priest would return. If he observed further spread of the *tzaraat*, then the entire house would be demolished. All of this would be followed by a sacrificial purification process.

The Piaseczner Rebbe raised a compelling question about this elaborate destructive process. If it's so clear, as per Rashi, that what appears to be an affliction is actually a blessing in disguise, why such a complicated and elongated procedure to arrive at its revelation? Why not just tear down the walls immediately and expose the riches hidden within?

The Rebbe answers: Because even when something is "*l'tovah*" (for the

best), even when it will reveal itself over time as an occasion for opening or healing or clarity, we must still pause to really honor the uncertainty and the pain that that so often inflicts. No matter how many explanations we might come to have to make the disorientation "worth it"; no matter how many ways we might have to retrospectively redeem or recontextualize that which unsettles, in the here-and-now it just hurts. It is just anguish or inconvenience or isolation or confusion. So for seven days we hold that. And then some. We suspend speculation about the meaning of things. We resist resolution. And we just sit *shiva* for the loss and the insecurity that comes from that. We mourn for the ways in which we've been uprooted. We breathe, cry, just pause. And then, only then, might we be prepared to reveal the blessings that lay hidden deeply (sometimes very deeply) inside of such experiences.

The Piaseczner concludes:

> And so the law states: A person must say, "Something like a lesion has appeared to me in the house" (Lev. 14:35). *Ki'negah nirah li.* Even if he is a scholar and knows the exact definition of a leprous mark, he must still use the phrase "like a lesion" — for, as we said above, a person is never able to tell whether what is happening to him is a [blessed] challenge or a [meaningless] injury. All he can say is that it looks like an affliction. Even if the truth, as the Torah announces, is that what God is doing with us is for the good of Israel. (*Esh Kodesh*, Metzora 1940)

A person locked in his or her own hardship or doubt or confounding disappointment can never really know what lays on the other side of it. The Torah does not ask us to leapfrog over that pain or to explain it away, but rather to sit with it and wait. The treasures behind the walls will likely come, says the Rebbe, but only with time and a little bit of breaking down.

Here we have one final Torah of the Night, contending not just with intellectual doubt, but with deep existential pain. Pain that comes not from propositional uncertainty, but from lived experience that testifies to abandonment, destruction, loss. The image is one of homelessness, total vulnerability. And the Piaseczner's reponse is to just hold it there. *Ki'negah. Ki.* I can't ever fully know God and I can't ever fully know my fate, so the faithful stance opens up space to pause and to sit with the raw reality of irresolution.

* * *

Here we have three Hasidic thinkers — Rebbe Nachman of Breslav, Rabbi Mordechai Yosef Leiner of Izbica, and Rabbi Kalonymus Kalman Shapira of Piaseczno. Three approaches to holy doubt. Three Torahs of the Night. For Reb Nachman, doubt is embedded in the very fabric of the universe and is in fact essential for its maintenance. To be in faith is to contend with the Void, not by overcoming it, but by traversing it through silence or song. For the Izbitzer Rebbe, uncertainty is just correct theology. I cannot know the "*ani*" of God. I can only know the "*anochi*," the *ke-ani*, the likeness of God. So to be in a place of doubt is to be in a place of honesty and ripe for spiritual growth. Finally, for the Piaseczner Rebbe, the stakes of doubt are not only theology, but psychic wholeness. How can I live with searing doubt, even when it compromises the ground beneath my feet, the shelter above my head? How can I engage existentially with the uncertainties that break me?, he asks. And he answers with a "*kaf*." By pausing to honor all that is unknown and making space for the pain that that uncertainty sometimes yields.

These are but three voices from a majestic Hasidic tradition, a tradition marked by unvarnished honesty, attention to human complexity, embrace of grit and grace. It is a spiritual orientation that welcomes embodiment, values vulnerability, celebrates fallibility, and sees authenticity in ambiguity. It embraces a rich Torah of the Night.

The journal that you have before you continues in this tradition. Using the varied frames of textual exegesis, theology, and *halakhic* inquiry, our writers, all graduates of Yeshivat Maharat, each grapple, in their own ways, with the tensions — the creative, beautiful, and sometimes painful tensions — that arise when the Torah of the Day meets the questions of the night. Enjoy the journey into the *arafel* (fog).

Part I:

Exegesis and Spirituality

נצחוני בניי

The Powerless God in Israeli Women's Midrash

Rabbanit Dr. Liz Shayne

All *midrash* is theology. This is not to say that *midrash* is a treatise on theology or that it is prescriptivist doctrine. It is, nevertheless, a descriptive theology. Or, rather, *midrashim* are a series of descriptive theologies that, while they may not intend to make such claims, inevitably and implicitly have something to say about God and the world. In this respect, the fact that *midrashim* contradict one another is unsurprising and, frankly, unproblematic. Like the maxim that there are שבעים פנים לתורה, seventy faces (or interpretive stances) to the Torah, different *midrashim* access different aspects of Jewish theology. To read *midrash* is to read a theological argument about the nature of God in the world.

It follows, then, that to write *midrash* is to make a theological argument about the nature of God in the world. In this paper, I want to address the theologies implicit in re-writings of the story of "The Oven of Akhnai"[1] as they appear in two contemporary *midrashim* written by women. Both are found in the first volume of *Dirshuni*, a collection of contemporary *midrashim* written by Israeli women and edited by Tamar Biala and Nehama Mintz-Weingarten, and each retells part of the original *midrash* — specifically the part that occurs within the walls of the *beit midrash* — by highlighting Jewish women's experiences.[2] In the original story, the rabbis win the debate with the exclamation "לא בשמים היא", the Torah is not in the heavens. The *midrash* tells us that when R. Natan asked the ministering angels what God was doing at the moment the rabbis said this, the angels answered that God laughed and exclaimed "נצחוני בני", my children — but literally sons — have defeated me.

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1. BT Bava Metzia 59b.
2. Weingarten-Mintz, Nehama, and Tamar Biala. דרשוני: מדרשי נשים. 2009 ,ידיעות אחרונות.

This motif of נצחוני (God's laughter) is shared by these two *midrashim* to show that women fighting for change are on the same side as God, but they make radically different theological claims about God's relationship to God's children. Looking at these *midrashim*, we see that although they end with the same refrain, the first reflects the same laughing, triumphant, conceding God found in the original, while the second sees a God who is utterly powerless to right the wrongs committed by God's people. This second *midrash* calls into question the theology of the first, suggesting that God's concession is not delight at being out-argued but rather devastation at being overruled. It takes נצחוני בניי to its logical conclusion and asks us to imagine a God who sees not only the tragedy of the world but also the sins of God's own sons and can do nothing to fix it. The second midrash from *Dirshuni* presents a compelling and disturbing theology where God has as little power as a chained woman, an *agunah*.

"The Oven of Akhnai" may have the distinction of being the single most commented-on work of *midrash* in the canon. For that reason, I have no intention of offering another read of the narrative here: my goal is to provide enough of context to explain the contemporary versions. To that end, I rely primarily on Jeffrey Rubenstein's read of the *midrash* in *Talmudic Stories*, particularly his emphasis on R. Eliezer's experience of pain as the fulcrum around which the story turns.[3] That focus parallels the pain of the female characters at the center of the *Dirshuni* versions. I also draw on both Miriam Gedweiser and Charlotte Fonrobert's interpretations of gender in "The Oven of Akhnai" to clarify how gender has always been a part of this narrative, even before its transformation in *Dirshuni*.[4] All these authors emphasize the need to read the story in its entirety, from the Mishnah that discusses the prohibition of causing anguish through to the end when R. Gamaliel dies from R. Eliezer's anguish.

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3. Rubenstein, Jeffrey L. *Talmudic Stories: Narrative Art, Composition, and Culture*. First Edition edition. Baltimore, MD London: Johns Hopkins University Press, 2003. 34–63.
4. Gedwiser, Miriam. "If Your Wife Is Short, Bend Down and Hear Her Whisper: Rereading Tanur Shel Akhnai — The Lehrhaus," February 17, 2019. https://the-lehrhaus.com/scholarship/if-your-wife-is-short-bend-down-and-hear-her-whisper-rereading-tanur-shel-akhnai/. Fonrobert, Charlotte Elisheva. "When the Rabbi Weeps: On Reading Gender in Talmudic Aggadah." *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, no. 4 (2001): 56–83.

However, given that these contemporary *midrashim* only use part of the original and call attention to God's role, my work tries to balance both perspectives.

To that end, it is useful to consider how the argument of לא בשמים היא is used in the original: R. Eliezer uses supernatural proofs to support his position, which culminate in the *bat kol,* heavenly voice, that validates his approach. The response of לא בשמים היא is the equivalent of telling God that God has no say in the development of law in the *beit midrash.* Rubenstein cites Daniel Boyarin's observation that the rabbis use their own power to justify making such a determination.[5] But the victory is incomplete, as Fonrobert observes, because R. Eliezer's anguish leads to the death of R. Gamaliel later in the story.[6] But with the reassuring statement of נצחוני בני in the divine voice, the *midrash* walks the fine line between rabbinic practice and rabbinic attitude. Although the rabbis' behavior was suspect, they had the rabbinic right to be correct, so much so that even God agreed. The presence of נצחוני בני means that, even if the specifics of this story end in tragedy, the overall rabbinic project is justified. With rabbinic vindication resting solely on the word of God as transmitted by R. Natan ex-post-facto, however, one is tempted to imagine what the story would be like absent divine approbation.

Fortunately for us, the version in the Talmud Yerushalmi — found in chapter 3 of Moed Kattan — ends with the statement לא בשמים היא, and this happens after R. Eliezer is excommunicated, thus ending the tragedy rather than escalating it. What is asserted is the rabbinic right to make these decisions, even when they lead to anger. Only in the Bavli does the story provide an account of God's laughter and pronouncement of נצחוני בני and the story's continuation with R. Eliezer's excommunication and R. Gamaliel's death, the latter of which is absent entirely from the Yerushalmi. As Rubenstein puts it, "the rejection of the heavenly voice [in the Yerushalmi] successfully contains the destruction while the ban has no deleterious consequence."[7] When the Bavli's retelling becomes a narrative of anguish, it places God in a position of powerlessness. While not as common as depictions of a powerful God, this is still an occasional theme in Jewish theology, especially when considering God as empowered by and partnering with human beings. Perhaps more significantly, though, it places the rabbis in the position of sinners. The point is

5. Ibid., p. 41.
6. Ibid., p. 56–7.
7. Ibid., p. 50.

not that God is powerless, but God is powerless to stop them from disobeying God's will when they say לא בשמים היא. Maybe, in their actions, they have thrown out not merely R. Eliezer but God and God's will. Given the destructive outcome, the Bavli needs some reassurance that the rabbis did the right thing. Emphasizing God's laughter and concession is a sign that what the rabbis have done with their right to say לא בשמים היא is also morally correct.

Thus, despite appearances, נצחוני בני is how the rabbis reassure themselves that they are aligned with God's will. Because God allows them to win and laughs at their cleverness, there is no concern that they have sinned in matters of *halakha*. Even if they have acted wrongly in their treatment of R. Eliezer, the larger project of the *beit midrash* and the debate therein is validated through God's pronouncement. Fonrobert argues that this *midrash* is a foundation myth that establishes the collective identity of the rabbinic *beit midrash*,[8] and, in that respect, נצחוני בני plays an integral role in the mythopoesis. נצחוני בני is how the rabbis know that God wants a *beit midrash* with fierce debate and battle lines drawn. The very language of נצח, victory, echoes the valorization of the battlegrounds of Torah And, ideologically, נצחוני בניי is the language of justifying our own decisions. God is delighting in our claims and laughing, conceding to our position. No wonder that it appears multiple times in *Dirshuni*, sometimes altered to the feminine form of נצחוני בנותיי: the authors are co-opting that same reassurance and justification to validate the choices they make and the changes they want to see.

The version I see as paradigmatic is the *midrash* on the מדרשה by Yehudit Shilat, which opens with the daughters of Israel approaching God and requesting "יפתחו לפנינו שערי תורה" — open before us the gates of Torah. But then R. Eliezer (the same one from the *midrash* of the oven of Akhnai) stands up and makes his well-known statement from the Mishnah in Sotah[9]: "כל המלמד בתו תורה כאילו מלמדה תפלות" — all who teach their daughter Torah, it is as if they taught her nothingness/garbage/immorality. In this *midrash*, the women debate but eventually lose heart and go home to the labor that keeps the Jewish household running. But later, after the gates of understanding are opened to the whole world — which I think means after modernity arrives and women are seen as men's intellectual equals — the women approach God again and make their case that they too have a share in the Torah. This time, the

8. Ibid., p. 59.

9. M. Sotah 3:4.

disagreement comes from "a few" of the sages, who ask where they have been for the past 2000 years. The women respond that they have a tradition from Imma Shalom, the wife of R. Eliezer and the sister of R. Gamaliel, that all the gates (of supplication) may be locked except for the gates of anguish, the *o'naah* around which the entire *midrash* of "The Oven of Akhnai" revolves in the Bavli. They continue:

> Is it not known before you, God, that for many generations we have borne the burden of the house of Jacob with willingness and love: we have wed, birthed […] cooked, laundered, suffered without complaint and, with all this, we have built the house of Israel. And now that You, in Your infinite goodness, have opened the gates of understanding to the entire world and in Your great compassion you have made the work easy, we desire to make our souls whole through learning Your Torah. The Holy Blessed One, hears, and He desired what they said and smiled. A heavenly voice rang out and declared נצחוני בנותיי, נצחוני בנותיי. My daughters have conquered me, my daughters have conquered me.[10]

In this version, Shilat cleverly reworks the debate between R. Eliezer and the sages about an oven into a debate about R. Eliezer's infamous statement about women's learning. Though she omits the supernatural elements of the original version, Shilat retains the larger theme of anguish so that, as in the original, God can side with those making the good *halakhic* argument and with those experiencing pain. Like the rabbis of the Bavli, who imagine God as a delighted bystander who validates their struggle, Shilat imagines a similar God who is eager to support women's Torah study as soon as the case is made. God is, once again, figured as caring, invested, powerful, and willing to take sides in an ideological struggle. Most crucially, theologically speaking, God is on the women's side.

With the understanding that the *midrash* is not *necessarily* intending to make every theological claim that a close reader uncovers, the text does suggest that God opposed women's learning for two millennia and just came around recently. In the original, the debate is about the purity of the oven and, while the debate is important, the two *halakhic* positions lack a moral valence. When God laughs, God concedes that the *halakhic* case is strong enough that the

10. Shilat, *Dirshuni*. 119, trans. mine.

decision made by the rabbis can stand. There is no fraught, ethical question attached to whether the oven is pure or impure.

Not so in Shilat's *midrash*. This *midrash*'s argument — which it never explicitly contradicts even though I feel strongly that it did not intend to make this argument — is that God originally agreed with R. Eliezer's interpretations that opposed women's learning. Only after the women mount their final argument does God changes God's mind about women's learning. When one accepts the idea of מלחמתא דתורה, the battle of Torah, one takes on the rest of the metaphor as well. Wars have a winner and loser. Wars have two sides. If God's daughters win against God, God might be delighted, but it does seem God was on the "losing" side until God conceded. This is the peril of *midrash*, after all; the story is never just a story. In the same way that the Bavli's rewriting of "The Oven of Akhnai" makes manifest the troubling possibility that the rabbis were defying God's will and God would not or could not stop them, Shilat's retelling makes manifest an equally troubling implication. Maybe, for all these years, God was not on the side of women.[11]

There is an alternative read, which — based on how strongly the rabbis rejected it in "The Oven of Akhnai" — appears to be even more fraught. Maybe the rabbis really did spend years inadvertently flouting the will of God and God could do nothing to stop them. Maybe their rabbinic right was wrong. It is this idea that Rivka Lubitch addresses in her "*Midrash Mesuravet*." This is the story of one of the *mesuravot get*, the women whose husbands refuse to give them a *get*, or writ of divorce, and who are commonly called *agunot:* chained women. One woman comes before the rabbis and says, "Give me my *get* and I will leave." The rabbis protest that only her husband can give the *get*. She then suggests that they force him to give the *get*, and they refuse, lest it be considered a "*get me'usah*," a forced document that lacks authority. And so on, with the woman suggesting one *halakhic* solution after another that will allow her to be free of the chains of her marriage and the rabbis finding one reason after another to reject her suggestions and keep her a prisoner. With each

11. Creating a consistent theology that accounts for *halakha* and God's will as an ongoing project that can develop or change but that does not, in changing, indict earlier iterations of itself is the work of Tamar Ross's *Expanding the Palace of Torah* and what she calls "cumulative revelation." It is precisely the sorts of problems illuminated by Shilat's *midrash* that animate the final chapter of Ross's magnum opus.

refusal on the part of the rabbis, a miracle happens in the house of study to show heavenly support for the petitioner, just like the miracles that supported R. Eliezer in the story of the oven of Akhnai, and yet the rabbis ignore them. Finally, in response to the suggestion that perhaps she has withheld something from her husband and that is why he is refusing to grant the *get,* a heavenly voice rings out and says, "What is it to you that this woman's husband is disgusting to her and she does not need to give him anything so that she can receive her *get*." The rabbis respond "לא בשמים היא" and add "we do not rely on a heavenly voice." And in that hour, the *midrash* says, God was crying and saying "נצחוני בניי, נצחוני בניי".

If, as this *midrash* suggests, it is theologically untenable to believe that God had the power to effect change in the status of women but chose not to do so for two thousand years, the only alternative is that God is powerless in the face of the rabbis here on earth. We can imagine God as partnering with human beings, as depending on human beings, even as being defeated by the clever arguments of human beings. But does the rabbinic imagination stretch to the idea of a God who can do nothing except cry as the rabbis override the Divine Will to cause anguish in God's daughters? In the original, R. Eliezer's anguish causes R. Gamaliel's death. In Shilat's, anguish brings about a *halakhic* sea change. In Lubitch's version, the rabbis are not God's partners but God's enemies. And they have won. That is what this *midrash* proclaims: My sons, not my daughters, have conquered me, says God. With the Bavli's framing of causing anguish using words (*ona'ah*) but without the reassurances of נצחוני בניי, "The Oven of Akhnai" can be read as the story of a powerless God unable to intervene when the rabbis bully God's child using God's own *halakhic* system. It is, in fact, the exact story told in the "*Midrash Mesuravet*."

As uncomfortable as I find this *midrash* as a person holding rabbinic authority, I find the implications of Lubitch's *midrash* less troubling than Shilat's. If God's willingness to laugh and declare us victors is all women are waiting for, where has God been all these years? Why does it take two thousand years and the gates of anguish for God to take the side of God's daughters? If the "right" side wins, why was God on the "wrong" side? While I do not think this is Shilat's intentional theological claim, it is an unavoidable consequence of the way that God is figured in "The Oven of Akhnai" and all the variations that evolve from it. Lubitch, along with the Bavli, is most sensitive to these theological implications.

When Fonrobert, in her read of gender in "The Oven of Akhnai," discusses

the feminization of rabbinic behavior and how the rabbis take on symbolically female roles through their crying, one can almost hear Lubitch's narrative crying out, "Yes, but what about the actual women?" Imma Shalom, the wife of R. Eliezer who keeps the peace (hence her name), is the least feminized character in the story: it is the men, and specifically her husband, who play the role of the wronged wife. And yet the complexity of the story, the interplay between the ideal *beit midrash* and the anguish of R. Eliezer, the myth of the *beit midrash* "that is endowed with the creative power to coordinate human, natural, and divine forces"[12] only stands because it incorporates women symbolically but not physically.

To my mind, it is Lubitch's *midrash* that articulates the more compelling position. If nothing changes after God's delighted announcement of נצחוני בנותיי, if the rabbis remain unconvinced, then the distinction between the God of Shilat's *midrash* and the God of Lubitch's evaporates. They are both stories of divine powerlessness. Shilat's *midrash* points towards a development of *halakha* most clearly articulated in Rahel Berkovits's article about her grandfather, Eliezer Berkovits', approach to Judaism.[13] Eliezer Berkovits believes the job of a rabbi and *posek* is to build and innovate an ethical *halakha*. Rahel Berkovits accepts that framing and, in her articulation of her grandfather's position, imagines *halakhic* leaders making the changes that Shilat champions in her *midrash*. The difference, of course, is that in Shilat's *midrash*, the women make those changes themselves. Berkovits writes about reality, a place where it does not actually matter how often God says ניצחוני בנותיי if the rabbis do not feel the same push towards ethical behavior. There are other *midrashim* in *Dirshuni* that culminate with women refusing rabbinic authority and making their own decisions, often with approbation from God, because *halakhic* Jews need the reassurance that their behavior merits God's delighted laugh. We humans, says this approach, are getting better at following God's will.

Lubitch's *midrash* is almost a direct response to Berkovits. Where, asks the *midrash*, are these ethical rabbis? Where are these men concerned for the honor of the Torah and the ethics of *halakha*? Berkovits' entire concept of *halakha*, which he articulates in the book aptly titled *Not in Heaven*, is grounded in the idea that *halakha* is a code that does — and must — reflect the underlying

12. Fonrobert, "When the Rabbi Weeps." p.75.

13. Berkovits, Rahel. "Torat Hayyim: The Status of Women in the Thought of Eliezer Berkovits." *Shofar* 31, no. 4 (2013): 4–15.

moral nature of God and what God desires. Lubitch's *midrash* points to a break between the underlying moral nature of God and *halakha* as experienced by those who are subject to it. There is no moral *halakha* here, only a God who cries at the immorality of how *halakha* is instantiated. God is trapped by the *halakhic* system no less than the *mesuravot* and, enmeshed in it, can find no way to effect change.

Lubitch, then, offers a story without tangible hope. When God is not merely on the side of the helpless and the oppressed, but with them and portrayed as chained alongside them, the savior of the Jewish people cannot save. The *agunah* can never free herself, and God can do no more than she. But this is, paradoxically, why I find it to be the more theologically comforting narrative: the world is filled with things that we, as good people, need not countenance because God also cannot countenance them. The *mesuravet get* does not need to give up on God even if she may need to give up on expecting divine intervention to matter. The theology offered by her *midrash* is, perhaps, the only tenable one given the world as it is experienced by the *mesuravot get*. These women are no less beloved by God, no less fought for than any other of God's children. And yet they are at the mercy of those who conquer God and against whom God is powerless to respond. God, in this story, has always been a feminist. God has always been the God of the widow and the orphan, the *agunah* and the *mesuravet*. Lubitch takes a situation that has always been treated as an earthly one — לא בשמים היא indeed — and drags God down into it to force us to reframe the question of "what does *halakha* say?" into "what ought God's *halakha* be?" The rabbis refuse the reframing. Lubitch saves Berkovits' God of morality and righteousness, although she sacrifices the *halakhic* system to do so.

In these stories, God takes the role of the women writing them: God is deeply invested in the outcome and in the *halakhic* system itself; God cares about the outcome and lends God's weight to the right side; and God is, ultimately, silenced by the status quo. The only hope left lies in the articulation of the very powerlessness of God and the *mesuravet*, that anguished cry that echoes R. Eliezer's sobbing. There is something devastating in the *midrash*'s inability to continue and, like the original on which it is based, imagine an end where the anguish of those wronged can emerge as a cautionary tale. The best hope that this *midrash* offers is in the invitation to see the anguish and, through it, take steps towards turning נצחוני בניי into נצחוני בנותיי.

Thinking Spirituality Anew: Shekhina, *or the Ethics of Presence*

Rabbanit Myriam Ackermann-Sommer

This inquiry focuses on the concept of *shekhina* as a potential basis for a feminist theology. I will delve into the role it might play in a Jewish spirituality and explore the paradoxical representation of a suffering God that it entails. In approaching this topic, I considered introductory questions such as, "What form might a Jewish spirituality take?" "How should we live our Jewish spiritual lives?" and, and perhaps more importantly, "How are we to embody and enact a Jewish spirituality in our daily lives?" Then I realized I should start from the very beginning and ask, "Is there such thing as a Jewish spirituality?" For it is this question that has led me to define my personal journey through Jewish spirituality in relation to what I will define as an ethics of interdependence, care, and vulnerability.

My research began with the observation that, in many circles, the notion of spirituality, and specifically what is misrepresented as the recent invention of a Jewish spirituality, still arouses a certain suspicion. While it is based on flawed premises, we need to understand where this suspicion comes from. I must confess that, as a child, I associated spirituality with pictures of meek hippies, reveries of distant ashrams, or, at worst, ruthless gurus trafficking in dreams and taking advantage of the yearning of good souls for a more meaningful world. On a more conceptual level, spirituality was associated in my mind with a hermetic life of voluntary seclusion, turned towards the contemplation of the essence of Being. In keeping with dictionary definitions that describe the realm of the spiritual as immaterial and even antagonistic to the body and the physical world, I equated spirituality with a disembodied life, or at least with the aspiration for an otherworldliness that I both admired and dreaded — perhaps

because it seemed unattainable, but probably because I resist a spirituality that seeks to annihilate or overcome the material and the embodied.

This brings me back to the subject that I would like to address here, namely, that of the translation of a representation of Hashem (a spirituality of God) action. Therefore, I am trying to define a new form of spirituality that can be described as the humble quest for what exceeds us, for an Otherness that is never fully knowable and therefore cannot be encompassed by the human subject. I define Otherness in keeping with the philosophical tradition of French Jewish thinker Emmanuel Levinas (1906–1995), according to whom the encounter with Otherness, either in the form of God or of a specific human being, implies that the Other should not be reduced to or absorbed by the self. The Other must remain irrevocably different, separated, for self and Other to maintain their discrete identities. Self and Other, according to this philosophical tradition, only exist in relationship. They emerge through the tension and longing for one another that they maintain through the balancing of separateness and relatedness. In this theoretical framework, I define spirituality as a yearning for the infinite Otherness of God.

It is important to note that spirituality, so defined, should not lead to contemplation and stasis alone. It must involve the passionate commitment of both body and soul as we encounter the face of God through individual Others, the human beings who surround us and in whose faces our tradition encourages us to identify a *tselem elokim*. It is also my assumption that a disembodied spirituality would not only be a futile endeavor but would prove dangerous for the self, at risk of being negated in its embodied, material presence. It would also be dangerous for the *Other*, who would face the risk of being ignored in the subject's process of approaching God by aspiring to an ethereal reality and moving further from the world. Indeed, such a movement would disregard creation and its creatures. In other words, spirituality defines what we aspire to become through this quest for Hashem, the Other. Spirituality expresses our endeavor to be ourselves *b'tselem elokim*, not descriptively but *prescriptively*, as a project and endless dynamic.

In order to enquire into this active, mimetic, and embodied spirituality, we should delve deeper into the sparks of wisdom that hint at the myriad facets of Hashem, notably through the countless names and attributes of God; these sparks of divine presence may shape our vision of the created world and help shape our relation to Otherness — both that of God and that of Others. How can our representation of Hashem influence our actions? How does this

conception, both intimate and rooted in a shared tradition, define our responsibility towards Others as we emulate some of its defining traits?

In order to translate our spirituality to an ethics nourished and constructed by text study, allowing us to develop an intimate relationship with Hashem, we must overcome a number of objections. Since I posit that *shekhina* may serve as the foundation for a feminist theology, I should note one of the obstacles that could hinder such relationship: the Torah, in the broadest possible sense, often speaks the "language of men." In this context, I allude not only to anthropomorphism, in the tradition of the Rambam and his *Moreh Nevukhim*, but to what might be termed "andromorphism," literally "male form." The effort to conceptualize the divine has often taken the form of an implicit or explicit masculinization of the figure of Hashem — as Lord, Father, King or Lord of Hosts (*Hashem tsevaot*). This may have corresponded to the spiritual needs of the people who addressed God — for many people this imagery is still relevant today. But I, for one, have always struggled with the military connotations of *Hashem tsevaot* or *ish milchamah*. Yet it is mostly through these male metaphorical figures that Hashem has been traditionally described.

In light of this fact, I would like to argue that the predominance of masculine images or representations of God may sometimes make it harder for female-identifying Jews to relate to Hashem through the mode of *imitatio dei*. Furthermore, given the evolution of the concept of masculinity over time, it may also be hard for some male Jews to relate to God as warrior and conqueror. And while one obvious objection to the argument of failed identification is that, at a philosophical and conceptual level, it is taken for granted that Hashem is altogether beyond the categories or gender and sex, we still need to account for the many masculine designations that exist. They more or less consciously shape our daily understanding of our shared Jewish tradition. Moreover, they emanated from a context where the spiritual needs of Jewish men were primarily addressed, even while Jewish women may also have reacted positively to and engaged with what they saw as the default representation of supreme. This may have become less relevant in our daily lives for both male and female Jews, even though these images undoubtedly retain some significance as vessels through which God can be conceived as a source of awe.

The promotion of the sexless and genderless "God of the philosophers" in the Maimonidean rationalistic tradition may not be a satisfactory solution to the problem either. Indeed, it seems to me that electing the *via negativa* in the tradition of the Rambam (as expounded notably in the *Moreh Nevukhim*);

enhancing the concept of an absent, transcendental God above all speculation; and resisting any attempt at knowing God implies a loss in terms of the relation between Hashem and the individual Jew. It simply does not give the pious Jew anything to think about or relate to since that God is infinitely Other. In other words, one cannot emulate what is infinitely Other: in such a case, there is nothing to grasp or even begin to describe. To emulate is to say that something could be imitated, but here nothing can be identified as potentially mine because nothing lends itself to conceptualization or categorization. I cannot begin to name attributes without perverting the Otherness of the Other.

Therefore, while this representation of God as beyond representation is philosophically cogent, it may leave one spiritually frustrated, at a loss to discover whom we should praise, thank and implore. In other words, the transcendent "God of the philosophers" leaves no room for *imitatio dei*, nor for the imagining or refashioning of the relationship between creator and creation that may become the foundation of an interpersonal ethics. It may elicit awe but never love.

This leaves us in a double bind. While I cannot identify with a purely transcendental God, I also struggle to consider what my relation to *Hashem tsevaot* or *ish milchamah* could be. I should note that this inquiry encompasses not only the problem of how Jewish women relate to specific facets of Hashem's anthropomorphic representation but that of more subjective forms of relation. For instance, I find it more uplifting to think of God as father, mother (*av harachaman* as "the maternal Father," drawing on *rechem*, "womb") or ruler than to imagine God as warrior. That is because I feel disconnected from warfare's violent implications. As some Jewish feminist thinkers argue, we may have to invent new representations rather than using any pre-existing ones. Tamar Ross's *Expanding the Palace of Torah* brilliantly retraces the history of twentieth-century Jewish feminism and refers to these endeavors, to which she has many a sound objection.[1] I agree with Ross' objections. We do not have to reinvent an entire theology. There is room in our texts for more relatable images of God that may lend themselves to *imitatio dei* for both women and men if we just look closely enough. I also think that there is more to our tradition than meets the eye, which is probably the phrase that sums up my choice

1. Ross, Tamar. 2004. *Expanding the Palace of Torah: Orthodoxy and Feminism* (Brandeis University Press).

to identify as Orthodox even when I struggle daily with so many aspects of traditional Judaism.

In particular, one facet of Hashem that our textual tradition expresses is that of care, vulnerability, and compassion (in the Latin sense of *cum-patior*, i.e. to *suffer with*). This is what the figure of the *shekhina* has come to encapsulate in later Kabbalistic and Hasidic traditions that draw on the rabbinic descriptions of *shekhina*. The *shekhina* can be described as the immanent presence of God within the world, and perhaps as the "feminine" face or side of Hashem[2] in a conceptual framework where "male" and "female" refer to abstract constructs rather than to fixed biological categories or essentialist behavioral prisms.[3] More particularly, the feminine in this context is regarded in relation to its Other, the masculine, often in a binary system of oppositions. For instance, the representation of a compassionate God is not limited to the feminized avatar of the *shekhina* even though it is one of the recurrent models or images through which this representation is channeled. That said, the feminine grammatical form of the noun *shekhina*, as well as its later Kabbalistic and neo-Kabbalistic direct personification as a female entity yearning to be reunited to her masculine divine half, has cemented *shekhina* in the minds of many as a feminine facet of God. This feminine assignment is less clear in the Gemara, however, which does not explore what it would mean to say that the *shekhina* is a feminine emanation of God.

In the texts below, what characterizes the *shekhina* and its worldly manifestation is the ability to suffer passively with human beings, to accompany the Jews in their earthly wanderings, and to affirm presence in ways that are spiritually meaningful. In fact, the *shekhina* is a spiritual model that can enable us to think of the relationship between God and God's people. It asserts that God and God's creations cannot exist or maintain their identities outside of this relationship but only in a state of connectedness and interdependence. This seems to challenge most of our rationalistic assumptions about the autonomy and self-sufficiency of God or of the sovereign subject. Questioning

2. The form of the word itself is feminine, even though the verb that follows is sometimes in the masculine form, as is the case in Rav's teaching from BT *Shabbat* 12b; see Appendix.
3. This argument is made by French Kabbalah scholar Charles Mopsik in *The Sex of Souls* in his introduction to the book. Mopsik, Charles. *Sex of the Soul: The Vicissitudes of Sexual Difference in Kabbalah*, Cherub Press, 2005.

these self-evident axioms is very meaningful to me as I have found more truth in the ethical assumption that we are a society of vulnerable people, who need to care for one another and who constantly rely on one another, than in what can be described as the roots of modern atomized individualism. And the spirituality that will derive from such a conceptual framework is obviously one of interdependence and partnership between God and people.

In my analysis, I draw inspiration from Levinas, according to whom human subjects only exist by virtue of their willing subjection to the needs of the other, through the act of accepting responsibility for the vulnerable, and more broadly through the relationship to the non-self that makes us selves.

> *La relation intersubjective est une relation non-symétrique. En ce sens, je suis responsable d'autrui sans attendre la réciproque, dût-il m'en coûter la vie. (…) C'est précisément dans la mesure où entre autrui et moi la relation n'est pas réciproque, que je suis sujétion à autrui ; et je suis "sujet" essentiellement en ce sens. Vous connaissez cette phrase de Dostoïevski : "Nous sommes tous coupables de tout et de tous devant tous, et moi plus que les autres." (Les Frères Karamazov, La Pleïade, p. 310). (…) Le moi a toujours une responsabilité de plus que tous les autres.*
>
> The intersubjective relation is a non-symmetrical relation. In this sense, I am responsible for others without expecting reciprocity, even if it costs me my life. (…) It is precisely insofar as the relation between others and myself is not reciprocal, that I am subject to others; and I am "subject" essentially in this sense. You know this sentence of Dostoyevsky: "We are all guilty of everything and everyone before everyone, and I more than the others." (The Brothers Karamazov, Pléiade, p. 310) (…) The self always has more responsibility than all the others. (Levinas 1982, p. 90, trans. mine).

That is a weighty limit to the credo of self-determination. "No man is an island, entire of itself," as the English poet John Donne elegantly phrased it. We are very much "other-determined" in our daily lives. We do realize that, but it is often perceived as a negative, unintended consequence of social life. However, the acknowledgment of interdependence, existential vulnerability, and interpersonal care is something I was delighted and proud to find in my own religious tradition.

Indeed, if one returns to the biblical source that serves as the blueprint for the formation of the *shekhina* concept, one becomes aware of a tradition

that constantly stresses the need to strive for the Other in the form of God, for something beyond the limits of the self. In Exodus 25:8, it is Hashem who commands the children of Israel to build a sanctuary "that I may dwell among them:"

וְעָשׂוּ לִי מִקְדָּשׁ וְשָׁכַנְתִּי בְּתוֹכָם׃

And let them make Me a sanctuary that I may dwell among them.

In other words, it is only when one creates room within the self that divine presence, *shekhina*, the dwelling, can be felt. Not unlike the *mishkan* journeying with the people in the desert, we have our own sanctuaries within ourselves if only we leave room for the Other.[4] In other words, the sacred exists where there is separation and connectedness, for there cannot be connectedness without a separation that ensures that two distinct entities are interacting.

This idea of presence as the potential for meaningful relationships is probably why the *shekhina* often appears in contexts where people unite in holy encounters and direct their thoughts to the infinite Otherness of God — when a *minyan* prays to Hashem (BT *Sanhedrin* 39a) or when two people share words of Torah (Mishnah *Avot* 3: 2). While studying *daf yomi,* I found the list of instances where the *shekhina* manifests itself (BT *Berakhot* 6a): in the synagogue, when three sit in judgment, and when ten, three, or two people engage in Torah. Even a person alone who is engaging in matters of Torah benefits from *shekhina*. This is not an exhaustive list, but it is a very good way to start an enquiry into rabbinical elaborations of *shekhina*.

The quasi-performative manifestation of *shekhina* through human intentionality and the creation of a proper setting can be described as a revelation of God's presence as a witness of human interactions. *Shekhina* is where the people are when they direct their thoughts towards what exceeds them. In this sense, the *shekhina* testifies to a twofold presence through which the plural of dialogue or of shared prayer transcends the agonistic dualism of dialectical polemics to leave space for the mysterious encounter of self and Other. This is an encounter through a glass darkly, through a *parokhet* maybe, where one may glimpse but never gaze, caress but never possess. This tension and yearning

4. Here I am alluding to the *Kedushat Levi* on Exodus 25: 8 which insists that the verse cannot possibly mean that God's presence was constricted in the physical space of the temple but rather that *betocham* means "within the hearts and mind of the Israelites."

have an erotic dimension; it is thus not surprising that the *shekhina* is also said to be present between a worthy man and woman when they form a couple.

דריש ר"ע איש ואשה זכו, שכינה ביניהן, לא זכו, אש אוכלתן

> **Rabbi Akiva taught:** If **a man [*ish*] and woman [*isha*] merit** reward through a faithful marriage, **the Divine Presence** rests **between them.** The words *ish* and *isha* are almost identical; the difference between them is the middle letter *yod* in *ish*, and the final letter *heh* in *isha*. These two letters can be joined to form the name of God spelled *yod*, *heh*.
>
> But if due to licentiousness **they do not merit** reward, the Divine Presence departs, leaving in each word only the letters *alef* and *shin*, which spell *esh*, fire. Therefore, **fire consumes them.**[5]

The *Likutei Moharan* (ii. 32: 4) interprets this *derashah* as a reference to the coupling of man and woman through the act of sex. In keeping with this erotic interpretation, it is noteworthy that the act of love does not result in a union or a fusion but rather in a new form of duality, that of the couple and the *shekhina*. So much for the commonly-held belief that people simply become one when they make love — here it is clear that some level of (indivi)duality must remain.

However, there is also a clear ethical and ritual dimension to Rabbi Akiva's insight. Indeed, the statement "every time two people have sex God is there" might sound appealing but also slightly too pantheistic. What Rabbi Akiva stresses here is that the *shekhina* is present when a couple have "merit." Rashi's comment on the saying clarifies that we are dealing with conjugal fidelity (ללכת בדרך ישרה שלא יהא הוא נואף ולא היא נואפת). One might observe that this is very much a *bein adam lechavero* ethical issue: What does God have to do with that, apart from the obvious relation with the prohibition of adultery that comes from God?

In my opinion, this maxim posits the presence of the *shekhina* not only in spiritually charged moments of encounter between the human and the divine (such as praying and studying), but also in meaningful encounters between people, and more specifically between two people. In this context, it is interpersonal commitment in the form of fidelity that makes the couple deserving of

5. BT *Sotah* 17a, Schottenstein translation.

welcoming the *shekhina* in their midst. If you leave room for the Other within you, you will realize what consequences infidelity could have on the person you love and on your relationship with them. It is only by making room within ourselves that we can welcome God, or pure Otherness, in the form of the *shekhina*. Therefore, I find it meaningful that the *shekhina* is present between man and woman in a relationship of committed love, which is even more coherent as the definition of committed love is not regulated exclusively by the two of them in a locked one-to-one exchange but by the Torah of Hashem, which, as we observed, commands fidelity. In other words, the manifestation of *shekhina* in a conjugal context points to a fragile convergence in the relationship with the human Other and the divine Other that exceeds the dialectics of the two without reaffirming a consensual, fusional oneness that negates the boundary between self and Other. That is why the *shekhina* appears "between them," not above them or beside them. The *shekhina* is like the *parokhet* that reenacts erotic separation, prevents the complete fusion of the couple, and maintains distinctiveness, tension, and yearning. Through the creation of a new duality, it ensures that the dual nature of the couple is preserved and not subsumed under the totality of the one.

So far, I have mostly alluded to contexts where we encounter a healthy realization of the *shekhina*'s presence through fulfilling self-to-Other interactions. However, our texts teach us that the *shekhina* is not only present where there already exists a thriving relationship between creator and creation or between human beings. It may appear obvious that divine presence dwells where people are building outer or inner sanctuaries, praying, making love, and sharing words of Torah. But it seems to defy expectations that the *shekhina* is also to be found where there seems to be nothing but darkness and suffering, and where the connection between creation and creator has almost been severed. Indeed, *shekhina* (the "dwelling") can paradoxically signify, and testify to, Jewish uprootedness and a sense of irretrievable spiritual or physical loss. To give but a few examples, it is present when a sinner is put to death (BT *Sanhedrin* 46a-b, *Chagigah* 15b); when people are lying sick in bed (BT *Shabbat* 12b); on the face of a crying, vulnerable baby discovered by the daughter of Pharaoh (BT *Sotah*); and — perhaps the most commonly quoted and familiar manifestation of *shekhina* — it follows the Jewish people in exile and shares their anguish (BT *Megilah* 29a, see Appendix). This is all the more noteworthy as the exile is usually interpreted as a theological paradigm for distance

between the Jewish people and God, so the proximity of God should not be taken for granted in this context.

Moreover, in all these instances, we may observe that the epiphany of the *shekhina* is not as spectacular as we might have expected, especially within a tradition that frowns upon the depiction of direct divine intervention. While in BT *Shabbat* 12b, the *shekhinah* is said to feed and aid the sick, it seems quite clear that the phrase is not to be understood literally. Even more strikingly, in the parallel teaching of Rabbi Meir in BT *Sanhedrin* and *Chagigah*, when a person is condemned, the *shekhina* is reported to say, "I am burdened from my head, I am burdened by my arm" ("It is too heavy" Rashi explains, "it hurts"). It hurts to know that people, evil though they may be, are suffering. This is a baffling expression of utter helplessness on the part of God. Similarly, the *shekhina* does not heroically rescue the Jewish people from exile but rather follows them in anguish and sorrow. This elicits a sense of powerlessness that we may find incompatible with the traditional representation of an omnipotent God. However, what if passive suffering were a necessary aspect of omnipotence? What if omnipotence were not necessarily synonymous with redeeming action and direct intervention, as it is sometimes assumed to be?

Yet those texts suggest that we can mend broken relationships and soothe suffering souls merely by *being there*, silently but compassionately present. The *shekhina* suffers because the condemned person suffers and because of the sins that led to that person's execution. As an emanation of Hashem's *rachmanut* (mercy but also maternal love), the *shekhina* offers here what Levinas calls the "ethical caress," something that is perhaps even beyond the sensual and the erotic — a gentle and loving touch that barely brushes the skin. The caress of the *shekhina* does not proudly herald the end of grief and sorrow or miraculously heal the physically or spiritually wounded but merely whispers to the vulnerable Other that connectedness and love are still possible in the heart of darkness; that you are not, you are never, alone.

This is what an ethics of presence and care looks like: it implies that we may become as vulnerable as the one whom we wished to comfort while never denying what is deeply specific, intimate, and impenetrable in the grief of the Other. The ethics of presence is predicated upon the necessity of mourning alongside the mourner, of suffering with the weak and the sinful. It exalts tenderness and interdependence more than the dream of outright reparation. It advocates a paradoxically active passivity that realizes the importance of listening and caring rather than speaking to or fixing the vulnerable. More importantly,

it postulates that reparation and the healing of the Other's suffering are a continuous process, a constant effort and tension towards the improvement of the loved one's plight, rather than a teleological goal to be achieved.

Theologically, it implies that *tsimtsum*, the retraction of Hashem's infinity and the retention of traces of divine presence in the created world, is constantly renewed and re-actualized through the compassionate suffering of the *shekhina* that invests the ordeals that the Jewish people experience with meaning. It also invokes a sense of awe rather than pity when encountering vulnerable others, as is suggested in BT Shabbat 12b.

It is striking that the Gemara forcefully stresses that "God will support them on the day of illness." The scriptural prooftext is quoted three times, as though to underline that this is a unanimous reference. Therefore, when we visit the ill, we are "between the person and God," not unlike the *shekhina*, who manifests herself between two lovers. We are participating in, and enhancing the meaning of, a dual relationship through our presence at the bedside. This Talmudic passage also gives us a precious indication of the tremendous respect that we should feel when visiting the sick. In wrapping ourselves in our *tallit* and not daring to sit, are we showing deference only to the *shekhina* who tends the sick, or also to the people who suffer? I think that by echoing and experiencing human weakness and vulnerability, the *shekhina* indirectly suggests that we are, and should be, doing both.

That is why I argue that we need the *shekhina* as a model that can teach us ethics of presence and interdependence rather than only the ethics of relation with a transcendental Otherness. The vision of the *shekhina* following the *bnei Yisrael* in exile is not one of infinite, distant otherness, but one that every Jew, male and female, can relate to, one that feels closer in everyday life than the vengeful warrior-like God or the First Principle. I hope to have demonstrated that it leaves us room to emulate the divine attribute of care, and to exercise in turn, to the best of our ability, the ethics of presence.

Bibliography

Levinas, Emmanuel, *Éthique et Infini*, *Dialogues avec Philippe Nemo*, Paris : Fayard, 1982.

Levinas, Emmanuel, *L'au-delà du verset: Lectures et discours talmudiques*, Editions de Minuit, 1982, Paris.

Appendix: Rabbinic Sources

BT *Shabbat* 12b

דאמר רב ענן אמר רב מנין ששכינה סועד את החולה שנאמר ה' יסעדנו על ערש דוי תניא נמי הכי הנכנס לבקר את החולה לא ישב לא על גבי מטה ולא על גבי כסא אלא מתעטף ויושב לפניו מפני ששכינה למעלה מראשותיו של חולה שנאמר ה' יסעדנו על ערש דוי ואמר רבא אמר רבין מנין שהקדוש ברוך הוא זן את החולה שנאמר ה' יסעדנו על ערש דוי:

As Rav Anan said that Rav said: From where is it derived that the Divine Presence cares for and aids the sick person? As it is stated: 'God will support him on the bed of illness' (Psalms 41: 4). The Gemara comments: That was also taught in a *baraita*: One who enters to visit the sick person should sit neither on the bed nor on a chair; rather, he should wrap himself in his prayer shawl with trepidation and awe, and sit before the sick person below him, as the Divine Presence is above the head of the sick person, as it is stated: 'God will support him on the bed of illness,' and he must treat the Divine Presence with deference. On a similar note, Rava said that Ravin said: From where is it derived that the Holy One, Blessed be He, feeds the sick person during his illness? As it is stated: 'God will support him on the bed of illness.'

BT *Megilah* 29a

תניא ר"ש בן יוחי אומר בוא וראה כמה חביבין ישראל לפני הקב"ה שבכל מקום שגלו שכינה עמהן גלו למצרים שכינה עמהן שנאמר (שמואל א ב, כז) הנגלה נגליתי לבית אביך בהיותם במצרים וגו' גלו לבבל שכינה עמהן שנאמר (ישעיהו מג, יד) למענכם שלחתי בבלה ואף כשהן עתידין ליגאל שכינה עמהן שנאמר (דברים ל, ג) ושב ה' אלהיך את שבותך והשיב לא נאמר אלא ושב מלמד שהקב"ה שב עמהן מבין הגליות

It is taught in a *baraita*: Rabbi Shimon ben Yochai says: Come and see how beloved the Jewish people are before the Holy One, Blessed be He. As every place they were exiled, the Divine Presence went with them. They were exiled to Egypt, and the Divine Presence went with them, as it is stated: 'Did I reveal myself to the house of your father when they were in Egypt?' (1 Samuel 2: 27). They were exiled to Babylonia, and the Divine Presence went with them, as it is stated: 'For your sake I have sent to Babylonia' (Isaiah 43: 14). So too, when, in the future, they will be redeemed, the Divine Presence will be with them, as it is stated: 'Then the Lord your God will return with your captivity' (Deuteronomy 30: 3).

Finding God in Chaplaincy Work Through Jewish Text

Rabbi Eryn London, BCC

Training and working as a chaplain have impacted not only the way I am able to be with people in their times of need but also the ways that I think about and connect with God. Most Clinical Pastoral Education (CPE) courses consist of clinical hours in a hospital, hospice, nursing home, or prison as well as classroom time where one learns how to be present with another person and reflects on their work. The CPE experience gave me the tools to use my "sacred texts" to connect my work with God and to have a more personal relationship with God.

In writing about his CPE experience, Chaplain Dr. Bruce Feldstein reflects:

> Through a process of continual reflection and refinement that is at the core of CPE training, I learned to observe my own reactions and thoughts, feelings, and images and draw on these in formulating what to say to patients and families. I would consider how to be with them whether to accompany, guide, bless, or advocate, or some combination of these. Over time, I became a spiritual reflective practitioner in action.[1]

As Feldstein explains, the CPE experience can be a way of enacting practical theology, which, according to Bennet, Graham, Pattison & Walton, "… seeks in explicit and varied ways to enable the Christian practitioner to articulate faith — to speak of God in practice."[2] CPE is rooted in Christian values and

1. Feldstein, C. (2011). Bridging with the Sacred: Reflections of an MD Chaplain. *Journal of Pain and Symptom Management*, 42(1), pp.155–161. 158.
2. Qtd. in Stoddart, E. (2018, June 21). Retrieved from https://ericstoddart.

ideas, where the role of chaplain is seen as one's "ministry," the place where one is doing God's work, relating to God, and sharing God with others. By working within the frame of practical theology, the chaplain gains a language of God through their ministry.

In this paper, I present a Jewish view of "practical theology," illustrating how Jewish chaplaincy is a way to interact with God and to think about God, and how Jewish text can not only guide how we are meant to live our lives but also how we might speak to and about God. Through this lens, I explore how chaplaincy has affected my thinking about God, how chaplaincy taught me to use text as a reflective tool, and how it informed my views on Jewish education generally and rabbinic training specifically.

Thinking about God

In my years of yeshiva day school, *midrasha*, and rabbinical training, I don't think I was ever asked about my personal relationship with God. I wasn't asked about how my actions allow me to connect or not to connect with God. I wasn't asked to use the texts I was involved in to garner meaning in my life. My education was about learning and memorizing. I studied law. I memorized which rabbi said what. I learned about structure and versions of text. I practiced holding many opinions in my head so I could answer questions. I examined different interpretations of a seemingly extra letter written in a verse. I was encouraged to ask questions. Ideas, words, and songs were playing through my head at any given moment.

CPE was a shift. I was told to reflect, not to spit back information, not to argue a point. I was asked to think about what my "sacred texts teach me about my situation." The primary tool I used was writing in order to craft spiritual and theological reflections. At first, these two genres seemed very foreign, but I learned from my Christian colleagues that, while in seminary, they were asked to write these on a regular basis. Through their years of studying, they

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wp.st-andrews.ac.uk/2018/06/21/what-is-practical-theology/. Bennett Zoë, Graham, E. L., Pattison, S., & Walton, H. (2018). *Invitation to research in practical theology*. London: Routledge.

had "spiritual direction," wrote their own theology, and openly spoke about the place of God in their journey.

This reflective process asked them to take "a concrete experience in spiritual care that is being critically examined and evaluated, drawing upon the wisdom of one's religious heritage in the larger context of major perspectives and practices in the social sciences, while generating new visions in understanding and practicing care."[3] I viewed this as a backwards *d'var Torah*; instead of seeing a piece of Torah and writing about my ideas, I took a situation and made connections to text. The theological reflection "is a self-conscious, intentional act in which one seeks to know God and be known by God so that one can love God and others as God loves. It is theological because it consciously relates the divine to the human in a way that makes transformation into wholeness possible."[4] I looked at the texts to which I connected, delving into them to discover my feelings, what I could learn about a situation based on that text, and where I saw God.

This practice can be illustrated in the case of M, a 40-year-old woman with metastatic cancer. I spent many days visiting with her and her family. After one visit with her, my theological reflection was:

> I was in shock when I was speaking to M this time. She practically quoted the fears of the rabbis in Moed Katan. This was the most tearful visit with M. I was at a loss for my own words, but really this visit was full of tears. She is crying for all that she will be losing. She is crying for the pain and sadness that she fears her son (age 2.5) will feel. She is crying out of fear. She is crying because there is nothing more to be done. Just as it says in Lamentations 1:16:
>
> עַל־אֵלֶּה | אֲנִי בוֹכִיָּה עֵינִי | עֵינִי יֹרְדָה מַּיִם כִּי־רָחַק מִמֶּנִּי מְנַחֵם מֵשִׁיב נַפְשִׁי הָיוּ בָנַי שׁוֹמֵמִים כִּי גָבַר אוֹיֵב׃
>
> For these things do I weep, My eyes flow with tears: Far from me is any comforter Who might revive my spirit; My children are forlorn, For the foe has prevailed.
>
> For now comfort is too far away.

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3. VanKatwyk, P. 2010 [online] Spiritualcare.ca. Available at: https://spiritualcare.ca/flow/uploads/pdfs/THEOLOGICAL_REFLECTION1.pdf [Accessed 9 Jan. 2020].
4. Warren, H., Murray, J. and Best, M. (2002). The Discipline and Habit of Theological Reflection. *Journal of Religion and Health*, 41(4), pp. 323–331. 324.

And to this, my self-reflection exploring my own feelings, was:

> Again I find myself in tears even as I am writing this. I know that there was so much more said during the visit than I could hold onto, as it was really difficult to stay present. I have seen her since this visit…. She also told me that I don't have the temperament of a traditional chaplain, but that was something good for her — that we are able to joke around, talking about regular things, but that I will also be ok for the more difficult conversations. Going to the birthday party was very bittersweet. Her son was so happy, and it was really amazing to see the entire staff there (many came in even though they were off). But I couldn't help thinking in the back of my mind that this is most likely the last birthday she will celebrate with her son. In speaking with her after the party, she was more tearful and sad again. She is in disbelief that she will be moving to hospice and this is the end — and I'm really not sure what else I am able to do, other than just show up to sit with her and her husband.

It was through reflection on the verse in Lamentations that I was able to realize the deep sadness I felt in this visit. But it was not only the verse itself that brought meaning to the situation but also the general emotion of the book of Lamentations and the time of year at which it is read. Through the interactions with Patient M and my connection to this verse, I found words for a feeling and a perspective on God that I could not have found on my own.

The CPE process provided me a new avenue for use of text as an explanatory or responsive tool for emotional experience for myself, my patients, and their families. The process shed new light on God and my own spirituality. This new perspective offers a significant avenue for growth both as a chaplain and as a rabbinic scholar, which is not generally available through traditional avenues of study.

Theological Growth as a Chaplain and Rabbi

As VanKatwyk describes, "Theological reflection is a spiritual discipline in self-care and in personal and professional growth."[5] When done right, it allows

5. VanKatwyk, 3.

for a person to consider the texts they are learning to guide their actions, not only has *halakhic* precepts but also as ideas and language to deeply explore what drives their actions. One can then look at biblical verses, Talmudic exegesis, and even *halakha* as a basis for discussing one's personhood. As Warren explains, "Theological reflection goes beyond analysis, leading the practitioner into a different relationship with God because of the new configuration between them that arises."[6] Using theological reflections allowed me to notice those things that influenced me, giving meaning to all I was experiencing and, most importantly, allowing me to recognize God in it all.

Rabbi Amy Eilberg, in her remarks at the 10th anniversary of Jewish chaplaincy at Stanford University Hospital, relates her work to the ideas of *bikur cholim:*

> …The Jewish chaplain enters that door each day to come to work, or each week as a volunteer, ready to perform the *mitzvah* of *bikur cholim*, being present to the ill, which Maimonides says is an expression of the overarching *mitzvah*, "*Ve'ahavta le'rei'a'cha kamocha*," "Love your neighbor as yourself." Contrary to the natural way of living outside the hospital, in which we instinctively recoil from pain and struggle to avoid it, here we intentionally place ourselves in the realm of suffering in order to reach out to another, to bring the balm of human presence to aching souls, to imitate God's role as a Source of love and healing. As Jewish chaplains — or as volunteers — we also draw on the wisdom of Jewish tradition to bring comfort and connection, and we invite a Jewish patient or staff member experiencing isolation back into the embracing circle of Jewish community.[7]

Throughout the time I was working as a chaplain, I too connected my work to the laws of *bikur cholim*, visiting the ill. I used the *halakhic* texts to dictate how I was supposed to interact while visiting patients, but these texts also allowed me to talk about theology: where God's place was in my work and where God's place was in myself. Rabbi Yitzchok Silver, in his work *Kitzur Mishpatei HaShalom*, separates the laws of *bikur cholim* into four components:

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6. Warren, 324.
7. Eilberg, A., 2010. Rabbi Amy Eilberg Remarks. SUH Jewish Chaplaincy 10th Anniversary, May 23, 2010. Available online: https://stanfordhealthcare.org/content/dam/SHC/patientsandvisitors/spiritual-care/docs/rabbieilbergremarks52310.pdf.

1. To do what the ill person needs
2. To provide comfort to the ill person and their family
3. To pray on their behalf at the bedside, because that is where the *shekhina* (God's presence) is residing, and it is a time for asking for mercy
4. To take 1/60th of the illness away.[8]

Rabbi Silver's breakdown of *bikur cholim* gave me concise language to present my goals when working as a chaplain. I wanted to do what the patient needed, whether that was finding a nurse, sitting and crying with the patient, or even joking around. I was there to bring comfort, even when the familiar sense of comfort was not possible. Instead, I saw comfort as being present and supportive. I learned the art of spontaneous prayer, reciting prayers not during a set time but in response to need or emotion. Sometimes those prayers were traditional liturgical texts and other times they were created with the people beside me. Prayer did not have to be fancy or long; at times, prayers were as simple as "may you have a peaceful day." The idea of taking away 1/60th of the illness, found in BT Nedarim 39b and reiterated by Rabbi Silver, felt like the answer to the overarching question of "what am I doing in these visits?" It is a reminder that being present, even when you can't see an immediate result, is still significant.

In further exploration of the laws of *bikur cholim*, I realized that these rules were not only about how to care for those who are vulnerable; they also included an underlying theme of connecting to God and emulating God. The prooftexts brought by the rabbis are "follow in the way of God" (Deut. 13:5), "do what is right and good in the eyes of God" (Deut. 6:18), and "love your neighbor as yourself, for I am God" (Lev. 19:18). It became clear that by interacting with those who are ill and their caretakers, one is also connecting to God or even perhaps being God's emissary. The work of a chaplain became inherently a spiritual practice. Through connecting my work to the text, the work became an interactive text study, not only allowing me to have a greater understanding of the texts of the rabbis but allowing me to have a closer, more personal, relationship with God.

8. Silver, Yitzchok. *Kitzur Mishpatei HaShalom*. Agudas Notzrei Lashon. 14:8.

Conclusion

Thinking as a chaplain is different from the way I was learning in yeshiva, which was, in many ways, not asking me to think about God. Rather, it was about learning how to use the texts as law or inspiration. Thinking as a chaplain, by contrast, is about exploring how the stories, the ideas from *chasidut*, the verses from the Bible, and even the ideas in *halakha*, can give language to our actions, to our interactions with others, and to our relationship with God. This approach creates new avenues for thinking about God and new directions for spiritual and professional growth not part of traditional rabbinic training and thinking.

However, there does not have to be, nor should there be, such a dichotomy between working as a chaplain and a rabbi. As illustrated in the discussion above, Jewish texts can be used as a companion for pastoral care and as a source for reflection and growth as a rabbi. Having a strong background in traditional text study allows one to build meaningful and rigorous pathways to practice, prayer, and healing. If we can appropriate the language and reflection of chaplaincy, rabbis and Jewish lay people can use texts to illuminate new realities of God in one's life and experience new dimensions in pastoral and spiritual interactions.

Part II:

Halakha*

* Please note that all halakhic opinions expressed here are those of the respective authors and are not the *psak* of the *yeshiva*.

Halakhic Issues Facing Non-Binary Jews

Rabba Aliza Libman Baronofsky

Question: How can halakhically observant Jews who identify as non-binary make halakhic choices in a fundamentally binary system?

Some of our children look in the mirror and know for a fact that they are neither male nor female. Depending on where they live, they may find a community that welcomes them with open arms or one that disputes the very fact of their identity. *Halakhic* Judaism is fundamentally gendered. From the very first verse that describes creation, the rabbis have interpreted humanity as fundamentally binary as Genesis 1:27 says, "זָכָר וּנְקֵבָה בָּרָא אֹתָם" — "Male and female [God] created them." This binary carries through a plethora of laws, where the rabbis discuss how the Torah applies differently to men and to women. In our critical text, Bikkurim 4, the rabbis ask, "how do we classify someone who does not fit?" Every categorization is along the gender binary. How should *halakhically* observant Jews who identify as non-binary or whose children identify as non-binary navigate the inherent cultural and *halakhic* issues that arise?

Our motivation here is clear: people who identify as non-binary exist in our families and communities. The scientific community continues to acknowledge this phenomenon as having scientific basis though they cannot yet fully explain it. In the *Journal of Endocrinology*, biochemistry professor Charles Roselli writes, "The establishment of gender identity is a complex phenomenon and the diversity of gender expression argues against a simple or unitary explanation."[1]

Gender non-conforming members of our community, particularly youth,

1. Roselli CE. Neurobiology of gender identity and sexual orientation. J Neuroendocrinol. 2018 Jul;30(7):e12562. doi: 10.1111/jne.12562. PMID: 29211317; PMCID: PMC6677266.

are at particular risk if not fully welcomed into our communities: "Suicide risk among transgender and nonbinary (TGNB) youth is a public health crisis… existing research consistently finds that TGNB youth have worse mental health and greater suicide risk compared with cisgender youth, including cisgender lesbian, gay, bisexual, queer or questioning (LGBQ) youth."[2] Writing in the peer-reviewed journal *Transgender Health* in 2021, Price and Green conclude that gender identity acceptance by peers and adults is associated with lower rates of suicide attempts. This preliminary data should be sufficient for us to take action in our communities to accept non-binary youth fully for who they are. The primary question is how we can do so within the *halakhic* system.

One possible approach is consider a case where *halakha* recognized that some humans were not definitively male or definitively female. This approach could help establish a *halakhic* framework for thinking about people who don't fit the binary. How did *chazal* handle gender difference? The Talmudic category of the "*androgynous*" (אַנְדְּרוֹגִינוֹס) is fertile ground for this discussion. The Mishnah and later texts, including the Talmud in Yevamot and elsewhere, Maimonides in his Mishneh Torah and Rabbi Yosef Karo in his Shulchan Aruch recognize that someone could be born with the biological characteristics of both men and women such that that there may never be a way to determine (using their medical knowledge) into which biological category this person fits.

Categorization is extremely important: many aspects of a person's life in the times of the Mishnah were defined by biological sex. Mishnaic and rabbinic sources cover everything from marriage and intercourse to personal purity, financial valuation, and performance of *mitzvot*. The rabbis see the world in a gendered way and feel compelled to classify this person so that they know how the law applies to them. There are three ways it is possible to classify the אַנְדְּרוֹגִינוֹס:

1. The אַנְדְּרוֹגִינוֹס is a *halakhic* male. In this reading, the presence of a penis defines a person as male, and the additional presence of female reproductive organs does not change this person's fundamental status.

2. Myeshia N. Price and Amy E. Green. Association of Gender Identity Acceptance with Fewer Suicide Attempts among Transgender and Nonbinary Youth. Transgender Health. http://doi.org/10.1089/trgh.2021.0079.

2. The אַנְדְּרוֹגִינוֹס is a case of doubt (*safek*), and we will never be able to resolve this doubt one way or another.
3. The אַנְדְּרוֹגִינוֹס is a third category of human altogether.

It is noteworthy that there is no classical opinion that suggests that an androgynous individual is female, in what is likely the converse of opinion #1: If a person has a penis, the rabbis cannot imagine any way to see this person as fully female.

If *poskim* are willing to rule *halakhically* for the third position, we can begin to map out a framework for how a person who is definitely not male and definitely not female can fit into the *halakhic* system. Living in a Jewish community, the questions that may arise regarding the non-binary individual include, but are not limited to, how one should dress; whether one may shave their *peyot* and beard (if applicable); whether one may have *yichud* (isolation) with a man or with a woman; whether one is obligated in positive, time-bound *mitzvot;* and whom one can *halakhically* marry. The most challenging issues are the biblical ones, like marriage, where we cannot simply rule leniently in a case of doubt.

Fundamental Challenges Inherent in this Approach

In the classical sources, discussion of the gender binary revolves entirely around observable biological differences. In this case, we are looking to make space in Jewish tradition for those whose gender identity is different from their biological designation by not conforming to the binary established by society and by traditional Jewish practice. The rabbis of the Talmud spoke only of biology, but in our era the scientific community recognizes that gender identity is separate from biological sex, leaving us with a *halakhic* conundrum. In our era, religious leaders who search in the classical texts for help resolving questions about gender and *halakha* must rely on texts that only consider biology. When modern rabbis do so, they apply gender to cases that only considered biology. To say that one applies to the other requires a cognitive leap.

It is clear in certain cases that the rabbis rely heavily on biological reality in their decision making: in many cases, the presence of a penis and the rabbinic bias to associate male identity with a penis is a major driver behind their rulings. We will have to contend with this fact as we study the אַנְדְּרוֹגִינוֹס.

Mishnaic Sources

The fullest treatment of the case of the אַנְדְּרוֹגִינוֹס is found in the fourth chapter of Masechet Bikkurim. However, this chapter may not truly be from the Mishnah; despite some textual differences, it largely comes from the Tosefta Bikkurim. This chapter's omission from all authoritative editions of the Mishnah means that many classical Mishnah commentaries never discuss it. Having fewer commentaries and less well-developed discussion of it also limits how much material we have to work with as we analyze this chapter.

We'll first consider the appearance of the אַנְדְּרוֹגִינוֹס in other tractates of Mishnah before returning to the comprehensive discussion in Bikkurim. As outlined above, in some cases in the Mishnah, the אַנְדְּרוֹגִינוֹס is treated as definitely male while, in other cases, the אַנְדְּרוֹגִינוֹס is treated as a *safek* (unresolvable doubt) or as a third category. The difference between the latter two can be subject to dispute based on the scant information present in most *mishnayot*.

The best evidence for the אַנְדְּרוֹגִינוֹס being definitely male is that the Mishnah in Yevamot 8:6 allows the אַנְדְּרוֹגִינוֹס to marry a woman, and if this person is a kohen, enables her to eat *teruma*:

> רַבִּי יוֹסֵי וְרַבִּי שִׁמְעוֹן אוֹמְרִים, אַנְדְּרוֹגִינוֹס כֹּהֵן שֶׁנָּשָׂא בַּת יִשְׂרָאֵל, מַאֲכִילָהּ בִּתְרוּמָה. ... אַנְדְּרוֹגִינוֹס נוֹשֵׂא, אֲבָל לֹא נִשָּׂא. רַבִּי אֱלִיעֶזֶר אוֹמֵר, אַנְדְּרוֹגִינוֹס חַיָּבִים עָלָיו סְקִילָה, כְּזָכָר:
>
> **Rabbi Yose and Rabbi Shimon say:** A **priest who is an androgyne, married an Israelite woman, enables her to eat *teruma*… An androgyne may marry** a woman **but he may not be married** by a man. **Rabbi Eliezer says:** If [a man] had intercourse with **an androgyne,** he **is liable to** receive the punishment of **stoning on his account as if** he had had relations with **a male.**

In this Mishnah, three different pieces of law all rule that the case of an אַנְדְּרוֹגִינוֹס is the same as that of any man. Most other sources in the Mishnah don't suggest the אַנְדְּרוֹגִינוֹס is definitely male. If an אַנְדְּרוֹגִינוֹס child is born to someone who vowed to be a *nazir* if he had a male child, he is not a *nazir* (Nazir 2:7). An אַנְדְּרוֹגִינוֹס person cannot be valuated for the purpose of donating their value to the *mishkan*, as discussed in Arachin 1:1, since "שֶׁאֵינוֹ נֶעֱרָךְ אֶלָּא זָכָר וְדַאי וּנְקֵבָה וַדַּאִית," "we only valuate definite males and definite females." In Chagigah 1:1, the אַנְדְּרוֹגִינוֹס is listed as a person who does not have a *chiyuv* (obligation) in *aliyah*

le'regel (pilgrimage to Jerusalem) in contrast to a man who does. In general, the *mishnayot* outside of Bikkurim mostly point away from option (1) where the אַנְדְּרוֹגִינוֹס is a *halakhic* male, but it is not clear whether the Mishnah thinks this is for reasons of doubt or because the אַנְדְּרוֹגִינוֹס is their own category.

Fundamentally, the Mishnah in Zavim 2:1 tells us, this person is dealt with stringently to avoid potential sins:

> טֻמְטוּם וְאַנְדְּרוֹגִינוֹס, נוֹתְנִין עֲלֵיהֶן חֻמְרֵי הָאִישׁ וְחֻמְרֵי הָאִשָּׁה...
>
> With regard to a *tumtum* and an androgynous [person], they place upon [the androgyne] the stringencies for a man and the stringencies for a woman…"

The *mishnayot* in Bikkurim begin with a statement that:

> אַנְדְּרוֹגִינוֹס יֵשׁ בּוֹ דְּרָכִים שֶׁוֶּה לַאֲנָשִׁים, וְיֵשׁ בּוֹ דְּרָכִים שֶׁוֶּה לַנָּשִׁים, וְיֵשׁ בּוֹ דְּרָכִים שֶׁוֶּה לַאֲנָשִׁים וְנָשִׁים, וְיֵשׁ בּוֹ דְּרָכִים אֵינוֹ שָׁוֶה לֹא לַאֲנָשִׁים וְלֹא לַנָּשִׁים. (ביכורים ד':א, תוספתא ביכורים ב':ב')
>
> The androgyne is in some ways like men, and in other ways like women. In other ways [the אַנְדְּרוֹגִינוֹס] is like men and women, and in others … like neither men nor women.[3]

Each subsequent Mishnah enumerates examples for each of the four categories. In Bikkurim 4:2–3 (corresponding to Tosefta 2:3–4), there is discussion of *halakhic* distinctions between men and women in how the אַנְדְּרוֹגִינוֹס is classified in areas of ritual purity, particularly concerning the Temple, general biblical commandedness, aspects of appearance including hair and clothing, marriage and appropriate sexual conduct, and financial issues. When reading these sources, it is important to note the difference between versions. Two of the extant versions are called Nusach Ha'Gemara (the Version of the Gemara, the first version listed on Sefaria) and Nusach HaRashash (the version chosen by the Artscroll Mishnah Series). There are some key differences between the texts, particularly in the areas of shaving and *yichud*, two major areas that could impact the day-to-day lives of non-binary Jews who have passed the age of *mitzvot*.

3. Bikkurim 4:1; Tosefta Bikkurim 2:2.

Version of the Gemara	Tosefta	Version of the Rashash
Bikkurim 4:2 כֵּיצַד שָׁוֶה לָאֲנָשִׁים: מְטַמֵּא בְּלֹבֶן כַּאֲנָשִׁים, וְזוֹקֵק לְיִבּוּם כַּאֲנָשִׁים, וּמִתְעַטֵּף וּמְסַתְּפֵר כַּאֲנָשִׁים, וְנוֹשֵׂא אֲבָל לֹא נִשָּׂא כַּאֲנָשִׁים, וְחַיָּב בְּכָל מִצְוֹת הָאֲמוּרוֹת בַּתּוֹרָה כַּאֲנָשִׁים:	Bikkurim 2:3 דרכים ששוה [בהן] לאנשים מטמא בלובן כאנשים נושא אבל לא נושא כאנשים ואין מתייחד עם הנשים כאנשים ואינו נתון עם הבנות כאנשים [ואין מטמא למתים כאנשים] ועובר על בל תקיף [ועובר על בל] תשחית כאנשים וחייב בכל המצות האמורות בתורה כאנשים.	Bikkurim 4:2 שוה לאנשים כיצד? מטמא בלובן כאנשים ונושא אבל לא נישא כאנשים ואינו מתייחד עם הנשים כאנשים ואינו ניזון עם הבנות כאנשים ואינו נעטף ומספר כאנשים ואינו מיטמא למתים וחייב בכל תקיף ובכל תשחית כאנשי' וחייב בכל מצות האמורות בתורה כאנשים:

Version of the Gemara: "In what ways is [the androgyne] similar to men? Like a man, [the androgyne] is considered unclean through semen; is required to perform *yibbum* (levirate marriage) like a man; dresses **and cuts hair** like a man; marries others and is not married off, like a man; and is obliged to perform all the commandments in the Torah, like a man."[4]

Version of the Rashash: "…He may not be secluded with women, like men. He is not maintained with the daughters, like men; **He transgresses the law of: "You shall not round" (Leviticus 19:2) and "You shall not defile for the dead," (Leviticus 21:1) like men**; And he must perform all the commandments of the Torah, like men.[5]

Version of the Gemara	Tosefta	Version of the Rashash
Bikkurim 4:3 כֵּיצַד שָׁוֶה לַנָּשִׁים: מְטַמֵּא בְּאֹדֶם כַּנָּשִׁים, וְאֵינוֹ מִתְיַחֵד עִם הָאֲנָשִׁים כַּנָּשִׁים, וְאֵינוֹ עוֹבֵר עַל "בַּל תַּקִּיף" וְלֹא עַל "בַּל תַּשְׁחִית" וְלֹא עַל "בַּל תִּטַּמֵּא לַמֵּתִים" כַּנָּשִׁים, וּפָסוּל מִן הָעֵדוּת כַּנָּשִׁים, וְאֵינוֹ נִבְעָל בַּעֲבֵירָה כַּנָּשִׁים, וְנִפְסָל מִן הַכְּהֻנָּה כַּנָּשִׁים:	Tosefta Bikkurim 2:4 דרכים ששוה לנשים מטמא באודם כנשים ואין מתייחד עם האנשים כנשים ואין זוקק ליבום כנשים ואין חולק עם הבנים כנשים ואין [חולק] בקדשי קדשים כנשים ופסול לכל עדות שבתורה כנשים ואם נבעל בעבירה פסול [מן הכהונה] כנשים.	Bikkurim 4:3 שוה לנשים כיצד? מיטמא באודם כנשים ואינו מתייחד עם האנשים כנשים ואינו זוקק ליבום כנשים ואינו חולק עם הבנים ואינו חולק בקדשי המקדש כנשים ופסול לכל עדות שבתורה כנשים ואינו נבעל בעבירה כנשים ופסול מן הכהונה כנשים:

4. Sefaria community translation.
5. Mishnah Yomit, trans. by Dr. Joshua Kulp.

Version of the Rashash/Tosefta: "In what ways is he like women? He causes impurity with red discharge like women; and he must not be secluded with men, like women; and he doesn't make his brother's wife liable for *yibbum* (levirate marriage), like women; and he does not share [in the inheritance] with the sons, like women; and he cannot eat most holy sacrifices, like women. … and he is disqualified from being a witness, like women. If he had illicit intercourse, he is disqualified from eating *teruma*, like women.[6]

Appearance

With regards to the issues of appearance, we see that all three versions to some extent require the אַנְדְּרוֹגִינוֹס to maintain an appearance similar to that of men. Both the Tosefta and Nusach Ha'Rashash explicitly obligate the אַנְדְּרוֹגִינוֹס to follow the bans on shaving while the Nusach Ha'Gemara takes the opposite *halakhic* tack: the אַנְדְּרוֹגִינוֹס is explicitly NOT banned from shaving, just like a woman. However, both versions contain an overall statement of "וּמְסַתֵּפֵר כַּאֲנָשִׁים" — "cuts their hair like a man" (Artscroll translates this as "grooms himself like a man.") While the two versions of the Mishnah describe diametrically opposing views on shaving, all three sources are unified in the אַנְדְּרוֹגִינוֹס needing to look like a man.

Relatedly, the two Mishnah versions both describe the garments of the person using the term עֲטִיפָה (wrapping). The Nusach Ha'Gemara version says "מִתְעַטֵּף" — to wrap him/themself like a man — without a direct object, necessitating commentary and analysis. The commentary of the Yachin U'Boaz says that "וּמְסַתֵּפֵר כַּאֲנָשִׁים," meaning that the אַנְדְּרוֹגִינוֹס may not wear women's clothes. In contrast, the Nusach Ha'Rashash has the text as "ואינו נעטף" — "does not wrap him/themself like a man." Does this mean that the אַנְדְּרוֹגִינוֹס does not wrap themself like men don't wrap themselves, or that the אַנְדְּרוֹגִינוֹס does not wrap themself like a man *would* wrap himself? (The latter is likely rejected because the purpose of this Mishnah is to point out similarities with men, not differences from them.) In what manner do men not wrap themselves, then? The Rash (Rabbeinu Shimshon of Sens), who was one of the Tosafists, comments on Nusach Ha'Rashash, writing:

6. Sefaria community translation.

ואינו נעטף ומספר כאנשים. כלומר אינו נעטף כאנשים ומספר כאנשים וכללם לפי שטעם אחד לשניהם דדרך אשה לעטוף את ראשה ולכסותו בצעיף ואין דרך איש כן. דרך איש לספר ואין דרך אשה לספר אלא מגדלת שער כלילית ובענין שינהוג בעצמו בתספורת ומלבושים כעין איש שלא יבא לינשא אם יתנהג כאשה וחשו לינשא יותר מלישא כדפרישית אבל אין לפרש דתנא מספר כאיש משום פיאות דהא תנא ליה סיפא: (ר"ש משאנץ על משנה ביכורים ד':ב')

That is to say, [the אַנְדְּרוֹגִינוֹס] does not wrap like men and grooms [themself] like a man and [these laws] are included together since they have one reason: it is the way of women to wrap their hair and cover it with a scarf, and this is not the way of a man. The way of a man is to cut his hair and the way of a woman is not to cut her hair, rather she grows it like Lilith. In this matter, [the androgyne] should have the customs of hair-cutting and dress that are like a man, so that [the androgyne] will not come to be married by [a man] if [they] behave like a woman. [The Rabbis of the Mishnah] worried more that [the androgyne] would be married [by a man] more than that [they] would marry [a woman], as has been explained; however, [the Mishnah] when it says "**מספר**" like a man should not be interpreted as [referring to the prohibition of shaving] the corners [of the face], since the Mishnah discusses that later.[7]

More broadly, we can ask, is this עֲטִיפָה a specific *halakhic* requirement for the אַנְדְּרוֹגִינוֹס (which seems unlikely in the context of the many ways the אַנְדְּרוֹגִינוֹס is not included in normative male *aseh mitzvot,* positive commandments) or a cultural norm to present as male? The Rash looks at this in the latter context, living in a world where all dress and hair presentation is coded as "male" or "female." Even if this person is neither male nor female, we need to choose a category to lump them into. The Rash says that since this person can marry as a man but not as a woman ("נוֹשֵׂא אֵבָל לֹא נִשָּׂא כַּאֲנָשִׁים" in all three versions), we don't want them to dress or cut hair as a woman does so as not to attract offers of marriage from men.

The *halakhic* issue of marriage is thorny, involving a biblical law. In contrast, the cultural issue is weaker in our era: where men and women sport a wide range of hair lengths and some broader clothing choices, a need to assign appropriate appearance strictures for cultural reasons seems less relevant. If

7. Rash MiShantz on Mishnah Bikkurim 4:2.

these appearance laws are cultural, the *posek* has more room to maneuver when other *halakhic* issues hang in the balance.

Yichud (Seclusion)

In the context of the previous laws requiring the אַנְדְּרוֹגִינוֹס to dress like a man, the unanimity that the אַנְדְּרוֹגִינוֹס cannot be secluded with other men "like a woman" is puzzling: "וְאֵינוֹ מִתְיַחֵד עִם הָאֲנָשִׁים כַּנָּשִׁים". After all, isn't the whole point of presenting as a man to keep them away from those they may eventually marry? Is this person supposed to be "passing" as a man? If so, the prohibition on *yichud* with men makes no sense culturally.

Given the unanimous opinion that the אַנְדְּרוֹגִינוֹס cannot seclude with men, we would expect that they would be allowed to seclude with women. Both the Tosefta and the Nusach Ha'Rashash forbid this, writing "ואינו מתייחד עם הנשים כאנשים". This puts the אַנְדְּרוֹגִינוֹס in a tricky position of not being able to have a roommate, go on a shared trip, and the like. For our discussion, it is relevant in the context of navigating camp, *shabbatonim*, dorm life, and the early years of adulthood. It's clear from the bigger picture of the sources that this is a concern based on the biology of the אַנְדְּרוֹגִינוֹס; possessing both types of genitalia, the אַנְדְּרוֹגִינוֹס could have heterosexual intercourse with both men and women which concerns the rabbis. This worry is relevant to us as we think through limitations imposed upon non-binary people as a result of *their* biology. Fundamentally, a life of isolation, where one cannot be trusted to be alone with any other person, does not seem viable.

There are also some ways in which the Mishnah says the אַנְדְּרוֹגִינוֹס is like both men and women:

Nusach Ha'Gemara	Tosefta	Nusach Ha'Rashash
Bikkurim 4:4 כֵּיצַד שָׁוֶה לָאֲנָשִׁים וְלַנָּשִׁים: חַיָּבִים עַל מַכָּתוֹ וְעַל קִלְלָתוֹ כַּאֲנָשִׁים וְכַנָּשִׁים, וְהַהוֹרְגוֹ שׁוֹגֵג גּוֹלֶה וּמֵזִיד נֶהֱרָג כַּאֲנָשִׁים וְנָשִׁים, **וְיוֹשֶׁבֶת עָלָיו דָּם טָמֵא וְדָם טָהוֹר כַּאֲנָשִׁים וְכַנָּשִׁים**, וְחוֹלֵק בְּקָדְשֵׁי קָדָשִׁים כַּאֲנָשִׁים וְכַנָּשִׁים, וְנוֹחֵל לְכָל הַנִּחָלוֹת כַּאֲנָשִׁים וְכַנָּשִׁים, וְאִם אָמַר "הֲרֵינִי נָזִיר שָׁזֶה אִישׁ וְאִשָּׁה" הֲרֵי זֶה נָזִיר:	Tosefta Bikkurim 2:5 דרכים ששוה [בהן] לאנשים ולנשים חייבין על נזקו [בין איש בין אשה] ההורגו במזיד נהרג בשוגג גולה לערי מקלט [אמו יושבת עליו בדם טוהר כאנשים] וכנשים ומביאה עליו קרבן כאנשים וכנשים [ונוחל בכל נחלות כאנשים וכנשים חולק בקדשי הגבול כאנשים וכנשים ואם אמר הריני נזיר שזה איש ואשה הרי זה נזיר].	Bikkurim 4:4 שוה לאנשים ולנשים כיצד חייב על נזקו כאיש ואשה וחייב בכל הניזקין כאיש ואשה וההורגו במזיד נהרג בשוגג גולה לערי מקלט **ואמו יושבת עליו דם טוהר כאנשים וכנשים** ונוחל בקדשי הנבול כאנשים וכנשים והאומר הריני נזיר שזה איש ואשה הרי זה נזיר:
"In what ways is he like both men and women? One who strikes him or curses him is liable, as in the case of men and women; one who unwittingly kills him must go into exile, and if on purpose, then [the slayer] receives the death penalty, as is the case of men and women. **His mother must [at his birth] bring an offering, as in the case of men and women.** He has a share in holy things that are eaten outside of the Temple; and he may inherit any inheritance, as in the case of men and women. And if he said, "I will be a nazirite if he is a man and a woman," he is a nazirite."[8]		

Nusach Ha'Gemara	Tosefta	Nusach Ha'Rashash
Bikkurim 4:5 כֵּיצַד אֵינוֹ שָׁוֶה לֹא לָאֲנָשִׁים וְלֹא לַנָּשִׁים: אֵין חַיָּבִים לֹא עַל מַכָּתוֹ וְלֹא עַל קִלְלָתוֹ לֹא כַּאֲנָשִׁים וְלֹא כַּנָּשִׁים, וְאֵינוֹ נֶעֱרָךְ לֹא כַּאֲנָשִׁים וְלֹא כַּנָּשִׁים, וְאִם אָמַר "הֲרֵינִי נָזִיר שָׁזֶּה לֹא אִישׁ וְלֹא אִשָּׁה" **אֵינוֹ נָזִיר**. רַבִּי **מֵאִיר** אוֹמֵר: אַנְדְּרוֹגִינוֹס בְּרִיָּה בִּפְנֵי עַצְמָהּ הוּא וְלֹא יָכְלוּ חֲכָמִים לְהַכְרִיעַ עָלָיו אִם הוּא אִישׁ אוֹ אִשָּׁה. אֲבָל טֻמְטוּם אֵינוֹ כֵּן, פְּעָמִים שֶׁהוּא אִישׁ פְּעָמִים שֶׁהוּא אִשָּׁה:	Tosefta Bikkurim 2:6 דרכים [שלא] שוה [בהן לא] לאנשים [ולא לנשים] אין חייבין על [חטאתו] ואין שורפין על טומאתו ואין נערך לא כאנשים [ולא כנשים] אין נמכר לעבד עברי לא כאנשים [ולא כנשים] אם אמר הריני נזיר שאין זה איש ואשה **הרי זה נזיר** ר' יוסי אומר אנדרוגינוס בריה [לעצמו ולא יכלו חכמים להכריע עליו] אם איש הוא [אם] אשה [הוא] אבל טומטום אינו כן אלא או ספק איש או [ספק] אשה.	Bikkurim 4:5 אינו שוה לא לאנשים ולא לנשים כיצד? אין חייבין על טומאתו ואין שורפין על טומאתו ואינו נערך לא כאנשים ולא כנשים ואינו נמכר בעבד עברי לא כאנשים ולא כנשים ואם אמר הריני נזיר שאין זה איש ואשה **הרי זה נזיר** ר' יוסי אומר אנדרוגינוס בר' בפני עצמה ולא הכריעו בו חכמים אם איש אם אשה אבל טומטום אינו כן אלא ספק איש ספק אשה:

8. Adapted from Sefaria community translation.

Version of the Rashash: "And in what way is he different from both men and women? He is not liable for entering the temple while impure; one does not burn *teruma* if it came into contact with his discharge; he cannot be evaluated, unlike men or women. He must not be sold as a Hebrew slave, unlike men or women. If one says: "I will be a nazirite, if he is neither a man nor a woman," then **he becomes a nazirite**…

Version of the Gemara: "…Rabbi **Meir** says: the hermaphrodite is a unique creature, and the sages could not decide about him. But this is not so with a *tumtum* (one of doubtful sex), for sometimes he is a man and sometimes he is a woman."[9]

In the final two *mishnayot*, we are given additional ways to understand the אַנְדְּרוֹגִינוֹס. Mishnah 4 perplexingly suggests that perhaps this person is *both* a man and a woman by classifying them as both when the law is different for men and women. First, it requires the mother of an אַנְדְּרוֹגִינוֹס to observe the post-birth *tahara* rituals for both a boy and a girl; second, if a person makes a vow that if the child born is "איש ואשה", that person is a nazir upon the birth of an אַנְדְּרוֹגִינוֹס child. In the first instance, we might say that it seems like the Mishnah is ruling that the mother of the אַנְדְּרוֹגִינוֹס needs to observe both sets of practices because the Mishnah is attempting to cover its bases and rule stringently in the case of doubt, similar to what was stated explicitly in the Mishnah in Zavim above.

The second case is more ambiguous. Does the phrase "איש ואשה" mean this person is "a man and a woman," or do we interpret it differently? Taken at face value, it seems to say that the אַנְדְּרוֹגִינוֹס has the status of both a man and a woman *at the same time*. The commentary מלאכת שלמה does not take this Mishnah literally, writing "**הריני נזיר שזה איש ואשה.** כלומר שזה איש או אשה". This commentary changes the crucial word "and" to "or," suggesting a *psak* of *safek*. Perhaps this change is the result of Melechet Shlomo's unwillingness to accept what the Mishnah seems to be saying when it implies that the אַנְדְּרוֹגִינוֹס truly has the status of both male and female.

The fifth Mishnah does not help us resolve the ambiguous nazirite case: It says, "ואם אמר הריני נזיר שאין זה איש ואשה" — "If one said, 'I am a nazir if this person is not a man or woman,'" the version of the Rashash tells us "הרי זה נזיר" — he becomes a Nazir. The version of the Gemara instead writes, "אֵינוֹ נָזִיר" — he

9. Adapted from Sefaria community translation.

is not a Nazir. This underscores the Mishnah's difficulty in determining the status of the אַנְדְּרוֹגִינוֹס.

In that same fifth Mishnah in Bikkurim ch. 4, we first see the position that suggests that an אַנְדְּרוֹגִינוֹס is a third category. In the Tosefta and both versions of the Mishnah, we see a version of the following statement:

ר' יוסי אומר אנדרוגינוס ברי' בפני עצמה ולא הכריעו בו חכמים אם איש אם אשה

> Rabbi Yose says: The אַנְדְּרוֹגִינוֹס is a creation of its own; the rabbis did not determine whether they are a man or a woman.

This is of interest in that, if the *halakha* is willing to consider a third category, it is helpful to us as we think about people who don't consider themselves men or women. We will see this statement of Rabbi Yose developed further in the Talmudic sources.

A Third Category *L'Halakha*

Many references to the אַנְדְּרוֹגִינוֹס in the Talmud seem to categorize them as a *halakhic* male or as enough of a *safek* to rule stringently. There is evidence, though, that at least some rabbis thought a third category could or did exist. The Talmud in Yevamot 83a states:

לֵיתֵהּ לְמַתְנִיתִין מִקַּמֵּי בָּרַיְיתָא דְּתַנְיָא רַבִּי יוֹסֵי אוֹמֵר אַנְדְּרוֹגִינוֹס בְּרִיָּה בִּפְנֵי עַצְמָהּ הוּא וְלֹא הִכְרִיעוּ בּוֹ חֲכָמִים אִם זָכָר אִם נְקֵבָה

> **The Mishnah** here, **is not** to be relied upon **in the presence of a *baraita*** that teaches otherwise. **As it is taught** in a *baraita* that **Rabbi Yose says: An androgyne is a creature unto himself, and the Sages did not determine whether he is a male or a female.**

This text attempts to resolve a contradiction between the Mishnah (Yevamot 8:6) and a *braita* (which we see reproduced in the Mishnah and Tosefta in Bikkurim). That Mishnah suggested in the name of R. Yose and R. Shimon that an אַנְדְּרוֹגִינוֹס kohen has enough male status to allow their wife to eat *teruma*. Given that we rule stringently in the case of biblical *safek,* if we believe the rules of *teruma* are biblical in origin, then this person must be a definite male and not a *safek*.

The Gemara in Yevamot says we must reject that Mishnah (Yevamot 8:6)

in light of the *braita* where Rabbi Yose says an אַנְדְּרוֹגִינוֹס is its own category. Rabbi Yose can't say both things! The two parts of Rabbi Yose's statement pose a challenge to us. The second clause "וְלֹא הִכְרִיעוּ בּוֹ חֲכָמִים אִם זָכָר אִם נְקֵבָה" might be interpreted as evidence that the אַנְדְּרוֹגִינוֹס has the status of *safek*, except for the preceding clause where Rabbi Yose declares definitively his opinion that in fact the אַנְדְּרוֹגִינוֹס is some third category: "בְּרִיָּה בִּפְנֵי עַצְמָהּ הוּא".

In interpreting this text *halakhically*, early Rishonim (including Rashi and Tosfot) used the latter clause to say that this person has the status of *safek*. Ramban disagreed with their position:

> כן באנדרוגינוס לפי שלא הכריעו עליו בסימנין של איש לעשותו כאיש ולא בסימנין של אשה לעשותו כאשה לפיכך הוציאוהו מכלל שניהם ועשאוהו בריה בפני עצמו (חידושי רמב"ן על יבמות פ"ג א:א)
>
> Similarly, for the androgyne, since they did not determine using physical characteristics that [the androgyne] is male, and did not determine using physical characteristics that [the androgyne] is female, therefore [the Rabbis] took [the androgyne] out of both categories and classified [the androgyne] as a creation unto him/themself.[10]

Ritva cites Ramban and follows his approach:

> אבל רבינו הרמב"ן ז"ל סובר וכן שמעתי על רבינו מאיר הלוי ז"ל שהשיב על רבינו שמשון ז"ל דלמ"ד אנדרוגינוס בריה בפני עצמה היא הוא מין בפני עצמו ולהכי קרי ליה בריה (ריטב"א על נדה כ"ח ב)
>
> However, our teacher Nachmanides, of blessed memory, reasoned, and so I also heard of Rabbeinu Meir the Levi, of blessed memory, who responded to Rabbeinu Shimshon, of blessed memory, that according to those who say an androgyne is a creation unto itself, [the androgyne] is a type unto itself and that is why it is called a creation.[11]

In contrast with Nachmanides and Ritva, Maimonides rules that the אַנְדְּרוֹגִינוֹס has the status of סָפֵק (doubt) in the Mishneh Torah.

> מִי שֶׁיֵּשׁ לוֹ אֵיבֶר זְכָרוּת וְאֵיבֶר נְקֵבוּת הוּא הַנִּקְרָא אַנְדְּרוֹגִינוּס וְהוּא סָפֵק אִם זָכָר סָפֵק אִם נְקֵבָה. (הלכות אישות ב':כד)
>
> A person who possesses both a male sexual organ and a female sexual

10. Chiddushei Ramban on Yevamot 83a.

11. Ritva on Niddah 28b.

> organ is called an *androgynous*. There is doubt whether such a person should be classified as a male or as a female.[12]

The position of *safek* (doubt) in general results in a *psak* that is similar to a man's, with certain notable exceptions.

Fulfillment of *Mitzvot*

With regards to the fulfillment of *mitzvot*, Maimonides generally says to do the *mitzvah* without a *bracha*, such as in the case of *tzitzit*:

> טֻמְטוּם וְאַנְדְּרוֹגִינוּס חַיָּבִין בְּכָלָן מִסָּפֵק לְפִיכָךְ אֵין מְבָרְכִין אֶלָּא עוֹשִׂין בְּלֹא בְּרָכָה: (משנה תורה, הלכות ציצית ג:ט)

> Persons of doubtful sex and an androgyne are under the obligation to fulfill all the precepts because of the doubt. Hence, they do not recite the blessing, but fulfill the duty [of wearing tzitzit] without pronouncing the blessing.[13]

He rules similarly in the case of Sukkah:

> וכן טומטום ואנדרוגינוס לעולם אין מברכין לישב בסוכה מפני שהן חייבים מספק ואין מברכין מספק: (משנה תורה, הלכות שופר וסוכה ולולב ו:יב)

> Similarly, a *tumtum* and an אַנְדְּרוֹגִינוּס never say the *bracha* "to dwell in the Sukkah" because they are obligated by doubt, and we do not say blessings in cases of doubt.[14]

Attire, *Peyot*, and General Appearance

Maimonides seems to follow the lead of the Tosefta in requiring that the אַנְדְּרוֹגִינוּס refrain from wrapping their head like a woman would and refrain from shaving their hair like a man must refrain. However, his statement that this is not punishable suggests that the prohibition is lesser due to the *safek* (or

12. Mishneh Torah, Laws of Marriage, 2:24.
13. Laws of Tzitzit, 3:9.
14. Mishneh Torah, Laws of Shofar, Sukkah and Lulav, 6:12.

perhaps due to this being a cultural requirement rather than a strictly *halakhic* one.)

> טֻמְטוּם וְאַנְדְּרוֹגִינוּס אֵינוֹ עוֹטֵף כְּאִשָּׁה וְלֹא מְגַלֵּחַ רֹאשׁוֹ כְּאִישׁ וְאִם עָשָׂה כֵּן אֵינוֹ לוֹקֶה: (משנה תורה, הלכות עבודה זרה וחוקות הגויים יב:י)

> A *tumtum* and an *androgynous* may not wrap their heads as women do or cut [the hair of] their head as men do. If they do [either of the above], they are not [liable for] lashes.[15]

Exceptions: *Zimmun* and *Shofar*

In two cases, Maimonides rules that the אַנְדְּרוֹגִינוּס has a separate law than men and women: *zimmun* (an invitation to say grace after meals) and *shofar*. Generally, we rule that a man can make a *zimmun* for three or more other men (and whoever else is present) while a woman can make a *zimmun* for three or more women. The אַנְדְּרוֹגִינוּס fits in neither category and thus cannot lead either of the aforementioned *zimmunim*, writes the Rambam in הלכות ברכות ה':ז:

> אַנְדְּרוֹגִינוּס מְזַמֵּן לְמִינוֹ וְאֵינוֹ מְזַמֵּן לֹא לְנָשִׁים וְלֹא לַאֲנָשִׁים מִפְּנֵי שֶׁהוּא סָפֵק.

> An *androgynous* may make a *zimmun* among his own kind but should not be included among a *zimmun* either of men or of women.[16]

If Maimonides is being consistent, this *psak* presumably reflects the same ruling that the אַנְדְּרוֹגִינוּס has the status of סָפֵק. However, Maimonides did first state that the אַנְדְּרוֹגִינוּס can lead a *zimmun* for other אַנְדְּרוֹגִינוּס people, which, practically speaking, creates a third category by default, "מְזַמֵּן לְמִינוֹ", which suggests that different אַנְדְּרוֹגִינוּס people all fit into the same category together and are not evaluated individually. Even though Maimonides is unwilling to give the אַנְדְּרוֹגִינוּס the definite status of בְּרִיָּה בִּפְנֵי עַצְמָהּ, he implies they are in the same category together.

In the laws of Shofar (2:1), Maimonides does not exempt the אַנְדְּרוֹגִינוּס or qualify their *chiyyuv* (obligation) by saying to blow shofar without a *bracha*.

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15. Mishneh Torah, Laws of Foreign Worship and the Ways of the Nations 12:10.
16. Mishneh Torah, Laws of Brachot 5:7.

Though they do appear to be fully required to blow the Shofar, they are still grouped differently, as he explains in 2:2:

כָּל מִי שֶׁאֵינוֹ חַיָּב בַּדָּבָר אֵינוֹ מוֹצִיא אֶת הַחַיָּב יְדֵי חוֹבָתוֹ. לְפִיכָךְ אִשָּׁה אוֹ קָטָן שֶׁתָּקְעוּ בַּשּׁוֹפָר הַשּׁוֹמֵעַ מֵהֶן לֹא יָצָא. אַנְדְּרוֹגִינוּס מוֹצִיא אֶת מִינוֹ וְאֵינוֹ מוֹצִיא אֶת שֶׁאֵינוֹ מִינוֹ. (משנה תורה, הלכות שופר וסוכה ולולב ב:ב)

> Whoever is not [himself] obligated regarding this matter cannot facilitate the performance of the mitzvah for one who is obligated. Thus, if a woman or a minor blows the shofar, one who hears does not fulfill his obligation. An *androgynous* can facilitate the performance of the mitzvah for one of his kind, but not for one who is not of his kind.[17]

The nature or degree of the obligation for the אַנְדְּרוֹגִינוּס is not the same as that of a man and, consequently, they cannot blow the shofar and discharge the obligation of anyone who is not an אַנְדְּרוֹגִינוּס. However, they can discharge each other's obligation, which suggests a commonality between them all.

Yichud (Seclusion)

אַנְדְּרוֹגִינוּס אֵינוֹ מִתְיַחֵד עִם הַנָּשִׁים. וְאִם נִתְיַחֵד אֵין מַכִּין אוֹתוֹ מִפְּנֵי שֶׁהוּא סָפֵק. אֲבָל הָאִישׁ מִתְיַחֵד עִם הָאַנְדְּרוֹגִינוּס וְעִם הַטֻּמְטוּם: (הלכות איסורי ביאה כב:יא)

> An *androgyne* may not enter into seclusion with women. If [the androgyne] does, he is not given physical punishment, because his status is doubtful. A man may enter into seclusion with an *androgynus* or a *tumtum*.[18]

Maimonides acknowledges our difficulty with the version that appears in the Tosefta and the Nusach Ha'Rashash, ruling that the אַנְדְּרוֹגִינוּס is forbidden from *yichud* with women but permitted to have *yichud* with men. This follows logically from the rulings and assumptions that the אַנְדְּרוֹגִינוּס is more like a man and required to marry a woman. As a result, the laws of *yichud* categorize them as a person who can have *yichud* with a man.

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17. Mishneh Torah, Laws of Shofar, Sukkah and Lulav 2:2.
18. Mishneh Torah, Laws of Forbidden Intercourse 22:11.

We should note here that Maimonides completely ignores the three main versions of the Mishnah and Tosefta we saw earlier, overriding their prohibition on the אַנְדְּרוֹגִינוּס being in seclusion with a man. Does Maimonides do so because it is more consistent in framing the אַנְדְּרוֹגִינוּס as needing to "code" (or present as) male, or because Maimonides recognizes that it is not manageable for a person to live a life without normal interpersonal relationships with at least one category of people? The latter, we hope, can give us more flexibility to consider the person when making decisions with non-binary people.

Marriage

Maimonides' position on marriage is puzzling. In the Tosefta and Mishnah, we saw that the initial ruling is that an אַנְדְּרוֹגִינוּס may marry a woman but not be married by a man (Tosefta Bikkurim 2:3; Mishna Bikkurim 4:2). The Mishnah is followed by a discussion in Bavli Yevamot 82b where the discussion concludes that an אַנְדְּרוֹגִינוּס may only marry a woman *bedieved* (after the fact) and may not marry a man. If they did marry a man, the marriage is invalid even after the fact, and the man who marries the אַנְדְּרוֹגִינוּס is liable for the death penalty for having intercourse with them. Though the Talmud later concludes "הֲלָכָה כְּרַבִּי יוֹסֵי בְּאַנְדְּרוֹגִינוֹס" on 83a, that does not give them flexibility in who they can marry.

In his Mishneh Torah, we saw already that Maimonides rules in הלכות אישות that the אַנְדְּרוֹגִינוּס is a case of doubt. In 4:11, Maimonides adds:

> טֻמְטוּם וְאַנְדְּרוֹגִינוּס שֶׁקִּדְּשׁוּ אִשָּׁה אוֹ שֶׁקִּדְּשָׁן אִישׁ הֲרֵי אֵלּוּ קִדּוּשֵׁי סָפֵק וּצְרִיכִין גֵּט מִסָּפֵק: (משנה תורה, הלכות אישות ד:יא)
>
> A t*umtum* or וְאַנְדְּרוֹגִינוּס who betrothed a woman or who was betrothed by a man; their betrothal is one of doubt and they need a divorce based on the doubt.[19]

It seems here that Maimonides does not follow the lead of the Talmud: first, he equates the אַנְדְּרוֹגִינוּס's marriage to a woman with their marriage to a man, whereas the Mishnah, Tosefta and Talmud all differentiated between them. He also does not object to these marriages to a man as we might expect he would, given the Talmud's discussion of the death penalty. In the next law,

19. Mishneh Torah, Laws of Marriage 4:11.

Maimonides discusses someone who marries one of his עֲרָיוֹת (biblically forbidden relationships) and says about that marriage, "לֹא עָשָׂה כְּלוּם" — he has not done anything. This marriage has no effect. In contrast, Maimonides seems to believe it is technically possible for an אַנְדְּרוֹגִינוּס to marry either a man or a woman and for the קִדּוּשִׁין (legal betrothal) to take effect.

In contrast, in הלכות איסורי ביאה א:טו (Laws of Forbidden Intercourse 1:15), Maimonides echoes the position that a man having intercourse with an אַנְדְּרוֹגִינוּס in the manner of "זִכְרוּתוֹ" (his maleness, presumably anal intercourse) is liable to the death penalty, and affirms in the same law that an אַנְדְּרוֹגִינוּס may marry a woman. Given this conclusion, we are left to wonder why Maimonides ruled it was possible for them to marry a man in הלכות אישות ד:יא (Marriage 4:11), since forbidden relationships that lead to marriage are generally invalidated. This question is posed by the Ra'avad, who writes in his glosses on the Mishneh Torah:

> כתב הראב"ד ז"ל ולמה הם צריכים גט מספק והלא אינם ראוים להנשא כלל עכ"ל: (השגות הראב"ד על משנה תורה, הלכות אישות ד:יא)
>
> The Ra'avad (of blessed memory) wrote, 'And why do they need a divorce out of doubt, and behold they are not fitting to marry at all?[20]

Family Status

Relatedly, Maimonides rules that the אַנְדְּרוֹגִינוּס does not participate in levirate marriage either in the male or female role:

> וְאֵלּוּ הֵם שֶׁאֵין לָהֶן זִקָּה כְּלָל. סָרִיס חַמָּה וְאַנְדְּרוֹגִינוּס מִפְּנֵי שֶׁאֵינָן רְאוּיִין לֵילֵד וְלֹא הָיָה לָהֶן שְׁעַת הַכֹּשֶׁר: (הלכות יבום וחליצה ו:ב)
>
> With regard to the following, [the deceased's wives] have no obligation at all: a *saris chamah* and an *androgyne*, for they are not fit to father children, nor had they been at any time.[21]

Maimonides also ruled that the אַנְדְּרוֹגִינוּס inherits with the sisters if there are no brothers (Laws of Inheritance 5:1). Thus, in three related areas, the אַנְדְּרוֹגִינוּס's

20. Hasagot HaRaavad on Mishneh Torah, Marriage 4:11.

21. Mishneh Torah, Levirate Marriage and Release 6:2.

safek status in the eyes of Maimonides leads them to marry as a man, inherit as a woman, and not participate in levirate marriage at all. The wide variation in the ways the *halakha* applies to this person could be challenging for practical implementation.

Revisiting Maimonides' Position

Maimonides's rulings sometimes suggest that the אַנְדְּרוֹגִינוּס is its own category. When discussing animals of this nature, Maimonides writes in הלכות איסורי המזבח ג׳:ג that "לְפִי שֶׁהֵן סָפֵק זָכָר סָפֵק נְקֵבָה הֲרֵי הֵן כְּמִין אַחֵר" — they are disqualified from being offered on the altar because they are doubtful male and doubtful female animals; thus they are like another type.[22] While we don't prefer to make analogies from animals to humans, it is interesting that Maimonides says this about animals but won't say it about people. "הֲרֵי הֵן כְּמִין אַחֵר" is much closer to "בְּרִיָּה בִּפְנֵי עַצְמָהּ" than we have seen from others who rule the status of a human אַנְדְּרוֹגִינוּס is a *safek*.

Maimonides' positions on *zimmun* and *shofar* also lend credence to the idea that the אַנְדְּרוֹגִינוּס is a third category; by allowing them to make a *zimmun* together and blow *shofar* for each other, we suggest that whatever they are, they are in that category together. Each אַנְדְּרוֹגִינוּס is not an individual *safek* based on their particular situation; rather, they are all אַנְדְּרוֹגִינוּס together despite any potential physical distinctions.

A Final Challenge

Fundamentally, all discussions of the אַנְדְּרוֹגִינוּס are based around observable biology. The *halakha* attempts to create a framework for how this person must behave based on their sex characteristics. To map this framework on to gender identity raises questions that may be harder to resolve.

First, once we have established that there is such a thing as "בְּרִיָּה בִּפְנֵי עַצְמָהּ", who is to say that this applies to gender identity where it is contradictory to biological sex? In fact, we have not fundamentally established yet that Judaism

22. Mishne Torah, Laws of Things Forbidden on the Altar 3:3.

recognizes gender identity as a *halakhic* factor. These are questions that are incumbent on *halakhic* leaders to engage with so that we can help non-binary people live full *halakhic* lives. The practical matters here are the core of the issue that we face: when we try to decide where our non-binary children will daven and where they will room at camp and on school *shabbatonim*, our decisions will telegraph to them and to others how seriously we take these challenges. As we navigate these issues, we can draw guidance from these texts and their attempts to sort out these complexities.

Which of our three initial positions on the אַנְדְּרוֹגִינוּס is most helpful to the *posek* weighing these issues? Seeing the אַנְדְּרוֹגִינוּס as a third category helps us affirm the identities of non-binary Jews: rabbinic Judaism recognizes that it is possible to be neither male nor female *l'halakha*. However, the argument of *safek* might also allow for some flexibility. In cases of rabbinic laws and lower-level prohibitions, we can use the principle of *safek d'rabbanan l'kula* and rule leniently. Additionally, bringing in the factor of *kavod ha'briot* can further tip the scales in our decision making. The Talmud in Brachot 19b tells us:

גָּדוֹל כְּבוֹד הַבְּרִיּוֹת שֶׁדּוֹחֶה [אֶת] לֹא תַעֲשֶׂה שֶׁבַּתּוֹרָה

Great is human dignity, as it overrides a prohibition in the Torah.

This principle is used sparingly, only to override rabbinic prohibitions in certain cases, but perhaps it can allow us to override lower-level prohibitions as we guide non-binary Jews to decisions that affirm who they are as people.

Conclusion

The *halakhic* sources show that there is a strong tradition in Judaism recognizing that it is possible to exist in some category that is neither male nor female. As we encounter in our communities people whose gender identity does not neatly fit into the 'male' or 'female' binary, we are obliged to take them seriously and treat them with the respect owed to anyone created in the image of God. As the science of gender identity is still evolving, we need to navigate these cases with sensitivity. *Halakhic* leaders must attempt to answer the unanswered questions here in a way that is livable and inclusive. First, we must find a way to *halakhically* recognize the truth of who these people are. Next, we must find

halakhic solutions for them that are not isolating and don't oblige them to act in ways that are contrary to their identities. If we believe that every Jew can be brought closer to the divine through Torah and *mitzvot*, we must create ways for non-binary Jews to live authentic *halakhic* lives.

Can Women be Witnesses in a Beit Din?

Rabbanit Gloria Nusbacher

Ask any child, or most adults, whether women are valid witnesses under Jewish law, and they will likely answer that women are "*pasul l'eidut*" — invalid to testify. However, the reality is more nuanced. While many statements in the Talmudic and *halakhic* literature indicate that women's testimony is categorically inadmissible, there are also a number of instances where women's testimony has been accepted in Jewish courts. The use of witnesses originally arose in three contexts: in civil cases, to determine the facts of the case in a dispute over monetary matters; in criminal cases, to determine whether there were grounds for punishing an alleged wrongdoer; and for purposes of establishing status as part of religious rituals, such as marriage or divorce. This article explores women serving as witnesses in civil cases.

Biblical Sources

The plain reading of the Biblical verses about testimony does not differentiate between male and female witnesses. The Torah states:

טו לֹא יָקוּם עֵד אֶחָד בְּאִישׁ, לְכֹל עָוֹן וּלְכָל חַטָּאת, בְּכָל חֵטְא אֲשֶׁר יֶחֱטָא: עַל־פִּי שְׁנֵי עֵדִים, אוֹ עַל פִּי שְׁלֹשָׁה עֵדִים יָקוּם דָּבָר	**15** One witness shall not stand against a man for any iniquity or any sin, in any sin that he may sin; according to two witnesses or according to three witnesses a matter shall be established.
טז כִּי יָקוּם עֵד חָמָס בְּאִישׁ, לַעֲנוֹת בּוֹ, סָרָה	**16** If a corrupt witness shall stand against a man to testify a fabrication against him

17 the two men, between whom there is a dispute, shall stand before the Lord, before the priests and the judges who will be in those days. (Devarim 19:15–17, Steinsaltz translation)

יז וְעָמְדוּ שְׁנֵי הָאֲנָשִׁים אֲשֶׁר לָהֶם הָרִיב, לִפְנֵי ה', לִפְנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בַּיָּמִים הָהֵם. (דברים יט:טו־יז)

On its face, the Torah seems to require two witnesses, whose gender is not specified; the only reference to men is in the context of litigants.

Tannaitic Sources

As early as the Sifre, the Biblical verses quoted above were understood to exclude women from eligibility to serve as witnesses:

And they shall stand: It is a commandment for the litigants to stand. The two men: This tells me only of two men. From where do I learn of a man with a woman, a woman with a man, or two women? The *pasuk* says "who have a dispute" — in any event.

Could it be that even a woman is eligible to give testimony? The *pasuk* here says "two" and the *pasuk* there says "two." Just as here the two spoken about are men and not women, so too the two spoken about there are men and not women.

(Sifre Devarim, Shoftim, 190)

ועמדו: מצוה בנדונים שיעמדו.

שני האנשים: אין לי אלא בזמן שהם שני אנשים; איש עם אשה ואשה עם איש שתי נשים זו עם זו מנין? תלמוד לומר אשר להם הריב מכל מקום.

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. (ספרי דברים פרשת שופטים פיסקא קצ)

The Sifre seems to read verse 19:17 to require all litigants, whether male or female, to stand. It then employs the hermeneutic device of a *gezeira shava*, in which the existence of the identical word or phrase in two passages is used to derive a *halakha* from one passage to the other. In this case, both verses speak of "two," referring once to witnesses and once to men, which leads the Sifre to conclude that the two witnesses can only be men.

Notwithstanding the Sifre's blanket statement, the Mishnah's treatment of women's testimony is somewhat ambiguous. For example, the third chapter of Sanhedrin contains a list of persons not eligible to be witnesses — dice players (gamblers), usurers, pigeon racers, traffickers in *shemita* produce, relatives, and a litigant's friend or enemy — and does not expressly exclude women (3:3–5). Those listed as ineligible to testify are engaged in disreputable practices or have

a bias and thus lack credibility. The omission of women from this list would suggest that there is no inherent problem with their credibility. However, the list of individuals who are deemed not qualified to testify because they are relatives (3:4) consists only of men, suggesting that women were not considered eligible to testify for some other, unstated, reason. On the other hand, the Mishnah states that the parties may agree to allow testimony of an otherwise ineligible witness (3:2). While this provision does not address the status of women, the principle seems broad enough to permit the parties to agree to admit the testimony of a woman.

The Mishnah in Rosh Hashana is also somewhat ambiguous. In describing the witnesses who are eligible to testify that they saw the New Moon, the Mishnah identifies the same list as in Sanhedrin 3:3 and adds slaves. It then goes on to say:

זה הכלל כל עדות שאין האשה כשירה לה אף הן אינן כשירים לה:

> This is the general rule — any testimony for which a woman is not qualified, these also are not qualified (Mishnah Rosh Hashana 1:8).

This Mishnah seems to assume categories of testimony for which women are not eligible but also suggests that there are categories of testimony for which they are eligible, without stating what those categories might be. However, the Mishnah in Shevuot, about who is required to take an oath of testimony (swearing that they do not have relevant testimony) seems to assume that women are not eligible to testify:

The oath of testimony applies to men and not to women, to non-relatives and not to relatives, to kosher witnesses and not to ineligible witnesses, and applies only to those eligible to testify… (Mishnah Shevuot 4:1)	שבועת העדות נוהגת באנשים ולא בנשים, ברחוקין ולא בקרובין, בכשרים ולא בפסולין, ואינה נוהגת אלא בראויין להעיד... (משנה מסכת שבועות פרק ד משנה א)

By contrast, the Tosefta is clear that there are at least some circumstances in which a woman's testimony is accepted. It provides that all are believed to testify that a kohen's wife who was taken captive was not raped — "even her son, even her daughter" — other than the woman herself and her husband

because a person doesn't testify on his own behalf (Tosefta, Ketubot 3:2).[1] All of these sources use the language of testimony (עדות), not just believability (נאמנות), thus raising the level of the woman's statement to that of formal testimony.

In another example, the Tosefta expressly permits women's testimony, but only when it is given immediately after occurrence of the event:

Rabbi Yochanan ben Barokah said a woman or a minor is believed when they say 'the bee swarm came from here.' When does this apply? When they are testifying right there, but if they went out and came back they are not believed because [of a concern that] they only say it out of persuasion or fear [i.e. that their testimony has been influenced by others]. (Tosefta, Ketubot (Lieberman) 3:3)

אמ' ר' יוחנן בן ברוקה נאמנת אשה או קטן לומ' מיכן יצא נחיל זה. במי דברים אמורים? בזמן שהעידו על מעמדן אבל אם יצאו וחזרו אין נאמנין שלא אמרו אלא מתוך הפיתוי ומתוך היראה. (תוספתא מסכת כתובות (ליברמן) פרק ג הלכה ג)

Similarly, in Yevamot 16:7, the Mishnah addresses whether a single witness that a husband is dead is sufficient to allow his wife to remarry. The Mishnah states that the Sages established a presumption that a single witness was sufficient and that the witness could be a woman or a slave. The Mishnah then reports two dissenting views. Rabbi Eleazer and Rabbi Yehoshua reject the "one witness" rule completely. Rabbi Akiva accepts that rule but disagrees regarding the acceptability of women and slaves as witnesses. He then modifies his view to conclude that, in limited circumstances, a woman's testimony will be accepted:

And the law was established that they allow a woman to remarry on the evidence of one witness. And it was established that they allow a woman to remarry on the testimony of one witness from the mouth of another witness [i.e. hearsay testimony], from a slave, from a woman, or from a female slave. Rabbi Eleazer and Rabbi Yehoshua say a woman is not allowed to remarry on the testimony of one witness.

והוחזקו להיות משיאין על פי עד אחד. והוחזקו להיות משיאין עד מפי עד, מפי עבד, מפי אשה, מפי שפחה. רבי אליעזר ורבי יהושע אומרים אין משיאין את האשה על פי עד אחד.

1. See also Mishnah Ketubot 2:6 and 2:9, allowing testimony by a woman that another woman was not raped.

Rabbi Akiva ruled: [a woman is not allowed to remarry] on the evidence of a woman, on that of a slave, on that of a female slave or on that of relatives. They said to him: It once happened that a number of Levites went to Tsoar, the city of palms, and one of them became ill on the way, and they left him in an inn. When they returned they asked the [female] innkeeper, "Where is our friend?" And she replied, "He is dead and I buried him", and they allowed his wife to remarry. Should not then a kohen's wife [be believed at least as much] as an innkeeper!" He answered them: When she will [give such evidence] as the innkeeper [gave] she will be believed, for the innkeeper had brought out to them [the dead man's] staff, his bag and the Torah scroll which he had with him.

רבי עקיבה אומר, לא על פי אישה, ולא על פי עבד ולא על פי שפחה ולא על פי קרובים. אמרו לו, מעשה בבני לוי שהלכו לצוער עיר התמרים, וחלה אחד מהם, והניחוהו בפונדק, ובחזירתן אמרו לפונדקית איה חברנו, ונמת להם מת וקברתיו; והשיאו את אשתו. אמרו לו, לא תהא כוהנת כפונדקית. אמר להם, ובשתהא הפונדקית נאמנת. והפונדקית הוציאה להם מקלו, ותרמילו, ומנעלו, ואפונדתו, וספר תורה שהיה בידו.

While this Mishnah provides that a woman's testimony is accepted for purposes of allowing a woman to remarry — either without condition (according to the Sages) or, at least if there is corroborating evidence (according to Rabbi Akiva) — it is not clear how broadly we can generalize from it. It is likely that the rabbis were strongly motivated by a perceived need to enable women to remarry when there was even some evidence that their husbands were dead, which led to a relaxation of the normal rules of testimony, both to permit a single witness and to allow that witness to be a woman.

The view expressed in this Mishnah by Rabbi Akiva that a woman's testimony is accepted only where there is corroborating evidence can also be seen in an unattributed Mishnah (Gittin 2:7), which provides that even a woman relative who is not permitted to testify that someone's husband died is believed when she brings that person a *get* from abroad because the *get* document provides proof of the divorce.

It is notable that, with one exception, the Tannaitic sources do not state a reason for the exclusion of women's testimony. (In the one case where a reason is given, Tosefta Ketubot 3:3, the stated reason is a concern that the woman's testimony would be influenced by others.) This suggests that the assumption that women do not testify was so pervasive that offering a reason to exclude their testimony was unnecessary. And yet, in a limited number of specific instances, the need for a woman's testimony was deemed great enough to override this widespread assumption. However, the instances in which a woman's

statement was relied on appear to have occurred outside of a formal court setting, and thus would not constitute formal "testimony."

Gemara

The primary discussion in the Gemara regarding women's ineligibility to testify is in Bavli Shevuot 30a. Commenting on Mishnah Shevuot 4:1, the Gemara asks about the source for a woman's ineligibility to testify and provides three *braitot* as proofs. The first is a *braita* that derives the rule from an interpretation of Devarim 19:17, which states וְעָמְדוּ שְׁנֵי הָאֲנָשִׁים אֲשֶׁר לָהּ הָרִיב (literally, "and the two men shall stand, between whom the dispute is"). Because the phrase "between whom the dispute is" clearly refers to the litigants, the phrase "and the two men shall stand" is construed to refer to the witnesses and thus to require male witnesses. The *braita* acknowledges that this is not a strong proof (ואם נפשך לומר — and if it is your wish to say [that this is not a proof]) because the entire phrase could refer to the litigants. It then provides as an alternate proof the *gezeira shava* cited by the Sifre: since both 19:17 and 19:15 refer to "two," in one case referring to "two men" and in the other referring to "two witnesses," the verses taken together refer to male witnesses.

The Gemara then cites a second *braita* arguing that the phrase "the two men shall stand" must refer to witnesses rather than litigants since, while witnesses generally come in pairs, at times multiple litigants might come to court. Again, the *braita* acknowledges the weakness of the argument, in this case because even when there are multiple individuals as parties, there are typically only two sides to a case (plaintiffs and defendants), and again provides the *gezeira shava* argument as a fallback.

The third *braita* cited asserts that the reference to "two men" must refer to witnesses rather than litigants because women do come to court as litigants. Again, the *braita* acknowledges the weakness of the proof, this time because, although women are legally entitled to come to court, they typically do not and instead send agents to appear on their behalf. Yet again the *braita* falls back on the *gezeira shava* argument to conclude that only men may be witnesses. This Gemara suggests that the disqualification of women as witnesses was a long-standing tradition that the Gemara struggled to justify. While the justification appears weak, ultimately the conclusion is upheld.

The Gemara's conclusion that women are not eligible to testify is taken as a given in Bavli Bava Kamma 88a, dealing with the question of whether a Canaanite slave is eligible to testify. There, Ulla uses a *kal v'chomer* argument to assert that if women are ineligible as witnesses, so too are slaves. The Gemara does not discuss the premise that women are ineligible but instead considers the various similarities and differences between women and slaves to determine whether the comparison is valid.

Despite the apparent blanket rule against admitting testimony of women, the Gemara describes several instances in which the word of a woman is accepted and treated as credible when significant determinations are at stake. One example is that of a midwife, in Bavli Kiddushin 73b:

אמר רב חסדא: שלשה נאמנים לאלתר. אלו הן: ...

Rav Hisda said: there are three cases where people are believed at the moment [that the event occurs], and they are these …

חיה דתניא חיה נאמנת לומר זה יצא ראשון וזה יצא שני.

A midwife, as it is taught: a midwife is believed to say 'this one [of twins] emerged first [and thus is the *bechor*], and this one emerged second.'

...

תנו רבנן נאמנת חיה לומר זה כהן וזה לוי, זה נתין וזה ממזר. במה דברים אמורים? שלא קרא עליה שם ערער, אבל קרא עליה ערער אינה נאמנת. ערער דמאי? אילימא ערער חד והאמר רבי יוחנן אין ערער פחות משנים? אלא ערער תרי.

…

Our sages taught: [If several women gave birth at the same time] a midwife is believed when she says 'this [baby] is a Kohen, and this is a Levi, this is a *natin*[2] and this is a *mamzer*' [i.e. she is believed to say which baby came from which mother]. In what case is this said? If no one contests [her statement], but if an objection was raised, she is not believed. What type of objection? If we say it is an objection by one person, doesn't Rabbi Yochanan say there is no objection with less than two? Rather, it means an objection by two [people].

ואיבעית אימא לעולם אימא לך ערער חד וכי אמר רבי יוחנן אין ערער פחות משנים הני מילי היכא דאיתא חזקה דכשרות אבל היכא דליכא חזקה דכשרות חד נמי מהימן

Alternatively, one could say it actually was an objection by one, and when Rabbi Yochanan said an objection is invalid if made by less than two that was in a case where there was a *chazakah* of *kashrut* (presumption of legitimacy), but where there is no presumption of legitimacy, even one [challenger] is believed.

2. *Natin* (Gibeonite) and *mamzer* are categories of people who are not permitted to marry into the Israelite community.

From this Gemara, we see that a woman is seen as credible and her statements are used to determine facts of monetary significance (which child is the first born, relevant for inheritance purposes) and personal status (which child is a kohen or *mamzer*). If her statement is challenged by two witnesses, they are believed over her. This is reasonable since Jewish law generally requires two witnesses and generally does not even accept testimony of a single witness. However, if her statement is contradicted by a single witness, the Gemara provides two alternative views. Under the first view, the statement of the midwife is always upheld over that of a single challenger. Under the alternative view, her statement is upheld only if there is a "*chazakah* of *kashrut*" (presumption of legitimacy). The commentaries understand this presumption as relating to the lineage of the baby. However, under the case presented, where the very issue is which baby belongs to which mother, no baby can have the required *chazakah*. Thus, the testimony of the midwife can never survive a challenge, even by a single witness.

The Gemara in Bavli Yevamot 117b deals with a case where a single kosher witness testified that a woman's husband had died, which would make her free to remarry, and two invalid (female) witnesses subsequently testified that he did not die. The Sages initially ruled that in such a case the testimony of the two women would be believed as against that of a single kosher (male) witness, and the woman would be required to leave her new husband. The Gemara then qualifies this statement: the two women are to be believed when they contradict a single man only if they were the initial witnesses and testified to the death. However, if a man initially testified to the death, even 100 women cannot negate his testimony. This latter statement is challenged with a *braita* which states that whenever the Torah permits a single witness to testify to the death of a woman's husband, that testimony can be negated by contrary testimony of two witnesses. The Gemara then reconciles this *braita* by holding that the two women are believed only if they came first by establishing a general rule that the testimony of two women is equal to the testimony of one man.

In Bavli Bava Kamma 114b, the Gemara discusses another area in which women's statements are believed for purposes of determining property ownership. The case involves a swarm of bees being pursued by their owner. A statement by a woman (or a minor) that "it was from here that the swarm emerged" was deemed credible for determining ownership of the bees. However, the Gemara clarified that this was not formal testimony, and in fact was accepted only because it was made in an offhand manner (מסיחין לפי תומם).

In summary, the Mishnah and the Gemara seem to reflect a general principle that women are not acceptable as witnesses but without articulating a reason for this exclusion. However, these texts contain several instances in which women's statements are relied on for making determinations, including those with significant consequences. Yet the instances in which women's statements are relied on are either not formal court cases (e.g., the midwife, the swarm of bees) or involve the special circumstances of testimony regarding the death of a woman's husband, where the rules of testimony were relaxed to provide that a single witness, even one not otherwise eligible to testify, was sufficient. Even in the latter situation, women's testimony was accepted over that of a man only when it would serve to facilitate the policy goal of enabling the widow to remarry.

Rishonim, Shulchan Aruch, and Rema

The Sefardic poskim generally take a hard line against admitting women's testimony, even when women are the only available witnesses. For example, Rambam in *Hilkhot Nizikei Mamon* (Laws of Monetary Damages) 8:13 states the following:

אין הנזקין משתלמין... אלא בראיה ברורה, ובעדים הכשרים להעיד. שלא תאמר הואיל ואין מצויין באוריות הסוסים וברפת הבקר וגדרות הצאן, אלא העבדים והרועים וכיוצא בהן, אם העידו שבהמה זו היא שהזיקה את זו – שומעין להן; או אם העידו קטנים או נשים שאדם זה חבל את זה, או העידו בשאר נזקין – סומכין עליהן. אין הדבר כן; אלא לעולם אין מחייבין ממון על פי עדים, עד שיהיו עדים הכשרים להעיד שאר עדייות...

Damages should not be collected … unless definite proof is brought with witnesses who are acceptable to testify. We do not say that since only shepherds, servants, and the like are found in the stables of horses, the stalls of cattle, and the corrals of sheep, their testimony should be accepted if they testify that one animal damaged another. Similarly, if minors or women testify that one person injured another or caused another type of damage [one might think] that we rely on them. This is not so. Rather, financial redress is required on account of witnesses only when the witnesses are acceptable with respect to other kinds of testimony…

Similarly, writing in response to a question about a dispute regarding whether a woman transferred ownership of synagogue seats to her son, the Rashba (R' Shlomo ibn Aderet, 1235–1310, Spain) states, in Responsa, Vol 5, #139:

Know, that the testimony of women, even if there are a thousand [women], they are all equal to the testimony of one, and their testimony is not testimony except in matters of prohibitions.… And maybe you found one of the *Rishonim* [who held that the testimony of women is valid] in the place where women sit in the synagogue because it is a place just for women and men do not enter there when women are sitting there. But we do not know of such things, and never heard of them, and they are not worthy to be relied on.

דעו: שעדות הנשים, ואפי' אם יהיו אלף, כולן שוות כעדות אחת, ואין עדותן עדות, אלא בדבר איסור בלבד.... ואולי מצאתם כן לאחד מן הראשונים, במקומות שהנשים יושבות שם בבית הכנסת, מפני שהוא מקום מיוחד לנשים, ואין האנשים נכנסים שם בשעת שהנשים יושבות שם. ואנחנו לא נדע דברים אלו, ולא שמענו מעולם, ואין ראוי לסמוך עליהם.

The Rashba finds the situations in the Gemara where a woman's statements were relied on to be not applicable to the case at hand. In the case of the midwife who was relied on regarding which baby was the *bechor,* he states that such reliance is necessary because there is no other way to determine the facts since men are not present in the birthing room. And in a case described in Bavli Niddah 48b, where a woman was allowed to examine (and presumably testify) whether a girl had two pubic hairs, he states that the testimony is allowed only because the underlying physical evidence was available even without her testimony. However, he concludes, in a case involving monetary matters, women's testimony is not considered testimony at all, and even 100 women are not treated as a single witness.

The Ashkenazic Rishonim are more willing to accept women's testimony in certain, albeit limited, situations. In a frequently-cited responsum, #353 (*siman* שנג), the Trumat HaDeshen (R' Israel Isserlein, 1390–1460, Austria) deals with a case of disputed seats in the women's section of a shul. One claimant, Leah, brought two women witnesses that the seats belonged to her. The second claimant, Rachel, brought a single male witness to support her claim. The Trumat HaDeshen sets the stage for his decision with a very strong statement regarding the acceptability of women's testimony in appropriate circumstances:

ואף על גב דבעלמא אין עדות אשה כלום, בנדון זה דאינהו רגילי למידק טפי מאנשים מהימנינן להו שפיר. וכן מצאתי הועתק מפסקי גדול דנאמנות הנשים להעיד לאלמנה אלו הבגדים לבשה בהן בחיי הבעל, משום דאין האנשים רגילין להסתכל בבגדי הנשים, והביא ראיה מהא דאמרי' ג' נאמנים על הבכור חיה לאלתר. הא קמן דבמילי דלא רגילי האנשים למידע מהמנינן לנשים, אפי' לאפוקי ממונא כי התם בבגדי אלמנה. ונראה דבמקומות בהכ"נ של הנשים נמי אין האנשים רגילים לידע איזה מקומה של אשה זו ואיזו של זו.

And even though, as a general matter, female testimony has no value, on this matter where women are likely to be more attentive than men, it is better to believe them. And so I have found cited from a great *posek* that women are believed to testify regarding a widow that she wore particular clothing while her husband was alive, since men do not typically look at women's clothing; and he brought proof from that which was said [in the Gemara, Kiddushin 73b]: three are believed regarding the *bechor,* the midwife immediately [after birth]. Thus, on matters where men are not likely to know, we believe women, even to extract money like in the case of the widow's clothing. And it seems that with regard to seats in the women's section of the synagogue, men are also not likely to know which seat belongs to this woman and which to that woman.

The Trumat HaDeshen goes on to acknowledge that the Gemara in Bava Kamma 15a states that, in cases of monetary damages, acceptable witnesses are free men and Jews. But he argues that this statement intends to exclude slaves and non-Jews, who lack either legally recognized kinship relationships (in the case of slaves) or an obligation to keep *mitzvot* (in the case of non-Jews). He thus claims that the statement in the Gemara is not meant to exclude Jewish women, who have neither of these deficiencies.

Accordingly, he concludes that if Rachel had a presumption (*chazakah*) of ownership of the disputed seats but Leah had two female witnesses supporting her claim, Leah could take the seats away from Rachel based on the testimony of the two female witnesses. However, the situation would differ if Rachel had a single male witness against Leah's two female witnesses. In such a case, based on the Gemara in Yevamot 117b, the two sides would be considered of equal weight, and the disputed seats would be awarded to the woman who had the presumption (*chazakah)* of possession.

This *teshuva* takes the idea of women as witnesses to an entirely new level. Whereas the Gemara treats women as credible and relies on their statements for making important determinations, it for the most part does not recognize their statements as formal testimony. By contrast, the Trumat HaDeshen is willing to accept women's testimony in a formal court setting as the basis for a plaintiff winning a monetary judgment. Thus, the *teshuva* goes a long

way toward establishing the admissibility of women's testimony in financial disputes. However, the scope of this decision is very limited. First, it is limited to matters in which women are likely to pay attention to the facts and men are not. Perhaps more important, in any case in which the testimony of two female witnesses is challenged by that of a single male witness, the testimonies cancel each other out.

The Shulchan Aruch (Choshen Mishpat 35:14), following the Sefardic tradition, makes the blanket statement that women are ineligible to testify. However, the Rema (R' Moshe Isserles, 1530–1572, Poland) disagrees, making the following comment:

וכל אלו הפסולים, פסולים אפילו במקום דלא שכיחא אנשים כשרים להעיד (הרשב"א בתשובה והרמב"ם בפ"ח מה' נזקי ממון וכ"כ הב"י), וכל זה מדינא, אבל י"א דתקנת קדמונים הוא דבמקום שאין אנשים רגילים להיות, כגון בב"ה של נשים או בשאר דבר אקראי שאשה רגילה ולא אנשים, כגון לומר שבגדים אלו לבשה אשה פלונית והן שלה, ואין רגילים אנשים לדקדק בזה, נשים נאמנות (ת"ה סי' שנ"ג ואגודה פ' י' יוחסין). ולכן יש מי שכתב דאפילו אשה יחידה, או קרוב או קטן, נאמנים בענין הכאה ובזיון ת"ח או שאר קטטות ומסירות, לפי שאין דרך להזמין עדים כשרים לזה, ואין פנאי להזמין (מהרי"ק שורש קע"ט ומהר"ם מריזבורג וכלבו סי' קט"ז). והוא שהתובע טוען ברי (מהרי"ק שורש כ"ג/צ"ג/) (וע"ל סכ"ח סט"ו בהג"ה).

And all of these invalidations [of women witnesses] apply even where valid male witnesses are not typically found (citing Rashba, Rambam, and the Beit Yosef). And all of this is according to the strict letter of the law. But there are those who say that there is an ancient *takana* (enactment) that in a place where men are not typically present, such as the women's section of a synagogue, or in other happenstance circumstances where women, but not men, are typically present — such as to say that a particular woman wore certain clothing and they belong to her — where men do not typically pay particular attention to such matters, women are believed (citing the Trumat HaDeshen and the Agudah). And accordingly, there is one who wrote that even a single woman, or a relative or a minor, are believed regarding assault or embarrassment of a *talmid chacham* or other quarrels or informing to the secular authorities, since there is no way or opportunity to invite valid witnesses to this (citing Maharik, Maharam, and Kol Bo). And this is so long as the plaintiff is certain of his claim (citing the Maharik).

In his earlier work, *Darchei Moshe* (commenting on the Tur, Choshen Mishpat 35:3), Rabbi Isserles provides somewhat greater detail about the ancient *takana* regarding women's testimony, stating that the Maharik ascribes this *takana* to Rabbenu Tam, and the Kol Bo ascribes it to Rabbenu Gershom Me'Or

Hagolah.[3] The Darchei Moshe states that even though, under the strict letter of the law, women's testimony is not accepted even in places where men are not commonly found, as stated by Rambam and Rashba, these earlier *takanot* provided for accepting women's statements in cases of assault, embarrassment of a *talmid chacham,* and all quarrels where valid witnesses are unlikely to be present, and states that this is also true in the case of informants. He notes that the Trumat HaDeshen limits women's testimony to uncommon, happenstance situations ("אקראי בעלמה") where men typically don't pay attention, as opposed to most cases of monetary damages, where presumably men are commonly present and paying attention. However, he goes on to say:

However, it appears to me that in matters of assault or injuries, women are believed, as stated by Rabbenu Tam, since this is also not common … and therefore it seems to me there is no reason to reject their words without clear proof.	מיהו נראה דבדבר הכאות וחבלות נשים נאמנות וכדברי רבינו תם דזה גם כן לא שכיחי ... ולכן נ"ל דאין לדחות דבריהם בלא ראיה ברורה.

Thus, the Darchei Moshe takes the earlier view of the Trumat HaDeshen, which allows women to testify regarding "women's matters" where men are either not present or not likely to be paying attention, and expands it based on the *takana* to include cases of assault or other injury. The theory seems to be that if the only witnesses to an incident are women, the reasons to admit their testimony are the same as for cases involving "women's matters." The essential factor is the absence of male witnesses rather than anything inherent to the incident. However, in line with the ruling of the Maharik, he limits the admissibility of women's testimony to cases where the plaintiff has made a "*bari*" claim (i.e. a claim in which the plaintiff asserts he is certain).

The Rishonim take two approaches to expand the admissibility of women's testimony from the cases described in the Talmud. The first is a case law approach, exemplified by the Trumat HaDeshen, who reasons by analogy from the midwife case to accept women's testimony in other areas where women are

3. See Maharik (R' Joseph Colon Trabotto, 1420–1480, Italy) Responsum # 179 (קע"ט), stating that an early enactment of Rabbenu Tam provides that even an individual woman (or relative) is believed to testify that she saw an assault because there is no opportunity to invite valid witnesses when there is a sudden event; see also Sefer KolBo *siman* 115 (קי"ו) describing the *takana* of Rabbenu Gershom, which cites the enactment of Rabbenu Tam.

likely to be the only witnesses present. He continues the limitations set forth in the Talmud regarding the nullification of women's testimony when there is conflicting testimony from a male witness. The second approach is a legislative approach, exemplified by the *takana* of Rabbenu Tam, which extends the admissibility of women's testimony to cases of assault and other situations that arise suddenly in places where men might be present but happened to not be present at the time of the incident. The *takana* seemingly does not address the acceptability of women's testimony if there was conflicting testimony from a male witness. However, the *takana* adds a new limitation: the woman's testimony is admissible only if the injured person can state with certainty who injured him (i.e. can make a "*bari*" claim). The admissibility of women's testimony only where the plaintiff makes a "*bari*" claim seems to be a throwback of sorts to the cases in the Mishnah (Yevamot 16:7 and Gittin 2:7) in which the woman's testimony is believed only with corroborating evidence. In the case of a "*bari*" claim, the certainty of the plaintiff provides some corroboration. However, it is not clear why such corroboration was deemed necessary, given that, in the absence of conflicting testimony, the midwife's testimony was accepted without need for corroboration.

It is interesting that the Rema takes as his premise that women's testimony is inadmissible. In his view, the *takana* does not change this formal exclusion of women's testimony. He describes the *takana* as providing that "we believe women" (נשים נאמנות) in the situations covered by the *takana* without expressly calling their statements testimony. As a result, the Rema creates a hybrid situation: women are not eligible to give formal "testimony," but their statements are relied on to determine the outcome of certain court cases.

Acharonim

Several Acharonim comment on the Rema's statement in Choshen Mishpat 35:14 and try to limit its scope. The Me'irat Einayim (R' Yehoshua Falk, 1555–1614, Poland) states (in Choshen Mishpat 35:30) that the Tur (in Choshen Mishpat seif 408) cites the Rambam's position that only kosher witnesses can be relied on in cases involving monetary damages (נזיקין). He further states that neither the Tur nor the Shulchan Aruch nor the Rema himself say that the ancient *takana* referred to by the Rema is strong enough to allow women

to testify in cases of monetary damages. In support of his position, the Me'irat Einayim cites the Trumat HaDeshen (*se'if* שנ"ג) as well as Darchei Moshe on Choshen Mishpat 35:13 and 408. This appears to be a misreading of the Darchei Moshe on Choshen Mishpat 35, which describes the *takana* as covering assaults (הכאות) and quarrels (כל דבר קטטה) and extends it to other forms of injury (חבלות). Moreover, while the Rema does not comment about women's testimony in *siman* 408 of the Shulchan Aruch, the Darchei Moshe's comment on *siman* 408 of the Tur refers to his comments on *siman* 35, indicating his belief that the expanded approach to women's testimony described there applies as well in cases of monetary damages.

The Shach (R' Shabbetai Kohen, 1621–1662, Eastern Europe) states that while the Maharshal allowed women's testimony, it was only in the absence of a *chazakah* regarding ownership of the property in dispute. If there was a *chazakah* of ownership for three years, it would outweigh any testimony by women to the contrary. He also states that, in any case, the testimony of a single male witness outweighs the testimony of two female witnesses, again citing the Maharshal.

The Nodah B'Yehudah (R' Ezekiel Landau, 1713, Poland — 1793, Prague) issues a responsum (Choshen Mishpat #58) (שו"ת נודע ביהודה מהדורא תנייא — חושן משפט סימן נח) elaborating on the issue of women's testimony. The case involved a situation where, several days after the occurrence of a theft, two women testified that they had seen the stolen items in a certain person's home, and the accused person denied stealing them. The Nodah B'Yehudah noted that, with respect to an occurrence in a place where women are typically found and men are not, women witnesses would be believed even without the *takana* referred to by the Rema, based on the midwife discussed in the Gemara. However, since this theft occurred under circumstances where men and women were equally unlikely to be found, as is the case in most instances of assaults and quarrels, the only basis for admitting the women's testimony was the *takana* referred to by the Rema. Yet the *takana,* as described by the Rema, would permit using women's testimony only where the plaintiff made a "*bari*" claim against the accused. In this case, although the plaintiff could state with certainty that he had been robbed, he was not certain of the thief. Thus the *takana* would not allow for admitting the women's testimony in this case.

However, the Nodah B'Yehudah goes beyond this reason to reject the women's testimony. He states that even if the plaintiff had made a "*bari*" claim that he had seen the stolen items in the accused's home, the women's testimony

would not be admitted. Unlike the situations covered by the *takana,* where the assault or quarrel occurred suddenly and the only possible witnesses were on the scene at that very moment, the women here did not testify that they saw the theft being committed but only that they had seen the stolen items in the accused's home. Thus, it was possible that there could be male witnesses who also saw the items in the accused's possession. The Nodah B'Yehuda declines to extend the *takana* to this situation. He concludes his *teshuva* by clarifying that he is not deciding that the women's testimony would be accepted if they had in fact witnessed the theft, but that there is room to reach such a decision in those circumstances.

The Aruch HaShulchan (Rabbi Yechiel Michel Epstein, 1829–1908, Lithuania) takes a more complex position**.** In his discussion of invalid witnesses (Choshen Mishpat, *siman* 35, *se'if* 13), he begins by stating that we do not accept the testimony of invalid witnesses even if there are no valid witnesses. He then refers to the early *takana* discussed by the Rema as well as the various limitations on admissibility of women's testimony raised by other *poskim,* describing the position that women's testimony is accepted in places where women are commonly found and men are not and the view that women's testimony is accepted regarding assault, embarrassment of a *talmid chacham,* other quarrels and disagreements, and informants. However, in line with the Rema, he limits reliance on women's testimony under the *takana* to cases where the plaintiff has direct knowledge that enables him to make a "*bari*" claim. Moreover, in reliance on the Schach, he holds that, even after the *takana*, a single valid (i.e. male) witness is believed more than any number of invalid (i.e. women) witnesses, and, in reliance on the Maharshal, he holds that the testimony of women does not override the presumption of possession (*chazakah*). He then cites the position of the Nimukei Yosef that, even under the *takana,* women's testimony is accepted only when the essence of the matter is already known and not denied by the defendant, in which case the women's testimony is permitted to supply the details. But if the only knowledge of the event is from the women's testimony and the defendant completely denies the claim, we do not judge based on their testimony. Here, again, we see a requirement that the woman's testimony needs some corroboration coupled with a belief that the women's testimony can be overridden by contradictory male testimony.

However, in his discussion of Laws of Monetary Damages, (Choshen Mishpat, *siman* 408, *se'if* 1–2), the Aruch HaShulchan takes a more expansive view of the admissibility of women's testimony and does not mention any of

the limitations he described in *siman* 35. He begins his discussion of damages for causing injury by reiterating the Rambam's ruling that such damages are only payable based on the testimony of valid witnesses. He goes on to say that the Rema had already limited this ruling to the strict letter of the law and had ruled based on the earlier *takana* of Rabbenu Tam that, in a place where no valid witnesses were present, we accept the testimony of invalid (i.e. women) witnesses. He notes that the Me'irat Einayim argued that the earlier *takana* applies only in uncommon occurrences but not in cases of monetary injury, which are common. To this point, the Aruch Hashulchan responds in extremely strong language:

ותמיהני דא"כ לא שבקת חיי דמאין נקח עדים כשרים לנזקי שן ורגל וכה"ג

> And I was shocked because if this is so, there is no room left to survive, because from where will parties get valid witnesses to [various forms of property damage].

He speculates that the primary reason people opposed allowing testimony of invalid witnesses was out of a concern that such witnesses would be more likely to accept payment from one of the parties to testify falsely. His solution is to give the *beit din* the power to reject testimony of invalid witnesses that it finds not credible and to admit testimony that it believes would lead to a correct judgment. He believes that this approach is necessary:

שאם אי אתה אומר כן יחריבו השדות והגנות והפרדסים ואין אומר השב

> Because if you do not say so, the fields, gardens, and orchards will be destroyed and there will be nobody to respond.

It is difficult to reconcile the statements of the Aruch HaShulchan in these two *simanim*. However, one possible reading is that, while he acknowledges that, as a legal matter, the *halakha* contains these limitations on women's testimony, he believes that in judging actual cases, there is room for a *beit din* to consider women's testimony if it determines that their testimony is necessary to reach a correct judgment. Yet even in his discussion of the limitations on women's testimony, the language of the Aruch HaShulchan displays a subtle development in the thinking about women's testimony. Whereas the Rema avoids using the word testimony (עדות) regarding women's participation in court proceedings, and instead speaks of women's "statements" (דבריהם) and that

women "are believed" (נשים נאמנות), the Aruch HaShulchan discusses women's statements in court proceedings using the language of testimony (עדות).

Conclusion

Although, on its face, the Torah does not expressly specify a gender requirement for testimony, from the time of the Mishnah, the Torah verses have been interpreted to exclude women as valid witnesses. Nevertheless, both the Mishnah and the Gemara contain specific examples of situations where women's statements were relied on, most notably the midwife's statements as to which child was born first and which child was born to which mother, thus establishing a precedent that, in the absence of other witnesses, a woman's "testimony" could determine both economic and personal status questions.

The Sephardic Rishonim, most notably the Rambam and the Shulchan Aruch, followed the Talmudic general rule that women's testimony is inadmissible and do not include any of the contrary examples as normative *halakha*. However, the Ashkenazic Rishonim not only rely on the Talmudic exceptions to the general rule but expand them. The first expansion reflects a case law approach that extends the principle behind the midwife to other situations where women were likely to be the only available witnesses, such as regarding transactions in the women's section of the synagogue. The second expansion is a legislative enactment (*takana*) by Rabbenu Tam that accepts women's statements in court proceedings regarding incidents, such as assaults, that arose suddenly in places where men might have been present but were not present at the time of the incident. Each of these expansions comes with its own limitations. Under the case law approach, women's "testimony" could be nullified, or perhaps outweighed, by the contrary testimony of a single male witness. Under the *takana*, women's "testimony" was not admissible unless the plaintiff could make a definite ("*bari*") claim. The Rema preserves both of these expansions while seemingly taking pains to avoid referring to the women's statements as testimony.

The Acharonim try to limit the scope of the Rema's rulings by focusing on the limitations on women's testimony but do not deny that there were some limited, instances in which women's statements would be admissible. The Nodah B'Yehuda, in his *teshuva*, expressly acknowledges both the case law and

takana as bases for accepting women's testimony (at times even referring to it as testimony) while finding that neither applied in the particular case. The Aruch HaShulchan, in his discussion of valid and invalid witnesses, preserves both the expansions regarding the acceptance of women's statements in court proceedings and the limitations on admitting such statements. However, he gives added legitimacy to such statements by referring to them as testimony. Moreover, in his discussion of the laws of monetary damages, he disagrees with *poskim* who limit the admissibility of women's testimony and, in extremely strong language, urges judges to consider women's testimony where it is necessary to reach a correct result.

Thus, over time we have moved, very gradually, from categorical statements of the inadmissibility of women's testimony to reliance on women's statements in court proceedings in limited situations to the labeling of such statements as testimony and to the call by a major *posek* for judges to rely on women's testimony whenever necessary to reach a correct judgment.

Female Sages and Adding the Imahot[1]

Rabbi Dr. Wendy Zierler

Prologue

In the short speech I gave on the occasion of my receiving *semikhah* from Yeshivat Maharat, I suggested that ordination of women as rabbis represents a paradigm shift that calls for the reformulation of the *mesorah* not only as *Pirkei Avot,* but also as *Pirkei Imahot*. As such, I offered a new formulation of the things that sustain the world, not just three things, corresponding to the *avot* (the three forefathers), as seen in Pirkei Avot 1:2 and 1:18, but four, corresponding to the *imahot* (the four foremothers).[2] I offered these four things in an effort to highlight what has changed with the advent of women's learning, teaching, and leadership, and how these changes ought to inform Jewish leadership and decision making going forward:

עַל אַרבעה דְּבָרִים הָעוֹלָם עוֹמֵד: עַל הלימוד, ועל האהבה, ועל שוויון ושלמות.

The new world of Jewish women's spiritual and halakhic leadership stands:

a. *Al halimmud*, on learning: Women's Torah learning has transformed everything in ways that we have only begun to appreciate. By this, I

1. Many thanks to my *teshuvah* advisor R. Ysoscher Katz for his incisive and helpful feedback and suggestions; to R. Dov Linzer for the *teshuvah* writing workshop that helped initiate this project; to my *hevruta*, R. Lindsey Taylor Guthartz and my life and learning partner, Daniel Feit, who each helped me incubate its fundamental arguments.

2. I will note that there is a strain in rabbinic literature that enumerates six foremothers so as to include Bilhah and Zilpah, and draws an analogy between these six mothers, the six days of creation, and the six orders of the Mishnah. See for example Bamidbar Rabbah 12, Shir Hashirim Rabbah 6, Esther Rabbah 1.

mean that critical masses of women have developed the knowledge and assumed the spiritual leadership powers that enable them, for the first time in history, to contribute substantively to the liturgical and legal discourse and its communal implications.

b. *Al ha'ahavah*, on love: Love is at the center of our daily liturgical declarations of faith — ואהבת את ה' אלוקיך — and at the center of our ethical convictions — ואהבת לרעך כמוך. And yet it appears on neither of the prior Pirkei Avot lists of sustaining values. One contribution that feminist psychology, theory and women's leadership and teaching can offer is the restoration of love to the primary place that it ought to occupy in our religious consciousness: love of God, love of Torah, love of family, and love of humanity.

c. *Al shivyon*, on equality: The first chapter of the Torah teaches that all human beings are created *Betselem Elokim*, in the image of God. Longstanding trends in human society and in *halakha* have militated against the promulgation of that divinely ordained value. The full enlistment of women in Jewish leadership, decision making, and spirituality bring us closer to the actualization of that principle of equality and fundamental human dignity.

d. *Va'al shlemut*, on wholeness: If God is often presented in *midrashic* tradition as *Hamelekh she-hashalom lo,* the King whose domain is peace; or in the *Amidah* liturgy, as the God of Abraham, Isaac and Jacob, to the exclusion of the founding foremothers of our nation, the feminine noun *shleimut* urges us to consider the *Havaya she-hashleimut lah* — the Divine Being defined by wholeness and inclusivity. The principle of *shleimut* urges us in our current moment, where we see more and more women entering the ranks of Jewish leadership and scholarship, to develop a more inclusive theology, liturgy, social view, and religious practice that stands for true wholeness and inclusivity in our community and in the world.

I mention all of this as an overture to the following consideration of liturgical change and the desire to see women's voices in Orthodox liturgy, beginning with the addition of the *imahot* in the thrice-daily Amidah liturgy. In addressing this issue, as a newly-minted Orthodox rabbi, one who has over the past three years attended daily *minyan* and confronted, viscerally and painfully, the utter absence of women's voices in our *siddurim,* I consider it important to

approach this question in terms of the precedents provided by tradition but also with an awareness of what tradition has yet to actualize. My hope in presenting these core values of learning, love, equality, and wholeness, principles that arise from our tradition but that have not yet been adduced as core values or as *halakhic* meta-principles, is to call attention to the absent perspective and contributions of חכמות (female scholars) in the formulation of the מטבע שטבעו חכמים — the liturgical coinage fashioned and stamped by the (male) scholars of our past. The plain fact is that half the community was unrepresented in the process and the substance of the original coinage, not to mention in the centuries-old conversation about liturgy that ensued. Women's perspectives are needed both to offer new interpretations of traditional sources on Jewish liturgy and to suggest alternative coinages.

As such, I begin with contemporary, women-centered readings of two Talmudic sources.

לא כיזבו בו: You Should Not Speak Falsely About God

The first source, from BT Yoma 69b, deals specifically with liturgical change:

> והא דרב מתנא מטייא לדרבי יהושע בן לוי דאמר רבי יהושע בן לוי למה נקרא שמן אנשי כנסת הגדולה? שהחזירו עטרה ליושנה. אתא משה אמר (דברים י, יז) האל הגדול הגבור והנורא אתא ירמיה ואמר נכרים מקרקרין בהיכלו. איה נוראותיו לא אמר נורא אתא דניאל אמר נכרים משתעבדים בבניו איה גבורותיו לא אמר גבור אתו אינהו ואמרו אדרבה זו היא גבורת גבורתו שכובש את יצרו שנותן ארך אפים לרשעים ואלו הן נוראותיו שאלמלא מוראו של הקב"ה היאך אומה אחת יכולה להתקיים בין האומות. ורבנן היכי עבדי הכי ועקרי תקנתא דתקין משה אמר רבי אלעזר מתוך שיודעין בהקב"ה שאמתי הוא לפיכך לא כיזבו בו.
>
> This interpretation that Rav Mattana said corresponds with the opinion of Rabbi Yehoshua ben Levi, who said: Why were the members of the Great Assembly called by that name? Because they returned God's crown to its former glory. How so? Moses came and said in his prayer: "The great, the mighty, and the awesome God" (Deuteronomy 10:17). Jeremiah the prophet came and said: Gentiles are carousing in His sanctuary; where is His awesomeness? Hence he did not say "awesome" in his prayer: "The great God, the mighty Lord of Hosts, is His name" (Jeremiah 32:18). Daniel came and said: Gentiles are enslaving His children; where is His might? Hence he did not say mighty in his

> prayer: "The great and awesome God" (Daniel 9:4). The members of the Great Assembly came and said: On the contrary, this is the might of God's might, conquering inclination in demonstrating patience toward the wicked. And God's awesomeness is thus: Were it not for the awesomeness of the Holy Blessed One, how could one lone people survive among the nations? The Gemara asks: And the Rabbis, i.e., Jeremiah and Daniel, how could they do this and uproot an ordinance instituted by Moses, the greatest teacher, who instituted the mention of these attributes in prayer? Rabbi Elazar said: They did so because they knew of the Holy One Blessed be He, that He is truthful and hates a lie. Consequently, they did not speak falsely about God.

R. Joshua ben Levi's teaching here deals with the *nusakh* of the Avot blessing and the notion of liturgical/historical truth, acknowledging that under certain historical circumstances, changes might need to be made to liturgy so as to make the prayer ring true. Here, a liturgical formula, attributed originally to Moses, is modified to represent contemporary reality, with the prophets Jeremiah and Daniel remade after the manner of the sages. The words נורא and גבור are removed from the Avot blessing in order to reflect the Jewish experience of exile and the felt reality of not having been protected by a purportedly awesome and courageous God. According to R. Joshua ben Levi, the greatness of the Men of the Great Assembly was that they found a way to restore the relevance of that original liturgical formula by reinterpreting the meaning of God's גבורה and מורא for their time. Writing from a position of political powerlessness, they fashioned an alternative liturgical theology where the notion of manly (from the root ג.ב.ר) might was radically redefined as the capacity to conquer one's "*yetser*" (inclination).[3] The ostensible message of this Gemara is twofold: 1) respect for liturgical truth and the need, in some instances, to adapt the liturgical formula to historical, social or cultural experience and 2) concomitant respect for tradition that encourages creative exegesis to reframe or re-invigorate liturgical truth.

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3. Cf. the statement attributed to Ben Zoma in Mishnah Avot 4:1, and the prooftext for this idea, from Mishlei 16:32 טוב ארך אפיים, מגיבור. It is worth noting, of course, that the verse in Proverbs pits "*gevurah*" (might) against the virtue of being slow to anger, whereas Ben Zoma and then Men of the Great Assembly, alike, redefined might as the capacity to conquer one's inclinations, and this applies not just to Jewish men in the seemingly impotent condition of exile, but to God, too.

A feminist, *hakhamot*-centered perspective on this source yields additional insights. If Jeremiah and Daniel were noted for their liturgical honesty (and their belief that God upholds the truth), and the rabbis are praised for a radical reinterpretation that fashions an image of God after the image of exilic Jewish men, then these are useful precedents. Why should literate, committed, praying women — and anybody else who cares about theological and liturgical truth — not do the same, and renew the glory of the liturgy in light of the broader meaning of the *avot* as encompassing both the foremothers and the forefathers? The liturgical *matbe'a* ought not to be so hardened by *halakha* as to be unwilling to admit this more correct representation of Jewish history and of God. Indeed, although the Avot blessing is often placed in a category of inflexible blessings that one ought not amend, this Talmudic *midrash*, attributed to a third century Palestinian *amora*, accepts as fact that this blessing was repeatedly amended in preceding generations. Deletions were made to the blessing, despite its Mosaic provenance, and then, as a result of creative exegesis, the deleted portions were re-added. In short, the supposed inflexible blessing is not so inflexible after all.

There are those who might argue that this is an incorrect reading: that the men of the Great Assembly modeled a way to ensure the future relevance of the blessing through creative re-interpretation and that later *poskim* codified the blessing in its current form. I contend, however, that a useful analogy can be proposed between the deletions and additions made to the Avot blessing and the idea of adding the *imahot* to the same blessing. As we shall see below, rabbinic sources are rife with material on the *imahot*, their significance to the covenant, and their unique merit. Yet, somehow, all of this was omitted from the *matbe'a*, in effect impoverishing the liturgical picture of God's covenantal relationship with our ancestors, forefathers and foremothers alike. For a woman committed to the thrice-daily spiritual exercise of prayer to confront this exclusively masculine, limited *matbe'a* is to experience not merely a slight against the history and memory of the matriarchs but also against God and divine providence. As such, the current coinage might be construed as constituting a form of כיזבו בו, a liturgical distortion of truth. If the Men of the Great Assembly restored the divine crown to its former glory by adding back divine might and awe-inspiration, so too, contemporary *hakhahim* and *hakhamot* might correct the theological and historical wrong of identifying God only with the forefathers by including Sarah, the founding first mother, along with Abraham, as objects of God's protection. In this sense, adding the *imahot* might be seen as a corrective redefinition of divine *gevurah* and *haganah* for our times.

כדי לעשות נחת רוח לנשים — In Order to Bring Spiritual Gratification to the Women

The second source, often invoked in discussions of the permissibility of women observing time- bound commandments to which they are considered exempt (even forbidden!), is BT Hagigah 16b:

> מיתיבי: דבר אל בני ישראל... וסמך, בני ישראל סומכין ואין בנות ישראל סומכות. רבי יוסי ורבי ישמעאל אומרים: בנות ישראל סומכות רשות. אמר רבי יוסי: סח לי אבא אלעזר: פעם אחת היה לנו עגל של זבחי שלמים, והביאנוהו לעזרת נשים, וסמכו עליו נשים. לא מפני שסמיכה בנשים – **אלא כדי לעשות נחת רוח לנשים.**
>
> The Gemara raises an objection from a *baraita*: "Speak to the children of [*benei*] Israel…and place hands" (Leviticus 1:2, 4). This means that we learn that the sons [*benei]* of Israel place their hands, but the daughters of Israel do not; Rabbi Yose and Rabbi Yishmael say: It is optional for the daughters of Israel to place their hands. Rabbi Yose said: The Sage Abba Elazar told me that on one occasion, we had a calf for a peace-offering, and we brought it to the Women's Courtyard, and women placed their hands on it. We did this not because there is an obligation of placing hands in the case of women, but **in order to offer spiritual gratification to the women.**[4]

In this Gemara, R. Yose in the name of R. Eliezer adduces a new principle: that there is value to departing from regular practice, even transgressing the law of a woman "performing work or activity on an animal that has been designated as *heqdesh*,"[5] in order to gratify the spiritual aspirations of women. The Gemara concludes that women were not required to perform the act of placing their hands on the sacrificial animal. Nevertheless, they were offered the spiritually pleasurable opportunity to do so. In other sources, most notably, in the commentary of the Rosh (R. Asher Ben Yehiel, 13th century) on BT

4. Rabbi Daniel Sperber discusses this source and concept as part of his presentation of the *halakhic* value and concept of *kevod habriyot* in *Darkah shel halakhah* (Jerusalem: Reuven Mass, 2007), p. 80–81.
5. See Judith Hauptmann's discussion of this sugya in *Rereading the Rabbis* https://www.sefaria.org/Rereading_the_Rabbis%3B_A_Woman's_Voice%2C_10_Ritual.62?ven=Rereading_The_Rabbis:_A_Woman%27s_Voice._By_Judith_Hauptman&lang=bi&with=all&lang2=en.

Rosh Hashanah 4:7, this principle of bringing spiritual gratification to women is extended to a discussion of other *mitzvot*, too:

> אין מעכבין את התינוקות מלתקוע הא נשים מעכבין והתניא אין מעכבין לא את הנשים ולא את התינוקות מלתקוע. אמר אביי לא קשיא הא ר' יהודה והא ר' יוסי ור"ש. דתניא בני ישראל סומכין ולא בנות ישראל סומכות דברי ר' יהודה ר' יוסי ור"ש אומרים נשים סומכות רשות והיה אומר ר"ת(צ) אע"פ שסתם תנא דמתני' כרבי יהודה הלכה כר' יוסי דנימוקו עמו *ואמרי' נמי בפרק המוצא תפילין (דף צו א) דמיכל בת שאול היתה מנחת תפילין. ואשתו של יונה היתה עולה לרגל. ומעשה רב. וכן ההוא עובדא דפרק אין דורשין (דף טז ב) הביאוהו לעזרת נשים וסמכו עליו נשים כדי לעשות נחת רוח לנשים. וגם היה אומר ר"ת דנשים יכולות לברך על מצות עשה שהזמן גרמא. אע"פ שהן פטורות ואין כאן משום ברכה לבטלה (רא"ש מסכת ראש השנה פרק ד' סימן ז)

> One need not prevent children from sounding the shofar on Rosh Hashanah. Implied is that if women wish to sound the shofar, then one prevents them from doing so. But isn't it taught in a *baraita* that one doesn't prevent women or children from sounding the shofar on a Festival? Abaye answers: This is not a problem, as the mishnah is in accordance with the opinion of Rabbi Yehuda, while the *baraita* accords with Rabbi Yose and Rabbi Shimon. As it is taught in a *baraita,* "Speak to the children of Israel … and place hands." This means that we learn that the sons [*benei]* of Israel place their hands, but the daughters of Israel do not, this is the statement of Rabbi Yehuda. Rabbi Yose and Rabbi Shimon say: It is optional for women, and one would say that even though the ruling in the Mishna typically goes with R. Yehuda, in this case, the ruling sides with R. Yose, as he provides reasoning. Furthermore it is said in the chapter of "He who finds Tefillin" [BT Eruvin 96a] that Mikhal, the daughter of Saul, would lay *tefillin,* and the Sages did not protest against her behavior, as she was permitted to do so. Similarly, the wife of Jonah would make the festival pilgrimage and the Sages did not protest against this practice. And this is a practice of a Rav [which would have a superior force in *halakha*]. Similarly, the case in Hagigah 16b, where they brought an animal to the woman's courtyard, and the women placed their hands on the animal, in order to spiritually gratify the women. Furthermore, Rabbeinu Tam teaches that women are permitted to make blessings on commandments that are time bound, even

> though they are exempt, and there is no issue, in this regard, of saying a blessing in vain.[6]

By analogizing the case of the animal brought into the Women's Courtyard with the general category of time-bound ritual commandments from which women are exempt, the Rosh effectively extends the principle of כדי לעשות נחת רוח לנשים beyond its original provenance to the notion of women's ritual involvement. Despite women's exemption from a whole category of mitzvot, the rabbis recognize women's spiritual yearnings and allow them to perform even those rituals from which they are exempt, and with a blessing! If this sensitivity to women's spiritual aspirations is demonstrated with regard to rituals from which women are exempt, how much more so should this principle extend to areas such as tefillah, where women are fully obligated in the same measure as men? As the Rambam teaches (Hilkhot Tefillah 1:2):

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6. See Tosafot Eruvin 96a, which quotes Rabbeinu Tam as saying the following:

   נשים סומכות רשות – מכאן אר"ת דמותר לנשים לברך על כל מצות עשה שהזמן גרמא אע"ג דפטורות כמו מיכל בת שאול שהיתה מסתמא גם מברכת

   Here Rabbeinu Tam adduces the example of Mikhal the daughter of Saul in order to claim that women are permitted to the say the blessing of "*asher kidshanu bemitsvotav*" when performing *mitsvot* that they are exempt from, even though some might claim that this constitutes a *berakhah levatalah*. Remarkably, Rabeinu Tam simply asserts that Mikhal simply said these *berakhot,* as if there was nothing controversial in the act whatsoever. And even though Mikhal was an aristocrat, whose life differed from the regular run of women, her example is seen not as an exception but as proof that all women are permitted to recite such blessings. It is important to note that there is a strain in Ashkenazi *psak* that does not accept the permissibility of women laying *tefillin*. In his gloss on Shuklhan Arukh Orah Hayyim Hilkhot Tefillin 38:3, where R. Yosef Caro rules that women and slaves are both exempt from laying *tefillin*, the Rema adds as follows in the name of the 13th-14th century legal compendium, the Kol Bo: ואם הנשים רוצין להחמיר על עצמן מוחין בידן — If women wish to be stringent with themselves and to take on the *mitzvah* of *tefillin,* they should be stopped from doing so. The Mishna Berura explains this position on the basis of a notion that in order to wear *tefillin,* one must have a clean body (*guf naki*) and women are not generally careful about maintaining this sort of cleanliness, a view that seems to be connected to a form of menstrual taboo. For background sources for this strain in Ashkenazi thinking about women's bodies in relation to *tefillin* see the position of the Ri as presented in the commentary of the Tosafot on Eruvin 96b: "For in the matter of *tefillin* women and slaves are like minors who have not yet reached the age of educability, that if they want to lay them we do not allow them because it might disgrace the *tefillin*."

לְפִיכָךְ נָשִׁים וַעֲבָדִים חַיָּבִין בִּתְפִלָּה לְפִי שֶׁהִיא מִצְוַת עֲשֵׂה שֶׁלֹּא הַזְּמַן גְּרָמָא אֶלָּא חִיּוּב מִצְוָה זוֹ כָּךְ הוּא שֶׁיְּהֵא אָדָם מִתְחַנֵּן וּמִתְפַּלֵּל בְּכָל יוֹם וּמַגִּיד שִׁבְחוֹ שֶׁל הַקָּדוֹשׁ בָּרוּךְ הוּא וְאַחַר כָּךְ שׁוֹאֵל צְרָכָיו שֶׁהוּא צָרִיךְ לָהֶם בְּבַקָּשָׁה וּבִתְחִנָּה וְאַחַר כָּךְ נוֹתֵן שֶׁבַח וְהוֹדָיָה לַה' עַל הַטּוֹבָה שֶׁהִשְׁפִּיעַ לוֹ כָּל אֶחָד לְפִי כֹּחוֹ:

> Accordingly, women and slaves are under an obligation to pray, this being a duty, the fulfillment of which is not time bound. The obligation in this precept is that every person should daily, according to his ability, offer up supplication and prayer; first uttering praises of God, then, with humble supplication and petition ask for all that he needs, and finally offer praise and thanksgiving to the Eternal for the benefits already bestowed upon him in rich measure.

Given women's full obligation[7] to pray daily, with the attendant requirement to offer proper praise of God, should not some measure of נחת רוח be extended to women to enable them to offer their praise in a spirit of truthfulness, sincerity, and dignity? Given the rabbis' demonstration of the principles of *ahavah*, *shivyon*, and *shleimut* through their willingness to depart from regular practice to show loving appreciation for women's spiritual strivings, ought we not attempt to act in a similarly inclusive and loving manner?[8]

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7. In contrast to the Rambam who insists on women's full obligation in *tefillah*, the Magen Avraham (R. Avraham Gombiner, 1635–1682) in Shulkhan Arukh Orah Hayyim 106:2 argues that women are obligated but not to the same extent as men. He writes that according to the Rambam, women are biblically commanded to pray, but "biblically, it is sufficient to recite one prayer a day, in any formulation that one wishes. Therefore, most women have the practice of not praying regularly, because immediately after washing their hands in the morning they say some request, and this is biblically sufficient, and it is possible that the sages did not extend their obligation any further. But the Ramban thinks that *tefillah* is rabbinic, and this is the opinion of most decisors." R. Ovadia Yosef follows this view that it is sufficient for women to utter one small prayer of request. See *Shut Yabia Omer* 6:17. The Mishna Berurah (106: 4) points out, however, that most of the *poskim* rule in line with the Ramban against the Rambam, and quoting the Sha'agat Aryeh, the Mishna Berurah rules that indeed, women are obligated in *tefillah*, and that they ought to say Shema with its blessings too, in order to juxtapose *geulah* with *tefillah*:

> וכן עיקר כי כן דעת רוב הפוסקים וכן הכריע בספר שאגת ארי' ע"כ יש להזהיר לנשים שיתפללו י"ח ונכון ג"כ שיקבלו עליהן עול מלכות שמים דהיינו שיאמרו עכ"פ שמע ישראל כדאיתא בסימן ע' ויאמרו ג"כ ברכת אמת ויציב כדי לסמוך גאולה לתפלה כמו שכתב המ"א בסימן ע' וכ"ז לענין שחרית ומנחה אבל תפלת ערבית שהוא רשות אע"פ שעכשיו כבר קבלוהו עליהם כל ישראל לחובה.

8. The *Alei Tamar* (Yissoschar Tamar, 1896–1982) on Berakhot 9 extends the usage of this term to pertain to the formula of the morning blessings, which might be deemed insulting to women.

With these principles and sources in mind, I now survey the history of past efforts to add the *imahot* to the Avot liturgy and analyze the relevant material pertaining to the interdiction against changing the liturgical coinage of the rabbis.

The Argument from Tradition: Historical Survey

Efforts to include the *imahot* in the Amidah liturgy began in the U.S. in the early 1970s, in the wake of the *Havurah* movement and the ordination of Sally Priesand by HUC-JIR in 1972.[9] Religion scholar Chava Weissler recalls attending a Jewish Women's and Men's Conference in 1973, where she led a creative Friday night service that included mention of the *imahot*. In 1976, Rabbi Laura Geller (ordained by HUC-JIR in 1975) called for the *imahot* to be included in the liturgy when she assumed a position at the USC Hillel. The same year, Brown undergraduates Naomi Janowitz and Margaret Moers Wenig (later ordained by HUC-JIR and a current HUC-JIR faculty member) published *Siddur Nashim*, which includes the matriarchs.[10] In the ensuing years, the inclusion of the *imahot* became a widespread practice in the liberal denominations of Judaism,[11] including the Masorati and Conservative movements.

In a 2012 essay surveying the history of these changes, historian and former YULA Judaic Studies teacher Sara Smith contrasts the liturgical changes in those movements with the resistance to them in Orthodoxy:

> The question of whether or how to insert the Imahot into the Amidah is almost non- existent within Orthodox circles because Orthodox Judaism is bound by a halakhic process that intentionally

9. Prior to Sally Priesand there was Regina Jonas, ordained by Rabbi Dr. Max Dienemann in Germany in 1935.
10. Sara Smith, "The Imahot in the Amidah: A History," *Contemporary Jewry* 32:3 (October 2012, Vol. 32, No. 3 (October 2012), pp. 314.
11. The Reform movement addressed the question of whether to add the *imahot* to the liturgy and in what form, and whether Bilhah and Zilpah ought to be included among the foremothers in the CCAR Responsum 5763.6. See https://www.ccarnet.org/responsa-topics/matriarchs-in-the-tefilah/ for the text of the *teshuva*. The reasoning provided is similar to that of a Conservative movement *teshuva* written by Joel Rembaum discussed below.

> makes change slow and difficult. Rabbinic tradition considers the Amidah to be a sacred text and sets up barriers to prevent actions that would lead to meddling with the text. Still….the underlying issues of inclusivity and sensitivity toward women are increasingly present in some liberal Orthodox communities. In many of these, the quest for a functional alternative to changing the Amidah has resulted in a number of other liturgical changes. Some of Orthodoxy's rabbinic and lay leadership have responded to the growing desire to create an inclusive liturgy by adding the Imahot to prayers and texts that are of a less inflexible nature than the Amidah. These texts include, but are not limited to, the Mi Shebeirach prayers (prayers for members of the community in need of healing or assistance), Birkat Hamazon (grace after meals), and the Ushpizin (list of guests invited into the sukkah) text.[12]

Despite general resistance in Orthodoxy to liturgical change to the statutory parts of *tefillah*, the changes to more flexible prayers have found their way into individual Orthodox communities, demonstrating that the liberal origins of the push for change do not disqualify these changes in the eyes of at least some elements within Orthodoxy.

In 1990, Rabbi Joel Rembaum of the Conservative Rabbinic Assembly published a responsum[13] defending the inclusion of the *imahot* in the Avot blessing on the following grounds:

- A general belief in the flexibility of liturgy to adapt to the needs of different generations, as well as historical evidence of certain changes in the formulation of the Amidah blessings.
- A selective reading of Rambam Hilkhot Berakhot 1:6., which indicates that should the worshiper deviate post-facto from the fixed language of a blessing (מטבע), the religious obligation associated with the blessing will have been fulfilled so long as the blessing included reference to God's

12. Ibid, p. 233–323.
13. Rabbi Joel E. Rembaum, " Regarding the Inclusion of the Names of the Matriarchs in the First Blessing of the עמידה" https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19861990/rembaum_matriarchs.pdf. This responsum was adopted by the CJLS on March 3, 1990 with nine votes in favor, six opposed, and four abstentions (9–6–4). The names of voting members are unavailable.

ineffable name and kingship (שם מלכות) and the wording of the blessing remains consistent with the established theme (ענין) of the prayer. This principle is set forth in the same paragraph where Rambam allows for the recitation of blessing in all languages. Traditions from BT Berakhot 40b and Sotah 32a-33a serve as the foundation for Rambam's legislation in these cases. Rembaum acknowledges that in the preceding *halakha* (Hilkhot Berakhot 1:5, the pre-facto /*lehatkhilah* scenario), the Rambam says that one may not deviate from the blessing formula composed by Ezra.[14] Nevertheless, based on R. Yosef Caro's Kesef Mishneh commentary on Rambam (Hilkhot Berakhot 1:5), Rembaum concludes that liturgical variation is not rejected by Talmudic tradition.

- The Rambam and his commentators, Rembaum claims, tolerate liturgical change within certain normative parameters. Making small additions or subtractions, or paraphrasing the original formula while preserving the theme and intent of blessing, is permissible. According to Rembaum, adding the *imahot* falls within these acceptable parameters.[15]
- On this basis, Rembaum concludes that adding the *imahot* is warranted and appropriate for a generation when women are assuming more significant roles in the religious community. In his view, "it is appropriate that the prayer that expresses the unity, commitment and lofty aspirations of the Jewish people, the Amidah, be modified so that it can speak to all members of our congregations, male and female alike."

Rembaum's responsum in favor of the inclusion of the *imahot* in the Avot blessing receives historical and *midrashic* support in an essay on the *imahot* in rabbinic literature by his Conservative rabbinic colleague R. Alvan Kaunfer, who identifies 76 instances of the founding role and merit of the *imahot* in rabbinic literature.[16] According to Kaunfer, "It would seem that at least to some

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14. Rambam Mishneh Torah, Hilkhot Berakhot 1:5:

וְנוֹסַח כָּל הַבְּרָכוֹת עָזְרָא וּבֵית דִּינוֹ תִּקְּנוּם. וְאֵין רָאוּי לְשַׁנּוֹתָם וְלֹא לְהוֹסִיף עַל אַחַת מֵהֶם וְלֹא לִגְרֹעַ מִמֶּנָּה. וְכָל הַמְשַׁנֶּה מִמַּטְבֵּעַ שֶׁטָּבְעוּ חֲכָמִים בִּבְרָכוֹת אֵינוֹ אֶלָּא טוֹעֶה.

See also, Rambam Hilkhot Keriyat Shema 1:7:

כְּלָלוֹ שֶׁל דָּבָר כָּל הַמְשַׁנֶּה מִמַּטְבֵּעַ שֶׁטָּבְעוּ חֲכָמִים בִּבְרָכוֹת הֲרֵי זֶה טוֹעֶה וְחוֹזֵר וּמְבָרֵךְ כַּמַּטְבֵּעַ.

15. Rembaum does not distinguish between *lehatkhilah* and *bedi'eved* in this case, which opens him up to critique, as we shall see.

16. Alvan Kaunfer, "Who Knows Four? The Imahot in Rabbinic Judaism" *Judaism.* Win '95 44(1): 94–103.

rabbinic sages, the Matriarchs were deemed worthy of mention as founders of Judaism, along with their male counterparts" and that *zekhut imahot* existed as "reserve of merit to be tapped in prayerful supplication."[17] Against the charge that interest in the *imahot* is an "invention of the past decade," Kaunfer effectively demonstrates that the *imahot* were central to rabbinic literature.[18]

Kaunfer's argument does not succeed, however, in parrying the critique of the Rembaum responsum on *halakhic* or theological grounds. Indeed, the thinness of Rembaum's consideration of *halakhic* sources makes it a ready target for the more *halakhically* conservative members of the Conservative movement. In a 2001 rejoinder (revised and republished in 2007), Rabbi David Golinkin, current President of the Schechter Institutes Inc., targets Rembaum's selective reading of the Rambam and his apparent failure to distinguish between post-facto changes to the liturgy, which the Rambam appears to accept (Hilkhot Berakhot 1:6), and changes before the fact (*lehatkhilah*), which the Rambam appears to oppose (Hilkhot Berakhot 1:5, Hilkhot Kriyat Shema 1:7).[19] But Golinkin doesn't restrict his criticism to what he considers Rembaum's shoddy reading of Maimonides. Rather, he adds the following objections, based on the purportedly fixed character of the opening blessings of the Amidah, and a biblically-based, immutably patriarchal notion of the Covenant:

- According to Rabbi Golinkin, the idea of adding the *imahot* to the conclusion of the Avot blessing is unprecedented in the last 2,000 years, disqualifying it from the outset. Of course, the fact that something hasn't occurred previously doesn't in and of itself make it forbidden, hence the phrase, *Lo ra'inu eino ra'ayah*."[20]
- The *Magen Avraham* ending of the Avot blessing, Rabbi Golinkin argues, is based on a biblical verse (Genesis 15:1), and thus should not

17. Ibid, p. 95.

18. Ibid, p. 101.

19. David Golinkin, "Question: There is a custom today to add the *Imahot* to the first blessing of the *Amidah*. Is it permissible to do so according to Jewish law?" *Responsa in a Moment* 1: 6 (February 2007) https://schechter.edu/a-responsum-concerning-the-addition-of-the-imahot-matriarchs-to-the-amidah-silent-devotion-1-responsa-in-a-moment-volume-1-number-6-february-2007/.

20. See Mishnah Eduyot 2:1–2 and Mishnah Zevahim 12:4. For discussions of when unprecedentedness does serve as proof, see Aryeh Klapper, "Does 'It's Never Been Done" Imply It Never Should be Done?" https://moderntoraleadership.wordpress.com/2017/03/31/does-its-never-been-done-imply-it-should-never-be-done-part-2/.

be changed. In fact, this is not quite true, as "*magen Avraham*" is not a verbatim quotation of Genesis 15:1, and thus itself marks a change.

- There is no reference in the Bible, says Rabbi Golinkin, to a God of the foremothers: in his view, the phrase 'God of Sarah, God of Rebecca, God of Rachel, and God of Leah' is not "biblical Hebrew because God did not make a covenant with the Matriarchs." In my view, this part of Golinkin's argument reflects a problematic, literalist, and static notion of the covenant, which would seem to be antithetical to any developmental theory of the relationship of God and Israel. By this calculus, anything that didn't happen in biblical times ought to remain outside the *halakhic* pale. It is worth reiterating, in this context, the rabbis' and later commentators' willingness to acknowledge the dynamic, evolving nature of such notions as merit and covenant. As we will explore further below, the Gemara in Shabbat 55a asserts in the name of Shmuel that תמה זכות אבות; we've depleted our *zechut avot*. This then raises the obvious question if it is at all appropriate still to recite the first *bracha* in the Amidah, which is about זכות/חסדי אבות, since those merits have dissipated. R. Tam, introducing a new concept, saysזכות אבות תמה אבל ברית אבות לא תמה. The idea of ברית אבות claims that, even if we have exhausted זכות אבות, the covenant persists. This enables R. Tam to salvage the first *bracha* by reinterpreting its meaning to be about *brit*, not about *zekhut*. This is but one example of how historical reality rendered certain formulations obsolete and how creative reinterpretation can salvage liturgical meaning. Adding the *imahot* might be seen as a similar, traditionally grounded innovation.
- In Rabbi Golinkin's view, the Sages did not include the matriarchs because Avot deals with the plain meaning of the biblical text and they did not want to rewrite history. It is not at all clear to me, however, that the Avot blessing deals only with the plain meaning of the text given the references to "the bringing of a redeemer to the sons of their sons" ("*meivi go'el livnei beneihem*"), which is not a term that appears in Bereishit.
- Rabbi Golinkin contends that adding the *imahot* to the Avot blessing constitutes a falsification of history, tantamount to changing Lincoln's Gettysburg address. This, I would charge, is a spurious analogy, as the Gettysburg address was a speech authored by a particular man for a particular occasion. While recited in ceremonial contexts, that speech never pretended to serve as the ongoing spiritual script and liturgy for an entire people for all time. Hence, there would be little need to amend

Lincoln's speech, whereas the need for a relevant and truthful liturgy might necessitate liturgical change in certain circumstances.

- In addition to these biblical/historical objections, Rabbi Golinkin argues that egalitarian style "impoverishes our tradition, by making everything in Judaism homogenous and parve." It is unclear to me what "*parve*" means in this liturgical context. As far as homogeneity goes, it seems to me that the liturgical tradition is already highly homogeneous, given that it includes, with very few exceptions, only male voices and personalities despite the plethora of invocations of *zekhut imahot* in other rabbinic sources. And if biblical sources are meant to set the standard, why, in codifying the liturgy, did the rabbis and their descendants excise even such biblically-based women's prayers as Miriam's part in the Song of the Sea (Exodus 15:20–21) and Hannah's prayer in I Samuel 2?
- Finally, quoting an article by Debra Reed Blank, but no other textual proof, Rabbi Golinkin argues that liturgy is "meant to connect us to the past rather than be relevant."[21] I fail to be persuaded that this is the sole objective of liturgy, especially since rabbinic statutory prayer constitutes a break from Temple worship while the style of our recitation of the Amidah, in emulating Hannah rather than Eli, similarly marks a shift from one cultic mode and period to another. I contend, in fact, that our liturgy aims to construct a bridge from the past to the present and the future, providing a traditionally grounded literary and spiritual vehicle to express our sense of history as well as our yearnings for things to come. As such, it very much needs to be relevant to every generation and not stuck in a mode antithetical to contemporary values.

After all of this, Rabbi Golinkin suddenly shifts direction and tone, expressing sympathy for the desire to add the *imahot* to the liturgy and claiming that his problem is not so much with the goal of this addition, but with the particular method of adding the *imahot* to the opening or closing of the blessing. Instead, he supports the genre of *piyyutim*,[22] recommending that the following addition

21. See Deborah Reed Blank, "Liturgical Theory and Liturgical Change," *Conservative Judaism* 47: 2, (Winter, 1995): 53–63.
22. This is somewhat ironic, given his earlier focus on a proper reading of Maimonides and the Rambam's long-standing opposition to adding *piyyutim* to the core sections of *tefillah*.

by his Schechter colleague, Rabbi Dr. Einat Ramon, be inserted after the words "למען שמו באהבה":

נבואה אהלי שרה, רבקה, רחל ולאה,
ותהי גמילות חסדיהן לפנינו בכל עת ובכל שעה

> We shall enter the tents of Sarah, Rebecca, Rachel and Leah
> And their acts of lovingkindness shall be before us always and for all time.

This is an intriguing addition, but it is not more authentically traditional than simply adding "*ufoked Sarah*" or adding "*veSarah*" the end of the Magen Avraham blessing, given how in rabbinic sources the *hesed* and *zekhut* of the *avot* and *imahot* often appear in tandem. The verb *navo'ah* also strikes me as infelicitous given that it addresses us, the pray-ers, rather than God, and given the sexual connotations of "*bi'ah*" especially in the "tent" context.

In referring to Ramon's *piyyut,* Golinkin also cites a scholarly essay by Ramon, which provides additional theological support from rabbinic *midrash* for the invocation of *imahot* in the Amidah.[23] Golinkin cites Ramon as part of his effort to reject the adding of the *imahot* to the *matbe'a* of the Avot blessing — specifically the opening and closing thereof — but by so doing, he helps support the argument of those who wish to advocate for this change.

According to Ramon's "The Matriarchs and the Torah of Hesed (Loving-Kindness)," "The invocation of the matriarchs should be seen as a reference to divine lovingkindness (*hesed*) as embodied in the personal example of the acts of loving-kindness that the matriarchs of the Israelite nation brought to bear on their surroundings. These acts of loving-kindness are perceived in the *midrash* as an ultimate expression of the monotheistic-ethical perspective in which loving-kindness is viewed as the epitome of the covenant between humans and the Divine."[24] In direct contrast, then, to Rabbi Golinkin's insistence on the historically patriarchal nature of the biblical covenant, Ramon suggests that the egalitarian mention of the matriarchs in the Amidah emphasizes that the covenantal relationship with God unfolds through a wide range of daily activities and experiences relating to *hesed.* While she concedes (and laments)

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23. Einat Ramon, "The Matriarchs and the Torah of Hesed (Loving-Kindness)," *Nashim: A Journal of Jewish Women's Studies & Gender Issues* 10: 2 (Fall, 5766/2005), Jewish Women's Spirituality, pp. 154–177.

24. Ramon, pp. 154–55.

the patriarchal worldview that led the rabbis to exclude the *imahot* from the liturgy and to downplay women's formative contributions and relationship with God, she does not insist on the virtue of leaving this liturgical bias unchecked. "Ironically," Ramon notes, "as a result of the exclusion of Jewish women over the generations from public religious affairs, *gemilut hasadim* became perhaps their [Jewish women's] most central religious activity."[25] Given that, it would be an appropriate and salutary corrective to invoke the *hesed* and *zekhut* of the foremothers (and, by extension, of their female descendants) in this opening blessing of the Amidah. It would also correspond to the divine of attribute of גומל חסדים mentioned in this very *bracha*.

More recently, the concept of *zekhut imahot* has been explored in a 2018 article by Fordham Professor and Maharat Advanced Kollel graduate ('23) Sarit Kattan Gribetz. In this article, Kattan Gribetz[26] demonstrates the importance of *zekhut imahot* and argues that "the figure of Rachel stands most prominently among the matriarchs whose merit assists her descendants.[27] Already in tannaitic sources, and more so in amoraic sources, Rachel's deeds during her lifetime as well as her intercessory prayers on behalf of her children in future generations are presented as no less effective or powerful than those deeds of her male counterparts."[28] The significance of Rachel is reflected in the selection of poems about her that appear in the appendix to this essay. Some sources also see biblical references to הרים וגבעות (mountains and hills) as symbolic of the *avot* and *imahot*, with the mountains representing the forefathers and the hills, the foremothers.

I will note that some more recent sources place the matriarchs' merit not merely alongside but above that of the patriarchs. As previously mentioned, BT Shabbat 55a states in the name of Shmuel that תמה זכות אבות, that the merit

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25. Ibid, p. 160. See Jeremiah 31:14: קול ברמה נשמע רחל מבכה על בניה, מנעו קולך מבכי, ושבו בנים לגבולם

26. Sarit Kattan Gribetz, "*Zekhut Imahot*: Mothers, Fathers and Ancestral Merit in Rabbinic Sources." Journal for the Study of Judaism (2018): 263–296.

27. The centrality of the *imahot*, Rachel, in particular, can be seen not just in the plethora of rabbinic sources surveyed by Kaunfer and Kattan Gribetz, but also in such mystical / liturgical practices as Tikkun *hatsot*, which include sections entitled Tikkun Rachel and Tikkun Leah. See https://www.sefaria.org/Siddur_Edot_HaMizrach%2C_The_Midnight_Rite%2C_Tikkun_Rachel?lang=bi

28. Ibid, p. 263. Kattan Gribetz notes that in a number of *midrashim* Rachel appears alongside Abraham, in terms of their shared special merit. See pp. 276–286.

of the forefathers has lost its potency before God. The Sefat Emet (R. Yehuda Leib Alter, Poland, 1847–1905) insists that while the merit of the forefathers may have expired, that of the matriarchs remains in force:

> ויתקיים לנו במהרה מאמר מקפץ על הגבעות. גם הרים הם אבות. וגבעות זכות אמהות (ר"ה י"א ע"א) והנשים רחמנים ביותר כמ"ש חז"ל ששלחו לחולדה הנביאה (מגילה י"ד ע"ב) כן יעשה לנו עתה בזכות אמהות לכן גם למאן דאמר **תמה זכות אבות זכות אמהות לא תמה ! (**שבת נ"ה ע"א). (שפת אמת פסח תרמ"ב ד"ה בשיר)

> Speedily shall it come to pass, bounding over the hills. "Mountains" are the forefathers. And "hills" are the merit of the matriarchs. (BT Rosh Hashanah 11a). And women are especially compassionate, as our Sages of blessed memory wrote with respect to those who sent for Hulda the Prophetess (BT Megilah 14b). So, too, should it happen with us by virtue of the matriarchs, in accordance with the one who wrote that the merit of the forefathers ceased but that of the foremothers did not cease. (BT Shabbat 55a) — Sefat Emet, Pesah, 642, "In Song"

The Tsafnat Pa'aneah (R. Joseph Rosen of Dvinsk, 1858–1936) ערך זכות וחוב אופן ד' makes a similar argument about the enduring power of the matriarchs' merit (as opposed to the depleted merit of the patriarchs), arguing that the Israelites were redeemed from slavery in Egypt on account of the merit of righteous women. The Torat Yehiel (R. Akiva Yosef Schlesinger, 1838–1922) makes perhaps the most forceful and relevant arguments for our purposes:

> וזכרתי את בריתי יעקוב ואף את בריתי וגו' בחו"כ איתא את זה לרבות זכות האמהות דאל"כ הול"ל ברותי עם אברהם יצחק יעקב אע"כ כל אלו את לרבות ... ואם תמה זכות אבות (שבח נה) זכות אמהות לא תמה ובזכות נשים צדקניות גואלינו ה' צבאות **וכן בברכה א' דשמו"ע אצל אלהי אברהם כוונתינו "שרה" שאמרה גרש האמה הזאת ואת בנה וגו' (בראשיה כא), אלהי יצחק "רבקה" שלקחה הברכות ליעקב, אלהי יעקב "רחל ולאה" שבנו שתיהם את בית ישראל וגו (רות ד). (תורת יחיאל (עקיבה יהוסף שלעזינגער)** בחוקותי אות פח)

> And I shall remember my covenant with Jacob and my covenant with Isaac and my covenant with Abraham … In Behukotai this is brought to add the merit of the matriarchs, for it shouldn't have been said that way, rather the text should have said "My covenant with Abraham, Isaac and Jacob," rather, all this comes to add [the matriarchs] … And if the merit of the patriarchs ceases to be, the merit of the matriarchs does not cease (BT Shabbat 55). And so with the first blessing of the

> Shemoneh Esrei (Eighteen Blessings of the Amidah), we also intend to refer to Sarah, who told Abraham, "Expel this maidservant along with her son…" (Genesis 21); the God of Isaac refers to Rebecca, who took the blessings for Jacob; and the God of Jacob refers to Rachel and Leah, whose sons built up the House of Israel (Ruth 4) (Torat Yehiel Yosef Schlesinger, Behukotai 88).

According to R. Schlesinger's commentary on Parashat Behukotai 88, the repetition of the word '*brit*' in relation to each of the patriarchs is meant specifically to refer to the covenantal merit of the foremothers. And in the first blessing of the Shemoneh Esrei, when we invoke "*Elokei Avraham*," we actually refer to the God of Sarah and to her divinely endorsed insistence that Isaac inherit and not Ishamel. When we invoke "*Elokei Yitzchak*," we actually refer to the God of Rebecca who masterminded Jacob's claiming of the blessing from his father Isaac; and when we invoke the God of Jacob, we are speaking really of the God of Rachel and Leah who together [with the handmaids] built up the house of Israel. If that indeed is the intention of the blessing, then, why not explicitly mention Sarah's name?

Similarly, in his commentary on Parashat Balak 99, R. Schlesinger invokes the example of Rachel, who cries on behalf of her exiled children in Jeremiah 31:14–16, as proving that זכות אמהות אין לו גבול — there is no limit to the efficacious merit of the matriarchs. The variety and quantity of such sources offers ample precedent from tradition for invoking the matriarchs together with the patriarchs in the Avot blessing of the Amidah.[29]

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29. See for eg., the gloss on Shir Hashirim 2:8 in BT Rosh Hashanah 11a; the statement in the name of R. Yudan in Yerushalmi Sanhedrin 50, a, Chapter 10, Halakha 1. Other *midrashim* interpret the repetitions that are part and parcel of the poetics of biblical parallelism, identifying one part of a verse from Song of Songs with the merit of the fathers and the other with that of the mothers. (See Shir Hashirim Rabbah 2:9:4 and Bamidbar Rabbah 9:13). Bereshit Rabbah 39:11 traces three uses of the word *gedulah* and four uses of *berakha* in the stories of Abraham and concludes that the former three attribute greatness to the fathers while the latter four attribute blessing to the mothers; Shir Hashirim Rabbah 2:9:4. More recent sources include the Haggadah of the Maharal, which sees the merit of the forefathers and the foremothers as represented together in the rituals of the Passover seder, with the three forefathers invoked by way of the three *matsot* and the four foremothers in the four cups of wine.

Liturgical Change and the Idea of a Fixed Rabbinic Liturgical Coinage (מטבע שטבעו חכמים)

All the *halakhic* sources analyzed thus far are products either of the Conservative movement or the Academy. All that changed, however, with the founding of JOFA, which invited Rabbi Daniel Sperber to address these issues, leading to the publication of Rabbi Sperber's *On Changes in Jewish Liturgy: Options and Limitations* (Urim, 2010). This book offered a comprehensive, copiously sourced treatment of a wide range of issues relating to liturgical change from the perspective of Orthodoxy and traditional *halakhic* interpretation, covering such broad topics as "The Constant Evolution of Our Liturgical Text," "The Legitimacy of Change," and "The Limits of Flexibility of Change in Our Liturgy," as well as specific studies relating to the addition of *piyyutim* and Hasidic changes in prayer *nusakh*. It would be unwieldy and redundant for me to recapitulate every aspect of R. Sperber's analysis. I will, however, highlight sources that serve as lodestars for his approach and summarize his reading of key sources relating to שינוי המטבע.

Rabbi Sperber begins with Talmudic epigraphs that speak to the rabbinic desire for prayer to have the character of genuine supplication and be less ossified and formalistic:

> רַבִּי אֱלִיעֶזֶר אוֹמֵר כֹּל הָעוֹשֶׂה תְּפִלָּתוֹ קֶבַע וְכוּ׳: מַאי "קֶבַע"? אָמַר רַבִּי יַעֲקֹב בַּר אִידִי אָמַר רַבִּי אוֹשַׁעְיָא: כֹּל שֶׁתְּפִלָּתוֹ דּוֹמָה עָלָיו כְּמַשּׂוֹי. וְרַבָּנַן אָמְרִי:כֹּל מִי שֶׁאֵינוֹ אוֹמְרָהּ בְּלַשּׁוֹן תַּחֲנוּנִים. רַבָּה וְרַב יוֹסֵף דְּאָמְרִי תְּרַוַיְיהוּ: כֹּל שֶׁאֵינוֹ יָכוֹל לְחַדֵּשׁ בָּהּ דָּבָר.
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> Rabbi Eliezer says: One whose prayer is fixed, his prayer is not supplication. What is "fixed?" Rabbi Ya'akov bar Idi said that Rabbi Oshaya said: Anyone for whom his prayer is like a burden upon him. The Rabbis say: Anyone who does not pray in the language of supplication. Rabba and Rav Yosef both said: Anyone unable to introduce a novel element. (BT Berakhot 29b)

Keeping in mind the goals of sincerity and truth, on the one hand, and of conservation, on the other, R. Sperber sets out to investigate the historical, *halakhic*, and *hashkafic* issues surrounding liturgical change. He cites the opinions of many scholars who reject such changes, such as R. Hirz Scheur, Rabbi of Mintz, who inveighed against the amendments of the German Reformers, deeming liturgical change as "the worst aberration from Jewish faith," which

threatens to "split Judaism into two religions."[30] He is careful to note that the changes targeted in that case relate to the excising of any mention of the coming of the Messiah, the return to Israel, and the re-establishment of the Temple, major doctrinal changes that are not comparable to the desire to include the *imahot*, who were always part of traditional Jewish sources.

Rabbi Sperber traces this aversion to change back to the early Geonim and stretching into the twentieth century, with the writings of R. Soloveitchik, who considered God fundamentally unapproachable and prayer possible only by sacrificing all ego. Against these naysayers, R. Sperber mounts the historical counterargument of the "constant evolution of the siddur," bringing examples of variant texts and changes to various blessings in the Amidah, including "*birkat hashanim*," "*refa'einu*,' "*shema koleinu*," and "*lamalshinim*," as well as a consideration of *siddur*-printing and its role in conveying the impression of an enduringly stable liturgy.

Chapters 8 and 13 deals with the notion of שינוי המטבע, specifically those sources in the Talmud and Rishonim that appear to forbid liturgical change, beginning with BT Berakhot 40b:

> נִיתְנֵי כְּתַנָּאֵי: רָאָה פַּת וְאָמַר: "כַּמָּה נָאָה פַּת זוֹ, בָּרוּךְ הַמָּקוֹם שֶׁבָּרָאָהּ" – יָצָא. רָאָה תְּאֵנָה וְאָמַר "כַּמָּה נָאָה תְּאֵנָה זוֹ, בָּרוּךְ הַמָּקוֹם שֶׁבָּרָאָהּ" – **יָצָא, דִּבְרֵי רַבִּי מֵאִיר. רַבִּי יוֹסֵי אוֹמֵר: כׇּל הַמְשַׁנֶּה מִמַּטְבֵּעַ שֶׁטָּבְעוּ חֲכָמִים בִּבְרָכוֹת — לֹא יָצָא יְדֵי חוֹבָתוֹ.** נִיתְנֵי רַב הוּנָא דְּאָמַר כְּרַבִּי יוֹסֵי, וְרַבִּי יוֹחָנָן דְּאָמַר כְּרַבִּי מֵאִיר?! אָמַר לָךְ רַב הוּנָא: אֲנָא דַּאֲמָרִי אֲפִילּוּ לְרַבִּי מֵאִיר, עַד כָּאן לָא קָאָמַר רַבִּי מֵאִיר הָתָם, אֶלָּא הֵיכָא דְּקָא מַדְכַּר שְׁמַיָּהּ דְּלָא קָא מַדְכַּר שְׁמַיָּהּ דְּפַת אֲפִילּוּ רַבִּי מֵאִיר מוֹדֶה.וְרַבִּי יוֹחָנָן אָמַר לָךְ: אֲנָא דַּאֲמָרִי אֲפִילּוּ לְרַבִּי יוֹסֵי, עַד כָּאן לָא קָאָמַר רַבִּי יוֹסֵי הָתָם אֶלָּא מִשּׁוּם דְּקָאָמַר בָּרְכָה דְּלָא תַּקִּינוּ רַבָּנָן, אֲבָל אָמַר "שֶׁהַכֹּל נִהְיֶה בִּדְבָרוֹ" דְּתַקִּינוּ רַבָּנָן, אֲפִילּוּ רַבִּי יוֹסֵי מוֹדֶה.
>
> Let us say that this parallels a tannaitic source, as it was taught in a *Tosefta*: One who saw bread and said: How pleasant is this bread, blessed is the Omnipresent Who created it, fulfilled his blessing obligation. One who saw a fig and said: How pleasant is this fig, blessed is the Omnipresent Who created it, fulfilled. This accords with Rabbi Meir. Rabbi Yosei says: One who deviates from the formula coined

30. From "*Eleh divrei haberit*," 1819. Quoted in Daniel Sperber, *On Changes in Jewish Liturgy* (Israel: Urim, 2010), p. 12. The larger issue at play here is the *issur* of *lo titgodedu*, a Talmudic derivation based on a creative reading of Deut. 14:1, which prohibits ritual cutting of one's flesh, but which BT Yevamot 13b extends to departures from regular *halakhic* practice, which might lead to the creation of many different groups with different practices.

> by the Sages in blessings, did not fulfill his obligation. If so, can we say that Rav Huna, holds in accordance with Rabbi Yosei; and Rabbi Yoḥanan, holds in accordance with the opinion of Rabbi Meir? Rav Huna could have said to you: I said my statement, even in accordance with the opinion of Rabbi Meir, as Rabbi Meir only stated his opinion, that one who alters the formula of the blessing fulfills his obligation, there, where the individual explicitly mentions the term bread in his blessing, but where he does not mention the term bread, even Rabbi Meir agrees that he did not fulfill his obligation. And Rabbi Yoḥanan could have said to you: I said my statement, even in accordance with the opinion of Rabbi Yosei, as Rabbi Yosei only stated his opinion, that one who alters the formula of the blessing does not fulfill his obligation, there, because he recited a blessing that was not instituted by the Sages; however, if he recited: By whose word all things came to be, which was instituted by the Sages, even Rabbi Yose agrees that, after the fact, he fulfilled his obligation to recite a blessing.

Rabbi Sperber notes that there is a debate between R. Meir and R. Yose about changing the *nusah* of blessings; R. Meir is more permissive, but the discussion remains inconclusive. In the version of the same story that appears in the Yerushalmi Berakhot 6:2, however, the *halakha* follows R. Meir's more permissive opinion:

> תני רבי יוסי אומר כל המשנה על המטבע שטבעו חכמים לא יצא ידי חובתו...רבי מאיר אומר אפילו אמר ברוך שברא החפץ הזה מה נאה הוא זה יצא **רבי יעקב בר אחא בשם שמואל הלכה כר' מאיר...**

> R. Yose taught: One who alters the formula of the blessing does not fulfill his obligation… R. Meir says even one who says "Blessed is he who created this thing, how wonderful it is, fulfills his obligation. R. Yaakov bar Aha said in the name of Shmuel: The *halakha* is in accordance with R. Meir…

Rabbi Sperber cites a number of *poskim* (R. Hai Gaon, Tosfot of R. Yehuda on Berakhot 40b and others)[31] who, on the basis of this ruling in the Yerushalmi

31. The Rosh on Berkahot 40b seems to support the ruling of R. Meir, insisting that what is really at stake in ensuring the correctness of a blessing is that one mention God's name and the notion of *malkhut:*

> **רא"ש מסכת ברכות פרק ו**
>
> [דף מ ע"ב] ועל כולם אם אמר שהכל וכו'. אמר רב הונא חוץ מן הפת ויין רבי יוחנן אמר אפילו פת

that favors R. Meir, permit changes to the blessings composed by the Sages (Sperber p. 94). Most of the examples of change that he cites relate to changes to the *birkot hashahar*, for example, the שלא עשני גוי blessings, in light of anti-Semitism and fear of the censor.

He also considers the relevant sources in the Rambam that have already been mentioned with respect to the Rembaum Conservative responsum and the Golinkin dissent:

Rambam, Hilkhot Kriyat Shema, Chapter 1:7 shows little openness to any

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ויין(ע) וקיימא לן כרבי יוחנן לגבי רב הונא וכן נמי הא דפליגי רבי מאיר ורבי יוסי דרבי מאיר קאמר אם אמר על הפת ברוך המקום שבראו יצא ורבי יוסי קאמר כל המשנה ממטבע שטבעו חכמים בברכות לא יצא ידי חובתו קאמר עליה בירושלמי אמר רבי יעקב בר אחא בר שמואל (פ) הלכה כרבי מאיר **וגם לכאורה ר' יוחנן כרבי מאיר סבירא ליה אלא דהגמרא קא דחי לה. הא דקאמר רבי מאיר אם אמר על הפת ברוך המקום שבראו יצא מיירי בין בברכת המוציא ובין אחר אכילה ויצא בה ידי ברכה ראשונה כדאמרינן בנימין רעיא כרך ריפתא אמר בריך מריה דהאי פיתא אמר רב יצא. והא בעינן שלש ברכות. מאי יצא נמי דקאמר ידי ברכה ראשונה. והאמר רב כל ברכה שאין בה הזכרת השם אינה ברכה.סט דקאמר בריך רחמנא מריה דהאי פיתא. גופא אמר רב כל ברכה שאין בה הזכרת השם אינה ברכה. ור' יוחנן אמר כל ברכה שאין בה מלכות שמים אינה ברכה. אמר אביי כוותיה דרב מסתברא. דתנן לא עברתי ממצותיך ולא שכחתי לא עברתי מלברכך ולא שכחתי מלהזכיר שמך עליו. ורבי יוחנן אמר תני מלברכך ומלהזכיר שמך ומלכותך עליו.(צ) רב האי פסק הלכה כרבי יוחנן.(ק) ולעיל גבי בנימין רעיא מיירי שהזכיר גם מלכות. וי"ס דגרסינן בהו בפירוש ולרבי יוחנן דאמר כל ברכה שאין בה מלכות אינה ברכה דאמר בריך רחמנא מלכא מריה דהאי פיתא.ע ור"י היה מסופק אם הלכה כרב(ר) מדקאמר אביי מסתבר כוותיה(ש) וגם ר' יוחנן צריך להגיה מתניתין דמעשר שני. ונ"מ **שאם דילג מלכות שמים** [שלא] יחזור ויברך דשמא הויא ברכה לבטלה. ואם תאמר ברכה מעין שבע שאומר ש"ץ בערב שבת אין בה מלכות. וי"ל דהאל הקדוש שאין כמוהו חשוב מלכות כדאמרינן בפרק בתרא דראש השנה (דף לב א) דשמע ישראל ה' אלהינו(ת) ה' אחד זה מלכות וברכה ראשונה של שמונה עשרה(א) כיון דאית בה האל הגדול הוא חשוב כמו מלכות. ויש אומרים לפי שאמר אלהי אברהם הוה כמו מלכות לפי שעדיין לא המליכוהו עליהם העולם עד שבא אברהם אבינו והודיע טיבו בעולם והיינו דכתיב (בראשית כד) ה' אלהי השמים אשר לקחני מבית אבי

See also חידושי הרא"ה מסכת ברכות פרק ו — כיצד מברכין , which cites the ruling of the Yerushalmi.

See also :

ב"ח או"ח סימן קפז

וכל מי שמשנה המטבע וכו' בפרק כיצד מברכין (דף מ') ונראה דרצונו לומר דמשנה עיקר ענין המטבע שעליה נתקנה הברכה כגון ברכת הזן משנה אותה לענין הארץ וכן ברכת הארץ וברכת ירושלים משנה אותה לעניינים אחרים או שאומר עיקר הברכה אלא שלא הזכיר מה שחייבו חכמים להזכיר בה כגון שלא אמר ארץ חמדה טובה ורחבה או שלא אמר ברית ותורה בברכת הארץ ומלכות בית דוד בבונה ירושלים. אבל כשהזכיר מה שחייבו חכמים להזכיר בה וגם אינו משנה עיקר ענין הברכה לענין אחר אלא שאומרה בלשון אחר פשיטא דיצא וראיה ברורה מבנימין רעיא דכרך ריפתא ואמר בריך רחמנא מרא דהאי פיתא דקאמר רב התם דיצא וק"ל:

change in the blessing formula based on the interdiction against שינוי המטבע. The repetition of the words אֵינוֹ רַשַּׁאי and אֵין רָאוּי underscores this opposition:

> בְּרָכוֹת אֵלּוּ עִם שְׁאָר כָּל הַבְּרָכוֹת הָעֲרוּכוֹת בְּפִי כָּל יִשְׂרָאֵל עֶזְרָא הַסּוֹפֵר וּבֵית דִּינוֹ תִּקְּנוּם וְאֵין אָדָם רַשַּׁאי לִפְחוֹת מֵהֶם וְלֹא לְהוֹסִיף עֲלֵיהֶם. מָקוֹם שֶׁהִתְקִינוּ לַחְתֹּם בְּבָרוּךְ **אֵינוֹ רַשַּׁאי** שֶׁלֹּא לַחְתֹּם. וּמָקוֹם שֶׁהִתְקִינוּ **אֵינוֹ רַשַּׁאי** לַחְתֹּם. מָקוֹם שֶׁהִתְקִינוּ שֶׁלֹּא לִפְתֹּחַ בְּבָרוּךְ **אֵינוֹ רַשַּׁאי** לִפְתֹּחַ. מָקוֹם שֶׁהִתְקִינוּ לִפְתֹּחַ **אֵינוֹ רַשַּׁאי** שֶׁלֹּא לִפְתֹּחַ. כְּלָלוֹ שֶׁל דָּבָר כָּל הַמְשַׁנֶּה מִמַּטְבֵּעַ שָׁטְבְּעוּ חֲכָמִים בִּבְרָכוֹת הֲרֵי זֶה טוֹעֶה וְחוֹזֵר וּמְבָרֵךְ כַּמַּטְבֵּעַ.
>
> These blessings and all the rest of the blessings familiar to the Jewish people were instituted by Ezra, the scribe, and his court. One may not detract from them or add to them. In every instance that they decreed to conclude with "Blessed…," one may not omit this conclusion. Where they decreed not to conclude [with "Blessed…"], one may not conclude with it. Where they decreed not to begin with "Blessed," one may not begin with it. Where they decreed to begin [with "Blessed…"], one may not omit it. The general principle is that anyone who deviates from the set form of blessings established by the Sages is mistaken and must recite the blessing again in its proper form.

Rambam Hilkhot Berakhot 1:5 reiterates this principle, but uses the somewhat softer language of **אֵין רָאוּי** לִשְׁנוֹתָם rather than **אֵינוֹ רַשַּׁאי,** adding the additional qualifier that, in order to be considered a proper blessing, one has to mention God's name and kingship:

> וְנוֹסַח כָּל הַבְּרָכוֹת עֶזְרָא וּבֵית דִּינוֹ תִּקְּנוּם. וְ**אֵין רָאוּי** לְשַׁנּוֹתָם וְלֹא לְהוֹסִיף עַל אַחַת מֵהֶם וְלֹא לִגְרֹעַ מִמֶּנָּה. וְכָל הַמְשַׁנֶּה מִמַּטְבֵּעַ שָׁטְבְּעוּ חֲכָמִים בַּבְּרָכוֹת אֵינוֹ אֶלָּא טוֹעֶה. וְכָל בְּרָכָה שֶׁאֵין בָּהּ הַזְכָּרַת הַשֵּׁם וּמַלְכוּת אֵינָהּ בְּרָכָה אֶלָּא אִם כֵּן הָיְתָה סְמוּכָה לַחֲבֶרְתָהּ:
>
> The text of all the blessings was ordained by Ezra and his court. It is not fit to alter it, to add to it, or to detract from it. Whoever alters the text of a blessing from that ordained by the Sages is making an error. A blessing that does not include the mention of God's name and His sovereignty is not considered a blessing unless it is recited in proximity to another blessing.

After the two statements, one that outright prohibits any changes to the blessing, and the other that considers additions and subtractions unsuitable but then qualifies the prohibition even further, Rambam Hilkhot Berakhot 1:6

demonstrates a post-facto acceptance of changes, even of recitation in another language:

> וְכָל הַבְּרָכוֹת כָּלָן נֶאֱמָרִין בְּכָל לָשׁוֹן וְהוּא שֶׁיֹּאמַר כְּעֵין שֶׁתִּקְּנוּ חֲכָמִים. וְאִם שִׁנָּה אֶת הַמַּטְבֵּעַ הוֹאִיל וְהִזְכִּיר אַזְכָּרָה וּמַלְכוּת וְעִנְיַן הַבְּרָכָה אֲפִלּוּ בִּלְשׁוֹן חֹל יָצָא:
>
> All the blessings may be recited in any language, provided one recites the text ordained by the Sages. One who changes that text fulfills his obligation nonetheless — since he mentioned God's name, His sovereignty, and the subject of the blessing — although he did so in an ordinary language.

R. Sperber, like Rabbi Rembaum above, and following the Kesef Mishneh,[32] resolves the seeming contradiction between these sources by arguing that the prohibition against changing the *matbe'a* means that one may not change the opening and closing structure of the blessing that was determined by the rabbis.

The question, of course, is whether adding the *imahot* to the description of God qualifies as a structural change. Given that God refers to the *imahot* and speaks to them, and insists on their role in generational transmission, and in the case of Sarah, takes their side against that of Abraham (see Genesis 21:12, where God commands Abraham to listen to Sarah), it would seem that the addition of the *imahot* simply fleshes out the biblical historical record.

The one strange omission on the part of Rabbi Sperber is that of Rambam, Hilkhot Tefilah:1:9, which stipulates that one may add extra elements to the middle *brachot* of the Amidah to show that prayer is voluntary, not obligatory, but in the first three and last three *brachot*, says the Rambam, no addition, diminution, or other changes are allowed.

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32. The Kesef Mishnah on Hilkhot Berakhot 1:5 resolves this contradiction by saying that each of these *halakhot* are talking about different things and that here the permission is in an instance when the person makes no change to the *petihah* or the *hatimah*. (The question, of course, is whether adding the *imahot* constitutes a substantive change of this sort):

> על מ"ש רבינו ואם שינה את המטבע וכו' יצא. כתב הרמ"ך תימה דבהלכות ק"ש כתב לא יצא וכו' וצ"ע עכ"ל. ויש לתמוה על תמיהתו דבריש הלכות ק"ש מיירי ששינה שחתם בברוך או פתח במקום שהתקינו שלא לחתום או שלא לפתוח או ששינה ולא חתם או לא פתח בברוך במקום שהתקינו לחתום או לפתוח והכא מיירי ששינה בנוסח הברכה ולא אמר אותו לשון ממש אלא שאמר ענין הברכה בנוסח אחר ולא שינה לא בפתיחה ולא בחתימה וזה מבואר בדברי רבינו:

וְשָׁלֹשׁ רִאשׁוֹנוֹת וְשָׁלֹשׁ אַחֲרוֹנוֹת לְעוֹלָם אֵין מוֹסִיפִין בָּהֶן וְלֹא פּוֹחֲתִין מֵהֶן וְאֵין מְשַׁנִּין בָּהֶן דָּבָר:

> One may never add or subtract from the first three and the last three, nor may one change anything.

This would seem to impact the question being addressed here, insofar as adding the *imahot* is an addition to the first three *brachot*, unless one considers the Rambam's prohibition only to pertain to additions that change the basic meaning, theme, or structure of the blessing.

Another omission on R. Sperber's part is Shulkhan Arukh Orah Hayyim 113:9, which prohibits adding any extra epithets to the description of God:

אין להוסיף על תאריו של הקב"ה יותר מהא־ל הגדול הגבור והנורא ודוקא בתפלה מפני שאין לשנות ממטבע שטבעו חכמים אבל בתחנונים או בקשות ושבחות שאדם אומר מעצמו לית לן בה ומ"מ נכון למי שירצה להאריך בשבחי המקום שיאמר אותו בפסוקים:

> One may not add to the descriptions of the Holy One Who Is Blessed more than "The Great and the Mighty and the Awesome God." And this is specifically in the Amidah, since one may not change the formulation that the Sages formulated. But in the supplications, pleas and praises that a person says oneself, there is no [problem] with it. Nevertheless, it is proper that one who wants to lengthen the praises of the Omnipresent should say it using [biblical] verses.

This source from the Shulkhan Arukh seems to reflect a concern about not assigning too many epithets to God so as not to say something affirmative when God is unknowable. There are indeed Talmudic sources that inveigh against heaping too many adjectives or elements of praise on God.[33] But can we not add a reference to something we know, which is that the matriarchs worshiped and were protected by this God, too? The end of the *se'if* somewhat contradicts the first part, seeming to create some allowance for elongated praise of God if it can be expressed in the form of *pesukim* (biblical verses). But isn't the fact that God rewarded and protected the merit of the matriarchs amply attested to in the Bible?

Ultimately Rabbi Sperber rules (not all that differently from Rembaum)

33. See for example, BT Shabbat: 118, where R. Yose says that if one were to recite Hallel daily it would be tantamount to blasphemy. And BT Megillah 18a, where Rava bar Hana says in the name of R. Yohanan, that he who offers too much praise of God is uprooted from the world.

that small liturgical changes that do not affect the basic theme or structure of the blessings, and even the compositions of original poems, do not constitute a prohibited שינוי המטבע and therefore ought to be permitted:

> Therefore, when I am asked questions such as "To what extent may we add elements in our prayers?" "What method can be used for incorporating additional prayers?" "Can we add new elements to existing prayers?" "Can we mention the Imahot (foremothers) in addition to the Avot (forefathers)?" I see the answer as very simple: It is all completely permissible. Adding completely new prayers where one is not changing *matbea shetavu hakhamim* — because that would amount to a new creation, a new composition — is certainly permitted. Adding words or phrases to an established *berachah* is less acceptable, according to Maimonides, but if the basic content is not changed, one who recites such a *berachah* does not have to repeat it in its previous form. (p. 111)

Rabbi Sperber also rejects the notion that such change ought to be prohibited because it will split Jews into separate groups or communities:

> Therefore we should not, and need not, seek unanimity in our liturgy. Let there be yet another *nusah* of *tefillah* one that will be acceptable within the context of modern-day Orthodox feminist thinking, and which hopefully will gain ever wider legitimacy.
>
> At the same time, we must exercise great care to retain the traditional elements of our prayer book, to preserve its character and structure, to ensure that any additions, deletions or alterations do not contradict or conflict with normative halakhah [ie., complete alternation of the former *berachah* structure]. (p. 129)

Dissenting Opinions

R. Aryeh A. Frimer mounts a clear dissent against R. Sperber's openness to the addition of the *imahot* in a review essay entitled "The Wrong Changes in Liturgy."[34] Regarding the adding of the *imahot* to the opening paragraph

34. R. Aryeh Frimer, "The Wrong Changes in Liturgy" Torah Musings (October 11, 2011) https://www.torahmusings.com/2011/10/wrong-changes-in-jewish-liturgy/

of the Amidah, Rabbi Frimer introduces his rejection of the idea by saying "this is a practice that has found its way into Conservative Jewish practice and prayer books despite the objection of some of their own leading scholars." The appearance of the *imahot* in Conservative prayer books seems to serve as a disqualifier (with the addition that some of the leaders of the movement have already prudently rejected it). It is my view, however, that the origin of a change within another movement should not bar the Orthodox community from adopting a change if there is a *halakhic* rationale and a communal value to permitting it.

Rabbi Frimer goes on to state that "over the past millennium, no changes or additions whatsoever have been made in the first three *berakhot* of the Shemoneh Esrei." I would counter by saying that I am not sure this is entirely relevant. Over the past millennium we have also not seen the numbers of learned and religiously active women that we have today. And a progressive view of history would dictate that certain practices, even if they had a long-standing history — say, slavery or a prejudice against Gentiles — ought to be abrogated. Moreover, as my teacher R. Ysoscher Katz notes, Rabbi Frimer's reference to the absence of any changes over the past millennium bypasses Geonic changes for the High Holidays that were made to the first three *berakhot,* including זכרנו לחיים and מי כמוך.

Like Rabbi Golinkin, Rabbi Frimer argues that the basis for referring to God as the God of Abraham, Isaac and Jacob has its source in Exodus 3:15. But the choice of this identifier rather than other epithets was conditioned by a patriarchal mindset, the implications of which have far-reaching consequences. The task of Orthodox religious feminism has been to work within that tradition to provide a sorely needed missing perspective.

Again, like Rabbi Golinkin, Rabbi Frimer rejects the idea of the God of the *imahot* because it doesn't appear anywhere in the Torah. No matter that rabbinic statutory prayer is a composition of the rabbis and includes many formulations that do not appear in the Torah. "Our covenantal relationship to G-d," Frimer asserts, "is through the Avot, not the Imahot. To be sure, the Imahot were very important supporting players in the formative years of our people, but they were not the spiritual leads by any means." Rabbi Golinken made the same objectionable point, which in my view, itself constitutes an argument for liturgical change so as to inculcate a theology of *ahavah*, *shivyon*, and *shleimut*, as outlined in my opening principles. Admittedly, the ritual of *brit milah* is male in focus; but the Torah insists on Sarah's role as mother to

Abraham's successor, indeed, on her crucial role in shaping that next generation, as indicated by Isaac's bringing Rebecca into his mother's tent and loving her when he marries her. Isaac doesn't walk together with his father at the end of the *Akedah* exercise in Genesis 22. They don't live together, either. But Sarah's loving memory lives on and shapes that next generation. To speak of the God of the *imahot* is to acknowledge that crucial, formative, maternal role. If an exclusively patriarchal notion of covenant has any basis in history or in the way the text has been transmitted, the very function of *Torah shebe'al peh,* of a living breathing *halakha*, would be to find a theological and liturgical means to counter that notion.

Rabbi Frimer suggests that to add the *imahot* would be to deny the role, as suggested by *chazal*, of the patriarchs establishing the three daily prayers. Methodologically, using for *halakhic* purposes a *midrashic* homiletic explanation for the origin of the three daily prayers, one that is based on a selective reading of instances of prayer in the Bible, seems suspect. And what about Rebecca's going *lidrosh eh Hashem?* Miriam's song at the sea? And Hannah's prayer in Shilo serving as the basis for the recitation mode of the Amidah?

Rabbi Frimer mounts a further objection to the idea of adding the *imahot* in that we don't mention Moses or David or Joseph. "Why mention the Imahot?" he asks. "Just because they were women? Just because of feminist sensibilities? This is not only a theological misrepresentation as discussed above, it is intellectually dishonest. I don't think that women should be excluded, where relevant, because of their gender; nor should they be included, where irrelevant, just because of their gender." In my view, this statement constitutes what-about-ism and deflection. I wish to add liturgical mention of the *imahot* precisely because we believe that women were part of the covenant and crucial to the earliest historical stratum of the people and therefore wish to rectify a theological and liturgical wrong. The idea that this is "irrelevant" to prayer is absurd. Prayer is a theological exercise in confirming one's core values. A t*efillah* liturgy that repudiates the place of women in our earliest history and, by extension, denies my place as a covenantal member of the Jewish people is a potentially counter-productive, destructive exercise. Reading these words by Rabbi Frimer in a review of Rabbi Sperber's brilliant and compassionate *halakhic* exegesis is similarly caustic and distasteful.

Rabbi Frimer concludes by contending that Judaism is not egalitarian. "Halakhic Judaism maintains that **God Himself ordained and commanded non-identical roles for men and women**." I confess that I am unwilling to

accept this ossified definition of *halakha* as that which happened in the past or his right to decide what God did or did not ordain. His use of the term "radical feminism" throughout his review also serves as a means of dismissing feminist claims as ultimately incompatible with Orthodoxy.

In sum, what Rabbi Frimer's article reveals is a basic unwillingness to accept the worth and legitimacy of feminist change. More than the blessings themselves, his patriarchal theology emerges as an immovable *matbe'a,* one he is unwilling to change for any purpose, however worthy. He shows no willingness to listen to the experiences and concerns of women, couching this resistance in spurious or tendentious readings of the Bible.

Rabbi Ethan Tucker, on the other hand, suffers from no such unwillingness to listen. A committed egalitarian, he nevertheless raises certain *halakhic* concerns about changing the Avot blessings in his essay "Liturgical Change and Its Limits."[35] Like Rabbi Sperber, Rabbi Tucker adduces the history of Jewish liturgical flexibility, contending that "one searches the Rabbinic canon in vain for a perfectly fixed text of the various statutory prayers."[36] To support this notion of flexibility, he quotes an important passage from ShaDaL's (Shmuel David Luzzatto, 1880–1865, Trieste) introduction to the Rome Mahzor:

> קדמונינו זכרונם לברכה קבעו לנו מטבע הברכות להודות לה' ולהתפלל לפניו, **אך לא נתכוונו בתקנתם שיהיה נוסח תפילותינו קבוע כיתד בל תמוט, עליו אין להוסיף וממנו אין לגרוע,** אבל היתה כוונתם לקבוע בקרב כל ישראל הענינים אשר עליהם נודה לאלהינו ונתפלל אליו, ולקבוע לנו סדר הברכות והתפלות...וכל זה כדי שיהיה עיקר התפלה וענין כל ברכה וברכה, וסדר הברכות ופתיחתן וחתימתן שווה בקרב כל ישראל בכל מקומות מושבותיהם.[37]

> Our predecessors of blessed memory established a formula for the blessings to thank and pray before God, but they did not intend in their decree to establish a formula for all time like a permanent fixed peg, to which one is prohibited from adding or subtracting. Rather their intention was to establish for all of Israel the matters for which we should thank and pray to God, and to establish the order of the blessings and the prayers… and all of this is so that there will be a general principle for the prayers and a principle for each and every

35. Ethan Tucker, "Liturgical Changes and Its Limits." Center for Jewish Law and Values. https://www.hadar.org/torah-resource/liturgical-change-and-its-limits

36. Ibid., p. 3.

37. Rabbi Sperber quotes the same source in English translation. See Daniel Sperber, *On Changes in Jewish Liturgy* (Jerusalem: Urim, 2010), p. 71.

> blessing, and so that the order of the blessings, their opening and their closing will be the same for all of Israel in all of their places of habitation.

Having studied and written about the poetry of ShaDaL's cousin, Rachel Luzzatto Morpurgo (1790–1871), I find this quotation particularly moving. The religiously devout and learned Morpurgo was the first modern Hebrew poet and the composer of several liturgical poems that specifically invoke the *imahot*, particularly Rachel.

Rabbi Tucker surveys many of the sources quoted thus far, in addition to Tosefta Berakhot 4: 4–5, which is quoted by both the Bavli and the Yerushalmi cited above, and Berakhot 34a, too. He cites a range of Gaonic opinions about the insertion of *piyyutim* from pro (Natronai Gaon) to con (Nachson Gaon), and extensively examines the various positions of the Rishonim, most notably Rabbeinu Tam, who "sought to defend the rich culture of *piyyut* that had established itself in Europe."[38] He also cites the following other Rishonim who seem, within limited parameters, to be open to some changes to the blessings:

- The Ra'ah on Berakhot 11a, who suggests שנוי [כ]הניכר קיצור או אריכות דווקא מטבע — We are specifically concerned about expansion or abridgement that will be recognized as a change in the formula.
- Ritva Hilkhot Brachot 6:14, who might be open to some liturgical change depending on its scope and permanence.
- Rashba, who offers a very liberal definition of the *matbe'a* based on the structural principle that blessings should begin and end with *barukh*. Other than that, not only may one add to the words, but one can even add *piyyutim* and so without any concern for the length or even the topic.
- Meiri on Rashi: that Rashi understood מטבע to be themes and ideas. Thus, additions need to stay on topic.

Rabbi Tucker notes, however, that these positions embrace liturgical creativity only on the basis of existing practice and in that sense are grounded in deep distrust of liturgical change. Thus it is not clear that these are precedents for actively and consciously encouraging new liturgical forms.[39] With respect to the Rambam, R. Tucker goes beyond the sources from Mishneh Torah cited

38. Tucker, p. 14.

39. Tucker, p. 22.

thus far and reads several of the Rambam's responsa, including the following, which opens with a strong objection to any change from the *matbe'a:*

שו"ת הרמב"ם סימן רנד :

התשובה **אסור לשנות ממטבע שטבעו חכמים בברכות בשום פנים, וכל המשנה טעה.** ומה שהבאת ראיה מן אלו נאמרין בכל לשון, אינו ראיה, לפי שהוא אינו מוסיף על העניינים ואינו גורע מהם, אלא משנה הלשון לבד. ואין זה כמו הפיוטים אשר הם תוספת עניינים והבאת דברים הרבה שאינם מעניין התפלה, ונוספים לזה משקלם וניגונם, ויוצאת התפלה מגדר תפלה (ונעשית) לשחוק. וזו הסיבה היותר גדולה לחסרון הכוונה ושההמון מקילים ראש לשוחח (באמצע התפלה), לפי שהם מרגישים, שאלו הדברים הנאמרים אינם מחויבים. ונוסף לזה, שאלו הפיוטים הם לפעמים דברי משוררים, לא תלמידי חכמים,...

The Responsum: One may never deviate from the set form of blessings established by the Sages and anyone who does so mistaken. And that which you bring from the idea that the blessings are said in any language is not proof, insofar as in that case one is not adding to the substance nor is one subtracting, rather simply changing the language. And this is not analogous to the piyyutim, which add in terms of substance and many other things which are irrelevant to the prayer, and also add weight and melody, causing the prayer to depart from its proper limits and to become a matter of frivolity. And this is the greatest reason why people depart from their intention and become so light-headed as to speak during the prayers, for their feel that all these things that are being said are not required. Additionally, these piyyutim are often written not by sages but by poets…

A close inspection of this teshuva reveals the Rambam's strong antipathy to *piyyut* as a source of distraction and indecorousness. As Rabbi Tucker explains, the Rambam objects to adding long passages and new themes, altering structure, rhythm, and cadence, but not necessarily to adding specific words. According to Rabbi Tucker, "it is fairly clear that, in terms of scope and structure, the addition of the Matriarchs as described above presents no problems" for any of these five medieval models.[40]

Nevertheless, Rabbi Tucker voices a reluctance to adding the *imahot* to the *hatimah* of the Avot blessing based on a prohibition against a חתימה בשתיים, that is the ending of a *berakha* that includes two aspects (See Berakhot 49a).

40. Tucker, p. 23.

Tucker admits that this is a principle that is not adhered to in any number of canonized blessings. I would argue further that adding the name "Sarah" to the Magen Avraham blessing is not so much a doubling of the *hatimah* but an attempt to "put her back" where she belongs, offering an elaboration of what we mean by Avraham.[41]

Rabbi Tucker also asserts the importance of Avraham as a stand-out, founding figure (a point similar to that made by Golinkin and Frimer). This argument is based on a desire to avoid essentialist gendering and a concern that women identify with Abraham and the patriarchs.[42] "I am concerned," he writes,

> that part of the drive to add Sarah specifically to the end of the blessing is the aim not to have Avraham, the man, stand alone without a female companion. I worry that this in part reflects a kind of essentialist sorting of men into a space of male role models and women into a space of female role models.

I will admit my discomfort with this position, not just because it denies Sarah's founding role but because it ignores the essentializing effect of the traditional liturgy, where godliness, convenant, and primacy are consistently presented in masculine terms. For millennia, women have been acknowledging the *zekhut* of the Avot. That practice is not under threat. Opening the Amidah with reference to the *imahot* merely completes the record and offers a place for the feminine too.

All of this, together with the four principles that I laid out at the beginning, leads me to argue for the acceptability of adding the four mothers to the opening part of Avot (אלוקי שרה, אלוקי רבקה , אלוקי רחל ואלוקי לאה) certainly in one's private prayer and in the repetition as well, if the community is open to this change.[43] I am inclined to amend the *hatimah* as well to מגן אברהם ושרה, especially since the source for this concept (Gen 15:1) doesn't use the verbatim expression

41. Thanks go out to R. Ysoscher Katz for this formulation.

42. This might be one way of understanding the teachings of R. Akiva Schlesinger in the Torat Yehiel Behukotai 88, as cited above.

43. I have suggested this formula because it is already in use in some liberal congregations and because mention of these four matriarchs has strong traditional precedent. I recognize that the idea of the "four *imahot*" omits Bilhah and Zilpah, which itself is regrettable and merits further consideration. I would urge a community interested in undertaking to include the *imahot* to engage in a process of

"*magen Avraham*." Rather, God issues to Abraham, in second-person address, a covenantal promise of protective reward — אָנֹכִי מָגֵן לָךְ — שְׂכָרְךָ הַרְבֵּה מְאֹד — in the form of descendants, a promise that is later adumbrated and expanded in Gen. 17 explicitly to include Sarah as the mother of these descendants.

The Argument on the Insufficiency of Tradition

While I do believe that the traditional sources make a *halakhic* case for the addition of the *imahot*, it feels important to close with an awareness of the fundamentally masculine nature of the tradition as it has been elaborated and practiced until now. A crucial change has come about as a result of contemporary Jewish women's learning, ordination, and greater participation in public prayer and its leadership — a change, if you will, to the social/spiritual/communal *matbe'a*. I do not believe that this paradigm shift, which I address in my opening, can be entirely accounted for by referencing prior *halakhic* writing and practice. The very idea of a *matbe'a shetav'u hakhamim*, a stable, unchanging liturgical coinage established by male sages alone, is a historically inequitable construct that needs to be addressed through loving consideration of the felt reality and theological understanding of women in general and *hakhamot* in particular, those women now invested with the power of spiritual leadership in our communities. In the face of naysayers, like Rabbis Golinkin and Frimer, who suggest that even if one can provide a *halakhic* rationale for making these additions, the first three *berakhot* of the Amidah ought never change because they never have, the argument from the insufficiency of tradition — or from the change in contemporary reality — needs to be adduced. If one pits an utterly fixed *nusah* — itself gainsaid by rabbinic sources concerned with cultivating a spirit of *tahanunim* in prayer — against the opposing social and theological values of *ahavah, shivyon,* and *shleimut*, the latter ought to win out. Certainly the relatively minor, considered changes to the *matbe'a*, which are amply grounded in traditional sources, ought to be unreservedly endorsed. Indeed, they should be seen as helpful correctives and affirmative means to enlist and represent women — half of our Jewish community — in our *tefillah*. Given the general societal disposition toward egalitarianism, inclusiveness, and

learning as well as community discussion to see what formulation would best be accepted and appreciated by the community.

loving acceptance of difference, the embrace of these changes might also fend off disillusionment on the part of some young feminists (male and female alike) for whom these values are sacrosanct. As R. Shimon Ben Menasiya teaches in BT Yoma 85b with regard to the notion of "*pikuah nefesh*" overriding Shabbat:

> ר' שמעון בן מנסיא אומר ושמרו בני ישראל את השבת אמרה תורה חלל עליו שבת אחת כדי שישמור שבתות הרבה.
>
> Rabbi Shimon ben Menasya said: It is stated: "And the children of Israel shall keep Shabbat, to observe Shabbat" (Exodus 31:16). The Torah said: Desecrate one Shabbat on his behalf so he will observe many *Shabbatot*.

If the rabbis were willing to conscience the desecration of the Shabbat for the sake of saving a life, we, the male and female rabbis of today, ought to be willing to consider minor changes to the blessings' formula for the sake of maintaining fidelity to our tradition.[44]

Lastly, it behooves us to consider, as part of this, the meaning and implications of the metaphor of the *matbe'a*: a coin, or coinage. Coins have value as part of an economy, a system of exchange and of relative and fluctuating values. In my view, an approach to our liturgical coinages that is careful and considered, but also dynamic and holistic, has a better chance to maintain its longterm value and currency for the community as a whole.

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44. The Rambam uses this principle beyond the context of violating Shabbat to refer to the need for a court to uproot prior rulings should they prove too onerous or to make necessary changes to return the people to observance. See — רמב"ם הלכות ממרים פרק ב.

כן אם ראו לפי שעה לבטל מצות עשה או לעבור על מצות לא תעשה כדי להחזיר רבים לדת או להציל רבים מישראל מלהכשל בדברים אחרים עושין לפי מה שצריכה השעה

Appendix: From the Hebrew Poetry of Rachel Morpurgo (1790–18710)

"A Voice is Heard in the Heights" (1855)

A Voice is Heard in the Heights[45]	**קוֹל ברמה נשמע**
My God, my God, Rock and Salvation[46]	אֵלִי אֵלִי צוּר גֹּאֲלִי
Look, see and hear my intonation.[47]	,הַבֵּט וּרְאֵה וּשְׁמַע קוֹלִי
I cry and wail in supplication	אֶבְכֶּה אֶזְעַק וְאֶתְחַנַּן
Take pity and spare a troubled nation.	.חוּס נָא חֲמוֹל עַל עַם נִכְאָם
Set up my tent, consent to my plea	הוֹאֵל הָקֵם אֶת אָהֳלִי
For there is none to beg,[48] none to aid me.	.כִּי אֵין דּוֹרֵשׁ אַיִן עוֹזֵר לִי
Sons will return to their frontiers[49]	בָּנִים יָשׁוּבוּ לִגְבוּלָם
In boundless joy for endless years.[50]	.עֲלֵי רֹאשָׁם שִׂמְחַת עוֹלָם
Bear the weight, please, of what they've trangressed[51]	אָנָּא שָׂא נָא כֹּבֶד פִּשְׁעָם
Hasten, raise up the chosen people's best.	.חִישׁ נָא הָרֵם בְּחִיר הָעָם
Weep no longer for God's grace is blessed.	:לֹא עוֹד תִּבְכִּי, כִּי אֵל חָנַן
If he tarries I shall wait.	אִם יִתְמַהְמַהּ לוֹ אֲיַחֵל
His house shall be rebuilt, wall and barricade[52]	בֵּיתוֹ יִבָּנֶה חוֹמוֹת וָחֵל
And with new song Rachel shall celebrate.	.וּבְשִׁיר חָדָשׁ תְּשִׁישׁ רָחֵל

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45. Jeremiah 31:14.
46. See Psalms 19:15: .יִהְיוּ לְרָצוֹן אִמְרֵי פִי וְהֶגְיוֹן לִבִּי לְפָנֶיךָ ה' צוּרִי וְגֹאֲלִי. This verse comes at very end of the traditional Amidah.
47. Lit. hear my voice. The phrase "lishmo'a **be**kol" or lishmoa **le**kol is used throughout the Bible to connote obedience, including two instances where a man reprimanded for obeying his wife (Gen 3:17, 'Because you hearkened unto the voice of your wife…cursed is the ground for thy sake) or is enjoined to do so (Gen 21: Whatever your wife Sarah says, *shema bekolah* — hearken unto her voice).
48. See Psalms 142:5: הַבֵּיט יָמִין וּרְאֵה וְאֵין לִי מַכִּיר אָבַד מָנוֹס מִמֶּנִּי אֵין דּוֹרֵשׁ לְנַפְשִׁי:
49. Jeremiah 31:16.
50. Isaiah 35:10.
51. The expression שא נא פשע is used in Gen 50:17, in the aftermath of Jacob's death, with respect to the sins committed against Joseph by his brothers. As such, Rachel Morpurgo places herself as a kind of spiritual voice for the descendants of the biblical Rachel.
52. We saw the same phrase, "*ḥomot vaḥel*," in the signature to "*Hineh zot ha'iggert*."

Let the heavens be glad and the earth rejoice[53]	ישמחו השמים ותגל הארץ
Rosh Hodesh Heshvan[54] 5654	ליל ראש חדש בול ה'תרט"ו.

Rachel Morpurgo, "Upon the Death of the Righteous Mrs. Leah"

Upon Upon the Death of the Righteous Mrs. Leah,	אל מות החסידה מרת לאה
Wife of Avraham Cohen, Adar 5651	אשת אברהם הכהן, אדר תרי"א
Like Leah, I was so very tired[55]	אֲנִי לֵאָה הָיִיתִי
Only toil and sorrow I descried	כִּי רַק עָמָל יָגוֹן חָזִיתִי,
And in quiet times I aspired	וּבְעֵת שַׁלְוָה קַוֹּה קִוִּיתִי;
To an early death, my soul to be pass on.	מָוֶת קֹדֶם נַפְשִׁי לָקַחַת.
Hush my daughter, your soul has flown	דֹּמִי בִתִּי נַפְשֵׁךְ פּוֹרַחַת
In my Garden of Eden you shall be sown	וּבְגַן עֵדְנִי תִּהְיִי צוֹמַחַת
The afterlife is like a fire, glowing,	דִּמָּה דוּמָה אֶל אֵשׁ קוֹדַחַת
Meant to atone and cleanse offense.	אוֹתָךְ לְצָרֹף וּלְכַפֵּר פָּשַׁע.
Speedily shall I send deliverance	אֲבָל מַהֵר אֶשְׁלַח לָךְ יֶשַׁע,
No guilt-slag have you, nor malevolence,	סִיגִים אֵין בָּךְ אַשְׁמָה וָרֶשַׁע,
May you traverse the fiery stream[56]	נָהָר דִּי נוּר אָנָא עֲבֹרִי
And be cleansed of the world's impurity	לְטַהֵר טָמְאַת הַחֶלֶד
For your light has come, arise, gleam;[57]	כִּי בָא אוֹרֵךְ קוּמִי אוֹרִי;
The door is open to you, already.	כְּבָר לָךְ נִפְתַּח הַדֶּלֶת.
Open the gates and let in a righteous nation[58]	פתחו שערים ויבוא גוי צדיק
The lowliest of creatures Rachel Morpurgo	הנקלה שבבריות רחל מורפורגו

53. Psalms 96:11.
54. According to tradition, the biblical Rachel died on 11 Cheshvan. The earliest source for this is Jubilees 32:33, which refers to Benjamin's birthdate (and Rachel's consequent death in labor) as having been on the eleventh of the eighth month in the first of the sixth week of this jubilee. Tova Cohen suggests that the upcoming anniversary of Rachel's death might have furnished the occasion for the composition of this poem.
55. There is a play here on the name Leah and its literal meaning, which is fatigued or tired.
56. Daniel 7:10.
57. Isaiah 60:1.
58. Isaiah 26:2.