

Unfair to Women

by: Rabbi Jeremy Rosen

We live in interesting times where men may be women and women, men, and combinations of both and transitions in and out of the other. This is a reflection of the process of evolution or as some might say the slippery slope the western secular world is on, towards making no distinction at all. And in our societies, there are both opponents and supporters of these developments.

I am in favor of minimal State interference and in freedom of choice. But I also believe in having strong personal moral codes that may be different from those of the State. I have no problem with States defining what constitutes acceptable behavior in their opinion, so long as no one is harmed, and no one is coerced on matters of conscience. There need be no conflict between these positions. But sadly, politicians on both sides seem to think their role is indeed to impose their values on everyone else.

What interests me is the end result. Women were treated as the “second sex” for too long and still are in much of the world we live in. In the different wings of Judaism, we have been unduly influenced by external cultural and political forces in both directions. In being too insensitive to the needs and rights of women on the one hand and on the other being too accepting of other norms. This is, in fact, one of the greatest challenge we face within the world of commitment to Torah today. Can we, should we be influenced and to what extent? Or should we completely shut out alternative attitudes and hole up within our mental as well as physical ghettos?

I have recently read a great book. “Jewish Women in Europe in the Middle Ages: A Quiet Revolution” by Simha Goldin. It is not a recent publication. It was first published in 2011. But it is one of the best studies on position of women in Medieval European Jewry. And it takes its place alongside Avraham Grossman’s much wider ranging “Pious and Rebellious: Jewish Women in Medieval Europe” that appeared with the talented Jonathan Chipman’s translation in 2004.

Simha Goldin focusses more specifically on the different currents of rabbinic opinions on legal matters concerning women, in different communities in Europe in the Middle Ages. How some authorities went out of their way to support the rights of women and their economic independence. And how others feared that too much freedom could have negative repercussions.

This battle was waged in two fronts. On the ritual side women had always been restricted in their obligations under Jewish Law. Originally, this might have been to enable them to concentrate on the home and children. Commandments that were related to time, were not obligatory. Women did not have to drop their children or leave the food cooking on the fire to get to the synagogue or attend regular prayers. Women were also restricted by demands for modesty. Many of these came from outside Judaism, the Church and Ulema. And they

limited their appearance in public. Modesty also protected them from the humiliation of being questioned, challenged or humiliated in public courts or from being forced out of the security and privacy of their homes. All of these in practice limited them in other areas outside of the home and subjected them to the control of their husbands and guardians.

The biggest handicap by far was the requirement that it was a man who performed the acts of marriage and divorce. And this put women at a distinct disadvantage then and often still does. The rabbis of Talmud in introducing the Ketubah, tried to help women by protecting them financially enabling them to retain finance and property they brought into a marriage and by securing their rights and the financial obligations of husbands and estates towards them. Often when husbands refused to co-operate, rabbis used their authority and power to force them. In Babylon in the seventh century Rabbinic courts did indeed compel husbands to give divorces.

Surprisingly in Medieval times more rabbis than now were prepared to make efforts to ameliorate at different times and in different situations the disadvantages that women labored under.

One reason for leniency was practical. Women often had to be the breadwinners in a turbulent unpredictable world where husbands were often murdered or disappeared. But the record shows that women played a major part in defending their homes and communities against the Crusaders and other medieval genocidal mobs. Often, they volunteered for martyrdom. Both to assert Jewish pride and to deflect murderous mobs and rapists. In many cases, they alone were left to keep the Jewish flame from being extinguished. As a result, many rabbis sought to ameliorate their disadvantages.

R. Eliezer ben Natan (1090-1170) declared that a widow who took possession of her dead husband's property for her upkeep or to pay off what was owed to her by her Ketubah could keep what she has had taken and the rabbinic authorities had no right to take it away from her.

Both under Christianity and Islam, a Jew, male or female, who converted, could often take all the family assets with them over to "the other side." And this was a threat that women as much as men often used to get their way and circumvent Jewish law. And at the same time, men and families often used strict and one-sided laws to blackmail or severely restrict the lives of women. That was why rabbis began to be more supportive. Rabbeynu Gershom (960-1040) enabled rebellious wives to divorce for fear they may turn to Christian courts or immorality. He was also responsible for banning polygamy.

Rashi (1040-1105) strongly opposed husbands who tried to blackmail their wives and supported compelling them to give divorces. The Mahram of Rothenberg (1220-1293) too was in favor of compulsion and imposed fines on recalcitrant husbands. Medieval rabbinic ordinances (*Takanot*) also forbade a man to divorce his wife against her will. R Yitzchak Ben Avraham (end of 12th century) also allowed compulsion.

It was Rashi's grandson Rabbeynu Tam (1100-1171) who although initially supported compulsion, and those women who wanted more opportunities to take

on religious obligations, eventually turned fiercely against compelling husbands. It has been suggested that his later strictness over divorce was in response to pressure from the Church who at that time absolutely opposed divorce and felt undermined or by Jewish permissiveness. He is the one that current authorities always turn to in order to justify their intransigence.

At the time there was fierce disagreement between the rabbis of France and Germany. The latter were overwhelmingly in favor of compelling husbands to divorce where the wife was the plaintiff. As indeed they were in dealing with cases of the levirate marriage where a childless widow was bound to the next brother in line. Ostensibly to help preserve the memory of the one who died. But also, to keep his estate in the family. In practice this meant the widow was trapped unless the ceremony of *Halitzah*, a kind of divorce, freed her. Here to she was in the hands of a male who might refuse or blackmail here. Sadly, over time their lenient positions lost out to the intransigent ones.

Whichever way one looks at it one sees the Medieval period as one where rabbis went out of their way to ameliorate the position of women under Jewish Law. The question is why they did not go further. Why have rabbis allowed a situation to be perpetuated whereby some women still suffer under the constraints of Jewish Law?

I suspect that the more that women are liberated, the more the conservative minds set themselves against any concession towards modernity. The trauma of the Holocaust and the continuing hatred expressed by much of the secular world towards Judaism and Jews, simply reinforces the reluctance to accommodate what is often seen as coming from a culture identified with the enemies of Judaism.

It is my opinion that the increasingly prominent role of orthodox women in Jewish public life, particularly in Israel, will over time, force a radical re-think. I pray that day comes sooner rather than later.

After I had written this, I saw on Monday, in the Israeli press that Rabbi Daniel Sperber (a great man whom I know and admire immensely) had convened a special rabbinic court in Israel, to free a woman from an abusive and violent husband who had refused to give her a bill of divorce. Rabbi Sperber's court annulled the original marriage on the grounds that had she known of his violent past and abusive character beforehand, she would never have agreed to marry him in the first place. Rabbi Sperber had only resorted to this, which is a legitimate device in halacha, because the established Rabbinate in Israel refused to act to release her. And he has done the same in several other cases.

The response of the rabbinate was predictable. Kobi Alter, the spokesperson from the Chief Rabbinate of Israel, said that the dissolution was not recognized by the rabbinate and that the woman would not be allowed to remarry via state authorities as she is still considered married. "We can't have anyone who wants to, setting up panels to do whatever they want," Alter said. "The rabbinate is quite capable of dealing with cases of *agunot* and has

done so many times.”

Clearly in this case they were not! As with most religious authorities they were too concerned to preserve the system and their authority to think of the needs of this individual. Thank goodness we still have an outstanding, learned, spiritual, caring rabbi who is prepared to stick his neck out and stand up to those rabbis who are will not make use of ways allowed in Jewish Law to deal with such issues. They should go back to Medieval times when greater men than they, were prepared to be creative within the law.

If only there were more like Rabbi Sperber and his colleagues.