

III

sources

in

Jewish law



AN VIEW of the unanimity among orthodox authorities as to the legal position, to quote the classical sources on which these authorities have based their decisions, may only serve to buttress an already impregnable stand. However, a brief reference to the origins of these strong opinions, will add a necessary dimension of historical perspective.

1. Both Temples had a special women's section (1). The changes in the structure of the women's section referred to in the Talmud do not disprove, but rather confirm, that the Women's Court existed prior to the repairs. See, for example, the responsum of R. Moshe Feinstein (chap. II, source 15). And the late beloved R. Samuel Gerstenfeld has clearly shown from the Talmud's question about the changes (Sukkah 51b) that its Sages were certain be-

yond doubt that the second Temple was a precise replica of the first (except for specific minor changes)—including a Women's Court which might not ordinarily be altered (2). This matter is also treated in R. Menahem M. Kasher's fine essay (chap. VI, source 2). Except for specific ritual functions, for which a woman was admitted to the inner Temple court, men and women were always separated; see Josephus, *Wars of the Jews*, V, 5, 2 (1C). Even when women were admitted on such occasions, the Sages indicated special provisions to prevent the slightest possibility of levity (chapter VI, source 2).

As the Mishnah, Middoth 2, 5, interprets Ezekiel 46:21 (1B§1), there will be exactly the same Women's Court in the Sanctuary of the Messianic future (so also Rashi to Ezekiel 44:19). This fundamental symbol of the principle of separation will thus never be forgotten or relegated to the past. Rooted in Talmud and Scripture, it remains part of our program for the spiritual renaissance of future time.

2. Interpreting Ezekiel 11:16, the Talmud calls the synagogues of the Exile "little Sanctuaries" (3§1). To a lesser degree, our synagogues have been our Sanctuaries, ever since the Temple itself was destroyed. This concept is affirmed in Talmud and Midrash (3); many passages see prayer as the successor to Temple offerings; and for one Geonic responsum the synagogue is, in effect, our Holy of Holies (3§5). Nor is this mere poetic or homiletic fancy; the Talmud derives the times for daily prayers from the times for the daily burnt-offerings in the Temple (3§3); a late Talmudic work applies a Bible law on the Temple directly to the synagogue (3§4); an Early Code (*Eshkol* 5) cites two Talmud passages on the relation of prayer to sacrifices, as a legal principle; *Tur Orah Hayyim* 150 discusses

details of synagogue arrangement required because it must parallel the Sanctuary; and two Early Authorities cite this principle as the basis for Talmudic laws governing reverence for the synagogue (3§6-7). When the *Shulhan Aruch Orah Hayyim* includes these laws (151), the late sainted *Hafetz Hayyim* simply notes in his definitive commentary *Mishnah Berurah* that it is because the synagogue is a Sanctuary-in-miniature; hence frivolity is strictly forbidden there. Now, because of the prohibition against levity, the separation of men and women was so strictly carried out in the Temple, and it therefore follows logically that synagogues were from the beginning required to have the same separation of sexes as the Temple.

3. The principle that men and women remain apart at times of great spiritual experience, is quite perceptible in Scripture itself: after the rescue at the Red Sea, Moses and the men sing praise separately, Miriam and the women separately (Exodus 15:1, 20-21); before the Revelation at Mount Sinai, Moses commands the Israelites, *Come not near a woman* (*ibid.* 19:15). In the Oral Torah this principle began yet in Noah's Ark and continued throughout Jewish history (4), down to Talmud times, when rabbis insured that men and women remained apart when all came to hear their lectures (4§7).

At Mount Sinai, Moses first informed the women of the forthcoming Revelation, and then the men—separately; they were to stay apart until the great moment; and witnessing the Divine manifestation, they remained separate: so we read in the Midrash *Pirke de-R. Eliezer* 41 (4§3). Commenting in the Biblical encyclopedia *Torah Sheleimah* (XV, 94, §183), R. Menahem M. Kasher writes: Here is a most reliable source for the prohibition against men and women being mingled in the synagogue: If in the

wilderness, at Mount Sinai, at a time as holy as the Revelation, our Sages say that men and women were separate—and there is some evidence for this in the verse, *Come not near a woman*—how much more necessary is such separation in the synagogue the year round.

That men and women require separation at every festive or sacred occasion, continues to be clearly stated in the writings of the Geonim and Early Authorities (5).

In one Midrashic passage, the verse, *the Lord thy God is a devouring fire* (Deuteronomy 4:24, 9:3) implies that men should not pray in the midst of women (4§6). This was elaborated splendidly by R. David Ochs (Toronto) in a personal communication to the editor (6).

4. The Codes do not specifically discuss the special women's gallery in synagogues. This omission is probably for the same reason that the Mishnah fails to give particulars about the laws of *tzitzith* (fringes) and *tefillin* (phylacteries)—because *the observance was so widespread as to be common knowledge*; thus Maimonides in his commentary on Mishnah, Menahoth 4, 1 (7). Moreover, this observance was not in fulfillment of a specific law referring to the synagogue, but merely the application of a general, clearly stated law to synagogue conditions: "The law of the Torah for the separation of the sexes to prevent frivolity applies to all places where crowds gather, not just to places of worship"; so wrote R. Moshe Feinstein, referring to Talmud Sanhedrin 20a and *Mordechai ad loc.* There is no law requiring a synagogue to have a women's section; however, if women come to worship, then, for the protection of the sanctity of the Synagogue and the undisturbed devotion of the worshippers, a women's section is specifically required. In other words, the women's gallery is the obvious formal expression, in the synagogue, of an existing

law, rather than some entirely novel institution—as R. Menahem Hayyim Landa, a prominent Torah authority of Poland, asserted (8). Our definitive latter-day authority, R. Israel Meir ha-Kohen (the *Hafetz Hayyim*) notes in another connection (*Mishnah Berurah* 151, 1b): “. . . iniquity becomes so much more heinous in a sacred place. . . . There is no comparison between sinning in private and sinning in the royal palace, in the king’s very presence”; these words recall what another authority wrote, in a similar vein, several centuries earlier: in his Bible commentary *Akedath Yitzhak*, R. Isaac Ar’ama also stressed that a public sin by a group is so much more serious a crime as to be of a different degree or quality from the private sin of the individual (9). These points apply with peculiar cogency and force to the question of *mehitzah*.

5. The separation of the sexes in a regular place of worship is, moreover, a necessary consequence of the legal rule (Talmud, *Berachoth* 3, quoted in *Shulhan Aruch Orah Hayyim* 75) that under many conditions prayers may not be read in the immediate proximity of women; see in this connection *Abodah Zarah* 20 and *Shulhan Aruch ‘Eben Ha’ezer* 62 (10). This prohibition applies even to private prayer; but where larger numbers of worshippers are present, more formal arrangements are required. The women’s gallery was the answer to this problem.

6. The many incidental references to women’s sections that occur in the Rabbinic literature throughout all ages prove that the existence of these women’s sections could be taken for granted. The Jerusalem Talmud refers to the women in the Great Synagogue of Alexandria as being above (11§1). Authorities of the 12-14th centuries mention the women’s section in passing, while writing of other matters (11§2-7). For instance, one authority requests that at

the time the *shofar* is sounded, to avoid disturbance, the little ones be sent to the *women's section* of the synagogue (11§4).

A later decision which implies the existence of a women's gallery as a legal requirement, is given by R. Moses Isserles in *Shulhan Aruch Yoreh De'ah* 265; he also cites the references of two Early Authorities to women's synagogues (*ibid. Hoshen Mishpat* 35; 11§3, 7). And *Ture Zahab* to *Shulhan Aruch Orah Hayyim* 315, 1 cites a medieval authority about erecting a temporary partition when men and women require separation (5§6). Note that no early authority suggests that women be permitted to sit in the men's section and the erection of a partition foregone.

7. In the 19th century, when for the first time reform tendencies raised questions about the need for a women's gallery, this need was unequivocally affirmed in *all* responsa, among them those of the great Rabbinic authority, R. Moses Sofer (*Hatham Sofer, Responsa, Hoshen Mishpat* 190 and *Orah Hayyim* 28), and of *Maharam Schick* (*Orah Hayyim* 77), both of whom pointed out that the mixing of the sexes is forbidden no matter what the consequences may be in regard to synagogue attendance and religious practices (12). In the responsa *Teshuboth Beth Hillel* 50, it is clearly stated that where there is no proper *mechitzah*, "it is forbidden to enter the synagogue even if no women are present, because the violation has desecrated the Synagogue and has left it devoid of the sanctity of a miniature sanctuary" (13). In this vein, another typical responsum, condemning strongly even the use of an inadequate partition, was sent by the noted R. Eliyahu Guttmacher (14). One could go on, page after page, enumerating all the similar responsa, without a single dissenting orthodox legal opinion, which appeared over the last 150 years.

8. These responsa also pointed out that the change to mixed pews, like most innovations introduced at that time into the Synagogue, was imitative of non-Jewish practice, and therefore in direct violation of the Torah's law prohibiting the imitation of non-Jewish religious forms and practices in our worship (12). This was stressed particularly in the responsa *Dibre Hayyim*, *Orah Hayyim* 18 by the renowned Hasidic Rabbi of Sanz (15).

9. R. Aaron Kotler, one of the leading Rabbinic authorities of our time, points out that in our days there is an additional legal rule against the abolition of women's sections (chapter II, source 16). Since this practice has been adhered to by our foregatherers in all generations and in all countries, it would have the force of law—by virtue of the Biblical rule, *Forsake not the teaching of thy Mother* (Proverbs 1:8, 6:20)—even if there were no law requiring this practice as such. This was also stressed by Chief Rabbi Kook in a responsum issued in 1927 (chapter II, source 11). It has been further clarified by R. David Regensberg, dean of the Hebrew Theological College, in a communication to the editor (16).

10. Jewish law also stresses that where a community has traditionally established certain practices no changes should be made that would redound to the disadvantage of any of the members of this community (17). A change, therefore, which would make it impossible for members of the congregation to worship there, would be a violation of Jewish laws relating to property rights.

Many of the sources mentioned above, in Talmud and Early Authorities, et al., have been ably reviewed by R. Ezekiel Grubner, showing the inevitable conclusions to which they lead (18).

We may then summarize the position in the words of

Dr. Soloveitchick (chapter II, source 17): "The separation of the sexes in the Synagogue is a basic tenet of our faith. It dates back to the very dawn of our religious community . . . [and] can never be abandoned by any legislative act on the part of a rabbinical or lay body."

sources for chapter III

1

The Women's Court in the Two Temples

SOURCES FROM TALMUD, EARLY COMMENTARIES, ETC.

A. IN THE FIRST TEMPLE

1. *And the spirit of God clothed Zechariah the son of Jehoiada the priest; and he stood above the people, and said unto them: "Thus saith God: Why transgress ye the commandments of the Lord, that ye cannot prosper? because ye have forsaken the Lord, He hath also forsaken you." And they conspired against him, and stoned him with stones at the commandment of the king in the court of the house of the Lord (2 Chronicles 24:20-21).*

R. Judan asked of R. Aha: Where did they kill Zechariah—in the Women's Court or in the Court of the Israelites? He answered him: Neither in the Court of the Israelites nor in that of the Women, but rather in the Court of the *kohanim* (priests) . . . (Jerusalem Talmud, Taanith 4, 5—69a).¹

2. *And he built the inner court with three rows of hewn stone, and a row of cedar beams (1 Kings 6:36).*

The inner court: this was the court of the *kohanim* (priests) and the court of the Israelites; it was located before the porch.

1. Since the murder occurred under Joash, the eighth king of Judah, who reigned from 836 to 798 BCE (see 2 Chronicles 24), the passage concerns the first Temple. The passage is also found, with minor variants, in *Pesikta de-R. Kahana*, 'Echah (121a); 'Echah Rabbathi, Proems 5 and 23; *Koheleth Rabbah* 10, 5.

1: *The Women's Court in the Two Temples*

Scripture calls it "inner" because it was farther within than the women's court (Rashi *ad loc.*).²

B. IN THE SECOND TEMPLE

1. The Court of the Women was 135 [cubits] in length by 135 in width; there were four chambers at its four corners, each of forty by forty cubits, and they were not roofed over; and so are they destined to be [in the Temple of the future], for it is stated, *Then he brought me forth into the outer court, and caused me to pass by the four corners of the court. . . . In the four corners of the court there were courts inclosed . . .* (Ezekiel 46:21-22). . . . It [the Women's Court] was bare at first, and then they surrounded it with a balcony, so that the women could look on from above and the men from below, in order that they should not be mingled. Fifteen steps rose from it to the Court of the Israelites, corresponding to the fifteen [Songs of] Ascents in the Book of Psalms (120-134), and upon them the Levites [stood and] chanted hymns. . . . There were chambers underneath the Court of the Israelites which opened into the Women's Court, where the Levites would store stringed instruments,³ cymbals, and all kinds of musical instruments. . . . Corresponding to these [four southern gates],

2. In Mishnah Middoth 2, 5 (cited below in B §1.) Ezekiel 46:21-22, *Then he brought me forth into the outer court*, etc., is quoted to prove how the Women's Court will be in the Temple of the Messianic future; hence "the outer court" is taken to denote the Women's, and so R. David Kimhi interprets in his commentary to Prophets *ad loc.* So also Rashi to Ezekiel 44:19. The phrase, "the inner court," used here in regard to the first Temple, suggests that there was also an "outer court," i.e., a Women's Court. Hence its existence in the first Temple is directly implied by the present verse. See also the commentaries of R. Samson of Sens and R. Asher b. Jehiel to Mishnah Kelim 1, 8, and *Tosafoth* to Pesahim 92a, s.v. *tebul yom*, which tally a passage in the Mishnah with another in the Gemara, indicating that the first Temple had a Women's Court in Jehoshaphat's time.

3. Hebrew, *kinnoroth u-nebalim*, variously translated as harps, lyres, lutes or psalteries.

on the north side, starting from the west corner,⁴ were the Gate of Jeconiah, the Gate of Offering, the Women's Gate, and the Gate of Song . . . (Mishnah Middoth 2, 5-6).

The Court of the Women was 135 [cubits]: from east to west. by 135 in width: from north to south. . . . It, i.e., the Women's Court, was bare at first: for there were no joists whatever over it. and they surrounded it with a balcony: they set brackets in the wall all around, and built an upper level on them (R. Asher b. Jehiel, Commentary ad loc.).

It [the Court] was *bare* in that it was quite open, and no wall enclosed it. It has already been explained toward the end of Tractate Sukkah (52b) that there the people gathered for the rejoicing in the days of the [Sukkoth] Festival; out of fear lest the women mingle with the men, they surrounded it with filled arches to which some kind of stairway led, so that the women should watch from there when the people Israel gathered there for the Festivity of Drawing Water . . . (Maimonides, *Commentary to Mishnah, ad loc.*).

It was bare at first: that is to say, [the balcony]⁵ was quite open, with no wall surrounding it on its four sides; it merely stood on columns. and they surrounded it with an exostra:⁶ that is, a screen of lattice-work; for the women would gather there to see the Festivity of Drawing Water, while the men stayed in the Court; and in order that the women should not commingle with the men⁷ they surrounded it with these screens (Me'iri ad loc.).

4. Literally, close to the west.

5. This addition is clearly required by what follows. This interpretation by Me'iri differs widely from the others; the first comment seems to follow Maimonides (above), but is applied differently; what follows, concerning a screen, suggests the comments of the first R. Isaiah di Trani, given below, end of §2.

6. This is the Latin version of the Mishnah's *ketzoth-terah*, and means balcony or gallery. Me'iri, however, interprets quite otherwise.

7. I.e., communicate through speech or looks.

1: *The Women's Court in the Two Temples*

Fifteen steps rose out of it [the Rampart] which descended from the Court of the Israelites to that of the women; the height of each was half a cubit, and its depth was half a cubit (Yoma 16a).

2. They said: He who has not seen the Festivity of Drawing Water [for Libations] has never seen rejoicing in his life. At the conclusion of the first Festival day [of *Sukkoth*] they would descend to the Women's Court and make a great improvement there. . . . And Levites without number with harps, lyres,⁸ cymbals, trumpets and other musical instruments were on the fifteen steps which descended from the Court of the Israelites to that of the Women, corresponding to the fifteen Songs of Ascents in the Book of Psalms (120-134); on these the Levites stood with their instruments and chanted hymns. Two *kohanim* (priests) stood in the upper gate, which led from the Court of the Israelites down to that of the Women, with two trumpets in their hands . . . (Mishnah Sukkah 5, 1-2 and 4).

They would descend: *kohanim* and Levites would go down from the Court of Israelites, which was higher than the Women's Court, for the latter was below it along the incline of the mountain (Rashi *ad loc.*).

A great improvement: that is to say, of great benefit; for the people would prepare one place for men and another for women, the place for the men being above the one for the women, so that the former would not gaze at the latter (Maimonides, *Commentary to Mishnah, ad loc.*).

What was the great improvement? Said R. Eleazar, It was as we learned: it [the Women's Court] was bare at first,⁹

8. See note 3.

9. One MS reads, "At first it was divided between the men and the women"—which might mean that the area was divided into two, the Women's Court for the women, and the Rampart for the men (Rabinowitz, *Dikduke Soferim, ad loc.*).

and they surrounded it with a balcony and instituted that women should sit above and men below (Mishnah Middoth 2, 5). Our rabbis taught: Originally the women were within and the men outside, and they would reach a state of frivolity; it was then ordained that the women sit without and the men within, but they would still reach a state of frivolity; it was [finally] ordained that women were to sit above and men below. But how could they do so? It is written [of the Temple plans], *All is in writing, as the Lord hath made me wise by His hand upon me* (1 Chronicles 28:19)?¹⁰ Said Rab, They came across a verse, which they interpreted: *And the land shall mourn, every family apart: the family of the house of David apart, and their wives apart* (Zechariah 12:12); they reflected: In this instance, surely we can reason from the lesser to the greater: If in the [Messianic] future when they will be occupied in mourning, and the Evil Impulse will have no power over them, the Torah ordains that men be apart and women apart, now, when they are engaged in rejoicing, and they are subject to the Evil Impulse, how much more certainly must they be separated (Sukkah 51b-52a).

It, the Women's Court, was bare at first: and no brackets projected from the walls. and they surrounded it with a balcony: they set brackets in the walls to extend from them all around, and every year they would arrange balconies there [on the brackets] out of boards . . . so that women could stand there during the Festivity of Water-Drawing, and look on; this was the "great improvement" of which we learn in the Mishnah, that was constructed every year. within: in the Women's Court proper. without: along the expanse of the Temple Mount and the Rampart. But how could they do so? how could they add or alter anything in the construction of Solomon?

10. Since the Temple plans were of Divine origin, how might anything be altered?

1: *The Women's Court in the Two Temples*

It is written: of King David, when he instructed Solomon about the measurements for the Temple and its construction [that he said], *All is in writing, as the Lord hath made me wise by His hand upon me—even all the works of this pattern*—which the Holy One (blessed be He) transmitted to him through Gad the Seer and Nathan the Prophet. *They came across a verse:* that it was necessary to separate men from women, and erect a "fence" in Israel, so that they should not come to grief. *And the land shall mourn:* in Zechariah's prophecy he foretells how in time to come the Messiah of the tribe of Joseph will be eulogized, for he will be slain in the battle of Gog and Magog; and it is written, *the family of the house of David apart, and their wives apart*—[indicating] that even in time of sorrow men and women must be separated. *when they will be occupied in mourning:* at that time, and one who grieves will not be frivolous; and furthermore, *the Evil Impulse will have no power over them:* as the Writ states, *I will remove the stony heart* (Ezekiel 11:19, 36:26); and below [the Talmud] declares that the Holy One (blessed be He) will slay it. . . . *now, when they are engaged in rejoicing:* and close to becoming frivolous, and furthermore, *now they are subject to the Evil Impulse*—how much more surely must they be apart (Rashi *ad loc.*).

They would reach a state of frivolity: for they [the men] would enter among the women. And so they made a balcony round about the Court, projecting from the wall, with an arched roof over it . . . (R. Nathan b. Jehiel, *Aruch*, s.v. *gezuztera'*).

. . . *It was as we learned . . .* Originally the Women's Court was bare, and no brackets extended from the wall; and afterward *they surrounded it with a balcony:* they had brackets extending out, on the inside of the walls of the Court, round about—either by building them on or by means of holes that they made there [in the walls]; beams were set upon them, and boards atop those, so that the women could stand on them

and observe the festivity from above, while the men would stand below, in the Court. The men could not gaze at the women, for it [the balcony] had screens round about, made like a kind of latticed windows, so that the women within could see out, while those without could not see in. As it was taught: *Originally the men were within and the women outside,*¹¹ *and they would reach a state of frivolity:* for the men would come and go among the women. *it was then ordained that the men stay outside and the women within, and they would still reach a state of frivolity:* for the men would enter and leave among the women. *it was then ordained that the men be without and the women within, and yet they would come to be frivolous:*¹² for they would regard one another and communicate with their eyes. It was [ultimately] enacted that the women were to watch from above and the men from below. *How could they do so? It is written, All is in writing, as the Lord hath made me wise by His hand upon me—even all the works of the pattern—* and we have not permission to alter the construction, to add or lessen anything (The first R. Isaiah di Trani, *Rulings to Sukkah, Sam Hayyim*, Leghorn 1801, 25a).

3. What improvement would they make there? They would set the men off by themselves, and the women by themselves, as we learned elsewhere (Middoth 2, 5): It [the Women's Court] was bare at first, and they surrounded it with a balcony, so that the women could watch from above and the men from below, in order that they should not be intermingled. Whence did they learn [to do so]? From something in the Torah: *The land shall mourn, every family apart* [etc.] (Zechariah 12:12). Two *amora'im*¹³ [differed on this]: one said, it refers to the

11. This and the texts which follow differ markedly from our version.

12. From the comment which follows, the arrangement now seems to have been such that one could not actually go from one group to another.

13. Sages of the Gemara (the later part of the Talmud) who discussed, interpreted and elaborated on the Mishnah.

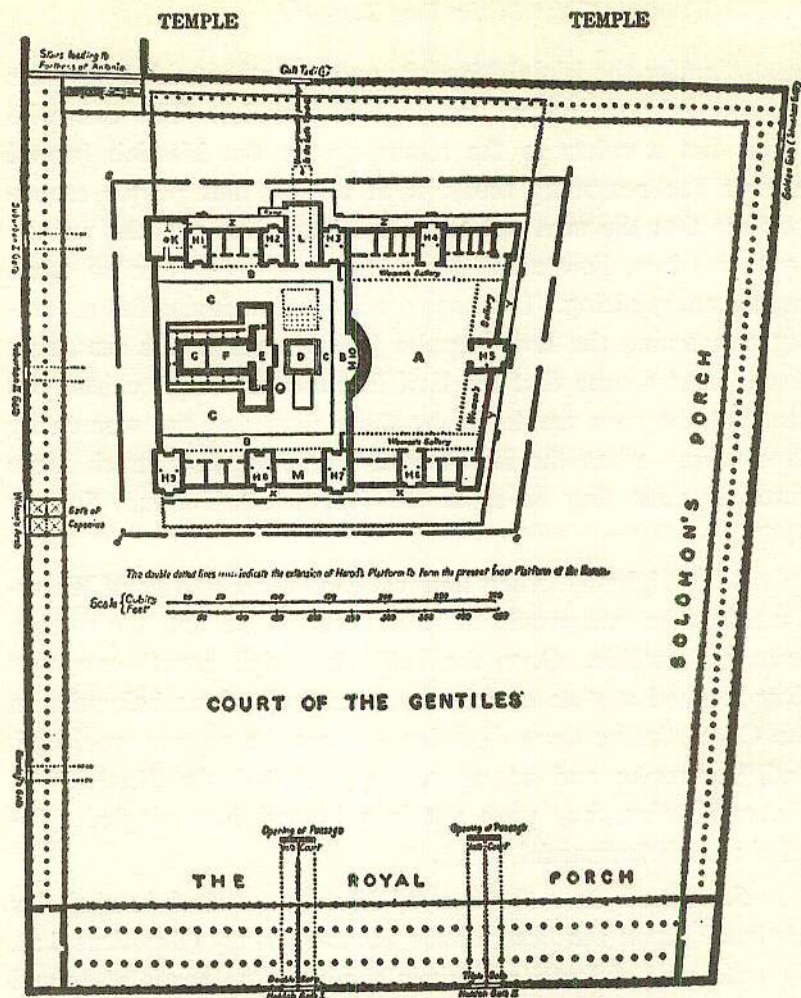
1: *The Women's Court in the Two Temples*

mourning for the [slain] Messiah; and the other said, It signifies the mourning in regard to the Evil Impulse. The one who holds that it refers to the mourning for the Messiah [would explain the reasoning thus]: if at a time that people mourn you see that the men are to be by themselves and the women by themselves, how much more certainly must it be so when people are rejoicing. The one who holds that it signifies mourning concerning the Evil Impulse [would explain the reasoning thus]: if at a time that the Evil Impulse no longer exists, you see that the men are to be by themselves and the women by themselves—when the Evil Impulse is alive, how much more certainly must they be separated (Jerusalem Talmud, Sukkah 5, 2).

4. Originally, when they watched the Festivity of Water-Drawing, the men would look on from within and the women from the outside. Once the *beth din* (high court) saw that they reached a state of frivolity, they built three balconies in the Court, facing three directions, where the women would [sit and]¹⁴ observe; and so when they watched the Festivity of Water-Drawing they were not [any longer] intermingled (Tosefta ed. Zuckerman 4, 1).

5. *Speak unto the sons of Israel. . . . And he shall lay his hand [upon the head of the burnt-offering]* (Leviticus 1:2, 4)—the sons of Israel rest [their hands on the heads of animal sacrifices] but not the daughters of Israel. R. Jose and R. Simeon say: Women have the option to do so. Said R. Jose: Abba Eleazar told me, Once we had a calf for a peace-offering, and we brought it into the Women's Court, where the women laid their hands upon it—not because this is incumbent on women, but to give them satisfaction of spirit (Hagigah 16b).

14. So in one MS. The Women's Court in the second Temple is also mentioned in Talmud, Sotah 40b-41b, q.v.



a b c d, the surrounding balustrade (*sdrēp*). X Y Z, the terrace (*chrl*).
 A, Court of the Women. BBB, Court of Israel. CCC, Court of the Priests.
 D, altar of burnt-offering. E F G, porch, holy place, and holy of holies. O, the laver.
 H, 1-9, Gates of the Sanctuary (*Middoth*, i. 4, 5), viz.: 1, gate of the House Moked; 2, Corban gate; 3, gate Nitsus; 5, the gate of Nicanor, or the Beautiful Gate; 7, the water gate; 8, gate of the firstborn; 9, the fuel gate; 10, the 'upper gate,' wrongly called the gate of Nicanor.
 K, the guardhouse Moked (=hearth). L, the 'northern

edifice that was between the two gates' (see BJ vi.11. 7 [Niese, § 150]). Here, it is suggested, the sacrificial victims were examined by the priests, having been brought in either by the underground passage shown on the plan, or by the ramp also shown. The upper storey may have contained the important 'chamber of the councillors' (*parhedrin*) (*Ydmā*, i. 1).
 M, the chamber Gazith, in which the priests on duty assembled for prayer (*Tamēd*, iv. end). There are not sufficient data for fixing the location of the other chambers mentioned in the Mishna. Their distribution on the plan is purely conjectural.

In his diagram of the Temple, Hastings clearly indicates the Women's Court (A), with the women's gallery on three sides.

2: R. Samuel Gerstenfeld, *The Ezrath Nashim in the Synagogue*

C. OTHER SOURCES

1. Since there was a partition built for the women on that side, as the proper place where they were to worship, there was a necessity for a second gate for them; this gate was cut out of its wall, over against the first gate. There were also on the other sides one southern and one northern gate, through which was a passage into the court of the women; for the women were not allowed to pass through the other gates; nor, when they went through their own gate, could they go beyond their own wall (Josephus, *Wars of the Jews*, V, 5, 2).

2. Entering by the "Beautiful Gate," (H5), one found oneself in the colonnaded *court of the women*—so called because accessible to women as well as men. This was the regular place of assembly for public worship. . . . The women were accommodated in a gallery which ran round the court (Mishnah Middoth 2, 5), probably above the colonnades as suggested in the plan. . . . The west side of this court was bounded by a wall, which divided the Sanctuary into two parts, an eastern and a western. As the level of the latter was considerably higher than that of the eastern court, a magnificent semi-circular flight of fifteen steps led up from one to the other (Hastings, *Dictionary of the Bible*, p. 902a).

2

The Ezrath Nashim in the Synagogue

BY RABBI SAMUEL GERSTENFELD

THIS QUESTION is "a matter of controversy in our gates."¹ Congregations are formed or dissolved in consequence of it. What usually happens is this: Members who have prospered

1. [See Deuteronomy 17:8.]

PLAN OF THE TEMPLE
ACCORDING TO THE
TALMUD.

(Designed by J. D. Eisenstein.)

NOTE. The smallness of the scale has rendered impossible the delineation of the full number of steps in each staircase. The exact position of the Temple upon Mount Moriah is indicated in the illustration given on the preceding page.

1 Eben Shetiyyan

2 Candlestick

3 Altar of Incense

4 Table of Showbread

5, 6 Chamber of Knives

7 Attic of Altians

8 Chamber of the Pancake Makers

9 Chamber of Phinehas the Vestment Keeper

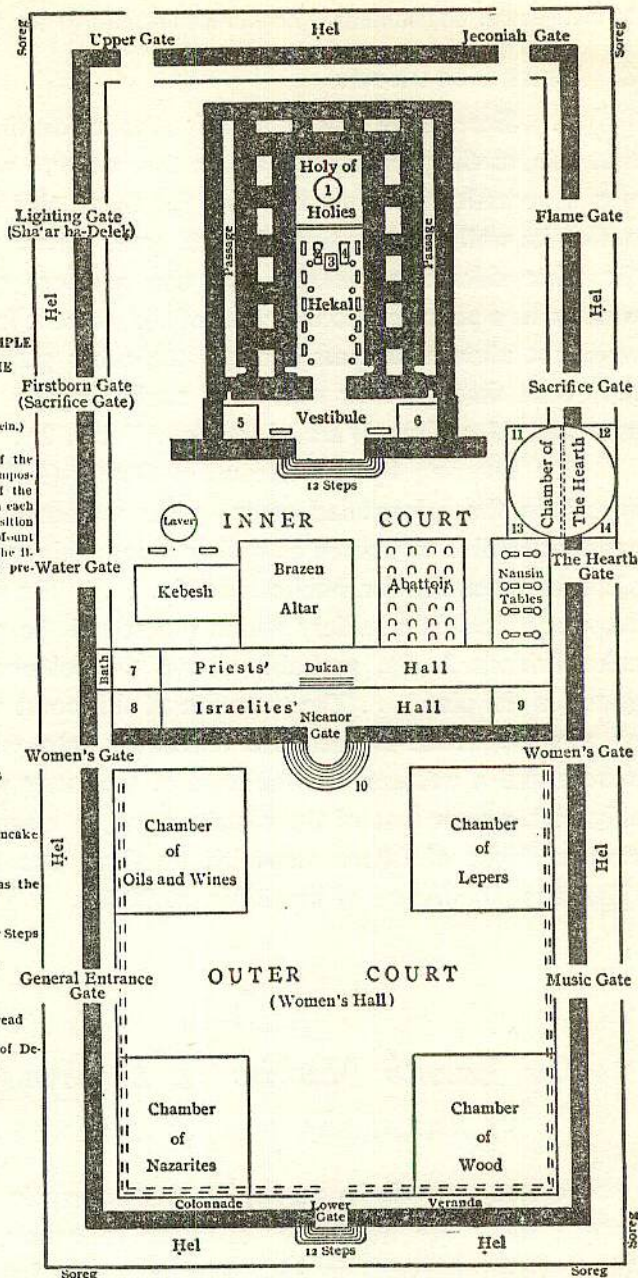
10 Fifteen Semicircular Steps

11 Chamber of Lamb

12 Bath Chamber

13 Chamber of Showbread

14 Chamber of Stones of De-
siled Altar



Dotted lines have been added to show where the balcony was built.

and attained wealth and position, become possessed of a spirit of innovation and imitation. They begin to be critical and find fault with the Synagogue in its traditional form. They clamor for an organ, a mixed choir and commingling of the sexes. And to our sorrow, as in the time of the Judges, we are without the restraining hand of a central authority, "everyone doing what is upright in his own eyes."²

The consequences are: Either the innovators get the upper hand and then the synagogue becomes reformed and the remnant of Israel, "of the seven thousand that have not knelt to the *Baal* of innovation,"³ have to withdraw and build another synagogue conducted along traditional lines; or the innovators are outvoted and then is realized the plaint of the Prophet, *Israel has forgotten its Maker and built temples* (Hosea 8:14). The position of the rabbi in a modern synagogue is unenviable and unstable. He is frequently put to the test. Shall he court poverty and lose his position by not yielding, or shall he enjoy well-being and sit firmly in his position by being pliant, thus abjuring the tenets inculcated at his alma mater?

To enter into a controversy with confirmed reformers would be labor wasted and in vain. What is purposed in these lines is to strengthen the hands of those that doubt and waver, "that halt between two opinions," and that have not yet crossed the line dividing orthodoxy from reform.

The crux of this question is whether the separation of the sexes in the synagogue is a *recent addition* to Judaism and is therefore no integral part of the Jewish ceremonial law or whether it is a law of ancient standing that provided for an *ezrath nashim* to keep the sexes apart, and is therefore part and parcel of Jewish law.

Research and investigation prove that at all periods of the

2. [See Judges 17:6, 21:25.]

3. [See 1 Kings 19:18.]

Temple as well as of the Tabernacle, the sexes were not to mix during prayer.

The main authority for this custom is the Halachah. The Halachah alone is our most authentic history. No one can profitably read our *halichoth olam*, our history, who neglects the study of our *halachoth*. By the searchlight of our laws alone we are enabled to trace the antiquity of the custom of segregation of the sexes during public worship.

Now according to the following data (Maimonides, *Yad*, Laws of the Temple, 7, 5; R. Aaron ha-Levi, *Hinuch*, 362), the Temple of Jerusalem with its environs was subdivided, with regard to degrees of sanctity, as its prototype the *Tabernacle of Moses*, into three parts. Within the walls of Jerusalem up to the Temple Mount (corresponding to the square formed about the Tabernacle in the wilderness within the hosts of Israel) was the Israelite camp, *mahaneh Israel*. From the Temple Mount to the Gates of Nikanor, the portals of the Temple (corresponding to the square formed by the hosts of Levites surrounding the Tabernacle) was the Levite camp, *mahaneh leviah*.

The place within the Gates of Nikanor (corresponding to the court of the Tabernacle) was called the "divine camp," *mahaneh shechinah*. According to the same sources, within the "camp of the Levites" in its western part, close to the Gates of Nikanor, was the women's section, *eizrath nashim*; while within the "divine camp," *mahaneh shechinah*, in its eastern part, was the men's division, *eizrath Israel*. Farther west, nearer the altar, was the priests' section, called *eizrath kehunah*. For sacrificial purposes these distinct sections, *azaroth*, were non-existent. Except for the case of a *sotah* (see Maimonides, Laws of Sotah, 3, 16.) all might traverse to the altar in connection with an offering. But for the sake of prayer or other religious gatherings, the distinction of *azaroth* was rigidly observed and

enforced. When once R. Meir's disciples discussed the contingency of a priest's wedding a woman with his portion from the sacrifices which must be consumed only within the *mahaneh shechinah*, i.e., *eizrath kehunah* and *eizrath Israel*, and must not be carried beyond to the *eizrath nashim*, which is located in the *mahaneh leviah*, R. Judah, displeased at being troubled with any hypothetical questions, exclaimed, וכי אשה בעזרה מניין? Is the event of a woman's presence in the *mahaneh shechinah* possible? (Kiddushin 52b).

Who knows with certainty? And yet we may declare with the highest degree of probability that the institution of *eizrath nashim* originated with the Tabernacle of Moses. The phrase repeated in the Writ, of "the women that congregated at the door of the Tabernacle,"⁴ which, according to Onkelos and Ibn Ezra, alludes to prayer meetings *at the door of the Tabernacle*, at *mahaneh leviah*, points to the later *eizrath nashim* situated in *mahaneh leviah*, at the eastern side of the Gates of Nikanor.

And as there was an *eizrath nashim* in the second Temple, so there was one also in Solomon's Temple. For, the second Temple was like the first. Its plan was merely a copy of the first drawn up by King David according to the instructions of Samuel with the assistance of Gad the Seer, and Nathan the Prophet. When King David fled and narrowly escaped the emissaries of Saul, he hid himself at Ramah, where he met Samuel for the second and last time and where the plan of the future Temples was worked out (see 1 Samuel 19:18; Zebachim 54b). Except for the double curtain of the second Temple, which replaced the *ammah teraksin*, the cubit-wide double partition of cedar, and other minor changes, both Sanctuaries were alike (Yoma 51b; Maimonides *Mishneh Torah*, *Hilchoth Beth ha-Behirah*, 2).

The statement by Dr. Mosessohn in "The Jewish Tribune"

4. [Exodus 38:8; 1 Samuel 2:22.]

(June 8, 1923), that "the Temple built by Solomon had no provision for a women's apartment," thus contradicts the facts. Is he disinclined to grant the same amount of credence to our annals as he would grant to a tale by Strabo, Herodotus or Xenophon? We may exclaim with the Talmud, "Shall not the priest's wife be accorded an authority at least equal with that of the saloon keeper?" Shall not our Torah, which is perfect, be at least as the idle gossiping of theirs? The fact is that Solomon's Temple did have an *ezrath nashim* for the use of women for the purpose of prayer. And according to the *Tana D'be Eliyahu* [ed. Friedmann, chapter 9] as quoted in *Yalkut Shimoni* [I, 934] the Biblical injunction, *Let thy camp be holy*, etc. (Deuteronomy 23:15), is a direct order that men and women shall not sit together in the synagogue.

An important historic reference bearing on our subject, is the narrative of Sukkah 51b (see Maimonides, *Mishneh Torah*, *Hilchoth Lulab*, 8):

It is told in that Baraitha that "at the end of the first Festival day of *Sukkoth*, the priests would go down to the women's apartment, *ezrath nashim*, and make extensive repairs therein." Asks the Talmud, "What was the nature of the repairs?" Says R. Eliezer, "It was as is explained elsewhere: It was originally smooth and they surrounded it with projecting beams." (Rashi: The walls of the *ezrath nashim* were originally smooth, there having been no projecting beams; then came the priests and fixed them permanently, and annually they came and covered them with boards, thereby enabling the women to view the rejoicing.) Then the Talmud proceeds to quote a Baraitha: The Rabbis have taught: Originally the women were inside and the men outside (the women in the *ezrath nashim* and the men in the broad square of the Temple mount and by the wall). This arrangement led to levity; so they provided that the men be inside and the women outside. Yet misconduct was not

prevented. Therefore it was finally arranged that the women be seated on the upper part (on the balcony of the *ezrath nashim* —Rashi) and the men below.

The Talmud proceeds to question the legality of the addition to the building. "How did they do so when it is written, *All this the Eternal made me understand in writing with His hand upon me?* (How did they add and change anything in Solomon's plan? Is it not written by King David when leaving word before his death to Solomon about the dimensions of the Temple and its structure, all the work according to the pattern communicated through Gad the Seer and Nathan the Prophet?) Says Rab: קרא אשכחו ודרשו — they found a verse and expounded it (they found a verse that it is necessary to separate men from women and to make a "fence" in Israel to prevent misconduct —Rashi).

The following thus becomes evident: that the *ezrath nashim* existed prior to these innovations or extensive repairs; that previous to these repairs either the men were inside and the women outside, or vice versa, but never together; that the Talmudic criticism was directed *not* against the introduction of separation, but against adding permanently fixed beams to a structure whose plan was drawn up by a king through a seer and a prophet, according to Divine instruction. And since the fixed beams objected to were in the *ezrath nashim*, we have the strongest possible evidence that in the second Temple the *ezrath nashim* itself was not a departure from, but in conformity with the plan of the first Temple.

Rab's answer conveys the lesson that in all gatherings, whether festive or mourning, separation is to be insisted upon, and is of such vital importance, that it outweighs the illegality of making structural changes [in the Sanctuary].

Maimonides in quoting this Talmudic passage says: "Though it is a duty to rejoice on all holidays, on *Sukkoth* the rejoicing was greater than on all other holidays; as it is said,

You shall rejoice before the Lord your God seven days (Leviticus 23:40). How did they do it? On the eve of (in the Mishnah, the evening after) the first Festival day they prepared seating for the women in the Temple on the upper part, and for the men beneath, so that they would not mix one with another."

Dr. Mosessohn, however, discounts the decision of Maimonides because Maimonides does not set it down as a law but as an historical narration, and says: "Its very contents prove that Maimonides has not made it as a law . . . this is history of the past and not a law for the future." He thinks that Maimonides does not give this the dignity of law, because Rab, when replying to the criticism of innovation, uses the phrase of קרא אשכח ודרשו. And the use of this phrase, accordingly, (*Lehem Mishneh*, on Maimonides, Talmud Torah 4, 1; see also *Shach*, *Yoreh De'ah* 246, 8) minimizes the legal value of anything so derived. He must have supposed that this innocent phrase is a magic spell, that overthrows *halachoth*. He fails to notice an apparently slight distinction which makes big differences. When the Talmud apologizes for R. Meir, for his having studied from Aher, it states: קרא אשכח ודרש. This does not necessarily imply the rejected opinion of an individual.

This singular form probably conveys the meaning that Rabbi Meir stands alone in this view (see Tosefta Hullin 11b, Kiddushin 3, 1 and elsewhere). But in our case, concerning the alterations in the Temple made for the separation of sexes, the plural form is evidence of general concurrence (see Gittin 20a and 77a, and *Tosafoth*, *ibid.*). Surely Maimonides in quoting this historic fact, meant to convey to us the custom which has the sanctity of law, that sexes are not to mingle in the synagogue as they did not in the Temple. The narrative form does not prove that it is merely intended "as a history of the past and not as a law for the future." Even the narrative part of our literature is written with a purpose, viz., to deduce

laws for life's conduct. The Zohar (quoted by *Baal Akedah* 7) echoes this doctrine in the following words: Said R. Simeon b. Yohai, "Woe to that man who says this Torah came to present mere history and secular things. Were it so, even today they could manufacture a Torah, and perhaps a more attractive one, etc." Were the Mishnah and Maimonides bent merely on telling a story and not on setting up an example for imitation, why have they left out such thrilling stories, so graphically narrated by Josephus and others, of what befell the Jewish people at that time? Perforce must it be admitted that their records of the past are *ipso facto* examples for the future.

So far it is proven that the *ezrath nashim* is an ancient institution existing in both Temples and, according to *Yalkut*, is part of a Biblical commandment. Now what about the Synagogue? Ezekiel says (11:16), *Therefore say: Thus saith the Lord Eternal, Although I have cast them off among the heathens, and although I have scattered them among the countries, yet I will be to them a little sanctuary in the countries whither they shall come.* The *mikdash me'at*, or Temple-in-miniature, is, according to the Rabbis (Megillah 29a), an allusion to the Synagogue, which is the Temple of the diaspora.

The Codes, indeed, do not yet directly mention an *ezrath nashim*. Yet it is mentioned incidentally and as a matter of course. It is stated that for the two-fold purpose of chanting praises and preventing a fire, some are accustomed to have vigil on the night of *Yom Kippur*. However, when slumber overtakes them, they may lay themselves down either at the entrance, on the western side, or in the *ezrath nashim*, when no women are present (see *Hagahoth Maimunioth* to end of Maimonides' Code, *Hilchoth Shebithath 'Asor*).

The silence of the Codes on this point is rather due to the fact that the custom of separate worship was so well known and the practice of setting apart an *ezrath nashim* was so clearly

in vogue, that the Codes could afford to be silent about it. Just as the Mishnah omits particulars about the laws of *tzitzith* and *tefillin* (see Maimonides, Commentary on Menahoth, 4) because their observance was so general and widespread, so was this considered too obvious a custom for further inquiry.

The old synagogue bears witness to the continuity of the law concerning *eizrath nashim*, and its acceptance by Israel. We may well exclaim with R. Eliezer (Baba Metzia 59b): כותלי בית המדרש יוכיחו: — "the walls of the synagogue shall corroborate my statement." Every synagogue still extant with a history of centuries behind it, has an *eizrath nashim*. And when, after the commencement of the Mendelsohn era, synagogues were erected in western Europe without an *eizrath nashim*, a mighty shout of protest rang out and was echoed from one end of the Diaspora to the other. All contemporary great Rabbis denounced it as a violation of a sacred custom.

It is thus demonstrated that the *mikdash me'at*, the Temple-in-miniature, the synagogue, conformed to the law of an *eizrath nashim* as it did conform to all laws that are motivated by decorum, decency and good conduct.

To prove his contention "that there was no segregation of the sexes during public prayers," Dr. Mosessohn quoted Megillah 23, where it is stated, "All may be called up (on Sabbath) to fill up the number of seven, even a minor, even a woman; but the Sages said, a woman should not read from the Torah because of the honor of the community." He reasons that "it is obvious that if a woman may be called to the Torah which is read in the synagogue, she was not separated from them, but sat with them and prayed with them." He seems to think that then, as today, a reader would recite in behalf of the person called, and that everyone was therefore eligible, and that if a woman was called up, it is conclusive evidence that she was one of the congregants. Else why not call up one of the *minyanyan*?

3: *The Synagogue as a Sanctuary*

The fact, however, is that till the time of R. Asher b. Jehiel, the *Rosh* (see Megillah 3, 1), to be eligible as one of the seven, one had to be able to read from the scroll. Not everyone was therefore able to read the Torah. When there were no seven scholarly men present, they may have had to forego or discontinue reading the week's portion. Under such conditions, the question would arise whether to invite a scholarly woman to read.

Now, since Torah reading and studying—and when Hebrew was the vernacular, reading the Torah in public was not a dry mechanical *mitzvah*, but a real study—are conducive to pure and moral thoughts (see Sotah 21a), the Sages would permit a woman to read before the *minyan*; but because of the shame of ignorance that would accrue to the congregation, they forbade such reading. So we see that for prayer or any religious gatherings in the synagogue, an *ezrath nashim* is as ancient as our Torah.

A synagogue without an *ezrath nashim* is a violation of the Law and ought altogether to be shunned. Rather than bring about that *He will turn away from thee* (Deuteronomy 23:15), a consequence resulting (according to the *Yalkut*) from non-separation in the synagogue, it is better to pray alone and be with Him that hears all prayers and who promised, *In every place where I shall permit my name to be mentioned I shall come to thee and bless thee* (Exodus 20:21).



The Synagogue as a Sanctuary

SOURCES IN TALMUD, MIDRASH, GE'ONIC
AND EARLY AUTHORITIES

1. YET SHALL I BE FOR THEM *as a little sanctuary in the lands where they are come* (Ezekiel 11:16): Said R.

Samuel b. R. Isaac,¹ This refers to the Houses of Prayer and Study in Babylonia [the Exile]. . . . Raba interpreted: What does this verse signify: *Lord, a haven hast Thou been for us in every generation* (Psalms 90:1)? It refers to the Houses of Prayer and Study (Megillah 29a).

2. R. Yohanan said: He who prays in the synagogue in the present world, it is as if he were praying in the ancient Temple, for it is stated, *Yet shall I be as a little sanctuary for them in the lands [where they are come]* (Jerusalem Talmud, Berachoth 5, 1, version of *Yalkut Shim'oni*, Psalms 659).

3. R. Joshua b. Levi said: [The Men of the Great Assembly] instituted the prayers to correspond to the daily burnt-offerings. . . . We have learnt a *baraita* supporting R. Joshua b. Levi: Why did they say, the time for the morning prayer is till noon? Because the daily offering of the morning could be sacrificed at any time until noon. . . . Why did they say, afternoon prayers may be recited until the evening? Because the daily offering of the afternoon might be brought until evening. . . . Now why did they say that evening prayers have no time limit? Because the limbs [of burnt-offerings] and suet [of other sacrifices whose blood was sprinkled before sunset] which were not consumed [by the altar fire] by evening, might continue to be consigned to the flames that entire night. Why did they declare that the additional prayers may be recited at any time

1. Where variations from printed editions occur, please consult the Hebrew texts and notes. For the translations the likeliest readings have generally been adopted, with no attempt to note the variants.

In addition to the excerpts cited here, many passages in Talmud and Midrash regard prayer as a substitute or equivalent for the Temple sacrifices, e.g., §3 below. See Jerusalem Talmud Berachoth 5, 1 (8d); *Mishnath R. Eliezer*, p. 234; *Sifre*, Deuteronomy 41, end; *Shemoth Rabbah* 38, 4; *Bamidbar Rabbah* 18, 17; *Shir ha-Shirim Rabbah* 4, 11 and 5, 2; *Pesikta' de-R. Kahana'*, *Shubah*, end; *Sifra*, *Behukothai* 6 (cited in 6 below); R. Israel Al-Nakawa, *Menorath ha-Ma'or*, II, 5-6 and 171; see also *Tosafoth* to Baba Bathra 8a, s.v. *yathib*, and R. Samson b. Zadok, *Tashbetz* 202.

3: *The Synagogue as a Sanctuary*

during the day? Because the additional offerings [for any special day] might be sacrificed at any time on that day (Berachoth 26b).

4. *Nor shall she come into the sanctuary* (Leviticus 12:4): [a woman ritually unclean from childbirth] has no permission to enter Houses of Prayer or Study (*Baraitha de-Massecheth Niddah*, 30-33).

5. . . . And should you say, the land is defiled—Israel is a holy people, and does not take defilement; the Torah is hallowed; and the Houses of Prayer and Study stand in place of the Holy of Holies for us today . . . (from a Geonic responsum in *Otzar ha-Geonim*, Kethuboth, p. 182).

6. *Thou shalt fear thy God* (Leviticus 19:14, *passim*): He has commanded that when a man enters the Sanctuary, a synagogue, or a House of Study, he is to behave toward them with reverence and respect, for it is written, *Ye shall keep My sabbaths, and reverence My sanctuary* (*ibid.* 26:2). It was taught in a *baraitha* in Yebamoth (6b): *and reverence My sanctuary*—do not fear the Sanctuary, but rather the One who adjured you about the Sanctuary—meaning the Holy One (blessed be He). Now we find the House of Prayer or Study called a Sanctuary, as we read in *Torath Kohanim* (*Behukothai* 6): *I will bring your sanctuaries* (*mikdeshechem*) *unto desolation* (Leviticus 26:31): [it contains three words:] *mikdash* (sanctuary), *mikdashi* (My sanctuary), *mikdeshechem* (your sanctuaries)—and thus includes Houses of Prayer and Study. And in Megillah (29a): *Yet shall I be*, etc.² Thus we learn that when Scripture says, *Ye shall reverence My sanctuary*, Houses of Prayer and Study are included. Scripture does not explain in what such reverence consists, but the Sages have defined it by their views, each in accordance with his concepts of sanctity. About reverence for the Sanctuary we learn in the

2. See above, §1, for the passage which follows.

Mishnah, Berachoth (54a): A man should not act in disparagement before the eastern gate [of the Temple], for it is opposite the Holy of Holies. And Rab commented: This applies only from *tzofim* toward [the Sanctuary, an area from which it was visible] and if he actually can see it. Similarly, R. Yohanan added: If no fence intervenes, and when the Shechinah (Divine Presence) rests there. . . . We learned further (*ibid.*): A man should not ascend the Temple Mount with his walking stick, shoes, or bag; nor with the dust [of his journey] on his feet; nor should he make it a general thoroughfare.³ . . . Thus we learn what constitutes irreverence toward the Temple Mount. As for the synagogue and the House of Study, we learn in Mishnah Megillah (28a): In a synagogue which has become a ruin, one is not to hold mourning eulogies, spread nets, set out fruit on its roof,⁴ or fasten bundles; nor is it to be made a thoroughfare; for it is stated, *I will bring your sanctuaries into desolation* (Leviticus 26:31): they remain sanctified though they are desolate. . . . In a *baraita* in Megillah (*ibid.*) we read: Synagogues and Houses of Study are not to be treated with heedless disparagement; one should not eat there or drink there, use the premises for pleasure, or stroll there; nor should one enter on hot summer days to escape the sun, or in rainy weather to escape the downpour; they should be swept and washed. . . . We have thus clarified disparagement and reverence in each case; *give to a wise man, and he will be yet wiser* (Proverbs 9:9): let one guard against any irreverent act similar to the examples of which our Sages have taught, and certainly against anything more serious (R. Eliezer of Metz, *Sefer Yere'im* 324).

7. . . . The synagogue is considered a little Sanctuary, as we learn further in the chapter (Megillah 29a). It is there-

3. To use it to reach other destinations, or for similar ulterior motives.

4. The latter two, to dry.

4: *The Principle of Separation*

fore proscribed to demolish anything of the synagogue; for we read in *Sifre* (Deuteronomy 61): How do we learn that if one demolishes even one stone of the Temple, altar or court, he transgresses a negative precept? From the verses which state, *Ye shall break down their altars . . . Ye shall not do so to the Lord your God* (Deuteronomy 12:3-4; *Mordechai*, Megillah 826).

4

The Principle of Separation

SOURCES IN TALMUD, MIDRASH AND COMMENTARIES

1. R. LEVITAS OF YABNEH said: All that came to the Ark had the males separated from the females, for it is stated, *Noah went in and his sons, and his wife and his sons' wives* (Genesis 7:7)—the males were then to one side, and the females on another. When they went out, males and females were reunited, for it is stated, *Go forth from the ark, thou and thy wife, and thy sons and thy sons' wives, with thee* (*ibid.* 8:16)—man and wife together (*Pirke de-R. Eliezer* 23).

2. Then sang Moses and the sons of Israel¹ this song. . . . *I will sing unto the Lord, for He is highly exalted. . . . And Miriam the prophetess . . . took a timbrel in her hand, and all the women went out after her. . . . And Miriam sang unto them: Sing ye to the Lord, for He is highly exalted* (Exodus 15:1, 20-21).

Miriam sang unto them: Scripture tells us that just as Moses sang praise for the men, so did Miriam chant for the women: *Sing ye to the Lord*, etc. (*Mechilta*, *Shirah*, end).

At the paean for [deliverance from] Egypt, the men pre-

1. Literal translation.

ceded the women; at the paeon of Deborah (Judges 5) the women preceded the men: for here deliverance came through men, as it is stated, *Moses and Aaron did all these wonders* (Exodus 11:10); there, however, it was women who brought deliverance—Deborah (Judges 4:6-10, 14) and the wife of Heber the Kenite (*ibid.* 17-22; *Lekah Tob*, Exodus 15:20).

3. R. Pinhas said: The day before Sabbath, the Israelites stood at Mount Sinai arranged with the men apart and the women apart. [On the Monday before,] the Holy One (blessed be He) bade Moses, "Go, ask the daughters of Israel if they wish to accept the Torah": for usually men follow the opinion of women; as it is stated, *Thus shalt thou say to the house of Jacob* (Exodus 19:3), i.e., the women; *and tell the sons of Israel* (*ibid.*), i.e., the men . . . (*Pirke de-R. Eliezer* 41).

The day before Sabbath: At the beginning of chapter 46, this Midrash states that the Revelation, when the Torah was given, occurred on the day before Sabbath; it continues on the verse, *Thus shalt thou say*, etc., which occurred before the Revelation, on Monday, as we read in *Mechilta'* and Shabbath (86b); however, the statement that they stood arranged with the men and women separate, seems to refer definitely to the day of Revelation, for earlier there was no need for them to separate and stand apart. But because it wishes to interpret the verse that Moses was to speak to the women first, it begins by relating that on the sixth day the women also stood, arranged by themselves: hence Moses was bidden to speak to them apart, for they were also to attend the Revelation (R. David Luria, Commentary *ad loc.*).

Here is a most reliable source for the prohibition against men and women being mingled in the synagogue: If in the wilderness, at Mount Sinai, at an event as holy as the Revelation, our Sages say the men and women were separate, how much more necessary is such separation in our synagogues the

4: The Principle of Separation

year round (R. Menahem M. Kasher, *Torah Shelemah*, XV, 94, Commentary §183).

4. R. Helbo said: On the day that Moses our Master (peace upon him) died, he wrote thirteen Torah scrolls, one scroll for every tribe, and noon had not yet come [when he was done]. He then called every tribe and bequeathed it the Torah and its precepts. That [thirteenth] Torah scroll [which remained], he put beside the Ark [in the Tabernacle]. He adjured and admonished every single [tribe] separately, the men apart and the women apart, saying to them: Be careful of the honor of the Torah and its precepts (*Midrash on the Passing of our Master Moses*).²

5. Now there was a certain man of Ramathaim, etc. (1 Samuel 1:1). Elkanah would go up [on pilgrimages to Jerusalem] four times a year: three by the Torah's precept (Deuteronomy 16:16), and one which he had taken on himself; as it is stated, *This man went up out of his city from year to year*, etc. (*ibid.* 3). Elkanah himself went up, and with him his wife, sons, daughters, brothers, sisters, relations in general, as well as all the members of his household. . . . Why did he take them all with him? When they went up on the way, they would camp for the night in a city square, and the men [of the city] would gather separately, and the women apart: for a man would talk with a man, and a woman with a woman, an adult with an adult, and a child with a child. The entire countryside would take notice of them, and would ask, "Whither do you go?" And they replied, "To the house of God that is

2. Reprinted in J. D. Eisenstein, *Otzar Midrashim*. A slightly different version is given in *Da'ath Zekenim* to Deuteronomy 31:26. For other passages indicating the separation of women see *Pesikta' Rabbathi* MS cited in *Sefer Aggadah* 373a; Tosefta 'Arachin 2, 1; Kiddushin 52b: "How would a woman come to be in the Men's Court?" as interpreted by Rashi, Me'iri and *Tosafoth R. Isaiah di Trani*; Sanhedrin 20a, Rashi and *Tosafoth* s.v. *nashim*, *ad loc.*; *Mordechai*, Sanhedrin 684; Jerusalem Talmud Sanhedrin 4, 4 (20b).

in Shiloh, from which Torah and precepts emanate; why do you not come with us, and we will go together?" At once their eyes would well with tears; they would ask, "Shall we go up with you?" And the reply would be, "Yes!" (*Seder Eliyahu Rabbah*, ed. Friedmann, 9).

6. A man should not stand among women and pray, because he will mind the women.³ Let a man consecrate his camp four cubits to the north, four to the south, four to the east, and four to the west.⁴ If he is within a house,⁵ let him consecrate it entirely, even if it be 100 cubits; for it is stated, *The Lord thy God is a devouring fire*⁶ (Deuteronomy 4:24, 9:3; *Seder Eliyahu Rabbah*, ed. Friedmann, 9).

7. Abbaye⁷ set a row of jugs; Raba⁸ arranged grass reeds (Kiddushin 81a).

Jugs: Where men and women would gather, either for the rabbi's lecture or for a wedding, he would arrange many earthenware pitchers between them, so that if they should approach each other, these would be struck, and would give off a sound. . . . *arranged grass reeds* . . . so that if anyone passed over them, their sound would be heard (Rashi *ad loc.*).

3. So Zeth Ra'anani on *Yalkut Shim'oni* 1, 934; literally, because of the mind of the women.

4. *Yalkut Shim'oni* reads: Let him rather consecrate his camp five cubits in each direction. But Berachoth 22b tends to confirm our reading.

5. *Yalkut Shim'oni* has: within his camp. Our reading suggests Berachoth 25b: an entire house is like the four cubits about one.

6. *Yalkut Shim'oni* cites: *the Lord thy God walketh in the midst of thy camp* (Deuteronomy 23:15).

7. Religious leader in Pumbeditha, 322-337.

8. Religious leader in Mehoza, 337-351.

❧ 5 ❧

Further on the Principle of Separation

SOURCES FROM GE'ONIC AND EARLY (MEDIEVAL) COMMENTARIES

1. WHAT IS THE LAW about having men and women intermingled at a celebration? It is forbidden to do so; rather must the men be apart and the women apart: for if at a time of mourning, when there is lamentation and weeping, it is writ, *the land shall mourn, every family apart* (Zechariah 12:12), at a time of festivity and feasting, when there is happiness and the Evil Impulse is rampant, how much more certainly must each group be by itself, so that their inclination shall not contemplate sinning, at the joy of the feast (*Ma'asim li-Bene Eretz Yisra'el*, ge'onic work, MS fragment in *Tarbitz*, I, 1, p. 97).

2. It is forbidden for women to mingle among the men, either at a ritual meal or at any other occasion; rather must women be apart and men apart, for we reason from the lesser to the greater: if for a time of mourning it is written that the House of Israel shall lament every family apart, *the House of David apart and their wives apart*, how much more is separation necessary at feasting and rejoicing, for then the Evil Impulse is provocative (*Sefer ha-Pardes*, 19b).

3. Do not mingle sons amid daughters, lest they sin. [We read:] *Then shall the virgin rejoice in the dance—alone; but the young men and the old together* (Jeremiah 31:13). So also, *boys and girls playing in its broad places* (Zechariah 8:5)—boys apart and girls apart. And again toward the end of Psalms (148:12), *Young men and also maidens*;¹ it does not read, "Young men with maidens," like [the continuation], *old men*

1. Literal translation.

with children (*ibid.*). [The extra word] *also* signifies that, in addition, women should also be separate (*Sefer Hasidim*, ed. Mekitze Nirdamim, 60).

4. Whoever would recite [before the Grace to a wedding meal] the benediction ["Let us bless our God] in whose dwelling is joy," must ascertain if Scripture's dictum, *rejoice with trembling* (Psalms 2:11), has been observed: if there is "trembling" [awe] in the place of rejoicing. But if he [the bridegroom] is marrying an unsuitable woman . . . or if women are sitting among the men, where there would be illicit thoughts, it is not fitting to say, "in whose dwelling is joy." Concerning people such as these is it said, *I sat not in the assembly of them that make merry, nor rejoiced* (Jeremiah 15:17); and again, *For all tables are filled with filthy disgorgement, and no place is clean* (Isaiah 28:8) . . . (*Sefer Hasidim*, ed. Mekitze Nirdamim, 1176).

5. Our master R. Jacob the Levite said: Hence it was written as normative in *Sefer Rabbiah* that it was the custom to permit spreading prayer robes² to separate men from women, on the Sabbath at the time of the rabbi's lecture, for the sake of chasteness (R. Jacob b. Moses Moelln, *Sefer Maharil*, Cremona 1565, 38a).

6. It is forbidden to set up any screen whatever on the Sabbath, unless it is for chasteness in general . . . but a screen made for general chasteness is permitted: for example, the divider that is put up for the rabbi's lecture, between the men and the women, may be set up on the Sabbath (*Mordechai*, Shabbath, 311).

2. Or perhaps, cloths or robes in general.



6



A Letter

BY RABBI DAVID OCHS

(Translated by Rabbi Shapiro of Milwaukee)

TO THE DISTINGUISHED MAN OF LETTERS who wages the battles of the Lord, Mr. Baruch Litvin: peace and blessing.

To my great regret I cannot undertake to be present at the time of the court suit, to have the honor of standing by you, as I am not in the best of health. May the Blessed One grant that His cause which you bear, the defense of the sanctities of our people, will meet with success.

In regard to your question, whether among the arguments of the opponents there are specious ones, let me say this: It is certainly impossible to arrive at any true decision in Halachah unless one believes in the sacred character of the Torah and its Halachah, and in its revelation at Sinai. Their attempts to interpret questions of immorality and indecency in Jewish law, and the Writ involved, differently from the way in which our Sages have interpreted, are naught but windblown distortion; they put a construction on Torah that is at variance with our sacred ancestral Halachah.

The sources of the prohibition against praying in a synagogue without a *mechitzah* (physical separation) or a women's gallery, are all known. In the Talmud, Sukkah 51b, it is clearly indicated that even before the "great amendment" was made¹ there was a partition which separated the men from the women, for originally one group was without and another within. The amendment was instituted to prevent any possibility of levity at any time.

1. [For the passage in full see above, source 1, §2.]

In a passage cited from *Seder Eliyahu Rabbah* 9 in *Yalkut Shim'oni* I, 934 we read: One should not stand among women and pray because he will mind the women; he should rather sanctify his site five cubits on each side; and if he is within his own camp let him sanctify it in its entirety, for it is stated, *The Lord thy God walketh in the midst of thy camp* (Deuteronomy 23:15). . . .

It is clear from this passage that on public grounds, which can be but a transient setting for prayer, if no alternative is possible, it is sufficient to set off a distance of five cubits all around; but as for a synagogue, it must be sanctified in entirety, so that one cannot come to entertain illicit thoughts.

In his responsum² R. Moshe Feinstein has written that in every synagogue where a state of levity can be reached, the Scriptural precept *My sanctuary shall ye reverence* (Leviticus 19:30, 26:2) is being violated, for the synagogue is a sanctuary-in-miniature. All this applies even when the women are dressed properly, in accordance with Jewish law. However, if they are not so dressed, then even in one's own house is it forbidden to recite the *shema'*, and all the more certainly in the synagogue, a dwelling place for holiness; for according to a prior passage cited in *Yalkut Shim'oni* (*loc. cit.*) such unholiness would deprive the synagogue of its sacred character: it reads, *That He see no unseemly thing in thee, and turn away from thee* (Deuteronomy 23:15)—this teaches us that indecency repels the Divine Presence (*Sifre, Debarim* 258).

The view of *Mordechai* to Megillah 28a is that the Torah itself equates the sanctity of the synagogue with that of the Temple. Perhaps this is also the thought of Maimonides when he writes in his enumeration of the precepts, at the beginning of his Code, negative precept 65: [We are obligated] not to destroy

2. [Reprinted in this volume as source 15 to chapter II.]

the Sanctuary, synagogues, or Houses of Study . . . for it is stated, *Ye shall surely destroy all the places wherein the nations . . . served their gods. . . . Ye shall not do so unto the Lord your God* (Deuteronomy 12:2, 4).

Even R. Nissim, who in his *Novellae* to Megillah 26 holds that a synagogue is holy only by Rabbinic ordinance, has himself ruled in a responsum that during prayer the synagogue is sacred by Biblical law.

Moreover, the desire to remove the *mechitzah* touches on the violation of the many injunctions of the Torah that *neither shall ye walk in their* [the nations'] *statutes* (Leviticus 18:3), as Maimonides enumerates them in his Code, *Hilchoth 'Abodah Zarah* 11. There is also a ban against demolishing any part of the Temple, etc. This has all been dealt with at length in the Responsa of *Maharam Schick*, *Orah Hayyim* 71, which see in its entirety, as well as 77,³ where he is most emphatic about such innovations. See also the Responsa titled *Dibre Hayyim*, I, 3, that even if the synagogue is holy by Rabbinic law alone, nevertheless the demolition of a synagogue or any part of it is Biblically forbidden.

In any case, *Maharam Schick* has already written that the matter does not depend on the severity of the transgression, for we have been adjured to observe a "minor" precept as carefully as an "important" one.

As for the argument that even in orthodox synagogues study groups are held for men and women together, and this is also considered "Divine service" or "worship"—it is true that study is also a form of Divine service, as Maimonides has written in his *Sefer ha-Mitzvoth*, positive precept 5: ". . . to serve him (Deuteronomy 11:13) denotes prayer, and it denotes study. . . . Serve Him through His Torah, serve Him in His Sanctuary."

3. [Reprinted below as source 12.]

Nevertheless there are distinctions; for there are three types of service: (1) sacrificial offerings at the Temple; (2) study of the Torah; (3) prayer, which is called the service of the heart—and each one has special laws. Proof is that only for group prayer is a *minyan*, a quorum of at least ten, needed, but not for group study of Torah.

In support of this the opinion of the *Bayith Hadash* may be cited. He states in *Eben ha-Ezer* 62 (quoted in *Beth Shmu'el* 11) that one should not recite the formula, *she-ha-simhah bi-m'ono* [in whose dwelling is the rejoicing—usually said in the Grace after a wedding meal] if there is no separation between men and women, for there is no Divine joy where the Evil Inclination has dominion; however, the *sheba' berachoth*, the seven wedding benedictions, are to be pronounced, as his words plainly indicate. It is clear then that the prohibition here under discussion applies only to prayer in the synagogue with women present, because of the necessary sanctity of the "camp" and reverence of the Sanctuary-in-miniature.

I am in prayer that the Almighty awaken the hearts of His people to return to Him in truth; and may He vouchsafe you His Divine aid.

I close with greetings to you and yours.



On Laws which are Common Knowledge

BY RABBI MOSES BEN MAIMON (MAIMONIDES)

THE LAWS of *tzitzith* [fringes; Numbers 15:38], *tefillin* [phylacteries; Deuteronomy 6:8, 11:18] and *mezuzah* [the scroll on the door-post; *ibid.* 6:9, 11:20], the manner of making them, the blessings that must be recited over them, and all other

matters of law connected with them, as well as what has been said about them in responsa—all these are not, properly speaking, subjects for discussion here, according to the adopted purpose of this work; for it is but a commentary, and the Mishnah does not speak of these precepts in particular, to include their especial laws, so that it should require explanatory commentary. The reason for this [silence of the Mishnah], it seems to me, is that these matters were common knowledge at the time the Mishnah was composed; they were known and practiced by the entire people, in general and in particular, and not one detail was beyond anyone's ken; therefore he [the redactor of the Mishnah] saw no need to speak of them, just as he did not set down the order of the prayers, or what the reader of the congregation should do, for this was all common knowledge; hence no order of prayers was composed, but rather the Gemara [as a commentary on the Mishnah] and its explanation (Maimonides, *Commentary to Mishnah*, Menahoth 4, 1).



Responsum to an American Rabbi

BY RABBI MENAHEM MENDEL HAYYIM LANDA

TO MY ESTEEMED FRIEND AND PUPIL, R. Raphael Abigdor Landa, Manchester, New Hampshire: Your letter has reached me, in which you write of those who brazenly do away entirely with the women's section in the synagogue, pray with men and women seated intermingled, and yet call themselves orthodox, claiming that they nullify no law of our Codes, because in our compilations of laws it is not mentioned at all that there must be a women's section, especially for women.

Know that these are *a brood of sinful men* (Numbers

32:14), who wish to break through the "fences" of our fathers, in order to be like the non-Jews; they would uproot the guards for chasteness which have ever distinguished our ancestors.

The matter is explicitly indicated in the Mishnah, Middoth 2, 5 which deals with the Court of the Women in the Sanctuary: "It was bare originally, and then they surrounded it with a balcony, so that the women could look on from above and the men from below, and then they would not be mingled." It is clarified in Sukkah 51b: "What was the great amendment? Said R. Eleazar: As we learned . . . Originally, the women were within and the men without, and they came to be frivolous; it was then ordained that the men sit outside and the women within, but they yet reached a state of frivolity; then it was ordained that the women sit above and the men below. [Then it was asked,] How could this be done? etc. [We derive from a verse that the original Temple plans might not be altered.] Said Rab, They [the Sages] found a verse which they interpreted, etc.¹ If in the [Messianic] future when people will be engaged in mourning, and the Evil Inclination will have no power over them, the Torah declares that men and women should be separate, now that they were involved in festivity, how much more necessary was such separation."

Now, in the *Shulhan Aruch* (Code of laws) there is no mention that a women's section is to be provided in the synagogue, because the *Shulhan Aruch* notes only matters which *must* be observed. But there is no absolute obligation to have a women's section in the synagogue, since women are legally exempt from group prayer.² However, this custom was automatically adopted everywhere: to have a separate section for

1. [For the continuation see above, source 1, B §2.]

2. [Hence a synagogue may well remain without a women's section if no women attend. This has been the practice to this day in many Houses of Prayer of the Hasidim.]

the women who would come to pray although not required to do so—just as women have stringently accepted the precepts of *shofar* and *lulab*. This section is generally made as it was in the Sanctuary: to have the women on an upper level and the men on a lower, so that they will not mingle.

This is obviously most stringent a matter if the Sages permitted erecting a balcony [in the Sanctuary] although it was generally forbidden to add anything to the Temple structure as it had been made by the builders in prophetic times. No matter what—once women also came to that court, for the Festivity of Water-Drawing for Libation, the Sages permitted an addition to the structure so that there could be no mingling of men and women—as the Talmud in Sukkah clearly states.

Actually, it appears that in the Sanctuary, originally, the women's court was not at all reserved particularly for women; the outer court was merely called that of the women because the latter were permitted to come there. Farther within, beyond the wall, however, women did not go: according to Rashi (Kiddushin 52b, s.v. *vechi 'ishah*) because they were forbidden there; according to *Tosafoth* (*loc. cit.*) because they were not in the habit of going there. And so the outer court was called the Women's Court, because their custom was to go there if they happened to come; but it was not a fixed place for women alone, as it was not their habit to come regularly to the court. And under Bible law, it did not have the sanctity of a regular court; if we find in the Mishnah, Kelim 1, that the Women's Court was hallowed, it was by Rabbinic enactment, as is indicated in Yebamoth 7b. . . .

Now originally no amendment was needed there, since women came only infrequently, by happenstance. It was only in the later generations that women betook themselves to the court with greater regularity, and especially after the Sages instituted the Festivity of Water-Drawing for Libation to remove the

belief of the Sadducees, who held heretical views about the libation of water. Then many women would come to see this religious rejoicing. And it was seen that although they did not actually mingle, for the women sat within and the men in the outer part, they nevertheless reached a state of levity. Then was it ordained to erect a balcony and have the women above, etc. Now the balcony was made in the women's court itself, and the men too sat in that court, below; it was not at all designated especially for women. Further, entry to the court of the men was only by way of the women's court; there was no other way to get to that court. Thus it was not in the least peculiarly a *women's* court; it was so called only because the end of this court was as far as women went when they came to the Temple.

And so in the synagogue there is no obligation to have a women's section; it is only that since generations before our time women have grown accustomed to come to pray in the synagogue. Therefore the practice was instituted to have a section for women on an upper level, or even at the side, but separated by a complete physical partition.

The proper way is to endeavor with soft words to correct these people's erroneous views, and to show them that what they do runs counter to an enactment of our Sages yet from the time of the Temple.

May peace dwell amid the people Israel.



On Public Iniquity

1. IDLE CONVERSATION, which means even any secular talk for the sake of one's livelihood, which is permissible elsewhere, is forbidden in the synagogue; and especially so con-

9: On Public Iniquity

versation that is altogether idle, from which it is always fitting to refrain. The holy Zohar on pericope *vayyakhel* enlarges on the great seriousness of this sin.¹ And in the synagogue or House of Study one should certainly beware of the sin of forbidden talk, such as malicious gossip, talebearing, quarreling or discord: for not only are these great sins in their own right, but the wrongdoing is so much greater in the hallowed place, since the honor of the Shechinah (Divine Presence) is thus deprecated. There is no comparison between sinning alone, by oneself, and transgressing in the royal palace, in the presence of the king. And the evil is here so much greater, since many are brought to grief by crimes such as these . . . (*Mishnah Berurah* 151, 2).

2. In the Midrash (*Bereshith Rabbah* 50, 7) we read: *This one came to sojourn and he would play the judge* (Genesis 19:9)—the law which the early inhabitants enacted, you come to undo. Said R. Menahem in R. Bibi's name: Thus had the people of Sodom agreed among themselves: they said, Whatever traveller stops off here, we will use him immorally and arrogate his money.² . . . They were entirely bent, then, on abolishing hospitality from their midst and having no one come there from anywhere at all. . . . Now this clarifies Ezekiel's meaning when he says, *Behold, this was the iniquity of thy sister Sodom*, etc; *neither did she strengthen the hand of the poor and needy* (Ezekiel 16:49); he means that they made this their law and norm. . . . That night they followed their usual practice, and their measure of sin overflowed, for it was filled from before

1. The passage reads: Once the holy congregation has gone up into the synagogue [on the Sabbath] it is forbidden to be occupied with anything, even the needs of the synagogue, except matters of doxology, prayer and Torah, as it is fitting. If a person takes up other matters, worldly matters, this is a man who is desecrating the Sabbath; he has no portion amid the people Israel. Two angels are assigned to him on the Sabbath day; and they rest their hands on his head and say, Woe to so-and-so, who has no share with the Holy One, blessed be He (*Zohar* II, 205b).

2. Or, more likely, his wealth, goods, possessions, etc.

with every kind of casual and wilful iniquity, and thus they incurred annihilation. From here we derive a satisfactory explanation about the men of Gibeah (Judges 19-20): for if they followed the practice of the Sodomites in these two respects, namely, to put an end to anyone's passing through, and to permit this bestiality, such practice was not made part of their statutes, and was not sanctioned by their laws, perish the thought; they were rather like a people with good laws who do not, however, observe them. Therefore we need not puzzle why brimstone and fire did not rain down on them from the Lord in His heaven; yet by their own laws this [action of theirs] was a criminal offence, and the judges of the city or the tribe were obligated to extirpate them from this world; since these judges looked on and did not seek to stay their hand, or they closed their eyes to what was done so openly, the guilt lay on the entire tribe,³ and it was the blessed Lord's will to visit retribution upon all, once those who sought justice were satisfied. And this is the rule for any transgression which individuals in any group may commit, violating some one of the Torah's prohibitions, such as drinking non-kosher wine, eating non-kosher cheese, wearing clothes of wool and linen (Leviticus 19:9, Deuteronomy 22:11), etc. If the blind eye which the judges and leaders turn on this practice gives the transgressors tacit permission, as though they were allowed by law, then the sins of the individual have been converted into the group sins of all. . . . Indeed, if but public opinion accords with it, and it becomes the rule of the courts to raise no objections, then the smallest sin becomes a statutory crime and wickedness, and is the iniquity of the entire group; it can find atonement only through retribution upon the group, as it happened with the Benjaminites for their participation in

3. The original has "tribes"—perhaps in the sense that the other tribes were required to redress the great wrong by waging a war of annihilation against the tribe of Benjamin.

10: *On Chasteness, Immodesty and Indecency*

the sin. . . . It were therefore far better that those who sin with their very souls be decimated, burnt or stoned, rather than let one letter of the Torah be uprooted with public consent. . . . He who does not accept this has no share of understanding and no portion in the Godly Torah (R. Isaac Ar'amah, *Akedath Yitzhak*, I, 20).

❧ 10 ❧

On Chasteness, Immodesty and Indecency

SOURCES FROM TALMUD AND CODES

1. SAID R. ISAAC: A handbreadth of a woman's body [if exposed] constitutes an indecency. In regard to what? If we say in regard to gazing at her, R. Shesheth has already stated: Why did the Writ list outer jewelry together with intimate jewelry [in Numbers 31:50]? To inform you that whoever gazes at [even] the little finger of a woman, it is as if he stared licentiously. Rather does this apply to one's own wife, in regard to reciting the *shema'*. R. Hisda said: The leg of a woman [if exposed] constitutes an indecency, for it is written, *uncover the leg, pass through the rivers* (Isaiah 47:2), and Scripture continues, *Thy nakedness shall be uncovered, yea, thy shame shall be seen* (*ibid.* 3). Samuel said: A woman's voice [singing]¹ is morally disturbing, for it is stated, *sweet is thy voice,² and thy countenance is comely* (Song of Songs 2:14).³ R. Shesheth said: A woman's hair is morally disturbing [if visible], for it is

1. So *Me'iri* and *Shittah Mekubetzeth ad loc.*

2. Since the verse praises her for this, it is apparent that this makes her desirable (Rashi).

3. In the version of the Jerusalem Talmud, Hallah 1, 4, the proof-text is Jeremiah 3:9, *from the voice of harlotry the land was polluted.*

stated, *thy hair is as a flock of goats*⁴ (*ibid.* 4:1; Berachoth 24a).

2. If a handbreadth of a woman's body [is revealed] in a part which is usually covered, even if she is one's own wife, it is forbidden to recite the *shema'* in her presence. If the hair of a woman's head which is usually covered [is visible], it is forbidden to recite the *shema'* in her presence (even if she is one's own wife).⁵ . . . One should beware of hearing a woman singing while he recites the *shema'* (R. Joseph Caro, *Shulhan 'Aruch 'Orah Hayyim* 75, 1-3).

3. . . . *thou shalt keep thee from every evil thing* (Deuteronomy 23:11)—[this indicates] that a man should gaze neither at a beautiful woman, even if she be unmarried, nor at a married woman, even if she be ugly, nor yet at the colorful clothes of a woman [for he will remember the woman as she looks in them, how they beautify her, and his thoughts will dwell on her].⁶ . . . R. Judah quoted Samuel: Even if they are hung on the wall ('Abodah Zarah 20a).

4. It is the practice in Cracow that at the meal [in honor of the groom and bride] given on the second night [after the wedding] one recites the blessing, *who hast created joy and gladness* [following the Grace after the meal] but not [*Blessed be our God*] *in whose dwelling is gladness*, [before the Grace]. This is puzzling, and I have found no explanation for it, unless it is because this is a small meal and the men and women are seated together in one room, and it is written in the Customs that the blessing, *in whose dwelling is gladness*, is not recited where thoughts of transgression are suspected (R. Joel Sirkes, *Bayith Hadash to Tur 'Eben ha-'Ezer* 62, s.v. *ve-yesh 'omrim*, end).

4. See note 2.

5. Gloss of R. Moses Isserles.

6. Rashi *ad loc.*

5. The [author of] *Bayith Hadash* has written that when men and women are in one chamber, the blessing *in whose dwelling is gladness* is not to be said, for there is no gladness where the Evil Impulse is rampant (*Beth Shmu'el* to *Shulhan Aruch 'Eben ha-'Ezer* 62, 11).

11

The Women's Section in the Synagogue

AS MENTIONED IN TALMUD AND EARLY
(MEDIEVAL) AUTHORITIES

1. SAID R. JUDAH: Whoever did not see the Diplaston [basilica synagogue] of Alexandria has never in his days seen the glory of Israel. It was like a great basilica,¹ having a colonnade within a colonnade; at times it held twice as many as had left Egypt. . . . Who laid it waste? The wicked Trajan . . . [his] legions surrounded it and slew them [the men within]. Said he to their wives, Yield yourselves to my legions, and I will not slay you. They retorted, What you did on the ground do on the upper level.² He thereupon merged their [the women's] blood with theirs [the men's], and the sea ran red until Cyprus (Jerusalem Talmud, Sukkah 5, 1).

2. It is the custom of some men to sleep in the synagogue [the night of *Yom Kippur*] for during most of the night they recite psalms, hymns and prayers of praise; some do so for the sake of guarding the candles [they sleep there to guard that none

1. I.e., it had two areas separated by ranges of columns, with a raised platform at one end. According to S. Krauss (*Synagogale Alteruemer*) the Jews adopted this Greek style of architecture for synagogue construction, and eventually the early Christians copied it from the Jews.

2. It is thus clear from this tragic account that the men were generally below, and the women on a gallery. This tallies with archaeological findings of the synagogues of second century Galilee; see chapter IV.

of the many candles sets fire to the synagogue] . . . and such was the practice of our master R. Me'ir [b. Baruch Rothenberg], although he would sleep at the western end [of the synagogue], far from the place of prayer, or in the women's synagogue when there were no women there (*Hagahoth Maimunioth to Mishneh Torah, Hilchoth Shebithath 'Asor*, end, s.v. *kol nidre*).

3. Three are believed on [the identity of] a firstborn [among twins, etc.], viz., the midwife, his father and his mother: the midwife, immediately [after birth] . . . (Kiddushin 74a): I have heard the ruling, derived from this, that a person is believed about whatever he is occupied with, and no other, as in the case of the midwife. This applies practically to . . . matters occurring in the women's synagogue, about which we would rely on women's testimony (R. Alexander Zuslin ha-Kohen, *Sefer ha-'Agudah* 106a-b).

4. Our master R. Jacob the Levite [Moelln] said that it was strange, past his understanding, whence came this bad custom of people to bring the little children to the synagogue, so that they should hear the sound of the *shofar*. This is well and good for the reading of the Scroll of Esther, when it is done for the sake of merriment; but why here? only when small children reach the age for education is it obligatory to train them. And so, if a woman cannot leave her child at home, it is better if she keeps him in the women's synagogue (R. Jacob b. Moses Moelln, *Maharil*, Cremona 1569, 50b).

5. Our master R. Jacob the Levite preached that it is a custom for the people to spend the night of *kol nidre* [*Yom Kippur*] in the synagogue, to recite a great many hymns of praise . . . and if one would go to sleep let him go off to the western end, away from the place of prayer, or to the women's synagogue when there are no women there (*ibid.* 59b).

6. . . . In your city, however, where the women's synagogue is in the [wine] cellar of the sexton, [lighting candles there]

would be considered for the sake of the meal,³ in order to [be able to] draw wine at night; this is the more certainly so if [Sabbath candles] are lit in a women's synagogue near the wine . . . (*idem*, *Responsa of Maharil* 53).

7. Leah and Rachel⁴ are disputing over seats in the women's synagogue: Leah has brought two women [to attest] that the seats are hers, while Rachel has proffered a man who testifies that the seats are hers. Which testimony is the weightier, that of the two women or the man's?

Response: The law would seem to depend on the present possession of the seats . . . if Leah now holds these seats, and Rachel is trying to wrest them from her, Leah need not even take an oath to refute Rachel's witness . . . for since Leah has two women attesting to her claim, she is free of any obligation. Now, although generally a woman's testimony is legally invalid, in this case, where they would be wont to observe more accurately than men, they are well believed. . . . It would seem that regarding seats in the women's synagogue as well [as in similar cases] men are not likely to know which seat belongs to which woman . . . (R. Israel Isserlein, *Terumath ha-Deshen*, I, 353).

12

A Responsum on a Changed Mechitzah

BY MAHARAM (RABBI MOSES) SCHICK

Hust, Hungary, 1878

NOW [AS I UNDERSTAND IT] this is your inquiry: Brazen members of a certain congregation have hitherto had their

3. And therefore permissible and in order, since Sabbath candles must ordinarily be lit for the Sabbath meal.

4. Random names to designate two women, like "Jane Doe." For an earlier reference to women's remaining apart during prayer, see *Tosafoth* to Rosh Hashanah 27b, s.v. *veshama*'.

shops closed on the sacred Sabbath; now certain wicked men have dared to set hand to the partition which divides the women's section from the men's [in the synagogue], so that there will no longer be a complete separation by boards but only by slats, permitting people to see and be seen. Many say that, with the blessed Lord's help, I can battle them with a strong hand, but the wicked ones threaten to secede from the community and begin at once to have their shops open on the Sabbath too—which may easily lead others as well to violate the sacred Sabbath. Hence you know not what plan to devise, how to act in accord with the Law: to battle them and let them go to the devil—give the wicked rope and let him hang himself¹—or perhaps, since others will emulate them and be ensnared by their influence, it were better to keep silent.

It were sacrilege for you righteous men to keep silent on this insolent breach by the brazen ones! for it is by law that we are required to separate the men's section from the women's, as it was in the Sanctuary, each section apart. In those days, when they had the Festivity of Water for Libation, a "great amendment" was instituted [i.e., a balcony for the women] as we read in the Talmud, Sukkah 51b; it is there derived from a Scriptural verse that an amendment was needed so that the men should not see the women, since they could thus be led to a state of levity and further transgressions.

These brazen violators also transgress the Bible's admonition, *Ye shall not do so unto the Lord your God*² (Deuteronomy 12:4), since the synagogue is a sanctuary—a "sanctuary-in-miniature."

There is a duty to protest such action, and to chastise the transgressors. Those righteous men who have it in their

1. [Literally, Give the wicked one his fill to swallow, and let him die.]

2. [This follows the command to destroy the temples and idols of the conquered heathen nations.]

power to object strenuously [and do not] are disobeying the positive command, *Thou shalt surely rebuke thy neighbor* (Leviticus 19:17); indeed this applies to anyone in whose power it lies to protest. Further, we have it as law in *Shulhan Aruch Yoreh De'ah* 157 that when such people fail to protest it is as if they committed the crime themselves, and they are caught up in the guilt.

Granting even that these wicked men speak truth, that for the sake of the change in the partition they will not open their places of business on the Sabbath, it is nevertheless an established rule that we may not say to a man, "Sin so that your fellow will win merit," where it means wilful transgression; this is clarified in *Magen Abraham* 306, 28-9. How much more does this apply in our case, where it might be said, "Since the rabbis were silent we may conclude that it was acceptable to them"; this would be a desecration of His Name, especially in our generation, when the insolent transgressors are determined about this violation. This might well be likened to the Jewish custom about a shoelace, for which one is obligated to sacrifice his life if need be (*Sanhedrin* 74b).

Yet more than this: it is an established decision, since most authorities agree with R. Moses Isserles in *Shulhan Aruch Yoreh De'ah* 334, 1, that if one has incurred excommunication he is to be excommunicated, even if there is reason to fear that as a result he may leave the faith. Had we the authority to excommunicate these insolent transgressors, we would be obligated to do so, as is clear from the source cited (*ibid.* 43): one of the twenty-four crimes which warrant excommunication is contemning even the words of the Sages. But we most certainly have no right to accede to their demands, since silence is tantamount to consent; and if they secede, why, let them secede.

I have written thus far according to the view of the esteemed

questioner. But in truth we well know that this would be but the beginning of their breach of the Torah's word; one sin draws another in its wake (Aboth 4, 2). As our Sages (of blessed memory) said, "This is the *metier* of the Evil Tempter: today he tells one, Do this; tomorrow he bids him, Do that—until he says to him, Go and worship idols" (Shabbath 105b) or, Desecrate the Sabbath, which is equivalent to idolatry. [Of them] is it written, *Whose mouths speaketh falsehood, and their right hand is a right hand of lying* (Psalms 144:11). If they separate from the congregation, it will be a fine departure for them and for all. And should the income of the community stand to be diminished as a result, nothing impedes the Lord from helping, through many or a few. The Lord will give blessing to those who uphold His Torah, as is His desire. . . .

❧ 13 ❧

Concerning a Thin Partition

BY RABBI HILLEL LICHTENSTEIN

Friday, New Moon Day, Adar 1873, Kolomea, Austria; to my dear, beloved friend, the reverent scholar R. Wolf Leb . . . peace:

YOU ASK with your very soul, if it is permitted to enter a synagogue where the partition (*mechitzah*) dividing the women's section from the men's is so gossamer thin that the men can see the women—i.e., if one is not of the defiant transgressors, but wishes to submit to the verdict of the *beth din* (religious court).

I do not know what there is to question here. It has already been clearly stated that it is forbidden to make the partition in such a way that the men can regard the women, and if the

partition has already been so made, one should not enter there. This applies all the more strongly in your instance, for originally the division there was thick and well made, and people changed it with the intention of [thus] joining the violators and innovators. . . . Moreover, even if there is not a single woman in the synagogue, it is forbidden to enter and pray there: for on account of this wilful violation it has become desecrated and is no longer a "sanctuary in miniature."

Since I find your words so appealing, I will answer insofar as my poor hand is able. Now you are stirred by the question, Why were curtains not put up at the Festivity of the Water for Libation, in the Temple, so that the men could not gaze at the women? The answer seems to me to lie in Maimonides' comment to the Mishnah, Sukkah 5, 2: "A great amendment—i.e., of great value, because the people used to prepare a location for men and another for women; and the place for the women was above the one for the men, in order that the men should not gaze at the women." If we note his language carefully, we see that he could have said simply, "the place for the women was above, in order that the men" etc.; why state, "the place for the women was above *the one for the men*"? It therefore seems to me that Maimonides means just this: it was arranged for the men to sit precisely underneath the balconies, but not beyond them, for if the latter the men could still have stared upward. He therefore is intentionally specific [to intimate that the] location for the men was only the space underneath the balconies. . . . Hence there was no need for a partition. . . .

Do not take it to heart or take it ill that you will pray alone; for the Writ says, *Better is a dinner of herbs where love is, than a stalled ox and hatred therewith* (Proverbs 15:17). God grant us the merit to see Him fulfill His word for all: that *the Lord thy God will circumcise thy heart . . . to love the Lord thy God with all thy heart* (Deuteronomy 30:6).

On the Grave Importance of Mechitzah

BY RABBI ELIYAHU GUTTMACHER

I WAS FURTHER ASKED: In the synagogue there, a *mechitzah* was erected to partition the men's section from the women's; however, it was to be but eighteen cubits high [about five and one half feet] so that from the shoulders up the women would be easily visible from the men's section. Now you are in some doubt on this, insofar as opinion [on related matters] is divided in *Shulhan Aruch Orah Hayyim* 75.

Now, first let me convey that by the views you hold this can in no way be permissible, since the exposed women's hair would legally constitute an indecency. If R. Moses Isserles expresses a lenient view in this regard because women's hair is wont to extend beyond the bounds of the head-covering, this offers but scant permission: for such is not the way of reverent, wholly observant women, but rather of the brazen. Perhaps, though, in his locality such permission became widespread.

Yet, granting for the moment that his view can be stretched to somehow sanction our case, what can we say when women go about with bared backs? And as regards the wife of one's fellow, even if less than a handbreadth is improperly exposed, it legally constitutes indecency. *Magen Abraham* (*Shulhan Aruch, loc. cit.*) writes that even under thick covering, if part of a women's body is visible, a ban exists. In paragraph 6 there the *Shulhan Aruch* states that with closed eyes it is permissible to pray under such circumstances; but *Ture Zahab, Magen Abraham* and *Eliyahu Rabbah (loc. cit.)*, by whose words we live, differ decisively with this view; *Peri Hadash (ibid.)* adduces

proofs aplenty that shutting the eyes does not bring permission [to recite the *shema'* and pray]. . . .

So much can be said, then, in behalf of a lenient view, based on *Shulhan Aruch Orah Hayyim* 75. But alack and alas if permission is thus extracted from this source. Were the *Shulhan Aruch* to grant full, unequivocal permission, it would yet not cover our case: for that Code treats only of an instance where *it happens by chance* that a man must recite the *shema'* [under such circumstances; then the question is] shall he recite it or not. But to establish such a situation in the synagogue to begin with, as a fixed state of affairs—to invite the Evil Inclination into a sacred place—this is certainly forbidden. There are parallel instances in the laws of *kashruth* involving meat and milk, where if something has happened, the food may yet be eaten, but to deliberately make this happen remains forbidden.

Our case is even more severe, for the Talmud states explicitly: R. Isaac said, A handbreadth of a woman's body constitutes an indecency [if exposed; and it is asked,] To what does he refer? Shall we say, staring at a woman? but R. She-sheth has already declared . . . Scripture tells you that whoever stares even at a woman's little finger, it is as if he stares licentiously. Rather, then, he refers to one's own wife when one must recite the *shema'* (Berachoth 24a). If such a sight sullies the eyes, can there be a greater desecration than to regard women in a gathering for the sake of Heaven? *O, the Heavens be confounded at this* (Jeremiah 2:12). See what the Talmud says: *Thou shalt keep thee from every evil thing* (Deuteronomy 23:10)—[this means] that a man should not regard a beautiful woman though she be single, nor a married woman though she be ugly, nor yet the colored raiments of a woman; said R. Judah in Samuel's name: even if these last are hung on the wall, if he but recognizes their owner (Abodah Zarah 20a). Maimonides (*Hilchoth 'Issure Bi'ah* 21) and the

Shulhan Aruch ('Eben ha-'Ezer 21) cite these rules as normative law. What argument can yet be advanced when in such a case women will be in view bedecked with hats and jewelry—in the synagogue, in the House of the Lord?

Can it be right for a man to go up and take a Torah scroll from the Ark, and then turn around, and standing elevated before the sacred Ark, have women in his vision and come to entertain alien thoughts—all the while holding the Torah which writes of capital punishments by Heaven and *beth din* (Jewish religious court) for immorality? Shall *kohanim* (priests) go up to give the priestly blessing and have their vision encounter defiling immodesty? And if they are supposed to close their eyes and not dare to look up, lest they see the women, the enormity of the snare is only too plain: for this very action will arouse within them impure thoughts at a time when extra holiness is needed, when they should fulfill the written injunction, *Sanctify yourselves and be ye holy* (Leviticus 11:44, 20:7); as the Sages interpreted it: If a man sanctifies himself slightly, he becomes greatly hallowed; if he sanctifies himself here, below, he is hallowed from above; if he sanctifies himself in the present world he will be hallowed in the future world¹ (Yoma 39). If eyes must be shut against the sight of women and their raiments all about the *kohanim*, there will rather be fulfilled Scripture's admonition, *Neither shall ye make yourselves unclean with them, that ye should be defiled thereby* (Leviticus 11:43), [which is interpreted:] If a man defiles himself somewhat, he will become very unclean; if he defiles himself here, below, he will become impure from above; if he defiles himself in the present world, he will be defiled in the future world.

What more need we than to ponder this Talmudic passage:

1. [Since the verse is apparently redundant in its repetition, these interpretations give it the sense, If you sanctify yourselves, you will be hallowed. Similarly the verse and interpretations which follow.]

They [the Sages] came across a verse and interpreted it: *And the land shall mourn, every family apart: the family of the house of David apart, and their wives apart* (Zechariah 12:12). Said they: Can we not reason from the lesser to the greater? If in the [Messianic] future when they will be occupied with mourning, and the Evil Inclination will have no sway over them, the Torah says that men and women shall be separate, now that people are engaged in festivity, and they are subject to the Evil Inclination, how much more certainly must they be separate (Sukkah 52a). If our Sages spoke thus when the women did not go with heads or backs bared, what is there for us to say? Is it not the purpose of present-day women to thus attract men's glances? The synagogue would then become a place of which the Lord might well say, *Who hath required this of your hand, to trample My courts? Your new moons and your appointed seasons My soul hateth. . . . And when ye spread forth your hands*—[to give the priestly benediction]—*I will hide Mine eyes from you* (Isaiah 1:12, 14, 15). As the *kohanim* shut their eyes on such sights, so will the Lord shut His eyes [so to speak] to their blessing.

Many years ago I was asked by a Godfearing man to write to his rabbi (of blessed memory) because of this very question: a short partition—but a huge breach of the Law—was to be installed in the synagogue, to separate the women's section. I gladly complied with the request; but the rabbi consulted his wife, and she frightened him against opposing the innovation. In the end the Lord visited upon him the iniquities of all the congregation; as our Sages say, "the righteous man is seized for the sin of the generation"; *those close about Him are judged most critically, to a hair* (Psalms 50:3):² for he would not wage

2. [The word *nis'arah* is here connected with *sa'ar*, hair, to yield this meaning. Jewish Publication Society renders: *round about Him it stormeth mightily.*]

the battle of the Lord. The very season in which the new synagogue building was completed, standing before the Ark on the Sabbath of Repentance to preach, a sudden and strange death seized him (may we be spared), and he was taken lifeless from the pulpit. His great righteousness merited this much, that he should not preach in such a synagogue.

Therefore, O my brethren, do not commit evil; betray not the Lord. Let your ears hear what you utter, as the Law requires of you, when you say, *And thou shalt love the Lord thy God with all thy heart and with all thy soul* (Deuteronomy 6:5). Do you then fear that the women can decrease your earnings or your esteem? Cry out to them that they should take care, and not go at all to such a synagogue. The women will heed if you but appeal to them out of heartfelt distress, as though they were going to deprive you of a livelihood; and you will find that the Lord is with you.

It is incumbent on me to inform you, and all your congregation equally—men, women and children—that I am of greater authority for your community than other rabbis. The matter cannot remain as it is; let poles be set up at the ends, and a beam be put on them; a lattice is to go in the middle, and let curtains hang over all.

If for our many iniquities one breach has been made in our sacred tradition, and the center has been abolished from many synagogues—something most strictly prohibited, for which the guilty congregations will have no answer at judgment—nevertheless, whatever can be repaired to return the synagogue to its original state of grace, we are required to repair.

A Responsum from Sanz, 1864

BY RABBI HAYYIM HALBERSTAM

the renowned Hasidic leader of Sanz

TO THE WORTHY, distinguished and reverent seekers of the Torah's truth, the esteemed heads of the Jewish community of Miskolcz: Your letter has reached me, in which you ask of me whether it is permissible to establish a house of prayer literally similar to a non-Jewish place of worship, and to have as reader before the Ark a cantor and choir who will sing non-Jewish melodies, and will bow and genuflect in ways alien to us.

Know, my dear friends, that the very fundamentals of the religion of our hallowed Torah, are founded up on the Oral Torah which our Sages and guides have taught us, having themselves received their teaching through an unbroken line of tradition; this tradition has been transmitted from person to person, and goes back to our Teacher Moses, who received the hallowed Torah at Sinai. For without the Oral Torah we should not know what any precept is: e.g., what exactly are the *frontlets between thine eyes* (Deuteronomy 6:8)? or the *fruit of goodly trees* (Leviticus 23:40)? by what ceremony does *a man take a wife* (Deuteronomy 24:1)? and what precisely is *a bill of divorcement* (*ibid.*)? and so on. Most of the Torah's precepts are principally known only through the tradition of our Sages; so also were most of the punishments and admonitions established through their knowledge. And Scripture itself warns us: *According to the law which they shall teach thee, and according to the judgment which they shall tell thee, thou shalt do; thou shalt not turn aside from the sentence which*

they shall declare unto thee (ibid. 17:11). Many times has the Writ adjured us on this; it is a fundamentum of our faith.

Out of the blessed Lord's lovingkindness toward His people, He has shown this wonder: a very long time has passed, and we have been dispersed through many lands, and yet we remain one people, with one Law for us all; if differences of opinion arose among the Sages, the majority view has become law, but nothing has been changed from country to country, far or near. Our faith stems from one source, and there is no basic deviation in it (Heaven forbid). There are differences in customs: for where the law is permissive (as all would agree) some Sages have chosen to impose stringency on themselves, and hence on their followers and local adherents—much as one may take a vow of abstinence about something generally permitted. Of course, in such cases, many of our people would not wish to accept the added stringency, and thus there are different customs: in one country a stringency may have been accepted, but not in another. But in such a case the lenient ones cannot be called transgressors, for all agree that the Torah permits leniency, and it is only the people in one country who desire the extra severity, much as any individual might take a vow of abstinence or become a Nazir.

The laws of the Torah, however, the entire people Israel observe uniformly, in all countries, even to the end of the world. And even as regards local customs, our Sages have enjoined us that an individual is forbidden to deviate from the practice of the general community in which he lives.

It is therefore certainly forbidden to vary and build a synagogue in a fashion other than the custom which we have ever followed in this country; and especially to emulate a house of worship other than our own, and to have a reader for the congregation sing melodies that are not ours, and alter the traditional bowing and genuflection—this is totally forbidden.

The Talmudic dictum is known that even the least of Jewish customs, involving perhaps a shoelace, we must observe at the cost of our lives, if need be, for it is a Jewish practice.

Nor let us feel shamed by those who would calumniate us and deride our faith and our laws. It is quite known that in every other faith there are practices and statutes which seem unacceptable to those who are not of that faith, and outsiders may indeed regard some such statutes with scorn; yet those who uphold that faith will disregard those who deride their belief, and will not give up their practices because of the scoffers. How much more must we, who believe in the religion of our hallowed Torah, never give up right laws on account of the calumniators; here Jeremiah's words apply: *Send unto Kedar, and consider diligently, and see. . . . Hath a nation changed its gods, which yet are no gods? But My people hath changed its glory for that which doth not profit* (Jeremiah 2:10-11).

Then may Heaven forfend that our people build a synagogue or conduct prayers in ways that are not ours; Heaven forfend that we ever alter any detail of our fathers' ways, and thus wreck our entire faith. For go out and see what has happened with the new "sect" which has contemned the rules of the Sages: they are almost alienated from the people of Israel, and commit many transgressions wilfully. Principally: whoever does not have faith in the teaching of the rabbis who have received the Oral Torah, has no care for the customs of our fathers, sees the Sages' words as contemptible, and chooses for himself whatever seems fit in his own view—he has left the ranks of our faith. For the mainstay and basis of our faith are the words of the Sages; whoever does not believe this, is not committed to our sacred religion. Nor does he practice any other religion, for other faiths seem equally contemptible in his view; he chooses for himself whatever his whim finds fit. Such a man is not religious at all, for he acts with no purpose

of observing any faith, but only as seems pleasing to him. He thus cannot at all be included among those who have a faith.

And so beware to enter any house of prayer built in such new fashion, or to pray therein. It is forbidden to listen to the melodies of those who chant¹ without religious devotion or reverence for the Lord.

I have written only generally, and have not indicated any source for my statements—some printed work or authoritative legal decision; this for two reasons: (1) this matter is very obvious, as is well known, to anyone with the least knowledge of our sacred literature, unless he has gone off into apostasy, and his eyes have gained nothing from the sight of the truth; with the slightest investigation one can find clear statements in Scripture, Talmud and later authorities; why shall I then carry on at length? and (2) it is known that the new “sect” derides the words of our Sages of blessed memory; how shall I then quote from them to prove my statements? All their words will only sound ludicrous in the ears of those fools. . . . Hence I have cited no proof whatever for my words, but merely stated the truth in itself.

It was indeed *as a heavy burden, too heavy for me* (Psalms 38:5) to reply on such a matter, *but who can withhold himself from speaking* (Job 4:2)? We are commanded to inform those who seek the truth, but briefly; he who will, will hear. . . .

Therefore, my friends, obey the Torah and do not follow the views of those who detest the faith of our sacred Torah; keep far from their opinions, and all will be well with you.

1. [The Hebrew has *mesorerim*, “who rebel or go astray,” rather than *meshorerim*, who chant. Either it is a typographical error, or a double meaning is intended.]

❧ 16 ❧

The Mechitzah as a Minhag

BY RABBI DAVID REGENSBERG

DEAR MR. LITVIN:

It is a well established rule in Jewish religious law that a custom (technically called *minhag*) is Law, whether there is or is not any legal basis for the observance of the custom. The very acceptance of a custom by the community of Israel bestows upon that custom the status of law.

A law thus established is not subject to any process of change. It is stated in the Talmud, Yebamoth 102, that even if the prophet Elijah were to return to earth he would be without authority to change a custom. The great rabbinic authority R. Abraham b. David (RABAD) in his glosses to the Code of Maimonides (*Hilchoth Mamrim* 2, 2) cites this as definitive: that even Elijah would lack the authority to change an accepted custom. Maimonides (*ibid.* 3) states that if a rabbinic court decreed the enactment of a rule which became established and observed by the people, and if such a rule is a *seyag* (a "hedge" or preventive measure, designed to prohibit acts which might lead further to violations of Jewish law) it might not be abolished by even a more authoritative court (i.e., greater in scholarship and number). The *mechitzah* undoubtedly falls into the category of *seyag*.

❧ 17 ❧

On the Inviolability of Traditional Rights

IF ONE does not allow the poor to glean [gather what is dropped or forgotten during reaping, or what grows in a corner

left for the needy],¹ or allows one [poor person to glean] but not another, or helps one of them, he is in effect robbing the poor. Concerning this is it said [in Scripture], *Do not move the boundary of those who have risen* (Proverbs 22:28; Mishnah Pe'ah 5, 6).

R. Jeremiah and R. Joseph [both interpreted *those who have risen*]: One said, They are the people who went up out of Egypt. The other said, They are those who have gone down in their fortunes, [so called in the sense that] a blind man is called "light-filled" (Jerusalem Talmud *loc. cit.*, 19a).

One said . . . out of Egypt: in other words, Do not move the boundary . . . set for those who left Egypt, meaning the precepts of the Torah (R. Isaac b. Melchizedek Simponi, *Commentary ad loc.*).

As for [the Mishnah's] reading 'olim (those who have risen) while the Writ has 'olam (of old), do not regard this as a difficulty, for this is by way of interpretation . . . 'olim denotes those who went up from Egypt, and the verse refers to the precepts and statutes which the Almighty commanded them (Maimonides, *Commentary to Mishnah, ad loc.*).

The other said . . . "light-filled": that is, 'olim is interpreted in the sense of "risen," and is applied to the poor as a euphemism of respect, just as the blind are called by this other euphemism of respect (R. Samson of Sens, *Commentary ad loc.*).

❧ 18 ❧

A Review of the Sources

BY RABBI EZEKIEL HA-LEVI GRUBNER

TO MY ESTEEMED AND VERY DEAR FRIEND, who with pure heart stands in the breach to wage the Lord's battle, a

1. Leviticus 19:10-11, 23:22; Deuteronomy 24:19-21.

man now hailed in the circles which revere the Lord, Mr. Baruch Litvin:

At your suggestion I hereby set forth my views about this evil matter, in which people have acted to destroy the sanctity of the synagogue, saying [as it were] "Let us now see how the others serve God, and we too will act thus."¹ Their intention is but to emulate the non-Jews and the wilful transgressors of our people; they would commit the deed of Zimri (Numbers 25:14) and seek the reward of Phinehas (*ibid.* 11-13). They bring "strange fire" into the sacred service,² to "play the harlot" in the House of Jacob, and say they come to adorn and elevate the House of our Lord with a beautiful choir and lovely services. Woe to us, how astoundingly the principles of Torah have fallen: men of frivolous minds who sin against their very souls, have come forth and diverted their neighbors into their evil ways, to separate from the pathways of our fathers and go seeking after strange creations which are forbidden us.

To its furthest reaches the people Israel has had from time immemorial, a uniform, traditional format for its synagogues, patterned after the Sanctuary, as I will explain; hence no concern was felt to specify plans, insofar as the matter was so obvious and well known. In general, women are free of the obligation to pray in a group, and so there is no mention [of a women's section in the synagogue] in the Talmud or in Maimonides' *Mishneh Torah*, *Hilchoth Tefillah* 11, where he deals in detail with the order and arrangements of a synagogue. It is only that a long time afterward women of themselves acquired the practice of attending the synagogue to pray; then women's sections were set up for them. Therefore

1. [See Deuteronomy 12:30.]

2. [See Leviticus 10:1.]

is it not mentioned in our Codes of law. This is all obvious and well known to the lettered, beyond any question. I have thus not come now to render a decision or to demonstrate anything new: for this evil matter in question has already been declared utterly forbidden by early and later Sages, the saintly who have passed into eternal life. I will merely seek to gather and set in order the sources from Mishnah and Gemara [which together form the Talmud] and from the writings of our Earlier and Later Masters.

Firstly we have the Mishnah in Sukkah 51a: The evening following the first day of the Festival [of *Sukkoth*] they would go down to the women's court [in the Temple] and establish there a great amendment. On the following page the Gemara asks: What was the great amendment? Said R. Eleazar, As we have learned: It [the women's court] was bare originally, and then they surrounded it with a balcony, and instituted that women were to sit above and men below. [The Gemara continues:] Originally the women were within and the men outside, and they would reach a state of levity; it was ordained that the women occupy the outer part and the men the inner, but they yet reached a state of levity. It was then enacted that women were to sit above and men below. [Then it is asked:] How could they do this? It is written, *All this [do I give thee] in writing, as the Lord hath made me wise* (1 Chron. 28:19).³ Rab replied, They came upon a verse which they interpreted (that it was essential to separate men from women and establish a guard in Israel to keep the people from coming to grief—Rashi): *And the land shall mourn, every family apart: the family of the house of David apart, and their wives apart* (Zechariah 12:12); said they: We can surely reason from the

3. [Indicating that the plans for the Temple which David bequeathed to Solomon were of Divine origin, and hence not subject to any change.]

lesser to the greater; if in the [Messianic] future, when they will be engaged in mourning, and the Evil Inclination will not hold sway over them, the Torah asserts that men and women are to be apart—now that people are in the midst of festivity, and the Evil Inclination has dominion over them, how much more certainly must they be separated.

Tosefta, Sukkah 4, 1 adds: so that the women would sit there and watch the Festivity of the Water for Libation, and they would not mingle. This is also found in the Jerusalem Talmud, Sukkah 5, 2; there it is clearly indicated that the prohibition involved was Biblical; for in speaking of the addition of the balcony, it states: What amendment would they make there? they would set the men off by themselves and the women by themselves . . . whence did they learn [to do so]? from a matter in the Bible.

The original passage about this [balcony] is in the Mishnah, Middoth 2, 5: The court of the women . . . was originally bare, and they surrounded it with a balcony, so that the women could look on from above and the men from below, in order that they should not mingle. Now the words of the Mishnah, that originally the court was bare or smooth, are explained in several ways: Rashi comments: No beams extended out from the walls; while Maimonides writes: It was open to the winds, and no wall enclosed it. The *Aruch*, s.v. *gezuztera*, explains: It was as smooth as a hill, and they came to be frivolous because they [the men] would enter among the women. About the balcony Rashi comments: Beams extended out from the wall all around, and every year boards would be arranged on them so that they [the women] could stand there during the Festivity of Water for Libation, and watch; this was the great amendment which, as we learned in the Mishnah, they would set up every year. Maimonides writes: They surrounded them with filled arches, and set some kind of steps

to them, so that the women could look on from there. The *Aruch* explains: They built a balcony about the court, coming out of the wall, with an arched roof over it; the women would stand above, on the balcony, and the men below, in the court . . . they established three balconies, facing three directions. . . . And *Me'iri* writes: They surrounded it with a balcony which had a lattice-like partition, for the women would gather there to observe the Festivity of Water for Libation, while the men would be in the court; it was in order that men and women should not mix together that they surrounded it with these screens.

In his Commentary to the Mishnah, Sukkah, Maimonides writes: A great amendment, meaning that it was of great value; because the people prepared a place for men and a place for women, the area for the women being above the one for the men, so that the men would not gaze at the women. In his Code, *Mishneh Torah*, *Hilchoth Lulab* 8, 12, he writes: They would prepare places in the Temple, for the women above and for the men below, so that one group would not mingle with the other. And he writes similarly in the same work, *Hilchoth Beth ha-Behirah* 5, 9: The women's court was surrounded by a balcony, so that the women could observe from above and the men from below, in order that they should not become merged. In *Sefer Mitzvoth Gadol*, positive precept 163, R. Moses of Coucy words it thus: They surrounded it with a balcony so that the women would look on from above and the men from below, at the Festivity of Water for Libation, as the Talmud states in Sukkah, so that they would not be mingled.

What emerges clearly, then, from all the statements of the Early Commentators, is that it is necessary to separate the men from the women. On the Mishnah, Sukkah 5, 2 *Tosafoth Yom Tob* comments: Men's gazing upon women indeed

leads to a state of frivolity, for it is written, *He shall rule over thee* (Genesis 3:16).⁴

Now these are Josephus' words in his *Wars of the Jews*, V, 5, 2: . . . of necessity [there were] two [gates] on the east; for since there was a partition built for the women on that side, as the proper place where they were to worship, there was a necessity for a second gate for them. He writes further: There were also on the other sides one south and one north gate, through which was a passage into the court of the women: for the women were not allowed to pass through the other gates, nor when they went through their own gate could they pass beyond their own wall or partition.

In the first Temple there was also an area designated as a women's court: Rashi to 1 Kings 6:36 writes, Scripture calls it inner because it was farther within than the women's court.

We thus see that in the Sanctuary care was taken that even when there was no prayer there should be no mingling of the sexes; and synagogues have always taken the Sanctuary as their model, as appears from Tosefta, Megillah 3, cited in *Tur Orah Hayyim* 150: The doors of synagogues are to open on none but the eastern side, for so we find in the Temple, that its door was toward the east, as it is stated, *Those that were to pitch before the Tabernacle eastward, before the Tent of Meeting toward the sunrising, were Moses and Aaron and his sons, keeping the charge of the Sanctuary* (Numbers 3:38). See also *Bayith Hadash*, *Orah Hayyim* 90, based on the Jerusalem Talmud, Berachoth 5, 1, that a synagogue is to have a forecourt, similar to the porch of the Sanctuary, so that a person entering will pass through two doorways. In a similar vein Maimonides writes in *Mishneh Torah*, *Hilchoth Tefillah* 11, 2—and it is quoted as law in *Tur Orah Hayyim* 150, 2: A

4. [The tendency for male dominion over the female is thus implicit in the natures of both, and in their interrelations.]

synagogue should be built in none but the high part of the city, for it is stated, *She [wisdom] calleth at the head [the top] of the noisy streets* (Proverbs 1:21). And so is it also derived from the Temple that a synagogue must be taller than the other houses of the city. See also Talmud, Shabbath 11a; and *Hilchoth Beth ha-Kenesseth*, that there is a view that it is forbidden to tear down any part of a synagogue, for it is called a sanctuary-in-miniature, and if one pulls down a stone of the Temple he violates a negative command: *Ye shall break down their altars. . . . Ye shall not do so unto the Lord your God* (Deuteronomy 12:3-4); (thus *Sifre ad loc.* interpretes these verses). So also R. Moses Isserles in *Shulhan Aruch Orah Hayyim* 152, quoting *Mordechai*, Megillah 4, 826; and similarly in many instances the Talmud likens a synagogue to the Temple as regards building or tearing down.

To quote *Mordechai* again (beginning of Tractate Shabbath), Our sanctuary-in-miniature is to be regarded as having a sacredness essentially similar to that of the Temple. Thus too the comment of the Talmud, Megillah 29a on the verse, *Yet shall I be to them as a little sanctuary* (Ezekiel 11:16): Said R. Isaac, This denotes the synagogues and Houses of Study in Babylonia; and what does this verse signify: *Lord, Thou hast been our dwelling-place in all generations* (Psalms 90:1)? It applies to the synagogues and Houses of Study. See also *Sefer Yere'im* 324, that reverence for the synagogue and the House of Study is incumbent by Biblical precept, out of the verse, *My sanctuary ye shall reverence* (Leviticus 19:30, 26:2), which covers as well the synagogue and the House of Study. *Tosafoth* to Baba Bathra 8, s.v. *yahib*, states that whatever is contributed to a synagogue counts as a sacrificial offering, and hence such contributions may be accepted from non-Jews.

For this reason, throughout the dispersed communities of the people Israel, wherever they settled, be they Sephardic

[from Spain and Portugal] or Ashkenazic [from France, Germany or Eastern Europe] the basic plan of the synagogues is uniform; one does not vary significantly from another, for by our ancestral heritage, all are in emulation of the Sanctuary. In our time synagogues were still extant which had been built about a thousand years ago; to our misfortune many of them have been torn down and destroyed by the Nazis (be their names extirpated); all of them followed one plan as regards the women's section, for we follow but one sacred teaching.

To quote again from the *Shulhan Aruch*, which derives this from the Responsa *Terumoth ha-Deshen* 353 and *Sefer Agudah, Asarah Yuhasin*: It is an enactment of the Early Authorities that in a location where men are not wont to be, such as the women's synagogue . . . women are relied upon [as witnesses] (*Hoshen Mishpat* 35). It is thus explicitly indicated that men could not see what was happening in the women's section.

Even in a private dwelling, not in a synagogue, and not during prayer, our Sages are stringent about the mingling of the sexes: Do not mix sons among the daughters, lest they cause sin; [the Writ states] *Then shall the virgin rejoice in the dance* (Jeremiah 31:13)—alone—but *the young men and the old together* (*ibid.*). So also should young boys and girls play in their respective streets, the boys apart and the girls apart; thus, toward the end of Psalms (148:12) we read, *young men and also maidens*,⁵ but not “young men *with* maidens,” in the way that the verse continues, *old men with⁵ children*; the word *gam*⁶ (too) is to add that women too should be apart. So wrote R. Judah he-Hasid in the 13th century in *Sefer Hasidim* (edition of *Mekitze Nirdamim*, Berlin 1891, Frankfort a. M. 1924, 60).

5. [Literal translation.]

6. [It is a principle of Rabbinic interpretation that the participle *gam* (also) extends the meaning or application of a verse.]

Thus too we read in the Talmud, Sanhedrin 20a: Where it is the custom for women to follow the bier [in a funeral procession] they are to do so; where it is their custom to precede the bier they are to do so; and Tosafoth comments (s.v. *nashim*): There is also the practice of having them follow after the bier, and the men before it, since it disgraces daughters in Israel to have men regarding them.

Again, Tosafoth to Kiddushin 81a (s.v. *sakba*) writes: The meaning is that these Festival days are the worst of the days of the year as regards seclusion of couples and sin, for there is a gathering of men and women to hear the rabbi's exposition, and one casts an eye upon another; some say that this is why it has become the practice to fast after *Pesah* (Passover) and after *Sukkoth*. In *Mishneh Torah, Hilchoth Yom Tob* 6, 21 Maimonides writes: The *beth din* (Jewish court) is obligated to appoint guards for the Festivals to make the rounds and look through the gardens, orchards and river banks, in order that men and women should not gather there to eat and drink, and thus be enticed into sin. See also *Shulhan Aruch Orah Hayyim*, end of 529.

Ture Zahab to *Shulhan Aruch Orah Hayyim* 315 cites *Mordechai*, Shabbath 3, 311 that "a *mechitzah* (partition) for the sake of mere propriety is permitted [to be set up on the Sabbath]—for instance, a *mechitzah* installed between men and women for the duration of the rabbi's exposition, may be set up on the Sabbath, as is indicated in 'Erubin chap. 9.' . . . Again, Rashi to Kiddushin 81a, s.v. *gulf*, comments: In a place where men and women would gather for the rabbi's exposition, Abaye used to make partitions of earthenware jars, and Raba, of reeds.⁷ In a similar vein we find this passage in *Seder Eliyahu*

7. [So that no man could approach a woman, or vice versa, without causing disturbance.]

Rabbah 9, in regard to Elkanah and his men: When they would go up journeying on the way [to make the pilgrimage to Jerusalem for a Festival] they would sleep in a city square; whereupon the men [of the city] would gather separately, and the women separately, for a man [of Elkanah's party] would talk with a man, and a woman with a woman [to convince them to join the pilgrimage]. . . .

Now all these authorities deal only with a time of festivity and rejoicing, when no one is praying or reciting the *shema'*. When men had to be in the women's court [in the Temple] the Talmud speaks of a "great amendment" that had to be made on that account. How much more certainly must there be a high, solid partition separating the women from the men in our synagogues, where people come to recite the *shema'*, prayers and everything holy.

To cite the Talmud once more: Said Raba . . . If an indecency [is visible] in a mirror, it is forbidden to recite the *shema'* before it; *that He see no unseemly thing in thee* (Deuteronomy 23:15) said the Compassionate One, and here such can be seen. In similar vein Maimonides in *Mishneh Torah, Hilchoth Keri'ath Shema'* 3, 15: Every part of a women's body constitutes an indecency [if exposed]; therefore one should not regard a woman's body while reciting the *shema'*, even if she is his own wife; if a handbreadth is exposed, he should not recite this portion in her presence. And so *Shulhan Aruch Orah Hayyim* 75, 4: It is forbidden to recite it before any indecency. On this the *Mishnah Berurah* comments: Since it is writ, *The Lord thy God walketh in the midst of thy camp . . . therefore shall thy camp be holy, that He see no unseemly thing in thee*, etc.; from this verse the Sages learned that wherever the Lord our God "walks with us"—i.e., when we are engaged in reciting the *shema'* or prayer or the study of Torah—nothing immoral is to be seen about us, which means that nothing of

indecenty should face him who recites [the *shema*] or prays, as far as he can see.

Such an unchaste sight may be exposed hair or a revealed handbreadth of the body; see *loc. cit.* 2. There, note 10, the *Mishnah Berurah* continues: "This involves a Biblical ban, since it is written, *The priest shall . . . let the hair of the woman's head go loose*" (Numbers 5:18). In *Sifre ad loc.* it is derived from this verse that "daughters of Israel are to cover their hair"; and so Rashi comments on the verse. The Talmud, Kethuboth, puts it thus: It is an admonition to the daughters of Israel that they ought not to go out with loose [uncovered] hair. Such is also the law in the *Shulhan Aruch ibid.* 90, 26 in regard to prayer; see *Mishnah Berurah* there note 82; such is also the law regarding the study of Torah or any holy matter.

There is, further, the passage in *Seder Eliyahu Rabbah* 9, quoted in *Yalkut Shim'oni* I, 934, on Deuteronomy 23:15 (given above): One should not stand among the women and pray, because [he will have his] mind on the women; let him rather sanctify his camp five cubits on each side, and if he is amidst his own camp let him sanctify its entirety, for it is stated, *The Lord thy God walketh in the midst of thy camp*. And again, *Yalkut Shim'oni* I, 601 has: Why was the portion of [Scripture beginning with] holiness (Leviticus 19 *et seq.*) set near the portion on immorality (*ibid.* 18)? To teach you that wherever you find a "fence" against immorality you find holiness; whoever "fences" himself off from immorality, is called holy. We thus see that the term "holy" is the opposite of the immoral; how can we then have men and women seated together in the synagogue, a hallowed place, when it is considered an indecenty for a man to pray in the presence of women? . . .

Teshubah me-'Ahabah 229 states succinctly: To have a woman in the House of the Lord, the men's synagogue, is

like having an idol there. Maimonides writes in *Mishneh Torah*, *Hilchoth 'Abodah Zarah* 2, 3: So did our Sages state: *that ye go not about after your own heart* (Numbers 15:39), refers to heresy; *and after your own eyes* (*ibid.*), to immorality. . . . Talmud, Sotah 8a has: Said Raba, It was learned that the Evil Inclination has power only in regard to what one's eyes see.

In the Jerusalem Talmud, Berachoth 1, 5 we read: It is writ, *Thou shalt not commit adultery* (Exodus 20:13), and again, *That ye go not about after your own heart and your own eyes*: said Resh Lakish, the eye and the heart are the two agents for sin; spoke the Holy One (blessed be He), If you give Me your heart and eyes, then I know you are Mine. *Midrash Rab-bah* and *Midrash Tanhuma* comment on this verse (Numbers 15:39): The heart and eyes are agents for the body, for they nourish the body; therefore is it stated, *that ye may remember and do all My commandments* (*ibid.* 40).

It was Job who said, *I made a covenant with mine eyes; how then should I look upon a maid* (Job 31:1)? . . .

And so we can draw our conclusion, how very great is the obligation to remove any possibility of sinful thoughts; as the *Hatham Sofer* wrote in his Responsa (Addenda, *Hoshen Mishpat* 190), such thoughts are like flame in dry straw. And in our instance it is a question of men and women sitting together in actual closeness. . . . A Midrash to *sidrah beshallah* states: Whoever touches a woman who is not his [wife] brings death upon himself; and this passage is ancient. How is it then possible to consider breaching our traditional guard and permitting prayer under such reprehensible conditions during the Holy Days of Awe?

Come and see the revealing words of the hallowed Targum of Jonathan ben Uzziel to Genesis 6:2: The sons of the great [chieftains or justices] *saw the daughters of men that they were fair*, that they painted their eyes, rouged their faces, and went

about exposing themselves; and they lusted to cohabit, *and took themselves wives, whomever they desired*.⁸

To sum up, if men and women are intermingled in a synagogue during prayer, it is forbidden to join in the services there, for four reasons: (1) the sanctity of the traditional arrangement of the synagogue has been altered; (2) women are improperly in view; (3) when anything morally improper is in sight it is expressly forbidden to recite the *shema'* or pray; (4) physical contact with another's wife touches on the ban against adultery.

Therefore, my dear good friend, in my opinion it is incumbent on you to resist with all your strength this attempt to destroy the House of the Lord. Do not grow afraid of the militant, strident voices that will be raised against you, verbally and in writing. Let not your heart quake before any attempts to frighten you, for the Lord battles for you. . . . The *Maharam Shick* stressed the duty to fight such actions and to admonish the transgressors, for otherwise the righteous share in the guilt (*Responsa, Orach Hayyim* 77).

I have written at such great length because the arrogance here involved makes one's hair bristle if a spark of Judaism still glows in one's heart. . . . I do hope they will retract and leave matters as they have been traditionally, in glory and beauty, rather than defile the holy. May the Lord turn back the hearts of the Children of Israel to their Father in heaven; and may they uphold the ways of their forefathers.

8. [According to *Midrash Bereshith Rabbah* 26, they took wives indiscriminately, even women already married, and thus helped bring on the Flood.]