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Walking with Mitzvot

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THE INTERSECTION OF GENDER AND MITZVOT

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TO START WITH A COUPLE

Halakhah, or Jewish Law, it has been often noted, is as much a pedagogical system as a legal system. The goal of the mitzvot as codified and explicated in the halakhic system is to create a certain type of person. Ideally this is a person who is righteous and God fearing, a person who feels and fulfills their obligation towards God as well as towards their fellows. Embedded into this goal, of necessity, is an idea or conception of what a person is. On the most basic level, the mitzvot “construct” people as masculine and feminine. This means that the halakhic system, or the system of mitzvot as practiced, classically define certain behaviors as masculine and others as feminine. The mitzvot themselves are then grouped into broad categories which are mapped onto male and female.

Let’s start with a couple of examples. The (3rd century CE) tractate Kiddushin of the Mishnah begins with the following law: “A woman is acquired in three ways, with money, with a contract and with sex.” The assumption here is that a man “acquires” a woman in marriage and not the reverse. (“Acquires” is in quotes since the acquisition while actual is not like other acquisitions. For example, while a man who acquires a slave may sell the slave onward, a man who acquires a wife cannot. Even to the extent that, as many scholars understand this acquisition, he acquires her sexuality, he cannot benefit from her sexuality in any way other than having consensual sex with her. He cannot prostitute her.) This acquisition is unexplained in the mishnah, but rests on certain cultural assumptions. Those assumptions are explicated in the (6-7th century CE) Babylonian Talmud. In its commentary on this mishnah, the Talmud says:

Rabbi Shimon says: Why did Torah say: “When a man takes a woman...” and did not write: “When a woman is taken to a man?” For it is the way of a man to pursue a woman, and it is not the way of a woman to pursue a man. This is akin to a person who loses an object. Who searches after whom/what? The owner of the lost object searches after his lost object (Babylonian Talmud, Kiddushin 2b).

This sermonette of Rabbi Shimon is interesting and revealing. It needs to be said that no law is decided in this text. Rabbi Shimon is discussing the reasons for a law—a law that is found in Deuteronomy Chapter 22. In truth, the object of the passage in Deut. 22 is not marriage either; it is divorce. This phrase is the longest extended discussion of marriage between a previously unmarried man and a previously unmarried woman in the Bible. Rabbi Shimon’s “question” is asked in order that he might introduce his teaching, which is that in the order of the world a man pursues (romantically) a woman and not the opposite. The interesting feature about this teaching is that Rabbi Shimon seems to place this feature of the world in its hard-wiring, almost from the moment of creation. In citing the parable of the person pursuing his lost object, it is almost certain that Rabbi Shimon is alluding to the creation story (Gen. 2) in which woman is separated from the original Adam. It is man then who is searching for his “missing half.”

While, as I said, there is no law decided in this Talmudic passage, it is probable that a cultural assumption such as articulated here—which defines agency in marriage as male—is behind the legal structure of the marriage law—that men betroth women and not the opposite. The legal ramifications are played out further on in the Babylonian Talmud’s discussion wherein it is made clear that if a woman were to betroth a man, or even if a man were to hand a woman a ring but the woman were to pronounce the betrothal, the act would be of no legal consequence.

A second example of the cultural premises which lay under the surface of legal decisions breaks through in a discussion of divorce. In tractate Gittin of the Babylonian Talmud the statement is made that “More than a man wants to troth, a woman wants to be betrothed.”

This statement is spoken as “fact.” It is a given of the social reality that the rabbis experience or project. This statement of “cultural reality” brings with it legal consequences. For example, a woman’s dowry upon divorce is paid off in the worst crops. (There are three classifications of crops: excellent, middling, and bad.) The reason is that this would not dissuade a woman from marrying.



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There are many more examples of this type of cultural understanding which lead to or undergird or generate legal decisions, which then, by being followed, construct and solidify certain practices as male and others as female. “A man does not want his wife to be embarrassed by appearing before a court.” A woman leading services or reading Torah is not “honoring the community.” “A woman is light-headed [frivolous].” These statements are all projections of the rabbis, written down as fact and then relied upon in decision making. Once the decisions are made, the circle is closed, and it is “obvious” to “everybody” that women shouldn't appear before the court or lead the community in prayer, or have an active role in marriage.

In addition to those actions in which the cultural facts which lead to certain legal decisions are articulated, there are others in which the gender distinctions are legislated while the cultural context is left unarticulated. Mishnah Kiddushin 1:7 states:

All commandments that are incumbent upon a father to perform for his son, men are accountable and women are exempt.

All commandments that are incumbent upon a son [child] to perform for his father [parent], both man and woman are accountable.

All commandments “Do!” caused by time—men are accountable and women exempt.

All commandments “Do!” not caused by time—both men and women are accountable.

All commandments “Do not!” whether caused by time or not—both men and women are accountable.

This neat categorization of the mitzvot is not actually so neat in practice. However, the general thrust of dividing the mitzvot into male and female obligatedness, in essence gendering the mitzvot, is accurate. The Babylonian Talmud's discussion of this Mishnah is based on a (3rd century CE) Tosefta:

A father is accountable in regards to his son to circumcise him, to redeem him from captivity, to teach him Torah, to marry him off to a woman and to teach him a trade. There are those who say: Even to teach him to swim. Rabbi Yehudah said: One who does not teach his son a trade, teaches him larceny.

The Talmud grounds each of the commands incumbent upon the father in biblical verses. For example, the obligation of circumcision is based on the verse: “And Abraham circumcised his son Isaac” (Gen. 21:4) and the verse “every male among you must be circumcised” (Gen. 17:10). The exclusion of women from performing this commandment is based in the continuation of the former verse: “as God had charged him.” The Talmud comments: “him” and not “her.” It is not completely obvious that since God had invested Abraham with the charge that Isaac be circumcised (or, more broadly, that eight day old males be circumcised) that only men are then obligated to fulfill (or, perhaps even allowed to fulfill) this command.

This logical move is, however, far more solid than the ones that undergird the exclusion of women from the other tasks on the list above. The circular reasoning which exempts women from redeeming a captive son, marrying a son off or teaching a son Torah, is grounded in the fact that they are not obligated to themselves be redeemed or married off or study Torah. A rule is then introduced that one who is not obligated in a specific commandment is not able to perform the commandment on or for others. This then effectively excludes women from studying and teaching Torah, being circumcisers, etc. (Apparently, there were female mohalot or circumcisers in the middle ages.)

In a similar vein, women are excluded from serving as witnesses and therefore as judges, since those who are not able to testify are not allowed to judge. Women are excluded from the Temple for most of their lives as a result of the various impurity legislations (menstruation, semen, etc.). Women are excluded from wearing phylacteries (or are not obligated in the wearing of phylacteries) and tzitzit, and from sukkah under the “commandments ‘Do!’ caused by time” ruling.



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At the end of the day, the result is that women are not allowed to fulfill public legal or ritual functions; they are exempted from much of the rhythm of the ritual life (thrice daily prayer) and from the central practice of Rabbinic Judaism—studying Torah. This generated new narratives about what men and women are. Women are more spiritual and therefore do not need the mitzvot in the same way as men do. Women think differently and therefore cannot grasp talmudic study in the way men can. And so on.

As the larger cultural narratives about what men and women are have changed as a result of historic shifts in the last century, the exclusion of women from these practices made less and less sense. The stories we told ourselves about what men and women were, did not map onto the identities that the tradition had constructed for them. The identities started to shift. Women now study all branches and fields of Torah across a wide spectrum of Jewish denominations, all essentially, excluding the ultra-Orthodox. Outside the Orthodox movement, women can serve as prayer leaders, rabbis, Torah readers and lay tefillin and pray thrice daily.



THE INTERSECTION OF GENDER AND MITZVOT – TEXT 1

תלמוד בבלי מסכת קידושין דף ב עמוד ב
ר"ש אומר: מפני מה אמרה תורה "כי יקח איש אשה" (דברים כב: יג), ולא
כתב "כי תלקח אשה לאיש?" מפני שדרכו של איש לחזור על אשה, ואין
דרכה של אשה לחזור על איש. משל לאדם שאבדה לו אבידה, מי חוזר על
מי? בעל אבידה מחזור על אבידתו.

BABYLONIAN TALMUD, KIDDUSHIN 2b

Rabbi Shimon says: Why did Torah say "When a man takes a woman..." (Deut. 22:13), and did not write "When a woman is taken to a man?" For it is the way of a man to pursue a woman, and it is not the way of a woman to pursue a man. This is akin to a person who loses an object. Who searches after whom/what? The owner of the lost object searches after his lost object.

תלמוד בבלי מסכת כתובות דף פו עמוד א
יותר ממה שהאיש רוצה לישא אשה רוצה להנשא.

BABYLONIAN TALMUD, KETUBOT 86a

More than a man wants to troth [or: marry], a woman wants to be betrothed [or: married].

STUDY QUESTIONS

- Dr. Cohen points out that these Talmudic passages, among others, help to construct gender by identifying certain characteristics as female, and others as male. If you only had these texts, what would you think is the rabbis' conception of men and women with regard to marriage?
- What cultural realities may lay behind the cultural assumptions in these texts?
- Are these "difficult texts" for today? If so, how should we learn them and teach them?



THE INTERSECTION OF GENDER AND MITZVOT – TEXT 2

משנה מסכת קידושין פרק ד משנה יג
לא ילמד אדם רווק סופרים ולא תלמד אשה סופרים. ר' אליעזר אומר: אף
מי שאין לו אשה לא ילמד סופרים.

MISHNAH KIDDUSHIN 4:13

An unmarried man shall not be a teacher of young children, and a woman shall not be a teacher of young children. Rabbi Eliezer says: Even a person who does not have a wife shall not be a teacher of young children.

STUDY QUESTIONS

- Who is allowed to be a teacher of young children? Who is not allowed to teach young children?
- What could some of the reasons be for the restrictions in our mishnah?
- This mishnah presents rules concerning who may and who may not be a school teacher. In Dr. Cohen's terms, does it serve to construct gender? If yes, how?
- Think about gender based job restrictions in the country you live in. For example: In many parts of the United States, married women were not allowed to be school teachers until well into the 20th century, while unmarried women were allowed to teach. What were the cultural assumptions behind these laws? How do they differ from those of today? From those of the rabbis?



THE INTERSECTION OF GENDER AND MITZVOT – TEXT 3

תלמוד בבלי מסכת קידושין דף פב עמוד א
מאי טעמא? אילימא משום ינוקי, והתניא, אמרו לו לר' יהודה: לא נחשדו
ישראל על משכב זכור ולא על הבהמה! אלא רווק - משום אמהתא דינוקי,
אשה - משום אבהתא דינוקי. ר' אלעזר אומר: אף מי שאין כו'. איבעיא
להו: מי שאין לו אשה כלל, או דלמא בשאינה שרויה אצלו? תא שמע: אף
מי שיש לו ואינה שרויה אצלו - לא ילמד סופרים.

BABYLONIAN TALMUD, KIDDUSHIN 82a, ON MISHNAH KIDDUSHIN 4:13

What is the reason? If you say it is because of the children, [that can't be the case,] but wasn't it taught in a baraita: They said to Rabbi Yehudah: Jews are not suspected of homosexuality and bestiality! Rather, an unmarried man [shall not be a teacher of young children] on account of the children's mothers; a woman [shall not be a teacher of young children] because of the children's fathers. Rabbi Elazar says: Even a person who does not have [a wife shall not be a teacher of young children]. They asked him: Does this mean one who has no wife, or perhaps [it also applies to] one who has a wife but she isn't living with him? Come hear [a proof]: Even one who has a wife but she isn't living with him – he shall not be a teacher of young children.

STUDY QUESTIONS

- Think about Dr. Cohen's discussion of gender construction and how gender constructs work their way into law. According to the Talmudic text, what is the reason that women and unmarried men are not permitted to be teachers of young children? How does this fit with what you thought about the mishnah?
- The rabbis allow married men whose wives are living with them to teach young children. Why don't they allow this for married women in the same circumstances? What does this say about their construction of married women, and of women in general?
- What are the rabbis worried about? What aren't they worried about? How does this impact their construction of men and women?
- According to our text, concern about sexual temptation between teachers and their students' parents is the reason that the rabbis prohibit many people from being school teachers. Can you envision a solution that might allow both men and women, regardless of marital status, to teach young children? Why do you think that there are no solutions suggested in the rabbinic discussion?



THE INTERSECTION OF GENDER AND MITZVOT – TEXT 4

משנה מסכת קידושין פרק ד משנה יד
ר' יהודה אומר: לא ירעה רווק בהמה ולא ישנו שני רווקים בטלית אחת
וחכמים מתירין.

MISHNAH KIDDUSHIN 4:14

Rabbi Yehudah says: An unmarried man shall not herd cattle, and two unmarried men shall not sleep in one cloak; but the Sages permit.

תלמוד בבלי מסכת קידושין דף פב עמוד א
ר' יהודה אומר: לא ירעה כו'. תניא, אמרו לו לרבי יהודה: לא נחשדו
ישראל על משכב זכור ולא על הבהמה.

BABYLONIAN TALMUD, KIDDUSHIN 82a

Rabbi Yehudah says: An unmarried man shall not herd cattle [and two unmarried men shall not sleep in one cloak]. It was taught in a baraita: They said to Rabbi Yehudah: Jews are not suspected of homosexuality and bestiality.

STUDY QUESTIONS

- What are the rabbis worried about? What aren't they worried about?
- How does the dismissal of suspicions of homosexuality help to construct heteronormativity?
- This Talmudic passage follows directly after the one in Text 4. Why do you think the Sages' statement to Rabbi Yehudah is repeated like this?



THE INTERSECTION OF GENDER AND MITZVOT – TEXT FOR GROUP STUDY

משנה מסכת קידושין פרק ג
...הרי את מקודשת לי...

MISHNAH KIDDUSHIN 3:1-3, 6, ETC.

...Behold you are mekudeshet to me...

STUDY QUESTIONS

- Dr. Cohen shows us that in Deuteronomy Chapter 22 [and 24], the Bible says: “When a man takes a woman...” and that Mishnah Kiddushin 1:1 says: “A woman is acquired...” In Mishnah Kiddushin Chapter 3, we see the language of the betrothal formula that is still used in traditional Jewish weddings today. The man says to the woman: Behold, you are mekudeshet to me. The root of the word mekudeshet is .ש.ד.ק which means sacred, holy, set aside, consecrated. How is the language of this ceremony different from the language in Text 1? Does it construct gender and/or marriage differently?
- How does this language of the traditional Jewish wedding ceremony serve to construct gender today? How do you feel about that?





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