

# VI

is the Law  
subject to  
change?



THE AUTHORITY of the Torah law has been challenged on the grounds that it is itself subject to historical changes: "The unchangeability of the Law is a myth; it changes with the times."

The orthodox Jew categorically refuses to admit this. In *The Difference Between Orthodoxy and Conservatism*, Rabbi Harold P. Smith shows very clearly that the so-called "socio-historical evolution of Jewish law" is exactly the point over which the modern reform movements have broken with traditional Judaism. "Traditional Jewish belief maintains that the times are the rock and our religious observances are the chisels that shape the rock, and not, as the non-traditionalists by necessity have to say, that the Jewish religion is the rock and the times constitute the chisel which shapes the rock. Orthodoxy says that our

religion is a Divine instrument to shape the ages, rather than clay which the ages are to shape" (1).

It is true, of course, that Judaism knows many controversies over details of the Law, and that there is no one book which contains *the* entire, undisputed resume of Jewish Law. But while no one book can claim such authority, the Law as a whole can, and while there are differences over legal details, these differences are all within the Law. In other words, we find differences of rabbinical opinion on details, even on such a subject as the exact manner in which the sexes are to be separated in the synagogue, or on the exact quantity of matzoth to be eaten on the first night of Passover—but: (1) these differences do not touch fundamentals (such as the duty to separate the sexes, or to eat matzoth); (2) they are not the result of adaptation to contemporary socio-cultural conditions; they rather arise from legalistic differences in the application of the fundamentals; (3) thus they are not a challenge to the principle of the rule of the Law; and the Law, indeed, provides its own self-regulating techniques for solving such differences of opinion, namely, appeal to outstanding authorities for their correct application, or majority decisions of competent rabbis, or mediating principles laid down by the Law itself, as defined by the rabbis, etc. Jewish history indicates that the Law has indeed enjoyed absolute continuity of observance. It has itself arbitrated between controversies over its application; it has turned its back only on those who dispute the entire principle and system of the Law, and see it as a mere by-product of historical evolution.

In defense of the latter view, great play has been made of so-called shifts in the orthodox position toward reform tendencies; obviously, it has been said, orthodox legal principles cannot be immutable if ninety years ago the absence

of a *bimah* in the synagogue, or sermons in the vernacular, were causes for "excommunication," while today they are readily accepted by orthodoxy. In reality, these arguments merely reveal ignorance of the legal principles involved.

Sermons in the vernacular and (according to some legitimate legal rulings) the absence of a *bimah* were not wrong per se: they were banned at one time because they were then examples of imitation of non-Jewish practice and, as such, they became both legally objectionable and dangerous. When these considerations were no longer of significance, the prohibitions naturally lapsed. On the other hand, such a rule as the separation of the sexes at worship is prescribed by the Law irrespective of circumstances.

Efforts have been made to establish the time-bound character of laws such as the separation of the sexes, by calling them the result of social-historical conditions and an outgrowth of antiquated ideas about the inferiority of women. There is absolutely no justification for this view. As Chief Rabbi Herzog put it, "Think not for a moment that this law implies the least inferiority of women. Nothing was further from the minds of our ancient teachers, the successors of the prophets. Prophecy is surely the highest degree of human perfection, and our ancient teachers count many women as prophetesses" (chapter II, source 9). The Bible thus describes Miriam (Exodus 15:20), Deborah (Judges 4:4), and Huldah (2 Kings 22:14). The Talmud lists them, together with Sarah, Hannah, Abigail and Esther. And from Genesis 21:12 the Midrash derives that Sarah was indeed Abraham's superior in prophetic power (*Shemoth Rabbah* 1, 1; *Tanhuma' Shemoth* 1).

The existence of a women's section in the synagogue is in no way a symbol of degradation, but actually a natural consequence of the fact that the Torah exempts women

from the obligation of regular public prayer: not because they are inferior, but because they have other duties in the home, which in the eyes of the Jewish religion must take precedence. Beyond that, of course, there is the injunction of the Torah against levity or frivolity at public gatherings, and, in particular, at public services (see chapter II, above). Its purpose is to assure maximum decorum, to put the individual into a prayerful mood, and to lead him toward the transcending ideal of holiness. This has been cogently elucidated by Rabbi Menahem M. Kasher in his eloquent essay on the hallowed nature of the synagogue (2).

#### THE JUDAIC CONCEPT OF WOMAN

On woman's place in Judaism there are passages galore scattered throughout Talmud and Midrash, which tell their own clear tale. A representative selection, given after this chapter, shows a rare insight into, and appreciation of, woman's proper role in Jewish family life, as well as her qualities of compassion and intuitive understanding; and Jewish law treats her with tender regard for her nature (3). Citing such sources and others, the late Dr. Joseph H. Hertz has written an impassioned short essay to refute thoroughly the "hostile misrepresentation that exists in regard to the woman's position" in Judaism (4). His teacher, Solomon Schechter, depicts in an earlier essay the role of "woman in Temple and synagogue"; he shows how, from earliest times to the present, women have participated in love and reverence in Temple and synagogue worship—although segregated (5). In this connection we might quote an inscription found by the late E. L. Sukenik (Israel's foremost archaeologist) in the remains of a synagogue in Na'aran, near Jericho, dating from about 300 CE. In a mosaic pavement at the entrance hall are the words:

May Halifo the daughter of R. Safrah be remembered for good, because she supported this sacred place; Amen (E. L. Sukenik, "Ancient Synagogues in Palestine," *Rimmon*, V, Berlin, 1923, p. 20). And from the 17th and 18th centuries we have tombstone inscriptions of women (recorded in such works as Marcus Horovitz, *'Abne Zikkaron*, Frankfurt, 1901) which bear lasting witness to their scrupulous, pious regular prayers, and their faithful attendance at synagogue. Apparently attending regularly in the women's section was not regarded as a mark of inferiority but as a matter for praise.

But perhaps only women can speak with final authority for their own kind. Nahida Remy, a 19th century Christian woman, studied with growing fascination the life of the Jewess, past and present, especially as compared with woman's lot in other cultures and other lands (she ultimately became a proselyte). Out of her study she wrote a book, *The Jewish Woman*, from which we have appended sections of two chapters (6). What can be more eloquent than this: "The special care for woman and the reverential regard for her [in Bible and Talmud] are remarkable, and fall nothing short of homage." Even more eloquent, in its own way, is an essay by the present-day Nina Alderblum, an "insider," who was reared in a family steeped in Jewish tradition. To choose a random sentence from *The Elan Vital of the Jewish Woman*: "The Jewish soil is fertile for nurturing the creative ideals of womanhood" (7). Neither author sees any hint of inferiority in the traditional life of the Jewish woman. Another woman writer points out in a recent book that the Jewish woman's religious status cannot very well be considered inferior if it is given to her to usher the Sabbath's holiness into her home by lighting the Sabbath candles (Evelyn Garfiel, *The Service of the*

*Heart*, New York, 1958, pp. 126-127). Earlier in the book she notes that R. Elijah Levita (*R. Eliyahu Bahur*) translated the daily Prayer Book, in the 16th century, into early Yiddish, expressly for the benefit of the women, that they might understand the prayers—a sign of a great degree of literacy among the women, and a mark of the care felt for women's religious welfare (*ibid.* p. 38).

A modern exponent of our ancestral tradition has recently written in moving fashion on what marriage has been, and can be, in the lives of observant Jews. In his essay, *Married Love in Jewish Law*, Dr. Leo Jung shows how the age-old laws, rituals and symbols surrounding Jewish marriage make for happy, rewarding life, even in our age of upheaval (8).

But we have digressed; let us resume the main thread—the question of *mechitzah* per se.

Elucidating the question from the point of view of our current modes of living, Rabbi Morris Max writes: "Although we are living in an age when the intermingling of the sexes in schools and public gatherings is commonplace, there is no doubt that when absolute concentration is necessary, as in prayer, and when the mind is apt to wander as the individual strives to conceive and feel the ideas of Godliness, the presence of the opposite sex that may lead to socializing may become a distracting factor" (9).

To say that this outlook reflects an outdated strictness of social behavior, and should therefore be discarded, means overlooking the very serious moral, social, and psychological problems that have been created by our contemporary lack of strict standards. A brilliant exposition of the psychological factors involved was recently published

by Rabbi Norman Lamm (10). The Torah's insistence on the sanctity of the relation between the sexes has undoubtedly been one of the means for protecting the Jewish people from most of these problems during its long pilgrimage through history. Here, again, the traditional Jew sees an indication of divine wisdom, revealed by the Torah, which is superior to contemporary social modes, and cannot be changed by, or for, the times.