

# Politics of Exclusion in Judaism

## Preserving Gender Roles Part 1: Mechitza

### B. Sukkah 51b-52a

Our Rabbis have taught, originally the women used to sit within [the Court of the Women] while the men were without, but as this caused levity, it was instituted that the women should sit without and the men within. As this, however, still led to levity, it was instituted that the women should sit above and the men below. But how could they do so? [Alter the original structure of the Temple] Is it not written, All this [do I give thee] in writing as the Lord hath made me wise by His hand upon me?— Rav answered, They found a Scriptural verse and expounded it: And the land shall mourn, every family apart; the family of the house of David apart, and their wives apart. (Zech. XII, 12) Is it not, they said, an a fortiori argument? If in the future when they will be engaged in mourning and the Evil Inclination will have no power over them, (So that levity is least to be expected) the Torah nevertheless says, men separately and women separately, how much more so now (At the festivities of the [Water-Drawing] when they are engaged in rejoicing and the Evil Inclination has sway over them.

### תלמוד בבלי מסכת סוכה דף נא:ב-נב:א

חלקה היתה בראשונה והקיפונה גזוזטרא, והתקינו שיהו נשים יושבות מלמעלה ואנשים מלמטה. תנו רבנן: בראשונה היו נשים מבפנים ואנשים מבחוץ, והיו באים לידי קלות ראש, התקינו שיהו נשים יושבות מבחוץ ואנשים מבפנים. ועדיין היו באין לידי קלות ראש. התקינו שיהו נשים יושבות מלמעלה ואנשים מלמטה. היכי עביד הכי? והכתיב +דברי הימים א כח+ הכל בכתב מיד ה' עלי השכיל! - אמר רב: קרא אשכחו ודרוש, +זכריה יב+ וספדה הארץ משפחות משפחות לבד משפחת בית דוד לבד ונשיהם לבד. אמרו: והלא דברים קל וחומר. ומה לעתיד לבא - שעוסקין בהספד ואין יצר הרע שולט בהם - אמרה תורה אנשים לבד ונשים לבד, עכשיו שעוסקין בשמחה ויצר הרע שולט בהם - על אחת כמה וכמה.

### I. R. Moses Feinstein

**THERE ARE LOCALITIES** in this our country where people are breaking with the practice of having a *mechitzah* to separate men from women in the synagogue—in the "little Sanctuary" that yet remains to us. Undoubtedly they do not intend willfully to transgress the law, but rather act from a lack of knowledge of the severity of the prohibition. It is therefore essential to explain the origins of the law, its stringency, and the minimum height of a *mechitzah* [physical separation: partition, screen, etc.] which the law might require.

The basic rule is that even if men are on one side and Women on the other, it is still forbidden for them to be without *mechitzah*; and this would seem to be a Biblical injunction. The proof lies in Sukkah 51a: there the Talmud speaks of the balcony that was erected [in the women's court of the Temple] on the eve of the second day of the Sukkoth Festival, so that the women could be relegated to the upper level and the men to the lower [to watch from there the simhath beth ha-sho'ebah, the "festivity of drawing water" for libations]. [Emphasis original]

And the question is raised: But it is written [that David said to Solomon about the Temple plans], All this is in writing, as the Lord hath made me wise by His hand upon me, even all the works of this pattern (1 Chronicles 28:19)—[indicating] that it was forbidden to add anything to the structure of the Temple and the courts? Rab replied that they [the Sages] came across a verse in Scripture [Zechariah 12:12, signifying] that it was necessary to have a separation between men and women; see Rashi's amplification ad loc.

Quite obviously the import of the reply is that with the verse they found, it is as if the projecting balcony had been explicitly ordained, and there was thus no need to have Gad the Seer and Nathan the Prophet transmit this matter when they gave instruction about the working plans (1 Chronicles 28:29). Now had the balcony been required only by a Rabbinic proscription, it would be impossible to say that a Rabbinic law could override the Biblical dictum that all this [all the Temple plans, were given] in writing [and hence were not to be modified]—and in Hullin 83 the Talmud makes it quite clear that this is Scripture's ruling.

Therefore, if a balcony was required to separate the men from the women, that too must have been by Biblical law. So it would also seem from a passage in the Jerusalem Talmud, Sukkah 5, 5: Commenting on this addition which amended the Temple structure, it states, "Whence did they learn [that they should build it]? From something in the Bible." Thus, such a separation is referred to as a Biblical matter. And even though its source in the Bible—Zechariah 12:12—is a verse from the prophets (Divrei kabbalah), in which case the rule is that it cannot establish any Biblical prohibition, here a Biblical law can well be derived from it: for the verse does not seek to originate any prohibition, but merely requires that mourning be observed in accordance with [apparently pre-existing] Scriptural law—men separate and women separate.' We learn similarly of many Biblical laws from the actions of the Prophets Judges and Kings, out of verses quoted in passages of Oral Tradition....

From the Talmud's discussion in Sukkah 51a we learn something more: Even if there is a mechitzah (separator), but such as could still permit a state of levity to come about, the same Biblical prohibition remains in force. For originally in the women's court of the Temple, on this Sukkoth Festival night] women were within and men outside; Rashi explains that actually the former were in the women's court proper while the men occupied the Temple mount and the enclosure within the rampart; there was a great *mechitzah* between them, as the law required, but because people had to stand near the open gate to see the proceedings, it was noticed that levity soon obtained, against which the *mechitzah* availed nothing. It was this situation which Biblical law forbade, and therefore it was decided to build a balcony.

Nor did the Biblical prohibition apply because a man and woman might seclude themselves (which situation is likewise 'pained by Scripture), for . . . with so many men and women its were present at this Sukkoth night festivity, there was no reason to fear such seclusion . . . especially as two passageways remained open, and people passed through constantly to leave, through the Temple mount, the rampart enclosure, the women's otirt, the general courtyard, and thus outside. . . . Hence, necessarily, the problem was only the onset of a frivolous mood...

It becomes clear, then, that a balcony was necessary by original Biblical law, so that the women would be above and the men below, and then they would in no sense mingle or communicate.

As the Mishnah states: [The wall of the women's court] was smooth at first, and then a balcony traversed its length, so that the women would see [the festivities] from above, and the men from below, and they would not be intermingled (Middoth 2, 5). This proves that originally, though they were separated by an adequate mechitzah, they were considered as if commingling; such a situation violated Biblical law, which implicitly demanded, then, a balcony.

The conclusion to be drawn is that in the synagogue as well, where men and women gather to pray, it is best to have a balcony, so that the women will be on the upper level. If for some reason it is too difficult to build a balcony, a physical separation in the full sense of the term must be installed, such as will rule out any possible frivolity. . . . Therefore a *mechitzah* ten handbreadths high [about one yard] is inadequate, for it is worthless as a guard against levity; people can talk and continue to chatter at length without any hindrance, even when seated; this allows for the greatest possible state of levity. Therefore in such a case those present would be regarded as actually commingling, and a Biblical prohibition would obtain—for this is worse than the mechitzah which separated the women's court from the rampart enclosure in the Temple: the latter mechitzah was far more substantial, yet its open gates rendered it ineffective. A mechitzah must be made to such a height as to effectively preclude any possible frivolous mood. . . .

*In a personal communication, the author of this responsum, one of the recognized poskim, final authorities in Jewish law, of our generation, wrote further concerning his legal opinion:*

June 17, 1957

Dear Mr. Litvin,

In reference to what is written in my name, that "the prohibition of mixed pews is Biblical law," it would be better to change the words to read: "the prohibition against praying in a synagogue without a *mechitzah* of at least eighteen *tefahim* (handbreadths) or sixty-five inches high, is a Biblical law." Stronger emphasis should be put on the point that it is prohibited to pray in a synagogue without a proper *mechitzah*, even though there is separate seating.

Sincerely yours,  
*Rabbi Moshe Feinstein*

## **II. R. Soloveitchik**

### **Message to a Rabbinic Convention**

I regret exceedingly my inability to be at this most important conference of our organization. On strict orders of the doctor, I must not engage, for the time being, in public speaking, or even attend public functions. Please accept my heartfelt wishes for very successful and fruitful deliberations and discussions, which should in turn be translated into realities.

I also wish to express to you my deep appreciation of and admiration for your unselfish and untiring efforts in behalf of Torah and traditional Judaism. I know how much you have given to the cause of strengthening the orthodox rabbinate, to solidify its position and to promote its objectives. May the Almighty bestow upon you His infinite blessings and grant you health and fortitude to carry on your good work for many more years. The task is a difficult one; but the

harder the mission, the greater is the reward. לפום צערה אגרא

The Rabbinical Council of America stands now at the crossroads; and must decide either to assume boldly and courageously the time-honored, by-ages-sanctified role of the traditional rabbinate which traces its history back to Joshua, Moses and Sinai, and thus be ready to fight for an undiluted Halachah which is often not in the vogue; or to deteriorate into a so-called modern rabbinic group of undefined quality and of a confused ideology, vague in its attitudes and undecided as to its policies.

In particular, I wish to call the attention of the Conference to the *mechitzah* problem. I continually receive reports from laymen from all parts of the country, accusing many rabbis of displaying indecisiveness and even cowardice in this matter. They charge them with laxity and indifference, even in cases when the traditionally minded individuals are willing to organize in defense of the principle of segregation. I have the feeling, that a well coordinated, aggressive effort on our part may stop, if not reverse even, the trend of Christianization of the synagogue. However, many of our colleagues choose the *derech ketzarah va'aruchah*, the easy way which leads to doom and disaster.

I do hereby reiterate the statement I have made on numerous occasions, both in writing and orally, that a synagogue with a mixed seating arrangement forfeits its sanctity and its Halachic status of *mikdash me'at* [a Sanctuary-in-miniature], and is unfit for prayer and *abodah she-beleb* [the service of the heart]. With full cognizance of the implications of such a Halachic decision, I would still advise every orthodox Jew to forego *tefillah b'tzibbur* [group prayer] even on Rosh Hashanah and Yom Kippur, rather than enter a synagogue with mixed pews, notwithstanding the fact that the officiating rabbi happens to be a graduate of a great and venerable *yeshibah*. No rabbi, however great in scholarship and moral integrity, has the authority endorse, legalize, or even apologetically explain this basic deviation. Any rabbi or scholar who attempts to sanction the desecrated synagogue, *ipso facto* casts a doubt on his own moral right to function as a teacher or spiritual leader in the traditional sense of the word. No pretext, excuse, *ad hoc* formula missionary complex, or unfounded fear of losing our foothold in the Jewish community, can justify the acceptance of Christianized synagogue as a bona fide Jewish religious institution....

The greater the difficulty, the more biting the ridicule and sarcasm, and the more numerous the opponent—then the holier is the principle, and the more sacred is our duty to defend it. In my opinion, the Halachic dictum, *bishe'ath gezerath ha-malchuth 'afillu mitzvah kallah kegon le-shinuyei arketha de-mesana, yehareg ve'al ydabor* [at a time of religious persecution through governmental decree, even for a minor custom, such as one involving changing a shoelace, let one suffer death sooner than transgress it] (Sanhedrin 74b), requiring of us a heroic stand in times of adversity, applies not only to political and religious persecution originated by some pagan ruler, but also to situations in which a small number of God-fearing and Torah-loyal people is confronted with a hostile attitude on the part of the majority dominated by a false philosophy.

## On Seating and Sanctification

THIS IS THE QUESTION which has been raised: Lately there has been a great increase in the number of synagogues where men and women sit together. Many of them are attended by Jews who designate themselves as orthodox. Shall Orthodox Judaism then consider such synagogues as an inevitable development, and become reconciled to them? Or must it assume a militant stand against them?

To make absolutely clear my position on this laden question, I would like to relate this incident:

A young man moved into a suburb of Boston, where the only existent synagogue had men and women sitting together. He asked me what he should do on the High Holy Days, *Rosh Hashanah* and *Yom Kippur*; until then, on account of the mixed seating, he had not entered the synagogue; but on the Days of Awe he was very reluctant to remain at home. I answered him that it were better for him to pray at home both *Rosh Hashanah* and *Yom Kippur*, and not cross the threshold of that synagogue. A few days later he telephoned me again: he had met the man who was to sound the *shofar* in that synagogue, and this man had warned him that if he did not come to the synagogue he simply would not hear the *shofar* at all, for the man would not sound the *shofar* again, privately, for his benefit. The young man practically implored me that I grant him permission to enter the edifice, at least for a half hour, that he might hear the *shofar* blasts. I hesitated not for a moment, but directed him to remain at home. It would be better not to hear the *shofar* than to enter a synagogue whose sanctity has been profaned.

My stringent position regarding the mingling of men and women, arises from several reasons.

First of all, such mingling is forbidden according to the *halachah*. In certain instances Biblical law prohibits praying in a synagogue where men and women are seated together. Such a locale has none of the sanctity of a synagogue; any prayers offered there are worthless in the eyes of the Jewish Law.

Secondly, the separation of the sexes in the synagogue derives historically from the Sanctuary, where there were both a Court of Women and a Court of Israelites. In its martyr's history of a thousand years, the people of Israel have never violated this sacred principle. Moreover, when primitive Christianity arose as a sect in the Holy Land, and began to slowly introduce reforms, one of the innovations which the sect established at once in the externals of synagogue practice, was to have men and women sit together. In many instances mixed seating was the unmistakable sign by which a Jew could recognize that he had found not a place of sanctity for Jews to pray but rather a prayer-house for a deviating sect; for in those times the Christians had not yet formally differentiated themselves from traditional Jewry. As a secret sect they endeavored to hide their identity, and only through certain definite signs could they be recognized.

It would seem to me that our remembrance of history alone should keep us from imitating today the practice of primitive Christianity almost 1900 years ago.

Thirdly, the entire concept of "family pews" is in contradiction to the Jewish spirit of prayer.

Prayer means communication, with the Master of the World, and therefore withdrawal from all and everything. During prayer man must feel alone, removed, isolated. He must then regard the

Creator as an old Friend, from whom alone he can hope for support and consolation. *Behold, as the eyes of servants look unto the hand their master, as the eyes of a maiden unto the hand of her mistress; so our eyes look unto the Lord our God, until He be gracious unto us* (Psalms 123:2).

Clearly, the presence of women among men, or of men among women, which often evokes a certain frivolity in the group, either in spirit or in behavior, can contribute little to sanctification or to the deepening of religious feeling; nor can it help instill that mood in which a man must be immersed when he would communicate with the Almighty. *Out of the depths have I called Thee, O Lord* (Psalms 130:1), says the Psalmist. Such a state of being will not be realized amid "family pews."

In my opinion, Orthodoxy must mobilize all its forces and wage an indefatigable battle against the "christianization" (I have no other name for it) of the synagogue—a process which is being accomplished by people who possess no sense of *haiachab* and no historical-philosophical concept of the nature of prayer; but they do have the arrogance to wreck principles and traditions which have become hallowed through blood and tears.

And I do not believe this battle will be a lost one.

In the mingled seating of women and men I see no progressive idea which should appeal to the person of culture. The American Jew, though he is ignorant in matters of Jewish law, has a great amount of common sense, and a certain intellectual honesty. I am convinced that if the Jewish public were to be truly enlightened on this matter, it would react quite differently to this reprehensible reform. It would understand that the separation of men and women implies not disrespect or contempt for woman, as the representatives of the 'half-reformed camp would interpret. On the contrary, it is based on the Jewish sense of modesty, a sense identical with the attitude of reverence for Deity, a sense which the Judaism of Abraham and Sarah has shown toward woman as the mother and builder of the people Israel. When *they*, the angels, *said unto him: Where is Sarah thy wife?* Abraham simply replied, *Behold, in the tent* (Genesis 18:9).

In practical terms, Orthodoxy has three tasks: (1) to Conduct a program of education through the oral and the written word; (2) to morally support those individual laymen and rabbis who often give themselves in self-sacrifice to a battle for the sanctity of the synagogue. Mostly an action for reform will begin with the obstinacy of one despot in the brotherhood or sisterhood. Were the observant Jews well organized, and if they but had a more aggressive attitude, the reform could, in many instances, be averted. (3) Orthodox organizations should undertake to build synagogues in the suburbs and new communities where Jews are settling. If the various synagogue organizations . . . would concentrate on organizing new synagogues and Jewish communities in America, they could accomplish much.

We have not yet lost the battle, for we have not yet begun to fight. We have but abandoned the synagogue, much as France abandoned Paris before the Germans fired the very first shot. Even today, however, we can yet defend our position if we will but have the determination. We must have the will to give battle, for the synagogue is the center of Jewish communal life in this

country. No movement or organization - as strong as the synagogue. When we lose a House of Prayer, we lose a strategic position. A right battle for principles always a worthy and honorable endeavor.

*Gird thy sword upon thy thigh . . . prosper, ride on, behalf of truth* (Psalms 45:4-5).

### **An Open Letter**

FIRST, LET ME REITERATE in precise and unequivocal terms my position with regard to the seating arrangement in a house of worship. The separation of the sexes in the synagogue is a basic tenet in our faith. It dates back to the very dawn of our religious Halachic community, and constitutes a Pentateuchic injunction ('issur de'oraitha) which can never be abandoned by any legislative act on the part of a rabbinic or lay body regardless of its numeric strength or social prominence. What was decreed by God can never be undone by human hand. In my opinion, mingling of the sexes is by far a more flagrant violation of a great principle than installing an organ or praying with bare heads. Unfortunately, while every traditionally minded Jew understands that the latter practices tend to strip our synagogue of its Judaic quality, and are tantamount to an attempt; to Christianize our ritual, many well meaning and sincere Jew', are being misled with respect to the mixed seating arrangement.

I wish to state that I do not know of any orthodox rabbi or Talmudic scholar of high repute who would dare to say that mixed seating is in consonance with our Law. Neither the orthodox rabbinate of America, consisting of three major organizations, nor the chief rabbinate of Great Britain and its Dominions, nor the rabbinate of the Holy Land would ever even vaguely suggest that such a practice is permissible. The requirement for separation is Halachically so elementary and axiomatic, historically so typical of the Synagogue in contradistinction to the Church since antiquity, and philosophically so expressive to our religious experience, that whoever dares to question this, institution either is uninformed or consciously distorts religious realities.

As to whether or not the Halachah also requires segregation, I wish to say that there is certainly a requirement for the erection of a partition, and the synagogue which fails to erect' one is guilty of violating a very sacred tradition. However, there is a basic difference between this wrong and that of the complete mingling of the sexes, for, as I indicated above, separation has its origin in the Bible itself, whereas the requirement of a mechitzah must be attributed to a Rabbinic ordinance, The Biblical passage from which the Talmud derives the interdiction against mixed pews [Zechariah 12:12 in Sukkah 51b], and also the Pentateuchic injunction, Let Him see no unseemly thing in thee (Deuteronomy 23:15), deal with separation only. There is no mention, however, of segregation. The latter has been introduced in accordance with the old maxim, *vdassu ,veyag latorah*, "Make a fence around the Law" (Aboth 1, 1), as a safety measure in order to prevent the mingling of the sexes. The Biblical law itself, however, only requires separation. Although complete segregation is important, since we have no authority to amend even a Rabbinic institution, yet it should not be treated on a par with the principle of separation. While the latter determines the very essence and sanctity of the synagogue, the former, if violated, does not place the congregation in the class of a reform temple.

In conclusion, let me say that it is completely irrelevant to our problem whether fifty or five percent of the membership of the Rabbinical Council of America occupy pulpits in synagogues with

improper seating arrangements. The violation of a religious or ethical principle does not affect its validity and cogency, even though a large segment of the community is engaged in doing so. A transcendental tenet is binding regardless of its unpopularity with the multitudes. Was the commandment against murder declared null and void while the Nazi hordes - were practicing genocide?

### **"Mehizah, Midrash and Modernity: A Study in Religious Rhetoric" – R. Dr. Alan J Yuter**

The passage's context refers to the requirement that the ancient Israelites preserve a state of ritual purity in their camp so as to insure God's protective presence. Not only is the context not related to the separation or segregation of the sexes, none of the medieval enumerations of the six hundred and thirteen commandments considers this verse to be the source for an eternally binding law. According to Maimonides, a verse must be cited by, the Talmudic authorities on the basis of an exegetical tradition of the Oral Law or be derived by means of the classical rules of exegesis and it must be a command given to Israel which is binding for all time." By employing the rhetoric of midrash halakhah, Rabbi Soloveitchik implies that he possesses both the authority and tradition to define the meaning and application of the Pentateuch, a prerogative traditionally reserved for members of the Great Sanhedrin.

Equally far-reaching is Rabbi Soloveitchik's attribution of the requirement that the sexes be segregated by means of a partition to a rabbinic injunction. Rabbinic law must be legislated and recorded; if a prohibition is not specifically mentioned and promulgated as such by the Talmud or the Codes, the restriction is, at best, a minhag or local ordinance of regional validity.' Rabbi Soloveitchik tacitly admits the weakness of his position by attributing the requirement that the sexes be segregated to a rabbinic ordinance, the source of which is not cited.

By defining family pews as a violation of Pentateuchal law, Rabbi Feinstein denies the sanctity even of "traditional" Conservative congregations because they cease to conform to the mandates of what has been defined as Pentateuchal law. Similarly, rabbis who grace such pulpits are heretics because they deny the religious authority of the Pentateuch as understood by Rabbi Feinstein. Consequently, one ought not to respond amen to a benediction recited by a non-Orthodox rabbi, "while the benediction of a non-observant doctor ought to be answered." The former, by rejecting the authoritative sage, is a heretic; the latter, moved by impulses presumably other than ideology, is not. Further, Rabbi Feinstein begrudgingly tolerates the institution of Bar Mizvah with all of its abuses only because it was instituted by Orthodoxy; the Bat Mizvah rite is opposed for no reason other than that it was instituted by non-Orthodox leaders."

#### Sources

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