



Kedma: Penn's Journal on Jewish Thought, Jewish Culture, and Israel

Volume 2
Number 2 *Fall 2018*

Article 8

2020

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Women's Testimony and Talmudic Reasoning

Deena Kopyto

Introduction

Today, being a witness is often considered a burden – an obligation that courts force people to fulfill. In contrast, in Talmudic-era Babylonia and ancient Israel, testifying was a privilege that certain groups, including slaves, women, and children, did not enjoy. While minors should be barred from participating in courts, and still largely are today, the status of women in Talmudic courts poses a much trickier question.

Through this historical and Talmudic analysis, I aim to determine the root of this ban. The reasons for the ineligibility of female testimony range far and wide, but most are not explicitly mentioned in the Talmud. Perhaps women in Talmudic times were infrequently called as witnesses, and rabbis banned women from participation in courts in order to further crystallize this patriarchal structure. By contrast, perhaps women had previously participated as witnesses in courts, but stopped being called to testify once the rabbis enacted this decree. Another option is that this was the Jewish tradition since Sinai, and women were never allowed to be witnesses in the Jewish court system; the rabbis did not create this law, they just solidified a tradition. Through each option, the context of the societies in which these laws were formed cannot be ignored. In this paper, we will focus on whether this ban

really is rooted in biblical texts, or if it was artificially grafted by rabbinic enactments.

Biblical Origins

One of the main questions about the disqualification of women's testimony is whether this is a rabbinic enactment, or if a biblical source exists. Other societies existing in the biblical era had mixed positions on women bearing witness, with Athenian texts suggesting women could not, and the Assyrian position being less clear. Nowhere in the Bible are women, or other groups who are rabbinically excluded from giving testimony, explicitly mentioned in connection to testimony. In Deuteronomy 19:15, the verse states "According to two witnesses or according to three witnesses, matters shall be established." While one scholar, Yair Shiber, claims that women were not excluded from testifying because both parents of the rebellious son can be witnesses to his immoral behavior, most experts agree that this was an exception rather than a rule. This lack of Biblical proof suggests this enactment was created by the rabbis. However, some Mishnaic and Amoraic sources attempt to prove that this law is biblically sourced, and use various methods, such as *gezera shava* (verbal analogy) to support their stance.

Tannaitic Origins

The Mishnah explicitly mentions women in court in Tractate Shevuot 4:1

An oath of evidence applies to men but not to women, to those who are not near of kin but not to such as are kinsfolk, to those who are eligible but not to those who are not qualified. And it applies only to such as are fit to give evidence.

The Mishnah does not consider it necessary to provide proof for this statement, but states it as a fact in a conversation about oaths and court proceedings. That there is explanation offered in support of this statement, affirms the argument that women already were ineligible to testify. The

apparent shift could have been the product of societal influences. Other ancient societies, such as Assyrian, Greek, and Roman laws put restrictions on women witnesses, and Jews in the Mishnaic adopted this practice.

This Mishnah is particularly interesting in that it explicitly mentions women, instead of grouping them with people who are “not qualified”. This indicates that the rabbis felt it necessary to clearly mention that women’s testimonies were not accepted, which suggests that these testimonies may once have been permitted. Later we see that in some cases, the testimony of a woman was admissible, so this Mishnah makes clear that Jews know these cases are the exception and not the rule. From here we see that the rabbis wanted to cement this practice of excluding women’s testimony. The following verse from the Amoraim Mishnah greatly influenced women and courts throughout Jewish history.

In tractate Rosh Hashanah 1:8, the Mishnah states,

These are considered unfit (witnesses): gamblers with dice, those that lend interest, pigeon racers, those who trade in the produce of the sabbatical year, and slaves. This the general principle: all evidence that a woman is not eligible to give, these (people mentioned above) also are not eligible to bring.

This *mishnah* implies that there are cases in which a woman can bring testimony and some in which she cannot. However, the *mishnah* in Shevuot implies that a woman’s testimony is always inadmissible. This may reflect a shift in the perspective of the rabbis, and support the case that the rabbis slowly limited the cases in which women could testify until there were almost none left. Eventually they decreed in Shevuot that a woman’s testimony is never admissible.

Curiously, a tractate similar to the one in Rosh Hashanah appears in Sanhedrin 3:3, with one main exception. The tractate in Sanhedrin lists the “gamblers,” “usurers,” “pigeon flyers,” and “sellers of sabbatical goods,” as people whose testimony is not admissible, but excludes the statement,

“This the general principle: all evidence that a woman is not eligible to give, these (people mentioned above) also are not eligible to bring.” According to Tzvi Karl, the ruling in Rosh Hashanah came after the one in Sanhedrin, which further supports the theory that as time went on, the rabbis limited women’s roles in the court. There could be many reasons for the opinions of the Tannaim to change over time, including external societal influences. For example, in Rome, many women were afforded more rights to participate in the public sphere, and in a reactionary fashion, the rabbis attempted to create laws limiting women to the home (Fuchs, 2012).¹ However, Roman laws about women being witnesses are ambiguous, thus this cannot be the only reason for this shift.

Why would tractate Rosh Hashanah mention women along with these groups of people? Among all of these categories, one thing that connects them is their supposed dishonesty. Perhaps women were seen as deceitful, which is why they cannot be trusted to testify in court. The conception of women as untrustworthy is one that runs throughout history in various societies. Since Eve, women have often been portrayed as crafty tricksters, fooling innocent men. Christian theology especially promulgated this idea, as it often portrayed women as seductive and deceiving. They based this conception partially on the Christian interpretation of the Adam and Eve story, in which Eve is the main deceiver in the story, not the snake. This idea even extended to the idea of women being witches, fooling men with their powers and lies. Perhaps the Jewish ban in the courts was a precursor to the Christian view, and simply reflected popular sentiment that women could not be trusted, along with gamblers and usurers.

The change in the Mishnah indicates the following evolution: at one point, women were accepted as witnesses, indicated in Sanhedrin, then only in some situations, indicated in Rosh Hashanah, then not at all, as seen in Shevuot. Gradually, rabbinic decrees stripped women of the right to testify. This implies that this law was not originally from the Bible: if women were

prohibited from testifying in the bible, they would not be permitted to testify in particular situations in other legal texts. The weak proof using *gezera shava* (verbal analogy) and the non-direct examples from the Bible further support the idea that women were originally able to testify. Because the prohibition was made up with no sound Biblical basis, contemporary rabbis have the freedom to allow women to serve as witnesses.

Amoraic Origins

Although Mishnaic sources sometimes allow women to give valid testimony, by the Amoraic period, women were categorically ineligible to testify. This follows the general trend we have observed, in which Tannaitic rabbis gradually restricted women's testimony, so that by the time of the Amoraim, women were not allowed to testify at all. While the Amoraic sources depend on exegesis to prove that women cannot be witnesses, they do not provide any explanation as to why this ruling exists.

In Bava Kamma 14b, a discussion of what is considered testimony leads to a conversation about women and minors as witnesses. The Talmud states, The Mishnah teaches Rabbi Yochanan Ben Broka, said: a woman or a minor is trustworthy when they say 'from here this swarm of bees came.' The *stam* asks: Are a woman and a minor eligible for testimony? Rav Yehuda said in the name of Shmuel: Here we are dealing with a case where the owners were pursuing the bees, and the woman and minor were conversing offhandedly and saying, 'It was from here that this swarm emerged.'

This commentary implies that at one point in the Talmudic period, women were eligible to provide evidence, given they were not formally testifying. This development furthers the theory that as time passed, the rabbis in the Tannaitic period gradually restricted women from testifying. At first women were able to testify for some matters, then they were only considered credible for immediate situations, when they were not aware that they were testifying.

This immediacy prevented women from changing their minds and being pressured by external influences to lie during their testimony (Fuchs, 2012).²

This Gemara further continues a discussion of whether casual remarks are considered testimony, and in which situations they are. The overall consensus is that offhand remarks are not testimony, and that the case with a beehive represents an exception, rather than a rule. This further supports the idea that women are not credible witnesses, since offhand remarks are generally not considered testimony. This beehive case demonstrates how the Amoraim interpreted Rabbi Yochanan Ben Beroka's statement to further limit women. In the Tannaitic time, this may have been interpreted to further include women's testimony, but by the time of the Amoraim, the cases in which offhand testimony was accepted were minimized. Furthermore, the Amoraim established that women's testimony was not formally accepted, and that casual remarks from a woman were only credible because she was not formally testifying.

The *stam*, a group of unattributed authors in the amoraic time, further explains the previously mentioned *mishnah* (Shevuot 4:1) in Shevuot 30a with the following:

How do we know? – Because the Rabbis taught: “And the two men shall stand,” the verse refers to witnesses – You say [it refers to] witnesses; but perhaps [it refers to] the litigants? When it says: “between whom the controversy is,” the litigants are already mentioned; hence, how do I explain “and the two men shall stand?” [Therefore,] the verse refers to witnesses. And if you wish to say [something to refute this deduction, I give you another]: Here it is said, “two,” and there it is said, “two”; just as there it refers to witnesses, so here it refers to witnesses. What is meant by: If you wish to say [something to refute the deduction]? – You might say, because the verse is not written: “and those between whom the controversy is,” the whole verse refers to the litigants, [therefore, I give the second

deduction:] here it is said: two, and there it is said: two; just as there it refers to witnesses, so here it refers to witnesses.

These Amoraic rabbis depend on exegesis through *gezera shava* to argue that verses from Deuteronomy imply that women are ineligible to be witnesses. Deuteronomy 19:17 states, “And the two men shall stand, between whom the controversy is, before the lord, before the priests, and the magistrates in authority at the time, and the magistrates shall make a thorough investigation. If the man who testified is a false witness...” First, the *stam* brings a proof to state that “the two men shall stand” refers to witnesses, not litigants, so women aren’t disqualified from litigation processes, only witnessing. The *stam* further proves that this is referring to witnesses by referring to Deuteronomy 19:15, “A single witness may not validate against a person any guilt or blame for any offense that may be committed; a case can be valid only on the testimony of two witnesses or three witnesses [or more].” Since the first time the word “two” is mentioned, it is referring to witnesses, the second time the word is mentioned it is also referring to witnesses. Now that we have established that ‘the two men shall stand’ is in fact referring to witnesses, not litigants, the *stam* uses this to support the *mishnah*, ‘an oath of evidence applies to men but not to women’ (Shevuot 4:1).

The key weakness in this argument is the assumption that the word *anashim* (men) refers to only men, excluding women. In the Hebrew language, the plural word for man, *anashim*, can refer to a group of men, but also refers to groups in which both men and women are present. The entire Talmudic proof crumbles when one interprets the word *anashim* as “people”. The verse in Deuteronomy “the two men shall stand” now reads, “the two people shall stand”, and the subsequent Talmudic discussion about whether these “standing men” refer to witnesses or litigants is rendered irrelevant. The Hebrew language does not contain a gender-neutral word for “people”, so it is often difficult to know when the bible is referring only to men, or to both men and women. This issue arises frequently in the Talmud, in contexts in

which other laws excluding women are derived from the word *anashim*. The use of one disputed word, *anashim*, to disqualify women from testifying, further supports the theory that this was a rabbinic, not a biblical enactment. Although some may use this proof to claim that this ban is a biblical commandment, the weak proof, combined with the ambiguous statements of earlier Tannaim, demonstrates that women were excluded as witnesses by the Amoraic period, but not necessarily during the biblical era.

Shevuot 30A continues with further proof of the *stam*'s argument:

Another [*baraita*] teaches: "And the two men shall stand"; the verse refers to witnesses. You say [it refers to] witnesses; but perhaps [it refers to] the litigants? You may retort: Do, then, men come to court, and do not women ever come to court? But if you wish to say [something to refute this deduction, I give you another]: Here it is said, "two," and there it is said, "two"; just as there it refers to witnesses, so here it refers to witnesses. What is meant by: If you wish to say [something to refute this]? – You might say, it is not usual for a woman, because "all glorious is the King's daughter within", [therefore I give the second deduction:] here it is said, "two," and there it is said, "two"; just as there it refers to witnesses, so here it refers to witnesses.

Here the *stam* follows the earlier argument, reasoning that the "two men" are witnesses, not litigants. By close reading, we can see that this segment logically deduces in the opposite direction of the previous proof. This paragraph states that because the passage refers to men, it must be referring to witnesses, not litigants, since women can come to court as litigants. The circular reasoning in this *gemara* is now evident and further undermines the evidence that the *stam* brings. To recap: first the *stam* states that the verse "two men shall stand" refers to witnesses, and because of this masculine language, women cannot be witnesses. In the second proof, the *stam* reasons that since women cannot be witnesses, but can be litigants, the "two men shall stand" refers to witnesses, again dependent on the masculine language. This inconsistency demonstrates

that the arguments used to prevent women from giving testimony do not hold up under scrutiny, implying that the rabbis are offering false reasons for this ruling.

Shevuot 30a raises the concept of modesty into the ruling and suggests that women cannot testify because “all glorious is the King’s daughter within.” In this passage from psalms, the king is alluding to God and the daughters are the Israelite women. There is significant evidence that the rabbis viewed the home as a proper place for women, and so tried to limit their participation in public affairs. The rabbis justified this practice by claiming that it preserved a woman’s modesty, as in this example. However, women were still allowed to participate in other court proceedings as litigants, such as those relating to marriage. If women were already allowed to participate in litigation, why did the rabbis see testifying as an affront to modesty?

Perhaps women’s involvement with litigation was unavoidable, despite issues with modesty, since women could be brought to court as plaintiffs or defendants. This has biblical roots in the case of the *sotah*, where a woman is essentially tried for adultery. A woman could also bring a case to court if her husband refuses to give her a divorce, and generally cases in which women are litigants are those which involve family life. However, women were permitted to own property, thus civil cases involving property were unavoidable. Women were also not permitted to be judges, which further demonstrates that women were generally unwelcome in the court system, yet were permitted to act as litigants out of necessity.

Bava Kamma 88a further discusses this issue, stating unequivocally that women and slaves cannot give testimony.

But again would you now also say that according to the rabbis, a slave would be eligible to give evidence, since it says, “And behold, if the witness be a false witness and hath testified falsely against his brother?” – Ulla replied: “Regarding evidence you can surely not argue this. For his disqualification from giving evidence can be learned by means of

an a fortiori from the law in the case of woman: for if woman, who is eligible to enter [by marriage] into the congregation [of Israel] is yet ineligible to give evidence, how much more must a slave who is not eligible to enter [by marriage] into the congregation [of Israel] be ineligible to give evidence?”

It is not surprising that Ulla, whose misogyny is evident in Berakhot 51B, would state that women are ineligible to testify without providing any proof. In Berakhot, Ulla refuses to send the cup of blessing to Yalta, despite a request from Rav Nachman. He argues that the source of the blessing is the man, and that women can only receive the blessing via men, thus only men should have the cup of blessing. In Bava Kamma, Ulla states that women cannot be witnesses, and since women are held in higher esteem than slaves, slaves also cannot give testimony. He does not bring proof for why women are ineligible to testify, rather he bases his argument on the premise that earlier rabbis had already provided reasons. The conversation then discusses the obligations of minors, slaves and women, and robbers, all of whom are disqualified from giving testimony. Women are often listed within these groups [excluding robbers], since they are not obligated to fulfill all commandments. The comparison of these groups can shed light on why women were actually ineligible to testify.

The inclusion of robbers further supports the previous argument that women cannot testify due to untrustworthiness. While this in no way suggests women are prone to act criminally, it does suggest that women cannot be held to the same standard as men. Innumerable prejudices about women may contribute to this estimation, for example, the prejudiced stereotype that women are more easily swayed than men, and can be pressured to change their testimony. Due to their lack of education, women may not have been able to understand financial cases as well as men. However, women were allowed to act as litigants in financial cases, so it would be inconsistent to exclude them from testifying in financial cases due to claims of ignorance.

Perhaps women were perceived as more easily swayed, despite any amount of education. Kiddushin 80b discusses a Mishnah stating that a man may be not be secluded with two women, but a woman can be secluded with two men. The school of Eliyahu taught that this is because “women are light minded”, so they would be more likely to be seduced. The idea that women are “light minded” can be one reason the rabbis prohibited women from testifying. This description of women indicates that when testifying, they can be easily influenced by outside pressure, be it from their husbands or fathers. The “light mindedness” of women can also be interpreted as an aspersion on their intelligence, indicating that women are inherently intellectually inferior to men, thus would be incapable of providing sound testimony. This idea may also be the reason women could not be judges, since most women would be unable to impartially judge both sides, due to their lack of intellect.

During the Talmudic era, the roles of women were largely limited to the home, and in order to preserve the status quo the rabbis attempted to keep women out of the courts. Gittin 46a states “a man who would want to disgrace his wife in court,” implying that even being involved in a court proceeding was an embarrassment for women. This disgrace could be because this instance was specifically referring to divorce, or it could be interpreted as a broad statement referring to all court cases. Either way, this commentary implies that women were only present in court if it was necessary, and if not, should be excluded. This idea is further supported by Talmudic statements which allow women to act as witnesses in the case in cases of female purity and identifying other women (Ketubot 72a, Yevamot 30b). When there is no other option, women can be involved in courts, but ideally, they should be excluded.

Conclusion

The Talmudic sources seem to indicate that as time passed, the rabbis gradually prohibited women from acting as witnesses. This theory is

supported by the appearance of Deborah, a female judge and prophetess in the book of Judges. In Talmudic times, it was unthinkable for a woman to be a judge, yet in a previous era, people came to Deborah for advice and judgement. Although evidence about women in the Biblical Era is scant, it is possible that women were able to testify in certain cases, as recognized by some Tannaitic sources. By the Amoraic era, it was taken as a fact that women could not testify, and reasons were not usually given. Overall, there is evidence that the rabbis were interested in limiting the roles of women outside of the home, and used testimony to support this aim. The weak biblical proofs, combined with the trend of limiting women as time progressed, suggests that the rabbis formulated an opinion and then searched for biblical reasons to support it.

Whether it be from modesty, distrust of women, or women lacking education, none of these reasons are relevant in our modern world to block women from testifying. Women are more educated than ever, have many public leadership positions, and are independent enough to form their own opinions without being pressured by men. The opinions of the Talmudic rabbis were largely based on the ancient society in which they lived, which is why they had such difficulty producing biblical proofs. Over time, women's testimony became gradually more accepted in certain situations, particularly in the regions of Ashkenazi Jews. This issue today is especially relevant in Israel, where rabbinic courts have a strong influence in many civil issues, particularly marriage. Contemporary rabbis in rabbinic courts have allowed women's testimony in particular cases, regarding women's and domestic issues, but women are still not qualified to testify in general.

This discussion frames the view of women in modern Orthodoxy today, and relates to many other issues of women and *halakha*. Numerous contemporary rabbis believe that there is biblical proof that women are ineligible to testify, and therefore even as times change, women's status in this regard will not. This view leads to a certain permanence in the role of women,

and does not accept the idea that as times modernize, so should halakha. If modern rabbis were to reject the biblical proof offered here, and instead realize that the Talmudic decision made was more influenced by the Talmudic era societies than the actual Torah, they might be open to changes. However, since many Orthodox rabbis today view the word of the Talmud as eternal, their view on women may never evolve from this era.

Deena is a sophomore from New York, majoring in Cognitive Science and Philosophy. She is not going to medical school after college and is a feminist, much to the dismay of her mother. She is interested in bioethics, neuroscience research, and has no clue about what she wants to do after college, so please do not ask.

Endnotes

1. Ilan Fuchs, "Women's Testimony in Jewish Law: A Historical Survey," *Hebrew Union College Annual* 82-83 (2012): 119-59. <http://www.jstor.org/stable/10.15650/hebruniocollannu.82-83.119>.
2. Ibid.