

Chapter Nine

HIRHUR AND COMMUNITY NORMS¹

Is there halachic justification for the relatively open interaction between men and women in much of today's Orthodoxy, and if so, what is it?

First, some background:

Of the *halachot* relating to women, those concerning prayer and ritual relate to what women may or may not do. So too, questions of modesty in dress and the like deal with behavior by women themselves. The laws we will discuss today, on the other hand, are formulated as *male* imperatives. Some examples are: *Ve'al tarbeh sichah im ha'ishah*, "don't converse at length with a woman";² "a man should always greatly distance himself from women";³ "one may not look at women who are forbidden to him"; and "it is forbidden to walk behind a woman in the market place."⁵ In all of these, the Halacha places the onus of responsibility on the male, to refrain from improper thoughts or actions.

In practice, however, the burden in these areas has often been borne by the woman and not by the man. The reason for this is that the simplest way for men to avoid excessive conversation with women, closeness to women, and looking at women is to not have women around at all. This approach is one which keeps women in the home and out of the workplace and marketplace

altogether or, at least, separates men from women in places of employment, transportation, in boards and committees of organizations and so forth. As we know, separate is not equal. Restricting women's *physical* place to the home or other private arenas effectively circumscribes her role and status in society.

All this may be true, but begs the question of Halacha. The danger is a real one: interaction between the sexes can lead to *hirhur* or impure thoughts by men about women, or to *kalut rosh* or improper levity. These are prohibitions firmly grounded in the Talmud⁶ and *Shulchan Aruch*.⁷ We are halachic Jews, and we should accept with faith and love even those disabilities and restrictions which the Halacha may place on us. Is there a halachic justification for the mingling of men and women in modern Orthodoxy?

Our brief discussion will begin with the Talmud, continue with early authorities, the *rishonim*, and conclude with later authorities, the *achronim*, up to close to our day.

In the Talmud we find a few cases of seemingly egregious behavior on the part of the Sages. In tractate *Ketuvot* (17a), R. Acha lifted a bride on his shoulders at her wedding and danced with her. In *Berachot* (20a) R. Gidel and R. Yochanan used to sit in front of the mikva while the women were leaving after *tevillah*, for reasons the Gemara explains. This behavior surprised their colleagues, who asked them about it, and the explanations they gave were similar: "To me, women are like white geese"⁸ or, "to me she is like a wooden beam." In other words, they had no improper intentions or impure thoughts, and therefore no prohibition was involved.

Does this exemption—that if there are no impure thoughts there is no prohibition—apply to post-Talmudic times as well? The *rishonim* differ. *Sefer haChinuch* (188) states emphatically that this exemption does *not* apply: "[The rabbis of the Talmud] were like angels...they felt no evil feeling in anything, because of their great devotion to Torah and *mitzvot*. But we, nowadays, may not deviate in the slightest in all these matters, and we have to follow all of the regulations which keep us away [from women]." According to this, even the most saintly of persons today may not take special liberties in matters of *hirhur*.

However, at least three early authorities disagree with *Sefer haChinuch*. The first is Rav Hai Gaon, quoted by *Rabbeinu Yonah* in *Berachot* (25a). On the topic of *kol ishah* as an impediment to a man's reading the *Shema*, Rav Hai Gaon states that if a man can concentrate on his reading to an extent that he doesn't listen to the woman's voice and pays no attention to her, he may read the *Shema* while she is singing. According to this, based on subjective capabilities, the individual may permit to himself what would be prohibited to others. This is the same principle employed by R. Acha and the others in the Talmud.

The second authority is the Tosafist R. Yitzchak of Corbeil. In his *Sefer Mitzvot Katan* (30) he writes, simply, that looking at women is permitted "if they are to him like a wooden beam or white geese." As he does not limit this to the sages of the Talmud, it is clear that it applies to later generations as well.

The third *rishon* is R. Yom Tov ben Avraham, the *Ritva*. At the end of his commentary on tractate *Kiddushin*, *Ritva* writes:

Everything depends on what a person recognizes in himself... If he recognizes that his impulses are overcome and under his control and he has no lust at all, he is permitted to look at and speak with an *ervah* [a woman forbidden to him] and inquire about a married woman's welfare. Such was the case with R. Yochanan who sat at the entrance to the mikva and was not afraid of evil impulses...and R. Ada ben Ahava⁹ who lifted a bride on his shoulders and danced with her and was not afraid of lustful thoughts, for the reason that we have stated.

R. Hai Gaon, *Sefer Mitzvot Katan*, and *Ritva* all disagree with the opinion of *Sefer haChinuch*. Still, we have not gotten very far. All we have established is that, according to a handful of *rishonim*, exceptionally pious individuals in every generation may take liberties that the average person may not. *Ritva* himself concludes: "It is not fitting to be lenient in this, except for a person of great piety who knows himself." *Poskim* are, understandably, leery of permitting people to rely on themselves in such matters.

A very different approach, however, was put forward by the 16th century authority, R. Shlomo Luria, the *Maharshal*. In his *Yam Shel Shlomo* on *Kiddushin* (4:25), he prefaces¹⁰ with the following remarks:

Everything depends on what a person sees, and [if he] controls his impulses and can overcome them he is permitted to speak to and look at an *ervah* [a woman forbidden to him] and inquire about her welfare. The *whole world* relies on this in using the services of, and speaking to, and looking at, women.

He subsequently quotes the *Ritva* in full. This is surprising, for the *Ritva* speaks of "a person of great piety who knows himself," whereas *Maharshal* speaks of the

"whole world," that is to say, the entire community. The "whole world" is hardly in the category of persons of great piety who know themselves.

What *Maharshah* is saying is that the average individual may not rely upon himself to go beyond what others are permitted in these matters. When an entire community is accustomed to mingling with and speaking to women, on the other hand, their familiarity may be relied on to forestall sinful thoughts.

Maharshah's source for this distinction is the *Tosafot* in *Kiddushin* (82a). In the Gemara, "*hakol leshem shamayim*" ("all in the name of heaven") is used by R. Acha bar Ada to explain the special liberty he alone took in taking his betrothed granddaughter on his lap, but the *Tosafot* there write, "On [*hakol leshem shamayim*] we rely nowadays [in] that we make use of the services of women." The *Tosafot* employ this principle to justify widespread practices. This is precisely the equation employed by *Maharshah*.

It can be said that the "whole world" of modern Orthodoxy relies implicitly on this *Maharshah* in using the services of and speaking to and looking at women. I will note two additional *achronim* who follow the path forged by the *Maharshah*.

The first is the *Maharshah's* student, R. Mordechai Yafeh, the author of the *Levush*. It is customary to add the phrase *shehasimchah beme'ono*, "in Whose abode is happiness" in *zimun* before *birkat hamazon* on the occasion of the festive meals following a wedding. The 13th century *Sefer Chassidim* (393), however, specifically excludes meals "where women sit among the men, *hirhur* being present." Where there is mixed seating, then, *shehasimchah b'meono* may not be said.

The *Levush*, however, writes on this issue in his *Minhagim* that "We do not take care [about avoiding mixed seating] because nowadays women are very common among men, and there are relatively few sinful thoughts [about them] because they seem to us like 'white geese' due to the frequency of their being among us..."¹¹ This is identical to the approach found in the *Yam Shel Shalom*,¹² and indeed, *shehasimchah beme'ono* is today universally recited even in communities where there is mixed seating at *sheva berachot*.

The second and relatively recent authority is the late 19th century author of the *Aruch haShulchan*, R. Yechiel Michal Epstein. We have already mentioned that there are things that prevent a man from reciting the *Shema*; one of these is the uncovered hair of a married woman. Nevertheless, the *Aruch haShulchan* (*Orach Chayim* 75:7) writes:

For many years Jewish women have been flagrant in this sin and go bareheaded...married women go about with [uncovered] hair like girls—woe to us that this has occurred in our day. Nonetheless, by law it would appear that we are allowed to pray and say blessings facing their uncovered heads, since the majority go about this way and it has become like [normally] uncovered parts of her body...

That is to say, although it remains forbidden for married women to go bareheaded in public, since they do so anyway, their hair is no longer an impediment to a man's reading the *Shema*. The reason for this is that since men are used to seeing it, women's hair is no longer a cause of *hirhur*—precisely the approach of the *Maharshah*.

We have seen, then, that there exists a trend—not a dominant trend, but a trend—within halachic thought

that in interactions between the sexes that might ordinarily lead to *hirhur*, frequency and familiarity of contact can be a mitigating factor, and that a community can legitimately rely on this "in using the services of, and speaking to, and looking at, women" to use the words of the *Maharshah*.¹³

And here we need some words of caution and qualification. First, the above applies only to mingling of men and women that is innocent in and of itself. No degree of frequency and familiarity can legitimize what is intrinsically or intentionally sexually stimulating. Examples are immodest or provocative dress, erotic performances and entertainment, and other pitfalls too numerous to be listed. A sin indulged in a thousand times remains a sin.

Second, frequency and familiarity of contact are a mitigating factor in certain *halachot*, but not in many others. The *Aruch haShulchan* waives the impediment of a married woman's uncovered hair as regards a man's reading *Shema*, but clearly forbids the act of going bareheaded itself. There are people who misread the *Aruch haShulchan* as if he permits women going bareheaded. Their mistake lies in confusing the requirement for a married woman to cover her hair in public with the need to avoid causing *hirhur*. In fact, the two are separate *halachot* stemming from two completely separate Talmudic discussions.¹⁴

We have mentioned accepting with love and faith the restraints that Halacha may place on us. Head-covering for married women is an example of this.

Third, there is no halachic imperative to introduce mingling of the sexes where it does not already exist. What we have said here is a *justification* of community practices, not an agenda. It is much easier to legitimize

existing practice than to justify new ones. To do the latter, we would have to take into account the approaches of far more *achronim* than just the *Yam Shel Shalom*, the *Levush*, and the *Aruch haShulchan*.

In this, as in other areas, our communities need rabbinic guidance which is both authoritative and sensitive.¹⁵

I would like to close with a famous Talmudic anecdote that bears on our topic. In tractate *Eiruvim* (53b): "R. Yosi the Galilean was walking along the road, when he met Beruria. He asked her 'Which is the road we take to Lod?' She responded, 'Stupid Galilean! Don't the Sages say not to converse at length with a woman? You should have said, "Which way to Lod?"'"

On the face of it, Beruria, the greatest woman Torah scholar in the Talmud, seems to have internalized the injunction against men speaking to women in a somewhat extreme fashion. But I think that's not what she meant. Take the following example: You are walking along the street in the nineteen-sixties and you suddenly meet Rabbi Soloveitchik. You say to him, "Oh, Rabbi Soloveitchik, tell me, which way to the subway?"

Which way to the subway!? You've just met a *gadol hador*, and the only thing you have to say is, which way to the subway? Maybe ask him something regarding Torah?

That is what Beruria meant. She was a famous scholar, one who used to learn 300 *halachot* from 300 sources,¹⁶ and all R. Yosi had to say to her was to ask directions? Well then, she said, if you're going to be that extreme in not speaking to women, follow that approach to its logical conclusion. Don't say, "Which is the road

we take to Lod?" in eight words, when you can say "Which way to Lod?" in four!

It is my hope that a dialogue be established between rabbis and learned women, a dialogue that will consist more of Torah than of giving directions. And, may we all look forward next year to a conference not on "Feminism and Orthodoxy," but on Feminism in Orthodoxy.

Notes

1. This address was delivered to a conference plenum of 2,000 women in February 1998.
2. *Avot* 1:5.
3. *Tur* and *Shulchan Aruch*, *Even haEzer* 21:1.
4. See *BT Shabbat* 64a-b.
5. *Tur* and *Shulchan Aruch*, *Ibid.*, from *BT Berachot* 61a and *Avot deRabi Natan* 2:2.
6. *BT Ketuvot* 46a, *et al*; *Avot* 3:12.
7. *Loc. cit.*
8. Perhaps this simile was used because it was common to bring geese from market over one's shoulders.
9. Our texts in *Ketuvot* 17a read: R. Acha.
10. On the question of the authorship of the introductions in *Yam Shel Shlomoh*, see *Bnei Banim*, I, p. 35 (note), and II, p. 233.
11. No. 36, at the end of *Levush haTechelet vahaChur* (*Orach Chayim*).

12. *Maharshal* himself, however, in *Yam Shel Shelomoh* to *Ketuvot* 1:20, approvingly quotes *Sefer Chassidim* on not saying *shehasimchah beme'ono* where there is mixed seating. Presumably, the merry nature of a wedding feast makes it more problematic, in this view, than ordinary occasions. Also, *Maharshal* writes that the custom "in my country...in most places" was that men and women at *sheva berachot* feasted in separate rooms—as opposed to the custom reported by the *Levush*. Therefore, there was no call for him to justify mixing of the sexes in this regard. For an extensive discussion on mixed seating at weddings and other occasions see *Bnei Banim*, I, no. 35, and *Otzar Haposkim* (vol. 17) to *Even haEzer* 62:13, pp. 106-7. It should be noted that *Aruch haShulchan* in *Even haEzer* 62 omits mention of *Sefer Chassidim* altogether.
13. Mixing of the sexes at weddings, social gatherings, and even Torah lectures was also characteristic of the strictly Orthodox Germanic-Dutch communities. Most of these communities were destroyed in the Holocaust, but their remnants in various places in Europe and America largely continue the practice. I am grateful to Rabbi F. J. Lewis of Amsterdam for this observation.
14. *BT Ketuvot* 72a and *Berachot* 24a. For an extensive discussion of the parameters of women's hair covering, see *Bnei Banim*, III, nos. 21-24.
15. A recent pronouncement by a group of New York area rabbis prohibiting a long list of activities by women was not authoritative, in that it included activities such as women's *Megillah* readings that are clearly not forbidden by Halacha; see chapter seven above and *Bnei Banim*, II, no. 10, pp. 39-40. Nor was this pronouncement sensitive, in my opinion, as the way to maintain influence is not through blanket prohibitions, but by seeking out points of agreement. Blanket prohibitions lead to a complete

breakdown in communication, and that is what resulted in this case.

On the question of other innovations in women's rituals see *Ibid.*, pp. 42-44, and R. Aryeh and R. Dov Frimer's article in *Tradition* 32:2 (Winter 1998) pp. 5-118.

16. *BT Pesachim* 63b.