

## When Law Cannot Bind: The Example of Niddah

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**A**S FAR BACK AS JEWS CAN REMEMBER, A HALLMARK OF JEWISH PRACTICE HAS BEEN THE OBSERVANCE OF THE LAWS OF *NIDDAH*—EUPHEMISTICALLY REFERRED TO AS THE LAWS OF “FAMILY PURITY.” During the last ten years we have seen a flourishing of interest in and reinterpretations of these laws among Conservative, Reform, Orthodox and even Havurah Jews. Nevertheless, these laws have proven unacceptable to the vast majority of contemporary Jews both in theory and in practice. Why?

The laws of *niddah* govern the intimate relations of a married couple during a woman’s menstrual cycle. The new Reform Bible, *The Torah: A Modern Commentary*, begins its discussion of *niddah* by citing a range of superstitions and pseudo-scientific bases for the laws, the main principle in common being the blood taboo. For example, the medieval commentator Nachmanides reported as a matter of personal experience that if a menstruating woman stares at a mirror of polished iron, drops of blood will appear on it.

On the other hand, the Reform commentary continues, “Biblical law on this subject appears mild and rational” and the Talmud “ascribed a psychological benefit to (the period of) enforced abstinence” (p. 850). Such a separation leads to a monthly renewal of the honeymoon. We are thus presented with two, seemingly contradictory, versions of the history of the law. While the law is tied to the tradition of misunderstanding and fear of a woman’s reproductive cycle, we are told that the mainstream tradition has been rational, focused on the psychological needs of couples who have to

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deal with premenstrual syndrome.

The first *Jewish Catalog* goes further, placing the laws of *niddah* at the very center of Jewish theology:

All things die and are reborn continually. In our own bodies death and regeneration proceed cell by cell... Throughout each teeming and dying body, moreover, flows an undying spirit... Our consciousness tells us that we are created beings and so are mortal, soul tells us that we are the image of the Creator and so cannot be mortal. Our knowledge of ourselves then is paradoxical. How do we reconcile it and make ourselves whole? Jews solve the paradox with the ritual cycle of *tumah* and *taharah* (impurity and purity) in which we act out our death and resurrection (p. 167).

According to the *Jewish Catalog*, then, the laws of *tumah* and *taharah*—of which only the laws of *niddah* survived the destruction of the Temple—are not only still meaningful, but, in fact, they contain the key to the Jewish understanding of the meaning of life.

Within the Conservative movement, normative practice is defined in terms of Rabbi Isaac Klein’s *Guide to Jewish Religious Practice*. Tellingly, Rabbi Klein includes the laws of family purity but places them in the last chapter of the volume. Klein states that “we must treat the laws of family purity from the aspect of holiness and wholesome family relationships” (p. 511). He goes on to attack the “much heralded sexual revolution and the new morality” as being neither new nor morality; the new morality is presented as simply the old paganism reemerging in response to the repression of wholesome sexuality caused by Christian ascetic values. Klein therefore concludes that Judaism presents the *via media* between these two equally unhealthy extremes.

Rabbi Klein’s *Guide*, like the *Jewish Catalog*, does not suggest any changes in the observance of the laws of *niddah*. However, Rabbi Joel Roth, then dean of the rabbinical school of the Jewish Theological Seminary, once informally proposed a restructuring of the law that would work as follows: Reframe *niddah* as having a basis not in the blood taboo but in the understanding found in the Talmud in the name of Rabbi Meir: the laws of separation are intended to make the wife attractive to her husband and reinforce mutual respect (NIDDAH 31b).

Certain consequences then follow. We could, for example, return to the biblical seven days of sexual abstinence, not the fourteen days mandated by the Talmud. After all, the Talmud reports that the additional seven days were a stringency that Jewish women took upon themselves. In addition, the week of separation should apply throughout a couple's life and not only during times of ovulation. Thus, women who do not menstruate (pregnant or post-menopausal women, for example) would continue to observe a week of separation. So would an unmarried woman in a committed relationship. Finally, both men and women would go to the *mikveh* (ritual bath) at the conclusion of the period of separation.

This approach might well appeal to a community that desires to reconcile traditional concerns of halakhah with egalitarianism. Nevertheless, one difficulty remains: what to do about a woman who sees a drop of blood outside her usual week of separation. According to biblical law, rabbinic interpretation, and the practice of generations of Jewish women, this drop would be sufficient to render her impure, thus starting the cycle of purification again.

Thus, a single drop leads to the heart of the problem with this clear and well-intentioned proposal; it neglects the social reality of the majority of those who would consider observing the laws of *niddah*, and in so doing, positions itself between the traditional halakhic community and the egalitarian and liberal communities, without being able to fully satisfy the serious objections of either group. If we ignore the drop, the Orthodox community has additional reason to disallow this proposal for its halakhic leniencies even if (and this is a big if) that community accepted the premises that motivate the proposed changes. The egalitarian and liberal communities that are prepared to ignore the drop, do not and cannot base their Jewish observance on the assumption that there is a binding halakhah. Furthermore, they need no emendation to a law that has not been a vital component of even the most Jewishly observant egalitarian groups, and they might not be eager to welcome an "acceptable" reform of the laws of *niddah* that imposes additional halakhic stringencies on woman and man alike.

Even those Jews who reject the idea that biblical and rabbinic law are still binding on the Jewish people find it necessary to account for the laws of

*niddah* and place them in a positive context. After all, these laws deal with the most central issues of human self-understanding and the most intimate concerns we share about human relations. Still, one senses no groundswell towards the observance of the laws of *niddah* in the liberal Jewish community.

And for good reason. None of the reconstructions reviewed above treats the central problem of the laws of *niddah*: these laws were instituted by a society that feared and misunderstood the female body and that treated woman as an object to be guarded against and kept under control. Rabbinic law perpetuates this attitude and in fact expands it—creating the situation we know today, where a woman is considered in the status of a *zibah* who must count seven clean days from the last day of her period, thereby at least doubling the number of days during which the woman is taboo.

Despite Rabbi Meir's oft-quoted assertion that these laws were instituted "so that the woman shall be beloved by her husband as at the time of her first entry into the bridal chamber," this singular statement is nowhere subject to further discussion or elaboration and does not inform halakhic decision making. The context of the statement is a series of questions beginning with: "Why did the Torah ordain that the uncleanness of menstruation should continue for seven days?" But the questions that follow are rarely quoted:

Why does a man go in search of a woman and no woman goes in search of a man? Why does the man lie face downwards and the woman face upwards towards the man? Why is a man easily pacified and a woman not easily pacified?

These statements, as much as those of Rabbi Meir, form the context in which we must understand the history of the laws of *niddah*.

It is, of course, up to the practice of Jewish women and not the legislation of male Jewish *poskim* (decisors) to determine whether or not the laws of family purity can be reconstructed in our time. While some women have found meaningful ways to reinterpret and practice the laws of *niddah*, other women's choices seem to suggest otherwise. We may yet be too deeply involved in the battle for the equality of women in ritual Judaism and society to again take laws upon ourselves which are part of a system of law and custom that has historically led to the segregation of

women, to men patronizing them and severely limiting their role in society.

As long as this battle is with us it will be difficult to accept, for example, the solution of having men and women going to *mikveh*. Such a move will still be seen as obligatory on women and voluntary for men. Only in a world where ritual and social equality has been internalized can we return to the tradition to reconstruct the laws of *niddah* on any one of the bases mentioned above. I can imagine the possibility of a time when our daughters and sons or granddaughters and grandsons will be able to turn to the laws of *niddah* and find in them a meaningful addition to their lives, addressing their concerns about mortality, sanctification, and human understanding. For our generation, the battle for the normalization of women in Jewish life must be given first priority, and that battle has barely begun.

*Niddah* is one example where modernity or secularization overrides our desire to be open to the whole law. Try as we will, not all laws can become commandments for each of us. Faced with a classical legal system that does not recognize the legitimacy of compromise behavior, we blame ourselves for being less than Orthodox, or we blame Judaism for perpetuating archaic rules.

But one need only read the Bible against the Mishnah, the Mishnah against the Talmud, or the Talmud against the Shulchan Aruch to see radical shifts in focus, with laws central to one system becoming peripheral in its successor, while each document in turn claims to change nothing. This phenomenon reveals a basic truth about tradition and change in Judaism: the authority of tradition is preserved as absolute, while its teachings are applied selectively.

