

RESHAPING THE LAWS OF FAMILY PURITY FOR THE MODERN WORLD

Rabbi Miriam Berkowitz

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שאלה

How should we observe the laws of משפחה טהרה (*Tohorat HaMishpahah*) in our times?

תשובה

INTRODUCTION

The corpus of laws known as משפחה טהרה (*Tohorat HaMishpahah*, Family Purity)¹ is a core aspect of Jewish observance, since it relates to the very nucleus of Jewish existence, the Jewish home. It encourages human beings to infuse a potentially animalistic drive with personality, moderation, restraint, respect and holiness. The system as a whole is a powerful framework for developing deep partnership, not only between husband and wife, but also between the couple (individually and as a unit) and God, and between the couple, God and the Jewish community, in allegiance to a covenant of shared values.²

Ancient in origin, these laws have changed and expanded over time in response to various historical and sociological conditions. Yet, for many moderns they appear overly complicated and largely archaic. Many modern couples have negative or mixed feelings about the observance of this cornerstone of Jewish life, and many more have abandoned it altogether, failing to see its religious significance or biological relevance for the woman of today. Ironically, these laws, which aim to foster love, harmony, respect and dignity between the couple, are now perceived by many couples, as burdensome at best, and at worst, as detrimental to the very relationship. On the other hand, use of *mikveh* has become more popular lately for a variety of traditional and creative lifecycle uses. Such interest hints that there may be more to this ancient practice than many moderns assume. Indeed, there is now great potential to reclaim the old rite of *mikveh* immersion as a powerful tool and symbol of spiritual transformation and renewal.

It is therefore appropriate, at this juncture, to look at the law and lore that has developed, clarify misconceptions, and set out a path for more meaningful observance. This endeavor will involve changing some of the existing laws as well as changing attitudes and terminology.

The current *halakhah*, as grounded in the *Shulhan Arukh* and observed in traditional communities, involves abstinence from conjugal relations from before the start of menstruation until after *mikveh* immersion.³ This period consists of menstrual days – a minimum of five – or, according to the Sephardic view, four – days (even if the actual period of bleeding is

1 As indicated below in Part I. "Reframing Attitudes toward Family Purity?" the term המשפחה טהרה (*Tohorat HaMishpahah*) emerged in the early twentieth century. It soon replaced the earlier term הלכות נדה (*Hilkhot Niddah*). The new term seems to mark a shift in focus from concern with ritual purity to emphasis on the stability and cohesiveness of the family. I am indebted to Rabbi Dr. Zvi Yehuda for calling my attention to this point and for sharing many rabbinic sources and historical background with me.

2 My thanks to Dr. Moshe Gresser for his editorial assistance and for the addition of this particular idea.

3 Our congregants probably do not observe all these laws fully, however the Conservative Movement has not offered a definitive, comprehensive reworking of the laws until now. Therefore we start with the laws as they currently exist before going on to make suggestions for modification.

shorter), plus an additional seven clean days (with no bleeding). During this entire time, the couple is required to refrain not only from conjugal relations but also from any physical contact, however casual, and observe additional modes of separation (הרחקות *harkhakot*, distancing such as not sharing the same bed, not passing objects to one another, etc.). Moreover, in the process, the woman must practice a routine of special “self-checking” (בדיקות *bedikot* with a piece of cloth). First, at the end of her period, to make sure her bleeding has completely stopped (הפסק טהרה *hefsek tohorah*); and then, during the seven clean days, she must check twice daily, (though, according to the *Mishna*, if she forgets, just once on the first and once on the last day is sufficient).

Following the seven clean days, at nightfall, the woman immerses in a *mikveh*; then, and only then, is the couple permitted – even encouraged – to resume intimate physical relations. Women who experience bleeding at other times of the month wait until the bleeding is finished and then count seven days. There are types of blood which do not require waiting, but since many women (and sometimes even rabbis) do not know the difference, and many women are even embarrassed to ask a rabbi, they all take the strictest approach. More stringencies: A waiting time is required upon engagement (דם חימוד *dam himmud*), after the consummation of the marriage of a virgin bride (דם בתולים *dam betulim*), and from the onset of labor (דם יולדת *dam yoledet*), so that a husband is not able to touch his wife as she gives birth to their child. In addition, halakhic authorities bar unmarried women from using the *mikveh*, other than for conversion, preventing them from experiencing the transformative power of *mikveh* before Festivals, Rosh Hodesh and other lifecycle events.

A. APPROACH

We maintain that the gradual evolution of *niddah* law should continue, benefiting from the changes that have taken place in modern times. Most of the complicated and onerous details and stringencies of טהרת המשפחה (*Tohorat HaMishpahah*) laws are post-Biblical (as will be outlined below). They reflect post-Temple Rabbinic Judaism. They evolved gradually during the ages and were adopted by the Sages and the people, due in part to a lack of clear knowledge about human anatomy and physiology (see examples in Part II). Later, as an integral part of their general societies, medieval Jews inevitably adapted many of their contemporaneous superstitions and medical theories about women and menstruation. Because of their unavoidable reliance on the antiquated medieval sciences, later rabbis (before the modern period) had a very limited and inaccurate knowledge of the workings of the human reproductive organs. The whole outlook on menstruation, its natural biology as well as its ritual rules, became more and more confused and complex, shrouded as it was with an aura of mystery and fear, and based on ignorance and uncertainty.

This, however, has dramatically changed. Current medical knowledge of the anatomy and physiology of the reproductive system can answer many of the questions that mystified our forebears and consequently simplify the most archaic of the rules.

Our approach is to present a program for observance that reflects contemporary needs and concerns, yet is fully grounded in authentic rabbinic tradition. Our *teshuvah* differs in significant detail from the current Orthodox practice of halakhah as outlined above, by offering opportunities for leniency in many areas, including הרחקות (*harkhakot*), childbirth (*dam yoledet*), בדיקה (*bedikah*), דם חימוד (*dam himmud*) and דם בתולים (*dam betulim*). We offer a further leniency by presenting the Sephardic tradition of fixing four days instead of five as minimum menstruation days as well as the minority–but well-documented view – that the seven clean days can begin as soon as menstruation is over, be it even less than four days.⁴ Yet we differ from the approach of Rabbis Reisner and Grossman, in their *teshuvot*, in particular with regard to their definition of “Biblical observance” of *niddah*. We interpret “Biblical observance” as seen through the lens of classical rabbinic tradition, and are not willing, as they are, to “go back to Biblical observance” stripped of all its rabbinic inputs and influences. Thus, we retain the practice of שבעה נקיים (*shiva nekiim*, seven clean days), even as we propose to distinguish between that waiting

4 שו"ת הרשב"ש (ס"ס תלו) כ', שאע"פ שכי' הרא"ש והטור שלא תמנה הכלה שבעה נקיים אלא מיום חמישי לשימושה, אין זה מוסכם מהכל, ולא נהגו כדבריו, אלא מונה שבעה ימים משעה שתפסוק מלראות דם. ע"כ

period and the actual period of menstruation. We argue that the need to conflate the statuses of *zavah ketanah*, *niddah* and *zavah gedolah*, and count שבעה נקיים for all, is grounded in legitimate rabbinic concern for problems that inevitably arise from their interpretation of the Biblical system. The beginning of the process of conflation was rabbinic enactment, and even the part that originated in custom soon became established and enshrined in rabbinic law. Also, unlike the other two *teshuvot*, we advocate retaining the category of *zivah*, integral to Torah's *niddah* laws, even as we propose many exceptions to its actual observance, based on well-documented halakhic precedent.

There is no need to reject the accumulated rabbinic tradition totally, or ignore its delicate insights and wisdom. We, as Conservative Jews, generally embrace Rabbinic Judaism, not Biblical Judaism or Karaism. Precisely within the parameters of rabbinic halakhah, we wish to uphold constructive leniency and reject outdated stricture, thus bridging the gap between our modern reality and cherished tradition. We do not wish to create a completely new creature which resembles neither that of our own rabbinic tradition nor that of fellow observant Jews around the world, for example, by creating new reasons for immersion to replace the traditional reasons.

The other *teshuvot* drastically deviate from our established halakhic process.⁵ Claiming to be “returning” to Biblical observance, they actually exclude themselves from the fold of rabbinic tradition.⁶

This *teshuvah* seeks to tread a middle ground between, on one side, a tradition out of touch with modern sensibilities and advance, and on the other, a proposal for radical reconstruction, by following lenient precedents, even creating new ones, but in large part respecting the halakhah as it has evolved [developed?]. We are convinced that the program outlined in our *teshuvah* reflects a more halakhically rigorous approach and, combined with serious educational initiatives, can also effectively meet the needs of modern couples.

In summation: Our approach to rejuvenating the observance of family purity laws today entails three elements: education, support, and halakhic modification.

1. Education: We endeavor to clarify and redefine the essence and purpose of the *niddah* laws in a light which stresses the dignity of women and emphasizes in the laws the principle of aspiring toward holiness, rather than physical purity.

2. Support: We aim to provide access to *mikvaot*, teaching and offering resources that will make the experience as pleasant and attractive as possible. Additional uses of *mikveh* will be encouraged as a complement to – but not a replacement for – the current system of טהרת המשפחה (*Tohorat HaMishpahah*).

3. Halakhic modification: We seek to judiciously adjust some details of the laws of Family Purity, to bring them more in touch with medical and cultural realities. The adjustment will be done in a measured and balanced way, making sure that the essence and purposes of the laws are not obscured either by the excessive layers of stringencies of the past, or by the flood of *de facto* leniencies in the present.

B. JUSTIFICATIONS FOR HALAKHIC MODIFICATION

We see three justifications for halakhic change: upholding the dignity of women; maintaining the conceptual distinction in the law between keeping the rules of ritual purity (דיני טומאה וטהרה) and maintaining the rules of matrimonial holiness (איסורי עריות וקדושת האישות); and keeping current with increasing biological and medical knowledge.

1. The Dignity of Women

The first justification relates to the dignity of women. Our sources seem to assume that women were not adequately knowledgeable or reliable to keep track of the complicated counting of days.⁷ The Talmudic report on the חומרה (*humra*, stringency) of בנות ישראל, (*bnot Israel*, the daughters of Israel), acclaiming women's resolve to keep seven clean days after any sight of the tiniest drop of blood, demonstrates, besides their virtuous piety, their presumed incompetence and dependence

⁵ For example, by rejecting the idea and practice of the seven clean days.

⁶ More specifically, they reject altogether the rabbinic halakhic rule of additional “seven clean days” – which we uphold.

⁷ See below, “*Niddah* in the Torah.” My thanks to Rabbi Susan Grossman for pointing out that women were considered reliable in *hallah*, kashrut, telling their husbands when they were in *niddah*, and certain areas of *edut*. The concern here is due to the complicated nature of the counting, not to any inherent weaknesses of women.

on men. Ironically, it is touted by some modern scholars as a rare example of female decision-making and empowerment, but actually it is – as depicted in the sources – a tacit admission of women’s inability to do things properly.

Rabbinic law greatly simplified the counting by considering all women as *zavot gedolot* (explained below, Part II). Still, in many observant communities women are still encouraged to bring and show their blood stains to a rabbi, fully relying on his decision concerning their purity status and the permissibility of intimate relations.

The revised rabbinic laws of טהרת המשפחה for our modern world must reflect the dignity and independence of women and an intrinsic rabbinic respect for the delicate and nuanced sensitivities of modern women, and yield to them the power to make decisions based on their own understanding of their bodies and feelings. If a modern woman needs guidance, she is more likely to turn to a doctor than a rabbi. The revised halakhah should reflect the woman’s prerogative to make such a choice, and the acceptance of the physician’s reliability and expertise – a well-established halakhic premise.

This perspective guides our approach to the rabbinic laws of הרחקות (*harkhakot*, additional ways of distancing) and בדיקה (*bedikah*, the woman’s self-checking to make sure there is no bleeding during the seven “clean” or “white” days). The הרחקות were initially designed to prevent sexual intercourse from occurring. They are forms of the typical rabbinic “fence” (סייג, *siyag*), erected to keep a person away from transgression (להרחיק אדם מן העברה). By confirming a baseline of הרחקות but allowing each couple to determine their own level of observance, our approach enfranchises them religiously, by trusting their ability to distinguish between unbridled sexual contact, which is forbidden, and affectionate and supportive expressions of love, which are recommended. Furthermore, by granting the couple the power of decision in these intimate matters, we actually provide and allow for a positive interaction of love between them throughout the extended *niddah* period, when sex is prohibited, but love is surely desirable.

Similarly, with בדיקה, we give the woman more leeway in deciding how she will establish the fact that menstruation is indeed over and that the seven days are indeed clean (“white”).

The crucial point is that the halakhic category of blood that renders a woman *niddah* or *zavah* is uterine blood – in ancient times, the color and appearance were the main available way of determining this. Today, we have scientific ways of determining it. Thus in general we recommend couples seeking medical advice rather than turning to a rabbi, most of whom are not versed in the long tradition of identifying types of blood.

2. The distinction between ritual purity and conjugal sanctity

The second reason for halakhic modification relates to the conceptual distinction between טהרה (*tohorah*, ritual purity) and עריות (*arayot*, sexual prohibitions). The Torah laws of נדה (*niddah*) are grounded in two separate sources, Leviticus 15 and Leviticus 18 & 20. The aspect that is related to Temple ritual, טומאה and טהרה (*tumah ve tohorah*, ritual impurity and purity), is no longer applicable practically in our time, nor has it been for almost two thousand years. Without a Temple and ashes of the red heifer, we are all ritually impure – males and females, menstruants and non-menstruants, before and after *mikveh* immersion, even all *Cohanim*.⁸

Many commentators already acknowledged that the ritual purity aspect has been non-functional for centuries,⁹ but the popular conception has not fully assimilated this approach. Specifically, “the language of defilement has been unnecessarily retained as something that applies to women only.”¹⁰ Some reasons may have included superstition about menstruating women, the wish to display extra piety, and a hope that the Temple would soon be rebuilt, thus necessitating retention of the

⁸ The custom of *Cohanim* not to enter cemeteries except to bury a close relative has been retained, possibly because it is related to a specific negative *mitzvah* (Leviticus 21:1-4), or because the *Cohanim* wanted to remember their special status, but all *Cohanim* are still ritually impure. *Netilat yadayim* is also widely practiced, as a symbolic reminder that we should treat our homes like the Temple, though it does not actually make us “pure.” (See *Mishnah Berurah to Orach Hayyim siman 4, piska 1*, where he says hand washing in the morning is a rabbinic enactment, either because the hands roam over the body at night and ought to be cleaned before prayer, or to make us like the *Cohanim* before their work; and *piska 10* where he talks about removing the “bad air” or “bad spirit” from the hands – more of a folksy explanation. Nowhere does he mention “*tumah*,” though in 1 he talks of “*hirkadshut*,” wanting to make ourselves more holy.)

⁹ Rabbi Yehudah HaLevi, *The Kuzari*, 3:49.

¹⁰ Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism*, (Lebanon, NH: Brandeis University Press, 2004), p. 239.

purity laws in preparation for the time when they would once again be relevant. The only one that may still apply is the wish to infuse the home with some of the sacredness that applied in the Temple, to treat the home as a miniature sanctuary

Unfortunately the relevant aspect of Family Purity laws, namely, אישות (*ishut*), the laws governing intimate relations, have been abandoned by many modern women, in part because of its confusing mixture with טהרה. In falsely assuming that ritual impurity is still applicable, and that it is degrading especially to women, they ceased observing the time of abstention and immersion in *mikveh*. Ritual impurity, though socially stigmatic, was not considered morally negative; it was applicable in Temple times to men and women in a variety of situations. However, for many people its ancient associations are still alienating, (though for many they remain deeply meaningful, even without the Temple). Today we have to accept the reality of a Judaism which is not centered around a spiritualized Temple, but rather on existing institutions like synagogue, school and home. Once we do this we can transplant the framework definitively from an issue of ritual purity to the framework of relations between husband and wife.¹¹ We should focus on the matrimonial aspect of the laws, not on ritual purity. This should make the *mitzvot* more accessible and appealing to modern women. The memory of *Mikdash* (Temple) may, however, be retained as an abstract concept, as will be discussed below (See “Terminology”) where we evaluate the name “*Tohorat HaMishpaha*” for this collection of laws.

3. The progress in biological and medical knowledge

The third consideration is the progress in biological and medical knowledge, which enables women – with the help of their physicians – to determine for certain the source and type of bleeding, and therefore avoid the necessity of additional spells of abstinence due to doubt and uncertainty (see below, “Halakhah for Today”).

PART I. REFRAMING ATTITUDES TOWARD FAMILY PURITY

A. ATTITUDES TOWARD *NIDDAH*

Our later sages (אחרונים, *aharonim*), including contemporary authorities, amply elaborated on the double elements in the laws of *niddah* and *zavah*, discussing whether their main purpose is to uphold ritual purity (ויקרא טו יט) or regulate sexual relations (ויקרא יח יט) or both.¹²

One of the reasons that women in America ceased to observe Family Purity was their belief that these laws, at their core, represented a negative view of women and female biology – that essentially these laws were about women's impurity, and that being ritually impure (טמא *tameh*) was personally degrading and insulting.

As we shall see, these assumptions are false. We maintain that Torah laws, properly understood, aim at the very opposite goal, namely, that of maintaining the dignity and privacy of women. Thus the laws should be embraced not despite but because of feminist sensitivities.

Firstly, we should insist that there is nothing inherently horrible or appalling with being טמא – it simply marks a legalistic category with no moral or esthetic implications. The laws of ritual purity have no real relevance in our days (though they can still be learned – *daresh vekabel schar* or appreciated for their educational or metaphoric significance). These laws were fully consequential only within the domain of the Temple and its hallowed services and priests. This view has been summarized in the words of Maimonides:

¹¹ Ibid.

¹² שב שמעתתא ש"א סוף"ב; אתון דאורייתא כלל בא; שו"ת מהרש"ם ח"ב סי' קפב; שו"ת שבט הלוי ח"ו סי' קיט; הקדמה לספר טהרת הבית להגר"ע יוסף; שו"ת יביע אומר ח"ו חיו"ד סי' טו; שו"ת ציץ אליעזר ח"ו סי' מ סוף"א ופכ"ה.

רמב"ם טומאת אוכלין פרק טז הלכה ח :

כל הכתוב בתורה ובדברי קבלה מהלכות הטומאות והטהרות אינו אלא לענין מקדש וקדשיו ותרומות ומעשר שני בלבד, שהרי הזהיר את הטמאין מליכנס למקדש או לאכול קודש או תרומה ומעשר בטומאה אבל החולין אין בהן איסור כלל, אלא מותר לאכול חולין טמאין ולשתות משקין טמאים...

Whatever is written in the Torah and submitted by Tradition about the laws relating to impurity and purity is relevant only to the Temple and its hallowed items and to sacred offerings and second tithe, for it warns the impure persons not to enter the Temple and not to eat any hallowed food, while in impurity. However, regarding regular food, there is no such prohibition at all, for it is permitted to eat and drink regular food and liquids even if they are impure... (Maimonides, *Mishneh Torah*, Chapter 16, Halakhah 9).

Secondly, the laws of *Tohorat HaMishpahah* in our time are clearly related exclusively to marital relations, not to ritual purity. After the Destruction, ritual impurity is no longer a relevant issue. Indeed, there is no difference between the טומאה (ritual impurity) of a menstruating woman and that of any other person. We are all, in principle, perpetually impure due to contact with the dead (טומאת מת). What is unique about the menstruating woman in this regard is that she and only she can halakhically alter her formal condition, through immersion in a *mikveh*, thus modifying her status from being אסורה, forbidden, to being מותרת, permitted to fully engage in marital relations.

A prevalent notion that a menstruating woman is to be barred from entering the synagogue or touching a Torah is very troubling.¹³ The suppositions that a woman in *niddah* is unworthy to worship in public and that she may contaminate the Scroll are both false. Whether bleeding or not, forbidden or permitted, the woman always retains her human dignity and ritualistic sanctity.¹⁴ In addition, nothing can render a Torah טמא.¹⁵ Thus the idea that women in *niddah* must not participate in sacred services or touch a Torah Scroll is doubly incorrect.

Negative attitudes toward menstruating women developed in the Middle Ages. These views were based on superstition as well as faulty "scientific" beliefs, and suggested that a menstruating woman had the potential to harm or infect and should be kept away from the synagogue as well as from routine social interaction.

Ramban [Rabbi Moshe ben Nahman Girondi, 1194-1270] is the best-known proponent of this philosophy. He was a physician and wrote a short treatise on the laws of *Niddah*, as is well-known for his Torah commentary. While as a *posek* he was very moderate and logical, his Torah commentary displays a medical-mystical approach, which was influenced by his Christian colleagues, their superstitions, and their negative attitude toward the male and female body and towards sexuality in general.¹⁶

Ramban speaks here as a physician,¹⁷ influenced by his Christian colleagues, expressing views of his times.¹⁸ In his halakhic works, however, he does not take such a strict view.¹⁹ His writing reflects the lore of the time and is not scientific or based in any way on fact. It certainly does not reflect modern legal or social paradigms.

Another remnant of the idea that menstruating women must be distanced from society and the sancta is present in the reluctance of some women to touch the Torah or take an *aliyah* while menstruating. This has no basis in halakhah.

13 Although Rabbeinu Shlomo [Rashi, 1040-1105] concludes that it is a nice custom, he is much more convincing in explaining why it is not necessary: if the synagogue is like a Temple, a woman shouldn't enter it until she has brought a קרבן (*korban*, sacrifice) which she cannot now do, and no man should enter either. If it is not like the Temple, then she has no reason to absent herself.

14 בית יוסף אורח חיים סימן פח אות א כל הטמאים קורין בתורה וקורין שמע ומתפללין וכו'. דתני רבי יהודה בן בתירא שאין דברי תורה מקבלים טומאה.

15 משנה ידיים 5:3.

16 Note his comment that intercourse ought to be permitted solely for the purposes of procreation, a clearly Christian point of view: רמב"ם ויקרא פרק יח פסוק ו [איש איש] אל. His highly controversial statement about the dangerous qualities of menstruating women appears in his commentary on Rachel's refusal to stand before her father Lavan in Genesis 31:35. Many quote this Ramban passage, as if it represents normative Jewish outlook.

17 Nahmanides earned his livelihood as a physician. (See Responsa of Solomon b. Abraham Adret (part 1, 120, 167).

18 It is well known that Jewish physicians throughout the ages had to rely on the medicine of their time. They could not rely on Talmudic medicine (which was strongly influenced by the Greek heritage), because in matters of physical health, we must halakhically rely on contemporary physicians, not rabbis.

19 The *Braita de Niddah* that he cites is of questionable origin and not part of mainstream rabbinic tradition.

It should be explicitly publicized that there is no stigma of any kind attached to the status of *Niddah* or menstruation and no restrictions are placed on the participation of the woman in social or religious life due to being in *Niddah*, except for the ban on conjugal relations.

B. TERMINOLOGY

Some modern scholars and laypeople are very concerned about the terminology of “Family Purity,” “*Niddah*” and “pure/impure,” and feel that the terms, and the attitudes they convey, are serious impediments to attracting today’s couples to observe these laws. There are two approaches to dealing with words that are seen by some as degrading to women. The first is to reinterpret them; the second is to replace them.

1. Tamei/ Tahor

Since the ban on conjugality between the couple – איסור ביאה (Leviticus 18) – rather than the concept of ritual impurity (Leviticus 15), is the core of the modern halakhah, we suggest replacing in popular usage the ritualistic terms, טמאה, impure, and טהורה, pure, with the behavioral-prescriptive terms, אסור, forbidden, and מותר, permitted, which point to the couple’s normative *ishut* relationship. In this manner, we will dispense with the negative associations and misunderstandings that have accrued due to the use of purity/impurity terminology. Whereas earlier writers placed the woman in a passive role, saying that she was forbidden to her husband, we subtly shift the emphasis, specifying that sexual relations are forbidden, or that the couple is forbidden to one another.

For those who do not relate to the language of halakhah and want an even more modern set of adjectives, “ready” and “not ready” or “in their time of separation/their time of togetherness” are beginning to be used.²⁰

2. Niddah

The term נדה (*niddah*) in the Torah is usually translated matter-of-factly as “separated,” or “put aside,” from the root נ.ד.ה. In later writings, it acquired a more negative connotation (i.e. Eicha 1:8, Ezra 9:11).²¹ However, in popular parlance it has come to mean simply “a woman who is menstruating or counting the seven days until immersing in the *mikveh*, and therefore refraining from intimate relations.” While the terminology is from Leviticus 15, the practical applications are from Leviticus 18.

We recommend avoiding the current habit of referring to a menstruating woman – particularly in contemporary Family Purity guides – as “a *niddah*.” In the Torah the woman is not called a *niddah* – the status does not define her essence. We may say instead that she is **in** *niddah*, but not that she **is** (a) *niddah*,²² or better still, refer to the couple as “ready” and “not ready” or “in their time of separation/their time of togetherness” as mentioned above.

Rabbi Grossman suggests the more neutral term “אשה מדממת,” “a woman who is bleeding,” however this would cause ambiguity for us since we retain the seven clean days and wish at times to refer to a woman after she has stopped bleeding but before she has immersed.

While ideally we would prefer the more poetic Biblical expressions אורח כנשים (*orach kanashim*, “the manner of women,” Genesis 18:11) or דרך נשים (*derech nashim*, “the way of women,” Genesis 31:35), the term *niddah* is useful in that it extends to the seven additional days as well as the days of menstruation. Therefore we propose either keeping this word, seeing it in a neutral, not a negative light, and using it to refer to the time, but not to the woman herself, or using the words “ready” and “not ready” presented above, stressing the responsibility and involvement of both members of the couple.

²⁰ Mayyim Hayyim ritual team.

²¹ My thanks to Rabbi Lauren Berkun for pointing out the chronological evolution in these attitudes. “Tumah and Tahara: Redefining Ritual Readiness,” Reclaiming Mikveh Conference of Mayyim Hayyim, Boston, June 5, 2006.

²² See Leviticus 15:19, 20, 24, 25, 26; 15:31-33. The only instance where a woman is actually called *niddah* is in the context of forbidden sexual partnership – Leviticus 20:21- and has nothing to do with menstruation.

3. Tohorat HaMishpahah

The term טהרת המשפחה was coined in the early 1900s, originally concerning the desirable lineage for a marriage partner,²³ and then about the laws of *Niddah* specifically. It was not used when the Temple was standing. Rather it was introduced by *poskim* like Rabbi Haim Ozer Grodzinski (1863-1940) in a *teshuvah* in 1907 and Rabbi Abraham Isaac HaKohen Kook (1865-1935) to evoke a myriad of associations.²⁴

טהרה is used as a metaphor, not necessarily a concrete physical process. Although the system of טומאה and טהרה is no longer operative practically, the idea of aspiring towards טהרה certainly is. טהרה means all that is noble, sanctified, pure of intention as well as in body.

The Sages also lived after the destruction of the Second Temple, when the purity system was no longer operative. Yet they chose to include the purity matters in the *Mishna*, to study them and retain them as a living concept. Perhaps they expected the Temple to be rebuilt; equally likely, they wished to retain the image of *Mikdash* as an educational concept even when its physical reality was distant in time or place.

In Temple days a person's separation from טומאה (*tumah*) – the purification ritual, culminating in immersion in a mikveh – would signify preparation (or Divine permission) to enter the holy domain (*Mikdash* in Jerusalem). In post-Temple days – via the rabbinic rules of Family Purity – this very ancient form of התקדשות (*hitkadshut*, self-purification) is symbolically a potent prelude before entering the holy domain, מקדש מעט (*Mikdash Me'at*, the “miniature Temple”) of the couple's intimacy and conjugality (though note the subtle shift from purity language to holiness language).

Regularly sustaining a time without physical intimacy – with the knowledge that they are committing themselves to a system and a partnership that emanates from the Torah and a Divine commanding Voice – may spiritualize and dignify the relationship and help the two treat each other not only as sexual partners but also as Jewish partners and worshippers of God. Spiritual sensitivity – more than mere sexuality – is the real goal of Family Purity.

Still, for many, the associations evoked by the translations “purity” and particularly “impurity” are serious obstacles to embracing this observance.²⁵

Rabbi Grossman suggests replacing the term טהרת המשפחה (*Tohorat HaMishpahah*, “Family Purity”) with קדושת יצירה (*Kedushat Yetzirah*, “Holiness of Creation”) since the system of purity and impurity is no longer applicable in the absence of the Temple, and since the focus of Leviticus 18, the source for continued observance of abstinence during menstruation, is holiness rather than purity.

These two points are well-taken and compelling, and we would happily accept Rabbi Grossman's earlier suggestion of *Kedushat Mishpahah* קדושת משפחה as a synonym for *Tohorat HaMishpahah* (with the caveat that holiness within the family requires a range of behaviors, including the sexual attitudes and practices presented *Shulhan Arukh Even HaEzer* 25, as well as communication and respect in all areas of the marriage). However, the term “קדושת יצירה” (*Kedushat Yetzirah*) creates a completely new concept, that of a woman renewing herself spiritually without a necessary context of marital relationship, while we wish to retain unapologetically the emphasis on family, as will be discussed below in Part IV.²⁶

We accept *Kedushat Yetzirah* as a general term for the new use in which women visit the *mikveh* to celebrate the workings of their bodies (monthly cycle, first menstruation, menopause, or other special biologically related events). Rabbi Grossman's concern with single women having access to the *mikveh* is legitimate – however this will be addressed under the

23 שו"ת אחיעזר חלק ג סימן כז בתשובה בענין גירות, משנת תרס"ז (1907).

24 Rav Kook was the first to use the term relating to the laws of *Niddah*. In a letter addressed to Rabbi David Miller, he encouraged the translation of Miller's teachings on the topic into Hebrew, and their dissemination in Eretz Israel.

... וכשהיו כל אלה הדברים מתוקנים על ידי כבוד מעלתו, אז הנני מסכים מאד שדבריו היקרים, שהם מלאים זיו ונוגה, וממשיכים ומקרבים הלבבות לאבינו שבשמים, ולקדושת תורה"ק וטהרת המשפחה בישראל, יהיו מתורגמים גם ללשון הקודש, ומתפשטים גם כן באה"ק, שרוב הדור הצעיר הוא דובר וקורא עברית. שו"ת דעת כהן (עניני יו"ד) סימן ק, משנת 1934, במכתבו "לכ' הרב הנכבד ויקר ערך מו"ה דוד מיללער שליט"א.

25 Proceedings of “Reclaiming Mikveh” Conference, Mayyim Hayyim, Boston, July 4-6, 2006.

26 *Mikveh* use by women “celebrating their relationship with G-d” is welcome, but it complements and does not replace the traditional framework of Family Purity.

rubric “Alternative uses of *Mikveh*” (Part IV) all of which are to be not merely tolerated but encouraged. However, they are not to replace טהרת המשפחה. The framework of טהרת המשפחה is not synonymous with *mikveh* use. It is a subcategory of *mikveh* use that is purposely designed for women as part of a couple. However, for the traditional monthly immersion of women after the alternate intimacy of *Niddah*, we prefer *Kedushat Mishpahah*,²⁷ with its focus on family and its intentional reference to Leviticus 18, the “holiness” chapter rather than Leviticus 15, the “purity” chapter.²⁸

טהרת המשפחה aims to achieve much more than celebrating the healthy workings of a woman’s body. It aims to sanctify the family as a covenantal, Divine-human, unit; to elevate and refine the relationship between the couple – both humanizing and enriching it; to enhance the respect and closeness between the man and the woman and elevate their bond beyond mere physical attraction and sexuality. Essentially, it deepens their friendship, as well as their love.

PART II. MODERN OBSERVANCE OF FAMILY PURITY LAWS

The traditional code of family purity laws has been constantly evolving throughout the ages, gradually becoming more and more complex and stringent.²⁹ Our design of modern observance of family purity laws is projected not as a departure from traditional observance, but rather as an imperative stage in its ongoing evolution.

The *Rishonim* (Meiri and others) outlined three main stages in the evolution of *Niddah* laws until their times. It will be helpful to survey them:

A. NIDDAH OF THE TORAH

The Torah presents two aspects of the laws of *Niddah*. The טומאה/טהרה (ritual purity/impurity)³⁰ aspect, and the אישות (marital celibacy)³¹ aspect. The laws of זיבה (*zivah*) are closely intertwined with the laws of נדה (*niddah*).³² While menstrual bleeding at a certain time of the month (*niddah*) required waiting a total of seven days and then resuming normal relations, other bleeding (*zivah*) required a waiting time of seven additional clean days.

According to the Torah’s view, a woman who experiences bleeding from the uterus must refrain from sexual intercourse for seven days whether she sees a single drop of blood or experiences a flow for up to seven days (or any amount in between).³³ If the bleeding has stopped by the end of the seventh day, she immerses after nightfall (the start of the eighth day) and may resume intimate relations with her husband. In this practice, *there is no additional waiting time* such as the שבועה נקיים. According to the original halakhic interpretation, the woman is not considered in *niddah* (in the ritual and personal aspects) unless she actually felt the blood flowing from the uterus (הרגשה).³⁴

27 Some might object to the term “משפחה” (*mishpahah*, family) as it seems to exclude all who are not in a classic arrangement of “משפחה” as it has been understood until recently. On the contrary, changing the term in order to include alternative forms of families under the umbrella is confirming their worst fear, namely, that they are not accepted as Jewish families. To keep the current term, but to understand that it implies that all forms of families may strive toward sanctity, is to offer inclusion, whereas to change the name in effect tells non-traditional couples that they can never be families.

28 Leslie Cook, “Body Language: Women’s Rituals of Purification in the Bible and Mishnah,” in R. Wasserfall, ed., *Women and Water*, Hanover, NH: Brandeis University Press, 1999.

29 Many of the additional stringencies arose because of lack of knowledge about human anatomy, and also because of the complicated nature of the counting of the days of נדה/זבה (*niddah/zavah*) system; see Introduction. Further stringencies arose from the reluctance of the Sages to spend so much time identifying status of blood as pure or impure. Now that medical knowledge can tell us in most cases whether the blood is menstrual or not, we are able to remove some of the חומרות which were based on doubt or even on inaccurate portrayal of the reproductive system.

30 Leviticus 15.

31 Leviticus 18.

32 Particularly due to the rabbinic interpretations of ימי נדה (*yemei niddah*) and ימי זיבה (*yemei zivah*), the days in which bleeding would cause *niddah* or *zavah* status.

33 According to the Torah (Leviticus 18:19 and 20:18) the prohibition is only against actual sexual intercourse. The Sages instituted further prohibitions as a “fence” around the Torah. Over the generations, more and more stringencies were created. See below, 5).

34 שולחן ערוך יורה דעה סימן קפג סעיף א: אשה שיצא דם ממקורה, בין באונס בין ברצון, טמאה, והוא שתרגיש ביציאתו. ומיהו משתרגיש בו שנעקר ממוקומו ויצא, טמאה אף על פי שלא יצא לחוץ, ואפילו לא פתחי תשובה יורה דעה סימן קפג ס”ק ד שלשה מיני הרגשות יש לענין שמהא טמאה מדאורייתא א’ שנודעו ראתה אלא טיפת דם כחרדל, יושבת עליו שבועה נקיים. א. גופה כמי”ש הרמב”ם פ”ה מהלכות א”ב דין י”ד. ב’ שנפתח מקורה כמבואר בסי’ קפ”ח ובסי’ ק”ץ ס”א. והשלישית נמצא בשו”ת האחרונים ז”ל כשמרגשת שדבר לח זב במנה בפנים --- שו”ת הריב”ש סימן תכה.

During the next eleven days, if she bleeds for one day or two, she is a “זבה קטנה,” (*zavah ketanah*) a “minor *zavah*,” and immerses on the following day and is then permitted to resume relations. However, if during these eleven days she experiences uterine bleeding for three consecutive days, she is termed a “זבה גדולה,” (*zavah gedolah*) a “major *zavah*.” She must count seven clean days after the bleeding has stopped, immerse on the evening following the seventh day, and bring an offering to the Temple.³⁵

What is the difference between *niddah* and *zavah*? Practically, there is little. Both situations speak of menstrual uterine bleeding.³⁶ Both refer to normal, healthy bodily functions.³⁷ There are merely two different ritual requirements. The *zavah gedolah* has to count seven clean days after the flow stops, while the *zavah ketanah* waits only one additional day, and the woman in *niddah* none at all, after the seventh day. Another is that the *zavah gedolah* has to bring an offering to the Temple. Though this is a rabbinic interpretation, it has a *de'oraita* status and is considered “הלכה למשה מסיני” (*halakhah LeMoshe MiSinai*, a law handed directly to Moses, for which there is often no logical explanation).

What is the reason for a distinction at all? In all likelihood, bleeding during the first seven days of a cycle is considered a more common occurrence. Sighting of blood after this time is less common.³⁸ In summation, from a rabbinic perspective, “*Niddah* of Torah” includes and integrates both laws, of *niddah* and *zavah*.

B. NIDDAH OF THE SAGES

Due to the rabbinic construct of seven/eleven (7/11)³⁹ keeping track of one's status was difficult. Problems were bound to develop. The Meiri [Rabbi Menahem ben Solomon Meiri, 1249-1316] says the problems were of two types: the rabbis were no longer experts in determining which type of blood was טהור and which טמא,⁴⁰ and the women were no longer so scrupulous in counting the days of the *niddah/zivah* cycles.

In order to prevent errors in this important area in which the punishment for intentional transgression is כרת (*karet*, being cut off from one's people) (and probably also to liberate the rabbis from spending so much time looking at samples and more on political/social issues) changes were made in the application of the Torah laws. The major change was extending the waiting time to six days even after bleeding of one or two days, thus effectively erasing the category of *zavah ketanah*.

המאירי על מסכת ברכות דף לא/א

אח"כ נתמעט לבן של חכמים מפני כובד הגליות ותכיפת הצרות וחששו שמא יטעו בדבר זה שזדונו כרת ושגגתו חטאת שהרי אפשר שתראה האשה ז' ימים וכל ששה הראשונים מהם דם טהר ואינם מעלים ולא מורידים ונמצא שביעי שלה שהוא ראשון וסבורה לטבול בלילה והיא צריכה לישב עוד ו' ימים ואפי' תאמר שמא נמצא חכם בקי במראות שאפשר לברר הדבר על ידו אפשר שתטעה מצד אחר במנין הנדות והזיבה

Afterward the wisdom of the sages was reduced due to the weight of exile and the frequency of troubles, and they worried that they might err in this matter whose punishment for voluntary disobedience is being cut off from one's people, and for involuntary disobedience is bringing a sin offering (for a woman could see blood for seven days and the first six could be pure (non-menstrual) blood which do not count at all, and the seventh day turn out to be the first day of her menstrual counting, but she will think she can immerse that evening when she really

35 Leviticus 15:19-33.

36 Unlike the male zav who has a flow presumably due to a disease unknown to us.

37 The Biblical phrases “עת נדתה” (the time of her *niddah*) and “בלא עת נדתה” (not at the time of her *niddah*) and the rabbinic phrases “ימי נדה” (days of *niddah*) or “ימי זיבה” (days of *zivah*) all refer in essence to the same thing, to uterine menstrual discharge. The difference is in timing not substance. The distinction between *niddah* and *zavah* does not define the type of bleeding or the status of the women but the timing and ritual construct.

38 Ramban on Leviticus 15:11 refers to extended bleeding as an illness, therefore, in his opinion, the Torah distinguished between *niddah* and *zavah*. Nevertheless, there is no clear reason presented in Biblical or other ancient sources, and even according to Ramban, *zivah* does not mean “unnatural flow” and, unlike the זב (male zav), does not refer to puss or any discharge signifying disease. It could better be compared to what today is called “spotting.”

39 (4:7, 4:4 משנה נדה etc.) The seven/eleven construct is not clear, and commentators disagree about its applications. It does not match biological realities, and is difficult to keep counting. The existence of this system is probably responsible for the stringencies which grew up around the observance of Family Purity laws.

40 Uterine blood (מן המקור) was the only blood which rendered a woman *niddah* or *zavah*, and earlier sages could tell by the color of the blood whether it could render her impure or not.

must wait another six days, and even if you say she could find a specialist to ask, perhaps she might err in another aspect of the *niddah* and *zivah* counting (Meiri on *Talmud Berakhot* 31a).

Therefore Rabbi Judah the Prince (end of second century C.E.) instituted certain stringencies:

א/וס נדה ילבב
אמר רב יוסף אמר רב יהודה אמר רב, התקין רבי בשדות: ראתה יום אחד - תשב ששה והוא, שנים - תשב ששה והן, שלשה - תשב שבעה נקיים. אמר ר' זירא: בנות ישראל החמירו על עצמן, שאפילו רואות טפת דם כחרדל - יושבות עליה שבעה נקיים.

R. Yoseph said that R. Judah said in the name of Rav: Rebbe [Rabbi Yehudah HaNassi] enacted in Sadot that if she saw blood for one day that she remain [in a state of ritual impurity] for six [more days] in addition to that one day itself [because we assume it is menstrual blood]; if she saw blood for two days that she remain [in a state of ritual impurity] for six days in addition to those two [because the first may be the end of *zivah* and the second the beginning of *niddah*], but if she saw blood for three days, she must sit for seven clean days [following those three, because she may be in a state of *zivah*]...⁴¹

Rabbi Yehudah HaNassi said that if a woman sees blood for one or two days she must wait six days before immersing. Scholars debate the reasons. Although they are not crystal clear, the main reason was probably the difficulty of ascertaining when the menstrual cycle really began. This תקנה (*takkanah*, rabbinic enactment) effectively erases the category of *zavah ketanah*. Also Rabbi Yehudah ruled that if she saw blood for three days, even during the time frame of *niddah*, she had to wait seven clean days (like a *zavah gedolah*) instead of four more days for a total of seven, as the Torah describes in the case of *niddah*.

These changes, instituted as a תקנה by the editor of the Mishna, were a significant change from the Torah laws. They seem like unnecessary stringencies by any definition, though are an understandable way of avoiding the complication of counting in the 7/11 system. They also obviated the need to show blood to the rabbis to determine if it were טמא or not (from the uterus or not).

The rabbis also instituted the system of כתמים (*ketamim*, stains) whereby if a woman saw blood on her clothes or body, even if she hadn't felt it flow, it would be considered potentially טמא, unless it could be attributed to another likely source.⁴²

An additional innovation of the sages was determining a minimum amount or "שיעור" (*shiur*) which would render a woman *niddah* or *zavah*. For menstrual blood, they fixed the שיעור of "כלשהוא" – *kolshehu*, any noticeable amount which a woman felt flowing from the uterus (see *Shach, Yoreh Deah* 183:3). The minimum *shiur* to count for a כתם (*ketem*) was a larger שיעור, namely, a גריס (a small coin the size of a penny or the equivalent of nine lentils).⁴³

In effect the system of כתמים did away with the need for הרגשה (*hargashah*) and made women become *niddah* in more situations. Thus while the rabbinic enactments liberated rabbis and women from complicated countings and checkings, they also had the effect of making the couples abstain from relations for more time. The rabbinic stage was a middle stage on the way from Torah law to the laws as we know them, but it was much closer to the observance of בנות ישראל than to the observance delineated in the Torah.

41 Talmud Niddah 66a, with notes from Judith Hauptman, *Rereading the Rabbis* (Boulder, Colorado: Westview Press, 1998), p. 157.

42 *Shulhan Arukh Yoreh Deah* 190:18. The reason was because the clothes would be ritually impure even if the woman was not, and this created a strange situation.

43 *Shulhan Arukh Yoreh Deah* 190:26-28

C. NIDDAH OF THE DAUGHTERS OF ISRAEL

At this stage a further stringency was added, effectively doing away with the category of *niddah* and treating all women as *zavot gedolot*. The Talmudic passage which attests to this new development is unclear, and scholars debate the relative roles of the women and the rabbis in the emergence of this new custom. However, even by the end of Talmudic times, the custom had become an approved rabbinic law – a *halakhah pesukah*.

Rabbi Zera [third generation Palestinian *Amora*, end of third century] reports that the daughters of Israel themselves were so concerned about not making an error, that even were they only to see a drop of blood the size of a mustard seed (less than the שיעור of a גריס), they would wait seven clean days before immersing:

א / וס נדה ילבב

אמר ר' זירא: בנות ישראל החמירו על עצמן, שאפילו רואות טפת דם כחרדל - יושבות עליה שבעה נקיים.

Said R. Zera: The daughters of Israel assumed a stringency upon themselves that even if they see a blood spot the size of a mustard seed (smaller than the minimum requirement of the sages) they sit for seven clean days (*Talmud Niddah* 66a).

Meiri clarifies that the main innovation of בנות ישראל was not reducing the שיעור but rather increasing the number of clean days to seven instead of six.⁴⁴

Several reasons are given for instituting the additional חומרה. The Shach [Rabbi Shabbetai Kohen, author of *Siftei Kohen*, a commentary to the *Shulhan Arukh*, 1621-1662] places all the responsibility for the change on the rabbis, saying simply, “lest she make an error, the sages were strict and required seven additional days in every situation.”

ש"ך יורה דעה סימן קפג ס"ק ד

שבעה נקיים - היינו מדרבנן אבל מדאורייתא א"צ לישב ז' נקיים אלא זבה גדולה אלא שכדי שלא תבא לידי טעות החמירו חז"ל והצריכו לעולם ז' נקיים ועיין בעט"ז שהאריך בזה אף שאינו נהוג בזמן הזה וכתב לבסוף הארכתי קצת בסימן זה יען כי הוא מקור ויסוד שעליו נבנו כל דיני הנדה הנהוגים בזמן הזה כמו שיתבאר לפנינו עכ"ל.

Rabbi Joseph Caro explains that it was awkward for each woman to be counting by a different system, in which not all women were expert, so they made one uniform system for all women.⁴⁵

Here we sense that while the women may have had some role in the innovation, the rabbis were involved with the final decision. They accepted the women's initiative (or even encouraged it?), because the rabbis did not rely on the women's ability to carry out the counting correctly.

The Meiri gives a variation of this explanation, focusing more on the women's role:

⁴⁴ המאירי על מסכת ברכות דף לא/א 44

בנות ישראל החמירו עוד אח"כ וחששו שמא בראיה אחת שתקנו חכמים ו' נקיים אפשר לענין שיגיע לידי טעות הגע עצמך שהיתה זבה וסופרת ז' נקיים ושמה מתוך שכבר עמדה לה ו' ימים בטהרה היא סבורה שהוא תחלת נדה ולא תמנה אלא ו' נקיים ואף על פי שחששא זו רחוקה היא שהרי ספירת ז' דבר הניכר הוא מ"מ יש לחוש בקצת נשים שאינן בקיאות [וכן שהדבר נוח להם להיות המנין שיהי בכלן ולא תהיה זו מונה ו' וזו ז' דנו בעצמן בנות זריזות מה לנו בעיכוב יום אחד ואין בין ו' לז' אלא יום אחד בלבד לפיכך תקנו בעצמן שכל ראייה שתראה אף שלא במנין הנקיות יהו חוששות עליו לזיבה גמורה ואפי' דם טפה כחרדל שהדברים מוכיחים בה שהיא יוצאת ממעין סתום ולא ממעין פתוח] והרי עכשיו הוא מתחיל לצאת ואין לחוש שכבר נפתח ושתהא ראייה של יום ג' כדי למנות עליו ז' נקיים ולענין שפרשנו הוא אומר אפי' דם טפה כחרדל ולא שיהא בזה דבנותא למיעוט הראייה שאף מן הדין האשה מיטמאה בכחרדל ופחות מיכן וכן לא נאמרה לענין כתמים שבכתמים לא החמירו כלל

גפ"ב י"ד ס"י ק 45

בנות ישראל החמירו עוד אח"כ וחששו שמא בראיה אחת שתקנו חכמים ו' נקיים אפשר לענין שיגיע לידי טעות הגע עצמך שהיתה זבה וסופרת ז' נקיים ושמא מתוך שכבר עמדה לה ו' ימים בטהרה היא סבורה שהוא תחלת נדה ולא תמנה אלא ו' נקיים ואף על פי שחששא זו רחוקה היא שהרי ספירת ז' דבר הניכר הוא מ"מ יש לחוש בקצת נשים שאינן בקיאות. וכן, שהדבר נוח להם להיות המנין שיהיה כולן ולא תהיה זו מונה ו' וזו ז' דנו בעצמן בנות זריזות מה לנו בעיכוב יום אחד ואין בין ו' לז' אלא יום אחד בלבד לפיכך תקנו בעצמן שכל ראייה שתראה אף שלא במנין הנקיות יהיו חוששות עליו לזיבה גמורה ואפי' דם טפה כחרדל שהדברים מוכיחים בה שהיא יוצאת ממעין סתום ולא ממעין.

The daughters of Israel later adapted an additional stringency [of seven clean days, instead of six for they were apprehensive that upon seeing a sight of blood, for which the rabbis enacted six clean days [for *nidah*], they may come to an error: May be she really was a *zavah*, while thinking she is just a *niddah*, and she will mistakenly count only six clean days. Although this apprehension is very unlikely - for why should they confuse between six and seven days which is quite discernable - nonetheless they were apprehensive about the few women who are not very knowledgeable. Moreover, they felt it would be more convenient if the counting were the same for all women, so one woman would not be counting six days, and another woman seven. The committed women said to each other, 'There's not such a big difference between six and seven,' so they established for themselves that each time they saw blood (even not when seven additional days were required), they would treat it like definitive *zavah*, and even if it were only the size of a mustard seed, which is clearly from a closed womb, not an open one.⁴⁶

Thus they would wait seven clean days, like a *zavah gedolah*, whether they saw blood during the *niddah* days or the *zavah* days, whether they saw a drop or an extended flow, whether the bleeding lasted for one day, two, three, seven or more,⁴⁷ even though originally/ theoretically/ from the Torah,

ש"ך יורה דעה סימן קפג ס"ק א

ממקורה - מדכתיב והיא גלתה את מקור דמיה למדו חי"ל שאינה טמאה אלא בדם הבא מן המקור:

From the source – since it is written, "And she uncovered the source of her bleeding," the Sages learned that she is not impure unless the bleeding comes from the source (the uterus).

On the surface, it seems at this stage, as at the rabbinic stage, the women no longer required הרגשה and did not distinguish between a flow and a stain. Consequently even a small stain found on the body would render them ritually impure. However, according to the Meiri (see note 42, underlined portion), the additional stringencies did not apply to stains found on the clothing or even the body, only those when a flow was actually felt.

Furthermore, the expression "every drop of blood" seems to indicate that the women did away with distinctions between דם הורט / דם / טמא דם and considered all blood ritually impure. If this is so, it was a major departure from the Torah law . . . and one that we will seek to rectify below (see "Halakhah for our Times"). However it is possible that the daughters of Israel limited their stringency to uterine blood and that later generations failed to note this subtle but significant distinction.

⁴⁶ Meiri on *Berakhot* 31a. What the Meiri means is that even according to the earlier law "*tippat dam kehardal*" would be *tamei* if sighted by a *zavah* during her seven clean days; the *B'not Yisrael* extended this *humra* to other circumstances.

⁴⁷ ברכות לא א; מגילה כח ב; נידה סו א; רמב"ם איסורי ביאה יא ג-ד; טוש"ע י"ד קפג

D. HALAKHAH PESUKAH

In effect, the current system of waiting seven clean days in all situations treats all women as זבות גדולות in this regard (however no קרבן is required).⁴⁸ But while popular understanding focuses on the role of בנות ישראל, it was really a double effort of the women and the rabbis, with both contributing to the development of the present system. The תקנה of Rabbi Yehudah HaNassi added the first far-reaching חומרה, that of waiting six days after a single day of bleeding, thus effectively eliminating the distinction between *zavah ketanah* and *zavah gedolah*. The additional stringency, whether it evolved organically from the women or was also initiated by the rabbis, blurred the distinction between *niddah* and *zavah gedolah*. It was approved by the rabbis and soon gained the status of an accepted law.⁴⁹

The clearest example of the talmudic attitude to this stringency, which some would still call “*minhag*,” comes in Berakhot 31a in a discussion of how to prepare before praying.

בבלי ברכות לא, א

תנו רבנן: אין עומדין להתפלל לא מתוך דין, ולא מתוך דבר הלכה, אלא מתוך הלכה פסוקה. והיכי דמי הלכה פסוקה? אמר אביי: כי הא דרבי זירא, דאמר רבי זירא: בנות ישראל החמירו על עצמן, שאפילו רואות טיפת דם כחרדל - יושבות עליה שבעה נקיים.

The rabbis taught in a baraita: One should not rise to pray (the *Shmoneh Esrei*) neither amidst (the mental turmoil of having just judged) a lawsuit, nor amidst (the cognitive agitation resulting from having just studied) an (intricate) matter of law, but rather amidst (the mental calm that follows the study of) a clear-cut law.

And what is an example of a clear-cut law? Abaye said: such as that of Rabbi Zeira, for Rabbi Zeira said: Jewish women have accepted upon themselves the stringency that even if they see a drop of (menstrual) blood the size of a mustard seed, they wait seven clean days.

According to Rashi, “*halakhah pesukah*” means one which does not need in depth study, so it would not weigh upon the person’s mind during prayer. Clearly the topic of בנות ישראל is complicated – it does not mean a simple law, but rather a halakhah about which there is / should be no further discussion or debate. Similarly, according to the Meiri,

המאירי על מסכת ברכות דף לא/א

אף על פי שבנות ישראל הן הן שהחמירו וחששות רחוקות הביאום לכך קבלוה חכמים מהם וקיימו את דבריהם ועשוהו כהלכה פסוקה שאין עליה תשובה והוא הענין שקראוהו בכאן הלכה פסוקה.

Despite the fact that initially it was the women who were extra strict, and that it was remote fears which brought them to do so, the sages accepted it [the חומרה] from them and confirmed their words and made it as a “*halakhah pesukah*” about which there is no discussion, and this is why they called it “*halakhah pesukah*.”⁵⁰

So today all women today follow the חומרה of waiting seven clean days after establishing that bleeding has stopped, as a *zavah gedolah*. Thus, there is no practical difference between *niddah*, *zavah gedolah* and *zavah ketanah*.

⁴⁸ תוס' שבת יג ב ד"ה בימי; רמב"ן ורשב"א שם; תוס' כתובות סא א ד"ה מחלפא

⁴⁹ While Rabbi's *takkanah* was not about *niddah* specifically, and thus we cannot claim that the practice of waiting seven clean days after a regular menstrual period is a *takkanah*, the systems of *zavah* and *niddah* are so intertwined that we can cite his *takkanot* as part of the relevant data about the evolution of these laws, all of which concern us.

⁵⁰ המאירי על מסכת ברכות דף לא/א

E. HALAKHAH FOR TODAY

All the *halakhot* which relate to verified menstrual bleeding should be retained and embraced.

All the *חומרות* which relate to bleeding which is known today to be clearly non-menstrual should not be upheld.

In case of a verifiable menstrual period, all the rabbinic *halakhot* of *ימי נדה* should be accepted in principle. That is, the days of *Niddah* include a five day minimum for the period for those who follow the Ashkenazi custom, four for the Sephardic, or even fewer for a woman whose period is ascertainably shorter, (as brought by Rabbi Ovadiah Yosef, citing the Raavad who thought the waiting time – lest sperm be expelled – was only applicable in Temple times⁵¹), plus the seven clean days (*שבעה*) as established by Rabbi Yehudah HaNassi and *בנות ישראל*. There is room, however, for measured leniency, for example a discretionary distinction in observance of *הרחקות* between *ימי נדה* and *ימי ליבון*. However, immersion in a *mikveh* ideally should not take place before the seven additional days have passed.

There is a need for a woman to conduct a *הפסק טהרה* to determine (in any way that is convenient for her – special cloth available at *mikvaot*, or tampon) that the period has stopped. According to the halakhah, a woman must continue checking twice daily for the seven clean days, or, if she forgot, once or twice during the week will suffice. We consider that if a woman never experiences spotting after the period, she can rely on the regularity of her cycle and need not perform additional daily *בדיקות*. In this way we show more trust in the woman to monitor her status without the externally imposed need for *בדיקות*.

1. Discussion of Halakhic Change

There is a clear trend in Conservative halakhah to bring law into conformity with popular practice. However, while Conservative halakhah needs to be relevant to each generation, it does not have to mirror the behavior of the people. We as leaders must be able to bear a tension or a gap between the observance of our congregants and the ideals of Torah and *masoret*. Indeed, we should be actively engaged in challenging our laypeople to grow and aspire to increased observance every year, rather than making them more comfortable by systematically reducing the demands on them of the Commanding Voice.

Is the existence of a Biblical precedent, along with the wish to provide more time for couples to engage in physical relations, enough of a reason to revert to the ancient way?

We are not Biblical Jews – we do not sacrifice animals or anoint priests, we do not have slaves or allow bigamy. We are Rabbinic Jews, and many of our most cherished traditions – prayer, Shabbat candles, the festivals of Purim and Hanukah – are all rabbinic creations. We cannot simply go back to Biblical practice when it is convenient, citing antiquity or authenticity as our source.⁵² Furthermore, there is no ethical or moral challenge to the law. It would be a dangerous precedent to make the laws easier simply because people want them so, or because “that is what people are doing anyway.” An approach like this could lead to systematic dilution of the laws so that nothing remains. We also wish to retain continuity with Jews of the past and not break with *klal Israel* today.

On the other hand, we acknowledge that for some the system as it stands (twelve day minimum abstention) is too taxing, and they do not observe at all. This means that they are culpable for *biat niddah*, for which the consequence is *כרת* (*karet*, being cut off from one’s people, the most severe of Biblical punishments).

⁵¹ שו"ת יביע אומר חלק א - יו"ד סימן טו

⁵² עוד מצאנו מי שמקל בזה הוא הראב"ד ז"ל, שסובר שלא אמרו פולטת ש"ז סותרת אלא לענין טהרות, אבל לבעלה אינה סותרת. See also below, “Number of Days” for a fuller explanation of this matter.

⁵² If we read the Bible literally without rabbinic interpretation, we might find that there was no need for immersion after *niddah* at all.

Rabbis Grossman and Reisner argue that it would be preferable for people to observe seven days and then have the woman immerse than not to observe these laws at all. While we agree that this might make many people's lives easier, we do not believe that such a break with tradition is justified within the halakhic system. We propose finding a middle ground, reducing some of the formalistic *harkhakot* throughout the time of *niddah* and offering a further relaxing of the *harkhakot* during the seven white days, for couples who find the physical distance for that length of time too arduous.

Furthermore, individual rabbis have always been able and willing to grant התרים (*heterim*, dispensations) to couples to reduce the number of days when specific circumstances warrant it (i.e. when a woman's cycle is short and observing the seven clean days makes it impossible for her to conceive). The most elegant halakhic solution would be to expand the scope of these התרים, and allow rabbis to tell individual couples to observe less if for any reason they are unable to follow the laws as they stand.⁵³ However there is no compelling reason to change the laws for everyone and no justification for changing the laws by any kind of general *teshuvah* or תקנה.⁵⁴

Rabbi Grossman cites sources presented by Rabbi Roth, saying that when people have been observing a custom under the false impression that it is a law, and then become aware that it is a custom, they may have the opportunity to opt out of the custom.

However, nowhere in the book does Roth specifically cite *niddah* as an example of such permission to opt out of *minhag*, and the authors of the sources cited would probably be horrified to see their words used to permit such radical change in this almost sacrosanct area. We would argue that the sources cited by Roth (Da Silva, Rosh et. al, see *The Halakhic Process*, pp. 219, 222-3), do not apply to the case at hand, but rather to observance of a limited local custom. While initially the enactment of Rabbi Yehudah HaNassi was for outlying areas with little rabbinic expertise, the custom spread to the other women of Israel and then Babylon.⁵⁵ At an unspecified time, this *minhag* became a universal practice, and eventually a rabbinically sanctioned halakhah honored and recorded in all subsequent halakhic codes. **To treat the observance of seven clean days as a *minhag* falsely observed as law is to say that the Codes either tried to mislead people, were wrong, or are in themselves not considered halakhah!**

Even if the חומרה of בנות ישראל started as a *minhag*, the rabbis later confirmed it as *halakhah pesukah* as we have seen above ("*Niddah of Bnot Israel*"). Furthermore, whether the חומרה is defined as *minhag*, תקנה or halakhah is essentially irrelevant. The idea of the seven additional days is Biblical, even if its original application did not include *niddah*.⁵⁶ Once we accept the final rabbinic decision that we now apply *din zavah gedolah* in every case, then the rule of שבעה נקיים has de facto the status of a *d'oraita* law.

Neither the innovation of Rabbi Yehudah HaNassi nor the addition of the stringency of the בנות ישראל can be dismissed today as "just a *minhag*." Therefore we maintain that even today a woman must wait seven clean days following her period or other menstrual bleeding regardless of when it occurs.

However, even if it were "just" a custom (*minhag*), the Talmud suggests that when the circumstances surrounding a *minhag* are no longer applicable, the *minhag* is still binding on future generations simply out of respect for their ancestors.⁵⁷

Finally, the additional seven days offer several other benefits beyond their initial function of simplifying counting: encouraging couples to expand the vocabulary of their affection to non-physical avenues; keeping the time of physical reunion closer to the usual time of ovulation/potential conception (and to the woman's heightened hormonal receptivity/ interest in relations); accustoming the couple to restraint in every area of life; and possibly preparing them to handle times when, for

53 See also Rabbi Leonard Levy's proposal to base this rabbinic dispensation on Maimonides' concept of *horaat shaab*, radical measures for radical times, all the while acknowledging that it is not within our ability to alter the essential/ ideal law.

54 Interview with Rabbi Amy Levin, January 11, 2005.

55 Rava, one generation after Rabbi Zeira, does refer to the stringency of Bnot Israel as "*minhaga*" in *Niddah* 31a, giving credence to the view that the observance persisted as a custom. But from the context of the *sugya*, it is clear that he is discussing the source of the ruling (as opposed to *d'oraita* law), rather than its current status.

56 ויקרא טו: כח ואם טהרה מיוחדת וספקה לה שבעת ימים ואחר תטהר.

57 See *Pesahim* 50b.

medical or psychological reasons, they are not able to have such regular access to sexual activity. Rabbi Roth writes that when original historical sources of norms become wrapped in other layers of interpretation and justification, their initial historical source cannot be maintained as the sole *raison d'être* of the norm, and the norm cannot be discredited.⁵⁸ This principle seems to apply perfectly here.

Some voices within the Conservative Movement do wish to make significant changes in the laws, whether to encourage observance by more couples, or to give the seal of approval to what has become practice among a good portion of the Conservative Jews who do observe these laws, including rabbinic families.

We are not convinced that their reasoning is strong enough. There has been no change in human nature or in the times that would justify a radical alteration of the laws. However in several areas we can justify change on the grounds that “knowledge has changed.” We wish to bring the halakhah in line with medical realities and to avoid placing excessive burdens on a couple when these burdens are not based on biological facts.

2. Rabbinic Views of Biology

Many of the additional strictures come from a lack of clear knowledge of the sages and *poskim* (legal decisors) about the anatomy and physiology of women, and many of the stringencies were instituted to avoid making an error in determining whether blood was from the uterus or not. Furthermore, the sages and rabbis, until the invention of the microscope in 1674, were not certain how ovulation, fertilization occurred and exactly how the reproductive system functioned.

We have the utmost respect for the sages and their wisdom in matters of Torah and *derech erez*. Still, we could not expect their medical knowledge to be greater than that of the physicians of their time. We will offer examples of their inaccurate beliefs and then show how to modify the halakhah so that it reflects accurate medical knowledge and avoids some of the stringencies that grew out of doubt and confusion. (Changes in scientific knowledge do not always or automatically lead to change in halakhah – even if the knowledge is universally applicable and undisputedly correct. Rather, the knowledge becomes a base for the rabbis of the time to draw halakhic conclusions. See Roth, pp. 234-5).

First, the *Mishna* likens a woman’s reproductive organs to a room with a corridor and an upper chamber.

בבלי נדה יז/ב

משל משלו חכמים באשה, החדר, והפרוזדור, והעליה. דם החדר, טמא. [במשנה בבבלי, דם העלייה - טהור] נמצא בפרוזדור, ספקו טמא, לפי שחזקתו מן המקור.

“The sages had a parable about a woman — the room, the corridor, and the attic. Blood of the room is impure, blood of the attic is pure; blood in the corridor is of doubtful purity; we assume it came from the source [womb]” (*Mishna* in Tractate *Niddah* 17b).

The Talmud confirmed the metaphor (בבלי נדה יז, ב) explaining that the room is within (near the back – presumably the uterus) and the corridor is outside (near the front) and there is an opening between the attic and the corridor. Halakhah has ruled that blood which comes from the “attic” is pure, as it is not blood which comes from the uterus; this imagery [משל] does not conform to our modern anatomical knowledge of the woman’s body.

Although he was a physician and lived long after the Talmudic era, Rambam’s explanation in his commentary on the *Mishna* is still not precise.⁵⁹ Although it is close to our knowledge, it may imply that the Fallopian tubes (the tubes which

58 Rabbi Joel Roth, *The Halakhic Process: A Systemic Analysis* (New York: Jewish Theological Seminary, 1986), pp. 245-7.

59 רמב"ם על משנה מסכת נדה פרק ב משנה ה.

connect the ovaries and the uterus) connect the uterus and the vagina, or, as he puts it, “and the cervix is a corridor and it has two additions which resemble two horns on the cervix.” The tubes actually connect to the upper portion of the uterus.

Not even the dedicated translator the late Rabbi Yosef Kapach could square Rambam’s interpretation of this *mishna* with medical realities known in the twentieth century.⁶⁰

The first Rabbinic scholar to notice the discrepancy between the *Mishna* and modern medical knowledge was the Hatam Sofer [Rabbi Moses Sofer, 1762-1839] in his novella on *Masechet Niddah*. Although known for his mistrust of modernity and reforming tendencies within Judaism, he simply could not make the *Mishna* fit with new understandings of biology:

חתם סופר מסכת נדה דף יח עמוד א
... מהו פרוזדור וחדר וגג וקרקע ועליה. אחרי החקירה מפי ספרים וסופרים חכמי וספרי הניתוח א”א לנו להכחיש המציאות שאינו כפרש”י ותוס’ וציור מהר”ם לובלין ואין לנו אלא מ”ש הרמב”ם בחיבורו ובפ’ המשנה אלא ששם בפ’ המשנה יש איזה גמגום בסופו ע”ש ותמצא הציור הנכון בס’ מעשי טוביה ובספר שבילי אמונה. ולהיותו קצת משופע לצד שמאל יותר מלימין קראו לשיפועו התחתון קרקעו ולעליון גגו. ושם קבועים ביצים שלה המכונים עליה. עי’ היטב. ולכן לא הטרחתי כלל בביאור דברי רש”י ותוספות בשמעתין כי א”א להולמן לפי המציאות האמיתית ואתה דע לך.

... What is the corridor and the room and the roof and ground and attic? After researching in books and among the wise scribes and surgical texts we cannot deny reality, which is not as the commentary of Rashi and the Tosafot and the Maharam of Lublin’s drawing. We have nothing but what the Rambam wrote, but even there, there is some mix-up at the end (see there). And the correct illustration is in the book *Maasei Tuvia* and the book *Shvilei Emunah*...

Therefore I have not bothered with the commentaries of Rashi and the Tosafot as it is impossible to suit them to true reality; know this (Hatam Sofer, *Massechet Niddah* 18a).

Another example of a halakhah whose source is antiquated science is the discussion of the woman’s “external receptacle” (*Talmud Niddah* 41a). In the Hatam Sofer’s Responsa, Response 167, in explaining the location of the external receptacle, he wrote, “But in reality the *Tosafot* wrote all this according to their understanding, as did Rashi of blessed memory, etc. all according to their understanding, but after asking forgiveness of our holy rabbis—their words were not correct.”

A third example of outdated medical ideas concerns the process of conception.

רמב”ן ויקרא פרק יב פסוק ב
ובמשמעותו אמרו (נדה לא א) אשה כי תזריע ובמשמעותו אמרו, אשה מזרעת תחילה יולדת זכר. ואין כוונתם שיעשה הולד מזרע האשה, כי האשה אע”פ שיש לה ביצים כביצי זכר, או שלא יעשה בהן זרע כלל, או שאין הזרע ההוא נקפא ולא עושה דבר בעובר, אבל אמרו “מזרעת”, על דם הרחם שיתאסף בשעת גמר ביאה באם ומתאחו בזרע הזכר, כי לדעתם הולד נוצר מדם הנקבה ומלובן האישה, ולשניהם יקראו זרע. וכך אמרו (שם) שלשה שותפין יש בו באדם, איש מזריע בו לובן שממנו גידים ועצמות ולובן שבעין, אשה מזרעת אדם שממנו עור ובשר ודם ושער ושחור שבעין. וגם דעת הרופאים ביצירה כך היא:

⁶⁰ See also “אסיא” כרך סא-סב ד”ר מרדכי הלפרין על משמעות המושג ‘רחם’ בלשון חז”ל ע’ 109-105. כרך סג-סד” 169-176 ע’ פרופ’ יהודה לוי - משל משלו חכמים באשה... ע’

The Rabbis say that the implication of the verse (Leviticus 12:2) *אשה כי תזריע [Ishah ki thazria]*⁶¹ is that “when the woman ‘emits seed’ first, she will bear a male”]⁶² The Rabbis, however, did not mean that the child is formed from the woman's “seed”, for although the woman has eggs [ovaries], like the eggs of the male [testicles], yet her “eggs” (unlike the male's) do not form “seed” at all, or, if they do, that “seed” [of the female] is not thick and does not contribute anything to the embryo. Rather, the Rabbis used the term “מזרעת” “*mazra'at*” (“she emits seed”) as reference to the blood of the womb, which accumulates in the mother at the end of coitus and joins the seed of the male. For in the opinion of the Rabbis the child is formed from the blood of the female and the white [semen] of the man, and both of them are called “seed.” Thus the Rabbis have said: “There are three partners in [the formation of] a person: The male emits the white [semen], from which are formed the sinews, the bones, and the white substance in the eye. The female emits a red secretion from which are formed the skin, the flesh, the blood, the hair, and the black substance in the eye.”⁶³ This also the opinion of the *רופאים* (healers; physicians) on the formation [of the embryo].⁶⁴

A fourth example: The sages say, “the woman who urinates and blood is found is impure, as the place is narrow, returning to the source (womb)” (Rema, *Yoreh Deah* 191:1). But Avraham Sofer says in his book *Nishmat Avraham* that, “as a doctor, this is difficult for me, as nothing like this is possible in reality.” The rabbinic notion of uterine blood in the urine is clearly an impossibility.

Today, thanks to increased medical knowledge and technology, we are able to tell in most cases the source of bleeding: whether from the uterus, vagina, cervix, bladder etc. If bleeding is from any source other than the uterus, it does not fall under the laws of *Zivah* or *Niddah*. (Even if it is, but is not menstrual, as in after childbirth, it is technically not necessary to wait more than the seven/ fourteen days, although medical recommendation is usually to wait six weeks). As far as these systems are concerned, it is irrelevant. Sexual relations can continue, as long as medical advice says it is safe, and as long as the woman is not experiencing pain. Many women would feel more comfortable discussing these matters with their gynecologist than with their rabbi, and indeed, there is no need to show stains to a rabbi. Furthermore we trust the woman to keep track of her own cycle and empower her to make her own decisions when necessary.

Therefore we affirm the stringencies of (Rabbi Yehuda HaNassi and) *בנות ישראל* with regard to requiring seven days after every sighting of blood/ after menstruation, in order to free us of the need to count the 7/11 cycle, and in order to respect the evolution and binding nature of rabbinic law. However we limit the applicability of “טיפת דם” “if they saw a drop of blood . . .” to its most narrow interpretation: if they saw blood that emanated from the uterus they waited seven days, but if not, the blood was irrelevant, and is for us too.

3. *Zavah*

With the destruction of the Second Temple, the laws of *טומאה* and *טהרה* have no practical significance. Even when they had, there was not necessarily any negative moral value attached to being *טמא*. It is simply a technical halakhic term that means one cannot enter the Temple. In any event, we are all *טמאי מת*, and there is no possibility of any of us leaving that

61 Literally, “emits seed”, namely, “conceives” or gives birth.

62 And, conversely, “if the man ‘emits seed’ first, she will bear a female.” The biblical-rabbinic term of *הזרעה*, ‘emitting seed’ or ‘seeding’, should not be confused with the current terms, “orgasm” and/or “ejaculation;” while the latter are mainly neuromuscular, the former is purely generative and functional.

63 The statement concludes: “And the Holy One, blessed be He [the third partner], gives the person his spirit and soul, beauty of features, power of insight, power of hearing, speech and walk, and understanding and rational faculty” (*Niddah* 31a). Whereas we may take the entire rabbinic statement as a charming midrashic, educational-theological view, Ramban seems to take the midrash literally as a biological verity.

64 It is significant to note that the Ramban here rejects the “outdated” view of the Greek philosophers in favor of the physicians of his day: “In the opinion of the Greek philosophers, however, the whole body of the embryo is formed from [the substance of] the blood of the mother, the father only contributing that generative force which is known in their language as *hylē*, which gives form to matter: *צורה בחומר*. ועל דעת פילוסופי היוונים, כל גוף העובר מדם האשה, אין בו לאיש אלא הכח הידוע בלשונם היילי שהוא נותן צורה בחומר. Translation from Ramban's Torah commentary on Leviticus 12:2 and comments by Rabbi Dr. Zvi Yehuda.

status without the ashes of the red heifer, which are dependent on the Temple system.

If Leviticus 15 were the only passage about menstruation, the system would indeed be no longer applicable. However because of Leviticus 18 and 20 and their concern with permitted/ forbidden sexual relationships, a woman even in our times must abstain from relations and immerse in a *mikveh* before resuming relations with her husband.

While it would be convenient, as Rabbi Grossman does, to “disentangle” *niddah* and *zavah* and deem the *zavah* part inoperable, reducing the number of occasions when separation and immersion are required, and establishing a more “equitable” relation between male and female (no *zav*, no *zavah*), the two categories are inextricably intertwined. Although Leviticus 18 does not mention *zavah*, these rules are in the very core of the traditional rabbinic understanding of דיני נדה. *Zavah* and *niddah* are practically identical.⁶⁵ They differ only in timing, but not at all in substance. Both relate to “normal” (not sickly) uterine bleeding; דם נד relates to the “period” (first seven days from the inception of the menses) and דם זבה to the occasional “residual” (or “follow-up”) bleeding, which on occasion may occur (with no medical alarm) within the eleven following days. Both דם נדה and דם זבה stem from the uterus and relate to the natural menstrual flow. The *zavah* is not a parallel to the *zav*, a male oozing with an unnatural flow signifying illness (and egalitarian concerns cannot cloud our honest appraisal of rabbinic sources). In post-Temple Judasim, both *zavah* and *niddah* are in any event totally divorced from the rules (and sentiments) of being defined as טמא (or טהור), and related instead to being forbidden (or permitted) to engage in cohabitation.

Furthermore, many of the customs associated with immersion come from the laws of *zavah*, and it would be strange to keep them while erasing the source from which they derived. For example, the custom of immersing at night is explicitly tied to the *zavah* (Leviticus 15:28 – וספרה לה שבעת ימים ואחר תטהר). Even the actual *mitzvah* of immersion, which rabbinic exegesis applies also to the *niddah*, is mentioned explicitly in the Torah only in connection with *zavah*.

Therefore the category of *zavah* will be included in our theoretical discussion even though many ways are suggested to limit the actual situations in which bleeding would require abstinence, counting and immersion. While many leniencies and exceptions may be made, particularly in cases where fertility is an issue, we do not advocate abrogating the entire system of *zavah* as it has evolved, including the Torah laws, the הלכה למשה מסיני, the תקנה of Rabbi Yehudah HaNassi, and the *minhag* of בנות ישראל.

4. Leniencies

a. Medical procedures

Bleeding experienced after routine gynecological exams, blood seen in the urine and bleeding due to cysts or infection are not uterine bleeding and do not require abstention, counting or immersion.

Although there are stricter opinions in each instance, the vast majority agree that in a vaginal exam there is no concern whatsoever since the hand does not reach the womb.⁶⁶ In other matters there are also precedents for the more lenient views. If an instrument that cannot reach the womb is used, even if bleeding occurs it can be assumed not to be uterine blood and has the status of מכה (*makkah*, a wound) and not *niddah* or *zavah*.⁶⁷ Even if the instrument could reach the womb, we assume it does not.⁶⁸ In a pap smear in which tissue is taken from the outside of the cervix, there is similarly no uterine bleeding, and any bleeding is deemed a wound external to the uterus.⁶⁹ And even if the exam is of the uterus, as long as the instrument used is thin – which medical equipment is today – as long as no blood is seen, the assumption is that there was no bleeding caused by such a delicate instrument.⁷⁰

65 See *Tosefta Megillah 1:11*

66 שו"ת אבני נזר חיו"ד סי' רכד; שם חאבה"ע ז' סי' פ; שו"ת אגרות משה חאו"ח ח"ג סי' ק; שם חיו"ד ח"א סי' פג; שו"ת מנחת יצחק ח"ג סי' פד; שיעורי שבט הלוי סי' קצד ס"ב ס"ק"ה; שם סי' קפח ס"ג ד"ה ובבדיקת; שו"ת משנה הלכות ח"י סי' קכג-קכד; וראה עוד בשו"ת חת"ס חיו"ד סי' קעט.

67 שו"ת בית יצחק חיו"ד ח"ב סי' יד; ערוה"ש יו"ד קפח נאו; שו"ת ציץ אליעזר ח"י סי' כה פ"א, וחכ"ב סי' נג אות ג. וראה עוד בשו"ת מנחת יצחק ח"ג סי' פד, ושם, ליקוטי תשובות סי' פב.

68 שו"ת מלמד להועיל חיו"ד סי' סה; שו"ת משפטי עוזיאל מהדו"ת חיו"ד ח"א סי' כג; שיעורי שבט הלוי סי' קפח ס"ג ס"ק"ד.

69 שו"ת באר משה ח"ג סי' קנ-קנא.

70 שו"ת ציץ אליעזר ח"י סי' כה פ"א.

b. Fertility

Rabbi Grossman's main goal in proposing to eliminate the system of *zivah* seems to be to help couples undergoing fertility treatments to conceive. Unfortunately, hormone supplements, which usually mark the first stage of fertility treatment, often cause uterine bleeding,⁷¹ and a woman who sees blood for one day must technically wait seven clean days before immersing. This would cause her to miss the window of opportunity for conception. This is indeed a matter of great concern, for couples undergoing treatment as well as for all Jews who have a stake in bolstering low rates of reproduction.

However, "doing away with" entire chunks of Torah is not to be taken lightly, even when contemporary life would prefer it. Fortunately, there are several ways to reduce this concern without abolishing the system of *zivah*, an integral part of the entire system, or compromising women's health.

First, the halakhah refers to several situations in which blood, specifically stains, does not render a woman *niddah* or *zavah* if they are found after the seven clean days,⁷² as follows: if the blood is found on clothes or linens and is of an amount smaller than the size of a griss (19 mm. diameter); if it is larger but is found on a material not susceptible to the rules of *tumah* (plastic colored garments or linens or if it was on a place on her body (i.e. upper body) where uterine blood would not normally be found. The halakhah espouses a philosophy of "what you don't see doesn't count." It is advisable to use dark sheets and wear dark underwear after the seven clean days, and not to check for blood when wiping oneself, or to use colored toilet paper or panty liners. In any event, according to most authorities, blood found on toilet paper does not in itself render a woman *niddah* or *zavah* and therefore does not require waiting or immersion.⁷³

Although these leniencies generally do not apply to the seven clean days, if this proves to be the time when ovulation/spotting occurs, there is justification for proposing a new leniency and applying the above situations even during the seven clean days if it is certain that ovulation is occurring then and intercourse is necessary to ensure conception.

Secondly, a couple can turn to their rabbi, in conjunction with their doctor, for additional dispensation. There have always been individual rabbis who would grant a היתר for shortening the waiting period for *niddah* – presumably also for spotting – when the competing *mitzvah* of פרו ורבו (*pru urvu*, be fruitful and multiply) was at stake. This is already an accepted part of the halakhic system.

Furthermore, the halakhah assigns great weight to the opinion of the physician (even a non Jew who presumably does not understand the significance of all of the laws of *Niddah*). If the physician can confirm that the blood is not from the uterus then it is טהור דם and does not present any obstacle to sexual relations.⁷⁴

c. Blood in the Urine

The *Shulhan Arukh Yoreh Deah* 191:1 states, "A woman who urinated and blood came out with the urine, whether she was sitting or standing, she is pure... for urine does not come from the uterus, and this blood is from a wound..."

Although the Rema is more stringent, we advocate following the *Shulhan Arukh* as it conforms to medical fact.

The crucial point is that the halakhic category of blood that renders a woman *niddah* or *zavah* is **uterine** blood – in ancient times, the color and appearance were the main available way of determining this. Today, we have scientific ways of determining it. Thus in general we recommend couples seeking medical advice rather than turning to a rabbi, most of whom are not versed in the long tradition of identifying types of blood.

71 Interview with Dr. Sam Heering, F.A.C.O.G., October 31, 2005. Bleeding is not usually a problem with artificial insemination, I. V. F. and other more advanced forms of intervention.

72 See Meiri to BT *Berakhot* 31a, underlined portion of note 26 above.

73 Deena R. Zimmerman, *A Lifetime Companion to the Laws of Jewish Family Life* (Jerusalem: Urim Publications, 2005), pp.32-35.

74 שו"ת בית יצחק ח"ד ח"ב סי' יד; ערוה"ש יו"ד קפח נאו; שו"ת ציץ אליעזר ח"י סי' כה פי"א, וחכ"ב סי' נג אות ג. וראה עוד בשו"ת מנחת יצחק ח"ג סי' פד, ושם, ליקוטי תשובות סי' פב.

d. Number of Days

At some point the custom arose that no matter how short the menstrual period, a minimum of five days had to be counted as menstrual days before the seven clean days could begin. A bride before the wedding and a virgin bride after the consummation of the marriage waited four and then began counting the seven clean days.

The five day minimum is based on the concern that a woman might emit her husband's still potent sperm (from relations before the woman's period began) during the clean days. Such an emission would invalidate the day on which it occurred. Sperm is considered potent (medically and halakhically) for seventy-two hours. Since women are not always aware of when semen comes out, we must delay our count until the time period for potency has elapsed. A fourth day was added to rule out absolutely any possibility of beginning to count clean days while potent sperm could still be emitted (since seventy-two hours could start at different times in the day).

Among Ashkenazim, a fifth day was added to avoid any confusion based on halachic sunset [when the day begins/ ends], whether or not a woman had actually had relations with her husband. The imperative to wait a fifth day is first advanced by the responsa of the Trumat HaDeshen [R. Yisrael Isserlein; Austria, 1400's], but appears to have been practiced beforehand. The great Ashkenazi authority R. Moshe Isserles [the Rema; Poland, 1500s] is unequivocal in demanding adherence to the addition of the fifth day (*Yoreh Deah* 196:11).

The *Shulhan Arukh* [R Yosef Karo; Turkey and Israel, 1500s], however, does not require a fifth day of waiting (*Yoreh Deah* 196:11). The *Shulhan Arukh* also begins the four day count from the last time the couple had relations: if four days have passed since relations, there is no requirement to wait; if two days have passed since relations, she must wait two days, etc. A little-known leniency is that Rabbi Ovadiah Yosef cites a Sephardic tradition of waiting a minimum of four, ruling in accordance with the opinions of Yosef Karo in *Tohorat HaBayit* 13:11 (and in *Tohorat HaBayit HaKatzar* 13:55-56). Thus this further leniency can be observed by those who follow the Sephardic tradition.⁷⁵

Since the issue of ritual purity, including the contact with semen, is no longer relevant, we see no reason to lengthen artificially the number of days for the period, unless the couple is concerned that the semen may have covered up some blood (see discussion on *dam betulim*). In our opinion, any woman with a period of less than five days can choose to follow the precedent of the *Shulhan Arukh* even if she is not Sephardic – particularly if she has no established family custom. We would go further, following Karo (cited above) and say that if the period is three days, she can count three plus seven, if they have not had relations the day before the period began (or if they are not concerned that there will be any blood in semen expelled on the fourth day of the period).

e. *Dam Himmud*

Talmudic halakhah rules that after accepting a marriage proposal, a woman receives *niddah* status, and she is required to count seven clean days and then immerse in the *mikveh* before she is deemed eligible for marital intimacy. The law assumes that due to her excitement, lust and anticipation, she is likely to experience bleeding spontaneously, sometimes without even noticing it.⁷⁶

The Codes add stringency upon stringency. They make it clear that the woman becomes *niddah* even without⁷⁷ הרגשה. Moreover, the law applies even to pre-puberty minors, who have never menstruated, and to post-menopausal

⁷⁵ Thanks to Nishmat's halakhic advisors, under the direction of Dr. Deena Zimmerman, for the explanation of this section.

⁷⁶ בבלי נדה סו, א אמר רבא: תבעוה לינישא ונתפייסה - צריכה שתשב שבעה נקיים.

⁷⁷ This stringency derives, but is not obvious, from Rava's statement, and is confirmed by all *poskim*.

women.⁷⁸ The *Shulhan Arukh* adds that even if she checked herself and found no blood, she must still wait the seven clean days, however she needs no הפסק טהרה.⁷⁹

Based on the norms of man-woman interaction and of dating and courtship in modern society, there is no reason to fear that a woman will bleed when she accepts a marriage proposal. Even if we maintain that biologically, דם חימוד is a possibility, it should only apply when uterine blood can be humanly verified, not just theoretically presumed. Furthermore, since the marriage usually takes place so long after the engagement, the practical consequences of this law are almost nil.

We recommend that brides – and grooms – immerse in a *mikveh* before the wedding, after the menstrual cycle ends. However, the reason for doing so should be not a suspicion of bleeding, but rather a desire for self-purification in preparation for the holy covenant of marriage.

f. *Dam Betulim*

Current halakhah presumes that virgin brides bleed after losing their virginity, whether at the wedding night or thereafter, and requires that they wait seven clean days before immersing and resuming relations, even when no blood is noticed. This means that immediately after the very first act of intimate love making, the groom and the bride must stay away from each other physically. By then, a real menstrual cycle may have started and the couple will have to wait even longer before resuming relations. This law persists despite the common rabbinic knowledge that דם בתולים (*dam betulim*, “virgin blood”) is not uterine blood but like any other blood from a wound.⁸⁰ The fear is that דם חימוד is mixed with דם בתולים because a woman is presumed to be aroused by her first sexual experience:

שולחן ערוך יורה דעה סימן קצגא:

הכונס את הבתולה, בועל בעילת מצוה וגומר ביאתו ופורש מיד. אפילו היא קטנה שלא הגיע זמנה לראות ולא ראתה, ואפילו בדקה ולא מצאה דם, טמאה שמא ראתה טיפת דם כחרדל וחיפהו שכבת זרע.

A man who marries a virgin should consummate the marriage with one act of mitzvah intercourse and then should separate (from her) immediately, even if she is a prepubescent minor and she has not seen any blood, and even if she checked and did not see blood, she is impure, lest she bled a drop of blood like a mustard seed and the sperm covered it. (*Shulkhan Arukh Yoreh Deah* 193:1).

This halakhah fits neither contemporary sociological nor medical realities.⁸¹ We have already explained that *dam himmud* is not a likely phenomenon today. To abstain on the grounds that *dam himmud* may be present even if it is not seen is a double stringency which we do not need to perpetuate.

As for bleeding other than *dam himmud*, the first act of marital intercourse does not always cause any. Many virgin brides may have ruptured the hymen earlier due to sports or other physical activity. Even if they did bleed, it would be like any other wound, not uterine blood. It has the status of דם מכה and does not necessitate abstention. Furthermore, the strain on the couple of avoiding physical contact precisely at the time when they are finally allowed to be getting to know each other

78 רמב"ם איסורי ביאה פרק יא הלכה ט: "... כל בת שתבעו להנשא ורצתה, שוה שבעת ימים נקיים מאחר שרצתה ואחר כך תהיה מותרת להבעל, שמא מחמודה לאיש ראתה דם טיפה אחת ולא הרגישה בה, בין 79 שולחן ערוך יורה דעה סימן קצב סעיף א.

80 רמב"ם איסורי ביאה פרק ה הלכה יח דם בתולים טהור הוא ואינו לא דם נדה ולא דם זיבה שאינו מן המקור אלא כמו דם חבורה.

81 This law evolved at a time when engagements were not as long as they are today, probably to prevent couples from marrying hastily.

in this way (though others argue that the pause in physical intensity allows the couple to get to know each other in other ways too, now as married friends.) seems counterintuitive if not excessively severe.

As the Rema himself cites lenient precedents, we have no hesitation in ruling that *dam betulim* need not be observed today. We deem this halakhah inoperative on the grounds that in cases where there is bleeding, it is not from the uterus, and in cases where there is no bleeding, there is no reason to wait, unless the couple wishes to. We are supported by the gloss of the Rema on the source cited immediately above:

הגה: ויש מקילין אם לא ראתה דם, (הגהות מיימוני בשם איכא מ"ד.)

“And some are lenient if she didn't see blood.”

Of course if any serious bleeding or discomfort is experienced, the couple can choose to wait several days and/or seek medical advice, but this should be dictated by their own respect for one another, not by the halakhah.

g. Childbirth

This *teshuvah* differs radically from the *Shulhan Arukh* in the matter of preventing physical contact between the couple during and after childbirth, which is merely an extension of the *הרחקות* designed to keep couples from having intercourse during *niddah* time. According to the law,⁸² when labor begins, the woman enters a *niddah* state (*dam yoledet*, blood from a birthing woman). Her husband cannot touch her or “gaze upon her nakedness.” According to traditional interpretation then, the husband is not present at the delivery, or even if he can be in the room, cannot hold his wife's hand, watch the baby emerge, or be part of this miraculous turning point in their family life. (“The husband's place is outside the delivery room with a book of Psalms, praying that all will go well.”) While this arrangement may have suited many cultures in the past and might still be appealing to many a squeamish husband, it does not at all match the outlook of many young men who want to be involved in every aspect of parenting, women eager for support and companionship at this difficult time, and couples who wish to share the memory of this miraculous moment.

Most Jewish laws involve a tradeoff between two values: here the value of *shalom bayit* (emotional closeness, bonding) is pitted against the value of piety in observance of Family Purity. While Family Purity laws restrict and therefore enhance marital relations, there are times when a woman's sexuality is not her main identifying feature, and the fear of “transgressing” is relatively low. What better example than in the birthing room? The husband will be much more interested in his wife's miraculous capacity to give life than in her capacity as a sexual partner. She is not capable of having sex with him at this moment, and most probably not at all interested. There are doctors and nurses (or midwives) in the room. The point is clear. It is not necessary to restrict the husband's presence in the labor room out of concern for Family Purity issues. However, as the woman is technically in the status of *niddah* from the onset of intense contractions or the beginning of bleeding; contact from this time on should be affectionate (a back rub, a hug, holding hands), rather than sexual. This distinction should continue throughout the postpartum period, and indeed applies in general to the system of *הרחקות*.

5. Behavior During the Week of *Niddah*: הרחקות

Most of the laws of distancing oneself from a menstrual woman – הרחקות (*harkhakot*, distancings) – are based on the general rabbinic principle of “making a fence around Torah” to prevent people from sinning.⁸³

82 שולחן ערוך יורה דעה סימן קצד.

83 (ויקרא יח/ו), איש איש אל כל שאר בשרו לא תקרבו לגלות ערוה [אני יי].

משנה אבות א, ה: האנשי כנסת הגדולה [אמרו שלשה דברים, הו מתונים בדין, והעמידו תלמידים הרבה, ונעשו סגל לתורה.

מסכת אבות דרבי נתן: “ונעשו סגל לתורה” מתפרש במסכת אבות דרבי נתן נוסחא א פרק א, “ונעשו סגל לתורה = ועשה סגל לדברך, כדרך שעשה הקדוש ברוך הוא סגל לדבריו”. בהמשך שם פרק ב, הדבר מפורש יותר: איזהו סגל שעשתה תורה לדבריה? הרי הוא אומר (ויקרא יח, יט), ואל-אשה בגדת טמאתה לא תקרב [לגלות ערוה]. יכול יחבקנה וינשקנה וידבר עמה דברים בטלים? תלמוד לומר, לא תקרב. יכול תישן עמו בבגדיה על המטה? תלמוד לומר, לא תקרב.

What “fence” has Torah made to its words? Torah says [Leviticus 18, 19] “Do not come near a menstruate woman [to uncover her nakedness]” Then, may the man just hug her, kiss her, or have idle chat with her [short of intercourse]? The verse says “Do not come near!” Then, may the woman sleep with him on one bed with her clothes on [short of being naked]? The verse says “Do not come near!”

The הרחקות include two distinct types of fences: The first is personal/familial, and relates to intimate relations between the couple. The second is social/cultural, and relates to the woman's status and interactions within her social environment. The first concerns דיני אישות ואיסורי ביאה (conjugal laws). The second concerns דיני טומאה וטהרה (ritual purity). We will elucidate each set and then explain how they should be approached today.

a. Conjugal

The halakhah derives the first system of הרחקות from the Biblical verse וְאַל אִשָּׁה בְּנִדַּת טְמֵאָתָהּ לֹא תִקְרַב לְגִלּוֹת “Do not draw near to a woman in her impure separation to uncover her nakedness” (Leviticus 18:19), referring to a menstruant.

Some rabbis thought only intercourse was forbidden:

בבלי שבת יג, א

ופליגא דרבי פדת, דאמר רבי פדת: לא אסרה תורה אלא קירבה של גלוי עריות בלבד, שנאמר (ויקרא יח/ו), אִישׁ אִישׁ אֶל כָּל שְׂאֵר בְּשָׂרוֹ לֹא תִקְרַבוּ לְגִלּוֹת עֲרֻוֹה [אֲנִי יִי].

And it disagrees with [the opinion of] Rabbi Pedat, for Rabbi Pedat said, “The Torah prohibited only the closeness of ‘uncovering nakedness’ [i.e. cohabitation], as it is stated [Leviticus 18:6], ‘Each man shall not approach any close relative to uncover nakedness, I am the Lord’” (*Talmud Shabbat* 13a).

The majority thought that physical closeness was proscribed, as well:⁸⁴

בבלי שבת יג, א

תא שמע: (יחזקאל יח/ו), אֶל הַהָרִים לֹא אָכַל וְעֵינָיו לֹא נָשָׂא אֶל גְּלוּלֵי בַיִת יִשְׁרָאֵל וְאֵת אִשְׁתּוֹ רָעָהוּ לֹא טָמְאָה וְאַל אִשָּׁה נָדָה לֹא יִקְרַב, מִקִּישׁ “אִשָּׁה נָדָה” ל”אִשְׁתּוֹ רָעָהוּ”, מֵה “אִשְׁתּוֹ רָעָהוּ” - הוּא בְּבִגְדוֹ וְהִיא בְּבִגְדָהּ אֲסוּר, אִךְ “אִשָּׁה [אֲשֶׁתוֹ] נָדָה” - הוּא בְּבִגְדוֹ וְהִיא בְּבִגְדָהּ אֲסוּר. שִׁמְעָה מִיְנָה.

Come, learn [a proof: Scripture states, Ezekiel 18:6] “Upon the mountains he did not eat, his eyes he did not lift to the idols of the family of Israel, his neighbor's wife he did not defile, and a woman in niddah he did not approach. [By mentioning them in juxtaposition, the verse] compares a woman in niddah to a neighbor's wife. Just as [a man] is forbidden to sleep with a neighbor's wife even if they are both clothed, so is it forbidden for him to sleep with woman in niddah even if both are clothed. Learn from here (*Talmud Shabbat* 13a).

According to this rabbinic reading, sleeping in the same bed should be avoided as it offers too much temptation to the couple.

Whether because they were believed to be forbidden by biblical intention or simply because they might lead to other forbidden actions, behaviors other than intercourse came to be included as forbidden.

Once the rabbis began applying דין זבה גדולה to all women, and requiring the seven additional days, no distinction was made between behavior during menstruation - ימי נדה - and the seven additional days - ימי ליבון - with regard to the הרחקות.⁸⁵

In each successive era the fences progressively expanded and increased.

⁸⁴ See also פתחי תשובה יורה דעה סימן קפג ס"ק א.

⁸⁵ רא"ש מסכת כתובות פרק ה סימן כד.

אע"ג דקאמרינן בפ"ק דשבת בימי ליבון מהו אצליך בימי נדותך מהו אצליך שמהו רגילין לטבול אחר שבעה ימי נדות כשפוסקת קודם שתשב שבעה נקיים, בשביל טהרות, דלא אסירא השתא, אלא מדרבנן, אבל האידיא שאין רגילין לטבול עד שתשב שבעה נקיים, ימי ליבונה כימי נדותה, כדאמרינן במסכת שבת (דף סד ב), בנדוטה תהא עד שתבא במים.

The Mishna enumerates household activities which a woman in *niddah* should not do for her husband because they allude to physical closeness or were ancient forms of flirtation or foreplay and might lead to sexual intimacy:

משנה שבת א, ג
לא יאכל הזב עם הזבה, מפני הרגל עברה.

Mishna (*Shabbat* 1:3)

A *zav* should not eat with a *zavah* lest it lead to sin.

רש"י מסכת שבת דף יא עמוד א
לא יאכל הזב עם הזבה - וכל שכן טהור עם הזבה. מפני הרגל עבירה - מפני שמתוך שמתחדין יבא לבעול זבה שהיא בכרת.

Rashi on *Talmud Shabbat* 13a - **A *zav* should not eat with a *zavah*** - let alone a pure man with a *zavah*. **Lest it lead to sin** – because since they are alone together, he may come to have intercourse with a *zavah*, for which the punishment is כרת.

The Talmud (*Ketubot* 61a and Rashi there) aff the *Mishna* and add more examples. A woman should not make her husband's bed, pour him wine, or wash his hands and feet when she is forbidden to have relations with him. The general principle is not articulated but seems to be that actions which are sexually suggestive should be avoided.

The Rishonim added additional rules. Rashi took on a personal stringency of not passing a key to his wife.

תוספות מסכת שבת דף יג עמוד ב
ורש"י היה נוהג איסור להושיט מפתח מידו לידה בימי נדותה.

“And Rashi acted as if it were prohibited [took on as a prohibition] to pass a key from his hand to hers (his wife's) during the days of her *Niddah*” (Tosafot on *Shabbat* 13b).

Harkhakot continued to be developed and enumerated. In the *Mahzor Vitry* they are still presented as optional. The language (“even”) shows that the strictest people are going far beyond the letter of the law.

מחזור ויטרי סימן תצט ד"ה ד. דין
ד. דין שאסור ליגע לאשתו כל ימי נידתה אפ"ל באצבע קטנה. ויש נזהרין אפילו להושיט לה שום דבר. ולכל הפחות דבר של מאכל ומשתה טוב ונכון מליזהר שלא יושיט מידו לידה. וכן בימי ליבונה וספירתה עד שתטבול:

“The law that it is prohibited [for a man] to touch his wife during all the days of her *Niddah* time, even with his pinky...” There are some who are careful even not to pass her any object. And at the very least it is good to be careful not to pass her any kind of food or drink. **It is good and proper to be careful not to pass [anything] from his hand to her hand.** And the same holds for her clean days, until she immerses” (*Mahzor Vitry* section 499).

The *Bet Yosef* (*Yoreh Deah* 195) presents justifications for the stricter and more lenient views (although by concluding with the strictest view, he gives the impression that he agrees with it):

בית יוסף יורה דעה סימן קצה אות ב ד"ה ומ"ש ולא... ומ"ש ולא יושיט מידו לידה שום דבר ולא יקבלנו מידה... והרשב"א מן האוסרים שכתב (תוה"ק ב"ז ש"ב ד.) וז"ל לא יושיט מידו לידה שום דבר שמא יגע בבשרה וז"ל רבינו ירוחם (נכ"ו ח"ד רכד:): העידו על רש"י שלא היה רוצה לתת מפתח מידו לידה וכן נכון להחמיר אפילו בדבר ארוך שמא לא יזהר בטוב ויגע בידה עכ"ל:

...And as for the teaching, “he should not pass anything from his hand to hers, or receive anything from her hand”...The Rashba forbids it, as he wrote, “He should not pass anything from his hand to hers, lest he touch her.” And this is the language of Rabbeinu Yeruham. They testified that Rashi did not want to pass a key from his hand to hers, and it is indeed correct to be strict, even with a long object, lest he not be careful enough and come to touch her hand.”

However, by the time of the *Shulhan Arukh* (*Yoreh Deah* 195), they are presented as desirable and universally applicable stringencies.

These הרחקות stem from the laws on intimate relations (דין איסורי ביאה) and are still important even with the presence of laws of ritual purity.

b. Societal

The second set of restrictions against contact with a menstruating woman operates on the social/environmental level and concerns the relations of the woman with her surroundings. The basis for these fences was most likely a concern about coming into contact with ritual impurity, and a superstitious, mysterious fear of the “danger” imparted by menstrual blood or a menstruating woman.⁸⁶ With this fence a woman is distanced from regular participation in social and religious functions of the society, for example, going to synagogue, public events etc. In recent years there has been a trend in modern observant circles to suspend this custom – and indeed earlier sources speak of it as unnecessary and even undesirable.⁸⁷

In our estimation, the second set of fences should be abandoned entirely, for several reasons. First and foremost, the system of ritual impurity is no longer operative. While earlier generations may have continued to observe remnants of its laws because they wished for or actively expected the rebuilding of a third Temple, after two thousand years we must come to terms with reality and focus on the institutions that do exist: school, synagogue and home, instead of focusing our priorities on a non-existent, spiritualized Temple. (When *Mikdash* is used as a metaphor, this is laudable, but when its value conflicts with another religious value, such as human dignity, we can allow ourselves to put the Temple halakhah aside.)

Secondly, our concern for the dignity of women makes it imperative that no negative stigma be attached to menstruation. On the contrary, menstruation should be celebrated as a healthy, normal part of a woman’s life, and appreciated for its miraculous role in the reproductive process.

Third, women cannot afford to deprive themselves of the opportunities for learning, prayer and social interaction which the synagogue provides; the value of attending services clearly outweighs the folk piety of absenting oneself from the synagogue during menstruation.

On the other hand, the first set of הרחקות, the ones that govern relations between the couple, still have a great deal of relevance and merit, even though some may be so far from the original intent of the Torah that they are not essential. They may cause unnecessary awkwardness (as when a husband cannot pass a baby to his wife), may unnecessarily publicize a private matter (as when children or friends know by the couple’s conduct when the woman is menstruating), or may lead to a perpetual state of self-consciousness and distance (as when, to prevent people knowing when the wife is in *niddah*, couples observe these stringencies publicly at all times).

In most traditional circles, these הרחקות are taught as a complete program, without distinction among *de’oraita* or

86 מבי”ן ויקרא פרק יח פסוק יט.

87 See Part I. “Reframing Attitudes toward Family Purity.”

de'rabbanan laws and later custom.

We affirm the goal of distancing people from sin, and respect the additional expressions of piety. However in our times, the *harkhakot* do not seem to serve this purpose, but rather make people mock and reject the entire system of Family Purity. Thus couples have relations during *niddah* time and are subject to the Torah's most severe judgment, *karet*. We wish therefore to distinguish amongst the various levels of historical development and halakhic severity and to show legal precedents for a) reducing some of the stringencies even during the menstrual days, and b) further relaxing the *harkhakot* during the seven clean days.

We agree with Raaviah [Rabbi Eliezer ben Yoel HaLevi 1140-1225] that some of the fences are unnecessary according to the letter or the law. (He approves of the customs because they are custom but says there would have been no need for the custom to evolve).

ראבי"ה ח"א - מסכת נדה סימן קעג

ולכל הפחות בימי ליבונה נראה לי שאין צריך לפי ההלכה להחמיר בנגיעה בעלמא, ואפי' בימי נדתה, אילולי שנהגו העם. וטוב להתרחק ולעשות סיג ואין להתיר, משום דאתי למיטעי.

“At the very least during her clean days it seems to me that according to the law there is no need to be so strict about casual physical contact, and even during the days of menstruation, if it were not that the people had taken on this custom. But it is good to distance oneself and make a fence, and one must not permit otherwise, since it is possible to err...” (Raaviah, part 1, *Tractate Niddah* sign 173).

In this area this *teshuvah* agrees with Rabbi Grossman's analysis and recommendations: each couple should observe as many of the *הרחקות* as possible, consistent with their social norms.⁸⁸ To a community which does not practice “*shomer negiah*” and allows some physical contact among acquaintances, it does not make sense to expect cessation of this basic contact between spouses – passing a baby from one parent to another, sitting next to each other on a bench, going for a leisurely drive together etc.⁸⁹ Furthermore, we recommend that each couple learn the *הרחקות* and incorporate as many as they deem necessary to preserve an atmosphere of love and respect, even mild physical fondness (i.e. permitting hugging, holding hands, even sleeping in the same bed), while retaining the fences that limit greater physical intimacy, nudity and ultimately intercourse (for example, not changing in front of each other, sleeping unclothed, or engaging in physical activity from kissing on the lips onward).⁹⁰

However, for couples who find even this more moderated approach interferes with their ability to show tenderness and

88 As Naomi Marmon documents, even within a Modern Orthodox community there are great variations in behavior, probably more than in most areas of religious observance: “One of the areas in which there is great divergence of practice among interviewees is the way in which they relate to their husbands. For example, during Niddah some couples will not allow passing items from husband to wife, while others allow touching. Some allow touching, including hugging and kissing, but will not kiss on the lips. Some couples separate their beds completely; others put on separate sheets but do not push the beds apart, and others just sleep on opposite sides of their joined bed” (Naomi Marmon, “Reflections on Contemporary Miqveh [sic.] Practice,” in *Women and Water*, Rahel Wasserfall Ed., (Hanover, NH: Brandeis University Press, 1999), pp. 233-234).

89 Rabbi Susan Grossman, “Kedushat Yetzirah: *Mikveh* and the Sanctity of Being Created Human,” CJLS December 2004 Draft, p. 12.

90 Rabbi Joel Roth believes that the sole purpose of the *הרחקות* was and is to prevent intercourse. Therefore even though they do appear in medieval codes of law, and some even in the Talmud, he would probably suggest keeping only the ones that explicitly curb sexuality or intimacy: wearing seductive garments, engaging in “foreplay” while dispensing with other more symbolic gestures and prohibitions (Interview with Rabbi Joel Roth, July 8, 2003).

Rabbi Grossman feels that the purpose of the *הרחקות* is not merely to prevent intercourse but also to avoid all manner of flirtation (see *Ketubot* 61a) and create a different atmosphere during this time of month with different types of communication and interaction. The goal should be to increase mutual respect and not take one another for granted, as well as to prevent unintended sexual activity.

We agree with Roth's analysis but Grossman's conclusions: the original purpose of the *harkhakot* was simply to prevent intercourse. However a meaningful by-product of the laws is to create a different atmosphere during part of the month. Certainly all would agree that the prohibitions are against actual physical interaction, not against spiritual closeness, or verbal expressions of love or esteem. Perhaps this secondary purpose is what stimulated the development of the *הרחקות* beyond the prevention of sexual intercourse.

affection – or their willingness to subscribe to the system of Family Purity – there is even precedent for behaving differently during the seven clean days. Many *poskim* write that they disapprove of a distinction between the days of menstruation and the seven clean days, and state that a woman is in *niddah* until she immerses.⁹¹ However they do write of a custom of the women in medieval times to make a distinction between the two times. Even some of the *poskim* reveal through subtle use of language that they too sense a distinction at least theoretically, between these two times.⁹²

The fact that the *Shulhan Arukh* warns against making a distinction shows that distinctions were made.⁹³ A further Talmudic source shows that even a Torah scholar made a distinction between the days of menstruation and the seven clean days:

תני דבי אליהו: מעשה בתלמיד אחד ששנה הרבה וקרא הרבה, ושימש תלמידי חכמים הרבה, ומת בחצי ימיו. והיתה אשתו נוטלת תפיליו ומחזרתם בבתי כנסיות ובבתי מדרשות, ואמרה להם: כתיב בתורה (דברים ל/כ), [לְאַהֲבָה אֶת יְיָ אֱלֹהֶיךָ, לְשִׁמְעַת בְּקוֹלוֹ וּלְדַבְרָה בּוֹ], כִּי הוּא חַיִּיךָ וְאָרְךָ יָמֶיךָ [לְשָׁבֵת עַל הָאֲדָמָה אֲשֶׁר נָשָׁבַע יְיָ לְאַבְרָהָם לְיִצְחָק וּלְיַעֲקֹב לְתַתּוֹ לָהֶם]. בעלי ששנה הרבה וקרא הרבה, ושימש תלמידי חכמים הרבה - מפני מה מת בחצי ימיו? ולא היה אדם מחזירה דבר. פעם אחת נתארחתי אצלה והיתה מסיחה כל אותו מאורע. ואמרתי לה: בתי, בימי נדותרך מה הוא אצלך? אמרה לי: חס ושלום, אפילו באצבע קטנה לא נגע בי. בימי לבוניך מהו אצלך? - אכל עמי, ושתי עמי, וישן עמי בקירוב בשר, ולא עלתה דעתו על דבר אחר. ואמרתי לה: ברוך המקום שהרגו, שלא נשא פנים לתורה, שהרי אמרה תורה (ויקרא יח, ט), וְאֵל אִשָּׁה בְּגֵזֶת טְמֵאָתָהּ לֹא תִקְרַב [לְגִלוֹת עֲרוֹתָהּ]. כי אתא רב דימי אמר: מטה חדא הואי. במערבא אמרי, אמר רב יצחק בר יוסף: סינר מפסיק בינו לבינה.

It happened that there was one student who learned much *Mishna* and learned much Scripture, and spent much time serving Torah scholars, but who died at half his years [at a young age]. His wife would take his *tefillin*, bring them around to the houses of prayer and the houses of study and say to the people, ‘It is written in the Torah (Deuteronomy 30:20): [To love the Lord your God, to hearken to His voice and to cleave to Him] for this is your life and the length of your days [to dwell on the land which God promised to your ancestors, to Abraham, to Isaac and to Jacob, to give it to them]. My husband, who learned much *Mishna* and learned much Scripture, and spent much time serving Torah scholars, why did he die at half his days?’ And no one would answer her a thing.

Once I [Elijah] visited her and she retold the whole story. I asked her, ‘My daughter, during the days of your *niddot*, what did he [do] with you?’ She answered, ‘God forbid! He did not touch me, even on my little finger!’ I asked her, ‘during your white days, what did he [do] with you?’ She answered, ‘he ate with me, drank with me, and slept with me [in the same bed] without clothing, but he didn’t even think about anything else.’ I said to her, ‘blessed is the God who killed him, because he did not show respect for the Torah, [or “for there is no favoritism before Him”] for the Torah says (Leviticus 18:19): You shall not approach a woman in her time of impure separation [to uncover her nakedness].’

When Rav Dimi came [from Israel to Babylon], he said, ‘It was [only a matter of] sleeping in [the same] one bed which he thought was permitted. In the West [Israel] they reported [that] Rav Yitzhak bar Yosef said, ‘she wore knickers that interposed between him and her” (*BT Shabbat* 13a-b).⁹⁴

91 *Shulhan Arukh Yoreh Deah* 197:1 - A woman is in *niddah* even after many years if she has not immersed. Women after menopause who have not gone to the *mikveh* not only may but must go one time, no matter how many years have passed since their last period, before engaging in marital relations.

92 See Raaviah, part 1, Tractate Niddah sign 173, cited above.

93 *Shulhan Arukh Yoreh Deah* 195:14 - “All th and there is no distinction in all of these (cases) between seeing actual blood and finding a stain.”

94 This story also appears in *Tanna De-Vei Eliyahu* 15 [Also known as *Seder Eliyahu*, a late *midrash* concerned with the importance of and reasons for the *mitzvo*]. The story is probably an early source within the later compilation as it appears also in the Talmud.

רש"י: מטה חדא הואי - רחבה, ולא קירוב בשר הואי, וסבר דשרי בהכי.

Rashi: "it was one bed..." – wide, and they did not touch each other, and this he thought was permitted.

Although the purpose of the story is to decry this behavior, Tanna De-Vei Eliyahu does bring a story in which a scholar and pious man did make a distinction – and a serious one – between the *niddah* days and the white days. Indeed he even slept with his wife in the same bed, unclothed during ימי ליבון. Other Talmudic sages, and of course later commentators, find this so hard to believe that they make *ukimtaot* – perhaps it was a very large bed, perhaps they had a piece of clothing or a sheet between them... but the story if taken literally does show that at least one scholar did make a distinction between ימי נדה – in which he would not even draw near to his wife – and ימי ליבון, in which everything but intercourse was permitted. (Presumably he took the verse literally: וְאֵל אִשָּׁה בְּנִדְתָּהּ לֹא תִקְרַב לְגִלּוֹת עֲרוּתָהּ "Do not draw near to a woman in her impure niddah time to uncover her nakedness" (Leviticus 18:19) – in her *niddah* time, do not draw near; but during the seven clean days, it is permitted to draw near).

At one time women even immersed to mark the end of the נדה, and then again at the end of the white days, when they were able to resume relations:

תוספות מסכת שבת דף יג עמוד ב

בימי לבוניך מהו אצלך...ור"ת פירש שהיו רגילים לטבול שתי טבילות אחת לסוף שבעה לראייתה שהיא טהורה מדאורייתא בהך טבילה ואחת לסוף ימי ליבון לכך היה מיקל אותו האיש.

'During your white days, what did he [do] with you?'...Rabbeinu Tam explained that [the women] used to immerse twice, once at the end of the first seven days, when according to the Torah she would be pure and once at the end of the seven white days; this is why the man [in the story] was lenient" (Tosafot on *Shabbat* 13b).

Although the sources present strictness as the ideal, there was variety of practice. More importantly, openings for leniency exist even in the sources.⁹⁵

Perhaps if in ancient times the women were seen more as possessions, the men needed these הרחקות to make sure they would not overstep their boundaries. But for our constituents, we trust that the relationship of mutual respect and decision-making will constitute its own "hedge of roses" and allow them to refrain from relations during the appropriate time of month. Just like the sages permitted them to be alone together and did not worry about their potential lack of self-control, so can we give credit to the couple that they will be able to refrain from intercourse:

תוספות רי"ד מסכת שבת דף יג עמוד א

איבעיא להו נדה מהו שתישן אצל בעלה הוא בבגדו והיא בבגדה פל' משום דאמר' סוגה בשושנים שאיש ואשתו מתיחדין בבית אחד בעודה נדה ולא חשו חכמים בדבר הוא שואל אם התירו לו גם זה.

"They asked him, may a woman in *niddah* sleep [in the same bed] with her husband, each one fully clothed?... because they said, 'it is a hedge of roses that a man and his wife are alone in the house when she is in *niddah* and the sages do not worry about this, that is why he inquired if they had permitted to him also this [sleeping in the same bed]" (Tosafot Rid on *Shabbat* 13a).

Again, there is no need to radically change the laws on the books. One can still teach the full range of הרחקות and let the couple decide for themselves. As Rabbi Amy Levin suggests,⁹⁶ it is best to start with the strictest interpretation and then

⁹⁵ *Shulhan Arukh* 195:15, 17.

do less if necessary rather than the other way around.

Nevertheless, while הרהקות have become part of the laws, one who does not observe every detail need not worry about being a “hypocrite” or in any way making the *mikveh* “not kosher.” It would be a shame not to observe Family Purity at all because the couple would not sleep in separate beds. The essence of the *mitzvah* is abstention during menstruation for a minimum of seven days, followed by immersion. The הרהקות are indeed part of the accumulated tradition, but their status is not identical to that of the Torah laws. And while they can enhance the *mitzvah* and provide more possibilities for raising one’s level of “holiness,” they are not מעקב (*me’akev*): their non-observance will not invalidate the immersion if all the other aspects are followed according to law, and in this case, partial observance is better than non-observance..

PART III. ENHANCING THE EXPERIENCE OF FAMILY PURITY AND MIKVEH

Our program for modernizing the laws is not limited to adjusting the halakhah; the learning about the *mitzvah* and the observance itself need to be reframed in light of the sensitivities of our Movement and its adherents. In this non-halakhic arena, we are happy to take our cue from the positive developments which have evolved in the field, in exemplary Community and Conservative *mikvaot*.⁹⁷

Women (and men) should have the opportunity to learn about Family Purity within the context of their Conservative synagogue – premarital counseling, Rosh Hodesh groups, Introduction to Judaism classes, sermons etc. It should be presented as an expected and normal part of modern Jewish life, with emphasis on the aspects which appeal to a modern audience (spiritual renewal, relationship regeneration, women’s special role), rather than on the misconception that it is about physical cleansing. It should be presented without apology, in a positive and encouraging light, with access to private classes and teachers for those who wish to study in greater depth.

Mikvaot should be beautiful and clean, with all the accoutrements of a spa: soft towels, bathrobes, a comfortable waiting room, hairdryers etc.

There should be hours when men can immerse at night, or in the day, to coincide with their partners’ immersion (separate hours, entrances or locations will ensure proper regard for privacy and *tzniut*).

The attendants should demonstrate the greatest concern for people’s comfort and enjoyment of the *mitzvah*, from the tone of the answering machine message to the way they greet first-time visitors.

No one should be rushed and time should be available after the supervised immersion to remain in the *mikveh* for personal prayer, meditation etc.

Mikvaot associated with Conservative institutions (or Reform or Community *Mikvaot*) are usually run with greater sensitivity to first-time visitors, alternative lifecycle visitors, and women with various levels of observance. The building of such *mikvaot* should be encouraged and the pleasant atmosphere of existing ones (i.e. Mayyim Hayyim in Boston) should be more widely publicized.

⁹⁶ Interview with Rabbi Amy Levin, January 11, 2005.

⁹⁷ These include Wynnewood, PA, White Plains, NY, Albany, NY, Richmond, VA, Salt Lake City, UT, Highland Park, IL, and several others under construction.

PART IV. ADDITIONAL USES OF *MIKVEH*

Discussion of Family Purity laws often leads to a discussion of *Mikveh* use in general. Indeed, Rabbi Grossman proposes replacing the terminology “טהרת המשפחה” with “קדושת יצירה” and focusing on the woman, in a relationship or not, celebrating the healthy workings of her body, rather than on the ebb and flow of a relationship between a married couple.⁹⁸ While we applaud new and old uses of the *mikveh*, they should not supersede the core use of טהרת המשפחה. “If only a person could only observe one single *mitzvah* which has been commanded, with complete strength and concentration! This is hard enough – why create additional obligations?”⁹⁹

Traditional uses of *mikveh* do go beyond Family Purity. They include: bride and groom before marriage, men (and women)¹⁰⁰ before Shabbat and holidays, hassidic men before morning prayers, and scribes before writing the name of God. Women, regardless of their marital status, should be encouraged to immerse before holidays, Rosh Hodesh etc. if it enhances their *kavannah* and preparation for the holiday.

There are also new lifecycle rituals that are most popular with women, most falling into the broad categories of celebration or healing: celebrating *bat mitzvah*, rabbinic ordination or cantorial investiture, birthday, menopause, anniversary or life achievement and healing from divorce, loss, miscarriage, rape, abuse or illness. A third minor category is the use of the *mikveh* to prepare for an important transition such as assuming responsibility for synagogue leadership or reading Torah for the first time. Rabbi Dr. Steve Brown suggests using *mikveh* to mark additional life transitions, such as beginning a new job, moving into a new home, retiring etc.¹⁰¹

Some creators design a ritual for individual use, but others hope for their words and symbols to be shared. Some ceremonies involve friends and family, others are intensely private. Some involve adding liturgy to a traditional ritual, while others are patchworks of symbols, songs and new prayers.

These new rituals are excellent ways of bringing people to the *mikveh* – they are meaningful in their own right and do not take away from the sanctity of the *mikveh* in any way. Furthermore, by increasing exposure of the *mikveh*, they increase the chances that people will attend for traditional uses as well. Thus the new occasions for *mikveh* are to be encouraged alongside the old, but are to be considered a complement to, not a replacement for, observance of טהרת המשפחה.¹⁰²

V. SUMMARY

This *teshuvah* differs significantly in approach and conclusions both from the *teshuvot* of Rabbis Reisner and Grossman and from the status quo as outlined in the *Shulhan Arukh*. We acknowledge in this *teshuvah* that the additional stringencies, evolved over the ages, have indeed created a burdensome system that at times is dissonant with medical, cultural, and social realities, and we do propose some innovations. We seek to be lenient when it can be justified on substantive halakhic grounds, and indeed we bring precedents and reasoned arguments for each decision. These rulings are justified by our access to newly gained knowledge and our concern for the dignity of women. Most important is our core focus on the aspiration toward holiness in marital relations, rather than ritual purity, in the applicable laws of *Niddah*.¹⁰³ However, without a compelling

98 Grossman, 9.

99 Hassidic saying cited in Shmuel Avidor HaCohen, *Likrat Shabbat*, Reshafim, Tel Aviv, p.183.

100 Although many Orthodox mikvaot tend to discourage or even bar single women from using *mikveh* for spiritual purposes, hoping that their *niddah* status will deter them from premarital relations, Magen Avraham to Other *poseqim* distinguish between various shades of brown, since some might be closer to red. Orah Hayim 606:4 says that since the point of pre-Yom Kippur immersion is to cleanse one of one's sins, and since all girls over 12 are obligated to the *mitzvot*, they may also immerse before Yom Kippur.

101 Interview with Rabbi Dr. Steve Brown, April 20, 2006.

102 See above, Part I. “Terminology.” Additional resources and suggestions for creating ceremonies can be found at ritualwell.org and in Rabbi Debra Orenstein, *Lifecycles*, Vol. 1, (Woodstock, VT: Jewish Lights, 1994), pp. 359-376.

103 Rabbi Yehuda Halevi, points out, in *Kuzari* III 49, that in post-Temple halakhah, the laws of *Niddah* and *Yoledet* are no longer related to ritual impurity (טומאה), but rather to restricting physical closeness איסור קרבת בשר.

reason for change, the rabbinic tradition stands. Thus we insist on retaining the seven additional clean days (שבעה נקיים) and the idea of זיבה (*zivah*), even as we point out many exceptions to the latter's application.

The arguments for generally retaining the old Talmudic stringencies (חומרות) include the following: The main *niddah* חומרות (*humrot*) were added by Rabbi Yehudah HaNassi as obligatory rabbinic law, תקנת חכמים, not as custom (מנהג *minhag*). Even the additional layer of *bnot Israel* was later accepted as a decisive law הלכה פסוקה (*halakhah pesukah*) and all subsequent Codes, and is no longer formally a מנהג (*minhag*).

A ruling that reduced the number of days of observance, as claimed by its proponents, might increase the number of couples willing to observe, but it would certainly damage our claims of being a halakhic movement. In our experience, those who wish to observe seven days total already do, and those who do not observe at all cite many reasons other than the time frame for their unwillingness to embrace this observance. Furthermore, the additional seven days offer several other benefits beyond their initial function of simplifying counting: encouraging couples to expand the vocabulary of their affection to non-physical avenues; deepening their friendship; keeping the time of physical reunion closer to the usual time of ovulation and potential conception (and to the woman's heightened hormonal receptivity/interest in relations?); accustoming the couple to restraint in every area of life; and possibly preparing them to handle times when, for medical or psychological reasons, they are not able to have such regular access to sexual activity.

Rather than expecting a change in the laws to bring more devotees, a serious educational initiative can raise the profile of the *mitzvah* and effectively encourage greater observance. As a rule, we ought not to change laws just to make them easier. Rather, we must encourage our constituents to strive for more intensive and meaningful observance. We should focus on enhancing the quality of observance, rather than diluting the texture of the laws.

As a matter of principle, it is wrong to enjoy the benefits of rabbinic Judaism only when it is convenient, neglecting it when it is not, and reverting to Biblical precedent, when this seems more convenient. Surely any attempt to change the number of days must be grounded in far greater halakhic insight than simply saying "Let's go back to the Bible" or "Let's get rid of that custom," when what began as custom has become so universally accepted and so entrenched in legal codes.

Furthermore, to revert to the Biblical system of *niddah* while leaving part of it (*zivah*) out altogether, would mean to dismiss rabbinic and halakhic authority, not simply ignoring a *minhag*. Even as this may be possible, by using a variety of halakhic arguments, it would need to be acknowledged as the radical step it would be, tantamount to uprooting something from the Torah, not merely changing a folk custom.

Therefore, the concept of שבעה נקיים – counting seven clean days after cessation of menstrual bleeding (after Sephardic four days or Ashkenazi five days minimum or less, in the unusual case of an even shorter period) is to be generally retained, with immersion taking place after the counting of these additional שבעה נקיים seven clean days. Exceptions will be allowed with rabbinic and/or medical consultation, on an individual basis when extenuating circumstances exist.

The system of Family Purity includes laws of distancing (הרחקות) which developed as expressions of extra personal piety.¹⁰⁴ Some of them do not accord anymore with our cultural norms, such as avoiding passing objects from one to another (inspired by Rashi's personal custom),¹⁰⁵ or marking distinctions at the dinner table (inspired by the Tanaitic custom with regard to ritual purity).¹⁰⁶ These הרחקות are elaborative and not essential, and while we see no reason to strike them from the books, we expect that their appeal to our constituents will be minimal. However, הרחקות which reduce physical intimacy and sustain the original intent of the "fences around Torah" are certainly to be retained in principle, according to the guidelines offered above, with details left to the discretion of each couple, using if they wish Rabbi Grossman's guideline of "acceptable behavior between siblings."

104 Such as Rashi's custom mentioned above, p. 32. Clearly this was not a common custom, but a personal expression of extra strictness.

105 See page 32.

106 Mishna (*Shabbat* 1:3); as noted above in several places, we are no more concerned with this aspect of *Niddah* law.

For couples who are not able or willing to observe the system as we propose, we offer further flexibility and leniency. If they cannot observe the הרחקות for the entire twelve or so days, they can make a distinction between the time of menstruation and the seven clean days, drawing on several rabbinic and medieval precedents.¹⁰⁷ The seven days can become a time that allows some physical closeness – if the couple can draw the line and avoid intercourse – serving as a transition between abstention and reunion. There is no need or justification to allow immersion without שבעה נקיים and to cause such a radical rupture with tradition, rabbinic law, and *klal Israel*. Nevertheless, to reduce the impact of other burdensome חומרות and to bring the laws more in line with current medical knowledge which was not available to the Sages, we propose the following leniencies:

Although we confirm the חומרה of בנות ישראל to wait seven clean days after bleeding, we apply this only to uterine bleeding, not indiscriminately to all types of blood from other provenances. We explicitly exclude the following – דם בתולים, דם חימוד, דם טוהר, and דם נדה. Furthermore, we have shown how most instances of non-menstrual bleeding (spotting due to medical exams, ovulation, blood in the urine, etc) need not be considered as דם נדה either for אישות or טומאה. Thus we ascertain that in most cases abstention and immersion will not be necessary, even as we respectfully retain the theoretical system of *zivah*, which is integral to the system of *niddah*.

We share Rabbi Grossman's wish to make sure that couples undergoing fertility treatment do not miss the time for conception due to mid-cycle bleeding. However, we are able to accomplish this without uprooting a system (*zivah*) that is integrally tied to the Biblical conception of *niddah* (as seen through the rabbinic lens). Bleeding caused by hormonal therapy in the early stages of fertility treatment is usually uterine. However there are several ways to resolve this problem. The simplest is to wear dark underwear and simply try not to notice if any bleeding occurs. Alternatively, התרים could be granted in individual cases to have relations during the seven clean days (or in extreme cases, even during the days of spotting) on the premise that the *mitzvah of pru urvu* is paramount. We do not recommend, as other *poskim* do, proceeding directly to the more complicated and expensive treatments such as artificial insemination unless all other avenues have been pursued.

For women who experience spotting unconnected to fertility treatment (women taking birth control hormones or women nearing menopause), uterine bleeding throughout the cycle can impede marital relations and/or conception. Medical advice should be sought and the problem solved. If this is not possible, measures such as the ones outlined in the paragraph above can be taken in consultation with a rabbi and/or gynecologist.

Change is advocated with regard to observance of distancings during and after childbirth. In the delivery room, husbands should be able to hold their wives' hands and not feel any twinge of guilt at showing non-sexual physical support at this awesome moment.

We retain in principle the concept of בדיקה, that is, ascertaining that there is no bleeding for seven days. הפסק טהרה (*hefsek tohorah*) is necessary to determine when menstruation has ended. The woman must be sure that there is no bleeding throughout the seven days, but this can be determined in any manner she deems appropriate – cloth, tampon, toilet paper or reliance on a consistently regular cycle with no spotting.¹⁰⁸

The term טהרת המשפחה (Family Purity) may be retained and efforts made to accentuate its positive connotations. However, since physical purity and impurity are irrelevant in post-Temple times, the term is to be understood only in a metaphoric sense. The only significant distinction today is about when the couple is forbidden or permitted to engage in physical intimacy. Thus, we encourage the use of *Kedushat Mishpahah*, Holiness of the Family, when *Tohorat HaMishpahah* misleads people into thinking that the categories of *tameh* and *tahor* still apply, or when it prevents them from embracing the

¹⁰⁷ See “Halakhah for our Times” above.

¹⁰⁸ *Shulhan Arukh Yoreh Deah* 196:4 says that a woman should check twice a day all seven days (*lechatchila*), but if she checked only once during the whole time it is acceptable (*bediavad*), and some say the first and last day and one ought not to be lenient. It is ideal to check by daylight and not candle (artificial) light, but *bediavad* candle light is acceptable too. There are so many layers, ideals and accepted realities presented even within the *Shulhan Arukh* – we do not have to take the strictest one. It is a small step to affirm at the outset what the sources permit after the fact, i.e. checking once during the week, and not such a radical step to accept the woman's near certainty that there has been no bleeding. After all, the main goal is that there be seven clean days; the checking is a means to an end, not an end in itself.

system wholeheartedly. However, we stress that holiness in the family requires attention to many aspects of family life, not just the sexual.

A woman before immersion should not be referred to in Hebrew as “a *niddah*” but rather as “in *niddah*” and in the vernacular, according to the current social-cultural conventions, as menstruating or having a period, or “not ready” (for sexual intimacy), but never in ritual-religious terms of being impure, dangerous or set aside. In Hebrew, the more poetic Biblical אורח “כנשים” or “נשים דרך” can be used to refer to the actual time of menstruation or even to the halakhic period of separation. If a couple wishes to stress that they are both participants in the ebb and flow of the physical relationship, they can both call themselves “ready” and “not ready.”

There should be no restrictions whatsoever to the participation of a menstruating woman in synagogue or ritual life, and no negative attitudes toward her or her status.

Rabbis and educators must take every opportunity to educate about *mikveh* in general and טהרת המשפחה in particular, and to present them as meaningful and relevant *mitzvot* which their congregants will be inspired to understand and observe.

Needless to say, *mikvaot* must be beautiful and clean and their staff sensitive and welcoming, using the concept of *hiddur mitzvah* to encourage observance by more women/ couples.

Conservative institutions ought to have access to *mikvaot* where their constituents are welcomed, not merely tolerated. Building their own *mikvaot* would give rabbis greater autonomy over conversions, would allow men and women to visit the *mikveh* for a variety of lifecycle purposes without recourse to dishonesty or discomfort, and would send the message that *mikveh* is a crucial part of Jewish life.

New uses of *mikveh* are encouraged, for their own intrinsic meaning as an authentic Jewish symbol of renewal, hope, cleansing or rebirth, as well as for the possibilities they have of drawing people into *mikveh* use for more traditional purposes. However they do not replace the observance of Family Purity, which plays a role not only in the relationship of a woman to her cycle but in the relationship of a couple.

VI. P'SAK HALAKHAH

Immersion should take place after the completion of the menstrual period (however short it may be) plus seven additional clean days.

Non-menstrual bleeding (i.e. due to ovulation, urinary tract infections or gynecological exams and procedures) is not considered menstrual bleeding and does not require waiting or immersion.

The concept of דם חימוד is inoperative.

There is no need to wait at all after the consummation of the marriage on the wedding night unless there is uterine bleeding.

A partner should be free to be present at childbirth and to have physical contact with the woman, to the extent that it is emotionally supportive and not sexually oriented.

הפסק טהרה (בדיקה) is necessary to determine when menstruation has ended. It is recommended to continue checking throughout the seven days, at least the first and last, but if a woman knows she never bleeds after the period, we can

rely on her discretion and knowledge of her own body and forego the need for בדיקה.

הרחקות are to be observed as much as possible, but left up to the discretion of each couple. We understand their goal as aiming to preserve and enhance spiritual, emotional and intellectual closeness, even while ensuring some physical distance.

If a couple is not able to observe a long period of separation, they may make a distinction between the actual days of menstruation and the seven clean days, when they may assume a greater degree of physical closeness, according to the precedent of the Tanna De-Vei Eliahu.

If they are still not willing/able to observe the system even with the leniencies presented, and they decide to observe seven days total, knowing that this is not the mainstream custom, the woman may immerse in the *mikveh* without fear of invalidating the *mikveh*.

השי"ת בחסדו יצילנו משגיאות