NO ONE SINGLE JEWISH VOICE OR OPINION

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This essay presents a Jewish feminist perspective on balancing freedom of religion, gender equity and LGBTQ2 Rights. Noting a multiplicity of Jewish perspectives on these issues, the essay reflects discomfort with government impositions on religious minorities, while also problematizing both civil and religious restrictive legal codifications of gender and sexual identity. It argues for rejection of legislation of any sort, religious or civil, which allows for or demands or even justifies the restriction of participation, bodily freedom, the right of voice and the right of relationship to any human being created in God's Divine image.

Cet article présente une perspective féministe juive sur l'équilibre entre la liberté de religion, l'égalité des sexes et les droits LGBTQ2. Notant une multiplicité de points de vue juifs sur ces questions, ce texte reflète un inconfort face aux impositions du gouvernement sur les minorités religieuses, tout en problématisant à la fois les codifications juridiques restrictives civiles et religieuses du genre et de l'identité sexuelle. Il plaide pour le rejet de toute loi, religieuse ou civile, qui autorise, exige ou justifie la restriction de la participation, de la liberté corporelle, du droit de parole et du droit de relation à tout être humain créé dans l'image divine de Dieu.

In order for me to tackle the question of the balance of freedom of religion and gender and sexual equality as a Jew, I will first honour my Jewish culture where a Jew always answers a question with another question ("how are you?" — "how should I be?") and ask a more overarching question: according to Jewish thought, what role should religion play at all in the making of civic policies? As both a Jew and a woman I historically sit in discomfort at the entanglement of ruling powers and minorities; of jurisprudence and gender. And as a Canadian I watch with tremendous anxiety just to the south of us where this question seems to lie unasked. To answer this overarching question I look in Jewish sacred text, for it is there that we find the first articulatiosns in Jewish thought between the role of government and the role of human autonomy. And as a Jewish feminist, it's critical to bring to light also the analysis in feminist thought between the role of patriarchal law — that is, any law made by men *for* women or *about* women, whether then or now, whether granting freedom or restricting freedom — and the role of female autonomy.

From the beginning of the Jewish diaspora, we Jews have been rightfully fearful of too much involvement in politics, of too loud a voice in demanding that Jewish mores be universally accepted. My people too have experienced both "physical and spiritual violence" — as Kimberly Murray so eloquently talked about — at the hands of ruling powers when church and state are not separated. Beginning at the second century when the Roman Empire became the Holy Roman Empire we've been wary of the marriage of piety and politics.

Two of my ancient sacred texts serve as example: the first from *Pirke Avot*, a compilation of ethical teachings and wise

maxims from the Rabbis of the second century, which posits in chapter 2: "Be careful in your relations with the government; for they draw no person close to themselves except for their own interests. They appear as friends when it is to their advantage, but they do not stand by a person in their time of stress;" and the second from *halacha* or Jewish law in the Talmud, compiled in the 2nd to 5th centuries, which states unequivocally: *dina d'malchuta dina*: the law of the land is the law; that is, the law of the country in which a Jew lives in is binding upon the entire Jewish community.

This is not to say that if the law of the land forced Jews for example to eat pork or to desecrate the Sabbath we would go along willingly without finding some golden mean of compromise, but in the vast majority of cases which are neither radical nor extreme, the law of the land is Jewish law.

As a liberal Jew, it's fine for me to trust *dina d'malchuta dina* — that as a Jew I am bound to the law of the land — when that secular law is in consonance with my personal and autonomous values, but what happens when it isn't? If the law of the land took away my personal liberty of body, for example, or infringed upon my right to celebrate my love as my own religious conscience directed me, or demanded of me to practice something I found religiously abhorrent? Clearly the emergence of the modern nation-state brought the promise of equal citizenship to Jews but with that came the inevitable loss of Jewish corporate identity; of the power of Jewish courts to render civil decisions in property or marital disputes. Jews have, however, been willing to surrender that communal authority for the reward, if you will, of equal individual authority in the nation-state.

But for example, when Jewish women who feel harmed by restrictive legalisms of a more traditional reading of a patriarchal text for example around divorce and the dissolution of Jewish wedding vows, we celebrated the "*Ghet* law" when the Supreme Court of Canada overturned a Quebec Court of Appeal decision and ruled that civil courts have the authority to enforce the Jewish law of *Ghet* — of requiring a husband to grant his wife the Jewish bill of divorcement in order to obtain his full civil divorce. Yet Jewish women on the more liberal side of our tradition would object mightily to any discussion of any civil decision that would render the individual autonomous decision to abort a fetus as illegal.

So to the Jewish heart of the matter: it is virtually impossible in the 21st century to have a universally recognized "*Jewish* point of view" or "*Jewish* stance" on any political or religious question. I would hope today we will problematize the idea that there is one Jewish voice or opinion or recognized authority on LGBTQ2 rights, and if lawmakers are trying to see an issue through the Jewish lens they will have to place me on one side of the room and the bearded black-hatted male Rabbi with long sideburns and a hat — who so often is assumed to be the voice of the "*Jewish* community" — on the other. And in fact that lawmaker might find that there are more than just two communities vying for the "*Jewish* vote" or "*Jewish* perspective" on any particular political issue.

And to the feminist heart of the matter: in the 21st century, the theological is political.

As a woman of course I've also experienced physical and spiritual violence at the hands of a patriarchal system which taught when I was growing up that pain in childbirth is a punishment for a sin of my earliest ancestor Eve; and that my gender keeps me from — you choose which: serving communion, being a Rabbi, reading from the Torah, etc etc etc — any "language of permission" we women use for our fathers, father-priests and Father God to ascertain what we may or may not do, be, wear, think or say.

Which brings me to law. Jewish feminist writer and pioneer Judith Plaskow first critiqued this theology in her book *Standing Again at Sinai* when she wondered if the concept of law itself could ever be adapted to a feminist agenda with the provocative question: "Is law a female form?...Perhaps what distinguishes feminist Judaism from traditional rabbinic Judaism is not so much the absence of law in the former, as a conception of rule-making as a *shared communal process*." Thus a feminist view of law as a shared communal process suggests the ability — even the command — for civil law to be in dialogue with those who live it, rather than in monologue with those who must keep it.

This — law as a *shared communal process* — is a disturbing ideology for my more fundamentalist co-religionists who adhere to a strict literal reading of law as The Law and an eternally binding covenant from ancient days until an unknown future.

Let's be honest: Jewish law has been the major means by which Jewish women and Jewish LGBTQ have been marginalized, so even the most traditional of feminist Jews approach it with what feminist scholar Rachel Adler terms "a hermeneutics of suspicion." So too do I approach civil law in regards to anything which touches upon human and female autonomy with a hermeneutics of suspicion.

Western religion still is, and in fact many Eastern religions also are, in most areas of thought, binary systems which posit that men do certain things and are certain ways, and women are… the opposite. Except in the most liberal streams of each religion there is little doctrinal attention paid to trans and intersex and questioning and queer except where those identities cause a shift from classically legislated binary thinking, leaving religion at a loss for where to categorize this person and therefore how to legislate behaviour for this person according to either male or female classifications. But those questions are internal to the religious realm. If Judaism needs to work out which side of the gender divide in a traditional

synagogue transgender people should sit on, that belongs in the halls of the faith community and not in the halls of the Parliament.

In closing, a personal word: as I grow older and further away from the glass ceiling I first broke in Canada in 1983, I admit that my patience is wearing thin for legislature of any sort, religious or civil, which allows for or demands or even justifies the restriction of participation, bodily freedom, the right of voice and the right of relationship to any human being created in God's Divine image. I cannot believe that such a Creator isn't often frustrated with us and our lack of insight into the very basic fundamental truth in the maxim of the Rabbis in *Leviticus Rabbah*: when we are in one boat, and you bore a hole under only my seat, we both drown.