

Abstract: Parashat Bereishit

ואל האשה אמר—Category Shifts in Jewish Law and Practice

The early chapters of Bereishit are devoted to categorization, etiology and even, perhaps, stereotyping. Taxonomy rules the first chapter, with living beings divided up למיניהם / according to their type, and human beings classified by gender, male and female. These divisions create order; they also potentially foster rigidity. Categories that are too fixed can become not merely descriptive of the world, but normative as well. This potential rigidity is perhaps most evident in the second chapter of Bereishit, where the origin story of humanity is told, and where the genders are given a significant role to play.

The woman is tempted and tempts; the man succumbs to her invitation to violate God's command. While some of the punishments intoned by God might be read as responding only to the moment—cursing the man with hard work and the woman with dependence and subservience to her husband—other elements, such as the woman's fate to experience pain in childbirth, make clear that we have here a deeper pronouncement on the human condition.

Just how fixed are these categories meant to be? Are the male and female types in these early chapters of Bereishit meant to be normative extensions of the undeniable biological differences between men and women? If so, are men and women throughout the ages destined to see themselves as manifestations of their respective archetypes? Or are men meant to be able to learn from the shortcomings of the first woman and women from the failures of the first man? Do these chapters suggest that there is no escaping the metaphysical significance of the physical forms of our bodies and our world? Or are there underlying values encoded in these categories of creation that might apply to shifted and altered categories in a future when gender plays a different role than it did in the past?

This is a key narrative question, but it is a much broader question with respect to *halakhah* writ large.

Halakhah is, and always has been, about applying an eternal divine will to the shifting facts of life. The details of halakhic discourse focus not on philosophy, nor even primarily on state of mind, but on specific actions taken in response to our experience in the world.

Some of the most engaging debates in *halakhah* relate to the tensions that emerge between the halakhic language of an earlier generation and the emerging halakhic facts of a subsequent

one. What is the best way to respond to a case like this, where the significance of certain objects and actions change over time and place, such that the performance of a given act in one context may achieve a specific goal, while it may fail to do so—or even act contrary to that goal—in another context?

In this week's longer essay, my goal is to explore a series of examples to demonstrate these challenges, and to explore one solution for dealing with them. I call this solution a “*category shift*”: a claim that a certain object, action, or person, which was once properly classified under one Rabbinic category has now shifted categories, and, as a result, the applied law should look different.

Rather than arguing for a change in the law in light of new circumstances, this approach claims that the new facts lead to a different application of the old, inherited categories. The divine will is constant; only its translation to a given context is variable. Consider a light that has burned for an eternity, constantly and unchanging. If that light is filtered through a red lens and affixed on a roadway, drivers who approach it will slam on their brakes. Take the same light and shine it through a green lens and the drivers will hit the gas pedal. So too, even an eternal, unchanging, divine will filtered through a changing world can produce shifting demands.

This is perhaps most intensely felt when thinking about issues of gender. To what extent are the categories of male and female in Jewish law and practice meant to be extensions of immutable biological facts? And to what extent are they meant to be proxies for other categories: power, social gravity, and citizenship. Does Jewish law view men and women as ontologically different in all areas where it distinguishes between them? Are these prescriptions meant to be in force even when they are countercultural? Are they sociologically based and malleable over time and place? Can we plausibly say that contemporary women are no longer in the category of “women” with respect to various aspects of Jewish law, because those categories were never about biology *per sé*, but instead about citizenship?

However we come out on this question, we are not the first to grapple with this sort of interpretive struggle. Whether we are considering halakhic categories throughout the ages or the primordial narratives about men and women, a deep search for the divine will begs us to ask what these categories are about, and what abiding values stand behind them.