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Parashat Nasso : about the procedure of the Sotah.

When we read the procedure of the Sotah we, as modern people, accustomed to a well-ordered judicial procedure in which the accused takes always advantage of the doubt, are a little bit surprised and feel not comfortable.

This is particularly the case in Jewish law. Jewish law works according a precise procedure based on testimony. Any lack of detail in the procedure and already in the testimony will automatically weaken the accusation and advantage the accused.

Therefore the procedure used to prove the innocence of the sotah is disturbing and contrary to all what we find in the Torah. In other words we have no other example of such a procedure if we exclude the similar examination by the procedure of the golden powder mixed to water used against those who worshiped the golden calf. Iben Ezra notes the similarity of both procedures. Nevertheless this last procedure was unique, at one point of history at a moment of a major national and religious crisis. Further this procedure is only hinted in the Torah but its details given by Rashi on Shemot 32, 21 come from Gemara Yoma 66b. Nevertheless the relation with Sotah is problematic. Rashi writes: לא עדים ולא התראה בהדרוקן שבדקו המים וצבו בטניהם. By contrast Sotah works only with testimony and warning. (A better reading, preferred by Reshash can be found in Bamidbar Rabbah Nasso end of chap 9) But according to the utmost Pshat, beyond Ibn Ezra and Rashbam, it could very well have been an accelerated and simplified judicial procedure of exception, nevertheless based on testimony. The procedure of the powder of the Golden Calf would only have been a pedagogic method to teach Benei Yisrael the powerlessness of their divinity of one day. Therefore it cannot be used to support the procedure of the Sotah, which apparently was in use for a very long period for solving domestic and familial problems at the request of jealous husbands. On the contrary it seems rather a form of profanation a holy procedure for current use.

What makes us, or at least me, uncomfortable, is thus the fact that a rather current problem of domestic life is subject to an ordeal; a judgment of G'd, with a supernatural intervention. Now we know that Hakhamim did not accept supernatural intervention in the legal and judicial procedures. Rabbi Joshua said, after Rabbi Eliezer wanted to prove his view by supernatural methods:

עמד רבי יהושע על רגליו ואמר: לא בשמים היא. בבא מציעה נט ע"ב.

In order to get better understanding of the problem we cannot satisfy ourselves with the literality of the biblical text, we need to take into account the different Talmudic laws regarding the sotah allowing to put the problem in perspective. We refer to Rambam's hilkhot sotah. Here is a series of rulings:

1. The man must have suspicion against a particular man. He must have put his wife on her guard against becoming isolated with him before two witnesses. Then he must bring two witnesses testifying that she became isolated with this man for a sufficient span of time. In such a case, although there is no explicit proof against her, the woman is forbidden to her man until she undergoes the process and the man entitled to present her to the Cohen for an examination. Indeed the man has sufficiently elements of suspicion. It is therefore not surprising that the pessukim chap 5: 12 and 13 are written as if the facts were certain.
2. The man must be free of sin. That means that he did never perform a forbidden sexual intercourse. Otherwise the process does not work.

3. For this reason, during the second Temple, when the number of people having forbidden sexual intercourse to everyone's knowledge, increased, the process was suppressed.
4. Once the woman was in the conditions required to be imposed the procedure of Sotah, the oath she had to take and the procedure of drinking related not only to the litigious case but also to any possible passed infidelity.
5. All the elements of the procedure and the fear that it must impose are made to favor her to make a full confession. If this is the case she will be divorced and loose the Ketuba.
6. If she was isolated with someone during a sufficient span of time but without having been put on her guard before witnesses, then she is not forbidden to her man and she does not drink thus the man cannot bring her before the Cohen.
7. If she says I am pure but I don't want to drink, then she is divorced without ketubah.
8. If the man does not want her anymore even if she is ready to drink, then he must divorce her and give her ketubah.
9. If she says I am indeed impure, she does not drink and she is divorced without ketubah.
10. She can change her mind and refuse to drink out of fear as long as the divine name was not erased. After that she cannot change her mind and we force her to drink except he she confesses.
11. Finally it appears that she drinks only if she says that she is pure, that she accepts to drink and if her husband accepts to behold her if the test is favorable.

We can then conclude that the test was used very rarely. It was a test to clear her from any suspicion. All the process, the decorum, the shame and the infamy that she had to endure, were aimed at her confession. All the legal elements mentioned above could only favor her confession before the beginning of the process. Only a pure and solid woman who knew that her man hoped the proof of her innocence could undergo the process. The women who accepted to undergo the process were a priori innocent. But the procedure was now mainly aimed at definitively convincing jealous men and men tortured by a morbid jealousy. As we see the supernatural aspects of the procedure did not really play a judicial role but rather were aimed at healing the moral wounds of the married couple. Rambam in Moreh Nevuhim III: 49 gives a very similar explanation of the procedure of the Sotah. He insists also on the shame and the fear created by the procedure. The shame was provoked because the priest had to undo her hair, tear her dress and uncover her chest and take her around the sanctuary. Rambam adds that if she is innocent, part of the shame will spurt back on him and he will regret for a long time what happened. Therefore the man should be careful before initiating such a procedure and for example putting her on guard before witnesses!