Gender Roles in Ordination, Leadership and the Public: An Analysis of the OU Paper

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Dr. Noam Stadlan is Vice-Chairman of the Department of Neurosurgery at NorthShore University HealthCare system and Assistant Professor, Division of Neurosurgery, at the Pritzker School of Medicine/University of Chicago. He writes and lectures on neurosurgical topics and bioethics, as well as the intersection of medicine and Halakhah, with articles published in the journals Hakirah and Meorot, and on the blog of the Rabbinical Council of America. He is a pursuing a Masters degree in Medical Ethics at New York Medical College witha concentration in Halakhic medical ethics. He has served on the board of the Ida Crown Jewish Academy in Chicago and the Halachic Organ Donation Society, and currently serves on the board of the Jewish Orthodox Feminist Alliance and PORAT. This article was previously posted on the website of JOFA.

Earlier this year, 7 highly respected rabbis authored a position paper on the ordination of women and on the possibility of women serving as clergy[i]. Individually and collectively, they represent great learning, personal piety, and years of leadership. It would seem presumptuous for someone who will never achieve anything near their learning or stature to comment or critique. However, no one person or group has a monopoly on facts and logic. And, as will be demonstrated, Torah learning sometimes is not the sole or even dominant factor in a person's opinion on these issues.

- This paper addresses three issues that were highlighted in the OU paper: the meaning of the concept of Mesorah and its use as an argument, the specific Halakhic arguments against women serving as clergy, and the issue of gender roles in the public square.

The authors of the OU paper depict the debate over ordination as one between those who value the Mesorah and those who are unduly influenced by 'modern values.[ii]' This paper will illustrate that 'modern values' are intrinsically neither good nor bad, and that our Mesorah has always incorporated 'modern values' that found resonance in the Mesorah. Furthermore, according to great and highly respected Modern Orthodox authorities, a hallmark of Modern Orthodoxy is the willingness to acknowledge some 'modern values' as previously under-recognized religious values.

The Halakhic arguments, both pro and con the ordination and rabbinical roles for women, are not simply differences of opinions, where one set of authorities takes one position, and other authorities take a different position. The arguments against ordination essentially state a category or restriction, and then draw conclusions from that category. This paper will demonstrate that the arguments suffer from one or more of the following problems: they are based on wrong or at least unproven facts, the claimed conclusions do not follow logically from the premises, the Halachic reasoning is strained at best, the definitions of the categories or concepts lack specifics which allows the authors to escape in depth analysis, and there is great inconsistency in how the categories and restrictions are applied. In summary, the arguments appear to be unconvincing when analyzed from the point of view of facts, logic, and consistency.

The final section addresses the broader concept of gender roles in the public square. The authors of the paper state that historical gender differences in public service reflect the ethos of the Torah. But they fail to acknowledge that while they specify historical gender differences in public service, what they are prohibiting in their paper is not public service by women, but leadership. Most of the putative Halakhic bases for the restriction of women from the public restrict women from the public, and there is no differentiation between the secular public and the religious public. In fact, appearing in the secular public has historically been considered worse than appearing in the Jewish communal public. The actual practice of the Modern Orthodox community does not demonstrate any prohibitions on women being in the public, nor prohibitions on women in secular leadership positions. Therefore it is quite incoherent to claim that historical gender differences prohibit religious leadership, when the actual communal practice illustrates that the historical gender differences are not binding on the specific areas they were designed to address- the secular public square. In addition, I suggest that there is a fundamental need to articulate an overarching idea of what is the mandated ideal- taking into account the sources, social history, and present reality. I further suggest that it will be quite difficult, if not impossible, for the opponents of ordination to formulate a coherent position that

includes an honest assessment of Modern Orthodox practical reality, the Halakhic history and its surrounding cultural history, and their use of historical precedent to ban women in religious leadership positions. And finally, I think that we all face the challenge of identifying exactly what is the Divinely mandated differences in gender in the public square, and if having those differences is a situation where we have to accept the yoke of Heaven, or if it is a moral good as well.

Much has been written regarding the ordination of women. Some of the opponents have described it as being outside the pale of Orthodoxy. Some have cited the position of a certain rabbi or groups of rabbis and insisted that only that particular position represents Orthodoxy. This paper, while it includes discussions of particular Halakhic opinions, tries to refrain from valuing one opinion over another, and is concerned mostly with facts[iii], logic and consistency. I have taken the arguments presented in the OU paper and tried to identify underlying assumptions, identify ambiguous language, evaluate factual claims, and assess for consistency and coherence. I obviously have an opinion[iv], but I think the results of the analysis speak for themselves, and the conclusions are obvious. At the least, I hope that this paper will stimulate a discussion that is less dogmatic and more focused on defining positions based on sources, facts, logic and consistency.

I. Mesorah and the misuse of Mesorah

The term 'Mesorah' has been frequently invoked by the opponents of ordination for women. We can broadly define it as the content of our tradition that is passed from one generation to another. That tradition contains Mitzvot and opinion on the value of Mitzvot. Frequently a situation occurs where one must choose between emphasizing one mitzvah or a different mitzvah. Our Mesorah therefore contains not only the Mitzvot, but also attitudes or 'values' that help us choose between Mitzvot when they come into conflict. One could cogently argue that the 'values' are in fact Mitzvot in and of themselves, but for the purpose of this discussion that is a distinction without a difference. Ultimately what this analysis is concerned with is how, within the confines of our legal tradition, are values embraced or shunted to the side.

Change in the Mesorah

Mesorah can be viewed in a number of ways. It can be viewed as a self-contained body of knowledge and values, unaffected by anything external. This perhaps is the view of those who claim that the science of the Talmud is always correct, and that nothing in fact has changed since the time of the Talmud. If one accepts the input of observation and scientific method, this view is demonstrably false. For example, the Talmud expresses the beliefs that the sun revolved around the earth, and that babies born in the 8^{th} month were not viable, and these are demonstrably false.

Another option is to claim that the facts might change, but the values and relative weight given to values within our Mesorah are constant and eternal, unaffected by changes in time or culture. Under this construct, all the values in the Mesorah are fixed and the values and relative weight are the same now as they were 2000 years ago. This too, as will be demonstrated, is false. The third model acknowledges the truth of history, and understands that some values have gained or lost weight over time, either intrinsically or in response to external input, whether it is science or surrounding culture. Values from the outside world, sometimes termed 'modern values', are not automatically in conflict with the Mesorah. In fact, modern values are intrinsically neither good nor bad. Those that find resonance in the Mesorah are embraced, and those that do not are dismissed. Similarly, it is a demonstrable fact that there are values within our Mesorah that were more embraced in the past, and are less embraced or sidelined in the present.

Examples of Change in values

The Talmud and early sources have specific attitudes towards and/or halakhic restrictions on women, slaves, the blind, the deaf/mute (chereish) and others. For example, some of the Rabbis in the Talmud owned slaves. It is hard to imagine the rabbis of today being in favor of owning slaves. The moral values related to slavery clearly have changed. As Rav Gamliel Shmalo wrote[v]

"Our examination of the topic shows the varying degrees to which Orthodox thinkers acknowledge the moral values of their contemporary society and the different models with which they confront those values. Some are more apologetic, limiting biblical slavery so that it conforms to modern conceptions.

Others assert that the Bible contains moral accommodations that society has transcended. Interestingly, even conservative thinkers—who justify slavery by pointing to the social, economic, moral, and spiritual benefits it gives to the weak and the vulgar—may have been moved by modern conceptions to justify slavery in accordance with those conceptions. Accepting that only a direct benefit to the slave himself could be an acceptable justification for enslavement, almost all would agree that the practical application of this once normative institution would be unthinkable today."

In a similar vein, the exclusion of blemished Kohanim from service has gone from well accepted and unremarkable fact to a position that requires explanation and justification, if not some Halachic adjustment[vi].

Another example is the deaf/mute. The Talmud exempts the deaf/mute from all Mitzvot. In this day and age, many poskim hold that this is not the case[vii]. According to R Moshe Taub[viii]:

"The general consensus, and the general custom, is to allow a medaber (someone who speaks) to be called up to the Torah for an Aliyah (Torah blessings). Rabbi Feinstein allows even a true chereish to receive an Aliyah for his bar mitzvah or aufruf –so that he should not feel downgraded – and writes that in such a case the chereish should try to say the words as best he can, although such an Aliyah may not be from the main seven aliyot."

Obviously there has been a change in the assessment of the capabilities of those who are hearing/speech impaired. But the result is still a change in the Mesorah that has come about not only because of changes in our knowledge, but perhaps also, as illustrated by R. Moshe Feinstein above, by our sensitivity to those who are differently abled. Furthermore, the changes came due to a re-evaluation triggered by outside influences- modern facts and modern values.

There have been changes with regard to women and education. There are opinions in the Talmud opposing teaching women, and opinions in favor of teaching women. R. Chaim Twerski wrote[ix]:

"Two explanations are given to understand why the Talmud objected to teaching Gemara to women. The Rambam (*Hilkhot Talmud Torah* 1:13) states that most women, due to their mental weakness, would not understand the teachings correctly and would distort the Oral Law. A similar position is offered by the sages themselves, namely, that "women have light minds" (*Shabbat* 33b). Perhaps, Rambam interprets the words *ke-ilu milamdah tiflot*—"as if he teaches her lewdness"—as the result of their inability to comprehend the Torah leading to

distorting the Oral Law.

Rambam's assertion in interpreting "light mindedness" the way he did was most likely influenced by his observation of women in his time. Lack of education will deprive anyone of mental development. Today, however, we see no difference between men and women in their mental capacity.

The Talmud (*Sotah* 21b) offers another reason. It states in Mishlei (8:12): "I am wisdom and I reside with craftiness." Accordingly, once wisdom enters the mind it is capable of being sly (or devious). Wisdom, then, is a double-edged sword. It can be used for good and also for evil. The absence of wisdom allows for the person to remain on the straight and narrow path. Alternatively, introducing wisdom allows for the opportunity to deviate with clever but wrongful reasoning. It can lead to sophistry, which corrupts the Torah and indeed the individual, as well (see also *Maharil* n.199).

This second reason is seemingly also invalid in contemporary times. Women are sophisticated today, and go through the same core secular curriculum as their male counterparts."

Even this opponent of ordination for women is forced to acknowledge that the assumptions of the Talmud regarding women, similar to the Talmudic assumptions regarding the deaf/mute are not correct. In a similar vein, the OU and the authors of the OU psak advocate for leadership by women and more public avenues for women to teach and lead. This seems to track (albeit decades behind) with societal views of the roles of women in the public square.

Many more examples can be given in almost any sphere of life- some more halakhic, some more custom- foods, music, architecture, synagogue ritual(weekly speeches in the vernacular), some are modes of governance(democracy by direct election of the people is not mentioned by the Talmud as a valued mode of governance), and more. It seems very clear that our Mesorah, when faced with 'modern values', has incorporated those that found resonance. Rather than something intrinsically bad, 'modern values' have been part of the engine of beneficial change.

Is change good and desirable?

One possible avenue is to believe that even though change has occurred, it is b'dieved- not the ideal- something that may need to be accepted but should not be celebrated or seen as a religious good. On the contrary, R. Aharon Lichtenstein of blessed memory wrote[x]:

“Nor should we be deterred by the illusion that we can find everything we need within our own tradition. As Arnold insisted, one must seek “the best that has been thought and said in the world,” and if, in many areas, much of that best is of foreign origin, we should expand our horizons rather than exclude it.”

Similarly, R. Nahum Rabinovitch wrote:[xi] “Torah's method is to be a catalyst for the evolution of moral values in history, i.e. from polygamy to monogamy, from slavery to freedom, from war to peace, and from coercion to liberty.”

For example, with regard to the abolishment of polygamy, R. Rabinovitch wrote: “Certainly the Sages instituted such enactments – yet they did not draw them out of thin air, but advanced the values already determined by Scripture. In the biblical era, however, the time was not yet ripe, and people were not yet ready, for the full realization of that vision. Only over time, as a result of training in the life of Torah, were people's hearts made ready and did it become possible to draw closer to the goal established by the Torah.”

Not only is it simply a fact that ‘modern values’ have been used to adjust the value judgment within the Mesorah, but it is an important and distinguishing hallmark of Modern Orthodoxy. R. Walter Wurzburger[xii] “revered …. As a public voice of his teacher R. Joseph Baer Soloveitchik”[xiii], writes of Modern Orthodoxy: “What differentiates us from right-wing Orthodox is our acceptance….of the belief that some important modern values should be appropriated. We are inclined to stress human responsibility and activity rather than passive submission or fatalistic resignation to our condition… In contrast with the mentality prevailing during the premodern ‘age of faith’ which placed exclusive reliance upon God and denigrated the efficacy of human actions…the modern mind emphasizes man’s capacity to help determine the human condition…

“It must be realized that Orthodoxy nowadays contains two opposite approaches. On the one extreme we have the position of the Hatam Sofer…any form of innovation, any concession to modernity…is the very antithesis of Torah. On the other extreme we have the position of Rav Kook, who maintained…,Embrace the new by all means, but do so selectively.”

“…there is a great deal of positive value contained in modern attitudes of dignity, human understanding, and rationality….whenever the Torah is silent, **we can embrace many modern values, because that is one of the ways in which God reveals himself**[my emphasis]”

R. Wurzburger goes on to provide specific examples from the Meiri, the Maggid Mishnah and others who emphasize the contribution of modernity and human discernment to the values within the Mesorah.

With regard to women, R. Wurzburger writes: “today it is wrong for a married man to say “I’d like my wife to be totally ignorant. After all, the Gemara says that the main function of the woman is to be attractive and produce a lot of children and to do weaving…” Although this was acceptable five hundred years ago, women must not be treated in this fashion in our times because they have different expectations today. And those expectations can affect the psak as to what constitutes appropriate behavior.”

In conclusion, the historical record clearly illustrates that the values within the Mesorah have changed for the better in response to the encounter with Modern Values. It is incorrect to characterize modern values as wrong simply because they are modern. Furthermore, at least according to a prominent student of R. Soloveitchik, a distinguishing feature of Modern Orthodoxy is the belief that some important modern values should be appropriated.

The mistaken approach of the OU psak

The beginning of the OU paper on ordination for women contains three erroneous fundamental assumptions which impact the entire paper.

The first paragraph of the OU ‘psak’ on the ordination of women states: “some perceive limitations on women’s roles and titles as barriers to full involvement in the Orthodox community, while others view the lifting of traditional gender distinctions in ritual as representing a rejection of the Mesorah. This tension pits egalitarianism, a central value of modernity, against a time-honored tradition that clearly speaks of equally valued, yet different, roles for men and women.”

The first error is setting up a false conflict between the Mesorah and modernity. They seem to imply that changing something because of a ‘modern value’ is intrinsically wrong, and that something that is a ‘modern value’ is always, at least potentially, in conflict with the Mesorah. As demonstrated, this is an incorrect understanding of the history of the Mesorah and change. ‘Modern values’ have frequently provided the impetus for religiously desirable change.

The second error is characterizing the desire to remove barriers as a manifestation of egalitarianism. One would have hoped and expected that poskim writing a paper with potential far reaching consequences would have expended great effort to ascertain all the facts. But it appears that they did not meet with any of the women obtaining semikhah nor any of their teachers. So the authors do not have any firsthand knowledge of the motivation of the women seeking semikhah. It is therefore grossly unfair and patronizing to ascribe motivations when the OU panel made no attempt to meet with any of the women involved. They have only their own projections of what they think are the motivations of the women. There is a less pejorative (at least in their eyes) alternative. Writing regarding R. Eliezer Berkovits, R. Shalom Carmy states: "(his) moral ends derive from internal Jewish sources….dissatisfaction with mainstream Halakhah regarding women is rooted, **not in the pressures of contemporary egalitarianism, but in his judgment about biblical conceptions of justice**[my emphasis]."[xiv] The motive for semikhah can and from my experience should be seen as an expression of Masoretic values and the desire for maximal participation within Halacha.

The third error is denigrating egalitarianism as something that is against the Mesorah. The authors of the paper in fact state something quite egalitarian: "The Torah affirms the absolute equal value of men and women as individuals and as ovdei Hashem." This is not the view of the Talmud. The Mishnah (Horiyot 13:1) states: "A man takes precedence over a woman, in matters concerning the saving of life…a Cohen takes precedence over a Levi…." Clearly the lives are not of equal value in the eyes of the Talmud. R. Avraham Steinberg notes: "although strict Jewish law seems to require one to follow the order of precedencies cited in the Mishnah, the general practice and custom is otherwise."[xv] The authors of the paper have adopted modern egalitarianism in this instance and shunted to the side the values mentioned in the Mishnah. Obviously erasing all differences between the genders, including those that are Halakhically mandated, is against Halakhah and tradition. But if one stays within Halacha, is it against tradition? In fact our history, as documented above, is one of gradually erasing differences and/or eliminating previously mandated restrictions. Differences, or different restrictions, not because of specific Halacha but just for the sake of having differences, or based on now discredited beliefs regarding abilities, appears to be an ancient value, not a Traditional value.

Beliefs and psak

‘Modern values’ and Mesorah are not the only influences on Halachic decisions. The values one grows up with, modern or not, frequently have the most influence on what a person believes. It seems accurate to state that those who grow up Chassidic usually remain Chassidic, while those who grow up more Mitnagdish usually remain so. Obviously there are those who cross over, but growing up in a certain milieu is a reasonable indication of where one will end up. Similarly, those growing up in Zionist families and schools usually remain Zionists, while those growing up anti-Zionist usually remain anti-Zionists. It seems patently obvious that regarding these important issues and more, the study of mikra, Halakhah and precedent (what the authors of the OU paper describe as fundamental to one’s weltanschauung) are actually minor factors in a person’s weltanschauung. A video circulated last year showed boys at a summer camp demonstrating against a car carrying a mock Prime Minister Netanyahu[xvi]. I doubt that prior to that demonstration they had studied the sources of anti-Zionism in depth. Being anti-Zionist is how they were raised, and when they reach the Gemara on the three oaths and other sources, their upbringing will inform their evaluation of the arguments. If this were not so, one would expect large numbers of anti-Zionists and large numbers of Religious Zionists to cross over once they encountered the mikra, Halakhah and precedent in depth. But they do not. R. Wurzburger noted this as well. He wrote: “our attitude towards formal psak cannot be completely insulated from our attitude toward the world at large…if I were to ask a she’elah…I would get completely different answers from Rav Aaron Lichtenstein than from the Rosh Yeshiva of Hevron or other right-wing yeshivot…**exposure to various modern value systems obviously affects one’s way of responding to halakhic matters** [my emphasis].” I would add that being ingrained with pre-modern attitudes towards women and society also can affect one’s responses to halakhic matters.

A number of recent articles have highlighted the role existing beliefs play in opinions, and how these beliefs usually shape a person’s view of facts. For example, parents who believed that vaccines caused autism were given large amounts of material illustrating the falsehood of that belief, but the information had little to no influence on their opinions. If we translate this to the Halachic arena, it appears that pre-existing beliefs have significant impact on Halachic opinions and psak, regardless of the strength or weakness of the actual Halachic argument.

Impact of decisions

There are some issues where being more strict has little potential downside. Being more machmir on kitniyot for example, leads to dietary changes for some, but would not be expected to impact someone's life. It may be reasonable in such an instance to lean away from leniency given the minimal potential impact. On the other hand, the topic of women's roles in society and any limitations on them directly impacts fully 50% of the population and indirectly many more. Being more restrictive without appropriate justification, or out of the desire to avoid being wrong has a significant downside. What is frequently lost in the discussion of women's issues is the impact that each and every decision has on the women under consideration.

Taking into account pre-existing beliefs

Given all of the above, how can/should one come to a position on the issues? I think that most of the time there is no significant conflict of values. But, when there is a perceived conflict between ancient values and modern values, how can one decide which should be emphasized within the Mesorah? It is important for the advocates on all sides to try as best as possible to recognize and address their own potential biases. But ultimately, the quality and persuasiveness of the Halachic arguments should help resolve which values to emphasize. While the burden of proof for change is on those who advocate for the change, the argument of 'it is modern values and against Mesorah' has been shown to be invalid unless there is an illustration that it actually **is** against the Mesorah on a Halakhic basis. And the Halakhic arguments presented in the paper are surprisingly weak (see the next section for a detailed analysis) considering the importance of both the topic and the authors. Prof. Marc Shapiro, for example, wrote that most Orthodox rabbis would admit privately that there is nothing Halakhically problematic with ordination for women[xvii].

Conclusion: Timeless or Ancient?

The authors of the OU paper wrote: "a commitment to follow the ethos of the Torah, in addition to the letter of the law, requires faith, commitment, and a willingness to embrace timeless principles - even when counter-cultural and incompatible with prevailing societal values."

I think everyone committed to Orthodox Judaism agrees with this statement. The major issue is distinguishing between timeless values and ancient values. As

has been demonstrated, our Mesorah over time, consciously or unconsciously, has addressed the perceived conflict between ancient values and modern values. Certainly there are modern values that have been appropriately rejected. Frequently however, ancient values have been rejected or perhaps more accurately assigned a reduced role of importance. And the modern values have been the impetus for the re-evaluation. As discussed in the Part II, the Halakhic arguments, taken at face value, are in favor of ordination for women. The values of eliminating unnecessary restrictions, encouraging full expression of potential to serve the community, fairness, and others also point towards ordination. There are specific Halakhic restrictions in place governing the behavior of men and women. The question that needs to be answered is: What timeless principles (or values) are served by imposing restrictions on women that are not justified by a fair reading of the Halacha and the sources? Are they truly Timeless and justifiably dominant in our Mesorah, or just ancient? We will return to this topic in section III.

II Halakhic analysis

The authors of the OU paper make an argument that our Mesorah, from a value point of view, is against the ordination of women. Section I has refuted that claim and illustrated that: the relative weight of values within the Mesorah has changed over time, modern values are frequently the impetus for changing the balance of values within the Mesorah, the desire for ordination can be seen as an expression of Masoretic values, and even if we(baselessly) assign an egalitarian impulse to the desire for ordination, egalitarianism is valued in the Mesorah to the extent that the authors of the paper changed the valuation system found in the Mishnah to a more egalitarian one. From a 'value' perspective then, it can be cogently argued that Masoretic values would favor ordination and clerical roles for women, assuming the Halakhah was not clearly against it. So while the authors endeavor to enter the Halakhic discussion with a strong bias against ordination, this bias is based on an incorrect understanding of the history of Masoretic values.

The arguments pro and con the ordination and rabbinical roles for women are not simply differences of opinions, where one set of authorities take one position, and other authorities take a different position. The arguments against ordination

essentially state a category or restriction, and then draw conclusions from that category. But these arguments suffer from one or more of the following problems: they are based on wrong or at least unproven facts, the claimed conclusions do not follow logically from the premises, the Halachic reasoning is strained at best, the definitions of the categories or concepts lack specifics which allows the authors to escape in depth analysis, and there is great inconsistency in how the categories and restrictions are applied.

The authors present four arguments: the problem of serarah (authority), the issue of precedent, restrictions of semikhah, and modesty[xviii].

Serarah

The authors, quoting the Sifre[xix] and the Rambam, state that women are prohibited from positions of serarah. They state that serarah is "formal communal authority" but do not give any specifics or further definition. They then claim, without providing any documentation, that "rabbinical positions have been traditionally understood as paradigmatic of serarah[xx]", and conclude that these positions are restricted to men.

Before even beginning the analysis, it is important to note that one of the areas of imprecision is defining the term synagogue rabbi, or perhaps more accurately, the religious leader of a synagogue. I am not aware of a claim that being a rabbi or having ordination is a prerequisite for being the religious leader of a synagogue. The authors of the paper address both ordination and functioning as the religious leader of a synagogue. These are not Halakhically identical to each other. However, by failing to distinguish between the two, the authors are able to use potential arguments against one function to argue against the other one, when that argument clearly doesn't apply. They are using the ambiguity for their own advantage. In this case, the authors claim, without providing any support, that rabbinical positions are those of serarah. However, they don't clarify if this refers to holding the title of rabbi, receiving ordination (and there are many types and categories of ordination), leading a congregation (whatever that entails and however that is defined), answering halakhic questions, or simply teaching.

Addressing the specific argument, this point contains 2 claims and a conclusion. Both of the claims need to be true for the conclusion to be valid:

1. Women are prohibited from positions of serarah
2. Rabbinical positions are position of serarah
3. Conclusion: women are prohibited from occupying rabbinical positions.

R. Aryeh Frimer[xxi] documents many opinions that contradict the assumptions of the authors of the paper. For example, R. Ben Tzion Uzziel, former chief rabbi of Israel, noted that the Rambam's opinion with regard to halakhah in this regard is not routinely accepted, there are many Rishonim who disagree with the Rambam, and that the prohibition only applies to those appointed by the Sanhedrin. R. Moshe Feinstein[xxii] illustrates that Rashi, Tosafot, the Rosh, the Ran, the Ramban and possibly the Rashba all disagree with the Rambam. So there are many bases for concluding that women are indeed not prohibited from these sorts of positions.

Similarly, the definition of serarah needs to be examined. The authors define it as 'formal community authority'- and insist that rabbinical positions are those. It is telling and perhaps ironic to note that 7 of the greatest rabbinical authorities in the United States authored a position paper forbidding a certain action, and, as far as I know, there has not been a single person who changed their actions because of that position. There has not been, to my knowledge, a single woman who dropped out of rabbinical school because of the pronouncement. In fact, the only enforcement, if there will be any, will come from the non-rabbinical Orthodox Union.

R. Frimer documents the many authorities who note that positions of authority that are democratically elected(and synagogue rabbis are voted in by their boards, who in turn were voted on by the congregants, so it is a democratically controlled process) are not considered serarah. Furthermore, great authorities stated specifically that rabbinic positions are NOT necessarily positions of serarah. For example, the Rama (YD 245: 22) wrote: "someone who holds himself as the Rabbi of the town, even if he holds himself as some sort of serarah, cannot be removed from his position…and his sons inherit….". It is clear that being the Rabbi and holding serarah are two separate issues (and note that the

rabbinate is designated as life long and inherited). The Chatam Sofer(OH 12) takes note of this difference and emphasizes that the Rama is discussing positions of serarah and not of rabbinate(although he acknowledges that there are some positions that combine the two).[xxiii]

Perhaps the most problematic aspect of this prohibition of women from rabbinic positions is that of consistency. The Rambam prohibited women from positions of authority because they were similar to royal positions. Royal positions, according to the Rambam, were held lifelong, inherited by the children, and prohibited to women and converts. In years past there were many responsa written on whether a rabbinical position had to be passed down to the children. In some cases, it was ruled that the position was not one of serarah and therefore did not have to be inherited. The point being that the Rambam did not define a category of positions of authority whose sole characteristic is that they were prohibited only to women. The category had 4 characteristics. The lifelong and hereditary aspects seem to have fallen away at the same time as general society moved away from similar appointments [xxiv](perhaps another example of how 'modern values' are being incorporated into the Mesorah). R. Nachum Rabinovitch in fact wrote that the entire Maimonidean concept of kingship/serarah is inapplicable in this day and age.[xxv] Currently I am not aware of any positions in Modern Orthodoxy that are lifelong and inherited. The OU does not seem to have a blanket restriction of converts holding rabbinical positions[xxvi], and R. Schachter himself wrote that converts are allowed to receive semikhah, which is a rabbinical position. R. Moshe Feinstein, while allowing women to hold positions of serarah in matters of great need, was very certain in his prohibition of converts from positions of serarah[xxvii] In order to be a coherent position, the authors need to address all those who do not accept the Rambam's position(and indeed the Rambam's position is not codified in the Shulchan Aruch), define precisely what serarah is or isn't[xxviii], define exactly why a rabbinical position is one of serarah, and most importantly, address the tremendous inconsistencies in their position. As written, it appears that they are going far out of their way both to prohibit women from serarah(and they certainly don't appear to prohibit women from serving in other leadership positions in the community, both secular and religious [xxix]), and to define the rabbinate as one of serarah, all the while ignoring the wider implications and inconsistencies of their position

R Nati Helfgot perhaps summed up the issue best when he wrote:

"Other rabbinic scholars, however, have taken a much more limited reading of the Rambam and maintain that the definition of communal *serarah* (and thus the subsequent restriction) should be limited to those communal positions of

authority that truly mimic the kingship model. In this paradigm only positions that are imposed on the populace with some absolute powers would fall under the Rambam's categories of *serarah.* In this paradigm a rabbi of a synagogue who is hired by an election, and fired at the will of the congregation and board would clearly not fall into the category of some inappropriate position of authority even according to Maimonides. Other rabbinic scholars of note have also pointed to the concept of *kaballah,* of communal acceptance of a woman as obviating the restriction of the Rambam in the view of a number of rishonim. Many significant Modern-Orthodox poskim (though not all) have certainly taken that position over the last century on issues such as permitting women's suffrage and election to serve in high office or as the president of a shul or a member of a religious council. Indeed, to my knowledge, over the last decades a number of women have served in the position of president of their synagogues (a number affiliated with the Orthodox Union) without any formal objection.

Mori verabi, Rav Aharon Lichtenstein, in a conversation with former students currently serving in the rabbinate and Jewish education, recently (December, 2009) discussed this halakhic issue. He pointedly noted that it is clear that the Dati-Leumi/Modern-Orthodox community and its rabbinic elite have clearly come down in favor of a more narrow reading of the Rambam's restriction. He pointed to the fact that for the last two decades religious women have run as candidates of *Dati-Leumi* religious parties across the board, for Knesset, and some have served as members of parliament. In addition, a few have served as ministers in the coalition governments with the approval (despite an occasional rumble here and there) of the rabbinic leadership of those parties. These have included scholars such as R. Avraham Shapira zt"l, R. Mordechai Eliyahu (may he have a *refuah shelimah*), Rav Yaakov Ariel and others.

R. Lichtenstein stated that clearly a member of parliament and certainly a government minister is often involved in coercive legislation or votes on budgets involving tens of millions of shekels or issues of war and peace. This position is clearly more of a *serarah* than any shul rabbi or president. He thus felt that certainly in Israel, the Modern-Orthodox community has taken the position that the expansive reading of the Rambam, limiting women's roles, is not the normative ruling."[xxx]

Precedent

The next issue is that of precedent. This issue consists of a claim of fact- that the issue of ordination for women was considered and rejected in the past, and a

claim of Halacha- that the absence of women's ordination in the past is of great Halachic significance.

R. Jeffrey Fox[xxxi] discussed the Halachic reasoning in great detail. He points out that the claim directly contradicts the explicitly stated position in the Mishnah (Eduyot 2:2, Zevahim 12:4): "היאר וניא, וניאר אל and R. Fox also illustrates that the basis for the Halachic claim not supported by an unbiased reading of the Halachic sources.

But perhaps even more problematic is the factual claim. The authors write: "We find it implausible to say that the question of female ordination has never presented itself throughout the history of our Mesorah."

It would seem reasonable to expect that if a topic had been seriously considered and rejected on a communal level (in other words, not just one isolated person but the entire Jewish community), there would be some documentation of that. However, the authors fail to bring any documentation for their assumption. In fact, a comprehensive review of the entire topic of Semikhah[xxxii] states: "A most interesting question which has not been explicitly discussed anywhere, is whether a woman is eligible to obtain Semikhah." An argument from silence is not usually considered a strong argument. But in this case, the argument from silence is much stronger than the argument that semikhah for women was considered and rejected but absolutely no written trace of this is found, especially considering that tens of thousands of volumes of responsa have been written over the years and there is no sign of any discussion let alone rejection.

Semikhah

The authors state: "While contemporary *semikhah* differs from classic *semikhah* (as described in the Talmud) in many regards, it must, nevertheless, be viewed as an extension of the original institution of *semikhah*. Parallels between the current and original forms of semikhah therefore, are relevant and valid. Various sources indicate that the classic *semikhah* involved, and in fact may have centered on, designating individuals to serve as court judges. Since the majority halakhic view is that only men are eligible to be ordained as judges, even contemporary ordination would be restricted to men."

This claim consists of a number of parts, all of which have to be true in order for the conclusion to be true:

1. Women cannot be judges
2. Because women can't be judges, they were not eligible for classic semikhah
3. The restrictions on classic semikhah apply to current semikhah
4. Therefore women cannot receive current semikhah

There actually is another crucial but unstated and unaddressed claim:

1. Semikhah is needed to be the religious leader of a synagogue

Whether women can or cannot be judges and whether the restriction was extended to semikhah is a vitally important issue but deserves a separate in depth discussion.

The above point does not require discussion because it is very clear from the historical and Halakhic record that current semikhah is entirely unrelated to classic semikhah. Perhaps more importantly, it is also very clear that community religious leaders functioned in all the capacities of 'rabbis' without any formal semikhah.

The authors reference Shulchan Aruch YD 242[xxxiii]. This siman discusses the relationship between student and teacher. Some of the sections reference previous works which use the student/teacher relationship of classic semikhah to provide a basis for current student/teacher relationships. Since there is a Halakhically mandated relationship between students and teachers as mentioned in the Gemara, it is reasonable and necessary to establish the parameters of what that relationship should be. And, the only precedents for student/teacher relationships in Halakhah are those with respect to semikhah. However, it is an unfounded leap in logic to claim that the adoption of some aspects of the student/teacher relationships implies the adoption of all the restrictions and practices of classic Semikhah. Furthermore, they do not reference Section 14 which reads: "the semikhah that we practice at this time is so that people will know that he has achieved instruction (higia l'hora'a) and that he is instructing with the permission of the Rav who gave him semikhah. Therefore, if his Rav died, there is no need for semikhah. And so it is with a talmid chaver as it is stated elsewhere, in a place there is no need for permission, there is no need for semicha…….in any event, in these days, it(semikhah) is only the granting of permission."

The history of modern semikhah also illustrates that not only is there no connection between ancient and modern semikhah, but that for long periods of

time there were those who functioned as religious leaders and were recognized as such without semikhah.

Dr. Irving Agus (history professor at Yeshiva University) wrote[xxxiv]: "….we can see that there was no formal semikhah in the 13th century in Ashkenaz, and that the student did not receive permission to give hora'ah or to judge, and there was not given to him any special semikhah as a posek or even in the laws of what is forbidden and permitted." Professor Leah Bornstein quotes[xxxv] R. Yehuda Barziloni (from his book, "Sefer HaShtarot") that the semikhah given in the 12th century was: "… in remembrance of semikhah. That is to say, a secular practice…..given only for the purpose of encouraging the learners." R. Yitzchak Abravanel, on reaching Italy from Spain wrote regarding the semikhah that was being given in Italy: "I don't know where it comes from for them to allow this, perhaps they were jealous of the non-Jews that are made 'Doctor', and they are doing likewise."[xxxvi]

The **function** of semikhah in this day and age is so that the public know that someone is capable, and that his/her teacher has given him/her permission to rule. Importing the restrictions of classic semikhah appears to be a more modern invention.

In summary, even if one accepts that women are prohibited from receiving classic semikhah, the claim that women cannot receive contemporary semikhah is based on the now refuted claim that the prohibitions on classic semikhah apply to contemporary semikhah. Furthermore, the authors are again inconsistent. There were many conditions and restrictions on classic semikhah[xxxvii] . Yet it appears that the only condition that the authors have adopted from classic semikhah is the restriction on women, and none of the others.

Converts are also prohibited from receiving classic semikhah. However, in a discussion of the parameters of converts judging other converts[xxxviii], R. Herschel Schachter writes that according to some opinions: " the establishment of a judgment in beit din is an act of serarah on the defendant according to Tosafot(and not according to Rashi), because there is a difference between giving instruction in what is permitted and forbidden(hora'at issur v'heter) and the judgment(psak) of the court(bet din), because instructing permitted/forbidden(even treifot and mar'ot of blood) the judgment is not related to any specific mikra b'prat, only that the Chacham is only giving his opinion in halakhah ha-mufshetet. Which is not the case with beit din….which is an act of serarah."

Giving instruction in issur v'heter according to many is the essence of modern semikhah. R. Schachter, when discussing converts, states specifically that this is not serarah. Even giving judgment in court, according to some opinions, according to R. Schachter, is not serarah. This appears to be quite inconsistent with the OU paper's position on both serarah and semikhah, and provides yet another illustration of how it appears that some poskim define and apply basic halakhic concepts differently when women are involved.

Modesty

The final major halakhic argument is that of modesty. The authors write: "the sanctity of the synagogue demands a particularly enhanced level of modesty - as illustrated by the requirement of a *mechitzah*. This elevated demand for the separation of genders is incompatible with a woman presiding over a male quorum." The reference for this is R. Schachter's article 'B'inyanei Beit ha'kenesset u'kedushato'. Instead of reading the article as referenced[xxxix], I suggest reading the original[xl] which contains a final section (not found in the subsequent republication) which illustrates the disdain Rav Schachter has for those who disagree with him.

R. Schachter's argument is based on an Aggada-regarding a woman Kimchit, all of whose sons served as Cohen Gadol. When asked, she attributed this to the fact that she kept her hair covered at all times even in the house. Essentially, an Aggadah where a woman was rewarded[xli] for going beyond the letter of the law in hair covering is being used as proof that a woman cannot receive semikhah and/or serve as the religious leader and/or rabbi of a synagogue. The logical gulf is obvious, but some further analysis may be useful.

It is important to take into consideration the various types of tzniut- modesty. There is sexual modesty, which understands that certain areas of both men and women's bodies should be covered. There is also the 'hiding from the public' modesty that R. Schachter mandates[xlii]. Essentially R. Schachter states that all women in all circumstances are forbidden from appearing in public unless a man is not available to perform the task, or there are other mitigating circumstances. However, not only does the practice of the Modern Orthodox community not conform to this idea, it does not have to be seen as Halacha. Addressing a text mandating that women not stand out in public, Rav Yehuda Henkin writes:[xliii] " [these sources- in this case the text Oz v'Hadar Levushah by R. Yehoshua Falk] are as much about ideology and outlook as they are about Halachah. This ideology prohibits a woman from standing out and from being outstanding. She

must not act in a play, paint a mural, play an instrument or otherwise demonstrate special skills in front of men, lest she attract attention and her movements excite them(it is noted that the basis for the restrictions are perhaps somewhat different. Oz ve'hadar Levushah appears to be concerned solely with sexual excitement, while Rav Schachter claims that his concept goes beyond sexual excitement and is based on a fundamental demand by Halacha for privacy- but the result is the same).

Rav Henkin goes on to specifically state: "But I think no such issur exists….according to this ideology, the one area in which a woman should strive to excel is that of tzniut itself…..a woman's ultimate distinction is to be considered a tzanuah."

Kimchit's act was covering her hair, which in some situations is considered ervah. So it is an act of going above and beyond in sexual modesty.

There is a baseline of sexual tzniut for men and women, wherever they are. One would assume that synagogues with appropriate mechitzah's and properly dressed and acting men and women achieve that baseline. And, the other sources brought by R. Schachter emphasize that it is good to be stringent that the **baseline is maintained**. Just because a lack of tzniut seems to be a cause for the removal of the presence of the Shechinah, does not logically imply that more than mandatory tzniut will do more to bring the Shechinah. And if a woman covering more than necessary is good, then men covering more than necessary would be equally good, since they both have baseline obligations of covering certain areas. If men and women are appropriately dressed and on their respective side of the mechitzah during davening, it is hard to understand how a women 'presiding' over a male quorum is a problem of sexual tzniut. And, if having a non-clergy female give a drasha is not a problem, then having a female clergy give a drasha should also not be a problem.

It is equally difficult to understand why the issue of women presiding over davening is selected as emblematic of problems with modesty. There are many actually codified restrictions on men (SA EH 21) which could be enforced in the synagogue if more modesty was needed. In other words, even accepting the assumption that supranormal tzniut is needed in a synagogue, the authors have not explained why they selected having a women preside (whatever that is defined to be, and certainly it is a problem that can be avoided simply by appointing someone else to 'preside'- it does not have to be an intrinsic part of the rabbinic role- certainly shuls with multiple minyanim have minyanim where the rabbi does not 'preside') as being problematic.

R. Ben Tzion Uzziel identified and debunked what is perhaps the underlying assumption: "It is common sense that in any serious meeting and meaningful conversation there is no question of lack of modesty…and sitting in the proximity [of women] when involved in communal affairs, which is work of holiness, does not lead to lightheartedness. For all Israel are holy people, and her women are holy and are not to be suspect of breach of modesty and morality."[xliv]

Discussion

In science, the veracity of a theory is ascertained by how well it coheres with ideas of how things work, how well it explains known facts, and how well it predicts new findings. In the Gemara, consistency is greatly valued, and inconsistency is a reason to reject a position. In any disagreement regarding sources, some understandings of positions are clear, and some are forced. Similarly some conclusions are logical from the premises, and some are leaps of faith.

The authors of the OU paper presented 4 halakhic rationales. For the argument of serarah, they had to prove that women indeed were prohibited from those positions, that the positions under consideration were those of serarah, and that their use and application of the concept and definition of the positions were consistent. This paper has illustrated that the position that women are prohibited from serarah is far from universal, and, more importantly, it is very difficult to characterize the positions in question as those of serarah. And, the prohibition is being applied quite stringently in the case of women, but not in other similar situations such as those of converts.

Similarly, the argument of semikhah required proof that women were prohibited from receiving ancient semikhah, this prohibition still applied even though ancient semikhah is universally acknowledged to have ceased in the time of the geonim, and that the construct was coherent and consistent. We have shown that it is not clear that women were prohibited from receiving ancient semikhah, and more importantly, that even if there was a prohibition, there is no basis to the contention that it extends to modern semikhah. Furthermore, it appears very incoherent and inconsistent since the only characteristic among many of ancient semikhah being brought forward is the prohibition of women.

The argument from precedent required proof that indeed the possibility of semikhah for women was considered and rejected, and that this previous rejection is adequate precedent. We have shown that there is no evidence for the assumption, and that the halakhic methodology is not compelling.

The argument from modesty makes a huge logical jump from ”Kimchit was rewarded for covering all of her hair all the time” to “we should make sure we are modest in synagogue’ to ‘women can’t preside over services’ without proving the connection. The argument also ignored many other, more halakhic ways to improve modesty in the synagogue, if indeed it was necessary. Furthermore, presiding over services is not necessarily a key part of a rabbinic role, and disqualification from that would not at all imply disqualification from all the other rabbinic roles.

Perhaps the most distressing aspect of the teshuva is the lack of precision and clarity. There is no precise definition of serarah, there is no precise definition of semikhah. Furthermore, there are least four different categories that have been lumped together: formal semikhah for women, women giving hora’ah without formal semikhah, women holding the position of rabbinic leader of a synagogue, and a woman performing the functions of leader of the synagogue but without the formal title. These distinctions are important, because certain halakhic restrictions might apply to one category but not others. For example, halakhic restrictions on formal semikhah would not be applicable to the non-semikhah positions.

As a side issue, if the attempt to bar women from religious leadership is going to include the concept of Hora’ah, it needs to be defined. It should be clear that modern hora’ah can be considered very different from ancient hora’ah. As R. Lichtenstein wrote[xlv]: “Now, however, the posek’s personal status has been vitiated, and with it, the standing of his decisions. Now, he essentially serves as a reference guide, providing reliable information about what the tradition and its sources, properly understood and interpreted, state; but it is they, rather than he, that bind authoritatively.”

By lumping all the categories together, the OU panel was able to make it seem that Halachic objections to some of the categories apply to all of the categories, a position for which they do not provide any justifications.

They write: “For the reasons stated above we believe that a woman should not be appointed to serve in a clergy position. This restriction applies both to the

designation of a title for women that connotes the status of a clergy member, as well as to the appointment of women to perform clergy functions on a regular ongoing basis - even when not accompanied by a rabbinic type title."

They then go on to list: "officiating at religiously significant life-cycle events, (e.g. brit milah, baby naming, bar mitzvah bat mitzvah, weddings and funerals), the regular practice of delivering sermons from the pulpit during services, presiding over or "leading services" at a minyan and formally serving as the synagogue's primary religious mentor, teacher, and spiritual guide. While a synagogue rabbi performs myriad functions, it is these common functions most often performed by a rabbi that characterize his role as the synagogue's formal religious leader. The gamut of rabbinical responsibilities has evolved over time, adapting to the needs of each generation and locale. Nonetheless, the designated role of spiritual synagogue leader can be identified through the prevailing rabbinic duties."

They have established a new and as far as I know unprecedented Halachic category of 'things a synagogue rabbi does.' Doing them is not serarah, does not require semikhah, is not subject to the precedent argument(as least not as presented, and to make it would be even more specious than the one presented), and is not necessarily a problem of tzniut. On the basis of the arguments presented, there is absolutely no reason to restrict women from performing them. Yet, all are prohibited.

The bulk of the OU paper is not focused on Halacha but on tradition. It seems that the authors felt that female clergy violate the values of tradition. They obviously had the Rabbinic will to ban women clergy. And they constructed a Halachic way to ban women clergy. But their halakhic arguments are based on wrong or unproven facts, faulty logic, fuzzy definitions, inconsistent application of rules, and forced arguments.

III what does God want from us in terms of gender in the public square?

The authors of the OU paper discuss Halakha, but appear to give equal if not greater weight to what can be called 'meta-Halakhic' or overarching Halakhic issues. They present essentially two arguments: Mesorah(what we have been

doing has weight independent of any basis), and the idea that there is a specific Halakhic value, more than just technical restrictions, in gender restrictions in the public square. Section I addressed the Mesorah argument. There are three challenges facing the OU authors in making this second argument:

1. Articulating a coherent practical theory of gender in the public square- what is allowed, what isn't, and why(more details below)
2. Articulating the principles that undergird the practical theory- what exactly is the basis for this mandate?
3. Articulating whether restrictions on gender are in the category of a moral good, or more of a yoke of Heaven that demands obedience. In other words, is it our Halakhic obligation to increase restrictions, try to identify them without value judgements (as best as possible), or lessen them?

Is there a coherent theory for what is allowed and prohibited?

The first challenge may appear straightforward, but it is not. The authors of the OU paper write: "Gender differences have, historically, been particularly evident in the arena of public service. We believe that these distinctions are not merely a relic of times bygone; instead, they reflect a Torah ethos - a *Mesorah* - of different avenues and emphases by which men and women are to achieve identical goals - the service of G-d and the perpetuation of the Jewish people."

While the authors here use the term 'public service', the content of the paper illustrates that they do not oppose women in public service. They can be scholars, give classes, and appear in the public eye- without restriction as long as they are not considered clergy. What is problematic for their position is that the usual sources cited for restrictions on women are those that restrict women from the public square. The authors appear to be using those sources and tradition, not to restrict women from the public square, but to prohibit women from occupying positions of leadership.

For example, R. Schachter's concept of hiddenness requires women more than men to avoid being in public. A woman can only be in public if a man is not available to perform the duty. He applies this concept to everything, not just leadership positions and not just in the religious but in the secular realm as well. Another vocal opponent of progress for women, R. Moshe Meiselman, also restricted women from the public square, based not on halachah but on a Midrash[xlvi]. It should be noted that this Midrash is focused on tzniut, does not address leadership, and does not mandate any Halachic restrictions. Indeed, the

authors of the OU paper do not bring any specific evidence that the distinctions of bygone times are in fact a Torah ethos and certainly no evidence that they restrict women's leadership.

The phrase 'kol kevuda bat melech'(Tehillim 45:14) has been used as a source 'proving' that women should be private and out of the public square. It should be noted that the discussion stemming from this phrase is not about leadership, but the public square. R. Eli Reif[xlvii] illustrates that the use of this pasuk was NOT an imposition of restrictions, but a mechanism for women to choose, if they wished, not to violate societal norms. And while there are those who use it to forbid[xlviii], many modern poskim hold like R. Sha'ul Yisraeli[xlix] who wrote: "in our generation, religious women work in various offices, hospitals, kindergartens and schools, and yet no one objects." The point is that a concept that was used in the Gemara to allow women the option of avoiding the public is used by some to forbid them from the public.

This pasuk was used as a concept three times in the Talmud Bavli. An analysis of its use versus contemporary reality illustrates that it is a poor choice for those who want to use it as a source for binding restrictions in the modern age. The Gemara in Shevuot considers that women might not appear in court because it was not the way of honorable women to do so. The pasuk of 'kol kevuda' is used as a proof text. In modern times, Orthodox women work in courts, testify in courts, show up in court as lawyers, and even are judges. If the use of kol kevuda in this instance was meant as a restriction of women from courts, it is being globally ignored. Similarly the Gemara discusses whether Jewish (or Moabite) women did not go out to meet their counterparts, and the verse is used to posit that perhaps they did not go out due to modesty. Currently Orthodox women participate in welcoming committees, neighborhood events (with non-Jews), and again, it is hard to see this use as a basis for current restriction. The third use of the verse involves a woman in a strange city who asks that her husband support her financially so that she will not have to go out to work for strangers. The verse is used to support the contention that it is not honorable for a woman to have to go out and do so. The Gemara in this instance rejects the claim, and the conclusion in the Gemara is that the husband does not have to support his wife; she is obligated to support herself, despite the possible detriment to her honor. This discussion is in fact still employed in Jewish courts currently to deny some claims of alimony[l].

What hopefully is clear is that it is not factually or logically compelling to use the concept of 'kol kevuda bat melech' as developed in the gemara as the basis for some sort of restriction or mandate for modern private behavior. If the restriction

doesn't apply in the case of the original usage, it is hard to posit that it applies to any extended usages. And even if we accept extensions of its usage to prohibit public appearances, it still does not impact on leadership.

Another potential source for restricting women from the public is the curses of Eve. The Gemara in Eruvin[li] notes that one of the curses of Eve is that she is imprisoned. R. Reif posits that the Rambam was referencing this when he stated that despite restricting women from going out more than a few times a month, she should not be a prisoner in her home. However, there is no mandate to enforce a curse. As R. Herschel Schachter wrote (in reference to Zionism): " Surely Judaism does not forbid the attempt to avoid or curtail a punishment from God."[lii]

Bereshit 1:28 and the attendant Midrash is a frequently cited source for gender roles. This source impacts both on the practice and the theoretical underpinnings. In Bereshit 1:28, God blesses the man and woman that he had just created and tells them to have dominion over the world. It would appear from the pshat that both genders are obligated in conquering, and that is one opinion in the Midrash. However, another opinion in Bereshit Rabba(8:12)(utilizing a difference in kri/ktiv) states that instead of the woman being commanded to conquer the world, the man is commanded to capture his wife so that she does not go out to the market, because all those who go out to the market in the end will go astray. The proof provided is the incident of Dina, who the Torah tells us 'went out.' The Midrash therefore presents two options- women have the same obligation as men in conquering the world or, women do not have the same obligation as the men, and in fact are to be kept from the public square, by force if necessary. The irony in the case of Dina, aside from the victim blaming, is that the problematic area is not the religious public square, but the secular public square.

This distinction between the secular public square and the religious sphere deserves further analysis. Most of the usually quoted mandates for modest behavior appear to apply to the public square in general, not specifically to the religious square. We have already pointed out that the mandates for modest behavior do not prohibit leadership any more than any other public activity. The community has even embraced Jewish judges in the secular court system. This is significant because the same Rambam, who prohibits women from serarah, also prohibits women from serving as judges in non-Jewish courts[liii]. Yet, as far as I am aware, there is no opposition or opprobrium.

There also does not appear to be a Halakhic basis for prohibiting religious leadership more than secular leadership. R. Aryeh Klapper pointed out[liv]: “One might suggest that the prohibition (of serarah) applies specifically to positions of religious leadership. But I can find no basis for this suggestion in the Rambam or any other Rishon…..”

The reality of Modern Orthodox society is that women occupy public positions and positions of leadership in the secular sphere, without a peep of protest from Modern Orthodox religious authorities. They occupy public positions in the religious community without significant protest. Yet, sources that apply most specifically to secular public roles or even just appearing in the secular public square are being employed to prohibit women from religious leadership roles. The gap in logic and consistency is clear.

As noted in part II, religious leaders in Israel have noted the inconsistency in prohibiting religious participation while encouraging secular participation. Perhaps the overlap of religious and secular in Israel has made it clearer that there is no Halakhic or practical distinction between secular and religious leadership roles. And, that there is no distinction between the secular and religious public square. While some may still oppose ordination for women, more and more authorities in Israel have recognized that prohibiting women from leadership roles in the religious community while embracing those roles in the secular community is a logically untenable position. Unfortunately many in the United States have yet to see the schizophrenic nature of the position.

Those in favor of ordination for women can formulate a logically coherent position: Certainly there are Halakhically mandated differences between men and women. However, many of the prohibitions codified in the past, such as the Rambam’s prohibition on going out of the house more than a few times a month, are culturally based, and not universally mandated. Yes there is a mandate for all to act in a modest way, and there are Halakhic differences between men and women, but that does not prevent men or women from being in the public or acting in leadership roles.

Those opposed to ordination for women seem to have one of two options. They can attempt to bolster their case that from a strictly Halakhic point of view it is prohibited. As illustrated in part II, this appears to be a quite difficult task. The other option is to make the case that extra-Halakhic restrictions on women are desirable and in fact mandatory. The above discussion has illustrated how the use of the usual concepts to restrict women from leadership positions is entirely

inconsistent with their usual understanding and inconsistent with Modern Orthodox practice.

Perhaps the underlying question behind this and similar discussions is: What is the ideal? Do the steps forward that women have made in being in public, having jobs outside the home, learning and teaching Torah, being able to vote etc., are these moving towards an ideal? Or are they unfortunate necessary concessions to the practicality of life?

What is the theoretical basis for a theory of restriction?

In addition to a practical theory that explains what is prohibited and what is not, it is necessary to explain the basis for those restrictions. The authors of the OU paper write about a 'Halakhic ethos' and employ that ethos as part of their argument against ordination and other roles. They also take note of 'historical differences' between genders. But those in favor of maximally restricting roles for women need to take the facts into account.

Some of the facts are these:

1. The Gemara, midrash, and many other sources in the Mesorah contain many disparaging comments regarding women[lv]. Do the opponents of ordination agree with these opinions? Are they the basis for the 'historical differences'? If they don't agree with the opinions, do any restrictions that flow from them change?
2. The Gemara and older sources were written in a pre-modern milieu where women were, completely unrelated to any religious prohibition, generally prohibited from leadership and from the public square. Did that cultural milieu impact on the 'historical differences'? Now that the cultural milieu is different, how does that affect Halakhic or extra-Halakhic restrictions?
3. Modern Orthodox women do not appear to be restricted from secular leadership or from the secular public square, as noted in the first discussion. Are they in violation of the 'Halakhic ethos'?

Furthermore, what the authors state regarding the timeless nature of gender roles could have been and in fact in some cases was written many times in the last few hundred years[lvi]- in opposition to women working outside the home, women voting, women holding public positions, women learning Torah, and many more. And the argument against women performing the particular activity was

eventually rejected in many cases. So, in the absence of a supporting Halakhic mandate, simply pointing out a history of gender differences, without addressing the milieu of where they started and the history of how many of them have gone by the wayside, is not a persuasive argument.

As noted above, the Midrash Rabba on Bereshit presented two stark alternatives: women have the same obligation as men in conquering the world, or, women do not have an obligation to conquer the world, and in addition, men are obligated to keep their wives inside. Certainly it is possible to believe in the second option, and there are Orthodox communities who do so and enforce it maximally. However, the practice of the Modern Orthodox community is consistent with the first- women have the same obligation to conquer. If the OU panel is basing part of their opposition on this second world view, they should make it abundantly clear what their fundamental view actually is. The community can then decide if they wish to accept that fundamental view, or look to poskim whose views are more in consonance with their practice and beliefs. Ultimately, if an argument is going to be made that there is a theoretical basis for restrictions on women beyond the specific Halakhah, it is necessary to articulate the theory in a systematic and coherent fashion. This, I think, so far is an unmet challenge.

What does God want?

The authors reference two ‘meta’ concepts- “Derakheha darkhei noam vekhol netivoteha shalom” and “v’asita hayashar vehatov”. We are commanded to do what is good and what is right. Is it good to look for restrictions on women, converts, differently abled, and others? Is it a good to take a pasuk such as ‘kol kevuda’ or a concept such as ‘tzniut’ and manufacture restrictions? As noted above, neither R. Schachter nor R. Meiselman were able to find a Halakhic source for their restrictions, and need to import Halacha from Midrashim or creatively[lvii] re-interpret the concept of ‘v’halachta b’drechav’ in order to find a basis for the restrictions that they mandate. In fact, in reviewing R. Getzel Ellinson’s three volumes on mitvzot regarding women[lviii], I was not able to find any specific restriction on women in leadership nor appearing in public. There are, to be sure, restrictions related to sexual issues (modesty, yichud, etc) or the relationship between husband and wife, which also, incidentally, apply at least in part to men as well. But applying them to appearing in public and leadership is taking them completely out of context. Is it good in God’s eyes to do this?

In discussing whether a convert can be a Rosh Yeshiva, R. Moshe Feinstein wrote "However, in practice you should know that that the mitzvah of "and you shall love the ger" requires us to bring them close and to be lenient regarding all these things. Therefore, after great thought it appears that we need not consider such appointments in our time like appointments of serarah…."[lix] Similarly, R. Feinstein was concerned regarding the deaf/mute. Why are we not similarly concerned regarding women? The Torah mandates that there is one law that applies equally to the convert as well as to the native born. The usual understanding has been that the convert might suffer discrimination. Now, it appears the reverse is true. The authors of the OU paper do not seem to have a problem with converts in leadership, but appear to be going out of their way to find arguments against women in leadership- not only for their own specific sphere, but for all of Orthodoxy. They do not appear to be willing to even acknowledge that those who disagree have a legitimate opinion. Do they think that imposing restrictions on women is doing the good and right?

For the history of Halakha, poskim, all of them men, have been considering the status and place of women in public and leadership. Even prior to considering the specific Halakhic issues, they have, consciously or not, brought their pre-existing beliefs with them. And their beliefs have colored their evaluation of the Halakhic arguments. Obviously there are Halakhic parameters that cannot be breached. But within those parameters, similar to Rav Moshe and the convert, there are situations where the beliefs mandate trying to find a way to allow an action. My guess is that most if not everyone would think that finding a way for a differently abled person to participate in davening, for a deaf/mute to have an aliyyah, etc. if achievable within the system, is desirable. As R. Moshe illustrated, and the OU authors specifically state, there are specific Halakhic arguments, and there are also more overarching Halakhic values that can influence the posek to lean one way or the other, obviously within the Halakhic system.

Some have used the overarching value system to sideline the specific Halachic analysis. For example, R. Herschel Schachter, by labelling any request for changes in the status of women as heresy[lx], barely needs any other rationale to oppose changes. The authors here use Mesorah and tzniut to influence the Halakhic balance. This is not to claim that heresy, Mesorah and tzniut don't have Halakhic weight. But they are the Meta issues that have not been adequately addressed.

As an example, there is a very cogent(and as demonstrated, much more compelling) technical Halakhic argument that can be made: Rabbinic positions are not serarah and even if they are, we do not have to follow the position of the

Rambam; aside from the name, there is no connection between ancient semicha and modern semicha; there is no recorded discussion of ordination for women and therefore there is no precedent against it; and appropriately dressed and acting men and women are not a violation of any issues of tzniut. So the question that needs to be addressed is: What are the negative consequences of ordaining women that the authors are so concerned about? Is not eliminating non-mandated restrictions, similar to the other groups, something that should be considered laudatory and 'good'? Should we hunt for new restrictions because restricting women from the public or leadership as much as possible is a Halakhic value? I think it is clear from the practice of the Modern Orthodox community in secular Public Square, and from the strides that have been made regarding the differently abled in the religious sphere, that we embrace the idea that minimizing restrictions is a Halakhic good. So why has that not been extended to the Modern Orthodoxy religious sphere with regard to women?

Some poskim write about motivations- that women are motivated by 'non-kosher' desires to be just like men or to tear down Halakha. It is somewhat ironic that those who demand that women be excluded from decision making also assume to know exactly what women are thinking and their motivations. The situation could hardly be less fair, when those arrogating to themselves the right to decide refuse to even take steps to ascertain actual facts. The use of motivation also allows poskim to skew the Halakhic calculation and/or avoid the Halachic discussion.

Consider a male Kohein who falls in love with a woman, and then discovers she is a divorcee. One can claim that the Kohein's desire to marry the woman is a desire to flout Halacha, he is a sinner, and the case is therefore closed. One could also admire the love between two human beings while also noting the restriction on a Kohein marrying a divorcee. In that case, one could examine all the facts and laws of the case and see if there was a Halakhically valid way to allow it- knowing that in some situations there might be, and in some situations the answer will be no. But the no, in that case, is a no of sorrow and submission- submitting to the yoke of Heaven, while at the same time acknowledging the sorrow of the human beings whose love for each other will remain unfulfilled. The comparison is actually not very good because while the Halakha regarding the restrictions on the Kohein are relatively clear, well sourced, and unambiguous, those restricting women from the public square, as discussed, are not. But the point is that seeing the situation from the couple's point of view, being sympathetic, and trying to find a solution that will work for them seems like a logical and reasonable approach- despite the specific Halakhic proscriptions on the books. On the other hand, many and perhaps most of those opposed to women in public or leadership, do not give the women the same sympathetic

hearing, and seem predisposed to say no and close the books.[lxi] The question that they need to answer is: Is this the path that reflects the good and the right? Is that the way of pleasantness? The OU paper referenced the use of 'deracheha darchei noam' in two places; in one it is used to try to make sure a woman is not denigrated, and in the other, to make sure that we are not obligated to use a thorny branch for ritual purposes. I think an honest appraisal of the meaning of these concepts, and how they have been used for other groups, leads to the conclusion that minimizing restrictions, as much as Halakhically possible, is the way of pleasantness. Maximizing restrictions is oppression.

Conclusion

The arguments against ordination for women in the OU paper were: Mesorah, Halakhah, and Halakhic ethos. I think that I have adequately demonstrated that our Mesorah recognizes the contribution of modern values- and there is no reason for this case to be an exception. The Halakhic arguments against ordination have been addressed in detail, and a more compelling argument in favor of ordination was made. In the third section, I hope that I have raised to consciousness a perhaps under discussed topic: What is the ideal? Does God want us to have more or less restrictions on women? What is "the good and right" with regard to this issue? The answer, at least for the Modern Orthodox, is less restriction.

There is a cartoon where Bugs Bunny draws a line and dares Yosemite Sam to cross it[lxii]. Yosemite Sam crosses it, and Bugs draws a new one. As each line is crossed, a new one is made. Ultimately Bugs draws a line at the edge of a cliff, and Sam falls off the cliff. The progress that women have made over the years is similar in some ways. Poskim have stated that women were prohibited from a certain action, making it seem that it was the line at the top of the cliff. But then women did it, and it was not the cliff. Women moved into the public job market, voted, held leadership positions in the secular world, learned Gemara, taught Shiurim, etc. and I think that the Modern Orthodox world as a whole would agree that we have benefited from crossing all these lines. And in retrospect they shouldn't have been lines to begin with. Ordination for women is just another line being portrayed by some as a cliff. But it is a non-existent cliff, and it should not even be a line. That is not to say that there are Halakhic lines that cannot be crossed. But as noted in section 2, there is no Halakhic line here.

For some, the cliff model represents their approach to women's issues in Halakha. There is a safe area, and movement in a certain direction invokes possible danger. They are concerned about a 'slippery slope' and getting 'too close' to the edge. What they may fail to realize is that there is Halakhic danger (certainly of a different sort) in all directions. Prohibiting that which is allowed is also problematic. Is it appropriate to place restrictions on 50% of the population which are not specifically Halakhically mandated? Perhaps the better analogy is the mountain path with cliffs on both sides- finding the proper way forward while balancing the various Halakhic and Masoretic arguments- keeping in mind the effect each and every decision and pronouncement has on the people involved and the entire community. There are Halakhic cliffs in pretty much all areas of life. And we need to be cognizant of that. But the knowledge that there is a cliff somewhere should not keep us doing what we know is right, good, and Halakhically appropriate. The authors of the OU paper may feel that this issue represents the cliff. I think that this paper has adequately refuted that view. I hope that those who disagree with what I have written will address the points and issues identified in this paper so that the discussion can focus on Halakhah, facts, logic, and consistency, rather than devolve into competing claims of authority. And may all our disputes be for the sake of Heaven and for the sake of all of Klal Yisrael, women and men.

This paper has been written in memory of Batsheva Chaya bat Noam Yigal v'Rina. Batsheva was a proud Orthodox Feminist who never shied away from making the point she knew was right, no matter what authority she faced. I hope this paper is an adequate tribute to her.

I am grateful to those who reviewed and provided crucial feedback and comments. I am also grateful to those with whom I have discussed these ideas and whose responses assisted me in making better arguments. Full responsibility for the content is mine alone. Translations from the Hebrew are mine unless otherwise noted

[i] The paper can be found here: https://www.ou.org/assets/Responses-of-Rabbinic-Panel.pdf As will be discussed later, the OU paper sometimes conflates the two issues. For example, taking arguments against ordination and using them against women serving in clergy functions. This paper addresses the arguments that the OU paper presents, but focuses more on the issue of ordination. This is primarily because once it is shown that ordination of women is not problematic, it is difficult to impossible to argue against women serving as clergy.

[ii] The term 'values' is used in the paper since it is term usually used in popular discourse. It was pointed out to me that the more accurate term would be 'principles'. 'Value' usually implies that the concept under discussion is subjective, whereas a principle has intrinsic importance.

[iii] There are other stated facts in the OU paper that require discussion but are beyond the scope of this paper. For example, one of the points emphasized in the OU paper is the issue of women as ritual slaughterers (shochtim). Some authorities such as R. Jacob Landau and R. Moshe Isserles wrote that since women did not do it, there was a custom for women not to do so. But that was factually erroneous. "Female ritual slaughterers were to be found in most of the Jewish Diasporas…In Renaissance Italy, the phenomenon of shohatot was very common." Another source also documents that female shochtim were found in areas of Italy where they adequately educated. See Grossman, Avraham in "Pious and Rebellious: Jewish Women in Medieval Europe" Brandeis University Press, Waltham 2004. P 191. For more background see the entire chapter on women in religious life. See also Limmud Torah Atzel yehudei Italia b'tekufat Ha Renessance p 123. R. Brody and Broyde in their discussion of the topic also reject the conclusions based on the argument from ritual slaughterers(see reference note 18)

[iv] My wife is a student at Yeshivat Maharat

[v] Available here: http://www.yutorah.org/lectures/lecture.cfm/798326/rabbi-gamliel-shmalo/orthodox-approaches-to-biblical-slavery/

[vi] See for example “the Disabled, the Kohanim, and Us’ by Rav Uri Cohen, parashat Emor 5772 available here: https://harova.org/tora/view.asp?id=1548

[vii] See here: http://jbuff.com/w020713.pdf

[viii] Supra p. 19

[ix] http://www.thelehrhaus.com/timely-thoughts/2017/2/21/on-the-lomdus-of-the-ou-responsum

[x] ‘A Consideration of Synthesis from a Torah Point of View” in Leaves of Faith Vol. 1 Chap 4 p94 (Ktav: New Jersey) 1994

[xi]http://www.edah.org/backend/journalarticle/rabinovitch3_1.pdf

[xii] Wurzburger, Walter S. “Confronting the Challenge of the Values of Modernity” The Torah u’Madda Journal available here: download.yutorah.org/TUJ/TU1_Wurtzburger.pdf I strongly encourage everyone to read and digest this paper.

[xiii] Brill, Alan”A tiny but articulate minority” in Tradition. Available here: http://traditionarchive.org/news/_pdfs/50-84%20Brill.pdf

[xiv] Carmy, Shalom “Eliezer Berkovits’s challenge to contemporary Orthodoxy” The Torah u’Madda journal 12/2004. Pp. 192-207. A systematic response to R. Carmy’s critique is beyond the scope of this paper. However, some of the points made here acknowledging the historical mechanisms of change in the Mesorah and the potential lack of consistency of positions may answer some of the objections. In other words, it is an objective fact that the Mesorah up to now, consciously or unconsciously has taken into account the values of modern man. Perhaps the question now is how the process should work when we are remarkable self-conscious about it, so that a ‘natural evolution’ may not be possible.

[xv] Steinberg, Avraham, Encyclopedia of Jewish Medical Ethics. Vol. III p 852 (Feldheim 2003 Jerusalem). See also here: http://traditionarchive.org/news/_pdfs/0048-0068.pdf I am indebted to R.

Zivitovsky for pointing out this sources

[xvi] See here: http://www.jta.org/2016/08/24/news-opinion/united-states/anti-zionist-hasidic-children-pelt-eggs-at-mock-netanyahu-car-in-anti-israel-protest

[xvii] For example see here: http://seforim.blogspot.com/2012/03/answers-to-quiz-questions-and-other.html#_ftn1 (note the multitude of sources negating the claim that women cannot provide 'hora'ah'). It is specifically stated in this post: http://seforim.blogspot.com/2013/05/partnership-minyanim-and-more.html

[xviii] Interestingly, these four arguments are the same ones that are included in an excellent paper by R. Shlomo Brody and R. Michael Broyde which was first presented in limited form to the RCA in 2010 and subsequently published in the Journal Hakirah- available here: http://www.hakirah.org/Vol%2011%20Broyde.pdf
The paper is educational and not polemical. The conclusion of the Halakhic section is: "We believe that the technical halakhic questions regarding women rabbis remain debatable, but that ultimately a reasonable case can be made that it is not forbidden to issue qualified women semikhah and let them perform many rabbinic functions. Yet this does not necessarily make it appropriate or advisable in the current context." They also specifically reject the argument from shechitta that is emphasized in the OU paper. The ultimate conclusion of R's Broyde and Brody is that not enough great rabbis have signed on and that the supporters of women's ordination should slow the pace. In response, I am not sure how to to 'rate' the greatness of rabbis, but it is hard for anyone objective to dispute the credentials of those who currently are supporting the ordination of women both in the US and in Israel. Furthermore, the opposition, rather than, as suggested by the article, allow for "unity without uniformity, diversity without divisiveness", has gone out of its way to try to drive the supporters of ordination out of the Orthodox tent.

[xix] The standard editions of the Sifre actually do not contain any references to restrictions on women from positions of authority, only from kingship. However, others do. See discussion here: http://text.rcarabbis.org/women-in-communal-leadership-positions-shul-presidents-by-aryeh-frimer/

[xx] At the outset, the claim of connection between the Rabbinate and serarah is dispelled by the Ramban (on Numbers 16:16)- Moshe states (regarding Korach) "I did not take a single one of their donkeys". Ramban writes that Moshe says to

God: “what serarah did I lord over them? I never took even a single donkey from them for my own use, the way kings and lords do.” So when Moshe Rabbenu, the paradigmatic Rabbi, leader and teacher of Israel, taught, judged and led the people, it was not considered serarah. Serarah, according to the Ramban, is the power to arbitrarily take someone’s donkey and they would have no recourse.

[xxi] http://text.rcarabbis.org/women-in-communal-leadership-positions-shul-presidents-by-aryeh-frimer/ and here: http://www.daat.ac.il/daat/mishpach/maamad/nashim-2.htm

[xxii] Iggrot Moshe YD 4:44 and 4:45. I am not claiming that R. Feinstein would support ordination for women. However, his Halakhic analysis illustrates that there are many authorities who do not agree with the Rambam, and that he in fact was of the opinion that in cases of ‘great need’, one need not follow the Rambam’s position.

[xxiii] There is discussion as to whether in the next teshuva, written later, he changed his mind. However, what is clear is that a determination of serarah means that the position is inherited.

[xxiv] For examples of positions mandating that rabbinical positions need to be passed on generation to generation, see “Yerushat Mishpat” pp 491. The discussion there includes the positions that the Crown of Torah is available to all who are adequately learned, and that the inheritance aspect was grafted on due to the needs of a certain time..

[xxv] See R. Nachum Rabinovitch- Misilot Bilvovam page 436. R Rabinovitch specifically states that we currently have only leaders appointed for specific periods of time, and there is no problem with appointing women as leaders, judges, and religious judges (shoftim and dayanim).

[xxvi] I am not aware that the OU or any other Modern Orthodox institution forbids converts from holding rabbinical positions.

[xxvii] Iggrot Moshe YD 2:26

[xxviii] Definitions of serarah do exist. For example, see the teshuvot or R. Moshe Feinstein referenced earlier and Alon Ha Mishpat- piskei dinim gilyon 25-33, 2010

page 2. Serarah there is defined as: “a position where there is the power to force people to do something against their will, or a position that is honored in the eyes of the community. Examples from the poskim include- the rabbi of the synagogue, a judge, chazzan, gabbai, a physician appointed to head a department at a hospital, and a Rav giving hechsher. There are those who include the head of a yeshiva and even a maggid shiur.” Clearly there is a wide range of what can be included in the category. The issue is that if women are being prohibited from semikhah and/or being synagogue rabbis because of serarah, it is necessary to give the exact definition of serarah in use, explain why or why not women in other similar positions of leadership do or do not fall into that category, and why converts, who are under a more severe prohibition than women, are allowed to serve.

[xxix] Positions of communal authority would of course include even those constituted of women only. So the leader of an all-girls choir could be a position of communal authority, the head of a chessed foundation, the owner of a store who can fire employees, etc. The potential application of their concept is quite vast, but they seem to focus only on preventing women in religious authority, when serarah, as they define it, is communal authority- after all, the kingship was not a solely religious authority.

[xxx] From here: http://text.rcarabbis.org/women-communal-leadership-and-modern-orthodoxy-by-nathaniel-helfgot/ R. Helfgot also notes the inconsistency of those who insist on a restrictive reading of the Rambam but do not apply it everywhere it is germane.

[xxxi] http://www.thelehrhaus.com/timely-thoughts/2017/2/22/rabbi-soloveitchiks-position-on-women-as-shohatot-and-the-development-of-customs-of-absten...

[xxxii] Newman, J Semikhah [Ordination]: A study of its origin, history and function in Rabbinic Literature. Manchester University Press: Manchester 1950. Page 99

[xxxiii] They also reference the Aruch Hashulchan YD 242:29. It is not clear to me how the plain reading of that section mandates that the restrictions of ancient semicha apply to current semicha. In fact considering all of YD 242 and the referenced sections of CM 1, it seems clear that the Aruch Hashulchan feels that semicha is, in his own words, ‘netilat reshut b’alma’- simply the granting of permission. Furthermore, the issue of semicha is not brought up in the

corresponding sections of the Shulchan Aruch, only the Remah.

[xxxiv] Agus, Irving “Responsa of the Tosaphists” talpioth, New York 1954. P. 28.

[xxxv] Bornstein, Leah “The structure and spiritual leadership and courts of the Jews in the Ottoman empire in the 16th and 17th century.” January 1992.

[xxxvi] See Rabbi Yitzchak Abravanel “Nachalat Avot” and the reference to this quote and the attendant discussion in the paper by Brody and Broyde referenced above.

[xxxvii] See Newman J Ordination. Chapter 5 p82.

[xxxviii] Schachter, R. Tzvi ‘b’din ger dan et chavero’ in Kol Tzvi 4, 2002

[xxxix] See *Eretz Ha-Tzvi* (Rav H. Schachter) 12:11-12

[xl] Or Hamizrach vol 34 n. 1-2 September 1985 pp 54-67

[xli] It is not clear that the Chachamim agreed that it was a reward or that there was a cause and effect relationship. For all the sons to serve as Cohen Gadol, they all would have had to die and/or become impure so that another would be able to serve in their stead. Furthermore, The Aggada regarding Kimchit is from the Talmud Yerushalmi. A similar aggadah is found in the Talmud Bavli where Chazal seem to dismiss the importance of Kimchit’s hair covering.

[xlii] In the next section R. Schachter describes his approach to tzniut in general which I have addressed in part previously- see here: http://jewishweek.timesofisrael.com/why-would-you-ask-rabbi-schachter/ .

[xliii]Henkin, Yehuda “Understanding Tzniut” Urim p70

[xliv] Piskei Uzziel 44. Quoted in R. Daniel Sperber “On Women in Rabbinic Leadership Positions” Meorot 8 Tishrei 5771 2010

[xlv] Lichtenstein, R. Aharon. “Legitimization of Modernity: Classical and Contemporary” in Leaves of Faith vol 2. P 293 KTAV Jersey City 2004

[xlvi] Bereshit Rabba 18:2. The Midrash discusses how the woman was created from a rib since it was an area of hiddenness (tzniut). R. Meiselman fails to acknowledge the remainder of the Midrash. Various other anatomical parts were considered and discounted due to possible negative effects. The remainder of the Midrash then states that all those negative effects happened anyway. It is not very complementary of women.

[xlvii] Kol Kevuda bat Melech Penima – l’vracha v’lo l’kellala available here: http://ybm.org.il/lesson?lesson=2900&format=H

[xlviii] See discussion in R. Aryeh and Dov Frimer on Women Tefilla Groups *Tradition*, 32:2, pp. 5-118 (Winter 1998).specifically footnotes 202-209. Available here: http://www.daat.ac.il/daat/english/tfila/frimmer1.htm

[xlix] See note above footnote 208

[l] For example see Piskei Din she batei ha’din Ha’rabbanim B’Yisrael volume 14:8 p. 238. The argument of ‘kol kevuda’ was considered and rejected in deciding whether a woman could avoid working and claim support from her husband. Interestingly, the psak din states that the husband can force her to do work that involves ‘hora’ah or other duties that it is customary for women to perform. And even if she wants to refrain from working these types of customary work because she is very private(tzanua), the husband can force her to work.

[li] 100a see here for a more detailed discussion as well as the 2 other sources in Midrash where they are listed with some differences: http://jewishbible.blogspot.com/2005/10/ten-curses-of-eve-unpublishable.html

[lii] R. Herschel Schachter, The mitzvah of Yishuv Eretz Yisrael, Journal of Halacha and Contemporary Society, 1984, p. 29

[liii] 44 Rambam hilchot melachim 9: 14 “v’lo tadun Isha lahem” This is brought l’halacha by modern poskim, for example see: R Yitzchok Zylberstein Chashukei Chemed on Avoda Zara p. 44

[liv] Can Women Receive a Heter Hora'ah? Chukim, Mishpatim and Womanhood(part 2) on the RCA blog available here: http://text.rcarabbis.org/can-women-receive-a-heter-horaah-chukim-mishpatim-and-womanhood-part-2-by-aryeh-klapper/

[lv]See for example The first chapter of R. Eliezer Berkovits "Jewish Women in TIme and Torah" Ktav: Hoboken 1990.

[lvi] And indeed they were. See the responsa from R. Kook and R. Uzziel regarding women voting here: http://www.edah.org/backend/coldfusion/search/document.cfm?title=Two%20Public%20Le

[lvii] Since there is no specific stated mitzvah prohibiting women from being in public, R. Schachter bases his position on 'v'halachta b'dravhav'- one should imitate God. In the Gemara, Sefer Hachinuch, and Rambam's sefer haMitzvot, the obligation is manifested in positive commandments of lovingkindness between human beings. However, R. Schachter attaches the mandate to imitate God's hiddeness to this mitzvah- something not mentioned in the above sources. He then applies it to many situations, including forbidding a woman to read a ketubah at a wedding. Ironically, the Gemara specifically commends those that gladden the bride and the groom, with a midrash stating that God himself did so at the 'wedding' of Adam and Eve. So the obligation of imitating God would seem to mandate that when the bride and groom ask someone to read the ketubah, they should do so- thus fulfilling the usual understanding of Imitatio Dei consistent with the sources. Instead, R. Schachter uses the same obligation in a way not in keeping with the usual understanding to forbid gladdening the bride and groom in this manner.

[lviii] There are certainly many laws pertaining to women, and relationships between men and women. However, they are all in the category of sexual modesty(dress, prayer, yichud, etc.) or relations between husband and wife.

[lix] Iggrot Moshe YD 4:26

[lx] See the seminal paper by R. Adam Fertziger " Feminism and Heresy, the Construction of Jewish Meta-narrative" available here: http://www.bjpa.org/Publications/downloadFile.cfm?FileID=4705. R. Schachter states that the desires by women for more participation is a reflection of

saduccean and/or early Christian beliefs. Ironically, perhaps the most specific statement restricting women from positions of authority found from the relevant time period is 1 Timothy 2:12 “I do not permit a woman to teach or to exercise authority over a man; rather, she is to remain quiet.” (English Standard Version).

[lxi] On review, some might argue that the acknowledgement in the ou paper of women scholars etc may seem like a sympathetic view towards women. I suggest that a close reading of the paper, the Halakhic arguments and methodology suggests otherwise.

[lxii] https://www.google.com/webhp?sourceid=chrome-instant&rlz=1C1GGRV_enUS751US751&ion=1&espv=2&ie=UTF-8#q=bugs+bunny+cross+this+line