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WOMEN IN JEWISH LAW

The past few years have witnessed significant change in relation to women in Orthodox Judaism. While the drivers of this change are primarily in Israel and the USA, their effects are starting to be felt in Britain as well. It is no longer uncommon to hear Orthodox women reciting *Kaddish*, publicly chanting the *Megillah* on Purim or addressing a congregation from selective synagogue pulpits. In some *minyanim* (known as partnership *minyanim*) women are even called to the Torah or lead parts of the prayer service. While championed by some, these changes are contested by others. Both sides argue using Jewish sources and Jewish law; halacha. The question I want to address in this essay, and one that I am frequently asked is, if Jewish law is clear cut, why is there such a wide divergence of opinion and such controversy, around the question of women's roles within contemporary Orthodox Judaism?

To answer this question we need to do three things: (i) define the function and process of halacha (Jewish Law); (ii) distinguish between halacha and *Psak Din* (halachic ruling); and (iii) appreciate the influence of meta-halacha on the halachic process

The Function and Process of Halacha

Halacha comes from the Jewish root word *hlch*, which means to move. In other words halacha is a dynamic process and is not as cut and dry as many appear to believe. The dynamic of Jewish law is a constant dialectic between Jewish legal principles and real life situations.

Rabbi Daniel Sperber, Israel Prize laureate in Talmud and the world's expert in the development of halacha, compares the relationship between halachic principles and their contemporary application, to the evolution of a tree through the seasons of the year. While the external parts of tree; trunk, branches, and foliage go through radical changes, with every season all of these parts draw nourishment from the same set of roots. So while the tree undergoes routine superficial change its roots are a constant, unchanging source that determines the tree's specific characteristics. Even though external factors such as the climate, the quantity of rain and quality of the soil will determine how lush the foliage or how plentiful the fruit the tree will bear in any given year, the tree's essential character will not change. The external factors cannot cause it to bear a different type of fruit or sprout a differently shaped leaf. Jewish law similarly is in a constant state of change and adaptation, while at the same time its bedrock principles ensure the core element of continuity and stability. A vibrant halacha is always adapting, while at the same time remaining anchored to its foundational principles.

Distinction between Halacha and *Psak Din*

Halacha refers to a process, while *Psak Din* is the outcome of that process. This distinction can be illustrated by comparison with the methodology of medical diagnosis and treatment. Often, the diagnosis allows for a multiplicity of possible treatments. Before the physician decides on a course of treatment, he or she has to go through the process of examining the patient, gathering information about the symptoms and considering medical history, as well as the patient's psychological state, stamina and pain threshold. It is only through this process of diagnosis and personal consultation that the physician is able to reach a final decision regarding the best course of treatment for that particular patient. Likewise, each halachic question allows

for multiple possibilities. The halachic decisor, known as a *Posek*, goes through a diagnostic process of information gathering, weighing circumstantial factors and halachic principles to arrive at the final ruling; the *Psak Din*. The *Psak Din* is the application of a single possibility out of many.

Meta-halachic Considerations

Meta-halacha refers to the non halachic considerations that influence the halachic process. Since a *Posek's* considerations are by their very nature, subjective, the outcome will depend on the particular *Posek's* wider point of view. In this sense halachic discussion making is not all that different from mid-twentieth century banking. In the 1950s bank managers considering loan applications would generally have first-hand knowledge of the applicant. Potential lender and borrower would have lived in the same community, possibly attended the same church or synagogue, their children were likely to attend the same school and their spouses often were engaged in the same charitable activities. In assessing the loan application the manager would factor in not just hard financial data, but crucially, his own subjective assessment based on firsthand knowledge of the applicant's character. In such circumstances a manager might decide to extend a loan even if, in terms of hard figures, the loan appeared risky, provided he felt the risk would be mitigated by the strength of the borrower's character.

However, as banks grew and expanded they began assessing credit applications with highly sophisticated but impersonal algorithms, to compute the risk factors and the probability of default. The loss of intimacy and empathy with the borrower meant that credit is now awarded applying the same clear-cut set of rules equally to all applicants. In this highly regulated mathematical process subjective factors that may lead to more comprehensive and accurate judgments are lost.

The true halachic process resembles mid-twentieth century banking with highly subjective decisions based on personal knowledge of particular individuals and their circumstances. The Talmud (B. Bava Batra 131a) makes this point abundantly clear when it states that in coming to a halachic ruling the decisor can only consider what

‘his eyes behold’, namely the particular subjective circumstances surrounding the case in question. In other words, no *Posek* can completely divorce their worldview from influencing their halachic decisions. This is apparent in the halachic literature of all great *Poskim* throughout the ages.

A halachic process that resembles twenty-first century algorithmic banking is an aberration of what halacha has always been.

These three elements, halacha as dialectic, halacha as process, and halacha as subjective, are clearly apparent in the current debate over the role of women in Orthodoxy. It is only through appreciating these dynamics that one can come to understand why, on this issue, there is such controversy and a multiplicity of views.

Case Study: Rabbinic Ordination for Women

As an example, let us examine the issue of women’s rabbinic ordination. There are few areas in the debate over women’s roles within Orthodoxy that are as hotly contested as the issue of female rabbis.

One of the leading opponents of women’s ordination is Rabbi Hershel Shachter who is the senior Rosh Yeshivah at Yeshiva University in New York. His *Psak* (ruling) is unequivocal: a woman cannot receive ordination. The reasoning he uses to support this ruling is interesting. He argues that a rabbi’s role is, by definition, an outward facing one, and that, as such, it contravenes the foundational Jewish value of modesty.¹ Aware that his argument logically points to the elimination of male rabbis as well, he is quick to point out that Jewish life cannot function without such roles and so, to the extent that it is necessary to have rabbis, the role should at least be restricted to men:

We too must therefore strive to be anonymous and maintain strict privacy. We know that Hashem did reveal Himself on rare occasions. This is known as *Gilui Shechinah*. So on occasions we are all called upon to do things in a demonstrative fashion and in a public forum. We need a *shaliach tzibur* (prayer leader) to lead us in *tefillah*; we need a rabbi. But even then we recommend that whenever possible, only the men should compromise on *tznius* (modesty) and take these public positions. Women are always encouraged to avoid compromising their privacy.

The late Sephardic Israeli Chief Rabbi Benzion Uziel (1880–1953), while not discussing the question of female rabbinic ordination, addresses the issue of women’s modesty and argues in favour of greater female lay leadership roles in the synagogue.²

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 (i.e. immodesty). ‘For all Israel are holy people and her women are holy, and are not to be suspect of breach of modesty and morality’ (Responsa Piskei Uziel Siman 44).

What we see from these two positions is a divergence of views regarding the interpretation of modesty in the contemporary world. Both rabbis argue from Jewish sources and yet they come to very different conclusions. While it must be emphasized that Rabbi Uziel does not address the specific question of women’s ordination, it is abundantly clear that Rabbi Schachter’s principal argument against it (based on modesty) is not one that would resonate with him.

So what causes two rabbis to take such divergent views? This is where meta-halacha comes into play and in this case it is about how the respective rabbis understand feminism.

Rabbi Schachter has consistently and publicly decried feminism as a foreign import and corrosive challenge to traditional Judaism.³ He is unable to judge the issue of female ordination in a cultural vacuum. Rather the question is tangled up with the wider issue of feminism which he is anxious to keep at bay. Given this cultural bias he is naturally drawn to a particular source which he chooses to interpret in a particular way. Rabbi Uziel, on the other hand, appears to have little or no uneasiness about feminism. His understanding of the role of contemporary woman is far more open and encouraging. His choice and interpretation of sources reflects this worldview.

So aren’t the rabbis just choosing the sources that best fit in with their biases? In a word, yes, but that in no way means that they are cynically manipulating the sources. Applying one’s subjective view of reality to the vast array of traditional Jewish sources is precisely

what the halachic process is all about. And it is also why there is such robust, and at time acrimonious, debate around the halachic interpretation of new realities such as feminism.

If halacha were an objective, algorithmic process, one could just design a computer program to compute the data entered and then spew out consistent rulings. In reality this is not how halacha operates, and its intensely subjective nature is the reason there is such a divergence of views.

So if that is the case, how does one know which halachic view to follow? That is where choosing a rabbi comes in to play. One ought to seek out a rabbi who not only is knowledgeable in halacha, but also understands and empathises with one's worldview. It is not just a matter of the question that the rabbi will have to consider, but also the questioner and his wider social and cultural perspective.

The debate around women's roles within Orthodox Judaism will continue to rage for some time, but that is not a bad thing. Debates are healthy and necessary for the development of halacha and Judaism. For those looking for neat, consistent, clear-cut answers this can be frustrating. But for those who appreciate the complexity, fluidity and subjectivity of the halachic process, the debate over women's roles is an exciting and invigorating one. Rather than silencing those who we disagree with, we should be giving voice to the full spectrum of halachic viewpoints so as to allow the individual Jew to follow a halachic path suitable and inspiring for her life's journey in the service of God.

Notes

1. Hershel Schachter, 'Women Rabbis?', *Hakirah, the Flatbush Journal of Jewish Law and Thought*, 11 (Spring 2011), pp.19–23. <http://www.hakirah.org/Vol%2011%20Schachter.pdf>.
2. Daniel Sperber, 'On Women in Rabbinic Leadership Positions', *Meorot, A Forum of Modern Orthodox Discourse*, 8 (September 2010), pp.1–12. http://www.wyctora.org/component/option,com_docman/task,doc_view/gid,1393/.
3. Adam Fertziger, 'Feminism and Heresy: The Construction of a Jewish Metanarrative', *Journal of the American Academy of Religion* (Berman Jewish Policy Archive), 77, no.3 (September 2009), pp.494–546. <http://www.bjpa.org/Publications/details.cfm?PublicationID=4807>.

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