

Orthodox Judaism Today:

Ordaining A Female Rabbi and The Critique Of R. Avi Weiss

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Preface

When the envelope pushing, ethical activist Orthodox Rabbi Avraham [Avi] Weiss ordained Rabba Sara Hurwitz, with the courageous co-signature and learned approval of R. Daniel Sperber of Bar Ilan University,¹ the Haredi Council of Agudath Israel's Torah sages bluntly and harshly denounced the move. By unpacking and decoding what was pronounced in the denunciation of R. Weiss,² it emerges that there are today two competing versions of Orthodox Judaism.

The Crisis of Orthodox Self-Definition

Two Orthodox Judaisms

The "Traditional" version adheres to a rigorous, conservative social code in its

1. Rabbi Sperber is the recipient of the Israel prize in Talmud and, in my opinion, may be Modern Orthodoxy's most learned academic scholar of Oral Torah alive today.

2. Curiously, I found no mention or comment regarding R. Sperber.

popular religious prescriptions. Nevertheless, in reality it radically reforms the rules of Orthodox religious discourse in order to reconstruct what it presents to be Traditional Jewish culture; the most dramatic example of this being this group's relationship with its elite, who serve as God's human spokesmen. This version of Orthodoxy opposes the change in women's roles in the social condition of secular modernity.

The modernist version, dubbed "Open Orthodoxy" by R. Weiss among others, is more socially accommodating. Yet ironically, unlike its "Traditional" counterpart, this group works rigorously within the self-defining statutory constraints of Orthodox Judaism's official canon.

The Case

The facts of the case are undisputed. With the concurrence and signature of the preeminent Orthodox sage, Rabbi Professor Daniel Sperber, Rabbi Avi Weiss conferred the title of "Rabba" upon Sara Hurwitz, who also serves as a *full* member of the Rabbinic staff of the Orthodox Hebrew Institute of Riverdale, New York, where R. Weiss serves as the senior rabbi. In their condemnation, the Haredi Council of Agudath Israel's Torah Sages observes that "he (Rabbi Weiss) has stated that the change in title is designed to 'make it clear that Sara Hurwitz is a full member of our rabbinic staff, a rabbi with the additional quality of a distinct woman's voice'."

As a consequence of this, the Council of Torah Sages issued the following condemnation:

"These developments (the ordination of Rabba Sara Hurwitz) represent a radical and dangerous departure from Jewish tradition and the *mesoras haTorah*, and must be condemned in the strongest terms. Any congregation with a woman in a rabbinical position of any sort cannot be considered Orthodox."³

3. The signatories to this condemnation are: Rabbi Yitzchok Feigelstock, Rabbi Dovid Feinstein Rabbi Aharon Feldman, Rabbi Yosef Harari-Rafal, Rabbi Shmuel Kamenetsky, Rabbi Aryeh Malkiel Kotler, Rabbi Avrohom Chaim Levin, Rabbi Yaakov Perlow, Rabbi Aaron Schechter.

Overview

This study commences (i) with a review of the *de jure* normative statement of Orthodox Judaism, which provides — at least theoretically — the actual life code and culture map of what is canonically, normatively, and therefore authentically Jewish. I will call this the Covenant model of the Jewish legal order.⁴ It is against this benchmark that the ban of women rabbis and the dialect of Jewish Orthodoxy that advocated the ordination of female rabbis will be evaluated, decoded, and assessed (ii).

After decoding the ban itself, we will turn to the concurring condemnations of women rabbis by R. Avi Shafran (iii), the thoughtful, if contestable, critique of the well-known Jewish blogger, R. Gil Student (iv),⁵ and conclude with the views of Yeshiva University's renown decisor, R. Herschel Schachter (v).

I. The Covenant Model for Jewish Legal Validity

Like any legal order, Jewish law contains, in principle, a formal hierarchy.⁶ This consists of:

1. A basic norm: in the case of Judaism, the Jew must obey God's law as it appears in the Covenantal sacred library.
2. The Covenant that is public, exoteric, and accessible. Because it is *from* Heaven, i.e., God, the Covenant is not given to manipulation, mutation, or misrepresentation.
3. The actual norms of the Jewish legal order are *de-oraita*/Toraitic, rabbinic, and customary laws. This list descends in its normative valence;

4. One could also call this the “Maimonidean paradigm”, as it receives its most lucid description in Maimonides' introduction to the *Mishneh Torah*.

5. Rabbi Student's position is illuminating since it reflects the world view of an urbane center-right Orthodoxy whose orientation is based upon a culture platform as opposed to a systemic legal understanding regarding Jewish legal applications.

6. See, for example, R. Soloveitchik's “Tradition 1” category in: Joseph B. Soloveitchik, “Two Types of Tradition (שני סוגי מסורת)” in *Shiurim le-Zekher Abba Mori* (Jerusalem, 1993), as well as R. Moshe Feinstein's discussion of this in his responsa (*Iggrot Moshe* OH 4:49).

- unless special circumstances obtain, lower grade norms may not override higher grade norms.⁷
4. Any act that is not explicitly forbidden by legislated norm is implicitly authorized, or permitted.
 5. Torah norms and rabbinic norms, to be valid, must be promulgated by the *Beit Din ha-Gadol*, the (religious) supreme court of Israel. Customary rulings are binding locally and become binding globally only when they are accepted by all Israel, as were the rules and rulings of the last Talmudic court the Beit Din of Rabina and Rav Ashi.⁸
 6. Post-Talmudic rulings are valid if the local rabbi's decision or promulgation violates no Talmudic norm other than in emergency settings;⁹ post-Talmudic rulings are invalid if Oral Torah norms are violated by their implementation.
 7. It is the view that is convincing [שהדעת נטתה], i.e., the cogency of the claim and not the stature of the claimant, that characterizes covenant-faithful Judaism.
 8. "Tradition" in the authentic, precise, legal sense of the term is not what the current community of Israel's mimetic culture happens to do or believe or what the selective memory of its historical Jewish past happens to recall; the authentic Tradition that is normatively binding was initiated at Sinai and was vetted by the Supreme Court of all Israel or accepted as a custom by all Israel.

II. The Council of Torah Sages' Condemnation

The Condemnation

The Council's first claim is that Sara Hurwitz's rabbinic ordination "represent[s] a radical and dangerous departure from Jewish tradition and the mesoras haTorah."

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7. This statement does not necessarily hold true in practice among the early Ashkenazi decisors and some of their later followers. For a discussion of this see: Israel Meir Ta-Shma, *Early Franco-German Ritual and Custom* (Jerusalem: Magnes, 5759), 13–105 [Hebrew]. Also: Jose Faur, *Dine Yisrael* 6 (1975), 43–72.
 8. Maimonides, Introduction to *Mishneh Torah*, likely based upon b. *Baba Mezia* 86a.
 9. See Maimonides, *Mishneh Torah*, *Mamrim* 2:4

That the development is innovative is without question; that the development is “dangerous” is proclaimed but not demonstrated. The unstated but implied sense of “Tradition” is not the Covenant paradigm outlined above; it is however the mimetic ethos of Haredi culture/religion that is reified into *halakha* by the advocates and adherents of that version of Orthodox Judaism. The “Jewish tradition and the mesoras haTorah” goes undefined so that it, like its advocates, are not subject to review or challenge.

However, departing from precedent does not *per se* violate Israel’s covenant.¹⁰ There is no norm that mandates that style of culture is *a priori* normative. Only the norms recorded in the canonical library of Tradition must be observed. This was expressed mostly clearly by the Sages’ position in Mishna *Eduyyot* (2:2), where the phrase “that we have not seen it is no proof that it is not so (לא ראינו אינו ראיה)” was coined. This phrase is used a number of times, including by the most prominent of all halakhic decisors, R. Joseph Karo (*Beit Yosef* YD 1:1).

This statement makes the point baldly, boldly, and bluntly that unless a negative norm is cited that was violated, no wrongdoing has taken place. The claim that precedent for change is a requirement for change is at best incorrect and at worse a violation of the prohibition of adding to and thereby intentionally corrupting God’s word (Deut 13:1).

The Meanings of Mesorah

The idiom “*mesorah*” appears in two very different and conflicting senses. The first is prescriptive, i.e. the normative Oral-Torah Tradition. The second is descriptive, i.e. the living, breathing, pulsating folk culture of a given community.

According to the covenant model, the descriptive Tradition must both conform to and yield to the prescriptive Tradition; according to the (predominantly Haredi) “*mesoras ha-Torah*” model, mimetic usage of the community faithful determines what in the canon may be accessed, referenced, cited, or when in conflict with the textual canonical record, ignored. The calling

10. If Israel were obliged to live like its ancestors, Israel would be wearing *kephiyas* rather than *kippahs* [the words share the identical Semitic etymology, with the root being *kph/kpy*] and turbans instead of ties.

attention to the discrepancies between the canonical text and communal culture Orthodoxy is dismissed as disrespectful bashing and scandalous slander.¹¹

Haredi and, for that matter, institutional Centrist Orthodoxy regularly and happily blurs the distinction between the “Tradition” of the canonical text and the ethos of the sacred community. Like the Magisterial, or teaching/proclaiming authority of the Roman Catholic Church, only the accepted, recognized “great rabbis” have a right to an opinion; other rabbis, blessed with neither charisma nor renown, have a right to an autonomous opinion, however reasoned, however consistent or inconsistent with the classical conditions for normative validity outlined above, and in spite of the explicit normative license recorded on the Orthodox ordination-certificate, *Yoreh Yoreh*.¹²

Even though the view here cited seems to conflict with the covenantal paradigm outlined above, the view is nevertheless declared to be normative and binding without demonstration or reasoned demonstration. To this view, “Tradition” is not given as an inheritance, or more precisely, a possession of all Israel (מורשה קהילת יעקב)¹³ but is in fact entrusted to a self-select elite class of rabbis who, unlike the *Beit Din ha-Gadol*, are without peer and are therefore not subject to peer review.¹⁴

11. For a post-Talmudic justification of culture overriding canonical theory, see R. Moshe Isserles’ glosses to the *Shulhan Arukh* (HM 37:22).

12. R. Herschel Schachter’s “The Psak Process” (audio) states this rather explicitly.

13. Deut 33:4

14. See: R. Michael Rosensweig, “Mesorah as Halachic Source and Sensibility,” *Jewish Action* 71.1 (Summer 2011): 52, who argues that Maimonides regards as heretics those who are *makhehishei maggidehah*, who reject the Torah’s transmitters. The author sees the “transmitters” idiom to include post-Talmudic Masorah, a claim that Maimonides fiercely denies here. A close reading of Maimonides, *Repentance*, 3:8, indicates that R. Rosensweig extends the actual semantic field of the idiom from rejecting the Oral Torah as a system, like the Sadducees, Bethusians/Essenes, and quite likely Maimonides was alluding to the Karaites of his own day as well, and Maimonides would have agreed if one rejected a ruling of Rabina and Rav Ashi’s court. Given his view that all post-Talmudic rabbis are jurisdictionally equal and the sages of Shinar — the Geonim — are no more legitimate than the sages of France or Spain, disagreeing with a great Sage of post-Talmudic times would not fit into this category.

R. Hershel Schachter shares this misreading of Maimonides. In his article, “Preserving our Mesorah,” (*Jewish Action* 7.2, Winter 2010 — internet edition) he writes that the Torah commands that *ki yippale mimmecha* (Deuteronomy 17:8), which he translates as when you are uncertain of a halakha, you must go to the

The Agudath Israel's condemnation's concluding sentence affirms that "any congregation with a woman in a rabbinical position of any sort cannot be considered Orthodox." If by "Orthodox" we mean Judaism as practiced in the Haredi world, this claim is tautologically correct. But if by Orthodox we mean the Judaism of the Written and Oral Torah as universally accepted and understood according to the legal paradigm outlined above, the discerning reader is struck by two very stark facts. First, no offending norm of the halakhic order is cited in the Agudath Israel ban. Second, the notion that Judaism is essentially what the [theologically correct and divinely elect] Jews do and not

Beit Din HaGadol, the Central Rabbinic Court. An even clearer statement can be found in his post, "Did the Rabbis Distort the Psak?" (http://www.torahweb.org/torah/2003/parsha/rsch_mishpatim.html), "Rav Soloveitchik zt"l pointed out on various occasions that when Rambam speaks of the various heretics, he puts together the "one who denies the (Divine origin of the) Torah *she-ba'al peh*, and the one who contradicts its teachers." One who imputes ulterior motives to the *psakim* (halachic decisions) of an honest bona-fide rabbi, and says that Rabbi X was a convert, so that's why he always favors converts, and Rabbi Y didn't like women, so that's why in his decisions he will always put down women, and Rabbi Z is a Zionist, so that's why he will always *psaken lehokol* in matters regarding *Eretz Yisroel*, is in violation of this *Ikar* (principle) of faith. We not only believe that there existed at one time a Torah *she-ba-al peh* which was Divinely ordained; but rather we believe that *Hashem* continues to assist the G-d fearing qualified rabbis so that they should *psaken* properly. *Emmunas chachomim* is the foundation of all Orthodox Tradition!"

R. Schachter's 2003 post anticipates R. Rosensweig's reading. There is no record in the Maimonidean corpus that affirms that God keeps rabbis from error. On the contrary, his *Hilkhot Shegagot* seems to confirm our view. R. Schachter misreads *emmunas hakhomim* as faith in all Great Rabbis and not the [construct form of the Hebrew noun!] faith of the rabbis, as in *Avot* 6:6, where the idiom first appears. For Rabbis Schachter and Rosensweig, the sage is an oracle who reads God's mind; for Maimonides, the sage is first an exegete and then a jurist who parses God's word. Realizing the audacity of this version of *Masorah* doctrine, R. Rosensweig first concedes that closed canon Judaism has a fixed text and then argues in the name of Nahmanides that the Torah text "has metaphysical significance as well" (54). The erudite R. Rosensweig deftly and delicately alludes to the Nahmanidean doctrine that the Great Sage may reorder the letters of the Torah. See *Kitbe Ramban* (1:168). See Rabbi Menachem Genack, "Walking with Ramban", in ed., Menacem D. Genack (Hoboken, NJ: KTAV, 1998), pp. 208–221, where it is convincingly argued that R. Joseph B. Soloveitchik reflects the Nahmanidean perspective. This insight is corroborated by an oral communication by Rabbi Stuart Grant, a one-time aid of R. Soloveitchik.

what God actually commands in the documents of the Written and Oral Torah library resonates more like the Reconstructionism of Mordecai Kaplan than it does the Torah of Sinai.

III. R. Avi Shafran's Critique: Ideology in Action

Modesty

In his critique of R. Weiss's ordaining of Rabba Hurwitz, the Agudist spokesman R. Avi Shafran reflects, explicates, and clarifies the Haredi perspective.¹⁵ R. Shafran contends that since Rabba Hurwitz is a "full member" of the Hebrew Institute's Rabbinic staff, the act of ordaining her violated "the Orthodox value of *tzniut*, or modesty, for women."

While conceding that "some of the roles intended for the 'rabba' are in fact roles that women even in the Haredi community have played for centuries, such as counseling and offering wise advice... others, are not, especially those that thrust a woman into a public venue." He writes:

"Putting a woman in front of a group of men and women on a regular or ad-hoc basis is violative of *tznius*. Halacha ...[is] much more than the letter of the law. There is nothing in the Shulchan Aruch about keeping a cat in the aron kodesh. It's technically permitted but it's wrong to do."

Unfortunately for R. Shafran and his claim, there is no explicit norm or general category of "modesty" in Jewish law that is violated by Orthodox women speaking publicly. In communities where *etiquette* precludes women speaking in public, the act would be situationally, but not necessarily, improper.

Like his Agudist mentors, R. Shafran cites no normative source that precludes women speaking in public; indeed, Rebbitzin Esther Jungreis, (a Haredi woman) regularly speaks in public in mixed outreach venues, without Agudath Israel disapproval. "Tznius" is, for canonical Orthodox Judaism, defined by the specific legislated norms of the letter of the law legal order and not by socially proclaimed values that are reified into virtual statute; the fact that women *did not* speak in public does not mean that women *may not* speak in public.

15. *Jewish Star*, March 5, 2010

The claim that women may not speak in public, absent a specific legislated norm¹⁶ is overreaching at best and is an exegetically and therefore theologically immodest proposal at worst.¹⁷

In Haredi culture, “modesty” is a code idiom that seems to mean:

- By wearing the clothing demanded of them by men, women express their loyalty to God by deferring to God’s self-designated spokesmen.
- Uniformity of garb testifies to uniformity and orthodoxy/right doctrine in thought.
- These values are determined by great rabbis and not by a rational reading of the Oral Torah canon, as confirmed by R. Shafran, below.

In other words, adherence to the culture’s dress code is a public expression of loyalty and fealty to the culture’s peerless leaders, who are able to determine what is wrong by applying their intuition when statutory evidence is either absent or contradictory.

Gedolim

R. Shafran further reported that the Rabbinat of Agudath Israel also objects to the ordination of a woman because any change in Orthodox norms must be backed by a “*world-class Torah decisor.*” He adds that “no such authority has lent his name to Weiss’ actions.”

There is in point of inconvenient fact no rule in the Oral Torah system that requires a world class decisor to support a suggested innovation. Recalling the legal provisions cited above,¹⁸ it emerges that R. Shafran’s claim is innovative indeed. He maintains — without citation or demonstration — that the Jewish legal order actually requires the advice and consent of what he takes to be a world class decisor. He fails to cite a justifying source for this claim, which

16. The descriptive and not prescriptive Psalms 45:14 notwithstanding

17. Speaking on behalf of God’s intention without a citation of a recorded canonical justification actually conflicts with Torah law. See: Deut 4:2, where Moses is ironically paraphrasing and mocking the autocratic tyrant, Pharaoh, and *Pesiqta Zutarta*, (Deuteronomy *Va-ethanan 7b*).

18. A valid rule or ruling may not violate a higher grade norm, nevertheless, a post-Talmudic rabbi *may* innovate within the parameters of the oral Torah statutory canon. The Rabbinical Council of America seems to have accepted *de facto* the Haredi view that the Haredi position is always a legitimate Orthodox opinion.

in fact proclaims Haredi Judaism's *actual* demand. Haredi Judaism insists that it possess a veto over Modern Orthodox policy in order for the adherents of Modern Orthodoxy to be "recognized" by Haredi religion as Orthodox by its own standards, which *de facto* if not *de jure* supersede the Orthodox Judaism of the Oral Torah canon.

Even more radical is R. Shafran's claim that "no such authority has lent his name to Weiss' actions." The tautological nature of this claim is striking. R. Daniel Sperber is both an academic Talmudist and an Israeli community rabbi, the breadth and depth of his scholarship is breathtaking, and he has, as noted above, been recognized for his greatness. What is seemingly presented as an academic criterion of *expertise* is in point of fact an argument from *ideology*; what to the unsophisticated reader appears as an issue of competence emerges as a matter of theological/political loyalty.

Failure defer to Haredi discipline is regarded as defiance of God's word as articulated by God's only spokesmen. Thus, R. Shafran's contention, that a change in Jewish practice requires the approval of a living great sage, is at best a circular argument, and at worst, a falsification of Torah.¹⁹

IV. The Neo-Haredi Modern Orthodoxy of R. Gil Student

Rabbi Gil Student is a centrist Orthodox blogger, opinionator, and popular theologian. His opinions reflect the actual street-culture folk religion of non-Haredi, religiously serious Orthodoxy, whose platform is dogma. His "dialogue" and posts are restricted to pre-approved insider ideas that to his view do not undermine Torah as he understands it. Halakhic praxis is determined by the "accepted" Orthodox culture consensus but not by reasoned conversation, defended exegesis, or a willingness to confront what the Orthodox canon philologically parsed actually reports and requires.

On his blog of Thursday, June 18, 2009, R. Student attempts to derive a rule about whether a woman can be appointed as a rabbi from the discussion in halakha about whether she can be appointed as a slaughterer.²⁰ He

19. מגלה פנים בתורה שלא כהלכה, b. San. 99a

20. <http://hirhurim.blogspot.com/2009/06/women-slaughterers.html>

begins his analysis by citing with reverential assent a summary, compiled by R. Elyakim Koenigsberg, of R. Joseph B. Soloveitchik's position regarding women in leadership roles, from transcribed reports of his (Soloveitchik's) lectures.²¹ Then, basing himself on this lecture, and adding his own brand of selective theological literalism, Student offers his halakhic analysis, beginning with the assertion: "It seems clear to me that if a woman may not be appointed a slaughterer, as the Rema rules, then she may also not be appointed a rabbi."

In a different post,²² R. Student claims that Conservative Judaism's ordaining of women ignores what he takes to be an unambiguous restriction disallowing women from serving in leadership positions, following the contemporary Orthodox Great Sage consensus.²³ He assumes his conclusion rather than proving it. If the Great Rabbis rule in a certain fashion, *then* their word is God's law and lesser light rabbis ought to know their place and station and defer to their betters.²⁴

The claim that women may not be leaders, grafted onto the view that a ritual slaughterer is a leader and by Ashkenazi convention inappropriate for women, when unpacked, reveals a rather *un*traditional definition of Tradition.

The *Sifre* on Deuteronomy (157) rules that woman may not be *appointed* king; the non-canonical *Midrash Tannaim* (17) rules that women may not even be entrusted with leadership. This second text was glossed onto the canonical *Sifre* at some point during its later copying. By outlawing scientific text criticism of Rabbinic texts, the reformation of the canon by an aggressive glossator assumes normativity and the original canonical norm may be both challenged and changed. By defining a ritual slaughterer as a leader, by reifying communal taste into virtual canonical norm, and by investing descriptive usage with the sacred valence of "Tradition," this innovative version of Orthodoxy speaks with its own voice as well as with what it projects to be God's voice.

If it is argued that Ashkenazi Jews are somehow always obliged to follow

21. The content of the post is consistent with and independently attested by an oral communication from R. Stuart Grant to me, who was also present when these lectures were first delivered.

22. <http://hirhurim.blogspot.com/2004/12/ordination-of-women.html>; I thank Rabbi Zev Farber for calling this post to my attention.

23. For an extensive review of the literature, see R. J. David Bleich's chapter on women serving on a synagogue board in *Contemporary Halakhic Problems*, vol. 2.

24. Note that this sensibility is not shared by Maimonides, outlined above.

R. Isserles' (Rema's) rulings, all Orthodox Ashkenazi Jews would wear *tefillin* on intermediate festival days.²⁵ If, on the other hand, R. Isserles may be overruled on the merits of the case, then R. Isserles' ruling that women may not be slaughterers²⁶ and therefore may not assume a leadership role may also be reconsidered. Women not being leaders is a "custom,"²⁷ while wearing *tefillin* is a *Biblical* norm.²⁸

R. Student's "Centrist Orthodoxy," first justifies the elite consensus; Open Orthodoxy first asks if there is a restrictive norm and, if no norm exists, what approach is pastorally appropriate. R. Student claims that "if a woman cannot be hired as a pulpit rabbi and cannot fulfill some of the functions of a pulpit rabbi, it seems clear that a woman cannot be ordained to be such a rabbi." Male rabbis who are *kohanim* suffer funeral restrictions and those who are Israelites and Levites may not offer the priestly blessing. Women who are learned and trained may teach, preach, counsel, console, answer questions regarding Jewish law, ethics, and thought and, as our Academic Rabbinic exegesis has shown, serve as a religious leader.

Echoing R. Saul Lieberman, זצ"ל,²⁹ former JTS Rector and super scholar, R. Student suggests that "women, due to their exemption from forced testimony, are barred from serving as judges. They may not sit on any official rabbinic court, even though they may judge on an *ad hoc* basis when both litigants accept them. Because of a woman's inability to receive ordination for judging, she was barred from the official type of ordination." A close reading of R. Lieberman's position shows that for him, *yadin yadin* ordination may not be granted to women but *yoreh yoreh* [license to issue rulings] and *rav u-manhig* [the license to head a community as rabbi] would not technically be restricted.³⁰

25. *Shulḥan 'Arukh* OH 31:2, gloss. See also b. MQ 19a. See however Beha"g in *Tosafot Mo'ed Katan* 19a s.v. Rabbi Yossi and Rashb"ā Responsum 1:690.

The argument that "we follow the Rem"ā" is therefore specious, even for Ashkenazi Great Sages.

26. The canonical license lacks ambiguity. See m. *Ḥullin* 1:1 and b. *Ḥullin* 2a.

27. Alexandra Salome and Deborah served as kings (*šapitu* in Mari Akkadian means "king")

28. Deuteronomy 6:8

29. *Tomekh Ka-Halakhah*, vol. 1

30. R. Student argues that *rav u-manhig* is a rabbinic "driver's license." This idiom may be traced to R. Herschel Schachter, who argues that *yoreh yoreh* ordainees have a "rabbinic license to drive but do not know how to drive," i.e. may not issue rulings.

R. Student, like many socially conditioned Orthodox Centrists, regards the feelings of Haredi Jew to be halakhically relevant:

It must be remembered that a substantial segment of the Orthodox community considers the advanced learning of the Oral Torah by women to be forbidden. This is not an obscurantist position but a well-established halakhic view that is amply supported by traditional sources.

For Centrist Orthodoxy for which “recognition” by “Traditionalists” is socially important, Haredi positions are by dint of their reality *de facto* valid. Since there are rabbis who believe women studying Torah is improper, an examination of the Oral Torah’s laws may not be applied to render a decision.³¹ However, Haredi rabbis also forbid women from serving in the Israeli army whereas Jewish law actually requires female conscription for defensive wars.³² Similarly, the descriptive observation that women’s learning is indecent/*tiflut*³³ is not expressed syntactically as a legal norm, is the opinion of one rabbi, and ignores the explicit Oral Torah norm that affords license to women to learn Mishna even during menses.³⁴

R. Student argues that Orthodoxy must be “other” and not do anything that looks non-Orthodox. To our view, we accept truth from whomever it comes.³⁵ R. Student’s Orthodoxy is not defined by theology; it is defined by sociology with *masorah*/culture determining what in the classical canon may be cited.

For Rabbis Student and Schachter, only great rabbis may issue rulings and just because an act is not formally forbidden does not mean it is permitted. As noted above, Maimonides would disagree with this contention. I thank Rabbi Richard Wolpoe for this insight.

31. See my “Women in the Judaism of the Dual Torah”, in *The Encyclopedia of Judaism* Volume IV Supplement I, ed, Jacob Neusner, Alan J. Avery-Peck, and William Scott Green (Leiden: Boston, Brill, 2003): 1941–1953; and “*Nashim be-Talmud Torah: ‘Iyyun halakha tahbiri*” [Are women permitted to study Torah: a syntactic study of halakhic sources] *Ha-Darom* 61 (Elul 5752).

32. B. Sota 44b

33. *Supra.*, 20a

34. T. Ber. 2:12.

35. Maimonides, *Introduction to the Eight Chapters*

V. Rabbi Hershel Schachter and Women Rabbis

R. Schachter's address of the Female Rabbi issue reveals the actual competing religious constructions of reality that divide the contemporary Orthodox world.³⁶ After praising women for their *bina yeseira*, their extra insight, implying that women are the religious equals of men, R. Schachter writes that

But when a *shailah* [question regarding Jewish law] is researched one must look through the entire *Shulchan Aruch*, and consider all the various aspects of that *shailah*. Just because there is an issue that does not appear in *Even Hoezer Hilchos Kiddushin* or *Hilchos Nissuin*, it doesn't mean that the issue is "non-*halachic*". *Orach Chaim Hilchos Krias HaTorah* is just as "*halachic*" as *Even Hoezer Hilchos Kiddushin*. In *Hilchos Krias HaTorah* the *Shulchan Aruch* quotes from the Talmud that although judging from the perspective of *Hilchos Krias HaTorah* alone a woman may receive an aliyah, from the perspective of *Hilchos Tznius* [modesty] this is not permitted.

Upon reflection, what appears to be a matter of statutory law emerges as a matter of culture and oracular authority. One might think, argues R. Schachter, that just because one fails to find a restrictive norm, one may not conclude that the act is therefore permitted. Only the great sage, wedded to and intimate with Torah and therefore able to read between the lines of the Torah, may make these determinations.³⁷

Similarly, R. Schachter writes in response to those who advocate on behalf of women reading the *ketubah* during the wedding ceremony:

[they say] '*halachically* there is nothing wrong with this!' In a certain sense this statement is correct. If one only judges the issue from the perspective of the laws of "*siddur kiddushin*" there's nothing wrong. Yes, even if a parrot or a monkey would read the *kesuba*, the marriage would be one hundred percent valid. Strictly speaking, the reading of the *kesuba* is not at all part of the marriage ceremony. This *minhag* was

36. See: "Can Women be {orthodox} Rabbis," post in 2004, http://www.torahweb.org/torah/2004/parsha/rsch_dvorim2.html. R. Schachter speaks casually and not grammatically. Hence the title "can" and not "may" women be rabbis.

37. *The Psak Process*

Keren I

introduced in the days of the *rishonim* after the *geonim* had done away with the ancient practice of having a long pause (of several months) between the *erusin* and the *nissuin*.”

Here he concedes that a woman by statute may read the marriage document. Other than the vague concept of *tznius*/modesty, unpacked above, R. Schachter finds no other recorded statutory restriction to women reading the marriage document, or being rabbis.

Tznius is, in point of fact, a meta-halakhic culture value whereby men tell women what their power, rights and social position according to God's revealed and unchanging Torah ought to be. Astutely aware that the Oral Torah is not sufficiently restrictive and Orthodox feminists now are aware of their halakhic prerogatives, R. Schachter as great sage is endowed with the intuition that empowers him to make meta-halakhic determinations, as he does, for example, in the issue of women reading the *ketubah*:

The truth of the matter is that no one has to read the *kesuba*... nonetheless it is a violation of *kvod hatzibur* to have a woman surrender her privacy, to read the *kesuba* in public.³⁸ Were there no men present who were able to read this Aramaic document?

How woman's privacy is a mandated norm goes undefined as it is not an absolute *prescriptive* rule³⁹ but rather a *descriptive observation*;⁴⁰ for R. Schachter, the great sage intuitively grasps its operative, normative valence. Recalling that for the great rabbis, the sage mystically reads between the Torah's lines⁴¹ or, following Nahmanides, re-arranges the Torah's letters, which innovatively generates meaning, R. Schachter's approach to the classical canon is mystical — not reviewable — and charismatic, with authority residing in his empowered person and not only in plain sense of the canonical text.

38. b. Meg. 23 restricts women ascending to the Torah because of *כבוד הציבור*. R. Schachter innovatively affirms that the restriction is generic and not localized to the situation of public Torah reading.

39. Psalms 45:14. b. Git. 12a,

40. Maimonides, *Introduction to Mishneh Torah*, maintains that Israel is bound by the positive and negative precepts of Oral and Written Torah as well as statutory customs, i.e., *hanhagot*. Descriptions are not norms.

41. Supra., “The P'sak Process.”

In Parshas Dvorim we read that Moshe Rabbeinu appointed many rabbis to serve the community. The expression used by the chumash is (Dvorim 1:13), “let us appoint anoshim [i.e. = men].” Rashi quotes from the Sifre a fascinating comment: what is the meaning of the term “anoshim”? Was there even a “salka daitach” to appoint women rabbis? The expression must certainly mean “anoshim tzadikim.”

R. Schachter here invests the ancient Israelite description with normative prescriptive valence; because Moses appointed only men to lead in antiquity, only men may be appointed as rabbis in modernity.

R. Schachter believes that Jewish law may and does change; only the great sage, himself empowered to “read between the lines of the Torah,”⁴² is endowed with the power to intuit what the actual law ought to be. Only a *Godol* [= great sage] is authorized to determine if

a practice is consistent with the mesorah he has received from his teachers and transmits to his students. Someone committed to that mesorah will make sure to remain within the chain of Jewish tradition and not deviate beyond the letter and spirit of our received teachings.⁴³

Note well that R. Schachter’s “great sage” is apparently authorized to derive a legally binding rule from Scripture on the authority of his person. According to Maimonides, a *Beit Din ha-Gadol* is required for such a determination.⁴⁴

The great sage is apparently also empowered to invent, without a Sanhedrin’s approval, innovative concepts and principles, and to assign to these un-refereed innovations after-the-fact Divine approval:

Our generation is so much into publicity that this *midas hahistatrus* [an undefined “measure” of modesty] is totally unappreciated. We live in a generation in which there is no sense of shame. People will do

42. “The P’sak Process.

43. “Preserving Our Mesorah,”

44. Maimonides, *supra*. R. Schachter’s profoundly learned teacher, R. Joseph B. Soloveitchik, shared this view. See Alan J. Yuter, “Mehitsa, Midrash, and Modernity,” *Judaism* 28:2 (1979): 150–1, citing Deuteronomy 23:15. The now mandatory, because it was accepted by all Israel, *mehitsa* requirement seems to first appear at b. Shabbat 125b, s.v., *ha-kol modem*. My thanks to R. Yaakov Love of YCT for calling this citation to my attention.

the most intimate and the most private acts in a most explicit and most demonstrative fashion. Their arrogant attitude has led them to believe that if they were G-d they would always be bragging, boasting, and showing off, always “making a statement”. They don’t have the slightest notion that G-d exists, is a “*Kel Mistater*”, and has created all of us with a *tzelem Elokim*, which also includes this *midas hatznius*.⁴⁵

R. Schachter is here making several significant claims. First, he is claiming that there is a legal value — unattested in the Oral Torah canon — “discovered” by R. Schachter, called “*midas hahistatrus*.”⁴⁶ *Midas hahistatrus*, like *midas hatznius*, are categories so vague that they enable the great sage to be a legislator as well as a jurist, couching social policy in the apodictic diction of what is taken to be divine law. This great sage, who is able to read between the lines of the Torah, is also able to assess the intentions of others and to categorize them as “arrogant.”⁴⁷

Summary

In short, Rabbi Schachter believes that Orthodox Jewish law is not a legal normative order, but a social and ethical culture whose Rabbinic elite determines

45. “Can Women be Rabbis?”

46. Other examples of this phenomenon in R. Schachter’s writings are his essay titled *Ts’e lach be-‘Iqvei ha-Tson* in Tzvi (Hershel) Schachter, *Be’Iqvei ha-Tson: Beirurei Halakhah* (Jerusalem: Flatbush Bet ha-Midrash, 1997): 21–37. See n. 5, where he argues against the permissibility of women’s prayer groups because it is *ziyyuf ha-Torah*, “falsifying Torah”, and his article “Determining the Time of Death,” in *The Journal of Halacha and Contemporary Society* 17 (Spring 1989): 14–31, where he reads the passage in Ex 22:1 “ein lo damim” (there is no blood [guilt]) to be an affirmative proof that cardiac and not brain death is the normative Jewish standard. R. Schachter may be alluding to *Iggrot Moshe* EH 3:18 where this idiom is invoked to outlaw double ring wedding ceremonies which violate no statute but do violate Orthodoxy’s mimetic culture ethos. R. Zvi (Hershel) Schachter, “*Tse’i Lakh beIkvei haTson*,” (“Go Thy Way Forth by the Footsteps of the Flock” [Song of Songs 1:8]), *Beit Yitshak* 17 (5745), pp. 118–134, reprinted in R. Zvi Schachter, *Be-‘Iqvei ha-Tson* (Jerusalem: *Beit haMidrash deFlatbush*, 5757), pp. 23.

47. Ironically, R. Schachter believes that by their “arrogant” appeal to the words of the canonical statute, those who advance a feminist agenda are themselves non-believers in God.

the parameters of propriety. Since the Rabbinic elite is virtually infallible, submission to its authority is for Jewish laity and lesser light rabbis mandatory. Dialogue with dissenters is forbidden because dissent is implicitly forbidden, dialogue assumes a measure of recognition, and recognition of dissent undermines the authority of the Torah that originates in Heaven and is manifest in the charisma of great rabbis.

On the other hand, arguments from reason, the classical sacred Oral Torah library, or even Orthodox precedent are themselves rejected as arrogant. The simple Jew may not even invoke canonical authority, as we do not rule from the Mishna, the Talmud or Maimonides. The great sage “knows”/“intuits” the will of God by applying exegesis authoritatively to Scripture and by inventing legal principles in order to enforce and reinforce social conservatism, which on the basis of the religious canon’s actual revealed words alone cannot be maintained.

VI. Concluding Observations

Open Orthodoxy and Haredi Orthodoxy share overlapping sociologies but espouse radically distinct ideologies. Open Orthodoxy sees halakha not as an oracular tool, but as the real and revealed word of God that commands and forbids when explicit and, when silent, authorizes and permits. Haredi Orthodoxy cannot accord Open Orthodoxy legitimacy because, by dint of its conscience-driven agenda, Open Orthodoxy challenges the charismatic authority of the Haredi elite.

By arguing that “*mesorah*” [tradition] and not statute forbids women from being rabbis — a point conceded by R. Schachter — we conclude that there is no canonical rule forbidding the ordination of women to the Orthodox rabbinate. Whether women should be ordained to the Orthodox rabbinate is a policy issue⁴⁸ that requires a thoughtful, respectful, learned conversation in which the community has a voice, and the Oral Torah statutory limits have a veto.

48. See: R. Michael Broyde at <http://www.jewishpress.com/pageroute.do/40150/> and R. Michael J. Broyde and R. Shlomo M. Brody, “Orthodox Women Rabbis? Tentative Thoughts that Distinguish Between the Timely and the Timeless,” *Hakira* 11 (Spring 2011) 25–58. By addressing the issue as policy, the authors present reasons why the women rabbi innovation should not be entertained.

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Serious opposition must be considered, and hecklers may have no input. Finally, while rejecting their use of charisma-based halakha, even Haredi opposition must be weighed and considered as we struggle to present our best temporal reading of God's eternal writing.⁴⁹

49. Deuteronomy 6:18.