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## Women in Rabbinic Positions

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**Question:** Can a woman answer halachic questions, that is to say be a halachic decisor?

**Response:** In *Mishnah Nidah* 6:4 it is said: Whosoever is eligible to judge is eligible to bear witness. And in *Yerushalmi Yoma* 6:1 it is explicitly stated that since a woman may not bear witness she cannot judge. The *Tosafot* (*Niddah* ibid. 50a) asked: How then did Deborah the Prophetess serve as a judge? For in *Judges* 4:4-5 it is stated: "And Deborah, a prophetess, the wife of Lapidoth, she judged Israel at that time... and the children of Israel came up to her for judgement." And one of their answers is that what the Mishnah means to teach us is only that he who is eligible to give witness may judge, i.e. that he who for some specific reason is ineligible to bear witness, may not judge. That does not mean that there is an overall prohibition against a woman acting as a judge. This answer takes no account of the *Yerushalmi's* formulation.

In an additional answer offered by the *Tosafot* ibid., it is stated: " She [Deborah] did not herself give judgement, but taught [the judges] the laws; and the *Yerushalmi* declare that women are ineligible to judge. From this answer we learn that a woman may give halachic rulings, for that is the real meaning of teaching *halachah* to others.

Yet another solution to this apparent contradiction is found in the *Ritba* to *Kiddushin* 35a, (ed. A. Dinin, Jerusalem 1985, p. 373), and in the *Rashba* to *Bava Kama* 15a. (ed. A. Lichtenstein, Jerusalem 1987, p. 21), namely that the statement in *Niddah* refers only to a man, meaning that only a man who is unfit to bear witness is unfit to give judgement. But women, though they are unfit to bear witness, may act as judges, as we learn from Deborah the prophetess.

Quite a different reply is given by the *Ran* (R. Nissim) to *Shavuot* 30a (13a in the *Rif's* pagination), and the *Rashba* to *Shavuot* ibid. Concerning Deborah's position as a judge they write, in their second response:

....Or perhaps she did judge and did give rulings, because they accepted her, just as a person can accept one of his [close] relatives [as a judge]. (even though a close relative is legally disqualified from being a judge).

What the *Ran* is saying is that just as one can take upon oneself to accept the ruling of one who is legally disqualified from serving as a judge, (such as a close relative or a non-Jew), so too, since "the children of Israel came up to her for judgement," - agreeing to accept her ruling - her rulings were binding upon them. Hence, if a woman is approached for a halachic ruling, it may be presumed that the questioner will accept her reply as authoritative.

Further proof for this, if at all necessary, may be found in R. Ovadiah Yosef's discussion in *Yabia Omer* 2<sup>nd</sup> edition vol.1, Jerusalem 1986, *Orah Hayyim* sect. 41:16, p.146. he refers us to R. Yonatan Eibenschutz's *Tiferet Yonatan*, Lvov 1860, to *Yitro* (*Exodus* 18:16) who raised the question how could Deborah give judgement alone. Surely we have learned from R. Yishmael be-R. Yossi, "Judge not alone, for none may judge alone save One" (*M. Avot* 4:8). His answer is that many *poskim* wrote that when the plaintiff comes to the judge requesting his judgement, a single judge is permitted. This is also his ruling in

*Urim ve-Tumim*, Warsaw 1882, to *Hoshen Mishpat* 3:5. R. Ovadia strengthened this position by referring us to *Y. Sanhedrin* 1:1, where we read as follows:

R. Abbahu sat in judgement alone in Kenishta Maradeta in Caesarea. His disciples asked him, Rabbi, did you not teach us not to give judgement alone?!" He replied to them, "Since they see me sitting alone in judgement, and [nonetheless] they come to me, they are as those who have accepted upon themselves [a solitary judge]. And so indeed have we learned: When are we referring to [that one may not judge alone]? When the plaintiffs did not accept [such an arrangement]. But if they did accept [such an arrangement] upon themselves, even a single judge may give judgement.<sup>1</sup>

To the above we may add what we find in *Ruth Rabbah* 1:1, according to which both Devorah and Yael were judges, (see Redal, R. David Luria's note ad loc.). Likewise, *Ecclesiastes Rabbah*, commenting on the verse in *Ecclesiastes* 2:8 עשיתי לי שרים ושרות, explains זכרים ודינות נקבות, male and female judges<sup>2</sup>

Furthermore, even a blind person, who according to many *Rishonim* is not qualified to act as a judge, since he cannot give evidence (cf. *Nidah* ibid.), and so rules the *Shulchan Aruch*, *Hoshen Mishpat* 7:2, nonetheless, if he is accepted by the community or the plaintiffs, he may do so, and the defendant can even force the plaintiff (claimant) to accept his judgement, since the defendant has the upper hand in these matters.<sup>3</sup>

And returning to our main subject, even according to those who do not follow the lines of interpretation we have cited above, there are numerous areas in which a woman is eligible to give testimony, such as in the cases of *Yibum* and *Halitzah* (*Shulchan Aruch*, *Even ha-Ezer*, *Seder Halitzah* 21-24. *Rambam*, *Hilchot Yibum ve-Halitzah* 4:31), issues between a man and his wife (*Rambam*, *Ishut* 21:10), establishing that a

<sup>1</sup> See on this passage, Yisachar Tamar, *Alei Tamar*, *Nezikin*, Israel 1983, pp.75-76, on the differences of opinions on this issue, referring to *Deuteronomy Rabba* 1:10, *Shach*, *Hoshen Mishpat* 3:10, according to the *Maharshal*, responsum 35, *Tosafot Yom Tov* to *Avot* ibid., basing themselves on Rav Huna's actions, in the *Yerushalmi*, ibid. And see earlier on in that *Yerushalmi sugya* the other rulings of R. Abbahu. See further on the legitimacy of the acceptance of non-qualified judges in Rabbi Yitzhak Ha-Levi Herzog, *Tehukah le-Yisrael al-pi ha-Torah*, vol.1, Jerusalem 1989, p.43.

See further the very detailed discussion of R. Ovadiah Yosef in his *Yabia Omer* vol.2, 2<sup>nd</sup> edition, Jerusalem 1986, *Even ha-Ezer* 13:3, p.246, who brings a wealth of evidence to prove that *gittin*, bills of divorce, can be granted by a court of *hedyotot*, laymen – needless to say laymen who have learned the basic law of divorce, but are not necessarily ordained as *dayyanim* – judges. Indeed, the *Beit Yosef* in *Hoshen Mishpat* 8 cites the Rashba as saying "that in villages where there are not individuals who know even a single letter, ... one should appoint judges in accordance with the understanding of the local authorities", referring to *B. Sanhedrin* 23a etc. See his conclusions that it is sufficient that one know how to carry out the process of divorce in according with the books [which one has learned and assimilated].

<sup>2</sup> Again see Redal ad loc. who interprets that text differently. See also *Numbers Rabbah* 10:17, where it is asserted that women may not serve as judges. See Marc B. Shapiro's post of March 2, 2012, in the Seforim blog, entitled "Answers to Quiz Questions and Other Comments, part 2," who discusses the Escles. Rab. text in detail, referring, inter alia, to R. Yisrael Beeri, in his *Ha-Midrash ke-Halachah*, Nes Tziona 1960, p.317, who suggests that Solomon not only had female courts, but also "co-ed" *batei-din*. Similarly R. Hayyim David ha-Levi, in *ha Asei le-cha Rav*, vol 8, pp. 247-248, deals with this text, suggesting that it is operating under the assumption that there was no problem in appointing women *dayyanim*, or alternatively that Solomon and his council accepted the authority of the women, and therefor this was permissible. See the continuation of Shapiro's very learned discussion.

<sup>3</sup> See e.g., R. Hayyim Benveniste, *Knesset ha-Gedolah* to *Hoshen Mishpat* 7:2 (vol. 1, Izmir 1660); and his *Bai Hayyai*, *Hoshen Mishpat*, Saloniki 1788 vol. 1, sects. 5-6. And see the numerous sources cited by Aryeh Rodrigez, in his *Sefer ha-Suma*, Jerusalem (n.d. but c.2000), pp.483-490

captive woman was not raped and is permitted to marry a *Cohen* (*Rambam, Issurei Biah* 18:17), establishing ownership (*Baba Kama* 104b), issues both monetary and otherwise (*Ketubot* 85b, *Responsa Rivash* 182), in cases where the testimony of a single witness suffices (*Rambam, Edut* 5:3), *Kashrut*, separating *hallah*, Shabbat, and menstrual purity and impurity – *Nidah* - (*Responsa Tzitz Eliezer* vol.4, 20), everything that a person can of his own accord correct (*Shulhan Aruch, Even ha-Ezer* 17:3, based on *M. Yevamot* 16:7), etc.<sup>4</sup> It follows that in all these areas a woman is eligible not merely to give testimony, but also to give judgement.<sup>5</sup>

<sup>4</sup> See most recently Eliezer Hadad, "*Hishvah ha-Katuv Isha le-Ish*": *AL Maamadan Shel Nashim Be-Vatei Din Rabbanim*, (*Mehkarei Mediniut* 100), Jerusalem 2013, pp.32-82.

<sup>5</sup> Hardly any of this was taken into account in R. Moshe Meiselman's apologetic chapter on "Women as Witnesses", in his *Jewish Women in Jewish Law*, New York 1978, pp.73-80. He does note some situations in which some women's testimonies may be accepted, such as monetary issues "Where male witnesses are not readily available" (*Rema, Hoshen Mishpat* 35:14; cf. *Rambam, Sanhedrin* 24:1). "However," he adds, "this does not mean that their statements are raised to the level of witnessed testimony; it only means that where witnessed testimony is not available, we rely on credibility," (*ibid.* pp.77-78).

He then discusses the basic question as to "why this technical disqualification was imposed upon women," arguing "it might be arbitrary or it might have deeper implications..."

He continues (pp. 78-79):

I am unaware of any authoritative or semi-authoritative statement regarding the possible involvement of implicit principles in the disqualification of women as witnesses. Hence, any search for such principles is highly speculative, and the following material is nothing but my own private speculation and should be regarded as only that...

To *require* all women to testify at all times might very possibly contradict their private role in Jewish life, which we discussed earlier. In a similar vein, the requirement that a litigant must appear himself in court, rather than appoint an attorney to appear in his stead, is waived for women because of the verse "The entire glory of the daughter of the king lies on the inside," [*B. Shevuot* 30a and *Tosafot* ad loc.; *B. Ketubot* 74b]. The technical disqualification of women in Jewish law may also be due to a feeling that it would be improper to subject women to the indignity of intense cross-examination in court. Hence, the reasons for the disqualification of women and kings would be similar.

There are many possible reasons for the technical disqualification of women, and no one really knows for sure. The only clear facts are that the ability to testify is neither a right nor a privilege, but an obligation from which women have been excused. The disqualification of women is a technical rule, rather than an expression of lack of credibility. Thus, women's statements are acceptable whenever credibility is required rather than witnessed testimony. Women's statements are not considered witnessed testimony. A woman's oath is acceptable in court, as is the oath of any credible person.

My response to the above would be to refer the reader to R. Yehudah Henkin's discussion in his *Shut Bnei Banim* vol.1, Jerusalem 1981, no.40, pp.136-138. There he relates to *Rambam, Hilchot Ishut* 13:12, where he limits a married woman's right to go out of the house to visit to her father's house, to a mourner, to involve herself in acts of charity etc., but not to regularly stroll in the streets. Furthermore, the *Rambam* limits the wife's excursions to once or twice a month, in accordance with the relevant needs. To this R. Henkin responds that the *Rambam* was only referring to unnecessarily excursions. But when they have a positive purpose, or constitute a *mitzvah*, even the *Rambam* argues they are permissible. Clearly, the concept of a "positive purpose" is much broader nowadays, and would include shopping, visiting friends, and even entertainment which is good for a person's mental and emotional health.

To the above we may also add the remarks of R. Eliezer Yehudah Waldenberg, in his *Tzitz Eliezer* vol.9, no.50, that:

In older times women were not wont to walk about in the streets, but would sit at home. Consequently walking behind a woman would more likely lead to intimate thoughts (*hirhur*). But this is not the case in our days where the reality is not so... and [men] are used to seeing women in the streets, and hence "their failure (*kalkalatan*) is in the saviour (*tikunan*), and there is no danger of intimate thought in walking behind a woman as there was then..."

And incidentally I would like to bring a quotation from the response of R. Eliyahu Katz, of Beer Sheva, in his *Beer Eliyahu*, vol.3, Beer Sheva 1961, *Even ha-Ezer* no.2, pp.11-12:

Those people for whom there was evidence from kosher witnesses, *in the testimony of a woman*, in accordance with the law of the Torah, whose wives were sent by the accused [Nazis], may their names be erased, to the left (i.e. to the extermination centers), and it is close to certainty that they did not survive, permission is granted to the *Beit Din* in their city, or to that which is close to their city, after hearing testimonies and clarifying them and arriving at an opinion, to permit them to get married, and loosen their enchainedness (*igun*) from their first wife, as is expounded in the *Kuntres ha-heter* of the Rabbi of Riskeve... and the Rabbi of Brashov. [my grandfather, R. David Sperber, of blessed memory]. [My emphasis, D.S.]

This is merely to highlight the eligibility of women giving testimony in certain cases, and even extremely serious ones.<sup>6</sup>

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He is referring to the Talmudic role not to walk behind a woman, which I discussed in detail in my article in *JOFA Journal* 7/2, 2007, pp.7-9, which I refer to below. But here again we see that the sociological change in the status of women, and their "release" from being limited to staying indoors, directly effects the *halachah*. (See also R. Yitzhak Yosef, *Shulhan ha- Maarechet*, vol.2, Jerusalem 2010, p.729, who comes to similar, if perhaps a nuanced, conclusion).

As to the ruling of the *Shulhan Aruch*, *Hoshen Mishpat* 96:6 in the Rema, and 124, that "our precious women, for whom it is not dignified to come to a court, we send them clerks of the court, and they can make their claims before them..." ,R. Henkin refers us to the beraita in B. Shevuot 30a, where it becomes clear that women can come to court, and it is only when women are [or perhaps were] not used to going out and felt it impugned their dignity that the principle of "the glory of the daughter of the King lies inside" (*Kol kvodah bat melech pnimah*). However, this is hardly the case nowadays, as so cogently and forcefully argued by R. Henkin, in his chapter "The Significant Role of Habituation in Halachah", in his book *Understanding Tzniut: Modern Controversies in the Jewish Community*, Jerusalem New York 2008, pp.73-84, (and see his additional comments *ibid.* pp.85-91). I also related to this issue in my brief article in *JOFA Journal* 7/2, 2007, pp.7-9, entitled "The Human Element in the Commandments: The Effect of Changing Community Norms on Halakhic Decisions." Gershon holzer, in his Hebrew article in *Sinai* 67, 1970, pp.94-112, which deals with women's testimony in Jewish Law marshaled a considerable list of cases where, by the rabbis own evidence, women testimonies could be accepted. Tal Ilan, in her *Jewish Women in Greco- Roman Palestina*, Peabody Mass. 1996, pp.164-166, brings additional instances, (e.g. *M. Ketubot* 2:3, etc.)

For the Islamic background to Maimonides limiting women's "outdoor activities", see, for example, the passage in Sheyekha Nefzani, *The Perfumed Garden*, translation Richard F. Burton, New York 1964, p.97:

An ideal woman, speaks and laughs rarely and never without a reason. She never leaves the house, even to see neighbours of her acquaintance. She has no women friends, gives her confidence to nobody, and her husband is her sole reliance. She accepts nothing from anyone, excepting her husband and her parents. If she sees her relatives, she does not meddle in their affairs. She is not treacherous, and has no faults to hide, nor bad reasons to proffer. She does not try to entice people. If her husband shows his intention of performing the conjugal rites, she agrees to satisfy his desire and occasionally provokes it. She assists him always in his affairs, and is sparing in complaints and tears; she does not laugh or rejoice when she sees her husband moody or sorrowful, but shares his troubles, and wheedles him into good humour, till he is quite content again. She does not surrender herself to anybody but her husband, even if abstinence would kill her. Such a woman is cherished by everyone.

See Asghar Ali Engineer, *The Rights of Women in islam*, London 1992, pp.147-148, and the whole of chapter 7, "Islam and the Individual Dignity of Women," pp.144-153. According to Colville, in the introduction to his translation of Nefzani, he lived in the 12 cent. Others say this is a 15 cent. work.

<sup>6</sup> See also *Pithei Teshuvah* to *Even ha-Ezer* 17:104; and my grandfather's *Afracasta de-Anya*, vol.3, Brooklyn 2002, p.261 etc.

According to all the above replies, the upshot of the passage in *Bavli Nidah* is that a woman may give halachic rulings. This, indeed, is how one may understand a statement in *Sefer ha-Hinuch* (158)<sup>7</sup>, where we read concerning the prohibition that one who is enebriated may not give judgement: "[This prohibition] prevents giving judgement in any place and at all times on the part of males *and of a wise woman who is suited to give ruling.*" That is to say, "a wise woman who is suited to give rulings" may not do so if she is inebriated, but may do so if she is not. And this is how the *Hida* (R. Hayyim Yosef David Azulai) in his *Birkei Yosef, Hoshen Mishpat* 7:12, (and thence in *Pithei Teshuvah* *ibid.* sect. 5) understood the situation: "Namely that a woman is ineligible to judge; however, a wise woman may give rulings. So is it apparent from one of the Tosafot's answer, namely that Deborah taught them the laws. And see that this is so in *Sefer ha-Hinuch*, for in sect. 83<sup>8</sup> he agreed that a woman is ineligible to judge, while in sect. 158, concerning drunkards he wrote: "and so a wise woman who is suited to give rulings..."<sup>9</sup>

Furthermore, the *Rambam* in *Hilchot Talmud Torah* chapter 4 ad fin., wrote of:

"the need to understand the forbidden and the permitted and the rest of the commandments... which constitute the great goodness the Lord bestowed [upon us] to the betterment of this world so that we may merit the World to Come, for these are subjects that all have to know. And they may be known to all – old and young, man and woman, one with a broad heart and one with a narrow ."

From here we infer that an adult woman, with a broad heart, may well "understand what is forbidden and what is permitted.". Indeed, continues the Rambam, "the crown of Torah stands waiting for all, as it is said 'Moses commanded us a law, even the inheritance of the congregation of Jacob' (Deut. 33:4) – everyone who wishes may come and take" (*Talmud Torah* 3:1).

On the basis of these sources several great authorities of recent times agreed that a "wise woman", who took upon herself to study the Torah in depth, and who could be said to be crowned with the "crown of Torah", and who achieved a standard of learning such that she could give halachic rulings, may indeed do so. Rav Yitzhak Isaac Herzog z"l, (in his *Tehukah le-Yisrael al-Pi ha-Torah*, vol.1, Jerusalem 1989, p.110), and Rav Bakshi Doron, (*Binyan Av*. Jerusalem 1982, 65:5, p.287), wrote that women can be "of the great ones of the generation and serve as decisors, teaching Torah and halachic rulings, for which the authority stems from personal abilities."

<sup>7</sup> So in Chavel ed., Jerusalem 1952, p. 227. In Ahavat Shalom ed. Jerusalem 1998, with commentary of R. David Pipano, *Meil ha-Efod*. It is in vol.1, no.152, p.253, and see note 14 ad loc. For an extensive discussion on the authorship of *Sefer ha-Hinuch*, see now R. David Metzger's introduction to the Machon Yerushalayim ed. of the *Minhat Hinuch*, vol.1, Jerusalem 1988, pp.16-19, who concludes that he was a disciple of the Rashba.

<sup>8</sup> No.77, in Ahavat Shalom ed., vol.1, p.125

<sup>9</sup> And cf. Shaarei Teshuvah to Orach Hayyim 461:17.

See further the *Hida's Shem ha-Gedolim* vol.2, s.v. *Rabbanit*, who lists seven learned women; *idem, Tov Ayin*, Hushiatin 1904, sect.4, and Marc Shapiro's comments, (cf. above note 4). [In *Shem ha-Gedolim* *ibid.* he refers us to *Shevut Tziyyon* vol.1, resh sect.86, [but I have not identified this work.] Of relevance is also the introduction of R. Yosef Yose to his *Derishah* for a description of his life; *Shach to Yoreh Deah* 326:4, R. Yair Bachrach's introduction to his *Havat Yair*, etc. See also S.D. Goitein, *A Mediterranean Society* vol.2, Berkeley, Los Angeles, London 1971, p.184 that the daughter of Samuel ben Eli, the Gaon, or head of the Jewish academy in Baghdad during the years 1164-1193, was so learned that she was able to teach her father's students not only the Bible, but also the Talmud, (J.W. Baron, *History of the Jews*, vol.5, p.323 note 89).

And this, indeed, is the conclusion of R. Meshulam Roth, in his responsum in *Sheelot-ve-teshuvot Kol Mevasser*, vol.1, Jerusalem 1955, sect.12, p.29b.<sup>10</sup>

And because of the clarity of Rav Bakshi Doron's formulation, it is worth citing his summation in full:

From all that has been said above it appears that a woman (and a convert) can serve in leadership positions, and even as the great ones on the generation for the power of their leadership mandates the authority. A woman (and a convert) can serve as decisors and teach Torah and halachic rulings. Positions the authority of which is determined by the candidate's qualifications and this authority is based on those qualifications – such positions may be filled by a woman (and a convert.) They can judge without coercion. There is some doubt whether they can accept authority through a democratic vote, which has the halachic status comparable to their acceptance of by the congregation. In the opinion of many authorities this *is* permitted. Therefore, in the case of a woman one should rule leniently in this direction, since the actual prohibition is the subject of controversy among the Rishonim. In all such positions one must make a clear distinction between the power of authority and the power of leadership.<sup>11</sup>

We stated above that if a woman is approached for halachic ruling, it presumes that the questioner will accept her reply as authoritative and if the congregation appoints her, accepts and trusts her, its acceptance gives her position legitimacy – *kabbalah mehania*.<sup>12</sup> Indeed trust and acceptance are obviously a key element in leadership.<sup>13</sup>

In actual fact, many questions put before a rabbi are of a technical nature, and the questioner could easily find the answer in a halachic book, if he were competent to deal with such literature. And so in all so many cases, the rabbi's answer is almost the equivalent of opening a book, but for some people easier and more readily available.<sup>14</sup> Clearly, the element of trust again clearly comes into play, and the answer is much in the nature of a testimony. And since the answer can always be checked out, such a class of testimony is acceptable from a woman too.

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<sup>10</sup> Referred to briefly in R. Yaakov Ariel's *Halachah be-Yameinu: Morashtah, Limuda, Horaatah ve-Yissumah*, Ashkelon-Jerusalem 2010, p.222 note 1.

See also R. Yaakov Ariel, "The Women's Study Hall" [Hebrew], apud Y. Arzoni, ed., *Halakhic and Philosophical Issues in Jewish Women's Education* [Hebrew], Kiryat Arba 2003-2004, pp.205-219, who can envision women issuing halachic rulings; however it would appear from the tone of his comments that he would not view such a development as positive. See further Yoel Bin Nun, "Women will Rule for themselves" [Hebrew], *Nequdah* 268, 5764, pp.40-43; so also R. Shlomo Riskin, in his article "Women as Halakhic Decisors", [Hebrew], apud Ayin Tovah... *Sefer Yovel le-Torah*....., ed. Nahem Ilan, Tel Aviv 1999, pp.698-704.

<sup>11</sup>The issue of the status of the convert is only of partial relevance to our discussion, and therefore is not dealt with here. But see the recent summarizing analysis of Zev Farber, in his article "The Ger as a Judge and Public Figure," in *Keren* 1, 2013, pp.133-245.

<sup>12</sup> This principle does not apply to capital cases. See B. Nidah 50a, Tosafot *ibid.* s.v. *Kol ha-Kasher, B. Baba Kama* 15a, *Tosafot s.v. Asher; Minhag Hinuch Mishpatim* no.77:7, note 8, ed. Mechon Yerushalayim, vol.1, Jerusalem 1988, p.327.

<sup>13</sup> This notion of "acceptance" legitimizing the use of almost any judge was already mentioned by R. Yaakov Lewinson, in his *Shivyon ha-Nashim mi-Nekudat ha-Halachah*, New York 1920, pp.12-16, 22.

<sup>14</sup> And today halachic books are more or less the equivalent of rabbis, (see *Sheelot u-Teshuvot Shvut Yaakov*, by R. Yaakov Reischer, vol.2, Offebach 1719, sect. 64, R. Ovadiah Yosef, *Yabia Omer* vol.3 2nd edition, Jerusalem 1986, introduction.)

Furthermore, this position would seem to be borne out by an early responsum of *Ri Migash* (R. Yosef Ibn Megas, 1077-1141), Jerusalem 1959, sect. 114 (fol.17ab). He was asked:

What would you say, Our Master, about a man who has never in his life studied *halachah* under a Rabbi, and does not know the way of *halachah* and its ways of interpretation, on how to read [such literature], but he saw many responsa of the Geonim and books of regulations (*dinim*)?

The answer he gives is as follows:

Know that this person is more suited to be given permission to give rulings than many other people who have given themselves authority to give rulings in our time; for most of them have neither of two requirements, that is to say: an understanding of *halachah*, and a knowledge of the opinions of the Geonim. And those who think they can rule out of their own study of *halachah* and because of the strength of this study of Talmud, it is they who should be prevented from [giving rulings], as in our times there are more individuals who are worthy of this, and [even] one who has reached the wisdom of the Talmud may not rule out of the results of his personal study unless he be acquainted with the view of the Geonim. But, on the other hand, he who rules out of a knowledge of the Geonim and relies upon them, even if he does not understand Talmud, he is more suitable and praiseworthy, than he who thinks he knows Talmud and relies upon himself.

This remarkable statement clearly expresses the preference for one acquainted with the writings of the authoritative sources, to one who relies on his own judgement, but does not base himself on the authorities. In our days, the authoritative sources are readily available in books and other media, so that provided the answers given are based on and consonant with those sources, they may be given even by a less learned individual.

See further *Shut Maharshdam* (R. Shmuel de-Medina, Salonika 1506-1589), *Hoshen Mishpat* 1:

...In our days the scholar only rules in accordance with the book. And if we see that he is expert and experienced in studying [the sources] and has a healthy sense of reason (*u-baal sevara yodea daat u-meivin*), it is obvious that he can give rulings... even when there is someone greater [in learning] than him in his locale.<sup>15</sup>

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<sup>15</sup> See Avi Sagui, apud *Rabbanut: Ha-Etgar*, Jerusalem 2011, vol.2 p.716, and note 24 *ibid.* for additional material on this issue. And see *Entziklopedia Talmudit* vol.8, s.v. *Horaah*, 489- 490, on the various opinions on ruling from books; but there is a consensus that one may rule in accordance with the *Shulhan Aruch*, and its super-commentaries; see *Pithei Teshuvah* to *Yoreh Deah* 242:8. And see *Entziklopedia* *ibid.* 491-494, and especially *ibid.* note 109, that women may give rulings if they are sufficiently well educated (*ishah hachamah*).

The importance of books is already mentioned in mediaeval rabbinic sources. See, for example, the statement of the Tosafist, R. Mosheh of Evreux, who stated that:

From the time the Jewish people was exiled from its land, when our Temple was destroyed... the law that reverence for a teacher must be like reverence for God no longer applies, and all the rules regarding the relationship between disciple and master are abrogated. This is because the books, the treatises, and the commentaries are masters, and everything depends on intelligence and logic.

See further R. Ovadiah Yosef, *Yabia Omer* vol.4, *Hoshen Mishpat* 1:6, that this phrase "the books... are our masters" mandates that all books must be examined prior to rendering a psak. See A. Yehudah Warburg, *Rabbinic Authority: The Vision and the Reality*, Jerusalem New York 2013, pp.39 (especially note 63), 47-49, on sifrei psak. Further, on the importance of books, see *Pithei Teshuvah* to *Yoreh Deah* 242:3, in the name of R. Yaakov Reischer, the *Shvut Yaakov*, that the books which have been disseminated and accepted among [the Rabbis of] Israel are our Sages. See also M.M. Shklarsh, *Hayyei Mosheh* to *Yoreh Deah*, Bnei Brak 2001, p.257 note 16, citing the *Urim*

However, it must also be borne in mind that one has to choose the books upon which one bases one's ruling with the utmost care. One must be clear as to the status of the author, and the accuracy of the traditions cited, etc<sup>16</sup> (See Yitzhak Yosef, *Maarechet ha-Shulhan* vol.2, Jerusalem 2010, pp.412-420.)

One should further take note of the fact that the institution of *Semichah*<sup>17</sup> (ordination) was suspended, or even abolished, close to one thousand seven-hundred years ago, and as a result the notion and character of ordination underwent a radical change.<sup>18</sup> From that time onwards the practice is that a learned scholar, rich in experience and accepted by his congregation, after becoming acquainted with a candidate for ordination, and examining him in one way or another, gives him a "document of ordination"

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*ve-Tumim to Hoshen Mishpat* 72, that one should study books and come to rulings on their basis, and also *ibid.* p.258 note 22, on the need to study the book even of the most contemporary authorities.

The issue of the importance of books and their use in psak has also been discussed by R. Ovadiah Yosef in his *Maor Yisrael*, vol.3, *Tabaat ha-Melech al ha-Ramban* vol.1, Jerusalem 2005, p.17 (to *Rambam Hilchot Talmud Torah* 5:4). There he quotes the *Radbaz* vol.5, sect.2 (2147), that:

.... Nowadays, since there are several works on halachah and response of the Geonim, anyone who has reached the stage of being able to adjudicate (*higia le-horaah*), even if he is not yet aged forty, can rule according to the books, because he will be able to understand what the Geonim have clarified.

This is also cited in the *Beit Yosef to Hoshen Mishpat* 10.7, and similarly in the response of the *Maharshdam*, *Hoshen Mishpat* 1, etc. However, the *Rema* in *Yoreh Deah* 242:31, wrote that before the age of forty no one should make halachic rulings, and so too the *Mabit* sect.280. And on the basis of the *Rema's* ruling R. Eleazar Fleckeles, in his *Teshuvah me-Ahavah*, Prague 1709-1721, sect.375, writes that at the order of the *Noda bi-Yehudah* (R. Yehezkel Landau), a notice was publicized in Prague that since there has been an inflation of new books on *Shas* and *poskim* of relevance to practical *halachah*, and they have spread all over the world creating a stumbling block, because local Rabbis do not distinguish between [the different types] and think that anything published may be relied upon in *pesak* – therefore one must insist that only someone who has not reached the age of forty may not publish his halachic novellae, and only after the age of forty may he be permitted to do so. This notice was signed by the *beit din* of Prague, which also included R. Michael Bachrach, R.S.Z. Amrich, and R. Eleazar Fleckles. However, R. Ovadiah Yosef concludes that this applies to those who only follow the opinion of the *Rema*. But we (Sefardim), who follow the *Beit Yosef*, allow one who has reached the stage of being able to adjudicate, even if he is less than forty, to publish his novellae, and we will give them our approbation (*haskamah*). And see, in greater detail his responsum in *Yabia Omer* vol.4, 2nd edition, Jerusalem 1986, *Hoshen Mishpat* no.1:4-5, pp.378-379. We see here, on the one hand, the importance of halachic works and their value, but on the other hand, the care to be taken in distinguishing between significant and reliable ones and those less so, before making use thereof. A balanced discussion on the parameters of the use of books for psak, (including the well-known controversy on the use of the *Shulhan Aruch*, or indeed the *Rambam* for psak, see Yaakov Yosef Neischlass, *Meishiv ka-Halachah*, Brooklyn 2008, no.18.

We may further add that it is told of the wife of R. Eliyahu Mani (1818-1899, Chief Rabbi of Hevron) that when people came to the house with questions of *issur ve-heter*, and he was not available, she would go to the library, find the relevant book and give the answer. (See Yehiel Michel Stern, *Sefer Eshet Hsayyil*, vol.2, Jerusalem 2014, p.366.) So she give the *psak* on the basis of books, no doubt with the acquiescence of her husband.

<sup>16</sup>See Yitzhak Yosef, *Maarechet ha-Shulhan* vol.2, Jerusalem 2010, pp.412-420.

<sup>17</sup>On this institution, see J. Newman, *Semikhah (ordination) A Study of its Origin, History and Function in Rabbinic Literature*, Manchester 1950; Jacob Katz, "Rabbinic Authority and Authorization in the Middle Ages", *apud* *Studies in Mediaeval Jewish History and Literature*, ed. 1 Twersky, Cambridge Mass. and London 1976, pp.41-56. And on the importance of sevara, see A.H. Rabinowitz, *The Jewish Mind*, Jerusalem 1978, pp.149-165. But cf. *ibid.* pp.151-161, on the limitation of ruling from codices without a true understanding of the underlying source and principles involved, i.e. *Sevara*. (Compare Yitzhak Yosef, *Shulhan ha-Maarechet*, vol.2, Jerusalem 2010, p. 614)

<sup>18</sup>See R. Moshe Isserles, in his *Darkei Mosheh to Tur Yoreh Deah* 242:14, *Machon Yerushalayim* ed., pp.599-600; cf. his responsum no.24, ed. A. Ziv, Jerusalem 1970, p.147.

(*ketav hasmacha*)<sup>19</sup> which bears witness to his knowledge and competence in certain areas of *halachah* (either *Orah Hayyim* and *Yoreh Deah* – "Yoreh Yoreh", or *Hoshen Mishpat* and *Even ha-Ezer* – "Yadin Yadin"). This does not constitute a transfer of authority but rather a testimony as to the candidate's abilities and suitability to respond to questions in specific areas of *halachah*.

Indeed this was very clearly elucidated by Blu Greenberg, in her article in *Moment*, December 1992, (pp.50-53, 74), entitled "Is Now the Time for Orthodox Women Rabbis?" There she wrote:

A close look at the convention of ordination reveals that it is not the conferral of holy status nor a magical logging of hands to transmit authority. Nor does the process uniquely empower a rabbi to perform special sacramental functions that a knowledgeable layperson, cannot. Ordination is the confirmation of an individual's mastery of texts (largely from the Talmud and codes); familiarity with precedents; the ability to reason analogically and apply precedents to contemporary questions. Conferring the title "rabbi" is a guarantee to the community that this person has been judged fit by a collective of rabbis or by a single great scholar to give guidance on matters of *issur v'heter*, the forbidden and the permitted, primarily as it concerns the laws of *kashrut*, Shabbat and family purity. The *smicha* process assumes but does not even test for personal piety, good character or spiritual bent. The formal criteria are almost wholly intellectual."<sup>20</sup>

More recently, in certain communities there have been established a series of examinations, not necessarily individually tailored, but formalized and covering a broad spectrum of halachic issues. These are offered by institutions which prepare and vet them, and then give documents of ordination which are widely accepted by their communities. Such is the case of the Israeli rabbinate and Yeshivah University in New York, etc. But, as stated above, this is a relatively modern phenomenon. Even up to the present day the traditional practice that has been in use for so many generations since the abolishment of the original *semichah*, has been the granting of a testimony of competence given by a rabbi who was ordained, and accepted by the community as a decisor (*posek, baal horaah*), to one whom he has personally examined in a detailed, systematic manner. The document specifies and defines the areas of competence. Thus the nature of such ordination and the ultimate source of authority for the ordained person is the level of competence he has demonstrated. Today, such competence is not gender limited, and may well be demonstrated and proven by women as well as by men.

Indeed, there is now an accepted institution of women who are qualified to act as pleaders in rabbinic courts (*toanot rabbaniyot*)<sup>21</sup> and there are women advisors on halachic issues concerning niddah etc., (*yoatzot hilchatiyot*). The latter are, in effect, offering halachic rulings. The authority and recognition of such women is based solely on their proven competence.

Furthermore, there are additional examples of women giving *piskei halachah*. For the *Magen Avraham* in *Orah Hayyim* 263:5, in note 12 cites the view of the mother of the *Derishah* that on *Yom Tov* a woman should bless the candles and only afterwards light them. "And so is written at the end of *Sefer ha-Derishah*, by R. Yehoshua Falk (1550-1614), on *Even ha-Ezer* (in the *Derishah's* son's introduction), in the name of his mother, (i.e. the *Derishah's* wife, Baila). It is true that the *Magen Avraham* rejects this

<sup>19</sup> This is sometimes called Hatarat Horaah. The certificate carries with it the right to the title "Rabbi", or, as in some communities *Morenu*, or *Harav*. See Newman *ibid.* pp.171-172. A discussion of the history of these titles is beyond the scope of this study.

<sup>20</sup> See further her articles in *Judaism* 33/1, 1984, pp.23-33, "Will there be Orthodox Women Rabbis?", and in *First Things*, September 2009, "Women Orthodox Rabbis: Herecy or Possibility."

<sup>21</sup> See Hadad *ibid.* Pp.83-86.

ruling, adding that "there is no wisdom in a woman [except regarding the spindle]" (Y. *Sotah* 3:3 B. *Yoma* 66b), ruling that Shabbat and *Yom Tov* candles should be lit in on identical fashion, however, that same son, R. Yosef Yuzpa Falk accepts her ruling, adding "and her counsel is blessed and her reason is excellent, and I decided to print this in a book in her name, and shouts of beautiful beautiful to her", (*Zechariah* 4:7; preface to *Tur Yoreh Deah*, Lublin 1596, nowadays printed at the beginning of *Tur Orah Hayyim*). So too, R. Yehezkel Landau, in his *Dagul Mi-Revavah* to *Orah Hayyim* 263, accepted her ruling, adding "she is a woman who excelled in wisdom" (Cf. *Exodus* 35:26; see Golinkin *ibid.* pp.288-289, 301-302, and see *ibid.* for additional examples.)<sup>22</sup>

These are but some of the women listed by Ashkenazi. It should be noted that already in 1942 Shlomoh Ashkenazi had published (in Tel-Aviv) a small booklet entitled *Nashim Lamdaniyot: (Skirah Historit)*. It is somewhat more extensive than the material in that section of his *Ha-Ishah* etc. In his concluding remarks (p.69) he wrote that we may learn from his list that there were Jewish woman "who were learned, and with book-knowledge, who at times reached the status of *Roshat yeshivah* and preachers (*darshaniyot*) and those who gave halachic rulings (*poskot sheelot*). So there, are precedents for women in positions of halachic authority.

We may further add a comment by Cecil Roth in his article "Outstanding Jewish Women in Western Europe," which appeared in R. Leo Jung's anthology, *Women: The Jewish Library*, London and New York 1970, note 2 to pp.152-153. He writes as follows:

In this connection, the present writer may be excused for mentioning a family legend relating to his grandmother, Miriam, daughter of Rabbi Joseph Lissa and wife of Rabbi David Roth. It is recounted that on one occasion, when she was a girl, a dispute arose in the *Bet Hamidrash*, and she was asked to go fetch her father, the rabbi of the town, to decide it. She replied that it was not worth while to trouble him about it, as the solution was quite simple; her explanation was afterwards confirmed by her father. Another time, she is said to have heard one of the local scholars give an inaccurate opinion about some complicated question. She told him, in all humility, that her father would not have concurred, as indeed he did not. It is obvious, from these anecdotes, that knowledge of the *Talmud* was no male prerogative.

### Women in Positions on Communal Authority

As to the question of whether a woman can serve in position of communal authority, the view of the Ramban (*Melachim* 1:5) is known, forbidding women from having any position of authority.<sup>23</sup> However,

<sup>22</sup> Shlomoh Ashkenazi, in his *Ha-Ishah be-Aspaklariat ha-Yahadut*, Tel Aviv 1953, vol.1, pp.115-137, gives a long list of learned women, such as Rachel, daughter of Rashi who wrote halachot and response in his name (*ibid.* p.118); Miriam the daughter of Rivan, son-in-law of Rashi, whose practices served an early Rishon to clarify a halachah (*ibid.*); the mother of R. Mattiyahu of Treibish, (born 1305), was greatly respected by the *Tashbatz* (Shimon ben Tzemah Duran, 1361-1444), and cites her in his responsa (vol.3, no.78; *ibid.* 118-119; Hakah Bachrach, (1585-1652), mother of R. Shimon [1600-1670], who when he came to Vermaiza (Worms) to serve as its Rabbi-she came with him, and helped him solve halachic problems; her grandson R. Yair Hayyim Bachrach (1639-1702), author of *Havvat Yair*, quotes many of her *hiddushim* in his writings (*ibid.* 123). The title of his book *Havvat Yair* was in her memory, as he relates in his introduction, etc. etc.

Furthermore, Rabbenu Tam's wife, Miriam gave halachic rulings in her city (*ibid.* 131); Gittel the wife of R. David Schwerdscharf from Bilgurai (Poland) has several of her *hiddushei* Torah and responsa published in *Petach ha-Bayit* in the beginning of *Beit Yehezkel*, and in *Har ha- Bayit* at the beginning of *Pinot ha-Bayit*.

<sup>23</sup> This matter requires much further elaboration, and therefore I have addressed it below. Most recently Prof. Abraham Grossman, in an article entitled "*Ishah u-Mishpahah be-Haguto shel R. Avraham ben ha-Rambam*", in *Dinei*

later authorities stated that they know no source for this opinion (*Igrot Mosheh, Yoreh Deah* vol.2, 44-45), and that it is "a rejected ruling" (*Mishpetei Uziel* vol.3, *Hoshen Mishpat* 6). In addition Rav Uziel wrote (in *Piskei Uziel* 44 p.232):

This ruling only refers to an appointment by the Sanhedrin. But when the appointment is by the consent of the community, where through a majority vote the public voices its opinions, the agreement and trust of the public in its appointees, who will be supervising their communal affairs – in such a case even the Rambam would agree that there is no hint of a prohibition [i.e. for a woman to so serve].

In other words, since the appointment of the leader of a community, be it in a position of spiritual leadership (or administrative, financial and/or political) is dependent upon the congregation's agreement, or that of their elected representatives, the authority vested in such a leader stems from the community which has the halachic right to vest its authority in its leaders.<sup>24</sup>

*Yisrael* 26-27, 2009-2010, p.123, pointed to the ambivalent attitude of the Rambam to women. He refers us to *Hilchot Teshuvah* 10:1, where women's worship of God is categorized as of those of ignoramuses and children; *Iggeret ha Shemad* (*Iggerot ha-Rambam*, ed. Y. Shilat 1. Jerusalem 1987 p.30): "... even women lacking in brains..."; *Hilchot Avodat Kochavim* 11:16: "those senseless idiots, and among them women and children, who lack understanding", (my translation D.S.). On the other hand, the Rambam, Grossman points out, was concerned for the rights of women, (see *ibid.*). More recently Marc Shapiro, in his book *Changing the Immutable: How Orthodox Judaism Rewrites the History*, Oxford, Portland, Oregon 2015, pp.64, discussed Maimonides' attitude towards women. He writes that he is not to be placed in the category of the misogynists. He writes:

It is true that he often places women together with children and the ignorant, and in some of these passages it is clear that he did not think women had much religious sophistication [See the list of passages in A. Melamed, "Maimonides on Women: Formless Matter or Potential Prophet", apud A. Ivry ed., *Perspectives on Jewish Thought and Mysticism*, Amsterdam 1998, pp.119-122, and add: *Hilchot Avodah Zarah* 11:16, where women and children are said to have "undeveloped intellects".] When it comes to the study of Torah, he writes: 'Our Sages commanded that one should not teach his daughter Torah, because most women cannot concentrate their attention on study, and they transform the words of Torah into nonsensical matters due to their lack of understanding, [*Hilchot Talmud Torah* 1:13]. Nevertheless, Maimonides should not be placed with other medieval figures who speak negatively about women. In fact, he is actually one of the most progressive medieval Jewish writers when it comes to views on women.

Shapiro continues that though Maimonides was greatly influenced by Aristotle, who believed women are defective by nature, (see his references in note 113) he, however, broke with Aristotle when it came to the latter's view of women." He writes:

For Maimonides, any judgement to be made about the intelligence of women is due to their social circumstances, living in what was a Taliban-like society. However, they are not inherently inferior to men. Maimonides, in fact, asserts that women too are required to obtain knowledge of God and that this is necessary to fulfil various commandments. [*Sefer ha-Mitzvot* positive commandments nos 1-6; *Hilchot Yesodei ha-Torah* chapters 1-4; Warren Zev Harvey, "The Obligation of Talmud on Women according to Maimonides", *Tradition* 19, 1981, pp.122-130]. They are inferior because they have received no education, but this is not something 'hardwired' into them. In the words of Menachem Kellner, according to Maimonides the position of women 'was a function of sociology, not of ontology'. Seen in the context of medieval times, when negative views of women's nature were standard, Maimonides' alternative perspective can be seen as a 'radical egalitarian stance'.

<sup>24</sup> See A. Yehuda Warburg, *Rabbinic Authority: The Vision and the Reality*, Jerusalem New York 2013, pp.39-42, who discusses the notion of the *mara de-atra*, and the degree of autonomy of individual synagogues within a particular locale, explaining that, in such circumstances:

... the synagogue's autonomy is defined by having its own rabbi, conducting daily prayer services with its own liturgical practices, and maintaining governance by its lay membership. If the synagogue is construed as a *kahal*, the elected rabbi, contingent upon possessing the requisite scholarship, is to be viewed as the *mara de-atra* of the synagogue.

This view may find further support from the following discussion. The *Tosafot Yom Tov* in his commentary to *Mishnah Avot* 1:10, raises the following question related to Rambam's statement (in his introduction to his commentary in the Mishnah), namely that Shemaya and Avtalion were converts and rose to be *Nasi* and *Av Beit Din* (head of the court.) But surely we have learned (*Mishnah Sanhedrin* 4:2 and *Horayot* 1:4) that converts cannot receive such appointments! His reply is that they themselves were not converts but perhaps born of a non-Jewish father and a Jewish mother (from "*Kehal gerim*"). However, the *Hida* (in his *Birkei Yosef*, *Hoshen Mishpat* 7:6; quoting R. Hayyim Benveniste [1603-1673. Chief Rabbi of Smyrna] in his *Knesset ha-Gedolah*) has a different solution. He asserts that "*kabbalah mehania*" – acceptance has legal effect, "as we have learned from Shemaya and Avtalion... In every case where the community accepts and is satisfied with an appointment, the appointee can judge even on matters of authority and enforcement (*be-milei de sevarah u-kefiah*)."

There is, as it were, a contract of agreement that the congregation accept the rulings of its appointee, similar to the case of court arbitration, *borerut*. And when a great and accepted authority appoints an individual to such a position of leadership, the community assents to such appointment.

Moreover, we see that R. Feinstein (*Igrot Moshe*, *Yoreh Deah* vol.4, sect.24.) states that a woman is in no way prohibited from accepting a position of authority. Indeed, he permitted a woman to serve as a *kashrut* supervisor, even though this is a position of communal authority and can have serious financial implications, should she, for example, annul a *kashrut* certificate from a given institution, as R. Mosheh explicitly states. (*Igrot Moshe*, *Yoreh Deah* vol.2, 44).

Rav Herzog went even further (*Tekumah le-Yisrael al-pi ha-Torah*, vol.1, Jerusalem 1989, *ibid.* p.111), stating that the women of our generation, especially those who have been put forward as candidates for parliament, have a very broad education, and are successful in business, run charitable institutions etc. Accordingly, are surely fit to serve in leadership positions in the community, even as members of parliament. And, he argues, the Rambam would agree with this, and his remarks were made given the cultural state of women in his time. (Cf. above note 29) And as to the *acceptance* of women on the part of a congregation, as judges as opposed to their *nomination* - , see his, albeit reserved, view *ibid.* pp.43-46, where he finally agrees that it is permitted (p.45).

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Menachem Friedman, "Halachic Rabbinic Authority in Modern Open Society", apud J. Werthamer ed., *Jewish Religion Leadership: Image and Reality*, New York 2004, pp.765, termed this "voluntary community" to distinguish between the traditional Jewish community that existed in Europe up to the eighteenth century... The development of the Voluntary Community became possible from the moment that the leadership of the Jewish Community no longer had the power to enforce the observance of the traditional Jewish way of the members of the community. Warburg continues to explain as follows:

The synagogue's *mara de-atra* will either be "an authority" or "in authority" to the same degree as any communal *mara de-atra* is. Synagogue acceptance of the *mara de-atra* is either actualized through the adoption of a *takanot kahal*, synagogue bylaws, and/or the adoption of a *ketav rabbanut*, a rabbinic contract...

See continuation. And in note 80 *ibid.*, he states that the *takanot kahal* promulgated by duly elected and representative members of a particular town, as found in *Shulhan Aruch*, *Orah Hayyim* 153, can be equally extended to the general membership and/or board of a synagogue.

We may add that from the mediaeval period onwards, the majority of Rabbis were "democratically" appointed by all the (paying) members of the congregation, or their elected representatives, as is evidenced by the many protocols of the congregations, (*pinkasei ha-kehillot*), referred to by Y.Y. Bronstein, in his *Avnei Gazit*, Jerusalem 2002, pp.419-420.

And this indeed is what the *Sefer ha-Hinuch* says (*Mitzvah 77*)<sup>25</sup> says. For after bringing the Rambam's position, and raising the question of Devorah the prophetess, he first gives the answer offered by earlier authorities, namely that she did not give the final ruling, but:

they would discuss with her matters of *issur ve-heter* and *dinim*, and therefore it was said that "she judged Israel".

He then continues to offer a second alternative solution namely that:

"since the leaders of Israel accepted her authority, for with acceptance (*kabbalah*) everyone is certainly fit to give rulings, since on conditions regarding monetary issues (*tenai she-be-mammon*) everyone's ruling has validity. However, all that I have stated that they do not judge, is only according to some of the *Aharonim* and the *Yerushalmi* (*Sanhedrin* 3:9), where this is explicitly stated. However, according to some of the commentators they may judge.

R. Hayyim David ha-Levi, in his *Asei le-cha Rav*, vol.8, Tel-Aviv 1988, cites the *Hinuch* and adds that there may be an indication in *Ecclesiastes Rabba* (to *Eccles* 2:8) a text we have already referred to above, that there were women judges. For this *Midrash* (also found in *Yalkut Shimoni Ecclesiastes* 968), explains the verse "...I made men singers and women singers, *shiddah ve-shiddot*" which latter words the homilist explains as "*dayyanim zecharim ve-dayyanot nekeivot*", male and female judges.

And should one suggest that a woman's serving in a central position of authority in a community, and especially in the synagogue constitutes a breach of modesty, (as indeed does R. Yaakov Ariel, in his *Halachah be-Yameinu: Morashtah, Limmudah, Horaatah ve-Yissumah*, Ashkelon- Jerusalem 2010, p.190, although he agrees that in principle women may serve in leadership positions), and perhaps even involves the prohibition against "the voice of a woman being unchaste", Rav Uziel already determined (*Piskei Uziel* 44):

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.

Moreover, latter day authorities stated that wherever the awe of the *Shechinah* is present, we need not concern oneself with this rule, (R. Zvi Elimelech of Dinov, *Bnei Yisaschar*, [Zolkiev-Lvov 1846] Kislev-Tevet 4, 123, in the name of the Hida [*Rosh David*, Mantua 1776], 56d. *Be-Shalah*).

See further *Sefer Yad Sofer*, by R. Yaakov Hayyim Sofer, (in his *Kenesset Hayyim* Jerusalem 1993), p.54, who quotes the Hida in his *Rosh David* (*Parshat Be-Shalah* 54:4), who wrote:

When we pay attention to the song the the prophetess Miriam sang with all the women following her, and surely we hold that a woman's voice is *ervah* – unchaste, and how could this have taken place in such a holy situation! And early authorities answered in accordance with that which is found in B. *Nidah* 14 [read 13a] that where there is fear of the *Shehinah* (*beiatuta de-Shehinta*) there is no suspicion of sexual distraction, and here at the Red Sea surely the fear of the Divine Presence hovered over them, and hence there was no chance that this would lead to suspicion of in chastity. Hence, it was

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<sup>25</sup> In *Ahavat Shalom* ed., vol.1, p.125; in Chavel ed. No.83, p.141.

completely acceptable for the women to sing. This is what he stated. Such are the words of the Hida.

Furthermore, in *Hemed le-Mareh* (by R. Nissim Avraham Raphael Ashkenazi, *Zeraim*, Saloniki 1732) to *Y. Halah* 180a, we read that concerning a woman's carrying out a verbal *mitzvah* for an individual, there is an issue of *kol be-ishah*; but when she does so for a congregation (*rabim*), one does not raise this issue, because of the "fear of the *Shehinah*".<sup>26</sup>

Further proof for this position may surely be inferred from the passage in *Torat Kohanim* to Leviticus 7:2 (*Tzav* 5:3), where it is stated that the sacrifice of the *asham* (sin) offering may be carried out by women. (So too, *ibid.* *Nedavah* 4:2; and cf. *M. Zerahim* 3:1, *B. Zerahim* 31b-32a.) And we learn = from that passage in *Torat Kohanim* that the sacrifice of the *asham*, as well as that of the *hatat*, was offered at the north of the altar, i.e. in the innermost sanctum of the temple itself. And women were also allowed *semichah*, that is to say the placing of the hands upon their sacrifice. So their presence in the inner sanctum of the Temple was completely permissible, and apparently, there was no fear of a breach of modesty.

To the above we may add the ruling of the *Rema* in *Even ha-Ezer* 21:5, that:

There are those who say that any such actions that are not carried out as form of affection (*derech hibah*) but for the sake of heaven, are permitted, and therefore they ruled leniently in such matters (referring to *Tosafot Kiddushin* 82a.)

And furthermore, the *Sdei Hemed* (*Maarechet kof, klal mem-beit*) cites the view that wherever the singing is not songs of lust (*shirei agavim*, i.e. sexually provocative ones), and the listeners do not intend to enjoy [the femininity of her voice, when she intones songs of praise to God, the issue of *kol ishah* is not relevant.

All the above surely applies to women leading (parts of) the service in the synagogue.<sup>27</sup>

This may also be deduced from the straightforward reading of the beraita in Megillah 23a; and R. Ovadia Yosef. (*Yehaveh Daat* vol.4 Jerusalem 1981. sect.15 ad fin, and his note on p.78), as well as Rav Herzog, (*ibid.* p.98), write that they see no problem concerning matters of immodesty, for "surely women appear in our law courts.... and we have never heard that anyone has cast doubt on such behaviour. And if we were to take such a stringent position, life would no longer be liveable".

In actual fact, the issue of modesty is largely irrelevant. For R. Yehuda Henkin, in his *Understanding Tzniut: Modern Controversies in the Jewish Community*, Jerusalem New York 2008, pp.72-84, has convincingly demonstrated that because we are so used to seeing women in a broad variety of roles and situations, this no longer causes sexual distraction – *hirhur*. Thus, for example, among the several sources he cites, we read that the Levush, at the end of his *Minhagim* stated that:

We do not take care about [avoiding] mixed seating, because nowadays women are very common among men, and there are relatively few sinful thoughts about them... (*ibid.* 81-82).

<sup>26</sup> See Akiva Mosheh, *Ha-Keriyah ba-Torah ve-Hilchotehah*, Jerusalem 2009, p.294, note 2, ad fin.

<sup>27</sup> So too the Hida in his *Nahal Kedumim*, Lvov 1879, *Be-Shalah* 14; *idem*, *Meirat Ayin*, Livorno 1804, to Nidah 13a; Y. Hayyim Sofer, *Yad Sofer* vol.2, apud *Kenesset Hayyim*. Jerusalem 1993, p.54; Avraham Raphael Ashkenazi, *Nehmad le-Mareh*, *Zeraim*, Salonika 1732, to *Y. Halah*, 180a; Akiva Meller, *Ha-Keriyah ba-Tora ve-Hilchotehah*, Jerusalem 2009, p.294 note 2 ad fin., etc.).

Indeed, this was the basis of R. Yosef Messas' remarkable ruling permitting married women to appear in public without hair covering. At the end of his responsum he writes:

It is certainly understood... that since nowadays all women uncover all their hair... this being so usual it is not considered immodesty (*peritzut*)...., and any man is personally aware that in seeing thousands of women day by day passing before him with an uncovered head, he does not even notice them, and certainly has not *hirhur*, for uncovered hair [no longer] excites sexual distraction. (*Otzar ha-Michtavim* no.1484, vol.3, Jerusalem 1975, p.211).

More recently, R. Mosheh Lichtenstein, in his article entitled *Shirat Nashim le-Lo Kiruv ha-Daat, Tehumin* 32, 2002, pp.291-299, reached much the same conclusion with regard to listening to a woman's singing, that where there is no likelihood of sexual distraction (*hashash hirhur*) there is no reason to forbid it, and in the reality of our social situation, this indeed is the case.

To summarise: from the time of our ancestral mothers, - such as Sarah, Yael, Deborah the Prophetess, Beruriah the wife of R. Meir, Yalta the wife or Rav Nahman - there were learned women who dealt in *halachah*, and gave halachic rulings. See, for example, *Teshuvot Maimoniyot to Maachalot Asurot* 5; *Tosafot Shabbat* 111 b; *Raviah*, Evel sect. 841; *Or Zarua* vol.2, 256; Responsa R. Hayyim Or Zarua 101, 146, etc. Madame Bailah the wife of the *Sma*, was famous and was described by his son, R. Yosef Jospe ha-Cohen (in his introduction to the *Derasha on Tur Yoreh Deah* part 2) as being learned. R. Avraham Gombiner, (the *Magen Avraham*) disagreed with two of her *hiddushim*, but R. Yehezkel Landau wrote of her "that in my humble opinion the law is according to his mother.... And so would I rule like the wife of the Gaon the *Derishah*, who is a lady whose heart rises up in wisdom."<sup>28</sup>

There is even a tradition brought by R. David Conforte, in his *Koreh ha-Dorot*, (Venice 1746, 25b, Jerusalem 2008, p.93) that "a wise woman wrote " the anonymous *Kol Bo*, a famous mediaeval book of *halachah*, (though he himself, probably quite rightly, rejects this attribution).

Here it is interesting to take note of a most unusual comment of R. Efraim Shlomoh Luntshitz (Lenczyca, Poland 1550-1619), in his *Klei Yakar to Numbers* 13:2, "Send thou men, [that they may search the Land of Canaan which I give unto the children of Israel, of every tribe of their fathers shall ye send a man, every one a ruler among them].."

For the Sages said that they hated the Land of Israel, and said, "Let us make a captain, and let us return to Egypt" (*Numbers* 14:4), while the women loved the Land, and said [i.e. the daughters of Tzelofhad]" Give unto us therefore a possession among the brethren of our father" (ibid. 27:4). Therefore, the Holy One blessed be He said, "In my opinion, seeing the future, it would have been better to send women who love the Land [to spy it out], for they would not speak badly of it.

<sup>28</sup> Shlomoh Ashkenazi, in his book *Ha-Ishah be-Aspaklariat ha-Yahadut*, vol.1, Jerusalem 1953, pp.115-130, lists over seventy learned Jewish women, several of whom had leadership positions (e.g. the daughter of Rabbenu Nissim of Kairuan, the wife of R. Yosef ha-Nagid 1031-1066, who after her husband's death led the community of Luciena, Ashkenazi p.118), and gave halachic rulings (e.g. the wife of R. Yehoshua Walk, 1550-1614, Bailah, ibid. P.122, or the wife of R. Avraham of Falaise, ibid. p.119). See further M. Kayserling, *Jüdische Frauen*, Leipzig 1879; Shlomoh Ashkenazi *Nashim Lamdaniyot. Skirah Historit*, Tel-Aviv 1993; A. Neubauer and M. Steinschneider, *Zur Frauenliteratur*, ed. A.M. Habermann, Jerusalem 1968. On Madam Bailah, see also *Entziklopedia le-Toldot Gedolei Yisrael*, ed. M. Margalioth, vol.3, Jerusalem 1943, col. 710. See also the remarks of R. Hayyim David ha-Levi in *Asei Lecha Rav*, vol.2, Tel-Aviv 1978, p.193, who refers us to the *Hida* (Shem ha-Gedolim s.v. Rav, - *Rabbanit* who cites R. Shimshon who surprisingly found a woman Tannait who in *Tosefta* Baba Metzia 1, who was, of course, Beruria.

But you [Moses] think these people are suitable, so send them". And from these words one could conclude that women could serve in public positions of authority.<sup>29</sup>

It is true that this interpretation of the *Klei Yakar* was rejected by R. Elijah Katz, in his *Beer Yaakov* (vol.3, Jerusalem 2003, no.15, p.32); however, whether his refutation be correct or not, clearly R. Efraim Luntshits saw a place for women in public leadership positions, and sought to find some source in the canonic texts.

In conclusion: From the above sources, the *Tosafot* in *Nidah*, the *Ran* in *Shevuot*, the *Rashba* and the *Ritba* to *Bava Kama*, the *Sefer ha-Hinuch*, the *Hida* in *Birkei Yosef*, and a number of latter-day authorities, it emerges that "a wise woman", a God-fearing one, who studied Torah intensively and *halachah* systematically in depth and in breadth from truly learned scholars, and who was examined by them and/or by an experienced rabbi, and who gained practical experience in the areas of *halachah* by being in constant contact with true authorities – *shimush* -, she is certainly worthy to be crowned with the crown of Torah, and rightly to be considered eligible to give halachic responses and practical ruling, in those areas in which she was examined and found competent. And may the Lord guard over her that she make no error, and lead no one astray, but guide her congregation along the pathway of Torah and the fear of God.

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<sup>29</sup>See *Sifrei Zuta Pinhas* 27:1, *Sifrei Pinhas* no.133, etc., *Torah Shellemah*, by R.M. Kasher, vol.39, Jerusalem 1985, pp.45-46, no.30. The homiletic stress is on the word *lecha* (literally-yourself), of the words *shlach lecha* – literally send yourself, i.e. on your own responsibility, not Mine (God's). (Compare *Genesis* 12:1, "*Lech Lecha*", literally "send yourself", and Rashi ad loc., "For your benefit and your good." Cf. *Zohar* 1:77b, 2:32a; see *Torah:Ariel: Rashi ha-Shalem, Bereishit* vol.1, Jerusalem 1986, p.122 note 1.)

We find this same claim in R. Gedaliah ibn Yihya's brief essay in praise of womanhood, cited in A. Neubauer's *Zur Frauenliteratur, Israelitische Letterbode* 10, 1884-1885, p.147:

And so will you find that Israel on the advice of the spies refused [to go to] the Land of Israel, but in advance the daughters of Tzelofhad asked for their portion in the land. And it was for this reason that they were not subject to the decree of the spies, for they did enter the Land, as it is said, "And there was *not left a man of them*, save Caleb the son of Jephuneh and Joshua the son of Nun" (*Numbers* 26:65). ["Not left a man of them"], - but the women were left.

The following verse (*Numbers* 27:1) is "Then came the daughters of Tzelofhad...", and it is from the juxtaposition of these two verses that the Rabbis derived this homiletic position. The source is in *Numbers Rabba* 21:10, and parallels. (Cf. *Midrash ha-Gadol* to *Numbers* 26:65, ed. Tzvi Meir Rabinowitz, Jerusalem 1967, p.463.)

Gedaliah ibn Yihya's essay is in response to a misogynist poem by Abraham of Sarteano, and others, published by Neubauer, in *Israelitische Letterbode* 10, 1884-1885, pp.115-116, and see the other polemic poems brought by Neubauer *ibid.* pass. (They were collected in a small booklet by A.M. Habermann, under the title *Zur Frauenliteratur*, Jerusalem 1968, pp.1-50.)

We might further point out that R. Gedaliah ibn Yihya had great respect for the wife of R. Yom Tov, author of the *Magid Mishneh*, (otherwise known as Don Vidal di-Tolosa from Catalonia). He relates (in his *Shalshet ha-Kabbalah* Warsaw 1877, p.79) that he was told in the name of Maharam Padua that R. Yom Tov had a wife, and when she was widowed, the author of the *Migdal Oz* (Shem Tov be-R. Avraham ibn Gaon) came to her requesting her in marriage. Her reply to him was, "The last *Yom Tov* compared to the first was declared by the Rabbis as secular." (This is a clever paraphrase of Rav Ashi's statements in *B. Beitzah* 6a that "the Second *Yom Tov* with regard to a dead person was declared by the Rabbis as secular, meaning that one buried a dead person on the second day of *Yom Tov* and one does not delay the burial, even if there is no fear of the corpse's malodorous.) This was her clever formulation for rejecting Shem Tov over *Yom Tov*. (See Shlomoh Ashkenazi, *Nashim Lamdaniyot (Skirah Historit)*, Tel-Aviv 1942, p.36.)