

## **Rabbi Soloveitchik's position on Women as Shohatot and the Development of Customs of Abstention: Semikhah and Mesorah A Response to the February 2017 OU Panel**

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This essay analyzes the opening *shiur* in *Shiurei Ha-Rav* (Jerusalem: Mesorah, 2005), Rabbi Eliakim Koenigsberg's book of summaries and transcriptions of Rabbi Soloveitchik's *shiurim* on *Yoreh De'ah*.<sup>1</sup> The *shiur's* analysis of women serving as *shohatot*, ritual slaughterers, has recently been used by the rabbinic panel of the OU to articulate the panel's [opposition](#) to women serving as Orthodox clergy. In the opening two essays on Rabbi Soloveitchik's *shiur* on the laws of *Kashrut*, the Rav offers two approaches to the following passage in the *Yoreh De'ah* section of *Shulkhan Arukh* (1:1):

Everyone is permitted to slaughter from the outset, even women. *Rema*: And some say that we should not permit women to slaughter because the custom has developed not to slaughter. And that is the custom, that women do not slaughter.

הכל שוחטין לכתחלה, אפילו נשים.  
הגה: יש אומרים שאין להניח נשים  
לשחוט שכבר נהגו שלא לשחוט. וכן  
המנהג שאין הנשים שוחטות.

Rabbi Yosef Karo decided that women may, if properly trained, serve as *shohatot*. That ruling was in accordance with the simple understanding of the *Gemara* and the majority of *Rishonim* (See *Tosafot Chullin* 2a "Ha-kol Shohtin," *Rosh Chullin* 1:1(2), *Mishneh Torah: Sefer Kedushah-Hil. Shehitah* 4:4, *Rashba Torat ha-Bayit* 1:1, 7a, *Ran on Rif* page 2a "v-kulan she-shahatu") The *Rema*, in response, claims that we should not allow women to do *shehitah* and that such is the *minhag*.

### **Rabbi Soloveitchik's Approach to Women as *Shohatot*:**

It is important to state upfront that this is not a conversation of equals. The *gadlut* of the Rav far surpasses my learning. However, I feel that responding to a written essay is appropriate. Everyone who is writing about this sensitive issue must do so from a place of honest humility. I would like to analyze the written position of the Rav and make three basic claims:

1. This first claim will address a textual problem within the *shiur*. Rabbi Koenigsberg, in his

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<sup>1</sup>I would like to thank the students of Yeshivat Maharat as well as Rabbanit Devorah Zlochower for their helpful comments and insights in the formation of this article. There may very well be different versions of this *shiur* as the Rav was well known for revisiting material that he had taught in the past as though it was the first time he was encountering those texts. However, I can only evaluate the Rav's Torah based on what appears in writing. It was (loosely) [translated](#) by Rabbi Gil Student. In addition, Rabbis Aryeh and Dov Frimer used [this shiur](#) to argue that the Rav would certainly be against the granting of *semikhah* to women. I will deal with their claims below.

transcription of the notes from the *shiur*, relies on a text from the Semak that does not appear in the standard printed edition.

2. Second, the Rav, based on his understanding of the exclusion of women from *shehitah*, read Rambam's approach to *serarah* in a way that leads to an internal contradiction within Rambam.
3. The creative application of a 'custom of abstention' to explain a passage from the medieval period reflects a world in which there was no reality of advanced women's learning in the Orthodox community. In addition, the Shakh's position, which is central to the Rav's thesis, is only operational regarding matters of 'common' practice. Some later *aharonim* appear to ultimately reject the Shakh.

These three claims make the article of the rabbinic panel read less like a formal *pesak* and more like rabbinic advice (חוות דעת). It is certainly the case that different rabbinic scholars can and should express their opinions on matters of communal policy. No one questions the *gadlut be-Torah*, and indeed the courage, of these rabbanim, but given the range of possible positions on this matter, it is unwise for the OU to adopt this paper as a matter of national policy.

### Claim I: The text of the Semak

The Rav claims that a woman may not serve as *ashohetet* because it violates Rambam's understanding of *serarah* (coercive communal authority) or *mesimah* (appointment).<sup>2</sup> The Rav links this *minhag* to *serarahin* order to help explain a strange formulation found in the *Kol Bo* (n.107) and cited by the *Beit Yosef* (*Yoreh De'ah* 1). The *Kol Bo* quoted the *Semak* (*Mitzvat Aseh* n.197) as saying "women may only שוחטות לעצמן—slaughter for themselves." One implication of this phrase might be that women may *not* slaughter on behalf of others, or the community.

It is important to note that the *Beit Yosef* (*Yoreh De'ah* 1) quoted the *Kol Bo's* version of the *Semak* (*Mitzvat Aseh* n.197) in which the word "לעצמן—for themselves" appears. The *Agur* (*Hil. Shehitah, Siman* 1062) cites the *Semak* in the same way. However, the standard printed editions of the *Semak* do not have this phrase. The standard printed editions simply have שוחטות נשים without any qualification. The *Orhot Hayyim* (*Shehitah* n.3) does not have the words "for themselves." Much of the Rav's *shiur* is built on the distinction between "לעצמן", and for the community.

In his first comment in *Yoreh De'ah*, the *Peri Hadash* accepts the inference that לעצמן means that women may slaughter for themselves and not the community. However, he does not refer to Rambam and *serarah*. Instead, he claims that the job of the town-*shohet* requires hard work (זריזות גדול) and that women are too lazy (עצלניות) to perform the task. This is not a generous way to speak about women. However, it is clear that the *Peri Hadash* did not see the appointment of a woman as the town-*shohet* as a problem of *serarah* or *minuy* as he forbids that job for tangential reasons that I think all would agree no longer apply to women today.

To be clear, the position of *Rema* himself is based on the *Agur* (*Hil. Shehitah, Siman* 1062) who simply states that women may not serve as *shohatot* (the *Agur* is, in turn, based on the unusual

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<sup>2</sup> See *Sifrei on Devarim*, ed. Louis Finkelstein (New York: Jewish Theological Seminary of America, 1969), 209, lines 5-7. See also *Mishneh Torah: Sefer Shoftim, Hil. Melakhim* 1:4-5.

approach of Eldad ha-Dani, quoted in *Tosafot* on *Chullin 2a* “*Ha-kol Shohtin*”).<sup>3</sup> *Rema* did not quote the *Kol Bo*’s version of the *Semak*. Rather, he stated unequivocally that the *minhag* is that women may not slaughter. The Rav explains his inference from the *Kol Bo*’s citation of the *Semak* that women may not serve as a *shohetet* for others because it is a position of communal authority. He posits that once there was an office of the “town-*shohet*”, that appointment could not be filled by a woman.

### **Serarah and Converts**

Before turning to the internal contradiction created within Rambam, let us understand the full extent of the Rav’s position. Rambam’s approach is based on a parallel between the types of *serarah* that women and converts may attain. In chapter one of *Hilkhot Melakhim*, Maimonides first describes the limitations of the convert (*Hal.* 4) and then moves on to women (*Hal.* 5). There is a connection between the limitations placed on female leadership and what might be available to converts. The *halakhah* is that a convert may serve as a *shohet* (*Mishneh Torah, Hil. Shehitah 4:4; Tur, Yoreh De’ah 1; Darkhei Moshe 2*). If that is case, asks the Rav, how are we to distinguish between women, who may not serve as *shohatot*, and converts, who are permitted to serve as *shohtim*?

Accordingly, the Rav offered two different categories of appointments: מינוי של חשיבות ומינוי של שררה an *appointment of importance and an appointment of (communal) authority*. For the Rav, a convert can attain the status of an appointment of importance, חשיבות, just not one of authority. Therefore, since the *shohet* is only a מינוי של חשיבות (an appointment of importance) a convert may serve in that capacity. However, since a woman may not serve in *any* kind of מינוי—neither of importance nor of authority—she may not function even as a *shohetet*.

The Rav’s position is very extreme. According to Rabbi Soloveitchik, the appointment of a woman to nearly any position of communal leadership would ultimately violate his understanding of *serarah*. For most of the Modern Orthodox community today, placing these kinds of limitations on the leadership potential of either converts or women is anathema. In theory, being hired or appointed by a synagogue to serve as a halakhic adviser (*Yo’etzet Halakhah*) ought to be at least a position of importance. In addition, there are women who serve in administrative positions of Modern Orthodox day schools across the country. These professional capacities would likely fall under the category of a forbidden appointment for the Rav.

### **Claim II: Rambam on *Shehitah*—Internal Contradiction**

Rambam (*Hil. Shehitah 4:4*) rules that women may serve as *shohatot*. To him, it is clear that a woman may study with an expert and be trained by a *hakham* in order that she too may be considered an expert (מומחה). Rav Moshe Isserles, the *Rema*, in his *Darkhei Moshe on the Tur* (*Yoreh De’ah 1:3*) claims that the practice and requirement of receiving formal training and *akabalah* has its source in Rambam himself (*Hil. Shehitah 4:3*).

The language of Rambam is significant in order to understand some basic *shehitah* terminology. He wrote (*Hil. Shehitah 4:4*):

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<sup>3</sup> Eldad ha-Dani was a Jewish traveler from the ninth century who wrote a small Hebrew handbook of *halakhah* that dealt with the laws of slaughter. He was from Africa; likely Ethiopia. Many of his traditions violate standard talmudic law.

One who knows the laws of slaughtering and slaughtered in front of a *hakham* until they became accustomed is called an expert. And all experts may slaughter even from the outset by themselves (ביני לבין עצמן—meaning without someone watching over their practice). And [this law applies] even to women and slaves, for if they became experts they can slaughter from the outset.

היודע הלכות שחיטה ושחט בפני חכם עד שנעשה רגיל הוא הנקרא מומחה. וכל המומחין שוחטין לכתחלה ביני לבין עצמן. ואפילו נשים ועבדים אם היו מומחין הרי אלו שוחטין לכתחלה.

When Rambam uses the phrase “ביני לבין עצמן—by themselves,” he does not mean to imply that women who are experts may only slaughter for themselves. Rather, his point is that once a person has become an expert they no longer need supervision to ensure that they are carrying out the physical behaviors according to the law. This usage is likely what the *Kol Bo*’s version of the *Semak* means as well.<sup>4</sup>

What emerges from Rambam’s own words is that serving as *ashohet(et)*, which requires training and expertise, simply cannot be a violation of *serarah* or *mesimah*. The Rav argued that the implementation of training and the granting of a degree (*kabalah*) shifted the status of the *shochet(et)* from “איסור והיתר בעלמא” (just a prohibited and forbidden matter)” to a “מינוי הקהל” (communal appointment).<sup>5</sup> Therefore, women became ineligible.<sup>5</sup> However, I submit that this position cannot be maintained within the language of Rambam himself. It may be a way to explain the *Kol Bo*’s citation of the *Semak* (which does not reflect the extant version of the *Semak* himself, and is not the most convincing read of that passage), but it does not work within Rambam.<sup>6</sup>

What is perhaps even more interesting is that *semikhah* in the twenty-first century is often categorized as “איסור והיתר בעלמא—‘just’ a prohibited and forbidden matter,” which is not, by definition, a problem of *serarah*.

<sup>4</sup> See the *Peri Toar* (*Yoreh De’ah* 1) who explains the word לעצמן from the *Kol Bo* as “לחודייהו” which is the language of the Rabbis. This is a much more convincing explanation for this strange formulation. In addition, Rabbi Eliyahu Landsafer, in his *Kanfei Yonah* uses the phrase in exactly this way.

<sup>5</sup> The formulation of the Rav’s language by Rav Koeningsberg is important here. The key line reads as follows:

“ונראה דמאחר שנהגו ליטול קבלה מחכם כדי לשחוט, ממילא לא חשוב ענין השחיטה כמעשה איסור והיתר בעלמא שכל א’ ראוי לו, אלא הרי הוא כמינוי הקהל.”

This makes it clear that for the Rav, the receipt of a degree makes the from one category to the other automatically (ממילא).

<sup>6</sup> In addition, Rambam’s position on *serarah* is a minority voice among the *rishonim*. The Rav’s expansion to nearly all appointments, is an even greater minority position. See Rabbis Aryeh and Dov Frimer, who wrote: “the fact [is] that a large cadre of leading *poskim* have disagreed to varying extents with the Rav’s sole reliance on the Rambam, his analysis of *serara*, and his distinction between *serara* and *minui kahal*. Furthermore, many *poskim* accept the efficacy of democratic elections (*kiblu alayhu*) as a means of circumventing *serara* considerations in other communal leadership positions (such as shul presidency and elected political positions), and they may well feel the same about Rabbinic positions.” They also [penned](#) an extensive footnote listing those *Poskim* who disagree in their more complete Hebrew article. I have made a similar [claim](#) in my own treatment of the broader question.

While the Rav's *lomdus* here is creative in helping to understand certain language from the *rishonim*, it does not reflect the lived experience of many Jews in the twenty-first century.<sup>7</sup> The Rav is one very important voice among many *poskim* who have addressed this question. He happens to have concluded in a restrictive manner based on an unconvincing read of Rambam.

### Claim III: מנהג בשב ואל תעשה—A Negative Custom

This brings us to the first approach outlined in the Rav's essay. Here the Rav develops an idea that he calls a "מנהג בשב ואל תעשה" (a negative custom or a custom of abstention).<sup>7</sup> Although the Mishnah (*Eduyot* 2:2, *Zevahim* 12:4) states explicitly: "לא ראינו, אינו ראיה" (not seeing something cannot serve as evidence),<sup>7</sup> there are instances of communal decisions to abstain from a certain behavior that can develop a kind of negative custom.

The Shakh, in a number of places, develops the idea, based on *ateshuvah* of the Maharik (*Siman* 171), that within the context of customs it is possible that not seeing or not doing something (לא ראינו) can serve as evidence (ראיה) of a negative custom (See *Yoreh De'ah* 1:1). The Rav points out a few examples from the laws of mourning in which customs of abstention developed after the Talmud (See *Rema Yoreh De'ah* 381:1, 389:3).

The Shakh, in his comment on *Hoshen Mishpat* (37:38) explains that a negative *minhag* can only be created in the context of something that "arises regularly," שכיח טובא. The Shakh himself wrote in the beginning of *Hilkhot Milah* (264:2) that the practice to not have women serve as *mohalot* cannot be considered a *minhag* with obligatory force because it is so unusual: "אין בו מנהג—דבר שאינו מצוי אין בו מנהג—a matter that is uncommon is not subject to [the force] of *minhag*." At the end of this comment he refers to a comment he made in *Hilkhot Nidah* (*Siman* 190:3): "ועוד דהדבר ידוע שדבר שאינו מצוי אין שייך"—and it is known that [the concept of] *minhag* does not apply regarding something uncommon.<sup>8</sup>

The Shakh then refers to a similar comment made by Rambam towards the end of the 11<sup>th</sup> chapter of *Hilkhot Shehitah*. In *Halakha* 13 Rambam is dealing with the question of what happens if an organ gets taken away before it can be inspected for *treifot*. He says that we can rely on a presumption that the organ was healthy and that the animal is therefore kosher. He concludes by saying, "ואין בזה"

<sup>7</sup>Rabbi Michael Broyde and Rabbi Shlomo Brody in a lengthy footnote in their [article](#) on Orthodox Women Rabbis (p. 44n.21) responded to the [claim](#) of Rabbi Aryeh Frimer that based on this *shiur*, the Rav would obviously forbid the granting of *semikhah* to women. They are not convinced at all that this *shiur* was meant to be a statement about *halakhah*, but that it appears rather to be an in-depth *shiur lomdus*. In addition, it is just as likely that a synagogue president could be a problem of *serarah* but a shul Rabbi perhaps may not because the rabbi can be fired. They quote a tradition from Rav Ahron Soloveichik to that effect.

<sup>8</sup> See the *Peri Megadim, Sifte Da'at* 2 who points out that the creation of a custom of abstention can only be done in an area that is commonly found (שכיח טובא). The *Mahatzit ha-Shekel* (1) assumes as well that women must have been asking explicitly to serve as *shohatot* and then be turned down in order for the negative custom to develop.

מנהג שדבר שאינו מצוי אין בו מנהג—and this is not a matter of custom, because customs are not instituted regarding cases that are not commonplace.”

Rabbi Yonatan Eibescheutz, in his commentary on *Hoshen Mishpat* wrote (*Urim ve-Tumim*, 37:22):

<p>And I do not understand [the <i>Shakh</i>] in this matter. For certainly in a place where some matter was unsettled and it is known that some places behave like this and some like that, or there is a debate among the <i>poskim</i>, then we can say that ‘not seeing’ can serve as evidence.</p>	<p>ואני איני מבין בזה דבריו, דודאי במקום דהדבר תלוי וידוע דיש מקומות שנהגו כך או כך, או דיש מחלוקת בפוסקים, שפיר הוי לא ראינו ראייה.</p>
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Rabbi Eibescheutz concludes his comment in support of the *Beit Yosef* and leaves the *Shakh* with a need for further analysis (צ"ע). He may not be rejecting the *Shakh* entirely, but even if he does not go that far, he is clearly not convinced by the *Shakh*'s application of this rule.

In his *shiur*, the Rav only referred to the *Shakh*'s comment in *Yoreh De'ah* (1:1) in which he relies on the *teshuvah* of *Maharik*. While the *Shakh* does say that *minhagim* of abstention or withholding can be created, he explicitly says that this only possible in a manner that is common or regular. Given the unusual nature of a panel of esteemed rabbinical scholars convened on behalf of this OU, one is hard pressed to claim that this is a “common” question. It is, in fact, the unusually sensitive nature of this question, that necessitated this entire panel. The issue of the granting of ordination to women and their appointment as members of clergy is a thoroughly new and uncommon question.

### Three Decades of Women Learning

It is hard to overstate just how different the reality of women’s advanced learning is today than it was twenty-five or thirty years ago. In the universe of the Orthodox community pre-1990, it would have been unreasonable to imagine a group of women learning for *semichah*. There were, no doubt, over the course of Jewish history individual women who excelled in learning and who perhaps deserved to receive *semikhah*. However, until:

1. Modern Orthodox High Schools began teaching *Gemara* to girls on par with their male colleagues **and**;
2. those same women had places to learn in Israel that could extend their skills **and**;
3. *shiurim* to attend at Stern or on a college campus;

no one could even have asked the question.<sup>9</sup>

To claim that the Rav would apply the notion of a negative *minhag* to an idea that existed only in the abstract is untenable. The year that the Rav passed away was also the first year of the Drisha Scholars’ Circle. The only place in America where women could learn *Gemara* and/or *Halakhah* in a full-time setting was Drisha. There were fewer than a dozen women who had those skills. It is not reasonable to assert the creation of a *minhag* of abstention in a world in which no one was asking the question.

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<sup>9</sup> This argument was already made explicitly by Rabbis Broyde and Brody (p. 45) of their above-cited article: “Given the lack of formal education for women, the question of women rabbis, quite simply, did not arise on a regular basis. There is no basis for a mesorah which would assert that women were regularly qualified to serve as rabbis, but did not do so for some halakhic reason.”

There were of course non-Orthodox women who were being ordained as Rabbis by the mid-1980s. For the purposes of defining a custom of abstention, the group of Jews who must be seeking *semikhah* is the Orthodox community. We do not define the parameters of *minhagim* based on Jews who do not observe *Halakhah* in accordance with our worldview.

### Conclusion

What emerges from this careful reading of the Rav's *Yoreh De'ah* lecture is that there are different ways to read these same sources.<sup>10</sup> At a fundamental level, the OU panel has chosen a specific approach to a certain set of *mekorot*. However, there are other voices from within the *mesorah* that lead to a different understanding of this very sensitive issue. This debate is extremely important for the Modern Orthodox community. Future discourse should be based on careful reading(s) of the sources of our tradition. We all need to raise the level of discourse to reach the outcome most in tune with *Ha-Kadosh Baruch Hu*.



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<sup>10</sup> For a complete treatment of the nature of *semichah* today as well as a more complex approach to *serarah* (authority) please see my prior [article](#).