

## **(Mis)understanding Tradition**

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Originally published on [blogs.timesofisrael.com](https://blogs.timesofisrael.com)

February 9, 2017

The recent discussions about female clergy in Orthodoxy are flooded with the rhetoric of tradition and change. Given that Judaism, writ large, as certainly had a long-standing tradition of male leadership and full, public ritual citizenship has classically largely been male, can contemporary communities transcend this history without severing their link to that past?

In religious terms, doesn't *halakhah*—Jewish legal and normative discourse—and *mesorah*/tradition—the communal patterns of our ancestors—make the embrace of female clergy revolutionary and rebellious?

There are of course so many angles to think about here, but I just want to highlight one, which, in my view has barely been addressed but is perhaps the most important.

One can talk at length about what we have and haven't seen in the context of Jewish history in terms of leadership. This can take more descriptive forms—we haven't seen women acting as rabbis in the past—and prescriptive forms—quoting texts from authorities like the Rambam who say that women should not be in positions of authority and power. “One should not appoint a woman to any position of authority.” (Laws of Kings 1:5) Indeed, recent statements opposing the ordination of female rabbis *de jure* and *de facto* cite these sorts of texts and the absence of women from female leadership in the past as support for their position today. The premise that Jewish law and history preclude female leadership having been established, the discussion predictably turns from substance to form. We stop engaging the topic and then talk exclusively about who has the power to change how much of Jewish tradition for what ends.

But I fear that the entire premise of this discussion may just be wrong. Those opposed to female clergy today on the basis of *halakhah* may make no errors in legal methodology, but they may simply have their facts wrong. Put another way: I think contemporary opponents of female clergy in Judaism quite possibly misunderstand the very tradition they rightly seek to defend. Being a traditionalist is not dispositive of the question of just what tradition you are defending and why.

Let me give a counter example, from a totally different area of law and practice. There are a series of laws designed to prevent people from feeding the market for stolen goods. When there is a reasonable presumption that the person selling you something could not have legitimately come into possession of that item, you have to assume it is stolen and not buy it from them. One text in the cluster of sources dealing with this issue says that following:

**Tosefta Bava Kama 11:5**

*One may buy items made of wool from women in Judea, but one does not buy produce, wine, oil or flour neither from women, nor slaves nor minors.*

**תוספתא ב"ק יא:ה**

*לוקחין מן הנשים כלי צמר ביהודה ואין לוקחין פירות יינות שמנים וסלתות לא מן הנשים ולא מן העבדים ולא מן הקטנים.*

This is a text that forbids buying any sort of food items from women anywhere. It is a fairly clear directive. Would anyone imagine saying that this is in force with respect to contemporary women today? Of course not. Would that be because we had to update the *halakhah* in order to make it more friendly to contemporary assumptions and values? No. It would be because the underlying values of the *halakhah* have to be properly applied to contemporary reality. A close reading of this *halakhah* reveals that the term “women” here is clearly just a placeholder for one of a set of characters who don’t have economic independence. That is clear from the context—there is no reason laws about theft should have anything to do with biological sex; it is clear from the other (non-female) characters included here—slaves and minors—and it is clear from the other details of the law—under certain circumstances women clearly are trusted to have the items in question on legitimate authority (wool in Judea, where it is plentiful and in excess). And we could also trace how this trend of interpretation was maintained over time. It would therefore be bizarre today to imagine that this law had anything to do with biological essentialism and order traditional Jews to avoid buying produce from women except in very highly defined circumstances. In the contemporary Western economy, there is no more reason to presume theft when it comes to goods sold by a woman as opposed to a man.

Was there a tradition not to buy things from women in the Talmudic period? Yes there was. But that tradition almost perfectly overlapped the tradition not to buy things from people who were presumed to lack any meaningful financial independence. You technically could interpret these texts as only making highly circumscribed exceptions for buying from women in cases like the sale of wool in Judea, perhaps licensed for inscrutable divine reasons, and one could also argue that this *halakhah* is meant to enshrine a role for women: they ought not to be in the business of retail. I think there are few of us for whom that reading would stand up, but that is not because the word נשים/women forces us to one reading or the other. When we read a text like this, we do not reveal our hermeneutics and traditionalism as much as we reveal our assumptions around gender, sex and the value behind the law in question.

Similarly, it doesn’t help much to quote texts from the past that bar women from power. Because those texts also come from a world in which women, like slaves and minors, were not generally taken seriously as principals. Yes, there were queens here and there (always unusually inheriting the throne through patriarchal systems that privileged men in descent), but as a class of people, women were inferior in terms of power and citizenship in a consistent fashion. The Sifrei captures this best when considering the fact that Moshe seems to specify אנשים/men when describing the sorts of people the Israelites should select as judges. It asks with bewilderment:



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*"Men?! Could we possibly have thought women? Why did Scripture say, "men?!"*

*אנשים?! וכי עלתה על דעתנו נשים? מה תלמוד לומר? אנשים*

The bewilderment here is not from a proof-text, not from a settled principle of Jewish law; indeed, the passage being commented on here is just Moshe's reflection on the past. The astonishment is just from life—"How could anyone think to appoint a woman as a judge?" Isn't it obvious that doing so is a deep disrespect for the institution?

Similarly, when the Sifrei elsewhere says מלך ולא מלכה—"a king and not a queen"—in defining the terms of the Jewish monarchy, this seems to reflect the notion that a female monarch is inherently less serious and stable than a male monarch, not least because, in a patriarchal society, her marriage to another sovereign might well deprive a Jewish polity of its independence and distinctiveness. And when the Talmud (Yevamot 45b and Kiddushin 76b) and then the Rambam adopt the paradigm of the monarchy for positions of leadership, we arrive at the notion that women should not serve in any serious leadership capacities in the Jewish community.

Aside from whether all agreed with the Rambam's analysis, however, it is a huge stretch to pluck his ruling from the 12th century and drop it down in the 21st. Has there been a Jewish tradition to exclude women from leadership? Yes there has. Can we distinguish this tradition from the tradition to exclude more marginal citizens from leadership? No we cannot. Some of us find that so obvious that we would approach this *halakhah* the same way virtually everyone would approach the *halakhah* from Bava Kama above. In fact, we would say that the *exclusion* of women from leadership positions is a violation of the tradition that those with full social and economic independence are meant to serve and lead barring other obvious limitations. But even for those who are not so strident, it is surely not completely obvious that the sources excluding women from leadership are about biology!

And here is where some humility is in order. I think the time has come where we cannot give a free pass to conversations that simply assume the biological/chromosomal meaning of נשים/women in all Jewish texts and then run away to questions of authority and tradition. Those discussions of authority and tradition are often masks that conceal deep-seated gender essentialist positions about a whole host of things. Those assumptions are not self-evidently the products of texts that speak about women, especially when they speak about slaves and minors as well. We will only fully confront the underlying issues here when people speak directly to the values at stake. And the conversation should not be one of greater or lesser respect for the tradition—there is only one winner in that fight—but of how to properly understand it and apply it with reverence.