

A Principled Pesak and a Window into Pesak

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With the [publication](#) of the Orthodox Union's rabbinic panel's *pesak* and resultant resolution regarding clergy and gender roles, part of the Orthodox community and beyond is again engaged in heated debate. While the *pesak* ably stands on its own, and the distinguished rabbinic leaders who penned the response do not need my approbation, I hope to highlight several heretofore under-discussed points that relate to crucial matters of history, authority, and community.

At its core, Orthodox Judaism places its trust in rabbinic authority. Since the days when the Sanhedrin sat in the *lishkat ha-gazit* (Chamber of Hewn Stone), Jews have sought the guidance and decisions of each generation's rabbinic authorities to understand the *devar Hashem*, the word of God. In this rich historical vein, the OU did not avoid grappling with pertinent issues, but posed the questions to its community's preeminent Rabbis, including those to whom both the OU and many if not most OU pulpit rabbis turn to for halakhic guidance. The OU then undertook to render the guidance into official institutional policy. Irrespective of whether one views the decision as too liberal, too conservative, or something else entirely, the OU demonstrated bona fide leadership by addressing rather than deflecting important issues.¹

History

Some have [accused](#) the OU of being "divisive." In fact, however, it is precisely the opposite; the OU has long articulated where it stands. The rabbinic recommendation and the subsequent statement are in accord with an earlier stated position of the OU. In the 1970s, in the midst of the Conservative Movement's debate regarding the ordination of women, the Orthodox Union and the Rabbinical Council of America published an unequivocal statement, asserting women's ordination was contrary to *Halakhah*.

¹ The unusual process incorporated numerous consultations and solicited communal input. The panel heard from accomplished men and women from across the Orthodox spectrum, including multiple *yoatzot halakhah*, and at least one female faculty member of an Open Orthodox institution. While insufficient for those who reject the prominence or role of the members of the rabbinic panel, or their conclusions, the process's inclusiveness, transparency, and deliberative nature should be universally welcomed. Notably, similar steps were not pursued by those aiming to introduce to the Orthodox community the unprecedented step of ordaining women.



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Soon after his selection to head the Jewish Theological Seminary, the historian Gerson Cohen began grappling with women's ordination within Conservative Judaism. In 1974 the Rabbinical Assembly's Committee on Jewish Law and Standards passed a "legitimate minority" opinion stating women could serve as rabbi or cantor. Many Conservative scholars, who similarly viewed women's ordination as contrary to Jewish law, took umbrage at the resolution, opening a fissure that eventually led, in the 1980s, to the formation of what became the Union for Traditional Judaism. The OU and RCA published an impassioned statement taking issue with this stark abandonment of halakhic norms, and stated in part:

Halacha is the Jew's means of searching within Torah for guidance to all of life's questions and needs. It gives the Jewish people the opportunity to be creative in seeking solutions and directions within the framework that G-d has set.

In every generation there arose those who were impatient and cut the Gordian knot by approaching the Torah with arrogance saying, "you must give me the answer I desire or I shall deny your relevance." They pronounced the principle that the Torah and hence Halacha must bow to the needs of the moment. They thus deny the divinity of the Torah as a document given by G-d.

Our generation is no different. Those who have risen against Halacha are many. They speak in its name, using its terminology but in truth destroying and emasculating it.

In recent weeks, we have witnessed the Conservative Rabbinate's attempt to establish a new role for women in Jewish religious life. While they have attempted to enwrap it in an halachic framework, this is a falsehood. They have not used the sanctified interpretive approach to Halacha. They have done violence to the sacred principles by injecting their wishes into Halacha rather than seeking Halacha's answers.

Torah has ordained different and unique roles for men and women. Those who use the terms equality and inequality with regard to the respective roles of men and women in Judaism are either ignorant or have misunderstood the Halachic process. We pray during these Holy Days that the people of Israel will re-affirm their devotion to Torah and Halacha and will not be misled by false prophets.

This history offers insight into the current conversation. It reiterates the position amongst traditional Jews stretching back to Sinai that has precluded women from ordination. This precedent is reflected in the selfsame responses of the OU in 1974 and in 2017, when Conservative Judaism and Open Orthodoxy have respectively crossed that line. The statement also demonstrates what the status quo is, specifically for the OU. Ergo, claims of the OU being



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divisive, or having the burden of proof to establish its position fall away. The OU is responding to those engineering the divisiveness. As the *pesak* states:

Our group believes that the combination of these two considerations, precedent and halakhic concerns, precludes female clergy. Given the status quo that we feel is meaningful and intentional, the burden of halakhic proof rests on the side of changing the established practice.

Clearly, it is those who are attempting to introduce women's ordination as an Orthodox practice who have decided that their objectives outweigh the divisiveness they would be triggering. Objectives decided upon without the convening of forums or discussions with a broad spectrum of leading *poskim*, community Rabbis, educators, and lay leaders.

Authority

Beyond the firm historical and halakhic parameters upon which the *pesak* stands, the process concerns other areas, including the methodology and authority of *pesak*. While Torah study is a central value for every Jew, *pesak*, when determining communal behavior, is the province of an elite cadre of experienced *talmidei hakhamim*. As Yeshiva University's Rabbi J. David Bleich has written:

The ability to formulate definitive *psak* is the product of highly specialized skills. It is in choosing between conflicting precedents and opinions that the consummate expertise of the decisor is apparent. The decisor . . . must carefully weigh not merely on the basis of sheer number but also on the relative stature of the scholars whose opinions are under consideration, and must at the same time assess the complexities and relative importance of any number of component factors.²

Complex *pesak* is not for the layman, nor is it based on geographic diversity. The more consequential the question, the more qualified and experienced the deciders must be. In every academic discipline, not all opinions are given equal deference and the most consequential questions are posed to the preeminent experts in the field. Would the American Medical Association turn to a first year resident, or a doctor who has rarely practiced, to set profession wide standards? Would a first year associate be asked to pen a legal treatise on, or restatement of, the common law? Moreover, significant accomplishment in community leadership does not by itself earn one the status of a *posek*. There are, no doubt, many extraordinary contributors to the Orthodox community and beyond, whose love for Jews is unbounded. Nevertheless they cannot claim entitlement to leadership in *pesak* on that basis alone. And forum shopping in

² J. David Bleich, *Contemporary Halakhic Problems*, vol. I (New York: Ktav, 1977), xvii.



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search of finding a scholar ready to validate a predetermined policy objective through ostensibly halakhic decisions is hardly a valid halakhic process.

Halakhah, in contrast to secular legal systems, is the revelation of the Divine Will. A talmudic *kal va-homer* (a fortiori) can be applied to the process of *halakhic* adjudication, being a meritocracy rather than a democracy. Today, while there is no formalized hierarchy, there is one telling metric of rabbinic stature and skill and, *ipso facto*, authority. To whom do rabbis, from across the Orthodox spectrum turn to for advice, when they have perplexing questions? What made Rabbi Yitzhak Elchanan Spektor, Rabbi Chaim Ozer Grodzinski, and Rabbi Moshe Feinstein zt”l the acknowledged leading *poskim* of their respective times? Their status has been secured by the very fact that most of their prominent and not-as-prominent contemporaries turned to them, when faced with the most vexing questions. In a word, they each served as the rabbi’s rabbi.

Today, there is probably no single posek who towers over the rest. However, there is an acknowledged cadre of eminent *poskim* who field the most intricate halakhic queries from diverse communities and not just their own. Rabbi Dovid Feinstein, Rabbi Dovid Cohen of Flatbush, Rabbi Asher Weiss of Jerusalem, Rabbi Mordechai Willig of Riverdale, Dayan Chanoch Ehrentreu of London and two of the members of the OU’s rabbinic panel, Rabbi Hershel Schachter and Rabbi Gedalia Dov Schwartz, come to mind. The *pesak* requested by the OU thus reflects the clear directive of the most respected authorities of what is termed the Modern Orthodox world.

Community

Many, including myself, fear we are heading towards an irreparable rift. A balkanized socio-religious community will eventually affect acceptance of marriages, divorce, and conversions and real people will be hurt. We need increased dialogue. Originally, given my orientation towards what is colloquially termed the “yeshiva world,” I was concerned with stating an opinion on an issue for a somewhat different community. Then I realized, if we cannot have inter-communal conversations, the rift will be inevitable.

Some argue the divide is rooted in the reliance on different *poskim* and *elu ve-elū divrei elokim hayyim*. Yet the same Orthodoxy that does not countenance a *pesak* from the Conservative’s Committee on Jewish Law and Standards does not grant every opinion of every Orthodox rabbi equal validity. What is needed for acceptance of *pesak*, and for the maintenance of communal unity, is for the same basis to be utilized. The Orthodox perspective understands *Halakhah* as legal principles emanating from an independent Godly truth, both for “the yeshiva world” and Modern Orthodoxy.



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By contrast, the director of Yeshivat Chovevei Torah's Halakhah program, Rabbi Ysoscher Katz, has [written](#) that "Modern Orthodox halacha" should not be "exclusively Orthodox" but must incorporate a second set of values stemming from "a robust encounter with modernity" where "the books are only the raw materials." To be sure, Western values and Torah are often incongruent, including notions of autonomy, egalitarianism, and family values. While not to understate the challenges, we can aim to minimize the conflicts and through increased Torah study we can internalize the Torah's values. Yet when the conflict is irreconcilable, we choose the Torah values and proudly so. This is what unites all of Orthodoxy, from Beverly Hills to Bnei Brak, from Flatbush to Fairlawn. If the underlying framework for *pesak* will be the attempted fusing of two separate value systems, even when in tension, eerily reminiscent of Conservative Judaism's decades-old mantra of "Tradition and Change," then the schism will sadly be unavoidable.

We believe in the correctness of our *mesorah* and in our rabbinic luminaries serving as the torch-bearers of the *Torah Ha-kedoshah* we all cherish. In these trying times, may the OU rabbinical panel's *pesak*, following in the footsteps of its position from 1974 stating the well-established Orthodox perspective, and the discussions that have flowed from them, aid us in understanding and following God's intent for his people.