WOMEN IN THE RABBINATE?

1. Introduction

The question of whether or not women may become rabbis has become the subject of intense controversy of late. This question is not one which simply arose out of a particular situation (ma'aseh she-hayah) where an immediate normative ruling was called for; rather, it is one where an entire contemporary ideology—Feminism—confronts the entire Jewish tradition. As such the practical question of rabbinical ordination for women is not limited to a random occurrence or even a set of random occurrences; rather, it arises from a new theory confronting an old tradition.

Indeed, the question of rabbinical ordination for women epitomizes a confrontation which in the broadest sense is political. Feminism is asking the Jewish religious community to reconstitute its political order. A political order consists of institutions which structure relations between the participants in the particular order. Authorities are those persons in the political order who determine the meaning of these institutional structures for the participants, that is, they legislate, administer, and, especially, judge. If Judaism is the constitution of the political order of the Jewish religious community, then the authorities in this political order, certainly since the destruction of the Second Temple in 70 C.E., and probably earlier, have been the rabbis. Inasmuch as women have been excluded from the rabbinate, they have been excluded from authority in the Jewish religious community. The demand of Jewish feminists that women now be included in the rabbinate can only be considered revolutionary. Furthermore, this demand epitomizes the confrontation between Feminism and Judaism in that revolutions always seek a radical change in the existing authority more than anything else, because the designation of authority in the community more than anything else determines the character of the political community. Such terms as "patriarchy," "democracy," "aristocracy" and "theocracy" are all definitions of the character of various political communities by designating the primary authority in each of them. Certainly the more perceptive Jewish feminists are well aware of how revolutionary their project in truth is. The political question is: Can traditional Judaism sustain such a revolution? In the conclusion of this chapter I will suggest how a feminist revolution can be so sustained; but, I doubt whether many Jewish feminists will agree that my suggestion is sufficient.
They will probably regard it as too conservative. Before that suggestion can be
cogently put forth, however, the halakhic, historical, theological and philosophical
questions pertaining to the ordination of women as rabbis must be first dealt with, albeit
too briefly here.

2. Halakhah and History

The halakhic question of how legally insuperable is the traditional exclusion of
women from the rabbinate is one which can only be comprehensively answered if we look
at how political roles are determined in a society governed by Halakhah.

One can see four basic political roles in an halakhic society: (1) private participants;
(2) domestic participants; (3) public participants; (4) authorities.

Private participants in the society are persons who are permitted to practice its
rites qua individuals, but whose practice has no public significance. Generally, women
have been exempt from those rites which are to be performed at a specific time.\(^5\)
However, there has also been a general tendency in the history of the Halakhah to allow
women to practice whatever rites they choose over and above what they are obligated to
practice.\(^6\)

In the area of domestic participation in society the role of women was greatly
enhanced in the history of the Halakhah. They were basically elevated from the level of
chattel to the level of free persons with definite rights in the marital union.\(^7\) However,
all of the development in the area of Jewish matrimonial law was based on the
fundamental premise that a woman's essential role in life is to be a wife and mother, and
this purpose of the law pertaining to her was invoked in the reinterpretation of various
specific legal impediments which arose from time to time.\(^8\) One can see most halakhic
development pertaining to women as being in the interest of protecting women from the
exploitation by men which, of course, destroys true marital mutuality.\(^9\)

It is in the area of public participation in society where one can see the great
halakhic divide between men and women. The true dignity of women was seen in their
domestic rather than their communal role, since "all of the honor of the princess is
within (penimah)" (Psalms 45:14).\(^10\) Indeed in her domestic role it could well be argued
that the woman is the dominant participant, "the cornerstone of the house" (Psalms
113:9),\(^11\) a point to which I will return when examining the claims of Jewish
egalitarianism.

It is only when we have reached this point in our inquiry that the halakhic question of women rabbis can be seen in proper sequence.

Because a woman is not considered a public participant in society she is not counted as a member of the quorum required for public worship.\(^{12}\) (Whether or not women may themselves constitute their own quorum is a topic of current halakhic debate.\(^{13}\) Not being obligated for regular public worship she cannot very well be a public participant in its constitution.\(^{14}\) Her role is that of either spectator or private participant. Thus it follows from all of this that a woman may not lead a congregation in public worship or read the Torah for them.\(^{15}\) For the same reason a woman may not be the celebrant of a wedding in that the recitation of the nuptial blessings (birkat hatanim) may only be done by one of the men who is part of the quorum required for their recitation.\(^{16}\) Although these are not necessarily rabbinical functions, they are usual ones.\(^{17}\) Indeed, a rabbi who could neither publically read the Torah, nor lead public worship, nor celebrate weddings, such a rabbi would be practically disenfranchised in any Jewish congregation governed by Halakhah.

We are now at the point where the essential definition of a rabbi comes to the fore. A rabbi is one who alone may be an authority in a religious court (Bet Din) dealing with matters of personal and familial status. Although rabbis do many other things such as preaching, teaching, counseling and pastoring, none of these activities is essentially rabbinical. They may be done by virtually any other qualified Jew. If one is willing to eliminate the essential rabbinical role and concentrate only on the common ones today, as is the case in the Reform rabbinate, then one has in effect made the title "rabbi" lose its only specific distinction. As such, it is so far removed from its traditional matrix as to become a homonym. If this is the case, then the rabbinate becomes so amorphous a vocation that it could be argued that no serious traditional Jew—male or female—could hardly aspire to it.

The authoritative role of a judge is related to the role of a witness as a public representative of the society as a whole. The latter is the conditio sine qua non of the former. As the Mishnah states, "whoever is fit (kasher) to judge is fit to witness; but there are those who are fit to witness and are not fit to judge."\(^{18}\) The Halakhah is clear, with the exception of areas where a woman's testimony is indispensible and without
which domesticity would be impossible, a witness (ed) may only be a man. A judge, moreover, requires the requisite learning over and above the gender and moral requisites of a witness. The exclusion of women from the role of witness is considered explicitly Scriptural (gezerat ha-Katub) and is, therefore, beyond repeal; a fortiori the exclusion of women from the essential rabbinical role of judge (dayyan). Jewish legal proceedings where women functioned as either witnesses or judges are invalid, and the consequences for those dependent on these proceedings for clarification of their Jewish status could be tragically irreversible. Hence at the halakhic level the feminist challenge to traditional Judaism finds itself at an absolute impasse.

3. Theology

Theologically, the feminist challenge to Judaism is its voluntarism. Should not a person who wants to be an authority and has the moral and intellectual abilities to be an authority, should not such a person be allowed to be one? However, this would only be possible if the Jewish covenant with God were initiated by its human participants. If that were the case, then women could elect to be public participants in the covenant and, therefore, could be eligible to qualify as authorities. The logic of the type of voluntaristic theology espoused by the Jewish feminists was made in the first attempted internal revolution against established Jewish authority, that of Korah and his group. In challenging the authority of Moses and Aaron Korah states, "you have too much, for the entire congregation all of them are holy (kedoshim) and the Lord is in the midst of them" (Numbers 16:3). In other words, why have the others been excluded from positions of authority held by Moses and Aaron alone? Moses' answer is, "tomorrow the Lord will make known who is His and who is holy and He will draw him near; and whom He chooses (yibhar bo) He will draw near to Himself" (16:5). The logic of Moses' answer is as follows: Just as God chose the people of Israel in general from all the other peoples, so has He chosen Moses and Aaron from all the other leaders. The covenant and the various statuses it contains are not voluntary from the human position. Humans, to be sure, can choose to either obey or disobey God; however, the obligation is prior to their choice. Their choice is a subsequent response.

Ultimately, the status of being a Jew—with the exception of converts at the time of their conversion—is an involuntary matter. One can neither choose to be a Jew nor
choose not to be one from the Divine position. "Even if a Jew has sinned he is, nevertheless, a Jew."\textsuperscript{27} Even an apostate, although denied virtually all the privileges of being a Jew, is, nevertheless, considered a Jew subject to the full yoke of the commandments.\textsuperscript{28}

All of this, theologically, follows from the presupposition of the covenant, namely, God as Creator. For, if God can choose one universe over other possible and actual universes,\textsuperscript{29} and if God can choose one small species—homo sapiens—to create in His image, and if God can choose one small people—Israel—to be the recipient of His Torah, then why can God not choose men rather than women to be authorities in a society governed by that Torah? Here again the modern mind and temperment are faced with the scandal of the particularism of Judaism. Now it is faced with the particularism of Jewish sexism. Earlier in the modern period it was faced with the scandal of Judaism's particularism in such areas as the Hebrew language, the Sabbath, the dietary laws, and the Land of Israel\textsuperscript{30}—the last being a form of our scandalous particularism which so many in the world still find so hard to face. Clearly the inner meaning of Jewish particularism is not democratic; but, as Josephus pointed out quite correctly, Judaism is theocratic not democratic: the rule of God not the rule of humans.\textsuperscript{31} This does not mean, of course, that there are not democratic elements in Judaism, but one could hardly argue that they are primary.\textsuperscript{32} Hence at the theological level the feminist challenge to Judaism meets an impasse every bit as absolute as the halakhic one we just examined.

4. Philosophy

By demanding a categorical egalitarianism in Jewish religious life Feminism is making a philosophical assertion. It is asserting that absolute equality between men and women in the Jewish community is a desideratum, a moral imperative. Nevertheless, no such egalitarian commandment can be found in Normative Jewish Tradition. Moreover, I know of no Jewish feminist who has argued convincingly for the philosophical cogency of egalitarianism per se, much less for Jewish egalitarianism.\textsuperscript{33} Let us now briefly examine just how equality has functioned in Jewish tradition.

The Torah writes, "let there be one law (mishpat ehad) for the sojourner (ka-ger) and the native-born (ka`ezrah), for I am the Lord your God" (Leviticus 24:22). The Talmud interprets this verse to mean: "a law equal (ha-shaveh) for all of you."\textsuperscript{34} Here equality
is used to justify a monetary interpretation of the *lex talionis* inasmuch as mutual mutilation can never be truly equal. Only money, being an entity whose value is abstractly stipulated, can fulfill this ideal requirement. The first characteristic of equality in Jewish tradition, then, is abstractedness.

The *Mishnah* interprets this same Scriptural verse as mandating equal measures to be followed in both civil and criminal legal proceedings. And, although the subject of this verse, the sojourner or resident-alien (*ger toshab*) is not mentioned in this interpretation, he is implied in it. For the resident-alien was a private participant in Jewish society. Despite the fact that he could neither witness against Jews nor judge them, he was guaranteed the protection of Jewish civil and criminal justice if he publically agreed to live by the seven Noahide laws. As Hermann Cohen correctly pointed out, this was the equivalent in ancient Israel of secular citizenship (*Staatsbürger*). Thus the second characteristic of equality is that it seems to be limited to the realm of civil and criminal responsibilities. In this abstract, formal, realm persons are in effect desexualized (*das Man*), that is, their sexual identities are bracketed. In this realm they are all homogenized, all regarded as the same. In the fullness of life, however, to which the Torah addresses itself, sexual identity as difference (*hetero*-sexuality) is constantly recognized and affirmed.

Concerning the civil and criminal equality of men and women the Talmud teaches, "Scripture equated (hishvah *ha-Katub*) women and men (1) for all punishments of the Torah ... (2) for all civil matters (*dinin*) in the Torah ... (3) for all capital punishments (*meetot*) in the Torah." In its discussion of the rationale of this earlier statement the Talmud notes the following. (1) The first equation is the rule because God has identical compassion for women and men enabling both to atone (*kapparah*) by being punished; and this in spite of the fact that men are obligated for many more commandments (*bar mitzvah*) than are women (*lai bat mitzvah hil*). (2) The second equation is the rule because God has identical concern for a woman's livelihood (*hayuta*) which would be impaired by a lack of civil rights; and this in spite of the fact that men are more likely to be involved in business than are women. (3) And the third equation is the rule because the loss of human life, be it female or male, is heinous to God; and this in spite of the fact that men being obligated for more commandments should perhaps have the right to ransom their lives (*kofer*) in the case of a crime punishable by
death. Thus the third characteristic of equality is that its operation in the area of civil and criminal rights and responsibilities is irrespective of gender. However, as we have already seen, these rights and responsibilities are those of a private participant in society, and any attempt to infer that they have public significance as well was usually rejected by subsequent halakhists.

Although in the full religious life of the Jewish community women and men do not share the direct equality of civil and criminal rights and responsibilities, nevertheless, there is a certain proportional equality if one views the respective roles of women and men in their totality. Ironically enough, egalitarian logic at this very point in Jewish history has actually upset this proportional equality and thus has diminished rather than enhanced the importance of the Jewish woman.

We have seen earlier how the primary role of the Jewish woman is that of a domestic participant in Jewish life. Moreover, she is not only a domestic participant, she is the domestic determinant by virtue of a simple fact: it is the Jewish woman and the Jewish woman alone who confers unambiguous Jewish identity on her Jewish children. The Jewish man only confers subsequent infra-Jewish status on his children. Whether or not this was always the case in Judaism can be debated by historians, but the fact remains that this has been the unchallenged normative Jewish position until very recent times.

However, the same egalitarian logic which so eagerly pursues Gleichschaltung in the public sphere by breaking down the barriers between men and women, this same logic breaks down the primary domestic position of the Jewish woman as the conferer of Jewish identity on posterity. It is no historical accident that the Reform Movement, which a short time ago (twelve years in the context of Jewish history is a very short time indeed) began to ordain women as rabbis, has recently decreed that the Jewish identity of a child may be determined either by his or her Jewish mother or by his or her Jewish father. This is no historical accident because it is a further and more radical consequence of the very same egalitarian logic which called for the ordination of women as rabbis. Considering the non-normative way the Reform Movement has always approached Jewish tradition, this further consequence of their egalitarianism cannot be faulted as either inconsistent or insincere. Those who reject this current Reform position can only do so if they also reject the philosophically grounded egalitarianism.
upon which it is based. Those non-Reform liberals in contemporary religious Jewry—and here I particularly mean many of the leaders of the Conservative Movement—who want women as rabbis but recoil at the thought of the more radical rejection of matrilineal descent, are philosophically as well as historically naive if they believe they can coherently affirm both egalitarianism and the traditional halakhic criteria of status. And these criteria are only intelligible if seen in the context of the theological and philosophical principles I have just presented.

Philosophically this is the very crux of the question. For Jewish feminists assume that absolute equality is both self-evident and Jewishly authentic. From what we have seen, heretofore, neither assertion is true.

5. Conclusion: A Suggestion

Although the basic demands of the Jewish feminists have no adequate foundation in traditional Judaism—halakhically, historically, theologically, or philosophically—they do reflect a sincere and sustained cry for some way of recognizing the participatory and authoritative role Jewish women do play in the secular Jewish community and now desire to play in the religious community as well. The sincerity and intensity of this cry call for some deeper thinking. One cannot simply argue from the tradition and expect the answer to be obediently accepted. This would be as the rabbis used to say about inadequate responses to good questions, "to push away with a straw." The political dynamics involved in modern protest movements—and Feminism is the ideological basis of what we used to call a short time ago, "Women's Liberation"—just do not operate so simply.

Clearly Jewish Feminism is not going to disappear or retreat into silence. Since in my own thinking I have just recently accepted this inevitability, my traditionalist response to it is admittedly awkward.

Judaism, it seems to me, can sustain a feminist revolution if that revolution is a genuine development into a new historical situation. In such a revolution, actually evolution is a more apt name for it, old institutions are not destroyed but new institutions are added to the whole of Jewish life. In the emergent process both the old and the new institutions assume their respective roles of importance without either engineering the abolition of the other. A new economy of relations is gradually worked out. One can see this is the evolution which Pharisaism and Rabbinic Judaism effected in
Jewish history.

It is clear from an unbiased reading of Scripture that the whole institution of the Oral Torah itself is not something Scriptural. The prima facie meaning of the verse, "you shall not deviate (lo tasur) from the matter (ha-dabar) they will tell you" (Deuteronomy 17:11) simply is that Scriptural law needs to be interpreted in adjudication. Furthermore, the chief religious authorities were the hereditary priests as it states, "when you come to the levitical priests and to judge who will be in those days" (17:9). Nevertheless, the rabbis used this verse as the Scriptural support for their authority to create new religious institutions, something explicitly prohibited by the same Deuteronomistic code.50

The new institution of the rabbinate (hakhamim) gradually overtook in importance the older hereditary priesthood without, however, abrogating the specific functions of the priests. This can be seen in the following Mishnah.

How is the infected house inspected? "And he whose house it is shall come and tell the priest saying, 'there appears to me there is something like an infection in the house'." (Leviticus 14:35) Even if he is a rabbinic scholar (talmid hakham) and knows that it is definitely an infection, he may not decree and say 'there appears to me an infection in the house,' but 'something like an infection (ke-nega) appears to me in the house.'51

In other words, the priest is not to be denied his Scriptural privilege of declaring a house to be infected. However, the implication of this Mishnah is that the rabbinic scholar is the one, by virtue of his greater learning, who is in the fullest sense the more authoritative figure. What we have in the Pharisaic-Rabbinic evolution is the shift from the authority of heredity to the authority of learning and teaching. On the specific level of the priest's Scriptural privilege nothing has changed, but in the full economy of Jewish religious life everything has changed.52 A parallel to this same phenomenon is the assertion of the Mishnah that in the later days of the Second Temple the rabbinic scholars had to give the High Priest a cram course in the laws of Yom Kippur so that he could properly perform his Scripturally ordained duties.53 As the Talmud noted elsewhere, "the words of the student and the words of the teacher, to whose words do we listen?!”54 Finally, there is the famous Mishnah which states that the life of a bastard (one having a very low Jewish pedigree from birth) takes precedence over the life of the High Priest (one having the highest Jewish pedigree), if the bastard is a rabbinic scholar and the High Priest is an ignoramus (am ha'aretz).55 "The stone which the builders
rejected has become the cornerstone of the house." (Psalms 118:22)

I mention all of this because at the level of learning, and authentic Jewish evolution is always a learning and a relearning (midrash hakhamim), distinctions of pedigree and gender recede into the background. This comes out in the following way. When the Mishnah rules that women may neither serve as witnesses nor as judges, the medieval Tosafists saw the Scriptural Deborah as a seeming counter-example to this rule, as it says, "and she judged (ve-hi shoftah) Israel at that time" (Judges 4:4). Their answer was that this was either a special Divine dispensation, or "she did not judge but taught them the laws" (melamedet lahem ha-dinim). In other words, her role was intellectual rather than judicial. Nevertheless, it is clear where the true spiritual authority lay. In pre-war Eastern Europe, for example, although the rav or dayyan made the regular halakhic judgments in the Jewish community, his was not always the true spiritual authority. Among Hasidim this authority was in the hands of the rebe, who rarely made specific halakhic judgments. Among Mitnagdim (especially in Lithuania) it was often the rosh yeshiva.

Ironically enough, there are fewer halakhic impediments to learning from women than in teaching them. Therefore, my conservative suggestion is that Jewish feminists become our best scholars and teachers, that they master the traditional sources and reinterpret them in the light of their unique experience and insight. It is for them to create a new house of study (Bet Midrash) about which the Talmud says, "it is impossible that there be a Bet Midrash without something new (be-lo hiddush)." Out of this Bet Midrash, which Bialik, no doubt paraphrasing this Talmudic passage, called "the creative house (bet ha-yotzer) of the soul of the nation," could come a renaissance of Jewish learning and insight in our age of incredible Jewish ignorance and shallowness.

Whether our Jewish feminists choose the harder road of Jewish creativity which brings forth the new without destroying the old, or whether they choose the easier road of revolutionary nihilism which destroys the old and ultimately replaces it with further destruction, this is a choice they and they alone must make. If they do choose the harder road of learning and reverence (Torah ve-yirah), then I for one am willing to say that "from all my teachers I have been enlightened" (Psalms 119:99) and that this traditionalist is willing to become their student. What will practically emerge from all of this? I can only answer as did the rabbis in Lydda at a time of even greater Jewish
uncertainty, "greater is learning [than even doing] because it ultimately leads to the deed."