

GENDER EQUALITY AND RELIGIOUS LAW: THE ORDINATION OF WOMEN AS RABBIS IN THE CONSERVATIVE MOVEMENT AS A CASE STUDY

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ABSTRACT

This article explores one tumultuous encounter between a religious legal tradition and the modern principle of equality—an encounter that also has the potential to shed light on a much wider cluster of questions. The author tracks the ways that the responsa written by prominent Conservative rabbis on the subject of female rabbinic ordination and gender equality implicitly (but unambiguously) reflect the push toward increased equality that weighed on the movement’s trajectory, showing that the debate about the ordination of female rabbis reveals two principal trends in Conservative legal rulings, which differ in their responses to the challenge of egalitarianism and their visions of the law, and notes two outlier responsa that cannot be neatly classified within either trend. The author then examines the deep-seated historical, ideational, and sociological processes concurrent with the rise of what some have called the egalitarian age, which have produced these diverging responses and visions, and it determines an appropriate framework to understand them. The author shows that the fight for increased gender equality is situated within an intricate social context that imbues it with meaning and shapes its outcomes and modes of expression. In concluding, the author suggests applying the insights gained in the course of the analysis to other circumstances in which gender egalitarianism clashes with religious tradition. The framework by which the ordination of women in the Conservative movement is analyzed also proves useful, *mutatis mutandis*, in understanding and comparing the responses of other faith communities as they deal with challenges caused by the egalitarian age.

KEYWORDS: egalitarianism, feminism, Jewish law, Conservative movement, gender equality, ordination of women

Thomas Paine, writing in 1791 to defend the French Revolution against its critics, famously invoked the book of Genesis to suggest that the concept of equality is as old as humankind itself: “The Mosaic account of the creation, whether taken as divine authority, or merely historical, is full to this point, the unity and equality of man. . . . If this be not divine authority, it is at least historical authority, and shows that the equality of man, so far from being a modern doctrine, is the oldest upon record.”¹

The English-born founding father of the United States was hardly the first to observe the biblical roots of equality. Christian egalitarians classically invoke the Pauline assertion that “there is neither

1 Thomas Paine, *Rights of Man* (1791; repr. Oxford: Woodstock, 1992), 46–47.

Jew nor Gentile, neither slave nor free, nor is there male nor female, for you are all one in Jesus Christ,”² and the critique of traditional authority structures by the three synoptic Gospels is sometimes quoted to support the claim that Jesus abolished discrimination against racial minorities, slaves, and women, in both the church and marriage.³ Some teachings of the Quran, too, are thought to support social, religious, and gender egalitarianism.⁴ Classical Jewish sources similarly emphasize that all men and women are created in the image of God,⁵ that they all descend from the same original ancestors,⁶ that they all are the children of the same father,⁷ that no one can claim redder blood than another,⁸ and so forth.⁹

Even so, despite this pervasive rhetoric of equality and its apparent grounding in canonical texts, scholars are quick to point out that traditional faiths have often been guilty of widespread discrimination against nonbelievers, women, homosexuals, and others. This discrepancy certainly exists in the Abrahamic religions. Within Judaism, for instance, the equality of all persons did not find expression in any specific legal rule as a cardinal principle of the Jewish law (also known as *halakha*).¹⁰ On the contrary, halakhic norms discriminating on account of race,¹¹ religion,¹² gender,¹³ birth,¹⁴

2 Galatians 3:28, New International Version; similar statements are also found in Romans 10:12 and Colossians 3:11. See the insightful analysis of Karin B. Neutel, *A Cosmopolitan Ideal: Paul's Declaration "Neither Jew nor Greek, neither Slave nor Free, nor Male and Female" in the Context of First-Century Thought* (New York: Bloomsbury T&T Clark, 2015).

3 Matthew 20:25–28; Mark 10:42–45; Luke 22:25–27. These and other verses are regularly mentioned in journals like the *Priscilla Papers* and the *Journal for Biblical Equality*, both published by the organization Christians for Biblical Equality. For instance, see Roger Nicole, “Biblical Egalitarianism and the Inerrancy of Scripture,” *Priscilla Papers* 20, no. 2 (2006): 4–9. See also Linda L. Belleville, “Teaching and Usurping Authority: 1 Timothy 2:11–15,” in *Discovering Biblical Equality: Complementarity without Hierarchy*, 2nd ed., ed. Ronald W. Pierce and Rebecca Merrill Groothuis (Downers Grove: InterVarsity Press, 2005), 205–23.

4 See the many sources listed by Louise Marlow, *Hierarchy and Egalitarianism in Islamic Thought* (Cambridge: Cambridge University Press, 1997), especially 13–41.

5 For the Talmudic sage Ben Azai, the creation of all men in the divine image (with reference to Genesis 5:1) is a cardinal principle (*klal gadol*) of the Jewish law (*Bereishit Rabba* 24:7 and parallels).

6 The idea that humanity was created single underlies the admonition administered by rabbinical courts to witnesses in capital cases: the destruction of one human life is regarded as the destruction of the world entire. *Mishnah*, *Sanhedrin* 4:5. Subsequent citations to the *Mishnah* use the form mSanhedrin 4:5.

7 *Babylonian Talmud*, Ta’anit 18a and parallels; the language of the Talmud echoes the verse from Malachi 2:10. Subsequent citations to the *Babylonian Talmud* use the form bTa’anit 18a.

8 bSanhedrin 74a and parallels.

9 See also Joshua A. Berman, *Created Equal: How the Bible Broke with Ancient Political Thought* (Oxford: Oxford University Press, 2008), who suggests reading the Pentateuch as an early prescription for the establishment of an egalitarian polity.

10 The Jewish law is, in general, quite remote from “rights talk.” See a summary presentation of this idea in the work of the late Israeli Supreme Court Justice Haim Cohn: Haim H. Cohn, *Human Rights in Jewish Law* (New York: Institute of Jewish Affairs, 1984), 17–18.

11 The most deeply troubling of these, though by far not the only one, is arguably the genocidal command to blot out the Amalekites (Deuteronomy 25:19) and seven other nations, including the Canaanites (Deuteronomy 7:1).

12 The category of *Avoda Zara* (idol worship) is employed to justify a long litany of anti-pagan norms that are too numerous to be listed here.

13 For two excellent presentations of the differential treatment of women in Jewish law, see Rachel Biale, *Women and Jewish Law: An Exploration of Women's Issues in Halakhic Sources* (New York: Schocken Books, 1984); Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (Waltham: Brandeis University Press, 2004), 12–24.

14 A child born from an adulterous or incestuous sexual relation is legally considered a *mamzer* (bastard): mYevamot 4:13.

disability,¹⁵ and more¹⁶ are remarkably easy to come by. But elsewhere, too: even Sikhism—a faith ostensibly founded upon egalitarian principles reaffirming the notion of equality between races and genders—has been castigated for still adhering to a strong tribal casteism.¹⁷

The conflicted relationship between religion and equality has persisted for centuries without significant variation. Only since the last decades of the twentieth century, a period sometimes called the egalitarian age, have central problematic aspects of traditional faiths been severely challenged, at least in the West, in the name of equality. And while religious polemical writings throughout history have often heaped severe accusations of discrimination upon devotees of *other* faiths, now the discomfort is loudly voiced from within the fold, as many modern believers adhere wholeheartedly to the contemporary egalitarian ethos and seek ways to reconcile it with their traditional faith, or at least minimize the uncomfortable dissonance.¹⁸

One particular illustration of the tumultuous encounter between a religious legal tradition and the modern principle of equality has potential to shed light on a much wider cluster of questions. In New York City, during the second half of the twentieth century, the Conservative movement, one of the three main denominations of North American Judaism,¹⁹ faced a period of acute crisis, as its leaders hesitated over the appropriate response to the rise of full gender egalitarianism. The most difficult issue, the symbolic weight of which was clear to all parties involved, was initiated in March 1972 by a group of committed young Conservative women who posed the question of ordaining female rabbis. By October 24, 1983, most of the faculty of the Jewish Theological Seminary supported opening the gates of spiritual leadership to women and ordaining them as rabbis.

Much of the relevant material from this crisis and its resolution is legal in nature, and in what follows, I track the ways that the various responsa from prominent Conservative rabbis on the subject of female rabbinic ordination and gender equality reflect the push toward increased equality that weighed on the movement's trajectory. The debate about the ordination of female rabbis reveals two principal trends in Conservative halakhic rulings. These trends differ not only in their response to the challenge of feminism, but also—and perhaps even more significantly—in their understanding of the essence of the halakhic process.

However, the extensive legal debate that took place does not simply represent a linear shift toward more gender egalitarianism mirrored by an increased admissibility of extralegal considerations in the halakhic give and take. Deep-seated historical, ideational, and sociological processes were at play, both within the Conservative movement and in the world around it—concurrent with the rise of the egalitarian age—that produced the two polar-opposite halakhic trends (and two

15 See the masterful monograph authored by Tzvi C. Marx, *Disability in Jewish Law* (New York: Routledge, 2002).

16 See Norman Solomon's survey of this issue: Norman Solomon, "Religion and Human Rights with Special Reference to Judaism," in *Does God Believe in Human Rights? Essays on Religion and Human Rights*, ed. Nazila Ghanea, Alan Stephens, and Raphael Waldens (Leiden: Martinus Nijhoff, 2007), 89–105.

17 See Darshan S. Tatla, "Sikhism and Development: A Perfect Match?," in *Handbook of Research on Development and Religion*, ed. Matthew Clarke (Cheltenham: Edward Elgar, 2013), 97–112, esp. 105–10.

18 For an example within Christianity, beyond those listed at note 4, see John G. Stackhouse Jr., *Partners in Christ: A Conservative Case for Egalitarianism* (Downers Grove: InterVarsity Press Academic, 2015). For Judaism, see Marc D. Stern, ed., *Formulating Responses in an Egalitarian Age* (Lanham: Rowman & Littlefield, 2005). For Islam, see *Islam and Equality: Debating the Future of Women's and Minority Rights in the Middle East and North Africa* (New York: Lawyers Committee for Human Rights, 1999).

19 For a presentation of the history of the Conservative movement, its ideology, leaders, and institutions, see Neil Gillman, *Conservative Judaism: The New Century* (West Orange: Behrman House, 1993); Marshall Sklare, *Conservative Judaism: An American Religious Movement* (Lanham: University Press of America, 1985). The denomination also has smaller representations in Israel, Europe, and South America, sometimes under the alternative name Masorti.

outlier positions). The fight for increased gender equality was situated within an intricate social context that imbues it with meaning and shapes its outcomes and halakhic modes of expression.

The insights gained from studying the debate over female ordination at the Jewish Theological Seminary can be applied to other circumstances in which gender egalitarianism clashes with religious tradition, such as the ordination of female clergy in other Jewish denominations and in other religious groups. The framework for analyzing the ordination of women in the Conservative movement also proves useful, *mutatis mutandis*, in understanding and comparing how other faith communities deal with challenges caused by the egalitarian age.

ANALYSIS OF THE HALAKHIC MATERIAL

The discussions about the issue of women's ordination that took place at the Jewish Theological Seminary and throughout the entire Conservative movement raised different arguments, many of them halakhic in nature. Earlier scholarship has largely ignored or denied the importance of this legal debate in understanding the process by which women were allowed to become rabbis, yet, through this debate, the contemporary identity of the Conservative movement was recast in accordance with the spirit of the day.²⁰

But was the role of halakhic debate in this dispute really a marginal aspect of the developing course of events? The revolution of women's ordination at the Jewish Theological Seminary cannot be understood through social or historical observation alone while ignoring the legal context. Quite the opposite is true: the halakhic debate in the Conservative movement reflected—possibly even precipitated—the transformation and, in a broader sense, crystallized a drastic change that took place in the very identity of the movement.

That an encounter between the traditional Jewish faith and the modern egalitarian ethos is mediated by halakhic discussions may seem counterintuitive to outsiders, but it is actually not entirely surprising. Scholars have already observed that the Jewish law often serves as the medium through which rabbis engage the “weightier” matters of life. Especially in the Talmud, but also to a lesser degree in later strata of Jewish legal literature, halakhic discussions frequently merge with biblical exegesis, theological reflection, social criticism, folklore, and more.²¹ As the lines become blurred

20 One scholar was especially dismissive: “While writing, I could not avoid the feeling that the halakhic share of the discussion in the movement, which was perceived as so central in the discussions of the Rabbinical Assembly and the Seminary, was, in fact, absolutely detached from the common experience of the movement. . . . In my opinion, there was an absolute gulf between the learned academic debate on the minutiae of interpretation, which became quite passionate at times, and reality.” Arnon Bruckstein, “The Ordination of Women as Rabbis and Cantors in the Conservative Movement: An Aspect of the Struggle of a Modern Jewish Religious Movement between Conservation and Change” [Hebrew] (Master's thesis, Hebrew University, 1990), 108–09. Beth Wenger similarly believed that the halakhic aspect was only of secondary importance to other social, psychological, and political factors, and she devoted only one of the forty pages of her article to the halakhic side of the discussion: Beth S. Wenger, “The Politics of Women's Ordination,” in *Tradition Renewed: A History of the Jewish Theological Seminary*, ed. Jack Wertheimer, 2 vols. (New York: Jewish Theological Seminary, 1997), 2:485–523, at 491–92. The sole exception is Ezra Kopelowitz's fine review of the responsa from a cultural standpoint, which raised some valid points: Ezra Kopelowitz, “Three Subcultures of Conservative Judaism and the Issue of Ordaining Women,” *Nashim*, no. 1 (1998): 136–53. See also, touching upon some of the same material, Iddo Haklai, “Four Paradigms of Legal Change: American Conservative Halachic Rulings on Women's Roles in Synagogue Practice,” *Modern Judaism* 40, no. 2 (2020): 169–94.

21 This idea and its implication have recently been superbly treated in the latest book of Chaim N. Saiman, *Halakhah: The Rabbinic Idea of Law* (Princeton: Princeton University Press, 2018), esp. 124–40.

among legal decision-making, theoretical analysis of nonlegal concepts, and critical engagement with social evolutions, a legal debate may indeed turn out to be the appropriate framework to process the confrontation of an ancient religion with the modern concept of gender equality.

The legal material that I analyze comes mostly from a book edited by Simon Greenberg that contains the majority of the responsa written at the time by the seminary faculty members.²² One responsum, penned by Rabbi David Weiss Halivni, was not included in the published book because he later retracted his position and objected to the publication.

Greenberg's book is an anthology of halakhic opinions, each written separately, with no attempt to reproduce the bigger picture that arises from the collected legal material. Reading the responsa does not always make it clear whether an author's argumentation follows that of another author or constitutes an independent position. Unsurprisingly, the lack of any analytical framework for comparing the responsa makes it difficult for readers to understand the significance of the debate.

To tackle this problem, I distill the responsa down to five the principal issues that concern the authors: (1) the rabbi's role, (2) related halakhic problems, (3) relevant considerations, (4) the authority to issue halakhic rulings, and (5) the final rulings themselves. As these concerns permeate each of the legal examinations, they provide a basis for comparison.

The Role of the Rabbi

The question of the ordination of women is predicated on a more basic issue: the perception of the rabbi's role. Unsurprisingly, both proponents and opponents of female ordination discussed this question, whether explicitly or implicitly, and offered a number of divergent opinions.

The most definitively formalistic position was expressed by Rabbi Saul Lieberman, a world-renowned Talmudic scholar and the leading halakhic authority of the Conservative movement at the time. In 1979, in a letter addressed to a circle of his close friends and followers, Lieberman noted that true ordination, handed over from master to student in an unbroken chain originating with Moses, has long been lost; instead, contemporary ordination is merely a "writ," entitling its recipient to enjoy the title of "rabbi" and to function as a rabbinical judge. Thus, for Lieberman, the definition of the rabbinical role rests exclusively on its legal functions: a rabbi is first and foremost an expert in Jewish law who is qualified to serve as a judge.²³

Lieberman was hardly the only respondent to give a purely functional definition of the rabbinical role. Rabbi Israel Francus, a distinguished professor of Talmud, similarly argued that the rabbi of a congregation is required to lead religious services, read the Torah, be counted in the quorum of ten people necessary for public prayer, officiate at weddings, and so forth. An inability to fit into those halakhic categories, in Francus's view, prohibited an individual from serving as a rabbi.²⁴ Rabbis

22 Simon Greenberg, ed., *The Ordination of Women as Rabbis: Studies and Responsa* (New York: Jewish Theological Seminary of America, 1988). See also further material in David Golinkin, *An Index of Conservative Responsa and Practical Studies, 1917–1990* (New York: Rabbinical Assembly, 1996), 76–77; David Golinkin, *The Status of Women in Jewish Law: Responsa* (Jerusalem: Center for Women in Jewish Law at the Schechter Institute of Jewish Studies, 2012), 341–86; and the symposium on the ordination of women in *Judaism* 33, no. 1 (1984).

23 David Golinkin, "The Influence of Seminary Professors on Halakha in the Conservative movement: 1902–1968," in Wertheimer, *Tradition Renewed*, 2:445–82, at 451.

24 Israel Francus, "On the Ordination of Women," in Greenberg, *Ordination of Women as Rabbis*, 35–45, at 35.

David Weiss Halivni and Joel Roth likewise affirmed in their respective responsa that the position of rabbi is essentially to be understood in halakhic terms.²⁵

Still, not everybody was so formalistically minded; Rabbi Mayer Rabinowitz, a professor of Talmud at the Jewish Theological Seminary, represented a more liberal bent. Although he initially adopted a similarly traditionalist attitude defining the rabbinical role by its halakhic functions, he subsequently adopted a broader perspective, whereby all legal concepts depend essentially on time, place, and culture, the Jewish law being no exception. He applied this principle broadly, supporting a deviation from the traditionally accepted concept of a rabbi's role.²⁶

Even more progressive than Rabinowitz, the final report issued by the Interdisciplinary Commission, an ad hoc committee specifically established to discuss women's ordination in the Conservative movement, fleshed out an alternative vision of the rabbinic function. According to the authors of the report, the contemporary rabbinical role is not defined by the classical texts of the Jewish legal tradition. Rather, it develops from constantly shifting social needs and customs. Consequently, the modern rabbinate should not be restricted by specific halakhic categories, but instead should be perceived as a creation *sui generis*. According to the Interdisciplinary Commission, the rabbinical ordination granted at the seminary does not differ much from any other academic degree conferred following the successful completion of a university curriculum, although it is admittedly distinguished by its religious significance.²⁷

Along similar lines, Judith Hauptman, another professor of Talmudic studies at the seminary, argued that the word "rabbi" is synonymous with "teacher" and may therefore be used in reference to any individual possessing a sufficient degree of religious education. For Hauptman, the definition of the rabbinical role depends not on the rabbi's halakhic function but on his or her socio-educational status.²⁸

Finally, Rabbi Robert Gordis's viewpoint stands at the liberal end of the spectrum: "The rabbinate represents virtually a new calling, since the functions designated by this ancient title have undergone a far-reaching transformation. The term 'rabbi' is an old label on a bottle of new wine."²⁹ The legal sources, which did not recognize the new reality of the rabbinical role in the twentieth century, were utterly irrelevant for Gordis, who proposed a daring analogy: just as there was no halakhic debate on the possible ritual obligation of a Martian to put on the phylacteries (*tefillin*) to pray every morning, so, too, the new reality under discussion (that is, female rabbis) could not be included in classic halakhic discussions.³⁰

In summary, the debate within the Conservative movement showed that there was no consensus on the definition of the rabbinical role. Broadly speaking, one group defined the role in halakhic terms, while the other group adopted a sociological definition. As will soon become apparent,

25 David Weiss Halivni, "On Ordination of Women," in "On the Ordination of Women as Rabbis: Position Papers of the Faculty of the Jewish Theological Seminary of America (unpublished manuscript, variously paginated), BM726 .J48 1983, Library of the Jewish Theological Seminary, New York; Joel Roth, "On the Ordination of Women," in Greenberg, *Ordination of Women as Rabbis*, 127–87.

26 Mayer Rabinowitz, "An Advocate's Halakhic Responses on the Ordination of Women," in Greenberg, *Ordination of Women as Rabbis*, 107–23, at 108.

27 Gordon Tucker, "Final Report of the Commission for the Study of the Ordination of Women as Rabbis," in Greenberg, *Ordination of Women as Rabbis*, 5–30, at 16, 18–19.

28 See Reena Sigman Friedman, "Behind the Headlines: Women in the Conservative Rabbinate," *JTA Daily News Bulletin*, January 17, 1979, 3.

29 Robert Gordis, "The Ordination of Women," in Greenberg, *Ordination of Women as Rabbis*, 47–67, at 48.

30 Gordis, "the Ordination of Women," 48–49.

similar consistent divisions between traditionalists and liberals spanned other aspects of the halakhic debate.³¹

The Legal Issues Raised by the Ordination of Women

Several formalistic obstacles, all arising from Jewish legal sources, impeded the ordination of women as rabbis in the Conservative movement. In the course of their analyses, all respondents in the seminary discussions contended with these halakhic questions, but each attributed to them significant differences in weight. There were three primary halakhic objections against the ordination of women.³²

The first halakhic objection touches upon the permissibility of women's public leadership. The few (rare) sources that directly address the issue state that women are ipso facto ineligible to be appointed to any office of communal responsibility in the Jewish community.³³

More significantly, the second objection revolves around the legal capacity of women to accomplish religious commandments (*mitzvot*). While this capacity is generally recognized by the Jewish legal system, a well-known halakhic principle nevertheless states that "women are exempt of positive commandments that are time-dependent."³⁴ The reference here is to all the religious commandments meant to be performed at a certain time, such as putting on *tzitzit* (that is, the knotted ritual fringes, or tassels, attached to the four corners of a prayer shawl) by day and not by night, or blowing the *shofar* (a ram's horn trumpet) on Rosh Hashanah, the Jewish New Year, and not on any other day. This principle, however, is far from absolute and admits of numerous exceptions. For example, women are obligated to eat *matzah*, the unleavened flatbread, on Passover eve and not during the year.

This ritual exemption of women has an important corollary: the impossibility for a woman, in certain situations, to act legally as an agent for others. As a rule, the Jewish law recognizes the possibility for a commandment to be carried out by an agent; but this option exists only when the

31 I start by using the binaries of traditionalist/liberal and formalistic/progressive somewhat loosely. The initial benchmark is the age-old position of the Jewish law, which has always perceived rabbinic ordination to be a strictly male preserve. Any element that apparently supports a reaffirmation of this gendered view of the rabbinic function is deemed "traditional" (or sometimes "formalistic"), while any element which supports the reconsideration of previously held positions is deemed "liberal" (or sometimes "progressive"). Below, I problematize these categories and reassess their relevance against the background of the wider sociocultural processes that affected the Conservative movement at the time.

32 There were several secondary reasons, but discussion of them does not change the import of the analysis.

33 The main reference here is to the twelfth-century code authored by Maimonides (*Mishneh Torah*, Laws of Kings and Wars 1:5). Note that Maimonides's ruling represents an extension of the earlier *Midrash Sifrei*, according to which the Torah prohibits the appointment of a queen ("a king and not a queen"). The general question of women's leadership is far from purely theoretical; the same question gave rise to a significant controversy in 1919–20, as the rabbinic authorities of the "Old Yishuv," in the early mandate period of British Palestine, debated the halakhic permissibility of women's suffrage and representation. Rabbi Abraham Isaac Ha-Kohen Kook, who was chief Ashkenazic rabbi of Jerusalem at the time, ruled stringently, whereas Rabbi BenZion Meir Hai Uziel, then the chief Sephardic rabbi of Jaffa, ruled leniently. There is significant literature on this topic: see Zvi Zohar, "Traditional Flexibility and Modern Strictness: Two Halakhic Positions on Women's Suffrage," in *Sephardi and Middle Eastern Jewries: History and Culture in the Modern Era*, ed. Harvey E. Goldberg (Bloomington: Indiana University Press, 1996), 119–33; Menaḥem Friedman, *Society and Religion: The Non-Zionist Orthodox in Israel 1918–1936* [Hebrew] (Jerusalem: Yad Izhak Ben-Zvi, 1977), 146–84; Zohara Bozich-Hertzog, "The Debate on Women's Suffrage in Institutions of the Old Yishuv during the Early Mandate Period" [Hebrew] (Master's thesis, Bar-Ilan University, 1990).

34 *mKiddushin* 1:7.

agent's level of halakhic obligation is equal to that of the principal. Thus, a person who is not obligated by a specific commandment or who is obligated on a different level (a distinction that comes into play when comparing lower rabbinic obligations to higher Torah-based obligations, for example), cannot exempt the principal from performing his or her duty.³⁵

On the basis of these legal principles, a woman cannot lead public prayer and cannot thereby relieve men of their duty to recite the obligatory prayers from which she is exempt, because those prayers depend on specific times. On similar grounds, she cannot read the Torah publicly, be included in a quorum of ten for public prayer, blow the *shofar*, and so forth. Thus, on the face of it, there is no halakhic way for a woman to fulfill the normative rabbinical functions.³⁶

The third objection is that the Jewish law does not accept the testimony of women before a rabbinical court. This prohibition, definitively stated in relevant sources,³⁷ implies that a woman is forbidden to sign bills of divorcement, marriage contracts, and more. According to many rabbinical authorities, a woman is also forbidden to serve as a judge.³⁸

How heavily did these three objections weigh upon the arguments put forward by the faculty authors? As anticipated, the same distinction identified earlier between the responsa of the traditionalist and liberal camps remains consistent with respect to their assessment of the halakhic obstacles. According to the responsa penned by the traditionalist rabbis,³⁹ halakhic objections determine the exclusive lens through which the ordination of women as rabbis must necessarily be examined;⁴⁰ this remains true, even though their positions show at times a perceptible attempt to overcome these obstacles.

The rabbis of the liberal camp, on the other hand, formulated a much more complex framework of analysis. For them, the question was not limited merely to what was forbidden or permissible. Theirs was rather a multifaceted reflection, which openly included halakhic, social, ethical, and other components. In its final report, the Interdisciplinary Commission, for example, mentioned all the halakhic problems but also saw fit to include in its deliberations the much broader considerations of sociology, politics, and even public relations.⁴¹ Gordis, for one, vehemently concluded that the dilemma was simply not halakhic in the classical sense of the term: "In conclusion, it is clear that these objections, while ostensibly based on the Halakhah, are indirect at best and far-fetched at worst. . . . No Halakhic objections of substance have been adduced."⁴² In other words, Gordis's diagnosis completely nullified the importance of the classical legal objections and shifted the discussion entirely toward nonhalakhic considerations.

The Relevant Considerations

The same gap between traditionalists and liberals is also evident in the justifications provided by the authors—that is, the ways they dealt with the questions they themselves had asked. The traditionalists held that, just as the Jewish law determines which questions should be asked, it also shapes

35 *bRosh Hashanah* 29a.

36 In his position, Halivni noted the existence of halakhic sources prohibiting women from acting as agents, on behalf of the entire community, in the recitation of the bridegroom's blessing, thus barring them from accomplishing a crucial and symbolic function of the rabbinate: officiating at weddings. Halivni, "On Ordination of Women," 3–7.

37 *Sifrei* on Deuteronomy 17:19; *bShavuot* 30a; Maimonides, *Mishneh Torah*, Laws of Testimony 9:2.

38 See the relevant discussion of the Tosafists, *Shevuot* 29b, s.v. "shevuot haedut."

39 Francus, Halivni, Roth, and even Rabinowitz.

40 To clarify: while below I denounce the fallacy of "pure" halakhic considerations, my focus here is on the responsa as understood by the authors themselves.

41 Tucker, "Final Report of the Commission," 12–27.

42 Gordis, "The Ordination of Women," 57.

how they should be answered. According to Israel Francus, “There are those, albeit very few, who claim that ‘it is a theological and moral imperative to grant women full equality in the religious sphere even if it violates the Halakha.’ All that I can say to them is: you have read yourself out of the Conservative Movement, which was founded on, and continues to subscribe to, the primacy of Halakha in Judaism.”⁴³ These responsa were replete with citations from Talmudic sources, commentators on the Talmud, and the great rabbinical authorities. For example, Joel Roth added to his responsum more than 140 footnotes, almost all of which quoted classic halakhic sources.

In the progressive camp, some halakhic sources were certainly invoked, but it was obvious that the liberals did not rely exclusively on them, nor were they convinced by them. For example, the final report by the Interdisciplinary Commission mentioned many ethical and “other” considerations, the importance of which, in the opinion of the members of the commission, was preponderant. Among other considerations were, for example, the right of the individual to choose her preferred career, opportunities for female candidates to find jobs in Conservative congregations, the illogical contradiction between the egalitarian education in the movement and the discrimination against women in the requirements for admission to rabbinical studies at the Jewish Theological Seminary, and the positive response by the general public in surveys.⁴⁴

The Authority to Rule

A final point of contention between the two opposing wings of the Conservative movement concerned the identity of those qualified to rule authoritatively. This divergence most clearly manifested itself in the composition of the Interdisciplinary Commission, which was established in order to discuss the question of women’s ordination and included only a very small number of well-known rabbinical scholars.⁴⁵ Here, too, opinions were consistent with the above-mentioned division. As the traditionalist wing saw it, the lack of halakhic expertise that characterized some members of the committee was an “unrightable wrong”: “One would have expected that prior to the debate on the ordination of women, a thorough and definitive study by competent scholars would have been commissioned and made available to all participants to guide them in their decision-making. That was not done. Instead, a commission was appointed, including few rabbinic scholars, to study the feasibility of ordaining women to the rabbinate.”⁴⁶ Naturally, the liberal wing adopted the opposite position and considered participation by representatives of the general public to be a positive factor essential to the process.

The Halakhic Decisions

In short, a clear line consistently demarcated the traditionalist camp from the liberal camp. Traditionalists supported the definition of the rabbinical role on the basis of its halakhic functions, the exclusive authority of rabbinical scholars, and the understanding and analysis of the problem according to familiar halakhic categories. Liberalists viewed the rabbinical function as a cultural

43 Francus, “On the Ordination of Women,” 5.

44 Tucker, “Final Report of the Commission,” 21–27. Factors pulling in the opposite direction were duly considered but viewed as marginal (examples include the need to respect the minority opinion supported by the traditionalist wing and the risk of driving its representatives out of the movement; and the negative symbolism involved in a revolutionary halakhic innovation, which represented a deviation from the sanctified tradition and a concession to the positions of Reform Judaism).

45 Wenger, “The Politics of Women’s Ordination,” 494–95.

46 See Halivni, “On Ordination of Women,” 2.

and sociological creation, conferred authority upon representatives of the general public, and framed and resolved the dilemma through the use of ethical and cultural concepts.

One would expect the writers to have arrived, just as consistently, at opposite conclusions. In part, this is correct: for instance, the traditionalist Israel Francus emphatically denied to women the possibility of serving as the rabbi of a congregation, citing women's inability to exempt men from their religious duties. "Hence, anyone who will contribute in any way towards enabling women to be admitted to the Rabbinical School will be transgressing the biblical injunction, 'Before who is blind, do not place a stumbling block' (Leviticus 19:14). He will also be violating the rabbinic prohibition to assist transgressors."⁴⁷ Rabbi Lieberman, in his above-cited letter, likewise ruled out any halakhic possibility of ordaining women as rabbis.⁴⁸ On the other hand, *all* of the liberals, including Gordis, Rabinowitz, Hauptman, and the overwhelming majority of the members of the Interdisciplinary Commission, granted halakhic permission for the ordination of women. Some even considered it to be a positive religious commandment.⁴⁹

This is not the whole story, however. Quite unexpectedly, two representatives of the traditionalist wing also ruled *in favor* of allowing women to become rabbis: Roth and Halivni.

The two outcomes revealed by this in-depth study of the halakhic material—on one hand, the emergence of two different halakhic schools, and on the other, the existence of two diverging outliers—are significant and intriguing, each in its own right.

The Debate in Context

The neat division of the writers into two camps seems puzzling. To be sure, there is some degree of correlation among some of the five legal issues at stake, but most are not connected by any kind of internal logic that would dictate consistently coherent positions.⁵⁰ How can one account for the emergence of these two clearly defined, yet polarly opposed, halakhic trends within the Conservative movement? What is the significance of this phenomenon, beyond the dry, nitty-gritty of the halakhic debate itself? And, what is the significance, both for themselves and for the Conservative movement at large, of Halivni's and Roth's anomalous rulings?

The halakhic debate on the ordination of women demonstrates, from a philosophical-historical standpoint, something far more profound than the usual disputes between rabbinical authorities. This particular debate is a phenomenon with deep roots, touching upon the essence of the halakhic process itself, as the Conservative movement was slowly but surely coming to terms with full gender egalitarianism.

THE SHIFTING ETHOS OF THE CONSERVATIVE MOVEMENT IN AN ERA OF RADICAL GENDER EQUALITY

At first blush, one may be tempted to suggest that the legal debate analyzed above evidenced a progressive shift in the Conservative movement toward full gender egalitarianism combined with an

47 Francus, "On the Ordination of Women," 43.

48 Golinkin, "The Influence of Seminary Professors," 451.

49 See Rabinowitz, "An Advocate's Halakhic Responses," 119. Tucker, "Final Report of the Commission," 27–28. Gordis, "The Ordination of Women," 16–17. Anne Lapidus Lerner, "On the Ordination of Women," in Greenberg, *The Ordination of Women as Rabbis*, 93–106, at 100–01.

50 Thus, one can define the rabbi's role in halakhic terms (step 1), and rule leniently or stringently (step 5); moreover, the inclusion of sociocultural considerations (steps 2–3) does not logically lead to an automatic lenient ruling (step 5).

increased penetration of extralegal considerations in the halakhic discussion: in this theory, the traditionalist camp embodied the historical nonegalitarian, pure-halakhic ethos of Conservative Judaism, and the liberal camp represented the new egalitarian, socio-halakhic identity of the movement, with the latter eventually triumphing over the former.

There is some truth to this double claim, but the reality was far more complex and multifaceted. To avoid the pitfall of reductionism, this initial reading must be rejected on several grounds. First, regarding the switch to egalitarianism: a fair proportion of responsa from the traditionalist camp showed signs of an honest attempt to accommodate the demands for more gender equality; their authors apparently identified, at least partially, with gender egalitarianism but failed to square it with their view of the halakhic process; moreover, the diverging positions of Halivni and Roth, who identified with the traditionalist camp but ruled in favor of the ordination of women, can hardly be understood under this paradigm of a linear shift toward more gender equality. Second, regarding the switch to a mixed halakhic approach, there exists today a rich scholarly conversation showing that halakhic arguments are never purely legal, and that sociological context plays a significant role in the development of the Jewish law⁵¹; as a result, one must renounce the fallacy of “pure” halakhic considerations and take a good second look at the traditionalist camp’s larger motivations: the complex interplay of law, gender egalitarianism, and social context in the reshaping of the Conservative ethos.

The General Context: Historical, Sociological, and Ideological Changes

Not surprisingly, the division of the authors of the responsa into two camps also intersects with the historical processes that took place during the preceding decades, both throughout the entire Conservative movement and in the social microcosm around it. How this debate was also structured by its historical, sociological, and ideological backgrounds has been studied extensively by other scholars, and in describing the six evolutions that comprise the wider social backdrop of the dispute, I draw on their findings.⁵²

The Role of Jewish Theological Seminary in the Conservative Movement⁵³

The relationship between the Jewish Theological Seminary and the other institutions of the Conservative movement has always been one of complicated love. The seminary was founded in

51 Unsurprisingly, the question of the heteronomy of the halakhic debate is often raised in the context of a controversial topic, like the status of women or homosexuals in the Jewish law. See, for instance, Daniel Sperber, “Congregational Dignity and Human Dignity: Women and Public Torah Reading, Appendix I : On Halakhic Methodology,” in *Women and Men in Communal Prayer: Halakhic Perspectives*, ed. Chaim Trachtman (Jersey City: Ktav, 2010), 27–205, at 123–26; Tamar Ross, “Halakha Contextualized: the Halakhic Status of Homosexuals as Test Case” [Hebrew], in *The Halakha as Event* [Hebrew], ed. Avinoam Rosenak (Jerusalem: Van Leer Institute Press, 2016), 375–430. But not always: see Lawrence Kaplan, “Back to Zechariah Frankel and Louis Jacobs? On Integrating Academic Talmudic Scholarship into Israeli Religious Zionist Yeshivas and the Specter of the Historical Development of the Halakhah,” *Journal of Modern Jewish Studies* 14, no. 1 (2015): 89–108.

52 Beth Wenger’s essay provides a detailed historical description of the events: Wenger, “The Politics of Women’s Ordination.” See also Arnon Bruckstein, “The Ordination of Women as Rabbis and Cantors in the Conservative Movement: An Aspect of the Struggle of a Modern Jewish Religious Movement between Conservation and Change” [Hebrew] (Master’s thesis, Hebrew University, 1990); Pamela S. Nadell, *Women Who Would Be Rabbis: A History of Women’s Ordination 1889–1985* (Boston: Beacon Press, 1998), 170–214.

53 For a detailed treatment, see Jack Wertheimer, “JTS and the Conservative Movement,” in Wertheimer, *Tradition Renewed*, 2:405–42.

1886 and operated for twenty-five years as a rabbinical seminary and academic center unaffiliated with any official denomination. It founded the United Synagogue of America in 1913 in order to develop congregations where it could place its graduates.⁵⁴

One cause of tension was rooted in the emotionally charged question of the purpose of the seminary. Representatives of Conservative synagogues believed that the principal purpose of the seminary was to prepare rabbis and other leaders to serve throughout the branches of the movement. In other words, they expected the Jewish Theological Seminary to serve as the intellectual and spiritual head of the Conservative movement. The heads of the seminary, however, saw the institution's mission as transcending the confines of the movement by serving as an institution of higher learning providing thought leadership for American Jewry as a whole.⁵⁵

Another point of contention was religious in nature: some seminary faculty criticized Conservative synagogue leaders for not maintaining the traditionalist line modeled by the seminary and instead instituting innovations in liturgical customs and rituals. Actually, most rabbis did not rush to institute innovations but simply felt it necessary to adapt to the spiritual needs of their congregants. Still, as many seminary faculty privileged Torah scholarship over community leadership, they looked down on the work performed by community rabbis to accommodate the sociological reality and bring spiritual wisdom to their communities.⁵⁶

In turn, many Conservative rabbis felt that the seminary was out of touch with the needs of American Jews at the time and criticized its strict halakhic traditionalism. In 1948, after many years of frustration and complaints, they established the Law Committee of the Rabbinical Assembly, an autonomous committee of halakha independent of the great Talmud professors at the seminary, with more leeway to explore innovative interpretations.⁵⁷

In short, the seminary was torn between its desire to maintain an ivory-tower distance from the changes necessitated by the reality on the ground and the wish to exercise some degree of leadership and control over that reality.

Professor Saul Lieberman's Unique Position at the Jewish Theological Seminary

The chancellor of seminary in the 1940s, Louis Finkelstein, intentionally hired Talmudic scholars who had personally experienced the "old world" of classic rabbinical education in Eastern Europe and had combined it, at some stage of their lives, with a comprehensive Western university education.⁵⁸ Consistent with this Eastern European identity, the seminary especially emphasized Talmud studies. One of these scholars originally from Eastern Europe, Saul Lieberman, was the head of the Talmud Department. While he did not publish responsa of his own, he was extremely influential in determining the seminary's policy in matters of Jewish law. For instance, due to his opposition to mixed prayer, the synagogue at the seminary maintained a separation between men's and women's seating, a traditionalist position inconsistent with the prevailing custom in the movement, which had gradually dispensed with any separation since the 1940s.⁵⁹ Lieberman passed away in

54 Wertheimer, "JTS and the Conservative Movement," 406–08.

55 Wertheimer, 409–10.

56 Wertheimer, 414–16.

57 Wertheimer, 418–19.

58 The names of Saul Lieberman, Shalom Spiegel, Abraham Joshua Heschel, Moses Zucker, and David Weiss Halivni come to mind here. On this point, see Harvey E. Goldberg, "Becoming History: Perspectives on the Seminary Faculty at Mid-Century," in Wertheimer, *Tradition Renewed*, 1:354–417, esp. 359–61.

59 Golinkin, "The Influence of Seminary Professors," 450–52.

March 1983, and proponents of the change of women's status at the seminary perceived his absence as an opportunity.⁶⁰

Religious Competition from Other Jewish Denominations

From the mid-twentieth century, tectonic forces changed the landscape of American Judaism, and Conservative Judaism started experiencing tensions in its relations with both the Orthodox movement and the Reform movement. Orthodox Judaism had successfully rooted itself in the United States and began to attract large numbers of university-educated young people, many of them children of Conservative Jewish parents, who were disappointed by the halakhic compromises and the lack of spiritual enthusiasm that they perceived as characteristic of the Conservative movement. On the other hand, Reform Judaism had also changed. Its encouragement to return to the observance of certain commandments, its re-adoption of Hebrew as a language of liturgy, and its support of political Zionism had all brought it considerably closer to the values of the Conservative movement. And the decision, taken in 1972, to ordain the first woman rabbi in the Reform movement, added some pressure for the Conservative movement to act.⁶¹ Unlike Reform and Orthodox Judaism, which had begun to exhibit an unforeseen vitality, the Conservative movement began to be perceived as a fading denomination. New answers were urgently needed to show the movement's significance and dynamism in the new era.⁶²

A Drift away from Religiosity

The popular stratum of the Conservative movement, now the children and grandchildren of Eastern European immigrants, had acculturated in many ways to American life and felt less tied to religion. While congregants still wanted their Conservative rabbis to serve as symbolic role models and to be well versed in traditional Jewish texts, they were not personally observant themselves. Moreover, they increasingly expected their spiritual leaders to visit hospitalized members of their congregations, to participate in their celebrations, to teach their children, to comfort their mourners, and other similar activities. The feeling that the training given to rabbis at the Jewish Theological Seminary was not consistent with the needs of the time and place was rather widely shared.⁶³

Camp Ramah

In 1947, the Conservative movement founded a network of summer camps, called Ramah, which eventually came to host thousands of Jewish children and adolescents each summer.⁶⁴ The camps were established to provide an opportunity for young Jews to learn Hebrew language, Jewish texts, and Jewish living in an immersive experiential setting. The campers experienced their Judaism twenty-four hours a day for several weeks each year. The summer camps educated the young Conservative Jewish elite as a form of leadership training. Equality between men and women

⁶⁰ See Nadell, *Women Who Would Be Rabbis*, 212.

⁶¹ Nadell, 168–69.

⁶² On all these developments, see Gillman, *Conservative Judaism*, 117–18; Sklare, *Conservative Judaism*, 188–90.

⁶³ Gillman, *Conservative Judaism*, 118–20; Sklare, *Conservative Judaism*, 188–90, had already made similar observations in the original 1954 edition of his book.

⁶⁴ During the first year, only eighty-nine youngsters were enrolled. Ramah then grew rapidly: in 1970, more than three thousand youngsters were enrolled. Sklare, *Conservative Judaism*, 259.

was more widely practiced within the camp system than in the movement's other institutions: for example, there was hardly any difference between prayers conducted by girls and those led by boys.⁶⁵ The egalitarian education received in Conservative summer camps was an important factor in motivating that group of young women to launch, in March 1972, the movement for female ordination.⁶⁶

Professor Mordecai Kaplan's Influence

Mordecai Kaplan (1881–1983), who joined the seminary faculty in 1909 and taught there until he retired in 1963, exerted considerable influence on the worldview of the young rabbis who earned their ordination at the seminary. While many faculty members were influenced by the pragmatic philosophy of John Dewey, who taught at nearby Columbia University, Kaplan's own naturalistic theology is considered nothing short of a variation of Dewey's ideas. Kaplan believed that Judaism is essentially a civilization, a religious culture characterized by the underlying idea of the "covenant." He emphasized the commitment of believers as autonomous individuals who voluntarily decide to live a religious life of Torah and religious commandments.⁶⁷

From One Generation to the Next

As should be clear, the legal debate over gender egalitarianism also coincided with a generational change within the Conservative movement. All of the profound changes outlined above—those within the Conservative movement and those affecting it from without during the second half of the twentieth century—came into play on the halakhic battlefield; as the proverbial Pandora's box was opened, the dilemmas raised by gender equality in general, and by women's ordination in particular, provided a catalyst for the conflicting trends festering within the movement to burst out in full force.

Allowing for some minor measure of Weberian idealization, it is possible to identify the traditionalist camp as the "older generation," whose aim was apparently to preserve the role of the seminary as an elitist academic center. These authors saw no need to bridge the gap between the seminary and the institutions of the Conservative movement, believing that the ideal rabbi was a learned scholar of Talmud. They were unwilling to consider the prevailing reality among Conservative congregations, acceding neither to the demands voiced by those involved in the movement (such as Ramah campers and counselors) nor to the needs of Conservative congregants. Outside influences, like the demand for increased autonomy stemming from contemporary American philosophical and educational trends, were not allowed to weigh on the movement's trajectory.

The liberals, on the other hand, largely represented the "younger generation." Their goal was to reduce the disconnect between the seminary and the institutional infrastructure of the movement, hoping to transform the seminary into the pedagogical arm of Conservative Judaism. As they saw it, a rabbi was meant to be active at the community level. The social reality of the Conservative congregations, though influenced by the philosophical trends in vogue in surrounding

65 Michael Brown, "It's Off to Camp We Go," in Wertheimer, *Tradition Renewed*, 1:822–54.

66 See Nadell, *Women Who Would Be Rabbis*, 170–71.

67 See Mel Scult, *Judaism Faces the Twentieth Century: A Biography of Mordecai M. Kaplan* (Detroit: Wayne State University Press, 1993).

society, was a preponderant consideration in establishing the norms and the agenda of the movement on behalf of the seminary.

Thus, the move toward greater gender egalitarianism in the Conservative movement intersected with a social, historical, and institutional context rife with tensions. So intertwined were these two aspects that a ruling in favor of the ordination of female rabbis amounted to an endorsement of the emerging social vision of the younger generation, while a negative ruling conversely represented a reaffirmation of the historical ethos of the older generation.

One crucial lesson emerging from this story is that the legal battle for more gender equality is not fought in a vacuum. In other words, the fight cannot be easily divorced from the messy facts of life. Still, a full understanding of the struggle requires a better grasp of the relationship between the deep-seated social developments examined above and the minutiae of legal debate over the role of women in Judaism. The connections among law, social context, and gender egalitarianism seem too tight to be entirely coincidental. The key to the connection is the halakhic ethos of the Conservative movement.

The Philosophy of Halakha and the Conservative Movement

Since its birth in the nineteenth century, Conservative Judaism has been characterized by both its commitment to classic halakhic tradition and its willingness to adapt that tradition to the changing needs of time and place.⁶⁸ Its commitment to halakha distinguishes the Conservative movement from Reform Judaism, which does not consider halakha to be a binding source of authority. The Conservative movement's adaptivity distinguishes it from the various streams of Orthodox Judaism, most of which view Jewish law as ahistorical and monolithic. Fundamentally, what differentiates the Conservative movement from other Jewish denominations is not sociological but theoretical in nature; the movement's philosophy of halakha has always been the basis of its ethos.

Here, too, a familiar pattern seems to be at play: the position adopted by the traditionalist wing of the Conservative movement reflected the movement's historical philosophy of halakha, while the liberal wing formulated an innovative philosophy of halakha, weaving the sacred traditional sources with other social, ethical, cultural, and practical considerations. In so doing, the two wings implicitly weighed differently the two poles of tradition and change.

Little wonder, then, that the developments leading to the decision to ordain women at the Jewish Theological Seminary were perceived as a watershed moment by the main actors of the time. The move toward increased gender egalitarianism corresponded to the emergence of a new social vision for the seminary and a major shift in the halakhic philosophy of the movement at large.

True, owing to the Conservative movement's classical philosophy of halakha and its situation at the crossroads between tradition and change, one can hardly be surprised that significant social evolutions would be filtered through the prism of legal argumentation. And yet, in this particular instance, the push toward an egalitarian interpretation of the Jewish law carried much more significance than any simple realignment of canonized legal codes through creative jurisprudence. Rather, every step of the halakhic process was crucially affected by the shift toward gender equality. In essence, the entire halakhic process was, for a short while, understood in two divergent ways within the Conservative movement, with the more recent "upstart" eventually gaining the upper hand.

⁶⁸ See, for instance, the presentation of David Golinkin, *Halakha for Our Time: A Conservative Approach to Jewish Law* (New York: United Synagogue of America, 1991), 3–5.

The halakhic debate over the ordination of women, which so engrossed the great legal minds of the Conservative movement in the 1980s, had in fact taken on an unusual double nature. It was at once both transformative and reflective: transformative, because the law served as a channel for the movement's complex transition toward gender equality, intersecting with a loaded social context; and reflective, because the law itself became the profoundest expression of the changes undergone by the movement. Having arrived at this conclusion, one may now begin to understand Roth's anomalous responsum, one of the two outlier positions introduced at the end of the first section.

The Responsum by Rabbi Joel Roth

Roth's responsum represented a remarkable legal and ethical journey. Demonstrating a profound commitment to the classical halakhic system, the text nonetheless also completely identified with modern egalitarian concepts about women. The tension between these two important components of Roth's ethical and religious persona, almost palpable between the lines of the text, rendered it necessary for Roth to search for an appropriate solution that reconciled all of the conflicting requirements. Given its significance, this responsum merits attention here in some detail.

Roth organized his responsum into four sections. The first section analyzes women's place in Judaism from the standpoint of their obligation to observe religious commandments.⁶⁹ Roth begins with the well-known general principle: women are exempt from the performance of time-dependent positive commandments. About this, he raises the four questions that shape the responsum: (1) Are women permitted to voluntarily perform the commandments from which they are exempt? (2) If the answer is in the affirmative, are women permitted to recite the blessings for those commandments? (3) May women then be considered obligated to perform commandments that they take upon themselves? (4) If so, will their obligations be equal in status to obligations assumed by men?

Roth's answers to these questions are all affirmative—sometimes unreservedly, and sometimes after a tortuous analysis of the sources, but always without deviating from the generally accepted parameters of halakhic discourse. In the end, Roth rules that women could serve as prayer leaders, be counted in a quorum of ten for public prayer, and officiate at weddings. Still, he cautions, voluntary observance of religious obligations is a matter of serious consideration: “We have, we hope, made abundantly clear that the obligatory status of voluntary observance must be taken very seriously if it is to have the legal status of obligation. That seriousness is reflected in the recognition that, for that woman, there is no viable option to compliance with the norms. That, in traditional terms, means the recognition of sin as the consequence of noncompliance.”⁷⁰

Section two of the responsum focuses on women's ability to testify in legal settings.⁷¹ Roth states that halakha had determined *prima facie*—absolutely and certainly—that women are prohibited from testifying. Nonetheless, he refuses to stop the analysis at that point. In his opinion, the sole logical basis for the prohibition arose from the rabbinic perception of the nature of women: the Jewish sages saw women as unreliable and hypersensitive and therefore unworthy of testifying. Roth insists, however, that this assumption has been totally refuted in the modern age, and therefore halakha requires rabbinical authorities to revisit the existing norms.

For this purpose, Roth proposes three possible ways to eliminate the prohibition, in whole or in part: (1) leave the prohibition theoretically intact but add to the list of already long-standing exceptions two additional categories of testimony, witnessing a marriage contract (*ketubah*) and a bill of

69 Roth, “On the Ordination of Women,” 127–48.

70 Roth, 148.

71 Roth, 149–62.

divorce (*get*); (2) rely on a prestigious medieval authority (Maimonides) and propose a new interpretation of Torah verses that address the laws of testimony, appropriate to the spirit of the modern era; or (3) make use of the principle by which “the Sages may knowingly abrogate a norm which is biblical.” Roth himself does not make a decisive choice among those three possibilities and noted that none of them is free of difficulties: “In the final analysis, none of the three possible approaches is simple, and all involve great concern for the impact that any one of them may have upon Klal Israel, the ideal of the unity of the Jewish people, for undoubtedly any action whatsoever would evoke vigorous opposition in certain circles.”⁷²

Section three of the responsum, which is extremely brief, pertains to the halakhic sources that discuss a woman who serves as a rabbi⁷³—and there are few such sources. Aside from the opinion of Maimonides and a single, isolated *midrash*, Roth notes that there is no independent prohibition that precludes a woman from serving as a rabbi per se: “In the final analysis, then, there is no legal objection to the technical granting of the title ‘rabbi’ to a woman.”⁷⁴

In the fourth section, Roth provides his conclusions and practical suggestions.⁷⁵ In his opinion, the Conservative movement has to open a wide range of practical possibilities for women in the movement: to remain in their present halakhic situation, to observe some or all of the time-dependent commandments, and to do so with or without an obligation for the future. In his view, the sporadic observance of one positive commandment or another, in and of itself, does not impose an obligation upon any woman. Only the voluntary and intentional decision to assume an obligation to observe a specific commandment—meaning that the nonobservance of the commandment would thenceforth be considered a sin—gave a woman a halakhic status equal to that of a man. Such a woman, who has assumed an obligation to pray as a man, could then be counted in a prayer quorum and serve as a leader. Roth also calls upon the leaders of the movement to openly abrogate the prohibition against women serving as witnesses and supported the proposal to accept female candidates for ordination at the Jewish Theological Seminary effective immediately: “They [that is, the first group of female applicants to rabbinic ordination] will be the women who have had the fortitude to be trailblazers on previously unmarked paths. I cannot see why the forerunners should be denied the right which their very behavior will have bequeathed to those who follow them.”⁷⁶

What is the significance of this responsum for the discussion of the role of halakhic debate in the Conservative movement’s transition to full gender equality? Roth’s responsum was unique for a number of reasons. First, it was the longest and most detailed of all (sixty pages in Greenberg’s book, with more than 140 footnotes). Second, it was the only responsum cited in the writings of both opponents⁷⁷ and proponents⁷⁸ of the change. Third, this responsum, although its thought patterns were most similar to those of the opponents of change, nonetheless ultimately favored female ordination.

The combination of all of these elements admits the following explanation: Roth, knowingly or unknowingly, occupied the precise midpoint of the discourse at the seminary, identifying at once with the thought patterns of one camp and with the conclusions of the other. Not only did this

72 Roth, 162.

73 Roth, 162–66.

74 Roth, 165.

75 Roth, 166–74.

76 Roth, 174.

77 Francus, “On the Ordination of Women,” 43.

78 Lerner, “On the Ordination of Women,” 95–97.

central position confer upon him a unique legitimacy in the discussion, it also placed him in an important position—that of mediator between the two sides. By explaining, and even justifying, the liberal camp’s position while using the rhetoric of the traditionalist camp, Roth enabled a smoother transition from the preexisting situation to a new one and ensured apparent continuity within the movement. In other words, his responsum gave the revolution the appearance of a natural and gradual evolution, even though the shift occasioned by the encounter with gender egalitarianism was in fact quite radical. Moreover, it enabled many Conservative Jews to feel that the commitment to both tradition and change had been preserved, and thus to feel comfortable with the change.

The justification of the new worldview in terms of the old one functioned as a dynamic legal bridge—a transitory bridge, to be sure, for the middle position represented by Roth was “held” only for a very short while, as the Conservative movement was on its way toward the triumph of the new vision of the halakhic process delineated previously.

The Responsum by Rabbi David Weiss Halivni

Of all of the responsa written on the subject, Halivni’s was by far the most surprising. His responsum, like Roth’s, uses a traditionalist analysis yet culminates in a liberal judgment. At first glance, however, the reader has every reason to feel confused as to whether or not Halivni’s judgment permits women’s ordination; indeed, it seems that this unpublished responsum was meant, from beginning to end, to *prohibit* the ordination of women.

Halivni clearly found many arguments for denying women’s ordination. He made noticeable efforts to demonstrate that the representatives of the liberal camp had not considered all of the existing halakhic problems. Thus, in contrast to the consensus among the other rabbinic authorities, he argued that the well-known halakhic rule, according to which a woman cannot lead public prayer because the level of her obligation is different from that of a man, did not constitute the core of the discussion. According to his argument, the situation ought rather to be compared to another case: during a marriage ceremony, the bridegroom and the bride are both equally bound to hear the so-called bridegroom’s blessing (*birkat ḥatanim*), but it is nonetheless halakhically required that only a man may say it. From this line of argument, Halivni concluded that the legal impediment preventing a woman from reciting blessings, in both cases, was not the above-cited well-known halakhic rule but something else. What this could be Halivni did not consider necessary to describe. For him, it was enough to conclude that a woman’s obligation (or lack thereof) was not the deciding factor in the context of her function as a leader of public prayer.⁷⁹

However, Halivni did not stop there. He went on to argue that even a woman who voluntarily observes all of the commandments from which she is exempt cannot be considered obligated to the same extent as a man. Accordingly, she is inherently unable to exempt a man from time-dependent commandments, to function as a leader of public prayer, and the like. According to the sources cited by Halivni, a woman who takes the burden of all of the commandments upon herself still cannot exempt men from their obligation to observe even one commandment of biblical origin. As for commandments of rabbinical origin, only one minority opinion holds that such a woman is able to exempt men from observing them.⁸⁰ Halivni therefore concluded unequivocally that “*voluntary obligation does not equal commanded obligation.*”⁸¹

79 Halivni, “On Ordination of Women,” 7–8.

80 Halivni, 8–13.

81 Halivni, 9 (emphasis in the original).

Furthermore, as Halivni saw it, even if the rabbinical authorities were to ignore those problems and to agree, for a moment, that a woman who assumes the burden of observing the commandments is equal in status to a man, this still would not solve the problem. The only halakhic way to determine the assumption of such a burden was through a vow (*neder*), a religious undertaking that a person takes upon himself or herself. Such an undertaking, however, would be reversible. In other words, halakha recognized the possibility of canceling—or, more precisely, of being released from—a vow. Thus, even if a woman has assumed the burden of observing all time-dependent commandments *en bloc*, she is not obligated to do so forever. Because she is always free to recant her vow, she cannot be relied upon.⁸²

To summarize Halivni's line of argumentation, the halakhic impediments to the ordination of women were many, and it was completely beyond the realm of possibility to find a convincing solution to all of them.

And yet, despite the purely negative spirit of the responsum's first fifteen pages, Halivni quite astonishingly concludes his responsum with a practical and original proposal for resolving the matter. In his opinion, a woman who undertakes to keep all of the commandments, including time-dependent commandments—not as an isolated individual but, rather, based on a sense of belonging to a new set of women who all chose a similar lifestyle—would be considered obligated by the same legal status as men. Accordingly, the collective assumption of the burden of time-dependent commandments by a group of women would enable them to exempt men from all of those commandments and would pave their way to the rabbinate. Nonetheless, Halivni further asserted, a long period of time, corresponding approximately to an entire generation, would be needed to ascertain the quality of this new phenomenon, to imbue it with full halakhic validity, and to view it as a binding custom for that group of women. In other words, only the daughters of the pioneer women—that is, the second generation of women who observed time-dependent commandments—would be included in the proper halakhic category that would enable their ordination as rabbis.⁸³

In short, there is *no* halachic assurance that the women will continue to observe the positive commandments and not avail themselves of the option of having the vow annulled. Unless women *en masse* are observing time bound commandments, so that if some leave, others will join their ranks; unless it becomes a *מנהג*, a custom, of some duration, no serious change in their religious status can be contemplated. Without assurance of the continuity of their observance, given the small number of participants, no meaningful equality can be established. That may take a generation or so. Less than that, no permanency can be secured.⁸⁴

There is obviously a surprising disconnect between this sudden brutal compromise, which appeared at the end of the responsum, and the blatant opposition at its beginning. Moreover, a careful reading of the responsum shows that Halivni found only *a single halakhic source* on which to base his proposal, which, as a result, appears to be rather tenuous. Admittedly, it is not uncommon in classic halakha to rely on one scholar's opinion and to reject the majority opinion in a time of emergency; the expression "Rabbi So-and-so's opinion can be relied upon in a time of emergency" occurs not unfrequently in the Talmud. Thus, technically speaking, there was no deviation from the sanctified rules of adjudication. In the matter at hand, however, this was surprising because up to that point, the entire responsum was headed in a different direction. Moreover, the last few lines of the responsum half-heartedly express regret for this too-daring innovation: Halivni calls upon the women of

82 Halivni, 13–15.

83 Halivni, 15–17.

84 Halivni, 15–16.

the movement to wait patiently, to let time do its work, and, meanwhile, to focus on other—at times more important—religious roles, such as ritual slaughter.⁸⁵

No changes of far reaching consequences ought to be made in haste. We are an ancient people. Our origin hearkens back to the dawn of history. Haste to us means a generation or two. We need that long (even longer) to convince ourselves that the change we are about to make is not the result of a fleeting urge. When the change is for כלל ישראל [the entire Jewish people] we need even more time. We have to make sure that we are not acting out of our narrow geographical and cultural backgrounds. That only time can tell. For time not only heals; it also enlightens.⁸⁶

It would have been sensible for Halivni to rule against women's ordination in accordance with his avowedly traditionalist approach, which was reflected in the internal logic of this responsum and its broad compendium of reasons justifying the prohibition. What, then, caused him to compromise and to adopt such a precarious solution, at the last moment and apparently with a heavy heart?

In Halivni's own writings, one finds hints of three possible, mutually nonexclusive, metahalakhic reasons:

1. Sensitivity to the suffering of women. Halivni, in his responsum, shows empathy with women, notwithstanding his belief that the egalitarian demands for increased ritual participation arose from social pressure, rather than from any internal drive on the part of the women themselves.⁸⁷ The expressions of this empathy should be viewed not as mere lip service but as a true belief. This is apparent in his autobiography, published more than a decade after he left the seminary, in which he addressed the issue of women in halakha in modern times as a kind of "time of emergency" (*sha'at ha-dhak*)—that is, a desperate time, which requires an urgent and drastic response.⁸⁸
2. The fear that the Conservative movement would collapse and a wish to act toward bridging the gap between the various factions.⁸⁹ Halivni taught at the seminary for some twenty-five years and forged many important social and academic connections there. He was also a prominent leader of the movement and was concerned for its continued existence.
3. A wish to gain time. Technical considerations led him to the understanding that it would be best not to close the door in the case of women who sought ordination. Rather, he sought to pass the responsibility for making the decision on to the next generation, in the hope that the problem would resolve itself.⁹⁰

Be that as it may, Halivni's proposal was rejected. He himself withdrew it and refused to publish his responsum, with no explanation of his motives. In light of the foregoing, this action appears consistent with his understanding of his responsum as a precarious compromise, only justifiable—and even then, with great difficulty—by superior metahalakhic considerations. Representative of the traditionalist camp at the seminary, his *internal* position on the issue was coherent with that of his allies: that the ordination of women was prohibited. In all likelihood, it was Halivni's

85 Halivni, 17–19.

86 Halivni, 19.

87 Halivni, 18.

88 David Weiss Halivni, *The Book and The Sword: A Life of Learning in the Shadow of Destruction* (New York: Farrar, Straus and Giroux, 1996), 105.

89 Halivni, 105.

90 Personal conversation with Rabbi Halivni, June 2009.

unabashed rejection of the new narrative of the Conservative movement, and the corollary fact that he inhabited in essence a different legal universe than the rest of his one-time community, that rendered his failure inevitable: no matter how much he was willing to compromise to maintain peace, the difference of vision was simply too great to be bridged. Halivni thereby revealed, probably both to himself and to the outside observers, that he had now unwittingly become a sideliners within the Conservative movement, thoroughly lacking the capacity to negotiate and reflect, through his legal writings, on the ethos of the community as a whole as it faced its destiny in the egalitarian age. Small wonder, then, that in light of this failure to find a common ground among all the constituents of the Conservative movement, Halivni retracted his position and subsequently resigned from the seminary. And as Halivni quit the seminary, to which he had dedicated twenty-five years of his life, the new Conservative Judaism set out on its egalitarian way.

SUMMARY AND BROADER PERSPECTIVES

The case of female ordination at the Jewish Theological Seminary is just one faith-specific development that took place in one denomination of the North American Jewish world. The demands for full gender equality, inseparable from the intricate social patterns equally challenging for other long-held rules and traditional values, were negotiated in the form of complex legal discussions and pitted two opposing camps against each other, with only two middle-ground positions. This fight for gender equality was dynamically entangled in its social context, which shaped its forms of expression and outcomes: for the Conservative movement, the halakhic debate over gender egalitarianism became an opportunity to express social tensions that had been pent up for decades. But does this analysis shed light on comparable challenges faced by other religious traditions in the egalitarian age, or should we rather adopt the view that the overly particularistic Jewish law represents an impediment to interfaith comparisons?

As I note in my introduction to this article, the tension between religion and egalitarianism is widespread. The dilemmas raised by the ordination of female clergy are obviously far from being the sole prerogative of Judaism; thus, the enormous literature dedicated to the question and penned by Christian authors (from the Greek Orthodox,⁹¹ Roman Catholic,⁹² Episcopal,⁹³

91 The works of Elisabeth Behr-Sigel deserve special mention: Elisabeth Behr-Sigel, *The Ministry of Women in the Church* (Redondo Beach: Oakwood, 1991); Elisabeth Behr-Sigel, *The Ordination of Women in the Orthodox Church* (Geneva: World Council of Churches, 2000). See also the following: Kyriaki Karidonayes FitzGerald, *Women Deacons in the Orthodox Church: Called to Holiness and Ministry* (Brookline: Holy Cross Orthodox Press, 1998) (FitzGerald builds on the research pioneered by the late Evangelos Theodorou.); Gennadios Limouris, ed., *The Place of the Woman in the Orthodox Church and the Question of the Ordination of Women* (Katerini: Tertios, 1992) (the important publication of the 1988 Rhodes Conference by the Ecumenical Patriarchate); Petros Vassiliadis, Niki Papageorgiou, and Eleni Kasselouri-Hatzivassiliadi, eds., *Deaconesses, the Ordination of Women and Orthodox Theology* (Newcastle-upon-Tyne: Cambridge Scholars, 2017).

92 See, for example, Haye van der Meer, *Women Priests in the Catholic Church? A Theological-Historical Investigation* (Philadelphia: Temple University Press, 1973); Chloe Taddei-Ferretti, *Even the Dogs: The Ordination of Women in the Catholic Church* (Vienna: LIT, 2017); Ruth A. Wallace, *They Call Her Pastor: A New Role for Catholic Women* (Albany: State University of New York Press, 1992); Jacqueline Field-Bibb, *Women towards Priesthood: Ministerial Politics and Feminist Praxis* (Cambridge: Cambridge University Press, 1991); John Wijngaards, *The Ordination of Women in the Catholic Church: Unmasking a Cuckoo's Egg Tradition* (New York: Continuum, 2001).

93 John H. Henry, *Women Priests: An Emerging Ministry in the Episcopal Church (1975–1985)* (Bristol: Wyndham Hall, 1985).

Baptist,⁹⁴ and Methodist⁹⁵ traditions, to name just a few) serves as both a testimony to the serious obstacles raised by the rise of full gender egalitarianism and a celebration of the surprisingly innovative approaches that thinkers situated within these faith communities have produced. Female imams, while certainly controversial among Muslim scholars, are nevertheless a reality in several (mostly Western) countries.⁹⁶ Ironically, even a faith without clergy, like Baha'ism, has for decades had an issue with the spiritual leadership of women.⁹⁷

But this profusion generates significant methodological conundrums for the student of comparative religious law. As each religious tradition confronts the challenge of full gender egalitarianism on its own theological terms, scholars are left with, at best, documentary histories consisting mainly of lists of dates, names, and proclamations, without any possibility of creating meaningful comparisons. For this reason, the rare attempts to contrast the decisions taken by different faiths on the ordination of women clergy⁹⁸ may feel slightly contrived: what does it *mean* that the authorized bodies of two religious traditions have both decided (or declined) to ordain women, given the ideological and sociological gulf which separates them?

What could serve as a basis for sounder comparisons? If we are to learn from the experience of Conservative Judaism, then this analysis suggests a crucial lesson: a mere comparison between final positions, all permitting women to become clergypersons (or prohibiting them from doing so, as the case may be), cannot evince more than superficial similarities; what is equally important is the social context in which the religious (legal) debate is embedded, as well as the change mechanism to which the religious actors subscribe. In other words, the outcome does not reveal much if divorced from the process that led to its occurrence.

Thus, halakhically minded Jews (as do sharia-committed Muslims) generally negotiate the religious dilemmas of the egalitarian age via legal rules. Of benefit, therefore, may be research comparing the transition of Conservative Judaism toward gender equality with current debates within the liberal wings of the Jewish Orthodox world, where, both in Israel and in the United States, a willingness to rethink the possibility of ordaining women to the rabbinate has become evident in recent years.⁹⁹ Opponents are usually quick to point out that liberal Jewish Orthodoxy is only following,

94 Jesse Avery Hungate, *The Ordination of Women to the Pastorate in Baptist Churches* (Hamilton: James B. Grant, 1899).

95 See Judith Craig, ed., *The Leading Women: Stories of the First Women Bishops in the United Methodist Church* (Nashville: Abingdon, 2004); Paul Wesley Chilcote, *The Methodist Defense of Women in Ministry: A Documentary History* (Eugene: Wipf and Stock, 2017).

96 For one of the few academic studies that discusses contemporary female imams, see Simonetta Calderini, *Women as Imams: Classical Islamic Sources and Modern Debates on Leading Prayer* (London: I. B. Tauris, 2021).

97 Women were not permitted to serve in Baha'i institutions until 1954: see Susan S. Maneck, "Women in the Baha'i faith," in *Religion and Women*, ed. Arvind Sharma (Albany: State University of New York Press, 1994), 227.

98 Thus, for Neil Gillman, the decision of the Episcopal Church in the United States to ordain women runs parallel to the final position of the Jewish Conservative movement analyzed in this paper, and the Catholic Church's staunch refusal to follow in the same track is similarly echoed by Jewish Orthodoxy's unyielding veto of female ordination: Gillman, *Conservative Judaism*, 125.

99 See, for example, Haim Navon, "Kamah Mesukan Harissut Ha-Sedarim Ha-Yeshanim," *Akdamos* 22 (2009): 86–96. In contrast, see the very nuanced, and ultimately negative, position taken in Michael J. Brody and Shlomo M. Brody, "Orthodox Women Rabbis? Tentative Thoughts That Distinguish the Timely and the Timeless," *Hakirab, The Flatbush Journal of Jewish Law and Thought*, no. 11 (2011): 25–58. Liberal Orthodox responses affirming the possibility to ordain women as rabbis were penned by Rabbi Yoel bin Nun, Daniel Sperber, and Joshua Maroof in 2009, when Rabbi Sara Hurwitz became the first woman ordained in the seminary Yeshivat Maharat. These and related articles, thought papers, and press are currently posted on the seminary's website: "Teshuvot—Ordination," Yeshivat Maharat (website), accessed August 5, 2021, <https://www.yeshivatmaharat.org/teshuvot-text>.

a few decades later, in the footsteps of the Conservative movement. That may or may not be true: we lack the historical perspective to evaluate this point objectively. However, to be significant, any comparison between the paths adopted by two Jewish movements cannot be limited to the final positions eventually issued; it must also take into account their respective visions of the halakhic ethos as well as the social milieu in which they evolved. Identical rulings prompted by dissimilar social circumstances and based on widely diverging perceptions of the Jewish law can be dismissed as superficial and irrelevant.

Other religious traditions confront social change differently: sometimes the essential tool is hermeneutics, and the challenges of the times can be processed through creative rereadings of the religion's canonical texts.¹⁰⁰ Sometimes the key is theological inquiry: in Greek Orthodoxy, pondering the equality of the three Persons of the Trinity may represent one way to overcome the challenges arising from the egalitarian age.¹⁰¹ For others, the confrontation occurs in a different fashion altogether.

Faith-specific expertise is needed in each case to analyze how the dilemmas engendered by egalitarianism are answered on the ground by a given religious tradition. Far from representing overly particularistic aspects of the phenomenon studied, these contingent questions, like the nitty-gritty of the halakhic debates and the complex social context studied in this article, represent nothing less than the heart of the question. Their apparent technicity does not stand in the way of the comparatist's efforts, but rather provides the tools to build the conceptual bridges that ultimately enable interfaith comparisons.

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100 Roger Nicole, "Hermeneutics and the Gender Issue," in Pierce and Groothuis, *Discovering Biblical Equality*, 355–63.

101 Behr-Sigel, *Ministry of Women in the Church*, 39–42.