

*The Halakhic Debate over Women in Public Life: Two Public Letters of Rav Abraham Ha-Kohen Kook & The *Responsum* of Rav BenZion Uziel On Women's Suffrage and Representation*

Abstract: Translations of the halakhic opinions of Rav Abraham Ha-Kohen Kook and Rav BenZion Uziel on the questions of the permissibility women's suffrage, and more generally, women's participation in public life. The documents were written in 1919 and 1920, when the authors held the offices of Chief Ashkenazic Rabbi of Jerusalem and Chief Sephardic Rabbi of Jaffa respectively, and the question of women's suffrage was first debated in the Western world and Palestine. Rav Kook argued that women's suffrage as well as participation in public life were strictly forbidden by Jewish law and ethics, while Rav Uziel maintained that both were absolute rights accorded women by the Torah and the logic of democratic principles.



Biographies:

Rav Abraham Isaac Ha-Kohen Kook (1865-1935) was educated in Eastern Europe and immigrated to Palestine in 1904, where he first served as Rabbi of Jaffa. When he penned these public letters he was Chief Rabbi of Jerusalem, and in 1921 he was elected first Chief Ashkenazic Rabbi of Palestine. Exceptional in the religious community for his early principled support of Zionism, Rav Kook was a prolific author who left a rich legacy of halakhic, philosophic and mystical writings.

Rav BenZion Meir Hai Uziel (1880-1953) was born in the Old City of Jerusalem to an illustrious Sephardic family. He served as Sephardic Chief Rabbi of Tel Aviv when he wrote this *teshuvah*, and from 1939 until his death Rav Uziel served as *Rishon Le-Tsiyyon*, Chief Sephardic Rabbi of Palestine and Israel. He is best known for his halakhic decisions recorded in *Mishpetei Uziel*. Much of his writing on Jewish thought remains in manuscript form.



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Background *- editor

One of the major cultural and political controversies sweeping Europe and the Americas between 1917 and 1925 was the question of women's suffrage---both active (women voting others into office) and passive (women being voted into office by others). In 1917 only Finland, Norway, Denmark, Iceland and Russia had granted women the right to vote. By 1925 all of the northern European countries (Britain, Ireland, Luxembourg, Austria, Germany, Sweden, the Netherlands, Czechoslovakia and Poland had accepted women's suffrage. (America accorded women the right to vote in 1920.) No country in the Mediterranean Basin (Spain, France, Italy, Albania, Yugoslavia, Turkey, and Greece), Asia (except Russia), Africa or the Middle East recognized women's suffrage.

Geographically, Palestine was located squarely in this latter non-suffragist bloc, yet it too was swept up in the controversy. When it became apparent after the November 1917 Balfour Declaration that the new *Yishuv* would need to elect political entity to represent it *vis-a-vis* Great Britain, the question of suffrage arose. In June 1918 the Second Constitutive Assembly passed a compromise resolution that was gender neutral, according women full suffrage. The sole necessary condition was that any electee

be a minimum age of 25. This issue was hotly debated in the Ashkenazic Old *Yishuv* during 1918 and 1919 (see the beginning of Rav Uziel's *teshuvah*), and in March 1918 Ashkenazic rabbis and communal leaders in Jerusalem pronounced that any form of women's suffrage was religiously prohibited. Most Sephardic rabbinic leaders did not join their Ashkenazic counterparts in this prohibition.

The Mizrahi party in Israel was split on this question. (Interestingly, Mizrahi in America supported women's suffrage and involvement in political affairs in that country.) National elections were set for October 1919 and, faced with a policy decision, Mizrahi scheduled a convention in Jerusalem in September. Many from outside the city who supported women's suffrage found themselves in direct confrontation with the Jerusalem Ashkenazic rabbinic leadership. As a response they turned to Rav Kook---the newly installed Chief Ashkenazic Rabbi of Jerusalem---to decide the issue for them, assuming his support for women's suffrage. Shortly thereafter, a rabbinic forum was convened that included Rav Kook. To the shock of many, he announced via a public letter his opposition to women's suffrage in passionate and unequivocal terms. The opposition to women in public life was not merely personal, claimed Rav Kook, but the unanimous voice of all Jewish culture and *halakhah*.

* For an excellent halakhic and philosophic analysis of these documents, see Zvi Zohar, "Traditional Flexibility and Modern Strictness: Two Halakhic Positions on Women's Suffrage," in *Sephardi and Middle Eastern Jewries*, edited by Harvey E. Goldberg, (Indianapolis: Indiana University Press, 1996) pp. 119-133. For political, cultural and historical analyses of the question of women's suffrage in Israel, see Menahem Friedman, *Society and Religion: The Non-Zionist Orthodox in Israel 1918-1936* (Hebrew), (Jerusalem: Yad Yitshak Ben Zvi, 1977) pp.146-84; and Zohara Bozich-Hertzig, "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.

Mizrahi succeeded in averting the impending crisis by obtaining a postponement of the elections.

In March 1920 the World Executive of Mizrahi supported the upcoming elections as proposed. Since that support implied an endorsement of women's suffrage, Rav Kook reacted with a second public letter, articulating an opposition even stronger than the first. For Rav Kook, participation in an election that granted women suffrage constituted "betrayal" (*bigedah*) against Jewish tradition and law. He supported a boycott by religious Jews of the elections--no small sacrifice for an ardent Zionist--unless women were barred from the electoral process.

Rav Uziel composed his *responsum* on this issue in 1920, while Chief Sephardic Rabbi of Jaffa. In it he argued

strongly for women's suffrage for religious, moral and political grounds. Out of respect for Rav Kook, he never identified his intellectual adversary, but it is clear that much of his *teshuvah* is a point-by-point rebuttal of arguments Rav Kook had raised in the two letters.

History emerged as the ultimate *poseq*. Today most religious communities support both men and women voting, and there are a few anti-Zionist communities where neither the men nor women vote in Israeli elections. There is no significant Jewish community in which men vote and women do not on religious grounds.

Never before published in English, Rav Kook's two letters and Rav Uziel's formal *responsum* are presented here

“On the Election of Women” September 1919 - Jerusalem

(Translation - Zvi Zohar)

An Open Letter!

To the Hon. Committee of the Mizrahi Association,

I was honored to receive your request that I express my opinion concerning the pending question of electing women to the assembly of the representatives of the Jews of the Land of Israel. Despite my not being worthy of being approached, I consider that circumstances require that I expound my opinion on this matter, with greatest possible brevity.

It seems to me that the issue can be analyzed under three headings:

- a) Regarding the law (*din*), whether the matter is permitted or forbidden
- b) Regarding the general good, whether good for Israel will result from an affirmative answer or from a negative one
- c) Regarding the ideal, whether our moral consciousness opposes the prospect or supports it

We must expound our attitude on each of these three aspects, for I wish the discussion to be addressed to all our ranks: to the fully faithful of Israel, for whom the halakhic ruling is central; to those for whom the nation's good is decisive; and to those whose main regard is for the moral ideal in itself.

Regarding the law, I have nothing to add to the words of the rabbis who came before me. In the Torah, in the Prophets, and in the Writings, in the *halakhah* and in the *aggadah*, we hear a single voice: that the duty of fixed public service falls upon men, for “It is a man's manner to dominate and not a woman's manner to dominate”

(*Yevamot* 65b), and that roles of office, of judgment, and of testimony are not for her, for “all her honor is within” (Ps. 45:14). Striving to prevent the mixing of sexes in gatherings is a theme that runs through the entire Torah. Thus, any innovation in public leadership that necessarily brings about mixing of the sexes in a multitude, in the same group and gathering, in the routine course of the people's life, is certainly against the law.

Next to be discussed is the aspect of the general good. Regarding this, I think it is our duty to inform all our brethren, whatever their orientation—all of whom surely wish the good of our nation and the enhancement of our rights in the Land of Israel—of the foundation of the British government's [Balfour] declaration, which has planted for us a young shoot from which redemption will grow. The declaration rests on the correct view, shared by the best of the gentiles and the best of the British people particularly, that our link to the Land of Israel is something divinely sanctified. They are influenced in that view by the holy light of the Bible, which is treated as holy by the greater part of civilized nations today. And the spirit of the Bible is perceived even now by the weightiest part of the world as leaning generally to the side of modesty, fearing any depravity which might come into the world by reason of human weakness with respect to the sexual impulse. The special feeling of respect towards woman is therein based, and [her role is] centered on domestic life, the improvement of inner life, and all the delicate human works branching out from them.

The enemies of Israel—both internal and external—make much use nowadays of the libel that the young [*yishuv* in] Israel has lost its link to the Holy Book, and therefore has no right to the biblical land. Our duty is to take up stations and demonstrate to the whole world that the soul of Israel is alive in its true character and that the biblical land is deserved by the biblical people, for with all its soul it lives in the spirit of the Holy Land and of the Holy Book.

So it is indeed the truth that in the inwardness of their spirit our sons are “God's disciples” (following Isa. 54:13),

and their life's ideal is completely holy and biblical.

Hence our holy duty is to see to it that the inception of our movement towards a measure of [autonomy based on] our own political-social character be properly marked by the sign of biblical integrity and purity with which our life has been imbued from time immemorial. This will be so only if we avoid the European novelty—alien to the biblical spirit and to the national tradition deriving from it—of women's involvement in elections and public life, which is tumultuous and noisy and involves multitudes.

It is worth emphasizing that we are treading the path of our redemption not in order to be mere followers of European culture, which at least as to morality and the purity of virtues is defunct (as acknowledged by all penetrating critics who are not awed by the appearance of its imposing stature), but in order to proclaim evermore unto the entire world our message, vigorous, holy and clear, just as it springs from our internal fountainhead. In any event, in the present context, we ought to walk upright at this time of great need to emphasize our national character in our social life upon our land. We can rest assured that this assertiveness will confer upon us in the world far more than we might attain by imitating others, a course of action that usually results from inner weakness.

Finally, as to the ideal: Deeply imprinted in our soul is the ideal of being unblemished by any sin. When this ideal is realized, the world will be purified, and proper and safe

ways will be found for the delicate and holy participation of Woman, the mother in Israel, in public life, both generally and particularly, with wholesome influence and in accordance with her special inner worth, thus fulfilling the vision: "Every woman of worth is a crown unto her husband" (Prov. 12:4). But this future vision is as yet not even glimpsed in temporal cultural life, which, though outwardly well groomed, is rotten within. So any step we take in the course of our public life that carelessly disregards our outlook concerning Woman's present and future worth—something that is deeply imprinted in our spirit—merely impedes this ideal course. Only Israel's return to its land, to its setting and its kingdom, and to its holy spirit, its prophecy and its Temple, will eventually bring into the world that sublime light, for which all noble souls of all humanity yearn.

And this will surely come about only through maintaining our true character, in accordance with all the laws and ordinances by which the Torah instructs us in the ways of life of exalted glory, of supreme freedom, and of redemption.

This is my inner conviction, which I convey to you, my beloved brothers, in the integrity of my heart, awaiting prompt liberation and with God's blessing from Zion and Jerusalem.

Respectfully,
Abraham Isaac Ha-Kohen Kook

**“On Women’s Voting”
With God’s Aid,
April 1920-Jerusalem**

General *Responsum*

To the many who have asked about the participation of women in the election of the Constitutive Assembly:

Your weighty query regarding the election of women to the assembly of the Jews of the Land of Israel [is again at issue], even though I have already expressed my opinion in this matter in general in my open letter to the Mizrahi association [in September 1919].

Now, as then, I must say that I am unworthy of your having sent me [this query], for I see a strong need to convene a great assembly of the rabbis of the Land of Israel, which would decide the matter. I think that statehood has not yet been so separated from religion as to make it possible to think that the statesmen have the right to act on a matter of general concern without any consideration for the opinion of all the religious authorities in the Land of Israel, in their great majority. Therefore, I believe it necessary that all the rabbis of the Land of Israel rule on this issue jointly. Because the matter is most pressing, the assembly should take place as soon as possible.

As for my own opinion, as a matter of theory, however, I would like to add some clarification to what I said in the foregoing open letter.

As then, I must say now that the rabbis who declared the legal prohibition drew their opinion from the source of the one voice we hear from the Torah, from the Prophets, and from Scripture, from the *halakhah*, and from the *aggadah*, that teaches us that the spirit of the whole nation, in its essence and purity, opposes this modern innovation. It teaches as well that if we bend ourselves

specifically to the novel Irish morality,* we thereby commit an act of betrayal to our own morality, “the morality of Judaism.” Such an act stifles the spirit of the nation and lowers to the ground the fortress of national revival. If we are not prophets, we are the sons of prophets; and we must call out in a great voice to all our brothers who at present desire the strengthening of our revival, urging them to guard their spirits, and not to feed us this unripe fruit whose adverse effects we will necessarily greatly regret.

We believe our outlook on the life of society is more delicate and pure than that of the other civilized nations in general. Our family is sacred to us in a much deeper way than it is to all the modern world, and this is the basis of the happiness and dignity of the Woman of Israel. In other nations, the family is not the foundation of the nation, nor is it as stable and deep as it is amidst us. For this reason, they are not so taken aback by the cracks in family life, and the consequences of those breaks will not cause such harm to their national life. The psychological basis for calling for public participation in elections by the name of “women’s rights” arises fundamentally from the unhappy position of the mass of women amidst these nations. If their family situation had been as peaceful and dignified as it is generally in Israel, the women themselves, as well as men of science, morality and high ideals, would not demand what they call “rights” of suffrage for women, in the common fashion, a step that might spoil domestic tranquility (*shalom bayit*) and ultimately lead to a great deterioration of political and national life in general.

But out of their desperation and bitterness, the result of male coarseness that spoils family life, the women of other nations thought to receive, through some public empowerment, help in ameliorating their wretched situation at home, without regard to the further breaches made thereby, since those breaches are so numerous. We

* Ireland enacted women’s suffrage shortly before the writing of this general *responsum* – editor.

Mishpetei Uziel 44
Rabbi Ben Zion Uziel, 1920

(Translation -- Zvi Zohar)

“WOMEN’S RIGHTS IN THE HOUSE OF REPRESENTATIVES AND IN INSTITUTIONS OF PUBLIC AND *YISHUV* LEADERSHIP”

I wrote this *responsum* originally to clarify the *halakhah* for myself, not wishing to publicize and teach this *responsum* and this *halakhah* for implementation. However, now since this question has been resolved by itself, I deem it good to publicize it for the purposes of enhancing Torah.

A. Women’s Right to Vote

This issue became a central controversy in *Eretz Yisrael*, and the whole Land of Israel rocked with the debate.

Posters and warnings, pamphlets and newspaper articles appeared anew every morning, absolutely prohibiting women’s participation in the elections. Some based their argument on “Torah Law,” some on the need to preserve the boundaries of modesty and morals, and others on the wish to ensure the peace of the family home. All leaned upon the saying “The new is prohibited by Torah (*badash asur min ha-torah*).”¹

I regret to say that I do not have available now before me all the literature that has accumulated on this issue. I am very grateful to my friend, a virtual repository of Torah, the great Rabbi Hayyim Hirschensohn, who in his book *Malki Ba-Qodesh*, part 2, summed up all the relevant material. Thus I have the opportunity to hear all the opinions of those who prohibit [women’s suffrage], and to discuss them to the best of my limited capacity.

The issue can be subdivided into two headings: (a) the right to vote, and (b) the right to be elected.

Regarding the first [heading], we find no clear ground to prohibit this, and it is inconceivable that women should be denied this personal right. For in these elections we elevate leaders upon us and empower our representatives to speak in our name, to organize the matters of our *yishuv*, and to levy taxes on our property. The women, whether directly or indirectly, accept the authority of these representatives and obey their public and national directives and laws. How then can one simultaneously “pull the rope from both ends”: lay upon them the duty to obey those elected by the people, yet deny them the right to vote in the elections?

If anyone should tell us that women should be excluded from the voting public because “their minds are flighty (*da`atan qalot*)” (*Shabbat* 33b and *Qiddushin* 80b) and they know not how to choose who is worthy of leading the people, we reply: Well, then, let us exclude from the electorate also those men who are “of flighty minds” (and such are never lacking). However, reality confronts us clearly with the fact that, both in the past and in our times, women are equal to men in knowledge and wisdom, dealing in commerce and trade and conducting all personal matters in the best possible way. Has it ever been known that a guardian is appointed to conduct the affairs of an adult woman, against her will?

The meaning of our Rabbis’ statement, “*da`atan qalot*,” is entirely different. Also, the statement “women have no wisdom except with regard to the spindle” (*Yoma* 66b), is only flowery wording intended to circumvent a question posed by a woman. Indeed, the Talmud itself states that the woman who asked the question was a wise person, as it says: “A wise woman posed a question to Rabbi Eliezer.” And our Rabbis expressly stated: “And God constructed

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our revival. These will bestow upon us glory and splendor; augment peace, harmony, and mutuality among us; and endow us with the courage to fulfill in life the revival we all aspire to.

Those who support the participation of women in elections must recognize as well that what I have said here, stems from the deep spiritual knowledge of myriads of our brothers, righteous ones of Israel, who are connected in all their hearts and souls to the life of the nation and to its inner spirit. These myriads live with us in the Land of Israel, we very much need their collaboration, and they will also be amongst the new immigrants whom we so much expect. To them the matter of women's participation in elections, according to the modern Irish public style, constitutes a source of deep spiritual distress. Let us weigh on the scale of common sense whose course of action is better and more appropriate for the building of the nation. Do we forgo now this step of providing for the participation of women in elections, in its public form, thereby remaining in our moral-political state at the level reached by England before this legal innovation and by the other great kingdoms that have not yet taken that step and uniting as well all the strength of the Israeli public, as one man, in the effort to build the nation and the land? Or do we firmly insist on the demand for the participation of women in elections, specifically in this novel version, even though that will take from us the fundamental basis of national political collective life, which we all desire to establish at present, and bring about a crumbling party basis instead of a firm national political basis?

I think that this time it is our modern brothers who should forgo the strict application of their law and their novel demand. We will then assemble the nation, and it will become obvious to which side the spirit of the nation as a whole tends, for it is after all an obvious matter that no nation in the world is force-fed ways of culture against

its will. And even were the truth with those who say that morality demands what is called equal rights for women, and that their public participation according to the modern version is a fine and acceptable thing, rather than what we know it to be according to our own spirit, such participation would be an ugly and unacceptable matter. For every nation will say that it values the good and the bad, the beautiful and the ugly, according to its own values; and we too desire to build our world according to our values.

According to my assessment, this claim should enter the heart of all just souls that truly desire the building of the nation and who hope that we will build in the Land in a suitable manner a political life worthy of its name.

This, as stated, is the presentation of my theoretical opinion. As a practical decision, we now need the presentation of opinion and the decision of the gathering of our rabbis in the Land of Israel, which I hope that our best forces will help to actualize. I hope as well that our honorable public activists, in organizing the Constitutive Assembly, will also on their end support removing the obstacle barring the greater majority of the Jewish public in the Land of Israel from participating in the national gathering of elections. In that way, we will be able to announce openly to all of Israel and to all of the world the total consensus of the Constitutive Assembly, which will truly be a representative of the Israelite public in the Land of Israel, which in [certain] respects is the national representative of the whole nation. And this good hope shall come to pass, with God's aid, through the clarifications that will come to light through the general rabbinic assembly of all of the rabbis of the Land of Israel.

Anticipating redemption and with feelings of honor,
your brother and faithful servant,
Abraham Isaac Ha-Kohen Kook

***Mishpatei Uziel* 44**
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the rib’—this teaches us, that more insight was granted to woman” (*Niddah* 45b).

But perhaps this should be prohibited because of licentiousness? But what licentiousness can there be in this, that each person goes to the poll and enters his voting slip? If we start considering such activities as licentious, no creature would be able to survive! Women and men would be prohibited from walking in the street, or from entering a shop together; it would be forbidden to negotiate in commerce with a woman, lest this encourage closeness and lead to licentiousness. Such ideas have never been suggested by anyone.

Or, perhaps, it should be prohibited for the sake of preserving peace in the home (*shalom bayit*)? The author, being a great rabbi, has answered this well: If so, we must also deny the right to vote of adult sons and daughters still living at their fathers home. For in all cases where our rabbis concerned themselves with ensuring tranquility, they gave equal treatment to the wife and to adult sons living at home (see *Bava Metsi`a* 12b). It might still be objected, that denying this right to adult children should indeed have been proposed, but since it wasn’t, let us at least not increase friction even more by allowing women to vote! But the truth is, that differences of political opinions and attitudes will surface in some form or another, for no one can suppress completely his outlook and opinions.

A great innovation was advanced by Rabbi Dr. Ritter², who advocates denying suffrage to women because they are not *qahal* or *edah*, and were not counted in the census of the people of Israel nor subsumed into the genealogical account of the families of Israel. (His article is not before me, and I rely on the report by Rabbi Hirschensohn.) Well, let us assume that they are neither *qahal* nor *edah*, and were counted neither in census nor as “family” or anything. But are they not creatures, created in the Divine Image and endowed with intelligence? And do they not

have concerns that the representative assembly, or the committee it will choose, will be dealing with? And will they not be called upon to obey these bodies regarding their property as well as the education of their sons and daughters?

In conclusion: having found not the slightest grounds for this prohibition, I find that no one has the slightest right to oppose or to deny the wishes of part of the public on this matter. Regarding a similar situation, it has been said: “Even if ninety-nine request imposed distribution, and only one demands outright competition, that one should be followed, for his demand is legally right” (*Mishnah Pe`ah* 4:1). Over and above this, it has been stated: “Women were allowed to lay hands [on their sacrifice] for the sake of giving them a feeling of gratification” (*Hagigah* 16b), even though such an act appeared to the public as prohibited; how much more so in our case, where there is no aspect of prohibition at all, and where preventing their participation will be for them insulting and deceitful. Most certainly, in this case we should grant them their right.

B. May Women be Elected?

The second issue is whether a woman can be elected to public office. Now, it seems *prima facie* that we have come up against an explicit prohibition. For in the *Sifre* on Deut. 29:16 it is written:

“Thou shall appoint—and if he dies, another is appointed in his stead, [i.e.] a king and not a queen.”

From this source Maimonides derived the rule:

A woman may not be appointed to the throne, as it is written: “A king’—and not a queen.” And likewise, all public appointments in Israel are to be made from amongst the men and not the women. Therefore a woman should not be appointed as head of a community (*Hilkhot Melakhim* 1:5).

² Rabbi Dr. Bernhard Loebel Ritter, Chief Rabbi of Rotterdam, 1185-1928.

This is in consonance with the *halakhah* discovered in *genizah* material by the great Rabbi Shlomo Aharon Wertheimer: “A stranger (*ger*)”—this is the source for the dictum: ‘A man can be designated as a communal leader, but a woman may not be nominated as a communal leader.’” But I myself am in doubt whether this rule stems from (a) women being basically ineligible to function as judges, or from (b) the principle of dignity of the community. The effective significance of each alternative would be seen in a situation where it is not the *beit din* which appoints her, but rather a part of the public that chooses her as its representative and its proxy.

Under theory (a), such a public choice would be invalid, just as no individual can voluntarily decide to acknowledge a woman’s evidence in matters of marriage and divorce, etc., since the Torah has deemed her ineligible. But under theory (b), we would say that their choice is valid, and that only the unanimous public or the *dayyanim* are prohibited from electing her to public office, but a part of the public may choose her as their representative and proxy.

Now, according to one explanation offered by *Tosafot* (*Niddah 50a, s.v. kol ha-kasher*), i.e., that Deborah was a judge in virtue of her having been accepted by the public, it is plain that their acceptance is valid even when unanimous. And even according to their other explanation, i.e. that she was chosen by divine voice, it should be said that their acceptance is valid in principle, though it should not be done in practice because of the dignity of the public. This can also be proved from the text of the holy *Zohar* on Leviticus, 19b. Thus we learn that there is no prohibition against appointing a woman to public office, and that she may be appointed in case of need; but that it is considered an insult to the community that they could find no one to judge them except a female.

It is clear then that the text of the *Sifre* is to be explained accordingly: A queen should not be appointed over Israel by a *beit din* appointment, because of the dignity of the public. Therefore, a person—or persons—may with full right vote for her, and by virtue of her voters’ support she

may join the representative body.

Similarly, a woman may rule as queen if she is the only scion of the royal house, or by virtue of her actions and the need of the hour, as Deborah in her times.

Rabbi Pinhas Estersohn searched and found in our Talmud an explicit reference to this: “If he did not say ‘covenant (*berit*)’, ‘Torah’, or ‘kingdom’, he nevertheless fulfilled his obligation [to recite the blessing after a meal (*birkat ha-mazon*)]. ‘Covenant’—because it does not relate to women; ‘Torah’ and ‘kingdom’—because it relates neither to women nor to slaves.” Thus it is explicitly stated that kingship does not relate to women. Indeed, these proofs seem very strong and convincing.

Now, the great and learned author (i.e., Rabbi Hirschensohn) displayed the power of his arm by uprooting the entire problem. He explained the intention of the *Sifre* in a completely different way, and interpreted the conjunction of passages as indicating that “a king and not a queen” is the conclusion of the previous passage, which discussed royal succession (“A new king shall be appointed in his stead”). It signifies that if a king dies, a new king must be appointed in his stead, but if a queen dies, there is no positive injunction that she be replaced. He sought to support his view by pointing out that the text says “a queen (*malkah*)” and not “a ruling woman (*molekhet*).” One of the conclusions of his argument was that Maimonides emerged as having misread an elementary source, by relying upon his memory and not having the chance to recheck the text, or possibly by hasty reliance upon the custom of his time and place, which led him to conclude that it [womanly rule] must have been prohibited.

With all respect to the author, I believe that he erred in hastily writing such things about our master, Maimonides. For, while we may indeed take issue with his position, we may not characterize him as having committed [elementary] errors in understanding the text, or as having been misled by custom and historical context. The author’s remarks to such effect are, no doubt, a slip

of the pen.

Regarding his interpretation itself, I find it mistaken. For, when we find in Scripture “*ha-molekh*” does this mean that we are talking of the spouse of a queen? Rather, then, it should be clear that ‘*melekh*’ and ‘*malkah*’ are nouns, while ‘*molekhet*’ is present continuous. Thus it is clear that the text of the *Sifre* should be understood according to its plain meaning, just as Maimonides did. From this, it follows that all appointments made in Israel should be of men only. And the debate over the correctness of the ancient *genizah* text of the *Pesikta Zutarta* is unnecessary. (In passing, I would like to remark that halakhic significance derives not from the antiquity of a text but from the personality of the author, and a manuscript whose author or source is unknown may as well not exist; of such a case should we say, “It is not signed by Mar the son of Rabbina.”) Indeed, even should we be convinced that the text is correct, the only result would be to add another concurring authority; but are the *Sifre* and Maimonides taken alone of minor significance?

Our method will be to investigate whether the position of the *Sifre* and Maimonides’ decree are binding or whether proofs can be adduced to contradict their actual applicability. On its face, it would seem that since this opinion was not mentioned in the Talmud, neither in the *Mishnah* nor the *Gemara*, and since the *halakhah* of not appointing a woman as a community leader, despite having practical applicability in the present time, was not mentioned by the *poseqim*, it therefore has been rejected as a [normative] halakhic position.

Moreover, the statement in the Talmud that “Torah” and “kingdom” relate neither to women nor to slaves, can only mistakenly be understood as indicating that a woman cannot be appointed to royal office. For even a beginner understands that the “kingdom” referred to in *birkat ha-mazon* means not occupation of royal office but sovereignty, i.e. complete freedom from influence or domination by foreign people; a situation in which the king is chosen from amongst a people living in peace and tranquility and enjoying complete freedom to appoint to

the supreme throne a king who will rule the people in accordance with the people’s will and spirit. For such a kingdom do we give thanks, and it is clear that women have a place in such a kingdom just as much as men do, and only slaves are excluded. Accordingly, the statement that [Torah and “kingdom”] relate not to women nor to slaves is not equally relevant to both, for it is only in Torah that women are not included, while slaves are included neither in Torah nor in “kingdom.” You must admit this, for women have in fact even greater affinity to “kingdom” than men do, for any woman is eligible to marry a king, while no man is eligible to be king unless he comes from the stock of David.

C. Appointment of Women to Positions of Political Power (“*Serarah*”)

Despite our having clarified the fact that on talmudic grounds there is no source for denying women the possibility of authoritative appointments, an adversary could still take issue with us and say that the absence of proof is no proof (“*Lo ra’inu aino re’ayah*”). Therefore, I shall now present a positive proof for my position. *Tosafot* (*Niddah* 50a, s.v. *kol ha-kasher*), when discussing women’s capacity to serve as judges, offer two opinions. According to one opinion, a woman is legally fit to serve as a judge, since the injunction: “These are the judgments which thou shall set before them” (Exod. 21:1) relates to the judges and also teaches that Scripture views women and men equally with respect to all Torah laws. Clearly, this entails a rejection of the idea that “All appointments you appoint...” Otherwise, how would it be possible to appoint a woman as judge and obligate the public to be judged in her court? Is this not an appointment involving authority?

The other opinion that appears in *Tosafot* is that women are basically unfit to judge. But even this position justifies Deborah’s function by suggesting that she served as a public teacher and mentor. Accordingly, this opinion must be understood as holding that the verse “And the children of Israel came up to her for judgment” (Judg. 10:5) means that they were in need of her judicial teachings. Thus, a

woman's ineligibility relates only to her not being authorized to hear pleas or take evidence, but she is eligible to judge in the sense of deciding law and legislating. Now, is this not deemed authoritative office? Both opinions presented by *Tosafot* prove, then, that the position advocated by the *Sifre* is not accepted as definitive *halakhah*.

And if one's *heart* still hesitates—and it should be so, rather than to reject outright the *Sifre's* and Maimonides' position by sharp conjectures and purely logical operations and analyses without any positive indication of the existence of an alternate halakhic position—then women's eligibility to be elected [to office] can be halakhically justified on other grounds: the prohibition relates only to an appointment made by the Sanhedrin, but in our situation, the issue is not one of appointment but rather one of acceptance. Through the election process, the majority of the public expresses its acceptance of, and confidence in, certain persons as their representatives, and designates them to be their agents in supervising all its public affairs. Now, regarding such a case even Maimonides acknowledges that there is not the slightest prohibition. And also Ran, of blessed memory (on *Shevu'ot*, beginning of chapter 3) writes that what we find written regarding Deborah, that she judged Israel (Judg. 4:4), should not be understood in the sense of judging but rather that she led Israel. And although the *Sifre* says, “‘Thou shalt appoint a king’—and not a queen,” Deborah was not appointed; rather they followed her leadership (or, possibly, she did judge them and held court sessions for them, but on the basis of their voluntary acceptance, just as one can accept a relative as judge).

And so too does Rashba, of blessed memory, write: “It should be explained [that Deborah] was not a judge in the usual sense but a leader, in the same sense as the other judges that judged Israel. And although we find in the *Sifre*, ‘Thou mayst appoint a king’—and not a queen,’ in the case of Deborah she was not appointed but rather they behaved towards her in the manner one would behave towards a queen, and followed her word” (Rashba on *Shevu'ot*, chapter 4).

And our master Hida (R. Hayyim David Azulai) quotes from the book *Zikhron Devarim*, by our teacher R. Aharon Ha-Kohen Perahia, who quotes from an unpublished manuscript that “Deborah was a leader, as if queen,” and identifies this as consonant with Rashba's opinion (*Birkei Yosef* on *Hoshen Mishpat* 7:11).

You see then that the prohibition of placing women in public office relates only to an appointment made by authority of the Sanhedrin.

In conclusion, it is clear that even according to the *Sifre* she may be accepted as judge, that is, leader, and she may make decisions just as one can accept a relative [as judge]. Therefore, in appointment by election, which is the public's acceptance of those elected as their representatives and leaders, the law is that they can also elect women, even according to the positions of the *Sifre* and Maimonides. And in the writings of the *rishonim* in general no dissenting opinion has been found.

D. Law and Morality

Nevertheless, there is still basis for doubt—namely, that even though from a legal standpoint the acceptance [of an elected woman] is valid and people may elect her on the grounds that they have accepted her over them, from the standpoint of morality and conventions of modesty there might be a prohibition. Correctly did the author, Rabbi Hirschenson, write that ethics and Torah are one. But here, too, one must conclude that since the Torah prohibited only the appointment of a woman [by the *beit din*], there is no basis for a prohibition on grounds of licentiousness; for if there were such grounds, the Torah would never have permitted it. Still, in order to be cautious in matters of law, we shall investigate the matter along these lines as well, and we shall see if there are grounds here for concern about licentiousness.

Logic dictates that in no serious assembly or worthy discussion is there licentiousness. Daily, men meet and negotiate with women in commercial transactions, and

yet all is peace and quiet. Even those inclined to sexual licentiousness will not contemplate the forbidden while seriously transacting business. Our rabbis did not say “Do not engage in much conversation with a woman” (*Avot* 1:5) except as regards idle, needless chatter; for that sort of conversation leads to sin, but not so debate over important, communal issues. Meeting in the same enclosed area for the sake of public service—which is tantamount to service of the Divine—does not habituate people to sin or cause levity; for all Jews, men and women alike, are holy, and not suspected of violating conventions of modesty or morality. Nor should you object on the basis of that which the sages taught (*Sukkah* 51b): “Originally the women were within [the Temple’s court of the women] and the men without, but as this caused levity, it was instituted that the women should sit above and the men below.” For that was said only concerning a mass assembly of proper and immodest people together, and in such circumstances one suspects the licentious minority, particularly when they are engaged in celebration and the evil inclination exerts control over them. But this was not said regarding a gathering of officials, which would stigmatize those elected by the people as sexually licentious. Such may not be done in Israel!

Further proof can be brought from the teaching (*Megillah* 23a): “All may ascend to reading of the Torah [to the quorum of seven], even a child, even a woman, but the sages ruled that a woman should not read the Torah in public out of respect for the community” (*kevod ha-tisibbur*), that is in order to preclude the inference that there are no men in the community who can read from the Torah. But they did not rule in this way out of concern over licentiousness.

Likewise can we find support in our ruling concerning grace after meals (*Shulhan Arukh*, *Orah Hayyim* 199:6-7):

A mixed group of women, slaves, and children should not recite grace together on account of the licentiousness of slaves. Yet women recite grace

together amongst themselves; and when they eat together with men, they are obligated to say grace and fulfill their obligation with our recitation of it.

Here it is proven explicitly that even during the festivities of a banquet we do not suspect licentiousness; only when slaves are among the women do we suspect the licentiousness of the slaves.

From the comments of Rashi, however, it would appear that no festive banquet of women is in good taste; and thus did Rabbenu Yonah write in his commentary on Rif (on *Berakhot*, beginning of chapter 7): “Women, slaves, and children are not included in a public recitation of grace, for, as in Rashi’s interpretation, women do not participate in a public recitation of grace even with their husbands because their company is not appropriate.” Yet this does not contradict what we have written. First, that “their company is not appropriate” does not imply licentiousness. Second, even accepting this citation of Rashi, we must understand it as applying solely to a public recitation of grace, whose essence is the express, specific acknowledgement of having gathered together and kept company with women. This indeed is not appropriate, since it can entail an aspect of immodesty. But in any other assembly having no such stated purpose, no one can say that there is suspicion of licentiousness.

And thus did Ran write on the statement in the *Mishnah* that all are fit to read the *Megillah* (on Rif, *Megillah*, chapter 2):

“Should you wonder why we do not consider immodesty [to be of concern] as we do in connection with the public recitation of grace, the present situation differs inasmuch as the inclusion [of women] involves no change in the formula of the blessing, whereas in the public recitation of grace it would. Inasmuch as their mixing with women would thus be apparent, one must suspect immodesty. Yet when three—that is, besides the women—immodesty. Yet when three—that is, besides the

women—[say grace], the women participate with them, since their participation would not at all be apparent.

I have seen it written in *Sefer Malki Ba-Qodesh* that these words of Ran are not entirely clear and require exposition. Yet in my opinion they are very clear. The meaning of “their company is not appropriate” or Ran’s term “immodesty” refers to the desire of this [mixed] company to assemble needlessly and to express pleasure in their gathering. This is distasteful and appears immodest, even as regards a woman and her husband, since it entails useless conversation between husband and wife. Yet we have found no one of the *rishonim* who would so rule with regard to any public gathering that is necessary and has important benefit—especially pertaining to communal or national affairs. In truth, Rashi’s consideration of licentiousness is not accepted as *halakhah*, as is clear from the statements of Rambam and the *Shulhan Arukh* in this regard; they did not mention a suspicion of immodesty except when slaves are among them and only on account of the licentiousness of slaves.

Finally, I have seen a newly contrived basis for not giving women the right to participate in elections (even to vote)—namely, out of consideration for the prohibition of flattery, lest a woman insincerely cast her vote for the individual or party that her husband favors. *Sefer Malki*

Ba-Qodesh wrote correctly that such is not flattery but the upright nurturing of love. To which I would add: Would that this would be the case, that every woman would esteem her husband to the extent of suppressing her will on account of his. One might even voice this reason in favor of giving [women] the right to vote, so that a wife might thereby show love and esteem to her husband, and peace thereby abound in the house of Israel.

If we have come to suspect as much, the opposite actually makes sense—namely, to worry that she in fact be opposed to her husband’s opinion and flatter him by saying that she agreed with it, for the sake of peace or out of fear. Yet if so, we would need to institute open, non-secret elections; for this suspicion holds true for children, relatives, lovers, and friends. Such, however, is not deceitful flattery but comes under the rubric of (*Yevamot* 85a) “One may distort the truth for the sake of peace.”

E. Conclusions:

- 1) A woman has an absolute right of participation in elections so that she be bound by the collective obligation to obey the elected officials who govern the nation.
- 2) A woman may also be elected to public office by the consent and ordinance of the community.