

seems that Tosafot and Rosh are not bothered by a woman assuming non-monarchic leadership.⁵⁴

Until now we have dealt with the question of women's exclusion from *serarah*, on the assumption that the position of prime minister qualifies as *serarah*. However, many contend that this assumption is incorrect. They argue that since the Rambam's exclusion of women emerged from the verses concerning the monarchy, monarchy is the paradigm for *serarah*. Therefore, Rambam's general exclusion extends only to offices that enjoy, to some extent, the qualities of monarchy, and, they point out, the office of prime-minister lacks such qualities. The qualities cited include life-time terms, hereditary succession, powers of coercion, appointment by fiat (in the case of king, by the *Sanhedrin* and a *navi*), and being a servant of the national body – *Keneset Yisrael*.

Prominent scholars and *poskim* demonstrate that the office of prime-minister does not constitute *serarah*, as it lacks one or more of these qualities. R. Isaac ha-Levi Herzog, for instance, asserts that *serarah* refers to life-long, non-elective power.⁵⁵ R. Herzog additionally suggested that since the State of Israel was a joint venture between the U.N. and Jewish people, the Jew's halakhic responsibility for the State is limited. R. Shaul Yisraeli, a respected member of the Mizrahi rabbinate who wrote many influential responsa on matters pertaining to the State, held that that prime-minister was not the head of a true national government – *Keneset Yisrael* – and thus assimilated the identity of the prime-minister to that of a *shaliach*. R. Yisraeli writes, "It is thus obvious that just as in a business partnership between Jews and gentiles, one can divide the tasks among them, so that the gentile administers the business, and, this is not considered *serarah*, for he only represents the partners and issues directives in their name; so too in the greater partnership of the city and state, the basic content of the power of elected officials is no different. They have no *serarah*, but are only representatives of the community who function for its wellbeing, and as such have received their special powers... and it is not forbidden to appoint gentiles as representatives (*sheli-hin*)."⁵⁶ Another prominent Israeli, R. Uziel,⁵⁷ distinguishes contemporary communal leadership from *serarah* on the basis of elections constituting communal consent (*kabbalah*).⁵⁸ R. Ya'akov Levinson,⁵⁹ rabbi of Chovevei Torah in Brooklyn, says that the phrase "... that he may prolong his days in his kingship, he and his children" (Deuteronomy 17:20) indicates that monarchy, and *serarah* generally, entails lifetime incumbency and hereditary succession. The position of prime-minister lacks these qualities and therefore cannot be considered *serarah*.⁶⁰

While it has been shown that a formidable group of *poskim* and scholars adopt permissive positions regarding appointing a woman prime-minister even over an observant male, there are still strong grounds to forbid. Generally speaking, this paper has presented permissive opinions because they represent a departure from mainstream *pesak* and thus

may not receive as much attention. In terms of *pesak*, Rav Moshe states firmly that one should be *mahmir* for Rambam's position that women cannot assume any form of *serarah*, and it is clear from Rav Moshe's mention of the "president of the state" in his responsa that he does not distinguish between the office of prime-minister and *serarah*.⁶¹ R. Bleich in concluding his article suggests that the reason for excluding a woman from the monarchy appears to be the principle of '*kol kevudah bat melekh penimah*,' and that ideal is justifiably relevant in many forms of public office.

In summary, in Israel's current imperfect state one may elect a woman for prime-minister. In an ideal situation, the Rishonim disagree whether a woman is excluded from all forms of *serarah*. Rambam and Ritva say yes; Tosfos and Rosh say no; and it is unclear what Ran, Rashba, and Ramban hold. Moreover, even with Rambam and Ritva, many prominent *poskim* and scholars differentiate a prime-minister from *serarah*. Yet, despite the formidable voices for leniency, Rav Moshe Feinstein is *mahmir*.⁶² Be that as it may, it is certain that behind every great leader there stands a *Yiddishe mama*.

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¹ "Conversation with R' Brovender" (August 29, 1999) http://www.yhol.org.il/features/con_rcb3.html.

² *Iggerot Moshe, Yoreh De'ah*, II, nos. 44-45. Rav Moshe's *teshuvah* does not address directly the typical situation in Israeli politics where voters must choose amongst several irreligious candidates.

³ Additionally R. Judah Gershuni in *Ha-Torah ve-ha-Medinah*, II (Iyar 5710), 74, quotes an early authority who questions the appointment of Shema'ya and Abtalion, whom Rambam writes were the sons of converts, as head of the Bet Din. Riva is quoted as saying that if no equally qualified person of Jewish descent can be found, then one may even appoint the sons of converts. Riva's ruling indicates that if a woman were the most qualified candidate, one may appoint her.

⁴ YNET 10/28/08 <http://www.ynet.co.il/articles/0,7340,L-3614341,00.html>

⁵ Another possible source for the exclusion of women from public office, but not one attributed to Rambam, is Rema's ruling in *Hoshen Mishpat* 37:22 that the officials of the *kahal* also become *dayyanim*. Because women, according to accepted *pesak*, cannot be *dayyanim*, they cannot be community officers. However, R. Bleich notes that Rema lists only positions that involved judicial function - such as tax collectors, who, as part of their jobs, assessed the rate each household paid. To this author's knowledge, the prime-minister does not have a judicial role.

For discussion concerning other potential sources of Rambam's position, see R. Bleich's very informative article: "Women on Synagogue Boards" in *Contemporary Halakhic*

Problems: Volume II (New York: KTAV Publishing House, inc., 1983), chapter XII.

⁶ *Shevuot* 30.

⁷ Rav Moshe quotes the scripturally-based fact that Yehoshua had the status of a king insofar as the laws of *mored be-malkhut* applied to him and that he had the ability to establish the *Mishkan* in Shiloh. The question arises: If so, what does the Torah mean when it states that one day Jews will demand a king - what qualities of kingship did the *shoftim* lack? A close reading of the passages in Samuel I, chapter 8 concerning the Jews' demand for a king indicates that the powers of a king relate specifically to property rights and matters of personal service (See R. Bleich's presentation of *Teshuvot Hatam Sofer, Likkutim*, no. 14 in his article "Jewish Law and the State's Authority to Punish Crime" in *Contemporary Halakhic Problems: Vol. IV*, (1995), Chapter IV). Perhaps, such capabilities prompted the request for a king.

⁸ Indeed, Rav Moshe's understanding read wells into the answer found in Ramban and Rashba that they acted (*nohagin*) one with the other according to her words and advice *ke-din malkah* - as if she were a queen.

⁹ *Shevuot* 29, *Gittin* 88, *Bava Kamma* 15

¹⁰ *Shevuot* 30

¹¹ Chana Luntz (Avodah Mailing List, Volume 02 : Number 001, Tuesday, September 22 1998: <http://www.aishdas.org/avodah/vol02/v02r001.shtm>) writes that, alternatively, Tosafot and Rosh were answering that Devorah was allowed to be a judge based on a *hora'at sha'ah* similar to the answer given in Tosafot in *Niddah* 49b of "*al pi ha-dibbur*," regarding which she writes, "This answer assumes that what she did was Halachically Assur, and given the Klal that a Navi is forbidden to do something that is Halachically Assur unless it is a Horaas Sha'a (see e.g. Megila 2b, Sanhedrin 90a, Yevamos 90b, Rambam Yesodei Hatorah perek 9) we would have to assume that it was Horaas Sha'a (similar to the view expressed by Rav Moshe regarding Shmaya and Avitalyon)." To buttress the possibility that the two answers are indeed the same, she analyzes the phrase "*mi-penei ha-Shechina*," and writes, "maybe the fact of the Shechina's presence meant that the usual Halacha was waived."

¹² Rashba as a second answer writes, "or possibly she was a judge and judged and they accepted her in the way that a person can accept one of his relatives;" a formulation also found in Ran. Ramban writes a seemingly identical statement that, "*mekabbelin hayu devareha biretsonam*." For reasons unclear to the author, R. Moshe says that perhaps Ran and Rashba (he doesn't mention Ramban) had in mind that the Jews accepted Devorah as judge on an ad hoc basis. Therefore, she did not have an official position as judge and one cannot derive that these Rishonim are unconcerned with general female leadership.

¹³ *Tehukah le-Yisrael al pi ha-Torah* 1 (Jerusalem, 1989), pp. 2-12, 22-31, 39-49, 95-113.

¹⁴ *Ha-Torah ve-ha-Medinah* 7-8 (1955-1956).

¹⁵ *Mishpetei Uzi'el, Hoshen Mishpat*, no. 6.

¹⁶ The concept of communal consent serves a purpose in addition to distinguishing elective office from *serarah*; it creates a unique office within the halakhic system. The concept has received much discussion. In medieval time it was used to create legislature and to grant the ability to punish to an unspecified person. Additionally, See R. Bleich's article, "Jewish Law and the State's Authority to Punish Crime," where he discusses the opinion of Rashbam and Rambam who apparently hold that non-Jewish kings have power because the people accept a person to bestow upon the normative qualities of kingship. R. Kook discusses how, after the Jewish monarchy dissolved, the power returned to the people. R. Yisraeli (*Amud ha-Yemin* (Tel Aviv: Moresheet, 1966), 1:7, pp. 52-63 and 1:9, pp. 70-81) expands on R. Kook's idea to posit that the Jewish community therefore has the ability to create a position with the powers it deems apt.

¹⁷ *Shivyon ha-Nashim mi-Nekudat ha-Halakhah*, New York, 1920.

¹⁸ Such a position leads to the interesting issue of preferred characteristics of contemporary leaders; and the related question of when their constituents may disobey them. With regards to *serarah*, the *Jerushalmi* states that one looks for the most "*beirurin she-be-ahekha*." Furthermore, Rambam in *Hilkhot Sanhedrin* writes that when a person in a position of *serarah*, even a king, fails to exhibit positive characteristics the people should depose their failed leader. However, with regards to contemporary leadership, because the law found in *Jerushalmi* emerges from the *pesukim* regarding *serarah*, and even a non-Jew may serve as a contemporary leader, perhaps personal characteristics are of little interest. Indeed, R. Yisraeli's assimilation of contemporary leadership to nothing more than a business arrangement indicates such a sentiment. Therefore, indicating that one need not relieve a leader of loose morals.

¹⁹ The list of distinguished authorities opposed to women holding public office include Hafets Hayim, R. Hayim Ozer Grodzinski, R. David Zvi Hoffman, R. Yehoshua Leib Diskin, R. Yosef Hayim Sonnenfeld, R. Yehiel Michl Tucatzinski, and R. Yisrael Ze'ev Minzberg.

Actually, Rav Moshe has a definition of *serarah* that deserves investigation. Rav Moshe expresses the *issur* as: one cannot hire a woman for a position which involves her rendering decisions to his displeasure. Within that understanding, Rav Moshe allows a community to pay a rabbi who has a woman working as a *mashgiah* for him. He explains that while her stringent rulings may not please the community, the rabbi does not mind. This idea seemingly leads to the improbable, and contradictory, conclusion that according to Rav Moshe one may elect a female prime-minister as long as she receives her salary from someone whom her authority does not effect negatively.

²⁰ A rabbi informed the author that he had asked R. David Feinstein whether Rav Moshe ever retracted his stringent ruling; and R. David told him that Rav Moshe had not.