

WOMEN'S PRAYER SERVICES — THEORY AND PRACTICE¹

PART 1: THEORY

R. Joseph B. Soloveitchik has described prayer as “a basic experiential category in Judaism,” one through which our forefathers achieved a covenant with God and through which we expect eventually to realize that covenant. The people of Israel is “a prayerful nation.”²

It comes as no surprise, therefore, that both men and women are enjoined by Jewish law to pray daily, though there is some difference of opinion as to the extent of the obligation. Yet, despite this basic requirement to pray, women need not fulfill their obligation within the context of communal services—*tefilla be-tisbbur*. Moreover, ten women who join together in prayer—as opposed to ten men—cannot constitute the minimum quorum of ten individuals, a *minyan*, necessary by law to recite certain passages and texts generally reserved for public worship, including, *inter alia*, the *kaddish*, *kedusha*, *barekhu* or the thirteen attributes of God, the repetition of the *amida*, and the reading of the Torah and the *haftara* with their attendant blessings. While there are occasions within Jewish practice where women do count towards a *minyan*, public prayer is not among them.³ As a result, the synagogue service has historically remained almost exclusively male-oriented.

In the early 1970's, however, the Women's Liberation Movement stimulated within traditional Jewish student circles a re-examination of the role of women in Judaism. This coincided with an accelerating growth of higher-education opportunities for women in all areas of Jewish studies, including Talmud, halakha, *Tanakh*, and Jewish thought. The combined effects of this religious and educational exploration were

eventually felt in the general, more established Jewish community as well. One manifestation of this trend was the development of women's prayer services. Women would join in all-female groups on a particular *Shabbat* or *Rosh Hodesh* morning or afternoon in order to recite together the *Shaharit* or *Minha* prayers. Similarly, these women would gather on *Purim* for a women's reading of *Megillat Ester* or rejoice together on *Simhat Torah*, separate from the men, often dancing the *hakafot* with their own Torah scrolls.³

Two different groups supported these women's services. For some participants, a women's *tefilla* was an act of rebellion against the traditional male-oriented ritual. Such individuals or groups were not terribly concerned with the halakhic propriety or parameters of their prayer forms. On the other hand, numerous other women, who articulated a commitment to the halakhic process, at the same time expressed their desire for a more active and meaningful involvement in the spiritual moments of public prayer. In addition, they argued, the prayer group could serve for them as a learning experience—an opportunity to study the relevant laws, to act as *gabbai*, read the Torah and the *haftara*, lead the services as *hazzan*, lift and roll the Torah (*hagbaha* and *gelila*), etc.—affording them a greater appreciation of the symphony communal prayer is meant to be. These women further explained that their identification with Orthodox Judaism prevented them from joining Conservative *shuls* or egalitarian *minyanim*. An all-women's prayer group was consequently an attractive alternative.

This latter group turned to members of the Orthodox rabbinate for rulings and guidance on the halakhic permissibility of such women's services. Some rabbis, while sympathetic to the religious sentiments expressed by these women, objected to the very idea of separate women's prayer services, citing various halakhic and sociological arguments to support their position. Other rabbis, though, advised these women that they could have their service provided they forgo saying all those texts which required a *minyan* quorum; they were, after all, a women's prayer group, not a women's *minyan*.

In our extensive discussions with participants in such services, we have found that a significant percentage report the experience enriching, moving, and edifying, despite the halakhic limitations. Many testify to *davening* (praying) with greater *kavana* (religious devotion) or to discovering new meaning in their prayers. Satisfying what is perceived by the members as a real spiritual need, women's prayer groups have continued to meet in various communities on a regular basis for close to 25 years.

The recognition that women's prayer services are not a passing fad has compelled rabbinic scholars to confront and address the issue with increased earnestness. Yet, the years have not brought the halakhic authorities any closer to unanimity; if anything, the opposite is true. Essentially, three fundamental halakhic approaches to the subject have emerged. The first and most lenient position maintains that women may carry out a full service, including all those rituals and texts which normally require a *minyan* quorum. The second school is more stringent and openly opposes women's prayer groups on a host of halakhic and sociological grounds. The final approach argues that women's prayer services, if properly performed and religiously motivated, can be halakhically sanctioned, although some question their advisability on *hashkafic* and public-policy grounds.

Our survey and in-depth analysis of the responsa on this subject will be divided into two sections. In the first part of this paper (entitled "Theory") we will explore the basic question of the halakhic permissibility of women's *tefilla* groups. However, even if one should conclude that women's *tefilla* groups are fundamentally permissible, a host of practical issues arise that must be faced if such services are to be carried out within the guidelines of Jewish law. We discuss these latter issues in the second section of this paper (entitled "Practice"), which will be published in the future. Needless to say, the views presented in this work are those of the authorities cited by the authors, and not necessarily those of *Tradition* or the Rabbinical Council of America. Let us turn now to the responsa themselves and the threshold question of whether women's prayer groups can be, in principle, halakhically permitted.⁴

A. THE LENIENT SCHOOL

The most lenient responsum on the permissibility of women's services was penned in 1974 by Israel's late Ashkenazic Chief Rabbi, R. Shlomo Goren.⁵ After reaffirming that ten women do not constitute a quorum for communal public prayer, R. Goren proceeds to contend that ten women may nevertheless carry out a full service, including all those rituals and texts which normally require a *minyan*. The gist of his argument is as follows: Jewish law generally frees women from those positive commandments which, like *sukka*, *shofar* and *lulav*, are not continual obligations but are, rather, time-determined—*mitsvot ase'i she-ha-zeman geraman*.⁶ However, while a woman is exempt from such commandments,

she may nonetheless perform them on a voluntary basis, as a *petura ve-osa* (one who is exempted, yet performs the commandment).⁷ The question arises, though, whether she may also recite the attendant blessings along with her voluntary performance of the time-determined mitsvah. While the “unnecessary” performance of a mitsvah usually does not clash with any direct prohibition,⁸ pronouncing a *berakha she-eina tserikha* (an unnecessary benediction) is normally proscribed on the grounds that it is essentially taking God’s name in vain.⁹ Furthermore, the text of the blessing is troublesome. After all, the traditional form of these benedictions reads: “Blessed art Thou, Lord our God, King of the universe, Who has sanctified us with Thy commandments, and commanded us (*ve-tsivanu*). . . .” Since women are not commanded to perform *mitsvot aseí she-ha-zeman geramman*, how can they honestly proclaim that the Almighty has “commanded us”? Nevertheless, the noted Tosafist, R. Jacob Tam,¹⁰ rules that *petura ve-osa me-varekhet*: women voluntarily performing *mitsvot aseí she-ha-zeman geramman* may also recite the attendant benediction. He argues that the prohibition of a *berakha she-eina tserikha* is actually rabbinic in origin, not biblical.¹¹ As such, the Sages were free to carve out an exception for women, allowing them to make these “unnecessary” and seemingly improper benedictions when performing time-dependent *mitsvot*.

The crux of R. Goren’s argument is that the *petura ve-osa me-varekhet* principle enunciated by Rabbeinu Tam is a special dispensation, unique to women and granted to them in order to give them spiritual satisfaction (“*bi-khdei la-asot nahat ru’ah la-nashim*”).¹² It should be pointed out that this concept actually appears in the halakic literature as the rationale behind another rabbinic dispensation for women. When one brings a sacrifice, he is obligated in *semikha*, namely, to place his hands on the animal’s head and press down. Although women are freed from this obligation of *semikha*, because of the above principle they may do so should they desire, though unnecessary contact with a sacrificial animal is usually rabbinically forbidden. R. Goren suggests that similarly, in the case of the recitation of unnecessary benedictions, it was the rationale of “*bi-khdei la-asot nahat ru’ah la-nashim*” which allowed Rabbeinu Tam to formulate his *petura ve-osa me-varekhet* principle, thereby setting aside the rabbinic prohibition of taking God’s name in vain.¹³

R. Goren further suggests that Rabbeinu Tam’s approach, as just delineated, may be likewise extended to allow women to carry out a complete public prayer service without fear of taking God’s name in vain, even when reciting those texts which normally require the presence of a *bona fide minyan*. The late Chief Rabbi does, however, forbid

men from praying in such a service or from responding to the recitation of *kaddish*, *kedusha*, *barekhu*, etc., since men have no such dispensation, and as far as they are concerned, the requisite quorum is lacking.

R. Goren’s argument is unquestionably intriguing. It is, however, equally problematic. As noted above, his conclusion rests upon the view of Rabbeinu Tam and the thesis that women have a special dispensation to recite sacred texts normally requiring a *minyan* even when this quorum is absent. One potential challenge to this thesis is raised by R. Goren himself, and deals with the traditional introduction to the grace after meals, the “*birkat ha-zimmin*.” The *birkat ha-zimmin* must be recited when three or more adult males eat bread together. When a *minyan* is present, the text of the *birkat ha-zimmin* is amended so as to invoke God’s name by adding the word “*Elokeinu*,” and is then referred to as “*zimmin beShem*.” Although three women, too, have the option of forming a quorum for *birkat ha-zimmin*, Maimonides explicitly precludes ten women from *zimmin beShem*.¹⁴ But if R. Goren’s thesis were correct, why should ten women be precluded—why could they not say *zimmin beShem* on a voluntary basis, as *peturot ve-oso*?

R. Goren is not bothered by this seeming contradiction. He notes that the aforementioned *petura ve-osa me-varekhet* principle enunciated by Rabbeinu Tam is not universally accepted. Indeed, Maimonides disagrees with Rabbeinu Tam, maintaining instead that women may not pronounce benedictions which they are not halakhically bound to pronounce. Accordingly, Rambam rules—unlike Rabbeinu Tam—that women are forbidden to recite *berakhot* (benedictions) when performing time-dependent commandments.¹⁵ Consequently, when Maimonides proscribes ten women from reciting *birkat ha-zimmin beShem*, he is simply being consistent.¹⁵ Inasmuch as Ashkenazic practice has adopted Rabbeinu Tam’s view, however, R. Goren rejects any challenge to his thesis from the ruling of Rambam.

Surprisingly, R. Goren neglects to mention that even among those *rishonim* and *aharonim* who agree with Rabbeinu Tam’s ruling regarding women’s permission to recite blessings over time-dependent commandments, there is almost unanimous endorsement of Rambam’s exclusion of women from *zimmin beShem*.¹⁶ Apparently, then, Rabbeinu Tam’s ruling is not to be so liberally expanded as to include permission to pronounce God’s name “unnecessarily” when the “unnecessary” character results from the absence of a properly constituted *minyan*.

This brings us to a second problem. As R. Goren himself notes, although Rabbeinu Tam’s opinion is indeed the accepted Ashkenazic ruling,¹⁷ it is not the only view on the matter. Maimonides, R. Joseph

Caro,¹⁸ and, in fact, a majority of Sephardic authorities down to the modern period—most notably R. Ovadiah Yosef.¹⁹ R. Goren's Sephardic counterpart when the two jointly shared the position of Chief Rabbi of Israel—take strong exception to the Ashkenazic custom. These *posekim* strictly forbid Sephardic women from reciting *berakhot* when performing *mitsvot* from which they are exempted.²⁰ Thus, R. Goren's solution would not apply to Sephardic women.²¹

One also wonders why R. Goren insists at all on the presence of *ten* women. If, as R. Goren contends, Rabbeinu Tam's principle can be applied to public prayer rituals so as to obviate the need for a properly constituted *minyan*, even a lone woman should be able to say any of the prayer texts without being deemed to have taken the Lord's name improperly.^{21*}

More fundamentally, the late Chief Rabbi interprets Rabbeinu Tam's ruling as a *special* dispensation for women, based on the *nahat ru'ah* (spiritual satisfaction) rationale. This novel interpretation radically departs from the way in which Rabbeinu Tam's ruling was understood by the earlier authorities. None of the *rishonim*²² who cite Rabbeinu Tam use the notion of *nahat ru'ah* as a justification for this leniency; rather, they cite explanations applicable to both genders. For example, *Tosafot* explain that “the blessing [of a *patur ve-ose*] is not in vain since he is reciting the (appropriate) benediction for a mitsvah which he is performing, although he is exempt.”²³ Furthermore, notes R. Nissim Gerondi (Ran), the text, “. . . commanded us,” is not improper either; after all, the Talmud's conclusion—“greater is (the reward of) one who is obligated and fulfills the commandment, than (that of) one who is not obligated and yet fulfills the commandment”²⁴—clearly implies that the latter, too, receives at least some reward. If so, then even an *eino me-tsuve ve-ose* must share in the commandment. Since men are fully obligated and, as just noted, women receive reward for their actions, women may recite the *berakha*, the phrase “and commanded us” notwithstanding.²⁵

As further clarified by R. Ben-Zion Hai Uziel and R. Joseph B. Solovitchik,²⁶ the *mitsvot* were issued to the nation of Israel as a whole, men and women alike. Accordingly, both men and women possess an equal degree of “*kedushat Yisrael*,” Jewish sanctity.²⁷ But despite sharing the general obligations of *Kelal Yisrael* (corporate Israel), women were granted a particular and individual exemption from the performance of time-determined commandments. This is not to say that time-determined commandments are irrelevant to women; there is a vast dif-

ference between one who is fundamentally subject to an obligation but exempt from its performance (e.g., a woman), and one who is not obligated altogether *ab initio* (e.g., a gentile).²⁸ The former still falls under the umbrella of the general obligation of *Kelal Yisrael*, despite the exemption.²⁹ A woman, therefore, may—should she so wish—join together with the rest of *Kelal Yisrael* and perform that ritual from which she is exempt.³⁰ Rabbeinu Tam and the Ashkenazic *posekim* further maintain that women may also opt to recite the applicable blessing,³¹ including the word “*ve-tsiyanu*.” The phrase, “Who has sanctified us and commanded us,” refers not to individual Jews, but to the people of Israel as a singular entity, of which women are an integral part.³²

Rabbeinu Tam no doubt intended these guidelines to be applied broadly, so that anyone—man or woman—who is exempt and yet performs a mitsvah may also make the relevant blessing.³³ In fact, Rabbeinu Tam supports his ruling, *inter alia*, from the pleasure expressed by the famous blind *amora*, R. Joseph,³⁴ at hearing R. Judah's opinion that the blind are freed from the obligation to fulfill positive commandments. R. Joseph erroneously believed that, as one who would be performing such *mitsvot* on a voluntary basis, he would be worthy of greater spiritual reward than one who is obligated. From R. Joseph's expression of joy, Rabbeinu Tam deduces that when fulfilling a non-obligatory commandment, nothing is altered in its performance—including the recitation of the attendant benedictions. Were this not the case, argues Rabbeinu Tam, why would R. Joseph have been so happy? As a *patur ve-ose*, he would have been precluded from reciting these benedictions and, hence, from obtaining the concomitant reward! By invoking the blind, male R. Joseph as precedent, Rabbeinu Tam manifestly indicates that his principle is gender-neutral; we are not, as R. Goren assumes, dealing with a special dispensation. Indeed, the halakhic literature is replete with applications of Rabbeinu Tam's *patur ve-ose me-vareikh* principle to cases not specifically involving women.³⁵

It is apparent, then, that Rabbeinu Tam's principle is equally effective for men and women. Yet, in a case where fewer than ten males are available, R. Goren would acknowledge that Jewish law and tradition prohibit the males assembled from reciting the public prayer texts even on a voluntary basis. Absent the requisite ten men, those praying are not merely exempt from reciting the public prayer texts—no obligation exists, *ab initio*. Under such circumstances, even R. Goren would agree that the *patur ve-ose* principle would not apply. Why, then, should it be any different for women?³⁶

Thus, Rabbeinu Tam's *heter* (permissive ruling) to allow reciting a benediction over the voluntary performance of a commandment is broad in that it applies to both men and women alike. At the same time, however, it is apparently narrow in that it does not apply to those cases where the lack of obligation stems from the absence of a required *minyan*.

Further investigation, however, demonstrates that the matter is not so simple. While the above analysis indeed reflects the view of the vast majority of scholars, argumentation similar to that of R. Goren has been posited by isolated halakhic authorities in permitting to the individual certain religious practices which are normally communal. The first instance is the custom of reading *Hallel* on *Rosh Hodesh* with its attendant blessings. According to many *geonim* and *rishonim*, since the recitation of this particular *Hallel* is a custom, its benedictions can be said only together with a *minyan*.³⁷ Rabbeinu Tam dissents, however, allowing individuals to recite the *Rosh Hodesh Hallel* with its *berakhot*, even in the absence of a *minyan*—its *minhag* character notwithstanding.³⁸ Yet a third position is held by the 13th century French Tosafist, R. Samson ben Samson of Coucy (called “*HaSar miCoucy*”). Invoking the *patur ve-ose me-vareikh* principle, he argues³⁹ that even if a *minyan* is required to recite the *Rosh Hodesh Hallel* with its *berakhot*, an individual can do so voluntarily, “similar to *lulav* and *tefillin*,”⁴⁰ where women make blessings even though they are not obligated.⁴¹

The second case concerns the reading of the Book (or *Megilla*) of *Esther*. While the *Megilla* is generally read on the fourteenth of *Adar* and on the fifteenth in walled cities, there are circumstances where the *Megilla* is read as early as the eleventh day of the month.⁴² Although some difference of opinion exists on the matter, the general halakhic consensus is that the presence of a *minyan* is only preferable—but not an absolute requirement—when the *Megilla* is read on its designated date, *i.e.*, on the fourteenth of *Adar* generally, and on the fifteenth in walled cities.⁴³ But when the *Megilla* is read at any other time (*she-lo b-zmano*), the presence of a *minyan* becomes a prerequisite for the reading and its attendant blessings (three before and one after).⁴⁴ Whenever a *minyan* is required but unavailable, one is perforce freed from the obligation of reading *Megillat Ester*. Nevertheless, applying Rabbeinu Tam's *patur ve-ose me-vareikh* principle, R. David Ibn Zimra (Radbaz)⁴⁵ and R. Israel Jacob Algazi⁴⁶ argue that an individual should still have the option to read the *Megilla* with its attendant *berakhot*, despite the absence of a *minyan*.

These two examples seem to indicate that a few authorities maintain that Rabbeinu Tam's principle can be used to allow the recitation

even of texts carrying a *minyan* prerequisite. If so, why, according to these authorities, can't the *patur ve-ose me-vareikh* principle be extended still further—to permit the recitation of public prayer texts in the absence of ten men, as R. Goren contends?

The answer⁴⁷ lies in a careful review of the *Mishna* in the tractate of *Megilla*⁴⁸ which lists those rituals requiring a quorum of ten participants:

When fewer than ten are present, one may not recite the *shema* (including *kaddish* and *barekhu*) and its attendant blessings in an abbreviated form; nor appoint a *hazzan* (to repeat the *amida* with *kedusha*); nor do the priests bless the congregation; nor do we read the Torah or the *haftara* (in public with benedictions);⁴⁹ nor practice the funeral halts; nor pronounce the mourner's benediction, the mourner's consolation (after burial), or the nuptial blessings; nor introduce the blessing after meals using the name of God (*zimnun beShem*).

As Nahmanides notes, not all practices requiring a *minyan* are included in the *Mishna*'s list. The rituals mentioned are only those communal obligations (*hovot ha-tibbur*) for which the halakha⁴⁹ requires a *minyan* because of their special sanctity or public character.⁵⁰ For example, the *Mishna* includes those prayer rituals designated as “*devarim she-bi-kdusha*”⁵¹—public acts or declarations of the sanctification of the Holy One, such as *kaddish*, *kedusha*, *barekhu*, the priestly blessing, the repetition of the *amida*, and the reading of the Torah or the *haftara* with their attendant *berakhot*. Not included, however, are those rituals which are inherently personal obligations (*hovot ha-yahid*) but which are performed—for reasons of *pirsumei nisa* (publicizing the miracle) or the like—within a community setting (*e.g.*, reading the *Megilla*).

From the unequivocal and forceful language of the *Mishna*: “*Ein . . . [osin] pahot mei-asara*”—“One may not . . . [perform these] when fewer than ten are present,” it is eminently clear that under no circumstances may the texts enumerated in the *Mishna* be recited when a properly constituted *minyan* is absent.⁵² The Talmud⁵³ underscores this point even further when it states,

How do we know that an individual may not recite *kedusha*? Because it is written, “And I shall be sanctified amongst the children of Israel”—no act of sanctification (*davar she-bi-kdusha*) may take place when fewer than ten are present.

In such cases, the presence of a *minyan* is both the trigger and an integral ingredient of these communal obligations. This requirement has

little to do with unnecessary benedictions. Thus, without a *minyan* it is forbidden for anyone—man or woman—to say *kaddish* even though God's name is nowhere mentioned!

The reading of *Hallel* or *Megillat Esther*, by contrast, are not mentioned in the *Mishna* in *Megilla*, since they are essentially personal obligations. One may therefore argue, as did the *Sar miCoucy* and Radbaz, that perhaps in these cases the presence of a *minyan* is not, in fact, a prerequisite.⁵⁴ But when dealing with those practices and prayers mentioned in the *Mishna*, all authorities concur that a *minyan* must be there; without one, the ritual simply cannot be performed.⁵⁵ Rabbeinu Tam's *patur ve-ose me-vareikb* principle may allow the recitation of *hovot ha-yahid*, personal *berakhot*, but it cannot allow the recitation of *devarim she-bi-kdusha* nor any other *hovot ha-tsibbur*, communal *berakhot*, such as those listed in the *Mishna* in *Megilla*.

In summary, then, R. Goren's position allowing women to perform—on a voluntary basis—a complete public prayer service, leaves much room for serious challenge. While his fundamental logic and analysis are creative and insightful, his conclusions—at least as to the extent that they apply to those public rituals and texts which constitute *devarim she-bi-kdusha*—appear untenable. When it comes to the latter, the Sages of the Talmud have ruled unambiguously: no act of sanctification (*davar she-bi-kdusha*) may take place absent of a properly constituted *minyan*, and, as already noted at the beginning of this paper, in the specific case of public prayer rituals, this must be a *minyan* of males.⁵⁶

We close this section by noting that in 1989, R. Goren wrote a clarification of his 1974 responsum.⁵⁷ In a lengthy letter to former Sephardic Chief Rabbi Mordechai Eliyahu, R. Goren reiterates that his 1974 correspondence was a personal one, which was publicized against his specific instructions. The original letter contained some purely speculative material, which he certainly never intended to serve as the basis of action (*halakha le-ma'ase*). On the contrary, it is clear that women cannot form a *minyan* for public prayer and, hence, cannot alone perform those rituals requiring such a quorum. In light of this retraction, there is apparently no acknowledged *more hora'a*—recognized halakhic authority—who condones the recitation of *devarim she-bi-kdusha* at women's services.⁵⁸ It is noteworthy, however, that at issue in R. Goren's retraction is the recitation of *devarim she-bi-kdusha*; the late Chief Rabbi does not withdraw his fundamental support from those women's prayer groups which refrain from reciting *devarim she-bi-kdusha*. We will return to this point in Section C below.

B. THE STRINGENT SCHOOL

The next school of thought on women's prayer groups maintains that the entire institution is "forbidden by law." This position was adopted by a group of five *Rashei Yeshiva* from Rabbi Isaac Elchanan Theological Seminary (Yeshiva University)—Rabbis Nissan Lipa Alpert, Abba Bronspigel, Mordechai Willig, Yehuda Parnes, and Zvi (Hershel) Schachter—in a one-page 1985 responsum on the subject, addressed to the president of the Rabbinical Council of America (R.C.A.), R. Louis Bernstein.⁵⁹ To this responsum was appended a two-page addendum by R. Bronspigel, fleshing out some of the points raised in the responsum and indicating that a fuller presentation would soon be forthcoming.⁶⁰ Indeed, a few months later, there appeared a rather lengthy piece by R. Zvi (Hershel) Schachter, assiduously explaining and clarifying the halakhic thinking which underpins the opposition to women's prayer groups as expressed by the above-mentioned RIETS *Rashei Yeshiva*.⁶¹ Shortly thereafter, within the context of an article on the synagogue and its sanctity,⁶² R. Schachter took the opportunity to once again condemn the practice of women's services, but withdrew his personal criticism of the women, which had appeared in the earlier piece. It is this body of literature, in particular R. Schachter's works, which constitutes the most detailed critique of the innovation to have been published to date. Rabbis Moshe Meiselman and J. David Bleich have also addressed this subject in a similar spirit.⁶³

R. Menashe Klein,⁶⁴ R. David Cohen,⁶⁵ R. David Feinstein,⁶⁶ Jerusalem Sephardic Chief Rabbi Shalom Messas,⁶⁷ R. Leib Baron,⁶⁸ and the Va'ad HaRabonim of Queens⁶⁹ have also expressed their objection to women's prayer services, and their responsa echo many of the same issues and arguments put forward by R. Schachter. R. Judah haLevi Amihai (responding at the request of Israeli Chief Rabbi Israel Meir Lau)⁷⁰ and R. Efraim Greenblatt⁷¹ have challenged women's *hakafot*. Former Sephardic Chief Rabbi Mordechai Eliyahu⁷² and Rabbi Zalman Nehemiah Goldberg⁷³ have penned related prohibitive opinions in reaction to "The Women of the Wall" (*Neshot haKotel*) controversy.⁷⁴

Briefly summarizing, the stringent school's opposition to women's services is predicated on six major grounds: 1) in such services, *mitsvah* actions cannot be fulfilled in their most complete form; 2) the very existence of such services is a misrepresentation of Torah; 3) they contribute to divisiveness within a prayer community; 4) women's prayer groups are a serious, intentional departure from Jewish tradition; 5)

these services are foreign to Judaism and violate the biblical prohibition against following non-Jewish religious practices and immodest mores (*be-hukoteihem lo te-leikhu*); and finally 6) women's prayer services (as well as women's *Megilla* readings and *Simhat Torah hakafot*) run counter to the traditionally more private and modest role of the Jewish woman. Let us now turn to each of these points respectively, examining their soundness and cogency.

1. INCOMPLETE FULFILLMENT OF MITSVOT: The RIETS *Rashei Yeshiva* and R. Messas begin their responsa by noting that even women who participate in truly halakhic women's prayer groups have missed out on the opportunity to take part in the various rabbinic *mitsvot* connected with a *bona fide* public prayer service. In particular, by praying in the absence of a *minyan*, they have forfeited the opportunity of *tefilla be-tisbbur* (reciting the *amida* together with a halakhically defined community) and of answering to *kaddish*, *barekhu* and the repetition of the *amida* (*hazavat ha-shatz*) with *kedusha* or reciting the thirteen attributes. Without these important segments of the service, the prayers of the women's groups are lacking and incomplete.⁷⁵ What is more, argues R. Schachter, women are actually rabbinically obligated, in the opinion of *Magen Avraham*,⁷⁶ to hear the weekly reading of the Torah (*keriat haTorah*). The latter can be properly performed only with the recitation of *barekhu* and the *berakhot*, which, in turn, require a male *minyan*.⁷⁷

Similarly, contends R. Schachter, the reading of *Ester* on *Purim*, which is incumbent upon both men and women, cannot be properly fulfilled in a service composed solely of women. In support of this contention, R. Schachter cites the ruling that *Megillat Ester* should preferably be read with a *minyan*,⁷⁸ furthermore, for the recitation of the concluding benediction, "*Ha-rav et riveinu*," such a quorum, according to many views, is indispensable.⁷⁹ Rama expresses doubt as to whether women can be counted towards a *minyan* for these purposes.⁸⁰ Consequently, concludes R. Schachter, a woman can properly fulfill her obligation of hearing the *Megilla* only in the presence of a male *minyan*.⁸¹

Lastly, R. Schachter points to the mandatory Torah reading of *Parshat Zakhor* (*Deuteronomy* 25:17-19), traditionally read on the *Shabbat* before *Purim*. He argues that "in the opinion of some of the great latter-day authorities," women, like men, are obligated to hear the reading of this portion of the Torah. In addition, according to some views, this reading carries a biblical requirement for a *minyan*.⁸² Furthermore, other halakhic authorities maintain that the attendant blessings are an integral part of the *mitsvah*.⁸³ Since the reading of *Parshat Zakhor* with a

minyan and its attendant blessings requires the presence of ten adult males, women cannot fulfill their obligation of *keriat Parshat Zakhor* in its fullest sense in an all-women service.⁸⁴

The *Rashei Yeshiva* are indubitably correct that by not praying with men, women forgo reciting those sections of the *tefilla* reserved for a *minyan*. It must be emphasized, however, that women, though obligated in private prayer, are freed from any requirement of public worship, *tefilla be-tisbbur*.⁸⁵ Furthermore, there is even a minority opinion of several leading *posekim* who maintain that women sitting in the *Ezrat Nashim* (a separate women's section or balcony) *never* fulfill *tefilla be-tisbbur*.⁸⁶ Hence, women are equally freed from any need to answer to *barekhu*, *kaddish*, *kedusha*, etc. Similarly, the vast majority of *posekim*, both *rishonim* and *aharonim*,⁸⁷ totally reject the opinion of *Magen Avraham* and exempt women from any requirement to hear the Torah reading.

Indeed, actual practice as sanctioned by leading halakhic authorities runs counter to the "incomplete fulfillment" argument as applied to women in these cases. Thus, *Magen Avraham*⁸⁸ himself records that, contrary to his aforementioned view, the prevalent custom of the women in his very own community was actually to *walk out* during the Torah reading. The permissibility of this practice has been reaffirmed in the contemporary period by the noted *posek*, R. Bezalel Stern.⁸⁹ In addition, it is well known that the famed R. Elijah of Vilna advised the women of his family not to attend the synagogue altogether.⁹⁰ Finally, *tefilla* is part of the regular school day at *yeshiva* day schools and high schools for women, yet rarely are arrangements made for a male *minyan* to be present at these times to enable *tefilla be-tisbbur* and *keriat haTorah*.

Clearly, women cannot be censured for their non-fulfillment of optional *mitsvot*. Indeed, it is precisely for this reason that most authorities maintain that women who purposely perform time-determined commandments in an incorrect manner do not violate the biblical injunction, "Every matter which I command you, observe to do it; thou shalt not add thereto nor diminish from it."⁹¹ This requires some elaboration.

As noted earlier, women are exempt from the performance of time-determined commandments.⁹² Should a woman wish to perform such a *mitsvah*, she is free to do so and will receive the appropriate heavenly reward.⁹³ But what if a woman deliberately decides to perform a time-determined commandment in an incorrect fashion? Certainly, she will accrue no divine credit for her actions, but will she thereby violate any biblical injunction? Let us imagine, for example, a woman who,

on *Sukkot*, takes in her hand only three of the requisite four species with the intention of thereby performing the prescribed religious ritual. A man doing the very same act at the very same time would be viewed as transgressing the above injunction of “. . . nor diminish from it,”⁹⁴ but most scholars rule that a woman does not violate any injunction and cannot be charged with an “incomplete” fulfillment of the mitzvah. As a general rule, no one—male or female—can be criticized for having performed the mitzvah incorrectly when he or she was under no obligation to perform the ritual in the first place.⁹⁵

Consequently, a woman who fails to say one of the requisite additions (*me-ein ha-me’ora*, e.g., *ya’ale ve-yavo* on festivals) to the *amida* service, which (according to various opinions) she had no obligation to pray, need not repeat the *amida* correctly; had a man omitted the very same section, he would certainly be required to recite the *amida* properly.⁹⁶ Having had no obligation to pray the *amida* altogether, the woman’s omission of the addition is arguably not a critical flaw—it is not an incomplete fulfillment of the mitzvah.⁹⁷

The same would hold true, therefore, for women who prefer praying in a women’s prayer group rather than with a male *minyan*. Since women are not obligated in *tefilla be-tisbbur* to begin with, their prayer—even absent those sections of the service reserved for a *minyan*—can in no way be deemed flawed.

It should also be noted that inasmuch as *tefilla be-tisbbur* is not mandatory for women, it is at best a *biddur mitzvah*, i.e., a more preferable manner of fulfilling their prayer obligation.⁹⁸ But praying with greater concentration, understanding and personal meaning—“*kavvana*”—is also an enhanced and elevated mode of prayer.⁹⁹ For those women who find that women’s prayer groups enable them to pray with increased *kavvana*, the question then arises: which form of *biddur mitzvah* takes priority, *tefilla be-tisbbur* or *kavvana*? This question is not unique to women and has been debated with regard to properly constituted male *minyanim* as well. Many authorities have squarely ruled that praying with increased *kavvana* takes precedence over *tefilla be-tisbbur* even for men. Thus, these scholars permit one to pray alone in the privacy of his home,¹⁰⁰ or individually, at his own pace, in the synagogue,¹⁰¹ rather than with the community at large, if such allows for greater concentration. In addition, among those *posekim* who maintain otherwise, namely that *tefilla be-tisbbur* is to be preferred, some do so on the assumption that communal prayer for men is an obligation, while increased *kavvana* is merely a *biddur mitzvah*.¹⁰² Were communal prayer not a *bona fide* obligation, but simply a meritorious performance

of the commandment, then they too might well agree that enhanced *kavvana* would take priority. It follows that those women who find that their “service of the heart” is of a superior quality when “*davening*” with an all-women’s prayer group can muster significant halakhic authority in support of their forging a normative public prayer service in favor of a women’s service.¹⁰³

Turning now to the reading of *Megillat Ester*: many noted halakhists¹⁰⁴ rule that women, unlike men, are not required to hear a *public* reading of the *Megilla*.¹⁰⁵ Moreover, contrary to the conclusion drawn by R. Schachter, the consensus of leading *aharonim*¹⁰⁶ is that ten women alone do indeed constitute a proper *minyan*¹⁰⁷ for both the reading of the *Megilla* and reciting of “*Ha-rav et riveinu*” benediction which follows it.¹⁰⁸ As a result of the above two halakhic rulings, it is a prevalent custom worldwide¹⁰⁹ to have a second *Megilla* reading for women, where no provisions are made to have present a *minyan* of ten men. It would appear, therefore, that the majority of *posekim* would find no strictly halakhic imperfection in an exclusively women’s *Megilla* reading.

R. Schachter’s final argument, concerning *Parshat Zakhor*, while clearly rooted in the sources, appears to be constructed from minority opinions. First, most authorities rule that only men were commanded to remember the wanton attack on the Israelites by the Amalekite armies; women have no obligation whatsoever to participate in the yearly reading of *Parshat Zakhor*.¹¹⁰ Moreover, even if women are required to recall the battle with Amalek, it does not necessarily follow that they must fulfill their obligation through a Torah scroll reading, with the usual benedictions, and in the presence of a *minyan*. Most latter-day scholars reject the idea that a *minyan* for *Parshat Zakhor* is biblically mandated,¹¹¹ and, consequently, that the attendant blessings are an integral part of the fulfillment of the mitzvah.¹¹² Accordingly, many leading *posekim* allow women to read *Parshat Zakhor* from a printed *Humash* or even to recite it by heart in the privacy of their own home.¹¹³ The common rationale behind these leniencies is that the requirements of a Torah scroll, *minyan* and benedictions are all part of the general Torah reading obligation, which is rabbinic in origin and from which women are exempted, as noted above. Consistent with this view is the prevalent custom of a second reading of *Parshat Zakhor* for women without the appropriate benedictions or the presence of a *minyan* of men.¹¹⁴ While the precentor for these second readings is commonly male, R. Moses Shternbuch, Vice President of the Rabbinical Court of the *Eida ha-Hareidit*, states explicitly that women may read this portion themselves from the *sefer Torah*.¹¹⁵

Interestingly, one of R. Shternbuch's colleagues on the Rabbinical Court of the *Eida ha'Haraidit*, R. Abraham David Horowitz, forcefully contends that if women are indeed obligated to hear *Parshat Zakhor*, they too, can constitute a *minyan* for the reading, certainly by themselves and perhaps even with men.¹¹⁶ Although not cited by R. Horowitz, this position already finds expression in the works of R. Moses Sofer.¹¹⁷

In summary, the stringent school's first criticism of women's services would seem, upon analysis, to boil down essentially to "a call to saintliness." Women are summoned to fulfill all those observances from which Jewish law has specifically exempted them and/or to fulfill the requirements imposed by even minor opinions. Such a halakhic prescription may suit the self-selected spiritual elite, but it is certainly not binding—nor perhaps even advisable—for Jewish women as a group.¹¹⁸

The arguments of the RIETS *Rashei Yeshiva* lead them to conclude that women may not pray in their own groups; in order for women to fulfill their prayer obligation in a complete fashion, they must pray together with men in a *minyan*. This line of reasoning, however, equally leads to the conclusion that women should not pray alone at home, but only with men at *shul*. Nonetheless, we have seen no similarly argued responsum requiring—or even encouraging—women to participate regularly in communal synagogue services, and criticizing women's preference for private prayer. Even on *Purim*, when there is a special mitzvah of *pirsumei nisa* (publicizing the miracle), the common custom was for women not to come to the synagogue for *Megilla* reading, but rather to hear the *Megilla* in the privacy of their homes.¹¹⁹ In light of the traditions of the past, it is difficult to take issue with the newer women's prayer groups on the grounds of incompleteness.

One final remark before concluding this section of our paper. In his addendum to the responsum by the RIETS *Rashei Yeshiva*, R. Abba Bronspigel asserts that absent a *minyan*, "there is no fulfillment of communal prayer (*tefilla be-tisbbur*) whatsoever."¹²⁰ With all due respect, this claim is inaccurate. As a number of halakhic authorities have noted,¹²¹ there are two basic forms of public worship: 1) individuals collectively praying individually, *i.e.*, in one place at the same time; 2) individuals praying together as a community. While the latter form is by far the more preferred (and therefore required for reciting all *devarim she-bi-kdusha*), the former, too, has some value over private individual prayer. In addition, while "a community" for purposes of the second form requires a *minyan*, "in community" for the first form does not. Consequently, while a women's prayer group may not constitute *tefilla be-tisbbur* of the higher order, that does not mean that "there is no ful-

fillment of public prayer whatsoever." Women's prayer groups would certainly qualify as public worship in line with the first form.¹²² Halakhic logic would thus compel one to conclude that for a woman, praying in a women's prayer group is superior to praying alone in the privacy of her own home.

2. MISREPRESENTATION OF THE TORAH (ZITYUF HA'TORAH): The second claim of the RIETS *Rashei Yeshiva* is that women's services misrepresent Jewish law and tradition. They note that some prayer groups aim to demonstrate that women, like men, are capable of carrying out a full public prayer service. They thereby mislead the general public into believing that women may halakhically constitute a *minyan* and fulfill the obligations normally limited to *bona fide tefilla be-tisbbur*. Based upon the writings of R. Solomon Luria (Maharshal),¹²³ R. Schachter and his colleagues argue that such misrepresentation (*ziyyuf haTorah*) is biblically forbidden. Clearly, lying is generally prohibited.¹²⁴ What is unique about *ziyyuf haTorah* is the severity of the violation, which, according to Maharshal, is grounds for martyrdom.

R. David Bleich¹²⁵ concurs, though his target is the innovation of a pseudo-*keriat haTorah* at the women's service. According to R. Bleich, "the use of a Torah scroll by women who candidly acknowledge that they do not thereby fulfill the rabbinic requirements [for a *bona fide keriat haTorah*] borders on the farcical." Moreover, "in instituting *keriat haTorah*, complete with *aliyyot* (although without recitation of blessings), there is manifest a clear desire to establish a formal, innovative, liturgical ritual." R. Bleich bases his objection on Maimonides' ruling¹²⁶ forbidding non-Jews to develop religious practices of their own. As R. Bleich explains, the reason for this prohibition is that such an innovative "practice acquires the characteristics and overtones of a divinely mandated ritual and as such itself becomes *ziyyuf haTorah*—a falsification of the *mesora* (divine tradition)." This prohibition binds Jews as well, and in his view, the women's service Torah reading, as presently practiced, comes "dangerously close" to violating it.

Before commenting on these charges, it should be noted that contrary to R. Schachter's basic assumption that women *never* count for a *minyan*,¹²⁷ many *rishonim* and *aharonim* indicate that women may constitute a *minyan*—alone or with men—in a variety of instances, although public prayer is not one of them. As we have demonstrated in a previous article,¹²⁸ practically speaking (*halakha le-ma'ase*), these rituals include: 1) *Megilla* reading and the "*Ha-rav et riveinu*" benediction which follows it; 2) public martyrdom (*kiddush Hashem be-rabim*);

3) recitation of the *Ha-gomel* blessing; 4) circumcision; 5) *Hanukka* candle lighting in the synagogue. Hence, referring to ten women as a *minyan* in certain cases is not as strange or as misrepresentative as it might seem.

Let us return to the charge of *ziyyuf haTorah*. R. Yehuda Herzl Henkin¹²⁹ argues that the comments of Maharshal refer only to a misrepresentation of the *Torah*, i.e., of biblical commandments, but not of rabbinic injunctions like public prayer or Torah reading. Hence, even if women's prayer groups were misleading, they would not violate Maharshal's prohibition of *ziyyuf haTorah*. The late Chief Rabbi Isaac Herzog¹³⁰ indicates that the prohibition applies specifically to cases where someone (a non-Jew) questions a point of Jewish law, but not when the information is volunteered.

A more fundamental issue, however, is raised by R. Moses Feinstein,¹³¹ who explains that *ziyyuf haTorah* is prohibited according to Maharshal because it is comparable to denying the validity and immutability of the Torah (*ke-kofer beTorat Moshe*). As such, this prohibition is limited to those cases in which one *explicitly* misstates Jewish law, e.g., one states that a particular forbidden action is halakhically permitted, or that non-Jews have the same status in torts as Jews. But where one does not misstate the halakha, this would not constitute *ziyyuf haTorah*, even if someone could draw an incorrect halakhic conclusion from his behavior.¹³² Hence, if women's services do not violate any specific halakha and are cautious not to declare—even implicitly—that ten women make a *minyan*, they cannot possibly be guilty of *ziyyuf haTorah*. Indeed, such groups refrain from saying *kaddish*, *kedusha*, *barekhu* or other *devarim she-bi-kdusha* and repeatedly reaffirm their commitment and subservience to halakha. They call themselves “women's prayer (or *tefilla*) groups” or “women's services,” and not “women's *minyanim*.” Forbidding such services because some non-halakhic prayer groups act improperly would be comparable to forbidding public prayer in every synagogue because some errant congregations have mixed pews.

In closing, it should be noted that R. Moses Feinstein,¹³³ R. Isaac Herzog,¹³⁴ and R. Yehuda Herzl Henkin¹³⁵ have all indicated that normative halakha clearly does *not* follow Maharshal. R. Feinstein points to the fact that for hundreds of years, editions of the Talmud, codes, responsa, and other assorted religious texts opened with a disclaimer distinguishing between the halakhic status of the idolaters mentioned in the Talmud and the status of present-day gentiles. The purpose of this disclaimer was to appease the censor, but it was, nevertheless, patently false. Similarly, R. Yehuda Herzl Henkin cites several examples where

halakhot were distorted to appease the censor, yet no rabbinic authority objected.¹³⁶

We turn now to R. Bleich's characterization¹³⁷ of the *keriat haTorah* at women's prayer groups as “farical.” Such an analysis assumes that the women's reading of the Torah is devoid of religious value. Proponents have argued, on the other hand, that such readings serve as a vehicle for *limud haTorah* (Torah study).¹³⁷ The vast majority of *posekim* concur that even in the absence of a *minyan*, there is no prohibition for anyone to learn from a Torah scroll, provided that the *keriat haTorah* benedictions are not recited.^{138,139} What is more, R. David Ibn Zimra (Radbaz) and a host of other *posekim* who cite him¹⁴⁰ maintain that because of its greater sanctity, private Torah study from a Torah scroll is actually preferred, provided one reads the words properly accompanied by the *ta'amei ha-mikra* [intonations].

R. Bleich's citation from Maimonides¹⁴¹ forbidding all religious innovations should not serve as an obstacle for this practice. Rambam certainly could not have intended to forbid religious innovations such as *minhagim* (customs) or rabbinic ritual. Indeed, it is obvious from a reading of this entire passage that Rambam's intention was to forbid only those religious innovations about which it is falsely claimed that they are *divinely* binding.¹⁴²

Thus, this selection from Maimonides' Code is inapplicable for several reasons. First, this practice could not “acquire the characteristics and overtones of a divinely mandated ritual,” to use R. Bleich's own words, since *keriat haTorah* itself is a rabbinic, not biblical, enactment. Second, there is no false claim or misrepresentation if the women “candidly acknowledge that they do not thereby fulfill the rabbinic requirement,” as R. Bleich accurately observes. Certainly, halakhic women's services, in which the Torah is read without the introductory *barekhu* or the usual *keriat haTorah* benedictions before and after each *aliyya*, are making a clear statement that this reading is most definitely not a fulfillment of the rabbinic obligation of *keriat haTorah*. Such a Torah reading may be unnecessary, but it is not misrepresentation.

3. SPLITTING A PRAYER COMMUNITY AND BE-ROV AM HADRAT MELEKH: R. Schachter's third major criticism of women's services is based on the verse, “*Be-rov am hadrat Melekh*”—“In the multitude of people is the King's glory.”¹⁴³ From this passage, the rabbis derived that it is preferable to perform commandments and rituals together with or in the presence of large numbers of people.¹⁴⁴ This principle has been invoked by several *posekim* to prevent existing *minyanim* from splitting

into smaller groups over petty differences,¹⁴⁵ because of *be-rov am*, the larger, undivided prayer community is clearly preferred. The *posekim* were willing to entertain approving a split only when the dispute was insoluble (such as differing customs or *nusah*) or when the rift had already become so deep that the factions were irreconcilable. Since the desire to pray with other women is not of fundamental halakhic importance, it is not a valid reason, argues R. Schachter, for condoning a break-away women's service.¹⁴⁶

We note, however, that *be-rov am* is only one of many possible forms of *hiddur mitsvah*, of which some forms may be preferred over others. For example, doing a mitsvah at the earliest possible opportunity (*zerizin ma-kdimin le-mitsvot*) takes precedence over *be-rov am*.¹⁴⁷ For this reason, *davening* at sunrise (*ke-vatikin*) even in a small *minyan* is deemed much preferable to *davening* later in the day with a much larger congregation.¹⁴⁸

Other, more relevant considerations also set aside *be-rov am*. The responsa literature points out repeatedly that one may *daven* where he has greater *kavvana*¹⁴⁹ or where there is greater decorum.¹⁵⁰ *Posekim*¹⁵¹ argue very poignantly that the decision of where one has greater *kavvana* is very personal and highly subjective. In the words of R. Judah Greenwald:¹⁵²

"If they know in their soul that somewhere else they will *daven* with greater *kavvana*, no matter what the reason should be, it is obvious that they can gather elsewhere . . ."

Many generations earlier, R. Samuel de Modina¹⁵³ likewise stated:

Therefore, it is obvious . . . that one may leave his community to pray with *kavvana* and . . . the community has no power to force individuals to pray except where they prefer."¹⁵⁴

Hence, the fact that participants in the women's prayer groups testify that their greater involvement heightens their concentration and *kavvana* has important halakhic ramifications regarding setting aside *be-rov am*.

Regarding decorum, *posekim* have repeatedly lamented about the noise in the women's section of many synagogues. In particular, they note that it is so noisy during *Megilla* reading that they seriously doubt whether women fulfill their obligation.¹⁵⁴ The women's services, on the other hand, are generally very quiet, with little unnecessary talking.

More importantly, since women are exempted from the obliga-

tions of public prayer and from even coming to the synagogue, they ought not be faulted should they decide not to contribute to the synagogue's *be-rov am*.¹⁵⁵ With respect to the *be-rov am* of the male participants, there should be no difference whether the women stay home altogether or gather in someone else's home to pray together. Of relevance is *Magen Avraham's* comment, cited above,¹⁵⁶ that the women of his community actually used to exit during the reading of the Torah. Why did *Magen Avraham* and the other distinguished rabbis of his community condone such behavior? After all, these were not women who stayed home, but those who came to *shul* and then walked out. Why wasn't the rabbinic leadership of *Magen Avraham's* community concerned with *be-rov am*? The answer is simple: if you are not obligated in *keriat haTorah* and do not have to be present in the first place, there is nothing wrong with deciding not to contribute to the *be-rov am* of that ritual. Moreover, there is even room to contend that only those who are obligated in a ritual can contribute to the *be-rov am* quality of that ritual.¹⁵⁷ If so, the presence of women has no effect on the *be-rov am* quality of *tefilla be-tisbbur* or its associated rituals because *Hazal* exempted women from public prayer.

Finally, there is substantial evidence in the *posekim* that women as a rule are not at all obligated in *be-rov am*. For example, R. Abraham Hayyim Na'eh¹⁵⁸ forbids six men who have dined together from splitting into two *zimmun* units of three each, because of *be-rov am*; nevertheless, he and *Mishna Berura* allow three women to break off from three men in order to make their own *zimmun*.¹⁵⁹ *Megilla* reading for women is another case in point. As noted above,¹⁶⁰ *be-rov am* dictates that *Megilla* should be read in the largest community possible. Nevertheless, it was common practice for women to absent themselves from the public synagogue reading and hear it instead in the privacy of their homes. This suggests to many leading *aharonim* that women are not obligated in *be-rov am*.¹⁶¹

4. DEPARTURE FROM NORMATIVE JUDAISM: The fourth argument raised by nearly all those opposed to women's services is that they are an innovation, unknown prior to the last half of the twentieth century. They are a striking departure from what has been normative practice in the halakhic Jewish community for millennia. Jewish law clearly recognizes the binding force of *minhag*, accepted custom and usage. Furthermore, admonishes the stringent school, one must be extremely careful about introducing new rituals, lest they weaken the fabric of traditional Jewish observance.¹⁶² This danger is compounded when the innovations

are not purely personal in nature, but affect synagogue ritual and/or a large segment of the prayer community.¹⁶³ In addition, vigilance is required where the innovations are not instituted by the righteous and scholarly of the generation, as with women's services.

R. Yehuda Herzl Henkin sidesteps R. Schachter's argument in part by noting that most *tefilla* groups meet in halls, side rooms of synagogues, or private homes, and not in the main *shul* sanctuary.¹⁶⁴ Thus, one cannot argue that the customs of the *shuls* have been changed.

R. Eliezer Berkovits¹⁶⁵ and Justice Menahem Elon¹⁶⁶ question the very premise, namely, that the absence of women's *tefilla* groups, *bakafot* or *Megilla* readings in previous generations establishes a *minhag* that they are prohibited. The lack of such practices over the past centuries was not the result of any deliberate determination; rather, it merely demonstrates that there was no social need for them.¹⁶⁷ The situation would be analogous to the institution of *Bat Mitzvah* celebrations, which were unheard of in Orthodox Jewish circles several decades ago, yet now enjoy the approval of leading *posekim*.^{168,169}

This argument requires further explanation. There is a major debate among *abaronim* regarding a situation in which a community regularly and consistently (*ragil u-matsui*) refrains from acting in a certain manner—although the action is essentially halakhically permissible. Does such passive behavior, in and of itself, in the absence of a pre-existing *pesak halakha le-issur* (a restrictive halakhic ruling), constitute a communally binding prohibitive custom (*lo ra'inu ra'aya be-minhag*),¹⁷⁰ or perhaps not (*lo ra'inu eino ra'aya*)?¹⁷¹ Even according to those who answer in the affirmative, the community's passive behavior creates a *minhag* only when such inaction resulted from a deliberate and conscious decision. It is not sufficient that the community simply did not act; it had to have *decided* not to act.¹⁷² Moreover, the reason for the decision to refrain from a particular activity must be rooted in the desire for greater halakhic scrupulousness.¹⁷³

In light of these principles, the lack of women's prayer groups in previous generations cannot serve as the basis for a binding *minhag*. While the non-appearance of women's *tefilla* groups in previous generations is obviously passive behavior, there is no evidence—or even a claim—that it resulted from any form of halakhic ruling. Similarly, it was not the consequence of any deliberate or conscious decision to refrain from establishing women-only *tefillot*—it was simply not done. And finally, the absence of women's services in the past had little to do with halakhic stringency, especially in light of the reality that most women rarely attended *shul* at all!¹⁷⁴

The fact is, however, that women's prayer groups, in which one woman leads many others in prayer, have been around in one form or another ever since the Jews crossed the Red Sea. On the verse,¹⁷⁵ “. . . And Miriam sang unto them . . .”, the *Mekhila* states that just as Moses led the men in song and praise of God, Miriam, his sister, led the women. *Midrash Or ha-Afeila*¹⁷⁶ posits that with the words recited first by Miriam and then her female entourage, “Sing ye to the Lord, for He is highly exalted.”¹⁷⁷ Jewish women accepted upon themselves the obligation of daily prayer.¹⁷⁸ Finally, a commentary attributed to R. Sa'adya Gaon notes¹⁷⁹ that Miriam sang the 18 verses of the Red Sea song and the women repeated them, just as the *hazzan* recites the 18 benedictions of the *shemone esrei* to which the community answers *amen*. All the above texts suggest that women's praying together—even with a female precursor—has clear roots in Jewish tradition.

Records show that throughout the Middle Ages, certain women were noted because they led groups of women in prayer.¹⁸⁰ This institution continued in Europe, and the female precursor later became known as the *firzogerin* (foresayer), *foreleiner* (forcereader) or *zogerke* (female sayer). The latter were generally educated and highly literate women who chanted or sang aloud prayers, Psalms and *tehinot* (supplications), some of which were original compositions. Among Sephardic Jews, on the other hand, there are traditions of a regular women's service with a *hazzanit* and *keriat haTorah*. Thus, the late Sephardic Chief Rabbi of Haifa, R. Joseph Messas, writes:

The wont of righteous women is to rise earlier than their husbands and prepare them coffee, then wake them up to worship their Creator and hand them the coffee to restitute their minds, to have *kavvana* in their prayer. . . . And I saw in a book that in some places in Spain, the “*kosher*” and learned women used to rise very early [to go to] their synagogue (*beit ha-keneset she-la-hen*), and pray together (*mit-pallelot be-tsibbur*), and appoint one of them as *shelihat tsibbur*, and take out a *sefer Torah*; and some of them used to don *tefillin*, and everyone was wrapped in a *tallit*, and they used to do so on the Sabbath and Holidays, too. And afterwards they used to return to their homes and wake up their husbands and their sons to get up and pray. And this they used to do as a stringency which they undertook, since women are exempt from time-bound *mitsvot*, so they will have time to prepare their husbands' needs. And that is why they used to rise early for prayer while their husbands were still asleep. And this settles the correct meaning of the verse, “A nation that rises as a lioness and as a lion” (*Numbers* 23:24); the female is mentioned

first, before the male, for as we have said, both the man and the woman used to rise to worship their Creator, but the woman before the man.^{180*}

In the modern period, with the establishment of *yeshiva* day schools and summer camps for girls, we find—even in the *hareidi* school system—the natural development of *hazzaniyyot* who lead their classmates and friends in prayer.¹⁸¹ Hence, women praying together in prayer groups cannot be deemed a departure from normative Judaism.

With regard to a women's *Megilla* reading as well, the element of innovation is minimal. We have already noted above¹⁸² that it is a prevalent custom worldwide to have a second *Megilla* reading for women. In these special readings, the only man present is the *ba'al korei*; hence, it is not the presence of exclusively women that is the innovation. The new element in contemporary women's *Megilla* readings is that now *women* read for other women. This, however, should present no halakhic problem, since women are also obligated in the mitsvah of *Megilla*. Until recently, it was rare for women to know how to cantillate the *Megilla*, but the obstacle was not halakhic. Women were often illiterate and rarely attended services at all.^{182*} Furthermore, since they could not serve as *ba'alot keria* for a normative Torah reading, they simply had little practical use or reason to learn *trop* (the traditional cantillations). Finally, in light of the long list of *posekim* who permit a women's *Megilla* reading,¹⁸³ whatever innovative elements there may be in such a practice come with substantial rabbinic approval.

The lightning rod for the charge of innovation focuses, to a large extent, on the pseudo-*keriat haTorah* at the women's services.^{183*} Nevertheless, the earlier quote from R. Messas would seem to indicate that such Torah readings are not completely without precedent. Furthermore, as noted in section B.2 above, the private reading from a Torah scroll with *trop* by a woman is not prohibited *per se*. As in the case of the reading of the *Megilla*, the fact that women rarely, if ever, did so stemmed from lack of education and related sociological issues rather than halakhic ones. In such a case, too, one can well argue *lo ra'inu einu ra'aya*.

5. FOLLOWING IN THE WAYS OF THE GENTILES: The fifth argument of the stringent school¹⁸⁴ is that women's services violate the biblical injunction, "*U-be-hukoteihem lo te-leikhu*"—"After the doings of the land of Egypt . . . and the land of Cana'an . . . shall you not do; nor shall you walk in their statutes."¹⁸⁵ As understood by the codifiers, this verse admonishes Jews against emulating not only the religious ways of non-

Jews, but also their immodest mores.¹⁸⁶ Women's prayer services, argues the stringent school, are prohibited on both grounds. First, women's prayer services run counter to normative Jewish religious practice, since women do not lead public ritual. Unfortunately, lament these scholars, non-Jewish influence has had its effect on the Reform and Conservative movements, and from there it has passed to these Orthodox women's groups. What is worse, however, is that the clamor for such women's services is a direct result of the influence of "Women's Lib," a movement based on non-Jewish values and priorities foreign to halakhic Judaism. The primary goals of the Women's Liberation movement are immodest, for it attempts to obfuscate, if not obliterate, male-female sex roles.

On the other hand, as R. Y. Henkin has noted,¹⁸⁷ the prohibition of "*U-be-hukoteihem lo te-leikhu*" is directed towards actions and modes of behavior which imitate established non-Jewish patterns,¹⁸⁸ not merely ideas which have parallels in gentile circles.¹⁸⁹ In R. Henkin's words: "The Torah does not forbid movements, but actions" (pun intended). Significantly, we would note, the very language of the biblical verse refers explicitly to gentile doings ("*ma'ase*") and statutes ("*hukot*").¹⁹⁰ The *tana'im* of *Torat Kobanim* underscore this very point when they write, "'And in their statutes you shall not walk'—I refer only to statutes which were legislated for them and for their fathers and for their fathers' fathers."¹⁹¹ Only once it has been clearly determined that the practice under scrutiny is a well-established and long-standing gentile custom could it be prohibited for Jews as a violation of "*U-be-hukoteihem*."

Not surprisingly, therefore, all of the sources mustered by R. Schachter discuss immodest behavior or religious modes with direct parallels in non-Jewish custom or practice. However, non-Jews have no long-standing custom of women's prayer groups. Gentile female laity rarely, if ever, prays as a group without the presence of males. Consequently, Jewish women's services cannot be considered imitation of gentile ways. Absent a clear non-Jewish parallel, women's prayer groups do not—by definition—constitute a transgression of "*U-be-hukoteihem lo te-leikhu*." Furthermore, even were we to admit for argument's sake that the women's dissatisfaction with the usual services resulted from gentile influences, their response is inherently Jewish. Thus, the practice of women's prayer groups is particularly Jewish.

Moreover, even when dealing with accepted gentile custom, most halakhic authorities hold that such practice is not prohibited for Jews unless its adoption results from an intention to imitate gentile ways. If,

however, Jews intend to derive direct benefit from the custom, independent of the fact that gentiles also behave in a similar manner, the practice would not fall within the ambit of the prohibition of “*U-be-hukoteihem*.”¹⁹²

It was this latter principle that served as the critical basis upon which the noted Torah personalities, R. Yehiel Jacob Weinberg¹⁹³ and R. Ovadiah Yosef,¹⁹⁴ permitted the celebration of a *bat-mitsvah*. There, too, the new practice was challenged and criticized as a violation of “*U-be-hukoteihem*.”¹⁹⁵ However, after a lengthy and scholarly analysis of the nature and limits of “*U-be-hukoteihem*,” R. Weinberg rejects the charge:

For even the Reform of our people do not do so in order to imitate them [*i.e.*, the gentiles], but rather as a family celebration and rejoicing that their children have reached majority. And those of our brethren [*i.e.*, Orthodox Jews] who have newly instituted the custom of *bat-mitsvah* celebration claim that they are doing so to strengthen within the daughter, who has attained an age where the commandments are now incumbent upon her, a feeling of love for Judaism and her *mitsvot*, and to awaken within her a feeling of pride regarding her Jewishness and regarding her status as a daughter of a great and holy nation (*am gadol ve-kadosh*). It makes no difference to us that the gentiles as well celebrate confirmation both for boys and girls; they are with their ways and we are with ours. They pray and kneel in their churches and we kneel, bow and give thanksgiving to the supreme King of Kings, the Holy One, blessed be He.¹⁹⁶

Concurring with R. Weinberg’s analysis and conclusion, R. Ovadiah Yosef adds strikingly:

And in truth, the prevention of *bat-mitsvah* celebrations enables criminals to denounce the sages of Israel, as if they deprive the daughters of Israel and discriminate between sons and daughters.¹⁹⁷

Those Orthodox women who participate in women’s prayer groups similarly maintain that their desire to join such groups has nothing to do with gentile practice; on the contrary, it stems from a wish to strengthen their active involvement in Judaism and its *mitsvot*. These women report that the experience of praying together in an all-women’s service truly enhances their Jewish pride; rather than sow dissatisfaction with Jewish tradition, it heightens their awareness that they are indeed members of an *am gadol ve-kadosh*.^{197*} Assuming these claims are true—and we have no reason to doubt their veracity—the remarks of Rabbis Weinberg and

Yosef regarding *bat-mitsvah* should be equally valid when applied to women’s services, *mutatis mutandis*. Here, too, women’s prayer groups would not constitute a violation of “*U-be-hukoteihem*,” for the intention of the participants is not to imitate or resemble comparable groups or practices among the gentiles, but rather to obtain an experience that is wholly Jewish.

6. VIOLATION OF “*KOL KEVUDA BAT MELEKH PENIMA*”: The final issue raised by both Rabbis Schachter¹⁹⁸ and Klein¹⁹⁹ relates to the traditional role of the Jewish woman. As suggested by the verse,²⁰⁰ “*Kol kevuda bat melekh penima*”—“All glorious is the king’s daughter within [the palace],” and as widely reflected in Jewish law and lore,²⁰¹ this role is private and home-oriented. For example, based upon *kol kevuda*, the Talmud and codes indicate that women should not make a habit of going frequently to the marketplace.²⁰² They also record special dispensations made for women in instances where they had to be interviewed by a court.²⁰³ Rabbis Schachter and Klein argue that women’s prayer groups and *hakafot*, which build religious ritual around women and place them at the center of attention, run counter to the traditional private role of the Jewish woman.

This criticism, like the previous ones, is not unequivocal. Thus, R. Yehuda Henkin²⁰⁴ argues that *kol kevuda*, even according to the stringent formulation of Maimonides,²⁰⁵ bars only unnecessary exposure to public life. However, the fulfillment of *mitsvot* (*e.g.*, visiting parents, aiding the sick and needy, comforting mourners, rejoicing with the bride, etc.) is a perfectly legitimate reason for venturing into the marketplace. If so, going out to pray, be it in *shul* or at a prayer service, should be no different than fulfilling any other *mitsvah*.²⁰⁶ Other *posekim* make it clear that *kol kevuda* does not apply to an activity which is carried out away from the public thoroughfare and which is all-female or where the sexes are separated.²⁰⁷ Clearly, women’s *tefilla* groups conform to these criteria.

Finally, many *posekim* maintain that *kol kevuda* is a relative concept, depending on local habits.²⁰⁸ In this regard, the noted halakhist, R. Sha’ul Yisraeli, states:

It would also seem that the boundaries of *kol kevuda bat Melekh penima* depend on local custom, and only in communities where women never leave their homes is behavior to the contrary to be considered improper. However, in our generation, religious women work in various offices, hospitals, kindergartens, and schools, and yet no one objects.²⁰⁹

Certainly, from the perspective of *kol kevuda*, a woman's participation in a prayer group should be no different than her involvement or even leadership role in any other women's organization. In light of twentieth century realities and the unchallenged integration of religious women—*hareidi*,²¹⁰ modern Orthodox or otherwise—into all walks of life, the charge of *kol kevuda* simply does not ring true.

The above analysis leads one to the conclusion that, with all due respect, the halakhic arguments put forward by the stringent school are less than compelling. This school's claim—that women's *tefilla* groups *per se* violate Jewish law—seems neither firmly based nor absolutely convincing. This says nothing, of course, about whether such prayer groups are advisable or “a good idea” in the long run. Indeed, many of the issues raised by the stringent school could well be reformulated as Torah-value concerns. We will have more to say later in this paper about such public-policy and *hashkafic* considerations.

C. THE MIDDLE POSITION

As noted in our introductory comments, there also exists a middle position on this issue which argues that, in theory at least, assuming that all *devarim she-bi-kdusha* are omitted,²¹¹ women's prayer groups can be run in accordance with *halakha*. This school includes R. Moshe Feinstein, America's preeminent *posek*; R. Avraham Elkana Shapiro, former Ashkenazic Chief Rabbi of Israel and *Rosh Yeshiva* of *Yeshivat Merkas haRav*, Jerusalem; former British Chief Rabbi Immanuel Jakobovits, together with the London *Beit Din*; and, as noted at the end of Section A, the late Israeli Chief Rabbi Shlomo Goren.²¹² R. Nachum L. Rabino- vitch, *Rosh Yeshiva* of *Yeshivat Hesder Birkat Moshe*, Israel, has also ruled in accordance with this view.²¹³ These rabbis express no difficulty with the objections raised in the previous section by R. Schachter and his colleagues.

R. Feinstein's position finds expression in a series of responsa and letters spanning a decade. The first of these was a responsum written on 18 *Elul* 5736 (August 25, 1975) to R. Yehuda Kelemer, then rabbi of the Young Israel of Brookline, Massachusetts. R. Kelemer has shared with us²¹⁴ that his question, as posed to R. Feinstein dealt, in reality, with women's *hakafot*. R. Kelemer had initially turned to R. Soloveitchik, but after expressing his own negative opinion on the subject,²¹⁵ R. Soloveitchik encouraged R. Kelemer to discuss the matter with R. Fein-

stein as well. In their conversation, R. Feinstein related specifically to women's *hakafot*, clearly discouraging R. Kelemer from allowing the practice in his synagogue.^{215*} In his written—and later published²¹⁶—responsum, however, R. Feinstein chose to address the broader issue of the Women's Liberation movement. *Inter alia*, R. Feinstein writes:

Indeed, all women are permitted to perform even those commandments which the Torah did not obligate them [to do], and they have fulfilled a *mitsvah* and [receive] reward for the performance of these commandments. . . . Nevertheless, it is obvious that this is so only if her soul desires to fulfill *mitsvot* even though she is not commanded [to do so]. However, since her intention is not such, but rather, she is motivated by her grievance with God and His Torah, her deed is not to be considered a *mitsvah*-action at all, but on the contrary, a forbidden action. For she is violating the prohibition of heresy—since she thinks that the laws of the Torah are subject to change—[not only in thought, but] also in deed, which is [all the more] serious.

Although this responsum was written in 1975, as noted above, it appeared in print only in 1982. It did not take long thereafter for various rabbis to request that R. Feinstein further clarify his position. The first such clarification was, unfortunately, not written by R. Feinstein himself, but by his secretary and grandson, R. Mordechai Tendler, on R. Moshe Feinstein's stationery. The May 1983 *teshuva*, though, is based upon R. Tendler's discussions with his grandfather.²¹⁷ A full translation of this unpublished—although by now famous—responsum follows:

14 *Sivan* 5743

To my friend, Rabbi Meir Fund *Shlita*,

My grandfather's position, as published in *Lagzerot Moshe O.H.*, IV, sec. 49, is well known, and I cite it here for emphasis only: “However, since her intention is not such, but rather, she is motivated by her grievance with God and His Torah, her deed is not to be considered a *mitsvah*-action at all, but on the contrary, a forbidden action. For she is violating the prohibition of heresy—since she thinks that the laws of the Torah are subject to change—also in deed, which is serious.”

De facto, it is hard to find an instance where this fault will not be present, and, hence, it is difficult to say about any “women's *minyán*” that there is no problem with them. Only theoretically speaking can one say

that if there exists a group of pious women whose considerations are solely for the sake of Heaven and are without questioning of God's Torah and Jewish custom—why should we prevent them from praying together?

They may also read from the Torah, though they should be careful not to do so in such a manner as to create the erroneous impression that this constitutes *keriat haTorah*. Thus, for example, they should not recite the Torah benedictions aloud, but should either rely on the benedictions recited earlier [in *birkhot ha-shabbat*] or, in a case where they have not yet made these blessings, should recite them privately.

And, of course, there are other details about which one has to be wary, and all those responsible for halakhic decisions (*ba'al hora'a*) should act in this matter in accordance with this viewpoint.

Allow me to conclude with wishes that your rabbinate will be for the sake of Heaven and shed glory on God and his Torah.

In friendship,
Mordechai Tendler

P.S. Nor is there any real prohibition for a menstruant to look at or touch the Torah, even though it is proper to be stringent; nevertheless, it has become widespread that women are lenient in this regard.

In a recent conversation, R. Tendler explained that his grandfather regularly utilized the term "*ba'alei hora'a*" to designate those rabbis who were of a stature to serve as *posekim* in the more intricate areas of Jewish law, such as the laws of *nidda* (family purity) and *Hoshen Mishpat* (monetary matters). Only such rabbis were of the caliber necessary to rule on halakhic issues with far-reaching communal ramifications.²¹⁷ A few months after the above responsum appeared, a subsequent, undated, English²¹⁸ clarification was issued, again penned by R. Mordechai Tendler on R. Feinstein's stationery. It reads as follows:

In the last few months, there have been numerous requests of *rabbanim* [rabbis], *rashei kehillot* [community leaders], and members of women's organizations for clarification of the letter written in my Grandfather's *shlita*^h name to Rabbi Fund. Upon consultation with my Grandfather *shlita*^h the following clarification is being offered. As stated in my letter, the detailed discussion was purely in a theoretical

sense. My grandfather pragmatically feels that the possibility of a group of women, or for that matter men, existing in any one community which will fulfill the lengthy philosophical criteria mentioned in his printed *teshuvah* is extremely remote. Therefore, realistically speaking, he doesn't commend or actually condone the establishment of women's prayer groups.

Rav Mordechai Tendler
Segan le-Mori Savi ba-Gaon Rav Moshe Feinstein Shlit"z

R. Feinstein's final *teshuva* was given orally in October 1985 and was quite unequivocal. R. Chaim Spring requested that R. Mordechai Tendler discuss with his grandfather the propriety of a women's *Megilla* reading held yearly in Rehovot, Israel. R. Tendler answered that R. Feinstein had no objections to such a reading.²¹⁹ It must be acknowledged, though, that inasmuch as women are fundamentally halakhically obligated in hearing the *Megilla*, the notion of a women's *Megilla* reading poses less of a problem for rabbinic authorities than does the idea of a women's prayer group. As a result, many *posekim*²²⁰—including some who oppose women's prayer groups²²¹—concur that there is no halakhic problem with women reading *Megilla* for themselves, individually or in a large group.

As already noted, a similar approach to women's services has been adopted across the Atlantic as the official policy of the office of the Chief Rabbi of Great Britain in consultation with the London *Beit Din*. The text of their ruling reads as follows:

In principle, there is no objection to women organizing a prayer group along the lines described in your letter [*i.e.*, the service would be held in the city's synagogue and the *kaddish*, *kedusha* and blessing on the Torah would be omitted]. Nevertheless, women ought not exclude themselves from attendance at services at which they can hear and respond to those parts for which a *minyan* of men is required, *i.e.*, *borchu*, *kaddish*, *kedusha*, and reading of the Torah with *berachot*. In practice, therefore women's prayer group should preferably be limited to the recitation of such prayers as are not compromised by the absence of a *minyan*, such as the *kabbalat shabbat* service before *borchu* on Friday nights, or *halles* when applicable.

The most important consideration, however is the motive underlying the request. If this is genuinely put forward by observant students seeking, as you write, "a religiously fulfilling experience," it is one thing and

or bad for the Jews?" Put somewhat differently, are women's prayer groups the appropriate Jewish response to women's desire for greater religious involvement? If this is indeed the pivotal issue, then a variety of subsidiary questions need to be pondered, which relate to both the community and the individual. For example, concerning the former, one might ask: how do such services affect the sense of *kehilla* created by sharing common experiences? Do we undermine a community's commitment to tradition by allowing practices and prayer forms that are perceived as radically new and not authentically Jewish? Are we blurring the distinctions between the Orthodox and non-Orthodox movements within Judaism? Regarding the individual, one might inquire: do women's prayer groups push the horizons out so far that they create unfulfillable expectations? Will those women "spoiled" by a *tefilla* group experience be able to return to a normative public prayer situation? Are we in fact merely making it easier for marginally halakhic women to rebel?

We do not mean to imply that *tefilla* groups are unaware of or insensitive to these public policy issues. Indeed, for fear of splitting the community, many groups have agreed to meet only at times when women do not normally come to *shul*—on a Sunday morning, *Erev Rosh Hodesh*, or *Shabbat* afternoon. Other groups have consciously attempted to play down the innovative element of their meetings, placing greater emphasis on communal learning. Nearly all have a local Orthodox rabbi or some other rabbinic personality to guide and advise them. Nevertheless, most of the aforementioned queries have no easy or "right" answers. It may require decades before the long-term effects of this innovation can be accurately measured.

Jewish law clearly empowers rabbinic decisors to forbid otherwise permissible actions or innovations because of public policy considerations.²²⁶ Such prohibitions commonly appear in the halakhic literature under the general rubric of *le-mi-gdar milta* (protective ordinances). Thus, a *posek* may have some concern that a lenient ruling will harm the unity of his community or weaken his congregants' commitment to tradition. Alternatively, the rabbi may fear that his *halabatom* (community members) will misunderstand, misuse, or abuse a theoretical leniency and as a consequence will ultimately come to violate actual prohibitions. Regarding the issue at hand, our conversations with community rabbis confirm that the furor surrounding the institution of novel practices within the women's services, and the fear that more radical changes are in the offing, have prevented many from supporting or even cooperating with these groups.

Two caveats regarding public-policy-based prohibitions are in order. First, it is imperative to note that the consensus of codifiers maintain that public policy considerations, no matter how justified, do not entitle the rabbinic authority to misrepresent halakha. A *posek* need not give a rationale for his ruling, but if he feels it necessary to outline some or all of the reasons behind a non-permissive ruling, he must be halakhically accurate in his presentation. For example, a *posek* has to be careful not to "upgrade" a public-policy consideration by claiming that it is rabbinically or biblically forbidden; nor should a rabbinic authority even suggest one source for the prohibition when he is fully aware that it is not applicable, and is in fact another. Depending on the case, misrepresenting halakha and/or giving an erroneous reason for a prohibition may well involve violation of one or more of the following injunctions: adding to the Torah (*bal tosfif*);²²⁷ lying;²²⁸ and *ziyuf haTorah*.²²⁹ In addition, misrepresentation often results in unlawful leniencies in other areas,²³⁰ needless gossip and hate, as well as *hillul Hashem* (desecration of God's name) and a total loss of trust in rabbinic authority should the truth become known.²³¹

Our second caveat relates to the ease with which such public-policy prohibitions may be invoked. While there do not seem to be strict guidelines, it is clear that this authority to be stringent must be used sparingly. Halakha clearly warns against unnecessary and unwarranted prohibitions, suggesting that *posekim* must be lenient wherever Jewish law allows.²³² And, as has been so insightfully noted by R. Abraham Isaac haKohen Kook, this is all the more required in the modern period:

The wont of our saintly rabbinic scholars . . . was not to lean towards stringency in all matters where there was room to be lenient. . . . For it should suffice us if we are meticulous in following those traditions already enacted by our teachers and *posekim*.²³³ But regarding issues for which there are arguments on either side, certainly [the *posek*] who is inclined to be lenient, to be wise and beneficent, is to be praised—this provided that his decision is based firmly on halakha and sound logic. . . .

And I have already written you, honorable Torah scholars, that I know well the nature of our generation. For only if they see that all that which is permissible by law we [rabbis] permit, will they come to learn that that which we prohibit is indeed not permissible by true Torah law. . . .²³⁴

The take-home message would seem to be that a contemporary *posek* who feels that an action which is halakhically permissible would

nevertheless be ill-advised, might be wise to *convince* his congregants of the wisdom of his position or use the weight of his person and his office to dissuade them from the proposed action. *Prohibition* should not be used loosely.

E. WOMEN'S SERVICES: HASHKAFIC AND PUBLIC-POLICY CONCERNS

In the light of this introduction, we would like to turn now to one final position espoused independently by several outstanding Torah personalities: R. Joseph B. Soloveitchik, his brother, R. Ahron Soloveichik, and R. Gedalia Dov Schwartz. The opinion of R. Joseph B. Soloveitchik, reverentially known among his students and admirers as “the Rav,” has been the subject of much discussion and speculation;²³⁴ hence, it requires special attention and elucidation. The following remarks are based upon numerous interviews and conversations with members of the Rav’s family and many of his closest friends and *talmidim* who had *direct, personal* discussions with the Rav²³⁵ over the years 1971-1986²³⁶ on these sensitive matters. The position which emerged from these interviews was extremely consistent, with only minor variations—usually in tenor and emphasis rather than substance.

R. Joseph B. Soloveitchik, like R. Feinstein, was of the view that a women’s prayer service, if properly structured, could be conducted in accordance with halakha. Nonetheless, the Rav was most hesitant about women’s *tefilla* groups as a general practice and felt that they should not be encouraged. Consistently, he would recommend to his students not to hold such services. R. Soloveitchik’s negative attitude towards women’s services emanated not only from his doubts as to whether the halakhic guidelines would be scrupulously followed. He also expressed concern regarding numerous other *hashkafic* and public-policy issues which relate to the fundamental nature of religious practice and community.

As a rule, R. Soloveitchik gave great credence to established Jewish custom and tradition, especially in the area of prayer and the synagogue. Consequently, the Rav was quite conservative when it came to changing *minhagim*.²³⁷ *Minhag beit ha-keneset* (synagogue custom) constituted proper Jewish shul etiquette, and its modification was to be allowed only with the utmost caution.²³⁸ Women’s prayer groups with Torah reading, *hakafot*, etc. was, for the Rav, a clear deviation from Jewish prayer forms. That alone was sufficient reason for the Rav to withhold his support for the emerging practice.²³⁹

On a pragmatic level, the Rav feared for what he termed “brinkmanship.” He was worried that if the rabbis gave in on those matters of synagogue practice where there was admittedly some room for flexibility, it might well lay the ground for a call for change in other areas of halakha as well—areas where there was little or perhaps no room for maneuvering. How would the rabbis respond then? And, should the rabbis indeed resist further attempts for change, how would the women cope with the heightened sense of frustration they would most likely experience?²⁴⁰

But more importantly, the Rav was uncertain as to what precisely the women participating in these services were seeking: greater spirituality resulting from increased *kiyyum ha-mitsvot* (fulfillment of the commandments), or—consciously or not—something else, perhaps public peer approbation, conspicuous religious performance, or a sense of equality with men. If the real motivating factor was any of the latter, it was likely that a women’s *tefilla* group would not truly satisfy their religious needs; on the contrary, the women’s services would merely foster increasingly unfulfillable expectations, resulting in greater frustration and perhaps even a break with halakha.

R. Soloveitchik believed he had good reason to doubt that greater fulfillment of *mitsvot* motivated many of these women, as illustrated in the following story, related to us by R. Yehuda Kelemer, former Rabbi of the Young Israel of Brookline, Massachusetts. During the mid 1970’s, one of R. Kelemer’s woman congregants at the Young Israel of Brookline was interested in wearing a *tallit* and *tsitsit* during the prayer services. After R. Kelemer had expressed to her his hesitations about the matter,²⁴¹ she approached R. Soloveitchik—who lived in Brookline—on the matter. The Rav explained that in light of the novelty of the action, it needed to be adopted gradually. Accordingly, he suggested that she first try wearing a *tallit* without *tsitsit* (which is, of course, allowed for women.) The Rav asked the woman to return to him after three months, at which time they would discuss the matter further. When the two met once again, she described to R. Soloveitchik the magnificent nature of her religious experience in wearing the *tallit*. The Rav pointed out to the woman that wearing a *tallit* without *tsitsit* lacked any halakhically authentic element of *mitsvah*. It was obvious, therefore, that what generated her sense of “religious high” was not an enhanced *kiyyum ha-mitsvah*, but something else. Under such circumstances, the Rav maintained, wearing a *tallit* was an inappropriate use of the *mitsvah*. Consequently, the Rav forbade the woman from wearing a *tallit* with *tsitsit*.

The Rav's motivational concern extended to the entire phenomenon of women's prayer groups. After all, the women engaged in a women's service were missing out on *tefilla be-tisbbur*, the recitation of various *devarim she-bi-kdusha*, and a proper, halakhic Torah reading—available to them only if they attended a regular *minyan*. Granted, women are exempt from the obligations of public prayer, but the Rav was deeply disturbed that women who had consciously chosen not to stay and pray at home, but rather to participate in a women's *tefilla* group, were actively and deliberately opting for the inauthentic in place of the authentic.²⁴² Under such circumstances, the Rav found it difficult to accept the assertion that it was the desire for enhanced *kiyyum hamitsvot* which was propelling these women.^{243,244}

At the same time, the Rav was equally perturbed by the attitude of the many women who viewed women's prayer groups as an authentic, alternative form of *tefilla be-tisbbur* (public prayer), or at least an authentic, valid alternative to *tefilla be-tisbbur*. Thus, the *hashkama minyan*, the main shul *minyan*, the beginners' *minyan*, the teenage *minyan* and the women's service were all being perceived as equally halakhically valid choices in the spectrum of *tefilla be-tisbbur*. This was clearly not the case, and the Rav charged that those rabbis who gave the women's prayer groups the "go ahead" were misleading them.

In later years, the Rav grew increasingly distraught with the direction the women's prayer groups were taking and their possible impact on Jewish life. While recognizing that many of the women involved in the groups were sincerely motivated by their desire for greater spirituality and *kavana*, he expressed regrets that other women were co-opting the services for their own non-halakhic social agendas. He further articulated his concern as to the confusion women's services might generate in light of the general egalitarian movement within Conservative and Reform Jewry. He was also wary that allowing maximal diversity in religious experience might weaken the fabric and cohesiveness of the community. And in practice, he instructed his students to avoid any formal affiliation between synagogues and the women's prayer groups.

Yet, the Rav repeatedly emphasized to those who discussed with him the subject of women's prayer groups that his objections were predicated primarily on *hashkafa* and public policy, not strict halakha. It is for this reason that R. Soloveitchik declined to sign his name to the aforementioned responsum of the five RIETS *Rashei Yeshiva*²⁴⁵ opposing women's *tefilla* groups—despite numerous attempts to get the Rav to do so.²⁴⁶ What is more, R. Soloveitchik instructed his *shamash* at the time, R. Kenneth Brander, that if anyone should ever assert that he did,

in fact, sign the responsum, then R. Brander should publicize the falsity of the claim. The explanation the Rav gave for this refusal was that the RIETS *Rashei Yeshiva* had based their objections on supposedly halakhic grounds, while his overriding concerns were of a *hashkafic* and public-policy nature.^{247,248} The Rav felt strongly that the line between strict halakha and public policy must not be blurred. This does mean that the Rav's opposition to women's prayer groups was in any way weaker; any practice which runs counter to a Torah-based *hashkafa* or public policy is, in the Rav's view, wrong.²⁴⁸ Nonetheless, the character of R. Soloveitchik's objection to these groups was substantively different from that of the objections raised by the RIETS *Rashei Yeshiva*.

As just noted, the focus of the various considerations cited above is on the community level and the public-policy wisdom of allowing a women's *tefilla* group as an alternative to regular communal prayer. However, many of the issues enunciated above are less applicable when the prayer group in question is to take place in an educational setting, such as a school. Consequently, in 1972, the Rav initially supported the establishment of a women's *tefilla* at the Maimonides School in Brookline, Massachusetts, provided that the *devarim she-bi-kdusha* were omitted.²⁴⁹ R. Soloveitchik even suggested that, following the *amida*, in lieu of these *devarim she-bi-kdusha*, the women should recite the traditional replacements said by those who have prayed in the absence of a *minyan*.²⁵⁰ He had no hesitation about women reading from the *sefer Torah*, but insisted that they not recite *any* form of *birkhot haTorah* (*limud haTorah*) in any pseudo-*keriat haTorah*.²⁵¹ (On a separate occasion in a related matter, the Rav emphasized²⁵² that no men at all should be present at a women's service at any time, lest it turn into a spectator event.)²⁵³

Upon further reflection, though, the Rav withdrew his support for a women's *tefilla* group, even in an educational framework, for fear that his halakhic ruling would be misunderstood, misused and misapplied—that people would fail to distinguish between educational settings and communal ones. Interestingly, the issue arose at Maimonides a second time in 1974. The Rav again informed the teachers and administration that the services were permitted on strictly halakhic grounds—he even gave them the aforementioned guidelines—but indicated that he was not happy with the entire idea. Thus, the move never gained momentum and died.²⁵⁴

R. Soloveitchik's view on women's *hakafot* was in keeping with his general position on women's prayer groups. Here, too, the Rav did not, as a rule, find clear halakhic objections to the practice. He did forbid

taking the Torah scrolls outside the synagogue because of the prohibition of *tiltul sefer Torah*—the halakhically unnecessary transfer of a Torah scroll outside the synagogue or to another building.²⁵⁵ This is a sign of disrespect to the Torah, for people should come to the Torah, not vice versa.²⁵⁶ However, as R. Aharon Lichtenstein has noted, if the women's *hakafot* were in the synagogue, but in the women's section, *tiltul sefer Torah per se* would not be of issue.²⁵⁷ The Rav also stated that there was no problem with women's holding a *sefer Torah*, even when they were *niddot* (menstruants).²⁵⁸ Yet, for all the *hashkafic* and public-policy reasons indicated above, the Rav was clearly not in favor of the practice—whether the *hakafot* took place in the synagogue or some other venue.²⁵⁹ To a certain extent, R. Soloveitchik was more opposed to women's *hakafot* than he was to women's services. After all, women were obligated in prayer—and, according to R. Soloveitchik, they were obligated thrice daily.²⁶⁰ Therefore, the Rav was more understanding of the desire to enhance the experience of *tefilla*. There is, however, no such parallel obligation or *mitsvah* of *hakafot* for women; consequently, the Rav saw little reason to be accommodating in this area.²⁶¹

It appears that during the early 1970's, R. Soloveitchik was less emphatic about his objection to women's *hakafot*, despite his displeasure with them. Nonetheless, as the years passed and the Rav's discomfort with the direction things were taking grew, he would unequivocally express his opposition to women's *hakafot*, even in an educational setting, to anyone who came to ask his opinion on the subject.²⁶² In fact, in one instance, the Rav even volunteered to appear before a *shul* board to personally convey his objections to such *hakafot*.²⁶³ R. Soloveitchik often expressed his extreme annoyance at being cited as the authority who had supposedly sanctioned women's *hakafot*.²⁶⁴ The Rav would acknowledge that women's *hakafot* violate no strictly halakhic prohibition; nonetheless, he consistently recommended against them. That, for the Rav, was *not* a *heter*. On the contrary, in the mid 1970's R. Soloveitchik indicated to his nephew, R. Moshe Meiselman, that he viewed women's *hakafot* as a breach of proper synagogue etiquette.²⁶⁴

R. Soloveitchik also ruled on numerous occasions against having a women's *Megilla* reading. Here, however, the Rav's considerations were rooted in halakha. As noted above, the reading of *Megillat Ester* should preferably be carried out in the presence of a *minyán*; also, many *posekim* hold that a *minyán* is indispensable for reciting the concluding benediction, *Ha-rav et riveinu*.²⁶⁵ While most authorities agree that ten women constitute a *minyán* for both *mikra Megilla* and for the recitation of *Ha-rav et riveinu*, a significant minority dissent.²⁶⁶ Because the Rav preferred

that women fulfill their *Megilla* obligation according to all views (*la-tseit kol ha-de'ot le-kba-tehila*), he strongly advised women to be stringent to hear *mikra Megilla* in the presence of an all-male *minyán*.²⁶⁷

For the Rav, neither life nor halakha was simplistic; not every "*shaila*" could be answered with a superficial response of "*mutar*" (it is allowed) or "*assur*" (it is forbidden). The "*ish ha-halakha*" (halakhic man) does not live in a theoretical vacuum; he must also be sensitive to the need for a public policy. The possible impact of a *pesak* upon the Jewish community is a critical factor which the *posek* has to take into account before he renders his decision. Yet, at the same time, intellectual and analytical integrity has to be preserved. The Rav's approach to women's prayer groups is a delicate balance between these various halakhic considerations, recognizing their distinct character and, consequently, their relative weight. Thus, the Rav could forthrightly state that a particular action violated no halakhic prohibition, while at the same time counsel against its performance on *hashkafic* and public-policy grounds. Unfortunately, many of his *talmidim* apparently failed to appreciate this fine balance—some pulling too far *le-heter* (towards permissibility), others pulling too far *le-humra* (towards stringency). But the Rav himself adamantly refused to be drawn to extremes.

As already mentioned above, R. Joseph B. Soloveitchik was not the only *gadol baTorah* who objected to women's prayer groups on the grounds of *hashkafa* and public policy. Although the two never discussed the matter, this view is also shared by the Rav's younger brother, R. Ahron Soloveitchik.²⁶⁸ In short, he too maintains that, in principle ("*meikar ha-din*"), women's *tefilla* groups are, in and of themselves, permissible ("*mutarot mi-tsad atsmán*"), provided that *devarim she-bi-kdusha* and *berakhot* for a public Torah reading are not recited. Nonetheless, R. Ahron Soloveitchik, as well, strongly recommends against such groups based on *hashkafic* and public-policy considerations.

Not surprisingly, almost all of the specific concerns expressed by R. Ahron Soloveitchik overlap with those articulated by the Rav, although at times their precise formulations vary. Thus, like the Rav, R. Ahron Soloveitchik is especially concerned lest the women who participate in such groups are motivated not by a greater desire for the service of God, but by the social values and agenda of the Women's Liberation movement. In R. Ahron Soloveitchik's opinion, the woman's role as reflected in feminist values runs counter to that of Jewish law and tradition. Consequently, new religious forms which result from these values are not likely to be beneficial to Judaism. In light of the communal ramifications of women's prayer groups, and in contradistinction to the

rabbis of the "middle school" described above, R. Ahron Soloveichik contends that the *posek* cannot simply review the motivation of each particular *tefilla* group on an individual basis. Rather, he must be concerned with a generational perspective—examining the motivation of the majority of Orthodox women who desire to participate in these prayer groups. R. Ahron Soloveichik openly acknowledges that, were he convinced that the motivation of this majority was *le-shem shamayyim* (for the sake of heaven), he would find no fault with women's prayer groups. However, in R. Ahron Soloveichik's estimation, the facts today are otherwise, and he therefore strongly advises against their establishment.²⁶⁹

R. A. Soloveichik further expressed his fear that the feminist overtones of the *tefilla* groups might lead to two additional halakhically undesirable results. The first is the mistaken impression that ten women can indeed constitute a proper *minyan* for *tefilla be-tibbur* or *devarim she-bi-kdusha*. R. Soloveichik is well aware that the members of most of the prayer groups are careful not to call themselves a *minyan*, nor do they recite *devarim she-bi-kdusha*. Yet, notes R. Soloveichik, there is a deliberate attempt to construct and conduct the women's *tefilla* so that it approximates and conforms as closely as possible to the structure and content of a regular *minyan*, including a pseudo-*hazarat ha-shots*, reading from a *sefer Torah*, *birkhot haTorah*, *aliyyot*, *maftir*, etc. While these practices may technically be halakhically permissible, their designed mimicry of a regular *minyan* service is potentially deceptive and misleading (*geneivat da'at ha-beriyot*).²⁷⁰

Moreover, R. Soloveichik is troubled by the prospect that rabbinic approval for women's *tefilla* groups might be interpreted as an implicit validation of the claims and principles of feminism, thus leading to *hillul Hashem* (a desecration of God's name).²⁷¹ This *hillul Hashem* would be aggravated were the rabbinic approval for women's prayer groups viewed incorrectly as an acknowledgment that women can constitute a proper *minyan*, contrary to the halakhic rulings and practice of the past.

These same considerations have prevented R. Ahron Soloveichik from allowing women's *hakafot* with a *sefer Torah* or *Megilla* readings.²⁷² In practice, however, he has counseled his students to refrain from either encouraging or discouraging these latter practices, especially where the local rabbi's active opposition would cause controversy in the community and possibly lead to a split in the congregation.

The *Av Beit haDin* of the Rabbinical Council of America, R. Gedalia Schwartz, has also adopted a position very similar to that of the Rav and R. Ahron Soloveichik.²⁷⁴ R. Schwartz expresses some hesitation

regarding various specific practices of the women's prayer groups, particularly the removal of a *sefer Torah* from the Ark for a non-obligatory function, which may entail *zilzul* (disrespect) for the Torah Scroll.²⁷⁵ Nevertheless, he candidly acknowledges that most of the issues involved do not constitute clear violations of halakha (*issur gamur*), provided *devarim she-bi-kdusha* and *berakhot* for a public Torah reading are omitted.

Still, like many of the other halakhic authorities cited above, R. Schwartz has serious concerns regarding the motivation of those women who prefer a women's *tefilla* group to a regular *minyan*. Equally disturbing to R. Schwartz is his fear, based on more than three and a half decades of experience in the American pulpit rabbinate, that the development of women's prayer groups will generate fragmentation and bitter dispute within the Jewish community. The *Av Beit haDin* also emphasizes that the issues of motivation and divisiveness are critical considerations within the parameters of Jewish Law.²⁷⁶ The responsible *ba'al hora'a* cannot ignore their significance, and they remain integral elements of any halakhic decision—all the more when dealing with synagogue custom. Moreover, he notes, these factors must be examined not merely as they pertain to any specific group of women; the *posek* must take into account their possible impact upon the Jewish world as a whole. At the same time, the weight given to any one element may vary from generation to generation and situation to situation. On balance, R. Schwartz believes that today's communal conditions suggest firm restraint on the creation of women's prayer groups.

A careful reading of the positions of the Rav, R. Ahron Soloveichik, and R. Gedalia Dov Schwartz reveals that they, too, are sensitive to many of the same aspects raised by the "stringent school": motivation, misrepresentation, the continuity of established Jewish custom and tradition, and the maintenance of Torah values. But they do not perceive these issues as matters of strict halakha *per se*, but rather of *haskafa* and public policy. Moreover, it must be emphasized that they all were careful and deliberate in refraining from formally invoking the category of *le-mi-gdar milta*, despite ample opportunity to do so. They preferred instead to use the force of their personalities and standing with their *talmidim* and colleagues to "strongly recommend" against women's prayer groups, without explicitly declaring them *assur*.²⁷⁷ Within the broad framework of the halakhic system, the classification of the rationale is not merely technical; it has significant ramifications and implications as to their mutability and flexibility in reaction to time and place, as will be further expounded in our concluding chapter.

CONCLUSION

At least one conclusion is evident from the above lengthy analysis: while women's *tefilla* groups may well be halakhically permissible, the question of their desirability within the contemporary Jewish experience has no easy answer. There are clearly two sides to this issue which must be weighed *be-koved rosh* (with due deliberation). Rabbinic authorities who have qualms as to the advisability of this innovation cannot be simply waved off as callous or insensitive to the needs of women; the *hashkafic* and public-policy concerns delineated above are very real, and should not be made light of. On the other hand, those rabbis who are amenable to the formation of women's prayer services, evaluating each instance on a case by case basis, are on solid halakhic ground as well. The question which must be seriously and deliberately confronted, therefore, is whether or not the advantages accrued by their implementation well outweigh the risks. As noted earlier, a proper response must address and analyze not only halakha, but Torah values and policy considerations as well. The important joint role of law and values in formulating a balanced Torah position concerning women's prayer groups has been articulated by Justice Menachem Elon in his "The Women of the Wall" decision:

In the clash of opinions and approaches regarding this important, complex and sensitive topic, arguments have not been limited solely to clarifying *the law*. Attention has also been focused on *the values* of the world of Halakha—which are also part of the law in its broader sense—and the manner in which these values should be applied to the issue at hand. There has been particular concern with both the "is" and the "ought," with the formulation of proper judicial-halakhic policy based on the foundations of the past, in light of the reality of the present, and in view of the aspirations of the future. These are accepted and legitimate considerations in the world of Halakha in general, and they hold an especially critical position in a sensitive issue such as that before us. . . .²⁷⁸

While the purely legal component—based upon objective and reasoned halakhic analysis—will remain more or less constant, the public-policy element calls for continuous review and reexamination by the Torah giants of each generation. After all, needs, sensitivities and public-policy concerns change with time and location.²⁷⁹ What may have been a valid concern in 1970 may no longer be substantive as we approach the year 2000; and what may not have been of concern three decades ago, may today be critical.

Perhaps there is no better example of the fluxional nature of *hashkafa* and public policy than the question of women mourners saying *kaddish*. While the general tendency of scholars for many centuries has been to dissuade women from saying *kaddish*, the modern period has heard a substantially different tone.²⁸⁰ Thus, in his discussion of this topic, R. Ahron Soloveichik argues:

Nowadays, when there are Jews fighting for equality for men and women in matters such as *aliyyot*, if Orthodox rabbis prevent women from saying *kaddish* when there is a possibility for allowing it, it will strengthen the influence of Reform and Conservative rabbis. It is therefore forbidden to prevent women from saying *kaddish*.²⁸¹

In a similar spirit, R. Yehuda Herzl Henkin writes in connection with the lenient ruling of his grandfather, the outstanding American *posek*, R. Joseph Elijah Henkin:²⁸²

We are left where we started; at issue is essentially a question of policy and not *issur ve-heter*. In this context, my grandfather's words are worth repeating: "It is known that were it not for *kaddish*, many would refrain from teaching prayer to their sons and would not come to synagogue. When they come because of *kaddish*, they also come a bit closer to Judaism the rest of the year; and for that reason itself, one should not rebuff the *na'arot* either, since it fosters closeness to Judaism." On questions of policy, others may legitimately disagree. We should support any rabbi who declares, "While such a practice may be technically according to Halakha, in my opinion it would have dangerous consequences in my community and so I will not permit it"—although I would urge careful consideration of my grandfather's approach even in the white heat of current controversy; also see *Benei Vanim*, I, no. 37, sec. 12. What must be avoided is the confusion of Halakha with polemics.²⁸³

In the same vein, the door always remains open for a public-policy reevaluation of women's prayer groups by Torah authorities.²⁸⁴ The significance of the reality that the majority of prominent Torah personalities have to date opposed women's prayer groups for one reason or another cannot be overlooked. Nonetheless, a significant number of community rabbis—those who have ongoing direct contact with the members of women's *tefilla* groups—contend that greater rabbinic involvement and direction can serve to allay the legitimate motivational, *hashkafic*, Torah-value and public policy concerns articulated by the *gedolei Yisrael* cited above.

How our generation, or any of the generations of the future, may ultimately decide in this important issue is uncertain.²⁸⁵ Indeed, a half a century ago, the great halakhic authority, R. Jehiel Jacob Weinberg, wisely observed that in questions regarding the role of women in society, time is often the final arbiter.²⁸⁶ Yet, until that time when a clear consensus is reached, and in light of the growth and apparent vitality of women's prayer groups, the Torah community as a whole must openly and honestly address the real issues—both halakhic and public policy—raised in this article. We pray that our Torah leadership will be blessed with divine guidance, inspiration and Solomonic wisdom to find the appropriate answers for our generation. And we pray as well that the community will allow itself to be led.

ADDENDUM

PART I: GENERAL APPLICATIONS OF RABBEINU TAM'S PATUR VE-OSE ME-VAREIKH PRINCIPLE.

As mentioned above, text at note 35, the halakhic literature is replete with applications of Rabbeinu Tam's *patur ve-ose me-vareikh* principle to cases not specifically involving women. The following are several examples:

(a) One is freed from any obligation to attach *tsitsit* to a *talit she'ula* (a borrowed four-cornered garment) for the first thirty days. Nevertheless, should one desire to attach *tsitsit* within the first month, based on Rabbeinu Tam's principle he may do so and even recite the appropriate benediction. See *Tosafot* (s.v. "*Talit she'ula*"), *Rosh* (Chapter 8, sec 26; see also *Ma'adanei Tom Tov*, ad loc. note 20) and *Tosafot haRosh* to *Hullin* 110b; *Piskei Tosafot* (no. 160) and *Nimukei Yosef* (*Hilkhot Tsitsit*, s.v. "*Talit she'ula*") to *Menahot* 44a; *Semak* 31, gloss 20 of *Rabbeinu Perets* (in the name of *Tosafot Shantz*); *Haggahot Maimoniyot*, *Hilkhot Tsitsit* 3:4, no. 4; *Semag*, end of *Asi* 26; *Beit Yosef*, *Darkhei Moshe haArokh*, *Magen Avraham* (no. 5), *Be'er Heitev* (no. 5), *Eliyaya Zuta* and *Rabba* (no. 5), *Mishna Berura* (no. 9), *Arukh haShulhan* (no. 8) and *Shulhan Arukh haRav* (sec. 5) to O.H. no. 14; R. Jacob of Lisa, *Derekh haHayyim*, *Din tsitsit she-asa'an einu yehudi, ve-isha ve-katan, ve-din talit she'ula*, no. 4; R. Abraham Danzig, *Hayyei Adam*, sec. 11, no. 21; R. Mordechai Eliyahu, *Sefer Halakha*, 1:7 sec. 18; R. Jehiel A. Zilber, *Birur Halakha*, Y.D. sec. 286, pp. 253-268; R. Aaron Aryeh Schechter and R. Uri Aurbach, *Pit'hei She'arim*, Y.D. sec. 286, no. 267; *Birkhot haMitsvah* *keTikunan*, p. 55, no. 7. In light of the discussion above at notes 19 and 20, several *posekim* have raised a

caveat regarding use by Sephardic Jews of Rabbeinu Tam's position to allow reciting a *berakha* in the case of *talit she'ula* within thirty days. See R. Mordechai Carmi, *Ma'amar Mordekhai*, O.H. sec. 14, note 14; R. Joseph Hayyim, *Od Yosef Hai, Lekh Lekha*, 1; R. Judah Ayash, *Resp. Beit Yehuda*, Y.D. sec. 19; *Talkot Yosef, She'eirut Yosef*, Part 1, sec. 14, *Din Talit She'ula*, no. 1, note 1. See also section 1b below.

(b) One is freed from any obligation to affix a *mezuzza* to the doorpost of an apartment rented in the Diaspora for the first thirty days. Nevertheless, should one desire to affix a *mezuzza* within the first month, he may do so and even recite the appropriate benediction. See R. Abraham Oppenheim of Butchatch, *Eishel Avraham*, O.H. sec. 14, no. 2; *Pit'hei Teshuva*, Y.D. sec. 286, no. 17; *Hayyei Adam*, *kelal* 15, no. 22 and R. Benjamin Jehiel Zilber, *Beit Barukh*, ad loc. no. 34 (see also appendix *Kunteres haMezuza* 286:22, sec. 192); R. Hayyim Hezkiah Medini, *Sedei Hemed*, *Kelalim*, *Mem*, 112-115; *Resp. Igrot Moshe*, Y.D. sec. 179; R. Yaakov Y. Blau, *Hovat haDar*, sec. 7, no. 7; *Birur Halakha*, Y.D. sec. 286, pp. 253-268; *Birkhot haMitsvah* *keTikunan*, p. 305, no. 5, sec. 2. *Tosafot*, *Hullin* 110b, s.v. "*Talit she'ula*," question whether the application of Rabbeinu Tam's principle to *talit she'ula* and *mezuzza*, however, no one under such circumstances is obligated before thirty days, hence the deficiency would seem to be *in rem* (*ba-heftsa*). Despite this possible distinction, *Tosafot* and other *posekim* (in this and the previous section, section 1a) conclude with "*ba-meikil lo hifsid*" (he who is lenient and permits recitation of the *berakhot* has lost nothing). R. David Zvi Solomon Eibenschutz, *Levushai Serad, Peri Megadim*, *Eishel Avraham* (on *Magen Avraham*, O.H. sec. 14, no. 5), and *Torah Temima*, *Deut.* 22:12, note 125, explain *Tosafot's* lenient conclusion by noting that the owner of the *talit* or the dwelling remains obligated; hence, the deficiency in these cases, too, is *in personam* as it is with women. Cf. R. Zvi [Hershel] Schachter, *Nefesh haRav* (Jerusalem: *Reishit Yerushalayim*, 1994), p. 104; R. Hayyim Dov Altuski, *Hidushei Batra—Haga beMishna Berura*, O.H. sec. 14, note 9.

(c) and (d) R. Samson of Coucy, *supra*, text and note 41, and *Radbaz*, *supra*, text and note 45, extend Rabbeinu Tam's principle to the recitation of *Hallel* on *Rosh Hodesh* and the reading of the *Megilla* with its attendant benedictions, respectively, in situations where no *minyan* is present. R. Joseph Engel, *Gilyonei haShas, Megilla* 5a, finds difficulty with these attempts to extend Rabbeinu Tam's principle. The

Torah exempted women from *mitsvot ase* *she-ha-zeman geramman*; nevertheless, women have the option to perform these commandments, and, according to Rabbeinu Tam, even to say the appropriate benedictions, should they so desire. In the cases of *Hallel* and *Megilla*, on the other hand, the individual is fully obligated whether or not there is a *minyan* present. The *minyan*, however, is a precondition to the fulfillment of these rituals; in its absence, these rituals simply cannot be performed as prescribed. In order to resolve this difficulty, we would like to suggest a different understanding of Radbaz's responsum. In our opinion, Radbaz is not discussing whether or not one could read the *Megilla* with the blessing of "*al mikra Megilla*" absent a *minyan*. Rather, Radbaz's question merely addressed the issue of whether one could recite the other two benedictions of "*she-asa nissim*" and "*she-biyyanu*." These latter two *berakhot*, argues Radbaz, were not composed as blessings over the *Megilla*, but rather in recognition of the miracle of *Purim*. Consequently, these benedictions theoretically could and should be recited even if no properly mandated *Megilla* reading were available (—due to the lack of a *minyan*—according to those authorities whose opinion Radbaz is analyzing). However, writes Radbaz, since these two benedictions were enacted to be said—along with "*al mikra Megilla*"—together with the *Megilla* reading, when there is no required *Megilla* reading, one is exempt from reciting them. In accordance with Rabbeinu Tam's principle, though, Radbaz argues that one may nevertheless recite these *berakhot* optionally. As for the benediction of "*al mikra Megilla*," here R. Engel is absolutely correct: where there is no *minyan*, there can be no properly mandated *Megilla* reading and therefore no "*al mikra Megilla*" either. One is not merely exempt from "*al mikra Megilla*"; there is no place for the *berakha*, *ab initio*. Rabbeinu Tam's principle is, in this case, irrelevant. Accordingly, as a proper reading of Radbaz's responsum will reveal, Radbaz never even entertained its application to the *berakha* of "*al mikra Megilla*."

(e) An *onen* (note 30) is normally freed from fulfilling all positive commandments. Nevertheless, the noted halakhist, R. Joseph Te'omim, *Peri Megadim*, O.H. sec. 71, *Mishbetot Zahav* 3 and *Rosh Yosef*, *Berakhot* 17b, s.v. "*Mishna. Mi she-meito*," allows the optional recitation of *Shema* with its benedictions by an *onen* (provided he has someone to take care of all the burial arrangements).

(f) *Maharav Or Zar'a*, responsum no. 183, maintains that *yeshiva* students dorming with their teachers are freed of fulfilling all positive commandments. Nevertheless, they may recite the appropriate benediction before performing the *mitsvot* of their choice.

(g) R. Hayyim D. S. Zorapa, *Resp. Sha'ar Shelomo*, Y.D. sec. 109, p. 109 column 3, permits non-relatives to tear *keria* with a *berakha*.

(h) R. David Samuel haLevi, *Turei Zahav* (*Taz*), O.H. sec. 46, no. 7, invokes Rabbeinu Tam's principle in his discussion of *birkat ha-noten la-ya'eif ko'ah*.

(i) R. Aaron Worms, *Me'orei Or*, V, *Be'er Sheva* (published 1790), *hashmatot* to *Berakhot* 46a, p. 65a, raises the possibility of an optional two-man *zimmun* based on R. Tam's ruling.

(j) R. Moses Shternbuch, *Mo'adim uZemanim*, IV, sec. 288, p. 53, argues that one who became *Bar Mitzvah* during the counting of the Omer may continue counting because of Rabbeinu Tam's principle.

(k) R. Menashe Klein, *Haggada Magid Mishne*, p. 168, indicates that only *kohanim* are obligated in the ritual slaughtering of sacrifices, although non-*kohanim* are permitted to do so. Nevertheless, an Israelite who ritually slaughters a sacrifice may make the appropriate benediction.

(l) R. Samuel Elimelech Turk, *Resp. Kerem Tsvi*, sec. 43, invokes Rabbeinu Tam's principle in his discussion of *keriat haTorah* in a *minyan* on a day not ordained by *Hazal*.

(m) For additional examples and discussion, see *Resp. Tavia Omer*, O.H. I, sec. 28, nos. 5,6; I, sec. 39, no. 12 ff.; and V, sec. 43.

PART 2: THE PROHIBITION OF HANUEA— SYCOPHANTIC MISREPRESENTATION OF JEWISH LAW.

Related to the issue of misrepresentation in halakha (text at note 123) is the general prohibition of *hanuifa*—currying favor by flattering a wicked individual or his/her halakhically improper actions. *Mishna Sota* 7:8 (41a) recounts that King Agrippas was publicly encouraged by his Jewish subjects to continue as king despite his non-Jewish lineage. The Talmud criticizes their behavior by stating that for such sycophancy, they were worthy of destruction. *Tosafot*, *Sota* 41a, s.v. "*Kol ha-ma-hanif*," argues that they were worthy of punishment not because they misrepresented halakha, for that (based on the incident of Ula, note 131) is permitted in cases of mortal danger—but because there was no compelling reason for them to say anything at all! Many other *posekim*, *rishonim* and *aharonim*, agree with the above *Tosafot* and permit *hanuifa* in cases of danger. See *Yerei'im haShalem*, 248 [58]; *Magen Avraham* and *Pit'hei Olam uMatamei haShulhan*, O.H., end of sec. 196; *Shulhan Arukh haRav*, O.H. sec. 196, no. 18, *Mishna Berura*, O.H., end of sec. 196; *Yad haKetana* (unknown *aharon*), *Hilkhot De'ot*, sec. 10, nos. 13 and 14, *Minhat Ani*, notes 15 and 16.

The above *posekim* clearly take issue with Rabbeinu Jonah Geron-

di, *Sha'arei Teshuva*, Gate III, secs. 187-188, who derives from the asperity of the Talmud's censure (*Sota* 41b) that one is forbidden to praise non-halakhic actions even if it means placing oneself in "danger" (generally understood to mean "mortal danger"). Furthermore, in light of the incident of Ula (note 131), several later authorities who cite R. Jonah or agree with his position feel it necessary to make several important distinctions which have the effect of attenuating R. Jonah's ruling: 1) In *Menorat haMa'or*, *ner* 2, *kelal* 3, *helek* 1, *perakim* 1 and 2, secs. 44 and 45, R. Isaac Abuhav permits praising a wicked individual in a life-and-death situation, provided he does not justify his wicked actions. 2) Others go one step further and differentiate between public approbation of wicked actions, which is forbidden even in life-threatening situations, and private *hanufa*. See *Orhot Tsadikim* (unknown *rishon*), Gate 24, *Sha'ar haHanifot*, *helek* 1 (this section is a restatement of *Sha'arei Teshuva*, *ibid.*); *Yad haKetana*, *Hil. De'ot*, sec. 10, no. 14 and *Minhat Ani*, note 16; R. Moses Bezael Sinai, *Torat haKena'ot*, *Sota* 41b, s.v. "*Kol ha-ma-hanif*"; R. Hayyim Judah Segal Deutsch, commentary to *Sefer Hareidim*, *Lo ta'ase min haTorah ha-teluyyot ba-pe hakanane ve-efshar le-shamran be-khol yom*, sec. 4, no. 48—*Be'er Yehuda*, note 8, s.v. "*Od katav haTosafot.*" 3) *Yad haKetana*, *ibid.*, sec. 13, *Minhat Ani*, note 15, suggests one further possibility, namely that *hanufa* is forbidden in cases where there is "only a slight chance" (*hashash rahok*) of mortal danger but permitted in cases of clear and imminent threat. 4) Finally, R. Moses Bezael Sinai, *ibid.*, and R. Eliyahu Rot, *Sha'arei Teshuva ha-mcFurash*, sec. 188, *HaRotse biTeshuva*, s.v. "*Li-msor*" and "*she-be-henifu*," argue that *hanufa* is forbidden in cases of "financial danger" (*sakanat mamon*)—and this is the "danger" referred to by R. Jonah—but is certainly permitted in cases of "mortal danger." The view of R. Jonah is also cited by R. Israel Meir haKohen Kagan, *Hafeitz Hayyim*, *Petiha*, *la'avin* 16 and *Be'er Mayyim Hayyim ad loc.* This seems to contradict what he writes in *Mishna Berura*, O.H. end of sec. 196, where he permits praising even murder in cases of danger—unless he maintains one of the above distinctions. For a general discussion of *hanufa*, see *Encyclopedia Talmudit*, XVI, "*Hanufa*," p. 375.

It is unlikely that Rabbeinu Jonah agrees with Maharshal's position on *ziyyuf haTorah* (see discussion at note 123), since R. Jonah writes in *Sha'arei Teshuva*, Gate III sec. 52, that teaching Jewish law wrongly and incorrectly ("*she-lo ka-dat ve-she-lo ke-halakha*") violates "... before a blind individual, thou shalt not place a stumbling block" (*Lev. 19:14*). Nothing else is mentioned. See also Addendum, Part 4b.

PART 3: VIEWS AND CASES DEMONSTRATING THAT *ZIYYUF haTORAH* DOES NOT REQUIRE MARTYRDOM.

As mentioned above, text at note 133, Rabbis Feinstein, Herzog and Henkin opine that Maharshal's position on *ziyyuf haTorah* is quite problematic and/or is certainly not reflected by normative Jewish Law. The following represents a partial list of views and cases we have collected which apparently demonstrate that misrepresenting halakha is merely another form of lying, which may be permitted under certain conditions (see Addendum Part 6; see also note 132 regarding double-talk) and is by no means grounds for martyrdom. [This list does not take into account the aforementioned distinctions suggested by Rabbis Henkin and Herzog (note 129) according to the view of Maharshal.]

(a) R. Jonathan haKohen of Lund, cited in *Shita Mekubetset to Bava Kama* 38a, s.v. "*Shor shel Yisrael*," clearly states that when necessary, halakha may be distorted in order to make it more acceptable to non-Jews.

(b) *Rashi*, *Berakhot* 43b, s.v. "*ve-lo bi*," indicates that the noted *amora*, Rav Papa, was embarrassed by an erroneous halakhic ruling he had made. In order to cover up his shame, he consciously fabricated a legal decision by his mentor Rava in support of his position, which he knew to be wrong (*Cf. Tosafot*, *Rosh* and *Nimukei Yosef*, s.v. "*Garsinan*," *ad loc.*)! *Rashi*, *Avoda Zara* 58a, s.v. "*demei*" (*cf. Tosafot*, *ad loc.*, s.v. "*Ikla*") indicates that Rava, too, presumably lied about a previous ruling to cover his shame. R. Levi Ibn Haviv, *Resp. Maharalbab*, sec. 147, s.v. "*u-bar min dein*" [Lemberg, 1865; p. 59 column 4], citing *Rashi*, suggests that such misrepresentations of halakha are permitted, to avoid shame. See also R. Hayyim Joseph David Azulai, *Birkei Yosef*, *H.M.* sec. 12, no. 12; R. Malachi haKohen, *Yad Malakhi*, *Kelal* 663, pp. 168b-169b; *Sedci Hemed*, *Kelalim*, *Khaf*, no. 8; and *Shin*, no. 28; *Sefer Beir Aharon*, III (Brooklyn NY: Deutsch Printing and Publishing, 1955), *kelal* "*Omer Dayar beShem Omro*," *siman* 17, pp. 416ff. Interestingly, R. Abraham Isaac haKohen Kook, *Igrot haRe'iya*, II, no. 694 (28 *Sivan* 5674), suggests a creative explanation, such that no misrepresentation of halakha was involved. See also R. Abraham David Horowitz, *Resp. Kinyan Torah beHalakha*, VII, *Y.D.* sec. 74, no. 3.

(c) Likewise, the Talmud in *Berakhot* 27b records that R. Joshua lied about his position regarding the obligation to recite *ma'ariv* so as not to publicly contradict R. Gamliel, the *Nasi*. A similar situation occurred between R. Nahman and Ula (*Bava Kama* 12a). R. David haKohen Sakali, *Resp. Kiryat Hana David*, I, *Hiadushim veLikutim*,

sec. 37, no. 2, and R. Ezekiel Landau, *Tsiyyun leNefesh Haya, Berakhot* 27b, end of s.v. “*Amad*,” record such misrepresentations as perfectly legitimate—even though there was little more than a bit of unpleasantness and honor at stake. See, however, R. Joseph Hayyim, *Ben Yehoyada, Berakhot* 27b and *Resp. Aderet Tiferet*, note 123. As to why the issue of lying *per se* (“*mi-dvar sheker tirhak*”) is not an issue, see R. Chaim Kanievsky, *Masekhet Kutim* 1:14, *Me-taber* note 30. See also *infra*, Addendum, Part 6.

(d) The Talmud in *Berakhot* 63a further recounts that the Israeli court, in an attempt to reassert its sole authority in determining the calendar, sent two young scholars to Babylonia to R. Hanina, who persisted in fixing the length of years and months. To undermine the authority of R. Hanina, these young colleagues forbade that which he permitted and permitted that which he forbade. Many authorities maintain that the young scholars *parkened* falsely and purposely misrepresented halakha to this end. See R. Menahem Azarya de Fano, *Resp. Rama miFano*, end of sec. 108, s.v. “*ve-anahnu*”; R. Samuel Eliezer Edels, *Hidushei haMaharsha, ad loc.*; R. Hayyim Palagi, *Hafeits Hayyim*, sec. 19, no. 22; R. Hayyim ben Atar, *Heifets Hashem, ad loc.* Other commentators argue, however, that the rulings of the pair were in the category of *hora'at sha'a* (a temporary abrogation or change of the law), presumably effected by the authority of the *Sanhedrin* or the leading scholar of the generation; hence, their rulings cannot be considered misrepresentations of Jewish law. See R. Jonathan Shteiff, *Hadashim Gam Yeshanim, ad loc.*, first interpretation; R. Jacob Schor, *Mishnat Ya'akov, Birkat Ya'akov* (Jerusalem: *Mosad HaRav Kook*, 1990) *ad loc.*, see also Addendum, Part 4i. Finally, some commentators posit that the rulings of the young scholars were indeed accurate, though normally they should not have challenged R. Hanina publicly. See *ad loc.* the following commentaries: R. Elijah of Vilna, *Imrei Noam*, s.v. “*Ki beikha*”; R. Hayyim Joseph David Azulai, *Petakh Einayyim*; R. Jonathan Shteiff, *Hadashim Gam Yeshanim*, second interpretation; R. Joseph Hayyim, *Ben Yehoyada*; R. Jacob Emden (gloss, *ad loc.*); R. Joseph Saul Nathanson, *Yad Sha'ul*, sec 242, no. 23.

(e) The Talmud in *Eruvin* 13a indicates that for pedagogic reasons, R. Akiva lied in declaring that the halakha follows the view of the disciple of R. Yishmael. Similarly, in *Zevahim* 13a, R. Huna made up a non-existent *kal va-homer*—also for pedagogic reasons. In *Yoma* 23a/b we are told that R. Zadok misrepresented the laws of *egla arufa* in order to heighten the sense of mourning and re-sensitize the people to the value of life. (Regarding the latter case, see *Meiri, Yoma* 23a; R.

Isaac Nunis Weiss, *Si'ah Yitshak, Yoma* 23a; R. Aharon Lichtenstein, *Nahpesa Derakheinu veNahkora, Alon Shevut Bogerim, Tevet* 5756, pp. 15-27. Several of the commentaries reinterpret the comments of R. Zadok such that there is no misrepresentation; see *Ritva* and *Maharsha ad loc.*)

(f) *Megilla* 9a records that the seventy sages sequestered by King Talmi for the purpose of translating the Torah deviated in several instances from the literal meaning of the text for fear of offending the king. Maharshal himself suggests that the action of the seventy sages was divinely inspired, or alternatively that they changed only words, not the intent. R. Elijah Rogeler, *Resp. Yad Eliyahu*, sec. 48, is unsatisfied with these answers and derives from this incident that *ziyyuf haTorah* is not grounds for martyrdom. He further argues that even Maharshal could be referring only to instances where there is a mere “doubt” (*hashash*) of danger.

(g) The Talmud in *Yevamot* 106a recounts the story of a childless widow (*yevama*) who was hesitant to undergo levirate marriage to her brother-in-law (*yavam*) for fear that he was interested only in her money. In order to outsmart the brother-in-law, R. Hiyya bar Abba told the *yavam*: “*Halots la, u-vekhakh ata konea* (perform levirate divorce, and thereby you will marry her).” While R. Hiyya’s reasons for lying were noble, even laudatory, this was a willful misrepresentation of halakha. Interestingly, *Yam Shel Shelomo, Yevamot*, sec. 12, nos. 30 and 31, discusses this story, including the issue of lying, but does not raise the question of *ziyyuf haTorah*. Note, however, that Maharshal may distinguish between misrepresenting the permissibility or prohibition of an action, and misrepresenting the result and/or effect of a given action. There was nothing prohibited in R. Hiyya’s advising the *yavam* to do *halitsa*; the only *ziyyuf* here was about its consequence, i.e., whether *halitsa* can effect marriage.

(h) In the famous story recorded in *Gittin* 56a, Bar Kamtsa, in vengeful spite, maimed an animal sent to the Temple by the Caesar of Rome, rendering it forbidden to sacrifice. For fear of retribution from the Roman Empire, the rabbis wanted to sacrifice the animal anyway. R. Zekhariah ben Abkulas, however, prevented this by arguing that such an action might lead people to conclude that maimed animals are eligible as sacrifices. The rabbis then wanted to kill Bar Kamtsa as a pursuer (*rodef*); however, again R. Zekhariah cautioned that people might say that anyone who maims a sacrifice is liable for the death penalty. The Talmud closes with the words of R. Yohanan: that R. Zekhariah’s overly pious concerns resulted in the destruction of the Second Temple.

Contrary to the view of R. J. D. Bleich, note 123, nearly all the commentaries (*vide infra*) on this story indicate that life and death considerations should have guided the rabbis to both sacrifice the maimed animal and/or kill Bar Kamtsa—irrespective of any misrepresentation of halakha that might have occurred as a result. On *Gittin* 56a, see the following commentaries: R. Jacob Emden; R. Zvi Hirsch Chajes; R. Meir Schiff; R. Samuel Eliezer Edels (Maharsha); R. Jacob Reisher, *Iyyun Ya'akov*; R. Moses Sofer, *Hiddushei Hatam Sofer*; R. Hayyim Joseph David Azulai, *Petakh Einayyim*; R. Joseph Hayyim, *Ben Yehoyada*. In addition, see R. Elijah of Vilna, *Divrei Eliyahu*, *Parshat Mishpatim*, s.v. “Lo tihey”; R. Zev Einhorn, *Pirush Maharzu*, *Eikha Rabba* 4:3; *Resp. Benei Vanim*, I, *Ma'amar* 5.

(i) *Gittin* 62a indicates that in order to prevent an *am ha-arets* from defiling the ritual purity of *halla*, one is permitted to lie to the *am ha-arets* and state, “See here, if you touch the *halla*, your dough will return to a status of *tevel*.”

(j) *Bava Kama* 30b discusses instances where someone causes damage with belongings left in a public thoroughfare. According to one view, these effects are legally forfeit, and whoever takes physical possession of them first can take legal ownership. Nevertheless, the Jewish court, if asked, will counsel against such action, “because of theft” (*halakha ve-ein morin kein mi-shum gezul*). Meiri understands the latter to mean that the court forbids such seizures—though actually permitted in the present case—because they might be viewed as giving license to theft (*mi-shum tikun olam*). Rashi (s.v. “*he-halakha*”), however, indicates that the court counsels against such action “by stating that it is forbidden because it constitutes theft.” *Prima facie*, this seems to be a clear violation of *ziyyuf haTorah*.

(k) According to Rivan, cited by *Tosafot*, *Bava Metsia* 109b, s.v. “*Me-salkinan*” (the relevant talmudic discussion is actually found on 109a) and *Tosafot haRosh*, *Bava Metsia* 109a, s.v. “*Me-salki le-bu*,” R. Yosef lied regarding the rights of a gardener’s heirs to a share in capital gains in order to force them to accept his “generous” settlement offer without objection. See also R. Samuel Shtarshon, *ad loc.*; *Be’ur haGra* to *H.M.* sec. 329, no. 1.

(l) The *Mishna* in *Keritot* (1:7; 8a) records that R. Simeon ben Gamliel knowingly misrepresented the law by ruling incorrectly and leniently in order to lower the market price of sacrificial turtledoves. R. Israel Yacov Fisher, comment 10 of his approbation to R. Jacob Yehizkiyah Fisch, *Titen Emet leYa'akov* (Jerusalem, 1982), indicates that such misrepresentation was permitted since its purpose was to prevent future

violations. It should be noted, however, that the classic commentaries *ad loc.*, Rashi and Rabbis Ovadiah Bartenura, Yisrael Lipschitz (*Tiferet Yisrael*) and Pinhas Kehati, all suggest that this was a *hora'at sha'a* (a temporary abrogation or change of the law), effected by the authority of the leading scholar of the generation, and hence was not misrepresentation. *Vide infra*, Addendum, Part 4i.

(m) Nahmanides records his stating during the disputation at Barcelona that one is not bound by comments and interpretations found in *Aggada* and *Midrash*; see Moses ben Nahman, *Viku'ah haRamban*, in *Kol Kitvei haRamban*, R. Chaim D. Chavel, ed. (Jerusalem: *Mossad haRav Kook*, 1963), I, pp. 302-320). The late nineteenth century Russian Rabbi, Moses Eliasberg, *Shevil haZahav*, p. 27 (cited in R. Chavel’s notes to *Kol Kitvei haRamban*, *ibid.*, p. 308, s.v. “*sheAdam magid le-haveiro*”) suggests that Ramban consciously lied under pressure. Whether he did or not is a topic of much heated discussion (see Marvin Fox, “Nahmanides on the Status of Aggadat,” *J. of Jewish Studies* 40:1, Spring 1989, pp. 95-109, and sources cited therein). In any case, according to R. Eliasberg’s view, Ramban clearly misrepresented Jewish tradition, which, according to Maharshah, should have been grounds for martyrdom.

(n) Napoleon Bonaparte placed twelve queries before The Assembly of Jewish Notables, which included the outstanding talmudic scholar, R. David Sinzheim. Their responses, particularly regarding usury and intermarriage, were conscious misrepresentations of Jewish law, perpetrated because of the fear of reprisals. See Tama Diogene, “*Collection des Ecrits et des Actes Relatifs au Dernier Etat des Individus Professant la Religion Hebraïque*,” Contemporary English Translation and edition by F.D. Kirwan, 1807; Barukh Mevorakh, “*Napoleon uTkufato*,” (Jerusalem: Mosad Bialik, 5728), p. 77 ff. In particular, compare the halakhic answers of R. Ishmael of Modena (*ibid.*, p. 103 ff.) with those of the Assembly. See also R. Natan Raphael Auerbach, “*Toledot haRid Sinzheim*,” which appears in the introduction to R. Sinzheim’s “*Minhat Ani*” (Jerusalem: Machon Yerushalayim, 5748), I.

(o) In *Resp. Tsits Eliezer*, XIV, sec. 99, R. Eliezer Waldenberg permits a judge to willfully distort halakha and rule improperly in order to save his life (“*mutar le-hatot et ha-din bi-mkom piku'ah nefesh*”). Surprisingly, R. Waldenberg makes no mention of the view of *Tam Shel Shelomo*. See, however, R. Abraham Drori and R. Judah David Bleich, note 123.

(p) As discussed above, Addendum, Part 2, it is unlikely that Rabbenu Jonah agrees with Maharshah’s position on *ziyyuf haTorah*.

PART 4: EXAMPLES OF PROHIBITIONS BASED ON PUBLIC POLICY CONSIDERATIONS.

As discussed above, text at note 226, rabbinic authorities are empowered to forbid otherwise permitted actions or innovations because of public policy considerations. Such prohibitions commonly appear in the halakhic literature under the general rubric of *le-mi-gdar milta* (protective ordinances). Several leading references are cited in note 226. The following is a list of examples culled from the Talmud, codes and responsa literature.

(a) Brief citations from Talmud and codes: *Hullin* 15a (where Rav was publicly stringent regarding food cooked on *Shabbat* but lenient for his students); *Shabbat* 139a (where the rabbis refused to reveal grounds for leniency in spreading a bed canopy—see R. Hananel *ad loc.*); *Shabbat* 153b (where the rabbis were publicly stringent regarding carrying in a public domain in segments of less than 4 cubits); *Bava Kama* 30b (where the court, if consulted, counsels against taking possession of a forfeit object on the grounds of theft—see Addendum, Part 3j); and *Avoda Zara* 59a (where R. Yohanan forbade the unlearned to eat lupines [*turmisin*] cooked by non-Jews). Similarly, *Rama*, O.H. sec. 317, no. 3, forbids opening a non-permanent stitch in front of the unlearned. See also *Rama*, Y.D. sec. 160, no. 16; Shakh, *ad loc.*, no. 22; *Resp. Rashba*, I, sec. 98.

(b) In a lengthy letter to his relative, Rabbeinu Jonah of Gerondi, Nahmanides (*Teshuvot ha-meYuhosot leRamban*, no. 184) argues in favor of the permissibility of concubines. Nevertheless, he concludes his responsum by admonishing Rabbeinu Jonah not to permit the practice for fear that the laws of *Nidda* would not be observed and promiscuity would be encouraged. Cf. R. Jacob Emden, *She'eilat Ya'aveits*, II, sec. 15, and Getsel Ellinson, *Non-Halachic Marriage* (Tel-Aviv: The Dvir Co. Ltd., 1975), pp. 72-79, who questions the authenticity of this concluding reservation.

(c) R. Yair Bachrach, *Resp. Havvyot Ta'ir*, no. 222, ruled against the recitation of *kaddish* by a daughter, lest it weaken the customs of Israel. See also text and notes 280-283, *supra*.

(d) In a letter appearing in the introduction to *Talkot Yosef*, VII, R. Ovadiah Yosef suggests that although a mourner is permitted to dance at his own wedding, R. Jacob Ettlinger, *Biyan Tsiyyon*, sec. 139, forbade dancing, lest mixed dancing would result. A similar understanding is suggested by R. Gavriel Zinner, *Nitei Gavriel—Hilkhot Aveilut: Dinei uMinhagei Hishatfut beSimha*, page 29, note 21. See discussion, Addendum, Part 6.

(e) R. Yehezkel Abramsky, *HaPardes* 30:l (5716), pp. 1-4, reprinted in the introduction to *Resp. Tsits Eliezer*, IV, and again in his *Sefer Hazon Yehezkel*, III, Responsa, sec. 5, in a letter to the then President of the Union of Orthodox Rabbis of the United States and Canada (Agudath HaRabbonim), R. Israel haLevi Rosenberg, demonstrates that gelatin is permitted. He nevertheless maintains that it should be publicly prohibited since its non-kosher origins will confuse the unlearned.

(f) Late Chief Rabbi Isaac haLevi Herzog, *Resp. Heikhal Yitshak*, O.H. sec. 4, rpt. in *Pe'anim uKhtavim* I, *She'eilot uTshuvot beDinei O.H.*, sec. 14, urged the South African community not to change its Hebrew pronunciation—despite solid halakhic grounds to do so—for fear of playing into the hands of Reform Jewry.

(g) The late Chief Rabbi of Rehovot, R. Elimelech Bar-Shaul, indicates that a Torah reading with *berakhot* is halakhically permissible on *Yom haAtsma'ut*. He nevertheless opposes it lest some view the new holiday as a *bona fide Yom Tov* and not put on *tefillin*. See R. Elimelech Bar-Sha'ul, in *Hilkhot Yom haAtsma'ut veYom Yerushalayim*, Nahum Rakover, ed. (Jerusalem: *Misrad haDatot*, 5733), p. 310.

(h) *Taz*, O.H. sec. 585, no. 5, Y.D. sec. 117, no. 1, and *H.M.* sec. 2 (at end) maintains that one cannot forbid that which the Torah has explicitly permitted. See also R. David Cohen, *Gevul Ta'aveits* (Brooklyn, NY: Mesorah Publications Ltd., 1986), "Kuntres Heter Me-furash baKatur," pp. 70-111. Nevertheless, R. Aron Maged, *Sefer Beit Aharon*, VIII, s.v. "Ein le-ha-bakhamim la-asor davar ha-me-furash ba-Torah," sec. 27, pp. 158-160, cites many sources demonstrating that even where the Torah explicitly permits an action, the rabbis can forbid it *le-mi-gdar milta ve-tsorekh ha-sha'a*.

(i) According to R. Israel Yacov Fisher, in comment 10 of his approbation to *Titen Emet leYa'akov*, the incident of *Keritut* 8a (see Addendum, Part 3l) suggests that in extreme situations, one may rule leniently against accepted halakha for the purpose of preventing future violations (*le-mi-gdar milta le-heteira*). This also seems to be the view of several commentators regarding the incident of R. Hanina and the two young Babylonian scholars (*Berakhot* 63a; see Addendum, Part 3d). See R. Menahem Azariah de Fano, *Resp. Rama miFano*, end of sec. 108, s.v. "*ve-anashnu*"; R. Samuel Eliezer Edels, *Hidushei haMaharsha Berakhot* 63a; R. Hayyim Palagi, *Hafets Hayyim*, sec. 19, no. 22; R. Hayyim ben Atar, *Heifets Hashem*, *Berakhot* 63a; and R. Jonathan Shteif, *Hadashim Gam Yeshanim*, *Berakhot* 63a, second interpretation. Rosh, cited in *Shita Mekubetset* to *Bava Batra* 166b, seems to differ. R.

Joel Teitelbaum (of Satmar), *Resp. Divrei Yoel*, Y.D. sec. 35, no. 4, argues that today we do not have the power of *le-mi-gdar milta le-beiteira*. R. Fisher does not take note of the fact that, regarding both the cases of *Berakhot* and *Keritut*, some commentaries, *ad loc.*, indicate that these were examples of *hora'at sha'a* (a temporary abrogation or change of the law) presumably effected by the authority of the *Sanhedrin* or the leading scholar of the generation and, hence, cannot serve as precedents for normative halakhic procedure. See, for example, R. Jonathan Shteiff, *Hadashim Gam Yeshanim*, *Berakhot* 63a, first interpretation; R. Jacob Schor, *Mishnat Ya'akov*, *Birkat Ya'akov*, *Berakhot* 63a; *Rashi*, *Keritut* 8a, s.v. "Nikkmas le-beit din"; Rabbi Ovadiah Bartenura, *Yisrael Lipschitz (Tiferet Yisrael)* and Pinhas Kehati, *Mishna Keritut* 1:7; R. Moses Ibn Habib, *Kapot Temarim*, *Sukka* 34b, s.v. "Tosafot, d'h ve-li-drosh"; R. Avigdor Kohlen Zedek, cited by R. Zidkiyahu ben Abraham, *Shibbolei haLeket*, *Hilkhot Lulav*, sec. 355; and *Sefer Beit Aharon*, *supra*, Addendum, Part 3b, sec. 26, pp. 438ff. A similar approach is suggested by R. Barukh Frankel Te'omim, *Resp. Ateret Hakhamim*, E.H. sec. 29, in explaining *Seder Eliyahu Rabba* of *Tanna deVei Eliyahu* 4:1, where Moses attributes the command to kill the worshipers of the Golden Calf to God (*Exodus* 32:27), when in fact it was his own idea. (Regarding *Tanna deVei Eliyahu*, see also R. Reuben Margaliot, *Margaliyyot haYam*, *Sanhedrin* 89a, sec. 23.) Moreover, R. Jacob Ettlinger, *Arukh leNer*, *Sukkot* 34b, s.v. "*Sham, d'h ve-li-drosh*," indicates that such a *hora'at sha'a*—permitting the forbidden in order to prevent future violations—may be invoked only if the possible future violations are extremely serious, like those punishable by *karet*. R. Jacob Schor, *Mishnat Ya'akov*, *Birkat Ya'akov* (Jerusalem: Mossad HaRav Kook, 1990), *Berakhot* 63a (see Addendum, Part 3d), allows such a *hora'at sha'a* only where the unity of *kelal Yisrael* is seriously threatened.

(j) An interesting example is the requirement to locate the *bima* in the center of the *shul*. R. Moses Feinstein, *Resp. Igrot Moshe*, O.H., II, sec. 42, argues that R. Moses Sofer's stringency in this matter stemmed from his fear of Reform influences and was a case of *le-mi-gdar milta*. Where the desire to move the *bima* stems from other practical considerations (e.g., acoustics), it is permitted. In other words, where the concern is no longer valid, the *geder* is no longer applicable.

(k) The Late Chief Rabbi Isaac Herzog, *Pesakim uKhtavim* I, *She'eilot uTshuvot beDinei Orah Hayyim*, sec. 32, argues that in theory, there are grounds to permit accepting a bequest from an apostate towards the construction of a synagogue. Nevertheless, R. Herzog leaves it up to the discretion of the local rabbi to forbid it in practice

because of *mi-gdar milta*, lest the publicity of the receipt of such a donation ease the way to other acts of apostasy.

(l) See also *Resp. Maharash Mohliver*, sec. 6, s.v. "*Hen emet*"; *Nefesh haRav*, p. 180.

PART 5: RULING THAT SOMETHING IS BIBLICALLY FORBIDDEN, WHEN IT IS NOT, MAY VIOLATE *BAL TOSIF* (ADDING TO THE TORAH). As mentioned in note 227, based on *bal tosif*, Maimonides forbids claiming that something is biblically forbidden when it is actually rabbinic in origin. In *M.T.*, *Hilkhot Mamrim*, 2:9, he writes: "If the [court] forbids fowl [seethed in milk], claiming that it is included in 'goat' and is forbidden biblically, this is an addition. However, if it said that goat flesh is biblically permitted, but we forbid it and we notify the people that it is a [rabbinic] edict . . . this is not an addition . . ." Ra'avad, *ad loc.*, dissents, arguing that biblical verses are often cited in the Talmud as source texts for rabbinic prohibitions. See *Kesef Mishne* and *Lehem Mishne*. R. Joseph B. Soloveitchik, *Reshimot Shiurim*, R. Zvi Joseph Reichman, ed. [New York, 5749], *Sukka* 31b, p. 144, no. 8, s.v. "*beIsur*" and *Reshimot Shiurim*, R. Zvi Joseph Reichman, ed. [New York, 5753], *Nedarim*, p. 182, no. 5, s.v. "*veHinei aleinu*," and R. Yehuda Herzl Henkin, *Resp. Benei Vanim*, I, sec. 37, no. 12, suggest that Maimonides' prohibition applies exclusively to the Jewish court or *Sanhedrin*, but not to the individual *posek*. The vast majority of commentators who discuss Rambam's view seem to disagree, however. For example, *Hinukh*, Commandment 454 (465 in the Chavel edition), cites Maimonides' ruling as referring to any teacher or decisor of Jewish law ("*more*"), not just the court. [R. Yehuda Herzl Henkin (personal communication, June 5, 1997) has suggested that the above decision of *Hinukh* may be connected with his subsequent ruling (Commandment 496) that the biblical obligation to heed rabbinic edicts (*lo tasur*) applies to rulings of the great scholars of any generation, not just those of the *Sanhedrin*; see *Resp. Benei Vanim*, II, sec. 23, no 5, pp. 90-91.] Similarly, R. Elijah Zev Rosenberg, *Kiryat Sefer*, *Mamrim*, Chapter 2, *Azbara* 345, paraphrases Maimonides ruling using the singular (while the plural is used in the previous paragraph, which deals with the *Sanhedrin*). Other scholars agree with this latter understanding of Maimonides; see R. Jacob Ibn Forno, cited in *Birkei Yosef*, O.H. sec. 243 at end; R. Zevi Hirsch Chajes, *Darkei Hora'a*, sec. 6, first footnote, and in greater detail in *Torat haNevi'im*, *Ma'amar Bal Tosif*; R. Chaim Soloveitchik of Brisk, cited in *Nefesh haRav*, p. 177; R. Joseph Babad, *Minhat Hinukh*, 454, end of no. 1; R. Joseph Elijah Henkin,

Teshuvot Ivra, sec. 52, no. 3 (in *Kitvei haGri Henkin*, II); R. Joshua Menahem Mendel Ehrenberg; *Resp. Devar Yehoshua*, I, sec. 19, no. 6; and R. David Cohen, conversation with Aryeh A. Frimer and Dov I. Frimer, March 20, 1995. Interestingly, R. Chaim Soloveitchik, *ibid.*, maintains that according to Rambam, *ba'al tosfif* would forbid a *posek* even from treating a custom or rabbinic injunction with the same stringency as one would a biblical prohibition.

R. Moses ben Nahman (Nahmanides), end of commentary to *Deut.* 4:2, and R. Hizkiyah ben Manoah, *Hizkuni*, *Genesis* 3:3, while not referring to Maimonides explicitly, clearly apply *bal tosfif* to an individual who claims that an action was commanded by God (in the Torah) when it was not. Nahmanides writes [Chavel translation]: "In my opinion, even if someone devised an independent commandment . . . he transgresses . . . [The prohibition of not adding to the Torah does not forbid] whatever [laws] the sages have established in the way of a fence around the Torah, such as the secondary degrees of forbidden marriages—that activity of [establishing fences] is itself a requirement of the Torah, provided only that one realizes that these [laws] are a result of a particular fence and that they are not expressly from the mouth of the Holy One, Blessed be He, in the Torah." Cf., however, Nahmanides' comments on Maimonides' *Sefer haMitsvot, Shoresh Rishon*, s.v. "*ba'Rishona*," where he states, "First, because it is customary for rabbis to refer to rabbinic matters as 'Torah' and strengthen them with biblical citations." Nevertheless, this may have been done only when it was common knowledge that the ordinances were in fact rabbinic. See also the related comments of R. Joseph B. Soloveitchik, *supra*.

R. Hizkiyah ben Manoah, *Hizkuni*, *ibid.*, commenting on Eve's statement that God forbade even touching the tree of knowledge, cites the Talmud, *Sanhedrin* 29a, which describes this incident as an example of "he who adds detracts" (*kol ha-mosif gore'a*). R. Hizkiyah is troubled by the Talmud's criticism: after all, in what way is Eve's safeguard any different from subsequent rabbinic *gezeirot*? He suggests that Eve sinned in falsely attributing the source of the prohibition to the divine. This approach is, of course, in consonance with the view of Maimonides cited above. In fact, R. Joseph Babad, *Minhat Hinukh*, *ibid.*, actually cites *Sanhedrin* 29a as proof to the view of Maimonides. R. Reuven Margoliot, *Margaliyot haTam*, *Sanhedrin* 29a, no. 29 also suggests that *Sanhedrin* 29a supports Maimonides' position, but cites *Avot deRabi Natan*, chap. I, sec. 5 which indicates that it was Adam—not Eve—who erred. See also R. Hayyim Joseph David Azulai, *Kisei Ra-*

hamin, *Avot deRav Natan*, *ibid.*, *perush*, s.v. *Adam ha-rishon* and R. Menahem Kasher, *Torah Sheleima*, *Genesis* 3:3, nos. 13-15.

Additional *posekim* argue that it is forbidden to call a rabbinic edict a biblical prohibition because it violates *bal tosfif*. See R. Zvi Hirsch Chajes, *ibid.*; R. Jacob Ibn Forno, *ibid.*; and R. Joseph Elijah Henkin, *ibid.* In *Darkei Hora'a*, *ibid.*, R. Chajes specifically takes issue with the contention of R. Moses Sofer (responsum to R. Chajes published in *Darkei Hora'a*, *ibid.* and surprisingly absent from *Resp. Hatam Sofer*) that one may "strengthen" a biblical prohibition which is based only upon a negative commandment by claiming that it also violates a positive commandment. Other authorities, though, agree with *Hatam Sofer* provided there will be no practical halakhic consequence (e.g., no new obligation of lashes). Under such conditions, these scholars maintain that one may even upgrade a rabbinic prohibition to a biblical one. See *Resp. Rashba*, I, sec. 43; the commentary of R. Elijah Mizrahi to *Exodus* 12:16, s.v. "*Afilu al yedei aherim*" at end; R. Moses haKohen Ashkenazi, cited in *Birkei Tosef*, *ibid.*; *Taharat haMayyim*, *Ma'arekhet Het*, no. 42; R. Aron Maged, *Sefer Beit Aharon*, VII, s.v. "*Ein la-asor ha-mutar*," sec. 4, pp. 576-577. However, should a new obligation of lashes result from the upgrading, then *bal tosfif* has been violated. See *Sedei Hemed*, *Pe'at haSade*, *Ma'arekhet haAleph*, no. 75. We note in passing that R. Sofer's position is somewhat surprising in light of his own strong stance elsewhere against all forms of lying. See *Resp. Hatam Sofer*, VI, sec. 59. Even in cases where the lying is permitted to maintain peace ("*me-shanin mi-penei ha-shalom*," *Tevamot* 65b), R. Sofer, citing the commentary of Nahmanides to *Genesis* 18:13, allows only 'halving' truths, not outright lying. Cf. Addendum, Part 6.

PART 6: MISREPRESENTING HALAKHA MAY VIOLATE THE PROHIBITION OF LYING.

The issue of lying has arisen at several points in this paper, in particular with reference to *ziyyuf haTorah* and misrepresentation of halakha; see text at notes 124 and 228. For general halakhic discussions of the prohibition of lying and possible exceptions, see R. Hayyim Palagi, *He-Hafeits Hayyim*, sec. 19, "*Devar Emet*"; R. Jacob Yehizkiyah Fisch, *Titen Emet leYa'akov* (Jerusalem, 1982); R. Nahum Yavruv, *Niv Sefatayyim* (Jerusalem, 1989); R. Chaim Kanievsky, *Si'ah haSade*, *Orhot Hayyim* (by R. Asher), *LeYom Rishon*, sec. 3, *HaSham Orhotav*, note 3; and R. Chaim Kanievsky, *Mashekhet Kutim* 1:14, *Me-taher*, note 30; R. Aron Maged, *Sefer Beit Aharon*, III, *kelal* "*Omer Davar beShem Omra*," pp. 376-451. See also *Sedei Hemed*, *Kelalim*, *Khaf*, no. 8 and *Shin*, nos.

27-28; R. Reuben Margaliot, "*Shetika leHakhamim*," in *Askara* (volumes of remembrance to R. Abraham Isaac haKohen Kook), ed. R. Judah Leib haKohen Fishman (Maimon), III, (Jerusalem: *Mossad haRav Kook*, 5749), pp. 211-220—reprinted in R. Reuben Margaliot, "*Mehkarim beDarkei haTalmud veHidotav*" (Jerusalem: *Mossad haRav Kook*, 5697), pp. 72-79; R. Haim David Halevy, "*LeShanot miPenei haShalom*," *HaTsofe*, 13 *Tevet* 5756 (January 5, 1995), p. 7; *Asei Lekha Rav*, IV, sec. 62; R. Israel Meir Lau, "*Emet ve'el Emet—Mi-penei Darkei Shalom*," *Torah she-be'Al Pe* 21 (5740) pp. 88-100; *Avinu Moreinu* R. Norman E. Frimer, "A Midrash on Morality, or When is a Lie Permissible," *Tradition* 13:4 and 14:1 (Spring-Summer 1973), pp. 23-34—reprinted in *A Jewish Quest for Religious Meaning* (Hoboken, New Jersey: Ktav Publishing Company, 1993), pp. 95-106; R. Jack Simcha Cohen, "Halakhic Parameters of Truth," *Tradition* 16:3 (Spring 1977), pp. 83-97; Mark Dratch, "Nothing but the Truth," *Judaism* 37:2 (Spring 1988), pp. 218-228; R. Ari Zivifotsky, "Perspectives on Truthfulness in the Jewish Tradition," *Judaism* 42:3 (Summer 1993), pp. 267-288; R. Shimon Krasser, *Nahalat Shimon, Samuel* I, part 2, sec. 32, no. 2, par. 6-11. For a list of examples of lying in Talmudic literature—for a variety of reasons, see *Resp. Torah liShma*, secs. 364 and 371; Gloss of Rabbi Solomon Mordechai on R. Nahman Kahana, *Orhot Hayyim, O.H.*, end of sec. 156, s.v. "*beMagen Avraham*."

We turn now to the particular issue raised in the text at note 228, namely, does misrepresenting halakha and/or giving an erroneous reason or source for a prohibition involve violation of the prohibition against lying? R. Zvi Hirsch Chajes, *Darkei Hora'a, siman* 6, first footnote, argues that it is forbidden to call a rabbinic edict a biblical prohibition because it violates not only *bal tosf* (see Addendum, Part 5) but also "*mi-dvar sheker tirhak*"—"From untruthfulness, distance thyself" (*Exodus* 23:7). This is also the opinion of R. Chaim Soloveitchik of Brisk, cited in *Nefesh haRav*, p.178. R. Soloveitchik maintains that even Ra'avad (note 227 and Addendum, Part 5) agrees that "*mi-dvar sheker tirhak*" forbids the rabbis to claim that a rabbinic injunction is biblical. Accordingly, Rambam and Ra'avad disagree only whether it is permitted to be as stringent when dealing with a custom or rabbinic injunction as one would be were the prohibition biblical. R. Jacob Israel Kanievsky, *Ke-raina deLigarta*, letter 203, pp. 219-220, refuting the suggestion that it is forbidden to take part in elections in the secular State of Israel, writes: "... And your Honor should know that even to be zealous, it is forbidden to teach Torah not according to the halakha (*Avot* V:8), and that which is not true will not succeed at all." (Regarding the citation from

Avot V:8, see note 232.) In an as-yet unpublished responsum to Aryeh A. Frimer, dated 7 *Shevat* 5756, Rabbi Haim David Halevy prohibits a *posek* from misrepresenting halakha and/or giving an erroneous reason for a prohibition for two basic reasons: (1) the biblical prohibition of "*mi-dvar sheker tirhak*" and (2) a total loss of trust in rabbinic authority would result should the truth become known (see note 231). See also the related opinions of Rabbis Ehrenberg, Rogeler and Sobel cited below.

Several *posekim* dissent, arguing, on various grounds, that "*mi-dvar sheker tirhak*" is not applicable to cases where halakha is misrepresented so as to prevent future violations of Jewish law. Some argue that the dispensation to modify the truth in order to maintain peace (*me-shanim mi-penei ha-shalom, Yevamot* 65b) also applies to misrepresenting halakha in order to maintain peace between *kelal Yisrael* and the Almighty (cf. end of Addendum, Part 5 and note 231). See R. Solomon Ephraim, *Keli Yakar, Deut.* 17:11, s.v. "*Lo tasur*" at end; R. Samuel Kalai, *Resp. Mishpetei Shemuel*, sec. 120, p. 157—cited by R. Hayyim Palagi, *HeHafeits Hayyim*, sec. 19, no. 30; R. Barukh Frankel Te'omim, *Resp. Ateret Hakhamim, E.H.* sec. 29; *Resp. Torah liShma*, sec. 371; R. Yehuda Herzl Henkin, *Resp. Benei Vanim* I, sec. 37, no. 12; *Niv Sefatayyim*, part 1, *helek* 3, sec. 3 and part 2, *helek* 3, sec. 3, citing *Gittin* 62a (see Addendum, Part 3i); R. Israel Yacov Fisher (Addendum, Part 3l and Part 4l). In a conversation with Aryeh A. Frimer and Noah Dear (March 8, 1996), Rabbi Zelig Epstein indicated that *mi-dvar sheker tirhak* refers to lying in court. Similarly, R. Chaim Kanievsky, *Masekhet Kutim*, 1:14, *Me-taher*, note 30, and conversation with Aryeh A. Frimer (February 20, 1995), maintains that if a *posek* believes an action should be prohibited because of *mi-gdar milta*, he may misrepresent the reason for or source of a prohibition; since there will be no change in the legal outcome, *mi-dvar sheker tirhak* does not apply. This may also be the opinion of R. Ovadiah Yosef, introduction to *Talkot Yosef*, VII, and R. Gavriel Zinner, *Nitei Gavriel—Hikhot Aveilut: Dinei uMinhagei Hishtafut beSimha*, p. 29, note 21 (see also Addendum Part 4d), who argue that R. Jacob Ettlinger, *Binyan Tsiyyon*, sec. 139, forbade a mourner to dance at his own wedding—even though it was after *sheloshim* and clearly permitted—lest mixed dancing result. According to R. Yosef and R. Zinner, R. Ettlinger purposely gave the wrong reason for the prohibition because people tend to be much more careful about the laws of mourning than they are regarding mixed dancing.

R. Joshua Menahem Mendel Ehrenberg, *Resp. Devar Yehoshua*, I, *addendum* to sec. 19, no. 6 (see also V, *T.D.* sec. 12), demonstrates, however, that the consensus of *posekim* is that *mi-dvar sheker tirhak* ap-

plies in *all* cases, even if it is intended to promote a religious purpose (*ve-afilu li-dvar mitsvah*). See also *Niv Sefatayyim*, *ibid.*, *kelal* 1. Similarly, R. Elijah Rogeler, *Resp. Yad Eliyahu*, sec. 61 and 62, chastises a colleague for lying in a decision, even though his intentions were noble. R. Solomon Sobel, *Salma Hadasha, Mahadura Tinyana, Haftarat Tole-dot* (cited in *Titen Emet leYa'akov*, *ibid.*, sec. 5, no. 36), explicitly states that *me-shanim mi-penei ha-shalom* only allows one to change the facts, not the halakha. Both R. Jacob Ettlinger, *Arukh leNer*, *Yevamot* 65b, s.v. “*she-Ne’emar avikha tsiva*” and “*Ko tomeru leYosef*,” and R. Reuben Margaliot, *Kunteres Hasdei Olam*, sec. 1061, at the end of his edition of *Sefer Hasidim* (Mossad haRav Kook: Jerusalem, 5724), maintain that *me-shanim mi-penei ha-shalom* allows one only to obfuscate by using language which can be understood in different ways, but not to lie; hence, misrepresenting halakhic reasons or sources would also be forbidden.

Relevant to our discussion is the case recorded in the Talmud in *Sukka* 34b. In an attempt to drive down prices on whole *hadassim*, the *amora* Samuel threatened to publicize as accepted law the lenient ruling of R. Tarfon, who allowed the use of *hadassim ketumim* (myrtles whose tops had been chopped off). This, despite the fact that in reality Samuel maintained that R. Tarfon’s opinion was not the halakha. Ritva, *ad loc.*, s.v. “*Mai ta’ama*” (authorship is sometimes erroneously attributed to Rashba) reinterprets the case because he refuses to accept that Samuel would lie, even though it was clearly *li-dvar mitsvah*. Regarding the misrepresentations of halakha described in *Be’erhot* 63a and *Keritut* 8a, see Addendum, Part 4i. See also *Hiddushei Hatam Sofer*, *Sukka*, *ad loc.*, who equates the case in *Sukka* 34b with that in *Keritut* 8a, suggesting that both were *hora’ot sha’a* and, hence not normative Judaism.

Another interesting example of misrepresentation is described by the Talmud, *Menahot* 36b. Rav Ashi is reported to have worn *tefillin* at night, contrary to normative halakha. When his student, Ravina, asked whether the rationale for this action was Rav Ashi’s interest in keeping the *tefillin* safe, the latter responded in the affirmative. Nevertheless, Ravina indicates that this was in fact *not* Rav Ashi’s true rationale, but rather that the *mitsvah* of *tefillin* continues into the night. *Be’ur Halakha* to O.H. sec. 30, no. 2, s.v. “*ve-ni-mtse’in*,” indicates that this is an example of *halakha ve-ein morin kein*. Rav Ashi’s misrepresentation was halakhically mandated, lest others follow his actions, put on *tefillin*, and fall asleep with them on. Note, however, that the above case is not a clear precedent for misrepresenting the rationale in cases of *mi-gdar milta*, for while Rav Ashi misrepresented the true reason for his action, the false reason was also valid and applicable.

Our final example appears in *Mishna Avoda Zara* (11:5; 29b; see also discussion on 35a). On being questioned by R. Ishmael as to the grounds for the prohibition on non-Jewish cheeses, R. Joshua presented several reasons which proved untenable upon analysis. The commentaries *ad loc.* make clear that R. Joshua was attempting to hide the true reason for the edict. From the talmudic discussion (*ibid.*, 35a), it would seem that R. Joshua’s misrepresentation was halakhically mandated, lest the rabbinic decree become undermined. Interestingly, R. Solomon ben Aderet, *Resp. Rashba*, I, sec. 43 argues that R. Joshua knowingly suggested that non-Jewish cheeses were biblically forbidden when he knew full well that they were prohibited merely by rabbinic decree. This case might well serve, then, as a precedent for misrepresenting the rationale, even upgrading the prohibition, in cases of *mi-gdar milta*. Nevertheless, R. Moses Sofer, *Hiddushei Hatam Sofer* (Makhon Hatam Sofer, Jerusalem: 5736), *Avoda Zara* 29b, s.v. “*Amar R. Yehuda*” (also appears in *Derashot Hatam Sofer*, I, 78a, s.v. “*Ita baMishna*”) notes that the aforementioned *Mishna* surprisingly informs us that this discussion between R. Ishmael and R. Joshua occurred on the road. R. Sofer argues that R. Joshua misrepresented the rationale, specifically citing a biblical source, in order to cut highway discussion short and thereby prevent a potentially dangerous situation.

Some codifiers have suggested that in order to assure the acceptance of his decision, a decisor may falsely attribute his ruling to someone greater than he, provided he is absolutely convinced of its correctness. This is known in the halakhic literature as “*le-bi-talot be-ilan gadol*” (*Eruvin* 51a; *Pesahim* 112a). See *Magen Avraham*, O.H. sec. 156, no. 2; *Tosafot Yom Tov* and *Tiferet Yisrael*, *Boaz*, no. 2 to *Avot* 5:2 s.v. “*veAl ma she-lo shama shamati*”; *Birkei Yosef*, Y.D. sec. 242, no. 29; *Sefer Beit Aharon*, IX, “*Im bikashta lei-hanek, hi-tale be-ilan gadol*,” pp. 606-607, and *supra*, Addendum, Part 3b; *Niv Sefatayyim*, *kelal* 7; R. Abraham David Horowitz, *Resp. Kinyan Torah beHalakha*, VII, Y.D. sec. 74; R. Ovadia Yosef, *Me’or Yisrael*, II, *Eruvin* 51a; R. Aryeh Kaplan, “The Structure of Jewish Law,” *The Aryeh Kaplan Reader* (New York: Mesorah Publications, 1983), pp. 211-224—see especially p. 217 and footnote 105. R. Moses Jehiel Weiss, *Beit Yehzekel*, p. 75, suggests that this is permitted only to prevent others from sinning. In any case, this does not necessarily mean that it is permitted to lie about the reasons for the ruling, merely its attribution. (This distinction is, of course, rejected by the *posekim* cited above who argue that the dispensation to modify the truth in order to maintain peace applies to misrepresenting halakha).

NOTES

1. Portions of this paper were presented by Aryeh A. Frimer at the eighth and ninth annual Purim Frimer celebrations (21 *Adar* 5745 and 5746), which commemorate the release of *Avinu Moreinu haRav* Dr. Norman E. Frimer *zt"l*, together with one hundred others, from the hands of the Hanafi terrorists after 39 hours of captivity in the B'nai Brith Building, Washington, D.C., 1977. This paper is dedicated to his memory and that of our beloved mother, *Imeinu Moraineinu haRabbanit* Esther Miriam Frimer *a"b*.

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2. R. Joseph B. Soloveitchik, "Redemption, Prayer, *Talmud Torah*," *Tradition* 17:2 (Spring 1978), p. 55.
3. For documentation of the various points raised in this paragraph, see Aryeh A. Frimer, "Women and *Minyan*," *Tradition* 23:4 (Summer 1988), pp. 54-77; Aryeh A. Frimer, "*Ma'amad al Isha beHalakha—Nashim uMinyan*," *Or haMizrah* 34:1, 2 (*Tisrei* 5746), pp. 69-86. Regarding women's exemption from *tefilla be-tzibbur*, see as well *infra*, note 85. For examples where women do count for a *minyan*, see text, *infra*, at note 128.

- 3* Regarding the growth of Torah-learning opportunities for women in the recent period, see Shoshana Pantel Zolty, "And All Your Children Shall Be Learned: Women and the Study of Torah in Jewish Law and History" (Northvale, N.J.: Jason Aronson, Inc., 1993), pp. 301-309. Two sociological studies of women's *tefilla* groups have appeared recently. See Sylvia Barack Fishman, "A Breath of Life: Feminism in the American Jewish Community" (New York: Free Press/Division of Macmillan, 1993), pp. 158-170; Sylvia Barack Fishman, "Negotiating Both Sides of the Hyphen: Coalescence, Compartmentalization and American Jewish Values" (Cincinnati, OH: Judaic Studies Program, University of Cincinnati, 1996), pp. 21-27. Unfortunately, no comparable in-depth historical study of women's prayer groups has yet appeared in print. Much of the material in this section is based on our own discussions over the past 25 years with literally hundreds of women and many rabbis throughout the United States actively involved in or associated with Orthodox women's *tefilla* groups; see also note 235, *infra*. The collection, *Daughters of the King: Women and the Synagogue*, Susan Grossman and Rivka Haut, eds. (Philadelphia, PA: The Jewish Publication Society, 1992), includes several articles and personal vignettes written by Orthodox women involved in *tefilla* groups which shed light on the question of motivation. See also Norma Bauml Joseph, "Reflections on Observing Rosh Chodesh with my Women's *Tefilla* Group," in "Celebrating the New Moon: A Rosh Chodesh Antho-

logy," Susan Berrin, ed. (Northvale, New Jersey: Jason Aronson Inc., 1996), pp. 111-116. In a Letter to the Editor, *Jerusalem Post*, July 24, 1973, Sharon L. Haselkorn discusses the motivation of the women involved in one of the first women's services held at Harvard Hillel in the Spring of 1973. The published letter is abridged, and we thank Dr. Haselkorn for sharing with us the full text of her letter, dated June 28th, 1973. In addition, the reader is referred to the letter of Joseph and Sharon Kaplan, *Sh'ma* 7/122, November 26, 1976, regarding the beginnings of the Lincoln Square Synagogue's Women's *Tefilla* Group. For a recent critique of Orthodox Feminism and Prayer Groups, see R. Nissim Wolpin and Levi Reisman, "Orthodoxy and Feminism: How Promising a Shidduch," *The Jewish Observer* 30:3 (Nissan 5757, April 1977), pp. 8-15.

4. This paper has consciously avoided a discussion of the various additional halakhic and legal issues raised by the attempt of several women's groups to hold prayer services at the Western Wall. These issues, while germane to prayer services at the *Kotel*, are not necessarily relevant to women's prayer services in general, inasmuch as they result, in large part, from the specific language of the Israeli Statute under discussion, Rule 2(a)(1a) of the Regulations for the Preservation of Jewish Holy Places (Amendment), 5750-1989 (*K.T.* [1989] no. 5237, pp. 190-191). The halakhic and legal aspects of "The Women of the Wall" (*Neshot haKotel*) issue have been reviewed at length by Israeli Supreme Court Deputy Justice R. Menahem Elon, in the High Court's recently published decision; see "*Hoffman et al. vs. The Custodian of the Western Wall, Alter et al. vs. The Minister of Religious Affairs et al.*" (1994), 48 (ii) *Piskei Din* 265. See also Eliav Shochetman, "*Minyanei Nashim baKotel*," *Tehumin* 15 (5755), pp. 161-184; Shmuel Shiloh, "*Tefillat Nashim beTzavta beRahavat haKotel*," *Tehumin* 17 (5757), pp. 160-164; Rivkah Luvitch, "*Al Tefillat Nashim*," *Tehumin* 17 (5757), pp. 165-167; Eliav Shochetman, "*Od liShe'elot Minyanei Nashim*," *Tehumin* 17 (5757), pp. 168-174. The articles of Professors Shiloh and Shochetman are based on the expert opinions they filed with the Israeli Supreme Court in the above-mentioned case on behalf of the plaintiffs and respondents, respectively. For a discussion of the events from the perspective of an Orthodox feminist, see, *inter alia*: Bonna Devorah Haberman, "*Neshot HaKotel: Women in Jerusalem Celebrate Rosh Hodesh*," in "Celebrating the New Moon: A Rosh Chodesh Anthology," Susan Berrin, ed. (Northvale, New Jersey: Jason Aronson Inc., 1996), pp. 66-77; Bonna Devorah Haberman, "Women Beyond the Wall: From Text to Praxis," *Journal of Feminist Studies in Religion* 13:1 (Spring 1997), pp. 5-34.
5. R. Shlomo Goren, responsum to Prof. Aron Siegman, dated 11 *Kislev* 5735 (November 25, 1974). The unsigned letter was typed on the official stationery of the Chief Rabbi but carries the handwritten addition at the top of the first page: *ushar, lo le-pirsum* (approved, not for publication). A position similar to that of R. Goren was proposed more than a decade earlier by R. Shalom Rubin-Halberstam and rejected both by R. Menashe Klein, *Resp. Mishne Halakhot* IV, sec. 78, in a responsum dated 29 *Heshvan* 5723 (November 26, 1962), and by R. Isaac Jacob Weiss, *Resp. Minhag Yitshak*, IX, sec. 11, no. a, in a responsum dated 2 *Tevet* 5723 (December 31, 1962).

6. See *Encyclopedia Talmudit*, II, "Isba," pp. 244-246.
7. Our use of the terminology *petura ve-osa* (exempted, yet performs), rather than *cina me-tsava ve-osa* (not commanded, yet performs), is based on Rabbeinu Tam's own formulation; see note 10, *infra*. The phraseology, "*cina me-tsava ve-osa*" with regard to women was presumably introduced by Rabbeinu Nissim of Gerondi (Ran); see *infra*, note 24. For an analysis of the nature of women's exemption from time-bound commandments and the quality of their voluntary performance of such *mitsvot*, see note 23 *infra* and references cited therein.
8. Regarding *bal tosf*, see *Eruvin* 96a and commentaries *ad loc*.
9. *Berakhot* 33a; Maimonides, *Mishne Torah* (henceforth *M.T.*), *Hilkhot Berakhot* 1:15.
10. For leading references, see *Tosafot*, *Rosh haShana* 33a, s.v. "*ba*"; *Rosh*, *Ran* to *Rif*, and *Rashba* to *Rashba* haShana 33a; *Tosafot*, *Eruvin* 96a-b, s.v. "*dilma*"; *Tosafot*, *Kiddushin* 31a, s.v. "*de-lo*"; *Ritva*, *Kiddushin* 31a; R. Menahem Meiri, *Beit haBehira* (henceforth *Meiri*), *Hagiga* 17b.
11. This is provided that the benediction is recited as an expression of heavenly praise. If the recitation is totally for naught, then a biblical violation may be violated; see R. Moses Sofer, *Hiddushei Hatam Sofer*, *Ketubot* 24. Cf. Maimonides, *Teshuvot haRambam* (ed. Blau), sec. 164, who explicitly states that the prohibition of *berakha she-cina tsurikha* is biblical. See at length R. Isaac Arieli, *Einayim laMishpat*, *Berakhot* 14a (s.v. "*de-hani*") and 33a, no. 50; R. Nachum L. Rabinovitch, *Yad Peshuta*, *Hilkhot Berakhot*, 1:15.
12. *Sifra*, *Parsheta* 2; *Hagiga* 16b.
13. R. Menahem Mendel Schwimmer, *Birkhot haMitsvot keTikunan*, *Kunteres* 13, *Kelalei Birkhot haMitsvot*, *Kelal* 4, sec. 2c, p. 440, similarly suggests "*nahat ru'ah*" as the possible rationale for permitting women to recite benedictions when performing *mitsvot asai she-ha-zeman geramman*.
14. *M.T.*, *Hilkhot Berakhot* 5:7.
15. *M.T.*, *Hilkhot Tisat* 3:9. See also *Shulhan Arukh*, *Orah Hayyim* (henceforth *O.H.*), sec. 589, no. 6.
- 15* R. Yehuda Herzl Henkin (personal communication, June 5, 1997) has brought to our attention that the 13th century commentator, R. Meir haMe'il of Narvonna, *Sefer haMe'orot*, *Berakhot* 45a (first answer), also links women's exclusion from *zimmun beShem* with their prohibition of reciting *berakhot* when performing time-dependent commandments. As demonstrated in the next paragraph, there is no evidence from this, however, that the converse would be true, as R. Goren suggests.
16. Compare, for example, R. Jacob Barukh Landau Ashkenazi, *HaAgur*, sec. 249, vs. sec. 910. Compare *O.H.*, sec. 199, vs. sec. 589 in R. Jacob ben Asher, *Tur*; and R. Mordechai Jaffe, *Levush Malkhut*. Compare *O.H.*, sec. 199 vs. secs. 17 and 589 in R. Moses Isserles (henceforth, Rama), *Mapa*; R. Shneur Zalman of Liozna-Lyady, *Shulhan Arukh haRav*; R. Jehiel Michael haLevi Epstein, *Arukh haShulhan*; and R. Israel Meir haKohen Kagan, *Mishna Berura*.
17. Rama, gloss to *O.H.* sec. 589, no. 6.
18. *Shulhan Arukh*, *supra*, note 15.
19. R. Ovadiah Yosef, *Resp. Yabia Omer*, I, *O.H.* secs. 28 and 39-42; II, sec. 6; V, sec. 43; VIII, sec. 8 and sec. 23, no. 30; R. Isaac Yosef, *Yalkut Yosef*, *She'iruit Yosef*, part 1, p. 495, sec. 4; R. Ovadiah Yosef in his Letter of Approval to R. David S. Cohen's *Succat David*.
20. For leading references, see R. David Auerbach, *Halikhotei Beita*, *Petakh haBayit*, sec. 18; R. Jehiel Abraham Zilber, *Birur Halakha*, *Tinyana*, *O.H.* secs. 589 and 640; R. Eliezer Judah Waldenberg, *Resp. Tsits Eliezer*, IX, sec. 2 and XVII, sec. 64; R. Isaac Nissim, *Resp. Yein haTov*, 28; R. Moses Malka, *Resp. Mikve haMayyim*, III, sec. 16, IV, sec. 62, and V, secs. 28-29; R. Yosef Kafah in his commentary to *M.T.*, *Hilkhot Tisat* 3:9, no. 28; R. David S. Cohen, *Succat David*, sec. 2, 8, p. 105. See also the Addendum section of this paper, Part 1a. In line with the view of R. Ovadiah Yosef (*supra*, note 19), former Sephardic Chief Rabbi Mordechai Eliyahu [in his unpublished responsum, dated 19 Kislev 5750 (Dec. 17, 1989), regarding women's prayer services at the Western Wall; cited by Eliav Shochetman (*supra*, note 4, addendum 2 thereto)] states explicitly that Sephardic women are prohibited from reciting benedictions on commandments from which they are exempted—even in cases where women have accepted upon themselves the obligation to perform these *mitsvot* regularly as do men. Cf., however, R. David Hayyim Chelouche, *Resp. Hemda Genuza* 12, who takes strong issue with this view and in particular with R. Yosef's ruling. Moreover, Jerusalem's Sephardic Chief Rabbi Shalom Messas records that many Sephardic women in fact follow the practice of reciting blessings upon the performance of time-determined *mitsvot*, contrary to the view of R. Ovadiah Yosef and his own view. R. Messas rules that these women should not be reprimanded. See *Resp. Shemesh uMagen*, II, sec. 55, no. 4 and sec. 72, no. 3.
21. This very point is mentioned by R. Goren in his retraction/clarification cited in note 57 below. R. Abraham Abele haLevi Gombiner, *Magen Avraham*, *O.H.* sec. 296, no. 11, suggests that even according to Rabbeinu Tam, women are allowed to pronounce unnecessary *berakhot* which contain the word "*ve-tsivanu*" ("and has commanded us") only where the blessing accompanies the performance of an action commandment. On the other hand, where the very prayer itself is the fulfillment of the *mitsvah*, Rabbeinu Tam will concur with Maimonides that women are not permitted to voluntarily undertake to pronounce the Almighty's name where they are not so obliged. According to this view, Ashkenazic women, like their Sephardic sisters, could not rely upon Rabbeinu Tam's ruling (as understood by R. Goren) to recite public prayer texts in the absence of a *minyan*. Here, the *mitsvah* is purely the prayers themselves, which therefore do not fall within the ambit of Rabbeinu Tam's *heter*. The majority of authorities, however, disagree with *Magen Avraham*'s distinction. See at length *Resp. Yabia Omer*, II, *O.H.* sec. 6 and sources cited therein.

Conversely, there is room to claim that even Sephardic women may rely on Rabbeinu Tam in our case, since none of the texts involved contain the problematic phrase "*ve-tsivanu*." See *Rosh*, *Kiddushin*, chapter 1, sec. 49; *Magen Avraham*, *ibid.*; R. Ezekiel Landau, *Tsiyun leNefesh Hayya*, *Berakhot* 26a; R. Judah Leib Graubart, *Resp. Hava'im baNe'imim*, III, *O.H.* sec. 8; *Halikhotei Beita*, *Petah haBayit*, no. 21 and sec. 5, n. 11;

- R. Jacob Bezael Zolty, *Sefer haZikaron leMaran haGriv Zolty, Mishnat Ya'aveits, Hilkhot Tisrit* 3:9, p. 58; R. Shlomo Zalman Auerbach, cited by R. Yehoshua Yeshayahu Neuwirth, *Shemirat Shabbat keHilkhat*, II, sec. 61, no. 24, note 69. It is most notable that this is the view of *Rosh Yeshivat Porat Yosef* (Jerusalem), R. Ben-Zion Abba Shaul, in "Hityyuv Nashim biTfila," *Tsefunot* 1:2 (*Tevet* 5749), p. 52, and in *Resp. Or leTsiyyon*, II, sec. 4, no. 1 and sec. 5, no. 3. R. Ben-Zion Abba Shaul also notes that his predecessor, R. Ezra Atiya, concurred. Cf., however, R. Ovadiah Yosef, *Resp. Tabia Omer* I, O.H., sec. 28, nos. 1-8; II, O.H., sec. 6, nos. 1, 7 and 8; VIII, O.H., sec. 8 and *Talkut Yosef, She'eirut Yosef*, part 1, p. 486, who argues that this distinction of Rosh was not accepted.
21. R. Yehuda Herzl Henkin (personal communication, June 5, 1997) maintains that this particular argument is not a strong challenge to R. Goren's position, since it is unlikely that *Hazal* would permit more to a woman than to an equivalent male. Besides, permitting fewer than ten women to recite public prayer rituals might mislead people into thinking that fewer than ten men could also constitute a *minyan* (*dilma ati le-ahluvei*, cf. *Yevamot* 52a and *Gittin* 16b). Nonetheless, this simply begs the question; for if R. Goren were correct—that a properly constituted *minyan* is not required, due to the *patur ve-ose me-vareikh* principal, then indeed, ten individuals should not be required, whether for women or for men, as indicated in the text following note 38, *infra*.
22. *Supra*, note 10.
23. *Tosafot, Eruvin* 96a-b, s.v. "*dilma*." In other words, when a woman performs a time-bound commandment although not obligated to do so, her action is considered a proper fulfillment of the *mitsvah* (*kiyyum ha-mitsvah*). Accordingly, she may also pronounce the attendant *berakhot*. See at length R. Israel Zev Gustman, *Kuntresei Shiurim, Kiddushin, shiur* 20. For additional analysis as to the nature of women's exemption from time-bound commandments, as well as the quality of their voluntary performance of such *mitsvot*, see R. Elhanan Bunim Wasserman, *Kovets Shiurim*, I, *Kiddushin* 31a-32a; R. Samuel E. Volk, *Sha'arei Tohar*, V, sec. 27, no. 2 and VI, sec. 46, no. 2 and sec. 47; R. Ya'akov Bezael Zolty, *Mishnat Ya'aveits in Sefer haZikaron—Maran R. Ya'akov Bezael Zolty*, R. Joseph Buxbaum, ed. (Jerusalem: Moriah, 5747), *Hilkhot Tisrit* 3:9, p. 58; R. Dov Tsvi Karelleinstein, *Ma'aglei Tseddek*, O.H., sec. 2, s.v. "*ve-yevu'ar ba-ze*," R. Samuel haLevi Wosner, *Resp. Sheivet haLevi*, VIII, sec. 1.
24. *Kiddushin*, 31a; *Bava Kama*, 38a, 87a; *Avodah Zara*, 3a. It would appear from the talmudic sources that the phrase "*eino me-tsuve ve-ose*" as originally used by the first generation *amora*, Rabbi Hanina, implied a gentile, who lacks *kedushat Yisrael* (see *infra*, text at note 26) but nevertheless performed a *mitsvah*. The third generation *amora*, Rav Yosef, by analogy, applied it to a blind Jew as well, presumably because Rav Yehuda maintained that the blind, too, were exempted from all *mitsvot*; for discussion, see R. Ovadiah Yosef, *Me'or Yisrael*, II, *Eruvin* 97b, s.v. "*Tid'ha dilma*." It was not until *Ran* (on *Rif, Kiddushin* 31a) in the 14th century that the phrase was first utilized with regard to women, once again by analogy: if a gentile who performs a *mitsvah* receives reward, certainly a woman who performs a (time determined) *mitsvah* should receive reward.
25. *Hiddushei haRan, Rosh haShana* 33a; *Ran on Rif, Rosh haShana* 33a; *Ran on Rif, Kiddushin* 31a. Cf. *Tosafot Tongues, Kiddushin* 31a.
26. R. Ben-Tsiyyon Meir Hai Uziel, *Resp. Mishpetei Uziel*, III, H.M. sec. 3; R. Joseph B. Soloveitchik, cited in R. Zvi Schachter, *Eretz haTevi*, sec. 12, no. 12, pp. 96-97, and in R. Menachem Genack, *Gan Shoshanim*, sec. 4, p. 10. For similar but somewhat different formulations, see R. Elhanan Bunim Wasserman, *Kovets Shiurim, Kiddushin*, secs. 142-144; R. Isaac Tuvia Weiss, cited in *Birkhot haMitsvah keTikunan*, p. 476.
27. See also R. Moses Feinstein, *Resp. Igrot Moshe*, O.H. IV, sec. 49.
28. See also R. Moses Solomon Kasher, *Torat haRagat*, pp. 50-52.
29. See also *Sefer haZikaron leMaran haGriv Zolty, supra*, note 21; R. Aharon Lichtenstein, "Halakha veHalakhim keOshi'ut Musar: Hirburim Mahshaviyyim veHinukhiyyim," *Arakhim beMivhan Milhamah* (Jerusalem: 1985), p. 19, note 16. Cf. R. Jehiel Jacob Weinberg, *Resp. Seridei Eish*, III, sec. 104. One can perhaps grasp the idea more fully by considering a military unit which has received its marching orders, one or two particular soldiers are granted exemptions for medical or other personal considerations. Obviously, the exempt soldiers have received the orders, and, as part of the unit, they too are subject to the command—this despite the fact that they are released from performance. Moreover, should the soldiers decide to fully participate in the march with the rest of the unit, the same instructions which are addressed to the rest of the unit would apply equally to them.
30. All this is in contradistinction to an *onen* (mourning relative prior to burial), who, though normally exempted from all positive commandments, may not opt to fulfill them (*Shulhan Arukh, Y.D.* sec. 341, no. 1; R. Jehiel Mikhel Tukerchinsky, *Gesher haHayyim*, sec. 18, no. 19). The guiding principle in this case, however, is *kevod ha-met* (honor to the deceased). For a review of the sources, see R. Barukh Pinhas Goldberg, *Penei Barukh—Bikur Holim keHilkhat*, sec. 9, no. 10, note 31, p. 124.
31. The consensus of the *poskim* is that according to R. Tam, just as the performance of *mitsvot asei she-ha-zeman geraman* is optional, so too is the recitation of the appropriate benediction. Thus, women may perform such time-determined *mitsvot*, yet opt not to precede the performance with a *berakha*. See *Halikhot Batia, Petakh haBayit*, sec. 19; *Birkhot haMitsvah keTikunan*, p. 440, n. 1; R. Dov Tsvi Karelleinstein, *Ma'aglei Tseddek*, O.H., sec. 2, s.v. "*ve-yevu'ar ba-ze*." Interestingly, *Resp. Mishne Halakhot, Mahadura Tinyana*, I, O.H., sec. 484, suggests that this option remains valid today despite the widespread custom of Ashkenazi women to recite such *berakhot*.
32. The explanation of R. Uziel and R. Soloveitchik—that "*ve-tisvanu*" refers to *Kelal Yisrael* and not to individuals—finds earlier expression in the writings of Rivva, *Kiddushin* 31a, end of s.v. "*keivan*," R. Pinhas haLevi Horowitz, *Sefer haMikna, Kiddushin* 31a, s.v. "*beTosafot d.h. de-lo*," R. Ezekiel Segel Landau, *Resp. Noda biYthuda, Mahadura Tinyana*, O.H. sec. 112. See also R. Meir Dan Palatsky, *Hemdat Yisrael*, I, *Kuntres Torah Or*, sec. 14, s.v. "*Amnam*"; R. Ovadiah Yosef, *MeShiurei Maran haRishon leTsiyyon, Rabbeinu Ovadiah Yosef Shelita*, I, *Gilyon* 14, Ha'azinu 5756, sec. 6, p. 54; R. Yitschak Abraham Twersky, "*Iyyun beShi'at Rabbeinu*

- Tam sheNashim meVarkhot al Mitsvot Asei she-haZeman Gornmanan," *Beit Yitshak* 27 (5745) pp. 419-427. This might well be the intention of Meiri, *Kiddushin* 31a, s.v. "Gadol," who writes: "Nevertheless, regarding *mitsvot* upon which one makes a benediction, if someone who is not obligated performs them, some say that he should make a benediction *since he is a co-religionist* as are women." Similarly, Meiri *Berakhot* 48b, s.v. "Kol mi," maintains that when reciting the second paragraph of *birkat ha-mazon*, women may say, "For Your covenant which You sealed in our flesh"—which refers to circumcision—because women "are part of *Kelal Yisrael* and they say these words referring to the nation of Israel." A similar comment is made by *Arukh haShulhan*, O.H. sec. 187, no. 8 at the end.
33. This point is stated explicitly by R. Benjamin Ze'ev ben Mattathias of Arta, *Resp. Binyamin Ze'ev*, sec. 245.
34. *Supra*, note 24.
35. See Part I of the Addendum section of this paper for a collection of examples where Rabbeinu Tam's *patur ve-ose me-vareikh* principle has been applied to cases not specifically involving women.
36. In a personal written communication (to Dov I. Frimer, 19 Shevat 5744 [Jan. 23, 1984]), R. David Cohen (of Cong. *Gevul Ta'avetz*, Brooklyn, New York) formulates this argument as follows: Rabbeinu Tam's "*patur ve-ose me-vareikh*" principle is predicated upon the fact that despite the absence of obligation, there is nevertheless a fulfillment of the *mitsvah*, as evidenced by the receipt of heavenly reward. Hence, the benediction remains relevant and appropriate. (See also the related comments of R. Joseph B. Soloveitchik in *Reshimot Shiurim*, R. Zvi Joseph Reichman, ed. [New York, 5749], *Sukka* 44b, pp. 230-231, s.v. "veYesh l'ahor" and s.v. "Sham, bo" d., *veRabbeinu Tam*); and R. Abraham Weinfield, *Resp. Lev Avraham*, I, sec. 2). However, were a woman to make a benediction normally appropriate for a given *mitsvah*, yet not fulfill or improperly perform that *mitsvah*, she would undoubtedly be guilty of reciting a *berakha le-vatala* (a benediction for naught, thereby unnecessarily invoking God's name). Likewise, there are certain *mitsvot* whose fulfillment inherently requires the presence of community in the form of a *minyan*. The performance of these rituals absent a *minyan* could in no way be construed as the fulfillment of these *mitsvot*; consequently, reciting a benediction under such circumstances would constitute a *berakha le-vatala*. One example of a *mitsvah* for which an all-male *minyan* is an absolute prerequisite is *tefilla be-tisbuv* (communal prayer; see note 3, *supra*). When this prerequisite has been met, then certain benedictions and prayers may and must be said. However, should there be no *minyan*, as in the case of a woman's prayer service, then the communal component of these prayers is missing; *tefilla be-tisbuv* cannot and is not fulfilled. Reciting the texts and benedictions reserved for communal prayer under such circumstances would be a clear violation of taking God's name for naught. A similar argument is presented in a responsum by the former Ashkenazic Chief Rabbi Abraham Kahana Shapira (to Mr. Y. Yudson, 30 *Kislev* 5750 [Dec. 28, 1989]), cited in full by Eliav Shochetman (*supra*, note 4, addendum 1), p. 181, at 182. This argument may not be valid, however, should one hold with the minority school of the *Noda biYhuda*, *infra*, note 52. The latter raises the possibility that there may be a fulfillment of communal *mitsvot* which require a *minyan*, if *ex post facto* (*be-di-avad*) they were performed without the presence of the necessary quorum.
37. See *Encyclopaedia Talmudit*, IX, "Hallel," sec. 10.
38. R. Jacob ben Meir Tam, *Sefer haTashar*, sec. 441 (ed. Schlesinger, sec. 537); *Tosafot*, *Berakhot*, *ibid.*; *Tosafot*, *Arakhin* 10a, s.v. "Yud bet yamim"; *Haggahot Maimoniyot*, *Hilkhot Hanuka* 3:7, note 5. Cited also in R. Simha b. Samuel of Vitry's *Mahzor Vitry* (ed. Horowitz), p. 193. See as well R. Simeon ben Zemah Duran, *Rashbats to Berakhot* 14a.
39. Interestingly, Rabbeinu Tam himself, *ibid.*, does not utilize this approach to justify his *Hallel* ruling, instead using other arguments. See R. Joseph B. Soloveitchik, cited in R. Hayyim Dov Altskhi's *Hidushei Batra*, *haMasbir*, *Berakhot* 14a, secs. 134-135. See also R. Joseph Engel, *Gilyonei haShas*, *Berakhot* 14a; R. Isaac Ze'ev haLevi Soloveitchik, *Hidushei Maran Riz haLevi*, *Hilkhot Berakhot* 11:16. See also the Addendum section of this paper, Part I, sections c and d.
40. This is the text as found both in *Tosafot Berakhot* and *Haggahot Maimoniyot*, *supra*, note 38. However, in *Tosafot Rabbeinu Peretz*, *Berakhot* 14a, the text reads: "Lulav and tefilla (prayer)." Cf. *Haggahot haBah*, *Berakhot* 14a, note b.
41. *Tosafot Berakhot*, *Tosafot Arakhin*, and *Haggahot Maimoniyot*, *supra*, note 38. See also R. Hayyim Joseph David Azulai, *Birkei Yosef*, Y.D., sec. 333, end of note 1; R. Eleazar Finkleles, *Resp. Teshuva meAvaya*, II, sec. 693. See also *Resp. Hemda Genuza*, sec. 12, nos. 8 and 19; R. Abraham Gurevitz, *Or Avraham*, M.T. *Hilkhot Hanukka*, 3:7, sec. 28; *Hidushei Batra*, *Berakhot* 14a, sec. 75.
42. *Mishna Megilla* 1:1.
43. R. Jacob b. Asher, *Tur* O.H. sec. 690; R. Joseph Caro, *Beit Yosef*, *ad loc.* and *Shulhan Arukh*, O.H. sec. 690, no. 1.
44. *Mishna Berura* O.H. sec. 690, note 61 and *Sha'ar haTsiyyun ad loc.* On whether *Megilla* reading on the fourteenth in walled cities (e.g., when the fifteenth falls on the Sabbath) is considered *she-lo bi-zmano*, see R. Ovadiah Yosef, *Yehave Da'at*, I, sec. 90, no. 2 and IV, sec. 40, and *Yabia Omar* VI, O.H., sec. 46. Rama, O.H. sec. 692, no. 1, maintains that a *minyan* is always required to recite the "*HaRav et riveinu*" blessing that follows the *Megilla* reading. For further discussion, see *Birur Halakha*, sec. 690, no. 18 and sec. 692, no. 1; R. Jacob Hayyim Sofer, *Kaf haHayyim* sec. 690, no. 124; *Yehave Da'at*, I, sec. 88 and sec. 90, no. 2; *Talkut Yosef*, V. *Hilkhot Mikra Megilla*, no. 39, note 70, p. 300. There are, however, many dissenting opinions who permit the recitation of *HaRav et riveinu* even in the absence of a *minyan*; see, for example, *Be'er Heitev*, sec. 692, no. 4; *Arukh haShulhan*, O.H. sec. 690, no. 25 and sec. 692, no. 5; R. Joseph Hayyim, *Ben Ish Hai*, *Tetsave* 13; R. Aaron Felder, *Mo'adei Teshurun*, I, *Laws of Purim*, sec. 7, no. 9; R. Avraham David Horowitz, *Resp. Kinyan Torah beHalakha*, III, end of sec. 103. This is also the view of R. Moshe Feinstein, as quoted by R. David Katz, "*A Guide to Practical Halakha—Chanuka and Purim*" (New York: Traditional Press, 1979), VIII, *Laws of Purim*, sec. 14, no. 15, p. 134, and former Chief Rabbi Mordechai Eliyahu, as quoted by R. Moses Harari,

- Mikra'ei Kodesh—Hilkhot Purim*, sec. 9, no. 7, note 30. Although *Arukh haShulhan*, *ibid.*, states that the common *minhag* is to recite *HaRax et riveinu* even in the absence of a *minyán*, apparently the Ashkenazic *minhag* in Israel is not so; see *Lu'ah Dinim uMinhagim*, Israeli Chief Rabbinate (5757), p. 60; *Lu'ah Erets Yisrael*, R. Jehiel Michel Tucuzinsky (5757), p. 44. R. Isaac Ratsabi, *Shulhan Arukh ha-Mekutsar*, III, sec. 122, nos. 9 and 11, indicates that according to Yemenite usage, *HaRax et riveinu* can be said privately.
45. R. David Ibn Abi Zimra, *Resp. Radbaz*, II, sec. 665. See Addendum, Parts 1c and 1d.
46. R. Jacob Israel Algazi, *Kuntres Hug haAretz*, sec. 3. See also *Yabia Omer* O.H., I, sec. 40 no. 5.
47. See *Resp. Mishne Halakhot*, IV, sec. 78; R. Ovadiah Yosef, *Me'or Yisrael*, II, *Megilla* 23b.
48. *Megilla* 4:3 (23b). See also *Seferim* 10:7 and the commentaries *ad loc.*
- 48* See R. Joseph Caro, *Kesef Mishne, Hilkhot Tefilla* 8:5, s.v. "veKatav" (end); R. Joseph Te'omim, *Rosh Yosef, Megilla* 23b. See also *infra*, notes 138-140.
49. While all authorities agree that the institutions of *devarim she-bi-kdusha* are rabbinic in origin, some maintain that their recitation in the presence of a *bona fide minyan* is a biblical obligation. See *Einyayim laMishpat, Berakhot* 21b, no. 3; Aryeh A. Frimer, *Or haMizrah, supra*, note 3, footnote 14 and sources cited therein. See also R. Solomon Gansfried, *Peni Shelomo, Eruvin* 100a; *Resp. Igrot Moshe*, O.H. II, sec. 98.
50. R. Moses ben Nahman, *Milhamot Hashem*, on *Rif* to *Megilla*, chap. 1, sec. 1067, 5a [page 3a in Vilna edition of *Rif*], s.v. "veOd amar Rav." For a discussion of the reason in each case, see R. Israel Lipschutz, *Tiferet Yisrael, Megilla* 4:3, no. 24; R. Pinhas Kehati, *Megilla* 4:3.
51. See *Encyclopedia Talmudit*, VI, "Davar she-bi-kdusha," and Aryeh A. Frimer, *Or haMizrah*, note 3, *supra*, footnote 2 therein, for a discussion of those rituals included in this category and its ramifications.
52. The noted halakhist, R. Ezekiel Segel Landau, *Resp. Noda biYhuda, Mahadura Kama, Even haEzer* [henceforth E.H.] 56, suggests that performing a ritual requiring a *minyán*—in the absence of such a quorum—may, nevertheless, be valid *ex post facto*. The actual question raised dealt with the seven nuptial blessings included in the list in the *Mishna* in *Megilla* (*supra*, note 48). Although R. Landau himself questions the compelling nature of his arguments (see *ibid.*, s.v. "veDa she-haKesef"), his lenient position is cited by various *aharonim*: R. Abraham Zvi Hirsch Eisenstadt, *Pit'hei Teshuva*, H.M. sec. 62, no. 7; R. Abraham Danzig, *Hokhmat Adam*, sec. 129, no. 3; R. Abraham Adadi, *Resp. VaTikra Avraham*, sec. 11; R. Isaac Abulafia, *Resp. Peni Yitshak*, sec. 98; R. Isaac Joseph Zilberberg, *Resp. Atzei Zayit*, II, sec. 37; *Resp. Mishne Halakhot, Mahadura Tinyana*, II, H.M. sec. 343; R. Isaac Zilbershtein, *Neis lehitNose*, Part 2, sec. 48; R. Gedalia Felder, *Yesodei Teshuvun*, II, p. 168.
- Nevertheless, the majority of *posekim* reject this position: R. Eleazar Segel Landau (the grandson of *Noda biYhuda*), *Yad haMelekh, Hilkhot Ishut* 10:5; R. Joseph Saul Nathanson and R. Mordechai Zev Eitinge, *Magen Gibborim*, O.H. sec. 143, no. 1, *Shiltei haGibborim* note 2; R. Jacob Shalom Sofer, *Torat Hayyim*, O.H. sec. 143, no. 1; R. Israel Eisenstein, *Resp. Amudei Eish*, sec. 3, no. 3; *Arukh haShulhan*, E.H. sec. 62, no. 13—"This does not seem so from any of the codifiers"; R. Matzliah Mazuz, *Resp. Ish Matzliah*, I, O.H. sec. 13, no. 12, s.v. "veOd" (end) and Table of Contents, no. 41; *Resp. Sheivet haLevi*, IV, sec. 7 and 14; *Resp. Yabia Omer*, II, E.H. sec. 6, par. 7 and addendum; VII, O.H. sec. 20, par. 3; R. Ovadiah Yosef, *Me'or Yisrael*, I, *Megilla* 23b. See also *Otsar haPosekim*, E.H., sec. 62, no. 4, no. 18, subsection 3. See as well R. Aaron Milavsky, *Helkat Aharon*, sec. 2, regarding the view of R. Tam cited by *Or Zaru'a*, *Hilkhot Nesi'at Kapayim*, sec. 411, that *Birkat Kohanim* can be recited with fewer than a *minyán*. Furthermore, it should be pointed out that *Noda biYhuda's* leniency is based on the ruling of the *Jerusalem Talmud, Megilla* 4:4 (75a), that if a ritual requiring a *minyán* begins with the minimum quorum, it may continue even though some have left. The codes which cite this ruling (e.g., *Mishna Berura*, O.H. sec. 55, no. 11 and sec. 143, no. 5; *Arukh haShulhan*, O.H. sec. 55, no. 6) make it clear, though, that at least six must remain for the service to continue. Hence, even according to *Noda biYhuda*, a majority of a *minyán* must be present. Furthermore, *Rav Pe'alim*, O.H., I, sec. 5, maintains that it is forbidden to begin if it is known in advance that fewer than a *minyán* will remain for the entire service. Finally, no one entertains the possibility that one could *ab initio* (*le-kha-tehila*) recite the nuptial blessings in the absence of a *minyán* as a *patur ve-ose*; see the sources cited at the beginning of this paragraph, as well as *Resp. Tsafnat Panei'ah* (ed. R. Menachem Mendel Kasher, New York) sec. 83; *savenu moreinu z"l*, R. Moses Zev Kahn, *Resp. Tiferet Moshe*, Part 1, sec. 46; *Resp. Mishpetei Uziel, H.M.*, sec. 62; R. Aryeh Leib Grossness, *Resp. Lev Arye*, I, sec. 35; *Resp. Minhat Yitshak*, II, sec. 42; and R. Yehuda Gershuni, *Hokhmat Gershon*, p. 165, at p. 167.
53. *Berakhot* 21b.
54. *Supra*, note 48.
55. Consequently, we find a similar discussion regarding the necessity of a *minyán* for the recitation of the "thirteen attributes of God." For a summary of this discussion, see *Einyayim laMishpat, supra*, note 49; *Resp. Yehave Da'at*, I, sec. 47.
56. See references cited in Aryeh A. Frimer, note 3, *supra*; *Resp. Minhat Yitshak, supra*, note 5; *Resp. Riverot Efrayyim*, VII, sec. 314 and addendum p. 446; *Halikhot Beita, Petah haBayit*, sec. 24. Surprisingly, in his discussion of women's *tefilla* groups, R. Eliezer Berkovits, *Jewish Women in Time and Torah* (Hoboken, N.J.: Ktav Publishing House, Inc., 1990), Chapter 4, pp. 82-83, proposes that the reason for the exclusion of women from the *minyán* of communal prayer rituals "can only be that the rabbis would not allow men and women to pray together." Based on this analysis, he suggests that for public prayer and *devarim she-bi-kdusha* "one might give serious consideration to the halakhic possibility of a female *minyán*." R. Berkovits errs, however, both in his analysis and his conclusion, for as the scores of *rishonim* and *aharonim* cited above in Aryeh A. Frimer, note 3, *supra*, make clear, unambiguous rules and rationale exist for the exclusion of women from the *minyán* of public prayer—and they are quite different from that deduced by R. Berkovits. Indeed, the codes

- and codifiers are unequivocal: public prayer rituals require a *minyan* of males. See *Shulhan Arukh*, O.H. sec. 55, no. 1 and decisors *ad loc.*: *Levush*, no. 4; *Shulhan Arukh haRav*, no. 2; *Mishna Berura*, no. 3; and *Arukh haShulhan*, no. 6.
57. R. Shlomo Goren, responsum to R. Mordechai Eliyahu, 1 *Tevet* 5750 (Dec. 29, 1989). R. Goren's contention therein that he never intended for his 1974 responsum to be used *halakha le-ma'ase* is somewhat surprising for two reasons. First, Prof. Aron Siegman, who asked the original "*shaila*," has indicated (interviewed by Aryeh A. Frimer, January 1991) that to the best of his recollection, R. Goren was indeed aware that a "women's *minyan*" was functioning in the Baltimore area and that the question was being posed on their behalf. Furthermore, R. Avraham Weiss, *Women at Prayer* (Hoboken, N.J.: Ktav Publishing House, Inc., 1990), p. 111, footnote 38, indicates that in a conversation he had with R. Goren in Spring 1989, the latter had reaffirmed his support for the 1974 responsum. Nevertheless, in light of our analysis above, his subsequent December 1989 retraction is well founded.
 58. As a general rule, the member groups of the "Women's Tefilla Network" (WTN), which number to date approximately 60, do not rely on R. Goren's original ruling and do not say *devarim she-bi-kdusha*; see the comments of Bat Shava Marcus, Chair of WTN, in "Walk Humbly with Your God," *Sh'ma*, 27/531 (April 4, 1997), pp. 5-7. Nevertheless, in a letter dated January 1996 to the members of the Flatbush women's *tefilla* group, Rivka Haut indicates that based on R. Goren's 1974 responsum, women may recite mourner's *kaddish* at the conclusion of the women's *tefilla*. See also Rivka Haut, "Women's Prayer Groups and the Orthodox Synagogue," in *Daughters of the King: Women and the Synagogue*, *supra*, note 3*, pp. 135-157, at p. 141, in which the view of R. Berkovits, *supra*, note 56, is also cited. In a recent communication to Aryeh A. Frimer, dated July 25, 1997, Ms. Haut confirms that this remains the policy of the Flatbush *Tefilla* group. In light of our discussion above, such a development is halakhically improper, unfounded and indefensible.
 59. The responsum, dated 12 *Kislev* 5745 (November 25, 1985), was subsequently published in the halakic journal of the R.C.A. See R. Nissan Alpert, R. Abba Bronspigel, R. Mordechai Willig, R. Yehuda Parnes and R. Zvi Schachter, "*Teshuva beNashim leNashim beHakafot veKhu*," *HaDarom* 54 (*Sivan* 5745), pp. 49-50. It should be emphasized that the R.C.A. at no time adopted the position of this responsum as the official halakic policy of the organization. The minutes of the Executive Committee meeting of February 27, 1986, record the following: "The President stated categorically that he did not ask this question of the *Rashei Yeshiva* in the name of the R.C.A. He asked the question as an individual . . . The Executive declared that the opinion of the five *Rashei Yeshiva* was not the official position of the R.C.A. regarding this matter, that the R.C.A. has, to date, not taken any official position regarding the halakic admissibility of women's *tefillot* (sic!)." For further clarification of the position of the R.C.A., *vide infra*, note 248.
 60. R. Abba Bronspigel, "*Minyanim meYuhadin leNashim*," *HaDarom*, *ibid.*, pp. 51-53. The responsum is dated "the eve of *Hanukka* 5745," i.e. 24 *Kislev* 5745—December 7, 1985.
 61. R. Zvi (Hershel) Schachter, "Tse'i *Lakh belkvei haTson*," ("Go Thy Way Forth by the Footsteps of the Flock" [*Song of Songs* 1:8]), *Beit Yitshak* 17 (5745), pp. 118-134, reprinted in R. Zvi Schachter, *Belkvei haTson* (Jerusalem: *Beit haMidrash deFlatbush*, 5757), pp. 21-37. All citations in this article to R. Schachter's responsum are to its original publication in *Beit Yitshak*. For an English summary of R. Schachter's lengthy Hebrew responsum (as well as a review of some of the other halakic literature on women's prayer groups), see R. Jonathan Sacks, *L'Eyl* 22 (*Rosh haShana* 5747, September 1986), p. 54.
 62. R. Zvi Schachter, "*BeNiyanei Beit haKeneset uKdashuto*," Or *haMizrah*, 34:1, 2 (*Tishrei* 5746), 54, at pp. 64-67; reprinted in *Erets haTzi*, sec. 12—see especially pp. 96-99.
 63. R. Moshe Meiselman, *Jewish Woman in Jewish Law* (New York: Ktav Publishing House and Yeshiva University Press, 1978), pp. 144-146; see also *ibid.*, p. 197, footnote 64. R. J. David Bleich, *Sh'ma*, 15/299 (Oct. 18, 1985), p. 146; reprinted in a slightly modified form in *Contemporary Halakic Problems*, III (New York: Ktav Publishing House and Yeshiva University Press, 1989), pp. 115-121. To a great extent, R. Bleich has reworked R. Schachter's arguments (*supra*, note 61).
 64. R. Menashe Klein, lengthy and yet unpublished responsum to Dov I. Frimer, 9 *Shevat* 5746 (January 19, 1986), on the subject of women's *tefilla* groups; a short selection from this *teshuva* appears in the article of E. Shochetman, *supra*, note 4, p. 173. The major arguments are that: women's services are a sharp departure from normative Jewish custom and practice over millennia; they contravene "*kol kevuda bat melekh penima*" and the rules of modesty; such innovations are clearly based on the Women's Lib movement and the motivation of those who initiated them is impure; the *shekhina* resides in the home of a righteous woman and it is from there that her prayers will be heard. On the subject of women's *Megilla* readings, see R. Menashe Klein, *Resp. Mishne Halakhot, Mahadura Tinyana*, I, O.H. sec. 550.
 65. R. David Cohen, personal written communication to Aryeh A. Frimer, Feb. 3, 1990; on the grounds "that they are clearly based on the Women's Lib movement, which is [a violation of] *be-hukoteihem lo telechu* (see *Tosafot, Avoda Zara* 11a)."
 66. R. David Feinstein, interviewed by Aryeh A. Frimer, March 26, 1991; on the grounds that it is a sharp departure from normative Jewish custom.
 67. R. Shalom Messas, *Resp. Shemesh uMagen*, II, sec. 28. The major arguments are: first, that women's services are private worship, and hence, inappropriate for the synagogue, which is dedicated to *hona fide tefilla be-tisbbur*; second, one loses the opportunity to fulfill *tefilla be-tisbbur* by praying in a women's service. The first objection is surprising in light of the ruling of *Shulhan Arukh*, O.H. sec. 90, no. 9, that private prayer is preferable in a synagogue; the second objection will be discussed below.
 68. R. Leib Baron, "*BeNashim Im haNashim Rasha'ot le-hitPallel beTisbbur ve-liKrot baTorah u-biFrat Etsel haKotel haMa'aravi*," *HaDarom* 60 (*Elul* 5751), pp. 27-29. His major objections are that the motivation of those involved in women's services is impure ("*ein levanan im haKadosh Barukh*

- Hu"), that this practice is influenced by the Reform, and finally, that such an innovation might violate "*bal tosf*." Regarding the first two points, see the discussion below. Regarding *bal tosf*, see notes 91, 95, 227 and Addendum section of this paper, Part 5 *infra*.
69. In a one-page resolution dated 7 Shevat 5757 (January 14th 1997), the Va'ad HaRabonim of Queens charged that women's prayer groups, *hakafo* and *Megilla* readings were "*porcits geder be-masoret Yisrael* (breaching the boundaries of Jewish tradition)" and therefore prohibited. See also a subsequent article by R. Yitzchak A. Sladowsky, Executive Vice President of the Queens Va'ad, *Sh'ma*, 27/531 (April 4, 1997), pp. 3-4.
 70. R. Juda haLevi Amihai, unpublished responsum to *Beit Keneset Mitspe Nevo, Ma'ale Adumim*, dated 6 Kislev 5758 (on the stationery of Chief Rabbi Israel Meir Lau); see below, note 71.
 71. R. Efrayim Greenblatt, *Resp. Rivevot Efrayim*, VII, sec. 235. Both R. Amihai (*supra*, note 70) and R. Greenblatt rule against women dancing with a *sefer Torah* based on a custom that menstruants (*niddot*) do not look at a *sefer Torah* (see *Resp. Binyamin Ze'ev* no. 153; *Mishna Berura*, O.H. sec. 88, no. 7), a *fortiori* to carry it. A discussion of this latter issue will be deferred to Part II of this paper. Suffice it to say that four internationally renowned *poskim* have indicated that menstruating women no longer have the custom of refraining from looking at the Torah scroll. See R. Moses Feinstein, responsum to R. Meir Fund, dated *Sivan* 14, 5743 (May 26, 1983), text appearing before note 218 *infra*; R. Joseph B. Soloveitchik, *infra*, text near note 251 and note 258; former British Chief Rabbi, Lord Immanuel Jakobovits, in consultation with the London Beit Din, *L'Eylat* 28 (*Rosh haShana* 5750, September 1989), p. 21ff, reprinted in *Dear Chief Rabbi*, Jeffrey M. Cohen, ed. (Hoboken, N.J.: Ktav Publishing House, Inc., 1996), p. 90; and the noted Israeli *posek*, R. Joseph Shalom Elyashiv, conversation with R. Shlomo H. Pick, 22 *Iyyar* 5752 [May 25, 1992]. In any case, it is not clear why this concern should prevent the vast majority of non-menstruants from dancing with the Torah, particularly since R. Amihai himself admits that this is a stringency not required by halakha.
 72. *Supra*, note 20, on the grounds that it is a sharp departure from normative Jewish custom.
 73. R. Zalman Nehemiah Goldberg, "*Tefillat Nashim beFarhesya*," *Tehumin* 18 (5758, in press), on the grounds that it is an imitation of the ways of heretics (*i.e.*, the Reform movement) and consequently violates *U-behukoteihem lo telekhu*. Our thanks to Dr. Itamar Warhaftig for providing us with an advance copy of R. Goldberg's article.
 74. We note that both former Ashkenazic Chief Rabbi Abraham Shapiro, *supra*, end of note 36, and Shlomo Goren, *supra*, note 57, have also come out in opposition to women's services—but only those in which *devarim she-bikedusha* are recited. This was stated explicitly by R. Shapiro to R. Abraham Weiss; see R. Abraham Weiss, *Women at Prayer*, note 57 *supra*, p. 111. In their respective responsa, Rabbis Goren and Shapiro also opposed the actions of the "Women of the Wall," but here, too, special halakhic and legal considerations are at play, not relevant to regular prayer services.
 75. *Supra*, note 59, at p. 49. See also R. Bronspigel, *supra*, note 60, at p. 51; R. Schachter, *supra*, note 61, at pp. 118-119.
 76. *Magen Avraham*, O.H. sec. 282, no. 6; See also R. Masud Hai Rokei'ah, *Ma'ase Rokei'ah*, *Hilkhot Tefilla* 12:17; *Mishna Berura*, sec. 282, no. 12; *Birkei Yosef*, sec. 282, no. 7; R. Jacob Meshullam Ornstein, *Yeshu'ot Ya'akov*, sec. 282, no. 4; R. Zvi Hirsh Grodzinsky, *Mikra'ei Kodesh*, sec. 4, no. 1, *Sha'arei Kedusha* note 1; R. Hillel Posek, *Resp. Hillel Omer*, sec. 187.
 77. R. Schachter, *supra*, note 61, at p. 118.
 78. *Shulhan Arukh*, O.H. sec. 690, no. 18 and *Rama*, *ad loc.*
 79. *Supra*, note 44.
 80. *Supra*, note 78.
 81. *Supra*, note 61 at 118-119.
 82. See R. Israel Isserlein, *Resp. Terumat haDeshen*, sec. 109; *Magen Avraham*, O.H. sec. 685. Note also *Shulhan Arukh*, O.H. sec. 146, no. 12.
 83. R. David haLevi, *Turei Zahav*, O.H. sec. 685, no. 2 (end), as understood by R. Joseph Te'omim, *Pier Megadim*, *Mishbetot Zahav ad loc.*, and by R. Zvi Pesah Frank, *Mikra'ei Kodesh*, *Purim*, sec. 2. See also R. Hayyim David Halevy, *Asi Lekha Rav*, VII, sec. 41 and a more recent elaboration in *Resp. Mayyim Hayyim*, II, sec. 42.
 84. R. Schachter, *supra*, note 61, at p. 119.
 85. R. Jacob Reisha, *Resp. Shevut Ya'akov*, O.H. III, sec. 54; R. Abraham Hayyim Rodriguez, *Resp. Orach laTsadik*, sec. 3; *Resp. Teshuva meAhava*, II, sec. 229; *Alim liTrufa* (letter by the Gaon of Vilna which advises the women of his family not to attend the synagogue); R. Menahem Mendel Schneersohn of Lubavitch, *Resp. Tsemah Tsedek*, O.H., sec. 19, no. 2; R. Shneur Zalman of Lublin, *Resp. Torat Hesed*, O.H., sec. 4, no. 6; R. Isaac Herzog, *Resp. Heikhal Yitschak*, O.H. sec. 12, no. 5, par. 9—reprinted in *Pesakim uKhatvim* 1, *She'eilot uTshuvot beDinei Orach Hayyim*, sec. 24; *Resp. Tiferet Moshe*, part 1, sec. 29; *Resp. Tsits Eliezer*, IX, sec. 11; R. Isaac Liebes, *Resp. Beit Avi*, IV, sec. 3; *Resp. Sha'arei Moshe* II, sec. 3; R. Bezalel Stern, *Resp. beTsil haHokhma*, IV, sec. 19; R. Moses Sternbuch, *Mo'adim uZmanim*, I, sec. 9; R. Reuben Margalit, *Margaliyot haYam, Sanhedrin* 74b, sec. 27; R. Isaac Yosef, *Yalkut Yosef*, *She'arot Yosef*, part 2, page 348, note 16; R. Yisrael Pesah Feinhandler, *Avnei Yashfe—Hilkhot Tefilla*, sec. 16, no. 6 and notes 12-13. See also R. Jacob Isaiah Bloy, *Tsedak uMishpat*, sec. 12, no. 63 and R. Isaac J. Fuchs, *haTefilla beTisbbur*, addendum to sec. 3, no. 80. Interestingly, R. Ahron Soloveitchik, in conversation with Dov I. Frimer, July 8, 1997, maintains that men and women share the same obligation (or lack thereof) in both *tefilla be-tisbbur* and *keriat haTorah*. However, even were women personally obligated, R. Ahron Soloveitchik posits that they are, nonetheless, specifically excluded by *Hazal* from counting towards a *minyan* or serving as a *hazzan* or *ha'alat keri'a* because of *kevod ha-tisbbur*. Further discussion of this position is beyond the scope of this paper.
 86. *Torat Hesed*, *supra*, note 85, and R. Shlomo Zalman Auerbach, cited in *Avnei Yashfe*, *supra*, note 85 and footnote 13 therein. Most other *poskim* seem to disagree, however; see, for example, R. Elijah Rogler, *Yad Eliyahu*, part 1, sec. 7; R. Joseph B. Soloveitchik, *Reshimot Shi'urim*, *Sukka* 38a, p. 183, *s.v.* "*veNire*"; R. Samuel haLevi Wozner, as cited in *Avnei*

- Yashfe*, *supra*, note 85, footnote 12 therein; R. Joseph Shalom Elyashiv, cited in *Avnei Yashfe*, *supra*, note 85, footnote 12 therein, and in *Adar uFurim*, sec. 8, no. 5, par. 2:4 (see Aryeh A. Frimer, *Tradition*, note 3, *supra*, footnote 92, for clarification); *Halikhot Beita*, *Petah haBayit*, sec. 24; R. Yehuda Herzl Henkin, *Resp. Benei Vanim*, II, sec. 7. See also *Meiri*, *Rosh haShana* 28a, who states: "Our women, who pray in synagogue in a section unto themselves, do not fulfill *tefilla be-tisbbur*, since it requires ten." However, based upon the analysis of *Resp. Benei Vanim*, *ibid.*, one may contend that *Meiri* is referring to a case where the *mehitsa* reaches the ceiling. See also the references cited in Aryeh A. Frimer, *ibid.*, section G.
87. *Tosafot*, *Rosh haShana* 33a, s.v. "Ha"; *Rosh*, *Kiddushin* 31a; *Meiri* and *Ran* on *Rif*, *Megilla* 23a, s.v. "haKol Olim"; *Sefer Avudraham*, *Sha'ar haShelishi*, s.v. "Kataf haRambam zal"; *Sefer haBatim*, *Beit Tefilla*, *Sha'arei Keriat haTorah* 2:6; *Beit Yosef*, O.H. sec. 28, s.v. "haKol" and *Derisha ad loc.*; *Alim LiTrufa*, *supra*, note 85; *Resp. Orah laTsadiq* 3; R. Shalom Mordechai haKohen Shvadron, *Resp. Maharsham*, I, sec. 158; *Resp. Mate Yehuda*, sec. 282, no. 7; R. Hayyim Joseph David Azulai, *Kisei Rahamim* (complete edition, Jerusalem: 1959), *Maskehet Seferim* 14:14 *Tosafot* s.v. "sheMitsvah" and 18:4, *Tosafot* s.v. "she-haNashim"; *Arukh haShulhan*, O.H. sec. 282, no. 11; *Resp. Yabia Omer*, O.H. VIII, sec. 54, no. 7; *Resp. Yehave Da'at*, IV, sec. 23, note 1; *Talkut Yosef*, II, *Hiyyuv Keriat haTorah* *veYitkul haSefer Torah*, sec. 9 and footnotes 6 and 11; R. Isaac Yosef, *Kitsur Shulhan Arukh Talkut Yosef*, O.H. sec. 135, no. 9; R. Moses Stern (the *Debriciner Rov*), *Resp. Be'er Moshe*, VIII, sec. 85; R. Efrayyim Greenblatt, *Resp. Rivevot Ephrayyim*, VI, sec. 153, no. 21; R. Yisroel Taplin, *Orah Yisrael*, sec. 2, no. 8. See also R. Moses Mordechai Karp, note 89, *infra*, and *Birkhot haMitsvot keTikunan*, p. 184, n. 8. Regarding the view of R. Ahron Soloveichik, see note 85, *supra*.
 88. *Supra*, note 76.
 89. R. Bezalel Stern, *supra*, note 85. R. Moses Mordechai Karp, *Hilkhot Hag beHag: Purim* (Jerusalem: Orayasa, 5791) addendum to 7:3 note 7, p. 213, suggests that *Magen Avraham* also agrees that women are not inherently obligated in *keriat haTorah*. However, once *keriat haTorah* begins, an obligation devolves upon them along with the men, since they are part of the *tsibbur* (community) present in *shul*. This would then be analogous to the laws of *zimmun*, which is optional for women, but in the presence of three men becomes obligatory for the women as well (*Shulhan Arukh*, O.H. sec. 199, no. 7). According to R. Karp's novel approach, the "exodus" of the women, mentioned by *Magen Avraham*, occurred before the reading of the Torah commenced. A similar interpretation is suggested by R. Yehuda Herzl Henkin in "*Mabu Kevod haTsibbur*," *HaDarom* 55 (*Elul* 5746), p. 33 (see p. 39). *Resp. Benei Vanim* II, no. 10 (see p. 42).
 90. R. Elijah of Vilna, *Alim LiTrufa*. Jerusalem's Sephardic Chief Rabbi Shalom Messas, *supra*, note 20, records that most Moroccan Jewish women never attended synagogue even on *Tom Kippur*. As a result, few synagogues even had women's sections. Those women who did come to the synagogue rarely participated in the prayer service. R. Messas attributes this primarily to the women's illiteracy and lack of education.
 91. *Deut.* 13:1 (see also *Deut.* 4:2). This verse contains two prohibitions, commonly referred to as "*bal tosf*" and "*bal tigma*," which are in most respects halakhic mirror images of each other. See *Encyclopedia Talmudica* III, "*Bal Tigma*"; *ibid.*, "*Bal Tosif*."
 92. See text at note 6, *supra*.
 93. See text at note 24, *supra*.
 94. *Sifrei*, *Re'ei*, Chap. 13, sec. 82 (ed. Finkelstein, 148); R. David Samuel haLevi, *Taz*, O.H. sec. 651, no. 17; *Mishna Berura*, *Be'ur Halakha*, O.H. sec. 651, s.v. "Aval"; R. Judah Leib Graubart, *Resp. Havalim haNe'imim* II, sec. 7, no. 3. Cf. R. Aryeh Leib Gunzberg, *Turei Even*, *Avnei Milu'im*, *Rosh haShana* 28b.
 95. The following authorities maintain that women cannot be culpable for *bal tosf* (and, hence, *bal tigma*—see note 91, *supra*) in *mitsvot* from which they are exempted: R. Isaiah di Trani (*The Younger*), *Piskei Ri'az*, *Rosh haShana* 4:2, no. 3; R. Joshua Boaz Baruch, *Shiltei haGibborim*, *Rosh haShana* 33a, no. 3; R. David Fraenkel, *Korban haEida to Yerushalmi Erwin* 10:1 (26a), s.v. "*Ma'an de-amai*"; R. Ezekiel Kahila (reputed to be a pseudonym for R. Joseph Hayyim alHakam of Baghdad), *Resp. Torah liShma*, secs. 173 and 425; R. Joseph Babad, *Minhat Hinukh*, Commandment 454 (end); R. Solomon Avigdor Rabinowitz, *Binyan Sheloma*, sec. 14, no. 5; *Hemdut Yisrael*, part 2, *Kunteres Derekh haHayyim*, sec. 5, no. 1; R. Jacob Segal Prager, *She'elot Ya'akov*, sec. 18; R. Gedalia Felder, *Yesodei Yeshurun* I, sec. 93; R. Isaac Jacob Fuchs, *Halikhot Bat Yisrael*, Chapter 20, sec. 1, note 1. Several scholars maintain that *bal tosf* (and *bal tigma*) applies only to a *mitsvah* which is obligatory (*hiyyuvit*), but not to one which is optional (*kiyyumit* or *reshut*). See R. Prager, *ibid.*; R. Simcha Elberg, "*Im Mutar leKayeim Mitsvat Se'udot Shabbat beMasa beShabbat shel Erev Pesah*," *HaPardes* 32:5 (*Shevat* 5718), p. 20; see also comments to the article by R. B. Z. Rosenthal, *infra*; and R. Uri Langer, "*Im Shayyah Bal Tosif biSfirat haOmer*," *HaMa'or* 17:5 (*Iyyar* 5726), p. 3. This is, of course, the essence of a *mitsvat asei she-ha-zeman gerama*: obligatory for men, optional for women.
 - Others maintain that women can be culpable for *bal tosf* even in *mitsvot* from which they are exempted; see R. Isaac Tayeb, *Erekh haShulhan*, O.H. sec. 17, no. 2; R. Joseph Saul Nathanson and R. Mordechai Zev Eiting, *Magen Gibborim*, O.H. sec. 17, no. 2, *Elef haMagen*, note 4; R. Hayyim Judah Leib Litvin Sosnitzer, *Sha'arei Dei'a*, 12; *Kaf haHayyim*, O.H. sec. 17, no. 2, no. 8; R. Yisroel Taplin, *Orah Yisrael*, sec. 26, nos. 14 and 15; R. Leib Baron, *supra*, note 68. R. Ben Zion Rosenthal maintains that *bal tosf* also applies to *mitsvot* which are optional (*kiyyumiyot*); see R. Ben Zion Rosenthal, "*Bal Tosif beMitsvah sheEina Hiyyuvit*," *HaPardes* 33:2 (*Heshvan* 5719), p. 17; R. Ben Zion Rosenthal, "*Bal Tosif beVirchat Kohanim*," *HaPardes* 33:11 (*Av* 5719), p. 16—reprinted in R. Ben Zion Rosenthal, *Tenuvat Tsiyyon*, secs. 42 and 43. Cf. *Birkei Yosef*, O.H. sec. 17, no. 2, who leaves the issue of *bal tosf* by women unresolved.
 - Finally, there is also some discussion as to whether there is a prohibition of *bal tosf* on one who adds to a rabbinic enactment. The consensus is that there is not; see *Resp. Ketav Sofer*, sec. 120; *Sefer haMikna*, *kelal* 51; *Resp. Mishne Halakhot*, *Mahadura Tsiyyana* II, H.M. sec. 478.
 96. Those halakhic authorities who disagree with this ruling argue that a

- woman who voluntarily prays impliedly accepts all the requirements imposed upon one who is obligated to pray, *i.e.*, a man; see note 97, *infra*. (For a discussion of the related view of *Behag*, see *Resp. Benei Vanim*, II, sec. 19, p. 72.) This contention has no logical parallel to women's prayer groups. The latter clearly have no intention to constitute a *minyan* and could not halakhically constitute a *minyan* for public prayer even if they so intended. The voluntary assumption of obligation is not the same as legally imposed obligation; see Gidon Rothstein, "The Roth Responsum on the Ordination of Women," *Tradition* 24:1 (Fall 1988), pp. 104-115; *Sha'arei Tohar*, I, *supra*, note 23. *Minyan* requires legally imposed obligation; see Aryeh A. Frimer, *supra*, note 3. An analogous argument can be found in R. Isaiah di Trani (The Elder), *Piskei Rid*, *Rosh haShana* 33a and again in *Sefer haMakbiah*, sec. 78.
97. For a summary of the halakhic literature on the subject of *me-ein ha-me'ora* for women, see *Resp. Tavia Omer*, VI, O.H. sec. 18; R. David Auerbach, *Halikhot Beita*, sec. 6, no. 9; *Halikhot Bat Yisrael*, sec. 2, no. 19. In addition, see R. Israel Abraham Alter Landau, *Resp. Beit Yisrael*, I, O.H. sec. 10; R. Shraga Feivish Schneebalg, *Resp. Shraga haMeir*, V, sec. 114; R. Pesah Elijah Falk, *Resp. Mahaze Elyahu*, sec. 24; *Resp. Rivivot Ephrayim*, III, sec. 67 and IV, sec. 44, 79 and 81; R. Abraham David Horowitz, *Resp. Kinyan Torah beHalakha*, VII, O.H. sec. 10; R. Benjamin Joshua Zilber, *Resp. Az Nidberu*, XI, sec. 48 (67); R. Zalman Druk, *Sha'arei Tefilla*, sec. 20; R. Baruch Finkelstein, *Davar beito*, sec. 1, no. 19; R. Joel Schwartz, *Avodat haLev*, Laws of Prayer for Women, sec. 1, no. 3; R. Ovadiah Yosef, *MeShivrei Maran haRishon leTsiyon Rabbeinu Ovadiah Yosef Shelita*, I, *Gilyon* 16, *Beresit* 5756, sec. 10, p. 63; R. Isaac Yosef, *Otsar haDinim laIsha ve-laBat*, sec. 3, no. 12 and par. 13; R. Isaac Yosef, *Kitsur Shulhan Arukh Yalkut Yosef*, O.H. sec. 106, no. 5; R. Jehuthiel Judah Halberstam, *Resp. Divrei Yatsiv*, O.H. I, sec. 62.
98. See *infra*, note 102.
99. Among contemporary sources, see R. Ovadiah Hadaya, *Resp. Yaskil Avdi*, VII, *Kunteres Aharon*, O.H. sec. 2; R. Moses Feinstein, *Resp. Igrat Moshe*, O.H. III, sec. 7. While some of the halakhic consequences of *kavyana* are muted in our day (see, *e.g.*, O.H. sec. 98, no. 2 and sec. 101, no. 1), we are required to do all we can to maintain an optimal level (see *Mishna Berura*, sec. 98, no. 7). In any case, R. Moses Sternbuch, *Mo'adim uZmanim*, I, sec. 9, and *Resp. Teshuvot veHanhagot*, I, sec. 74 and III, sec. 36, maintains that *kavyana* plays an even more critical role in women's prayers than it does in those of men.
100. *Resp. Radbaz*, III, sec. 472 (910); R. Joshua Falk, *Perisha*, O.H. sec. 101, end of no. 7—cited approvingly by *Peri Megadim*, *Mishbetot Zahav*, O.H. sec. 101, end of no. 1 and *Mishna Berura*, O.H. sec. 101, Bi'ur Halakha, *s.v.* "deAti"; *Shulhan Arukh haRav*, O.H. sec. 101, sec. 3; R. David Orinberg, *Tehilla leDavid*, O.H. sec. 101, sec. 2; R. Shalom Mordechai haKohen Shvadron, *Da'at Torah*, O.H. sec. 90, no. 9; R. Jacob Saul Kassim, *Ketsinei Erets*, sec. 6; R. Ben-Zion Aba Shaul, *Resp. Or leTsiyon*, II, sec. 7, no. 20.
101. Meiri, *Be'erkhot* 27a (ed. R. S. Dickman, p. 99); R. Hayyim Mordechai Margalioi, *Sha'arei Teshuva*, O.H. sec. 52, sec. 1; R. Joseph Mashash, *Otsar haMikhtavim*, I, sec. 316, no. 5; R. Moses Sternbuch, *Resp. Teshuvot veHanhagot*, II, sec. 62.
102. *Resp. Igrat Moshe*, *supra*, note 99; see also II, sec. 27. There are, however, *posekim* who argue that *tefilla be-tisbbur* has priority over *kavyana*, not because public prayer is obligatory, but rather because it is a more preferable form of *biddur mitsvah*. See, for example, R. Bahyei ben Asher Ibn Halawa, *Pirkei Avot* II:5, *s.v.* "Hillel omer al tifrosh min ha-tisbbur" ("we thank R. Aharon Lichtenstein for bringing this reference to our attention"; R. David Zvi Zeinman, *Resp. Kav Zahav*, I, sec. 1; *Resp. Yaskil Avdi*, *supra*, note 99. See also *infra*, note 244, regarding the view of R. Joseph B. Soloveitchik in this regard.
- Whether, in fact, *tefilla be-tisbbur* is obligatory for men or merely a *biddur mitsvah* is a subject of some debate. See the sources cited by R. Isaac Yosef, *Yalkut Yosef*, *She'eiriv Yosef*, Part II, sec. 70, p. 330ff and R. Isaac Jacob Fuchs, *Tefilla beTisbbur* (Jerusalem: n.p., 1978), Introduction, sec. 4 (some of the sources cited are clearly not conclusive and are open to other interpretations). As indicated, R. Feinstein, *supra*, note 99, maintains that communal prayer for men is a rabbinic obligation. This view also appears in *Arukh haShulhan*, O.H. sec. 90, nos. 20-21; *Resp. Tiferet Moshe*, *supra*, note 85; *Amei Tashfe*—*Hilkhot Tefilla*, sec. 6, no. 11, note 16; and *Resp. Mishne Halakhot*, *Mahadura Pinya*, I, O.H. sec. 66 and 67. See as well the comments of Rabbis Chaim Pinchas Scheinberg, Joseph Shalom Elyashiv and David Kornglass as reported by R. Aryeh Zev Ginzberg in *Resp. Divrei Hakhamim*, O.H. sec. 6, no. 96. Many other leading authorities, however, differ, maintaining that *tefilla be-tisbbur* is merely a *biddur mitsvah*. See references cited *supra* in previous paragraph of this note; R. Israel Moses Hazzan, *Kerakh Shel Romi*, sec. 6 and 7; commentary of R. Shalom Moses Hai Gagin, *Yeri'ot haOhel* to R. Samuel Yarondi's *Ohel Moed*, *Sha'ar Keviat Shema*, *Derekh Shelishit*, *Netiv Dalet*, no. 4, *s.v.* "VaAni haPa'ut" and *Sha'ar Tefilla*, *Derekh Revi'*, *Netiv Alef*, no. 23 and ed. R. Joseph Elijah Henkin, *Lev Ivra*, pp. 158-159; R. Aryeh Pomeronchik, *Eimek Berakha*, *Birkhot Keriat Shema*, no. 1, pp. 7-8; R. Menahem Mendel Kasher, *Torah Sheleima*, XV, *Yitro*, *addenda*, sec. 5, reprinted in *Resp. Divrei Menahem*, I, sec. 29; R. Benjamin Joshua Zilber, *Resp. Az Nidberu*, XIV, secs. 37-38; R. Moses Malka, *Resp. Mikve haMayyim*, V, E.H. sec. 3, no. 4; R. Fuchs, *ibid.*, pp. 33-34. R. Aharon Soloveitchik, in a conversation with Dov I. Frimer, July 8, 1997, indicated that this was also the view of his grandfather, R. Hayyim Soloveitchik of Brisk. R. Aharon Lichtenstein stated to the authors that this position of R. Hayyim Soloveitchik was often cited approvingly by R. Joseph B. Soloveitchik as well. (Interestingly, R. Joseph B. Soloveitchik also records that his father, R. Moses Soloveitchik, maintained that *tefilla be-tisbbur* is not merely a better mode of private prayer, but an inherently different prayer form; see *Reshimot Shiurim*, *Sukka* 38a, p. 184, *s.v.* "Dimyon." This does not, of course, preclude the possibility, that *tefilla be-tisbbur* is optional). R. Joseph Elijah Henkin, *Lev Ivra*, *ibid.*, emphasizes, though, that even according to this school, *tefilla be-tisbbur* is a communal obligation, *i.e.*, the *men* of the community are obligated to ensure that a *minyan* is available for public prayer; only when such has been secured does actually

praying within a *minyan* become a *biddur mitsvah*. A similar analysis has been proffered by R. Joseph Rosen ("The Rogatchover"), *Tsafnat Panei'ah*, M.T., *Hilkhot Tefilla*, 12:5, with regard to *keriat haTorah*. See also R. Abraham Aaron Price, *Mishnat Avraham*, I, to *Sefer Hasidim*, sec. 410, pp. 410-411.

Even according to those authorities cited above who maintain that public prayer for men is merely a *biddur mitsvah*, there is room to distinguish between the Sabbath and Holidays, where communal prayer is obligatory, and weekdays, where it is not. See *Nahmanides*, Lev. 23:2; *Peri Megadim*, *Mishbetot Zahav*, O.H. sec. 490, no. 2 (end); R. Simeon Greenfield, *Resp. Maharshg*, II, sec. 82. Cf., though, R. Jacob haLevi Moellin, *Minhagei Maharil*, *Hilkhot Eruvei Havseivot*.

103. One can, therefore, take issue with R. Bleich's position (*supra*, note 63) that "the fulfillment of a mitsvah [e.g., prayer] in an optimal manner [i.e., via *tefilla be-itsbbur*], albeit without extraordinary *kavvana*, is to be favored over less optimal fulfillment accompanied by fervent religious experience." While such a statement may be true with regard to men, it may not necessarily be so for women.
104. *Magen Avraham*, in his gloss to the statement of *Shulhan Arukh*, O.H. sec. 689, no. 1, that "women, too, are obligated to hear the *Megilla*," writes, "'Women'—Therefore one must read the *Megilla* at home for the unmarried women." To this, *Be'er Heitev* and *Mishna Berura* add: "In some places, the unmarried women go to the women's section of the synagogue to hear the *Megilla*." R. Menashe Klein, *supra*, note 64, understands from the above citations that it was not the obligation nor the wont of the unmarried women, and certainly of the married women, to hear a public reading of the *Megilla*. (See, however, *Halikhot Beitin*, *Petah haBayit*, no. 25, who suggest an alternate understanding of *Magen Avraham*.) R. Yehuda Herzl Henkin, *Tisbbur Nashim biKvi'at haMegilla*, *Keshot*, 4 (*Adar II/Nisan 5755*), sec. 14, pp. 8-10, reprinted in *Resp. Benei Vanim*, III, sec. 7, suggests that this is the meaning of the cryptic suggestion of Behag, *Halakhot Gedolot*, *Hilkhot Megilla*, s.v. "*haKol hayavin*"; cited in *Rama*, O.H. sec. 689, no. 2, that women are obligated in hearing the *Megilla* [in private] and not in reading it [in public]. R. Mordechai Jacob Breisch, *Resp. Helkat Ta'akov*, III, sec. 144, argues that women are obligated in neither *be-rov am hadrat melakh* ("In the multitude of people is the King's glory," Proverbs 14:28; *vide infra*, sec. B.6 for a discussion of this term) nor in *pirsumei nisa* (publicizing the miracle). A similar position is maintained by R. Moses Sternbuch, *Mo'adim uZmanim*, II, sec. 173, and R. David Auerbach, *Halikhot Beitin*, *Petah haBayit*, sec. 25.
105. R. Israel David Harfeness, *Resp. VaYvarekh David*, I, O.H. sec. 82, and R. Gavriel Zinner, *Nitei Gavriel—Dinei uMinhagei Purim*, sec. 13, no. 3, note 6, dissent, however, maintaining that women are obligated in *be-rov am*. At first blush, this would also seem to be the view of *Hayyei Adam*, *kellal* 155, no. 7, who writes, "... Even if one can gather a *minyan* in his home, it is still highly preferable (*mitsvah min ha-mitsvot*) to go to the synagogue—he, his wife and his children—to hear the *Megilla*." Similar language is found in *Bah*, O.H., end of sec. 687 and *Ateret Zekenim*.

Nevertheless, one could well argue that *Hayyei Adam*, *Bah* and *Ateret Zekenim* maintain that children and certainly women contribute by their presence to the *be-rov am hadrat melakh* of others, though they themselves are not obligated therein. See R. Joshua M.M. Ehrenberg, *Resp. Devar Yehoshua*, I, sec. 96. Alternatively, these *posekim* may consider the presence of women and minors preferable because of *pirsumei nisa* (even in the absence of *be-rov am*). This is in fact the implication of *Or Zarua*, *Hilkhot Megilla* sec. 368, who states that one should be accompanied to the reading of the *Megilla* by his wife and children because of *pirsumei nisa*.

106. R. Mas'ud Raphael Alfasi, *Resp. Mas'ha deRabvata*, addenda at end of II, sec. 689; R. Joseph Hayyim, *Resp. Rav Pe'alim*, O.H. II, sec. 62; R. Moses Hayyim Lits Rosenbaum, *Sha'arei Emet*, *Hilkhot Megilla*, sec. 4, *Hemdut Arye*, sec. 4, no. 5; *Hug haAretz*, sec. 3; R. Joseph Hayyim Sonnenfeld, *Resp. Salmat Hayyim*, I, sec. 101; R. Tsvi Pesah Frank, *Mikra'ei Kodesh*, *Purim*, sec. 35 and 50, note 3; R. Avraham Yeshayahu Karelitz, *Hazon Ish*, O.H. sec. 155, no. 2; R. Isaac Halberstadt, *Shenei Sarei haKodesh*, p. 16; *Purim Meshulash*, sec. 2, nos. 8 and 9 and addendum thereto; R. Hanoch Zundel Grossberg, *Iggeret haPurim*, first edition, sec. 7, no. 2, second edition, sec. 8, no. 3; *Resp. Tabia Omer*, VIII, O.H. sec. 23, no. 27 and sec. 56, end of no. 4; R. Ovadia Yosef, *Likkutei Kol Sinai*, sec. 23, p. 47; *Talkut Yosef*, V, *Hilkhot Mikra Megilla*, sec. 7, p. 284; *Kitsur Shulhan Arukh Talkut Yosef*, O.H. sec. 692, nos. 4 and 10; *Resp. Tsits Eliezer* XIII, sec. 73; R. Joseph Shalom Elyashiv (personal written communication to Aryeh A. Frimer, 27 *Adar* 5754, March 10, 1994); Sephardi Chief Rabbi Eliyahu Bakshi-Doron, cited in *Lu'ah Dinim uMinhagim*, Israeli Chief Rabbinate (5757), p. 122; R. Joel Schwartz, *Adar uFurim*, sec. 8, no. 5, par. 2 and 3 and note 11; *Halikhot Beitin*, sec. 24, nos. 17-21 and notes 33, 34, 44 and 48; *Hilkhot Hag beHag: Purim*, sec. 8, no. 13 and 14, note 32 and addendum to sec. 8, no. 13, note 31, p. 218; Chief Rabbis of Ma'ale Adumim Joshua Katz and Mordechai Nagari, *Ma'alot*, no. 185, *Parshat Tetsave* 5756, *Halakha Sedura*, sec. B, no. 5 and conversation with Dov I. Frimer (March 23, 1996); R. Yehuda Herzl Henkin, *supra*, note 104. Other *posekim* dissent; see R. Shlomo Kluger, *Hokhmot Shelomo*, O.H. sec. 689, no. 5; *Kaf haHayyim*, O.H. sec. 690, no. 120; *Arukh haShulhan*, O.H. sec. 690, no. 25; *Resp. Mishne Halakhot*, *Mahadura Tinyana*, I, O.H. sec. 550; and R. Moshe Feinstein as quoted by R. David Katz, *supra*, note 44. Note, however, that both *Arukh haShulhan* and R. Feinstein, like many other leading *posekim*, maintain that the *HaRav et rivenu* benediction can be said even in the absence of a *minyan*; see *infra*, note 44.
107. For a discussion of the rationale, see *supra*, note 3.
108. *Resp. Rav Pe'alim*, *Mikra'ei Kodesh*, *Resp. Tsits Eliezer*, *Adar uFurim* and *Purim Meshulash* (all *supra*, note 106) suggest that *Rama*, O.H. sec. 690, no. 18 (see text near note 80), was hesitant to count women into a *minyan* together with men due to modesty considerations. *Rama*, however, would have no such reservations regarding a *minyan* for *Megilla* made up exclusively of women.
109. R. Sraya Devlitsky, *Purim Meshulash*, sec. 2, note 20, for example, refers to these second *Megilla* readings for women as the "*takana gedola*"

- (important innovation) of Bnei Brak.
110. Surveys of the different opinions can be found in the following works: *Encyclopedia Talmudit*, XII, "Zehvirat Ma'ase Amalek," sec. 3 (p.222); *Resp. Yabia Omer*, VIII, sec. 54; *Resp. Yehave Da'at* I, sec. 84; *Halikhot Beit*, sec. 9, no. 5, note 8; *Halikhot Bat Yisrael*, sec. 22, no. 1, notes 1-4; *Hilkhot Hag beHag: Purim*, sec. 3, no. 3 note 8 and end of addendum to sec. 3, no. 2 note 7, p. 214; *Nitei Gavriel—Dinei uMinghei Purim*, sec. 4, no. 4, notes 5-8, and no. 10, note 14; responsa of R. Isaac Goldberger printed at the very end of the 5744 edition of *Nitei Gavriel—Hilkhot Purim* [the responsum does not appear in the later, 5752, edition]. For additions, see Aryeh A. Frimer, *Tradition*, *supra*, note 3 and footnotes 36-38 therein. To those who obligate women, add R. Baruch HaLevy Epstein, *Torah Temima*, *Deut.* 25:19, note 206; *Minhat Yitshak*, IX, sec. 68, no. a; *Teshuvot veHanagot*, III, sec. 223. To those who exempt women, add R. Hayyim Halberstam, *Resp. Divrei Hayyim*, O.H. II, sec. 14; *Resp. Divrei Yatsiv*, O.H., II, sec. 288; *Rivevot Ephrayim*, O.H. IV, sec. 43, p. 81; *Resp. Kinyan Torah beHalakha*, V, sec. 80; R. Sha'ul Yisraeli and former Chief Rabbi Mordechai Eliyahu, cited in *Mikra'ei Kodesh—Hilkhot Purim*, sec. 1, no. 19, note 45; R. Yisroel Taplin, *Orav Yisrael*, sec. 2, end of no. 8; *Resp. Degel Re'uvein*, sec. 6. These latter *poskim* indicate that the lenient position is the view of the vast majority of codifiers and common practice. R. Moses Portman (Poniveze Yeshiva, Bnei Brak; conversation with R. Shlomo H. Pick and recorded in personal communication to Aryeh A. Frimer, April 1992) indicated that it was not the practice of religious women in Telshé, Lithuania to make a special effort to hear *Parshat Zakhor*. R. David Zvi Hillman (editor, *Encyclopedia Talmudit* and Frankel edition of *M.T.*; conversation with R. Shlomo H. Pick, *ibid.*) indicated that this was generally true for much of Eastern Europe. In addition, we note that both Rabbis Hanokh Henikh Agus, *Marheshet*, sec. 22, no. 2, and Meir Simcha haKohen of Dvinsk, *Or Same'ah*, *Megilla* 1:1, discuss the cryptic ruling of *Halakhot Gedolot*, *Hilkhot Megilla*, s.v. "haKol Hayyavin" and note 93 *supra*, that women are obligated in hearing the *Megilla* and not in reading it. They both posit that this view, which suggests that women have a lesser *Megilla* obligation than men, is essentially the same as that of *Hinukh*, who argues that women are exempt from the obligation of reciting *Parshat Zakhor*. Since the view of Behag is normative halakha for Ashkenazic Jewry (see *Shulhan Arukh* and *Rama*, O.H. sec. 689, no. 2), *Hinukh* should be as well. R. Isaac Ratsabi, *Shulhan Arukh ha-meKutsar*, III, sec. 121, no. 4, indicates that according to Yemenite practice, women are exempt from *Parshat Zakhor*. See also R. Eliyahu Bakshi-Doron, *Resp. Binyan Av*, III, sec. 30; R. Isaac Yosef, *Kitsur Shulhan Arukh Yalkut Yosef*, O.H. sec. 135, no. 49, sec. 143, no. 6 and sec. 685, no. 10.
 111. R. Joseph Babad, *Minhat Hinukh*, commandment 603; R. Tsvi Benjamin Auerbach, *Nahal Eshkol*, *Hilkhot Hanuka uFurim*, sec. 10, no. 1; R. Solomon haKohen (of Vilna), *Resp. Binyan Shelomo*, sec. 54, s.v. "Mihu an"; *Mishna Berura*, O.H. sec. 685, no. 16, *Sha'ar haTisuyin*, no. 5; *Kaf haHayyim* sec. 685, no. 30; R. Ben-Tsion Lichtman, *u'lam* 7 (5724), 361 and *Benei Tsuyon*, II, O.H. sec. 55, no. 1-2; *Mo'adim uZmanim*, I, sec. 166, *She'arim haMetsuyanim beHalakha*, *Kunteres Aharon*, sec. 140, no. 1; *Yalkut Yosef*, V, *Keriat Parshat Zakhor*, sec. 8, note 12, pp. 259-260; responsa of R. Isaac Goldberger printed at the end of *Nitei Gavriel—Hilkhot Purim* [5744 edition]. See also R. Tsvi Pesah Frank, *Mikra'ei Kodesh*, *Purim*, sec. 5, pp. 82-83 and the comments of R. Joseph Cohen, *ad. loc.*, nos. 8-9; R. Lichtman, *ibid.*, and R. Yehiel Abraham Zilber, *Bivur Halakha*, O.H. sec. 146, no. 2, demonstrate that the contrary view of *Resp. Terumat haDeshen* is predicated on a misprint (of one letter!) in the standard editions of *Piskei haRosh*, with the proper reading being "be-asei mi-deOraita" rather than "be-asara mi-deOraita"—as found explicitly in the Oxford-Bodley manuscript of *Piskei haRosh*, as well as in *Tosafot haRosh* and *Tosafot Rabbeinu Yehuda beHasid*, *Berakhot* 47b, s.v. "Mitsvah."
 112. *Yalkut Yosef*, *supra*, note 111; R. Moses Feinstein, as cited in *Mo'adei Teshurun*, I, Laws of Purim, 1: 6(a) and note 12 *ad. loc.* (p. 64); R. Sha'ul Yisraeli and R. Avigdor Nevenstal, as cited by R. Moses Harari, *Mikra'ei Kodesh—Hilkhot Purim*, sec. 1, no. 20, end of note 49 (end); *Resp. Sheivet haLevi*, IV, sec. 71, no. 1; R. Sraya Devlitsky, *Purim Meshulash*, sec. 2, note 20; *Adar uFurim*, sec. 3, no. 4(b)(2). Cf., however, R. Haim David HaLevy, *Resp. Asei Lekha Rav*, VII, sec. 41; R. Yehiel Abraham Zilber, *supra*, note 111; and *Halikhot Bat Yisrael*, sec. 22, no. 3.
As R. Schachter himself comments, *supra*, note 61 at p. 119, even if a *minyán* for *Parshat Zakhor* were biblically required, it is not at all clear that the failure to recite the attendant *berakhot* would, in fact, impinge upon the fulfillment of the mitzvah. First, the benedictions over the public reading of *Parshat Zakhor* may be of only rabbinic origin. (See the discussion found in the following sources: *Peri Megadim*, *supra*, note 83; *Arukh haShulhan*, O.H. sec. 47, nos. 3-4; R. Joseph Cohen, *Haverrei Kodesh*, no. 6 on *Mikra'ei Kodesh*, *supra*, note 83; *Resp. Yabia Omer*, III, O.H. sec. 27, no. 11; *Resp. Yehave Da'at*, I, sec. 85, p. 244). Second, even if the benedictions themselves are biblically mandated, it does not necessarily follow that failure to recite them would prevent one from fulfilling a *Parshat Zakhor* obligation. See at length R. Abraham Dov-Ber Kahane Schapira, *Resp. Devar Avraham*, I, sec. 16; R. Tsvi Pesah Frank, *Kunteres Mili deBrakhot*, *Resp. Har Zevi*, O.H. II, sec. 1 (printed originally as a preface to *Toledot Ze'ev*, authored by his brother Ze'ev Wolf Frank); R. Isaac Arieli, *Einyayim laMishpat*, *Berakhot* 15a, s.v. "ve-lo bi-vrakha."
 113. *Resp. Torat Hesed*, O.H. sec. 37; R. Hayyim Eleazar Shapira, *Resp. Minhat Elazar*, II, sec. 1, no. 4 ff.; R. Joshua Heschel Michel Shapira, *Tsits haKodesh*, sec. 52, no. 3; R. Dov Ber Karasik, *Pit'hei Olam uMatamei haShulhan*, O.H. sec. 685, no. 7, note 14; *Resp. BeTel haHokhma*, VI, sec. 49, no. 7 and at the end of the responsum; R. Meir Ze'v Goldberger, *Resp. Imrei haMezeq*, no. 22; *Mo'adim uZmanim*, II, sec. 167; *Resp. Yabia Omer* and *Kinyan Torah beHalakha*, *supra*, note 110; *Mo'adei Teshurun*, Laws of Purim 1:3, note 9 in the name of R. Moses Feinstein, *Nitei Gavriel—Dinei uMinghei Purim*, sec. 4, no. 10 and note 14; *Orav Yisrael*, sec. 2, end of no. 8, note 36; R. Mordechai Eliyahu in *Shabbat beShabbato*, VIII, no. 24 [380], 8 *Adar* II 5792 [March 13, 1992], *Meishiv beHalakha*, *Shulhan Arukh ha-meKutsar*, *supra*, note 110. See also *Resp.*

Rivevot Ephrayyim O.H. IV, sec. 43. R. Aharon Lichtenstein (conversation with Dov I. Frimer) has also ruled that women can fulfill their *Parshat Zakkor* obligation, even if biblical in nature, by reading the requisite portion from a printed *Humash* in private.

14. *Resp. Tabya Omer*, VIII, addendum to O.H. sec. 54, reports to seeing this custom in Har No'f, Jerusalem; *Purim Meshulash*, sec. 2, no. 8, note 20, records that this is the custom in Bnei Brak; *Resp. Minhat Yitshak*, *supra*, note 110, lists "Ashkenaz" and many other communities. We have also witnessed this practice in the United States in Boston, Boro Park (Brooklyn), Cleveland, and Washington Heights (Manhattan), as well as in Israel in Rehovot and Ma'ale Adumim. R. Aharon Felder, *LeTorah veHora'a: Memorial Volume to R. Moses Feinstein* (5749), p. 216, cites "one of the greatest rabbis" to the effect that this custom is by no means new and has been in practice for many generations. In a subsequent conversation with Aryeh A. Frimer, Jan. 6, 1991, R. Felder identified the great rabbi as R. Shimon Schwab. R. Moses Stern, cited by R. David Katz, *supra*, note 144, sec. 1, no. 22, page 84, and by R. Joel Schwartz, *Adar uFurim*, sec. 3, no. 3 (1), *Talkut Yosef II*, *Keriat haTorah beAsara*, sec. 5 and note 7, and R. Isaac Goldberg (responsum printed at the end of *Nitei Gavriel—Hilkhot Purim* [5744 edition]) also permit such a practice. R. Isaac Yosef, *Talkut Yosef*, O.H. sec. 143, no. 5 and *Kisur Shulhan Arukh Talkut Yosef*, O.H. sec. 143, no. 6, permits the practice only if women find it near impossible to attend the regular *keri'a* of *Parshat Zakhor*.
- On the other hand, other *posekim* do not approve of this practice. See *Resp. Torat Hesed*, *supra*, note 113; R. Moshe Feinstein, cited by R. Aharon Felder, *Mo'adei Teshuvim*, I, Laws of *Purim*, sec. 1 no. 3 and note 9 *ad loc.*, pp. 63-64, and by R. David Katz, *ibid.*, sec. 14, no. 2, p. 133; *Resp. Rivivot Ephrayim*, O.H. IV, sec. 43, p. 82; R. Menashe Klein, cited by R. David Katz, *ibid.*, and by R. Joel Schwartz, *ibid.*; R. Aharon Felder, *LeTorah veHora'a*, *ibid.* For a discussion of this prohibitive position and its rationale, see *infra*, note 139.
115. *Mo'adim uZmanim*, VIII, addendum to II, sec. 167.
116. R. Abraham David Horowitz, *Resp. Kinyan Torah beHalakha*, V, sec. 80, no. 4. See also *Resp. Minhat Yitshak*, *supra*, note 110, who also raises this possibility.
117. R. Moses Sofer, *Derashot Hatam Sofer*, III, *Derush leBar Mitsvah*, p. 72. Cf., however, *Resp. Torat Hesed*, O.H. sec. 37, and R. Joseph Cohen, *Harevei Kodesh* on R. Tsvi Pesah Frank's *Mikra'i Kodesh*, *Purim*, sec. 6, p. 86, who contend that even if women are obligated to read *Parshat Zakhor*, they cannot constitute a *minyan* for the reading. This debate is, in reality, predicated on the larger question of women and *minyan*. See at length Aryeh A. Frimer, *supra*, note 3. Rabbis Sofer and Horowitz clearly belong to the "First School," while Rabbis Schneur Zalman and Cohen align themselves with the "Second School," as defined in that article.
118. It should be noted that being exempted from a *mitsvah* is not always a valid reason for not performing it. For example, one is required to put *tsitsit* on the corners of one's garments when one wears a four-cornered garment—but there is no obligation to wear such a garment! Nevertheless,

less, R. Joseph Dov Soloveitchik, *Beit haLevi*, part 2, *Derush 11*, demonstrates that even in a case of a non-obligatory mitzvah such as *tsittit*, if the general custom is to obligate oneself (e.g., by wearing a four-cornered garment) and one refrains from doing so, he is liable for heavenly punishment. (See also *Tosafot, Pesachim* 113b, s.v. "V'ein lo banin.") This is because his inaction, in light of the general custom, suggests that he despises *mitzvot*, and he is therefore considered a sinner. This, however, is not at all relevant to a woman's choice to forego *tefilla be-tzibbur* in order to attend a woman's service. First, it is certainly not the universal custom of women to come to *shul*. Attendance is undoubtedly greater on *Shabbat* or *Yom Tov* mornings, but there are many communities in which most women simply stay home, as the Gaon of Vilna, *supra*, note 85, advised the women of his family to do. Second, and more fundamentally, even if a woman should choose to attend *shul*, she would not—and could not—thereby bring herself to a state of obligation in *tefilla be-tzibbur*.

19. See *supra*, note 104.
20. *Supra*, note 61 at p. 51.
21. R. Mordechai Banet, *Hiddushhei Mahavran Banet*, Berakhot 18a, s.v. "Ben Azzai Omer"; *Resp. Shevet haLevi*, IV, sec. 11, no. 1; R. Meyer Isaacson, *Resp. MeVaser Tov*, II, sec. 13; R. Moses Shternbuch, *Resp. Teshuvot veHanhagot*, II, sec. 57.
22. Note that R. Shternbuch, *Resp. Teshuvot veHanhagot*, *ibid.*, cites the verse from *Psalms* 34:4: "O magnify the Lord with me, and let us exalt His name together," as the source text for the first form of public worship which does not require a *minyan*. This is the very same verse which the Talmud, *Berakot* 45a-45b, utilizes as the basis for the *birkat ha-zimmun* recited by three adults—three men or three women—who eat bread together. See text at note 14, *supra*. *Rashi*, *Berakot* 45b, s.v. "delka," clearly underscores that women as well are included within "the fulfillment of 'O magnify the Lord with me.'"
23. R. Solomon Luria, *Tam Shel Shelomo*, Bava Kama, chap. 4, sec. 9 (*Bava Kama* 38a). The Talmudic passage under discussion by Maharshal deals with a particular law in torts in which Jews are given preferential treatment over non-Jews. The Talmud recounts that upon learning of this ruling, two non-Jewish emissaries/spies of the Roman Empire queried the rabbis as to the details of this law. Maharshal notes that the rabbis were accurate in their presentation despite possible serious repercussions, including the loss of life. Maharshal adduces this as proof that one must choose martyrdom over misrepresenting halakha. The view of Maharshal is cited in R. Isaiah Horowitz, *Shenei Lufot haBerit*, Part 1, *Tractate Sha'ruvot*, end of *Perek Ner Mitsvah*, s.v. "Kevod haTorah"; R. Elijah Rogeler, *Resp. Tad Eliyah*, sec. 48; R. Moses Shternbuch, *Ta'am vaDa'at*, *Shemini*, s.v. "vet ha-arnevet." For additional discussion of the view of Maharshal (and Rabbeinu Jonah Gerondi, discussed below in the Addendum section of this paper, Part 2 and Part 3p), see *Igrot Moshe*, O.H. II, sec. 51; R. David Cohen, *Birkhat Ta'aveits*, pp. 52-54; R. Abraham Drozi, *Resp. Aderet Tiferet*, sec. 31; R. Judah David Bleich, *Contemporary Halakhic Problems*, II (New York: Ktav Publishing House and Yeshiva University Press, 1983), pp. 134-138, and in his "Siddur Hupa leKohen veSafek Gerusha

- Kedei leMa'et beIssurin*," *Tehumin* 9 (5749), pp. 41-49. See also the exchange of letters by Rabbis A. Gurewitz, N. Helfgott and D. Cohen, *The Journal of Halakha and Contemporary Society* 20 (*Succot* 5751, Fall 1990), pp. 131-136, and references cited in the Addendum section of this paper, Part 2. Justice Elon, *supra*, note 4, p. 322, correctly notes that the terminology "*ziyyuf haTorah*" appears nowhere in *Maharshal* or subsequent codifiers, but rather "*shinui divrei Torah*" (changing the words of the Torah). R. Isaac haLevi Herzog, "*Tehuka leYisrael al Pi haTorah*," III (Jerusalem: *Mossad haRav Kook*, 1989), p. 278, uses the term "*siluf haTorah*."
124. For a general halakhic discussion of the prohibition of lying and possible exceptions, see the Addendum section of this paper, Part 6.
 125. *Supra*, note 63.
 126. *M.T., Hilkhoh Melakhim* 10:9.
 127. This is an assumption which R. Schachter states more explicitly in his article, "*BeNyanei Beit haKeneset uKdashato*," *supra*, note 62.
 128. *Supra*, note 3.
 129. R. Yehuda Herzl Henkin, responsum to Aryeh Leib Lewis, dated *Tammuz* 8, 5745 (June 27, 1985); published under the title "*Mahu Kevod haTisbuv*," *HaDorom* 55 (*Elul* 5746), p. 33; expanded and revised in *Resp. Benei Vanim*, II, sec. 10. R. Henkin suggests several possible grounds for refuting *Maharshal*'s proofs. See also R. Joseph Elijah Henkin, *Kitvei haGri Henkin*, II, *Teshuvot Ivra*, sec. 95, no. 2.
 130. R. Isaac Herzog, *supra*, note 123 (end).
 131. *Igrot Moshe*, *supra*, note 123. Rav Feinstein points out that *Maharshal*'s position that *ziyyuf haTorah* requires martyrdom is seemingly contradicted by two Talmudic passages. In *Gittin* 14b (see *Rashi*, *ad loc.*, s.v. "*tav ramu lei*") the Talmud recounts how R. Dustai, for fear of bodily harm, encouraged ruffians in their thrashing of his fellow, R. Yose, despite the fact that it was the latter's halakhically correct position which precipitated the ruffians' actions. Although R. Dustai consciously misrepresented halakha to save himself, the Talmud concludes this account with R. Ahi's approval of R. Dustai's behavior, which, as explicitly stated by several *rishonim* (*Meiri*, *Gittin*, 14a, s.v. "*Kevav ramaznu*"; *Tosafot Hakhmei Anglia*, *Gittin* 14b, s.v. "*Arda ve-arta*") refers to his words of encouragement as well. A similar story is recounted in *Nedarim* 22a (see *Ran* and *Rosh ad loc.*, s.v. "*uFru*"): the well-traveled *amora*, Ula, found himself witnessing the murder of one of his traveling companions. Fearing for his own life, Ula not only expressed his approval of the murderous action, but even encouraged the murderer to finish the job! Furthermore, the Talmud records R. Yohanan's approval of Ula's action in light of the potential danger to Ula's own life, despite the fact that Ula clearly misrepresented Jewish law in implying that this heinous crime is permissible. Indeed, *Tosafot*, *Sota* 41b, s.v. "*Kol ha-ma-hanif*," and other *poskim*, cited in Part 2 of the Addendum section of this paper, refer to the story of Ula as evidence that one may misrepresent Jewish law in times of danger. (See also *Tiferet Yisrael*, *Pe'a* 1:1, *Boaz* note a.) All this presumably contravenes the view of *Maharshal* that martyrdom is called for where *ziyyuf haTorah* may result. As noted in the text, R. Feinstein limits the prohibition to explicit—not implicit—changes in Jewish law.
 132. It is significant that R. Feinstein's distinction between explicit and implicit misrepresentation finds precedent in a related law of martyrdom. Jews are bidden to martyr themselves rather than deny their Jewishness or declare themselves idolaters, for this is equivalent to denying God (*ke-kofei beElokei Yisrael*). Nevertheless, double entendres are permitted. Thus, the Talmud (*Nedarim* 62b) permits one to declare that he is a "fire worshipper" since God is referred to as "a consuming fire" (*Deut.* 9:3). This is permissible even if the only purpose is to save oneself from a discriminatory tax. See *T.D.* sec. 157, no. 2 and *Keneset haGedola*, s.v. "*Asur le-adam*"; *Beit Lehem Tehuda*, s.v. "*Lashon de-mi-shamei'a*"; and *Pir'hei Te-shuva* (n.18) *ad loc.* It is noteworthy, however, that misrepresentation, even by implication, which involves flattering or encouraging the halakhically forbidden action of a wicked individual (as in the cases of Ula, R. Dustai or Agrippas, mentioned in note 131 and Addendum section of this paper, Part 2) is still forbidden because of *hanufa* (as discussed in Addendum, Part 2); however, this does not require martyrdom. See, though, R. Judah David Bleich, *supra*, note 123 and Addendum, Part 3o.
 133. R. David Cohen, "*HeAkav leMishor*" (Jerusalem: *Morasha leHanhil* Press, 5753) p. 33, s.v. "*ve-nizkarti*" (and in personal communication to Aryeh A. Frimer, Dec. 27, 1990). Rabbi Zelig Epstein, in conversation with Aryeh A. Frimer and Noah Dear, March 8, 1996, argued, however, that such a *ziyyuf haTorah* may have been permitted only because it enabled the spiritual salvation of *Kelat Yisrael*. This would be analogous to the position of R. Joseph Colon, *Resp. Maharik*, sec. 167 (see also *Encyclopedia Talmudit*, XXII, "*Te-hareg ve'Al Ta'avur*," at pp. 64-65), who justifies the actions of Yael and Queen Esther on the grounds that it resulted in the salvation of *Kelat Yisrael*.
 134. *Supra*, note 123.
 135. *Supra*, note 129 and R. Yehuda Herzl Henkin, "*Issur Harigat Goy veTov she-haGoyyim Harog*," *Keshot* no. 4 (*Adar II/Nissan* 5755), pp. 12-14, reprinted in *Resp. Benei Vanim*, III, sec. 40.
 136. See the Addendum section of this paper, Part 3, for an extensive list of views and cases which apparently demonstrate that misrepresenting halakha is merely another—albeit, perhaps, a more serious—form of lying, which may be permitted under certain conditions and is by no means grounds for martyrdom.
 137. *Supra*, text at note 125.
 - 137*See, for example, Rivka Haut, "Women's Prayer Groups and the Orthodox Synagogue," in *Daughters of the King: Women and the Synagogue*, *supra*, note 3*, pp. 135-157, at p. 141.
 138. For a review of some of the relevant responsa, see R. Ovadiah Yosef, *Haggada Hazon Ovadiah*, II, *Hilkhoh Hodesh Nissan*, sec. 1, no. 6 and *Resp. Yabia Omer*, VIII, *addendum* to O.H. sec. 54. The question of using and transporting a *sefer Torah* for a women's Torah reading, as well as the complicated issue of *berakhot*, will be discussed and documented in detail in Part 2 of this paper, which deals with the "Practical Issues" of halakhic women's prayer groups. We simply note at this juncture that, regarding a women's Torah reading, R. Mordechai Tendler writes in the

- name of his grandfather, R. Moshe Feinstein (*infra*, text following note 217), "They may also read from the Torah, though they should be careful not to do so in such a manner as to create the erroneous impression that this constitutes *keriat haTorah*." (See, however, an apparently contradictory ruling by R. Moshe Feinstein, cited by R. Aharon Felder, *supra*, note 114.) In a letter to Ms. Nili Arad, dated 22 Adar 5750 (March 19, 1990), concerning "The Women of the Wall" controversy, R. Meir Yehudah Getz, then Rabbi of the *Kotel*, indicated that the women's use of the *sefer Torah*, though not customary, did not contravene halakha. Finally, the following *posekim* indicate that their objection is to a women's Torah reading performed with benedictions: R. Ovadiah Yosef, *Yom haShishi*, 14 Shevat 5750 (Feb. 9, 1990), p. 30; R. Isaac Yosef, *Talkut Yosef*, II, sec. 143, *Keriat haTorah beAsara*, no. 4 and note 6, p. 135; R. Isaac Yosef, *Kitsur Shulhan Arukh Talkut Yosef*, O.H. sec. 143, no. 5; R. Joseph Kappah, *HaIsha veHinukha* (Amana, Kefar Saba, 5740), p. 35, nos. 9 and 10; and R. Efraim Greenblatt, *Rivevet Ephrayim*, VI, sec. 153, no. 12.
139. *Perisha*, Y.D. sec. 270, no. 8, and *Sifte Kohen*, Y.D. sec. 270, no. 5, prohibit reading from a Torah scroll when not halakhically required, even without the attendant benedictions, maintaining that such a practice shows disrespect for the Torah. The rationale behind this is that printed *Humashim* are readily available and the Torah should not be handled unnecessarily. This stringent position is rejected by R. Ovadiah Yosef, *Haggada Hazon Ovadiah*, *supra*, note 138; *Resp. Tavia Omer*, VIII, addendum to O.H. sec. 54, and many other *posekim* to be cited in Part 2 of this paper.
 140. *Resp. Radbaz*, III, sec. 529 [964] and V, sec. 157 [1530] regarding *shenayim mikra ve-ehad targum*. Radbaz's position is cited on O.H. sec. 285, no. 1 by *Magen Avraham*, no. 1; *Keneset haGedola*; *Mahzikei Berakha*, no. 2; *Mishna Berura*, no. 2; *Arukh haShulhan*, no. 7; *Shulhan Arukh haRav*, no. 4; *Kaf haHayyim*, no. 7; and *Birur Halakha*, no. 20, who offers additional citations. See also R. Chaim Elazar Shapira, *Nimukei Orah Hayyim*, O.H. sec. 669, end of no. 2; *Resp. Torah liShma*, O.H. sec. 58; and *Talkut Yosef*, IV, part 1, sec. 285, no. 14. R. Yosef reiterates that the *keriat haTorah* benedictions may not be recited.
 141. *M.T., Hilkhot Melakhim* 10:9.
 142. See Radbaz to *M.T., Hilkhot Melakhim* 10:10; R. Gershon Arfeli, *Torat haMelekh*, *ad loc.*
 143. Proverbs 14:28.
 144. *Encyclopedia Talmudit*, IV, "BeRov Am Hadrat Melekh," p. 195.
 145. R. Abraham Samuel Benjamin Sofer, *Resp. Ketar Sofer, Hoshen Mishpat* (henceforth *H.M.*) 39; *Resp. Meishiv Davar*, I, sec. 46; R. Solomon Chaim haKohen Aviner, *MeKedem leBeit El*, O.H. sec. 5; R. Jacob Ariel, "*LeAhduta shel haKehilla beNusah haTefilla*," *Tehumin* 9, pp. 196-202. (See, however, the comments of R. Yair Dreyfus, *ad loc.*)
 146. It should be noted that R. Schachter not long ago authored an extensive article on various aspects related to the synagogue (*supra*, note 62). Despite the appropriate opportunity, R. Schachter did not use that forum to attack the opening of *shibblach* throughout Boro Park, Williamsburg, Bnai Brak and Jerusalem—not to mention junior, teen-age, young couples, *hashkama* ("carly"), *yeshivische*, "happy" (R. Shlomo Carlebach devotees), and assorted other breakaway *minyanim*. The arguments used by R. Schachter against women's prayer groups, while questionable in their application with regard to women—as noted below—are certainly relevant to these male groups, yet R. Schachter fails to criticize them.
 147. *Supra*, note 143; *Encyclopedia Talmudit*, XII, "Zerizin Makdimin leMitsvat," pp. 409, 419.
 148. On the question of whether *ke-vatikin* takes precedence over *davening* with a *minyan*, see *Resp. Ish Matzliah*, I, O.H. sec. 15, *s.v. "veNahzor,"* p. 49ff; *Birur Halakha*, *Tinyana*, O.H. sec. 58, p. 151 ff, *Birur Halakha*, *Telita'a*, O.H. sec. 58, pp. 58-59, and *Teshuvot veHanagot*, III, sec. 27, 32 and 33.
 149. *Resp. Radbaz*, III, sec. 510 (472); R. Samuel de Medina, *Resp. Maharshdam*, O.H. sec. 36; R. Judah Greenwald, *Resp. Zikhron Yehuda*, O.H. sec. 67; R. Eliezer David Greenwald, *Resp. Keren leDavid*, O.H. sec. 41; R. Isaac Judah Ichiel of Komarno, *Shulhan haTahor*, O.H. sec. 150, no. 1; *Hidushei Batra—Haga beMishna Berura*, O.H. sec. 90, no. 28.
 150. *Arukh haShulhan*, O.H. sec. 90, no. 15; *Mishna Berura*, sec. 90, no. 28; *Hayyei Adam*, *kelal* 17, no. 5.
 151. *Supra*, note 149.
 152. *Supra*, note 149.
 153. *Supra*, note 149.
 154. *Piri Megadim*, O.H. sec. 689; *Eishel Avraham*, no. 1; *Mishna Berura*, sec. 689, no. 1.
 155. For a similar reason, *i.e.*, lack of any obligation, there should also be no problem of "lo tit-godedu"; see *Arukh haShulhan*, O.H. sec. 651, no. 22.
 156. *Supra*, note 76.
 157. *Resp. BeTul haHakhma*, V, sec. 30. *Cf.*, however, *Resp. Devar Yehoshua*, *supra*, note 105.
 158. R. Abraham Hayyim Na'eh, *Ketsot haShulhan*, sec. 45, no. 2, *Badei haShulhan* no. 5.
 159. *Ketsot haShulhan*, sec. 45, no. 9. *Mishna Berura*, sec. 199, no. 18, *Sha'ar haTsiyyun*, no. 9 cites this source and comments: "The [three women] will definitely not lose anything by breaking off [from the three men making the *zimmin*]."
 160. See text near note 104.
 161. *Supra*, note 104.
 162. See also *Resp. Eikhval Yitshak*, O.H. sec. 63, no. 5—reprinted in *Pesakim uKtavim*, II, *She'eilot uTeshuvot beDinei Orah Hayyim*, sec 106, no. 5.
 163. For a discussion of the importance of *minhag beit ha-keneset*, see R. Zvi Hirsch Chajes, *Darkei Hora'a*, sec. 6 and 7; R. Abraham Isaac haKohen Kook, *Resp. Orah Mishpat*, end of secs. 35 and 36; and Justice Menachem Elon, *supra*, note 4, p. 317ff. See also Judith Bleich, "Rabbinic Responses to Nonobservance in the Modern Era," in *Jewish Tradition and the Non-Traditional Jew*, Jacob J. Schacter, ed. (Northvale, N.J.: Aronson Inc., 1992), pp. 37-115 at p. 66ff and text at notes 233-5, *infra*.
 164. *Supra*, note 129. This observation is confirmed by the comments of R. Abraham Weiss, *supra*, note 57, p. 118.
 165. R. Eliezer Berkovits, *Jewish Women in Time and Torah* (Hoboken, N.J.:

- Ktav Publishing House, Inc., 1990), Chapter 4, pp. 77-81, discusses *lo ra'inu einu va'aya* (*vide infra*). He posits that in all cases "which are quoted to show that *lo ra'inu* is a *ra'aya* (proof), there are always two opinions, one for the practice, the other against it. In all these cases, the non-practice is a rejection of an opposing ruling. Where, however, there is no opposing ruling, the non-practice of an activity does not establish it as a *minhag* that must not be changed."
166. Justice Menachem Elon, in his "The Women of the Wall" decision (*supra*, note 4, pp. 313-317), distinguishes between a custom *not* to do something (*hesder shelili*), and no custom to do something (*lacuna*). For a related suggestion, see *Yehave Da'at*, I, end of no. 24.
 167. See, for example, R. Abraham Butchatch, *Eishel Avraham*, O.H. sec. 692: "It is not prevalent (*she-ein matsui*) that any woman should read to be *motzi* others." See also *Divrei Yatsiv*, O.H. II, sec. 294.
 168. *Ben Ish Hai*, *Re'ei*, sec. 17; *Resp. Seridei Eish*, III, sec. 93; R. Isaac Nissim, *Yein ha'Tov*, II, sec. 6; *Resp. Tashkiv Avai*, V, O.H. sec. 28 and VI, *addenda* at end (p. 336), no. 1; R. Hanokh Zundel Grossberg, *HaMa'ayan*, *Tevet* 5733; *Resp. Yabia Omer*, VI, O.H. sec. 29, and again in *Yehave Da'at*, II, sec. 29; *Yalkut Yosef*, III, sec. 225, *Berakhot Perativot*, no. 20.; R. Joseph Bar Shalom, *Resp. Netsah Tisrael*, I, sec. 4 (at end); *Rivevot Ephrayyim*, I, sec. 158; R. Mordechai Eliyahu, *Shabbat beShabbato*, 11 *Tevet* 5748, 12 (160); R. Sha'ul Yisraeli, *Resp. beMare haBazak*, sec. 7-3, p. 13; *Asi leKha Rav*, VI, sec. 12 and VII, sec. 9; R. David Feinstein, personal oral communications to Noah Dear and Dov I. Frimer; R. Mordechai Willig, *Am Morakchai*, sec. 29, no. 4. For a review, see R. Alfred S. Cohen, "Celebration of the Bat Mitzvah," *Journal of Halacha and Contemporary Society* XII (Fall 1986), pp. 5-16.
 169. Noteworthy in this regard are the comments of R. Benjamin Joshua Zilber, *Resp. Az Nidberu*, VI, addendum (*hashmatot*) to 67-68, end, regarding the issue of girls' lighting *Shabbat* candles in addition to their mothers: "And as to R. Blumenfeld's citation in this regard of '*he-badash assur min haTorah* (that which is new is forbidden)'—perish the thought that one would use this principle with respect to any case where the innovation was instituted in order to strengthen religion. The *Hatam Sofer* (R. Moses Sofer) *z"l* never intended to refer to such an instance."
 170. R. Jacob Landau, *HaAgur*, *Hilkhot Shehitin*, sec. 1062 (ed. Hershtler, pp. 171); R. Shabbetai haKohen, *Siftei Kohen*, Y.D. sec. 1, no. 1 and *H.M.* sec. 37, no. 38; R. Aaron Parahya haKohen, *Resp. Parah Mate Aharon*, I, secs. 63 and 68; R. Judah Ayash, *Beit Yehuda*, E.H. sec. 5, s.v. "*uKemo she-katavti*"; *Arukh haShulhan*, Y.D. sec. 1, no. 37; R. Joel Teitelbaum, *Resp. Divrei Yoel*, I, O.H. sec. 10, no. 7 and Y.D. sec. 99, no. 3. This also seems to be the view of R. Elijah Mizrahi, *Resp. R. Elijah Mizrahi*, sec. 16. See also *Resp. Hatam Sofer*, E.H. sec. 41, s.v. "*He'erakhu ba-zeh*."
 171. R. Joshua Boaz, *Shiltei haGibborim*, *Bava Metsin*, chap. 7, sec. 495, no. 2; *Beit Yosef*, Y.D. sec. 1, s.v. "*Um'sh nashim*"; R. Ephraim haKohen, *Resp. Sha'ar Efrayyim*, E.H. sec. 112, s.v. "*Omnam ra'iti*" and ff.; R. Yair Bacharach, *Resp. Havvot Ya'ir*, sec. 42, s.v. "*Od katavti*" and sec. 78; R. Jonathan Eybeschütz, *Kereiti u'Leiti*, Y.D. sec. 1, *Kereiti*, no. 4 and *Urim veTummmim*, H.M. sec. 37, *Tummin*, no. 24; R. Samuel Ashkenazi, *Mekom Shmuel*, II, Y.D. sec. 1; R. Hayyim Broda, *Torah Or veDerekh Hayyim*, I, Y.D. sec. 1, *Derekh Hayyim*, no. 1; R. Jacob Hayyim Sofer, *Kaf haHayyim*, Y.D. sec. 1, no. 10; R. Halfon Moses haKohen, *Resp. Sho'el veNishal*, V, O.H. sec. 82, s.v. "*Gam m'sh*" (*cf. ibid.*, sec. 1, s.v. "*Akh nire*"); R. Joseph B. Soloveitchik, *Mesora* 13 (*Adar* 5757), p. 25. This also seems to be the view of R. Alexander Sender Schor, *Simla Hadasha*, sec. 1, *Tevu'ot Shor*, no. 14 (end). See also R. Joseph Ibn Ezra, *Massa Melekh*, *Ne'ilat She'arim*, *Minhagim Mammon*, root 7, pp. 63c-64a.
 - R. Nissim Hayyim Moses Mizrahi, *Resp. Admat Kodesh*, I, E.H. sec. 31, and his brother, R. Israel Meir Mizrahi, *Resp. Peri haAretz*, II, sec. 2, both distinguish between two cases: (1) where the action is fundamentally permitted according to halakha, yet the *posek* is asked now to forbid it due to a claim of *minhag* resulting from passive behavior of the community; (2) where an activity has already been declared prohibited in previous generations due to *minhag* and the *posek* is now asked to rule that the old custom is no longer in force due to the community's passive behavior. These two rabbinic brothers maintain that a proper formulation of the halakhic rule is that a community's passive behavior is incapable of changing the halakhic *status quo*. Consequently, in case 1, the communal passive behavior *will not support* the conclusion that a prohibitive *minhag* has developed contrary to the established halakha; thus the activity will remain permissible. In the latter situation (case 2), the passive behavior of the community *will not void* the existing prohibitive custom; thus the activity will remain forbidden. The issue of women's *tefillot* obviously falls into the former category.
 - The view of R. Moses Isserles is unclear and appears to be self-contradictory. See *Darkei Moshe haArokh*, Y.D. sec. 1, no. 2; *Mappa*, Y.D. sec. 1, no. 1; and *H.M.* sec. 37, no. 22. For one attempt at reconciling and unifying R. Isserles' position, see R. Johanan Kremitzter, *Orah Mishor*, Y.D. sec. 1, both *mahadura kama* and *mahadura batra*. See also R. Abraham Isaac haKohen Kook, *Mitsvot Re'iya*, Y.D. sec. 1, no. 1.
 172. R. Simeon Greenfield, *Resp. Maharshal*, II, sec. 19; *Resp. Igrot Moshe*, Y.D. I, sec. 13.
 173. See R. Israel Schepansky, "*Torat haMinhagot*," *Or haMizrah* 40:1 (144) (*Tibree* 5752), p. 38, at pp. 49-51, and sources cited therein. See also R. David Friedmann (Karliner), *Resp. She'itai David*, I, *Kunterei haMinhagim*, note 2; *Igrot Moshe*, *supra*, note 172 and O.H. III, sec. 64, and O.H. V, sec. 38, no. 4.
 174. *Infra*, note 182*.
 175. *Exodus* 15:21.
 176. Cited in R. Menahem Mendel Kasher, *Torah Sheleima*, *Exodus* 15:21, note 239.
 177. *Supra*, note 175.
 178. The numerical value of the letters in the words "*ga'o ga'a*"—"highly exalted" equals 178, the number of benedictions in the *shemone esrei*.
 179. *Supra*, note 176.
 180. See Israel Abrahams, *Jewish Life in the Middle Ages*, (London: E. Gold-

- ston, 1932), p. 26; Shlomo Ashkenazi, *HaIsha beAspaklaryat haYahadut*, I (Tel Aviv: Zion Press, second edition, 1979), p. 138; Shlomo Ashkenazi, "Dor Dor uManhigan" (Tel Aviv: Don Press, 1977), pp. 209-210; Emily Taitz, "Women's Voices, Women's Prayers: Women in the European Synagogues of the Middle Ages," in *Daughters of the Kings: Women and the Synagogue*, *supra*, note 3*, pp. 59-71; Shoshana Gelecenter-Leibowitz, "Growing Up Lubavitch," in *Daughters of the Kings: Women and the Synagogue*, *supra*, note 3*, pp. 238-242; Shoshana Pantel Zolty, *supra*, note 3*, pp. 173-176. These volumes cite the Epitaphs of Urania of Worms (d. 6 Adar 5025 [1275 C.E.]) who "with sweet tunelessness officiated before the female worshippers to whom she sang hymnal portions"; Rechenza of Nuremberg (d. August 1, 1298), Guta bat Natan (d. 1308), and Dulce of Worms (d. 1238, wife of R. Elazar of Worms, author of the *Ma'ase Rokei'ah*).
- 180* R. Joseph Messas, *Nahalat Avot*, V, part 2, pp. 268-269. The citation is from the Master's degree thesis research of David Biton, Department of Jewish History, Hebrew University. We thank David Biton and Leah Shakdli for bringing this source to our attention.
181. *Resp. Mishne Halakhot*, IV, sec. 78; R. Avraham Weiss, *supra*, note 57, p. 56, footnote 47.
182. See discussion at note 109, *supra*.
- 182* As to Sephardic *kehillot*, see *Resp. Shemesh uMagen*, II, sec. 72, no. 3 and *supra*, note 90. Regarding Ashkenazic communities, see *Mo'adim uZmanim*, I, sec. 9. R. Shternbuch adds that in light of their high educational level, contemporary Jewish women should no longer be lenient with daily prayer—despite the lack of practice in the past.
183. See notes 219 and 220, *infra*.
- 183* This suggestion is confirmed by the comments of R. Avraham Weiss, *supra*, note 57, p. 56, footnote 48. See also the comments of R. Yitzchak A. Sladowsky, *supra*, note 69, where he writes: "Our primary objection concerns the reading from a *sefer Torah*."
184. R. Schachter, *supra*, note 61 at pp. 131-132, and R. David Cohen, *supra*, note 65; and R. Zalman Nehemiah Goldberg, *supra*, note 73.
185. *Leviticus* 18:3. See also *Leviticus* 20:23.
186. See sources cited in *Encyclopedia Talmudit*, XVII, "*Hukot haGoy*," p. 305.
187. *Supra*, note 129.
188. Cf. R. Zalman Nehemiah Goldberg, *supra*, note 73. R. Goldberg cites a responsum of R. David Zevi Hoffman, *Resp. MeLamed leHo'i*, I, sec. 16, which discusses the use of an organ in the synagogue. R. Hoffman contends that the prohibition of *u-be-hukoteihem* applies also to actions and modes of behavior which imitate the practices of Jewish heretics (e.g., Reform Jews). R. Hoffman finds support for his argument in *Mishna Hullin* 2:9, which forbids slaughtering an animal in the marketplace and allowing the blood to drain into a hole. The *mishna* explains that such behavior is not allowed since it appears "to imitate the ways of the *minim*." Rashi, *Hullin* 41b, s.v. "*Ye-hake*," comments that through imitation "one will strengthen their hand in their ways." The Talmud, *ibid.*, proceeds to quote a *beraita* which explicitly bases this prohibition upon the biblical text of *u-be-hukoteihem*. See *Encyclopedia Talmudit*, *supra*, note 186, at 316-317. R. Goldberg accordingly argues that inasmuch as women's participation in the prayer service finds its source in Reform practice, following suit would transgress *u-be-hukoteihem*.
- With all due respect, however, R. Goldberg's reliance upon R. Hoffman's responsum is quite problematic. As noted by the various commentaries, the activities of the *minim* prohibited by the above *Mishna Hullin* are idolatry-related practices. See, for example, *Rabbeinu Gershom, ad loc.*; Rashi, *Hullin* 41a, s.v. "*Avat*." In fact, R. Jehiel Jacob Weinberg, *Resp. Seridei Eish*, III, sec. 93 (end), underscores this very point in his discussion of R. Hoffman's responsum. R. Weinberg therefore takes pains to note that the use of the organ in the synagogue was initially instituted by the Reform movement with the clear design of imitating Christian religious services. Under such circumstances, adopting Reform practice would in essence constitute an adoption of Christian practice and thus violate *u-be-hukoteihem*.
- No such parallel can be drawn with women's *tefila* groups. All-female prayer groups do not imitate either established Christian religious practice or Jewish heretical practice rooted in non-Jewish religious behavior. Interestingly, in discussing a women's Torah reading accompanied by *keriat haTorah* benedictions, R. Ovadiah Yosef strengthens his prohibitive ruling by arguing that one must guard against the ways of the Reform movement. Nevertheless, he refrains from suggesting that such a practice is a violation of *u-be-hukoteihem*. See R. Ovadiah Yosef, *Yom haShishi*, 14 Shevat 5750 (Feb. 9, 1990), p. 30; R. Isaac Yosef, *Talkot Yosef*, II, sec. 143, *Keriat haTorah haAsara*, no. 4 and note 6; *Kitsur Shulhan Arukh Talkot Yosef*, O.H. sec. 143, no. 5.
- In closing, it should be emphasized that R. Weinberg concurs, as does R. Ovadiah Yosef, that those specific practices and innovations which would strengthen the convictions of Jewish heretics are clearly to be avoided, despite the fact that they do not technically violate *u-be-hukoteihem*. However, such considerations are within the realm of public policy, a subject which we will discuss more fully later in this paper.
189. Cf. M.T., *Hilkhot Avoda Zara*, 11:1. The terms "*mada'o*" and "*dei'otav*," however, are to be properly understood and translated as "theology" (or "articles of faith") and "ethical behavior," respectively, and not "ideas" and "opinions." See the commentaries of both R. Joseph Kafah and R. Nachum L. Rabinovitch, *Yad Peshuta*, *ad loc.* Of course, a particular idea or view may be prohibited on other grounds.
190. *Leviticus* 18:3.
191. *Torat Kohanim*, *Aharei Mot*, *Parshata* 9:8. See also Chap. 13:9.
192. For a summary of the authorities and views on this issue, see *Resp. Yabia Omer*, III, Y.D. sec. 25, nos. 8-9; *Encyclopedia Talmudit*, *supra*, note 186, at 306-307.
193. *Resp. Seridei Eish*, III, sec. 93.
194. *Resp. Yabia Omer*, VI, O.H. sec. 29; *Resp. Yehave Da'at*, II, sec. 29; *Talkot Yosef*, III, sec. 225, no. 20.
195. R. Aaron Walkin, *Resp. Zekau Aharon*, I, sec. 6.
196. *Resp. Yehave Da'at*, *supra*, note 194, pp. 296-297.
197. *Resp. Yehave Da'at*, *supra*, note 194 at p. 111. Cf. R. Isaac Herzog, "Pro-

- posed Enactments in the Laws of Inheritance," in *Constitution and Law in the Jewish State according to the Halacha* (Jerusalem: Mossad HaRav Kook—Yad HaRav Herzog, 1989), pp. 2-4, regarding rabbinic concern with charges of discrimination against women in inheritance matters. Excerpts of R. Herzog's proposal have been translated into English and annotated by R. Ben Zion Greenberg in "Rabbi Herzog's Proposal for *Takkanot* in Matters of Inheritance," *Jewish Law Association Studies*, V: *The Halakhic Thought of R. Isaac Herzog* (1991), p. 50, at 58-64.
- 197*See various articles in *Daughters of the King: Women and the Synagogue*, note 3* *supra*.
198. *Supra*, note 62.
199. R. Menashe Klein, unpublished responsum, *supra*, note 64.
200. Psalms 45:14.
201. For an extensive review of "*Kol kevuda bat melekh penima*," see the series of articles by Meir Shores, *Shema'atin* 17:60 (*Tevet*, 5741), p. 57; 18:64 (*Kislev*, 5741), p. 57; 18:65-66 (*Nisan*, 5741), p. 106; 19:67-68 (*Tishrei-Kislev*, 5742), p. 75.
202. M.T., *Hilkhot Ishut*, 13:11; *Tur* and *Rama*, H.M. sec. 72, no. 1.
203. *Shavut* 30a; *Tur* and *Shulhan Arukh*, H.M. secs. 96 and 124.
204. *Resp. Benai Vanim*, I, sec. 40. See also *ibid.*, Ma'amara 6.
205. *Supra*, note 202.
206. Surprisingly, R. Schachter (*supra*, note 62) suggests that *kol kevuda* is the rationale behind the exclusion of women from a *minyan* quorum. We have previously (*supra*, note 3) demonstrated that according to many, if not most, *poskim*, there are a variety of instances where women may indeed count together with men, and certainly alone with other women, towards a *minyan* quorum; see text at note 24, *supra*. Although public prayer is not one of these instances, the reason has nothing to do with *kol kevuda*. It would seem clear that *kol kevuda* is not relevant to the fulfillment of religious rituals in general and prayer services in particular.
207. *Nitei Gavriel—Dinei uMinhagei Purim*, sec. 13, no. 3, end of note 6. R. Shlomo Chaim Aviner, *Hesed Ne'urayyikh* (Jerusalem, 1991), p. 68ff—see especially p. 72.
208. R. Sha'ul Yisraeli, editor's note 4, p. 226, to R. Moses Dov Wilner, *HaTorah ve-haMedina* 4 (*Elul* 5712), p. 221—reprinted in *BeTosmet haTorah ve-haMedina* (Jerusalem: Tsomet, 1991), III, p. 230, note 7, p. 235; R. Issacher haLevi Levin, *HaTorah ve-haMedina* 5-6 (5713-5714), p. 55, section 12, p. 61—reprinted in *BeTosmet haTorah ve-haMedina*, III, p. 236, sec. 8, p. 242; R. Aryeh Binovsky (Bina), *HaTorah ve-haMedina* 5-6 (5713-5714), p. 62, section 14, p. 70—reprinted in *BeTosmet haTorah ve-haMedina*, III, p. 221, sec. 6, p. 228; *Mikvei haMayyim*, III, Y.D. sec. 21; *Resp. Benai Vanim*, *supra*, note 204; R. Asher Eliach, cited in *Resp. Rivivot Ephrayim* VI, sec. 68. Surprisingly, even R. Menashe Klein seems to agree that there is a relative element to *kol kevuda*; see *Resp. Mishne Halakhot*, IV, sec. 125. To this list should be added all those *poskim* who allow women to assume community leadership roles (elected or otherwise). See R. Chayim Hirschensohn, *Resp. Malki baKodesh*, II, as well as assorted letters of concurring scholars in volumes III and VI; R. Jacob Levinson, *HaTorah ve-haMada* (New York: 5692), pp. 22-54; *Resp. Mishpetei Uziel*, H.M. III, sec. 6; R. Samuel E. Turk, *HaDarom* 41 (*Nisan*, 5735), p. 63 and *Resp. Peri Malka*, secs. 67-71; R. Eliyahu Bakshi-Doron, *Torah she-be-al Pe* 20 (5739), p. 66 and *Resp. Binyan Av*, I, sec. 65; R. Joseph Kafah, *HaIsha veHinuKha* (Kfar Saba: Amana, 5740), p. 37; R. Shlomo Goren, interview in *Ma'ariv*, April 1, 1988, second section, p. 3; R. Hayyim David HaLevi, "*Zekhut Isha liVhor u-le-hi-Bahev*," *Tebumim* 10 (5749), p. 118 and *Resp. Mayyim Hayyim*, I, sec. 70. See also R. Simon Federbush, *Mishpat haMelukha beYisrael*, ed. Ben-Tzion Rosenfeld (Jerusalem: Mossad haRav Kook, 1973) p. 69; Aryeh A. Frimer, "*Nashim beMo'eitsot Datiyyot: HaHalakha Davka Be'ad*," *HaTsofe*, Nov. 3, 1986, p. 3.
209. *Supra*, note 208.
210. G. Kranzler, "The Women of Williamsburg: A Contemporary American Hasidic Community," *Tradition* 28:1 (Fall 1993), pp. 82-93; T. El-Or, "*Maskilot uVurot*" (Tel Aviv: Am Oved, 1993); J. Rotem, "*Ahot Rehoka*" (Tel Aviv: Steinitzky, 1993).
211. This point is discussed above at length in Section A. See also note 74, *supra*.
212. R. Feinstein is cited in the text below—see, however, note 224, *infra*. R. Shapiro discussed his position in a taped conversation with Dov I. Frimer, R. Elisha Aviner and Dr. Joel Wolowelsky, July 25, 1997. See also R. Abraham Weiss, *Women at Prayer* (Hoboken, N.J.: Ktav Publishing House, Inc., 1990), p. 111, and note 74, *supra*. The position of R. Jakobovits and the London *Bet Din*, appears *infra*, note 222, while that of R. Shlomo Goren is noted, *supra*, note 57. See also R. Jonathan Sacks, *infra*, note 222; R. Yehuda Herzl Henkin, *supra*, note 129; and R. Eliezer Berkovits, *Jewish Women in Time and Torah* (Hoboken, N.J.: Ktav Publishing House, Inc., 1990) Chapter 4; R. Eliezer Berkovits, Letter to *The Jerusalem Post*, September 20, 1985, p. 15). This position was also advocated by R. Abraham Weiss in his book, *Women at Prayer*, *ibid.*; R. Elyakim Getzel Ellinson (1987), in an as-yet unpublished supplement to the English translation of *HaIsha ve-haMitsvot*; as well as by R. Saul Berman, in a taped public lecture at Lincoln Square Synagogue, December 10, 1986, and again in a conversation with Aryeh A. Frimer, July 1987.
213. R. Nachum L. Rabinovitch ruled leniently both regarding a women's *tefilla*, in a conversation with Dov I. Frimer, Sept. 26, 1994 and July 3, 1997, as well as women's *hakafot* on *Simhat Torah*, interviewed by Dov I. Frimer and Ben Tzion Greenberger, Sept. 26, 1994, and Dov I. Frimer, June 28, 1997. R. Aharon Lichtenstein, interviewed by Dov I. Frimer, Sept. 26, 1994, also maintained that women dancing with the *Sefer Torah* on *Simhat Torah* was halakhically permitted; however, the discussion with R. Lichtenstein was merely a theoretical one and not a *pesak halakha le-ma'ase* (ruling in practice). Both scholars indicated that the women's *hakafot* should not be carried out in the men's section, but rather behind the *mehitsa* or in a separate room.
214. Conversation with Aryeh A. Frimer, June 17, 1996.
215. See Section E below.
- 215*See also R. Shlomo Riskin's conversation with R. Feinstein, *infra*, note 264.

216. *Resp. Igrot Moshe*, O.H. IV, sec. 49.
217. This was confirmed by R. Tendler in a conversation with Dov I. Frimer on September 16, 1997. R. Tendler noted that his discussions with his grandfather were conducted in Yiddish. The subsequent responsum, written by R. Tendler in Hebrew to R. Meir Fund of Brooklyn, New York and dated 14 *Sivan* 5743 (May 26, 1983), was based upon R. Feinstein's formulations and phraseology. On this latter point, see the exchange of letters by R. Bertram Lefk and R. Alfred Cohen, *The Journal of Halacha and Contemporary Society* 34 (Fall 1997), pp. 115-118.
- 217* R. Mordechai Tendler, conversation with Dov I. Frimer, *ibid.* See also the related comments of R. Avraham Shapiro in the text, *infra*, following note 225*. R. Ovadia Yosef, *Yom haShishi*, 16 *Iyyar* 5757 (May 23, 1997), p. 26, has indicated that one should not rely on the halakhic rulings of a rabbi who, despite his recognized general scholarship, is known not to be an expert in halakha. Should one rely on such a halakhic ruling, if the rabbi's *pesak* later proves to be in error, the questioner is held fully culpable (*ne-hshav ki-meizid*) for his/her misdeeds. See also *Resp. Rashba*, I, sec. 98 (end).
218. Except for the words in italics which appear in the original letter in Hebrew.
219. R. Chaim Spring, personal written communication to Aryeh A. Frimer (November 1985): "I have no objection to this reading in the synagogue library. Why are you asking the question? There are some things you don't ask, because once you ask them they become political questions with all the accompanying pressures. You have to know when to ask a *she'ela*."
220. Ma'ale Adumim Chief Rabbis Joshua Katz and Mordechai Nagari, *Ma'alot*, no. 185, *Parshat Tetsave* 5756, *Halakha Sedura*, sec. B, no. 5 and conversation with Dov I. Frimer, March 23, 1996—this ruling was reprinted the following year as well in *Ma'alot*, *Parshat VaYikra* 5757, *Halakha Sedura*; R. Yehuda Herzl Henkin, "Mahu Kevod haTisbbur," *HaDorom* 55 (*Elul* 5746), pp. 33-41 (see especially top of page 37)—expanded and revised in *Resp. Benai Vanim*, II, no. 10; R. Yehuda Herzl Henkin, *Tisbbur Nashim biKri'at haMegilla*, *Keshot*, 4 (*Adar II/Nisan* 5745), sec. 14, pp. 8-10—reprinted in *Resp. Benai Vanim*, III, sec. 7; R. Gedaliah Felder, cited by R. Henkin in *HaDorom*, *ibid.* In a conversation with Aryeh A. Frimer, April 29, 1992, R. Henkin reaffirmed the accuracy of this citation, despite its omission in the revised *Benai Vanim* presentation of this responsum. Similar opinions have been orally expressed by (in alphabetical order): R. David Cohen, conversation with R. Shael I. Frimer, March 1979, and to Aryeh A. Frimer, March 1980; R. David Feinstein, conversation with Aryeh A. Frimer and Noah Dear, March 26, 1991, and to Aryeh A. Frimer, Dov I. Frimer and Noah Dear, March 19, 1995; and R. Levi Yitzchak haLevi Horowitz, *The Bostoner Rebbe*, conversation with Mr. Noah Dear, March 1990—however, on April 13th, 1997, the *Rebbei's gabai*, Nesanel Peterman, wrote the following: "Since the *Rebbei* considered this issue in the early 1990's, the whole question of women's 'rights' has become more complex and the *Rebbei* would like to consider the wider issues further." R. Aharon Lichtenstein, conversation

with R. Chaim Brovender, March 1992 and February 1994, and to Dov I. Frimer, October 21, 1992 and February 19, 1994, also permits a women's *Megilla* reading. Nevertheless, R. Lichtenstein does advise Jerusalemite women not to hold such a reading when the fifteenth of *Adar* falls on *Shabbat* (known as *Purim me-shulash*). In such an instance, Jerusalemites read on the fourteenth, and, as noted previously (see discussion at note 42, *supra*), many *poskim* maintain that since this reading is not on its normally designated date, a *minyan* is an absolute requirement. (In all other years, a *minyan* is advisable but not a prerequisite to fulfillment.) While most authorities agree that ten women do constitute a *minyan* for *mikra Megilla* even on *Purim me-shulash*, a minority dissent (see *supra*, note 106 and discussion in Aryeh A. Frimer, *Tradition*, *supra*, note 3). R. Lichtenstein maintains, therefore, that it is best to be stringent so as to be sure that one's obligation has been fulfilled. *Cf.* the view of R. Joseph B. Soloveitchik, text *infra*, near notes 265-267. R. Ahron Soloveitchik, in a taped conversation with Dov I. Frimer, July 8, 1997, ruled that in those communities, such as in Israel, where there is already an established custom to have a second *Megilla* reading for women, it is irrelevant whether the reader is male or female. Elsewhere, where such a *minhag* is not so common, a special women's *Megilla* reading should not be permitted (for *hashkafa* and public policy reasons; *vide infra*, Section E). Should the local rabbi be afraid, however, that a rift in the community might result, he should refrain from taking any position whatsoever on the matter.

Rabbi Ovadia Yosef, *Tabia Omer*, VIII, O.H. sec. 56, end of no. 4, writes: "... *Resp. Mishne Halakhot* (*Mahadura Tinyana*, I, O.H. sec. 550) challenges the custom of women who make a *minyan* by themselves for *mikra Megilla* ... On the contrary, the aforementioned custom should be encouraged." The cited *Resp. Mishne Halakhot* deals with a custom for one woman to read the *Megilla* for all the women present. R. Yosef's *teshuvah* seems to imply that he approves of this custom in its entirety. Nevertheless, it should be pointed out for accuracy that this responsum deals with the question of women's counting for a *minyan* for *mikra Megilla*, not with the question of whether women can read for other women. Indeed, R. Ovadia Yosef never tackles this latter question head-on in any of his writings, though neither does he rule it out, despite his many opportunities to do so. This is presumably because he maintains that by law (*mi-tsad ha-din*), women can read even for men, though he permits it in practice only if there are no other viable options (*bi-she'at ha-dehak*). See *Yehave Da'at*, V, sec. 34, note 2, p. 162; *MeShivrei Maran haRishon leTsayyon Rabbenu Ovadiah Yosef Shelita*, I, *Gilyon* 19, *VaYera* 5756, sec. 2; *Me'or Yisrael*, I, *Megilla* 4a, s.v. "Tosafot d"b nashim"; *Yalkut Yosef*, V, *Dinei Keriat haMegilla*, sec. 12, p. 287; *Kitsur Shulhan Arukh Yalkut Yosef*, sec. 689, no. 7.

The above *poskim* who permit a women's *Megilla* reading reject two often-quoted rulings: The first is that of *Magen Avraham*, O.H. sec. 689, no. 6, who, based on *Midrash Ne'elam Rut*, indicates that it is preferable for women to hear the *Megilla* from men. Although R. Israel Meir haKohen cites *Magen Avraham* in *Mishna Berura*, O.H. sec. 689, no. 8, he takes serious issue with him in *Sha'ar haTsayyon* no. 16, *ad loc.* *Midrash*

Ne'elam is not accepted as normative halakha by the following: *Arukh haShulhan*, O.H. sec. 689, no. 5; former Chief Rabbi Mordechai Eliyahu, cited by R. Moses Harari, *Mikra'ei Kodesh—Hilkhot Purim*, 6:8, note 29; several other *posekim* cited by R. Nahman Kahana, *Orhot Hayyim*, O.H. sec. 689, no. 2, note 6.

The second ruling is that of R. Nethanel Weil, *Korban Netanel*, gloss to *Rosh Megilla*, chap. 1, sec. 4, note 40, who, based upon *Tosafot Sukka* 38a, s.v. “*beEmet amru*,” indicates that it is a breach of propriety (*zila milta*) for a woman to read *Megilla* for a group of women. The view of *Korban Netanel* is cited approvingly by *Mishna Berura*, *ibid.*, *Sha'ar haTsiyyun* no. 15 and *Kaf haHayyim*, O.H. *ibid.*, no. 17. Nevertheless, the *posekim* cited above, as well as many others cited *infra* in the next paragraph of this note, would argue that *Korban Netanel* misunderstood the *ba'alai haTosafot*, who were in fact discussing the impropriety of a woman's reading of the *Megilla* for men. This understanding of *Tosafot* is maintained by *Magen Avraham*, O.H. sec. 271, no. 2 (as noted by *Korban Netanel* himself) and has been confirmed by the text in *Tosafot haRosh*, *ad loc.*, which explicitly refers to men. According to this approach, *Tosafot's* “*zila milta*” is only a different formulation of the *Kevod haTibbur* concept applied to *keriat haTorah* (*Megilla* 23a; *Shulhan Arukh* O.H. sec. 282, no. 3), though the two may not be identical. See also the comments of R. Chaim Zalman Dimitrovsky to *Rashba*, *Megilla* 4a, s.v. “*veAmar R. Yehoshua*,” note 431; the related comments of R. Joseph B. Soloveitchik in *Reshimot Shiurim*, R. Zvi Joseph Reichman, ed. [New York: 4749], *Sukka* 38a, p. 184, s.v. “*Beram le-fi haTosafot*”; *Otsar Mefarshi haTalmud*, *Sukka*, II, 38a, s.v. “*I nami mishum*.”

As pointed out above, several *posekim—in* addition to those cited in the first three paragraphs of this note—have taken issue with *Korban Netanel*. Hence, R. Jacob Zev Kahana, *Resp. Toledot Ya'akov*, sec. 5; R. Jehiel Michel Tucatzinsky, *Lu'ah Eretz Yisrael*, *Purim*, ed. Prazmim, and R. Shlomo Zalman Auerbach, cited in *Halkhot Beita*, *Petai haBayit*, sec. 25—all maintain that one woman may make *berakhot* for many others. We note, however, that R. Shlomo Zalman Auerbach, as recorded in a personal written communication from his nephew, R. Yitshak Mordechai Rubin, to R. Asher Viner (*Kider* 5794), was nevertheless unwilling to permit a woman's *Megilla* reading, though he does not state why. The following *posekim* also set aside the view of *Korban Netanel*: R. Gavriel Zinner, *Nitei Gavriel—Dinei uMinhagei Purim*, sec. 13, no. 9, note 14; R. Zvi Kohen, *Purim veHodesh Adar*, sec. 10, no. 17; R. Haim David Halevi, *Mekor Hayyim liBnot Yisrael*, sec. 34, nos. 6 and 7; and R. Moses Mordechai Karp, *Zer Abaron—Inyanai Purim* (Jerusalem: Oraya, 5749), sec. 21, no. 7, who writes: “All the *posekim* have stated simply that a woman can read for other women, and it would seem so even for many women.” See also R. Karp's *Hilkhot Hag beHag: Purim*, sec. 7, no. 3, note 7, p. 60, where he states: “See the *Sha'ar haTsiyyun*, who writes in the name of *Korban Netanel* that a woman should not read for many women because of *zila milta*. This does not seem to be the view of other *posekim*.” These four authors indicate, however, that because of *Midrash Ne'elam*, a women's *Megilla* reading is not preferred; it is, nevertheless,

permitted if necessary. See also *Arukh HaShulhan*, O.H. sec. 271, no. 5, and R. Ben-Tsiyon Lichtman, *Benei Tsiyyon*, IV, O.H. sec. 271, no. 3, s.v. “*veRa'iti*,” who also disagree with *Korban Netanel's* understanding of *Tosafot*, though their stance on a women's *Megilla* reading is unknown.

Both of the past Chief Rabbis of Israel have published opinions against women's *Megilla* readings: former Sephardic Chief Rabbi R. Mordechai Eliyahu is quoted by R. Moses Harari, *Mikra'ei Kodesh—Hilkhot Purim*, sec. 6, no. 8, note 30; while former Ashkenazic Chief Rabbi Abraham Kahana Shapira is quoted by his assistant, R. Zalman Koiner, in a letter distributed by a group called “Women of Efrat for the *Achdut* of Halakha” and published in the newspaper *Tom haShishi*, 15 Adar 5791 (March 1, 1991), p. 8. R. Shapira's letter indicates that although “... halakhically, a woman can read for other women,” “one should not change the prevalent custom” which has followed the more stringent ruling of *Mishna Berura* (*Korban Netanel*). As noted above, R. Menashe Klein, *Mishne Halakhot*, *Mahadura Tinyana*, *ibid.*, also dissents.

221. For example, R. David Cohen and R. David Feinstein, *supra*, notes 65 and 66. In the words of R. David Feinstein: “You can't forbid women from doing that in which they're obligated.” See also *MeShiurei Mavan haRishon leTsiyyon Rabbeinu Ovadiah Yosef Shelita*, I, Gilyon 19, *VaYera* 5756, sec. 2, where R. Ovadiah Yosef permits a woman to read *Megilla* for a man (when necessary and only according to Sephardic usage), concluding: “And this is not, perish the thought, a Reform innovation, since this is the law and the halakha.”
222. R. Immanuel Jakobovits, *L'Eyla* 28 (*Rosh haShana* 5750, September 1989) pp. 21-22, reprinted in *Dear Chief Rabbi*, Jeffrey M. Cohen, ed., (Hoboken, N.J.: Ktav Publishing House, Inc., 1996), pp. 90-91. In February 1993, his successor, R. Jonathan Sacks, published a similar lenient ruling on the propriety of women's prayer groups, provided these services were held outside the synagogue premises. In addition, a *sefer Torah* could not used for this purpose. See *Jewish Chronicle*, February 18, 1994, pp. 1, 6 and 18.
223. The issue of *berakhot* at a women's *keriat haTorah* will be discussed at length in Part II of this paper. Suffice it to say that the following leading *posekim* explicitly forbid the recitation of *birkhot keriat haTorah* at a women's *Torah* reading: R. Ovadiah Yosef, *Tom haShishi*, 14 *Shevat* 5750 (Feb. 9, 1990), p. 30; R. Isaac Yosef, *Talkut Yosef*, II, sec. 143, *Keriat haTorah baAsara*, no. 4 and note 6; *Kitsur Shulhan Arukh Talkut Yosef*, O.H. sec. 143, no. 5; R. Joseph Kafah, *Halsha veHinukha* (Kefar Saba: Amana, 5740) p. 35, nos. 9 and 10; R. Efraim Greenblatt, *Revivot Ephrayim*, VI, sec. 153, no. 12; *Minhat Yitshak*, *supra*, note 5; R. Feinstein, *infra*, text following note 217; R. Joseph B. Soloveitchik, *infra*, text at note 251; British Chief Rabbi Immanuel Jakobovits and the London Bet Din, *supra*, text at note 222; R. Mordechai Eliyahu, *supra*, note 20; R. Abraham Shapira, *supra*, end of note 36; R. Shlomo Goren, *supra*, notes 57, and R. Gedalia Dov Schwartz, *Tradition* 26:3 (Spring 1992), pp. 97-99. We note in addition R. Feinstein's insistence that *no Torah benedictions*—not even the *birkhot limud haTorah* appearing in the *birkhot haShahar*—be recited, lest it create the erroneous impression that the

women's Torah reading constitutes *keriat haTorah*; R. Joseph B. Soloveitchik, *infra*, text at note 251, concurs. R. Jakobovits suggests the use of a *Humash* for Torah readings rather than a *sefer Torah*, although he does not explicitly forbid its use. His successor, R. Sacks, does, however; see *supra*, end of note 222.

224. In light of R. Feinstein's clear skepticism, it might well be argued that he should be grouped together with the Rav and Rabbi Ahron Soloveichik (see *infra*, section E of text) as one who opposes women's *tefilla* groups on *hashkafic* and public policy grounds (personal communication from Dr. Tovah Lichtenstein, May 29, 1997 and Rabbi Shael I. Frimer, June 12, 1997). Nevertheless, because of the apparent leeway he gave *ba'alci hora'a* to determine the matter on a case-by-case basis, we believe it more correct to include R. Feinstein in this middle school. See also the exchange of letters by R. Bertram Leff and R. Alfred Cohen, note 217, *supra*, as well as note 225**.
225. *Supra*, note 4, at p. 308. See also p. 323. The syntax of the original Hebrew is quite complex and has been somewhat simplified in our English translation.
- 225* Similar comments were independently expressed by R. Aharon Lichtenstein with regards to women's *hakafot*; see note 213, *supra*.
- 225** R. Shapiro explained that this was the basis of the halakha of *arketa demisana*; see *Sanhedrin* 74a-b. For a similar understanding of the *Sanhedrin* text, see R. Abraham Borenstein of Sochaczew, *Resp. Avnei Nezer, Likutei She'eilot uTeshuvot*, sec. 149; *Cf.* R. Joseph B. Soloveitchik, as cited by R. Zvi (Hershel) Schachter, *supra*, note 61, p. 133, who gives a similar explanation. It should be pointed out that R. Shapiro pushes the middle approach quite close to that of the Rav and Rabbi Ahron Soloveichik (*vide infra*, Section E). Yet there is a clear distinction between the two approaches: R. Shapiro allows for a case-by-case determination of the "policy" issues, while the Rav and Rabbi Ahron Soloveichik view these issues on a broad base, as inherently related to the nature and essence of women's prayer groups. See also note 224.
226. See, *inter alia*, *Encyclopedia Talmudit*, IX, "Halakha veEin Morin Kein," p. 339; R. Solomon ben Aderet, *Resp. Rashba*, I, end of sec. 98; R. Isaac bar Sheshet Perlet, *Resp. Rivash*, sec. 394, *s.v.* "Od re'itukha"; R. Zvi Hirsch Chajes, *Darkei Hora'a, Heilek Shenai*, *s.v.* "veKhen ba de-amru." For a list of examples, see the Addendum section of this paper, Part 4.
227. We have discussed above the prohibition of *bal tosfif*—adding to the Torah; see *supra*, text and note 91. Based on *bal tosfif*, Maimonides forbids one to claim that something is biblically forbidden when it is actually rabbinic in origin. In *M.T., Hilkhot Mamrim* 2:9, he writes: "If the [court] forbids fowl [seethed in milk], claiming that it is included in "goat" and is forbidden biblically, this is an addition. However, if it said that goat flesh is biblically permitted, but we forbid it and we notify the people that it is a [rabbinic] edict . . . this is not an addition. . . ." *Ra'avad, ad loc.*, dissents, arguing that biblical verses are often cited in the Talmud as source-texts for rabbinic prohibitions. See *Kesef Mishne* and *Lehem Mishne*. For further discussion, see the Addendum section of this paper, Part 5.
228. See the Addendum section of this paper, Part 6, for a discussion of various

aspects of lying. As discussed therein, many leading *posekim* maintain that it is forbidden to knowingly misrepresent halakha or the rationale behind a given ruling even if the purpose is to prevent possible future violations; others dissent.

229. See *Igrot Moshe* and *Resp. Aderet Tiferet*, *supra*, note 123; *Mishne Halakhot*, IX, sec. 262; R. Solomon Sobel, *Salma Hadasha, Mahadura Tinyana, Haftarat Toledot* (cited in R. Jacob Yehizkiya Fisch, *Titein Emet leYa'akov*, sec. 5, no. 36); R. David Cohen, conversation with Aryeh A. Frimer and Dov I. Frimer, March 20, 1995; Rabbi Zelig Epstein, conversation with Aryeh A. Frimer and Noah Dear, March 8, 1996.
230. In discussing the prohibition to forbid that which is permitted (see *infra*, note 232), R. Shabtai haKohen, *Sifte Kohen, Y.D.*, end of sec. 242, *Kitsur beHanhagat Hora'ot Isur veHeter*, no. 9, writes: "Therefore, if [a *posek*] must prohibit because he is in doubt or because of a stringency in a matter which is not clear as the sun, he must notify [the questioner] that the prohibition is not clear-cut, but that we must nevertheless be stringent." *Sedei Hemed, Aleph, kelal* 214, "Anur la-asor et haMutar," citing *Shakh*, states that the same is true if the prohibition is based on a "*humra be-alma*" (non-obligatory stringency), because otherwise the stringency may well lead to future error. See also R. Joseph Elijah Henkin, *Teshuvot Ivra*, sec. 52, no. 3 (in *Kivrei haGri Henkin*, II) and the discussion of R. Ephraim Meir Lasman, cited in *Resp. Seridei Eish*, I, sec. 6, subsect. a, *s.v.* "Kedei le-kayyeim."
231. R. Yehuda Herzl Henkin, *Resp. Benei Vanim*, I, sec. 37, no. 12, strongly advises against upgrading a prohibition, since such misrepresentation most often results in gossip, hate, unlawful leniencies in other areas, *hillul Hashem*, and a total loss of trust in rabbinic authority should the truth become known. (This despite the fact that, as mentioned in the Addendum section of this paper, Parts 4 and 5, R. Y.H. Henkin maintains that when a *posek* upgrades a prohibition for just cause, there is no prohibition of either *bal Tosfif* or *lihora'*). Similar views are expressed by *Resp. Torah liShma*, sec. 371; R. Moses Jehiel Weiss, *Reit Tehezekel*, p. 77; R. Abraham Isaac haKohen Kook, *infra*, note 232; R. Joseph Elijah Henkin, *supra*, note 230; R. Haim David HaLevy, unpublished responsum to Aryeh A. Frimer, dated 7 *Shevat* 5756; and R. David Feinstein, conversation with Aryeh A. Frimer and Dov I. Frimer, March 19, 1995. See also the commentary of Radbaz to *M.T., Melakhim* 6:3, where even normally permitted lying is forbidden lest it result in *hillul Hashem* should the truth be discovered. Similarly, in discussing *Sanhedrin* 29a and the cause of Adam and Eve's sin (see the Addendum section of this paper, Part 5), R. Hanokh Zundel, *Eitz Tosef, ad loc.*, *s.v.* "Ma," comments that one must be particularly careful how a stringency and its rationale are formulated, for if no distinction is drawn between a stringency and the original ordinance, any error found in the stringency may lead the masses to believe that there is an error in the original ordinance itself.
232. For example, according to several sources, included in the prayer of R. Nehunya ben haKana (*Berakhot* 28b) is the phrase, ". . . And that we should not permit the forbidden and forbid the permitted;" see *Terushal-mi, Berakhot* 4:2; Maimonides, *Commentary to Mishna Berakhot* 4:2 and

M.T., *Berakhot* 10:23; Rif and *Rosh*, *Berakhot* 28b. In addition, the *Mishna* in *Avot* V:8 states, "A sword comes to the world . . . because of those who teach Torah not according to the halakha." Rabbienu Jonah of Gerondi, R. Ovadia of Bartenura, *Tosefot Yom Tov*, *Tiferet Yisrael*, and R. Pinhas Kehati all understand this to include both he who prohibits the permitted and he who permits the forbidden. R. Shabtai haKohen, *supra*, note 230, states: "Just as it is forbidden to permit the forbidden, so it is prohibited to forbid the permitted . . . because [a stringency in one place] will lead to a leniency elsewhere." *Resp. Teshuva MaAhava*, I, sec. 181, at the end, states, "The punishment for one who is improperly stringent in his ruling is greater than that of one who is improperly lenient." *Resp. Divrei Hayyim*, I, Y.D. sec. 2 (based on Maimonides' *Sefer haMitsvot*, *Lo Ta'ase* 273) argues that one who forbids the permitted violates the biblical prohibition of "Ye shall do no unrighteousness in judgment . . ." (*Leviticus* 19:15). *Resp. Igrot Moshe*, Y.D. II, sec. 45, states: "It is also clear that one is obligated to clarify the law, even if there is reason to fear that as a result there may be some wrongdoers and fools who will err. . . . And the clarification of the law, even to be lenient, is an obligation even greater than teaching Torah. . . ." Particularly noteworthy are the comments of R. Samuel Eliezer Edels, *Hidushei Aggadot* to *Hullin* 44b, s.v. "haRo'e", who indicates that one who is stringent in case of doubt gets a share in the world to come, but that one who labors to find grounds for leniency not only gets a share in the world to come, but enjoys this world as well! See also *Encyclopedia Talmudit*, VIII, "Hora'a", p. 489, and references cited in footnotes 48-50 therein; *Sedei Hemed*, Aleph, kelal 214, "Asur la-asor et haMutar" and *Pe'at haShulhan*, *Ma'arekhet haAleph*, kelal 75; *Resp. Maharashdam*, Y.D. sec. 91; *Resp. Ya'aveitz*, I, sec. 5, s.v. "veKhei teima"; R. Joseph Engel, *Beit haOtzar*, Aleph, no. 136, s.v. *veAyyin od beSifra*, p. 204; R. Baruch HaLevy Epstein, *Mekor Barukh*, III, sec. 17; R. Abraham Isaac haKohen Kook, *Orah Mishpat*, no. 111 (pp. 117-120) and 112 (pp. 120-129); R. Ephraim Meir Lasman (cited in *Resp. Seridei Eish*, I, sec. 6, subsection a, s.v. "Kedei le-kayyim"; R. Aaron Levin, *Birkat Aharon*, no. 233; *Resp. Devay Tehoshua*, I, sec. 19 and the addendum thereto; *Resp. Az Nidberu*, VI, p. 156 at end; *Mishne Halakhot*, IV, sec. 105; V, sec. 104; IX, sec. 262; R. Gedalia Felder, *Nahalat Tsvi*, II, pp. 22-24; *Sefer Beit Aharon*, VII, kelal "Ein laAsor haMutar", pp. 565-605. For a popular presentation of the subject, see R. Moshe Weinberger, "Keeping up with the Katz's," *Jewish Action* 48:3 (*Rosh haShana* 5749) (1988), pp. 10-19 and references cited therein; see especially p. 15ff and footnote 62 *ad loc.*

233. For similar statements, see *Tashbeits*, III, sec. 281; *Resp. Radbaz* I, sec. 129 at end; *Pit'hei Teshuva*, Y.D. sec. 184, no. 5.

234. R. Abraham Isaac haKohen Kook, *supra*, note 232, p. 123, column b, and p. 126, column a. The correspondence deals with R. Kook's Passover certification of *kitniyyot* (legume) oils prepared by an innovative process.

234*See the comments of Justice Elon, *supra*, note 4, at pp. 322-323.

235. Names in alphabetical order (date of interview): R. Yosef Adler (3/10/96), R. Moshe Berger (7/23/97), R. Jeffrey Bienenfeld (4/12/97), R. Kenneth Brander (2/12/96), R. Mordechai Feuerstein

(2/5/96), Mrs. Sabina Frimer (4/5/96), R. Shmuel Goldin (7/29/97), R. David Gorelik (3/7/96 and 9/7/96), R. Carmi Horowitz (2/16/96 and 2/21/96), R. Yehuda Klemmer (2/16/96 and 6/17/96), R. Baruch Lanner (5/4/97), Mr. Nathan Lewin (7/24/97), R. Aharon Lichtenstein (9/25/94, 2/1/96 and 1/8/97); Dr. Tovah Lichtenstein (2/1/96), R. Haskel Lookstein (2/1/96 and 3/13/96), Dr. Caroline Peyser (5/9/97), R. Shlomo Riskin (1/31/96, 5/27/96 and 1/1/97), R. Bernard Rosensweig (8/5/97), R. Jacob J. Schacter (2/1/96), R. Haym Soloveitchik (2/5/96), Dr. Atarah Twersky (2/1/96), R. Mayer Twersky (7/28/97), R. Oscar Wachstock (R. Abraham Etzion; 1/31/96, 2/1/96 and notes dated *Emor* 1972), R. Binyomin Walfish (3/10/96), R. Charles Weinberg (2/1/96 and 2/21/96). We express our deepest thanks to all of these people for sharing with us the details of their conversations with the Rav and for allowing us to publish their remarks. In addition, we wish to thank R. Saul Berman (7/87, 1/31/96 and a taped public lecture at Lincoln Square Synagogue, 12/10/1986) for his assistance and valuable source material, and Mrs. Nancy Forse Shloush (2/18/96, 2/23/96 and 5/6/96) for her detailed recollections regarding the background to the Brandeis women's service. See also R. Moshe Meiselman, note 63, *supra*; R. Mayer Twersky, "Torah Perspectives on Women's Issues," *Jewish Action* 57:4 (Summer 5757/1997), pp. 24-29.

236. R. Mordechai Feuerstein, who served as the Rav's *shamash* during the early 1970's, has indicated to us that he believes the first time the Rav addressed the issue of women's services was late in 1971 (shortly before the Rav's conversation with R. Shlomo Riskin; *vide infra*, note 264). The Rav shared with R. Feuerstein that a group of women studying at Brandeis University had approached him on the matter. The Rav was not in favor of the prayer group, but it was clear to the Rav that the women were not prepared to listen and would proceed under any circumstance. The Rav consequently gave them halakhic guidelines similar to the ones he later gave to R. Wachstock and R. Riskin; see text and notes 249-251. Our attempts at discovering who actually spoke to the Rav regarding the Brandeis women's prayer group have proven unsuccessful. The last to speak to the Rav on this issue was presumably Dr. Caroline Peyser, in early 1986.

237. See *Nefesh haRav*, pp. 24-26; conversation with R. Aharon Lichtenstein.

238. R. Moshe Meiselman, *supra*, note 63, p. 146. R. Aharon Lichtenstein emphasized that *minhag beit ha-keneset* is not an independent category and does not appear as such in the halakhic literature. Rather, it is, as a rule, part of the general concept of custom and practice. Nonetheless, R. Soloveitchik has noted that *minhag beit ha-keneset* can, under the proper circumstances, also be rooted in the concept of *kedushat (kevod) beit ha-keneset*. See R. Meiselman, *ibid.* See also R. Zvi Schachter, *supra*, note 62.

239. See notes 162-163, *supra*. Apropos, Dov I. Frimer recalls that as National Educational Coordinator for Yavneh, the National Religious Jewish Students Association, he approached the Rav regarding the idea of reading from the Torah on *Shabbat* while facing the congregation rather than facing the Holy Ark. R. Soloveitchik responded that indeed, such a practice

- is mentioned by R. Joseph Caro in his *Kesef Mishneh*, *Hilkhot Tefilla* 11:3. Nonetheless, inasmuch as the accepted custom is to read the Torah facing the Ark—as noted by R. Caro himself—one should not act otherwise. See also *Nefesh haRav*, p. 131, no. 3.
240. The Rav had expressed the concerns outlined in this paragraph to R. Yehuda Kelemer and R. Binyomin Walfish. The term “brinkmanship,” however, was utilized by the Rav in his conversations with R. Kelemer.
241. See *Shulhan Arukh*, O.H. sec. 17, no. 2.
242. This formulation is that of Dr. Atarah Twersky. See also R. Aharon Lichtenstein, “The Rav at Jubilee: An Appreciation,” *Tradition* 30:4 (Summer 1996), p. 45, at p. 54, who writes: “He [i.e., R. Soloveitchik] was like the Rambam, persistently perturbed by religious vulgarization, practical or conceptual, and by shallow ritualization.” See as well the relevant remarks of R. Joseph B. Soloveitchik himself in his essays, “*Ma Dodekh miDod*,” in *Divrei Hagut veHa'arakha* (Jerusalem: Department for Torah Education and Culture in the Diaspora of the World Zionist Organization, 1981), p. 57, at p. 93; “*Tefillatam shel haThudim*,” *Ma'ayanot, Tefilla* (Jerusalem: Department for Torah Education and Culture in the Diaspora of the World Zionist Organization, 1964), pp. 9–11. For an adapted translation of the latter by Shalom Carmy and Menachem Kasdan, see “Jews at Prayer,” *Shiurei haRav*, Joseph Epstein, ed. (Hoboken, N.J.: Ktav Publishing House, Inc., 1974), pp. 82–85.
243. Similar comments have been made by R. Immanuel Jakobovits, *L'Eyla 29 (Pecah 5750, April 1991)*, pp. 26–27—reprinted in *Dear Chief Rabbi*, Jeffrey M. Cohen, ed. (Hoboken, N.J.: Ktav Publishing House, Inc., 1996), pp. 86–88. See also *Resp. Igrot Moshe*, O.H. IV, sec. 49 and text near notes 214–216. Justice Menachem Elon's remarks *supra*, text at note 225, regarding R. Feinstein's motivational requirement, are equally relevant in relation to R. Soloveitchik's analysis.
244. Surprisingly, R. Soloveitchik does not entertain the possibility that women attending women's prayer groups are perhaps motivated by a sense of greater *kavana*. See *supra*, notes 100 and 101, that a number of *posekim* maintain that greater *kavana* supercedes *tefilla be-tzibbur*. R. Lichtenstein indicates that until approximately the time when the Rav's wife, Tonya, fell ill (ca. 1963), the Rav was of the opinion that other spiritual considerations (e.g., the study of Torah, enhanced personal *kavana*) could be of greater importance than participating in communal prayer. Later, however, the Rav modified his position. Although he continued to maintain that communal prayer was not in and of itself a halakhic requirement, he now attributed much more significance to *tefilla be-tzibbur* than he had hitherto. As a result, the Rav believed that one should not sacrifice *tefilla be-tzibbur* merely for increased *kavana*; one should rather strive to attain the highest level of *kavana* which he can within the communal prayer setting. As previously mentioned, the conversations with the Rav, which serve as the basis for this article, took place during the 1970's and early 1980's, somewhat after his change of mind. Consequently, for the Rav, greater *kavana* could not serve as a valid justification for women's prayer groups.
245. See discussion at the beginning of Section B at note 59.
246. Conversation with R. Kenneth Brander. R. Brander was the Rav's *shamash* at the time the responsum appeared (1985) and was personally present at those times when individuals tried repeatedly to convince the Rav to add his signature to the responsum. The Rav consistently refused to do so.
247. Conversation with R. Brander. For the sake of accuracy, Rabbi Brander emphasizes that due to health considerations, the Rav did not review the *pesak*, and therefore neither expressly accepted nor rejected its specific arguments.
248. It was for this reason that the Rabbinical Council of America, as well, refrained from adopting the responsum of the RIETS *Rashei Yeshiva* as official halakhic policy of the organization—despite the fact that the RIETS responsum was addressed to the then president of the R.C.A., R. Louis Bernstein. Approximately a year or so prior to the appearance of the responsum, during R. Gilbert Klaperman's tenure as R.C.A. President, R. Binyamin Walfish, in his capacity as Executive Director of the R.C.A., met with the Rav in order to receive guidance on a variety of issues relating to women and halakha. During this very important conversation, R. Soloveitchik indicated—as he had on numerous other occasions with other people—that there were few serious halakhic problems with women's prayer groups, provided they refrain from *devarim she-bi-kdusha*. Nonetheless, the Rav expressed to R. Walfish his strong feeling that such groups should be discouraged. The Rav emphasized, though, that his considerations were not strictly halakhic, but more in the realm of public policy. The Rabbinical Council of America believed that it could not adopt a halakhic view, such as that articulated in the RIETS responsum, which was clearly contrary to the Rav's own position. See *supra*, note 59.
- 248* See R. Joseph B. Soloveitchik, “*Nos'ei haTsits ve-haHoshen*,” in *Divrei Hagut veHa'arakha* (Jerusalem: Department for Torah Education and Culture in the Diaspora of the World Zionist Organization, 1981), pp. 187–194.
249. The initial conversation with the Rav regarding the Maimonides women's *tefilla* was held with R. Oscar Wachstock (R. Abraham Etzion). The essence of that conversation is found in R. Wachstock's notes dated *Emor* 1972, which corresponds to the week of 9 *Iyyar* 5732—April 23, 1972. (R. Wachstock does not recall, however, the precise date of his meeting with the Rav, though it occurred several months earlier—presumably at the very end of 1971.) R. Wachstock sent a copy of his notes to his close friend, R. Saul Berman. We are very grateful to R. Berman for providing us with a copy of these valuable notes. These notes—with certain critical deviations regarding *birkhot haTorah* prior to the pseudo *keriat haTorah*—provided the framework for the women's prayer group held by R. Berman while serving as rabbi of Lincoln Square Synagogue in Manhattan. R. Berman was apparently unaware that the Rav had distinguished—albeit on public policy grounds—between the educational setting and a communal one; see below at note 254. Moreover, as noted in the text, the Rav withdrew his support for the idea even within educational settings.
250. See, for example, *Siddur haGra* (before *Aleinu*), pp. 182–184; R. J. Emden, *Siddur Beit Ya'akov* (following *Tahanun*), p. 81; *Otsar haTefillot* (before *Ashrei*), I, pp. 418–420; *Seder Avodat Yisrael* (following *Taha-*

- nun), pp. 120-121; *Siddur Tefilla haShalem* (before *Asvrei*), pp. 99-101; *Siddur Beit Tefilla* (after *shaharit*), pp. 149-151.
251. This is explicitly stated in the notes of R. Wachstock, *supra*, note 249. R. Soloveitchik gave the same instructions to Rabbis Riskin and Horowitz when they, respectively, discussed the matter with the Rav. See also R. Meiselman, *supra*, note 63, p. 197, note 64. R. Wachstock and R. Horowitz indicate that the Rav might have considered allowing *birakhot limud haTorah* "were it not for the Conservatives." (From R. Wachstock's notes. The Rav was concerned about the confusion the *berakhot* might generate in light of the general egalitarian movement within Conservative and Reform Jewry.) Cf. R. Meiselman, *ibid.*, p. 145. We will defer further discussion of the issue of *birakhot haTorah* (*limud* or *keri'a*) before a pseudo *keriat haTorah* to Part II of this paper. Re: the issue of *nidda* and *sefer Torah*, see *infra*, note 258.
252. To R. Jeffrey Bienenfeld.
253. R. Soloveitchik also provided the same guidelines, outlined in this paragraph of the text, in situations where it was clear that the service could not be totally prevented—as was indeed the case in the Brandeis University women's service; *vide supra*, note 236. A similar case arose in 1978, when a rabbi who was about to assume a rabbinical position discovered that the synagogue had a regular women's *tefilla* group. Under the circumstances, there was no possible means for the new rabbi to halt the women's service entirely. The Rav advised the rabbi to make sure that no *devarim she-bi-kdusha* would be recited. R. Soloveitchik made it clear that he did not endorse women's services and that he was not at all happy with the direction they had taken; nonetheless, under the circumstances, this was the least detrimental alternative. On a separate occasion, he told Rabbi Kenneth Brander that in these type of *be-di-avad* situations, the services should preferably be held outside of the synagogue so that the differentiation between them and regular *minyanim* would be evident; see text after note 244, *supra*.
254. Our information regarding the initial attempts to start a women's *tefilla* at the Maimonides School in 1972 is based upon our conversations with R. Oscar Wachstock and R. Charles Weinberg, as well as R. Wachstock's above-mentioned notes (*supra*, note 249). R. Wachstock was a teacher at the Maimonides school during the relevant period, while R. Weinberg, a personal friend of the Rav, was a member of the Maimonides Board of Education. Our remarks regarding the 1974 attempt are based upon conversations with R. Carmi Horowitz and R. Weinberg. R. Horowitz taught at Maimonides at that time, while R. Weinberg then served as the school's Head of the Hebrew Department. As far as the Rav's fears that his halakhic ruling would be misunderstood and misapplied, it indeed seems that they were well justified; see *supra*, note 249.
255. Conversation with R. Aharon Lichtenstein.
256. *Shulhan Arukh*, O.H. sec. 135, no. 14. For a detailed discussion of the issue of *titlul sefer Torah* as regards various other practical aspects of women services, see Part 2 of this paper and *supra*, note 138.
257. R. Aharon Lichtenstein, conversation with Dov I. Frimer, 20 *Tishrei* 5755 (9/25/94).
258. While this was implicit in his remarks to many of the people with whom the Rav discussed this matter, R. Soloveitchik stated it explicitly in his conversations with R. Haskel Lookstein and R. Baruch Lanner. A further discussion of *nidda* and *sefer Torah* will be deferred to Part 2 of this paper, which deals with the "Practical Issues" of halakhic women's prayer groups. Apropos, the Rav indicated to R. Wachstock that *niddat* would similarly not prevent a woman from wearing *tefillin*. Cf., however, *Arukh haShulhan*, O.H. sec. 34, no. 6.
259. While the Rav expressed his opposition to *hakafot* in *shul* on many occasions, his opposition to *hakafot* extended, in reality, to other venues as well—even where *titlul sefer Torah* was not involved.
260. See R. Zvi Schachter, "MiPeninei haRav Zal," *Beit Yitshak* 27 (5755), 1-20, at p. 5.
261. Conversation with R. Walfish.
262. In his conversation with R. Baruch Lanner in the late 1970s regarding *Simhat Torah hakafot* for the National Council of Synagogue Youth, R. Soloveitchik recommended against their institution, despite their obvious educational benefit. Moreover, in discussions with R. Yosef Adler and R. Binyomin Walfish, the Rav expressly indicated that his opposition extended both to women's participation in formal *hakafot* ("Ana Hashem hoshia na" etc.) and to their dancing—even behind the *meitisa*—with a *sefer Torah* between *hakafot*. See also R. Moshe Meiselman, *supra*, note 63, p. 146. R. Moshe Berger reports that in the early 1980s, the Rav also advised Orthodox women from Harvard-Radcliffe Hillel to refrain from having a special Torah reading on *Simhat Torah*, even without *berakhot*.
- 262* Conversation with R. Yehuda Kelemer; see text at note 214, *supra*.
263. See, for example, R. Zvi Schachter, "MiPeninei haRav Zal," *Beit Yitshak* 28 (5756), 9-34, at p. 23.
264. R. Moshe Meiselman, *supra*, note 63, p. 146. See also *supra*, note 238. R. Shlomo Riskin, then rabbi at Lincoln Square Synagogue, had been among the first people to discuss the women's services and *hakafot* issue with R. Soloveitchik, sometime in late 1971. Also present at that meeting was the Rav's *shamash* during that period, R. Mordechai Feuerstein. The Rav gave R. Riskin the same halakhic guidelines he gave to R. Wachstock (see text and notes 249-251). Nonetheless, the Rav expressed his view that women's services were "tokenism"—to which the Rav objected (see note 242, *supra*). Moreover, the Rav believed that it was not worth "the political price." Despite all the above, R. Riskin maintains that the Rav conveyed to him a sense that he had confidence in R. Riskin's judgment of his community's needs. Accordingly, for *Simhat Torah* 5733 (October 1, 1972), R. Riskin arranged for a women's service to meet in the synagogue's *beit midrash*. In so doing, R. Riskin was among the first Orthodox rabbis in the United States to actually hold women's *hakafot* and services in his synagogue.
- R. Riskin has shared with us that a few short years after he instituted these practices at Lincoln Square Synagogue, he received word that the Rav was displeased. As a result, he went to ask the Rav whether or not he should "pull back on the whole thing." R. Riskin reports that the Rav responded, "No." In addition, R. Riskin went to consult as well with R.

- Moshe Feinstein on the matter. R. Feinstein inquired whether, in R. Riskin's judgment, women would leave Lincoln Square Synagogue and go to the Conservative synagogues if the women's services and *hakafot* were halted. R. Riskin responded in the affirmative, "Most definitely." Upon hearing R. Riskin's evaluation, R. Feinstein told him that had he (R. Riskin) approached him (R. Feinstein) prior to initiating the women's *hakafot* and services, R. Feinstein would have opposed their institution. However, inasmuch as R. Riskin had already introduced these practices, and since their cessation would cause women to leave for the Conservative movement, R. Riskin could allow them to continue.
265. See discussion *supra*, text and note 44 and notes 78 and 79.
266. See *supra*, note 106 and discussion in Aryeh A. Frimer, *supra*, note 3.
267. Conversations with R. David Gorelik, R. Jacob J. Schacter and R. Bin-yomin Walfish. Both R. Schacter and R. Walfish noted, however, that the Rav indicated that if necessary, there was room to be lenient. Consequently, R. Soloveitchik advised R. Walfish that where the women of a particular congregation insist on having their own *Megilla* reading, the rabbi should not object. Similarly, in a telephone conversation with R. Shmuel Goldin and Mr. Nathan Lewin (in 1980 or 1981), the Rav permitted a women's *Megilla* reading by Mr. Lewin's daughter, Alyza, for those women who were unable to attend the regular congregational, early morning, *Purim minyan*. R. Soloveitchik emphasized, however, that the women's reading should not be held in *shul*, that the *ba'alat keria* could read only for women, and that this reading was not meant to replace the more preferred regular reading with a male *minyan*.
- Apropos, R. Adler recalls that the Rav often commented on his difficulty in accepting the view of Behag, *Halakhot Gedolot*, *Hilkhot Megilla*, s.v. "*haKol bayayavin*." Behag maintains that women are obligated in a lesser obligation of merely *hearing* the *Megilla*, while men are obligated in the maximal obligation of *reading*. Nonetheless, the Rav acknowledged that since *Rama, O.H.* sec. 689, no. 2, cites *Halakhot Gedolot*'s ruling approvingly, it has become normative halakha. Consequently, women could not read *Megilla* for Ashkenazic men. Interestingly, though, in the Winter of 1977, our sister-in-law, Mrs. Sabina Frimer, asked the Rav whether she could read the *Megilla* for her grandmother and home-bound grandfather. The Rav responded that it would be preferable to find a male to read for them, but if she were not successful, she could read for them herself. The Rav also suggested that the grandfather should make the *berakhot*.
268. R. Ahron Soloveitchik, taped conversation with Dov I. Frimer, July 8, 1997.
269. It is interesting to note that while R. Ahron Soloveitchik casts doubt on the motivation of the overall majority of women's *tefila* participants, the Rav (text, *supra*, following note 244) tended to acknowledge the legitimate motivation of many of the rank and file. See also R. Nissan Wolpin and Levi Reisman, note 37, *supra*, for a critique of the public pronouncements of some of the prominent Orthodox feminist leadership.
270. For a summary of the parameters of this halakhic concept, see *Encyclopedia Talmudit*, VI, "Geneivat Da'at," pp. 225-231.
271. Regarding mimicry in women's prayer services, see Joel B. Wolowelsky, *Women, Jewish Law and Modernity: New Opportunities in the Post-Feminist Age* (Hoboken, N.J.: Ktav Publishing House, Inc., 1997), pp. 105-110.
272. See *Encyclopedia Talmudit*, XV, *Hillul Hashem*, p. 340 at 347-351, s.v. "*beAdam hashuv*."
273. See above, note 220, first paragraph. R. Ahron Soloveitchik also opposes a women's Torah reading in a school setting, irrespective of whether *berakhot* are recited.
274. R. Gedalia Dov Schwartz, *supra*, note 223; conversation with Dov I. Frimer, November 19, 1997.
275. Cf. note 139, *supra*.
276. R. Schwartz cites the responsum of R. Aryeh Leibush Balachover, *Resp. Shem Aryeh, O.H.* sec. 5, as precedent for the position that the possibility of fragmentation and divisiveness is a legitimate consideration in halakhic rulings.
277. Among all of those with whom we discussed this point, only one individual—who requested that his name not be used—indicated that the Rav, in conversation with him regarding *hakafot*, utilized the term *assur*. All others emphasized that the Rav clearly refrained from the use of this term, invoking instead the phrase "not recommended" or the like.
278. *Supra*, note 4, at p. 325.
279. See R. Joshua haKohen Falk, *Derisha, H.M.* sec. 1, no. 2.
280. For recent reviews, see Joel B. Wolowelsky, "Women and *Kaddish*," *Judaism* 44:3 (Summer 1995), pp. 282-290. Joel B. Wolowelsky, note 271, *supra*, pp. 84-94; R. Reuven Fink, "The Recital of *Kaddish* by Women," *The Journal of Halacha and Contemporary Society* 31 (Spring 1996), pp. 23-37.
281. R. Ahron Soloveitchik, *Od Yisrael Yosef Beni Hai*, end of sec. 32, p. 100.
282. R. Joseph Elijah Henkin, *Kivvei haGr Henkin*, II, *Teshuvot Ibra*, sec. 4, no. 1.
283. R. Yehuda Herzl Henkin, Letter to the Editor, *The Journal of Halacha and Contemporary Society* 32 (Fall 1996), pp. 97-102.
284. Conversations with R. Avraham Shapiro, *supra*, note 212, R. Ahron Soloveitchik, *supra*, note 268 and again on November 2, 1997, and R. Gedalia Dov Schwartz, *supra*, note 274.
285. Our many conversations with women across America active in women's prayer groups reveal that in many—though certainly not all—communities, the generation of the daughters (now in their late teens and twenties) are substantially less interested in such groups. These younger women do eagerly attend when some special occasion or event is celebrated, be it a *Simhat Bat* (or *Zeved haBat*), *Bat Mitzvah*, a *Shabbat Kala*, or a women's *Megilla* reading; nevertheless, they are only marginally involved in the *tefila* group on a regular basis. While this trend is unquestionably worthy of further documentation and analysis, various interim interpretations of these facts have been put forward. One possibility is that it is a result of negative social pressure; the "daughters" fear that involvement in such groups would stigmatize them as "Women's Libbers," affecting possible future *shiddukhim* or employment possibilities. Another relates this phenomenon to the fact that this second generation—unlike many of the

mothers—has benefited from extended periods of intensive higher Jewish learning (see note 3*, *supra*). On the one hand, these daughters are dissatisfied with what they view as the incompleteness and inauthenticity of the women's prayer service; on the other, they are substantially more attracted to advanced Torah scholarship, which they value as more permanent and genuine. Put simply, they aspire to being *talmidot hakhamim* rather than *hazzaniyyot*. We note in this regard that R. Joseph B. Soloveitchik verbalized on many occasions his belief that—public policy issues aside—the women's energies were being misdirected in their battle for prayer groups. These intellectual and spiritual energies could be more properly, profitably and permanently invested in Torah scholarship (conversations with R. Baruch Lanner, R. Binyomin Walfish and R. Charles Weinberg). Indeed, the Rav actively supported women's involvement in all areas of Torah study, and he himself inaugurated the Talmud program at Stern College for Women.

286. *Resp. Seridei Eish*, III, sec. 105—this responsum is dated 1951. See also *ibid.*, II, sec. 52. The issue under discussion was the right of women to vote and be elected for government. On this topic, see at length, "*Leah Shukiel vs. The Minister of Religious Affairs et al.*" (1988), 42 (ii) *Piskei Din* 221, pp. 247-270. Regarding R. Weinberg's position, see p. 260.