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## Partnership *Minyanim*

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*Below is the edited text of a teleconferenced lecture delivered by Rabbis Aryeh and Dov Frimer to participants at the 51st Annual Convention of the Rabbinical Council of America on April 27, 2010. These comments are based on a very lengthy and heavily documented article which will be completed shortly; with a few exceptions, only leading references are cited in the present manuscript.*

Partnership or halakhic egalitarian *minyanim* (e.g., *Shira Hadasha* in Jerusalem and *Darkhei Noam* in Manhattan) actively involve women in leading the prayer service wherever these communities deem it halakhically appropriate. The practices differ from community to community, but can range from having women receive *aliyyot* and serve as *ba'alot keriah*, read *Megillat Esther* for men and women, read the other four *Megillot*, serve as *Hazaniyyot* for *pesukei de-zimra* and *Kabbalat Shabbat*, and lead the recitation of *Hallel*. Let us make it clear at the outset, that these practices are a radical break from the ritual of millennia and have not received the approval of any major *posek*.

Because of time limitations, we have decided to focus on two major issues: *keriat ha-Torah* and the recitation of *Hallel* – because we believe them to be paradigmatic of many of the issues that have been raised.

### Women and *Keri'at haTorah*

Our discussion of *keriat haTorah* begins with the *Gemara* in *Megilla* 23a.

תנו רבנן: הכל עולין למנין שבעה, ואפילו קטן ואפילו אשה.

אבל אמרו חכמים: אשה לא תקרא בתורה, מפני כבוד צבור.

The Rabbis Taught: All are eligible to receive one of the seven [Sabbath] *Aliyyot*, even a minor and even a woman. However, the Sages said: A woman may not read from the Torah, because of the honor of the community.

This Talmudic statement was subsequently codified essentially unchanged in *Shulhan Arukh* (*O.H.*, sec. 282:3). Despite the above negative ruling of the *Talmud*, *Shulhan Arukh* and in their wake all subsequent codifiers, within the last decade, there have been two major attempts to reopen this issue. One was an article penned by R. Mendel Shapiro, in the *Edah Journal* in Summer 2001. The second was the recent book *Darka shel Halakha* published by Israel Prize laureate R. Prof. Daniel Sperber.

Turning first to R. Mendel Shapiro, he argues that the major barrier to women getting *aliyyot* is *kevod ha-tsibbur*, which he understands to be related to a woman's social status. Since there has been a dramatic change in the sociological status of women in contemporary society, this should impact upon the relevance of *kevod ha-tsibbur*. Furthermore, the community should be sovereign to forgo its honor.

### **Evolution of Keri'at haTorah**

Before responding to R. Shapiro's analysis, allow us a few words of introduction. *Keri'at haTorah* has undergone somewhat of an evolution over the years. The Talmud [B.T., *Bava Kamma* 82a; J.T., *Megilla* 4:1] records that Moshe *Rabbenu* instituted that one *oleh* should read the Torah aloud for all – much like the way we practice the reading of *Megillat Esther*. In an attempt to get more people involved, Ezra instituted multiple *aliyyot*, and he varied the number according to the nature and sanctity of the day. The goal of these readings was **public Torah study** and to assure that it would take place on a regular basis.

Additionally, each *oleh* originally read his own Torah portion aloud from the *sefer Torah*, much the way it is done in Yemenite Synagogues to this day. This required literacy, knowledge and preparation – a challenge to which all were not equal (*Resp. Rivash*, sec. 326). It was not until several hundred years later, in the Gaonic period (*Resp. Iggerot Moshe*, *O.H.*, II, sec. 72), and certainly by the year 1000, that a *ba'al korei* was appointed to read aloud from the Torah for each *oleh* (*Tosefot, Megilla* 21b, s.v. “Tana,” ; *Piskei haRosh, Megilla*, Chapt. 3, sec. 1).

## How Can Women Theoretically Receive Aliyyot

Now this *gemara* in *Megilla* indicates that a minor, and - were it not for *kevod ha-tsibbur* - a woman, might be eligible to receive an *aliyya*. This statement is quite astounding for one simple reason. The overwhelming majority of *posekim*, both *rishonim* and *aharonim*, exempt women from any requirement to hear the public Torah reading, just as they exempt them from all other public prayer rituals.<sup>1</sup> The same is clearly true for a minor.

The *Mishna* in *Rosh haShana* 3:8 states categorically:

זה הכלל כל שאינו מחויב בדבר אינו מוציא את הרבים ידי חובתן

This is the general principle: one who is not obligated, cannot help others fulfill their obligation.”

This is comparable to the reading of *Megillat Esther*: a minor who is exempt cannot read the *Megilla* for an adult (*Shulhan Arukh, O.H., sec. 689:2*).

Now remember that in Mishnaic and Talmudic times, each *oleh* read their Torah portion aloud for the entire congregation. How, then, could Haza”l even consider allowing women and minors, who are exempt from the *keriat haTorah* obligation, to receive an *aliyya* and read the Torah for the assembled?

Perforce, the obligation of *keriat haTorah* differs fundamentally from the obligation of reading *Megillat Esther*. In the case of *Megilla*, each adult male and female has a personal obligation to read from the *Megilla*. The individual selected to read aloud from the *Megilla scroll*, thereby, enables others to fulfill their obligation via the principle of *shome’a ke-oneh* (listening attentively is like saying) – exactly as we do by *Kiddush* and *Havdala*. In order for this principle to work, however, **the reader must be a *bar hiyyuva*** – inherently obligated.

But *keri’at haTorah* is necessarily different than reading the *Megilla*. Here you need not one knowledgeable individual to read, but **seven!** The Rivash (sec. 326) indicates that Haza”l were concerned by the difficulty of finding *olim* who would be able to read from the *Sefer Torah*. They, therefore, considered widening the pool of eligible *olim* by formulating the *keri’at haTorah* obligation more leniently. There is a disagreement, however, as to the exact nature of this reformulation.

One school argues that in contradistinction to the reading of *Megillat Esther*, *keri’at haTorah* is not a personal obligation but a communal one – *hovat ha-tsibbur* (see R. Ovadiah Yosef, *Halikhot Olam, I, Parashat Ki Tisa*, no. 4, note 4). The *men* of the community are *obligated* to ensure that a *minyan* is available for a Torah reading - and when such has been secured, any Jew present, including women and minors who are not obligated, can at least in theory read for the community.

The second school maintains that the obligation is a personal one. Nevertheless, in contradistinction to *mikra Megilla*, one's duty is not to **read** from the Torah, but rather to **listen** as the words of the *Torah* are read aloud from the *sefer Torah* by several Jews (their number ranging from three to seven). As to the obligation of **listening** to the reading, each one can do that by themselves (see R. Moses Feinstein, *Iggerot Moshe, O.H.*, II, sec. 72, IV, secs. 23 and 40, nos. 4 and 5). Hence, the exact level of obligation of the readers in *keri'at haTorah* is unimportant – they can be women or minors, provided they can read aloud.

The fundamental take home lesson from this discussion should be clear. It's not that women were obligated in *keriat haTorah* - and by right should have had *aliyyot* - and along came *kevod ha-tsibbur* (which we have yet to define) and took it away. On the contrary, women are **not** obligated in *Keri'at haTorah* and, therefore, should have had **no** role to play therein. In an exceptional move, and out of fear that there would not be enough knowledgeable men to read from the *Sefer Torah*, Haza"l considered allowing women to get *aliyyot*. It was a very special dispensation, instituted because most congregants lacked the literacy required to preserve the institution of *Keri'at haTorah*. However, because of *kevod ha-tsibbur*, Haza"l decided that they would not allow this dispensation to become normative practice. We will come back to this point again – because it is the key to understanding much of the issue of women and *aliyyot*.

### Under a Ba'al Korei System

Until now we have only focused on the first part of the Baraita in Megilla 23a - namely *הכל עולין למנין שבעה, ואפילו קטן ואפילו אשה*. We have yet to talk about *kevod ha-tsibbur* and this we will do shortly. But we'd like to point out that when the rabbis of the Talmud talked about women getting *aliyyot*, they were talking about a case where the *Oleh* made the *berakhot* **and** read aloud to the whole community. In fact, the *Oleh* is the only one in that room who has any obligation to read; everyone else is supposed to listen.

However, as you all know, nowadays the job of *Oleh* is bifurcated – divided into two. The *oleh* makes *berakhot* - but who does the mitsva action? Who does the *ma'aseh ha-mitsva*? The *ba'al korei*! But, how can one person make *berakhot* and another do the *ma'aseh ha-mitsva*? This is contrary to all other cases in Jewish law, where the one who does the **action** is the one who makes the *berakha*! For there not to be a *berakha le-vatala*, there must be some mechanism to transfer the reading - the *ma'aseh ha-mitsva* - from the *ba'al korei* to the *oleh*.

We've already mentioned the mechanism of *shome'a ke'oneh*. It is through this

mechanism that we fulfill our obligation in reading *Megillat Esther*, *Kiddush* and *Havdala* - by listening to the reciter. However, this mechanism requires that the *ba'al korei* - who does the *mitsva* action of reading aloud, and the *oleh* - who recites the *berakha*, be obligated in *keri'at haTorah*. Otherwise there is no transfer mechanism to make it one act. The *berakhot* will not be connected to the act and will be *le-vatala*. [**Please note**: we are not concerned here with how a non-obligated woman can read the Torah aloud for the community – with that we dealt above. Here we are focusing on her inability to read for the oleh or to have someone read for her when she is an *olah*.]

Now, a woman could read for herself and make the appropriate *berakhot* – there is no need in that case for transfer when the same person does both acts. **But, she cannot read for others, nor can others read for her - and this is *me-ikkar ha-din* (basic law) and has nothing to do with *kevod ha-tsibbur*.** It should be clear therefore that, even without talking about *kevod ha-tsibbur*, what is done in nearly all egalitarian/partnership *minyanim* is completely wrong; unless the woman who gets the *aliyya* **reads for herself**, the *birkhot keru'at haTorah* are *berakhot le-vatala*. If the woman who gets an *aliyya* does indeed **read for herself**, then we have to discuss the issue of *kevod ha-tsibbur* – to which we now turn

### **Kevod haTsibbur Defined**

All we have said thus far has been in the absence of *kevod ha-tsibbur*. Let's now introduce this concept into the equation. Let's now return to the *baraita* cited in *Megilla* 23a

תנו רבנן: הכל עולין למנין שבעה, ואפילו קטן ואפילו אשה

Provided she reads for herself;

אבל אמרו חכמים: אשה לא תקרא בתורה, מפני כבוד צבור.

How are we to understand the *kevod ha-tsibbur* element by women's *aliyyot*? And why does it not apply to a *katan* – a minor?

R. Mendel Shapiro argued that *kevod ha-tsibbur* is a social concept – and a woman's general standing in society was lower than that of men. R. Shapiro unfortunately errs, however, for several reasons. Firstly, the vast majority of *Rishonim* and *Aharonim* simply disagree with his analysis – *kevod ha-tsibbur* has absolutely nothing to do with social standing. It is for this reason that perhaps the greatest social reprobate - a *mamzer* - can receive an *aliyya* (Rema *O.H.* sec. 282:3). Rather, the vast majority of *Poskim* maintain that *kevod ha-tsibbur* stems either from *tsniut* considerations, or from *zilzul ha-mitsvah* (disparaging or belittling ones obligation).

The *Tsniut* School includes *inter alia* such leading scholars as R. Yaakov Emden, R.

Avraham David Rabinowitz-Teomim, R. Yosef Dov Soloveitchik, R. Shaul Yisraeli, R. Dov Eliezerov, R. Shlomo Zalman Auerbach, R. Eliezer Waldenberg all zatsa"l, and R. Shlomo Yosef Elyashiv, R. Efraim Greenblatt and R. Zalman Nechemia Goldberg Shlit"a.<sup>2</sup> This school argues that because of possible sexual distraction, women should not unnecessarily be at the center of communal religious ritual. This is particularly true by *keri'at haTorah* since women are simply not obligated in Torah reading.

It's important to note that the synagogue is the one place that we particularly try to sanctify our thoughts; and we make special efforts to avoid all sexual distraction. Therefore, R. Eliyahu David Rabinowitz-Teomim, R. Abraham Isaac Kook and R. Menachem Kasher, note that the standards of *tsniut* in a synagogue are halakhically greater than those in other venues – as evidenced by the requirement of a *mehitsa*.

Now, if a woman is obligated to fulfill a particular personal ritual, such as reciting *birkat ha-gomel* or saying *Kaddish yatom*, many *gedolei ha-poskim* see no problem, for this is her individual obligation. The concern of the *Tsniut* School is for women unnecessarily being at the center of a communal religious ritual.

The second *Zilzul haMitsvah* School includes among others R. Naphtali Zvi Yehuda Berlin, R. Yosef Kapah, R. Ovadiah Yosef, R. Yosef Messas, and R. Shimon Harrari,<sup>3</sup> but is actually preceded by several Rishonim [Rashi, *Tosafot*, *Tosafot haRosh* and *Tosafot Rabbenu Peretz to Sukka* 38a]. These scholars maintain that the men, who ARE obligated, should be the ones fulfilling the *mitsva* – not the women who are NOT. To have those exempted lead the communal ritual reveals that the men do not value their *mitzva* obligations - which constitutes *zilzul* or *bizayon ha-mitsva*. This consideration does not apply to *ketanim* because of *hinukh* considerations.

### **Can a Community Set Aside *Kevod haTsibbur* by Women's *Aliyyot*?**

Now, in light of this, we believe that in the specific case of women's *aliyyot*, the large majority of *poskim* would rule that a community cannot set aside its honor – for a variety of reasons. Firstly, there is a substantial cadre of *rishonim* (eg., Rambam and Semag) and *aharonim* (*inter alia*, *Ma'aseh Roke'ah*, R. BenZion Lichtman, R. Zalman Nechemiah Goldberg)<sup>4</sup> who maintain that in the specific case of women's *aliyyot*, the rabbis simply forbade women from ever receiving *aliyyot* - even in cases of *she'at ha-dehak* where there is no one else knowledgeable to read.

There is another very large group of *poskim*<sup>5</sup> - probably the majority - led by the Ba"H, who also maintain that a community cannot set aside *kevod ha-tsibbur*. In cases of

*she'at ha-dehak* – where there is no one else eligible, *kevod ha-tsibbur* is no longer in effect because Haza"l never forbade under such dire straits. Only then can a woman read, and it is in such cases that the Gemara in Megilla was referring.

Finally, it makes little sense that Haza"l would disallow women's *aliyyot* because of deep concerns about *kevod ha-tsibbur* – be it because of *tsniut* or *zilzul ha-mitsvah* - and yet, a community could come along and say, we don't care about Haza"l's concerns.

Now let us reiterate the point we made earlier. It's not that women were full partners in *keriat haTorah*, and *kevod ha-tsibbur* came along and took away from women something that was rightfully theirs. Rather because of rampant illiteracy and lack of education, the Rabbis as a special dispensation considered the possibility of allowing women to get *aliyyot*. Haza"l determined, however, that as normative synagogue practice this would be a bad idea, because it might well introduce an unnecessary element of sexual distraction or would reflect the belittling of the men's *mitsva* obligation. It did, however, remain an option according to most authorities for *she'at ha-dehak* situations – situations where no one else was able or eligible to read.

### ***Kevod haTsibbur* and Partnership *Minyanim***

**Now here comes our central point!** This understanding of *kevod ha-tsibbur* clearly applies to the vast majority of innovations in Partnership *Minyanim*. While women are welcome, even encouraged to attend shul, they are not obligated to maintain a properly functioning *minyan* in their community. They are not obligated in *minyan* attendance, nor in *tefilla be-tsibbur* nor in *keri'at haTorah* nor in any other public prayer rituals - which we do as a *tsibbur*.

Having women lead such public rituals would at least be a violation of *kevod ha-tsibbur* – according to either of its possible definitions. The *zilzul ha-mitsvah* view of *kevod ha-tsibbur* maintains that since it is the men who ARE obligated in public prayer rituals, they should be the ones fulfilling them – not women who are NOT at all obligated. The source and nature of this obligation is not critical. It may be biblical, rabbinic, custom or *mitsva min ha-muvhar*. The recitation of the *megillot*, *kaballat Shabbat* and certainly *pesukei de-zimra* in shul – is a long standing communal *minhag* of at least hundreds of years. Indeed, R. Saadya Gaon holds that the role of the *shaliah tsibbur* begins before *pesukei de-zimra*, and that is our *minhag*. In a shul context, it is the men who are obligated in performing and running public prayer. To have women fulfill these communal obligations would reveal that the men-folk do not value their halakhic responsibilities and obligations, and that is a serious issue of *zilzul* or

*bizayon ha-mitsva*. Again there is no *kevod ha-tsibbur* by a *katan* because of *Hinukh*.

The *Tsniut* School, on the other hand, argues that because of possible sexual distraction, women should not **unnecessarily** be at the center of any **communal** religious ritual. By contrast, *birkat ha-gomel* and even *Kaddish yetoma* are individual obligations done in a *minyan*. Reciting *Kiddush* after shul can be viewed as fulfilling ones personal obligation in the presence of many; but its not part of the public prayer ritual – hence *kevod ha-tsibbur* is not relevant

We note that the correctness of the above analysis, that the practices of Partnership Minyanim violate *kevod ha-tsibbur*, has been confirmed by *Moreinu veRabbenu* R. Aharon Lichtenstein and the noted *posek* R. Moshe Mordechai Karp, *she-yibadlu le-hayyim tovim ve-arukim*.

### ***Kavod haBeriyot***

The second attempt to reopen the issue of *aliyyot* for women is that of R. Prof. Daniel Sperber, in *Darka shel Halakha*. There is much to critique in this book and AAF has written a lengthy review which appeared on “The Seforim Blog” in June 2008 (<http://seforim.blogspot.com/2008/06/aryeh-frimer-review-of-daniel-sperbers.html>). We will focus, however, on Prof. Sperber’s major *hiddush* in this book. Briefly, Prof. Sperber focuses on the halakhic concept ***kevod ha-beriyot***, which refers to shame or embarrassment which would result from the fulfillment of a religious obligation. Thus, the Gemara in *Berakhot* 19b indicates that if one is wearing *sha’atnez* –the wearer is obligated to remove it even in the marketplace, despite any possible embarrassment. However, if the garment is only rabbinically forbidden, one can wait until they return home to change. The reason is that *kevod ha-beriyot*, the honor of the individual, can defer rabbinic obligations and prohibitions. Hence, Prof. Sperber maintains that if there is a community of women who are offended by their not receiving *aliyyot* – because of the rabbinic rule of *kevod ha-tsibbur*, then *kevod ha-beriyot* should defer *kevod ha-tsibbur*.

Prof. Sperber is correct that *kevod ha-beriyot* has always been an important consideration in *psak*. However, an in-depth survey of the responsa literature over the past 1000 years makes it clear that **it cannot be invoked indiscriminately**. Indeed, the *gedolei ha-poskim* make apparent that there are clearly defined rules – we have found 14 - which Prof. Sperber totally seems to ignore. Violating any one of these rules nullifies R. Sperber’s claim and we believe he has violated nearly all 14 of them. Because of time limitations we will very quickly cite only seven (7).



(1) Firstly, *kevod ha-tsibbur* is merely the *kevod ha-beriyot* of the community (*Resp. Bet Yehuda, O.H. 58*). Hence it makes no sense that the honor of the individual should have priority over the honor of a large collection of individuals. Indeed, this is explicitly stated by the Meiri, *Bet haBehira, Berakhot 19b*: "שאיין כבוד רבים נדהה מפני יחיד או יחידים"

(2) Secondly, The Meiri (*ibid.*) also emphatically states: "שלא אמרה תורה כבוד אחרים". בקלון עצמך. Giving women *aliyyot* by overriding *kevod ha-tsibbur* with *kevod ha-beriyot* would effectively be honoring women by dishonoring the community – and, hence, should not be done.

(3) More fundamentally, R. Sperber's suggestion would ask us to uproot completely the rabbinic ban on women's *aliyyot*. However, the Jerusalem Talmud (*Kilayyim 9:1*) indicates that *kevod ha-beriyot* can only temporarily (*sha'ah ahat*) set aside a rabbinic ordinance. That this proviso of *sha'ah ahat* is applied to Rabbinic *mitsvot* as well – by *Tosafot, Or Zarua, Penei Moshe, Vilna Gaon, R. David Pardo, Arukh haShulhan* and others.<sup>6</sup>

(4) Fourthly, many *poskim* including R. Yair Hayyim Bachrach, R. Isaac Blazer, R. Meir Simha of Dvinsk, R. Jeroham Perlow, R. Moses Feinstein, R. Chaim Zev Reines<sup>7</sup> indicate that the "dishonor" that is engendered must result from an act of disgrace - not from refraining to give honor.

(5) Similarly, nearly all authorities (including R. Naftali Amsterdam, R. Elhanan Bunim Wasserman, R. Makiel Tsvi haLevi Tannenbaum, R. Joseph B. Soloveitchik, R. Elijah Bakshi Doron, R. Chaim Zev Reines, R. Israel Shepansky, and R. Yitzchak Nissim<sup>8</sup>) maintain that *kevod ha-beriyot* requires an objective standard that affects or is appreciated by all. This view rejects subjective standards - in which what is embarrassing results from the idiosyncrasies or hypersensitivities of an individual or small group. Many religiously committed women would perhaps prefer it otherwise; but they understand and accept the halakhic given, that they are not obligated in *keri'at haTorah* and, hence, cannot receive *aliyyot*.

More fundamentally, however, does it make any sense that a group of women or men could say: "this Rabbinic *halakha* or ordinance offends me" and as a result the Rabbinic injunction or obligation would be abrogated thereby?! Is there a simple *carte blanche* to uproot Rabbinic ordinances like *mehitsa, tsni'ut, kashrut, stam yeynam, bishul akum*, many aspects of *taharat ha-mishpahah*, who counts for a minyan, and who can serve as a *hazzan*?! Such a position is untenable, if not unthinkable.

(6) *Resp. Rivash* (sec. 226) forbade sewing baby clothes during *hol ha-moed* for a newborn's circumcision despite the wealthy parents' desire to dress him according to his

status for the event. One of Rivash's rationales is that since all understand that Haza"l forbade sewing new clothes on *hol ha-moed*, *kevod ha-beriyot* cannot be invoked to circumvent this rabbinic prohibition. Similarly, one cannot invoke *kevod ha-beriyot* to allow women to receive *aliyyot*, because all understand that this has been synagogue procedure for two millennia and that the Rabbis of the Talmud themselves prohibited it.

(7) Rivash (*ibid.*) and *Havot Yair* (sec. 95) and others categorically rule against extending the leniency of *kevod ha-beriyot* beyond those 4 categories explicitly discussed by Haza"l - honor of the deceased, personal hygiene dealing with excrement, undress and nakedness, and the sanctity of the family unit.

Thus we believe that the arguments of both Rabbis Shapiro and Sperber do not stand up under close scrutiny and there are no grounds to permit women's *aliyyot*. Hence, we take strong issue with those who would enact women's *aliyyot* in practice, and hastily undo more than two millennia of Halakhic precedent. Considering the novelty of this innovation, religious integrity and sensitivity would have required serious consultation with renowned halakhic authorities of recognized stature - **before** acting on such a significant departure from tradition and normative *halakha*. Often it takes time before a final determination can be reached as to whether or not a suggested innovation meets these standards. But that is no excuse for haste.

### **Recitation of *Hallel* in the Talmudic Period**

One of the new major innovations instituted by Partnership *Minyanim* is having a woman serve as the *shelihat tsibbur* for the recitation of *Hallel*. What is the rationale behind this innovation?

In the Talmudic period, the general custom was for the *shali'ah tsibbur* to recite the entire *Hallel* alone, out loud, with the congregation punctuating the *Hallel* with various responses of *Halleluya* and the repetition of specific verses. The community fulfills its obligation of *Hallel* via the recitation of the *shali'ah tsibbur* by the general mechanism of *shome'a ke-oneh*. The precise nature of the communal response is the subject of much debate: yet the model of the responsive *Hallel* interplay is the *shira ve-aniyya* (song and response) of *Moshe Rabbenu* and *Am Yisrael* when they sang *shirat ha-yam* in praise of the Almighty – as described in *Sotah* (30b). This unique responsive *Hallel* format (also referred to by the classic commentaries as *ker'ia ve-aniyya*, recitation and response) is invoked,

according to the vast majority of authorities, only when reciting *Hallel be-tsibbur*; but not when *Hallel* is recited *be-yehidut* (alone).<sup>9</sup>

What kind of *tsibbur* is required for the responsive *Hallel*? Rema (*O.H.*, 422:2), allows a responsive *Hallel* even when there are merely three males (see next paragraph) davening together. R. Moshe Soloveitchik (*Reshimot Shiurim*, supra note 9, p. 190) maintained, however, that except for Seder night (see *Shulhan Arukh*, *O.H.*, 479:1), a regular minyan of ten men is necessary for *shira ve-aniyya*. *Hallel* was enacted to be part of the *shaharit* service; and just as *shaharit be-tsibbur* requires a *minyan*, so too *Hallel be-tsibbur*. *Arukh haShulhan* (*O.H.*, sec. 422, no. 8) indicates that the general custom follows the latter position.

The *Mishnah* in the third chapter of *Sukka* teaches that the responsive *shira ve-aniyya* form can only be utilized – even *be-tsibbur* – when the *shali'ah tsibbur* is an adult male, who is obligated in *Hallel*, either by *takana* or by custom. However, if the congregation cannot find a qualified adult male *shali'ah tsibbur*, then they willy-nilly must rely upon a woman or a minor to serve as *shali'ah tsibbur*. However, since both a minor and a woman are exempt from the obligation of *Hallel*, the general mechanism of *shome'a ke-oneh* cannot be invoked. This is because, as noted above, *shome'a ke-oneh* requires that both the listener and the reciter be obligated; as a result, the responsive *Hallel* cannot be said. Instead, for the congregation to fulfill its basic *Hallel* obligation it must repeat the words of the minor or woman, word for word. Moreover, the *Mishnah* states that a person or congregation that needs to rely on such a non-obligated minor or female *shali'ah tsibbur*, is to be cursed – *tavo lo me'eira*.

The *rishonim* give two reasons for this drastic punishment of *me'eira*. The first reason is that the congregation has allowed itself to be so ignorant as to be forced into a position where it needs to rely upon non-obligated *shelihei tsibbur*. However, even if the members of the congregation are educated, they are nonetheless deserving of a curse; this is because they have appointed as their communal representative before the Almighty one who is not even obligated in the task. They have thereby insulted both the *mitsva* and the *Metsaveh* Himself [Rashi, *Tosafot*, *Tosafot haRosh* and *Tosafot Rabbenu Perets* to *Sukka* 38a].

### ***Hallel* in the Post-Talmudic Period**

Our contemporary pattern of reciting *Hallel* differs dramatically from the Talmudic form. Today, our communities are all considered to be educated (*beki'im*) who are knowledgeable in the proper recitation of *Hallel*. As a result, our custom is for everyone to

recite *Hallel* for himself and not rely on the *Shali'ah Tsibbur*. Nevertheless, we have maintained some semblance of the original custom of a responsive *Hallel* when recited *be-tsibbur*, although the segments of *Hallel* actually recited responsively are far fewer than those of the Talmudic period. Thus, only by the recitation of *Yomar na Yisrael...Yomar na Bet Aharon... Yomar na Yirei Hashem...Ana Hashem Hoshi'a na* and *Ana Hashem Hatsliha na* is there *shira ve-aniyya*. Yet, even with regard to these responsive portions of the *Hallel*, the *aharonim* note that the general practice today is to have the community say these verses as well, and not rely solely on their recitation by the *hazzan*.

If so, the argument goes, why can't a woman lead the *Hallel* service in our day and age? After all, the members of the congregation are anyway reciting *Hallel* themselves word for word, individually, fulfilling their own *Hallel* obligation. Consequently, the lack of obligation of the female *Shat"z* in no way impacts today on the obligation of the congregants.

We, however, believe this argument to be erroneous for three major reasons. First, having a woman lead the congregation in *Hallel* – as in *pesukei de-zimra* – violates *kevod hatsibbur*. This understanding – confirmed to us by both R. Aharon Lichtenstein and R. Moshe Mordechai Karp – was discussed at length above.

Second, having a woman, who is not obligated in the recitation of *Hallel*, lead the service, raises the concern of *me'eira*. Haza"l's criticism of have one who is not obligated in *Hallel* lead the service, has little to do with the *Hazzan* being *motsi*. After all, one who is not *hayyav* simply **cannot** be *motsi* the congregation. Even in the *Mishnah* of *Sukka*, the non-obligated minor or female *shaliah tsibbur* **is not** being *motsi* the *tsibbur*. That is precisely why the *Mishnah* requires each member of the congregation to recite the *Hallel* individually, with each person fulfilling his own obligation. Rather, as the *Rishonim* emphasize, Haza"l's criticism results from the fact that by appointing a non-obligated person to lead the service, the congregation is: “*mevazeh ba-mitsvot la'asot sheluhin ka-eileh mi-shum de-lav benei hiyyuva ninhu*” (*Tosafot Rabbenu Perets, Sukka* 38a). Through their appointment, the congregation demonstrates that it does not take their *Hallel* obligation seriously. Even today, the *Shaliah Tsibbur* plays a central role in leading the communal *Hallel* service, especially in those parts that are recited responsively. While the *hazzan* today is not *motsi* the *tsibbur*, he, nonetheless, melds the congregation into a cohesive unit and **leads** them in the communal *Hallel*. Only one who is obligated in *Hallel* can be an appropriate messenger/leader for his agent-congregation before the Almighty. [This analysis was also concurred to by Rabbis Aharon Lichtenstein, Moshe Mordechai Karp and Barukh David Povarsky (personal conversations with DIF, April 2010).]

The final objection is based upon the teachings of *Moreinu ve-Rabbenu haRav* Yosef Dov Ha-Levi Soloveitchik zt"l (*Reshimot Shiurim, supra* note 9). The Rav explains that there are two dimensions to the *mitsva* of *Hallel*. The first is the simple recitation of *Hallel*; the second is the responsive reading of *Hallel*. While an individual can fulfill the obligation of the simple recitation of *Hallel*, only a *tsibbur* can fulfill the mitzvah of reciting *Hallel* responsively. Reciting *Hallel* responsively is a unique *kiyyum* of *Hallel ha-tsibbur* – similar to reciting *kedusha* in *tefilla be-tsibbur*. The Rav further emphasized that *tefilla and Hallel be-tsibbur* are not merely enhanced forms of *tefillat veHallel ha-yahid*. Rather they are separate and distinct categories, each being its own unique *heftsa shel mitsva*, with its own set of rules. One such unique feature of *Hallel be-tsibbur* is the responsive *keri'a ve-aniyya* format.

Since women cannot **create** the *heftsa* of *mitsvot ha-tsibbur*, the Rav maintains that women cannot **lead** the *tsibbur* in their *kiyyum*. Consequently, women would be barred from serving as *shelihei tzibbur* for the recitation of *Hallel ha-tsibbur*.

Professor Haym Soloveitchik, in his now classic work "Rupture and Construction," [*Tradition*, Vol. 28, No. 4 (Summer 1994)] skillfully documented the gradual move in Contemporary Orthodoxy from a mimetic halakhic tradition to a text-based tradition. He further noted the profound impact that this transition had on the move of contemporary Orthodoxy in the 20<sup>th</sup> Century towards greater *humra* (stringency). What we are now beginning to witness is a similar, but opposite, text-oriented movement towards greater *kula* (leniency).

We would like to suggest that neither is healthy for the halakhic process or for the Torah community. Perhaps what is called for is a balanced return to a more mimetic-influenced tradition, with its inherent sensitivity and stability without rigidity. But that is for another occasion.

## References

1. See, for example: *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. "Katav 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.*
2. R. Jacob Emden, *Mor uKetsia, O.H.*, sec. 55, s.v. "Katuv baMordekha" and sec. 282; R. Elijah David Rabinowitz-Teomim, *Over Orach*, sec. 110, s.v. "ve-Nireh"; R. Walter S.

- Wurzbarger, “R. Joseph B. Soloveitchik as *Posek* of Post-Modern Orthodoxy,” *Tradition*, 29:1, pp. 5-21 (Fall 1994), at p. 17; R. Shaul Yisraeli, *Resp. beMareh haBazak*, I, sec. 37, no. 7; R. Dov Eliezerov, *Resp. Sha’ali Zion, Tinyana*, part 1, *O.H.*, sec. 19; R. Zalman Nehemiah Goldberg, in *Resp. beMareh haBazak*, V, addendum to sec. 113, pp. 225-228; R. Zalman Nehemiah Goldberg, *Resp. Binyan Ariel, E.H.*, “*Birkat Hatanim biSe’udat Sheva Berakhot al yedei Isha*,” pp. 135-141; R. Shlomo Yosef Elyashiv, cited in R. Abraham-Sofer Abraham, *Nishemat Avraham*, V, *Y.D.*, sec. 195, p. 76-77; R. Shlomo Zalman Auerbach, cited in R. Abraham-Sofer Abraham, *Nishemat Avraham*, V, *Y.D.*, sec. 195, p. 76-77 – see also *Halikhot Shlomo*, I, *Hilkhhot Tefilla*, Chap. 20, sec. 11, note 20; R. Eliezer Waldenberg, *Resp. Tsits Eliezer*, XX, sec. 36, nos. 2 and 3; R. Efraim Greenblatt, *Resp. Rivevot Efrayim*, I, sec. 449.
3. R. Naphtali Zvi Judah Berlin (Netsiv), *Meromei Sadeh, Sukka* 38a, *s.v.* “*Mishna. Mi sheHaya*”; R. Joseph Kafah, Commentary to *Yad, Hilkhhot Megilla*, chap. 1, no. 1, note 3; R. Ovadiah Yosef, *miShiurei Maran haRishon leZion Rabbi Ovadya Yosef Shlita, Gilyon* 19’ *Motsash Parashat vaYeira* 5756; R. Ovadiah Yosef, *Mishnat Yosef*, III, *Shiurei Maran haRishon leZion* 5762, *Parashat veYetse, Hilkhhot Keriat beSefer Torah beShabbat*, no. 11; R. Joseph Messas, *Resp. Mayyim Hayyim*, II, sec. 140; R. Simeon Harari, *Resp. Sha’ar Shimon Ehad*, I, sec. 4, *s.v.* “*veHineh ma*”.
4. Maimonides, *Yad, Hilkhhot Tefilla*, sec. 12, no. 17; R. Moses ben Jacob of Coucy, *Sefer Mitsvot Gadol, Divrei Soferim, Aseh*, no. 4, *Hilkhhot Megilla*, *s.v.* “*Tanya beTosefta*”; R. Masud Hai Rokei’ah, *Ma’ase Rokei’ah, Yad, ad loc*; R. Ben-Zion Lichtman, *Benei Zion*, IV, *O.H.* sec. 282, no. 3, note 6; R. Zalman Nehemiah Goldberg, in *Resp. beMareh haBazak*, V, addendum to sec. 113, pp. 225-228; R. Zalman Nehemiah Goldberg, *Resp. Binyan Ariel, E.H.*, “*Birkat Hatanim biSe’udat Sheva Berakhot al yedei Isha*,” pp. 135-141; *Tehilla leYona – Masekhet Megilla*,
5. *Inter alia*: R. Joel Sirkis, *Bayit Hadash (Bah), Tur, O.H.* sec. 53, *s.v.* “*veEin memanin*,” R. Joseph Caro in *Shulhan Arukh*, sec. 53, no. 6 according to *Pri Megadim, O.H.*, sec. 53, *Eshel Avraham*, note 9; R. Israel Lipschutz, *Tiferet Yisrael to Mishna Megilla* 4:6, no. 45; R. Hayyim Sofer in his comments to R. Jacob Alfanadri, *Mutsal meEish*, sec. 10; R. Judah Ayash, *Resp. Bet Yehuda*, I, *O.H.*, secs. 22 and 55; *Kaf haHayyim, O.H.*, sec. 143, note 10 – see, however, sec. 690, no. 5; *Resp. Mishpitei Ouziel*, IV, *H.M.*, sec. 4;
6. To JT *Kilayyim* 9:1, see: R. Moses Margaliyot, *Penei Moshe* and *Mareh Panim*; R. Elijah Kramer of Vilna (Gra), *Perush haGra*; R. Yitshak-Isaac Krasilchikov, *Toldot Yitshak*.

- This is also the opinion of: *Tosafot, Ketubot* 103b, end of s.v. “*Oto*;” R. Isaac of Vienna, *Or Zarua*, II, *Hilkhot Erev Shabbat*, sec. 6; R. David Samuel Pardo, *Resp. Mikhtam leDavid, Y.D.*, sec. 51; *Arukh haShulhan, Y.D.*, sec. 303.
7. R. Jair Hayyim Bachrach, *Resp. Havot Yair*, end of sec. 96 (“shame visible to all”); R. Isaac Blazer, *Resp. Pri Yitshak*, sec. 54, s.v. “*Yikrat devarav*;” R. Meir Simha of Dvinsk, *Or Same’ah, Hilkhot Yom Tov*, chap. 6, sec. 14; R. Jeroham Perlow, Commentary on *Sefer Hamitzvos L’Rav Saadya Gaon*, I, *Esin* 19 (p. 146, column 4); R. Moses Feinstein, *Resp. Iggerot Moshe, Y.D.*, I, sec. 249, s.v. “*veNimtsa*”; R. Chaim Zev Reines, “*Kevod haBeriyot*,” *Sinai* 27:7-12 (159-164; *Nisan-Elul* 5710), pp. 157-168.
8. Responsum of R. Naftali Amsterdam quoted in R. Isaac Blazer, *Resp. Pri Yitshak*, sec. 53; R. Elhanan Bunim Wasserman, *Kovets Shiurim*, I, *Bava Batra*, sec. 49; R. Makiel Tsvi haLevi Tannenbaum, *Resp. Divrei Malkiel*, I, sec. 67 and III, sec. 82; R. Isaac Nissim, unpublished responsum cited by R. Aaron Arend, “*Hagigat Bat-Mitsva bePiskei haRav Yitshak Nissim*,” in *Bat-Mitsva*, Sarah Friedlander ben Arza, ed. (Jerusalem: Matan: 2002/5762), pp. 109-115, at p. 113; R. Joseph B. Soloveitchik, *Divrei Hashkafa*, pp. 234-235; R. Joseph B. Soloveitchik cited by R. Zvi Schechter, “*miPeninei Rabbenu*,” *Bet Yitshak*, 36 (5764), p. 320ff; R. Elijah Bakshi Doron, *Resp. Binyan Av*, II, sec. 55, no. 3; R. Chaim Zev Reines, *supra*, note 7, p. 157; R. Israel Shepansky R. Israel Shepansky, “*Gadol Kevod haBeriyot*,” *Or haMizrah*, 33:3-4 (118-119; *Nisan-Tammuz*, 5745), pp. 217-228 - p. 225, note 48; R. David Povarsky, *Sefer Bad Kodesh to Berakhot, Zera’im, Shabbat and Eiruvim* (Bnai Brak, 5767), *Berakhot*, sec. 4, pp. 13-18, at p. 17.
9. See: Tur and *Arukh haShulhan, O.H.*, sec. 422; R. Joseph B. Soloveitchik in R. Zvi Joseph Reichman, *Reshimot Shiurim* [New York: 4749], *Sukka* 38a, p. 185-190; R. Barukh David Povarsky, *Bad Kodesh – Berakhot, Zeraim, Shabbat, Eruvin*, sec. 18; R. Moses Mordechai Karp, *Mishmeret Moed, Sukka*, pp. 332-338.