Lo Zo haDerekh: A Review of Rabbi Prof. Daniel Sperber’s *Darkah shel Halakha*

by Aryeh A. Frimer

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This is his first contribution to the Seforim blog.
Allow me to begin my review of R. Prof. Daniel Sperber’s new volume “Darkah shel Halakha, with a few words of introduction.” I have the greatest respect for Prof Sperber both as a scholar par excellence and as a human being. Over the almost 35 years I have been at Bar Ilan, we have developed a warm friendship and mutual respect. He writes clearly and beautifully, with great knowledge, sensitivity and depth – and his book Darkah shel Halakha is no exception. Nevertheless, I am forced to disagree with his analysis and conclusions. I strongly believe that we have to be sensitive to women’s spiritual needs or as Hazal say: לעשיהם נמה רוח לנשים (Sifra, Parsheta 2; Hagiga 16b). But at the same time, we have to be honest about what the halakha clearly states – so that, at the same time, we will not be guilty of האבה מקלקלת את השורה.

The question of women receiving aliyyot, which lies at the center of Darkah shel Halakha, is briefly discussed in a baraita cited in the Talmud Megilla (23a) which reads (Source 1):

(1) בתלמוד בבלי מסכת מגילה דף כג עמוד א
נתו רבנן: הכל עולין למנין שבעה, ואפילו קטן ואפילו אשה. אבל אמרו חכמים: אשה לא תקרא בתורה, מפני כבוד צבור.

Despite the above negative ruling of the Talmud and, in its wake, of all subsequent codifiers, within the last decade, there have been two major attempts to reopen this issue. One was penned by R. Mendel Shapiro who argues that kevod ha-tsibbur is a social concept – and a woman’s general standing in society was lower than men’s. Nowadays when this is no longer true, a community can be mohel on its kavod – voluntarily set aside its honor. He errs, however, since the vast majority of rishonim and acharonim disagree with his analysis. Kevod ha-tsibbur has nothing to do with social standing. The vast majority of posekim maintain that kevod ha-tsibbur stems from women’s lack of obligation in keri’at haTorah, and expresses itself either in terms of tsniut or zilzul ha-mitsvah. The Tsniut School argues that women should not be at the center of communal ritual unnecessarily – and this is particularly true by keri’at haTorah, from which they are freed. The Zilzul haMitsvah School maintains that there is an issue of zilzul ha-mitsva in that the men who are duty-bound should fulfill the mitsva that is incumbent upon them – and not delegate it to those who are not obligated.

The second attempt is that of R. Prof. Daniel Sperber, in Darkah shel Halakha, and I would like to focus on two major issues.
Kevod haTsibbur: Instruction or Recommendation?

Firstly, R. Sperber has suggested that the phrase in *Megilla* 23a “However, the Rabbis declared: a woman should not read from the Torah – because of kevod ha-tsibbur” describes what Hazal believed to be the preferred or recommended mode of conduct, the ideal way of performing keri’at haTorah.

Indeed, *ke-darko ba-kodesh*, Prof. Sperber surveys all the places where it states אבל אCharArray endorsed by Amoraim and shows that some cases are merely expressions of the ideal, while others refer to things that are actually assur. Yet, he concludes [note 19, p. 21] that that in the case of women’s aliyyot:

This position is very problematic, particularly in this case of women’s aliyyot which is one of kevod ha-tsibbur.

(1) Firstly, Meiri, *Kiryat Sefer, Ma’amor 5*, sec. a, writes (Source 2):

(2) Secondly, there is a group of rishonim and aharonim who maintain that in the specific case of women’s aliyyot, women cannot receive aliyyot, even in cases of *she’at ha-dehak* or *be-di-avod*. This school includes the Rambam and Semag and many subsequent *aharonim* (R. Abraham Pinso; R. Matsli’ah Mazuz; R. Ben-Zion Lichtman, R. Zalman Nehemiah Goldberg and R. Isaac Zilberstein). For example, Rambam (Sources 4 and 5) writes without any qualification that women may not receive aliyyot:

Clearly, from the Meiri’s perspective, the statement אבל אמרו חכמים in reference to women’s aliyyot is not a simple recommendation.
Semag (Source 6) records that minors may receive *aliyyot*, but makes no mention of women whatsoever. On the contrary, he maintains (Sources 7 and 8) that women cannot *motsi* men in *megilla*, *even be-di-avod*, just as they can’t receive *aliyyot*.

Similarly, the Gemara in Megilla was referring.

Clearly, according to these authorities, the statement is not a simple recommendation.

(3) There is another very large group of *posekim* (perhaps the majority) led by the R. Yoel Sirkis (Ba”h; Sources 9 and 10) who maintain that one cannot be *mohel* on *kevod ha-tsibbur* – particularly in the case of women’s *aliyyot*. However, *bi-she’at ha-dehak* – where there is no alternative or no one else eligible - a woman can read, lest *keri’at haTorah* be cancelled. It is to such cases that the Gemara in Megilla was referring.

For example, in a case of a city with only *kohanim* cited by Rabbi Sperber himself, Maharam miRothenburg (Source 11) permits women to receive the third through seventh *aliya*. Otherwise the Torah reading would not occur, for the lineage of the *kohanim* would be challenged were they to receive the remaining *aliyyot*. In the language of the Maharam:
Maharam mi-Rothenburg was only willing to permit *bi-she’at ha-dehak*. This certainly doesn’t sound like a recommendation (מביא ישיא). Rather it is permission given only *bi-she’at ha-dehak*.

It would seem to me that in *Darkah shel Halakha* there is a blurring of the difference between *le-khathila* and *be-di-avod*. For example, Haza”l say that one should not use a milchig spoon (שאטו משום ימי היא, not used in last 24 hours) to stir hot chicken soup. Similarly, Haza”l indicate that one shouldn’t eat out of utensils that haven’t been immersed in a mikva, in both cases, *be-di-avod*, the food remains perfectly kosher. Hazal’s ruling in both these cases is not a recommendation - but rather a clear directive how one is required to act; under normative conditions, it is *assur* to act otherwise. This is also true regarding women’s aliyyot - Haza”l forbade it *le-khathila*, even though *be-di-avod* or *bi-she’at ha-dehak* the aliyya may be valid.

Now it should be appreciated that from Prof. Sperber’s perspective it is important that מוהל ומשלמי be only a recommendation. Prof. Sperber wants to maintain that there really is no “down side” to women getting aliyyot. However, to my mind, he errs - *kevod ha-tsibbur* is a takana *le-khathila*, not a recommendation.

In this regard, I would also like to briefly mention one further crucial point, relevant to both the papers of R. Mendel Shapiro and R. Daniel Sperber – but which we will not be able to develop fully here (see note 4, supra). When Hazal talked about women getting aliyyot, they were referring to a system in which the *oleh* made the *berakhot* and read aloud - for himself and the community. However, in contemporary practice, the job of the *oleh* is bifurcated: the *oleh* makes the *berakhot* and *ba’al korei* reads aloud. This raises a fundamental question: how can one person make *berakhot*, while another does the *ma’aseh ha-mitsva*. For there not to be a *berakha le-vatala* there must be a mechanism to transfer the reading from the *ba’al korei* to the *oleh*. That mechanism is either *shom’eah ke-onah* or *shelihut*. But both mechanisms require that both the *oleh* and *ba’al korei* be obligated – otherwise there is no areivut. Since women are not obligated in *keri’at haTorah*, they can serve neither as the *oleh* nor as the *ba’al korei* - *me-ikkar ha-din* – because the birkhot haTorah of the *oleh* will be *berakhot le-vatala*. Note that all this has nothing to do with *kevod*...
ha-tsibbur. The only case in which the issue of kevod ha-tsibbur begins is in the uncommon case where a woman makes the berakhot and reads for herself. Hence, under a bifurcated system, there is a clear downside in allowing women to read or serve as olot – a proliferation of berakhot le-vatala!

Does Kevod haBeriyot Defer Kevod haTsibbur –

The Rules of Kevod haBeriyot

Lets now turn to the second issue – and this is Prof. Sperber’s major hiddush in this book. Briefly, Prof. Sperber notes that there is a concept in halakha called kevod ha-beriyot which refers to shame or embarrassment (בושה או בזיון) which would result from the fulfillment of a religious obligation. The view of the halakha is that kevod ha-beriyot 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.

Professor Sperber’s book is devoted to describing the use of kevod ha-beriyot in the halakhic literature. He is by no means the first to do this and the subject is extensively reviewed and analyzed by Rabbis Rakover, Blidstein, Lichtenstein, Feldman, and many others.

Let’s begin with the Gemara in Berakhot 19b:

The upshot of this Gemara is that if one is wearing sha’atnez – the wearer is obligated to remove it even in the marketplace, despite any possible embarrassment. The Gemara explains that G-d’s honor/dignity takes priority over that of Man. However, if the garment is
only rabbinically forbidden, one can wait until one returns home to change. The reason is that kevod ha-beriyot, the honor of the individual, can defer rabbinic prohibitions.

Prof. Sperber adequately shows that kevod ha-beriyot has always been an important consideration in pesak. However, an in-depth survey of the responsa literature over the past 1000 years makes it clear that it cannot be invoked indiscriminately. Indeed, as the gedolei ha-posekim make apparent, there are clearly defined parameters which Prof. Sperber seems to ignore. Hence, R. Sperber’s application of kevod ha-beriyot to the issue of women’s aliyyot is seriously flawed. In this brief presentation, we will discuss nine of the aforementioned principles.

(1) Firstly, kevod ha-tsibbur is merely the kevod ha-beriyot of the tsibbur. 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 13th century Meiri.

(2) Secondly, The Meiri (Source 14) also emphatically states:

Giving women aliyyot by overriding kevod ha-tsibbur with kevod ha-beriyot would effectively be honoring women by dishonoring the community – and, hence, cannot be done.

(3) R. Sperber’s suggestion would ask us to uproot completely the rabbinic ban on women’s aliyyot. However, kevod ha-beriyot can only temporarily set aside a rabbinic ordinance. As stated in the Jerusalem Talmud (Source 15):

Many of the commentaries on the Yerushlami and posekim hold that this proviso of sha’ah atat applies to Rabbinic mitsvot as well – including: Tosafot, Ketubot 103b, end of s.v. “Oto”; Or Zarua, Hilkhot Erev Shabbat, sec. 6; Penei Moshe; Vilna Gaon; R. David
Next, many posekim including R. Yair Hayyim Bachrach, R. Meir Simha of Dvinsk, R. Jeroham Perlow, R. Moses Feinstein, R. Chaim Zev Reines indicate that the “dishonor” that is engendered must result from an act of disgrace - not from refraining to give honor. As Rabbi Meir Simcha of Dvinsk writes:

Only in cases where kavod is obligatory (e.g., for a King or mourner) is the absence of kavod considered embarrassing, as indicated by R. Isaac Blazer,

Prof. Yaakov Bldstein discusses burial on Yom Tov sheni shel galuyot, which is permitted because Yom Tov sheni is de-rabbanan, while not burying is kevod ha-beriyot. However, a long list of posekim will not permit 20 individuals to violate Yom Tov sheni to attend to a burial, when only 10 are required to bury the deceased and the additional 10 would be coming along out of honor. Only the first 10 are permitted.

Similarly, in the case of aliyyot, no act of shame has been performed to all those not called to the Torah (both men and women); they are simply not honored. Kevod ha-beriyot cannot be activated under such conditions.

R. Daniel Sperber in his book Darkah shel Halakha (p. 77, note 104) attempts to challenge this principle - that kevod ha-beriyot is inapplicable when no act of shame has been performed. He cites the fact that a bride is permitted to wash her face on Yom Kippur.
R. Sperber assumes that the prohibition against washing on *Yom Kippur* is rabbinic (when many authorities hold it is biblical) and that the permission to wash stems from *kevod ha-beriyot*. Based on this, he wants to demonstrate that the shame here results from something that was not done.

This analysis is in error because the leniency for a bride has nothing to do with *kevod ha-beriyot*. What was forbidden was *rehitsa shel ta’amug*, but not washing of necessity, e.g., for cleanliness. A bride is permitted to wash her face on *Yom Kippur*, so that her face would not be displeasing in her new grooms eyes – and this is considered laving of necessity. As Rashi and Rav write (Source 19 above), a bride requires beauty.

R. Sperber (p. 83) further cites a responsum of R. Isaiah of Trani, *Resp. haRid*, sec. 21 which permits the lighting of candles in the synagogue on Yom Tov because of “*kevod ha-beriyot*.” R. Sperber attempts to use this example to demonstrate that *kevod ha-beriyot* can set aside prohibitions even if it is only to honor those who are attending synagogue.

Unfortunately, he errs in his analysis here as well. Similar *teshuvot* are found from the Rid, Rosh and Maharam of Rothenburg. And their goal is to show that lighting candles in the synagogue comes under the rubric of *tsorekh okhel nefesh* because they honor people (Rid), the synagogue (Maharam) or the holiday (Rosh). Once it its *tsorekh okhel nefesh*, it is the *tsorekh okhel nefesh* which defers the prohibition.

(5) Nearly all authorities – including, *inter alia*, R. Naftali Amsterdam (Source 20), R. Elhanan Bunim Wasserman, R. Makiel Tvi haLevi Tannenbaum, Rav Yitzchak Nissim (Source 21), R. Joseph B. Soloveitchik, R. Elijah Bakshi Doron (Source 22), R. Israel Shepansky - maintain that *kevod ha-beriyot* requires an objective standard that affects or is appreciated by all.
This view explicitly rejects subjective standards - in which what is embarrassing results from the idiosyncrasies or hypersensitivities of an individual or small group. The vast majority of religiously committed women are not offended when they do not receive an aliyya. Indeed, they understand and accept the halakhic given, although some might clearly have preferred it to be otherwise.

More importantly, does it make halakhic sense that if a group of women – nay, any group, says: “this Rabbinic halakha offends me” – be it mehitsa, tsni’ut, kashrut, stam yeynam, many aspects of taharat ha-mishpahah, who counts for a minyan, and who can serve as a havan - then we should have a carte blanche to go about abrogating it. Such a position is untenable, if not unthinkable.16

(6) Many leading scholars17 emphasize that, as in the cases of kevod ha-beriyot discussed in Berakhot 19b and elsewhere, the shame must result from extraneous factors. Thus, removing the kilayyim garment per se’ is not what causes the shame. Rather, it is that one has no other garment underneath and, hence, remains naked. In such cases, kevod ha-beriyot can be invoked to nullify the rabbinic commandment which leads to the dishonor. However, kevod ha-berooyot cannot be invoked to nullify a rabbinic commandment, where the shame comes from the very fulfillment of the rabbinic injunction itself.

Take for example one who is invited to dine with his colleagues or clients, would we allow him to avoid embarrassment by eating fruit and vegetables from which terumot and ma’asrot (which nowadays is Rabbinic) have not been removed, or by consuming hamets she-avar alav haPesah, or by drinking stam yeinam (wine touched or poured by a non-Jew). Or alternatively, suppose someone is at a meeting and is ashamed to walk out in order to daven Minha. And what about prayers at the airport in between flights. Would we allow him to forgo his rabbinic prayer obligation because of this embarrassment?

The answer is that in those cases where acting according to halakha - be it to not eat terumot and ma’asrot, or to not drink stam yeinam, or to fulfill ones prayer obligation – creates the embarrassment, then kevod ha-beriyot cannot set aside the Rabbinic prohibition. One should be proud to be fulfilling the halakha. Similarly, kevod ha-berooyot cannot be invoked to uproot the rabbinic consideration of kevod ha-tsibbur which prevents women’s aliyyot. This is because the dishonor stems directly from the very fact that women are not...
given *aliyyot* in accordance with the rabbinic guidelines.

(7) That the rabbis of the Talmud were sensitive to women’s spiritual needs is evident from the rabbinic concept of *nahat ru’ah* (spiritual satisfaction), which was invoked in a variety of instances to permit certain special dispensations for women. R. Sperber maintains that this concept is an expression of *kevod ha-beriyyot*. Yet, despite this admitted sensitivity, *Hazal themselves* were not concerned about *kevod ha-beriyyot* when they ruled that, because of *kevod ha-tsibbur*, women should not *le-khathila* receive *aliyyot*. Hence, how can we?

This argument is all the more true according to the explanation of Rashi on the mechanism of *kevod ha-beriyyot* deferments. Rashi ([Source 12](#) cited above) explains that in instances of *kevod ha-beriyyot* the Rabbis “forgo their honor to allow their edict to be violated.”

It is one thing if the clash is unexpected, unanticipated and accidental. But in the case of *keri’at haTorah*, it was *Hazal themselves* who knowingly set up the rule of *kevod ha-tsibbur* which precludes women from *aliyyot*. Why would we expect them to forgo their honor in such a case?

(8) The Rivash ([Resp. Rivash, sec 226](#)) forbade sewing baby clothes during *hol ha-moed* for a newborn’s circumcision despite the parents’ desire to dress him properly and festively for the event. One of Rivash’s rationales is that since all understand that new clothes cannot be sewn on *hol ha-moed* - because Hazal forbade it, *kevod ha-beriyyot* cannot be invoked to circumvent this rabbinic prohibition. Similarly, one cannot invoke *kevod ha-beriyyot* 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.

(9) Rivash ([ibid.](#)) and *Havot Yair* (sec. 95) and others rule against extending the leniency of *kevod ha-beriyyot* beyond those instances explicitly discussed by *Hazal* - honor of the deceased (*כבוד המת*), personal hygiene dealing with excrement, undress, and the
wholeness of the family unit. New cases may not be comparable in their nature or severity to the original examples. Indeed, as noted by Prof. Bldstein and R. Aharon Lichtenstein, throughout the two millennia of post-Talmudic responsa literature, *kevod ha-beriyot* is rarely if ever cited as the sole or even major grounds for overriding a *bona fide* rabbinic ordinance. It always appears as one of many additional reasons to be lenient (*snif le-hakel*). This is indeed the case in nearly all the instances cited at length by R. Daniel Sperber in his book *Darkah shel Halakha*.

What’s more, in those instances where *kevod ha-beriyot* is invoked essentially alone, it is because the matter being deferred is a mere, often unbased, stringency (*humra be-alma*). For example, the custom in some communities prohibiting menstruants to enter the synagogue – which Prof. Sperber has returned to repeatedly (Sperber, pp. 74) - is what the *posekim* call a *humra ve-silsul be-alma*. Hence, the fact that even in such stringent communities, menstruants visited the sanctuary on the High Holidays - would be a classic example of *kevod ha-beriyot* overruling a *humra be-alma*.

Now Prof. Sperber will respond, that he too would only invoke *kevod ha-beriyot* in the case of women’s *aliyyot*. After all, there is no real down side - at most we have only violated a recommendation. However, as we have argued above, “aval amru hackhamim” is not a recommendation with respect to women’s *aliyyot* - but a prohibition le-*khathilla*. What’s more, a woman who gets an *aliyya* without reading for herself or who is only the *ba’alat keria* is responsible for generating *berakhot le-vatala*. We have also argued that Prof. Sperber has improperly invoked *kevod ha-beriyot* for the case of women’s *aliyyot* because he has not taken into consideration the *kelalim* of the *gedolei ha-posekim*.

I would like to close with one last point. Despite the fact that we strongly disagree with Prof. Sperber’s conclusion, he after all did what a Torah scholar is bidden to do. He made a creative suggestion, documented his arguments, published his suggestion in the rabbinic literature for all to examine, and awaits criticism or approval. After thrashing out the issue, back and forth - one hopefully will be able to discern where the truth lies.21

However, we take issue with those who would enact women’s *aliyyot* in practice, hastily undoing more than two millennia of halakhic precedent - simply because an article or two has appeared on the subject. Considering the novelty of this innovation, religious integrity and sensitivity requires serious consultation with renowned halakhic authorities of recognized stature - prior to acting on such a significant departure from normative halakha.22
It often takes several years time before a final determination can be reached as to whether or not a suggested innovation meets these standards. But that cannot provide adequate justification for haste.

The halakhic process has always been about the honest search for truth – Divine truth. To adopt one particular approach - simply because it yields the desired result, lacks intellectual honesty and religious integrity. It is equivalent to shooting the arrows and then drawing the bull’s-eye. To paraphrase Prof. Yeshayahu Leibowitz: we must always ask ourselves whether we are in reality serving the Divine will or our own.

References and Notes

1. R. Daniel Sperber, “Darka shel Halakha – Keri’at Nashim baTorah: Perakim biMediniyyut Pesika” (Jerusalem: Reuven Mass, 2007). The phrase “lo zo ha-derekh” used in the title of this book review appears in Bava Metsi’a 37b and Kalla Rabati 9:19. [In Kings II, 6:19 it appears as “lo zeh ha-derekh”]. This critique is essentially the combined text of two lectures given at Bar Ilan University (March 17, 2008) and at Lander Institute, Jerusalem (May 4, 2008), and is based on a forthcoming article: “Women, Kri’at haTorah and Aliyyot” by Aryeh A. Frimer and Dov I. Frimer (in review). A complete list of sources and references will be fully delineated therein. The author would like to acknowledge the kind and gracious support of this research afforded by The Bellows Family Foundation. The author also wishes to express heartfelt thanks to Prof. Dov I. Frimer for reviewing the manuscript and for his many valuable and insightful comments.

2. See, for example, Maimonides, Yad, Hil. Tefilla, sec. 12, parag. 17; R. Joseph Karo, Shulhan Arukh, O.H., sec. 282, parag. 3.


4. See the forthcoming article: “Women, Kri’at haTorah and Aliyyot” Aryeh A. Frimer and Dov I. Frimer (In Review).

5. (a) R. Daniel Sperber, “Congregational Dignity and Human Dignity: Women and Public

6. R. Shlomo Pick (personal communication, March 2009) has reexamined some of the cases cited by R. Sperber as precedent for the suggestion that “aval amru hackhamim” is merely a recommendation. He finds that R. Sperbers interpretation runs counter to the explicit ruling of Maimonides - who uses the words hayyavim (obligated) or assur (forbidden). In particular, regarding *Yoma* 87b, see *Yad, Hilkhot Teshuva* 2:7; regarding *Yoma* 69a, see *Yad, Hilkhot Kilayyim* 10:12. See also Hullin 59a (not cited by R. Sperber) and *Yad, Hilkhot Mamrim* 6:14.

7. See, *inter alia*, R. Yosef Dov Soloveitchik, *miBeit Midrasho shel ha-Rav, Hilkhot Keri’at haTorah*, p. 31; *Shiurei haRav haGaon Rabbi Yosef Dov haLevi Soloveitchik zatsa”l al Inyanei Tsitsit, Inyanei Tefillen veHilkhot Keri’at haTorah*, p. 154.


at http://tinyurl.com/22kf6m.


16. See the comments on point of R. Aharon Lichtenstein, supra note 10a and b


18. Sifra, Parsheta 2; Hagiga 16b.


