

My Father would be proud  
My Mother would believe the whole thing

EMUNAH

[JN/ P12]

[Karen + Julian Nussbaum, our hosts and  
Chicago

Firstly allow me to thank the Friends of Bar Ilan University  
and the Skokie Valley Traditional Synagogue

and The Cleveland College of Jewish Studies) for inviting me to speak

this evening on Women and Menyan. I'm sure some of you are

asking yourselves why a Professor of <sup>active oxygen</sup> Chemistry <sup>(whatever that is!)</sup> was chosen to

speak on a problem of Halacha - Traditional Jewish Law.

However, this more than anything else reflects the uniqueness

of Bar Ilan University: An Institution which prides itself both

in its commitment to <sup>Excellence in</sup> Scientific Research and in its devotion to

Jewish Scholarship and Tradition.

Allow me to begin my talk this evening with a

short but important introduction:

Halacha or

In dealing with status of women in Jewish law, it is eminently clear that Jewish Law assumed a social order in which men and women play different roles; the man's role has traditionally been <sup>the</sup> more public, aggressive role - while that of the woman was more private and family-centered. It should be noted, however, that just because the two roles are not identical does not mean that they are not equally important. Two people need not have the same profession so that both have meaningful lives. Similarly, a Kohen and a common Israelite need not have the same religious obligations for both roles to be of equal importance and value. It is true that the Kohen's role has more specific commandments and is more sanctified; but that doesn't mean it's more important. From a religious perspective

What ultimately makes a role important - is what the Creator wants me to do! God does not want me, an ~~Israelite~~, to play the role of a priest or vice versa.

Let us also not confuse the importance of a role and the glory or the honor that comes with the role. The more honored or public role is not necessarily the more important (or for that matter, the President of the State of Israel) role. The Queen of England is a case in point: Her's is a <sup>Public</sup> role of great honor and majesty; yet of little importance in molding the future of her country.

All this is a long-winded way of saying that just because the man's role has more specific obligations and is a more public role - ~~does not mean~~ <sup>therefore</sup> that it is the more important role in the Divine scheme of things. On the contrary, Judaism views both roles as complementary and of equal value.

Let us also not confuse ~~the~~ importance of a role and "3132". The more honored or public role is not necessarily the more important role. The Queen of England is a case in point; her's is a role of great honor yet of little importance in molding the future of her country.

Rabbi Saul Berman in a seminar <sup>in Toronto</sup> ~~on the~~ <sup>on the</sup> ~~topic of~~ <sup>topic of</sup> ~~Women in Halacha note~~  
Now, in contradistinction to the role of 120 and 121, the traditional,

woman's role is neither binding nor exclusive. Rather it is a preferred and protected role. I used the word "preferred" in contradistinction to "mandated". Had the Torah intended to preclude from women all roles but that of wife-mother-homemaker, it had the means of doing so. After all the Torah knows how to obligate and prohibit. For Example the Torah

<sup>n</sup> Exodus 21

prescribed the obligations of a husband to a wife ~~710 1100 1100~~ ~~(Exodus 21)~~ - food, clothing and conjugal relations. Similarly the law prescribes the obligations of a father to a child: support, education, to marry them off, to teach them a trade or

occupation, to circumcise males and redeem first born sons and even to teach his children to swim.

Similarly, the law gives a whole series of obligations to children regarding the Honor and respect due to their parents.

Well then, had the Torah wanted to lock women into the role of Wife - Mother - Homemaker, it could have mandated women not only to marry and procreate but also an entire range of household duties. This would clearly have defined a religious Jewish woman's role. Yet women are neither obligated

<sup>although this is a great deal of hard work to do so</sup>  
to marry, nor are women obligated in <sup>1711 133 -</sup> procreation, <sup>although most women find a strong need to do so</sup> nor do they have specific household duties.

Yet, it is also clear, that while not demanding adherence to one role, the voluntary selection by women of the role of wife - mother - homemaker was preferred, encouraged and halachically protected. The Torah did this by freeing women from positive commandments which are time

determined /NDC /NSDE :DEO NBN. This category of  
positive <sup>Biblical or Rabbinic</sup> commandments, <sup>from which women are freed</sup> includes those which come from time to  
the time and demand fulfillment at a particular time or during a  
particular time frame. Examples include Shofar, Succah,  
Lulav, NBN etc. There are, by the way, many exceptions -  
for eg DYN, DBEN, UZIP - in which women are  
obligated though they come from time to time; nevertheless there is  
a special reason in each instance.

Women are also freed from commandments such as  
Public Prayer which would force them to leave their home  
and require a communal appearance.

are witness to the fact that religious women mix and compete  
freely with men in the marketplace and the business world. We  
find women after high school spending a good deal of time in  
institutions of Higher <sup>Secular and</sup> Jewish learning. We find women becoming  
involved in politics and <sup>religious</sup> community life.

5:30

What brought about these changes? I am neither a historian  
nor a sociologist but it is clear that the major factors were

Economic: 1900, and the changing attitude toward woman in the non-Jewish  
World. Clearly, <sup>persecution and</sup> Poverty forced the Jewish woman out of her home and  
forth into the public thoroughfare so that the Jewish mother  
was ~~forced~~ <sup>compelled</sup> to become not only  
a good educator but a successful "Hausfrau" as well.

In addition as we move into the modern period upward mobility  
— what the Jewish Mother called "Tachlis" —  
and financial security could only be obtained through a university  
education. Gradually Jewish men and women learn to compete  
not only for money but for grades as well.

These women who have shown their excellence in business

And secular scholarship began to yearn for greater involvement in all aspects of religious life as well - be it scholarship, ritual or leadership.

Now as long as this challenge to the existing norms came from those who rejected or were not fundamentally committed to <sup>Jewish Law</sup> ~~Halacha~~ - it was not taken seriously. True, <sup>Maimonides</sup> ~~the Rambam~~ says "אין הלכה כרוב המיעוט" - "acceptance - whatever its source"; nevertheless packaging has a strong effect on the Consumer. Once these very same desires were expressed by religiously committed women and mothers, the Halachic establishment was forced to consider the question <sup>more</sup> seriously.

The response has not been uniform. There are many amongst the lay and rabbinic leadership who have battled against all change - after all for two thousand years Good Jewish Women have followed a tried and tested recipe for successfully change now? <sup>after all</sup> the need to raise a solid, <sup>committed</sup> Jewish child has not changed over the years. <sup>can</sup> tampering with



women's role may weaken their commitment to their homes and children and the results may be catastrophic for the Jewish Community.

There were other people however who realized that the upheavals in values and norms that occurred in the 19<sup>th</sup> and particularly the 20<sup>th</sup> centuries have been so sweeping that we can no longer turn the clock of history back. We can no longer resurrect the simplistic innocence - women once had. If religious women want fuller Jewish involvement and expression, then Halakic Judaism ought to try to meet the challenge. This doesn't mean that we should stop educating our daughters of the importance and centrality of the Family and raising children as one of the major goals of life. But it does <sup>mean that we</sup> <sup>slowly</sup> recognize that there are other goals <sup>for women</sup> and furthermore of that <sup>there is a</sup> need to give modern women more solid religious content so that they will be able to gain greater benefit from the existing reality.

It's with this latter <sup>view</sup> <sup>hope</sup> that I personally agree - and will relate too from here on in

In the 50 minutes remaining to me, I certainly don't have sufficient time to discuss all that can and should be done in response to this challenge. I do, however, believe that the correct response will be a mix of education and creativity. It is only from a position of scholarship and earnestness that we can be sure that our queries are valid and confident that our creativity will not violate the rubric and guidelines of Halacha. For ultimately our desire should be to fulfill the divine will. I also firmly believe that much of the dissatisfaction expressed by women regarding their status in Jewish Law stems from a lack of understanding of the Halacha's intention, motivation or priorities. And this can be lucidly understood and explained - then one may be willing to

ive with the problem. Note - I didn't say you would necessarily  
be completely happy; but at least you wouldn't find the status  
too objectionable

12"

<sup>start</sup> For the past 20 years, I have been studying what I  
believe to be one of the central issues raised in regard to the  
status of Women in Jewish Law, namely the exclusion <sup>or non-inclusion</sup> of  
women in a minyan which is a minimum quorum of ten  
individuals required for many religious rituals, and did  
like to share some of my insights with you this evening.  
A full presentation of my findings are published in the Summer  
1988 volume of Tradition.

The story begins with a Mishna in the Talmudic Tractate  
Megilla which lists those rituals requiring a quorum of 10

participants. The Mishna reads in part as follows: Source 1

"When less than ten are present, we do not appoint a cantor - a *shan* - to lead the public prayer rituals of Kaddish, Kedusha, <sup>Qedusha</sup> ~~karecho~~ or the repetition of the Amida with Kedusha<sub>n</sub>; nor do the Kohanim, the priests, bless the congregation; nor do we read<sub>n</sub> <sup>from</sup> the Torah or the Prophets in Public with the appropriate benedictions; nor do we recite the 7 nuptial blessings - the *sheva brachot*; nor do we do *leitzim* <sup>leitzim</sup>, i.e., we do not introduce the grace after meals using the name of God, Elokeinu. "

In addition to the rituals mentioned in the Mishna, the Sages required a Minyan for the following:

Source 3 1) The recitation of the Hagomel Blessing; a special benediction of thanks recited upon being saved from a life

endangering experience such as childbirth, an operation or serious illness or a serious traffic accident.

2) The reading of the Megilla with the concluding Harav et Riveinu Benediction (Source 4)

3) The lighting of Chanukah Candles in the Synagogue and Finally: 4) (Source 2) there are special laws of Public

Martyrdom which come into effect when a Minyan is present.

Now the Question of Women and Minyan stems from the fact that the vast majority of public prayer rituals - including the recitation of

על נסח \* יוצא, יוצא, יוצא

Are referred to as יוצא נפשות - Public acts or declarations of Heavenly Sanctification - And the ruling is

the unanimous that the quorum for Minyan must consist  
of Ten Male Adults - to the exclusion of Women and Minors  
the <sup>Source 5</sup>

Now the Fact is that Public Prayer and Minyan are  
Rabbinic Constructs; institutions introduced by Ezra and  
the Men of the Great Assembly at the beginning of the Second  
Temple Period. It is, therefore, of interest to determine the  
rationale behind these rulings.

Furthermore, not everything requiring a Minyan is a Minyan!  
For Example, the Seven Neptical Blessings are  
benedictions of Joy and Praise and talk little if at all  
of God's Sanctity. Similarly the leading of the Torah and  
Haftarah were instituted by Moses and Ezra to serve as  
public learning sessions. Finally the leading of the Megillah and

A great many TOPICS -  
 Try to Resist the Urge to Go into the  
 Lomdus of Each Sugya  
 I'm not running Away -  
 Will be happy to discuss

Moses,<sup>5</sup> tl  
 kedusha<sup>1</sup>  
 freemen.<sup>20</sup>  
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These *derashot*, however, relate exclusively to those *mitzvot* which have been considered *devarim she-bi-kedusha*. It is still necessary to determine whether or not women may constitute the *minyan* quorum for those cases cited in the mishna<sup>3</sup> but not so categorized. Furthermore, we have seen that the above-mentioned derivations, even as they relate to *devarim she-bi-kedusha*, are only *asmakhtot* and the resulting laws rabbinic. It is important, therefore, to determine the logical reason for these rabbinic rules.

An examination of the many sources concerning the participation of women in a *minyan* reveals fundamentally three schools of thought.\* The first contends that women may participate in a *minyan* whenever their obligation is equal to that of men. The second contends that under no conditions may women constitute part of a *minyan*. The third school distinguishes between a *minyan* that is a precondition for fulfilling an obligation, from which women are excluded, and one that is necessary for publicizing a miracle or the fulfillment of a ritual obligation in which women may participate.

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## B. THE FIRST SCHOOL

The first school of scholars defines *minyan* as ten individuals of equal maximal obligation. Accordingly, women cannot constitute a *minyan*, whether together with men or wholly on their own, for those rituals in which they are either not obligated or lack the maximal obligation of men. On the other hand, they may indeed participate in a *minyan* for the performance of those *mitsvot*, whether of biblical or rabbinic authority, where they share an equal obligation with men. In the words of Meiri:<sup>23</sup> "In matters that require ten, there are those who claim that since the obligation of women is equal to that of men, they may constitute the quorum." Many (*rishonim*<sup>24</sup> and *aharonim*<sup>25</sup>) share this view and for the sake of clarity and convenience, I shall list them by topic.

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 13th  
 century  
 Codifier  
 R.  
 Menachem

1. Public prayer. Although women are obligated to pray, they are not obligated to participate in public prayer.<sup>26-29</sup> By the reasoning

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However

Even though Prayer is a Positive Commandment which is time determined, nevertheless

because it would force  
 them out of the House

Scholars

because

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It's a request  
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*onen* may recite  
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### 2. Reading

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### 3. Paras

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presented above, they are accordingly ineligible to constitute a *minyan* for any obligation that is part of the public prayer service, such as *kaddish*, *kedusha*, *barekhu*, the repetition of the *shemoneh esreh* and the priests' blessing.<sup>29</sup> Thus, R. Reuven Margalioth writes,<sup>29</sup> "Public martyrdom (in whose quorum women may be counted<sup>30</sup>) is not comparable to public prayer; a woman may not participate in the *minyan* for public prayer because she is not obligated in the latter."

The status of women according to this explanation is similar to that of an *onen* (the mourner in the hours between death and burial), who does not participate in the constitution of a *minyan* because he is exempt from all positive obligations, including public prayer.<sup>31</sup> [Interestingly, there is a discussion among the *aharonim* whether an *onen* may recite *kaddish*; those who permit it also allow his inclusion in the *minyan* for the recital of the *kaddish*.<sup>32</sup>] This further demonstrates the interrelationship between obligation and *minyan* eligibility.

2. Reading of the Torah. The *rishonim* and *aharonim* disagree as to whether the public reading of the Torah has the status of a *davar she-bi-kedusha*.<sup>4</sup> In any event, [the majority opinion is that women are exempt from this obligation.<sup>33</sup> The noted *posek* and author of *Pri Megadim*, R. Joseph Teomim,<sup>34</sup> utilizes this fact to explain why women do not constitute a *minyan* for this purpose: "Women are not obligated in the reading of the Torah, so how could they constitute (the quorum)?" A similar statement is found in *Responsa Orah la-Tsaddik*.<sup>35</sup> In reaction to a colleague's suggestion, the author queries: "Who told you that [a woman] can be included in a *minyan* for the reading of the Torah in the same way that she can be for the reading of the *megilla*? The cases are not comparable, for women are obligated in the reading of the *megilla*, but not in the reading of the Torah." [Again we find *minyan* and obligation linked.]

3. Parashat Zakhor. *Parashat Zakhor* (Deuteronomy 25:17-19) is read from the Torah with a *minyan* on the Shabbat before Purim.<sup>35</sup> There is a well-known dispute among halakhic authorities on whether women are included in this obligation,<sup>36</sup> though the majority opinion seems to be that they are not.<sup>37</sup> Interestingly, several authorities<sup>38</sup> support the exemption of women from this *mitsvah* based on an incident recorded in *Berakhot* 47b where the noted Tanna R. Eliezer freed his non-Jewish slave so that he could be included in a *minyan*. R. Asher b. Yehiel (Rosh) *ad locum* suggests the possibility (which he quickly rejects) that the slave was freed for the purpose of reading *Parashat Zakhor*. These scholars,<sup>38</sup> in the spirit of the "first school," argue that were women and likewise slaves<sup>39</sup> obligated to hear the *zakhor* reading, the slave could have joined the *minyan* without being freed.

Discuss  
Question  
of priorities

Minyan + Public  
Prayer vs  
Leaving Home

Scholars

mincl. overrides

because

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It is a request  
for mercy



[On the other hand, the *Hatam Sofer*,<sup>36</sup> like his mentor R. Natan Adler, maintains that women are indeed obligated to hear *Parashat Zakhor*. Nonetheless, he too acknowledges the interdependence between obligation and *minyan*.] In his extensive discussion of the case of R. Eliezer, he notes that according to the conclusion of the Rosh the slave was freed [for the purpose of a regular public Torah reading in which women and slaves are not obligated and therefore do not constitute a *minyan* for this purpose. For *Parashat Zakhor*, however, women can be counted for the quorum since they are obligated like men. Clearly, the *Hatam Sofer* too views eligibility for constituting a *minyan* as a natural corollary of obligation.<sup>40-43</sup>]

[4. *Megilla*. There is a controversy as to whether women's obligation to read *Megillat Esther* is equivalent to that of men. *Halakhot Gedolot* maintains that it is not; a woman's obligation is to hear the *megilla*, not to read it. Therefore, she cannot read the *megilla* for a man, who has a greater obligation. Rema (*Orah Hayyim* 689:2) follows this opinion. *Tur* and *Beit Yosef* (*ad locum*), on the other hand, cite other authorities who maintain that there is no distinction between the obligation of men and women and, therefore, women may discharge the obligation for men.

The presence of a *minyan* is preferred, though not absolutely required, whenever the *megilla* is read, provided it is done so on its designated date, i.e., the fourteenth of Adar generally and the fifteenth of Adar for walled cities. However, it is a necessary condition for reading the *megilla* with its attendant blessings at other times.<sup>44</sup> In addition, the concluding benediction "*ha-rav et riveinu*" requires a *minyan* at all times.<sup>45</sup> Rabbenu Nissim (Ran)<sup>45</sup> writes: "There is an opinion that although [women] may discharge the obligation [for men], they may not constitute the *minyan* of ten. . . I, however, [disagree, for] . . . how could it be that they can discharge the obligation of men but not join them in the constitution of the *minyan*? They definitely can constitute the quorum." Similarly, Meiri<sup>45</sup> states: "For the reading of the *megilla*, [women] can constitute the quorum and discharge the obligation of the community, since their obligation in this matter is equal." This opinion is also quoted in *Sefer ha-Mikhtam*<sup>45</sup> as the position of "several authorities" and cited by later codifiers as well.<sup>46</sup> Interestingly, several *rishonim*<sup>47</sup> recommend against counting women in a *minyan* for *megilla* because of "immodesty," implying that they are technically eligible since they are obligated. We will have more to say about this shortly (section B.7).

It should be emphasized that all of these opinions agree that women can constitute a *minyan*, and not because the eligibility

\* Although  
a woman  
can read  
for other  
women

\* i.e. is  
obligated  
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requirements regarding *megilla* are less rigorous than elsewhere (which is indeed the conclusion reached by the third school discussed below). On the contrary, they are eligible because their obligation is equal to that of men for this purpose. This is in contradistinction to other cases where they are ineligible for the *minyan* because their obligation is inferior to that of men or because they are exempt altogether.

5. *Zimmun be-Shem*. Three or more men who eat a meal including bread are obligated to recite the blessing after the meal (*birkat ha-mazon*) together, prefacing this recitation with the *zimmun* introduction. In the presence of ten men there is an additional obligation of *zimmun be-shem*, namely to invoke the name of God by adding "*Elokeinu*" to the *zimmun* text. It is clear from the Talmud (*Berakhot* 45b) that three women who eat together may also constitute a *zimmun* quorum, although *Tosafot* and Rosh (*ad locum*) disagree as to whether a women's *zimmun* is optional or obligatory.<sup>48</sup> The consensus<sup>49</sup> follows *Tosafot*, that a women's *zimmun* is optional, although the Vilna Gaon<sup>49</sup> nevertheless favors Rosh's stance that women too are obligated in *zimmun*. The Talmud does not, however, discuss the status of ten women who eat together. Maimonides seems to be the first to raise the question and rules that women may not in fact perform *zimmun be-shem*.<sup>50</sup> Despite some dissenting opinions among the *rishonim* (*vide infra*), the view of the Rambam is unanimously cited by all the later codifiers.

Maimonides gives no clear source for his ruling. Some argue that invoking God's name transforms the *zimmun* into a *davar she-bi-kedusha* from which women are excluded.<sup>51</sup> Others have suggested that the obligation of adding God's name to the *zimmun* in the presence of a *minyan* derives from the verse "In congregations bless God," and women do not have the status of a "congregation."<sup>52</sup> We have, however, argued above (and will cite further evidence in Section 6) that such derivations are merely *asmakhtot*, but not true rationales for the exclusion of women from these rabbinic rituals. A more fundamental reason given in the *Sefer ha-Me'orot*, *Sefer ha-Menuha* and *Arukh ha-Shulhan* is that women are not obligated in *zimmun* and hence cannot constitute a *minyan* for *zimmun be-shem*.<sup>53</sup> It is clear that these codifiers belong to the first school and base the ineligibility of women on their exemption from obligation.

We have noted above that despite the unanimity among *aharonim*, there are *rishonim* who disagree with the Rambam as to the status of ten women who ate together. Thus the *Meiri*, *Sefer ha-Me'orot* and *Shiltei ha-Gibborim* cite opinions allowing ten women to perform *zimmun be-shem*.<sup>54</sup> Interestingly, *Shiltei ha-Gibborim*

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quotes this opinion in the name of Rosh, which would be in line with Rosh's view (cited above) that women are indeed obligated in *zimmun*.

It should be obvious then, that those authorities who obligate women in *zimmun*, yet rule against their doing so *be-shem*, must necessarily subscribe to one of the other schools of thought discussed below concerning women's *minyan* eligibility. This is true, for example, for the Gaon of Vilna who, as we will shortly see (section C), belongs to the second school.

16. *Martyrdom*. The Talmud (*Sanhedrin* 74a) discusses the laws of *kiddush ha-shem*, i.e., the sanctification of God's name through martyrdom. It concludes that, with the exception of murder, idolatry and forbidden sexual relations, one may under threat of death transgress in private even biblical commandments. However, in periods of religious persecution and forced conversions or when the transgression will be performed in public, one is obligated to martyr oneself rather than transgress even a minor commandment. The Talmud further clarifies that "Less than ten [Jews] is not considered to be in public. . . as is written, 'I shall be sanctified in the midst of the children of Israel.'" We have noted previously that in the case of martyrdom this derivation is *bona fide*<sup>16</sup> (not an *asmakhta*), referring specifically to martyrdom in public.<sup>55</sup>

Women share this obligation equally with men. Numerous authorities,<sup>56</sup> therefore, conclude that women may be included in the *minyan* for this purpose. R. Yaakov Emden, for example, writes:<sup>56</sup>

It remains to be determined whether the presence of ten women is considered to be "in public." It is clear that, even though the term "children (sons) of Israel" is used concerning this *mitsvah*, women are definitely commanded to sanctify the name of God equally with men, and hence regarding this *mitsvah* they are not excluded from the class of "men." Therefore, it is "in public" before them as well.

R. Emden, as well as many others,<sup>56</sup> rejects the very possibility that women might be obligated in this *mitsvah* but not included in the audience necessary to give it its public quality. It is clear to them that quorum eligibility follows naturally and inexorably from obligation.<sup>57</sup> This is despite the fact that there is no greater act of sanctification—no greater *davar she-bi-kedusha*—than martyrdom. We must perforce conclude that, in the view of the first school, the unanimous exclusion of women from the quorum of *devarim she-bi-kedusha*<sup>19, 20</sup> is limited to those rituals incorporated in the public prayer service—from which women are exempted.

The situation is now rather paradoxical. After all, the necessity for a *minyan* to sanctify God's name either through *kiddush ha-shem*

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(martyrdom) or via the *davar she-bi-kedusha* public prayers or rituals is derived from the same verse,<sup>5</sup> "I shall be sanctified (*ve-nikdashti*) in the midst of the children of Israel." Nonetheless, while many authorities include women in the quorum for public martyrdom, they are ineligible with regard to public prayer! In reality though, as we stated at the outset, the verse is actually referring only to martyrdom; it is borrowed for rabbinic *davar she-bi-kedusha* prayers and rituals only in a secondary sense, as an *asmakhta*. Such a mnemonic device cannot itself serve as the basis for deciding the eligibility of women. The scholars of the first school accept equality of obligation as the most appropriate criterion.

7. *Modesty Considerations*. Finally, we should perhaps include in the first school all those scholars who recommend against counting women for a *minyan* together with men for a particular *mitsvah* merely out of fear that such a practice might encourage immodesty.<sup>58</sup> I have already cited the opinion of the *Sefer ha-Ittur*<sup>47</sup> concerning *megilla* that "just as women can form a *zimmun*, but do not join men in constituting this quorum (because of immodesty), so too their inclusion in a *minyan* (for *megilla*) is not recommended." Similarly, R. Simcha ha-Levi Bamberger<sup>59</sup> writes: "Women are disqualified rabbinically from inclusion in a *minyan*, even for those *mitsvot* in which they are obligated, because association with them is improper." R. Yitshak Palache<sup>60</sup> cites the ruling of *Sefer Kol Bo* that "women may discharge the obligation (of *megilla*) for men. Nonetheless, it is not proper to include them in the *minyan*; for wherever ten are required, the intention is for ten men." R. Palache explains that "he is concerned lest their inclusion lead (the men) to be in seclusion (*yihud*) with them."

According to this approach, were it not for the possible violation of the rules of modesty, women could indeed be included in any *minyan* together with men, provided their obligation is equal to that of the men. One could further argue that their inclusion in a *minyan* is valid after the fact (*bediavad*), since women are technically eligible to constitute the quorum. Similarly, it is possible that ten women might be able to constitute a *minyan* on their own, since there is then no violation of the rules of modesty, as we have already seen regarding *zimmun*. We will pursue these very points further in section F.

### C. THE SECOND SCHOOL

The second school rejects categorically the inclusion of women in any *minyan* quorum whatsoever. The basis for this opinion is the

(17) Talmud's statement (*Berakhot* 45b) regarding a *zimmun* of three women that "A hundred women are like two men." Rashi *ad locum* understands the Talmud to be exploring the possibility of an optional two-man *zimmun*. In this regard, the Talmud points out that even a hundred women are no more obligated in *zimmun* than are two men. Yet, three women can form an optional *zimmun* and perhaps the same is true for two men. Accordingly, the Talmud's statement has no implications regarding other *mitsvot* that require a quorum. Indeed, it is Rashi's interpretation which is presumably adopted by the first school.<sup>61</sup>

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(18) The *Tosafot* and other *rishonim*<sup>62</sup> prefer to generalize the Talmud's statement, arguing that it means to preclude women from the *minyan* of public prayer "and everything that requires ten." Numerous *aharonim*<sup>63</sup> maintain the position of the *Tosafot* and apply it to various ceremonies. For example, the *Responsa Binyan Tsiyyon*,<sup>63</sup> explicitly rejecting the first school, excludes women from the *minyan* of *parashat zakhor*: "Even though [women] are obligated in the reading [of *parashat zakhor*] they are not eligible to complete the *minyan*. This is not dependent on obligation."<sup>64</sup>

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This position is also maintained by the *Responsa Torat Hesed*<sup>63</sup> regarding *parashat zakhor*; by the *Sefer ha-Roke'ah*,<sup>62</sup> *Tsafenat Pa'ane'ah*<sup>63</sup> and *Minhat Hinnukh*<sup>63</sup> regarding the laws of martyrdom; and by the Gaon of Vilna<sup>63</sup> and R. Shlomo Zalman of Liady<sup>63</sup> regarding *zimmun be-shem*.

[A variety of explanations have been offered as to why the sages chose not to allow women to constitute a *minyan*.] *Sefer ha-Masbir*<sup>63</sup> suggests that *Hazal* simply followed the Torah's lead which refrained from counting women in any of the various censuses. [R. Yosef Engel<sup>63</sup> maintains that the concept of community is dependent on inheritance and possession of the Land of Israel, for land is what ultimately binds individuals together into a community. Since women did not participate in the inheritance of the Land, they do not constitute a community.] R. Gedalia Felder<sup>63</sup> suggests that in order to be part of the community, one must be totally available at any moment for service to the community. Women, however, generally have prior obligations to their husbands and families; the principle of uniformity (*lo pelug*) rules out the inclusion of unmarried women. R. Moshe Meiselman<sup>1c</sup> discusses *minyan* in light of role-playing in Jewish life. He offers the opinion that men have been delegated the more public role, necessary for the constitution of a *minyan*, whereas women have been delegated more private roles. This is the intention of the verse (*Psalms* 45:14), "All the honor of the king's daughter is within."

## D. THE THIRD SCHOOL

The last school of scholars contends that it is necessary to differentiate between two types of *minyanim*. Normally, the sages required ten male adults as a prerequisite for the performance of particular rituals, generally communal in nature. However, in certain cases, the *minyan* is not intrinsic to the performance of the *mitsvah*, for the obligation is essentially the individual's. Rather the *minyan* is needed only to give "publicity" to the performance. In such a case, women are counted even if their obligation is not equivalent to that of men. (This, of course, is in sharp contrast to the first school.)

The reading of the *megilla* is apparently the first case to which this distinction was applied. Ramban,<sup>64</sup> contending that the purpose of the *minyan* in this case is solely to publicize the miracle of Purim, concludes that the requirements for the constitution of this *minyan* are less stringent than in other cases. Ran<sup>64</sup> in this regard writes:

The Ramban has written . . . that all the cases listed (in *Megilla* 23b) are obligations of the community, and are therefore not performed unless ten, or at least a majority [of the ten], are obligated therein, e.g., if they have not yet heard *barekhu* or *kaddish*. However, for *megilla*, the need for ten is only in order to publicize the miracle. Therefore, we read it in the presence of ten for the sake of a single individual even though the others have already fulfilled their obligation.

R. Aaron ha-Levi (Ra'a)<sup>64</sup> uses this same reasoning to allow an additional leniency, namely the inclusion of women in the *minyan*. Despite R. Rema's hesitancy<sup>65</sup> to follow Ra'a's lead, a great many prominent authorities,<sup>66</sup> citing the view of the third school, do indeed permit the inclusion of women in the *minyan* for the reading of the *megilla* and recitation of the blessing "*ha-rav et riveinu*" that follows it.<sup>14b</sup> Similarly the *Sefer ha-Berit*<sup>67</sup> states that since the *minyan* recommended for circumcision is in order to publicize the *mila*, women are included. Rav Pe'alim<sup>68a</sup> and R. Ovadia Yosef<sup>68b</sup> allow the inclusion of women in the *minyan* for the special lighting of the Menorah in the synagogue, which was instituted to further publicize the miracle of Hanukkah. Women are also counted in the audience of ten necessary for the status of the public desecration of Shabbat.<sup>68a</sup>

## E. THE MINYAN ELIGIBILITY OF WOMEN FOR THE HA-GOMEL BLESSING

Having discussed the various approaches to the question of women and *minyan*, we can turn now to analyze an issue not explicitly

discussed by the *rishonim* or the early *aharonim*, namely the inclusion of women in the *minyan* quorum of *birkat ha-gomel* (the *Ha-Gomel* blessing). This benediction acknowledges the hand of God in natural miracles and is recited by one who has survived a life-threatening experience, be it a dangerous illness, operation, childbirth, or serious accident. ~~Since~~ the purpose of the *minyan* is to publicize the miracle of salvation, some codifiers maintain that the presence of a *minyan* in this case is only recommended (*le-khat'hila*).<sup>69</sup> Nevertheless, the consensus of *posekim* is that a *minyan* here too is obligatory and a necessary prerequisite.<sup>70</sup>

[Women too, despite the widespread impression to the contrary, are obligated by the majority of *posekim* to recite this blessing in the presence of a *minyan*.<sup>71</sup> The question therefore arises as to whether they can constitute the *minyan* for this purpose. The second school quoted above, which never allows the inclusion of women in a *minyan*, would obviously reply in the negative in this case as well. However, according to the first school, since their obligation is equal to that of men, it follows that they should be eligible for the *minyan*. They should likewise be eligible according to the third school, since the purpose of the ten in the case of this blessing is to publicize the natural miracle of salvation.]

As noted above, the *rishonim* and early *aharonim* do not explicitly discuss women's *minyan* eligibility in this regard. *Keneset ha-Gedola* (*Orah Hayyim* 219), however, states: "The need for ten is only recommended. . . . A woman who cannot recite the blessing in the presence of men may recite it without ten, but before at least one man or [several] women. If she recited it in private, she has discharged her obligation." *Keneset ha-Gedola* is of the minority opinion which maintains that a *minyan* is optional for *birkat ha-gomel*. More importantly for our purposes, he considers reciting this blessing before other women to be equivalent to reciting it before one man,<sup>72</sup> suggesting that women do not constitute a *minyan* here.

Nevertheless, many contemporary authors have concluded that in this instance ten women or nine women and one man do indeed constitute a valid *minyan*.<sup>73</sup> They derive this from the fact that *Mishna Berura* and others<sup>74</sup> cite the ruling of *Keneset ha-Gedola*, not as "before women or one man," but as "before women and one man." While some have found such a halakhic position problematic,<sup>73b</sup> we believe it to be in accord with either the first or third schools as explained above.]

#### F. INCLUSION OF MEN AND WOMEN TOGETHER

Now that we have clearly established that there are a variety of instances where according to the first and third schools women may

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constitute a *minyan*, the question arises as to whether they may be counted together with men or only in a separate women's *minyan*. The answer to this question depends on the various explanations of the mishna (*Berakhot* 7:2) which states: "Women, ~~slaves and children~~ are not counted for the purpose of the *zimmun* quorum." A minority opinion<sup>75</sup> maintains that this mishna only prohibits the formation of a quorum of three for *zimmun* via the combination of women with slaves or children, but there is no reason why women and men cannot join together for this purpose. Accordingly, in cases where women are eligible for the quorum of ten, they will be able to join men in constituting the *minyan*.

Most *rishonim*, however, maintain that the intention of the mishna is to invalidate a *zimmun* formed by combining men and women. Four reasons are offered for this prohibition. Firstly, some *rishonim* suggest that a woman's obligation to recite the blessing after meals may not be biblical in origin; hence women cannot form a *zimmun* with men because they do not share a common level of obligation.<sup>76</sup> Others argue that the text of the *birkat ha-mazon* in which women are obligated differs from that of men, because women need not mention the covenant of circumcision or the obligation to learn Torah.<sup>77</sup> A third group of *rishonim* posits that men and women cannot join together in one *zimmun* unit because the dining of women together with men is not considered to have an established and permanent nature.<sup>78</sup> However, these three reasons are specific to the blessing after meals; accordingly, in other cases where these reasons are not relevant, women may well be able to join men in constituting a quorum.

The fourth reason offered by commentators for this prohibition is that such a combination of the sexes might lead to "immodesty." What precisely, though, is immodest about this behavior? *Tashbets* and other authorities<sup>79</sup> state that mealtime is especially problematical because it is a time of drunkenness, levity and frivolity. This would again lead us to conclude that the prohibition is not general and would not apply to other obligations not performed in the same atmosphere.

Ran and Ritva<sup>80</sup> contend that Halakha is only concerned about immodesty when the presence of the women results in a noticeable change in the text of the ritual, e.g., an additional *zimmun* blessing is recited in the *birkat ha-mazon*. Therefore, concludes Ran, if there are already three men present establishing a *zimmun*, women may join the *zimmun* since no noticeable change arises by their inclusion. Similarly, he maintains that women may join with men to complete the *minyan* for the reading of the *megilla* (assuming that their obligation is equal to that of men) since the blessing made by an



individual or a community is the same and, hence, nothing draws attention to the inclusion of the women.<sup>81</sup>

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Other authorities,<sup>47</sup> however, contend that any combination of men and women is immodest. *Tur*, quoting *Sefer ha-Ittur*, specifically mentions *megilla* in this respect. "It is logical to conclude that just as women form a *zimmun* but do not join men in constituting this quorum (because of immodesty), so too their inclusion in a *minyan* (for *megilla*) is not recommended."<sup>47, 82</sup> It should be noted that *Sefer ha-Ittur* used the wording "their inclusion in a *minyan* is *not recommended*," i.e., their exclusion is only preferred (*le-khat'hilla*). R. Yaakov Emden and R. Sraya Devlitzky<sup>83</sup> understand this to mean that the *Sefer ha-Ittur* would concede that counting women together with men is valid *post facto* (*bediavad*), since women are technically eligible to constitute the quorum (when approved by the first or third schools). Moreover, the *Sefer ha-Ittur* should certainly agree that ten women are not barred from forming a *minyan* on their own, since in such a case there is no fear of violating the laws of modesty.<sup>66b</sup> Thus the many authorities who permit the reading of the *megilla* by or for a *minyan* of ten women with the recitation of the "*ha-rav et riveinu*" blessing at its conclusion.<sup>66</sup>

From the above discussion we may conclude that most *rishonim*<sup>75-80, 84</sup> concur that whenever women are eligible for inclusion in a *minyan* (according to the first and third schools above), they may join together with men to do so. Although *Tur* (*Orah Hayyim* 689) cites the opinion of *Sefer ha-Ittur*<sup>47</sup> who rules against joint constitution of a *minyan*, disqualification is only recommended (*le-khat'hilla*). Furthermore, *Bah* and R. Joseph Karo in *Beit Yosef* (*ad loc.*) prefer the alternative explanation of Ran outlined above. R. Karo consequently omits altogether from his *Shulhan Arukh* the opinion of *Sefer ha-Ittur*, thereby indicating that the *Ittur's* view is not definitive halakha. The consensus of the later *aharonim* also seems to run counter to the view of *Sefer ha-Ittur*.<sup>85</sup> Thus, we saw in Section E above that several contemporary authorities accept a *minyan* of nine women and one man for the purpose of reciting *birkat ha-gomel*.<sup>73</sup> Similarly *Hazon Ish*,<sup>66</sup> *Sha'arei Emet*,<sup>46</sup> and R. Zundel Grossberg<sup>66</sup> explicitly permit women to join with men in constituting the *minyan* necessary to read the *megilla*. R. Ovadia Yosef permitted their inclusion together with men in the *minyan* present at Hanukkah candle-lighting in the Synagogue,<sup>68b</sup> while *Or Hadash*, *Ura Shahar* and others count women together with men in the *minyan* of public martyrdom.<sup>56</sup> Hence, with the exception of *zimmun*, men and women may join together to form a *minyan* when suitable.

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## G. DOES THE *MEHITSA* INTERFERE WITH JOINT CONSTITUTION?

We must now determine whether a *minyan* can be constituted jointly by men and women where they are separated by a *mehitsa*. After all, *Shulhan Arukh* (*Orah Hayyim*, 55:13) rules that the participants in a *minyan* must be together "in one place," and the *mehitsa* would seem to have the effect of dividing the room into two distinct locations.

The resolution of this question according to the third school is quite straight-forward. The very "publicity" consideration, which allowed women to be counted, also removes any problems that might result from the existence of a physical barrier between members of the *minyan*. Ritva has already ruled that since the *minyan* of *megilla* is merely to publicize the miracle of Purim, we may count towards a *minyan* even those who are outside the synagogue. This opinion is cited by several contemporary authorities.<sup>86</sup>

Even according to the first school—which maintains that the eligibility of women to join a *minyan* results from the fact that their obligation is equal to that of men—it appears that the *mehitsa* does not bar joint constitution for several reasons. First of all, the *mehitsa* often consists of no more than a curtain. R. Y. Castro has ruled that a mere curtain hung for the sake of modesty does not interfere with the constitution of the *minyan*.<sup>87</sup>

Secondly, even in the case of a solid structure, *Sha'arei Teshuva* and *Mishna Berura* accept the inclusion of people in two different rooms, provided there is visual contact between them.<sup>88</sup> Therefore, if the *mehitsa* is not higher than shoulder level (in accordance with the opinion of R. Moshe Feinstein and R. Yehiel Yaakov Weinberg<sup>89</sup>) or if the women are in a balcony with a low *mehitsa*, there is no bar to their inclusion.

Even if the *mehitsa* is above the heads of the women, it does not normally reach the ceiling, in which case the room is not considered to be divided. Precedent for this ruling is found in the various responsa dealing with public-prayer on a train, where there are high backs to the seats forming partitions between the benches. If there is a space of eleven inches (three *tefahim*) under the ceiling, the passengers can be joined in a *minyan*.<sup>90</sup> In this manner, R. Yehuda Herzl Henkin<sup>88</sup> explains the ruling of his grandfather, R. Eliyahu Henkin,<sup>91</sup> who permitted a daughter to recite the *kaddish* from the women's side of the *mehitsa* even though *kaddish* requires the presence of ten males. This also explains the ruling of the *Keneset ha-Gedola* (*Orah Hayyim* 219) and later *posekim*<sup>71</sup> that a woman may recite *birkat ha-gomel* from the women's section, and be heard by a

*minyan* of ten men. If the *mehitsa* does not reach the ceiling, she is considered to be reciting the *kaddish* or the *ha-gomel* blessing in the presence of the men.

Recently, R. Y. H. Henkin<sup>88</sup> has argued that even a *mehitsa* which reaches the ceiling may not interfere with the inclusion of people from both sides in the same *minyan*. Since the purpose of the women's section is to serve as a place where women can hear and participate in the service together with the men, the two sections have a common single function; therefore, the women's section is considered an adjunct to the men's section.] The *Responsa Minhag Yitshak*<sup>92</sup> offers this same reasoning in the case of a study hall that was extended into a neighboring room. Since the two rooms have a common function, he concludes, they are considered to be a single room.

[In summary then, a *mehitsa* does not prevent men and women from joining together to form a *minyan* quorum, when appropriate according to either the first or third schools.]

#### H. WOMEN AS ADJUNCT MEMBERS OF A MINYAN

Our discussion until now has assumed only one type of membership in a *minyan*, namely full constituting membership. Thus, ten fully qualified members constitute a *minyan*—with the various schools disagreeing as to whether and when women are to be considered fully qualified. In truth, however, there are codifiers who, in the absence of a fully qualified member, permit the completion of the *minyan* through the participation of one normally disqualified.<sup>93</sup> We will refer to these two different types of membership in a *minyan* as primary membership (*ikkar*) and adjunct membership (*senif*).

For instance, the primary members of a *minyan* for the purpose of public prayer (*kaddish*, *kedusha*, *barekhu*, and the repetition of the *shemoneh esreh*) must be free male adults, and according to most opinions, the same is true regarding *zimmun be-shem*. Rabbenu Tam is perhaps the most prominent authority who permits a minor ~~or a~~ slave to complete the *minyan* for these purposes. Rabbenu Simha<sup>94</sup> and others<sup>75</sup> maintain that a woman may also be included as an adjunct member in order to complete the quorum for public prayer and *zimmun be-shem*.

As R. Joseph Karo explains,<sup>95</sup> this opinion maintains that the criterion of "in the midst of the children of Israel," from which the sages derive that the presence of God rests on any group of ten, applies equally to all members of the Sinaitic covenant—adults or minors, freemen or slaves.<sup>96</sup> Rabbenu Simha clearly maintains that

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the same is true for women. However, [a valid *minyan* requires the presence of at least nine *ikkarim* (free males); more than one *senif* (woman, minor or slave) would render the *minyan* invalid, for this would be inconsistent with the honor of heaven.<sup>97</sup>

Interestingly, R. Karo concludes his discussion of this issue in the *Beit Yosef*<sup>95</sup> by ruling that "since Rabbenu Tam himself refused to implement this practice [of including a woman], who will [dare to] do so. The accepted practice is not to include a woman at all."<sup>98</sup> This is also the definitive halakha as codified in R. Karo's *Shulhan Arukh* (*Orah Hayyim* 55:4) regarding public prayer and in the *aharonim* regarding *zimmun*.<sup>99</sup>

Thus, there is an overwhelming and nearly unanimous consensus regarding the non-inclusion of women in the *minyan* for public prayer—neither as a primary (*ikkar*) nor even as an adjunct (*senif*) member. Nevertheless, over a decade ago, the Conservative movement adopted a position permitting the inclusion of women in *all* instances (including public prayer) where the necessary *minyan* quorum of ten is required. This action has been rationalized as being in consonance with the position maintained by the school of Rabbenu Simha.<sup>75</sup> As is eminently clear from the above analysis, this understanding of Rabbenu Simha is erroneous. Rabbenu Simha was prepared to count a *single* woman toward the *minyan* of public prayer and only as an adjunct (*senif*). He never entertained the possibility of assigning full status to women as an *ikkar* for the *minyan* of public prayer from whose obligation women are free.<sup>26</sup> Moreover, as we have pointed out, the overwhelming majority of halakhic decisors have ruled contrary to Rabbenu Simha's approach. (See also references *1a* and *b*). For these reasons, many within the Conservative Movement itself have attacked this decade-old decision as being a serious break with Halakhah.<sup>100</sup>

## I. CONCLUSION

this lecture

In the ~~present paper~~ we have explored the rules and rationales of *minyan* eligibility, in particular as it applies to women. We have reaffirmed that women cannot constitute a *minyan*—either alone or together with men—for the purpose of public prayer which includes *kaddish*, *kedusha*, *barekhu*, repetition of the *shemoneh esreh* or the reading of the Torah and the *haftarah*.<sup>101</sup> However, this does not mean that women are excluded from all *minyanim*.<sup>\*</sup> Indeed the majority of *posekim* posit that women may constitute a *minyan*, according to one school, if their obligation in a given ritual is identical to that of men or, according to another school, when the

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know this!

\* "Women" and "Minyan" are not necessarily mutually exclusive terms.<sup>69</sup>

purpose of the *minyan* is to "publicize" a miracle or the performance of a *mitsvah*.<sup>45</sup> Thus, there are a variety of halakhically relevant cases where <sup>the majority of</sup> rabbinic authorities permit, both in theory and practice, the inclusion of women in a *minyan*. These include: 1) *megilla* and the "*ha-rav et riveinu*" benediction that follows it (four *rishonim*<sup>45, 64</sup> and some fifteen *aharonim*<sup>46, 66</sup>); 2) public martyrdom (eleven *aharonim*<sup>50</sup>); 3) the *ha-gomel* blessing (seven *aharonim*<sup>73</sup>); 4) circumcision (two *aharonim*<sup>67</sup>); 5) Hanukkah lighting in the synagogue (two *aharonim*<sup>68</sup>).

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The implications of this paper for the workings of "women's services"<sup>101</sup> should be obvious, though this innovation itself deserves long and considered evaluation <sup>which will discuss at length</sup> ~~and will be treated by this writer in a subsequent piece~~. It has long been our conviction that the spiritual needs expressed and the questions raised by modern religious women concerning their standing in Jewish law should and can be tackled seriously, respectfully and sensitively. However, it is only from a position of scholarship and earnestness that we can be sure that our queries are valid and confident that our creativity will not violate the rubric and guidelines of Halakha. <sup>This talk this evening has been an attempt to elucidate the issue of women and minyan and to shed some light on</sup> ~~subsequent piece~~ <sup>would like to thank you for your kind attention</sup>

for the coming

#### NOTES

1. See for example: a) S. F. Berman, *Tradition* 14:2 (Fall 1973), p. 5; b) J. D. Bleich, *Tradition* 14:2 (Fall 1973), p. 113; c) M. Meiselman, *Jewish Woman in Jewish Law* (KTAV, New York 1978), ch. 20.
2. A portion of this paper appeared previously in Hebrew: A. A. Frimer, *Or ha-Mizrah*, 34 (1, 2), 69 (Tishrei 5746).
3. *Megilla* 4:3. Note that some of the rituals listed have fallen into disuse.
4. a) See *Encyclopedia Talmudit*, vol. 6, *davar she-bi-kedusha*. Most opinions include *kaddish*, *kedusha*, *barekhu*, and the repetition of the *shemoneh esreh* in the category of *davar she-bi-kedusha*. There is some controversy regarding the status of the reading of the Torah and the *haftarah*, the recitation of the thirteen attributes of God, the priest's blessing and *zimmin be-shem*. The category into which these latter terms fall is of halakhic relevance, since women cannot count towards the *minyan* of a *davar she-bi-kedusha* (*infra*, notes 19-20). If, however, a ritual requires a quorum of ten for reasons other than *davar she-bi-kedusha*, women may perhaps be counted, this depending on the conditions and schools of thought (*vide infra*).  
b) Rabbenu Yona (*Berakhot* 21a, s.v. *ve-nikdashu*) notes that not all rituals which sanctify the Almighty's name are classified as *davarim she-bi-kedusha*. Thus, the acceptance of the heavenly yoke in the recitation of the *shema* does not require a *minyan*. As a result, R. Yona suggests that *davarim she-bi-kedusha* should be defined as those rituals for which the Rabbis saw fit to require the presence of ten because of the sanctification element. These cannot be performed in the absence of the *minyan* quorum. However, since *Hazal* never required a *minyan* for *shema*, it may be read in private despite its central importance.
5. *Leviticus* 22:32. See R. Menahem M. Kasher, *Torah Shelema*, Genesis 42:5 note 30 for a discussion of this and other derivations.
6. *Yerushalmi Berakhot* 7:3 and *Megilla* 4:4.
7. *Megilla* 23b; *Berakhot* 45b.
8. R. Yaakov Emden (*Lehem Shamayim*, *Megilla* 23b) applies this reason to the mourners' blessing and the consolation of the mourner as well.