## EGALITARIANISM, TEFILLAH AND HALAKHAH

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### Egalitarianism, Tefillah and Halakhah

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Since the middle of the last century, various communities of Jews, initially in the United States and subsequently elsewhere in Israel and throughout the Jewish world, have questioned, advocated for, argued over, and implemented adoption of equal roles for men and women in Jewish communal prayer services. Different communities have taken on varying degrees of egalitarian practice, some removing gender as a consideration in any aspect of communal ritual, others continuing to count only men for the *minyan*, even as women equally read from the Torah, others have adopted versions of partial egalitarian practice. Some have incrementally moved toward egalitarian practice over time. Some communities have instituted these practices in consultation with organized movements and rabbinic bodies and others have acted independently and with reference to their own grassroots views, sometimes articulated in halakhic language and sometimes not. Though the halakhic questions regarding egalitarian *minyanim* have earned a fair amount of literature, there is still a need for a comprehensive treatment of the issue that seeks to understand the underlying concerns and issues of the different positions taken. This

<sup>&</sup>lt;sup>1</sup> Many thanks go to Aryeh Bernstein, who worked tirelessly on much of the drafting and redrafting of this paper and has been a critical and central partner in bringing this to fruition.

We are by no means the first to address this topic. Among the central investigations the interested reader may want to consult are: Mayer Rabinowitz, "An Advocate's Halakhic Responses on the Ordination of Women," in *The Ordination of Women as Rabbis: Studies and Responsa*, ed. Simon Greenberg, JTSA, New York, 1988 (<a href="http://www.rabbinicalassembly.org/teshuvot/docs/19861990/ordinationofwomen1.pdf">http://www.rabbinicalassembly.org/teshuvot/docs/19861990/ordinationofwomen1.pdf</a>); Joel Roth, "On the Ordination of Women as Rabbis," ibid.

<sup>(</sup>http://www.rabbinicalassembly.org/teshuvot/docs/19861990/ordinationofwomen2.pdf); A. Frimer, "Women and Minyan", *Tradition* 23,4 (1988): 54-77 (http://www.daat.ac.il/daat/english/tfila/frimer2-1.htm); נשים וקריאת התורה בציבור", *תשובות ועד ההלכה* ג (תשמח) ז. גולינקין, "נשים וקריאת התורה בציבור", *תשובות ועד ההלכה* ג

<sup>(</sup>http://www.responsafortoday.com/vol3/2.pdf.); J. Hauptman, "Women and Prayer: An attempt to dispel some fallacies", *Judaism* 42,1 (1993): 94-103; M. J. Broyde and J. B. Wolowelsky, "Further on Women as Prayer Leaders and their Role in Communal Prayer", *Judaism* 42,4 (1993): 387-395; J. Hauptman, "Some Thoughts on the Nature of Halakhic Adjudication: Women and "Minyan", *Judaism* 42,4 (1993): 396-413; 59-79: "נשים במנין וכשליחות ציבור", *חשובות ועד ההלכה* ו (חשנו): 7. גולינקין, "נשים במנין וכשליחות ציבור", *חשובות ועד ההלכה* ו

<sup>(</sup>http://www.responsafortoday.com/vol3/2.pdf); A. Frimer and D. Frimer, "Women's Prayer Services – Theory and Practice", *Tradition* 32,2 (1998): 5-118 (http://www.daat.ac.il/daat/english/tfila/frimmer1.htm); M. Shapiro, "*Qeri'at ha-Torah* by Women: A Halakhic Analysis", *Edah* 1,2 (2001)—see also the follow-up comments by Y.H. Henkin and M. Shapiro in the same issue

<sup>(</sup>http://www.edah.org/backend/coldfusion/displayissue.cfm?volume=1&issue=2); D. Sperber, "Congregational Dignity and Human Dignity: Women and Public Torah Reading", Edah 3,2 (2003) (http://www.edah.org/backend/JournalArticle/3 2 Sperber.pdf); אי שוחטמן, "עליית נשים לתורה", סיני קלה-קלו (תשסה); G. Rothstein, "Women's Aliyyot in Contemporary Synagogues", Tradition 39,2 (2005): 36-58; אי שפרבר, דרכה של הלכה: קריאת נשים בתורה, פרקים במדיניות פסיקה, ירושלים תשסז ; S. Riskin and M. Shapiro, "Torah Aliyyot for Women—A Continuing Discussion", Meorot 7:1 (2008)

<sup>(</sup>http://www.yctorah.org/component/option.com\_docman/task,doc\_download/gid,711/). We have drawn on much material found in these various publications. Our analysis here was significantly influenced by an unpublished article on egalitarian minyanim by R. Shai Wald. While R. Wald's argument was not fully fleshed out and seems never to have been intended as anything more than a private response to a private inquiry, he suggested several creative new lines of thinking that guided our analysis here. We would also like to thank R. Aryeh Klapper, who has engaged us on these issues over the years, always offering sharp critiques and criticisms while constantly encouraging us to tighten our analysis and follow through the ramifications of every step of the argument. It has been a privilege to learn from him and with him on this and other matters.

problem is most acutely felt by members of independent prayer communities who care about observing *halakhah* properly and who are not affiliated with an organized denomination whose standards they can adopt or whose central rabbinic body they can trust without understanding the halakhic issues themselves. Further, many Jews seek a thorough personal understanding of their Jewish lives in their halakhic expression and will be served by an accessible, thorough treatment of this topic, which, though minor in its legal prominence, is quite significant in contemporary personal experience.

It is our intention here to submit the major questions of gender and public prayer to an analysis that is simultaneously thorough, transparent, and accessible. Readers interested in shorter synopses can find them here on the site. In this paper we will address two major questions: 1) the appointment of women as *Shelihot Tzibur* (prayer leaders) for public prayer; 2) counting women in the *minyan* of ten for public prayer and the like. We will not independently address the question of Torah reading, although we will summarize the topic where relevant in the question of women as *Shelihot Tzibur*. There the interested reader will find reference to very thorough articles devoted exclusively to that topic.<sup>2</sup>

### I. Serving as Shelihat Tzibbur – Communal Prayer Leader

The prayer leader (*Sheliah Tzibur*, or *Sha"tz*) performs two functions – 1) repeating the 'Amidah out loud (not relevant at '*Arvit*); 2) saying those parts of the service known as *devarim she-bikedushah* – *Kaddish*, *Barekhu* (at *Shaharit* and '*Arvit*), and *Kedushah* (at *Shaharit*, *Minhah*, and *Musaf*).

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<sup>&</sup>lt;sup>2</sup> This paper also does not address a range of issues that are gendered in classical rabbinic sources, because almost all of them do not involve power issues with regard to female participation in parts of the service. For instance, women were classically exempt from reading the Shema, but individuals in the congregation never have their obligations fulfilled by the leader in this regard. Nor does the leader perform this function with regard to the blessings surrounding the Shema, where s/he recites the bulk of the blessing silently, only cueing the congregation regarding pace by reciting the very end of the blessing, which is not sufficient for discharging another's obligation. Another example: women are classically exempt from Hallel. However, the way we recite Hallel today features all individuals reciting the entire text on their own, including the opening berakhah. See Mishnah Sukkah 3:10, which explains that a man who recites Hallel by repeating word-for-word after a woman or a child is cursed, but fulfills his obligation. See also Rashi on the Mishnah (Sukkah 38a s.v. makrin) who explains this as being based on an early custom, in which the communal prayer leader would fulfill others' obligation in Hallel. In such a case, where the community is being led by a woman, they would need to say it word by word, and they would be cursed (Rashi and Tosafot offer differing explanations as to the reason for this curse, see there). In our settings, where all individuals say all of Hallel personally (and the Sha"tz in most communities does not even say all of Hallel out loud, such that individuals could not choose to rely on the Sha"tz even if they wanted to), even the curse should not apply. The only issue other than those we will discuss here in which there is a gender gap in classical rabbinic sources and in which power dynamics come into play is the sounding of the Shofar on Rosh Hashanah. There, one person blows the Shofar for the entire community and, in keeping with Mishnah Rosh Hashanah 3:8, must be obligated in order to discharge the obligations of others. Arguments other than those advanced here are needed in order to advocate for women's ability to fulfill men's obligation in that *mitzvah*.

### 1) Repeating the 'Amidah out Loud at Shaharit, Minhah, and Musaf

One of the central roles of the repetition of the 'Amidah has traditionally been to enable those in the community who do not know how to pray to have their obligation in prayer fulfilled, as we see in the Shulhan Arukh's ruling (O $\underline{H}$  124:1):

After the community finishes their prayers, the *Sha"tz* repeats the prayer, so that if there is someone who does not know how to pray, he may have intention to what the leader is saying, and discharge [his obligation] through it. The one who is discharging [his obligation] through the prayer of the *Sha"tz* must have intention for all that the *Sha"tz* says, from beginning to end, and may not interrupt, nor speak, and takes three steps back afterward, like a person who is praying oneself.

לאחר שסיימו הצבור תפלתן,
יחזור ש"צ התפלה, שאם יש מי
שאינו יודע להתפלל יכוין למה
שהוא אומר, ויוצא בו; וצריך אותו
שיוצא בתפלת ש"צ לכוין לכל מה
שאומר ש"צ מראש ועד סוף; ואינו
מפסיק; ואינו משיח; ופוסע ג'
פסיעות לאחריו, כאדם שמתפלל
לעצמו.

In modern communities, this is usually *not* the central purpose, since the prevalence of prayer books in both Hebrew and many translations enables each individual to pray<sup>3</sup> and the *poskim* (authorities) rule that those who are capable of praying themselves cannot fulfill their obligations in prayer via listening to the *Sha"tz*. This is the law both *lekhatehila* (*ab initio*, i.e., if I know how to pray, I am not allowed to choose merely to listen to the *Sha"tz* instead of praying myself) and even *bedeiavad* (*post facto*, i.e., even if I did so already, my obligation has not been fulfilled and I have to go back and pray again).<sup>4</sup> In most modern situations, therefore, there is no issue of the *Sha"tz* fulfilling anyone's personal obligation to pray,<sup>5</sup> as first articulated by the **Magen Avraham**<sup>6</sup> (on Sh"A, OH 53:20):

It is universally agreed that prayer in translation is as valid, at least when one is praying in a community. The source for this rule is Mishnah Sotah 7:1 and the ensuing discussion on TB Sotah 33a. The Shulhan

The source for this rule is Mishnah Sotah 7:1 and the ensuing discussion on TB Sotah 33a. The Shulhan Arukh sums it up in OH 101:4: "יכול להתפלל בכל לשון שירצה, וה"מ בצבור, אבל ביהיד לא יתפלל אלא בלשון הקבועה לצבור, אפילו יחיד יכול "וי"א דה"מ כששואל צרכיו, כגון שהתפלל על חולה או על שום צער שיש לו בביתו, אבל תפלה הקבועה לצבור, אפילו יחיד יכול "One may pray in any language one wants, that is, when with the community, but when alone, one must pray only in Hebrew. But some say that this [restriction to Hebrew] is only when asking for personal needs, such as praying for a sick person or on some other domestic sorrow, but the prayer that is fixed for the community – even an individual may say it in any language. And some say that even an individual asking for personal needs may ask in any language desired, other than Aramaic." Even the stringent first position restricts prayer to Hebrew only when one prays alone; when praying in a minyan, everyone agrees that personal prayer is valid in the vernacular.

<sup>&</sup>lt;sup>4</sup> See, for example, the Mishnah Berurah (124:1): "אבל הבקי אינו יוצא אפילו בדיעבד בתפלת הש"ץ" - "But a literate person does not fulfill [the obligation] even post facto with the prayer of the Sha"tz."

<sup>&</sup>lt;sup>5</sup> R. Mayer Rabinowitz correctly registers this point in his responsum advocating the ordination of women as rabbis in the Conservative movement: "Today when all of our congregations have prayerbooks with translations for those who cannot read Hebrew, and often with explanatory notes, we are in the category of competent woshippers (*bekiim*), and our obligations cannot be fulfilled by a *shaliah tzibbur*," "An Advocate's Halakhic Responses on the Ordination of Women," in *The Ordination of Women as Rabbis: Studies and Responsa*, ed. Simon Greenberg, JTSA, New York, 1988, p. 117. The responsum is also available online: <a href="http://www.rabbinicalassembly.org/teshuvot/docs/19861990/ordinationofwomen1.pdf">http://www.rabbinicalassembly.org/teshuvot/docs/19861990/ordinationofwomen1.pdf</a>.

...It seems to me this was specifically in their times, when the *Sha* "tz discharged the masses of their obligation in prayer...which is not the case now, when all are literate, and the *Sha* "tz is only for liturgical poems.

...ונ"ל דדוקא בזמניהם שהיה הש"ץ....מוציא הרבים י"ח בתפלתו אז היה יחיד יכול לעכב דאין נעשה שלוחו בע"כ...משא"כ עתה שכלם בקיאין רק הש"ץ הוא לפיוטים.

The reasons why we nevertheless repeat the 'Amidah are in order to fulfill the Sages' decree across the board<sup>7</sup> and in order to enable the *Kedushah* and Priestly Blessing to be said.<sup>8</sup> The 20<sup>th</sup> century authority **R. Ben Zion Uzziel** affirmed that in a context in which all congregants are praying individually, the *Sha* "tz's sole function is in organizing the service, i.e. keeping everyone together. He adds that even people considered peripheral members of the community can serve this role, explicitly mentioning children and women (Responsa *Mishpetei Uzziel III*, *Miluim* 2):<sup>9</sup>

...In a place where the listeners say each word after the one making the blessings, and the reader is only reading reading the words before them, they fulfill their obligations with their own blessings and the reader only sets the pace by reciting the beginning and end of each blessing. So is it with the *Kedushah* – he opens the words of the *Kedushah* and the community answers after him – so the reader could properly be a minor or a woman.

...במקום שהשומעים אומרים מלה במלה אחרי המברך והקורא אינו אלא מקריא לפניהם הדברים, הרי שהם יוצאים ידי חובתן בברכת עצמם והקורא אינו אלא מסדר הדברים פותח וחותם כל ברכה. וכן בקדושת השם פותח דברי קדושה והקהל עונים אחריו שפיר יכול המקריא להיות קטן או אשה...

<sup>6</sup> The context here is the halakhah allowing an individual to prevent another individual from being appointed *Sh"atz*. The Magen Avraham argues that this law applied only when the job of the *Sh"atz* was to fulfill everyone's obligations, since no one should have to be represented by someone objectionable.

<sup>&</sup>lt;sup>7</sup> Shul<u>h</u>an Arukh, 124:3: "קהל שהתפללו וכולם בקיאים בתפלה, אעפ"כ ירד ש"צ וחוזר להתפלל, כדי לקיים תקנת חכמים" - "If a community already prayed and all of them know the *'Amidah*, nevertheless, a *Sha"tz* should repeat the *'Amidah*, in order to fulfill the decree of the Sages."

<sup>&</sup>lt;sup>8</sup> See, for example, the Arukh HaShulhan (124:3): "ודע דהטור כתב עוד טעם על חזרת הש"ץ משום קדושה ע"ש ונראה "ודע דהטור כתב עוד טעם על חזרת הש"ם משום ברכת כהנים" האהי יכול לומר גם משום ברכת כהנים — "Know that the Tur wrote another reason for the Sha"tz's repetition, namely, on account of the Kedushah, see there. And it seems that he could have also added on account of the Priestly Blessing". The Priestly Blessing is said every morning by the kohanim in the repetition of the Shaharit 'Amidah in most communities in the Land of Israel and most Sephardic communities even in the diaspora. The dominant Ashkenazi diaspora custom has been for it to be said by the kohanim only in the repetition of the 'Amidah for Musaf of the High Holidays and three Pilgrimage Festivals. However, even where the kohanim do not say the Priestly Blessing, the Sha"tz says it.

We should note here that it is historically likely that the "repetition" of the Amidah is likely an original, independent form of public prayer that functions as a model of communal worship. The private Amidah is likely a separate phenomenon, intended to structure the individual's prayer using the communal template. An analysis of this issue is beyond the scope of this paper but would provide a very different lens through which to view the ongoing importance of the public Amidah, even in a community of literate and competent individuals.

<sup>&</sup>lt;sup>9</sup> R. Uzziel (1880-1953) was the Sephardic Chief Rabbi of the Jewish settlement in the Land of Israel and later, the State of Israel, from 1939-1954. His context in this responsum is children leading a children's service, e.g., in elementary school, but for which a *minyan* of adults is present.

Nevertheless, situations arise in which there are no prayer books available, or none in translation in a place where some attendants cannot read Hebrew, or where the congregation includes a person who can read neither Hebrew nor the language into which the book is translated. Therefore, we will elucidate the situation of a *Sha"tz* fulfilling others' obligations in prayer, and how gender figures into that equation. We will see that the core principle is that only one obligated in a particular mitzvah is fit to fulfill other people's obligations in it. There are two perspectives in the *Rishonim* as to the nature of the obligation of prayer; though there has been some misunderstanding regarding the less dominant of these positions, we will see that according to both views, men and women are equally obligated in prayer, and are therefore, equally fit to serve as *Sha"tz*.

The **Mishnah** (Rosh Hashanah 3:8) establishes the principle that only one who is obligated in a mitzvah may fulfill another person's obligation toward it:

This is the principle: anyone who is not obligated in a	זה הכלל כל שאינו מחויב בדבר
matter cannot discharge the many of their obligations.	אינו מוציא את הרבים ידי חובתן.

Therefore, to serve as *Sha''tz* for *Sha<u>h</u>arit, <i>Min<u>h</u>ah*, or *Musaf*, where there is a repetition of the '*Amidah*, one would have to be personally obligated in that prayer. The **Mishnah** (Berakhot 3:3) establishes explicitly that men and women are equally obligated in the '*Amidah* prayer:<sup>11</sup>

Women, slaves, and minors are exempt from the	<b>נשים</b> ועבדים וקטנים פטורין
reading of Shema and from Tefillin and are <b>obligated</b>	מקריאת שמע ומן התפילין וחייבין
in prayer and in Mezuzah and in grace after meals.	בתפלה ובמזוזה ובברכת המזון.

This statement effectively summarizes the issue of gender and obligation in *tefillah*, and it is the starting point to which all later interpreters must return: the Mishnah makes clear that men and women share an equal obligation in prayer. But in order to understand the complexities of later discussions, more background is needed.

**Mishnah Kiddushin 1:7** offers a general rule that women are exempt from positive *mitzvot* caused by time:

In all positive commandments caused by time, men are	וכל מצות עשה שהזמן גרמה
obligated and women are exempt.	אנשים חייבין ונשים פטורות.

<sup>&</sup>lt;sup>10</sup> Despite R. Uzziel's position, it is possible that Magen Avraham himself would have objected to having a leader *incapable* of fulfilling the obligations of those present, even if there was no need to in the present case. If repeating the Amidah is important to fulfill Hazal's decree, it might well be necessary to have a person meeting the normal requirements for a *Sha* "tz. Therefore, it is important to examine whether the obligation in *tefillah* is gendered.

<sup>&</sup>lt;sup>11</sup> Throughout the Mishnah, the word "תפילה" often refers specifically to the 'Amidah, and that is its clear context here. For example, see Ta'anit 2:2, Berakhot 4:1 and 5:4, Shabbat 1:2, and elsewhere.

In keeping with this rule, the Talmud Bavli on Berakhot 20b asserts that *tefillah* is *not* such a *mitzvah*, placing it instead in the category of positive *mitzvot* not caused by time, thus explaining why women are obligated. <sup>12</sup>

Two core positions exist in the *Rishonim* to explain women's obligation in prayer: the view of the Rambam, and the view of Rashi, Ramban, and many others.

### The Rambam's View: Biblical and Rabbinic Prayer

The first view is that of the **Rambam**, who maintains that prayer is a positive *mitzvah* <u>not</u> caused by time, because *mi-d'oraita* (on Torah authority), the mitzvah to pray is inchoate: neither the number, nor the time, nor the content of prayers is legislated by the Torah. That is, a daily utterance of some sort of personal prayer suffices on the level of Biblical law, so long as it includes the three main elements of praise, request, and thanks. Here are the words of the Rambam:

### Rambam, Sefer Hamitzvot, Positive Commandments

## (5) The fifth commandment is that we are commanded to worship the Elevated One; this commandment has been repeated several times: It says "And you shall serve the Lord your God" (Ex. 23:25), and it says, "Him you shall serve" (Deut. 13:5), and it says, "Him you shall serve" (*ibid.*, 6:13), and it says, "and serve Him" (*ibid.*, 11:13)...In the words of the Sifrei: "Serve Him' – this is prayer" (Sifrei Devarim 41).

(10) ... The Tosefta says: "Just as the Torah fixed times for the reading of Shema, so the Sages gave a time for prayer" (Berakhot 3:1), meaning, the times of prayer are not biblical. Indeed, the obligation of prayer itself is biblical, as we explained (#5), and the Sages assigned it times. This is the sense of the statement, "They established the prayers parallel to the *Tamid* sacrifices" (TB Berakhot 26b), that is, they established its schedule parallel to the sacrificial schedule.

### ספר המצוות לרמב"ם מצות עשה

[ה] והמצוה החמישית היא שצונו לעבדו יתעלה וכבר נכפל צווי זה פעמים, אמר "וַעֲבַדְתָּם אֵת יְה ֹנָה אֱלֹ הֵיכֶם" (שמות כג:כה), ואמר "וְאֹ תוֹ תַעֲב ֹדוּ" (דברים יג:ה), ואמר "וּלְעַבְדוֹ" (שם, ו:יג), ואמר "וּלְעַבְדוֹ" (שם, יא:יג)...ולשון ספרי, "ולעבדו", זו תפילה" (דברים מ"א)...

(י) ...ולשון התוספתא "כשם שנתנה תורה קבע לקריאת שמע כך נתנו חכמים זמן לתפלה" (ברכות ג:א).
 כלומר, שזמני התפלה אינם מן התורה.
 אמנם חובת התפלה עצמה היא מן התורה כמו שבארנו (ע' ה) והחכמים סדרו לה זמנים. וזהו ענין אמרם "תפלות כנגד תמידין תקנום" (בבלי ברכות כו:). כלומר, סדרו זמניה בזמני ההקרבה.

<sup>&</sup>lt;sup>12</sup> There are two main versions of the text of the gemara here, one which asserts this point outright, and one which implies it by entertaining a contrary possibility and rejecting it. This split was already noted by numerous rishonim, including Rashba and R. Yehudah Hehasid. See also *Ma'adanei Yom Tov* letter *tzadi* on Rosh Berakhot 3:13, and Dikdukei Soferim on Berakot 20b. The latter version of the gemara in turn gets emended by Rashi. For a full discussion of the textual history here, see the appendix and the notes there.

### Rambam, Laws of Prayer 1:1-2

[1] It is a positive commandment to pray every day, as it is written: "You shall serve the Lord your God." By tradition, they learned that this service is prayer, as it says, "and to worship God with all of your heart". The sages said, "What is service of the heart? This is prayer." The number of prayers is not Biblical, the form of prayer is not Biblical, and prayer has no Biblically fixed time. [2] Therefore, women and slaves are obligated in prayer because it is a positive commandment not caused by time, but the obligation of this commandment is like this: a person should supplicate and pray every day and tell of the Holy One's praise, and afterwards ask for his/her needs as a request and a supplication, and afterwards give praise and thanks to God for the good that has been bestowed upon him/her, each person according to his/her ability.

### רמב"ם הל' תפילה א:א-ב

[א] מצות עשה להתפלל בכל יום, שנאמר, "וַעֲבַדְתֵּם אֵת ה' אֵלֹ הֵיכֵם": מפי השמועה למדו שעבודה זו היא תפלה, שנאמר, ולעבדו בכל לבבכם אמרו חכמים "אי זו היא עבודה שבלב זו תפלה", ואין מנין התפלות מן התורה, ואין משנה התפלה הזאת מן התורה, ואין לתפלה זמן קבוע מן התורה. [ב] ולפיכד נשים ועבדים חייבין בתפלה. לפי שהיא מצות עשה שלא הזמן גרמא אלא חיוב מצוה זו כך הוא: שיהא אדם מתחנז ומתפלל בכל יום ומגיד שבחו של הקדוש ברוך הוא ואחר כך שואל צרכיו שהוא צריך להם בבקשה ובתחנה ואחר כך נותן שבח והודיה לה' על הטובה שהשפיע לו כל אחד לפי כחו.

This view understands Biblically mandated prayer to be unstructured. The structures of prayer as we know it – specific content at specific times – are rabbinically enacted parameters to formalize that commandment. The details of these requirements fill the Rambam's Hilkhot Tefillah from shortly into chapter one (halakhah 4) all the way through the 6<sup>th</sup> chapter. At the conclusion of his elucidation of rabbinic prayer, the Rambam explicitly maintains that these rabbinic requirements are incumbent on women (Hil. Tefillah 6:10):

Women, slaves and minors are obligated in prayer and any man who is exempt from Sh'ma is exempt from prayer...

נשים ועבדים וקטנים חייבים בתפלה וכל איש שפטור מקריאת שמע פטור מן התפלה...

There has been confusion regarding the Rambam's position, as some have argued that the Rambam thinks that women are obligated only in general, unstructured Biblical prayer, but are exempt from the specific rabbinic requirements, which seem to constitute a positive (rabbinic) commandment caused by time. Such a position requires reading the halakhah just cited as departing from the local context of rabbinic prayer and returning to recapitulate the ruling stated in 1:1-2 about Biblical prayer. Such a reading is unsustainable for three reasons: 1 Context: after 5 ½ chapters entirely about the details of rabbinic prayer, it stretches the imagination to think that the Rambam suddenly returned to a different, long-completed topic, without giving any indication about the change. If he were to return to the earlier topic of Biblical prayer, he would have to

<sup>14</sup> **R. David Golinkin** makes a similar argument in his responsum "נשים במניין וכשליחת ציבור", cited above in note 1.

<sup>&</sup>lt;sup>13</sup> For one example, see **R. Ovadiah Yosef**, Responsa Yabia` 'Omer VI OH #17.

inform the reader that that is what he is doing. 2) Redundancy: the Rambam already recorded the law about women's and slaves' obligation in Biblical prayer, above in 1:1-2; why would he need to repeat it here? 3) Content: Above, in 1:1-2, when recording the law of Biblical prayer, the Rambam mentioned that women and slaves are obligated. Here, in 6:10, he mentions women, slaves, *and minors* as being obligated. Minors are never obligated by the Torah in *mitzvot*. They are obligated rabbinically in that their parents are obligated to train them. To say, therefore, that the reference here to women refers only to Biblical prayer requires not only understanding the Rambam to be switching topics unannounced and redundantly re-recording a law from chapter one, but it also requires understanding that he is talking about two different topics within one phrase. This is not a tenable reading, and indeed, **R. Yosef Caro** explicitly explains the Rambam here to be describing rabbinic prayer. <sup>15</sup>

Why are women obligated in rabbinic prayer according to the Rambam? Isn't rabbinic prayer a positive commandment caused by time, from which the mishnah in Kiddushin taught that women are exempt? The Rambam explains in his commentary on that mishnah (ed. Kapah):

And a positive commandment caused by time is obligatory at a set time; outside of this time, its obligation does not take effect, such as sukkah, lulay, shofar, tefillin and tzitzit, because they are obligatory during the day but not at night, etc. And positive commandments not caused by time are those commandments that are always obligatory, such as mezuzah, building a railing, and tzedakah. You already know that we have a principle that one does not learn from [heuristic] rules<sup>16</sup>, and when it says "all", it means "most." But the positive commandments in which women are obligated or are not fully obligated has no general rule, rather, they are passed on by tradition. Is it not the case that eating matzah on the first night of Pesah, joy on the festivals, the public reading of the Torah every seven years, **prayer**, reading of the Megillah, Hanukkah candles, Shabbat candles, and reciting Kiddush are all **positive** commandments caused by time, yet for each of them a woman's obligation is the same as a man's obligation.

ומצות עשה שהזמן גרמה היא שחובת עשייתה בזמן מסויים, ושלא באותו הזמן אין חיובה חל כגון הסוכה והלולב והשופר והתפילין והציצית לפי שחובתן ביום ולא בלילה, וכל כיוצא באלו. ומצות עשה שלא הזמן גרמה הן המצות שחובתן חלה בכל הזמנים כגון המזוזה והמעקה והצדקה, וכבר ידעת שכלל הוא אצלינו אין למדים מן הכללות, ואַמְרוֹ "כל", רוצה לומר על הרוב, אבל מצות עשה שהנשים חייבות ומה שאינן חייבות בכל הקפו אין להן כלל אלא נמסרים על פה והם דברים מקובלים, הלא ידעת שאכילת מצה ליל פסח. ושמחה במועדים, והקהל, ו**תפלה**, ומקרא מגילה, ונר חנוכה, ונר שבת, וקדוש היום, כל אלו מצות עשה שהזמן גרמה וכל אחת מהו חיובה לנשים כחיובה לאנשים.

<sup>&</sup>lt;sup>15</sup> In the Kesef Mishnah on the second half of this passage, he writes: ש"ש מפטור וכו'. רוב הפטורים מק"ש לא כ"ש נכל איש שפטור וכו'. רוב הפטורים מק שלא נתפרש פטורים מק"ו דק"ש דאורייתא פטורים תפלה דרבנן לא כ"ש "most who are exempt from Shema are also exempt from tefillah, and even those that are not explicity exempted obviously are: if they are exempted from the biblical obligation in Shema, isn't it obvious that they are exempted from tefillah, which is only rabbinic?

<sup>&</sup>lt;sup>16</sup> TB 'Eiruvin 27a, Kiddushin 34a.

The Rambam here discusses *mitzvot d'oraita* (Biblical laws, such as matzah on Pesah night, and Kiddush) together with *mitzvot derabbanan* (rabbinic laws, such as Megillat Esther and Hanukah candles). The "prayer" he refers to here is rabbinic prayer, since he describes it as caused by time, and yet women and men are equally obligated. His larger point is that one should take the Mishnah's rule about women's exemption from *mitzvot* caused by time not as an absolute, but as a non-exhaustive general indicator that describes a number of cases. As we noted, some scholars argue that the Rambam thinks women are exempt from rabbinic prayer. If such a view is exceedingly difficult given his ruling in Mishneh Torah Hil. Tefillah 6:1, as we explored above, it is impossible in light of this comment in the Rambam's commentary on the Mishnah. 17 Rambam uses different language in these different texts, but the data all point to a coherent position: there is only one kind of prayer, one that is biblical but whose parameters are rabbinically articulated. Though we have been speaking of "biblical" and "rabbinic" prayer, Rambam has no notion of a separate entity of inchoate, biblical prayer that survives beyond the rabbinic structuring of prayer. Moreover, "biblical" and "rabbinic" prayer, for the Rambam, are *not* two conceptually distinct universes. Recall that, for the Rambam, biblical prayer is not *totally* inchoate. Rather, one must include the three elements of praise, request, and thanks. As is well known, these are in fact the three main sections of the 'Amidah as formulated by the Sages. Thus, when one engages in the rabbinically composed 'Amidah, one is simply using the Sages' model for fulfilling one's biblical commandment. The basic *mitzvah* applies to the whole population; the conditions described by the Rambam which led the Sages to structure prayer<sup>18</sup> afflicted the population at large, therefore, the parameters they applied to prayer evolved the institution of prayer for the entire population. His model explains how the gemara could refer to prayer as not caused by time (its Biblical core possesses this quality), even as it is an obligatory practice multiple times a day, at set times (the rabbinic extension of the

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<sup>&</sup>lt;sup>17</sup> R. Ovadiah Yosef, in Responsa Yabia' 'Omer O<u>H</u> 6:17, opines that the Rambam must have changed his mind between writing his commentary to the Mishnah and writing the Mishnah Torah, which was published later. He therefore maintains that Rambam's final word on the matter was that women are only obligated to pray once a day. This explanation seems rather forced, given the clear passage in the Mishnah Torah which also indicates that women are fully obligated in rabbinic prayer, which R. Ovadiah does not engage. It seems that R. Ovadiah is likely drawn to this explanation in order to defend the practice of women in his community not to pray regularly, in a reprise of the dynamic we will describe in the Magen Avraham below. But as other aharonim we will cite below have noted, this is not truly a tenable read of the Rambam.

<sup>&</sup>lt;sup>18</sup> Hilkhot Tefillah 1:4: "When Israel was exiled in the days of Nebuchadnezzar the Wicked, they assimilated into Persia, Greece, and other nations and children were born to them in Gentile lands, and those children's speech was confused – each one's speech mixed up many languages, and one who would speak was unable to express oneself fully in one language, but only in a confused mix...and they did not know how to speak Hebrew....On account of this, the language of anyone who prayed would only briefly request some desires or to praise the Holy One in the holy language, before other languages would get jumbled up with it. When Ezra and his court saw this, they arose and enacted 18 blessings in order...so that they would be arranged clearly in everyone's mouth, and they would learn them, and the prayer of these stammerers would be a whole prayer, like the prayer of those with pristine language..."

<sup>&</sup>quot;כיון שגלו ישראל בימי נבוכדנצר הרשע נתערבו בפרס ויון ושאר האומות ונולדו להם בנים בארצות הגוים ואותן הבנים נתבלבלו שפתם והיתה שפת כל אחד ואחד מעורבת מלשונות הרבה וכיון שהיה מדבר אינו יכול לדבר כל צורכו בלשון אחת אלא בשיבוש...ואינם מכירים לדבר יהודית...ומפני זה כשהיה אחד מהן מתפלל תקצר לשונו לשאול חפציו או להגיד שבח הקדוש ברוך הוא בלשון הקדש עד שיערבו עמה לשונות אחרות, וכיון שראה עזרא ובית דינו כך עמדו ותקנו להם שמנה עשרה ברכות על הסדר...כדי שיהיו ערוכות בפי הכל וילמדו אותן ותהיה תפלת אלו העלגים תפלה שלימה כתפלת בעלי הלשון הצחה..."

biblical core). Women are obligated in the time-bound extension because of their obligation in the non-time-bound core. <sup>19</sup> Thus the Rambam, like the Mishnah, is explicit that the obligations of women and men in thrice-daily fixed prayer are identical.

### Rashi and Ramban: Prayer is Rabbinic

**Rashi**, in his comments on Berakhot 20b, reveals a different approach. He explicitly rejects the notion that prayer is commanded by the Torah and explains that the Mishnah's reason for ruling that women and men are equally obligated in prayer is because prayer is a request for mercy, which is necessary for everyone. <sup>20</sup>

"...and they are obligated in prayer" – because prayer is [a request for] mercy, and it is from the Rabbis, who established it even for women and for educating children.

"וחייבין בתפלה" - דתפלה רחמי היא, ומדרבנן היא, ותקנוה אף לנשים ולחנוך קטנים.

Rashi felt so strongly about prayer being rabbinic, rather than Biblical, that he rejected the text of the gemara that he had received:

The text should read as follows: "*Tefillah*, because it is [a request for] mercy – and it should not read "This is obvious!...", for it is not a Biblical commandment.

הכי גרסינן: תפלה דרחמי נינהו-ולא גרס פשיטא, דהא לאו דאורייתא היא.

The details of Rashi's textual work here are addressed in a separate appendix. Suffice it to say that Rashi advocated eliminating all talk of *tefillah* as a מצות עשה (a positive commandment), feeling that this term suggested that prayer was a Biblical obligation (as indeed concluded Rambam).<sup>21</sup> He is emphatic that regular prayer is operative solely on the rabbinic plane.<sup>22</sup>

<sup>&</sup>lt;sup>19</sup> For an excellent formulation of this point, see Sefer Hamenuhah on Hilkhot Tefillah 1:2. The editor's surprise there in note 24 stems from the kind of confusion we are trying to dispel here.

<sup>&</sup>lt;sup>20</sup> Rashi draws this notion of prayer being a request for mercy from two other passages in the Talmud Bavli. After Mishnah Sotah 7:1 lists prayer among the ritual speech acts which may be said in any language, the anonymous voice of the gemara (stama de-gemara) on Sotah 33a explains that "prayer is a request for mercy, so however one needs to, one should pray — "תפלה' — רחמי היא, כל היכי דבעי מצליי". The second place is Pesahim 117b: after Rava rules that the blessing praising God for redeeming Israel is said in the past tense in Sh'ma and Hallel, but in the present tense in prayer, the stama de-gemara explains that the reason it is said in the present tense is because "prayer is a request for mercy": אמר רבא: קריאת שמע והלל - גאל באל ". It is possible he was also influenced by Yerushalmi Berakhot 3:3, 6b, which comments on our mishnah: "ברחמי בל אחד ואחד מבל של עצמו ו אחד מבל אחד ואחד מבל אחד מבל אחד ואחד מבל אחד ואחד מבל אחד ואחד מבל אחד ואחד מבל אחד מבל אחד ואחד מבל אחד מבל אחד ואחד מבל אחד מבל אחד ואחד מבל אחד מבל אחד ואחד מבל אחד ואחד מבל אחד מ

Berakhot 3:3, 6b, which comments on our mishnah: כדי שיהא כל אחד ואחד מבקש רחמים על עצמו. Once Rashi erases any mention of tefillah as not caused by time, he can also concede that tefillah is indeed caused by time but nonetheless women are obligated in it because of its essence as a personal request for mercy. Tosafot Berakhot 20b s.v. peshita felt differently about Rashi's approach to the text here and thought the term מצות עשה could be used loosely to describe rabbinic mitzvot as well. They thus maintained the text of the gemara while still rejecting Rambam's analysis of tefillah. Another important example of this phenomenon is found in R. Yonah (Berakhot 11a, Rif pagination), who says: "הארפלה אים לה זמן קבוע אפ"ה כיון שאמרו הלואי שיתפלל אדם כל היום כולו כמצוה שאין הזמן גרמא דייניגן לה ולפיכך נשים חייבות אי "ה סיון שאמרו הלואי שיתפלל אדם כל היום כולו כמצוה שאין הזמן גרמא דייניגן לה ולפיכך נשים חייבות אי Despite the fact that prayer has fixed times, nonetheless, since they said "Would that people would pray all day long," it is treated like a commandment that is not caused by time. Therefore, women are obligated in it. Alternatively, [women may be obligated] because it is a plea for mercy [and thus incumbent on all]." The Talmudic passage quoted here can be found in various forms at TY Berakhot

Ramban expands Rashi's approach, attacking the Rambam and maintaining that there is no *mitzvah d'oraita* of prayer, rather, the whole enterprise is a rabbinic enactment (Hasagot to Rambam's Sefer HaMitzvot, 5).

### Ramban's challenges to Sefer Hamitzvot **Positive Commandment #5**

The master taught that the 5<sup>th</sup> commandment is that we must worship God, as it is said, "And you shall worship the Lord your God"...and in the words of the Sifrei, "Worship' – this is prayer"... This point is not agreed upon. The Sages already clarified in the gemara that prayer is only Rabbinic...We also see that in *Hilkhot Tefillah* (Ch. 1), he said that one is Biblically obligated to pray every day, but that neither the number of prayers nor the precise form of the prayers is Biblical. So, too, he wrote here in the context of the 10<sup>th</sup> commandment, where he said that prayer has no Biblically fixed time, despite the fact that the obligation to pray is itself Biblical. This also seems incorrect to me...It is reported that R. Yehudah would pray only every 30 days, <sup>23</sup> since he was constantly learning, and based himself on the view that scholars engaged in Torah must stop for *Sh'ma* but not for prayer, <sup>24</sup> which is always only Rabbinic in authority. Rather, prayer is not obligatory at all [on the Biblical plane] and it is merely one of the Creator's traits of kindness that the Blessed One listens to us and answers us whenever we call...and the exegesis in the Sifrei...is merely a support [for a rabbinic practice] or means that part of our service to God must be study and prayer in times of need and that our eves and hearts always be turned to him like those of servants to their masters.

### השגות הרמב"ן לספר המצוות מצות עשה ה

כתב הרב המצוה החמשית שנצטוינו בעבודתו שנ' ועבדתם את י"י אלהיכם וגו'...ולשון ספרי ולעבדו זו תפלה...ואין הסכמה בזה. שכבר בארו החכמים בגמרא תפלה דרבנן...וכבר ראינו בהלכות תפלה (רפ"א) שאמר שחייב אדם מן התורה בתפלה בכל יום אלא שאין מנין התפלות ולא משנה התפלה מן התורה וכך כתב בזה המאמר במצו' עשירית שזמני התפלה אינם מן התורה אבל חובת התפלה עצמה היא מן התורה. וגם זה איננו נכון בעיני...וכבר אמרו (סוף ר"ה) ברב יהודה דמתלתין יומין לתלתין יומין הוה מצלי, לפי שהיה עוסק בתורה וסומך על מה שאמרו (שבת יא.) חברים שהיו עוסקין בתורה מפסיקין לק"ש ואין מפסיקין לתפלה. שהיא דרבנן לעולם. אלא ודאי כל ענין התפלה אינו חובה כלל אבל הוא ממדות חסד הבורא ית' עלינו ששומע ועונה בכל קראינו אליו...ומה שדרשו בספרי...אסמכתא היא או לומר שמכלל העבודה שנלמוד תורה ושנתפלל אליו בעת הצרות ותהיינה עינינו ולבנו אליו לבדו כעיני עבדים אל יד אדוניהם.

1:1/2b, 4:4/8b, Shabbat 1:2/3a; TB Berakhot 21a, Pesahim 54b. Note how R. Yonah explains how we might regard tefillah as not caused by time without embracing the Rambam's model of Biblical tefillah. The ideal of prayer as constant and unlimited is never lost via the Sages' establishment of fixed times. which should be seen merely as the minimum expression of prayer. He also cites Rashi's approach despite tefillah's time-caused status, it is still obligatory on women—as an alternative explanation. Either way, women are fully obligated in tefillah.

<sup>&</sup>lt;sup>22</sup> Note that the substance of this view is supported by Berakhot 21a: אלא: קריאת שמע וברכת המזון - דאורייתא, ותפלה – דרבנן, a text taken up by Ramban in the passages partially cited below.

<sup>23</sup> TB Rosh HaShanah 35a.

<sup>&</sup>lt;sup>24</sup> TB Shabbat 11a.

For Rashi, Ramban, and all others who assume *tefillah* is rabbinic, the conceptual structure of women's obligation in prayer is even simpler. There is only one level of *tefillah*, and when rabbinic texts speak of women's obligation in prayer, they are obviously speaking about the regular and repeated obligation of daily prayer that is *tefillah*.

To summarize, Rambam rules that prayer is commanded in a general way by the Torah, and applies equally to men and women, as it is not caused by time, and when the Sages structured that general commandment into specific prayers at specific times, its equal application to women and men remained. Rashi and the Ramban rule that there is no such thing as Biblically-commanded prayer. Prayer – as we know it, thrice daily and with a particular structure – was instituted by the Sages and applied equally to men and women. Either approach is an effort to explain the same fact, explicitly laid out in the Mishnah, namely, that women and men are equally obligated in prayer.

The **Shulhan Arukh** (OH 106:1), in codifying this universally agreed upon point, follows the Rambam's language, stating that women are obligated in prayer because it is a positive *mitzvah* not caused by time.

And women and slaves, even though they are exempt
from reciting the Sh'ma, are obligated in prayer, because
it is a positive commandment not caused by time.

ונשים ועבדים, שאע"פ שפטורים מק"ש חייבים בתפלה, מפני שהיא מ"ע שלא הזמן גרמא

### The Problem of Women Who Do Not Pray: The Magen Avraham's Defense

Women's and men's equal obligation in prayer remained uncontroversial in halakhic literature until the 17<sup>th</sup> century. <sup>25</sup> Commenting on the Shul<u>h</u>an Arukh's formulation that women are obligated in prayer since it is a positive *mitzvah* not caused by time, the **Magen Avraham** writes the following (O<u>H</u> 106:2):

"A positive commandment": So wrote the Rambam, who thinks that prayer is a positive Biblical commandment, as it is written, "and to serve God with all of your heart..." But Biblically, it is sufficient to recite one prayer a day, in any formulation that one wishes. Therefore, most women have the practice of not praying regularly, because immediately after washing their hands in the morning they say some request, and this is Biblically sufficient, <sup>26</sup> and it is possible that the sages did not extend their obligation any further. But the Ramban thinks that prayer is

מצות עשה - כ"כ הרמב"ם דס"ל דתפלה מ"ע דאורייתא היא דכתיב ולעבדו בכל לבבכם וכו' אך מדאורייתא די בפעם אחד ביום ובכל נוסח שירצה ולכן נהגו רוב נשים שאין מתפללות בתמידות משום דאומרי' מיד בבוקר סמוך לנטילה איזה בקשה ומדאורייתא די בזה ואפשר שגם חכמים לא חייבום יותר

the Rambam thinks that the Biblical core requires one to engage in the threefold prayer of praise, request, and thanks.

<sup>&</sup>lt;sup>25</sup> One simple way of corroborating this point is to search an electronic database for any conjunction of the words אשה (woman), חפילה (prayer), and פטורה (exemption) in all digitized Jewish literature dating prior to the 17<sup>th</sup> century. Such a search turns up nothing that suggests exemption for women in prayer on any level. <sup>26</sup> It should also be noted that the Magen Avraham is choosing here to be somewhat imprecise, since even

Some authors have referred to the Magen Avraham as a source for arguing that women are not obligated in prayer, and therefore, to restrict their eligibility to serve as Sha"tz. But the Magen Avraham does not in fact argue that women are exempt; he confronts a reality in which otherwise pious women are not praying three times a day and attempts to justify this practice as having some basis, even if it is not normative.<sup>27</sup> In so doing, those women can be seen as not sinful, even if their practice is not what one would expect in light of the halakhic sources.

We should note a few points in order to maintain a precise understanding of this text, since so much confusion abounds in the literature on it:

1) The Magen Avraham does *not* say that the Rambam thinks women are exempt from regular, fixed prayer; after all, he knows that the Rambam explicitly says in Hilkhot Tefillah 6:10 and in his commentary to the Mishnah that they are obligated in this. Rather, he correctly notes that according to the Rambam, there is a d'oraita core, which women in his cultural context do fulfill in their personal morning petitions, and suggests that maybe *Hazal* obligated them no further, even though we have no record of such a position: "...immediately after washing their hands in the morning they say some request, and this is biblically sufficient, and it is possible that the sages did not extend their obligation any further". In other words, the Magen Avraham, in order to defend the pious women of his community, argues that the women a) agree with the minority view of the Rambam that there is a *mitzvah d'oraita* for abstract prayer, and b) have intuited a potentially true position of the Sages – that they are obligated no further in prayer – even though no we have no record of any Rishon who held such a position. He uses the conceptual model of two-tiered tefillah advanced by the Rambam as a way of introducing a new way of reading earlier texts to justify contemporary practice.<sup>28</sup> Since this is incompatible with the clear equality of obligation assumed in all earlier sources, many later authorities considered this defense to be a stretch, as we will see shortly.

2) Though the Magen Avraham roots his defense of contemporary women in the Rambam, he emphasizes that most authorities reject the Rambam's whole approach and think that prayer is entirely de-rabbanan, as we saw above in the positions of Rashi and the Ramban. According to this view, there is not even a conceptual foothold from which to launch an argument of a gender gap between men's and women's obligations. If we had only this comment of the Magen Avraham, we would assume that he follows the Ramban, ruling that prayer is entirely rabbinic, since he concludes his words by saying that the majority of authorities rule that way. We need not conjecture, though, because elsewhere the Magen Avraham explicitly says that halakhah accords with the Ramban, and not the Rambam, as seen in his comment on the topic of the proper way to end Shabbat before resuming work. After the Shulhan Arukh records the halakhot stipulating

order for this reading to cohere, which is an exceedingly difficult claim to make.

<sup>&</sup>lt;sup>27</sup> We should not err in assuming that just because apparently Jewish women in mid-17<sup>th</sup> century Poland did not regularly pray the 'Amidah, therefore Jewish women never prayed the 'Amidah regularly and that their obligation has always been a dead letter law. See R. Golinkin's responsum, "נשים במנין וכשליחות ציבור", cited in note 1, pp. 63-67 for a nice collection of evidence showing that women did pray regularly in many time periods and places. For one example, see R. Yonah on Rif Berakhot 7a, s.v. gemara.

28 Note that Magen Avraham would have to say that the Mishnah's ruling only applies to Biblical prayer in

that one should not work before verbally ending Shabbat, and that the conventional place to do this is in the 'Amidah of Saturday night 'Arvit, the Rema (OH 299:10) comments regarding the proper way for women to end Shabbat, since they tended in his context not to pray 'Arvit on Saturday nights:

...And one should also teach women who do not make *Havdalah* in the *'Amidah* to say "[Blessed is the One] Who separates holy from mundane" before they do any forbidden labor...

וכן נשים שאינן מבדילין בתפלה יש ללמדן שיאמרו המבדיל בין קודש לחול קודם שיעשו מלאכה...

On this ruling, the Magen Avraham (*ibid.*, 16) comments the following:

"Who do not make *havdalah*" – Even though they are obligated in the 'Amidah, as is written in Siman 106, nonetheless, most do not have the practice of praying at the end of Shabbat. Perhaps this is because the evening prayer is optional, save the fact that Jews accepted it upon themselves as obligatory, and women never obligated themselves to pray at the end of Shabbat.

שאין מבדילין — **ואע"ג דחייבות**בתפלה כמ"ש סי' ק"ו מ"מ רובן
לא נהגו להתפלל במ"ש ואפשר
לומר כיון דתפלת ערבית רשות
אלא דקבלו עלייהו כחובה והנשים
לא קבלוהו עלייהו במ"ש:

Here, the Magen Avraham explicitly notes that women are obligated in prayer, that this is reflected in Siman 106, and that any reality of women generally not praying was in tension with the law. His comment here demonstrates that his comment back in 106 was meant as an attempt to defend a non-ideal practice, and not a principled expression of the law. In both places, confronted with a clash between adjudicated law and popular practice of otherwise pious people, he engages in the classic rabbinic activity of suggesting a conceptual framework in which the legal establishment need not think of those people as so transgressive. Regarding Saturday night 'Arvit in particular, his defense is more modest than his more sweeping defense in Siman 106: Since 'Arvit was originally not obligatory and became obligatory only through the power of custom, it is more reasonable to suggest that if the masses of women are not praying, maybe they never participated in the custom that transformed 'Arvit into a requirement. This explanation demonstrates that Magen Avraham did not truly endorse his suggestion in

<sup>29</sup> One might try to argue that the Magen Avraham here is not expressing his own view, but rather, that of the Shulhan Arukh. However, the language does not suggest anything of the sort. In any case, even if we accept this more minimal reading of the Magen Avraham, this source still proves that *even the Magen Avraham* recognizes that the view of the Rambam obligates women in regular, "rabbinic" prayer, just like

men, since the Shulhan Arukh is himself a devotee of that position,

<sup>&</sup>lt;sup>30</sup> This revised justification gained a number of adherents, including Shulhan Arukh Harav and Mishnah Berurah. Of course, the status of women's obligation in 'Arvit has no bearing on the question of their fitness to serve as Sha"tz, since the whole question of obligation is relevant only for the matter of the Sha"tz fulfilling others' prayer obligation via the repetition of the 'Amidah. There is no repetition of the 'Amidah in 'Arvit.

Siman 106, and that in fact his starting assumption is one of gender equality vis-à-vis obligation in prayer.<sup>31</sup>

Nonetheless, a number of <u>ah</u>aronim have maintained the Magen Avraham's defense without challenging its legal coherence. For example, the **P'ri Megadim** (*Eshel Avraham*, 106:2), after citing the Rambam in chapter 1 and the Magen Avraham, says, "according to this, a leniency emerged among women to suffice with once a day" – "וֹלְפּ"ן" "Some late <u>ah</u>aronim, such as the **Arukh HaShulhan** (OH 106:7) and, in our own time, R. **Ovadiah Yosef** (Res. *Yabia' 'Omer* OH 6:17), have tried to strengthen the Magen Avraham's defense of the non-praying women by explaining that it was actually the position of the Rambam that women are not obligated in rabbinic, time-oriented, specific prayer. This should be seen as a further attempt to justify ongoing practice, rather than a principled reading. This is especially true of the Arukh HaShulhan, who also creatively attempts to justify women's non-regular prayer habits even according to Rashi and Ramban and concludes by openly acknowledging the nature of his whole exercise as generous defense of popular practice:

...and according to this, with great difficulty one may sustain the fact that our women are not meticulous in all three prayers, according to the position of Rashi and Tosafot, though according to the Rif and the Rambam it makes sense.

...ולפ"ז בדוחק יש ליישב מה שנשים שלנו אינן זהירות בכל הג' תפלות לשיטת רש"י ותוס' ולהרי"ף והרמב"ם א"ש ודו"ק:

Such suggestions that the Rambam thought that women were exempt from rabbinic prayer clearly contradict the evidence of chapter 6 of the Mishneh Torah, and even the Magen Avraham did not believe that the Rambam held such a thing. For the *aharonim* who saw an overarching value in justifying the practices of these otherwise pious women, it became necessary to try to push the Magen Avraham further and actually argue that the Rambam held that women were not obligated in Rabbinic prayer. Other *aharonim* rejected his defense. For one example, here are the comments of R. **Ben-Tzion Lichtman**, the Chief Rabbi of Lebanon in the mid-20<sup>th</sup> century, on this passage of the Magen Avraham (*Benei Tziyyon* on OH 106:1):

...And a further difficulty is that the Rambam wrote in the 6<sup>th</sup> chapter, "Women, slaves, and minors are obligated in prayer." And surely he is dealing there with all of the prayers, and not simply with the prayer of once a day in any form that one wants, but rather with the standard prayer that is the topic of that entire chapter; and furthermore, a comparison is made to minors who are obligated in all of the prayers, and it thus is seen clearly that also the Rambam obligated women in all of the prayers, and it is not as was written by the Magen

...ויותר מזה קשה, דהרמב"ם כתב בסוף פ"ו נשים ועבדים וקטנים חייבים בתפילה. ובודאי מיירי בכל התפילות, ולא רק על...פ"א ביום באיזה נוסח שהוא, אלא בסתם תפילה מיירי בכל הפרק, ועוד דומיא דקטנים שחייבין בכל התפילות, והרי נראה ברור שגם הרמב"ם מחייב נשים בכל

<sup>&</sup>lt;sup>31</sup> See also Magen Avraham 70:1, where he cites R. Yonah's language explaining why women are obligated in *tefillah* as a *time-caused commandment*. This further reveals Magen Avraham's acceptance of the fundamental fact that women are obligated in thrice-daily recitation of the '*Amidah*.

Avraham and the P'ri Megadim.

And this comes out clearly from [the Rambam's] version of the gemara: "Prayer – that is obvious! What would you have thought? Since it is written...[you might have thought that] it is a positive commandment caused by time, and from all positive commandments caused by time women are exempt; therefore, it comes to teach us otherwise."...And this is itself the whole innovation [of the gemara here], that even in [the fixed times for prayer] women are obligated, even though the Rabbinic obligation is dependent on time, and the reasoning is that since the core of the obligation for prayer from the Torah is not dependent on time and women are obligated in it, even the sages did not exclude them from their obligation, even though they fixed a time for it...

התפילות ודלא כמ"ש המ"א והפ"ם.

וזה עולה באמת לפי גרסתו בגמרא, "תפילה פשיטא מ"ד הואיל וכתיב...הו"ל מ"ע שהז"ג וכל מ"ע שהז"ג נש' פטורות קמ"ל."...וזהו כל החידוש שאף בהן נשים חייבות אע"פ שהחיוב דרבנן תלוי בזמן, והטעם הוא דכיון שעיקר חיוב התפלה מדאורייתא אינו תלוי בזמן ונשים חייבות בו אף חכמים לא הוציאו אותן מהחיוב שלהם אע"פ שקבעו לו זמן...

Indeed, other *aharonim*, too, such as R. **Shmuel Ehrenfeld** (*Hatan Sofer*, Tefillah 3:102b), **Maharam ibn Habib** (*Kapot Temarim*, Sukkah 38a), and R. **Yitzhak Taib** ('Erekh Hashulhan OH 106:1), insist that the Rambam mandates that women pray three times daily. The **Mishnah Berurah** (106:4) does not relate to whether the Magen Avraham's passage reflected the correct reading of the Rambam; nevertheless, he expressly states that halakhah accords with the Ramban, that prayer is an entirely rabbinic commandment and unquestionably equal for men and women, and that women should therefore be urged to pray regularly:

...but Ramban's view...[is that the sages] obligated them in *Shaharit* and *Minhah* just like men since prayer is a request for mercy. This is the essence of the matter, since it is the view of most authorities...Therefore, one must impress upon women that they pray the '*Amidah*...<sup>32</sup>

...אבל דעת הרמב"ן...חייבו אותן בתפילת שחרית ומנחה כמו אנשים הואיל ותפלה היא בקשת רחמים. וכן עיקר כי כן דעת רוב הפוסקים...ע"כ יש להזהיר לנשים שיתפללו י"ח...

### Other Defenses of Pious Women Not Praying

Other  $20^{th}$  century  $a\underline{h}aronim$  have gone to lengths to emphasize that women are obligated in prayer according to everyone, including the Rambam, yet have offered alternative frameworks for defending contemporary women who do not pray regularly. These defenses have pointed to lifestyle conflicts making it difficult for women in their particular contexts to pray with proper focus. R. **Ben-Tzion Lichtman** wrote as follows (*Benei Tzion* on OH 106:1):

<sup>32</sup> In fact, the author of the Mishnah Berurah only took up this cause regarding Sha<u>h</u>arit and Min<u>h</u>ah, having adopted the Magen Avraham's defense of women who do not pray Arvit that we described above.

And it seems to me that the way to justify the practice of those women who do not pray with regularity is that most women are encumbered with dealing with the needs of the house and the care of children and preparation of their needs, which distracts the mind and disorients proper focus, and in such a state one should not pray, as the Rambam wrote in Chapter Four: "If one's mind is disoriented and one's heart distracted, it is forbidden to pray until the mind gets settled"...And even though nowadays we are not concerned with this, since we are not so focused in our prayer [anyway], regarding the distraction of women [i.e. the raising of children] it is different...But those women who find themselves in a situation where they can pray certainly must pray all three prayers, because on the basis of the law they are obligated in all of the prayers according to all authorities.

ולי נראה ללמד זכות על רוב הנשים שאיז מתפללות בתמידות דרוב הנשים מוטל עליהן להתעסק בכל צרכי הבית ובטיפול ילדים והכנת צרכיהם, שמטריד הלב ומבלבל הכונה, ובמצב זה איז להתפלל כמו שכתב הרמב"ם בפ"ד מצא דעתו משובשת ולבו טרוד אסור לו להתפלל עד שתתישב 'דעתו...ואע"ג שעכשיו איז אנו נזהרי בזה מפני שאין אנו מכונים כ"כ בתפלה, לגבי טרדות הנשי' שאני...אבל אלו הנשי' שנמצאות במצב שיכולות להתפלל ודאי צריכות להתפלל כל הג' תפלות, כי מדינא נשים חייבות בכל התפלה אליבא דכו"ע.

In our own day, the Israeli authority R. **Yehuda Herzl Henkin** (*Benei Banim*, II:6) follows the Benei Tzion.

Another *aharon*, R. **Yekutiel Yehudah Halberstam**, the 20<sup>th</sup> century Rebbe of the Sanz-Klausenberg Hasidic dynasty, followed a similar route in explaining that even according to the Rambam, women are obligated in prayer, and that Magen Avraham himself understood this. He offered a similar, alternative defense of women who don't pray (*Divrei Yatziv* OH #121)<sup>33</sup>:

But I can still justify the practice described by the Magen Avraham, since in the Talmud *Eruvin* 65a[it is said that] I can exempt from the law of prayer, as it is written, "drunk, but not from wine," see there...and there is in any event certainly a sound basis for women today, who are not sufficiently focused...[given that] women are extremely burdened, subject to their husbands' authority and responsible for children. Therefore most women do

אך עדיין יש לי להצדיק המנהג שהזכיר המג"א, כיון דבש"ס עירובין ס"ה ע"א יכולני לפטור מדין תפלה שנאמר שכורת ולא מיין עיי"ש...ועכ"פ יש סמך גדול לנשים בזמה"ז שאינן בגדר ימוד את עצמו שיכול לכוון...וק"ו לנשים דטרידי טובא ורשות בעליהם עליהם והטף תלויים בהם, לזה נהגו רוב

<sup>&</sup>lt;sup>33</sup> Rabbi Menachem Nissel cites the <u>Hafetz Hayim</u> (Rav Yisrael Meir HaKohen, author of the Mishnah Berurah) as also holding the view that women burdened with childrearing may be exempt from *tefillah* on account of these burdens. Menachem Nissel, *Rigshei Lev: Women and Tefillah: Perspectives, Laws, and Customs*, Targum/Feldheim, 2001, p. 82-87, including the footnotes. His citation is to *Sihot Hafetz Hayim* I:27. Rabbi Nissel also cites evidence that this was the position of 20<sup>th</sup> century luminaries such as R. **Shlomo Zalman Auerbach** (via oral tradition), R. **Yakov Kaminetzki** (*Emet le-Yaakov* OH 106:131), the <u>Hazon Ish</u> (cited in *Shu"T Mahazeh Eliyahu* 19:5), R. <u>Hayim Pinhas Scheinberg</u> (personal communication with R. Nissel), and R. **Moshe Shternbuch** (*Moadim U-Zemanim* I:9, *Teshuvot Ve-Hanhagot* I:74, III:OH 36). He also emphasizes that R. Scheinberg, R. **Eliyahu Greenblatt**, and R. **Yosef Shalom Elyashiv** stress that a woman who is not in a situation of familial burden is obligated to pray regularly, pp. 85-86, footnotes 14-15.

not pray regularly, and only when they judge themselves to have sufficient focus do they pray, when it is possible. This, in my humble opinion, is correct...since they are in truth included [like men] in the original obligation of prayer...<sup>34</sup>

נשים שאין מתפללות בתמידות, ורק כשימודו בעצמן שיכולים לכוון עכ"פ לפי האפשרות, ולפענ"ד זה אמת...שכיון שבאמת מעיקר התקנתא היו חייבות בתפלה...

### **Summary**

In summary, throughout the classical halakhic literature, the full and equal obligation of women and men in prayer was maintained without controversy. In the period of the aharonim, some authorities attempted to defend the religious integrity of pious women who nonetheless did not pray regularly. The Magen Avraham's defense was far-reaching, but never claimed to be the ideal law. In any event, it met with resistance even as a defense by other authorities and even the Magen Avraham himself seems to have abandoned it. A more solid defense argued that the proposed exemption is properly understood as an exemption for women engaged in childcare, while engaged in childcare, a defense which is dependent on activity conflicts, not on gender, as it would just as reasonably be invoked to defend men who, on account of the pressures of childcare, become less meticulous about prayer than Rabbinic law would have them be.<sup>35</sup> The essential equality between men and women regarding prayer thus remains, even as those in caretaker roles may find themselves with a contextual exemption in certain situations. None of this affects a person's ability to discharge others' obligations in prayer by serving as Sha"tz, since, as was already clear in the Mishnah, men and women are equally obligated in prayer.

Women's supposed exemption from prayer is a red herring in the conversation regarding them serving as *Sha"tz*: 1) under almost no circumstances does a *Sha"tz* today have the ability to fulfill anyone's obligation in prayer (and under no circumstances for *'Arvit*, where there is no repetition of the *'Amidah*), since prayer books are widely available with translations; 2) even in the rare circumstance in which the *Sha"tz* is fulfilling other worshippers' obligations, there is no basis for any claim that women are, by dint of the fact that they are women, any less obligated than men in prayer. This is obviously true according to the dominant view of the Ramban (without any controversy) and is equally true according to the less-supported position of the Rambam. The equivocation regarding the Rambam's view reflects attempts to find ways to justify pious women who were not praying, but does not undermine their fundamental obligation in prayer. Other defenses in the past century focusing on lifestyle conflicts have proven

<sup>&</sup>lt;sup>34</sup> This passage in *Divrei Yatziv* is not only significant for its rejection of Magen Avraham's justification of the practice of many women not to pray regularly and his proposal of an alternative justification. He goes beyond *Benei Tziyyon* in actively endorsing women's full essential obligation in *tefillah* even in cases where a *berakhah levatalah* is at stake. The responsum here is dealing with the question of whether a woman who lit Shabbat candles may then pray Minhah—even if she did not explicitly condition her lighting with this in mind. R. Halberstam rules that she may, because her obligation in *tefillah* is identical to men and is thus a standing responsibility that her lighting of the candles and early acceptance of Shabbat cannot eliminate.

cannot eliminate.

35 Indeed, such a basis for exempting men who are primary caregivers is advanced in Responsa *Or Letziyon* II 7:24.

<sup>&</sup>lt;sup>36</sup> Two arguments appear in the Aharonim claiming that women are exempt from Musaf. 1) Women are exempt from Musaf because this prayer exists as a memory of the public sacrifices, and women were not

themselves more legally sound. From all angles, women and men are equally commanded in prayer.

### The "Mitzvah" of Public Prayer

Some recent authors<sup>37</sup> have tried to argue for women's continued exclusion from serving as *Sha*"tz, even while acknowledging that such an exclusion cannot be justified on grounds of their not being obligated in prayer. They have argued, instead, that while women are obligated fully in individual prayer, there is a separate "mitzvah of public prayer", which is incumbent upon men, but not upon women, and that this gap precludes women from serving as *Sha*"tz. We will here explore whether such a mitzvah exists and if so, explain its nature and function.

A number of Talmudic sources engage with the question of public prayer ("davvening in a minyan"). On Berakhot 47b, the gemara discusses R. Eliezer's decision to free his slave so that the ex-slave could be the tenth in a minyan:

obligated to contribute to the pool of funds set aside for this purpose. [See Mishnah Shekalim 1:5.] This argument first appears in R. Shaul Berlin's collection of responsa, Besamim Rosh. [R. Berlin edited this collection and claimed that it contained lost medieval responsa, including many of the Rosh, R. Asher b. Yehiel. Many contemporary rabbis—and modern scholars—considered the work to be a fraud composed by R. Berlin himself. His work has nonetheless been quoted occasionally by a range of later poskim.] Besamim Rosh #89 makes the above claim and then goes on to make the interesting claim that women nonetheless have the practice to pray "everything, and have obligated themselves in all the mitzvot." ( וחייבו (את עצמן בכל המצות The argument for exemption spelled out here is cited in Responsa R. Akiva Eiger I:9. R. Yitzhak Elhanan Spector rejects this argument outright in Responsa Be'er Yitzhak OH #20, given that it would imply that no one under 20 is obligated in Musaf. 2) Musaf is a time-caused commandment and therefore, following the rule of the Mishnah in Kiddushin, women are exempt from it. This logic is advanced in R. Yehezkel Landau's Tziyyun Lenefesh Hayyah on Berakhot 26a s.v. veshel musafin. This claim is a bit strange on its own, given that the gemara already seems to have accounted for the general tension between women's obligation in tefillah and the principle of exemption from time-caused commandments. But R. Landau develops his point by using Rashi's text of the gemara, which emphasizes that women are obligated in prayer because they it is a "request for mercy" (רחמי בינהו). Given that several rishonim argue that Musaf is not a request for mercy and therefore one cannot make up for a missed Musaf 'Amidah by repeating the next tefillah (תשלומין), it must be that the basis for women's obligation is not present and therefore we revert to the rule in Mishnah Kiddushin. This is a difficult argument on a few counts, not least of which is that it is a debate among commentators as to whether one can make up for a missed Musaf `Amidah (see Meiri on the sugya in Berakhot). Furthermore, once women are included in the mitzvah of prayer, there is no indication that they are then excluded from any part of it, and it is surprising to think that such a significant exclusion would not have been mentioned anywhere by the poskim. Most important, R. Landau's "argument" here is essentially a pilpulistic analysis of what seems to be an extraneous word in the Tosafot there, and it is very unclear whether he ever intended it to have practical halakhic force. In any event, R. Mordechai Ze'ev Ettinger and R. Yosef Shaul Nathanson (in Magen Gibborim, Elef Hamagen 106:4) both rejected R. Landau's argument here, claiming that in fact the Musaf `Amidah is fundamentally a request for mercy and that the ancient practice in Eretz Yisrael of saying an 18 berakhah 'Amidah for Rosh Hodesh Musaf confirms this point. Therefore, women are equally obligated in Musaf. In their words, הדין ברור, the law is clear on this matter. R. Spector also challenges R. Landau here. For a review of the basic positions on this topic, see Responsa Yabia Omer II OH 6:4-6. The most one could construct out of the dissenting Aharonim would be support for those women who do not regularly pray Musaf. There is not, however, enough to work with to claim that communities that assume women have the same obligation as men in Musaf are somehow playing on the legal margins. We will leave the discussion here with the unambiguous bottom line of R. Spector from the above teshuvah: וכן מוכח מסתימת הפוסקים דנשים חייבות בתפלה ולא חלקו בין מוסף לשארי תפלות: women are obligated in all types of *tefillah* without any distinction. For example, see R. Broyde and R. Wolowelsky's article cited in note 1 above.

It happened that R. Eliezer entered the synagogue and did not find ten, so he freed his slave and rendered him the completion of the ten.

...How could he act thus? Did not R. Yehudah say, "Anyone who frees his slave transgresses a positive commandment, as it said, 'forever treat them as slaves' (VaYikra 25:46)"?!

... For a *mitzvah* it is different.

[But] it is a *mitzvah* that is performed through a transgression!

A communal *mitzvah* is different.

And R. Yehoshua ben Levi said, "A person should always get up and go early to the synagogue in order to merit and be counted with the first ten"...

מעשה ברבי אליעזר שנכנס לבית הכנסת ולא מצא עשרה, ושחרר עבדו והשלימו לעשרה.

...והיכי עביד הכי? והאמר רב יהודה: כל המשחרר עבדו עובר בעשה, שנאמר, "לְעֹ'לָם בָּהֶם תַּעֲב' דוּ" (ויקרא כה:מו)!

- לדבר מצוה שאני.
- מצוה הבאה בעבירה היא!
  - מצוה דרבים שאני.

ואמר רבי יהושע בן לוי: לעולם ישכים אדם לבית הכנסת כדי שיזכה וימנה עם עשרה הראשונים...

The critical phrase in this passage is מצוה, literally, "a mitzvah of the many." This quality of praying with a *minyan* is what justified R. Eliezer's violation of the gemara's assumed ban on freeing slaves. There are multiple ways to interpret this phrase, each interpretation having different consequences for how we understand the practice of public prayer and its relationship to the individual: 1) מצוה דרבים means an individual obligation possessed by many people. R. Eliezer's action was warranted because he enabled multiple people to fulfill their individual obligations in public prayer. This reading supports the notion of an individual obligation to pray with a minyan. 2) מצוה דרבים means a communal obligation to have a minyan and, as such, devolves as a categorical imperative on any given individual, though not as a specifically individual obligation. Once the community has assured the presence of a minyan, no individual is specifically obligated to be there as part of his/her own religious obligations. According to this reading, all individuals who count in a *minyan* are responsible to do what they can to make sure the community has a *minvan*, but there is no individual obligation beyond that categorical imperative. 3) מצוה דרבים simply means a praiseworthy act that involves many people, but does not signify a neatly quantifiable personal obligation. This reading maintains that while it is certainly praiseworthy, beneficial and possibly even of deep importance to pray in a *minyan*, it is not a formal obligation like other *mitzvot*.

Various sources within the Talmud Bavli can be marshaled to support these various readings. In one passage in the gemara (Pesahim 46a), R. Abbahu cryptically says in the name of Resh Lakish, "for kneading, for prayer, and for the washing of the hands: four mil" – "לגבל ולתפלה ולנטילת ידים: ארבעה מילין". **Rashi** explains "prayer" there to refer to the degree one must inconvenience oneself to pray in a synagogue:

And so, too, for prayer: if a person is traveling along the way and the time comes to sleep and to pray, if there is a synagogue ahead within a distance of four *mil*, then one should go on and pray there and sleep there.

וכן לתפלה, אם מהלך אדם בדרך ובא עת ללון ולהתפלל, אם יש בית הכנסת לפניו ברחוק ארבע מילין הולך ומתפלל שם ולן שם. This may argue for an individual obligation to pray in a *minyan*, even when one is on the road, outside of one's local community, <sup>38</sup> though it may be speaking more about importance of setting—where one can pray in a sacred location, one should do so. In any event, Rashi's interpretation is disputed by **R. Hananel**, who explains "prayer" here to refer to the distance that one needs to travel to find water so that one can wash one's hands before praying. <sup>39</sup> If one adopts this reading, there is certainly no clear source formally mandating the individual to pray in a minyan.

Other sources seem to militate against the notion of an individual obligation, even as they may leave room for the notion of a categorical imperative. When R. Yehoshua ben Levi, in the passage above, says that "A person should always get up and go early to the synagogue in order to merit and be counted with the first ten", the language suggests the core obligation here is to make sure that there is a *minyan* present in the community. Similarly, when Resh Lakish says, "Anyone who has a synagogue in his city and does not enter there to pray is called a bad neighbor" – שיש לו בית הכנסת בעירו ואינו נכנס שם (TB Berakhot 8a), the emphasis is not on fulfilling an individual obligation, but rather on the need to make sure that the community can live out its collective obligations.

Yet other passages suggest that the act of public prayer should not be engaged on the axis of obligation at all. These sources suggest that public prayer is to be judged by its metaphysical value, not by its ability to fulfill personal obligations. It is a spiritual means rather than a personal or communal end. Theological expression for this value can be found in the gemara's statement that the "time of favor" when the Psalmist beseeches God to answer our prayers is in fact, "the time when the community prays" (TB Berakhot 7b-8a, on Psalms 69:14). Similarly, the continuation of the gemara learns from other Biblical verses (Job 36:5 and Psalms 55:19) that "The Holy One never despises the prayer of the many" (*ibid.*, 8a). In other words, though individuals risk God not hearing their prayers because of the offending consequence of their sins, a community's prayers will always be heard: the corporate voice drowns out individual sins.

R. Yohann said in the name of R. Shimon b. Yohai: What is the meaning of the verse "I am my prayer to you, YHWH, at a time of goodwill"

(Psalms 69:14)? When is a time of goodwill? When the community is praying.

R. Yose b. R. <u>H</u>anina derives it from here: "So says YHWH: at the hour of favor I answer you…" (Isaiah 49:8).

R. Aha b. R. Hanina derives it from here: "See, God is great and is not contemptuous..." (Job 36:5), and it is written: "[God] redeems my life in peace from the battle against me, as though there

אמר רבי יוחנן משום רבי שמעון בן יוחי, מאי דכתיב, "וַאֲנִי תְפִּלָּתִי לְדָ ה' עֵת רָצוֹן..." (תהלים סט:יד) - אימתי עת רצון - בשעה שהצבור מתפללין. רבי יוסי ברבי חנינא אמר, מהכא: "כֹּה אָמֵר ה' בְּעַת רָצוֹן עֲנִיתִידָ..." (ישעיהו מט:ח).

רבי אחא ברבי חנינא אמר, מהכא: "הֶּן אֵל כַּבִּיר וְלֹ`א יִמְאָס..." (איוב לו:ה), וכתיב: פָּדָה בְשָׁלוֹם נַפְשִׁי מִקְּרָב לִי כִּי בְרַבִּים הָיוּ עִמָּדִי (תהלים נה:יט).

<sup>&</sup>lt;sup>38</sup> For a later adherent of this approach, see **Iggerot Moshe OH II:27**.

<sup>&</sup>lt;sup>39</sup> The interpretational advantage of this reading is obvious: all three portions of the statement then deal with water, with "washing of the hands" referring to the water required before eating bread. Of course, R. Hananel may also be pushed to this perhaps less intuitive reading of the the word "*l'tefillah*" by the total foreignness of the idea that one would be obligated to pray with a *minyan*.

were many with me" (Psalms 55:19). So was it also taught [in a *baraita*]: R. Natan said, From where do we learn that the Holy One never despises the prayers of the many? As it is said, "See, God is great<sup>40</sup> and is not contemptuous..." (Job 36:5), and it is written: "[God] redeems my life in peace from the battle against me, etc." (Psalms 55:19). Said the Holy One: Anyone who engages in Torah and acts of lovingkindness and who prays with the community, I relate to that person as though he had redeemed Me – Me and My children – from the nations.

תניא נמי הכי, רבי נתן אומר: מנין שאין הקדוש ברוך הוא מואס בתפלתן של רבים, שנאמר: "הֶן אֱל כַּבִּיר וְלֹ'א יִמְאֶס..." (איוב לו:ה), וכתיב: פָּדָה יְשָׁלוֹם נַפְשִׁי מִקְּרֶב לִי וגו' (תהלים נה:יט): אמר הקדוש ברוך הוא כל העוסק בתורה ובגמילות חסדים ומתפלל עם הצבור - מעלה אני עליו כאילו פדאני, לי ולבני, מבין אומות העולם.

Classical sources never articulate expression of a full-fledged personal obligation for an individual to pray in a *minyan*. This is likely explainable, in part, because of a person's inability to fulfill such a "mitzvah" on his or her own. Moreover, we find views that some commitments trump praying with a *minyan* if there is a conflict. For example, in the same Talmudic passage we cited above (Berakhot 8a), we find R. Nahman justifying not bothering to go to the synagogue because he was "unable" and not convening a *minyan* where he was, because that would be "difficult". A few lines later, we find several sages concluding that those deeply engaged in Torah study should pray where they are, in the *beit midrash*, rather than interrupting their study to join the community.

R. Yitzhak asked R. Nahman: why didn't you

come to synagogue to pray? He said to him: I couldn't.

He said to him: then gather 10 and pray.

He said to him: that would be difficult for me. Then why not tell the *hazzan* to inform you of when they are praying?

He said to him: why should I go to such lengths? He said to him: because R. Yohanan said in the

name of R. Shimon b. Yohai...<sup>41</sup>

And Abaye said: Originally, I would study in the house and pray in the synagogue. When I heard that which R. <u>Hiyya</u> b. Ami said in the name of Ulla – "From the time the Temple was destroyed, the Holy, Blessed One has only the four cubits of Halakhah" – I would pray only where I studied. R. Ami and R. Asi, even though there were

אמר ליה רבי יצחק לרב נחמן: מאי טעמא לא אתי מר לבי כנישתא לצלויי? אמר ליה: לא יכילנא.

אמר ליה: לכנפי למר עשרה וליצלי.

אמר ליה: טריחא לי מלתא. – ולימא ליה מר לשלוחא דצבורא, בעידנא

דמצלי צבורא ליתי ולודעיה למר. –

?אמר לִיה: מאי כולי האי

אמר ליה: דאמר רבי יוחנן משום רבי שמעון בן יוחי...

ואמר אביי: מריש הוה גריסנא בגו ביתא ומצלינא בבי כנישתא, כיון דשמענא להא דאמר רבי חייא בר אמי משמיה דעולא: מיום שחרב בית המקדש אין לו להקדוש ברוך הוא בעולמו אלא ארבע אמות של

<sup>40</sup> This translation reflects the contextual meaning of the verse. The proof is based on reading the word for "great" as referring to the greatness—in quantitative terms—of the community.

<sup>41</sup> Here, the gemara continues with the passage we cited above about the positive values associated with praying with the community.

thirteen synagogues in Tiberias, would pray only	זיכא
between the columns where they studied.	
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הלכה בלבד – לא הוה מצלינא אלא היכא דגריסנא.

רבי אמי ורבי אסי אף על גב דהוו להו תליסר בי כנישתא בטבריא לא מצלו אלא ביני עמודי, היכא דהוו גרסי.

Various *rishonim* cite these voices and weigh them differently. As noted above, **Rashi** seems to argue for a personal obligation in public prayer. Rambam quite clearly points to the metaphysical benefits highlighted on TB Berakhot 8a while pointedly avoiding any language suggesting a personal obligation. It is fairly clear that for him there is no concrete individual obligation in play at all here:

### Rambam, Laws of Prayer, 8:1, 3

The prayer of the community is always heard, and even if there are sinners in it, the Holy and Blessed One does not reject the prayer of the many. Therefore, a person needs to participate with the community, and not to pray alone when one could pray with the community, and a person should always arrive early and leave late from the synagogue...and anyone who has a synagogue in one's city and does not pray with the community is called a bad neighbor...A *beit midrash* is greater than a synagogue, and great sages, even though they have in their city many synagogues, would pray only in the place where they would engage with Torah—and this is provided that there is communal prayer there.

### רמב"ם תפילה ח:א, ג

תפלת הציבור נשמעת תמיד ואפילו היו
בהן חוטאים אין הקדוש ברוך הוא מואס
בתפלתן של רבים, לפיכך צריך אדם
לשתף עצמו עם הציבור, ולא יתפלל
ביחיד כל זמן שיכול להתפלל עם הציבור,
ולעולם ישכים אדם ויעריב לבית הכנסת
שאין תפלתו נשמעת בכל עת אלא בבית
הכנסת, וכל מי שיש לו בית הכנסת בעירו
ואינו מתפלל בו עם הציבור נקרא שכן
רע...בית המדרש גדול מבית הכנסת,
וחכמים גדולים אף על פי שהיו להם
בעירם בתי כנסיות הרבה לא היו מתפללין
אלא במקום שהיו עוסקין שם בתורה והוא
שיתפלל שם תפלת הציבור.

Others make clear that, while the community may have an obligation to constitute a *minyan*, this not an individual obligation *per se*. For example, **Maharil** addressed the question of legitimate purposes for establishing an *'eruv tehumin*, the establishment of a food source far out in one direction in order to enable one to extend the distance permissible to walk on Shabbat (*Sefer Maharil*, Laws of *'Eruvei Hatzeirot*):

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<sup>&</sup>lt;sup>42</sup> Tur (OH 90) favors Rashi's reading of the gemara over that of R. Hananel. Nonetheless, he seems not to embrace the obligation in nearly as full terms, in principle accepting the notion that other values—such as praying where one learns—can trump the value of praying in a *minyan*. Tur, following Rosh, doubts whether contemporary scholars are truly so engaged in Torah study as to justify such an exemption from supporting the community, and out of concern that the masses would misunderstand the nature of the exemption. He therefore rules that this exemption no longer applies. [Rambam, whom we will cite in a moment, limits the exemption for scholars by saying that sages may pray in their places of study only when there is a *minyan* there.] But the idea that praying with a *minyan* is ultimately a highly-valued, strongly preferred act rather than a hard and fast obligation seems to prevail for the Tur. This explains Tur's language of אור בכל כהו One should try with all one's might" to pray with the community, plaintive language not normally used with straightforward, individual obligations. Shulhan Arukh borrows this language, which we will return to below.

"It is taught: 'We set an 'eruv tehumin only to rely on it for a mitzvah, such as to go to a house of mourning or to a wedding celebration." [Maharil] said that he did not see in any authority that it is permitted to make an 'eruv tehumin to go to synagogue in order to pray with ten, except for the Semak and the Agudah. R. Ika said to him, "And should it be of less status than a wedding?" He said to him, to pray with ten is not truly a mitzvah, because one can direct one's prayer in one's house, for we do not find that the sages required one to pray with ten.

"תנן אין מניחין עירוב תחומין רק לסמוך עליו לילך לדבר מצוה כגון לבית האבל או לבית המשתה." אמר מהר"י סג"ל דלא ראה בשום פוסק שמותר לערב תחומין לילך לבה"כ כדי להתפלל בעשרה רק בסמ"ק ובספר אגודה. א"ל הר"ר איקא ולא יהא פחות מבית המשתה, א"ל הרב להתפלל בעשרה אינה כ"כ מצוה דיכול לכוון תפלתו בביתו, דלא אשכחן אשר הצריכו חכמים להתפלל בי'...

Maharil's North African contemporary R. **Shimshon Tzema<u>h</u> Duran** concisely summed up this conception of praying with a *minyan* (Responsa Tashbetz, 1:90):

It is an obligation on the community to pray with ten, but if there are there more than ten, each one can say, "But without me there are still ten, and if so, I can refrain from coming to join you at that time"... ...שחובת צבור היא להתפלל בעשר' אבל אם יש שם יותר מעשרה כל אחד יכול לומר לו והלא יש עשרה חוץ ממני וא"כ הריני יכול להשמט מלבא אצלך באותה שעה...

Four centuries later, the **Havot Yair**, similarly, explicitly rejected the notion that there is a personal obligation to pray in a *minyan*. In that case, why did R. Eliezer free his slave to be a 10<sup>th</sup> in a *minyan* and why did the gemara justify this on the grounds that this was a "*mitzvah*"?

...It seems to me that the intent is not that such a mitzvah [of praying in a *minyan*] is incumbent on every Israelite, rather it means to suggest that it is the sanctification of God's name, and only among the many, and had he not freed him, this *mitzvah* would have been unfulfilled by all of the people gathered together.

ונ"ל דאין הכוונה דהמצוה נהוגה בכל ישראל רק ר"ל שהוא קידוש השם ודווקא ברבים ואם לא שחררו היה בטל המצוה מכל הרבים ההם שהיו נאספין יחד.

This claim, that praying in a *minyan* is a public responsibility, but not an individual *mitzvah*, seems to be the dominant perspective on this important activity. Not being a personal obligation does not mean it is value-less, of course. Far from it: if a community must convene public prayer, each citizen has a certain categorical imperative to contribute toward its successful formation, though there is no full-fledged personal obligation. This explains the language of the codes, such as the **Shulhan Arukh**: "A

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<sup>&</sup>lt;sup>43</sup> Siman 282.

<sup>44</sup> It is possible that these authorities followed Rashi in understanding there to be a formal *mitzvah* on each individual to pray in a *minyan*. But it is at least as likely that they saw the civic duty and/or metaphysical benefits of going to pray in a *minyan* as sufficient justification for establishing an 'eruv tehumin, akin to other civic duties incumbent upon the community, such as mourning or rejoicing at a wedding.

person **should make great effort** to pray in the synagogue with the community" – "ישתדל אדם להתפלל בבית-הכנסת עם הציבור" (Sh"A OH 90:9).

In sum, there are rishonim whose words suggest an idea that individuals are obligated to pray in a *minyan*. Others expect individuals to attend as part of their civic duty to help the community fulfill its *communal* obligation, but balk at the notion that the individual is obligated. Finally, other voices are explicit that a discourse of obligation misses the point and that the community gathers in prayer as an effective strategy for communicating with God.

No gender gap is ever articulated with regard to this responsibility—such as it is—before the late 17<sup>th</sup> century. Some recent authors have cited a few *aharonim* to evince the claim that there is such an obligation, that women are exempt from it, and that said exemption prevents them from leading the community in prayer. Of particular prominence in these claims is R. **Yaakov Reischer**'s statement that "a woman is not commanded at all to pray with ten" – אינה מצוה כלל להתפלל בעשרה (Responsa Shevut Yaakov, 3:54). When we look at this statement in context, though, we will see that such a claim is unjustified. Here is a fuller citation:

I was asked by a certain settlement regarding a homeowner who had a room in his house, and he had given permission to the community to enter into that room, men and women separately, to pray. And now, a great dispute had come about between the homeowner and one of the men and his wife who were accustomed to go to this synagogue that they should no longer go to the synagogue...And I ruled that he could not forbid out of doubt one of the members of the community from joining on to the Lord's portion, but regarding his wife, who was always starting arguments, he could forbid her that she should not go to the synagogue at all, because even though the woman is obligated in prayer, as is clear in [Shulhan Arukh] Orah Hayim 106, nevertheless, since the woman is not commanded at all to pray with ten, and she does not count toward the *minyan*, nor for *kedushah* at all, as we say, "What would a woman be doing in the Temple Court?" [BT Kiddushin 52b]<sup>45</sup> and "a young

נשאלתי מישוב אחד שבעל הבית אחד יש לו חדר בתוך ביתו והניח ליכנס הצבור בתוך החדר אנשים לחוד ונשים לחוד להתפלל ועכשיו נולד קטטה גדולה ביו בע"הב עם אחד מאנשים ואשתו שרגיליז לבוא לבה"כ שלא יבואו עוד לבה"כ...ופסקתי שלא יוכל לאסור מספיקא על אחד מן הקהל להסתפח מנחלת ה' אבל על אשתו המתחלת תמיד במריבה יוכל לאסור עליה שלא תבא לבה"כ כלל כי אע"פ שהאשה ג"כ מחויבת בתפלה כמבואר בא"ח סי' ק"ו מ"מ כיון שהאשה אינה מצוה כלל להתפלל בעשרה ואינה מצטרפת למנין ולא לקדושה כלל כדאמרינן "אשה בעזרה מנין?" [קדושין נ"ב:] ו"בתולה ציילנית מבלי עולם" ע"ש בסוטה דף כ"ב וכבר כתב המ"א

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<sup>&</sup>lt;sup>45</sup> Here, the Shevut Yaakov quotes Rabbi Yehudah's words in a baraita in which he accuses Rabbi Meir's students of badgering him with irrelevant and picayune questions, such as regarding the status of a marriage transaction of a *kohen* with the parts of the sacrificial meat which are his portion. Rashi understands R. Yehudah's point to be that this is a foolish question because the meat is useless if it leaves the Temple court, and women are not allowed in the Temple court. The Shevut Ya'akov imports this sense of the words to bolster his rhetorical point about women's presence in the synagogue being unnecessary: if they weren't even allowed in the main Temple court, and the synagogue is in some way an imitation of the Temple, then their presence there is extraneous as well, giving license to the homeowner to exclude a difficult woman. However, note that Tosafot (s.v., "") attack this interpretation of Rashi, pointing out

woman who prays excessively destroys the world" – see Sotah  $22^{46}$  – and the Magen Avraham has written [and he cites the text that we have discussed above at length]...therefore it seems to me that he can prevent her [from going to the synagogue in his house] until they reconcile and forgive each other, for women are likely to bicker and fight a lot. So have I ruled...

בסי' ק"ו ס"ק ב' וז"ל ולכן נהגו רוב נשים שאינן מתפללים בתמידות משום דאומרים מיד סמוך לנטיל' איזה בקשה ומדאורייתא די בזה עכ"ל המ"א לכן נ"ל דיכול למחו' בידה עד שיפייסו וימחול זה לזה כי הנשי' עלולת להרבה בקטטות ומריבות וכן דנתי למעשה...

The first thing to note is that Shevut Ya'akov assumes and relies upon the reading of the Magen Avraham positing that women are not obligated in prayer at all – a claim which we already demonstrated is unsustainable textually and controversial among the poskim, to put it mildly. Moreover, given the absence of a textual citation for Shevut Ya'akov's claim that women are "not commanded at all to pray with ten" – since, after all, no such source exists – it seems much more reasonable to understand him to be saying just that inasmuch as women don't count toward the minvan – a non-controversial assumption in his context, which we will later explore fully for ours – they don't have that categorical imperative to help the community form the *minvan*. This should be seen as a legal expression of that sense that many people in non-egalitarian communities have, in which many men feel driven to go to shul during the week "to help make the minvan", whereas women in the same communities are much less likely to make that effort, since they are not "needed". Here, the Shevut Ya'akov seems to be saying that in such a community, the homeowner may not restrict a troublemaking man from the synagogue in his home, since the man's presence fulfills more than his own personal desire to come to shul, but also reflects his portion of the communal duty to sustain the minyan, and that his absence that weakens the community. A troublemaking woman, on the other hand, could be restricted: since she shoulders no part of the communal duty, her presence reflects just her own personal desire to attend and participate in the life of the community, which can be forfeited through anti-social behavior.

Saying that women are "not obligated in communal prayer", then, may well be just an extension of saying that they don't count toward the *minyan*. To the extent that

that, counter to Rashi's unsupported claim, no mishnah stipulates that women are excluded from the Temple court. Moreover, they argue, Mishnah Zevahim 3:1 assumes women's legitimate presence there, as it teaches that a sacrifice slaughtered by a woman is legitimate, and further, a *Sotah* (woman accused of adultery) and a female Nazirite must bring offerings in the Temple Court. Tosafot, therefore, interpret the baraita's words more modestly, to mean "What would a woman be doing getting betrothed in the Temple Court?!" That is, "This whole case is so preposterous and remote that you shouldn't be wasting my time with it." The Shevut Ya'akov obviously knew this Tosafot; his use of the quotation from the gemara should be read as an exercise of poetic license for a rhetorical point, and not as a commitment to a legal rule.

<sup>46</sup> This opaque statement displays an aversion to excessive piety in female figures, though it is immediately challenged by another source in the gemara that features R. Yohanan praising a young woman whom he finds praying. Rashi understands the core problem here to be one of sorcery and witchcraft being dressed up as genuine religious expression. In any event, the passage is not referring to the Amidah and Shevut Ya'akov's use of the phrase here is clearly part of a larger rhetorical flourish he is building to make his case for excluding this woman from the prayer space.

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such an obligation it exists, it will apply to anyone who has the ability to count towards the *minyan*, a status determined, as we will see, by other criteria. 47

Even more important, however, is that even if one posits such a gender gap in the "obligation in communal prayer", Shevut Ya'akov nowhere suggests that the leader somehow fulfills the obligations of *others* in communal prayer. An assumption that that women need not go to *shul* in the same way as men do is irrelevant to the obligations of others in the Amidah; nothing in Shevut Ya'akov argues this point. Whatever the obligation in communal prayer may be, it seems to be about *attending* communal prayer and is something that cannot and need not be fulfilled vicariously through the prayer leader.

We should also note that the context in this responsum is a specific woman who is perceived to be a troublemaker, where a generous member of the community went above and beyond his categorical imperative by creating space for a synagogue in his home, and then felt that his good deed was being punished via harassment from his personal nemesis in his own home. Any reasonable person may feel sympathetic toward an argument allowing this homeowner to restrict entry to his home to a quarrelsome individual. One may imagine a subtext of fearing that if forbidden from restricting her, he may shut down his house to public access entirely. Extrapolating from this sort of case to all other contexts must be done with great caution.

Finally, notwithstanding the Shevut Yaakov, his view is not universal among the *aharonim*. The 19<sup>th</sup> century Lithuanian authority, **R. Eliyahu Ragoler** (Yad Eliyahu,), suggests, and the contemporary Israeli authority, R. **Yaakov Ariel** (the Chief Rabbi of Ramat Gan) rules, that women are fully part of pubic prayer, with the theological and halakhic implications therein. Unlike the Shevut Ya'akov, who recorded his view of women's lesser burden toward public prayer in a specific context of wanting to restore communal peace in the face of one specific troublemaker, the Yad Eliyahu and R. Ariel wrote their views in more general, expansive contexts.<sup>48</sup>

Here is the responsum of the Yad Eliyahu (*Pesagim*, I:7):

Question: In a small community, when there are only 6 or 7 men who have not prayed and 3 who have, one can only fulfill the *mitzvah* of *Kaddish*, *Barekhu* and *Kedushah*, but praying in such a group does not count as public prayer unless there are actually 10 [who have not prayed]...What I am unsure about is what if there are 3 women in this house who have not prayed, do the 3 women join with them such that the prayer of the

שאלה: אם יש באיזה בית הכנסת קטן או מנין של ששה או שבעה אנשים שלא התפללו ושלשה התפללו, ונמצא שא"א לקיים רק מצות קדיש וברכו וקדושה, אבל אין זה עולה לתפלה בציבור כי אם בעשרה ממש...אכן נסתפק לי לכאורה אם יש בבית הזה ג' נשים שמתפללים אם יש לצרף

<sup>47</sup> Though see below, for a different approach to this question taken by R. Ya'akov Ariel, coming to the explicit conclusion that women are obligated in communal prayer.

As Rabbi Menachem Nissel cites R. Yosef Shalom Elyashiv as also ruling that women are obligated to pray with the community and R. Hayim Pinhas Scheinberg and R. Eliyahu Greenblatt as opining that women should do so, while R. Shlomo Zalman Auerbach and R. Moshe Shternbuch rule that women usually have no special responsibility to pray with the community. See above for the full bibliographical citation; this topic is covered at the beginning of chapter 7. See also R. Aryeh Frimmer's citation of R. Ahron Soloveitchik that whatever the status of the obligation to pray with a *minyan*, there is no gender component involved, in Aryeh Frimer and Dov Frimer, "Women's Prayer Services – Theory and Practice", *Tradition* 32:2 (1998), footnote 85.

women is considered part of the community? It seems to me we can answer this from the fact that it says...nine and a slave join [to make a minyan] and then it challenges this point from the case of R. Eliezer, who freed his slave, and then resolves by saying that they needed two additional participants and so he freed one and counted the other slave as the tenth. If you claim that the prayer of women is not a part of the public prayer just as they are not joined to the *minyan* for Kaddish and Kedushah, then the Talmud should have resolved that R. Eliezer freed his slave in order to have public prayer—given that a woman and a slave have the same status with respect to joining a minyan and in their obligations in positive commandments...rather it must be that the prayer of women and slaves counts towards public prayer, and R. Eliezer had no need to free his slave for this purpose...

הנשים עמהם, אם נחשבת תפלת ?הנשים בכלל הציבור ונראה לי לפשוט מהא דאמר...תשעה ועבד מצטרפין, ומקשה מעובדא דר"א דשחרר עבדו, ומתרץ תרי הוי חסר, ושחרר אחד וצירף אחד עיין שם, והשתא אי אמרת דתפלת נשים אינם בכלל תפלת הצבור כמו דלא מצטרפין אותם לקדיש ולקדושה, אם כן הוה ליה לתלמודא לשנויי דלכו שחרר עבדו בכדי להתפלל בציבור דהא אשה ועבד שקולין לענין צירוף וחיוב מצוות עשה...אלא על כרחד דתפלת נשים ועבדים מצטרפים לתפלת הציבור. ולא היה צריך ר"א לשחרר עבדו בשביל זה...

Here is the responsum of R. Ariel (Responsa *Be-'Ohalah Shel Torah* II:27):

But even if a woman is obligated in the *musaf* prayer, we must still address the question of whether she is obligated specifically to pray it **with the community**<sup>49</sup>...it seems that a woman is also obligated to pray communally, as it is said: "See God is mighty, but not contemptuous..." [Therefore,] a woman who arrived late should pray *musaf* with the community and then pray *shaharit* after *musaf*...

ואם כי אשה חייבת בתפילת המוסף, אך השאלה היא אם היא חייבת להתפלל **בציבור** דוקא...מיהו נראה שגם אשה חייבת להתפלל בציבור, שנאמר "הן קל כביר ולא ימאס"...ועדיין י"ל שהאשה יכולה להתפלל מוסף עם הציבור ושחרית אחרי מוסף...

Rav Ariel believes that there is an obligation to pray with a *minyan*. However, for him, this obligation seems to flow directly from the obligation to pray more generally. To the extent that communal prayer leads to better, more acceptable prayer, then this obligation in communal prayer will devolve on anyone obligated to *pray*. Thus, since women are obligated to pray, they must also be obligated to pray with a *minyan*.

### Summary

Praying with the community is an important social responsibility in which members of the community should make every effort to engage. It is also a personal desideratum, in so far as it improves the acceptability of one's individual prayer. If one focuses on the latter of these two elements, then women, being obligated to pray, also share an obligation to pray communally (and thus, the view of R. Ariel). If we focus on the former element—the responsibility to help make a *minyan*—then the proper location

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<sup>&</sup>lt;sup>49</sup> R. Ariel's emphasis.

<sup>&</sup>lt;sup>50</sup> This verse, from Job 36:5, comes from the gemara we cited above that is the *locus classicus* for the issue of communal prayer (TB Berakhot 8a, based on Sifre Bemidbar 135). There, this verse is the prooftext for the *tanna*'s claim that the Holy One never despises the prayers of the masses (i.e., a *minyan*).

for the full examination of this question is below, where we fully explore the question of women's inclusion in the *minyan* in contemporary contexts. Even for those who argue, however, that women do not count and that they therefore lack much social responsibility to pray in a *minyan*, there is no basis to claim that this in any way affects women's fitness to serve as *Sha"tz*. Such a claim requires making three points, difficult to sustain in isolation and virtually impossible to sustain in concert: 1) There is an individual obligation to pray with a *minyan*—a point challenged by many *rishonim*, 2) There is a gender gap to that individual obligation—a point difficult to sustain in light of women's equal obligation in the 'Amidah' and in Kiddush hashem, unsupported by any evidence in the *rishonim* and directly challenged by many *aharonim*, and 3) the assumed gender gap plays a role in one's ability to serve as *Sha"tz*—a point that makes little sense, given that an individual obligation in public prayer seems to be about *attending* public prayer, not leading it, and which seems to have no reflection in any source prior to those contemporary writers who are searching for ways to forbid more gender-egalitarian forms of Jewish prayer. This line of argumentation has been a red herring.

### 2) Reciting the *Devarim she-biKedushah*

The other main function of the *Sha"tz* is to say the uniquely public parts of the prayer service, the "devarim she-bikedushah", which are said only in a minyan. We will here investigate whether women are thought by the poskim to be fit to say these special prayers, and to assume the public role of *Sha"tz*, irrespective of whether they count in the minyan. In other words, for those who assume that women do not count in a minyan, may they nevertheless serve as *Sha"tz*? Later, we will address the question of whether women count in a minyan.

**Mishnah Megillah 4:3** lists a number of prayers and rituals which are said only in the presence of ten, including public Torah reading, having a *Sha"tz* lead prayer, adding God's name to the invitation to Grace after Meals (*zimmun*) and various occasional rituals:

We do not responsively recite the Shema, nor have a communal prayer leader, nor offer the priestly blessing, nor read the Torah, nor read from the prophets, nor perform the standing/sitting [ritual for the dead], nor say the blessing of the mourners nor the formal comforting the mourners, nor recite the wedding blessings, nor say *zimmun* with the Name in a group of fewer than 10. And when redeeming land we require nine and a *kohen*. And so too with [redeeming] people.

אין פורסין את שמע, ואין עוברין לפני התבה, ואין נושאין את כפיהם, ואין קורין בתורה, ואין מפטירין בנביא, ואין עושין מעמד ומושב, ואין אומרים ברכת אבלים ותנחומי אבלים וברכת חתנים, ואין מזמנין בשם, פחות מעשרה. ובקרקעות, תשעה וכהן. ואדם, כיוצא בהן:

On Megillah 23b, **R. Yohanan** bases this on the verse "And I shall be sanctified among the children of Israel" – "וְנִקְּדַשְׁתִּי בְּחוֹךְ בְּנֵי יִשְׂרָאֵל", (VaYiqra 22:32) and states: "For every matter of sanctity (*davar she-bikedushah*), there shall be no fewer than ten."

How do we know this?	מנא הני מילי?
Said R. <u>H</u> iyya b. Abba said R. Yo <u>h</u> anan: The verse	אמר רבי חייא בר אבא אמר רבי

says: "And I will be sanctified in the midst of the children of Israel" (Lev. 22:32) – any *davar shebikedushah* shall not be said with fewer than 10. What suggests this?

R. <u>Hiyya</u> taught in a baraita: We derive it from the double usage of "midst": it says here "And I will be sanctified **in the midst** of the children of Israel" and it says there, "separate yourselves out **from the midst** of this *congregation*" (Num. 16:21); and then we derive it from the double usage of "congregation", it says there "How long must I suffer this evil *congregation*" (Num. 14:27): just as there it refers to 10, so here too it refers to 10.

יוחנן: דאמר קרא "וְנִקְדַּשְׁתִּי בְּתוֹךְ בְּנֵי יִשְׂרָאֵל" (ויקרא כב:לב) - כל דבר שבקדושה לא יהא פחות מעשרה.

?מאי משמע

- דתני רבי חייא: אתיא "תוך" –
"תוך": כתיב הכא "וְנִקְדֵּשְׁתִּי בְּתּוֹךְ
בְּנֵי יִשְׂרָאֵל", וכתיב התם, הִבָּדְלוּ
מִתּוֹךְ הָעֵדָה (במדבר טז:כא), ואתיא
"עדה" – "עדה", דכתיב התם, "עַד
מָתַי לְעַדָה הָרָעָה הַזּ־ֹאת" (במדבר
יד:כז), מה להלן עשרה - אף כאן
עשרה.

On Berakhot 21b, **R. Ada b. Ahavah** explicitly includes the *Kedushah* in this category of prayers which may be said only in the presence of ten and **Massekhet Soferim 10:6** includes *Kaddish* and *Barekhu*:

### Talmud Bavli Berakhot 21b

So said R. Ada bar Ahava: From where do we know that an individual does not say the *Kedushah*? As it says, "And I will be sanctified in the midst of the children of Israel" (Lev. 22:32) – any *davar she-bikedushah* shall not be said with fewer than 10.

### תלמוד בבלי ברכות כא:

וכן אמר רב אדא בר אהבה: מנין שאין היחיד אומר קדושה - שנאמר, "וְנִקְדַּשְׁתִּי בְּתוֹךְ בְּנֵי יִשְׂרָאֵל" (ויקרא כב:לב) - כל דבר שבקדושה לא יהא פחות מעשרה.

### Massekhet Soferim 10:6

We do not responsively recite the *Shema*...nor have a communal prayer leader, nor offer the priestly blessing, nor read Torah, nor read from the prophets, nor perform the standing/sitting [ritual for the dead]...**nor say** *Kaddish* **or** *Barekhu* with less than 10...

### מסכת סופרים י:ו

אין פורסין על שמע...ואין עוברין לפני התיבה...ואין נושאין את כפיהן, ואין קורין בתורה, ואין מפטירין בנביא, ואין עושין מעמד ומושב...ואין אומרין קדיש וברכו פחות מעשרה...

This specification, that all recitations of *Barekhu*, *Kaddish*, and *Kedushah* are considered *devarim she-bikedushah* and require a *minyan* of ten, is maintained throughout subsequent halakhic literature, as in **Shulhan Arukh OH 55:1**:

We say *Kaddish*. And we don't say it with less than 10 free, adult males<sup>51</sup> have hit puberty, and this, too, is the law for the *Kedushah* and *Barekhu*, that they are not said with less than 10.

אומרים קדיש. וא"א אותו בפחות מי' זכרים בני חורין גדולים שהביאו ב' שערות, וה"ה לקדושה וברכו שאין

<sup>&</sup>lt;sup>51</sup> Below, in the section on counting toward a *minyan*, we will discuss the Shul<u>h</u>an Arukh's stipulation that the ten be free, adult males. For our present purposes, we note just the enumeration of those prayers which require a *minyan*, however it need be constituted.

Talmudic literature never discusses the possibility of a woman serving as *Sha"tz*, nor about saying *devarim she-bikedushah* in a general way, but it does discuss her participation in one of those *devarim she-bikedushah*, Torah reading.<sup>52</sup> **Tosefta Megillah** 

<sup>52</sup> That Torah reading is a *davar shebikdushah* would seem to flow naturally from the fact that after it is listed among those things that require ten in Mishnah Megillah 4:3, the gemara explains the Mishnah's requirement of 10 with the statement that any *davar shebikdushah* requires ten. The straightforward impression that one would draw is that the items on the list, at least the first ones involving ritual practice in a communal prayer setting, all function by the same basic logic and structure. This is implied by the structure of Rambam Hilkhot Tefillah 8:4-6, and is stated explicitly by Meiri on Megillah 23b, where he makes the obvious point that having an aliyah includes the recitation of *barekhu*, which is considered a *davar shebikdushah*: שאין הכהנים נושאין את כפיהם אלא בעשרה אף זו דבר שבקדושה היא וכן בקריאת התורה שהרי צריך. Others who assert uncontroversially that Torah reading is a *davar shebikdushah* like any other include: R. Ovadiah of Bartenura in his commentary on Mishnah Megillah 4:3, Levush OH 143:1, Magen Avraham 146:6, R. Yisrael Lipshitz in his commentary on Mishnah Megillah 4:3, Arukh Hashulhan Yoreh Deah 334:7, Torah Temimah on Vayikra 22:32, note 195. See also Gittin 59b and Shibbolei Haleket Tefillah 8.

There are a few passages, however, that have been used by some to undermine the notion that Torah reading is a davar shebikdushah, such that one might be precluded from generalizing from the theoretical inclusion of women in Torah reading to other devarim shebikdushah. Most prominent among them is Ran on Rif Megillah 13b, where he states the following: "וואין נושאין את כפיהם פחות מי". דכתיב וישראל ענין בני שראל עשרה משמע כדילפינן בגמרא לענין דבר אהרן את ידיו אל העם ויברכם וכתיב כה תברכו את בני ישראל אמור להם ובני ישראל עשרה משמע כדילפינן בגמרא לענין דבר שבקדושה מדכתיב ונקדשתי בתוך בני ישראל...ומיהו הני מילי כולהו אסמכתא דרבנן נינהו דסדר תפלה גופא דרבנן. ואין קורין בתורה ואין מפטירין בנביא בפחות מעשרה. דתקנתא דרבנן הוא ולא תקון אלא בצבור...מנא הני מילי וכו'. וכל דבר שבקדושה לא יהיה פחות מעשרה...והאי טעמא סגי לאין פורסין על שמע ואין עוברין לפני התיבה משום קדושה דאית בהו, ולאין נושאין את כפיהם מטעמא דכתיבנא במתניתין..."

Ran here clearly states that the priestly blessing (נשיאת כפים) does not require 10 because it is a davar shebikdushah, but rather because the term בני ישראל—already associated with 10 in the context of devarim shebikdushah—is used to describe the object of the blessing. [It is not clear what the Ran's investment is in making this point, which is already argued by Rashba on Megillah 23b.] Whether he feels the same way about Torah reading is less clear, and depends on one's reading of two clauses in the above passage: 1) When Ran says that Torah and Haftarah reading require 10 because they are rabbinic ordinances that must be done in a communal setting, this gives the impression that he is distinguishing them from the first items in the list (אין עוברין לפני התיבה and אין פורסין על שמע), to which he explicitly applied the gemara's grounding of the quorum of 10 in their nature as a davar shebikdushah. One might thus read him as saying that Torah reading is not a davar shebikdushah. On the other hand, he might simply be explaining that Torah reading follows the rules of devarim shebikdushah because it was given holiness by the Sages as a public ritual and given the same status as the other initial items in the Mishnah's list. 2) In the last clause above. Ran seems to say that the rationale of devarim shebikdushah only applies to the first two items on the list, excluding Torah reading. But the continuation of the sentence suggests that this formulation may only be intended to buttress his claim that the priestly blessing is not a davar shebikdushah, but conceding that Torah reading is indeed in this category.

This lack of clarity in the Ran is reflected in later Aharonim. Eliyah Rabbah 128:1 indeed cites Ran as *not* treating Torah reading as a *davar shebikdushah*. But there are equally vociferous interpreters on the other side. See Turei Even on Megillah 23b, where, while attacking Rashba's position that the priestly blessing is not a *davar shebikdushah*, he leverages the argument that it is difficult to claim that Mishnah Megillah 4:3 would begin with *devarim shebikdushah*, take a detour to the priestly blessing (which, according to the Rashba is not a *davar shebikdushah*) and then return to other *devarim shebikdushah*, such as Torah reading. He clearly never imagined that anyone might think that Torah reading was not a *davar shebikdushah* and seems to have read the Ran in the alternate ways suggested above. For another aharon who fights Eliyah Rabbah's characterization of the Ran, see Mishpetei Uzziel II OH #14, 17-18. Note also that while Peri Megadim and Beur Halakhah note the Ran's dissent on characterizing the priestly blessing

**3:11** stipulates that this public function may be performed even by marginal members of the community: "...And all count towards the quorum of seven, even a woman, even a minor" – "ווהכל עולין למנין שבעה אפי' אשה אפי' קטן "...". However, it continues that "We do not bring a woman to read for the public" – "אין מביאין את האשה לקרות לרבים". The Talmud (Megillah 23a) records this halakhah, its version adding a reason the restriction: "But the sages said a woman should not read from the Torah because of the honor of the community" – "אבל אמרו חכמים אשה לא תקרא בתורה מפני כבוד הציבור".

There is a long literature discussing the ins and outs of this issue in theory and practice. R. Mendel Shapiro of Jerusalem recently published an article, which serves as the basis for the practice at communities such as Jerusalem's Shira Chadashah and New York's Darkhei Noam, that is so thorough in its treatment of the topic that it would be superfluous for us to re-hash the issue here; the interested reader is encouraged to read R. Shapiro's article in full.<sup>53</sup> The approach in this article is pursued and expanded in a recent book by R. Prof. Daniel Sperber. We will merely summarize the main points and then point them forward to the issues not addressed in these works.<sup>54</sup>

as a *davar shebikdushah* in OH 128, they make no mention of such a position of his with regard to Torah reading.

Even if one reads the Ran as does Eliyah Rabbah, that position is rejected by many prominent Aharonim. Mishnah Berurah 143:1 states unequivocally that Torah reading is a *davar shebikdushah* and Iggerot Moshe OH I:23 takes this position as well.

Finally, we must note the important point made by R. Menahem Azariah of Fano in Responsum #91, where he says that while it is possible to debate whether the reading of the Torah is a davar shebikdushah, it is obvious that the recitation of barekhu as part of having an aliyah is considered a davar shebikdushah: מ"מ אפי' לפי דעת החולקים בזה יש לנו דברים ברוים ושל טעם הם יחוייב השומע ומבין להודות בהם: הנה המבורך הוא דבר שבקדושה Given that Ran himself agrees that, controlling for kevod hatzibbur, a woman may clearly say barekhu—see Ran on Rif Megillah 13a s.v. hakol—it becomes even more challenging to interpret him as not accepting the principle that women's involvement in keriat hatorah has no ramifications for elsewhere. If anything, he may merely be trying to explain why the actual reading of the Torah—without reference to the barekhu/berakhot frame—requires 10, and he claims that that part of it is not necessarily a davar shebikdushah.

In summary, it is not at all clear that there were any rishonim that actively held that Torah reading was not a davar shebikdushah such that it could and should be distinguished in its mechanics from other rituals in this category, and the flow of the gemara itself militates against such a reading. [In the words of R. Uzziel: לפום ריהטא דסוגיא משמע דפורסין על שמע וקורין בתורה ומפטירין בנביא חד טעמא וחד דינא הוא.] To the extent that the Ran did hold this way, he is counterbalanced by rishonim who explicitly do classify Torah reading as a dayar shebikdushah like the other items in the list. Indeed, while both positions are found among the Aharonim, the notion that Torah reading is a davar shebikdushah is well-established and more dominant among later authorities. And as R. Menahem Azariah points out, even those claiming that Torah reading is not a davar shebikdushah seem only to be referring to the reading itself; to claim that the barekhu of Torah reading somehow functions differently from the barekhu before the blessings of Shema is a difficult and unnecessary position to take. Once women are permitted to say barekhu as part of an alivah, they seem clearly to be eligible to say any kind of davar shebikdushah in the presence of a valid minyan. The most one could say based on the above evidence is that those who wish to distinguish between Torah reading and other items in the Mishnah requiring 10 have positions on which they might rely. The weight of evidence, however, suggests that the initial categories in the Mishnah are clearly linked. For the sake of thoroughness, we will look below separately at the question of women saying kaddish or barekhu, but there is little reason to think that women's theoretical inclusion in Torah reading does not extend to all devarim shebikdushah.

<sup>&</sup>lt;sup>53</sup> For a full citation, see note 1 above.

<sup>&</sup>lt;sup>54</sup> We will *not* engage here the lengthy and important question of whether, even controlling for כבוד הציבור, women are eligible to read *all* aliyot according to the baraita (the position of R. Tam and most authorities),

What is "honor of the community" and why did this consideration lead the sages to exclude women from going up to bless and read from the Torah? "Honor of the community" appears in four other contexts in the Talmud Bavli, always as a reason to disprefer some mode of performing public ritual. The four unseemly practices are: a) reading Torah from a scroll containing only one of the five books, (Gittin 60a); b) rolling the Torah scroll in public – a consideration so unseemly that the preferred practice is for the High Priest to chant the additional Yom Kippur reading from memory (Yoma 70a); c) someone reading Torah naked or in tattered clothing (Megillah 24b); d) uncovering the ark in front of the community (Sotah 39b).

TILLID I'C'' (0	, ,
Talmud Bavli Gittin 60a	תלמוד בבלי גיטין ס.
Rabbah and R. Yosef both said: We do not read from	רבה ורב יוסף דאמרי תרוייהו: אין
$\underline{h}umashim$ [Torah scrolls containing only one of the	קוראין בחומשין בבית הכנסת משום
five books] in the synagogue because of the honor of	כבוד הצבור.
the community.	·
Talmud Bavli Yoma 70a	תלמוד בבלי יומא ע.
And [the paragraph about Yom Kippur in Bemidbar]	ובעשור של חומש הפקודים קורא
is read from memory [by the High Priest].	על פה. אמאי? נגלול וניקרי!
Why? Let him roll the scroll and read it from the text!	אמר רב הונא בריה דרב יהושע אמר
Said R. Huna b. R. Yehoshua, said R. Sheshet: We do	רב ששת: לפי שאין גוללין ספר
not roll the Torah scroll in public because of the honor	' '
of the public.	תורה בציבור, מפני כבוד ציבור.
Talmud Bavli Megillah 24b	תלמוד בבלי מגילה כד:
A person dressed in tattered clothing may lead the	פוחח פורס על שמע וכו'.
responsive Sh'ma	בעא מיניה עולא בר רב מאביי: קטן
Ulla b. R. asked Abaye: May a minor dressed in tatters	פוחח מהו שיקרא בתורה?
read from the Torah? <sup>56</sup>	אמר ליה: ותיבעי לך ערום? ערום
He said to him: Would you be in doubt about a naked	
minor!? Why would a naked minor be forbidden?	מאי טעמא לא משום כבוד צבור,
Because of the honor of the community, here too,	הכא נמי משום כבוד צבור.
because of the honor of the community.	
Talmud Bayli Sotah 39b	תלמוד בבלי סוטה לט:
And said R. Tanhum said R. Yehoshua b. Levi: The	ואמר רבי תנחום אמר רבי יהושע בן
prayer leader should not uncover the ark in front of the	לוי: אין שליח צבור רשאי להפשיט
community because of the honor of the community.	,
community occurse of the nonor of the community.	את התיבה בצבור, מפני כבוד צבור.

or whether adult males must read a majority or at least one of the aliyot (the view of Ran, cited by Rema). R. Shapiro deals with this issue in depth in his paper.

<sup>&</sup>lt;sup>55</sup> Our rendition of this last source follows Rashi's interpretation.

<sup>&</sup>lt;sup>56</sup> Rashi explains that the questioner understands that an adult in tattered clothing may not, on account of the verse, "Let [God] not see in you any nakedness" (Deut. 23:15), but perhaps a minor's nakedness would not be of concern, since Torah prohibitions such as that verse do not apply to them: "קטן פוחה מהו שיקרא הוא דאסור משום " וָלֹ א יִרְאָה בְּדָ עֶּרְוַת דְּבֶר" (דברים כג:טו), אבל קטן אינו מוזהר, או דלמא לא פליג בעורה' - גדול פוחה הוא דאסור משום " וָלֹ א יִרְאָה בְּדָ עֶּרְוַת דְּבֶר" (דברים כג:טו), אבל קטן אינו מוזהר, או דלמא לא פליג Alternatively, a minor's inappropriate exposure may be less problematic than that of an adult vis-à-vis the onlooking congregation. Ritva notes that some versions of the gemara lack the word per, in which case the question is about whether anyone, adult or minor, may read the Torah while wearing tattered clothing.

The phrase expresses the sense that it is disrespectful to act this way in front of the community and that for that reason, the law frowns on performing these important tasks in such a way. Given the intuitive nature of the consideration, it is not surprising to find subsequent authorities quite reasonably applying this term to additional practices. For example, Rashi gives "honor of the community" as a reason to prohibit a minor from performing *birkat kohanim*: it is demeaning for the community to receive the blessing from a minor. Rambam employs it to explain the preference for a bearded *Sh"atz* and for a standing reader of Megillat Esther:

Rashi, Megillah 24a	רש"י מסכת מגילה כד.
"[A minor] may not raise his hands" – if he is a <i>kohen</i> , for	ואינו נושא את כפיו - אם כהן
there it is not meet for the honor of the community to be	הוא, שאין כבוד של צבור
subject to his blessing.	להיות כפופין לברכתו.
Rambam Hil. Tefillah 8:11	רמב"ם הלכות תפילה ח:יא
One whose beard has not filled out, even if he is wise and	ומי שלא נתמלא זקנו אע"פ
great, should not be a <i>Sha</i> "tz because of the honor of the	שהוא חכם גדול לא יהא ש"ץ
community	מפני כבוד ציבור
Rambam Hil. Megillah 2:7	רמב"ם הלכות מגילה ב:ז
Whether one read [Megillat Esther] standing or sitting, the	קראה עומד או יושב יצא
obligation is fulfilled, and even in the community, but <i>ab</i>	ואפילו בצבור, אבל לא יקרא
<i>initio</i> , one should not read in a community while seated,	בצבור יושב לכתחלה מפני
because of the honor of the community	כבוד הצבור

Why has it been considered an affront to communal honor for women to read Torah publicly? Many *Rishonim* are silent on the issue, apparently taking for granted the reasonableness of the statement. At least two *Rishonim*, the **Ritva** (Megillah 4a) and R. **Avraham min HaHar** (Megillah 19b) connect the limitation on women reading Torah to another passage, in which men who rely on women in fulfilling certain religious obligations are cursed. Here is the latter's statement on the matter:

# Rav Avraham min HaHar, Megillah 19b And so do we have it explicitly at the beginning of 'Arakhin (2a): "'Everyone is obligated [in the Megillah] – 'everyone' to include women, following R. Yehoshua, etc." However, of course, *ab initio*, she should not disharge others of their obligation, as we said on Berakhot 20b: "May a curse come to a man whose wife or children bless [the grace after meals] for him." And we said on Megillah 23a, "Everyone counts toward the seven, but the Sages said that a woman should not read for the community because of the honor of the community,

etc."

רב אברהם מן ההר, מגילה יט:
והכי איתא בהדיא בריש ערכין (ב.)
הכל חייבין [במגילה], הכל לאתויי
נשים, וכדר' יהושע וכו'. מיהו ודאי
לכתחילא לא תוציא אחרים, כדאמרינן
במי שמתו (ברכות כ:) – תבא מארה
לאדם שאשתו ובניו מברכין לו.
ואמרינן בפרק עומד ויושב (מגילה
ואמרינן בפרק עומד וישב (מגילה
כג.) – הכל עולין למנין שבעה, אפילו
אשה או קטן, אבל אמרו חכמים, אשה
לא תקרא בצבור מפני כבוד הצבור,
וכו'.

Contemporary *poskim* such as *R*. **Yehudah Herzl Henkin** and R. **Daniel Sperber** (p. 24-28) follow this connection, explaining that the curse refers to the embarrassment of being made to look as if one is illiterate or otherwise unable to fulfill one's own obligations:

## Rav Yehudah Herzl Henkin Res. *Benei Banim* II:2, p. 14

Indeed, what is truly the meaning of "honor of the community" vis-à-vis *aliyot* for women? In my humble opinion, since the Ritba...and even more clearly, in Rabbenu Avraham min HaHar...it is explained to be the matter of a curse, i.e., that it is insulting to the community for it to seem as though there are not enough men who know who to read Torah, and that is why they summoned women, and this is also how *Petah haDevir* (282:9) interpreted it, and there is no *Rishon* who disputes this, therefore, of course, this is how we hold...

הרב יהודה הרצל הנקין
שו"ת בני בנים, ב:ב, עמ' י"ד
אמנם, מהו באמת פרוש כבוד הצבור
לענין עליות נשים, לע"ד כיון
שהריטב"א...וביותר בירור ברבנו
אברהם מן ההר...מבואר שהוא ענין
של מאירה פי' שבזיון הוא לצבור
שנראה כאילו אין די גברים היודעים
לקרוא בתרוה ולכן הביאו נשים וכן
פרש בפתח הדביר סימן רפ"ב אות ט',
ולא נמצא בראשונים מי שחולק על זה
לכן בוודאי הכי נקטינן...

The issue, then, is not about women *per se*; it is about dishonor and shame, from wherever they may come. Accordingly, we find prominent voices among generations of *poskim* suggesting scenarios in which it would be appropriate for women to read if communal honor would not be violated or if the available alternatives are worse. **Maharam of Rothenburg** (Responsa, IV:108) ruled that in a town whose residents are all *kohanim*, a kohen should read the first two *aliyot* and then women should read the rest: in his judgment, better the affront to communal honor via women reading than the potential defamation of those *kohanim* who, by taking the third through seventh *aliyot*, would be susceptible to gossip speculating that they are of questionable status, such as being children of divorcees, and that that is why they were relegated to the non-*kohen* aliyot:

And in a town whose residents are all *kohanim* and there is not even one *Yisrael*, it seems to me that a *kohen* should read twice and then women should read the rest, for all complete the quorum of seven...and R. Simhah explained that this refers not only to the quorum of seven but also to the quorum of three, for the Mishnah states simply: "A minor may read from the Torah." And even though the Talmud concludes that the sages said that a woman should not read because of the honor of the congregation, in a case where there is no alternative, let the honor of the congregation yield to the concern that we will defame the *kohanim*, so that people will not say they are the children of divorcees.

ועיר שכולה כהנים ואין בה [אפי']
ישראל אחד נ"ל דכהן קורא פעמים
ושוב יקראו נשים דהכל משלימי'
למנין ז' אפי' עבד ושפחה וקטן
(מגילה כג.) ופי' רבי' שמחה זצ"ל
דלאו דוקא למנין ז' אלא אפי'
לשלשה דתנן סתמא בפ"ג דמגילה
(כד.) קטן קורא בתורה [ומתרגם]
ונהי דמסיק עלה אבל אמרו חכמי'
לא תקרא אשה בתורה מפני כבוד
לא תקרא אשה בתורה מפני כבוד
הצבור מפני פגם כהנים הקוראים
שלא יאמרו בני גרושות הם.

More strikingly, the 14<sup>th</sup> century Provencal sage **Rabbenu David bR. Sh'muel Kokhavi** recorded the following in his *Sefer HaBatim* (*Beit Tefillah Beit HaQodesh*, Herschler ed., p. 236, #6):

There is among the great ones one who wrote that when people pray with ten in their homes, a woman may read from the Torah there, for it is not called a "community" unless they are praying in a synagogue.

יש מן הגדולים שכתב שהמתפללין בבתיהם בעשרה אשה קוראה שם בתורה, שלא נקרא ציבור אלא כשמתפללין בבית הכנסת.

Closer to modernity, R. **Yaakov Emden** produced this same reasoning in his *Migdal 'Oz* (*Hil. Yoledet, Shoket B*, 12c):

It seems that when ten pray and read Torah in a small group in the house of the new mother, and her husband is not there, one may restore the basic principle that a woman may go up and read Torah. Even though the Sages said that she should not read in the community because of honor, they said that only with reference to a large congregation, and not to do so regularly, but in this situation, which is an irregular occurrence, and it is for her sake, one can say that they did not decree. In any event, they explicitly said that she goes up among the seven, and if not for now, for when were these words intended? Certainly, everything the Sages said must have some applicable context, and in this sort of case, it is similar to a *post facto* case. So inclines my opinion if my colleagues will agree with me.

ונראה דכשמתפללין וקורין עשרה
בצמצום בבית היולדת ואין בעלה כאן,
יש להעמיד הדבר על הדין שאשה עולה
וקוראה בתורה כהאי גוונא. אע"ג
שאמרו חכמים לא תקרא בציבור מפני
הכבוד, לא אמרו אלא בקהל רב, ושלא
לעשות תדיר, אבל בהאי גוונא דהויא
מילתא דלא שכיחא ומשום תקנתא דידה,
איכא למימר לא גזרו, עכ"פ הרי בפירוש
אמרו שעולה למניין ז', ואם לא עכשיו
אימתי אלה הדברים איפוא הם אמורים,
ובודאי לא יפול שום דבר מדבריהם
ארצה שלא יהא לו מקום, ובאופן זה
כדיעבד דמי. כך דעתי נוטה אם יסכימו
עמי חברי.

In his glosses on our passage in the Talmud, R. Emden concisely explained that the gemara's restriction on women reading is not absolute, and women may read if circumstances demand it:

## Rav Yaakov Emden Glosses & Novellae, Megillah 23a

"But the sages said that a woman should not...": It seems that this means where possible, but the beginning [of the text, which stated that in principle women may read] is referring to when there are not seven who know how to read, but there is a woman who knows how, such that they can't suffice without her

## ר' יעקב עמדין הגהות וחדושים, מגילה כג.

"אבל אמרו חכמים אשה לא וכו": נראה דהיינו היכא דאפשר ורישא מיירי בדליכא שבעה (בהני עשרה דמצטרפי לדבר שבקדושה) דבקיאי למקרי ואיכא אשה בקיאה דלא סגי בלא דידה.

In our own century, R. **Ben Tziyon Abba Shaul** (*Or LeTziyyon*, Responsa II, *Halakhot Pesuqot*, OH I, p. 8) reasoned similarly, though he expressed practical reservations:

"We should consider that which our master wrote in the Shulhan Arukh... 'All may count for the quorum of 7, even a woman or a minor who knows to whom we bless, but the Sages said that a woman should not read in public because of the honor of the community.' This requires further thought. If a woman cannot go up because of the honor of the community, what difference does it make that she can [theoretically] count for the quorum of 7, and why did our master bother to write this detail? Therefore, it seems that there is practical relevance in a case where there is no concern for the honor of the community, such as in a place where all those praying are members of a single family and the woman is the head of household and all the others praying are her children and grandchildren. In that case, there is no diminishment of the honor of the public by her going up to the Torah, in which case she would be able to go up to the Torah and count towards the quorum of 7. But regarding practice, more investigation is required.

ואגב יש להעיר במה שכתב מרן בשו"ע...הכל עולים למנין שבעה. אפילו אשה וקטן שיודע למי מברכיז, אבל אמרו חכמים אשה לא תקרא בציבור מפני כבוד הציבור, וצריך עיון, שאם עכ"פ אין אשה עולה מפני כבוד הציבור, מאי נפק"מ שאשה עולה למנין שבעה, ולשם מה כתב מרן הלכה זו. ולכן היה נראה לומר שנפק"מ במקום שאין חשש משום כבוד הציבור, כגון במקום שהמתפללים הם בני משפחה אחת, והאשה היא ראש הבית וכל שאר המתפללים הם בניה ונכדיה, שאז אין חסרוו כבוד הציבור במה שתעלה לתורה, בכה"ג שפיר יכולה לעלות לתורה ולהצטרף למנין שבעה. ולמעשה צ"ע.

The restriction is not on women reading Torah per se; it is on dishonoring the public. From the perspective of these *poskim*, that issue never got off the ground in private contexts, where individual relationships were familiar and no social hierarchies would be disturbed by, say, a matriarch assuming her dignified, matriarchal role in the family. It is not difficult to see how these calculations of communal honor would come out differently in settings whose social arrangements are different, such as, for example, where women hold public office, run corporations, and so on. Indeed, in our own day, R. Daniel **Sperber** (ch. 1) argues that the restriction of women from reading Torah may well obtain only when it would shame men who would be exposed as illiterate, or only in the context of a generally patriarchal society. In halakhic terms, it is a safeik derabbanan – a restriction whose basic applicability is in doubt, which, with regard to a Rabbinic law, should be treated leniently, and overruled in our context, in which, R. Sperber claims, there is a competing value of kevod ha-beriyot ("human honor") in that many women feel shamed by their exclusion from public rituals. R. Sperber also registers the relevance of the historical reports that when Flora Sassoon, the business tycoon who managed the dynastic Sassoon family textile firm and was also a renowned Torah scholar, visited Baghdad in 1901, the honors lavished upon her by the community, then under the religious leadership of the **Ben Ish Hai**, included calling her to read Torah in the synagogue (pp. 32-33, n. 37). In other words, when a woman departed from the culturally familiar social relevance of the category "women", she was not restricted from the honorific roles barred from "women".

We should also note the explicit statements of a number of *poskim* that the prohibition of calling women to read is only *lekhatehila* (*ab initio*), but that *bedeiavad*, having read, the reading is valid, or even just having been called up, they may go ahead

and read. This view is seen not only from those sages mentioned above, such as Maharam, who allowed women to read in certain circumstances, but also from a number of others who never specifically discussed allowing it, yet said that it is valid *bedeiavad*, including two commentators to Tosefta Megillah 3:11, **R. David Pardo** (*Hasdei David*), and **R. Meir Friedman** (*Tekhelet Mordekhai*).

## May a "Community" Waive its "Honor"?

There is a dispute among the *poskim* as to whether an individual community may waive its honor and do one of the functions rejected by the sages on account of the concern for communal honor. **R. Yosef Caro**, (*Beit Yosef*, OH 53), following cues from *Rishonim* such as Rabbenu Yonah and the Mordekhai, rules that a community may waive its honor. In the context of the question of a minor functioning as a *Sha"tz*, he writes as follows:

From the words of our master [the Tur] and the words of the commentators that I have recorded, it seems clear that a minor cannot lead the community in prayer, even on a happenstance basis. Therefore, the practice of having a minor lead the community in prayer at the end of Shabbat to pray the evening prayer is surprising...And I found that the **Rashba** wrote in a responsum (I:239) in the name of the Ra'avad that the reason the Mishnah has to teach that a minor may not lead the responsive *Sh'ma* or take the podium [as public prayer leader] is that since blessings and *tefillot* are all of Rabbinic force, and a minor who has reached the age of education is also Rabbinically mandated, therefore, I might have thought that he is Rabbinically obligated and can discharge everyone else, who is also Rabbinically obligated. [That is why] it comes to teach us we do not do this on account of the honor of the community. For it is a disgrace to the community for a minor to discharge their duties." According to this reasoning, there is some support for the custom to say that the community waives its honor.

ומדברי רבינו ודברי המפרשים שכתבתי משמע בהדיא שקטן אינו רשאי לירד לפני התיבה אפילו באקראי בעלמא. ויש לתמוה על מה שנהגו שקטן יורד לפני התיבה במוצאי שבתות להתפלל תפלת ערבית...ומצאתי להרשב"א שכתב בתשובה (ח"א סי' רלט) בשם הראב"ד דטעמא דתנו דקטן אינו פורס על שמע ואינו עובר לפני התיבה דכיון דברכות ותפלות דרבנן נינהו וקטן שהגיע לחינוך דרבנן הוי אמינא אתי דרבנן ומפיק דרבנן קמ"ל דמשום כבוד הצבור לא עבדינן גנאי הוא לצבור שהקטן מוציאן עכ"ל. ולפי טעם זה יש מקום למנהג לומר שהצבור מוחלים על כבודם.

According to the Beit Yosef, the gemara frowns on certain practices which do the community dishonor, but ultimately, the community may waive the concern for its honor and go ahead with that practice. To this view, the thrust of the gemara's restriction seems to be that a minority interest may not impose its will on everyone if the main body of the community would be offended. However, if everyone thinks that it is acceptable to violate their honor in this way, then it is permitted. Alternatively, the point could be that a community may not waive its honor consistently and regularly, but for occasional needs, they may choose to waive their honor. Therefore, in the Shulhan Arukh (OH 53:10) he justifies those communities whose practice is to appoint a minor as *Sha* "tz on Saturday nights.

There is room to justify those places where the custom is for minors to lead 'Arvit at the end of Shabbat.

יש ללמוד זכות על מקומות שנוהגים שהקטנים יורדין לפני התיבה להתפלל תפלת ערבית במוצאי שבתות.

Against this, the  $\mathbf{Ba\underline{h}}$  (O<u>H</u> 53) insists that the whole point of the *kevod ha-tzibbur* restrictions is to prevent the community from undermining its dignity in the face of competing interests.

...Rather, the matter is simple: since the Sages legislated because of their concern for the honor of the community, a community has no license to waive it. Further, if it were the case [that the community could waive it], all these enactments that the Sages legislated because of the honor of the community, such as not rolling the Torah scroll before the community...if you say that they are allowed to waive [their honor], then the legislation has accomplished nothing, because every community will then waive it!

...אלא הדבר פשוט כיון שכך תקנו חכמים דחששו לכבוד צבור אין ביד הצבור למחול. ותו דאם כן כל הני תקנות שתקנו חכמים מפני כבוד צבור שלא לגלול ספר תורה בצבור...אם אתה אומר דרשאין למחול, א"כ לא הועילו בתקנתם כלום, דכל צבור יהיו מוחלים!

Communities may wish to cut corners because of expedience (rolling the Torah in front of everyone rather than preparing ahead of time, coming to shul in tattered work clothes rather than changing, etc.), or some other reason. No, say the Sages – Torah reading and public prayer are serious, communal acts that require the highest levels of dignity. According to the Bah, the *kevod hatzibbur* restrictions were enacted in order to prevent communities from the *de facto* waiving of their dignity implicit in choosing those unseemly practices.

Prominent *poskim* over the past few centuries have split in their rulings on this dispute.<sup>57</sup> Some argue that the stronger weight of authorities emerging from these disputes accords with the Beit Yosef's ruling that *kevod ha-tzibbur* may be waived,<sup>58</sup> and therefore argue that communities should be able to waive their honor and allow women to read Torah and say *devarim she-bikedushah*. The thrust of R. Shapiro's argument follows this line of thinking. However, even according to the quite reasonable and compelling view of the Bah, there should be no restriction in our case. Communities with egalitarian social norms are not claiming that women should be able to read Torah and lead *even though* it is undignified; they are claiming that there is no less dignity in a woman reading than in a man reading.<sup>59</sup>

<sup>58</sup> This voice includes, in our own generation, R. Ovadiah Yosef Res. *Yabia* ''*Omer* OH VI:23, as well as, probably, other strongly authoritative modern *poskim*, such as the Mishnah Berurah and Arukh HaShulhan. See Shapiro, *ibid.*, notes 203-04.

<sup>&</sup>lt;sup>57</sup> See R. Shapiro, pp. 35-36 for citations to a number of these authorities.

<sup>&</sup>lt;sup>59</sup> R. Shapiro indicates an awareness of this reasoning, though he ends up hedging by ultimately investing more attention on the prominence of the Beit Yosef's position. He quite perceptively writes: "[The Bah says that] just as a community should choose the imposing figure over the wise man to represent it before the Lord, so the congregation should not denigrate *qeri'at ha-Torah* by performing it through women. This line of thought is out of tune with modern perceptions...Jewish women are widely represented in the professions, including those, such as law and public office, which demand that they act as representatives

In short, the model of Torah reading demonstrates two things:

- 1) Women, in principle, may lead *devarim shebikdushah* in the presence of a valid minyan.
- 2) In practice, women's leadership of these parts of the service may be circumscribed by the concern of *kevod hatzibbur*.

Despite the simplicity and soundness of this argument, some opponents of egalitarian minyanim have argued that not all *devarim shebikdushah* work in the same way, and women's principled inclusion in Torah reading may not validate them, in principle, to lead other *devarim shebikdushah*, such as *kaddish*, *kedushah* and *barekhu*. <sup>60</sup> Specifically, some have claimed that one who leads these last three rituals is fulfilling the individual obligations of others in this part of the liturgy and that women are exempt from these requirements and thus unable to lead. For the sake of thoroughness, we will turn now to analyze the issues surrounding women's participation in these other *devarim shebikdushah*.

#### Other Devarim shebikedushah: kaddish, kedushah and barekhu

In this section, we will argue three central points:

- 1) For many rishonim, there is no individual obligation in *devarim shebikdushah*, such that there is no sense to any conversation regarding the ability of the *sha''tz* to fulfill the obligations of others.
- 2) Even those who do speak of such an individual obligation do not necessarily think of it as an obligation that can be vicariously fulfilled. When a person hears a berakhah made by someone else, the listener has an individual obligation to respond amen, but in no sense is the one who makes the berakhah fulfilling their obligation by making the blessing. Similarly, even if there is an individual obligation to sanctify God's name through devarim shebikdushah, this would seem to be about the individual's recitation of various phrases—such as מברוך ה' סדוש קדוש קדוש קדוש קדוש קדוש קדוש יהא שמא רבה מברך

and advocates for others...Does it make sense to accept as *halakhah* an opinion that is based on anachronistic cultural presumptions? It is, to say the least, ironic that many of those who would today rely on *Bah* to exclude women from *qeri'at ha-Torah* reject his position with respect to young, beardless *ba'alei tefillah*, and permit, if not encourage, the young to participate in leading the service" (p. 27, 36). While we would disagree with R. Shapiro's suggestion that the Bah's view is "based on anachronistic cultural assumptions"—after all, the idea that a community should be held to high standards of dignity even when they might want not to be makes just as much sense today as it did in the 17<sup>th</sup> century—we agree that the *application* of the Bah's view to exclude women from Torah reading is based on anachronistic cultural assumptions. R. Shapiro's final conclusion reads as follows: "To recapitulate, there appears to be sound halakhic basis for the argument that...in synagogues where there is a consensus that *a woman's Torah reading does not violate community standards of dignity* [emphasis ours], women may be permitted to read the Torah (or at least portions of it) as well. The only serious objection to *qeri'at ha-Torah* by women is the one raised by the *baraita*, namely that women's Torah reading violates *kevod ha-tsibbur*, and *kevod ha-tsibbur* should be regarded as a relative, waivable objection that is not universally applicable" (pp. 51-52).

<sup>60</sup> See our note above challenging the notion that Torah reading is not a *davar shebikdushah*. There are nonetheless those who acknowledge this point while pressing the claim that not all *devarim shebikdushah* are alike, forcing us to continue with our analysis here.

שה ועד המבורך לעולם ועד—and not about having the *sha"tz* perform these rituals on his or her behalf

3) Even were one to argue that the *sha"tz* does function in this sort of vicarious capacity in the context of *devarim shebikdushah*, there is no reason to think (and no evidence to suggest) that *devarim shebikdushah* are gendered.

#### Individual Obligation in Devarim Shebikdushah?

It is in fact a bit odd to see an individual obligation with regard to *devarim shebikdushah*, given that they can *only* be said in a communal context. We explored a similar line of thinking with regard to praying with a *minyan* above. Indeed, **Ramban**, <sup>61</sup> makes precisely this point, arguing that *devarim shebikdushah* are *communal* obligations, rather than individual ones:

Those things mentioned in our Mishnah [*Megillah* 4:3] are all communal obligations, and they apply only to groups obligated in them, <sup>62</sup> but Megillah, just as the community is obligated, so too each and every individual is obligated...

השנויים במשנתינו כולם חובות הצבור הן ואינן אלא במחויבים בדבר אבל מגילה כשם שהצבור חייב כך כל יחיד ויחיד חייב...

<sup>61</sup> *Milhamot Hashem* on Rif 3a s.v. *ve-od*. The Ran on the Rif here cites the view of the Ramban approvingly as well.

The linguistic phrase "obligated in the thing" simply means "those who have not yet performed this rite," and does not, in a formal sense, ascribe any individual obligation. Similarly, Rivash uses the word להוציא in his responsa (#334), but when R. Ovadiah Yosef cites this passage (*Yabbia Omer* OH 2:5), he does not comment on it, even though he adamantly denies any individual obligation, presumably because he recognizes that the word need not be taken literally.

It is for precisely this reason that a number of texts that use the phrase להוציא את הרבים בקדושה (or some similar variant) cannot be cited convincingly as evidence of a view obligating individuals in *devarim shebikdushah*. The language need not be understood technically, and in fact, it more often than not is simplest to understand it to mean "to perform the ritual such that others can respond," but not to imply an actual fulfilling of others' *obligations*. In fact, Rashi, who we will see explicitly denies the existence of individual obligations in *kedushah*, uses this very phrase in his commentary on the Talmud (*Berakhot* 47b and *Megillah* 24a).

Indeed, the *Hida* and *Arukh haShulhan* both make this point in a particularly bold way, understanding *Massekhet Soferim*'s statement that women are "הייבות בקריאת ספר" as merely indicating that is appropriate for them to hear the reading (*Kisei haRahamim* on *Soferim* 18:4; *Arukh haShulhan* YD 282:11). It is problematic how R. Shlomo Riskin cites these sources in his article, "Torah Aliyot For Women", *Meorot* Fall 2008, to claim that women lack an individual obligation in Torah reading while at the same time insisting that Ramban's similar language *does* signal an individual obligation.

<sup>&</sup>lt;sup>62</sup> We follow here the reading of R. Ovadiah Yosef in Yabia Omer IV OH #8, who interprets the phrase מחוייבים בדבר מחוייבים בדבר to mean a group of people who have not yet performed the ritual in question, such as *kaddish* or *kedushah*. The phrase clearly cannot refer to individuals who are obligated in this particular act, since Ramban's entire point in this passage is to deny that such an individual obligation exists with respect to the rituals being dicussed here in the Mishnah. Indeed, Ramban here seems to be paraphrasing an earlier formulation of this idea expressed by R. Meshullam b. Moshe in Sefer Hahashlamah on Megillah 5a in the following clear language: דכל הני דקתני במתניתין אין פורסין על שמע ליכא חיובא כלל בציר מעשרה אבל במגילה איכא. The only tenable reading of Ramban here, when he says "those obligated in the thing", is that an obligated community is defined as a *minyan* of people who have "not yet heard" these things said, who have not yet gone through the paces of these rituals.

Ramban here is responding to a claim made by the *Ba'al haMaor*, who suggested that the exclusion of the reading of the *megillah* from this Mishnah proved that it did not require a *minyan*. Ramban disagrees, arguing that the reason that act is left out of this list is not because it does not require a *minyan*, but because of the nature of its obligation. Acts such as Torah reading and the leading of communal prayer (which includes the saying of the *devarim shebikdushah*, i.e. *barekhu, kaddish*, and *kedushah*) are not obligatory on individuals, as opposed to the reading of the *megillah*, which, even though it should be read with a *minyan*, remains obligatory on each individual in that community.

**Rashi** seems to express a similar view to that of the Ramban, though his point is made locally, regarding *kedushah* specifically and not *devarim shebikdushah* generally. He explains that the *Kedushah* is "precious to us," not that any individual is obligated to say or hear it (Mahzor Vitry 44<sup>63</sup>):

Regarding ten people who have prayed everything and have heard *Kedushah* and *Barekhu* and the prayer order: they can count towards another quorum for one who has not yet prayed...and even one of those who has prayed already can repeat the *Amidah* to fulfill the obligation of the one still obligated. And my master provides support for this ruling from the fact that though the community prays the *Amidah* individually. the leader repeats it in order to say *Kedushah*. We see, therefore, that those who already prayed count towards the quorum on account of the *Kedushah* alone. Someone challenged this and said: Perhaps, in your example, they are counted towards the quorum only because they have not yet heard *Kedushah*? They are therefore still obligated and can therefore count in the minyan! My master responded: We do not find anywhere in the Talmud an obligation to hear kedushah: rather, it is dear to us and it cannot be said in a group of less than ten.

ועל עשרה שהתפללו כולו ושמעו קדוש' וברכו וסדר תפילה. שיכוליו להימנות להמנייו אחר בשביל אחד שלא התפלל...ואפילו אחד מאותן שהתפללו כבר יכול לחזור ולהתפלל להוציא את החייב. וסומך ר' ומראה פנים. מן הציבור שמתפללין י"ח כל אחד לעצמו. וחוזר וכופלו השליח ציבור בשביל קדושה. נמצא שהמתפללין נימנין לסדר המניין על הקדושה לבדה. נענה מאן דהו וא'. שמא בשביל הקדושה שלא אמרו כל אחד לעצמו הן נימנין. נמצאו עדיין מחוייבין בדבר. והשיב ר'. לא מצינו בכל התלמוד חיוב קדושה אלא חביבה היא לנו ואינה בפחות מעשרה:

The practical corollary of this approach to *devarim shebikdushah* is that questions of obligation are beside the point when thinking about who is qualified to lead these parts of the service. This notion achieves clear expression in **R. Yosef Caro**'s treatment of the question of a minor leading Arvit, which we briefly explored above. In Beit Yosef, he grapples with the validity of this common practice in the face of sources, starting with Mishnah Megillah 4:6, that unambiguously forbid a minor from serving as a *sha*"tz. He proposes justifying the practice by breaking down the job of *sha*"tz into its component parts:

<sup>&</sup>lt;sup>63</sup> For parallels to this text, see Responsa of Rashi #92, Sefer Haoreh II:129, Siddur Rashi #59 and Issur ve-Heter LeRashi #124. In the responsum, the argument is explicitly connected to the Massekhet Soferim text we will analyze below.

#### **Beit Yosef Orah Hayyim 53**

It is possible to argue that the sages were only particular [about a minor being forbidden to lead] regarding Shaharit, which has *kedushah* in the first blessing before the Sh'ma and in the Amidah, and during which the leader must also repeat the Amidah to fulfill the obligations of others. Since a minor has no obligations, he would be unable to fulfill their obligations, as it is taught, "One who is not obligated in something cannot fulfill the obligations of others"...

בית יוסף אורח חיים סימן נג
ואפשר לומר דלא הקפידו חכמים אלא בתפלת שחרית שיש בברכת יוצר ובתפלה קדושה וגם שצריך שליח ציבור לחזור התפלה להוציא הרבים ידי חובתן וקטן כיון דלאו בר חיובא הוא אינו מוציאם כדתנן כל שאינו מחוייב בדבר אינו מוציא את הרבים ידי חובתן...

R. Caro's argument here is that leading Arvit does not require the minor to fulfill anyone else's obligations, given that there is no repetition of the 'Amidah. Most important for our purposes, he clearly does not consider there to be any issue of obligation with regard to kaddish and barekhu, which would also be led by the minor functioning as a sha"tz for Arvit. This is in line with the approach of Rashi and Ramban sketched out above; there is no individual obligation in devarim shebikdushah, rather, the community performs these rituals as part of public prayer and must do so in the presence of a valid minyan. In keeping with this approach, R. Caro justifies the practice of allowing a minor to lead Arvit—including its devarim shebikdushah—as we saw above in Shulhan Arukh 55:10.

Nevertheless, there are voices that seem to assume a more formal obligation in *devarim shebikdushah*. The earliest of these is found in **Massekhet Soferim 10:6** (cited above), which lists *barekhu* and *kaddish* among the *devarim shebikedushah* requiring a *minyan* and also seems to talk about an individual obligation to hear *barekhu* and *kaddish*:

...and in a place where there are nine or ten who have heard *Barekhu* or *Kaddish*, and after the *tefillah* one person gets up who did not hear these things, and he says *Barekhu* or *Kaddish*, and the others answer after him, **he has fulfilled his obligation**. And the Sages have already enacted that cantors say after the redemption prayer "May the name of Hashem be praised from now till eternity", and after it, "Praise Hashem, the praised" [*Barekhu*], in order to discharge those who had not heard, for R. Yohanan said, "Would that a person would pray all day long."

...ובמקום שיש שם תשעה או עשרה ששמעו בין ברכו בין קדיש, ולאחר התפילה עמד אחד שלא שמע בפני אילו, ואמר ברכו או קדיש, וענו אילו אחריו, יצא ידי חובתו; וכבר התקינו חכמים לחזנים לומר לאחר גאולה, יהי שם י"י מבורך מעתה ועד עולם, ואחריו, ברכו את י"י המבורך, כדי לצאת אותם שלא שמעו, דאמר ר' יוחנן הלואי ויתפלל אדם כל היום כולו.

This text is cited by many Ashkenazic authorities—including Rashi—as the basis for allowing an individual to get up at the end of communal prayer in order to hear devarim shebikdushah that he missed. Precisely because Rashi uses this text and nonetheless asserts that there is no individual obligation in kedushah, we must be cautious in ascribing too much meaning to the phrase צא ידי חובתו, which might well be

read as an overly legalistic formulation of the notion that this person has succeeded in praising God's name in public through engagement with devarim shebikdushah.<sup>64</sup>

Nonetheless, at least one rishon advances a general line of thinking that would obligate individuals in (at least some) devarim shebikdushah and likely understood Massekhet Soferim to be reflecting a similar perspective. Sefer haMahkim<sup>65</sup> writes that any kaddish said by minors must not be an "obligatory" one, since otherwise, these children, not being "obligated," would not be able to fulfill the obligations of others, based on the rule discussed above in Mishnah Rosh Hashanah 3:8. But these claims are rare in the rishonim, 66 and the topic receives more attention from the aharonim. For example, Shulhan Arukh haRay 53:13, spells out one possible ramification of this approach to devarim shebikdushah with respect to the justification offered by the Shulhan Arukh in defense of the minor serving as *sha"tz* for Arvit:

#### Shulhan Arukh HaRav OH 53:13

There is room to justify those places where the custom is for minors to lead Arvit at the end of Shabbat, because they do not fulfill the obligations of others, seeing as they do not repeat the 'Amidah and merely say *barekhu* and *kaddish*. <sup>67</sup> But in places that do not already have this practice, a minor should never lead, not even Arvit (because of barekhu...and the barekhu of Shaharit and Arvit is different in this regard from the barekhu of Torah reading, which a minor may say, for the latter is not really an obligation, whereas the entire community is obligated to hear the former), and a minor, not being obligated, cannot fulfill their obligations.<sup>68</sup>

#### שולחן ערוך הרב אורח חיים נג:יג

יש ללמד זכות על מקומות שנוהגין שהקטנים יורדים לפני התיבה להתפלל ערבית במוצאי שבתות לפי שאין מוציאין את הרבים ידי חובתן שהרי אינן מחזירין את התפלה רק שאומרים ברכו וקדיש ובמקומות שלא נהגו כן אין לקטן לעבור לפני התיבה אפילו בתפלת ערבית (משום ברכו שבה...ואין ברכו של תפלת שחרית וערבית דומה לברכו של קריאת התורה שקטן יכול לאמרה לפי שאינה חובה כל כך...אבל אלו הן חובה על כל צבור לשמען שחרית וערבית) וקטן שאינו חייב אינו מוציאם ידי חובתן.

<sup>&</sup>lt;sup>64</sup> See our note above pointing out other instances where this sort of language is read in this loose fashion by various poskim. Note also that R. Yosef Caro, despite his clear stance above that there are no issues of obligation with regard to barekhu does not hesitate to use the language of להוציא in the context of barekhu in OH 236:2. This is further evidence for the notion that the language of להוציא—possibly in Massekhet Soferim as well—must be read as "giving others the opportunity to respond" such that they can, through their response, fulfill the mitzvah of sanctifying God's name publicly. On this point, see our analysis of a passage from Shibbolei Haleket below.

65 S.v. *hakorei*. The author of this work is R. Natan b. Yehudah of the Tosafist circles of 13<sup>th</sup> century

<sup>&</sup>lt;sup>66</sup> One source sometimes inaccurately cited as evidence of an obligation in *devarim shebikdushah* is that of the Meiri on Berakhot 45a. In discussing the difference between women's participation in zimmun and their participation in the reading of Megillah and Torah, the Meiri discusses a gender gap between men and women regarding obligation. However, he is discussing there the difference between men and women with regard to obligation in zimmun (cf. Rashi on Berakhot 45b, s.v. deafilu), not with regard to any "obligation" in devarim shebikdushah. See the appendix on zimmun for our full analysis of the passage in Sefer Hamikhtam on which this Meiri is based.

<sup>&</sup>lt;sup>67</sup> Note this confirmation of the point we made regarding the Beit Yosef above.

<sup>&</sup>lt;sup>68</sup> This second part of the passage is an explanation of Rema's qualification of SA OH 55:10, where he says that those communities without an exisiting practice of minors leading Arvit on Saturday nights should not institute it. He gives no reason for this qualificiation, which in fact just seems to flow from R. Yosef Caro's own ambivalence towards the practice, even though he ends up justifying it. Rema might simply be filling in what he felt was implicit in the Beit Yosef, might prefer a less convoluted reading of the

With respect to this debate over whether there is in fact a concrete, individual obligation in *devarim shebikdushah* that would affect our discussion of who is qualified to serve as *sha"tz*, voices like those of Sefer Hamahkim and Shulhan Arukh HaRav hardly dominate later discussion. In his typically comprehensive style, **R. Ovadiah Yosef**<sup>69</sup> surveys the views of *aharonim* who see an individual obligation but rejects them, maintaining that any such opinion cannot stand up in light of the position of the Ramban cited above.

Sha"tz as agent for devarim shebikdushah?

We saw above that Sefer Hamahkim and Shulhan Arukh HaRav not only assume that there is some sort of individual obligation in *devarim shebikdushah*, but that the *sha"tz* fulfills the obligations of those assembled vicariously through his recitation. This, however, is far from a unanimously held view. Consider the following passage from **Shibbolei Haleket Tefillah #20**:

וכן מצאתי לרבינו ישעיה זצ"ל אע"ג דאמרינן שומע כעונה הני מילי בברכות אבל בקדוש ומודים ואמן יהא שמיה רבא שהן קלוסין חשובין לפני הקב"ה אינו יוצא ידי חובתו בשמיעה עד שמוציא בפיו עם הצבור...

And so too I found in the name of R. Yeshaya [of Trani]: even though we normally say that one who listens [to the *berakhah* made by another] is considered as if he said it himself, that only applies to *berakhot*. But with regard to *kedushah*...and *kaddish*, which are lofty expressions of praise for God, one does not fulfill one's obligation just by listening; rather, one must actively voice the words along with the rest of the community.

This source uses the language of individual obligation to talk about *kedushah* and *kaddish*, but it denies that the leader can vicariously fulfill this obligation for anyone else. Indeed, this is the most straightforward way to understand the essence of the rituals of *kedushah*, *kaddish* and *barekhu*. The function of the leader of these rituals is essentially to prompt the community to perform the act of sanctifying God publicly. There is nothing particularly significant about calling on the community to bless God (in the case of *barekhu*—קומבורך) or to sanctify God (in the case of *kedushah* and *kaddish*— ברוך ה' המבורך/קדוש קדוש קדוש קדוש ליה עבה (מברך ברוך ה' המבורך/קדוש קדוש קדוש ליה שמה רבה), which is *not* delegated to the leader. Even if one chooses to see part of the obligation to sanctify God's name as playing out in an individual obligation in *devarim shebikdushah*, that obligation would seem most logically to be about *participation* in those rituals, rather than simply being present for them while another leads them, which is not the way they are structured. Among later authorities, this point was emphasized by

Mishnah's seemingly comprehensive ban on allowing minors to lead, or he might be toeing the line on issues related to *kevod hatzibbur*, cited in Beit Yosef as Ra'avad's reason why a minor cannot lead any of the *tefillot*. Shulhan Arukh HaRav is the first to suggest that one would oppose the practice because of issues related to obligations grounded in *kaddish* and *barekhu*, though this is a plausible continuation of the discussion we saw in Sefer HaMahkim and, possibly, Massekhet Soferim.

<sup>69</sup> Yabia Omer VIII OH 14:3-4.

**R. Uzziel.**<sup>70</sup> He noted that the very structure of *kedushah* is such that questions of obligation play no role in determining who is fit to lead this *davar shebikdushah*. <sup>71</sup> Accordingly, controlling for issues of *kevod hatzibbur*, in principle a minor or woman can lead *kedushah*, and serve as *Sha* "tz in general:

...In a place where the listeners say each word after the one making the blessings, and the reader is only reading reading the words before them, they fulfill their obligations with their own blessings and the reader only sets the pace by reciting the beginning and end of each blessing. So is it with the *Kedushah* – he opens the words of the *Kedushah* and the community answers after him – so the reader could properly be a minor or a woman.<sup>72</sup>

...במקום שהשומעים אומרים מלה במלה אחרי המברך והקורא אינו אלא מקריא לפניהם הדברים, הרי שהם יוצאים ידי חובתן בברכת עצמם והקורא אינו אלא מסדר הדברים פותח וחותם כל ברכה. וכן בקדושת השם פותח דברי קדושה והקהל עונים אחריו שפיר יכול המקריא להיות קטן או אשה...

Are devarim shebikdushah gendered?

If, despite all this, one wanted to maintain the assumption of authorities like Shulhan Arukh HaRav that there is an individual obligation in *devarim shebikdushah* that is fulfilled vicariously through the *sha"tz*, there is no reason to assume that women are not equally obligated. Indeed, given that an *'oleh* to the Torah reading says *barekhu* – in the original custom just for the first *aliyah*, and in the later custom, for all *aliyot*<sup>73</sup>--then any of the many voices validating women going up for an *aliyah* (whether those who permit for only some portion or those who permit with no limit) presumably validate women saying *Barekhu*.<sup>74</sup>

**R. Yair Bachrach**<sup>75</sup> makes explicit that there is nothing gendered about *kaddish*, arguing that the only obstacle to women saying it is custom: women in theory can say *kaddish*, he says, since there is universal agreement that they are obligated in martyrdom (*kiddush hashem*), which falls under the same controlling idea of sanctifying God's name as do *devarim she-bikedushah* and is attached to the same set of verses:

<sup>71</sup> The logic he employs here applies equally to *kaddish* and *barekhu*, which have congregational responses that are structured similarly.

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<sup>&</sup>lt;sup>70</sup> Responsa Mishpetei Uzziel III, Miluim 2.

<sup>&</sup>lt;sup>72</sup> Note that R. Uzziel objects to following through on this suggestion in practice, because he feels that letting a minor (or a woman) lead would violate Bah's notion of *kevod hatzibbur*, a point explored above. That simply returns us to that conversation as to whether one need follow the Bah's approach, and even if one does, whether such an approach in contemporary circumstances would even recommend for women's exclusion.

<sup>&</sup>lt;sup>73</sup> See the interesting theory of the Hatam Sofer on this matter cited in note 90 of R. Shapiro's article, cited in note 1 above.

<sup>&</sup>lt;sup>74</sup> Indeed, exactly such a position is taken explicitly by the *Or Letziyyon*, who says that a minor may say *Barekhu* following the mourner's *kaddish* based on the fact that he is already permitted to do so in the context of Torah reading (II 5:14). Shulhan Arukh Harav 55:13, which we saw above, disputes this equation, but neither he nor anyone else prior to contemporary opponents of egalitarian minyanim suggest that women are "exempt" from *barekhu*.

<sup>&</sup>lt;sup>75</sup> Responsa <u>H</u>avot Yair #222.

Question: A strange thing happened in Amsterdam and was well publicized there. A man died without a son and he ordered before his death that ten men learn every day in his house for twelve months and after their learning his daughter should say Kaddish...and the sages and leaders of the community did not object. And even though there is no evidence to contradict them in this matter, for women are also commanded to sanctify the Name and there is also a quorum of males who are called "B'nei Yisrael"...nonetheless, we should worry that by such an act Jewish customs will be weakened...and everyone will build an altar of his own according to his own theories...therefore in this case, where the act is public we should protest.

שאלה דבר זר נעשה באמשטרדם ומפורסם שם. שאחד נעדר בלי בן וצוה לפני פטירתו שילמדו עשרה כל יום תוך י"ב חודש בביתו בשכרם ולא הבת קדיש...ולא מיחו בידה חכמי הקהילה והפרנסים. ואף כי אין ראיה לסתור הדבר כי גם אשה מצוות על קידוש השם, גם יש מניז זכרים מקרי בני ישראל...מ"מ יש לחוש שע"י כך יחלשו כח המנהגים של בני ישראל שגם כן תורה הם ויהיה כל אחד בונה במה לעצמו ע"פ סברתו...ולכן בנדון זה שיש אסיפה ופרסום יש למחות.

Finally, the responsum of **R. Ben Zion Uzziel** cited earlier clarifies the nongendered nature of *kedushah*. Responding to a question about minors in a school leading a minyan that includes 10 adults, R. Uzziel makes the basic, but oft-overlooked point that the text of *kedushah* is simply an expansion of the third *berakhah* of the '*Amidah*, known as קדושת השם. Given that a woman is obligated in this berakhah, as she is in all other berakhot of the 'Amidah, how can one plausibly suggest that she is unable to fulfill the expanded version of this berakhah recited in public?

R. Uzziel argues that minors cannot so obviously fulfill the obligations of adult males in *kedushah* (or any other part of the 'Amidah), but directly implies that women, since they are fully obligated in *tefillah*, may:

And don't respond to me from that which is taught in a Mishnah: "Women, slaves, and minors are exempt from the saying of Shema and from tefillin, but are obligated in the 'Amidah and mezuzah..." [and say based on this text:] You have learned that minors are obligated in the 'Amidah and included in the 'Amidah is kedushah. And therefore, they may fulfill the obligations of

others.

For that is not a good response. After all, Rashi explained: "prayer is a request for mercy, and it is rabbinic, and they declared it also for women and for the education of minors." You see from here that the obligation of minors is only a derivative of the general obligation in education, and it is not like the obligation of women, who are obligated like men according to the decree of the rabbis.

ואל תשיבני מדתנן: נשים ועבדים וקטנים פטורין מק"ש ומן התפילין וחייבים בתפלה

ומזוזה...הא למדת שקטנים חייבים בתפלה ובכלל תפלה הוא גם קדושת ה', וכיון שכך מוציאים את הרבים ידי חובתם.

ואין זו תשובה. שהרי פירש רש"י: דתפלה רחמי ומדרבנן היא, ותקנוה אף לנשים ולחנוך קטנים. דוק ותשכח דחובת קטנים אינה אלא ממצות חנוך ואינה כחובת הנשים שחייבות כאנשים מתקנת רבנן.

Though R. Uzziel in this passage rejects this proof for minors, he does not reject the assumption on which it is based, namely, that the *kedushah* is subsumed as part of the general obligation of prayer.<sup>76</sup>

#### Summary

Devarim she-bikedushah, such as Torah reading, barekhu, kaddish, and kedushah, need to be said in a minyan. There is no explicit discussion in classic sources over who is fit to lead most of these rituals, such as barekhu, kaddish, and kedushah. There is discussion over who is fit to perform one of the items on the Mishnah's list, namely, Torah reading. The Talmud states that in principle, women may do so, but adds that the sages said that women should not read because of "the honor of the community", understood by several rishonim to mean that men would be humiliated by the implication that they are incapable and must rely on a woman. Authorities split over whether individual communities may waive concern for their honor, but even those who normally forbid should not object in our context, where there is no affront to communal honor via women's public performance of important communal duties.

This discussion is also relevant for the other devarim she-bikedushah listed in the Mishnah, and this issue of kevod hatzibbur is the only relevant issue to discuss with regard to women's leadership of barekhu, kaddish and kedushah. According to Ramban and others, these rituals do not reflect individual obligations. In that vein, poskim such as the Ra'avad, Rashba, and Beit Yosef are not at all concerned with issues of obligation when discussing who can lead this rituals. We also see that some *poskim* did discuss the existence of an obligation in these devarim shebikdushah, though their approach was rejected by R. Ovadiah Yosef. Even for those who approached these devarim shebikdushah in this way, it is far from a widely accepted view that the sha"tz discharges the obligations of those listening; it is much more in keeping with the way we perform these rituals to see the participation of the individual as key, again rendering questions of obligation irrelevant for choosing an appropriate leader. Finally, even working with a model of vicarious fulfillment, there is no reason to assume a gender gap with respect to these rituals: as *Havvot Yair* and *Mishpetei Uzziel* make clear, these rituals are rooted in the obligations to sanctify God's name (*Kiddush hashem*) and to pray (*tefillah*), in which women have equal hivvuv.

This paves the way for a promising further step forward for self-defined "Partnership *Minyanim*", in which women read Torah and have *'aliyot* but do not serve as *Sha"tz* for any of the main prayers. The halakhic reasoning for their validation of women

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<sup>77</sup> Depending on how one interprets the phrase פורס על שמע, there may be some evidence for saying that a minor is normally excluded from leading *barekhu*.

<sup>&</sup>lt;sup>76</sup> A similar idea seems to lie behind the view of the *Arukh haShulhan* OH 69:14, cited in *Yabbia Omer* 8:14 discussed above. The *Arukh haShulhan* argues that, while one may not read Torah unless there are ten individuals who have not yet heard it read, one may still say *barekhu* and *kedushah* so long as one as six who have not yet participated in those rituals, because the latter are "ענייני חפילה שכל יחיד חייב בזה"," issues related to prayer in which individuals have a distinct obligation—presumably resulting from their obligations in prayer more generally. Of course, R. Ovadiah correctly contrasts the view of the *Arukh haShulhan* with that of the Ramban, showing that the latter clearly rejects the former's distinction between Torah reading on the one hand and *barekhu* and *kedushah* on the other. But in any event, the sense that *kedushah*, at least, to the extent that it makes a claim on the individual, does so via its connection to prayer more generally, also supports the notion that, like *tefillah*, there is nothing essentially gendered about it.

reading Torah is the argument we summarized above, i.e. that most authorities follow the Beit Yosef in allowing the waiving of *kevod ha-tzibbur*, and in any event, even being stringent for the Bah should not restrict women from reading because in such communities there is no dishonor in women reading. By their own logic, then, there seems to be no reason why women should not be able to lead 'Arvit, since the function of the *Sha*"tz in 'Arvit is only to say those prayers which may be said only in a *minyan* – *barekhu* and *kaddish*. Even if they choose not to address the questions addressed in part 1 regarding women's equal obligation in prayer, and therefore, not to open the question of those prayers with a repetition of the 'Amidah—though we argued above that this point should be non-controversial—there should be nothing else to discuss regarding 'Arvit. Indeed, R. Mendel Shapiro, who got the halakhic ball rolling for these communities, explicitly says that he knows of no objection to women saying *devarim she-bikedushah* in general (footnote 90):

I have heard the argument put forward that women may not say birkhot ha-Torah of qeri'at ha-Torah because they are davar she-bi-qedushah...which women may not recite, but I have found no evidence to support this conclusion. Devarim she-bi-qedushah require an appropriate minyan. Absent such a minyan, they may not be said by men or women. Where there is such a minyan, there is no reason to suppose that women may not say devarim she-bi-kedushah. I have also heard it argued that women are precluded from saying the barekhu that precedes the birkhot ha-Torah said by those called to the Torah. I have found no basis for this position and can only speculate that its origin may be in the perception of barekhu as a devar she-bi-qedushah that women may not say. Again, there is no reason to believe that women may not say devarim she-bi-qedushah in the presence of a minyan of ten men...

Having addressed these questions of obligation (or lack thereof), the conversation returns to the issue of *kevod hatzibbur*; just as communal honor dictates who is fit to read Torah, so too it dictates who is fit to assume the communal leadership role of saying these special prayers. Therefore, the question of the fitness of women to lead *devarim she-bikedushah* for a *minyan*, even under the assumption that they do not count toward the *minyan*, is, nothing more and nothing less than the same question as that of their fitness to read Torah, that is, whether it brings honor or disgrace to the community. We surveyed that question above and it has been dealt with at length elsewhere.

Beyond that, the question is one of custom and stability: what seemed reasonable (or at least not worthy of controversy) to the rabbis of Amsterdam seemed radical and destabilizing to the Havot Yair. The same disputes abound today; communities who address these questions today tend to assume basic equality in the dignity of men and of women, such that there is a certain disgrace in the fact that women are excluded. The real argument, therefore, is over the extent to which women assuming the role of *Sha"tz* destabilizes widespread custom and whether the risks of such destabilization are outweighed by the religious risks of excluding women when we live in a social environment that grants women access to even the highest corridors of power. Precisely

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<sup>&</sup>lt;sup>78</sup> Emphasis ours.

such an argument led R. Ahron Soloveichik to cite the Havot Yair as support for his ruling permitting (and requiring permission for) women to say *kaddish* in the synagogue. While the threat in the time of the Havot Yair was, in his view, the dissolution of the unified Jewish community, R. Soloveitchik felt the greater risk to be the temptations of heterodoxy, such that contemporary Orthodoxy's mission was to permit participation by women to the extent possible while retaining maximal allegiance to tradition among the Jewish population.<sup>79</sup>

In addition to these considerations of stability and custom, one may sense that lurking behind contemporary opposition to women's inclusion in communal prayer roles are political concerns which focus not on the issue at hand of gender, but of broader social boundary issues. Indeed, in a 2004 responsum, R. Yehuda Herzl Henkin opined that nowadays the reason to restrict women from having *'aliyot* to the Torah is not communal honor, but as a bulwark against assimilation (*Benei Banim* IV:3, p. 17):

...Today, when the reader reads the Torah, whereas those with 'aliyot to the Torah say the blessings but do not read, the whole matter of communal honor is irrelevant...I have written several times that in my opinion the essence of the prohibition on giving 'aliyot to women today is not on account of communal honor, but on account of it is an opening to assimilationists.

...היום שרק הבעל-קורא קורא בתורה ואילו העולים לתורה מברכים אבל אינם קוראים אם כן בטל ענין כבוד הצבור...וכתבתי כמה פעמים שלדעתי עיקר איסור עליות נשים היום אינו משום כבוד צבור אלא משום שהן פתח למתבוללים.

Similarly, in his response to R. Mendel Shapiro's aforementioned article, R. Henkin concludes his opposing argument as follows:<sup>80</sup>

Where does all this leave us? Regardless of the arguments that can be proffered to permit women's *aliyyot* today—that *kevod ha-tsibbur* can be waived, that it does not apply today when everyone is literate, that it does not apply when the *olim* rely on the (male) *ba`al qeri'ah* and do not themselves read—women's *aliyyot* remain outside the consensus, and a congregation that institutes them is not Orthodox in name and will not long remain Orthodox in practice. In my judgment, this is an accurate statement now and for the foreseeable future, and I see no point in arguing about it.

In these two passages, R. Henkin is discussing only the issue of 'aliyot for women; nevertheless, similar considerations animate discussions of other issues of gender in synagogue life, even if they are not explicitly acknowledged. Of course, these assessments are highly subjective and controversial: R. Henkin's concern with certain practices being outside of the Orthodox concensus does not seem to bother R. Sperber, who has emerged as a forceful advocate for women's aliyot in the context of Orthodox connunities. We hope that R. Henkin's refreshing candor is a model for others to engage further conversation on this topic with similar transparency. Some communities may well evaluate that maintaining difference from non-Jews or from self-defined heterodox

<sup>&</sup>lt;sup>79</sup> 'Od Yisrael Yosef Beni Hai, no. 32, 100.

<sup>&</sup>lt;sup>80</sup> See R. Henkin's comments in his responses to R. Shapiro's article, cited in note 1 above.

Jewish groups is so important as to trump local, internal issues, since blurring of those boundaries may lead to problems much more numerous or grave in their estimation than those caused by unnecessary exclusion of women. These concerns should be debated on their own terms, though, so that we don't, God forbid, err in our assessment of what is at stake and make unwise choices.

#### II. Counting in a Minyan

The number ten is one with ancient significance as a figure signifying a quorum. For example, in **Ruth 4:2**, ten elders are assembled for the legal procedure of the kinsman's redemption or relinquishing of his inheritance claim: "וַיֵּקָה עֲשָׁרָה אֲנְשִׁים מִזּקְנֵי "And he took ten men from the elders of the city and said, 'Sit here,' and they sat." Non-rabbinic sources also feature ten as the minimum needed for a quorum in various communal settings. The Sages found ways to connect this number back to verses in the Torah as a way of grounding it in Scripture. In **Mishnah Sanhedrin 1:6**, we see that the community is thought to be represented by a panel of ten judges, such that capital cases require 23 judges – a "congregation" of ten to advocate, another congregation of ten to condemn, and a final group of three, a court in its most basic structure.

The large Sanhedrin had 71 members and the small one 23...How do we know that the small Sanhedrin has 23 members? As it says, "the *eidah* will judge" and "the *eidah* will save" (Num. 34:24-25) – a judging *eidah* and a saving *eidah*, that makes 20. How do we know that an *eidah* is 10? As it says, "Until when will I have to bear this evil *eidah* [referring to the spies, who were 12 in number], and Yehoshua and Kalev do not count [because they brought back a good report, leaving 10]...

סנהדרי גדולה היתה של שבעים ואחד, וקטנה של עשרים ושלשה...ומנין לקטנה שהיא של עשרים ושלשה, שנאמר: "וְשָׁפְטוּ הָעֵדָה", "וְהָצִּילוּ הָעֵדָה" (במדבר לד:כד-כה), עדה שופטת ועדה מצלת, הרי כאן עשרים. ומנין לעדה שהיא עשרה, שנאמר: "עַד מָתַי לָעֵדָה הָרָעָה הַזּ'את" (במדבר יד:כז), יצאו יהושע וכלב...

**Mishnah Megillah 4:3**, which we saw in the last section, requires ten for a variety of functions, including the repetition of the `*Amidah* and Torah reading:<sup>82</sup>

We do not responsively recite the Shema, nor have a communal prayer leader, nor offer the priestly blessing, nor read the Torah, nor read from the prophets, nor perform the standing/sitting [ritual for the dead], nor say the blessing of the mourners nor the formal comforting the mourners, nor recite the wedding blessings, nor say *zimmun* with the Name in a group of fewer than 10. And when redeeming land we require nine and a *kohen*. And so too with

אין פורסין את שמע, ואין עוברין לפני התבה, ואין נושאין את כפיהם, ואין קורין בתורה, ואין מפטירין בנביא, ואין עושין מעמד ומושב, ואין אומרים ברכת אבלים ותנחומי אבלים וברכת חתנים, ואין מזמנין בשם, פחות מעשרה. ובקרקעות, תשעה וכהן. ואדם, כיוצא בהן:

<sup>81</sup> For two examples, see the Damascus Document, col. X, and the Community Rule, col. 6.

<sup>&</sup>lt;sup>82</sup> We explored this mishnah in greater depth above and saw how later sources clarify that *kedushah*, *kaddish* and *barekhu* are also among the rituals that require a group of 10.

#### [redeeming] people.

Strikingly, this text offers no specifications regarding who is eligible to count as one of the ten. All we can infer is that, except for the evaluation of land, there is no need for one of the ten to be a priest. But what other limits are there on the constitution of this group? The Mishnah's silence on this point only reinforces the idea that we are dealing with a preexisting notion of a quorum that has certain assumed protocols that are not fully spelled out.

Later texts attempt to ground the quorum of 10 in verses:

#### Yerushalmi Megillah 4:1, 74c

Said R. Simon: It says here "in the midst" (tokh) and it says there "And benei visrael came to get grain in the midst of those coming," just as tokh there signifies 10, so here too it is 10. Said to him R. Yose b. R. Bun: If you derive it from tokh, there will be too many! Rather, it says here "benei visrael" and it says there "benei *yisrael*"; just as there it refers to 10, so here too it refers to 10.

ירושלמי מגילה ד:א/דף עד עמוד ג אמ' ר' סימון נאמר כאן "תוך" ונאמר להלן "וַיַּב אוּ בָּנִי יִשְׂרֵאל לשָׁבּ ר בְּתוֹדְ הַבַּאִים" (בראשית מב:ה). מה "תוך" שנאמר להלן עשרה, אף כאן עשרה. אמר ליה רבי יוסה בי רבי בון, אם מ"תוך" את למד סגין אינון! אלא נאמר כאן "בני ישראל" ונאמר להלן "בני ישראל" מה להלן עשר' אף כאן עשרה.

## Talmud Bavli Megillah 23b

How do we know this?

Said R. Hiyya b. Abba said R. Yohanan: The verse says: "And I will be sanctified in the midst of the children of Israel" (Lev. 22:32) - any davar shebikedushah shall not be said with fewer than 10. What suggests this?

R. Hiyya taught in a baraita: We derive it from the double usage of "midst": it says here "And I will be sanctified in the midst of the children of Israel" and it says there, "separate yourselves out from the midst of this congregation" (Num. 16:21); and then we derive it from the double usage of "congregation", it says there "How long must I suffer this evil congregation" (Num. 14:27): just as there it refers to 10, so here too it refers to 10.

#### תלמוד בבלי מגילה כג:

?מנא הני מילי

אמר רבי חייא בר אבא אמר רבי יוחנן: דאמר קרא "וְנִקְדַּשְׁתִּי בְּתוֹךְ בְּנֵי ישַׂראל" (ויקרא כב:לב) - כל דבר שבקדושה לא יהא פחות מעשרה. ?מאי משמע

- "דתני רבי חייא: אתיא "תוך" "תוך": כתיב הכא "וְנַקְדֵּשְׁתִּי בָּתּוֹדְ בָּנֵי יִשְׂרַאֵל", וכתיב התם, הַבַּּדְלוּ מתּוֹדָ הַעְדָה (במדבר טז:כא), ואתיא "עדה" – "עדה", דכתיב התם, "עַד מַתִי לַעְדָה הַרַעָה הַזּ־את" (במדבר יד:כז), מה להלן עשרה - אף כאן עשרה.

Both texts ground the practice of devarim shebikdushah in the verse from Vayikra 22, which demands that God be sanctified in the midst of benei Yisrael, the Jewish people. They then try to associate the number 10 with this verse in various ways. Neither text gives us much further insight into the requisite composition of the group. 83

<sup>&</sup>lt;sup>83</sup> Any attempt to extract too much information from these passages creates difficulties. For instance, one who would want to claim that Joseph's brothers and the spies were all male, thus demonsrating the gendered nature of minyan—as does R. Manoah in a passage we will see below—would have to ask whether the *minyan* can be formed only by males over the age of 30 (as were Joseph's older brothers when

We begin to get greater insight into the composition of this group through information implied by the few discussions in rabbinic literature on the question of *minyan*. We begin with a text from TB Berakhot 47b-48a:

Said R. Joshua b. Levi: Even though they said a child resting in a cradle should not be included in the *zimmun*--but we make him an adjunct to the ten.

And said R. Joshua b. Levi: Nine and a slave combine [to make ten for a minyan]

...Said R. Huna: Nine and an ark combine.
R. Nahman said to him: Is an ark a person?

Rather, R. Huna said: Nine, when they look like ten, combine.

...But the halakhah does not follow any of these teachings...

...דאמר רבי יהושע בן לוי: אף על פי שאמרו קטן המוטל בעריסה אין מזמנין... עליו - אבל עושין אותו סניף לעשרה. ואמר רבי יהושע בן לוי: תשעה ועבד מצטרפין.

...אמר רב הונא: תשעה וארון מצטרפין... אמר ליה רב נחמן: וארון גברא הוא? -אלא אמר רב הונא: תשעה נראין כעשרה מצטרפין.

...ולית הלכתא ככל הני שמעתתא...

From R. Yehoshua b. Levi's two statements here, we can gather that he assumes that minors and slaves may not be full participants in a minyan, since he only speaks about them completing the quorum. The gemara does not here or elsewhere spell out why minors and slaves are normally excluded nor why they might be included in these liminal situations. It is possible that the latter section of this passage suggests that there was a tendency to "cheat" on the last member of the *minyan*, effectively considering 9 to be like 10. In any event, these various lenient rulings were controversial, and our printed text of the gemara here ends with a rejection of these various statements. While this legal rejection was not originally a part of the text (it was originally a Geonic gloss that crept into the text), <sup>84</sup> it reveals that even toying with the margins of the definition of *minyan* was controversial.

Another passage engages the question of the quorum of ten in another facet of the commandment to sanctify God's name: the obligation to martyr oneself when forced to violate certain *mitzvot* in certain contexts. The gemara reports a series of decisions that held that one must martyr oneself before violating *any* mitzvah in public, which is defined as a group of 10:

#### Talmud Bavli Sanhedrin 74a-b

And how many [people] form a public collection [such that a person is obligated in martyrdom because of the presence of a public collection--a *parhesiya*]? Says R. Yaakov says R. Yohanan: "A *parhesiya* cannot be less than ten people." Obviously, we require Jews [for this

#### תלמוד בבלי סנהדרין עד.-עד:

וכמה פרהסיא? - אמר רבי יעקב אמר רבי יוחנן: אין פרהסיא פחותה מעשרה בני אדם. פשיטא, ישראלים בעינן, דכתיב: ונקדשתי בתוך בני ישראל. בעי רבי ירמיה:

they went down to Egypt), or whether it must be made up exclusively of wicked people (as were the spies). The sound approach here is to embrace the Ran's statement (contained in his commentary on Mishnah Megillah 4:3, found in the *dappei ha*-Rif) that all of these derivations are *asmakhta'ot* and are thus post facto attempts to tie existing rulings back to verses such that one should not view them as generative of further rules.

<sup>&</sup>lt;sup>84</sup> For confirmation of this point, see Otzar Hageonim Berakhot Teshuvot #314-316.

number], as it says, "And I will be sanctified amidst benei yisrael." R. Yirmiyah asked: "Nine Jews and one non-Jew--what is the law?" Come and learn what R. Yannai the brother of R. Hiyya taught: It comes from the double occurrence of "tokh:" here is written "And I will be sanctified amidst ["tokh"] the children of Israel" and there is written (Num. 16) "Separate yourselves from admist ["tokh"] this congregation." Just as there all ten are Jews, also here all ten must be Jews.

תשעה ישראל ונכרי אחד מהו? תא שמע, דתני רב ינאי אחוה דרבי חייא בר אבא: אתיא תוך תוך, כתיב הכא ונקדשתי בתוך בני ישראל וכתיב התם +במדבר ט"ז+ הבדלו מתוך העדה הזאת מה להלן עשרה וכולהו ישראל - אף כאן עשרה וכולהו ישראל.

The gemara here explores the margins of the quorum of 10 for martyrdom, taking it as obvious that non-Jews are not primary members of this group. Nonetheless, **R. Yirmiyah** asks whether a non-Jew could be the tenth member of a group triggering the obligation of martyrdom. The gemara then rejects this possibility and insists that all 10 members of the group must be Jews.

Neither of these passages weighs in on the question of whether women count toward the quorum of 10. It is hard to know whether the passage in Berakhot would take it for granted that women are included in the concept of minyan and therefore it explores only the cases of slaves and minors, or whether the total exclusion of women from minvan is so obvious that even the liminal roles explored for these other groups are not even entertained for them. The passage in Sanhedrin would seem to push us in the former direction: a plausible reading of that passage would claim that if the gemara is willing to entertain the liminal status of a non-Jew in such a quorum, then it clearly considers women to be included in those that the verse terms בני ישראל, and thus women would be included in minyan.85 Furthermore, all other factors being equal, one might well assume that women count towards the minyan, given their equal obligation in prayer (in the context of which many of the situations requiring a minyan are clustered), and their explicit inclusion in the similar *mitzvah* of martyrdom. <sup>86</sup> But women's participation in *minyan* is nowhere directly addressed in classical rabbinic sources, leaving us simply to say that their normative exclusion is nowhere asserted but that proving their inclusion is equally impossible. In short, there is no dispositive evidence one way or the other.<sup>87</sup>

argue in the other direction as well.

Similar reasoning is used by the *Urah Shahar*, cited below.
 The latter point is made clear by the gemara's initial assumption on TB Sanhedrin 74b that Esther ought

to have been required to martyr herself rather than allow herself to be taken as Ahashveirosh's wife.

87 Claiming that women are obligated in *tefillah* and martyrdom does not automatically positively dispose of the question of their inclusion in the *minyan* associated with those practices. Note that the *Shulhan Arukh* at one and the same time held that women were obligated in prayer and that only men could constitute the *minyan*. Despite much argument to the contrary, by both proponents and opponents of counting women in a *minyan*, there is simply no good evidence for the notion that one counts in a *minyan* if and only if one is obligated in the respective *mitzvot* associated with that minyan. All of the rituals we have been discussing are in one way or another associated with the *mitzvah* of sanctifying God's name in public. While anyone obligated in this *mitzvah* (including women) may be eligible/obligated to engage in the relevant practice, it could well be that the requisite quorum to give these acts meaning must be made up of those with some sort of principal group identity that extends beyond obligation in these *mitzvot*. In other words, if the quorum is intended to assure that some microcosm of the Jewish community is present, it could be that women are sufficiently a *part* of that community to obligate them in the performance of the practice, but insufficiently *representative* of the community to create the quorum. Naturally, one could

Just as the question of a woman counting toward the *minyan* for public prayer and *devarim she-bikedushah* does not arise in rabbinic sources, so too most *Rishonim* do not discuss it. However, several *Rishonim* do say that a woman does not count for various functions. Some give no reason, such as R. **Sa'adiah Gaon** (with reference to *devarim shebikdushah*), the **Rambam** (with reference to Torah reading), **Tosafot** (public prayer and application to all requirements of 10), <sup>88</sup> **Sefer Hameorot** (the reading of Megillat Esther and application to all requirements of 10), **Meiri** (with reference to *devarim shebikdushah*) and **Shibbolei HaLeket** (stated generally):

## Siddur Sa'adiah Gaon, commentary following weekday Yishtabah

If the community prays these three *tefillot*— the measure of a community for this being ten males who have reached puberty—...

#### Rambam, Laws of Prayer 12:3

We do not read from the Torah in public with fewer than 10 adult free males. 89

## סידור רב סעדיה גאון פירושו על תפילת שחרית, אחר ישתבח

ואם צבור מתפלל את שלש התפלות האלה, ושיעור הציבור הוא עשרה זכרים שהגיעו לפרקם...

רמב"ם הלכות תפילה יב:ג

Because the contrary argument has been advanced by so many, it is worth briefly engaging with one passage in the rishonim that is claimed to support the notion that obligation in a mitzvah and counting towards its quorum go hand in hand. Ran on Rif Megillah 6b s.v. matnitin, after positing that women can fulfill the obligation of men in the reading of the Megillah, says the following: וי"א שאע"פ שהן מוציאות אין . מצטרפות...וא"א...היאך אפשר שמוציאות אנשים ידי קריאה ואין מצטרפות עמהם למנין אלא ודאי מצטרפות... this as a general principle that once one is obligated in a mitzvah one is eligible to count for all associated quora. This is an overreading of the Ran. More likely the Ran is making a point local to the reading of the Megillah. Whereas other quora may be wrapped up in representing the community in microcosm, the 10 of Megillah (itself a disputed requirement in the gemara) are required only in order to publicize the miracle of Purim and thus serves a different function from the quorum of 10 required for devarim she-bikdushah. Ran is making the claim that, with respect to megillah, there is absolutely no reason to think that there are any requirements beyond obligation for counting in the minyan for that mitzvah, since the only point of that quorum of ten is to get ten Megillah-obligated people together to do this mitzvah more publicly. The voices he is arguing with apparently don't limit the quorum for Megillah in this way and understand it to entail the same sorts of requirements as for other quora. See the debate between Maor and Ramban on precisely this point. This reading of Ran is supported by the following passage from his teacher, Ritva, on Megillah 4a s.v. ve-kheivan, which is likely his source: הילכך הכא דעשרה אינם אלא לפרסומי ניסא בעלמא ולא חשיב צירוף כולי האי כיון דחייבות במקרא מגילה מצטרפות. There is therefore no solid support for the claim that anyone, including Ran, thinks that being obligated in a mitzvah automatically and generally validates one as counting towards the guora associated with it.

Note that Tosafot claim that their interpretation is grounded in the claim on TB Berakhot 45b that "a hundred women are like two men", והא מאה נשי כתרי גברי דמיין. They take this line to indicate the exclusion of women from all quora, including those of 10. In other words, Tosafot assert that women have no capacity for group identity in halakhic discourse. Rashi there, however, does not take this interpretation, and most other *rishonim* follow Rashi, seeing this line as specifically discussing *zimmun* and asserting that even the largest group of women is not obligated to form a *zimmun*, or that even the largest group of women is simply not more socially significant than two men, such that two men should have the right to form a *zimmun* if they wish. Given the broad interpretational dispute with the Tosafot, it is best to take their position on its own terms as a halakhic statement in its own right rather than engage Berakhot 45b directly as a relevant text for our topic. For this reason, we did not include it in our discussion above.

89 This follows our printed text of the Mishneh Torah. R. Manoah, in his *Sefer Hamenuhah* on this passage, seems not to have had the word המשים in his text, in which case there would be no explicit source from Rambam's writing excluding women from the *minyan* required for *devarim shebikdushah*. Regarding

#### Tosafot on Berakhot 45b

"But 100 women are like two men!": For the matter of a prayer quorum and all other matters that require ten...

## R. Meir b. Shimon of Narbonne, the Me'ili Sefer Hameorot Megillah 5a

It seems that though a woman may fulfill a man's obligation in reading the *Megillah*, it is not proper to count her towards the ten for the reading, because wherever we require 10, we specifically need men.

#### Meiri, Beit Habehirah Berakhot 47b

... devarim she-bikedushah are not the domain of women...she may not count [even as a tenth] for the necessary quorum for Torah reading and prayer. 90

אין קורין בתורה בציבור בפחות מעשרה אנשים גדולים בני חורין

#### תוספות מסכת ברכות מה:

"והא מאה נשי כתרי גברי דמיין" - לענין קבוץ תפלה ולענין כל דבר שבעשרה.

## ר' מאיר בן שמעון מנרבונא המעילי ספר המאורות. מגילה ה.

ונראה לומר שאף על פי שאשה כשירה להוציא את האיש ממקרא מגלה, שאין ראוי להשלים בה עשרה, דהיכא דבעינן עשרה, אנשים דוקא בעינן.

#### מאירי, בית הבחירה ברכות מז:

...ואין דבר שבקדושה מסור לנשים... אינה עולה למנין י' של מעמד ותפלה.

ר' צדקיה הרופא מרומא

Rambam's approach to women and the 10 required for *zimmun bashem*, see the appendix on that topic at the end of the paper.

<sup>90</sup> The first part of this passage in the Meiri is in the context of a discussion of whether 10 women can perform zimmun bashem, adding God's name into the introductory invitation to birkat hamazon. The immediate surrounding text reads as follows: אבל אם היו עשר אע"פ שמזמנות מכל מקום אין מזמנות בשם, שהזכרת השם דבר שבקדושה מחור לנשים. ויש חולקים בכך. It is syntactically possible to read this line in the Meiri as claiming that there are some who disagree that devarim she-bikedushah are not the domain of women and in fact permit 10 women to perform rituals that require a minyan. In fact, there is a possibility, albeit unprovable, that R. Simhah of Speyer subscribed to such a view, a point we will note below. Indeed, this seems to be the view of R. Shmuel Dikman in his edition of Bet Habehirah, Jerusalem, 1960. See p. 179 n. 152 there. Nonetheless, given that there is no explicit evidence for such a view anywhere in the rishonim, it seems safer to read the view cited in the Meiri here as agreeing with the the basic claim that devarim she-bikedushah are not the domain of women. Rather, it rules that 10 women doing a zimmun may mention God's name because adding God's name there is not a dayar she-bikedushah. and therefore, the agreed upon fact that women are not included in such rituals is irrelevant. This conservative reading is also supported by 1) the fact that the next line in the Meiri cites a proof specific to the question of zimmun bashem, which seems to be arbitrating a dispute over 10 women and zimmun bashem, as opposed to a broader debate over quora of 10 more generally, and 2) the second part of the passage we have quoted here, where Meiri takes for granted, even against the backdrop of the possibility that 10 women might sometimes form a group, that 10 women never add up to a quorum for devarim shebikdushah. This approach also comports with explicit evidence for views in the rishonim that zimun bashem is not in fact a davar she-bikedushah. See Ra'avan, Even Haezer #185 and Rashba Megillah 23b s.v. ve'ein nos'in. Note also that all manuscript witnesses to the text of Megillah 23b explain the reason for the quorum of 10 required to mention the Name in zimmun as אר אורה ארעא, which might be taken as a claim that this ritual, unlike the first group of rituals in the Mishnah is not a davar shebikdushah. For more, see Benei Tziyyon 199:6. On the other hand, it might be that the gemara here is explaining that the whole notion of a quorum of 10 for a davar shebikdushah (including zimmun) is that it is לאו אורה ארעא to engage in such a serious ritual without significant numbers. We will return to the latter reading below. For more on questions of zimmun bashem and the passage in Sefer Hamikhtam on which the Meiri referred to here is largely based, see the appendix on that topic.

### R. Tzidkiyah Harofeh of Rome Shibbolei Haleket Hil. Tefillah 9

Women and slaves may not complete the quorum.

## שבלי הלקט הלכות תפלה ט ונשים ועבדים אינן משלימיו לעשרה.

Other *Rishonim*, especially in Provençe, also specify men, but provide textual or logical support for this position. In each example of textual evidence, a particular *Rishon* focuses on one of the verses the Talmud cites to explain why some ritual requires ten, and explains that this verse must refer only to men. The best summary of these various explanations is found in **R. Manoah**'s *Sefer Hamenuhah*. After noting that Rambam's ruling that ten women may not mention God's name in their *zimmun* has no explicit basis in the Talmud, R. Manoah offers three readings of biblical verses to strengthen both Rambam's point and his assumption that women are generally excluded from the *minyan* for *devarim shebikdushah* as well:

This requires consideration...This matter is not explicit in the gemara, but nonetheless it is the law...for it is written, "bless in makheilot", and they [i.e. women] are not at all called a kahal. And we hold similarly with regard to prayer, in which women are obligated, but nonetheless they do not form the quorum of 10,93 and they as a group on their own do not say *Kaddish* or *Kedushah*, for any davar she-bikedushah may not be said in a group of less than 10, since it is written "And I will be sanctified in the midst of benei visrael"—and not benot yisrael. And "edah" also applies only to males, because the spies were men. And since a davar she-bikedushah may not be said in a group of fewer than 10 men, and the restriction on mentioning the Name in zimun in a group of fewer than 10 is because this act is a davar she-bikedushah, women are thus excluded...and further, common sense tells us that they should not conduct zimun with the Name, because they do not have the intellectual capacity to magnify and exalt the name of the Holy and Blessed One as men do, and it is written: "Magnify God with me."

וצ"ע...ועניין זה אינו בגמרא בפירוש, מיהו דינא הכי הוא...דהא כתיב " בַּמַקהַלוֹת בַּרָכוּ" [תהלים סח:כז], והני לא איקרו קהל כלל. והכי נמי אמרינן בתפלה דאחייבי בה ואפילו הכי לא מצטרפי לעשרה, והן עצמן נמי לא אמרי' לא קדיש ולא קדושה, דכל דבר שבקדושה אינו בפחות מעשרה, דכתיב ונקדשתי בַּתוֹדָ בַני ישַׂראל, ולא בנות ישראל. ו"עדה" נמי בזכרים היא ולא בנקבות, דהא מרגלים אנשי הוו. וכיון דדבר שבקדושה ליתי' בפחות מעשרה אנשים, והזכרת השם בברכת זמון ליתא אלא בעשרה משום דהוי דבר שבקדושה, ממילא אימעיטו להו נשים...ואף הסברא נותנת שלא יזמנו בשם, שהרי אין בהם דעת לגדל ולרומם שמו של הקב"ה כאנשים, וכתיב "גדלו לה' אתי".

This is a point also noted by Sefer Hameorot 45a. He adds that, because this is the case, one should not protest against those who violate the Rambam's ruling. This is an important text for helping to reframe an issue that often suffers from hot tempers and intolerance for divergent views, given that women's exclusion from *any* kind of *minyan* is nowhere explicated in classical rabbinic literature.

<sup>&</sup>lt;sup>91</sup> Commentary on Mishneh Torah Berakhot 5:7.

<sup>&</sup>lt;sup>93</sup> Note that R. Manoa<u>h</u> here makes explicit what we showed earlier, i.e. that obligation in prayer is irrelevant to—or at least, insufficient to answer—the question of counting towards the *minyan*.

R. Manoah begins by quoting Tehilim 68:27—שָּלְהַת בַּרְכוּ אֱלֹ־קִים—which appears in Mishnah Berakhot 7:3 as the basis for using increasingly elaborate language in praising God as the size of the gathering for *zimmun* increases further. He then proceeds to state that women are not considered a קהל, and since zimmun bashem is associated with the term קהל, 10 women may not perform it. This notion that women are not a קהל finds earlier roots in an exegetical tradition in Sifrei Bemidbar 109, which assumes that the term קהל only includes men. He then proceeds to cite "And I shall be sanctified among the people [literally, 'sons'] of Israel" – "נָקְדָשָׁתִּי בַּתוֹךָ בָּגֵּי יָשֶׁרָאֵל" (VaYikra 22:32), the core verse adduced in the Talmud to justify requiring ten for devarim she-bikedushah (Megillah 23b). He explains here that the Torah intentionally specifies the "sons" of Israel, and not the daughters. 94 R. Manoah is presumably basing himself on a tannaitic midrash, recorded in many places, that when the Torah commands "benei visrael" with regard to certain procedures in Temple sacrifices, it means males specifically ( "בני ישראל") "בני ישראל" "סומכין ואין בנות ישראל סומכות", Hullin 85a et.al.). R. Manoah's innovation is to apply that to another context. His final Scriptural evidence is the word "congregation" – "עדה": when the gemara demonstrates the necessity of ten for devarim she-bikedushah from the story of the spies, it must mean men specifically, since all ten spies were men. 95

Tellingly, he concludes that "logical reason indicates that they should not do a *zimmun* in [God's] name, for they lack the intellect to magnify and exalt the Holy One's name, as men can". This argument from reason seems to cut to the core of what is driving these *Rishonim*, and helps us make sense of the textual arguments, which seem, at first glance, to be surprisingly weak. The textual supports they cited can best be understood as *post facto* supports ("*asmakhtot*") for a deeply-held religious conviction, and not as generative prooftexts, for the following reasons:

- 1) None of those *derashot* is found in any rabbinic texts in this context, as R. Manoa $\underline{\mathbf{h}}$  noted.
- 2) These sages could not be claiming that the word "assembly" "קהל" formally excludes women, since several mitzvot in the Torah which equally apply to women and men use that word. Examples are the Passover sacrifice "The whole **assembly** of the congregation of Israel shall slaughter it at dusk" ( "הָשָּרְשִׁל שֵּרַת יִשְׂרָשֵּל שֵּרָת יִשְׂרָשֵּל בֵּין " "בְּלַבְּל שְּרָת יִשְׂרָשֵּל בֵּין " " בְּעַרְבָּיִם", Ex. 12:6); the prohibition of a *mamzer* (child of an incestuous or adulterous relationship) from entering God's "assembly" ("הַקְהֵל יְק וָלְין"): "Assemble the nation the men, the women, and the children" ("אַרָּשִּׁים וְהַנְּשִׁים וֹהָפֵּץ in a prominent midrath in the Tosefta (Sotah 6:4) and several places in the Talmud (Berakhot 50a, Ketubot 7b, Sotah 31a, Yerushalmi Sotah 5:4/20c) as the source for the notion that even fetuses in their mothers' wombs joined in singing the Song at the Sea. These *rishonim* would not claim that fetuses are more a

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<sup>&</sup>lt;sup>94</sup> A century later, **Orhot Hayim** also cited this verse for the same point.

<sup>&</sup>lt;sup>95</sup> We noted the problem with this sort of analysis above. Nonetheless, this point is cited by several Aharonim, including Shulhan Arukh Harav 55:2, as a basis for excluding women. Ra'avan, in Even Haezer #185, also uses the fact that the spies were adults to exclude minors.

<sup>&</sup>lt;sup>96</sup> Here is the midrash as it appears in the Tosefta:

<sup>&</sup>quot;ר' יוסי הגלילי אומ' כיון שעלו ישראל מן הים וראו את אויביהם פגרים מתים ומוטלין על שפת הים אמרו כולם שירה. עולל מוטל בין ברכי אמו ותינוק יונק משדי אמו כיון שראו את השכינה הגביה עולל צוארו ותינוק שמט פיו משדי אמו וענו כולם שירה ואמרו

part of the "assembly" than women, and, of course, women explicitly sang the Song of the Sea. However, if we understand the use of this *asmakhta* as an expression of a belief that women do not participate in corporate entities, creating communities, these *Rishonim* make quite a bit more sense—what could be a more appropriate verse to cite to this effect than one which invokes the notion of community?

3) Similarly, these Rishonim are not claiming that the phrase "benei yisrael" itself proves that only men are referred to, since, for example, the mitzvot regarding evaluative oaths ('arakhin, Vayikra 27) are directed to "benei yisrael" and explicitly apply both to men and women. Moreover, the very same verse interpreted in the Talmud to be the source for requiring ten for a minyan ("And I shall be sanctified among the children [literally, 'sons'] of Israel" – "לְּנָקְרַשֶּׁתִּי בְּחוֹךְ בְּנֵי יִשְׂרָאֵלִי ", Lev. 22:32) is also the source for requiring ten for the mitzvah of dying in sanctification of God's name ("'al kiddush Hashem"). Many authorities say that women do count toward the minyan of ten for that mitzvah (see below), so the language of that verse can hardly be taken as proof that women are not part of the minyan for ritual matters, a point to which we will return below. But again, if we understand this use of the verse not as a formal proof, but as an allusive expression of a deeply-held belief—that the Jewish "community" is not properly represented by its female members—than the use of a phrase about the Jewish people is a perfectly reasonable support.

As is often the case in rabbinic discourse, the textual citations here are all *post* facto support ('asmakhtot), Scriptural citations which, while weak as formal proofs, quite honestly express the religious sensibilities of their authors and their communities. What is more, they are self-consciously so. Two significant things can be learned from Rabbenu Manoah's telling closing words that "common sense indicates (הסברא נותנת)" that women do not count for the minyan for invoking God's name in the invitation to Grace after Meals (zimmun) "since they lack the intellect ["דעת"] to magnify and exalt the Holy One's name, as men can". First, the authority who went to the greatest lengths to explain women's exclusion from ritual minyan considered women, as a class, to be insufficiently educated to form a community for the purposes of publicly praising God. Second, he considered this social reality to be a relevant and, apparently, decisive factor toward the question of their participation.

That women do not count is intuitive to these *Rishonim*, just as the exclusion of slaves and minors was intuitive to R. Yehoshua b. Levi. Their citation of verses is not meant to *prove* these religious intuitions, but rather, to provide some allusive Scriptural

<sup>&</sup>quot;זה אלי ואנוהו". ר' מאיר אומ' אפי' עוברין שבמעי אמותן אמרו שירה שנאמ' "במקהלות ברכו אלים ממקור ישראל" ותינוק שמט דד מפיו ואמ' שירה שנ' "מפי עוללים ויונקים".

<sup>&</sup>lt;sup>97</sup> The pain and distress that many moderns, the current authors included, feel when reading texts such as these cannot and should not be diminished. At the same time, well-founded modern critiques of R. Manoah's social setting as well as R. Manoah's own troubling forumulation, should not lead us to a facile dismissal of his core halakhic point. If we consider a world in which education for women was minimal (even in comparison to the relatively spartan education of many Jewish men), then it should not surprise us that women would be viewed as intellectually inferior to men. It was likely a reality in R. Manoah's time that a collection of women would lack the social capital that a similar-sized collection of men would have had. Thus, if one takes seriously the weightiness of the sanctification of God's name, then in R. Manoah's context, his words can be understood as making an important point about the seriousness of *devarim shebikdushah*, even if they do so in the context of a social reality that is disturbing to us, and even if R. Manoah's seeming complicity with this reality is disappointing to us.

context for them. The question that then arises is: why? What is behind this intuitive exclusion of women, absent any Biblical or rabbinic text that weighs in on the topic? How might we more precisely define the social considerations that are clearly at work in medieval discussions of this topic?

### What Is Minyan?

If the question of membership in the *minyan* depends on social conditions, such as the role men or women play in a given society, we will be served in our understanding by also considering what a *minyan* really is. The first and only thorough-going attempt in the rishonim to define what *minyan* is all about was proffered by **R. Tam**. Following R. Yehoshua b. Levi's rule in the gemara (TB Berakhot 47b) that one baby – even an infant in a cradle – could be counted in a *minyan*, <sup>98</sup> R. Tam comments as follows (recorded in Tosafot R. Yehudah Sirleon on Berakhot 47b):

And I add even an infant in his cradle, for God's presence dwells among all groups of ten, for when they learn that matters of sanctity are done in a quorum of ten from the verse "I will be sanctified", no distinction is made between minors and adults. But there must be nine adults, because more than one [minor] may not be counted, as it is taught with respect to a slave, for [with more than one minor] *there is insufficient honor for heaven*. And a slave also comes under the principle "I will be sanctified", for God's presence dwells among all who are obligated in commandments and members of the covenant...

ואני מוסיף אפי' מוטל בעריסה,
דאַכּל בי י' שכינתא שריא, דכי
גמירי קדושה בעשרה
מ"ונקדשתי", ל"ש גדולים ול"ש
קטני', ובלבד שיהיו תשע
גדולים, דטפי מחד לא, כדאמרי'
גבי עבד, דליכא יקרא דשמיא
כולי האי, ועבד נמי אייתי בכלל
ונקדשתי, דשכינה שריא אכל
מחוייבי מצות ובני ברית...

Recall that the Talmud's source for the numerical make-up of *minyan* was Lev 22:32 – "And I shall be sanctified among the children of Israel". Rabbenu Tam explains that this "sanctity" inhabits all who are obligated in *mitzvot* or members of the covenant. His point is to argue that slaves (who are obligated in *mitzvot*—to the same extent as Jewish women—despite not being Jews) and children (who are Jews but not yet obligated in *mitzvot*) are essentially eligible to count in the *minyan*, <sup>99</sup> as evidenced in his eyes by the Talmud's undifferentiated statement "The *Shekhinah* dwells on all groups of ten" ("כל " — Sanhedrin 39a). However, even the most inclusive opinion in the

<sup>&</sup>lt;sup>98</sup> R. Tam arrives at this view by arguing that the statement הלכתא ככל הני שמעתתא—already an integral part of his text—only applied to the immediately prior statements and not to R. Yehoshua b. Levi's rulings on counting a slave and a minor. This, of course, is just a return to possibilities of the the original text of the gemara before the Geonic gloss found its way into the text.

<sup>&</sup>lt;sup>99</sup> This assumes the *vav* of ובני בריח is disjunctive. If one, however, reads the *vav* as conjunctive—which seems to be the reading of Rosh Berakhot 7:20—one would have to say that minors are obligated in mitzvot as part of the process of educating them and/or because they will be obligated in mitzvot as adults. Slaves would be considered בני בריח in the sense that they are circumcised (an interpretation advanced by R. Yom Tov Lippman Heller's commentary on the Rosh, *Ma'adanei Yom Tov* on Rosh Berakhot 7:20, likely influenced by TB Bava Kama 15a and driven by the Rosh's reading of R. Tam's two criteria as jointly necessary rather than individually sufficient).

Talmud allows counting only one slave, and not many. Therefore, Rabbenu Tam explains that the reason a *minyan* should not include more than one child or slave is because more than that would be "insufficient dignity of Heaven" ('האי"). Rabbenu Tam does not appeal here to precedent or a formal definition; he is expressing the quite reasonable judgment that it is inappropriate to form the *minyan* – the representative microcosm of the community for the task of exalting God's name – with such low-grade, peripheral, non-citizen members, even though, from a theological perspective, God's *Shekhinah* does descend on any group of ten members who are connected to the Jewish people either through obligation (slaves) or birth (minors).

Now, we have no record of Rabbenu Tam discussing the question of women and *minyan*, but his conceptual framework can further our understanding. His description of what *minyan* is about would include women, who were obligated in all the same *mitzvot* as slaves in his context, and were also considered part of the covenant. Purely following R. Tam's logic, we might well conclude that 10 women can constitute a minyan. There is no rabbinic source that telegraphs limits on the participation of women, as there is regarding slaves and minors, and no other indication that counting more than one woman would violate יקרא דשמיא, the honor of heaven. At that point, we revert to R. Tam's original definition of where the Divine Presence dwells, about which he says, אלא קטנים 'i.e., ten minors (and ten women) can theoretically make up a minyan.

Indeed, this basic conceptual extrapolation was made by **Rabbenu Simhah**, who ruled that a woman could count towards the ten (Mordekhai Berakhot #173). From the context in which his ruling is cited, however, it seems that he limited the extrapolation to a more conservative extension from R. Tam's actual ruling regarding one slave or one minor and only allowed one woman to count towards the minyan: 102

I found in the name of R. Simhah: A slave or a woman can join towards the 10 required for prayer and for mentioning the Name in *zimmun*. And regarding the case where R. Eliezer freed his slave in order to complete the quorum, which makes it sound as if an unfreed slave may not count towards the 10 – and the same restriction would apply to a woman – we can say that there were two slaves present; one he freed [in order to count as the ninth] and one he counted as the tenth [while still a slave].

מצאתי בשם רבינו שמחה: עבד ואשה מצטרפין בין לתפלה בין לברוך א-להינו, ומעשה דר' אליעזר ששחרר עבדו והשלימו לי' דמשמע דוקא בשחררו אבל אי לא שיחררו לא והוא הדין לאשה, יש לומר תרי הוו ושחרר חד ומילא בחד.

According to one version, Rabbenu Simhah acted upon this ruling (Mordekhai Berakhot #158 = Mordekhai Gittin #401):

<sup>101</sup> If the term "covenant" is meant generally to refer to Jews, then women are obviously included—for a usage of ברת ברית to refer to a woman in this sense, see Sifrei Zuta 35:12—and if it refers to circumcision, the Talmud considers women to be already circumcised (TB Avodah Zarah 27a).

<sup>&</sup>lt;sup>100</sup> It is plausible that R. Yehoshua b. Levi's statement about making an infant a סניף also only imagined counting one, and this is how R. Tam clearly understood him. Others, however, understood him to be more liberal on infants, possibly permitting counting up to four towards the minyan. See Maor here.

<sup>&</sup>lt;sup>102</sup> This conservative reading of R. Simhah is maintained by Beit Yosef and many others. See the next note.

R. Simhah used to count a woman toward the 10 required for zimmun. Even if you say that a woman is only rabbinically obligated [in birkat hamazon]...that is only a concern for her fulfilling the obligation of others, but there is no problem with her counting towards the ten needed to mention the Name. 103

...גם רבינו שמחה היה עושה מעשה לצרף אשה [לי'] לזימון, ואפילו אם תמצא לומר דאשה לא מיחייבא האשה אלא מדרבנן...ה"מ לאפוקי אחרים י"ח, אבל לצרוף בעלמא להזכרת שם שמים. שפיר מצטרפת.

The **Beit Yosef** here curiously does not cite any of the authorities who explicitly exclude female participation, but he does mention R. Simhah's position to count one and rejects it, arguing that it would be unseemly to practice that way since Rabbenu Tam himself never did so, nor did common custom include even one woman (OH 55):

And it is written in the Mordekhai in the name of R. Simhah that a slave or a woman may be included for tefillah and for the grace after meals in the ten; and clearly, this is according to the explanation of Rabbenu Tam, who ruled like R. Yehoshua b. Levi that one slave may be included, and R. Simhah opined that this is also the law for a woman, for in every situation, a woman is equal to that of a slave. But since Rabbenu Tam himself did not want to do such a thing, who can be lenient regarding it; thus, the universal practice is not to include a woman at all.

וכתוב במרדכי בשם רבינו שמחה דעבד ואשה מצטרפין לתפלה ולברכת המזון בעשרה ופשוט הוא שזהו לפירוש ר"ת דפסק כרבי יהושע בן לוי בעבד אחד מצטרף וסובר רבינו שמחה דהוא הדין לאשה דבכל דוכתא אשה שוה לעבד וכיון דר"ת בעצמו לא רצה לעשות מעשה מי יקל בדבר וכן נהגו העולם שלא לצרף אשה כלל:

Upon this reasoning, <sup>104</sup> he stated summarily in the **Shulhan Arukh** (OH 55:1) that the minyan consists of ten free, adult males.

*Kaddish* is said. And it is said only in the presence of ten free, adult males who have reached puberty, and the same is true of kedushah and barekhu, which אומרים קדיש. וא"א אותו בפחות מי' זכרים בני חורין גדולים שהביאו ב' שערות, וה"ה לקדושה וברכו שאין

<sup>&</sup>lt;sup>103</sup> R. Simhah's position on counting women towards the *minyan* is reported here second hand, filtered and repackaged along with other sources. The language in this latter source actually sounds as if R. Simhah allowed women to count as equals towards the ten of zimmun. This opens the possibility that R. Simhah permitted women to count as equals towards the quorum of 10, even as he limited slaves and minors to one of the 10 slots, in keeping with R. Tam's rulings on the matter. It might be that only a later hand bringing his positions on women slaves together in the first passage in the Mordekhai cited above assumed that the rulings were identical and that R. Simhah permitted only one woman to count in a minvan. This reading of R. Simhah is unprovable and likely unrecoverable, but it is important to establish its historical possibility given the later views that we will see that in fact establish the theoretical plausibility of counting 10 women towards a minvan. In the discussion here, however, we will assume, so as to be as cautious as possible, that R. Simhah practically permitted counting only one woman towards the minyan, even as we will maintain that he theoretically permitted 10 women to count, following R. Tam's criteria.

<sup>&</sup>lt;sup>104</sup> It is also possible that R. Karo was influenced to reject R. Simhah in light of what he understands to be behind Rambam's ruling in Hilkhot Berakhot 5:7 (cited above) that ten women may not mention God's name in zimmun. In Beit Yosef 199:7, R. Karo explains Rambam as rejecting the possibility of 10 women forming this quorum because zimmun with God's name is a davar shebikdushah, and a davar shebikdushah can only be done in the presence of 10 adult, free males.

Most subsequent authorities follow this, though **R. Shneur Zalman of Lyadi** says not to protest against those who are lenient in dire situations, since they have on whom to rely (Shulhan Arukh HaRav, OH 55:5):

Some permit saying a *davar shebikdushah* with 9 joined together with a slave, a woman or a minor, because the *Shekhinah* dwells on any group of 10 Jews [lit. members of the covenant]—nonetheless it would not be honoring heaven to say a *davar shebikdushah* with fewer than 9 *b'nei mitzvot*, <sup>105</sup> because 9 look like 10...and some say that a woman, slave or minor may not count at all and all 10 must be free male adults who have reached puberty...the latter opinion is correct. Nonetheless, one should not protest against those who are lenient in pressing circumstances...they have authority on which to rely. <sup>106</sup>

יש מתירין לומר דבר שבקדושה בט' וצירוף עבד או אשה או קטן לפי שעל כל עשרה בני ברית השכינה שורה אלא שאינו כבוד שמים לומר דבר שבקדושה בפחות מט' בני מצות—שט' נראים כי'... יטוי"א שאין אשה ועבד או קטן מצטרפים בשום ענין אלא צריך שהיו כל עשרה זכרים בני חורין גדולים שהביאו שתי שערות...וכן עיקר ואעפ"כ אין למחות באותן שנוהגין להקל בשעת הדחק...כיון שיש להם על מי שיסמכו...

יז ברכות מ"ז ב' יטר"י רא"ש רמב"ם...רשב"א הרר"י ראב"ד ראבי"ה

R. Tam's model thus stipulates that slaves and minors are the theoretical equals of free men when it comes to the *minyan* for *devarim shebikdushah*, with issues like יקרא, "the honor of heaven", standing as the only obstacle to practical implementation of this theory. R. Simhah's extension of R. Tam's model of *minyan* ruling posits that women also have as much theoretical connection to the notion of אינ ישראל as do adult free males. The concern of "the dignity of Heaven" may not even apply to women at all, but we can only prove R. Simhah's willingness to carry out the conservative extension of R. Tam to inclusion of one woman.

Most authorities disagree with R. Tam and do not count even one child in a minyan, following the Geonic gloss to the gemara at hand. Given that R. Tam is the only *rishon* to spell out a theory of *minyan*, it is reasonable to assert that all other *rishonim* agree with his theory, even if they disagree with his theory of practical implementation. In other words, even if minors are the theoretical equals of adults in constituting a

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בני אולה Note that Shulhan Arukh HaRav's formulation here considers slaves, minors, and women to be ברית —members of the covenant—but not בני מצות, which must mean fully obligated adults. Minors are exempt by dint of their age, whereas women and slaves are exempt from a whole class of mitzvot (those positive mitzvot caused by time that we explored above). This is a different usage from that of R. Tam, who explicitly puts slaves in the category of מחוייבי מצות and seems to reflect the encroachment of another model for minyan we will discuss shortly. In any event, the sense of this text is clear: 10 women are theoretically valid for a minyan, but according to this view, we must reserve 9 slots for free, adult males. It is also important to note that Bah ruled unhesitatingly like R. Simhah with respect to zimmun and it is quite possible that this ruling would extend to counting one woman in the minyan as well. R. Aharon Shmuel Kaidonover in his commentary Tiferet Yisrael on the Rosh goes out of his way to cite R. Simhah on zimmun, suggesting that he endorses his ruling as well. Maharshal also seems to endorse this position. Bah's ruling is then cited by Shiyarei Kenesset Hagedolah.

minyan, it might offend the honor of heaven to count even one towards the quorum of 10. Whereas R. Tam agreed to a modest infraction on the dignity of Heaven (relying upon one non-citizen), most authorities do not allow even that level of infraction. Under this reading of the silence in the rishonim, all agree with R. Tam that the only criteria to count in a minyan are 1) evincing sanctity through some basic connection to the Jewish people and 2) not creating a situation that offends the dignity of heaven. The disagreement regards only criterion 2) and whether some degree of adjunct participation is tolerated. This interpretation of the sources helps make sense of how the conversation on women and minyan moved from a blank slate in classical rabbinic sources to near unanimity on the total exclusion of women. If the issues at stake are not the theoretical exclusion of women, but rather the propriety of including them in practice, then we can understand how societies in which women largely functioned as adjuncts would not view them as fitting representatives of the community in microcosm.

That said, beginning in the 16<sup>th</sup> century, another articulation of *minyan* begins to emerge. It is first articulated by R. Mordechai Jaffe in **Levush OH 55:4**:

Neither a slave not a woman nor a minor may count towards the *minyan*, because they are not obligated in *mitzvot*. And some permit joining 9 adults with 1 minor, since the minor will eventually become obligated...

ועבד ואשה וקטן אין מצטרפין שאינם חייבים במצות. ויש מתירין בט' וצירוף קטן כיון שיכול להגיע לכלל חיוב מצות..

Levush is clearly operating with a different definition of *minyan* from that of R. Tam, despite some of the linguistic similarities. Though both authorities talk about obligation in *mitzvot* as a criterion for counting in a *minyan*, they mean very different things. R. Tam thought this criterion *included* slaves (and, by extension, women), since they are obligated in many *mitzvot*. Levush, by contrast, uses this criterion to *exclude* slaves and women. For him, obligation in *mitzvot* clearly means *maximal* obligation and excludes those, like women and slaves, who are exempt from a whole range of *mitzvot* (those of the positive, time-bound variety explored above). This paints a significantly different picture of *minyan*. R. Tam was able to conceive of a "community" that comprises free adult males as well as more marginal types, such as slaves, minors, and, most likely, women, but he felt that most such convocations are not so respectful to the honor of Heaven. Levush cannot even conceive of such a convocation being considered a representation of the larger community. By his logic, how can someone exempt from a whole category of *mitzvot* possibly help constitute a microcosm of the Jewish people?

In fact, once considering Levush's model, it is difficult to know the conceptual basis behind those who opposed R. Tam and forbade any participation by minors in a minyan without further comment. Was this, as we suggested above, a minor disagreement over the proper boundaries of the honor of Heaven? Or might they, like the

<sup>&</sup>lt;sup>107</sup> It should not be surprising to find this kind of leniency specifically in the writings of Rabbenu Tam and the Tosafists, who, by and large, lived in tiny Jewish communities in northern France. Making a *minyan* is much more difficult when the pool of potential participants is so small. Perhaps even more significant is the greater financial independence enjoyed by women in these communities as opposed to those in Southern Europe and the Mediterranean. For the broader religious context, see A. Grossman, *Hasidot Umordot* = A. Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe*, Waltham, 2004.

Levush, have rejected out of hand the notion that minors could ever represent the community in microcosm? In other terms, do they disagree over the boundaries of יקרא, or do they dispute R. Tam's more fundamental principle of לא שנא גדולים לא שנא, or do they dispute R. Tam's more fundamental principle of א קטנים—that the essence of minyan does not depend on the presence of 10 free adult males? We can never know the answer to this question with certainty. On the one hand, R. Yosef Caro (in the passage from the Beit Yosef we cited above), takes no issue with R. Tam's model and seems to explain the opposition to using that model to count women to be an issue of ingrained practice. His approach is supportive of seeing a practical divide among *rishonim* anchored in a shared theoretical framework. On the other hand, Shulhan Arukh HaRav OH 55:5, among others, reads the Levush's model back into these rishonim, setting up a more fundamental divide:

Some permit saying a *davar shebikdushah* with 9 joined together with a slave, a woman or a minor, because the *Shekhinah* dwells on any group of 10 Jews [lit. members of the covenant]...and some say that a woman, slave or minor may not count at all and all 10 must be free male adults who have reached puberty; with fewer than that, the *Shekhinah* does not dwell and one may not say a *davar shebikdushah*...

יש מתירין לומר דבר שבקדושה בט'
וצירוף עבד או אשה או קטן לפי שעל כל
עשרה בני ברית השכינה שורה...וי"א
שאין אשה ועבד או קטן מצטרפים בשום
ענין אלא צריך שהיו כל עשרה זכרים בני
חורין גדולים שהביאו שתי שערות
ובפחות מכן אין השכינה שורה ואין
אומרים דבר שבקדושה...

Here, the contrast between R. Tam and Levush is laid bare. The core dispute is whether in fact the divine presence can dwell amidst anything other than a group of 10 free adult males, seemingly due to the issues of maximal obligation raised in Levush. This "debate within a debate", the question of whether to see the practical disagreement between R. Tam and his opponents in theoretical terms as well, continued in later halakhic literature. The turns taken in this conversation are central to one's understanding of the role of gender in contemporary *minyanim*. If one understands the dignity of Heaven to be the only possible obstacle to counting women as equals in the *minyan*, then a determination that said concern does not apply closes the issue. If, however, one understands the question of gender and *minyan* to be a subset of the question of gender and *mitzvot*, women's inclusion in the *minyan* would hinge on a broader reformulation of the role of gender in halakhic discourse.

## Counting Women as Equals in a *Minyan*: The Dignity of Heaven and Other Concerns

"The dignity of Heaven" ("יקרא דשמיא")—R. Tam's reason for not counting more than one minor or slave in the *minyan*—seems to parallel another expression we have considered extensively, namely, "the honor of the community" ("כבוד הציבור"). The

<sup>&</sup>lt;sup>108</sup> There are sources earlier than Levush that talk about obligation in *mitzvot* as being an important criterion for participation in a *minyan*, but there is no way to know if they assume maximal obligation when they use this term, or if they are using it—as did R. Tam—to refer to some minimal level of obligation as being necessary and/or sufficient. See the positions of R. Yonah on counting minors and Maharil on counting the deaf towards the *minyan* in Beit Yosef 55.

<sup>&</sup>lt;sup>109</sup> This parallel is particularly apt if we accept the Bah's definition of "honor of the community" (see above).

latter refers to the sense that participants have that they are in a serious and dignified assembly, whereas the former refers to the sense that they are interacting with God in a way that befits, to the best of our ability, God's dignity. Since the kinds of assemblies we are discussing are those in which the community interacts with God, these two concepts seem to be reflections of one basic sensibility – that the community should meet its Maker in a manner befitting God, the community who are called by God's name, and the norms which guide it.

This precise logic was advanced by an anonymous rabbi, whose responsum is preserved in full as section #2 of *Orah Latzaddik* (#2), the responsa of **R. Avraham Hayyim Rodrigues**, in the context of the question of whether it is permissible to count a hermaphrodite towards the *minyan*. The **anonymous posek** advances the claim that 10 hermaphrodites can indeed make a *minyan*, one of his central arguments being that the hermaphrodite meets R. Tam's requirements for constituting a *minyan* and we are nowhere told that he poses a problem of יקרא דשמיא. At that point, he says the following:

...You might object: according to my logic we would have to count a woman towards the quorum of 10, because she also is a member of the covenant 110 just like a slave, and yet we explicitly hold that a woman does not count! I would respond that, in fact, a woman should by all rights count...and the Mordekhai wrote in the name of R. Simhah—cited in Beit Yosef 55—that a woman counts towards the 10 needed for tefillah. But we may not actually count her because of the honor of the community...and this seems to be the point of Beit Yosef when he writes in reaction to R. Simhah that "the custom everywhere is not to count a woman at all" – this is merely a custom...and if it is the case that a woman can clearly count were it not for the problem of kevod hatzibbur, we can obviously count a hermaphrodite, where that concern does not exist...It is obvious that a hermaphrodite is obligated in tefillah like all other Jews, and from this we can deduce that there is no reason to distinguish him from other Jews, rather, we should count such a person towards all

ואם תאמר, אי הכי, מהאי טעמא נמי... נצטרף לאשה, דהא היא גם כן בת ברית כעבד, והא לא קיימא לן הכי, ובהדיה מצאנו דאינה מצטרפת! יש לומר, שאין הכי נמי דמן הדין מצטרפת...ובהדיא כתב המרדכי בשם הרב שמחה, הביאו הבית יוסף בסימן נ"ה, דאשה מצטרפת לתפלה. אבל אין לנו לצרפה מפני כבוד הציבור...וכן נראה דברי הבית יוסף על ההיא דהרב שמחה שכתב "וכו נהגו העולם שלא לצרף אשה כלל," ע"כ מנהג בעלמא...ואם באשה מצאנו בהדיא שמצטרפת אי לאו משום כבוד הציבור, כל שכן בנדון דידן שעדיף טפי דלא שייך האי טעמא...והאנדרוגינוס פשיטא שמחוייב בתפלה כשאר בני ישראל דמינה שאיז להוציאו מכללם אלא לצרפו לכל דבר שבקדושה או אחד או יותר בכל מקום

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<sup>110</sup> The author here refers to both slaves and women as "members of the covenant". There are a few possibilities for understanding this locution: 1) This is an imprecise way of referring to both criteria of and בני ברית and and and are women, since they are considered already circumcised. 2) This is an imprecise way to sum up R. Tam's approach of requiring either being part of the Jewish people or being obligated in mitzvot. The author here would then be saying that what truly matters is a connection to the Jewish people—being a member of the covenant—which can be attained through birth or an acquired obligation in the commandments. These two readings correspond to the conjunctive and disjunctive readings of R. Tam explored in an earlier note. It is not viable to read the author here as claiming that slaves and women are in through circumcision alone (a version of the disjunctive reading), since minors would qualify under this criterion as well and there would then be no place for the מחוייבי מצות and in R. Tam.

devarim shebikdushah, whether one or many,	ובכל זמן.
anywhere, anytime. 111	

In other words, women meet the theoretical definition for *minyan*, but it would be socially problematic to count them. This is a direct application of the analysis of R. Tam we explored above to a practical, halakhic decision. This argument (and many others advanced in the teshuvah in favor of counting hermaphrodites) is rebutted in strident fashion by R. Rodrigues himself in the next responsum (#3):

...Do you mean to say that because one is obligated to pray the Amidah, on account of its being a personal request for mercy, he is obligated to pray with a minyan of 10? A woman is obligated to pray the Amidah but is not obligated to pray with a minyan of 10, and we can deduce from this that she may not count towards that minvan!...Then you tried, without success, to cite proof from the Beit Yosef's citation of the Mordekhai that those who permit counting a minor do so because the shekhinah dwells in any group of 10; why would we exclude the hermaphrodite, who is also of holy stock? Everything you say is surprising; you yourself admit without shame that your proofs are drawn from rejected positions regarding minors and women! If so, are you coming to teach me the reasons for Beit Shammai's opinion? Those reasons have no authority given that we do not follow their practical implementation...According to your logic, we should count women towards the quorum of 10 for *tefillah*, whether one or many, based on the fact that they are obligated to pray the Amidah and are of holy stock, and towards the quorum needed for every davar shebikdushah. By my life, I am ashamed and embarassed even to have to respond to such an argument.

...דאטו משום שחייב בתפלה משום דרחמי נינהו יתחייב להתפלל בעשרה? הא אשה חייבת בתפלה מהאי טעמא ואינה חייבת להתפלל בעשרה, ומינה דאינה מצטרפת!...אחר כך יגע ולא מצא שהביא ראיה מהא דכתב הבית יוסף בשם המרדכי דטעמא דמאן דשרי לאיצטרופי קטן נראה דהיינו משום דכל בי עשרה שכינתא שריא ואמאי נוציא האנדרוגינוס מכלל זה כיוז דהוי זרע קדש וכו'. כל דבריו אינם אלא דברי תימא, דהא הודה ולא בוש שכל ראיותיו שהביא מקטן ואשה לאו הלכתא נינהו, ואם כן טעמא דבית שמאי אתא לאשמעינן וההיא טעמא לאו בר סמכא הוא כיון דלא קיימא לן הכי...ולפי דבריו בואו ונצרף לנשים לעשרה לתפלה, בין אחת או יותר, כיון שחייבות בתפלה וגם הן זרע קדש, ולכל דבר שבקדושה. חי נפשי שמתבושש אני ונכלם להשיב על דברים אלו.

R. Rodrigues's argument rests in part on the problematic and largely unprecedented claim that there is a gender gap in the obligation of public prayer. While he asserts this here as a simple fact, we demonstrated earlier in the paper that this is a controversial point. For our purposes here, R. Rodrigues is noteworthy for his overt rejection of R. Tam's definition of *minyan*, which he views as a corollary of the widespread rejection of his practical ruling permitting counting one slave or minor. Though R. Rodrigues does not spell this out, it is clear that he, like Shulhan Arkuh Harav, is working with a different definition of *minyan*, the most plausible candidate being that of the Levush. One *could* read R. Rodrigues against himself here and argue that his

Note that the argumentation here fundamentally assumes that R. Simhah—at least in theory—would have counted 10 women towards a minyan. R. Moshe Blau also seems to understand R. Simhah—and R. Tam—similarly in his edition of Sefer Hameorot, p. 135 n.9, as does R. Shmuel Dikman, cited above.

horror at the possibility of counting women as equals in the *minyan* stems precisely from a religious impulse stemming from concerns about communal and divine dignity and shame. The notion of counting a woman as part of a *minyan* is so unthinkable and embarrassing to him that he cannot even countenance the notion that this could be placed under the rubric of *kevod hatzibbur*, as if this is an insignificant prohibition of little weight.

But it seems more plausible to view the argument here as debating something more fundamental. The anonymous sage with whom R. Rodrigues is arguing would almost certainly contend that counting a woman towards the *minyan* would be unthinkable *in practice in his time and place*. But he would likely advocate for resisting the notion that just because something is wildly inappropriate in a given social context, it is therefore theoretically unimaginable in any possible context. This flows directly from R. Tam's model. R. Rodrigues, by contrast, seems to think that women's adjunct status is more deeply ensconced in broader issues relating to their adjunct religious status. This is probably a better reading of his utter rejection of the notion that *kevod hatzibbur* is the sole issue to consider when thinking about gender and *minyan*. And for this reason, the hermaphrodite—who has an adjunct status in various ways as well—is similarly excluded, even if issues of *kevod hatzibbur* can plausibly be argued not to apply to such a person.

Several other *aharonim* explicitly weigh in on the side of the anonymous posek in their analysis of this issue. **R. Yaakov Emden** and **R. Ahron Soloveichik**<sup>112</sup> say explicitly that the only reason women do not count in a *minyan* is because of "the honor of the community." Similarly, **R. Natan Nata Landau** explained that women don't count toward the *minyan* because "it is not the way of the world" ("לאו אורה ארעא") – that is, it is unseemly, which is a cultural assessment (*'Ura Shahar*, Kedushah #106), and entertained the notion of 10 women forming a *minyan* on their own.

#### R. Yaakov Emden, Mor Uketziah OH 55

It is written in the Mordekhai that a slave and a woman can count towards the 10 required for the Amidah and *Birkat haMazon*. R. Simhah's position clearly has solid Kabbalistic, as well as halakhic, grounding, because a woman clearly counts towards the quorum of 10 and towards the quorum of seven. Therefore, Hazal explicitly said that a

## הרב יעקב עמדין מור וקציעה או"ח סימן נה

כתוב במרדכי דעבד ואשה מצטרפין לתפלה ולברכת המזון בעשרה. עכ"ל. נראה דבודאי יש יסוד גדול לדברי רבינו שמחה גם בדרך הסוד, מלבד דרך הנגלה, שבלי ספק האשה מצטרפת בין

<sup>112</sup> Aryeh Frimer and Dov Frimer, "Women's Prayer Services – Theory and Practice", *Tradition* 32:2 (1998), footnote 85. They write: "Interestingly, R. Ahron Soloveichik, in conversation with Dov I. Frimer, July 8, 1997, maintains that men and women share the same obligation (or lack thereof) in both *tefilla betsibbur* and *keriat haTorah*. However, even were women personally obligated, R. Ahron Soloveichik posits that they are, nonetheless, specifically excluded by *Hazal* from counting towards a *minyan* or serving as a *hazzan* or *ba'alat keri'a* because of *kevod ha-tsibbur*. Further discussion of this position is beyond the scope of this paper." One wonders what the Rabbis Frimer mean by "further discussion of this position is beyond the scope of this paper", since both of R. Soloveichik's arguments there are the opposite of what the Rabbis Frimer argue throughout their paper. Readers may judge for themselves. This entire article is available on-line at: <a href="http://www.daat.ac.il/daat/english/tfila/frimmer1.htm">http://www.daat.ac.il/daat/english/tfila/frimmer1.htm</a>.

The point here about Kabbalah seems to be that *Malkhut* is the *sefirah* that corresponds to the female qualities of the Godhead and it is both one of the 10 *sefirot* as well as part of the seven lower *sefirot* that are

woman counts toward the seven who read from the Torah. But they nonetheless said that she may not read in public because of the honor of the community, and that is also the problem with counting women towards the quorum of 10. It is clearly the law that the only obstacle towards counting her is the issue of honor, but no more can be said now that all the authorities agree [to exclude women entirely]. Even though we might have said, according to what I have written, that one could be lenient in counting her towards the quorum of 10, more than in the case of reading from the Torah, which is possible only in one [clearly visible and central] location, because in the case of counting towards the 10, she could stand on the side or in an adjoining room such that she could join without impinging on the community's honor. Nonetheless, one should not depart from the decision of the Beit Yosef, whose testimony is faithful, that custom has become widespread not to count her at all. 114

למנין עשרה בין למנין שבעה, המבין יבין. ולכן אמרו חז"ל בפירוש שהיא עולה למנין שבעה הקורין בתורה. אלא שמכל מקום אמרו שלא תקרא בצבור מפני כבוד צבור, והוא הדין לדברים הצריכים עשרה, בודאי שכן הלכה, שאין מצרפין אותה מפני הכבוד בלבד, ואין אחר הסכמת הפוסקים כלום. אף על פי שהיה מקום לומר, לפי מה שכתבתי, שיש להקל לענין צרוף עשרה יותר מקריאת התורה דלא אפשר אלא עם הצבור במקום אחד ובמעמד אחד בתוכם ממש, מה שאין כן בצירוף לעשרה, דאפשר לאשה לעמוד מן הצד או בחדר, ובחצר קטן הפרוץ במלואו לגדול, שבאופן זה כבר תוכל להצטרף עם שמירת כבוד הצבור במקומו עומד, אף על פי כן אין לזוז מהכרעת הרב"י עדותו נאמנה, שפשט המנהג שלא לצרפה כלל.

# R. Natan Nata Landau, *Ura Shahar*, Kedushah (100:6)

And in the Beit Yosef...he cites the opinion of R. Simhah that a woman or a slave can be included in the ten, and the Beit Yosef wrote that this is according to the explanation of Rabbeinu Tam...And in Sanhedrin, at the end of *Ben Sorer*, we ask regarding the mitzvah of *kiddush hashem*: nine [Jews] and one non-Jew, what is the law?--which implies that a woman or a slave

#### ר' נתן נטע לאנדא

עורה שחר, קדושה (אות ק:ו')
ובב"י...מביא דעת רש"י [צ"ל: ר'
שמחה] דאשה או עבד מצטרף
לעשר', וכתב הב"י דזהו
לפיר"ת...ובסנהדרין ס"פ בן סורר
מבעיא לן לענין מצות קידוש השם
תשעה ונכרי אחד מהו, משמע
דאשה ועבד ודאי מצטרפין. ולא

often grouped separately. Women therefore have an appropriate part to play in the quora of 10 and seven, which correspond to these groupings.

114 R. Aryeh Frimer, in his article in *Or Hamizrah*, argued that R. Emden here was only suggesting that *kevod hatzibbur* prevented counting one woman towards the *minyan*; the exclusion of women from the other 9 slots is due to other, unspecified reasons. This is an unsustainable reading: 1) There is no indication of another factor at work here excluding women, and the entire conversation is built around R. Simhah's extension of R. Tam, which aims to give a fundamental definition of who counts towards a *minyan* as a principle in theory and in practice. 2) The Kabbalistic argument that kicks off this paragraph appeals to the numbers 7 and 10 as a way of justifying women's inclusion in Torah reading and the *minyan* for prayer. R. Emden, in his glosses on Megillah 23a, s.v. aval amru and Mor Uketziah #282 rules clearly that women may read all aliyot under the right circumstances. His logic thus intends to support the notion that once the feminine aspect of the Godhead is included in the count of either 7 or 10, femininity has been admitted to the quorum, and there is no basis for arguing that the theoretical inclusion of women in a *minyan* does not extend to all 10 slots, just as it allows for all 7 Torah readers to be women. Also, once we see other Aharonim taking this position, there is no reason to resist reading R. Emden in this straightforward way as well.

certainly are included. And not only this, but it also implies that amidst ten women, [the principle/verse] "And I will be sanctified" applies...And it is possible, that this situation that a woman is not included for the purpose of *tefillah* is because it is not the way of the world...but regarding *Kiddush Hashem* they certainly are included...And see the beginning of Berakhot Ch. 7 regarding [the statement] "And a hundred women are like two men." And according to the opinion of Rashi there, <sup>115</sup> it is possible that ten women can be included to say a *davar she-bikedushah*...

עוד אלא דמשמע בתוך עשרה
נשים שייך "ונקדשתי בתוך בני
ישראל"...ואפשר הא דאשה
ישראל מצטרפת לתפילה משום
דלאו אורה ארעא...אבל בקידוש
השם ודאי מצטרפת...ועיין בר"פ
ג' שאכלו גבי והא מאה נשי כתרי
גברי דמיא, ולשיטת רש"י שם
אפשר דעשרה נשים יכולות
להצטרף לומר דבר שבקדושה...

The approach of these *aharonim*, which flows directly from R. Tam's working definition of *minyan*, helps explain why it was obvious to the *rishonim* we saw above that women simply do not belong to the set of people who can truly represent the community in microcosm. The community would have experienced this as undignified – toward God ("*yekara de-shemaya*") and toward the community ("*kevod ha-tzibbur*"). Acting in such a way is not done; it is not "the way of the world", a phrase which should be understood with the same tone as the Yiddish phrase "*es passt nit*," i.e., it's inappropriate: "that's not women's role". There is one, simple explanation for classical restrictions on female involvement in the *minyan* for prayer, *kevod hatzibbur/yekara de-shemaya/orah ar'a*, that very real sense of communal and divine dignity.

This analysis is supported further by looking at the broader context of *kiddush hashem* as reflected not only through rules surrounding *tefillah*, but martyrdom as well. Women are clearly obligated in martyrdom, and several *Aharonim* are explicit that they count towards the quorum of 10 required to trigger an obligation to give up one's life even for the smallest of violations. However, even those authorities who count women towards the quorum of martyrdom reject their participation in the quorum for *tefillah*, even though the two are derived from the same verses and fall under the same religious obligation to sanctify God's name in public. Why?

Though the verses about formal *kiddush hashem* (martyrdom) are the same as those used by at least some sages to define *minyan*, we cannot simply equate these two

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<sup>&</sup>lt;sup>115</sup> Because Rashi interprets this line differently, this phrase is irrelevant to *minyan*, thus eliminating any possible Talmudic hook for the exclusion of women from *minyan*, as we noted above. <sup>116</sup> See R. Sperber, p. 33, where he explains the phrase "*kevod ha-tzibbur*" in reference to women having

<sup>&#</sup>x27;aliyot to the Torah with this phrase, and cites one contemporary author, Dr. Ephraim Halivni, as essentially translating this sensibility into modern language when, in opposing women's 'aliyot under any circumstance, he opines that for "kevod ha-tzibbur", "The issue is one of a woman's proper role."

117 See Ura Shahar above. **R. Shmuel Aboab** was in doubt about this possibility in Responsa Devar

Shemuel #63, but see *Responsa R. Pe'alim II OH #62* and **R. Reuven Margaliyot** in *Margaliyot Hayam* on Sanhedrin 74b for clear rulings that women count towards this quorum. Those who oppose counting women towards the 10 of martyrdom either think that concerns about insufficient social and religious capital apply to these situations as well or are working with something like the Levush's model of *minyan*: one is not considered to have engaged in a public violation unless the Jewish community—defined by its fully obligated members—is out in full force.

For a contemporary posek who simply accepts this disjuncture, see *Yabia Omer IV OH #9*.

categories.<sup>119</sup> Thinking that it is dangerous to violate *mitzvot* in front of a given group of people certainly does not imply that said group represents the community in microcosm when calling down God's presence in the synagogue. Though there is not an iron wall dividing these two issues, they are easily enough separated. We can surely understand the many *aharonim* who consider women part of the quorum for martyrdom while unequivocally excluding them from the quorum required for prayer: conventional hierarchies and perceptions of dignity dissolve in times of communal stress, as marginal members of a community get persecuted along with the citizens.

Nonetheless, the shared verses and themes that these two categories hold in common do reveal significant overlap, if not congruity. Though martyrdom and public prayer invoke different concerns and priorities, they are by no means unrelated. They fall under the same rubric of kiddush hashem, the sanctification of God's name that lies at the core of what it means to be a Jew. This controlling idea permeates both categories and influences the rulings of numerous authorities as they borrow principles and details from one topic to elucidate the other. <sup>120</sup> Indeed, the very inclusion of women in the obligation of martyrdom and, according to some authorities, in the quorum required to trigger this obligation, ought to teach us about the nature of their exclusion from public prayer. It cannot be that women are ontologically excluded from the minyan of prayer even as they count for the minyan of martyrdom. If women are fitting vehicles for the sanctification of God's name anywhere, they must, at least in theory, be fitting for its sanctification everywhere. Their inclusion in the quorum for martyrdom by many aharonim should teach us that their exclusion from the quorum for prayer, though rational and perhaps even sensible and necessary in certain settings, is nonetheless situational and contingent on cultural contexts. One can embrace the coherence of a position that excludes women from the *minyan* for prayer without endowing it with a metaphysical power that it simply does not have. The inclusion of women in the rubric of kiddush hashem by no means resolves the question of whether they count in the synagogue, but it ought to help dismiss any claim regarding the obviousness of their exclusion in all times and places.

Indeed, R. Tam's analysis shows that women count in theory. The question has only been whether the realities of Jewish life could and should support the theory's practical implementation. It has never and likely will never support the practical implementation of the theory with respect to minors (nor would it to slaves if they still existed in our contexts), and there may be communities where that reality will persist for women as well. The question before the communities that grapple with this issue today is what the consequences are of perpetuating that reality. The very existence of this moral dilemma for certain communities and the intensity with which it is engaged there demonstrates a conviction that the message that says women compromise communal

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<sup>119</sup> We disagree here with R. David Golinkin's responsum on this matter; the inclusion of a set of people in one quorum does not necessarily lead to their practical inclusion in the other given their different social functions and resonances. R. Golinkin is certainly correct that the logic employed by R. Moshe Feinstein in Iggerot Moshe OH 2:19 does presume the equation of the two quora. Nonetheless, it is important to account for views, such as that of R. Ovadiah Yosef in Yabia Omer IV OH #9, that apply different standards for the quorum of martyrdom than for the quorum for prayer.

<sup>&</sup>lt;sup>120</sup> See *Iggerot Moshe* OH 2:19, who in fact argues that since the spies were wicked, it must be permissible to count one who violates Shabbat in a minyan. While we claimed above that this sort of argument from these verses is problematic, R. Feinstein's analysis is important evidence for how closely linked these two areas of halakhah are for many poskim.

dignity is palpably false and distorting, perhaps even threatening to the vitality of the Jewish community. Essentially, in any community in which the question is asked substantially, the answer is embedded within the assumption behind the question: communities who feel morally compromised by excluding women mean to say that in their experience, contemporary women, educated and publicly empowered, do not compromise human or divine dignity, and there is nothing about "women's role" in tension with their full membership in the body politic. On the contrary, as R. Wald perceptively writes in his unpublished paper, their *exclusion* compromises communal dignity. Thus, unless one rejects R. Tam's working definition of *minyan*—which no *rishon* does, and those *aharonim* who do hardly dominate the discussion—one cannot avoid engaging the question of gender and standards of seriousness and dignity when considering who ought to count in a *minyan*.

One who wanted to remain a partisan of the Levush and those who define *minyan* as a group of 10 bearing maximal Jewish obligation would have to make a different argument. Since, for the Levush, only a Jew obligated in the full range of *mitzvot* can count as a member of the *minyan*, one would have to claim that contemporary women (at least in some communities) are no longer exempt from the category of positive commandments caused by time. As is the case with any legal term, one must carefully examine its original context before mindlessly assuming what it means in a different context. While it is possible to read Hazal's term נשים as applying across history to all those who are biologically female, it is also possible—particularly when נשים is juxtaposed with the categories of slaves and minors—that this term is intended to refer to adjunct members of society who are dependent on and subservient to their husbands and a larger patriarchal structure for support. R. Yoel Bin-Nun has recently been advancing precisely this argument, suggesting that those women in our day and age who understand themselves to be בנות חורין, freed from earlier patriarchal structures, are thus subject to all the traditional ritual obligations of men. <sup>121</sup> In order to count women as equals in the

<sup>&</sup>lt;sup>121</sup> In a personal communication, R. Bin-Nun confirmed that he would extend this logic to the realm of vicarious fulfillment; i.e., a woman in this category could blow *shofar* for a man. This sort of linguistic redefinition is well attested in *halakhic* literature. Though a full survey of this phenomenon is beyond the scope of this paper, two important examples should suffice to convince the reader that this is a plausible argument with an established pedigree. 1) R. Menahem HaMeiri, of 13-14<sup>th</sup> century Provence, argued that various halakhot regarding interactions between Jews and non-Jews related only to lawless pagans and not the civilized Christians he knew and interacted with regularly. Meiri's approach essentially redefined the term גוי or גוי in areas of civil and criminal law. Though an unreflective application of these terms to all non-Jews would have been understandable, Meiri argued that these terms were in fact aiming to get at the negative sociological traits of certain non-Jews – i.e. lawless pagans – but not all non-Jews, and in particular not the Christians among whom the Meiri lived. Some of the halakhic consequences of this analysis were merely greater stringencies on the Jew, demanding equal treatment of the non-Jew in civil and criminal law. But Meiri took his rereading of the terms נכרי seriously enough to justify violating Shabbat—a capital crime in Jewish law—to save the lives of his contemporary Chirstians, whereas classical rabbinic sources assume that Shabbat can only be violated to save Jewish life. 2) A deaf-mute (שרש) is generally classed in rabbinic literature with the mentally incompetent and is therefore exempt from various mitzvot. When sign-language was developed in the modern period, a number of poskim advocated understanding חרש not as a physical description, but rather as an indicator of mental incompetence, such that a deaf-mute able to communicate with the outside world and to learn would not fall into this halakhic category. For more on this topic, see the article of א. אנצ'ילובץ, "מעמד החרש, מו"ר במציאות זמננו", תחומין כא (תשסא): 141-152.

Levush's *minyan*, one would have to take this broader step, arguing that women not only have the social capital they would need for R. Tam, but also the broader religious equality that would enable them to constitute the community in microcosm. There are already many communities where men and women are functionally equal in this regard, where women do not make room for men when a *sukkah* is too small, where women are no more lenient about the *mitzvot* of *lulav* and *shofar* than are men, and where *sefirat ha'omer* reveals no trace of any gendering. Such communities could, with integrity, follow R. Bin-Nun's model and argue that women ought to count as equals in the *minyan* according to either definition of a quorum of 10.<sup>122</sup>

It bears repeating here that R. Tam's working definition of *minyan* is the only one mentioned in the *rishonim*. Moreover, Levush's definition suffers from the problem that even most adult male Jews lack a host of obligations that apply only to *kohanim*, such that the organizing principle of maximal obligation is not entirely compelling. <sup>123</sup> Furthermore, several *aharonim* later than the Levush—whom we saw above—do not work with his model, but rather with that of R. Tam in analyzing various questions pertaining to *minyan*. Any communities working with R. Tam's model—allowing women to count on account of a dramatically changed social reality even as those same women are allowed exemptions from various *mitzvot*—find themselves in good company in halakhic discourse. For them, the only issues to address are the honor of Heaven, the honor of the community, and a sense of what is proper and right in our contemporary social reality.

Nonetheless, Levush's model is certainly a plausible way of thinking about *minyan*. One can certainly understand communities that are hesitant to count as equals for the quorum people who do not consider themselves as obligated as other members of the community. For those approaching the issue from this angle, women would only be counted when a largely gender-blind approach to ritual had taken root much more broadly in the community.

Beyond this, some may argue that counting women in the *minyan*, though theoretically appropriate today, would still be problematic simply because it has not been done, <sup>124</sup> while others will argue that counting women does not entail any meaningful break with tradition. This argument echoes the dispute we saw above between the rabbis of Amsterdam, who had no objection to women saying *kaddish*, and the <u>Havot Ya'ir</u>, who

Both of these redefinitional approaches are controversial and neither attracted unanimous support. Nonetheless, they are one part of the halakhic conversation and serve as important parallels to the contemporary debate surrounding gender and Jewish practice.

D.

<sup>122</sup> R. Joel Roth, in the context of the conversation regarding the ordination of women as rabbis in the Conservative movement, attempted to create such a situation in order to justify women counting themselves in a *minyan* defined as 10 maximally obligated individuals. He suggested that women could obligate themselves in all *mitzvot* and thereby be eligible to be treated identically to men with regard to a *minyan*. See his paper, cited in note 1 above. Engaging this approach of self-obligation and its effectiveness is beyond the scope of this paper.

Note, however, that the notion that the gap between male and female obligation is more significant than that dividing priests and commoners already dates back to Tosefta Berakhot 6:18, where it is stated שאין הנשים חייבות במצות.

<sup>&</sup>lt;sup>124</sup> This is, in effect, the argument of R. Emden in *Mor UKetziah* above, which emphasizes the nature of this practice as custom.

thought such a practice would be disruptive of norms, and the contemporary dispute between R. Mendel Shapiro and R. Daniel Sperber, who see women reading Torah and having 'aliyot as appropriate, and R. Yehuda Henkin, who thinks that such a practice will de facto render a community non-Orthodox and is therefore unsound. We of course have precedent in the halakhic tradition for recognizing that these concerns, as well, are contextual. R. Ahron Soloveichik permitted women saying kaddish, precisely because in his community, to refuse to do so would lead to the weakening of Jewish observance via the abandonment of Orthodox communities by Jewish women searching for synagogues that would allow such a practice.

But we should also note that, in some sense, it is not even accurate to say that counting women now would be a breach with tradition. That is to say, it wasn't women who were exluded throughout the generations, but non-citizens. The breach with tradition would be to exclude women in communities where women are full public citizens, because such a practice would effect an unprecedented standard of excluding Jewish citizens from the minyan. This, in turn, would lead to various infractions of halakhah, such as delaying communal prayer while waiting for ten men to arrive, even though a minyan of ten, dignified, Jewish citizens is present.

## **Summary**

The issue at hand in reciting *devarim she-bikedushah* is the presence of the community in its invocation of God's name. It was culturally clear to many of our sages that women do not represent a microcosm of the body politic, on account of their adjunct status, whether in the social sphere or on account of their less central role in certain areas of Jewish ritual practice. It is inappropriate to form the *minyan* with people who damage the "dignity of Heaven;" that is, the *minyan*, as a microcosm of the community in its task of sanctifying God's name, should be formed in a manner that bestows honor to God. Jewish communities of today still share this instinctive feeling about counting children as equals in the *minyan*. For a significant communal act such as public prayer the community should bring out its finest, its full citizens, not its peripheral members. This concern excludes "women" only in communities in which it is true that women do not reflect the community in a dignified and representative way.

The notion that gender might play a different role in different Jewish communities is effectively a claim that gender plays a much larger role in the human economy than in the divine one. While God may tolerate and even, in certain cultural settings, endorse social arrangements that discriminate based on gender, once we see those arrangements as contextual and contingent, we cannot avoid the corollary idea that such distinctions are not, in and of themselves, divinely ordained. Human society sometimes has a more difficult time with gender equality than does God. This is not a new idea, and is in fact already expressed by our Sages of blessed memory in their midrashic expansion on the story of the daughters of Tzelofhad (Sifre Bemidbar #133):

"And Tzelofehad's daughters drew near" (Bemidbar 27:1): When Tzelofehad's daughters heard that the land would be divided according to the tribes – to males and not to females – they all gathered with each other for advice. They said, "The goodness of God is not like the goodness of flesh and blood. Flesh and blood show greater goodness to males than to females, but the One-Who-Spoke-the-World-into-Being is not so, but is good to all, as it is said...'The Lord is good to all and shows kindness to all creatures" (Psalms 145:9).

"וַתִּקְרַבְנָה בְּנוֹת צְלָפְחָד":

כיון ששמעו בנות צלפחד שהארץ מתחלקת
לשבטים, לזכרים ולא לנקבות, נתקבצו כולן
זו על זו ליטול עצה. אמרו, 'לא כרחמי בשר
ודם רחמי המקום: בשר ודם רחמיו על
הזכרים יותר מן הנקבות אבל מי שאמר והיה
העולם אינו כן אלא רחמיו על הזכרים ועל
הנקבות רחמיו על הכל', שנאמר ["נֹתֵן לֶחֶם
לְכָל בָּשֶׂר וגו'" (תהלים קלו:כה), "נוֹתֵן
לְבָהֵמָה לַחְמָה וגו'" (שם קמז:ט) ואומר]
"טוֹב ה' לַכַּ'ל וְרַחֲמָיו עַל כָּל מַעֲשָׂיו" (שם
קמה:ט).

## **Appendix: Talmud Bayli Berakhot 20b**

Mishnah Berakhot 3:3 discusses women's obligation in *tefillah*, and there are many variants in the Talmud Bayli's analysis of this Mishnah on Berakhot 20b. Here is a synopsis of the various witnesses:

#### Florence II-I-7

פשיטא מצות עשה שהזמן גרמא הוא ונשים פטורו' מהו דתימא הואיל ואי(ן)[ת] בה מלכות [שמים] (לא) [חייבות] קמ"ל [נ"א קרית שמע ותפילין דהויא לה מצות עשה שהזמן גרמה וכל מצות (לא) תעשה שהזמן גרמה נשים פטורות תפילה ומזוזה וברכת המזון דהויא להי מצות עשה שלא הזמן גרמה וכל מצות עשה שלא הזמן גרמה נשים חייבות] מן התפילה פש' מהו דתי' הואיל וכתי' בה ערב ובק' וצה' כמצות עשה שהזמן גרמא הוא [דדמיא] קמ"ל [תפילה רחמי היא] מן התפילין פשיטא מצות עשה שהזמן גרמא הוא ונשים פטור' [נ"א לגי' מה מזוזה מיחיבי אף תפילין נמי ליחייבי קמ"ל] מהו דתימא נקיש תפילין למזוזה קמ"ל מתני' (...) ומזוזה [פשיטא מהו דתימא ניקוש מזוזה (לתפילה) לתלמ' תורה מה תלמ' תורה פטירי אף מזוזה נמי פטירי קמ"ל וברכת המזון פשיטא מצות עשה שלא הזמן גרמה היא איצטריך סד"א הואיל וכת' בתת ה' לכם וכו' תהוי כמצות עשה שהזמן גרמה קמ"ל (האומ' רב אדא בר)] (פשיטא מצות עשה שלא הזמן גרמא וכל מצות עשה שלא הזמן גרמא נשים חייבות מהו דתי' נקיש מזוזה לתלמוד תורה קמ"ל)

### Munich 95

מאי טעמ' דק"ש ותפילין הוי להו מצות (מאי עשה שהזמן גרמא וכל מצות עשה שהזמן גרמא נשים פטורות תפלה ומזוזה וברכת המזון דהוו מצות עשה לא הזמו גרמא נשים חייבי') [אינו מלשוו התלמ.. ?...? ..איו צריד לפרש אלא גרסינן פשי?ט..? כו'] ופטורין מק"ש פשיטא מצות עשה שהזמו גרמא הוא מהו דתימ' הואיל ואית ביה מלכות שמים ליחייבינהו 'קמ"ל ומן התפילין פשיטא מהו דתימ הואיל ואיתקש תפילין למזוזה מה מזוזה מיחייבי אף תפילין מחייבי קמ"ל ובמזוזה פשיטא מהו דתימא הואיל ואיתקש מזוזה לתלמוד תורה מה תלמוד תורה פטירי אף מזוזה פטירי קמ"ל וחייבין בתפילה (פשיטא דמצות עשה שלא הזמן גרמא הוא ?)(? [מהו דתי'] הואיל וכתי') [גירס' רש"י תפלה דרחמי ננהו וא"ד פשיטא מ"ד הואיל דכתיב ערב ובקר וצהרים אשיחה כמצות עשה שהזמן גרמ' דמי קמ"ל מתנית?ין? ובברכת המזוז פש.. מ"ד הואיל וכתיב ויאמר משה בתת ייי לכם בערב בשר לאכול כמצות עשה שהזמן גרמא הוא קמ"ל (מאי שנא ק"ש ותפילין דלא דמצות עשה שהזמן גרמא הוא וכל מצות עשה שהזמן גרמא נשים פטורות תפלה ומזוזות וברכת המזון מצות עשה שלא הזמן גרמא הוא ומשום הכי חייבות) [אינו תלמוד]

### Oxford Opp. Add. fol. 23

פשיטא מהו דתימא הואיל ואית בה מלכות שמים אימא לא קמ'ל ומן התפילין פשיטא מהו דתימא הואיל ואיתקש למזוז' אימא לא קמ'ל וחייבין בתפלה פשיטא מהו דתימא הואיל וכתיב ערב ובקר וצהרים אשיחה ואהמה הויא לה מצות עשה שהזמן גרמה וכל מצות עשה שהזמן גרמה נשים פטורות קמ'ל ובמזוזה פשיטא מהו דתימא הואיל ומזוזה איתקש לתלמוד תורה ליפטרינהו קמ'ל וברכת המזון פשיט' דמצות עשה 'שאין הזמן גרמה היא סד'א הואיל וכתי ויאמר משה בתת יי'י לכם בערב בשר לאכול ולחם בבקר לשבע תהוי כמצות עשה שהזמן גרמה קמ'ל מאי שנא ק'ש ותפילין דהויא להו מצות עשה שהזמן גרמה וכל מצות עשה שהזמן גרמה נשים פטורו' אבל תפלה ומזוזה וברכת המזון מצות עשה שלא הזמן גרמה היא ומשום הכי נשים חייבות

#### Paris 671

מאי שנא קרית שמע וכל מצות עשה שהזמן (ש) גרמה נשים פטורות משום דכתי' ביה בשכבך ובקומך הוייא ליה מצות עשה שהזמן גרמה תפלין נמי לילה לאו זמו תפיליו הוא הוו להו מצות עשה שהזמן גרמה נשים פטורות אבל תפלה ומזוזה וברכת המזון כיון דהוייא להו מצות עשה שלא הזמן גרמה חייבות מאי טעמ' כל מצות עשה שלא הזמן גרמה נשים חייבות פטורין מקרית שמע פשיטא דהא מצות עשה שהזמן גרמה הוא מהו דתימ' כיון דמלכות שמים (הוא) היא הכל חייבין קמ"ל ומן התפילין פשיטא מהו דתימ' הקיש תפילין למזוזה מה מזוזה מיחייבי תפילין נמי מיחייבי קמ"ל וחייבים בתפלה פשיטא מהו דתימ' הואיל וכתי' ערב ובקר צהרים כי מצות עשה שהזמן גרמה היא קמ"ל כיון דרחמוי נחילא ובמזוזה פשיטא מהו דתימ' אקיש מזוזה לתלמוד תורה מה תלמוד תורה פטירי אף מזוזה נמי פטירי קמ"ל דמחייבי וברכת המזוז פשיטא מצות עשה שלא 'וכתי' הזמז גרמה היא ס"ד אמינ' הואיל וכתי בתת י"י לכם בערב בשר לאכול ובבקר תשבעו לחם כי מ([צ]וות עשה שהזמן גרמה היא קמ"ל

### **Soncino (1484)**

מאי שנא ק"ש ותפילין דמצות עשה שהזמן גרמ' וכל מצות עשה שהזמן גרמ' נשים פטורות' תפלה ומזוזה וברכת המזון דמצות עשה שלא הזמן גרמ' נשים חייבות' ק"ש פשיטא' מצות עשה שהזמן גרמ' הוא וכל מצות עשה שהזמן גרמא נשים פטורות' מהו דתימ' הואיל ואית בה מלכות שמים קמ"ל" ומן התפיליו פשיטא' מהו דתימ' הואיל ואתקוש למזוזה' קמ"ל" וחייבין בתפלה דרחמי נינהו' מהו דתימ' הואיל וכתי' בה ערב ובקר וצהרים כמצות עשה שהזמן גרמ' דמי קמ"ל" ובמזוזה' פשיטא' מהו דתימ' הואיל ואתקש לתלמוד תורה' קמ"ל" ובברכת המזון פשיטא' מהו דתימ הואיל וכתי' בתת יי לכם בערב בשר לאכל ולחם בבקר לשבע' כמצו' עשה שהזמן גרמא דמי קמ"ל" A quick look at these parallels reveals two basic versions of the gemara here. 1) A statement explaining why the different mitzvot are treated differently: Those that are time bound are obligatory for women and those that are not are not. This version is highlighted above in red. 2) A series of short אפשיטא exchanges on all five mitzvot in the Mishnah, with an expression of shock that one might ever have thought otherwise. In the case of the obligatory mitzvot, we imagine how they might have been considered time bound (tefillah and birkat hamazon), or how they might have been closely linked to another mitzvah from which women are exempt (mezuzah). In the case of the exemptions, either the value at stake is high enough (Keriat Shema) or the mitzvah is similar enough to an obligatory mitzvah (tefillin) that we might have though women were obligated. This version is highlighted above in red. There are also a few section left in black which are additions to the text from other sources and processes.

Though there is much to say about these manuscripts, the following picture emerges: Ms. Florence lacked the red version in the body of the text and bears witness to a version of the gemara with five ששש passages and no general explanation. A later hand then added the other version of the gemara into the margins. The double appearance of the red text in the body of ms. Munich suggests that it was a marginal gloss to a textual ancestor of this text that crept into the body in two separate places. A later hand, however, clearly possessed something like the body of ms. Florence and was careful to note that the red version ought not to be considered an original part of the gemara (in his opinion, at least). The parallel nature of these two versions of the gemara is confirmed by rishonim, with both Rashba and Tosfot R. Yehudah Hehasid stating that they knew of texts that lacked the שששש passages entirely and only featured the general statement highlighted here in red. The other witnesses thus represent a hybrid picture, reporting both versions of the gemara together. Mss. Oxford and Paris nonetheless switch the order of the two versions, a classic sign that one of them is a later addition that crept in from the margins (a process we described above in ms. Munich). The first printing solidifies this process, with both versions of the text achieving canonical status until today, even though they were originally dueling versions.

It is thus clear that when the Rif offers his summary statement of the reasoning behind the Mishnah's ruling that he is citing his version of the Talmud Bavli, which itself offers this sort of blanket statement and does not engage the פשיטא structure at all (the red text above). The same is true of many other rishonim, including Talmidei R. Yonah, who offer their own explanations of their version of the gemara, which asserts without explanation that *tefillah* is not a time-caused commandment. 125

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This confirms the instinct of *Ma'adanei Yom Tov* letter *tzadi* on Rosh Berakhot 3:13, who said that Talmidei R. Yonah seem not to have had anything in their gemara. To put it more precisely: they did not have a version with any פשיטא statements, just a blanket statement about the nature of these different obligations.

The next significant change to the text comes about as a result of Rashi. Rashi clearly had the version of the gemara that featured multiple ששיטים passages, like the green section of ms. Oxford. Rashi assumed two points that created a problem for him: 1) That the term עשה refers to something biblical, and 2) that tefillah had no biblical component and was entirely rabbinic in provenance. He therefore considered this passage as the work of an unlearned copyist and argued for its erasure. In place of the passage on tefillah, he suggested the phrase: דרחמי נינהו, an assertion of the basis for obligating women in tefillah independent of the question of its status as a time-caused commandment. We can see this process at work in ms. Munich. The base text there begins with a text that reads identically to the green section of ms. Oxford, but which gets cut off in the middle due to a copyist's error caused by the next section of text. A later hand adds a note that Rashi replaced this section with the words אול ברחמי נובהו and that the alternative he was arguing against read as does the green section of ms. Oxford. In ms. Florence, we see how Rashi's version is suggested as an alternative in the margins to a passage virtually identical to the green section of ms. Oxford. In ms. Paris, this alternative has already crept into the base text.

Our printed version represents the final stage of this process. Either the manuscript used by the printer or the printer himself wanted to update the text of the gemara to reflect Rashi's emendation. But this editor did not properly understand Rashi's comment and thought that when the latter wrote, "ילא גרס פשיטא", Rashi was merely referring to the word פשיטא, as opposed to the entire phrase that begins with that word. As a result, the first printing features a text that replaces the word שוני שיטא with the words אול בינהו פשיטא פשיטא text. This hybrid doesn't really make any sense—having מהו דתימא without a prior expression of surprise is syntactically awkward—but we can now understand how it came about. 130

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<sup>126</sup> The first assumption seems to be a linguistic point, though it is disputed by Tosafot Berakhot 20b s.v. peshita; the second point is supported by Berakhot 21a: אלא: קריאת שמע וברכת המזון - דאורייתא, ותפלה – דרבנן.

The phrase is borrowed from Sotah 33a, where it is used to explain why *tefillah* can be said in any language. The concept that *tefillah*'s essence as a personal request for mercy is at the core of women's obligation in it is already found in the Yerushalmi parallel to our sugya.

<sup>&</sup>lt;sup>128</sup> The copyist seems to have jumped from the words מהו דתימא הואיל וכתיב in the section on תפילה to the same words in the later section on ברכת המזון, an extremely common type of scribal error.

<sup>&</sup>lt;sup>129</sup> See also Meiri s.v. mahloket.

<sup>&</sup>lt;sup>130</sup> Note that the process of conceptual hybridization—asserting that one might obligate women in prayer *even if* it were a positive *mitzvah* caused by time, because it is a personal request for mercy—already gets underway in the rishonim. See Talmidei R. Yonah and Rosh Berakhot 3:13 for two examples. All such efforts, however, result from an attempt to synthesize an earlier text with Rashi's emendation. Everyone before Rashi (and even Rashi himself) understands the gemara's text to be saying that *tefillah* is *not* caused by time and therefore is obligatory on women. They may then disagree over *why* prayer belongs in this category, but not *that* it does.

# Appendix: The relationship of zimmun to other quora

We did not, above, address the question of how early rulings on valid quora for *zimmun* affect the conversation about *minyan* in other areas of ritual practice. For the sake of thoroughness, and in order to give the reader a clear understanding of the structure of the topic, we will treat it briefly here.

While classical rabbinic sources have nothing explicit to say about the role of gender in any quorum of 10, a number of sources do address the question about the role of gender in forming a *zimmun*.

Mishnah Berakhot 7:2 states concisely: נשים ועבדים וקטנים אין מזמנין עליהם; adult males (the presumed addressees of this Mishnah) may not form a zimmun with women, slaves and minors. A baraita on Berakhot 45b clarifies that women form their own zimmun and slaves form their own zimmun, but a group of women and slaves may not form a joint group. The gemara on Arakhin 3a cites a text of unclear provenance and undisputed authority stating that women are obligated to form a zimmun. This is all the direct evidence that classical sources present on the question of women and zimmun.

Regarding women's obligation in *birkat hamazon* more generally, **Mishnah Berakhot 3:3** clearly states that they are obligated. **Tosefta Berakhot 5:17**, however, exempts women (along with slaves and minors) from *birkat hamazon* and explains that they may not fulfill the obligations of others. It then adds that a woman may say *birkat hamazon* for her husband (and a slave may do so for his master and a son for his father): נשים ועבדים וקטנים פטורין ואין מוציאין את הרבים ידי חובתן באמת אמרו אשה מברכת לבעלה בן מברך לרבו נשים ועבדים וקטנים פטורין ואין מוציאין את הרבים ידי חובתן באמת אמרו אשה מברכת לבעלה בן מברך לרבו (אביו עבד מברך לרבו עבד מברך לרבו עבד מברך לרבו (אביו עבד שנותי). This then leaves unclear exactly what the status of women's obligation is. Do they, according to the Tosefta, have an equal obligation to men, in which case we would have to say that the word פטורין is an error? Or is there indeed a gender gap with respect to obligation in *birkat hamazon* but there was nonetheless, at least at one point, some tolerance for a woman saying *birkat hamazon* for her husband, at deviance with the usual rule that one can only fulfill the obligations of others if one is equally obligated? The state of t

<sup>&</sup>lt;sup>131</sup> Indeed, ms. Erfurt of the Tosefta here omits the word פטורין and simply states that women do not fulfill the obligations of others, which is possibly a statement that they are not *allowed* to do so, not that they are *unable* to do so. See also Meiri, who, for other reasons, emends the Tosefta to claim that women are obligated in *birkat hamazon* and may nonetheless not fulfill the obligations of others.

There is an even more intriguing possibility that should be considered here: Perhaps the phrase להוציא את האחד is not synonymous with the notion of להוציא את האחד. In other words, lack of obligation may not preclude one's ability to fulfill the obligations of another individual. Rather, it may be that a lack of obligation disqualifies one from serving in a public capacity to discharge the obligations of those assembled as a group. That would make perfect sense of the Tosefta: Women, slaves and minors cannot lead a communal birkat hamazon for a group including men. However, on a one-to-one basis, the Tosefta may be telling us that there is no issue. This would also fit with the general pattern of the phrase באמת אמרו, which in no other place contradicts what comes before, but rather makes a qualifying statement consistent with the prior phrase, albeit counterintuitive or unexpected. While later sources clearly assume that sources like Mishnah Rosh Hashanah 3:8, את הרבים ידי חובתן, apply to individual interactions as well—a reading perhaps influenced by Mishnah Sukkah 3:10—it might be that this Tosefta gives us a glimpse at a different approach to this question. We hope to return to this idea elsewhere in greater depth.

Despite this ambiguity, the Mishnah's obligation of women in *birkat hamazon* seems to dominate subsequent discussion. On Berakhot 49a, Rav derives details about the essential core text of *birkat hamazon* from the assumption that anything that does not apply to women cannot possibly be a core part of *birkat hamazon*, which seems to reflect an assumption that *birkat hamazon* is not gendered in any way. Therefore, given that women are not circumcised nor commanded to study Torah, nor does the Davidic line flow through them, mentioning these themes in *birkat hamazon* must not be essential.

Nonetheless, the conflict between the Mishnah and the Tosefta, along with the Mishnah's treatment of women as a separate and seemingly inferior class with respect to zimmun (the language of the Mishnah is not לא יזמן איש עם שתי נשים ולא תזמן אשה עם שני אנשים, following the structure of Mishnah Kiddushin 4:12) seems to have sown doubt as to whether the Mishnah's claim that women are obligated in birkat hamazon is unequivocal. On Berakhot 20b, Ravina wonders if women's obligation in birkat hamazon might only be derabbanan. Rava responds by quoting the end of the Tosefta cited above, which seems to indicate a full-blown obligation for women, given that a wife is said to be able, in principle, to fulfill her husband's obligation in this regard. [Notably, this parallel omits the first part of the Tosefta as we have it, which states that women are exempt. It further adds a coda condemning any husband who would rely on his wife to perform such a task for him.] A final passage questions this interpretation, given that it seems to suggest that a minor can fulfill his father's obligation in birkat hamazon, even though the former's obligation is rabbinic, while the latter's is biblical. Therefore, says the gemara, Rava's prooftext can be deflected as assuming women's obligation is rabbinic and that they (like minors) can only fulfill the obligations of adult males who have eaten so little that their obligation in *birkat hamazon* after that meal is rabbinic.

The impact of this final passage on the sugya's conclusion is an area of major dispute. Many rishonim, like **Ra'avad**, hold that this final section is a mere deflection devoid of halakhic weight and still assume that the sugya's conclusion follows Rava that women are biblically obligated. Some, however, take the deflection seriously and as the final legal word here: Ravina's question is left unanswered and we do not know if women are biblically obligated in *birkat hamazon* and therefore, we cannot allow them to fulfill the obligations of men in this regard. (Rambam Berakhot 5:1)

Returning to the question of women and *zimmun*, the gemara in Arakhin seems crystal clear that women are obligated to form their own *zimmun*, but that they may not do so with men. Indeed, if one reads Mishnah Berakhot and the gemara in Arakhin in isolation, one could easily conclude that *birkat hamazon* and *zimmun* are "separate but equal" rituals. Men and women share an obligation, but they must execute this obligation on their own. This approach can be found in various rishonim. We noted above the

version of the baraita means an adult son, who only presents a problem of social boundaries but not of an obligation gap. Regarding the last point, see Ramban, *Milhamot Hashem* on Rif Berakhot 12a, where he claims that the words וליטעמיך קטן בר היובא הוא are a later addition to the base text, such that the gemara here never even took a stand on the notion of whether a minor is in play. We suggested above that the plain sense of the baraita may hark back to a time when obligation (and certainly equal obligation) was not a

presumed prerequisite for discharging the obligations of others.

<sup>133</sup> Hasagot HaRa'avad letter *aleph* on Rif Berakhot 12a. These authorities address the problem of the child blessing for the father by saying that the father repeats the words of *birkat hamazon* after his son, following the resolution to this problem in Yerushalmi Berakhot 3:3, 6b. Alternatively, perhaps בו in the Bavli's

rishonim who say that women are biblically obligated in birkat hamazon, and **R. Yonah** and **Rosh** insist on taking the gemara in Arakhin at face value and obligate women in zimmun in the same way as men. Women and men, however, do not join together to form a zimmun but rather form groups on their own. This is a social concern; in the words of Rashi as cited by R. Yonah: אין הברתן נאה. There is something improper about a joint fellowship of men and women. 134 But as we noted above, women's equal obligation in birkat hamazon does not seem to have been universally agreed upon in Tannaitic sources and beyond, and this trend seems to have spilled over into the question of obligation in zimmun. Rashi on Arakhin 3a already suggests that the reason men and women may not form a zimmun together is because of unequal obligation in birkat hamazon. **Tosafot** Berakhot 45b also report that common practice—perhaps fueled by many women's ignorance of Hebrew—was for women *not* to ever lead a *zimmun* on their own. They therefore proposed a reading of the baraita on Berakhot 45b that only *allowed* 3 women to form a zimmun, but did not require them to do so. In the face of the blatant evidence to the contrary in Arakhin, Semag cites the Ri as explaining that women are obligated in zimmun when they have eaten in the presence of 3 or more men and that this is the meaning of Arakhin 3a. 135 Note that this potentially shifts the Mishnah's ban on mixedgender zimmun from the realm of social policy to a problem regarding equality of obligation and thus potentially takes various social issues off the table. More generally, the notion that perhaps groups of women are *not* obligated to have a *zimmun* plays a key role in later discussions of women and quora in general.

The classical sources leave us with a few key ambiguities. We know that women may not join with men to form a *zimmun*. Does this also apply to joining with men to mention God's name in a *zimmun* of 10? We know that 3 women make a *zimmun* on their own. Does a group of 10 women make a *zimmun* with God's name? Does one's stance on these questions affect whether 10 women or mixed groups of 10 can form other quora, a topic not taken up explicitly in classical sources?

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<sup>&</sup>lt;sup>134</sup> Note that this concern would apply even if there were 3 men and 3 women. They would seemingly be required to split into two groups. It is not clear if R. Yonah is specifically concerned about a meal-based environment, or if the problem is broader and goes to the question of any sort of mixed-gender group. <sup>135</sup> This is a forced interpretation aimed at shoring up a practice deviant from a central text. Note that it eviscerates any notion of impropriety just by dint of sharing a meal and then joining for *birkat hamazon*, such that, for Semag, it is obvious that 3 women can answer to the *zimmun* of 3 men and need not break off and make their own. This is not an obvious point and we will see sources below that fall on the other side of this question.

<sup>136</sup> Since we are primarily interested here in quora of 10, we will not address the unexpected position of R. Yehudah Hakohen, cited in Responsa of Maharam of Rothenberg IV:227, who ruled that יכולה אשה לצרף. Later commentators struggle with how he reconciled this view with the Mishnah's ban on including women in a zimmun. Hiddushei Hagahot suggests that he thought the Mishnah only banned one man joining with two women, whereas Derishah thought he read the Mishnah as only banning creating groups of men, women, slaves, and minors all together. According to Hiddushei Hagahot, it seems R. Yehudah Hakohen would only have allowed one woman to count towards the 10 needed for zimmun bashem, whereas Derishah would likely have him endorsing treating women as equals with respect to any zimmun, including zimmun bashem together with men or on their own. See also Agur and Bah. Maharam of Rothenberg argues against this view, in part appealing to his assumption that 10 women cannot perform zimmun bashem on their own, a view we will return to below.

In the body of this paper, we track the post-Talmudic history of the gendered nature of the quorum of 10 required for *devarim shebikdushah*. We saw how R. Sa'adiah Gaon seems to be the earliest source to make any explicit statement that a community of Jews for the purposes of public prayer consists of 10 men. This statement is descriptive and almost instinctive, without any discussion of the basis for it or the reasons surrounding it. And most medieval sources maintain this sort of approach, either omitting any mention of gender when describing quora of 10, or simply excluding women from them as a matter of fact without any need for comment. We analyzed above the few sources that do engage the question somewhat, either to uphold a strict male standard, or to open the possibility for female involvement.

Post-Talmudic discussions around quora of 10 for *zimmun bashem* and the public reading of the *megillah* can help fill in the picture we described above. The question of women and these quora of 10 is first meaningfully engaged in the 12<sup>th</sup> century. **Rambam Berakhot 5:7** states that 10 women may not make a *zimmun bashem*, without providing any reason. While he does not comment on the possibility of a mixed quorum of 10 men and 10 women for *zimmun*, it would seem that his citation of the Mishnah's explicit ban on a mixed gender *zimmun* encompasses the *zimmun* of 10 as well. <sup>137</sup> **R. Yitzhak b. Abba Mari of Marseilles**, in the Ittur, argues that *lekhathilah*, women should not count towards the 10 of *megillah*, just as they don't count towards the 10 or the 3 of *zimmun*. For him, the exclusion of women from *zimmun* is paradigmatic for excluding women from all mixed groups with men, albeit *lekhathilah*, suggesting that after the fact and/or in certain kinds of situations, such a mixed quorum does not compromise the integrity of the ritual. He says nothing about 10 women reading the *megillah* on their own (or performing *zimmun bashem*).

The next figure to contribute to this debate is **Sefer Hameorot** on Berakhot 45a, who resists Rambam's ruling that 10 women may not perform *zimmun bashem*, suggesting that the statement that women form their own *zimmun* in the gemara is comprehensive and applies both to quora of 3 and 10. He offers two suggestions for the basis for Rambam's ruling: 1) He holds that women are permitted, but not obligated to form a *zimmun* and, therefore, consistent with his view that women do not say *berakhot* over *mitzvot* from which they are exempt, they may not mention God's name in an optional *zimmun*. <sup>138</sup> 2) A group of women lacks קביעות, the kind of social cohesion

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<sup>&</sup>lt;sup>137</sup> We note here that while Rambam has always been read as forbidding 10 women from making a *zimmun bashem* it is technically possible to read Rambam as only forbidding 10 slaves from engaging in this ritual. The gemara on Berakhot 47b cites a view that 9 free people and one slave may join together, which, from context, seems to be permission to count one slave towards the quorum needed for *zimmun bashem*. One might infer from this statement that if a slave cannot even count as a tenth, then certainly a group of 10 slaves cannot form their own group of ten, despite their ability to form an independent group of 3. This would then provide some more basis for Rambam's ruling here, which puzzled various authorities as devoid of any Talmudic source, and he would not be making a comment on women at all. But such a reading remains unlikely given that no one seems to have read him in this way.

<sup>&</sup>lt;sup>138</sup> According to this logic, communities that followed R. Tam and did permit women to say such *berakhot* would indeed allow 10 women to perform *zimmun bashem*. Note that Sefer Hameorot's reading of Rambam here does not seem to be the plain sense of Rambam Berakhot 5:1, 7—see Meiri's understanding of Rambam on this question—and is borrowed from the Tosafot's notion that women are exempt from

necessary to create a *zimmun*. Rambam felt that women and slaves do not generate a social center of gravity the way free men do, and perhaps this is the reason that they may not do *zimmun bashem*. Despite these justifications, he argues that one should not stop groups of 10 women who do *zimmun bashem*, since there is no source in the gemara that opposes it. He then goes further, however, actively permitting an adult male to lead a group of either 10 minors or 10 women in *zimmun bashem*, revealing a rejection of Rambam's principle. 141

With respect to the Ittur's restrictive position on a mixed-gender group of 10 for *megillah*, Sefer Hameorot echoes this view on Megillah 5a, saying that whenever 10 are needed, men are required. In fact, this seems to go further than the Ittur, in that it suggests that 10 women on their own are also ineligible to compose the 10 for *megillah*, the first view to do so explicitly. This statement seems to reflect the kind of reflexive assumption that women are generally excluded from *minyanim* of 10 that we saw in the body of the paper, extending it into the realm of *megillah*. <sup>142</sup>

*zimmun*. Likely for this reason, and out of a desire to understand how the Rambam's ruling might apply to all communities, he suggests a second basis for the ruling here.

<sup>139</sup> Sefer Hameorot's approach here seems to draw on the approach of Ra'avad in Temim De'im #1, where he lays out the idea that a lack of קביעות is the core of the problem with mixed-gender *zimmun*, arguing that a group of men and women never coheres into a single unit with its own single center of gravity. Sefer Hameorot extends this notion to suggest that women on their own have the same problem.

<sup>140</sup> As we noted above, this sort of measured perspective would be welcome throughout the larger topic under discussion in this paper, with Sefer Hameorot's principle applying to women's participation in the *minyan* for *devarim shebikdushah* as well.

<sup>141</sup> Sefer Hameorot is thus likely the יש חולקין בכך cited in Meiri Berakhot 47b that supports 10 women performing a zimmun bashem. The scenario of one adult male leading the zimmun bashem for 10 women is not intended to convey the notion that 10 women cannot do this on their own, given that he otherwise rejects the notion that women join together with men and the only reason to say God's name is thus the presence of 10 women. Rather, he discusses the case of a man leading for 10 women in order to argue the case—which he does in the next part of the passage—that there is never an issue of peritzut when free men lead rituals for women; that concern is limited to slaves and women joinging together for ritual performance. Though he also cites those who think that peritzut is a wide ranging problem in the context of meals, and that this would be a problem for allowing a man to lead a zimmun for women, he rejects this view. In the end, he therefore in principle endorses the notion that a woman would lead other women in a zimmun bashem as well. Note also that R. Shmuel b. Meshullam Gerondi, in Ohel Mo'ed 107b, cites a view identical to that of Sefer Hameorot on this point in the name of R. Avraham, which may refer to Ra'avad. Given our citation of Ra'avad in Temim De'im above. Ohel Mo'ed seems to argue that if the problem with mixed-gender zimmun is the inability of men and women to cohere as a group, then there ought to be no issues with treating a group of women on its own identically to a group of men on its own. See Repsonsa Benei Banim 3:1. This view of Sefer Hameorot does not get much traction with later poskim and Meiri explicitly rejects him in his commentary on Berakhot 47b by echoing R. Manoah's claim explored in the body of the paper—that zimmun bashem requires a ההל, and 10 women cannot form a קהל. [R. Ben Zion Lichtman, in Benei Tziyyon 199:6 struggles with this passage in the Meiri and suggests instead that perhaps Meiri had a different girsa on Megillah 23b that explicitly tied the requirement of 10 for zimmun bashem to the notion of קהל Most later authorities display no awareness of Sefer Hameorot's

position. <sup>142</sup> Sefer Hameorot then offers a reason why women should not join with men towards the 10 of *megillah*, Ittur's original point: such a mixed-gender group is a problem of *peritzut*. But, in light of his analysis on Berakhot 45a, where he suggested that free adults are not subject to such concerns, he comments here that the concern of *peritzut* could be easily dismissed. He thus seems to fall back on his first general statement that groups of 10 are not the domain of women. This itself is a problematic statement, in that he is on record, as we saw, as permitting 10 women to perform a *zimmun bashem*. One might question whether his

At around the same time, **R. Simhah of Spever**, whose rulings we examined in the body of the paper, also took for granted that at least one woman could count towards the 10 of zimmun. We suggested above that he might have had an even bolder position, permitting women to function as equals in this quorum of 10, whether with or without men. 143 What is striking about R. Simhah is that he carries the participation into the realm of the minyan of tefillah, something that no one before him did explicitly, even though the logic for doing so is similar to that of those, like Sefer Hameorot, who argued for the ability of 10 women to form a zimmun. Nonetheless, as we saw above and will see again below, even those authorities entertaining including women in the 10 of zimmun or megillah seem to have taken for granted their exclusion from the 10 of devarim shebikdushah, for reasons we argued for in the body of the paper.

The next voice to weigh in is that of **R.** Aharon Halevi of Barcelona, who is cited in Ritva Megillah 4a. He argues there that women ought to be able to join with men towards the quorum of 10 for *megillah*, directly rejecting the Ittur, and his logic makes clear that he would permit 10 women on their own to count as a quorum for this purpose. He then attempts to distinguish the mixed-gender group he permits here from the one explicitly banned by the Mishnah. A zimmun constituted by men and women is problematic because an entirely new ritual (zimmun) is being added due to the joint participation of men and women, and this presents a concern of *peritzut*. Since neither the men on their own nor the women on their own could do this ritual, their joint participation is blatantly obvious, and thus problematic. 144 In the case of megillah,

endorsement of the latter position also began to put into play the possibility of 10 women reading the megillah on their own, a possibility not yet proposed in his day.

There is the larger question of whether R. Simhah accepted the outlier view of R. Yehudah Hakohen cited above, in which case he might simply have said that any combination of 10 adults is valid for zimmun bashem. If not, he maximally would have permitted combinations of up to 7 of one gender with 3 of the other, so as not to violate the Mishnah's ban on combining men and women to form the core zimmun of 3. This is assuming that R. Simhah did not accept the more radical view of R. Yehudah Hakohen cited above. 144 This is a novel articulation of the nature of the concern of *peritzut*. All sources earlier than the Ra'ah assume that peritzut is a problem of interaction in the context of the ritual, such that it would theoretically apply to any case of a man or a woman performing rituals one for the other. Indeed, based on such an assumption, Sefer Hameorot on Berakhot 45a argues that *peritzut* cannot be an area of concern when dealing with free adults of mixed gender, since men perform rituals for women all the time and women, were it not for kevod hatzibbur, are eligible to read Torah for a community that includes men. Ra'ah is the first to advance the notion that though leading a ritual for someone else is devoid of *peritzut*, being dependent on the presence of the other person in order to do so is, and said concern applies to mixedgender groups of free adults as well. In part because earlier sources implicitly reject this notion and in part because it doesn't necessarily translate easily into intuitive notions of how peritzut would actually work in a human context, it seems best to understand Ra'ah here as coming up with a post facto defense of his ruling that women count as equals for the 10 of megillah in order to defend it from any challenges from the realm of zimmun. This only underscores what an important model zimmun was for thinking through questions of quora in the rishonim, which is why we are addressing these issues here.

however, the ritual looks the same irrespective of the size of the group, <sup>145</sup> and therefore there is no issue of *peritzut*. <sup>146</sup>

As a summary of this topic, it is worth looking at a passage in **Sefer Hamikhtam** on Berakhot 45b by R. David b. Levi of Narbonne, in which he tries to synthesize all of this various material regarding women and various quora and to work through how controlling a paradigm the material on women and *zimmun* ought to be. He writes as follows:

נשים ועבדים וקטנים אין מזמנין עליהן.

- 1) פי' דלאו בני חיובא נינהו כאנשים, ואע"פ שהנשים חייבות בבכרת המזון, ספק הוא אם חייבות מדאוריית' או מדרבנן, והאנשים חייבות מן התורה...
  - . וכתב הרמ' דנשים אם מזמנות לעצמן לעולם אין מזמנות לעצמן בשם, אפי' ביותר מעשר.
  - (3) ועוד מפרש בגמ' דנשים ועבדים אפי' אם רצו לזמן אין מזמנין משום פריצותא, כלומ' כדי להרחיק שלא לעשות מסיבה של נשים ועבדים.
- 4) ויש שאומ' דדוקא בעבדים שהם פרוצים, כדאמ' עבדא בהפקירא ניחא ליה, אבל בחבורה של נשים עם בני חורין הכשרין אין מפקירין.
  - 5) אבל מכל מקום הנשים אינן מצטרפות עם האנשים, דסתמא דמתני' דנשי' ועבדים וקטנים אין מזמנין עליהן, ואפי' סניפין לעשרה אין עושין מהן.
- 6) ולא עוד אלא במה שמצטרפין הקטן היודע למי מברכין אין מצרפין אותן לענין זמון, דקטן אתי לכלל חיובא בגדול, אבל נשים לא.
- 7) ואע"ג דלענין מקרא מגילה מצטרפות לעשרה לדעת קצת הפוסקים, ומוציאות את האנשים אם היו יודעות לקרות, שאני התם דחיובן שוה לאנשים.
- 8) ואע"ג דאמרי' נמי אשה לא [תקרא] בתורה בציבור מפני כבוד [הציבור], דמשמע טעמא משום כבוד ציבור הוא דלא, הא לאו הכי שרי, התם נמי אפשר דקריאתה אינה עולה למנין השבעה, או אפילו תימא דעולה מ"מ איהי לא מצטרפא לעשרה דאין קורין בתורה בפחות מעשרה.

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<sup>&</sup>lt;sup>145</sup> Either Ra'ah does not subscribe to the view taken by some rishonim that the final berakhah after the *megillah* is only done in a group of 10, or he does not consider this sort of addition to be significant enough to trigger a *peritzut* problem. Depending on how one answers this question, one would reach a different conclusion as to whether, for the Ra'ah, a mixed group of 10 men and women could perform *zimmun bashem*, given that the fundamental structure of the *zimmun* is already in place via the presence of 3 men and/or 3 women.

<sup>&</sup>lt;sup>146</sup> If one took the logic of the Ra'ah here seriously, one would have to reckon with the issue of *peritzut* in the context of mixed-gender groups of 10 for devarim shebikdushah, even if one concluded that a group of 10 women was valid for this purpose. Indeed, there are a number of aharonim who raise such issues as a defense against mixed-gender quora even when it can be demonstrated that women have identical obligation to men. For one example, see Zekher Simhah #75, who argues that women and men can never form a group because of R. Yonah's reason for the problem of mixed-gender zimmun: אין הברתן נאה. While not an issue of sexuality, this is a claim that there is simply never a proper sense of group when men and women are both involved. As suggested in an earlier note, it is not clear that the Ra'ah's logic here ought to have that sort of weight, given its context. Furthermore, Sefer Hameorot disagrees, holding that peritzut is not a concern for free adults, and Ra'ah does not address the former's argument from women's principled inclusion in Torah reading. There is also the tacit disagreement of all authorities prior to Ra'ah on his definition of *peritzut*. Finally, it would seem that the issues of *peritzut* would not be immune from social changes, such that if women and men are more accustomed to sharing space in contemporary society—a fact with wide-ranging halakhic consequences, as pointed out by innumerable poskim—this concern might not even apply for the Ra'ah himself today. Nonetheless, one can certainly imagine a community that might accept the basic narrative traced in this paper considering women to be full participants in Jewish life, while preserving heightened gender distinctions through a "10 men or 10 women" policy for a minyan.

. ויש שאומרי' דלהכי לא פסלינן נשים לספר תורה ולמקרא מגילה משום דלא נתמעטו נשים אלא מזימון. משום דבסעודה שכיחא שכרות ושחוק וקלות ראש וכל זה איננו שוה להכשירן לענין צירוף שלשה או עשרה אפי' בכשרים

- 1) Sefer Hamikhtam begins here by explaining why it is that women and men do not join together to make a zimmun: they lack equal obligation to men. Even though they are obligated, once the gemara on Berakhot 20b raises a doubt as to whether their obligation is biblical, they are no longer on the same plane as men with regard to zimun and may not join them.
- 2) He notes that Rambam says 10 women may not do zimmun bashem.
- 3) The gemara clarifies that women and slaves may not form a joint group for *zimmun*, because of concerns of sexual impropriety. There should never be a joint meal of women and slaves 147
- 4) The above logic would seem to ban men and women from ever having a joint zimmun or meal, so Sefer Hamikhtam now cites the view of Sefer Hameorot that there is no fear of sexual impropriety with regard to free men and women. Therefore, 3 men and 3 women may participate in the same zimmun. 148
- 5) Nonetheless, even if free men and women present no problem of sexual impropriety, such that they can participate in the same zimmun, they still may not join together to form a quorum of 3 or 10; the Mishnah's ban must minimally prevent these sorts of joint quora (even if it might still allow for joint participation in a zimmun formed by a single-gender quorum). Even nine men and one woman may not perform zimmun bashem. 149
- 6) You might object that the Mishnah also forbids including minors in a zimmun and, yet, voices in the gemara legitimate counting at least one minor. Why shouldn't at least one woman be allowed to count towards the 10 of zimmun bashem. He deflects this problem by insisting that minors are different, since they will eventually be fully obligated in *birkat hamazon* as adults, whereas women's obligation will never be on par with men's. 151

<sup>150</sup> This is a reference to the idea that a minor who is sufficiently intelligent to understand the notion of blessing God for the food one has eaten may indeed help form the *zimmun*. R. Nahman rules this way on Berakhot 48a and the gemara on Arakhin 3a endorses this view as normative. This then leads to a Geonic gloss that creeps into the text of Berakhot 48a affirming R. Nahman's statement as consensus law.

The logic of distinguishing minors from other categories of people via the claim אתי לכלל חיובא their

eventual status as free, adult Jewish males renders them more similar to the latter group than others outside

<sup>&</sup>lt;sup>147</sup> Note that the logic here applies even if the women and slaves are not relying on one another for a quorum. In other words, when the baraita on Berakhot 45b forbids women and slaves from mixing together because of פריצותא, the plain sense is that even 3 women and 3 slaves cannot combine to the same zimmun. This coerced separation is intended to prevent their inappropriate cohesion as a group. See above our comment regarding the question of whether 3 men and 3 women may join together to form a zimmun; based on Sefer Hamikhtam's understanding here, we would not permit in such a case if we felt there was a problem of פריצותא in a mixed-gender group of free adults.

Note that one who did not accept Sefer Hameorot's distinction, or who felt that other problematic social issues arose from a mixed-gender meal, might reject this permission. Indeed, this seems to be the view of Rashi cited by R. Yonah that we cited above, who says that women do not join with men because אין הברתם a concern that would apply to any kind of joint zimmun, whether or not the men need the women to attain the quorum. While Beit Yosef 199:8-9 rejects this view in favor of the Semag cited above, he agrees that this is the proper reading of R. Yonah, and this section of Sefer Hamikhtam confirms the plausibility of such a position.

<sup>&</sup>lt;sup>149</sup> Obviously, R. Simhah read the Mishnah differently.

7) Given the blanket ban on men and women forming a joint quorum for *zimmun*, you might be surprised by those authorities (like Ra'ah), who permit women and men to join for the 10 of megillah. Shouldn't women and men be banned from ever forming a joint quorum, based on the model of zimmun? Sefer Hamikhtam argues that megillah is different from zimmun, because women's obligation in megillah is equal to that of men, whereas this is not (at least clearly) the case with regard to birkat hamazon. 8) Given the blanket ban on men and women forming a joint quorum for *zimmun*, you might be surprised that the baraita on Megillah 23b makes it sound like a women can be among the quorum of 7 readers for the Torah (assuming we control for the concern of kevod tzibbur). Sefer Hamikhtam offers two ways of explaining how women are indeed not really joining together with men to form a Torah reading quorum. First of all, some say that she may not join men towards the quorum of 7. [This almost certainly refers to the view that women were only ever allowed to read when they did not have to make a berakhah over the reading, since originally only the first and last reader did so. Once each person coming to the Torah was required to make a berakhah, women, who were classically exempt from Torah study, were no longer eligible to participate in the Torah reading at all. This view is first suggested as a deflection in Tosafot Rosh Hashanah 33a and is later picked up as an actual ruling by later authorities, such as Sefer Habatim, Sha'arei Keriat Hatorah #6. According to this view, women's exclusion from Torah reading is a perfect match with zimmun, from which women are also excluded because of an unequal obligation to that men.] And even if one follows the plain sense of the baraita, which poses no objections to women's aliyot other than kevod hatzibbur, 152 women are still excluded from the quorum of 10 required to enable the reading to happen in the first place. 153 Therefore, even if men and women can join to form the quorum of 7, we still see a disability analogous to the ban on a joint zimmun in the context of the ritual

of that category—was an innovation of Tosafistic circles. In fact, the almost certain referent here is a passage that appears in two parallel Tosafot (on Eruvin 96b and Rosh Hashanah 33a) that discuss the question of whether women are allowed to say berakhot over the voluntary performance of mitzvot from which they are exempt. After citing R. Tam's support for this position, Tosafot deflect several suggested proofs for this view (even though they do not challenge the validity of R. Tam's view itself). The end of the Tosafot reads as follows: ומקטן דמברך ברכת המזון אף על פי שהוא פטור אין ראיה לאשה דקטן בא לכלל חיוב וחייב The potential argument here is that Mishnah Berakhot 3:3 (which we looked at above), rules (according to Rashi and Tosafot's interpretation of that text) that minors say birkat hamazon. Given that minors are exempt and yet allowed to say these blessings, one might argue that women, even though exempt, can say blessings over mitzvot that they voluntarily perform. Tosafot reject this potential argument by suggesting that we would more readily let a minor bless than an exempt adult: Minors will eventually become obligated and must be educated; moreover, they are not yet culpable for taking God's name in vain. Tosafot's claim here seems to be that because the minor will eventually be obligated in these mitzvot, there is a value in educating him to perform them. This is supported by Tosafot on Nazir 57b, where they consider it a forced suggestion that one would be stricter in the case of a minor simply because he will eventually become obligated in the absence of educational concerns. Sefer Hamikhtam borrows that concept here to claim that we are more invested in including minors in a zimmun as part of their training to become adults. Therefore, our leniencies with them have no implications for women. <sup>152</sup> This is likely not just a theoretical point raised here in Sefer Hamikhtam. The author was likely aware

This is likely not just a theoretical point raised here in Sefer Hamikhtam. The author was likely award of rulings like the one cited in Sefer Habatim—which we discussed above—permitting women to read Torah in a private home where *kevod hatzibbur* might be said not to apply.

<sup>153</sup> This fact is asserted as obvious by simply appealing to the text of the Mishnah. Obviously, Sefer Hamikhtam here is subject to the same analysis we offered in the body of the paper for all such statements in the rishonim, and he is another good example of the phenomenon of asserting this assumption of religious practice.

of Torah reading as well. In short, Torah reading in fact conforms to the ban on a mixedgender zimmun quorum in one way or another.

9) Alternatively, there is another way of explaining why men and women may not jointly create a quorum for zimmun even though they can join for the 10 required for the megillah and the 7 required for Torah reading: 154 zimmun presents a serious problem for mixed gender activity, because mealtimes are prone to sexually inappropriate behavior; zimmun is not paradigmatic for other rituals that lack this quality, such as Torah reading and megillah. Therefore, one might entertain including women with men in the latter rituals while maintaining an ironclad ban on allowing even free men and women to jointly form the guora of 3 and 10 for zimmun. [This is the view cited by Sefer Hameorot on Berakhot 45a, though he rejects it.]

Sefer Hamikhtam is a good place to end our discussion, because of his fairly comprehensive survey of the material we have covered here. 155 He also demonstrates the deeply embedded assumption of so many rishonim that, whatever other interesting conversations one might be having about the inclusion of women in various quora, women's exclusion from the 10 required for devarim shebikdushah is an obvious truth in need of no justification. We examined this pattern and its significance in the body of the paper. Finally, this source, along with the others we have explored in this appendix, demonstrates how the thin record on women and quora in classical sources can be taken in a variety of directions with respect to a variety of rituals. Whether one views zimmun as paradigmatic or exceptional ultimately reflects what each authority understood to be the principles underlying the gendering of that practice. This should help put in perspective our analysis of the underlying principles of the gendering of the 10 required for devarim shebikdushah and how one might apply that information in different religious times and places.

<sup>154</sup> In other words, this is another effort to justify the rulings permitting women and men to combine for the 10 of megillah (Ra'ah) and permitting women to read Torah (Sefer Habatim) without running afoul of the

Mishnah's opposition to mixed-gender groups in the context of *zimmun*.

155 Meiri on Berakhot 47b essentially cites Sefer Hamikhtam here, almost verbatim. His main contribution is to add a brief discussion on the question of whether 10 women can perform zimmun bashem, citing Sefer Hameorot's opposing view to that of Rambam, though ultimately rejecting it.