

Women and Public Prayer: Duty and Dignity

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שאלה QUESTION

I have been asked whether women may be included in a *minyan*, the quorum required for the recitation of specially sanctified prayers (*d^evarim sh^eb^eq^edushah*).

תשובה RESPONSE

Introduction

1. The convergence of political change, new reproductive technology, economic independence, career opportunities for women, cultural emphasis on individual autonomy and personal choice, and the immediacy of global communication has transformed religious life in significant social, religious and personal ways. These developments have affected even the most insular of communities and have resulted, paradoxically, in both an embrace of the new and a rejection of these changes.

2. Even for those who welcome these social changes, it is not enough for rabbinic authorities to simply state that this is a new era with novel moral insights for Jewish life. It is also insufficient to contend that the narrative intent of the teachings of Torah leads us in a particular normative direction. There will always be contending interpretations of the master narrative of Torah. Jewish law requires the use of its own internal language and logic, a jurisprudential argument that builds on precedent, however narrow be that bridge between the past and the possible. The halakhic system is the grammar of Jewish spirituality. It governs how I and other committed Jews encounter God, encompassing particulars and principles, details and aspirations for the divine. Interpreting this magisterial tradition is neither obvious nor easy, but it is necessary for us to undertake so that the Torah will continue to live and be meaningful in new times, places and cultures.

3. It must be noted that the Jewish legal tradition is primarily concerned with duties, obligations and responsibilities that derive from a sense of *mitzvah*, being commanded. This is at variance with the Western legal tradition which is framed around the rights of individuals. While many *mitzvot* apply to the community, most *mitzvot* devolve upon individuals. Still, the Torah tradition places those personal obligations within the context of the Covenant (*b^erit*), with the understanding that individual desires – while important – are secondary to the welfare and continuity of the sacred community of Israel.

4. The history of *halakhah* is replete with adherence to precedent and principle. It also contains significant shifts in issues at the core of Jewish spiritual attitudes and behaviour. Some of those developments - attitudes toward non-Jews, toleration of secular Jews, changing paradigms of public prayer, and the study of Torah by women - are still contested. Other modifications, particularly in business law (i.e., *prozbul* or *heter isqah*), have been generally accepted. Some of these changes appear to have taken place gradually and without much public attention, but “the perceptive onlooker can discern a causal connection between halakhic change and shifting societal attitudes.”¹

5. While there are male-female distinctions within the Torah tradition that are not congruent with a wholly egalitarian perspective, I do not believe that feminism is antithetical to Judaism. Nor do I accept the idea that halakhic change will destabilize the psycho-social structure of Jewish life. The role of women in public religious activities relates to moral sensibilities that are central to the human experience and that speak to the nature of human sexuality, the family, our particular community and society in general. This is exactly where the Torah tradition seeks to situate itself and to have something to say in conversation with the modern world. The questions about greater inclusion of women in public prayer have the potential of enhancing the Torah tradition so that it might be more meaningful to all who seek to grasp hold of it.

6. Martin Buber, certainly not a halakhic authority, likened faith to a “narrow ridge” and this insight was also noted by Ludwig Wittgenstein who observed that “an honest religious thinker is like a tightrope walker. He almost looks as though he were walking on nothing but air. His support is the slenderest imaginable. And yet it really is possible to walk on it.”² This *t^eshuvah* is for Beth Tzedec Congregation. Not every congregation or community will find this to be the appropriate path for itself. Not everyone will walk the same tightrope, but this is how, why and where those who wish to walk with me are invited on this path of *halakhah*.³

¹ T. Ross, *Expanding the Palace of Torah*, Waltham: Brandeis University Press (2004), p. xv.

² *Culture and Value*, tr. Peter Winch. Oxford: Basil Blackwell, p. 73, cited in *Expanding the Palace*, p. xxi.

³ Many *teshuvot* and articles have been consulted. Among them responsa by faculty of the Jewish Theological Seminary in *The Ordination of Women as Rabbis: Studies and Responsa*, ed.

Women's Obligation for Prayer: Talmudic Sources

7. The Mishnah is the earliest source to discuss the women and prayer. It establishes with essential clarity the issue of gender and obligation in prayer:

נשים ועבדים וקטנים פטורין מקריאת שמע ומן התפילין וחייבין בתפלה ובמזוזה
ובברכת המזון:

Women, slaves, and minors are exempt from the reading of *Shema* and from *Tefillin* and are obligated for *Tefillah* (Prayer), *Mezuzah* and Grace (after meals). (Mishnah *Brakhot* 3.3)

From this primary pronouncement, we see that women have a personal responsibility (*hiyyuv*) for daily prayer. In general, the term *Tefillah* (Prayer) in the Mishnah refers to the eighteen-blessing Standing Prayer (*Amidah*) or its Shabbat and holiday equivalents. And, just as children are educationally obligated for the three daily prayers, it is reasonable to assume that women would also be required to pray three times each day.

Rabbi Simon Greenberg, JTS, New York, 1988: M. Rabinowitz, (<http://www.rabbinicalassembly.org/teshuvot/docs/19861990/ordinationofwomen1.pdf>) and Rabbi Joel Roth, (<http://www.rabbinicalassembly.org/teshuvot/docs/19861990/ordinationofwomen2.pdf>); Rabbi David Feldman, "Women's Role and Jewish Law", *Conservative Judaism* 26:4 (summer 1972); Rabbi Saul J. Berman, "The Status of Women in Halakhic Judaism", *Tradition* 14:2 (1973), (http://www.lookstein.org/articles/status_of_women.htm); Rabbi David Golinkin. "נשים במנין" (תשנז) וכשליחות צבור" תשובות ועד ההלכה ו (<http://www.responsafortoday.com/vol3/2.pdf>, and 47-72 (תשס"א) *Status of Women in Jewish Law: Responsa*, Schechter Institute, 2001); Rabbi Judith Hauptman, "Women and Prayer: An attempt to dispel some fallacies", *Judaism* 42:1 (1993): 94-103 and "Some Thoughts on the Nature of Halakhic Adjudication: Women and "Minyan", *Judaism* 42:4 (1993): 396-413; Rabbi David Fine, "Women and the Minyan", Committee on Jewish Law and Standards, OH 55:1 (2002) (http://www.rabbinicalassembly.org/teshuvot/docs/19912000/oh_55_1_2002.pdf); (private distribution); Rabbis Mikhael Rosenberg and Ethan Tucker, "Egalitarianism, Tefillah and Halakhah", *Mechon Hadar* (2010) (http://www.mechonhadar.org/c/document_library/get_file?uuid=8e2def5c-17b6-4160-9fe3-874c9c9c3587&groupId=11401); Rabbis Michael J. Broyde and J. B. Wolowelsky, "Further on Women as Prayer Leaders and their Role in Communal Prayer", *Judaism* 42:4 (1993): 387-395; Rabbis Aryeh Frimer and Dov Frimer, "Women's Prayer Services – Theory and Practice", *Tradition* 32:2 (1998): 5-118 (<http://www.daat.ac.il/daat/english/tfila/frimmer1.htm>); Rabbi Aryeh Frimer, "Women and Minyan", *Tradition* 23:4 (1988): 54-77 (<http://www.daat.ac.il/daat/english/tfila/frimer2-1.htm>); Rabbi David 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); for other papers also see Rabbi David Golinkin, *An Index of Conservative Responsa and Practical Halakhic Studies: 1917-1990* (New York: Rabbinical Assembly, 1992), p. 75. The analyses by Golinkin and Wald, as well as the arguments developed by Rosenberg and Tucker have had a significant influence on my thinking in recent years.

8. However, this initial clarity is obscured by a general rule of the Mishnah that women are exempt from positive mitzvot dependent on time:

וכל מצות עשה שהזמן גרמה אנשים חייבין ונשים פטורות וכל מצות עשה שלא הזמן גרמה אחד אנשים ואחד נשים חייבין וכל מצות לא תעשה בין שהזמן גרמה בין שלא הזמן גרמה אחד אנשים ואחד נשים חייבין

For all positive time-related mitzvot, men are obligated and women are exempt. For all positive mitzvot not time-related, men and women are equally obligated. For all negative mitzvot, whether time-related or not, men and women are equally obligated. (Mishnah Qiddushin 1.7)

Since *T^efillah*/Prayer is framed by many time related considerations, this general rule might exempt women from the obligation to recite the *Amidah*.

9. In a third source, discussing the obligation for *T^efillah*, the Talmud asserts that this Prayer is NOT such a commandment, placing it in the framework of a positive *mitzvah* that is **not** time-related:

וחייבין בתפלה דרחמי ניהו. מהו דתימא: הואיל וכתוב בה ערב ובקר וצהרים, כמצות עשה שהזמן גרמא דמי - קמשמע לן.

[Women] are obligated for *T^efillah*/Prayer for it is an expression of compassion. You might object that the verse (Ps. 55.18) “evening, morning and afternoon” suggests that (*T^efillah*/Prayer) should be considered as a positive time-related *mitzvah* [therefore, women would be exempt from this obligation]. Accordingly, [the Mishnah] came to teach [that women are obligated]. (TB Berakhot 20b)⁴

Women’s Obligation for Prayer: Rishonim- Rambam

10. Based on these three primary Talmudic sources, the early authorities (*Rishonim*) develop two positions related to the basis of women’s obligation for *T^efillah*/Prayer. Rambam (Maimonides) maintains that *T^efillah* is a Torah-based (*d^eoraita*) positive *mitzvah* which is not time-caused.⁵ Rashi, Ramban and others argue that *T^efillah* is a

⁴ The text before us conflates two versions of the Talmud, one of which explicitly asserts that *T^efillah*/Prayer is in the category of a non-time-related positive *mitzvah* and another that considers an alternate position before rejecting it. Golinkin, *Status*, pp, 48-49 and Wald, pp.2-3, discuss the textual variants before the early authorities.

⁵ Rabbi Alfasi brings the Talmudic conclusion (from 20b) without any variation: תפלה ומזוזה וברכת. “Prayer, the mezuzah and the Shema prayer are obligations that are not time-related. Women are obligated in them.”

rabbinic institution. For our purposes, it is important to note that both perspectives maintain that women have an obligation for *T^efillah*.

11. In *Sefer Hamitzvot*, Rambam rules that prayer has two aspects: from the standpoint of Torah legislation (*m'd^eoraita*), prayer is a positive *mitzvah* not time-caused. A daily offering of the heart (which includes the elements of praise, petition and gratitude) is sufficient. The time, text and frequency of structured prayer are to be understood as rabbinic enactments to provide specificity to the core commandment.

והמצוה החמישית היא שצונו לעבדו יתעלה וכבר נכפל צווי זה פעמים, אמר (משפטים כג כה) ועבדתם את יי' אלהיכם ואמר (ראה יג ה) ואותו תעבדו ואמר (ואתחנן ו יג) ואותו תעבדו ואמר (ס"פ עקב) ולעבדו ולשון ספרי ולעבדו זו תפילה

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

12. He decides in a similar way when detailing the tenth *mitzvah* (of the traditional 613).

והמצוה העשירית היא שצונו לקרוא קריאת שמע בכל יום ערבית ושחרית...כשם ולשון התוספתא (רפ"ג) שנתנה תורה קבע לקריאת שמע כך נתנו חכמים זמן לתפלה. כלומר שזמני התפלה אינם מן התורה. אמנם חובת התפלה עצמה היא מן התורה כמו שבארנו (ע' ה) והחכמים סדרו לה זמנים. וזהו ענין אמרם (שם כו ב) תפלות כנגד תמידין תקנום. כלומר סדרו זמניה בזמני ההקרבה.

The tenth *mitzvah* is that we are commanded to recite the *Sh^ema* every day, morning and night ... The Tosefta says: "Just as the Torah fixed times for the reading of *Sh^ema*, so the Sages gave a time for Prayer" (*Berakhot* 3:1), meaning that the times of prayer are not biblical. Even though the obligation of prayer itself is biblical, as we explained (above, *mitzvah* #5), the Sages assigned it times. This is the intent of the statement, "They established the prayers parallel to the *Tamid* (daily) sacrifices" (*TB Berakhot* 26b), that is, they established its schedule parallel to the sacrificial schedule. (*Book of Mitzvot*: Positive Command #10)

mezuzah and Grace after Meals are all positive *mitzvot* that are not time-caused; and women are obligated for all positive commandments that are not time-caused." *Rif, Berakhot* 11b.

13. In *Mishneh Torah* (Laws of Prayer 1.1), Maimonides affirms this earlier ruling when he states:

מצות עשה להתפלל בכל יום שנאמר ועבדתם את ה' אלהיכם, 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.

It is a positive *mitzvah* to pray each day, as it is written: “*You shall serve the Eternal 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.

14. Rambam then goes on to apply the **Biblical** *mitzvah* of prayer to women:

לפיכך נשים ועבדים חייבין בתפלה לפי שהיא מצות עשה שלא הזמן גרמא אלא חיוב מצוה זו כך הוא שיהא אדם מתחנן 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

Therefore, women and slaves are obligated for prayer because it is a positive *mitzvah* not related to time. The obligation of this *mitzvah* is thus: a person should supplicate and pray every day and praise the Holy One. Following this, a person should petition for one's needs as a request and a supplication and then offer praise and thanksgiving to God for the good that one has received, each person according to one's ability. (*Mishneh Torah*: Laws of Prayer 1.2)⁶

15. After an extended discussion about all the detailed obligations of prayer as mandated by the Talmudic sages, Rambam then concludes by also including women in the **rabbinic** framework:

נשים ועבדים וקטנים חייבים בתפלה, וכל איש שפטור מקריאת שמע פטור מן התפלה, וכל המלוין את המת אף על פי שאין למטה צורך בהן פטורין מן התפלה.
Women, slaves and minors are obligated in prayer. Any man who is exempt from *Shema* is exempt from prayer. [For example,] those who escort the dead for burial, even though they are not needed for

⁶ Golinkin, *Status* p. 51, points out that the Biblical status of this law is accepted because (1) most interpreters of Rambam agree to this point; (2) in subsequent rules (1.4-7), Rambam uses terminology that is expansive, neutral and indicative of the inclusion of women; (3) this also may be inferred from his *Laws of Prayer* 6.10, and his commentary to *Mishnah Qiddushin* 1.7.

the actual conveyance, are exempt from prayer. (*Mishneh Torah*: Laws of Prayer 6.10)⁷

16. In his earlier work, *Commentary to Mishnah*, Rambam articulated his conception of time-caused commandments and ruled regarding the obligation of Prayer for women:

ומצות עשה שהזמן גרמה היא שחובת עשייתה בזמן מסויים, ושלא באותו הזמן אין כגון חיובה חל והלולב והשופר והתפילין והציצית לפי שחובתן ביום ולא בלילה, הסוכה 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 רוצה לומר על הרוב, אבל מצות עשה שהנשים חייבות ומה ' כל' הכללות, ואמרו שאין חייבות בכל הקפן אין להן כלל אלא נמסרים על פה והם דברים מקובלים, הלא ידעת שאכילת מצה ליל פסח, ושמחה במועדים, והקהל, ותפלה, ומקרא מגלה, ונר חנוכה, ונר שבת, וקדוש היום, כל אלו מצות עשה שהזמן גרמה וכל אחת מהן חיובה לנשים כחיובה לאנשים

And a positive commandment that is time-caused is obligatory at an assigned time. Outside of this time, its obligation does not take effect, such as *sukkah*, *lulav*, *shofar*, *tefillin* and *tzitzit*, because these are obligatory during the day but not at night, and others similar to them. And positive commandments that are not time-caused are those *mitzvot* that are always obligatory, such as *mezuzah*, building a guardrail and *zedakah*. You already know that we have a principle that one does not derive [defined conclusions] from general [heuristic] procedures, so that when it says "all", it means "most." Actually, the positive *mitzvot* in which women are obligated or are not fully obligated have no general rule; instead, they are transmitted by tradition. Do you not already know that eating *matzah* on the first night of Pesah, rejoicing on the Festivals, the public reading of the Torah every seven years (*haq'hel*), prayer, reading of Megillah, [kindling] Hanukkah candles, [kindling] Shabbat candles, and reciting Kiddush are all positive mitzvot that are time-caused, yet for each of them a woman's obligation is the same as that of a man. (my emphasis). (*Commentary to Mishnah: Qiddushin* 1.7)

⁷ Wald, p.3 (n.10), Golinkin p.51 and Rosenberg and Tucker p.7, all agree that this refers to the **rabbinic** obligation for prayer. They argue that the context of this law, after five chapters dealing with the detailed obligations of rabbinic prayer, suggests that this is also part of the rubric of rabbinic law; that there would be no reason for Rambam to repeat the ruling regarding the Biblical command; and that the reference to minors here can only mean that this periscope refers to rabbinic law, as minors are never subject to Biblical commands. See also Y. Karo, *Kesef Mishneh*, to this passage.

17. It seems reasonable and clear that Rambam does obligate women – at both a Biblical and Rabbinic level – to regular Prayer. According to Rambam, the Sages' initial formulation of Prayer was in response to a social-political crisis (*Laws of Prayer* 1.4) that affected the entire people of Israel. The rabbinic format of Prayer – praise, petition, thanks - and its timing throughout the day is simply the way our Sages gave detailed expression to the greater Biblical mandate of Prayer. This

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 biblical core). Women are obligated in the time-bound extension because of their obligation in the non-time-bound core. Thus the Rambam, like the Mishnah, is explicit that the obligations of women and men in thrice-daily fixed prayer are identical.⁸

18. The equality of obligation is also codified by Rav Yosef Karo, who follows the language of Rambam:

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

Women and slaves, who are exempt from the Recitation of *Shema* are obligated for Prayer, for this is a positive mitzvah that is not dependent on time. (*Shulhan Arukh, Orah Hayyim* 106.1)

Those later authorities who interpreted the Rambam as exempting women from the rabbinic practices of specific time-linked Prayer, should be understood as simply attempting to explain a popular practice in conflict with the formal law.⁹

⁸ Rosenberg and Tucker, pp. 9-10.

⁹ This is a critical point. The *Magen Avraham*, Rabbi Abraham Gumbiner (Poland, c. 1633 – c. 1683), who often incorporates the customs of his contemporary Poland in his commentary to the *Shulhan Arukh*, notes that women in his community do not pray three times daily. he offers a legal explanation to explain their practice.

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

A positive command: So wrote the Rambam, for he thinks that Prayer is a positive Biblical command, as it is written, 'to serve [God] with all your heart...' Since, according to the Torah, it is sufficient to recite one prayer each day, in any form that one wishes, most women have the practice of not praying in regular pattern; for right after they wash [hands] in the morning, they offer some sort of petition. This is sufficient according to the Torah; and it is possible that the Sages did not obligate them more. However, the Ramban opines that Prayer is of rabbinic [status] and this is the opinion of the majority of authorities.

Women's Obligation for Prayer: *Rishonim*-Rashi and Ramban

19. Rashi explicitly rejects the idea that *Tefillah* is a Biblical *mitzvah* as well as the notion that it is a positive command independent of time. Correcting the Talmudic text that he had before him, Rashi explains the ruling of the Mishnah that men and women have equal obligation for Prayer on the grounds that *Tefillah* is a petition for divine compassion, needed for everyone.

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

The *Magen Avraham* here uses a dual-level hierarchy of Prayer, as advanced by Rambam, to suggest why 'it is possible' that pious women in his cultural context did not pray three times each day. As he notes, this is not the position of the majority of authorities *and it is not even one that he holds*. For in relation to the recorded practice that women did not recite *havdalah* for the conclusion of Shabbat in the Amidah, he rules:

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

Even though they are obligated [to recite] for Prayer (the Amidah), as I have written in section 106.7. Still, most do not have this practice [of Prayer] at the conclusion of Shabbat. Perhaps because the evening prayer is optional— even though it has been accepted as obligatory— women did not accept this [additional] obligation for the conclusion of Shabbat.

Here too, the *Magen Avraham* defends an extra-halakhic practice by offering a legal justification of a less than ideal pattern of behaviour.

However, his effort to explain a cultural reality was taken by other authorities as a principled position. See *Arukh Hashulhan: Orah Hayyim* 106.7. Although even he acknowledges

- "לפ"ז בדוחק יש ליישב מה שנשים שלנו אינן זהירות בכל הג' תפלות
Thus with difficulty one may maintain [the practice of] our women who are not careful with the recitation of all three Prayers."

Rosenberg and Tucker, pp. 15-20, discuss this in great detail and cite Rav Ben Tziyyon Lichtman (20th c, Lebanon):

... ויותר מזה קשה, דהרמב"ם כתב... נשים ועבדים וקטנים חייבים בתפלה, ובוודאי מיירי בכל התפלות, ולא רק ... על פ"א ביום באיזה נוסח שהוא, אלא בסתם תפלה מיירי בכל הפרק, ועוד דומיא דקטנים שחייבים בכל התפלות, והרי נראה ברור שגם הרמב"ם מחייב נשים בכל התפלות ודלא כמ"ש המ"א והפ"ם.

And a further difficulty is that the Rambam wrote... 'women, slaves and minors are obligated in Prayer.' Surely he is referring to all the Prayers (of the *Amidah*) and not simply with prayer once daily in any form one [wants]; [he intends] the standard Prayer that is the subject of the entire chapter. Moreover, by comparison to minors who are obligated for all the Prayers, it can be seen that the Rambam obligated women for all the Prayers, not as written by the *Magen Avraham* and the *P^eri Megadim* (106.2).

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

They are obligated in prayer: because prayer is a request for mercy; and it is of rabbinic status, which they established it even for women and educating children.... The text should read: "*Tefillah, for it is a request for mercy*". It should not read "This is obvious!", because it is not a Biblical commandment. (Commentary to Berakhot 20b)¹⁰

Rashi wants to avoid using the language of *mitzvah*, because for him this implies a Biblical status for Prayer and he is clear that regular Prayer is a rabbinic institution.¹¹ For him, women are included in the rabbinic obligation because the quest for divine compassion is not limited by gender.

20. Ramban builds on Rashi's position and attacks Rambam, arguing that Prayer is not a Biblical command (*mitzvah d'oraita*) and is exclusively a rabbinic decree.

כתב הרב המצוה החמישית שנצטוינו בעבודתו... והוא מצוה בתפלה... ואין הסכמה בזה.... שכבר בארו החכמים בגמרא תפלה דרבנן ... ואמרו ספק התפלל ספק לא התפלל אינו חוזר ומתפלל... דקריאת שמע דאורייתא, 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 במצוה עשירית שזמני התפלה אינם מן התורה אבל חובת התפלה עצמה היא מן התורה. וגם זה איננו נכון בעיני.... וכבר אמרו (שבת יא,א) 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:

The master wrote that the fifth [positive] *mitzvah* is that we are commanded to worship [God]... and this refers to the *mitzvah* of Prayer.... There is not agreement on this.... The Sages already explained in the Gemara that Prayer has rabbinic [status]... [for] they say that if there is uncertainty about whether one has prayed or not, one need not return to pray.... for [while] the recitation of *Shema* is a Biblical [command], Prayer is [only] rabbinic....

We also have seen in [Maimonides'] Laws of Prayer (chapter 1) that he said that one is obligated by Torah [command] to pray every day, but that neither the number of prayers nor the form of the prayer is of Torah status. He also wrote regarding the tenth *mitzvah* that the

¹⁰ On the textual history of this section of Talmud see Golinkin, *Status*, pp. 48-49, and Wald, pp.2-3.

¹¹ However, see *Tosafot*, Berakhot 20b "*peshitta*", who agrees with Rashi that Prayer is a rabbinic development, but suggests that the terminology of *mitzvah* might still apply.

times of Prayer are not fixed by the Torah even though Prayer itself is of Torah [status].

This also is incorrect in my eyes.... And [the Sages] already taught (Shabbat 11a) that scholars who are occupied with Torah [study] must interrupt [their studies] to recite the *Shema*, but are not obligated to do so for Prayer, for it is always of Rabbinic [status]. The entire enterprise of Prayer is not obligatory. It is an expression of the grace of the Creator toward us that God hears and responds when we call. (Ramban, *Critique of Rambam's Book of Commandments*, #5).

According to Ramban, there is only one level of obligation: rabbinic. For him and for Rashi (and others who follow their understanding of Prayer), whenever the Talmud spoke of the *hiyyuv* of women for Prayer, it refers to the obligation for regular and repeated daily Prayer.

21. Rav Yisrael Meir Kagan (Poland, 1838 - 1933) affirms the position of Ramban, writing:

אבל דעת הרמב"ן שעיקר מצות תפלה היא מד"ס ... שתיקנו י"ח ברכות על הסדר להתפלל אותן שחרית ומנחה חובה וערבית רשות ואע"פ שהוא מ"ע מד"ס שהזמן גרמא והנשים פטורות מכל מ"ע שהזמן גרמא אפילו מד"ס אעפ"כ 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.

...But the view of Ramban is that the essence of the mitzvah of Prayer is established by the Sages... who obligated that the eighteen *b'rakhot* should be recited in *Shaharit* and *Minhah* with *Arvit* optional. Even though this obligation is a positive mitzvah that is time related and (usually) women are exempted from these, even if established by rabbinic ruling, the [Rabbis] obligated them for Shaharit and Minhah, just as men, for Prayer is a petition for [divine] compassion. This is the essence of the matter, as accepted by all authorities. Therefore, one must impress upon women that they should pray the [Amidah on a regular basis]. (*Mishnah B'erurah* 106.4)

In affirming the general obligation of women for Prayer, the *Mishnah B'erurah* exempts them from Arvit. Perhaps this too is to justify what he saw as their general non-participation in Arvit.¹² We know that the Sages initially determined that the evening Prayer was optional for men also (probably because it was not linked to the daily morning or afternoon sacrificial offerings) and only later became universally obligatory. Since Rashi, Ramban and Rambam all speak of an identical obligation for all persons to pray each day,

¹² See Wald, p.5.

it seems reasonable to affirm that women would be obligated for all three of what historically became the regular routine of daily Prayer.¹³

Golinkin brings a significant number of examples of women in different locations and periods of history who engaged in fixed prayer at home and in synagogue. These instances support the perspective that women did not limit their prayers to once daily and did follow standard formulation. The opinion of Rabbi Gombiner and other *Aharonim* that women need offer only one heartfelt prayer each day was rejected by some women in favour of the pattern of regular prayer at fixed times every day.¹⁴

Minyan

22. The basic unit of a public quorum is ten. In Numbers 14.27, ten spies are identified as a “congregation” (עדה) and in Ruth 4.2, ten elders are assembled for a legal procedure. Mishnah Sanhedrin 1.6 sees ten judges as representative of a community: ten to advocate for the accused in a capital case, ten to condemn (עדה שופטת ועדה מצלת הרי כאן) (עשרים) and three as the core construct of a court (leading to a court of 23 judges).

23. The Mishnah requires ten for certain elements of public prayer.

אין פורסין את שמע ואין עוברין לפני התיבה ואין נושאים 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:

We do not recite the *Shema* with a response, nor go before the Ark [to lead communal prayer], not lift up hands [for the priestly blessing], nor read the Torah, nor conclude [the Scriptural reading] with the prophets, nor perform the [burial rituals of] standing and sitting, nor the blessing of the mourners, the expression of condolences, nor the wedding blessings, nor the summons to Grace using the Name with a group of less than ten. When redeeming land nine and a *kohen* [are required]. So too, [when redeeming] a person. (Mishnah Megillah 4.3)

23. Although the requirement of a quorum of ten is common to all the rituals mentioned in Mishnah Megillah, the basis for this obligation is not identical. Some of these (such as

¹³ See Golinkin, p.59, who argues that the collective language of Rambam when discussing various aspects of the rabbinic institution of Prayer - “they established” – is indicative of a general approach to avoid distinguishing between different expressions of formal Prayer, thus including women in the obligations for *Musaf* and *Neilah*.

¹⁴ Golinkin, pp. 52-56.

funeral rituals and the summons to grace) seem to be common practice while others are given specific Scriptural attribution.¹⁵ The initial ones are linked to the verse “I shall be sanctified in the midst of the Children of Israel” (Deut. 14.27).

מנא הני מילי? אמר רבי חייא בר אבא אמר רבי יוחנן: דאמר קרא “ונקדשתי בתוך בני ישראל” - כל דבר שבקדושה לא יהא פחות מעשרה. מאי משמע? - דתני רבי חייא: אתיא “תוך” “תוך”, כתיב הכא “ונקדשתי בתוך בני ישראל”, וכתיב התם הבדלו מתוך העדה”, “ואתיא “עדה” “עדה”, דכתיב התם “עד מתי לעדה הרעה הזאת”, מה להלן עשרה - אף כאן עשרה.

How do we know this? Rabbi Hiyya bar Abba taught in the name of Rabbi Yohanan: The verse says, “And I shall be *sanctified* in the *midst* of the children of Israel” (Lev. 22.32). Any matter of sanctity should not be recited with fewer than ten. What tells us this? Rabbi Hiyya taught in a *b^eraita* (a Mishnah status tradition), We derive from the double usage of “midst” (*tokh*). It says here, “And I shall be sanctified in the *midst* of the children of Israel” and it says there, “Separate yourselves from the *midst* of this *congregation*” (Num. 16.21). And then there is a double usage of “congregation” (*edah*). It [also] says there “How long must I bear this wicked *congregation*?” (Num. 14.27). Just as there “congregation” refers to ten, so here too, “congregation” refers to ten. (Megillah 23b)

Other than the obligation for public martyrdom, which the Talmud bases on a direct derivation (*d^rrashah*) from the verse “I shall be sanctified”, most authorities see the other attributions as indirect efforts (*asmakhtot*) to connect a rabbinic obligation to a Biblical source.¹⁶

24. Who may be constitutive of the ten? The Talmud considers and rejects the possible inclusion of a child or a slave for a *minyan* for prayer (Berakhot 47b-48a) and of a non-Jew for the sanctification of God by martyrdom (Sanhedrin 74a-b). However, women’s participation in a quorum of ten for public prayer or the recitation of *d^rvarim sh^eb^eq^edushah* is nowhere suggested (nor formally excluded) in classical rabbinic literature. Although an argument from silence is not legally substantive, the tendency of later authorities to “read back” and “discover” in the earlier sources a pattern of non-inclusion of women should also not be considered legally determinative.

¹⁵ See A. Frimer, “Minyan”, section A.

¹⁶ Rabbi Nissim Gerondi (*Ran*, 23b, *v^eeyn nos^eim*) points out that the blessings and prayers are themselves of rabbinic origin, so these constitute *post facto* supports for existing traditions and religious sensibilities. See Rosenberg and Tucker, pp. 57-59 for a discussion of the textual citations that bolstered the intuitive sense of the *Rishonim* that women were not included in these public acts.

25. There is however, much active discussion of the subject of women and public prayer among the *Rishonim*. Aryeh Frimer provides a close analysis of the opinions of the *Rishonim* and later authorities to show that while some rabbis categorically exclude women from any quorum of ten, others include women for *minyan* when they share equal maximal obligations with men, and a third group of scholars differentiate between a quorum where a formal community is intrinsic to the *mitzvah* and a *minyan* when the obligation is essentially for the individual to perform.¹⁷ Various reasons are offered for this exclusion.¹⁸

26. However, a paradox presents itself, for the requirement of a *minyan* for public prayer and sanctified matters (*d'varim sh'e' b'q'dushah*) and the necessity of a *minyan* for martyrdom (*qiddush hashem*) are both derived from the same verse: "And I shall be sanctified in the midst of the children of Israel" (Lev. 22.32). The Talmudic discussion (*Sanhedrin* 74b) about martyrdom indicates that with the exception of murder, idolatry and forbidden sexual relations, it is permissible to privately (*b'tzin'a*, בצנעא) transgress even Biblical mitzvot. However, in periods of religious persecution or in instances when the transgression would take place in public (*b'farhesya*, בפרהסיא), one is obligated to martyr oneself rather than violate even a minor *mitzvah*. In defining *b'farhesya*, the Talmud cites the double *d'rashah* of "in the midst" and "congregation" already mentioned in *Megillah* 23b regarding matters of sanctity in public prayer.

וכמה פרהסיא? - אמר רבי יעקב אמר רבי יוחנן: אין פרהסיא פחותה מעשרה בני אדם. פשיטא, ישראלים בעינן ונקדשתי בתוך בני ישראל. ...עשרה וכולהו ישראל.
What constitutes "public"? Rabbi Yaakov said in the name of Rabbi Yohanan: "Public" is no less than ten people. Certainly this refers to Jews, [for it is written *I shall be sanctified in the midst of the Children of Israel*...Ten [is required] and all must be Jews.
 (Sanhedrin 74a)

27. Even though some authorities would limit the language of sanctification through martyrdom to the "sons of Israel, בני ישראל", the obligation of "sanctification" is generally understood to refer to all "the children of Israel". This is in keeping with the Talmudic comment that "[valuation for Temple dedication] uses masculine language, לפי שכל העין זכר" (*Arakhin* 2b) even though the *mitzvah* and procedure are inclusive of women. Tosafot expand that observation to a general principle: "the entire Torah was revealed in masculine language, דכל התורה כולה נמי בלשון זכר נאמרה" (s.v. *ḥ'rabot*).

28. From subsequent discussion in *Sanhedrin* regarding the Biblical Esther, it is clear that she and other women were understood to be obligated, if necessary, to accept

¹⁷ Frimer, sections B, C and D.

¹⁸ See Rosenberg and Tucker, pp. 57-59 and their discussion of *Sefer Hamenu'ḥah*. Frimer, "Minyan," section C, provides a robust sample of rabbinic opinion.

martyrdom. Perhaps this inclusion of women in the quorum for public martyrdom is because of the awareness of the historic fidelity of Jewish women as exemplified in various narratives.¹⁹ Jurisprudentially, it was connected to the notion of equal personal obligation of women and men for this *mitzvah*. We believe that the inclusion of women for the *mitzvah* of martyrdom leads to a reasonable expectation that they would also be included for “sanctification” as part of a *minyan*.

29. Nonetheless, later authorities who included women in the quorum for martyrdom held them to be ineligible for the *minyan* of public prayer.²⁰ One of the dominant trends of rabbinic writing about women and *mitzvot* centers on the question of equality of obligation. Rav Menahem Meiri (Perpignan, 1249 – c. 1310) states:

כל שהיא צריכה לעשרה י"א הואיל וחיוב הנשים שוה בה לאנשים מצטרפות הן לעשרה.

In matters that require ten, there are those who claim that when the obligation of women is equal to that of men, they may constitute the *minyan*. (*Beyt Habehirah*, *Megillah* 5a)

30. Perhaps equal obligation was seen as forming a shared community, a sub-set of the larger Jewish people. Rabbi Mordekhai Yaffe (Poland, c. 1530- 1612) identifies the boundaries of this religious polity from the perspective of maximal equal obligation:

ועבד ואשה וקטן אין מצטרפין שאונם חייבים במצות. ויש מתירין בט' וצירוף קטן כיון שיכול להגיע למצות.

Neither a slave, nor a woman nor a minor is included [in a minyan] for they are not obligated for [all] *mitzvot*. Some permit nine [adult males] and one minor, for he will eventually become obligated for the commandments. (*L^evush Malkhut*, *Orah Hayyim* 55.4)

As much as 21st century thought might find the grouping of women, slaves and minors together to be morally questionable, it should be noted that they were considered to have a common legal status as people whose obligations were not the same as adult free males. For *L^evush*, obligation creates a representative group of the larger community. Someone who is exempt from a series or a category of *mitzvot* could not act as a microcosm of the Jewish people.²¹ Today, we would have a different way of signifying status and inclusion within our religious community.

¹⁹ See 2 Maccabees 7 and Gittin 57b; this woman is often associated with Hannah and her sons. See Menachem M. Brayer, *The Jewish Woman in Rabbinic Literature: A psychohistorical perspective*. Ktav, 1986, p.174.

²⁰ Rav Reuven Margaliyyot, *Margaliyyot Hayam*, *Sanhedrin* 74b, sec. 27. Also see references cited by Golinkin, p.125ff and. Frimer, “Minyan”, section B6.

²¹ See the extensive discussion in Tucker and Rosenberg, pp.64-65.

31. Although, as we have seen, there are significant precedents – extending back to the Mishnah - for women to be obligated for daily Prayer, this is not the case for inclusion in the quorum for public prayer. Among those who exclude, Rav Saadia Gaon (Bagdad, 882-942) indicates:

ושעור הצבור הוא עשרה זכרים שהגיעו לפרקם

The number for a community for [matters of sanctity] is ten males above the age of puberty. (*Siddur Rav Saadia: Shaḥarit, Yishtabah*).

Tosafot restrict women's inclusion in the *minyan* for public prayer and other instances when a quorum of ten is required:

לענין קבוצ תפלה ולענין כל דבר שבעשרה

Regarding the matter of a group for prayer and for any matter requiring ten, [women do not constitute a quorum]. (*Tosafot, Berakhot 45b, vеха me'ah*).²²

Meiri specifically excludes women from any matter involving *d'varim sh'b'q'dushah*:

ואין דבר שבקדושה מסור לנשים... ואינה עולה למנין עשרה של מעמד ותפלה

Matters of sanctity are not applicable to women... She is not included in the quorum of ten for standing (Torah reading) or Prayer. (*Bet Habehirah, Berakhot 47b*).

Similarly, Rabbi Tzidkayah Harof^e (Italy, 1230-1300) rules

נשים ועבדים אינן משלימין לעשרה

Women and slaves may not complete the minyan.

(*Shiboley Haleqet, Laws of Prayer 9*).

All these statements are presented as dicta, authoritative pronouncements of what was considered to be settled law. That women are not included in the minyan for prayer is reflective of a culturally imbedded social reality which seemingly requires no justification.

32. However, as Rabbi Wald writes, "this is not enough to decide our question". We note the precedent of another major change in Jewish law related to women. Despite the opposition of Talmudic sources and early rabbinic authorities (*Rishonim*) to the instruction of Torah (Oral and Written) to women, in the past century great rabbinic authorities, such as the *Hafetz Hayyim*, agreed that such study would be permitted and may even be

²² However, see below where Rabbenu Tam develops a theoretical argument for the inclusion of women in such sacred matters because they are part of the covenantal community. Wald, pp. 8-9 dismisses this apparent contradiction, pointing out that other early authorities did not regard this inconsistency as substantive for halakhic decision.

considered a “great mitzvah”.²³ While the issue of Torah study appears to be in the realm of personal action without ramifications for the obligations of others, the inclusion of women for study has had broad-based communal ramifications for men and women. This religious-social transformation is a halakhic model for the question of inclusion of women in *minyan*.

From Prohibition to Possibility

33. Rambam, who obligates women for the formal pattern of prayer, does not mention gender when detailing the legal pattern of public prayer:

וכיצד היא תפלת הציבור יהיה אחד מתפלל בקול רם והכל שומעים, ואין עושין כן בפחות מעשרה גדולים ובני חורין, ושליח ציבור אחד מהם, ואפילו היו מקצתן שכבר התפללו ויצאו ידי חובתן משלימין להם לעשרה והוא שיהיו רוב העשרה שלא התפללו, וכן אין אומרים קדושה ולא קוראין בתורה ומברכין לפניו ולאחריה ולא מפטירין בנביאים אלא בעשרה.

What is the pattern of community prayer? One prays aloud and the others listen. This is not done with fewer than ten free adults and the leader of prayer is included among them. Even if some of them already prayed and have fulfilled their obligation, they may be part of the quorum as long as the majority have not yet prayed. Similarly, we do not recite *q^edushah*, read Torah, recite the blessings before and after, or [read] the prophetic *maftir* unless there are ten.

(*Mishneh Torah: Laws of Prayer* 5.4)

Since Maimonides is very precise in his language, his use of the word “adults” without reference to gender may be significant.²⁴ When Rambam wanted to limit the invitation to Grace or the invocation of the priestly blessing to a male *minyan*, he explicitly did so. Although Rav Golinkin rests his decision on this point, I do not consider this non-gendered language as determinative for two reasons. First, an argument from silence is

²³ pp. 5-6, citing *Tzitz Eliezer* 9.3.7 who quotes Rabbi Meyer Kagan:

בודאי מצוה רבה ללמדם חומש וגם נביאים וכתובים ומוסרי חז"ל ... כדי שיתאמת אצלם ענין אמונתנו הקדושה דאל"ה עלול שיסורו לגמרי מדרך ד' ויעברו על כל יסודי הדת ח"ו.

“Certainly it is a great mitzvah to teach [young women] *Humash* as well as Prophets, Writings, and the ethics of our Sages of blessed memory... so that matters of our sacred faith will become truthful for them. Otherwise, they might stray completely from the path of God and transgress all the foundations of our religion.”

See Shoshana Pantel Zolty, *'And All Your Children Shall Be Learned': Women and the Study of Torah in Jewish Law and History*. Jason Aronson, 1993, who discusses the development of a new rabbinic consensus in the 20th century in favour of the study of Torah by women. Initially such study is accepted for pragmatic concerns and later becomes legally and socially normative.

²⁴ Golinkin, pp. 61-62, uses this declaration as the basis for his inclusion of women in *minyan*.

not sufficient for a shift in Jewish law. Also, the methodological style of Rambam is to rule following the language of the Mishnah and Talmud, which did not refer to gender. Maimonides' pronouncement is not decisive, but it is suggestive of a possible basis for a new direction in *halakhah*.

34. As is the literary pattern of all early authorities, Rabbi Yaakov ben Asher (Cologne, 1269- Toledo, 1343) follows the non-gendered language of the Talmud to delineate who may be included in a minyan:

ואומר קדיש וא"א אותו בפחות מעשרה דכל דבר שבקדושה כגון קדיש וברכו וקדושה א"א אותו בפחות מעשרה.... צריך שיהיו כולם בני חורין וגדולים שהביאו ב' שערות ויש שמתירין לצרף קטן עם ט' על ידי חומש שנותנין בידו. וא"א ז"ל כתב שאין לצרפו.

One recites *kaddish*, but this is not said with fewer than ten, for all matters of holiness, such as *kaddish*, *barkhu* and *kedushah*, may be recited only if there are ten... and all must be free adults who have reached puberty. While some permit the inclusion of a minor with nine [adults] if [the child] is holding a *Humash*, my father of blessed memory wrote that he is not to be included. (Tur: Orah Hayyim 55)

34. Following the same literary paradigm, we would expect Rabbi Yosef Karo to follow the language of Rambam and the Tur, as he usually does in the *Shulhan Arukh*. However, he adds something new, explicitly excluding women from inclusion in the minyan:

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

They recite kaddish: It is not said in the presence of fewer than ten adult, free males who have reached puberty. This is also the law for kedushah and barkhu; they are not recited when there are fewer than ten. (Shulhan Arukh: Orah Hayyim 55.1)

While this was probably customary, the legal source for this new prohibition is not so self-evident.

35. Examining Rabbi Karo's extensive halakhic commentary to the *Tur Shulhan Arukh*, the *Bet Yosef*, we discover the basis for his additional words. Through his discussion, we can also discern a door open to disagreement and detect some new halakhic possibilities.

In the midst of a long discussion about whether a minor may be seconded as an adjunct to a minyan, Rabbi Karo states:

וכתוב במרדכי (ברכות סו"ס קעג) 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:

And it is written in the Mordekhai [ben Hillel; 1240-1298, Germany] in the name of Rabbenu Simḥah [of Speyer] that a slave or a woman may be included for Prayer and for the grace after meals in the [quorum of] ten. This is evident according to the explanation of Rabbenu Tam, who ruled in accord with R. Yehoshua ben Levi that one slave may be included [as an adjunct], and Rabbenu Simḥah was of the opinion that this is also the rule for a woman; for in every case, a woman is [at least] equal to a slave. But since Rabbenu Tam did not want to do such a thing on his own, who can be lenient regarding it? Therefore, the universal practice is not to include a woman at all.

36. Rabbi Karo's grounds the question of the inclusion of women in a quorum in an earlier disagreement of *Rishonim* about the status of a minor in *minyan*. This latter subject receives attention in the *Tur* and the discussion of the *Bet Yosef*. It is noteworthy that the *Bet Yosef* does not bring any formal objection to the inclusion of a woman despite the fact that the presence of women in public prayer was not customary. Equally interesting, the sole source that the *Bet Yosef* does cite (Rabbenu Tam) actually develops a theoretical argument in favour of the inclusion of women. In the end, this argument remains merely theoretical for the early authorities and is rejected for practice by the *Bet Yosef* in favour of the existing custom "not to include a woman at all". Still, the divergence of early authorities regarding the inclusion of a minor in a *minyan* has implications for the inclusion of women in a prayer quorum in our time.

37. The argument developed by Rabbenu Tam is reported in the Tosafot of Rabbi Yehudah Sir Leon:

ואני מוסיף: אפילו [קטן] המוטל בעריסה [מצטרף למנין] דאכל בי עשרה שכינה שריא. דכי גמירי קדושה בעשרה מ"ונקדשתי"- ל"ש גדולים ל"ש קטנים. ובלבד שיהיו תשע גדולים דטפי מחד לא. כדאמרין גבי עבד דליכא יקרא דשמיא כולי האי. ועבד נמי אייתי בכלל "ונקדשתי" דשכינה שריא אכל מחייבי מצות ובני ברית. וה"מ דמצטרפי כשישראל גדול מברך, אבל לאפוקי אינהו אחרים לא. דהא אמרין בשלהי ראש השנה דכל שאינו מחוייב בדבר אינו מוציא אחרים ידי חובותם. והא דסלקי קטן ועבד ואשה דליתנהו בתלמוד תורה למנין שבעה משום דספר תורה לשמיעה קאי וברכתן אין לבטלה, דלא מברכי "אקב"ו" על התורה אלא "אשר בחר בנו" ו"אשר נתן" וצורנו יתן לכלנו שלום.

And I add: even an infant in his cradle [may be included in the *minyan*], for God's presence dwells among all groups of ten. For when the [Sages] derive that matters of sanctity are done in a quorum of ten based on 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 dignity 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. This inclusion applies when an adult Jew [leads and] blesses, but not for the others [to lead]. For we find at the end of *Rosh Hashanah* that anyone who is not obligated for something may not bring others out of their obligations. The reason that a minor, a slave and a woman are included in the *minyan* of seven for [public Torah reading] – even though they are not obligated for the study of Torah is that the Torah is intended to be heard and their blessing is not in vain. They do not bless [with the phrase] “You have sanctified us with your *mitzvoth*” for the Torah [reading], stating [instead] “You have chosen us” and “You gave us [the Torah]”. May our Rock give peace to us all. (Tosafot Rabbenu Sir Leon, *Berakhot* 47b, pp. 520-521).

38. The Mordekhai also reports this perspective of Rabbenu Tam:

רבינו תם פסק דקטן מצטרף לברכת המזון בשם ולעשרה שמתפללין משום דבר שבקדושה אפי' אין יודע למי מברכין ולמי מתפללין אלא מוטל בעריסה מצטרף לעשרה מדאמר ר' יהושע בן לוי אע"פ שאמרו קטן המוטל בעריסה דהיינו אין יודע למי מברכין ולמי מתפללין אין מזמנין עליו אבל עושין אותו סניף ומשלימין אותו לעשרה וסניף היינו לברכת המזון בעשרה בשם ולעשרה שמתפללין כדפרי' וכן עבד אחד משלים...

וכן פי' רב האי גאון דקטן עולה למנין עשרה ור"ח חולק ולא מכח ההלכה אלא שכן דרכו דתופס לו לחומרא שלא להוציא שם שמים לבטלה ... [*אי נמין] אפילו לדברי ר"ח דמחמיר בזימון הוא דמחמיר אבל בסניף לעשרה לא פליג אדריב"ל דקיימא לן כוותיה וליכא מאן דפליג.

ועבד דפריך נמי לעיל איתיה בכלל ונקדשתי דשכינה שריא אכל מחויבי מצות ובני ברית ... ור"י כתב ראיתי ר"ת שלא רצה לעשות מעשה בקטן ... וכן השיב רב נתן בעל הערוך בתשובותיו וגם ראבי"ה כתב כיון שנחלקו גאוני עולם בדבר ראוי להחמיר לכל יראי השם שלא להצטרף קטן לא לזימון ולא לתפלה

Rabbenu Tam ruled that a minor may be included for *birkat hamazon* invoking the Name and for a *minyan* that prays the subjects of sanctity. Even [a minor] who lacks comprehension of the One to whom we pray or offer Grace and is simply in a cradle may be included in a quorum of ten. For Rabbi Yehoshua ben Levi taught that even though the [Rabbis] said that a minor in a cradle - that is, one who lacks comprehension of the One to whom we pray or offer Grace – may not be included for Grace, he may serve as an adjunct to complete the ten. Just as a single slave may complete [the quorum], an adjunct refers to [one who participates in] *birkat hamazon* with a *minyan* that invokes the Name and the *minyan* that prays [the subjects of sanctity]....

Rav Hai also explained that a minor may be included in the quorum of ten. But Rabbenu Hananel dissented, not from a legal argument, but because his method leads him to stringency, so that the Name of [God] will not be invoked in vain.... [Or else,] even according to Rabbenu Hananel who is stringent, such severity applies to the invocation for Grace, but for an adjunct for the *minyan*, he would not

disagree with what Rabbi Yehoshua ben Levi taught. For generally, [Rabbi Yehoshua's] opinions are accepted without disagreement. Regarding [the inclusion of] a slave, about whom a question is raised above, [a slave] is included in those [referred to] in the general principle of "and I shall be sanctified". For the Presence dwells with all those who are obligated by the commandments and a member of the covenant.... Rabbenu Yitzhak wrote that Rabbenu Tam did not want to [bring the theoretical position] regarding a minor to practice... Rav Natan, the author of the *Arukh* also recorded this in his responsa. Raviyah [R. Eliezer b. Yoel Halevy; 1140-1220, Mainz] also wrote, "Since great scholars differ on this subject, it is appropriate for those who are in awe of the Name to be more stringent and not to include a minor neither for [the invocation for] *birkat hamazon* nor for the [*minyan*] for prayer. (Mordekhai, *B^erakhot* 47, ch. 3, *remez* 172)

While noting the reluctance of these great medieval rabbis to proceed on the basis of the theoretical argument, the Mordekhai again transmits the core of Rabbenu Tam's argument: Even "an infant in a cradle" may be included in a *minyan*, "for the Presence dwells with all those who are obligated by the commandments and a member of the covenant".

39. By indicating that even "an infant in his cradle" may be included in the quorum for prayer, Rabbenu Tam moves away from the concept of a *minyan* as a gathering of ten people equally obligated for a particular set of prayers. Even though limited to a single adjunct, the principle is clear. An infant is not obligated. Instead, Rabbenu Tam indicates that the divine Presence is to be found in and through the people Israel who share a covenantal relationship and commitment to the system of *mitzvot*. Sanctity is forged through the presence of ten Jews who are "who are obligated in commandments and members of the covenant". A slave and a minor may each fulfill part of these double criteria. A slave is obligated for some commandments, but is not included within the covenantal community. A child is part of the covenant, but not obligated for the *mitzvot* (which is why the minor cannot lead the service: he is not obligated for the specific *mitzvah*).

40. Usually equality of obligation in prayer is the way that the concept of *minyan* is understood. However, while the *minyan* is a legal construct to facilitate the recitation of certain prayers, it is by no means the case that there is a particular obligation to form a *minyan*.²⁵ We can reasonably state that women share with men the obligation to pray,

²⁵ Rashi sees this obligation as applying to each individual. One must be part of the public group required for certain prayers. See *Pesahim* 46a, "*I^egabel*":

וכן לתפלה, אם מהלך אדם בדרך ובא עת ללון ולהתפלל, אם יש בית הכנסת לפניו ברחוק
ארבע מילין - הולך ומתפלל שם ולן.

but neither has a formal obligation to form a minyan and pray within a set quorum. (Even if one were to argue that such an obligation exists and that women are exempt from it, the basis for *minyan* may be established in another legal-political-theological concept: the formation of a holy community based on the verse "I shall be sanctified amidst the children of Israel".)

41. Rabbi Shlomo ben Aderet (Rashba; 1235-1310, Barcelona), affirmatively cites Rabbi Avraham ben David (Ra'avad; 1120 – 1198, Posquieres) on the question of the inclusion of a minor, indicating that one who has not yet reached the age of *mitzvot* does not have the legal status to assist others to fulfil their obligation for *birkat hamazon* with the invocation of the Name or for public prayer.

יש אומרים שאינו מצטרף לתפלה עד שיהא גדול ממש, ולזה דעתי נוטה. וכן כתב הראב"ד ז"ל זה לשונו: בעיא גדול ממש.... ויש אומרים שאף [מצטרף במנין] לתפלה ומביא ראיה ממה ששנו חכמים במגילה: "קטן קורא בתורה ומתרגם אבל אינו פורס על שמע ואינו עובר לפני התיבה". ומדאמרין שאינו מוציא אחרים, מכלל דאיצטרופי מצטרף. ולא היא, דאיצטרופי נמי לא מצטרף, דבעיא תוך בני ישראל.... אבל להוציא כיון דברכות ותפלות דרבנן, וקטן שהגיע לחנוך דרבנן סברי מימר אתי דרבנן ומפיק דרבנן, והא איכא עשר דחזו לקדושה. קא משמע לן, משום כבוד הצבור לא עביד: גנאי הוא לצבור שהקטן מוציאן.... "עד כאן לשון הרב ז"ל. ודבריו נכונים ופנים הם.

There are those who say that [a minor] may not be included until he is truly an adult, and my opinion inclines in this direction. So too, wrote the Ra'avad (may his memory bring blessing): "This is a great problem.... There are [even] those who apply this to [the *minyan* required for public] prayer. They bring support from what our Sages taught in *Tractate Megillah*: A minor may read Torah and translate [for the public], but may not lead the *Shema* responsively or go before the Ark [to lead public prayer]. [They argue that] since they said that he may not enable others to fulfill their obligation, it appears that he [nonetheless] may be included [for the *minyan*]. This is not so; he is also not included [in the quorum]. For one must be "among the children of Israel"....

So too for prayer: if one is on the road and reaches the time to rest and pray, if there is a synagogue – even four miles away- one should walk there, pray and then rest. However, Rabbenu Hananel *loc cit*, Rif on *Berakhot* (Vilna edition, p. 8), and Rambam *Laws of Prayer* 4.2, speak of the obligation to wash and purify one's hands before prayer, but do not delineate a specific obligation to pray with a *minyan*. Rema (*Orach Hayyim* 55.2) notes that one should not leave a prayer group unless ten are present, implying that attending a *minyan*, however much it is "urgently preferable" Moshe Meiselman (*Jewish Women and Jewish Law*, Ktav: 1978, p.134), is not formally obligatory. See Rosenberg and Tucker, pp. 19-29, who contend that communal prayer is a better form of prayer, a social responsibility and a "personal *desideratum*", but not a prescribed individual obligation (*hiyyuv*).

Nonetheless, one might contend that since blessings and prayers are of rabbinic enactment, and a minor who is educable is [obligated according to] rabbinic enactment, such a person may enable others to fulfill [their obligations] according to the rabbis, for there are already ten to establish [the status of] sanctity. That is why [the Sages] specifically express [the exclusion of the minor]. One may not do so out of regard for the dignity of the congregation; it is shameful for a minor to enable them to fulfill their obligation....” This is the teaching of the Ra’avad. And his words are correct and apt. (Rashba, *Responsa* 1:239)

Although the Ra’avad does not include a minor in a minyan, he (and presumably the Rashba), do appear to adopt the reasoning of Rabbenu Tam that the *minyan* is dependent on the presence of ten because that number is needed for *q^edushah*, “to establish [the status of] sanctity”.²⁶ Further, the Ra’avad does not indicate that the exclusion is because the child does not share an obligation for the relevant *mitzvot*. He actually argues that even though a minor is obligated for these rabbinic *mitzvot* in a way comparable to adults, he is still unauthorized to lead the congregation in prayer. He then indicates what the nub of the issue is. The reason for the denial of permission is “out of regard for the dignity of the congregation; it is shameful for a minor to enable them to fulfill their obligation....” This is a point that we soon shall return to consider.

42. For Rabbenu Tam, sanctity is forged through community- the presence of ten Jews who are “who are obligated in commandments and members of the covenant”. A slave and a minor may each fulfill part of these double criteria. A slave is obligated for some commandments, but is not included within the covenantal community. A child is part of the covenant, but not obligated for the *mitzvot* (which is why the minor cannot lead the service: he is not obligated for the specific *mitzvah*). Rabbenu Tam does not fully articulate the implications of this position and actually draws away from its practical implications regarding minors.

43. However, Mordekhai reports that Rabbenu Simḥah did make the theoretical extrapolation from one case to the other:

**מצאתי בשם רבינו שמחה: עבד ואשה מצטרפין בין לתפלה בין לברוך א-להינו.
I found in the name of Rabbenu Simḥah that a slave or a woman
may be included in the ten required for a minyan for prayer and for
invoking the Name for birkat hamazon. (Mordekhai, *Berakhot* #173)**

²⁶ See also Wald, n.17, who suggests that for Rambam (*Laws of Prayer* 8.1) the idea that God accepts the prayer of the community even though an unworthy individual may be part of the group is the legal equivalent of the theological notion that “the divine Presence dwells in the presence of a minyan”.

Moreover, there is a report that Rabbenu Simhah actually put this into practice:

גם רבינו שמחה היה עושה מעשה לצרף אשה [למנין עשרה] לזימון. ואפילו אם תמצא לומר דאשה לא מיחייבא אלא מדרבנן... ה"מ לאפוקי אחרים ידי חובתם. אבל לצרף בעלמא להזכרת שם שמים, שפיר מצטרפת.

Rabbenu Simhah used to include a woman for the [minyan] required for the invocation [zimmin for Grace]. Even if you say that a woman only has a rabbinic obligation [for birkat hamazon]... this would only matter in regard to fulfilling the obligation of others. But inclusion for the invocation of the Name [of God], in general she would be included. (Mordekhai, *Berakhot* #158 and *Girtin* #401)

Rabbenu Simhah, a minority of one, has opened up a path leading from prohibition to possibility of inclusion.

Dignity of Heaven, of Community and of Individuals

44. Rabbi Yaakov Emden (Altona, 1697- 1776) brings kabbalistic structure into his discussion about Rabbenu Simhah.

כתוב במורדכי 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 למנין עשרה בין למנין שבעה, המבין יבין. ולכן אמרו חז"ל בפירוש שהיא עולה למנין שבעה הקוראין בתורה, אלא שמכל מקום אמרו שלא תקרא בצבור מפני כבוד הצבור, והוא הדין לדברים הצריכים עשרה, בודאי שכן הלכה שאין מצרפין אותה מפני הכבוד בלבד.

It is written in the Mordekhai that a slave and a woman may be included for the [minyan of the repetition of the *Amidah*] Prayer and for the ten of *Birkat Hamazon* [with the invocation of the Name].

It seems that the position of Rabbenu Simhah has strong grounding from the perspective of esoteric [kabbalah] and exoteric [legal] Torah. Without question a woman is included whether to the minyan of ten [for prayer] or to the minyan of seven [called to the Torah]; the one who understands will understand.

Therefore, our Sages of blessed memory explicitly stated that [a woman] may go up for the reading of Torah. Nonetheless, they said that she should not read in public because of the dignity of the congregation. This is also the case for [sacred] matters that require ten. Certainly the law is that we do not include her because of the dignity of the congregation. (*Mor u'Q^etzi'ah*, *Orah Hayyim* 55)

The ten *sefirot* of the divine personality and the seven lower *sefirot* of that expression of divinity correspond to the ten needed for the quorum for public prayer and the seven

honoured at the Torah on Shabbat. Since the feminine aspect of divinity, the attribute/*sefirah* of *malkhut*, is included in the Godhead, women should be included in the *minyan* for prayer and Torah honours. This is the esoteric teaching that Rabbi Emden indicated parallels the halakhic argumentation already offered by Rabbenu Simḥah. Although Rabbi Emden goes on to state that “one should not depart from the teaching of the *Bet Yosef* that a woman is not to be included”, he makes it clear that the sole reason is the dignity of the congregation. While kabbalistic speculation should not be the basis for legal decisions, Rabbi Emden’s comment is indicative of an effort to develop a theological basis for the inclusion of women in minyan.

45. Rabbi Natan Neta Landau (Galicia, 1841-1906) makes a similar point:

מבעיא לן לענין מצות קדוש השם תשעה ונכרי אחד מהו? משמע דאשה ועבד ודאי מצטרפין. ולא עוד אלא דמשמע בתוך עשרה נשים שייך "ונקדשתי בתוך בני ישראל". ואפשר הא אשה אינה מצטרפת לתפלה משום דלאו אורח ארעא... אבל בקדוש השם ודאי מצטרפת.... ולשיטת רש"י שם אפשר דעשרה נשים יכולות להצטרף לומר דבר שבקדושה.

Regarding the *mitzvah* of martyrdom (*qiddush hashem*), we ask [in *Sanhedrin* 74a] what is the law if there are nine [Jews] and one non-Jew? This implies that women are certainly included [in the quorum].

This [further] implies that the verse “I shall be sanctified in the midst of the children of Israel” is applied to ten women. Perhaps a woman is not included in the [minyan for public] prayer is because this is not the way of the world.... But for martyrdom, women would certainly be included.... And according to the approach of Rashi there [in *Sanhedrin*], it is possible that ten women can be included to recite a ritual matter of holiness.

(*Urah Shaḥar*, *Q^edushah*, 100.6)

Recognizing that there are different types of quora²⁷, Rabbi Landau speculates as to why women would be included in the *minyan* for martyrdom, but not for public prayer. He suggests that “it is not the way of the world”. A congregation would have seen the

²⁷ A. Frimer, “Women and Minyan” *Tradition*, 23:4, 54-77 (Summer 1988), concludes his article by noting “We have reaffirmed that women cannot constitute a minyan - either alone or together with men - for the purpose of public prayer which includes *kaddish*, *kedusha*, *barchu*, repetition of the *shemoneh esrei* or the reading of the Torah and the Haftarah. However, this does not mean that women are excluded from all *minyanim*. There are a variety of halachically relevant cases where rabbinic authorities permit, both in theory and practice, the inclusion of women in a minyan. These include: 1) *megilla* and the ... benediction that follows it... 2) public martyrdom ... 3) the *hagomel* blessing ... 4) circumcision ... 5) Hanuka lighting in synagogue....

inclusion of women for prayer as undignified – toward God and the community- while still accepting the possibility that they might be martyred because of their devotion to God.²⁸

46. Reflecting back to the *Bet Yosef*, we see that his rejection of the reasoning of Rabbenu Tam and the opinion of Rabbenu Simḥah was not fully articulated or formally justified, but may have been based on a value similar to the one identified by Rabbenu Tam and clearly stated by the Ra'avad and the Rashba, and echoed in later generations. The inclusion of women would infringe on the dignity of the community.

47. Tucker and Rosenberg note that “dignity of heaven” mentioned by Rabbenu Tam seems to parallel “dignity of the congregation”, mentioned by Rabbis Emden and Landau. This concept is discussed extensively by Rabbis Daniel Sperber and Mendel Shapiro, leading to their independent conclusions that congregational dignity is a fluid concept, reflecting cultural context and dependent on social standing.²⁹

48. It seems correct to identify a serious community striving to relate to God as one that would properly reflect both the “dignity of the congregation” and the “dignity of Heaven”. Centuries after Rabbenu Simḥah and Rabbenu Tam, we may carefully build on their insight. A woman, who is both obligated for *mitzvot* and part of the covenantal community, may be included in a *minyan* at a more inclusive level than that of a child or a slave. A child may only be included as a *senif*, a solo adjunct. However, a woman’s obligation for prayer stands on its own, not through the status of another person, whether an owner or a parent. Moreover, even if there is some question about whether a child or a

²⁸ Aryeh and Dov Frimer report that Rabbi Aharon Soloveitchik maintained that neither men nor women have common obligations for public prayer and Torah reading. “However, even if women were personally obligated, R. Aharon Soloveitchik posits that they are, nonetheless, specifically excluded by *Hazal* from counting toward a *minyan* or serving as a *hazzan* or *ba’alat kerī’a*, because of *kevod ha-tsibbur*.” <http://www.daat.ac.il/daat/english/tfila/frimmer1.htm> or *Tradition*, 32:2, pp. 5-118 (Winter 1998).

²⁹ See Rabbi Daniel Sperber, *דרכה של הלכה: קריאת נשים בתורה* (Jerusalem: Reuven Mass, 2007) and “Congregational Dignity and Human Dignity: Women and Public Torah Reading,” *The Edah Journal* 3:2 (Elul 5763): 1-14 (http://www.edah.org/backend/JournalArticle/3_2_Sperber.pdf), and Rabbi Mendel Shapiro, “Qeri’at ha-Torah by Women: A Halakhic Analysis,” *Edah Journal* 1:2 (Sivan 5761): 1-55 (http://www.edah.org/backend/JournalArticle/1_2_shapiro.pdf). However, see critiques of Sperber by Rabbi Aryeh Frimer, <http://seforim.blogspot.com/2008/06/aryeh-frimer-review-of-daniel-sperbers.html> and of Shapiro by Rabbi Yehudah Herzl Henkin, “Qeriyat Hatorah by Women: Where We Stand Today,” http://www.edah.org/backend/JournalArticle/1_2_henkin.pdf, *Edah Journal* 1:2 (Sivan 5761), who contend that *kevod hatzibbur* is a halakhically fixed concept.

slave has a proper awareness of God, a Jewish woman certainly has respect for God and "the dignity of heaven".

49. Rabbi Moshe Feinstein would be far from those who advocate for inclusion of women in *minyan*. Yet, in discussing the different *mitzvah* obligations of men and women he shows great sensitivity to a woman's capacity for spiritual dignity in pursuit of a life of *mitzvah*.

צריך לדעת כי אין זה בשביל שנשים פחותות במדרגת הקדושה מאנשים. דלענין הקדושה, שוות לאנשים לענין שייכות החיוב במצות. שרק מצד הקדושה דאיכא בישראל הוא ציוי המצות. וגם לנשים נאמרו כל הקראי דקדושה, בין תחילת תנאי קבלת התורה "והייתם לי סגולה", "ואתם תהיו לי גוי קדוש" שנאמר לבית יעקב – אלו הנשים – ותגיד לני ישראל – אלו האנשים. ובין "ואנשי קדש תהיון לי" שבמשפטים, "והייתם קדושים" דשמיני, ו"קדושים תהיו" "והייתם קדושים" שבפרשת קדושים, ו"כי עם קדוש אתה לה" שבפרשת ראה, ובכל מקום שנמצא ענין קדושה דישראל נאמר גם לנשים. ולכן גם הנשים מברכות בלשון "אשר קדשנו במצותיו" כמו האנשים, אף על המצות שלא חייבתן תורה. ורק שהוא קולא מאיזה טעמי השי"ת שרצה להקל לנשים כדלעיל ולא מצד גריעותא ח"ו.

One must know that [the more extensive obligations of men] is not because women have a lesser status of *q^edushah* [holiness] than men. Regarding holiness, they are the equal of men for the obligation for *mitzvot*. Indeed, the commandment of *mitzvot* comes only because of the holiness that inheres in Israel. All of the verses regarding holiness were articulated to women, from the initial condition of the acceptance of Torah, "You shall be my treasured people." "You shall be a holy nation" was said to the House of Yaakov - this refers to the women; "And say to the sons of Israel" refers to the men. So too, in the portion *Mishpatim*, "you shall be holy people"; "You shall be holy" from the section *Sheminee*; "You shall be holy" and "be holy" in the reading of *Qedoshim*; "For you are a hol nation for the Eternal" in *Re'eh*.

Every place [in Torah] that refers to the holiness of Israel was also addressed to women. Therefore, women use the liturgical formula "You have sanctified us with Your *mitzvot* [and commanded us]" just as men do. This is the case even for the *mitzvot* which the Torah does not obligate [women] to perform. Whatever reasons the exalted God had to be lenient to women [by not obligating them], it was not, heaven forbid, to diminish them. (*Igrot Moshe, Orah Hayyim*, vol. 4, sec.

49, p, 81)

The sanctity of the Jewish people includes men and women and enables the people of Israel to be worthy of the *mitzvot*. Women who choose to accept upon themselves

specific *mitzvot* from which they may have been exempted should still recite the blessing “You have sanctified us through Your *mitzvot*”. The inclusion of women is for the totality of the *mitzvah* system, not only for commandments specifically designated for women.³⁰

50. In our time, when many social barriers have shifted and women are involved in all areas of public life, their personal dignity (*kevod haberiyyot*) is impinged upon when they are marginalized within the spiritual life of their religious community. Surely this causes many women anguish and anger. In a time when women are socially, politically and culturally integrated with and equal to men, an unjustified gap between genders in synagogue life can bring about a denigration of Torah and a desecration of the Divine name.

Pesaq Halakhah- Decision

51. Based on

- a. the understanding of Rambam, Rashi and Ramban that women share an equal obligation with men for regular prayer;
- b. noting that the verse referring to the sanctification of God’s name – for which women are included in a minyan – also functions as the basis for the establishment of a *minyan* for public prayer;
- c. accepting that the Talmud and early halakhic authorities did not include gender in their definition of a *minyan*;
- d. recognizing that the conceptualization of a *minyan* by Rabbenu Tam as inclusive of those “obligated for the *mitzvot* and part of the covenant community” is theoretically inclusive of women;
- e. identifying Rabbenu Simḥah as having acted on the basis of Rabbenu Tam’s argument;
- f. categorizing *minyan* as a highly desired religious-spiritual act for individuals, but not as one which is personally obligatory;
- g. clarifying that the historic limitation of *minyan* to men is not primarily based on a concept of shared obligation, but is essentially based on the “dignity of the congregation” (*kevod hatzibbur*);
- h. arguing that “the dignity of the congregation” is not halakhically fixed, but is socially and culturally determined;

³⁰ This is analogous to women reciting blessings for *mitzvot* for which they were specifically exempted; the *berakhah* recognizes God as the ultimate source of all commandments. So too, the blessings for Hanukkah lights and the reading of Megillah on Purim acknowledge God as the source of these *mitzvot* even though they are post-Biblical holidays instituted by the Sages, not by divine decree.

- i. believing that, in our days, the inclusion of women would not be a violation of “the dignity of the congregation (*k^evod hatzibbur*)” and that, in any case, a community may waive its dignity
- j. asserting that women at prayer have intention for the “dignity of Heaven” (*y^ekara d^esh^emaya*) and add to the respect of God;
- k. desiring to avoid the marginalization of Jewish women in our time, which can lead to alienation, anger and the desecration of God’s name; and
- l. seeking to affirm the “personal dignity” (*k^evod hab^eriyyot*) of women in our congregation;

It is permissible, appropriate and desirable for women to be included for the *minyan* required for public prayer and the recitation of *d^evarim sh^eb^eq^edushah* in our synagogue community.³¹

Rav Baruch Frydman-Kohl

Sefarad

Tevet 5771

³¹ Those who wish to retain the historically legitimated gender distinctive *minyan* may nonetheless rely on this opinion in situations when excluding themselves from participating in an inclusive *minyan* would prevent others from public prayer.