

BY WHOM SHALL G-D BE SANCTIFIED?

ומי י/תקדש את ה' בתוך בני ישראל?

*An Exploration of Women as Shlichot Tzibbur*

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Midreshet Lindenbaum, Matmidot

2020/5780

*Minyanim*<sup>1</sup> are primary conduits of a community's public religious life. They offer opportunities for significant religious and communal leadership and gathering. Several decades ago, the exclusive male leadership of *minyanim* began to come under scrutiny.<sup>2</sup> Since then, various streams of the Jewish world have engaged in a *halakhic* and social conversation to reexamine or reaffirm women's roles in such spaces. Because of *minyanim*'s prominent role in Jewish communal and religious life, whether and how women may lead in them bears tremendous weight on their personal experiences in religion, their position in society, and the trajectory of the associated religious community in a gender-liberated world.

The complexity and significance of prayer spaces leads many to contend with the merits, draw-backs, and pain-points of each community. While some reap religious fulfillment in a particular prayer community, others find and seek religious meaning by engaging in a variety of ritual spaces founded on different *halakhic* ideologies. This paper, speaking to both those grappling with and those confident in their religious practice and community, aims to uncover the *halakhically* and sociologically motivated *nekudot hamachloket* that distinguish each ritual community.

### **Central Questions and Definition of Terms**

This paper examines the approaches of representatives of the Conservative Movement, Hadar, Partnership *Minyanim* Orthodoxy,<sup>3</sup> and Orthodoxy to the right of Partnership *Minyanim*

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<sup>1</sup> Glossary includes translations of all Hebrew words used.

<sup>2</sup> Pamela Barmash, "Women and Mitzvot," Committee on Jewish Law and Standards Yoreh Deah, no. 246:6 (April 29, 2014): pp. 23, <https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/2011-2020/womenandhiyyuvfinal.pdf>.

<sup>3</sup> Titles for this movement are in flux, even among its leaders. Rabbi Sperber considers these *minyanim* to be part of the Orthodox community. Judy Maltz, "Just Don't Call the Rabbi 'Feminist'," Haaretz.com (Haaretz Daily

to the following question: in what situations may a woman serve as a *shlichat tzibbur*<sup>4</sup> for a mixed-gender congregation? Using these conclusions, this paper further examines the key differences in sources, interpretations of sources, terms of exploration, and extra-legal religious and social principles that lead each of their analyses and conclusions to diverge and converge.

The Conservative Movement will be represented by *teshuvot*<sup>5</sup> of the movement's official *halakhic* governing bodies: Rabbi David Golinken's *teshuva*<sup>6</sup> for the Va'ad Halakha in Israel<sup>7</sup> and Rabbi Pamela Barmash's *teshuva*<sup>8</sup> for the Committee on Jewish Law and Standards ("CJLS") in America.<sup>9</sup> Hadar, an educational institution committed to *Halakha* and gender equality, will be represented by Rabbi Ethan Tucker's and Rabbi Micha'el Rosenberg's *Gender Equality and Prayer in Jewish Law*, the flagship literature which serves as the basis for the organization's practice.<sup>10</sup> Unlike the Conservative Movement and Hadar, Partnership *Minyanim* and Orthodoxy to the right of such *minyanim* organize under less central leadership. Partnership *Minyanim* will be represented by those who have emerged as its thought leaders, such as Rabbi

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Newspaper, April 10, 2018),

<https://www.haaretz.com/jewish/.premium-just-dont-call-the-rabbi-a-feminist-1.5343659>.

<sup>4</sup> This paper uses *shlichat tzibbur* to refer to the leader of prayer service, and not necessarily the actual agent of the community. This question is discussed later in the paper.

<sup>5</sup> Responsa

<sup>6</sup> David Golinken, "Women in the Minyan and as Shelihot Tzibbur," *Teshuvot Va'ad Halakha* 6, (1997): 59-79. Accessed June 14, 2020. [www.responsafortoday.com/wp-content/uploads/2018/05/vol6\\_4.pdf](http://www.responsafortoday.com/wp-content/uploads/2018/05/vol6_4.pdf).

<sup>7</sup> The Vaad Halakha no longer exists. When it was active, its rulings were subordinate to the acceptance of the CJLS. David Booth, email message to Joy Cheskin, June 8, 2020.

<sup>8</sup> Pamela Barmash, "Women and Mitzvot," *Committee on Jewish Law and Standards Yoreh Deah*, no. 246:6 (April 29, 2014): pp. 1-32, <https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/2011-2020/womenandhiyyuvfinal.pdf>.

<sup>9</sup> The purpose of the CJLS is to produce *teshuvot* which "create options for the movement." As its decisions are "more educational than directive," thus not requiring synagogues to adopt any particular *teshuva*, a plethora of *teshuvot* exist in the movement that argue for gender equality. Cheskin, Joy, and David Booth. Research Question. Personal, May 8, 2020.

<sup>10</sup> Ethan Tucker and Micha'el Rosenberg, *Gender Equality and Prayer in Jewish Law* (Brooklyn, NY: KTAV Publishing, 2017).

Daniel Sperber.<sup>11</sup> For lack of an official analytical position, Orthodoxy to the right of Partnership *Minyanim*<sup>12</sup> will be represented by the work of Rabbi Michael Broyde, Rabbi Moshe Meiselman, and Rabbis Dov and Aryeh Frimer, prominent Rabbis in such communities.<sup>13</sup>

### History of Topic in Each Movement

In 1955, the CJLS ruled that women may receive *aliyot*, launching the movement's exploration of opportunities to advance ritual gender equality.<sup>14</sup> In 1973, after the circulation of several papers which argued for and against women counting in a *minyan*, and by extension serving as *shlichot tzibbur*,<sup>15</sup> the Conservative Movement permitted such advancements through establishment of a *takkanah* stating that “men and women should be counted equally for a minyan.”<sup>16</sup> By establishing a *takkanah* rather than publishing the details of their *halakhic* analysis, the Movement avoided adopting the disputed reasoning of prior *teshuvot* written.<sup>17</sup> In

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<sup>11</sup> Maltz, “Just Don't Call the Rabbi 'Feminist.'”

<sup>12</sup> Clearly, this category encompasses a wide range of ideologies and communities. Broadly, it includes responsa literature by those who allow women no form of prayer leadership in synagogue worship. Some in this category allow women to recite *tefillah l'shalom hamedina* and the like, but leadership of such *tefillot* are outside the bounds of this conversation.

<sup>13</sup> Broyde: Michael J. Broyde, “Further on Women as Prayer Leaders and their Role in Communal Prayer,” *Judaism: A Quarterly Journal of Jewish Life and Thought* 42, no. 4 (1993): 387+. *Gale Academic OneFile* (accessed June 14, 2020); Meiselman: Moshe Meiselman, “Women and Prayer,” in *Jewish Woman in Jewish Law* (Ktav Pub. House, 1978), pp. 130-142; Frimer: Aryeh A. Frimer, “Women and Minyan,” *Tradition: A Journal of Orthodox Jewish Thought* 23, no. 4 (1988): 54-77. Accessed June 14, 2020. [www.jstor.org/stable/23260941](http://www.jstor.org/stable/23260941), Aryeh A. and Dov Frimer, “Women, Keri'at Ha-Torah, and Aliyyot.” *Tradition: A Journal of Orthodox Jewish Thought* 46, no. 4 (2013): 67-238. Accessed June 14, 2020. [www.jstor.org/stable/43832687](http://www.jstor.org/stable/43832687).

Because no movement is a monolithic body with an absolute standard, the collection of *teshuvot* cited is not a perfect representation of the positions of each movement.

<sup>14</sup> Barmash, “Women and Mitzvot,” 23.

<sup>15</sup> If women can constitute a group assembled for public prayer, they may lead such prayer and fulfill the obligations of the community. See Broyde's and Meiselman's arguments in the “Devarim Shebikdusha and Public Prayer” section of this paper for more detail and to understand the converse of this argument.

<sup>16</sup> David J. Fine, “Women and the Minyan,” *Committee on Jewish Law and Standards Orah Hayyim*, no. 55:1 (June 12, 2002): 5.

[https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/oh\\_55\\_1\\_2002.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/oh_55_1_2002.pdf)

<sup>17</sup> While the Conservative movement prefers to make halakhic rulings through “existing halakhic norms,” it empowers its Rabbis to, where they deem necessary, “amend the existing law by means of a formal procedure of legislation (*takkanah*).” “Emet Ve-Emunah: Statement of Principles of Conservative Judaism,” Rabbinical Assembly

the late 1970s and early 1980s, driven by the belief that eligibility to be *shlichot tzibbur* was a determinant in Conservative rabbinical ordination, representatives of the Movement engaged with women's prayer leadership largely in the context of its rabbinical school's exploration of whether to admit women.<sup>18</sup> In 1983, the Movement decided to admit women to its rabbinical school without the formal adoption of any particular *teshuva*.<sup>19</sup> By not declaring official reasoning for its decision, the Movement left the door open for further internal conversation on how and why women are permitted to be *shlichot tzibbur*. In the following decades, several rabbis of the CJLS and its counterpart in Israel, the Va'ad Halakha, published additional *teshuvot* reiterating and reframing women's ability to be *shlichot tzibbur*.<sup>20</sup> Rabbi David Fine explains: "the issue has continued to engender debate and *halakhic* positions have continued to crystallize...as the Conservative Movement has become more and more egalitarian in its profile."<sup>21</sup> In 2014, seeking to end equivocation on this question, Rabbi Pamela Barmash published a new *teshuva* declaring all<sup>22</sup> religious obligations and opportunities of men and women to be equal.<sup>23</sup> Currently, adherents of the Conservative Movement may rely on the reasoning of a variety of *teshuvot* to support women as *shlichot tzibbur*.<sup>24</sup>

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of America, Jewish Theological Seminary of America. January 1, 1988.  
[www.bjpa.org/search-results/publication/18660](http://www.bjpa.org/search-results/publication/18660).

<sup>18</sup> Fine, "Women and the Minyan," 6-10.

<sup>19</sup> Fine, "Women and the Minyan," 10.

<sup>20</sup> Barmash, "Women and Mitzvot," 24-26.

<sup>21</sup> Fine, "Women and the Minyan," 1.

<sup>22</sup> All, "with the exception of those mitzvot that are determined by sexual anatomy." Barmash, "Women and Mitzvot," 32.

<sup>23</sup> Barmash's *teshuva* was approved by the CJLS with fifteen voting in favor, three voting against, and three abstaining. Though this *teshuva* earned a majority of votes, it was not made into a standard which all communities have to adopt, meaning that some communities maintain non-egalitarian practice. Barmash, "Women and Mitzvot," 1; Cheskin, Joy, and David Booth. Research Question. Personal, May 8, 2020.

<sup>24</sup> See Barmash, "Women and Mitzvot," 23-26 for cited examples.

Prior to publishing *Gender Equality and Prayer in Jewish Law* in 2017 under the auspices of Hadar, Rabbis Tucker and Rosenberg taught and implemented its source material in university campus communities and independent *minyanim* for over a decade.<sup>25</sup> Driven by a desire to enable a broader audience of Jews to gain a “thorough personal understanding of their Jewish lives in their *halakhic* expression,” they published their *teshuva* with the stated goals of:

...clarify[ing] misconceptions and dismiss[ing] red herrings...provid[ing] a sound basis for understanding the *halakhic* consequences of various positions related to gender and prayer...[and] provid[ing] a unifying discourse that can make sense of both egalitarian and non-egalitarian practices in Jewish prayer...<sup>26</sup>

In 2002, proponents of expanded roles for women in religious life founded the first Partnership *Minyanim*, Shira Hadasha in Jerusalem and Darkhei Noam in New York.<sup>27</sup> These independent *minyanim* aimed to advance women’s “ritual leadership roles to the fullest extent possible within the boundaries of Jewish Law.”<sup>28</sup> Though practices vary across Partnership *Minyanim*, most involve women equally in Torah reading and *aliyot*<sup>29</sup> and permit women to serve as *shlichot tzibbur* for “those portions of the service that are not *halakhically* defined as prayer,”<sup>30</sup> such as *Pesukei Dezimra* and *Kabbalat Shabbat*. Innovations in women’s leadership of such *tefillot* were based on the analysis of *Halakha* committees and other organic leaders of the

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<sup>25</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 7.

<sup>26</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 12-14.

<sup>27</sup> “About Darkhei Noam,” Darkhei Noam, accessed June 14, 2020, [www.dnoam.org/about](http://www.dnoam.org/about); Jacob Solomon, “Feminism and Mixed Minyans at Shira Hadasha Synagogue, Jerusalem,” Haaretz.com (Haaretz Daily Newspaper, April 10, 2018), [www.haaretz.com/israel-news/travel/.premium-mixed-minyans-at-shira-hadasha-shul-1.5375736](http://www.haaretz.com/israel-news/travel/.premium-mixed-minyans-at-shira-hadasha-shul-1.5375736).

<sup>28</sup> Jewish Orthodox Feminist Alliance. Accessed June 14, 2020. <https://www.jofa.org/partnership-minyans>.

<sup>29</sup> For a full treatment of this issue, see Mendel Shapiro, “Qeri’at ha-Torah by Women: A Halakhic Analysis,” *Edah* 1, no 2, (2001): 51-52. Accessed June 14, 2020. [http://www.edah.org/backend/JournalArticle/1\\_2\\_shapiro.pdf](http://www.edah.org/backend/JournalArticle/1_2_shapiro.pdf), and Daniel Sperber, “Congregational Dignity and Human Dignity: Women and Public Torah Reading,” *Edah* 3, no. 2 (2003). [http://www.edah.org/backend/JournalArticle/3\\_2\\_Sperber.pdf](http://www.edah.org/backend/JournalArticle/3_2_Sperber.pdf).

<sup>30</sup> Tamar Ross, “Does Positivism Work?,” in *Expanding the Palace of Torah: Orthodoxy and Feminism* (Waltham, MA: Brandeis University Press, published by University Press of New England, 2004), pp. 97.

growing movement.<sup>31</sup> Though no formal *teshuva* was published with a comprehensive analysis of women's prayer leadership outside the context of Torah reading and *aliyot*, a variety of articles express parts of the *halakhic* reasoning as well as practical ritual conclusions.<sup>32</sup>

Mainstream Orthodox literature addressing women as *shlichot tzibbur* functions to support the historical status quo rather than derive *halakhic* basis for a change in practice. Thus, analytical attempts at its defense exist sporadically, largely triggered by perceived or direct challenges to traditional Orthodox practice. Responding to the momentum of the global feminist movement in the 1970s<sup>33</sup>, Rabbi Moshe Meiselman published *Jewish Woman in Jewish Law* to iterate his understanding of the role of women in Jewish life. Later, Rabbi Michael Broyde published "Further on Women as Prayer Leaders and their Role in Communal Prayer" in response to Rabbi Judith Hauptman's argument for the permissibility of women as *shlichot tzibbur* in her 1993 *teshuva*.<sup>34</sup> The advent of Partnership *Minyanim* Orthodoxy inspired a more concerted effort to defend prior Orthodox practice. Because of Partnership *Minyanim*'s proximity to the broader Orthodox community to its right, Partnership *Minyanim*'s establishment posed a more direct and urgent challenge to the status quo. This development led to a wellspring of new literature defending and expanding upon traditional Orthodoxy's own standard of practice.

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<sup>31</sup> Zev Farber, "Partnership Minyanim: A Defense and Encomium," *Morethodoxy* (blog) (International Rabbinic Fellowship, January 25, 2013), <https://morethodoxy.org/2013/01/25/partnership-minyanim-a-defense-and-encomium/>.

<sup>32</sup> See, for example, Farber, "Partnership Minyanim: A Defense and Encomium" and Michal and Elitzur A. Bar-Asher Siegal, "Guide for the 'Halachic Minyan,'" among others.

<sup>33</sup> Meiselman, *Jewish Woman in Jewish Law*, back cover.

<sup>34</sup> Judith Hauptman, "Women and Prayer: an Attempt to Dispel Some Fallacies." *Judaism: A Quarterly Journal of Jewish Life and Thought* 42, no. 1 (1993): 94+. *Gale Literature Resource Center* (accessed July 17, 2020).

## DISCUSSION

A *sha"tz*<sup>35</sup>, literally meaning the agent of the collective, leads the congregation in prayer to fulfill the obligations of the community through his or her blessings, to enable recitation of texts which require the presence of a *minyan*, to set the pace of communal *tefillah*, and to fulfill a variety of additional communal responsibilities.<sup>36</sup> Given these essential roles, in order to serve as *shlichot tzibbur*, women must, at minimum, be able to fulfill the congregation's obligations in the *Amidah* and recite *devarim shebikdusha*<sup>37</sup>, sections of the service which comprise the essence of *tefillah b'tzibbur*.<sup>38</sup>

All opinions cited in this paper recognize women's obligation in private prayer. Golinken and Tucker and Rosenberg couple this obligation with women's obligation in recitation of *devarim shebikdusha* to permit women to be *shlichot tzibbur* for all *tefillot*. However, Broyde and Meiselman, crafting their arguments under different parameters, understand this obligation as irrelevant in the face of women's exemption from public prayer, which prohibits them from being *shlichot tzibbur*. Partnership *Minyanim* accept Broyde's and Meiselman's initial ruling, but by investigating technical solutions, allow women to lead particular *tefillot* and sections within the service. Still, Broyde and his colleagues reject Partnership *Minyanim* due to social and communal concerns. Each approach reflects not only a unique *halakhic* methodology, but also different priorities and underlying values which motivate and shape the approach.

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<sup>35</sup> From this point, individuals functioning as shlichei tzibbur will be referred to by the acronym "sha"tz" to avoid unnecessarily gendered language.

<sup>36</sup> Farber, "Partnership Minyanim: A Defense and Encomium."

<sup>37</sup> *Tefillot* which may only be said in a *minyan*. See Mishna Megillah 4:3.

<sup>38</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 17.

## Private Prayer

To satisfy the first criterion of eligibility for serving as *sha"tz*, women must at least hold an equal individual obligation to recite the *Amidah*.<sup>39</sup> Despite their divergence on subsequent topics and conclusions, the *teshuvot* analyzed in this study address women's obligations in private prayer through a similar line of reasoning. This paper addresses only *teshuvot* which view women as equally obligated in the *Amidah* of *shacharit* and *mincha*, if not more.<sup>40</sup> However, it would be remiss not to acknowledge the existence of prominent authorities who believe that women hold only an obligation in a more limited practice of *tefillah* than the traditional Rabbinic parameters of prayer indicate.<sup>41</sup> Because exempting women from personal duty to regularly pray the *Amidah* automatically disqualifies women from serving as *shlichot tzibbur* without need for further discussion or exploration, these arguments are not central for this comparative analysis and will therefore not be included.<sup>42</sup> What follows is a summary of the largely shared approach of Golinken, Tucker and Rosenberg, Broyde,<sup>43</sup> and Meiselman to women's personal obligation to pray.

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<sup>39</sup> See Mishna Rosh Hashanah 3:8. Only a person of equal or greater obligation in a mitzvah can fulfill the obligations of others.

<sup>40</sup> Opinions diverge on women's obligation in reciting the prayers and psalms surrounding the essential *tefillah* of the *Amidah*. However, obligation in the *Amidah* (or lack thereof) more significantly impacts their eligibility to serve as *shlichot tzibbur*. Some exempt women from the *Amidah* of *Maariv* based on the argument that it is a voluntary prayer which was never accepted by women as an obligation. Even those who make this claim, however, do not present this exemption as an obstacle to women as *shlichot tzibbur* largely because there is no communal repetition of the *Amidah* in *Maariv*. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 34, n32.

<sup>41</sup> See *Peninei Halakha Laws of Women's Prayer 3-4* for examples. Most who view women's obligation in this way base themselves on debatable readings of the Magen Avraham and the Rambam.

<sup>42</sup> See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 18-22 for an argument that could justify women's service as *shlichot tzibbur* even if they do not hold an equal obligation in prayer. However, Tucker and Rosenberg describe this as a weak argument.

<sup>43</sup> Broyde's *teshuvah* presents only the conclusion that women are obligated in private prayer, not the detailed analysis included in this section. Broyde appears to favor Rashi's approach to prayer.

These *teshuvot* begin their analysis by discussing *Mishna* Berachot 3:3 and its associated *Gemara*, Berachot 20b, primary texts which explicitly obligate women in “*tefillah*,” but do not further detail the particulars of this obligation.<sup>44</sup> *Rishonim* split on how to understand this obligation. Rambam views prayer as a positive non-time-bound Biblical obligation, confined neither by fixed texts nor times for its practice, in which women are explicitly obligated.<sup>45</sup> Some authorities interpret Rambam as seeking to limit women’s obligation in prayer to a minimal and loosely structured Biblical model of daily supplication.<sup>46</sup> However, a close reading of Rambam’s language and discussion in surrounding passages, which Golinken, Tucker and Rosenberg, and Meiselman all conduct to varying extents, can yield a more expansive conclusion.<sup>47</sup> They concur that Rambam obligated women equally not only in *tefillah*’s Biblical core, but also in its Rabbinic extensions. This obligation applies even though these Rabbinic extensions make *tefillah* time-bound.<sup>48</sup> Though Meiselman presents this interpretation as less absolute than do Golinken and Tucker and Rosenberg, they all conclude that the Rambam supports women’s equal obligation in *tefillah*.

As opposed to Rambam’s “two-tiered model,” Ramban and Rashi understand prayer as a uniquely and originally Rabbinic mitzvah in which women are equally obligated.<sup>49</sup> Women are

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<sup>44</sup> In these texts, “*tefillah*” refers to the *Amidah*. Tucker and Rosenber, *Gender Equality and Prayer in Jewish Law*, 22, n12.

<sup>45</sup> Rambam *Hilkhot Tefillah* 1:1-2

<sup>46</sup> See footnote 41.

<sup>47</sup> See Rambam *Hilkhot Tefillah* 1:3-7, 6:10 and Rambam, Commentary on *Mishna Kiddushin* 1:7. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 23-28 and Golinken, “Women in the Minyan and as Shelihot Tzibbur” for a detailed exploration of the Rambam’s approach.

<sup>48</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 23-28; Golinken, “Women in the Minyan and as Shelihot Tzibbur,” 59-79; Meiselman, *Jewish Woman in Jewish Law*, 131-132.

According to *Mishna Kiddushin* 1:7, women are exempt from most positive time-bound commandments.

<sup>49</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 33; Ramban’s Challenges to *Sefer HaMitzvot*, Positive Commandment #5; Rashi *Berachot* 20b.

obligated either because prayer's status as a request for mercy overrides its positive time-bound nature<sup>50</sup> or because, as an ideal, prayer is a non-time-bound mitzvah in which people should engage all day.

Contemporary authorities who maintain that women are not obligated in regular recitation of the *Amidah* find support in their debatable reading of the Magen Avraham, who mentions that “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>51</sup> He raises but dismisses the possibility that “the Sages did not extend their obligation any further.”<sup>52</sup> Golinken, Tucker and Rosenberg, and Meiselman agree that because of the nuances of his language and arguments in the cited and surrounding passages,<sup>53</sup> joined with the historical and societal context of his statements, the Magen Avraham seeks not to offer a *halakhic* ruling undermining women's obligation in *tefillah*, but to justify an existing practice of large numbers of women who do not pray the *Amidah*.<sup>54</sup> Rabbis Tucker and Rosenberg summarize: “While it is not our place to judge women who rely on Magen Avraham to justify their own practice, it is important to avoid allowing the justification of pious women who do not pray the *Amidah* regularly to undermine their fundamental obligation in prayer across time and space.”<sup>55</sup>

None of the *teshuvot* included in this paper believe that the Magen Avraham intended his remarks as a challenge. They agree that regardless of which *Rishon*'s school of thought an

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<sup>50</sup> See footnote 48, part two.

<sup>51</sup> Magen Avraham 106:2

<sup>52</sup> Magen Avraham 106:2

<sup>53</sup> Magen Avraham 299:16, as Tucker and Rosenberg discuss.

<sup>54</sup> For detailed treatment of this issue, see: Tucker and Rosenber, *Gender Equality and Prayer in Jewish Law*, 31-40; Golinken, “Women in the Minyan and as Shelihot Tzibbur,” 57-59; Meiselman, *Jewish Woman in Jewish Law*, 132-133.

<sup>55</sup> Tucker and Rosenber, *Gender Equality and Prayer in Jewish Law*, 40.

authority adopts, women are equally obligated in the *Amidah* prayer of at least *Shacharit* and *Mincha*.<sup>56</sup>

Golinken, Tucker and Rosenberg, Meiselman, and Broyde agree that a lack of equal obligation in private prayer cannot be maintained as an objection to women serving as *shlichot tzibbur*.<sup>57</sup> Though this principle contributes significantly to Golinken and Tucker's and Rosenberg's conclusion that women may serve as *shlichot tzibbur*, Broyde and Meiselman ultimately consider this obligation irrelevant in the face of overriding factors which disqualify women from service as *shlichot tzibbur*.<sup>58</sup>

### ***Devarim Shebikdusha* and Public Prayer**

In addressing the second role of a *sha"tz*, these *teshuvot* diverge significantly in their conclusions and in the parameters in which they frame their analysis. Golinken and Tucker and Rosenberg address women's ability to recite *devarim shebikdusha* by exploring the particular composition and nature of these *tefillot*. Broyde and Meiselman investigate women's ability to recite *devarim shebikdusha*, and even the *hazarat hasha"tz*,<sup>59</sup> by evaluating the issue within its larger context and framework of public prayer.

Golinken states that if women are equally obligated in *devarim shebikdusha*, then they may lead their recitation. In a significant break from the standard Orthodox line of reasoning, he

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<sup>56</sup> Broyde, "Further on Women as Prayer Leaders"; Meiselman, *Jewish Woman in Jewish Law*, 133; Golinken, "Women in the Minyan and as Shelihot Tzibbur," 57-59; See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 34, n32.

<sup>57</sup> Broyde, "Further on Women as Prayer Leaders"; Meiselman, *Jewish Woman in Jewish Law*, 133-134; Golinken, "Women in the Minyan and as Shelihot Tzibbur," 57-59; Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 39-41.

<sup>58</sup> Broyde, "Further on Women as Prayer Leaders"; Meiselman, *Jewish Woman in Jewish Law*, 133-136.

<sup>59</sup> According to Broyde, because the presence of a *minyan* is required for the *hazarat hasha"tz*, even though women are obligated in the *Amidah*, this additional criterion makes them unable to fulfill the congregation's obligations in the *Amidah*. Broyde, "Further on Women as Prayer Leaders."

asserts that an obligation in *Kedusha*, *Kaddish*, and *Barekhu* derives from the *mitzvah* of *kiddush Hashem*, “And I will be sanctified amidst the Children of Israel (*B’nei Yisrael*).”<sup>60</sup> He argues that this *mitzvah* manifests in two ways: martyrdom and recitation of *devarim shebikdusha* during communal prayer, both of which require a quorum of ten to be practiced.<sup>61</sup> The Talmudic discussion of martyrdom indicates that women share equally in this obligation and therefore count in its quorum.<sup>62</sup> Golinken’s argument is twofold. First, the obligations of martyrdom and *devarim shebikdusha* are derived from the same Biblical verse. Second, the Talmudic discussion of both obligations include identical analysis of the derivation of their quorum. Therefore, details of one can be extrapolated to the other. Accordingly, because women are obligated equally in the *kiddush Hashem* of martyrdom, they are equally obligated in the *kiddush Hashem* of *devarim shebikdusha*.<sup>63</sup>

Many reject the premise of connecting the Biblical and Talmudic origins of the obligations of martyrdom and *devarim shebikdusha*. Additionally, they oppose the application of such an obligation in *devarim shebikdusha* to women by focusing on the relevant Biblical verse’s language of “*B’nei Yisrael*.”<sup>64</sup> They claim that only “*B’nei Yisrael v’lo B’not Yisrael*” (men and not women) are included in the obligation to fulfill *kiddush Hashem* through public prayer.<sup>65</sup>

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<sup>60</sup> Golinken sees martyrdom and *devarim shebikdusha* as two sides of the same coin given that they were derived from the same verse, Leviticus 22:32. However, Rabbi Aryeh Frimer, a prominent Orthodox participant in this discussion, asserts that while that both martyrdom and *devarim shebikdusha* appear to be derived from the same verse, the verse is the actual derivation for martyrdom, but only an *asmachta* for *devarim shebikdusha*. Therefore, though women are obligated in martyrdom, this obligation cannot be extrapolated to public prayer. Aryeh A. Frimer, “Women and Minyan,” *Tradition: A Journal of Orthodox Jewish Thought* 23, no. 4 (1988): 54-77. Accessed June 14, 2020. [www.jstor.org/stable/23260941](http://www.jstor.org/stable/23260941).

<sup>61</sup> Martyrom: Sanhedrin 74b; *Devarim Shebikdusha*: Megillah 23b, Berachot 21b; Quorum: Mishna Megillah 4:3.

<sup>62</sup> See Sanhedrin 74b, which assumes Esther was obligated in martyrdom.

<sup>63</sup> Ascribing an obligation in recitation of *devarim shebikdusha* to any gender is, in itself, a significant *chiddush*.

<sup>64</sup> Leviticus 22:32

<sup>65</sup> See Golinken, “Women in the Minyan and as Shelihot Tzibbur,” 57-59, n25 for examples of such authorities.

Golinken dismisses these challenges as untenable given that the entire Torah is written in masculine language<sup>66</sup> and as a non-conclusive *asmachta b'alma*.

Golinken concludes that because women are obligated in the *kiddush Hashem* of *devarim shebikdusha*, they count towards the quorum required for its recitation, and may recite them on behalf of the community as *shlichot tzibbur*.<sup>67</sup>

While Golinken's argument presupposes an individual obligation in *devarim shebikdusha* fulfilled by the *sha"tz* and instead focuses on the gender blind nature of this *mitzvah*, Tucker and Rosenberg evaluate women's fitness to recite *devarim shebikdusha* by challenging whether and in what form this obligation exists before discussing its gender blind character. They present three questions on the nature of these *tefillot*. Is there an individual obligation in *devarim shebikdusha*? If so, is this obligation fulfilled by *the sha"tz*? If it is, is this obligation gendered? To exclude women from leading as *shlichot tzibbur*, all questions would have to be answered affirmatively. Such conclusions would effectively argue that there is an individual obligation in *devarim shebikdusha*, held only by men, that is fulfilled through the agency of the *sha"tz*.<sup>68</sup>

To the contrary, according to many sources and the codification of the Shulchan Aruch and Magen Avraham, it is possible to maintain that there is no individual obligation to recite *devarim shebikdusha*, rendering the obligation level of the potential *sha"tz* irrelevant.<sup>69</sup> Still, according to Rashi and Tosafot, an individual or communal obligation in the recitation of

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<sup>66</sup> Tosafot Arachin 2b, *dibur hamatchil* "lerabot."

<sup>67</sup> Golinken, "Women in the Minyan and as Shelihot Tzibbur," 57-59. Given that he does not see an absolute obligation in attendance of *minyan*, he likely views obligation in *devarim shebikdusha* as devolving on individuals only when they are in a group with ten others.

<sup>68</sup> See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 79-99 for a complete analysis of this subject.

<sup>69</sup> Shulchan Aruch OH 53:10 and Magen Avraham 53:12. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 80-85 for further citations.

*devarim shebikdusha* exists, prompting exploration of the second question.<sup>70</sup> According to Rav Ovadiah, the Shibbolei Haleket, Rav Uzziel, and the Aruch Hashulchan, obligations in *devarim shebikdusha* are not fulfilled by the *sha"tz*, but through the responses of each individual congregant, again rendering the obligation level of the *sha"tz* irrelevant.<sup>71</sup> However, the Shulchan Aruch HaRav and Sefer Hamahkim maintain that the *sha"tz* fulfills each congregant's obligations through the agency of his or her leadership, requiring exploration of the third question.<sup>72</sup> Is this obligation, fulfilled vicariously through the *sha"tz*, gendered? Tucker and Rosenberg, mirroring the innovative reasoning of Golinken, understand *Kedusha*, *Kaddish*, and *Barekhu* as "located under the rubric of the controlling *mitzvah* of *kiddush Hashem*."<sup>73</sup> They argue that women are obligated in the *kiddush Hashem*<sup>74</sup> of not only martyrdom, but also *devarim shebikdusha*. The Responsa Havvot Yair and Responsa Mishpatei Uzziel, among others, affirm the gender blind nature of an obligation in recitation of *devarim shebikdusha*.<sup>75</sup> As Tucker and Rosenberg explain, "no one prior to contemporary opponents of egalitarian *minyanim* suggests that women are 'exempt' from *Kedusha*, *Kaddish*, and *Barekhu*."<sup>76</sup> Even if the *sha"tz* fulfills an individual obligation in *devarim shebikdusha*, this obligation applies equally to all genders. Consequently, obligation gaps cannot justify excluding women from leading the recitation of *devarim shebikdusha*.

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<sup>70</sup> Rashi Berachot 47b and Tosafot Megillah 24a. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 87-89 for further citations.

<sup>71</sup> Responsa Yabia Omer VIII OH 14:3-4, Shibbolei Haleket Tefillah #20, Responsa Mishpatei Uzziel III, Milluim 2, and Aruch Hashulchan OH 581:5. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 89-92 for further citations.

<sup>72</sup> Shulchan Aruch HaRav OH 53:13 and Sefer Hamahkim s.v. hakorei. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 89-92 for further citations.

<sup>73</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 94.

<sup>74</sup> See footnote 62.

<sup>75</sup> Responsa Havvot Yair #222 and Responsa Mishpatei Uzziel III, Milluim 2. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 93-96 for further citations.

<sup>76</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 94 n148.

Broyde and Meiselman bypass discussion of the origin and particulars of an individual obligation in *devarim shebikdusha* by evaluating who is fit to lead *devarim shebikdusha* within the larger context of public prayer. In other words, instead of directly examining women's obligation to recite the prayers said in a *minyan*, they examine women's general obligation, or lack thereof, to attend a *minyan*. Though these two lines of investigation are connected and both reflect exploration of an underlying obligation in or exemption from *devarim shebikdusha*, each involves a meaningfully different set of sources and language.

Broyde and Meiselman view public prayer as a unit from which women are categorically exempt and thus disqualified from leading.<sup>77</sup> Broyde supports his claims of women's exemption using the *teshuva* of the Shevut Yaakov, the Teshuvot Me'ahavah, and the Margalioth Hayam, as well as the codification of Tefillah Kehilkhata and modern *teshuvot*.<sup>78</sup> He contends that women's general exemption from positive time-bound commandments generates their exemption from public prayer.<sup>79</sup> Meiselman, supporting his claims with the modern *teshuvot* of Rabbis David Feldman and Saul Berman, argues a similar conclusion.<sup>80</sup> However, he reasons instead that women's assigned charge to develop the private rather than public sphere of religious life leads to their exemption from public prayer.<sup>81</sup>

Both Broyde and Meiselman connect their discussion of women's exemption from public prayer with their analysis of women's inability to count in a *minyan*, the conduit of public prayer.

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<sup>77</sup> Broyde, "Further on Women as Prayer Leaders"; Meiselman, *Jewish Woman in Jewish Law*, 133-136. Again, see Mishna Rosh Hashanah 3:8, which states that only someone with an equal or greater obligation can discharge the obligations of others.

<sup>78</sup> Shevut Yaakov OH 3, Teshuva Me'ahavah 2:229, Margalioth Hayam Sanhedrin 74b, and Tefillah Kehilkhata 8:4.

<sup>79</sup> Broyde, "Further on Women as Prayer Leaders."

<sup>80</sup> David Feldman, "Woman's Role and Jewish Law," *Conservative Judaism* 26, no. 4 (Summer 1972): 35-36; Saul Berman, "The Status of Women in Halakhic Judaism," *Tradition* 14, no. 2 (Fall 1973).

<sup>81</sup> Meiselman, *Jewish Woman in Jewish Law*, 135.

They argue that because women are exempt from public prayer, they cannot count in a *minyan* assembled for its purpose, and therefore cannot be its leaders.<sup>82</sup> Though the first claim logically gives rise to the subsequent two, sources which establish women's inability to count in a *minyan* appear earlier than sources which discuss whether or not women are obligated in attending public prayer.<sup>83</sup> Thus, Broyde and Meiselman may have, on a theoretical level, worked backwards to derive women's exemption in public prayer from the Shulchan Aruch's earlier and clearer statement that women do not count in a *minyan*.<sup>84</sup> With history and existing practice largely on their side, reimagining the conversation surrounding these texts is unnecessary. However, their lack of explicit support from traditional sources in claiming women's exemption from public prayer leaves their opponents significant room to dismantle their arguments.

Countering the implied claim of Broyde's and Meiselman's arguments that women are exempt from reciting *devarim shebikdusha*, Golinken and Tucker and Rosenberg provide direct arguments for women's eligibility to lead the recitation of these *tefillot*. They also dismiss their opponents' explicit claims of a gendered obligation gap in attendance of public prayer.

Golinken notices that the same authorities, including Meiselman, who argue that women's exemption from praying with a *minyan* precludes them from leading as *shlichot tzibbur* also claim that men's obligation to pray with a *minyan* is not absolute.<sup>85</sup> If men are not

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<sup>82</sup> Supported by Margalioth Hayam Sanhedrin 74b, Broyde explains that a person only counts in a quorum assembled to perform an activity in which he or she is obligated. Broyde explains: "[in contrast,] in situations where women do count in the *minyan*/quorum [such as for martyrdom], they should be able to fulfill the obligation for others as a leader."

<sup>83</sup> The Shulchan Aruch, recording that women do not count in a *minyan*, was published in the 16th century. The Shevut Yaakov, suggesting that women are not obligated in public prayer, was published in the 18th century.

<sup>84</sup> Theoretical, given that at the time of writing, sources for both were already in existence and at their disposal.

<sup>85</sup> Commenting on the nature of a man's obligation in *minyan*, Meiselman states that "there is a crucial and critical difference, however, between the urgently preferable and the obligatory." Meiselman, *Jewish Woman in Jewish Law*, 134.

uncompromisingly obligated in public prayer, then women's potential exemption should not bear on their ability to serve as *shlichot tzibbur*.<sup>86</sup> Broyde and Meiselman would likely counter this challenge by arguing that because a man counts towards a *minyan* and is obligated to ensure the presence of a *minyan* in his community, his incomplete obligation is greater than that of a woman. Golinken and Tucker and Rosenberg would likely respond that women do count in a *minyan* and are thus included in this obligation and communal imperative. Consequently, the disagreement on obligation in public prayer would need to be further explored through discussion of who is eligible to count in a *minyan*.<sup>87</sup>

Tucker and Rosenberg challenge Meiselman's and Broyde's arguments and assumptions about the nature of public prayer by presenting two alternative models: public prayer either as important and spiritually beneficial but not an obligation or as a communal responsibility.

Tucker and Rosenberg explain that public prayer can be conceived of as a "spiritual means rather than a personal or communal end."<sup>88</sup> Berachot 7b-8a and Rambam Hilkhos Tefillah 8:1 both emphasize the "metaphysical efficacy" of public prayer, asserting that G-d favors and looks more generously upon prayers said in community.<sup>89</sup> Other sources emphasize that one should go to great lengths to attend public prayer, but do not express its importance as an obligation.<sup>90</sup> Viewed in either of these lights, public prayer is not an obligation, but an opportunity to pray in a more optimal atmosphere. Because women are obligated in private prayer, women and men would share an equal imperative to pray in a *minyan* to receive its

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<sup>86</sup> Golinken, "Women in the Minyan and as Shelihot Tzibbur," 57-59.

<sup>87</sup> See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 103-152 and Aryeh A. Frimer, "Women and Minyan," 54-77 for detailed arguments for and against women counting in a *minyan*.

<sup>88</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 159.

<sup>89</sup> Berachot 7b-8a and Rambam Hilkhos Tefillah 8:1,3

<sup>90</sup> Berachot 7b-8a and Shulchan Aruch OH 90:9

personal and spiritual benefits.<sup>91</sup> Further, when public prayer is removed from the sphere of obligation and exemption, whether or not women are obligated in it becomes irrelevant to whether they may be *shlichot tzibbur*. If no one is obligated in attending public prayer, it is untenable to claim that women's potential exemption from it makes them unfit for service as *shlichot tzibbur*.

Tucker and Rosenberg also acknowledge and address the view that there *is* a communal obligation and responsibility devolving on the individual to help make a *minyan*.<sup>92</sup> In response to this position, they argue that women count in a *minyan* and therefore would share the social responsibility of public prayer equally with men.<sup>93</sup>

When public prayer is characterized as an obligation, counting women in a *minyan* would counter claims of their assumed exemption from attending it. However, many who exclude women from service as *shlichot tzibbur* do not accept a redefinition of *minyan* eligibility. Still, even if women are not counted in a *minyan*, claiming that this disqualifies them from leading as *shlichot tzibbur* is difficult.<sup>94</sup>

To do so, one would have to prove all three of the following claims.<sup>95</sup> First, individuals are obligated to pray with a *minyan*, an idea disputed by many *Rishonim*.<sup>96</sup> If no such obligation exists for any gender, women's obligation or exemption status is irrelevant to their ability to be *shlichot tzibbur*. Second, if there is such an obligation, it is gendered, an idea not supported by

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<sup>91</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 171.

<sup>92</sup> Berachot 8a, Responsa Tashbetz 1:90, Responsa Havvot Yair #115. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 157-164 for further detail.

<sup>93</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 171.

<sup>94</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 171.

<sup>95</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 171.

<sup>96</sup> See footnotes 89 and 90.

*Rishonim* and challenged by some *Achronim*.<sup>97</sup> If such an obligation applies equally to all genders, an obligation gap between men and women cannot disqualify women from service as *shlichot tzibbur*. Third, if there is a gendered obligation, this gender gap makes women ineligible to serve as *shlichot tzibbur*, a counterintuitive claim supported only by contemporary sources “given that an individual obligation in public prayer seems to be about *attending* public prayer, not leading it.”<sup>98</sup> Because not all of the three prerequisite claims can be proven, Tucker and Rosenberg argue that using an exemption from public prayer to disqualify women from serving as *shlichot tzibbur* is untenable and “far from self-evident in the sources.”<sup>99</sup> Broyde and Meiselman would likely respond by insisting that contemporary sources which exempt women from public prayer must be understood as conclusive and taken at face value.

Broyde and Meiselman channel the bulk of their opposition to women as *shlichot tzibbur* through the claim that women are exempt from public prayer and thus cannot fulfill the obligations of the community as leaders of a *minyan*.<sup>100</sup> However, Golinken and Tucker and Rosenberg, viewing this channel of exploration as flawed and irrelevant, do not consider women’s ability to be *shlichot tzibbur* through the lens of public prayer except to address and reject their counterargument. Tucker and Rosenberg relegate their discussion of public prayer to their appendices, communicating that their arguments stand independently of this defense. Further conversation with Tucker reveals that because of public prayer’s prominence in the claims of traditional Orthodoxy, he addressed the argument seriously. Concluding that this

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<sup>97</sup> Responsa Be-Aholah shel Torah 2:27 and Yad Eliyahu, Pesakim 1:7. See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 168-170 for further detail and explanation.

<sup>98</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 171.

<sup>99</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 171. While Tucker and Rosenberg dismiss the face value claim of the Shevut Yaakov, for example, Broyde explicitly accepts it.

<sup>100</sup> Broyde, “Further on Women as Prayer Leaders”; Meiselman, *Jewish Woman in Jewish Law*, 135-136.

opposition functions as weak and non-substantive, especially given its late appearance in the *halakhic* dialogue, he determined that it was peripheral to his argument.<sup>101</sup> Evidently, opposing sides of the debate on women as *shlichot tzibbur*, more than disagreeing on fundamental sources, conduct their conversation through different terms and axes of argument.

### ***Kevod Hatzibbur***

Though Golinken and Tucker and Rosenberg all reject Meiselman's and Broyde's main premise of opposition, Tucker and Rosenberg recognize that a legitimate, albeit objectionable, challenge to women's leadership of those parts of the service that require a *minyan* may be made through the prism of *kevod hatzibbur*, impact on communal dignity.<sup>102</sup> According to the Beit Yosef, a community can waive its *kavod* in the face of other priorities.<sup>103</sup> The Bah implies that it may reassess the meaning of *kevod hatzibbur* in light of changed circumstances.<sup>104</sup>

Tucker and Rosenberg, echoing Broyde, understand that *kevod hatzibbur* only impacts the conversation when no mitigating obligation gaps exist.<sup>105</sup> Having proven women's equal obligation in *tefillot* recited privately and publicly, a woman's ability to serve as *sha"tz* rests on whether, in her community, women's ritual leadership elevates or diminishes the communal experience of a religious space.<sup>106</sup> Given their belief that it does increase the dignity of a religious space in today's increasingly egalitarian world, Tucker and Rosenberg assert that *kevod hatzibbur* can be waived or reassessed to permit women to lead as *shlichot tzibbur*.<sup>107</sup>

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<sup>101</sup> Cheskin, Joy, and Ethan Tucker. Questions on Your Book. Personal, May 15, 2020.

<sup>102</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 65.

<sup>103</sup> Beit Yosef OH 143

<sup>104</sup> Bah OH 53

<sup>105</sup> See Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 55-74 for a detailed exploration of *kevod hatzibbur*; Broyde, "Further on Women as Prayer Leaders."

<sup>106</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 72-74, 99

<sup>107</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 72-74, 102

They concede that those who believe women’s leadership still injures communal dignity would stand on firm *halakhic* ground in invoking *kevod hatzibbur* to maintain non-egalitarian prayer leadership. This claim, Tucker and Rosenberg assert, is one of the only “intelligible (aside from whether it is plausible or objectionable)” challenges to egalitarian prayer.<sup>108</sup>

However, because Broyde and Meiselman assert the existence of a gendered obligation gap in public prayer, they do not pursue Tucker’s and Rosenberg’s recommended path of opposition. Broyde insists that *kevod hatzibbur* “plays no role in the reason why women cannot be leaders in community prayer.”<sup>109</sup> To this type of claim, Tucker and Rosenberg respond: “there is no need to run away from that conversation [*kevod hatzibbur*] by forcing the creation of gender obligation gaps in *devarim shebikdusha* that are not clearly supported by traditional sources.”<sup>110</sup>

Though Broyde and Meiselman do not engage *kevod hatzibbur* in the primary *teshuvot* studied in this paper, they and their colleagues discuss the matter in the context of Partnership *Minyanim*, a unique hybrid of the different ideological camps and movements studied above.

### **Partnership Minyanim<sup>111</sup>**

Not all who abide by Broyde’s and Meiselman’s *halakhic* reasoning cease their exploration within the limits of Broyde’s and Meiselman’s conclusions. Advocates of

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<sup>108</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 98

<sup>109</sup> Broyde, “Further on Women as Prayer Leaders.”

<sup>110</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 98

<sup>111</sup> Though a major innovation and defining characteristic of Partnership *Minyanim* is allowing women to receive *Aliyot* and read Torah, these practices will not be discussed here. The following section will focus only on the practice of Partnership *Minyanim* to allow women to lead certain parts of the service. For discussion of Torah reading and *aliyot*, see the seminal works of Rabbi Sperber and Rabbi Shapiro, as cited in footnote 29, for arguments in favor. For arguments against, see Aryeh A. and Dov Frimer, “Women, “Keri’at Ha-Torah,” and “Aliyyot.”” *Tradition: A Journal of Orthodox Jewish Thought* 46, no. 4 (2013): 67-238. Accessed June 14, 2020. [www.jstor.org/stable/43832687](http://www.jstor.org/stable/43832687).

Partnership *Minyanim* largely accept Broyde's and Meiselman's assessment that women are exempt from public prayer and thus cannot fulfill the obligations of the congregation in *devarim shebikdusha*. However, by broadening their definition of a *sha"tz*, they still forge a path for women's prayer leadership.<sup>112</sup>

Partnership *Minyanim* explain that although one of the roles of a *sha"tz* is to fulfill obligations of the congregation, another function is to set the pace of *tefillah* and "enhance the collective prayer experience."<sup>113</sup> They argue that women's exemption from public prayer only excludes them from serving as *shlichot tzibbur* for *tefillot* that involve fulfilling the congregation's obligations in sections of the service considered *tefillah b'tzibbur*.<sup>114</sup> Therefore, they assert that women may lead *tefillot* in which either no fulfillment of obligation is involved or women share an equal obligation.<sup>115</sup>

However, opponents of Partnership *Minyanim* challenge their practices by claiming that even if a *tefillah* cannot formally be categorized as *tefillah b'tzibbur*, other factors still prohibit

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<sup>112</sup> Zev Farber, "Morethodoxy," *Morethodoxy* (blog) (International Rabbinic Fellowship, January 25, 2013), <https://morethodoxy.org/2013/01/25/partnership-minyanim-a-defense-and-encomium/>.

<sup>113</sup> Zev Farber, "Morethodoxy"

<sup>114</sup> It is important to note that the creators of "Guide for the 'Halachic Minyan'," which many Partnership *Minyanim* use as a practical guide to what women may lead in a service, stated that "it is not our intention to claim that communities in which women lead these parts [*devarim shebikdusha*] of the prayer are not *halachically* justifiable." Michal and Elitzur A. Bar-Asher Siegal, "Guide for the 'Halachic Minyan.'" Jewish Orthodox Feminist Alliance. Last modified 2008. Accessed June 14, 2020. <https://www.jofa.org/partnership-minyans>.

While this opinion does not represent all leaders and scholars of Partnership *Minyanim*, its existence is significant.

<sup>115</sup> This can be because there is no obligation in the given section of the service (such as Kabbalat Shabbat and Pesukei Dezimra), for a particular *tefillah*, congregants, not the *sha"tz* on their behalf, fulfill their own obligations, or because women are equally obligated in the *tefillah*. First, Hallel on the last six days of Pesach is customary and not obligatory, and thus, given that there is no obligation, women may lead it. Second, though Hallel on the first day of Passover is a positive time-bound commandment from which women are exempt, women may still lead this Hallel if each male congregant simultaneously says all the words of Hallel to himself. Third, women are equally obligated in Hallel on the first night of Pesach and thus she can fulfill the obligations of the entire congregation through her leadership. See "Guide for the 'Halachic Minyan,'" as cited in footnote 114, for more information.

women's leadership of such *tefillot*.<sup>116</sup> Rabbis Aryeh and Dov Frimer, who represent a similar community to that of Broyde, argue that women's leadership of a service which they are not obligated to attend, regardless of whether or not their role is to fulfill obligations of the congregation, affronts *kevod hatzibbur*. They explain: women's leadership suggests that "the men-folk do not value their *halakhic* responsibilities and obligations," causing *zilzul hamitzvah*.<sup>117</sup> Additionally, they posit that positioning women at the center of a communal religious ritual may lead to sexual distraction, raising issues of *tzniut*, including *kol isha*.<sup>118</sup> Further, they argue that instituting women's ritual leadership where it has not previously existed in Orthodox communities would violate "long standing communal *minhagim*."<sup>119</sup>

Broyde, in a *teshuva* separate from the one studied through the majority of this paper, recognizes the technical permissibility of some of these innovations in women's ritual leadership, but echoes the Frimers' objection to violation of *minhag* and categorizes such practices as a slippery slope to further unacceptable change.<sup>120</sup> Commenting specifically on women's leadership of *Kabbalat Shabbat*, Broyde writes: "even though technical Jewish law permits this conduct as a matter of *hilchot tefilla*...we are worried that people will grow confused as to what only men can lead..."<sup>121</sup> He continues:

Changing the custom so as to allow women to lead *Kabbalat Shabbat* as a *chazan* seems to me to be a practice that badly obfuscates between situations where a proper *shaliach*

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<sup>116</sup> Aryeh and Dov Frimer, "Women, "Keri'at Ha-Torah," and "Aliyyot," 165-174, 188-193; Michael Broyde, "Women Leading Kabbalat Shabbat: Some Thoughts," *Torah Musings*, August 20, 2010, <https://www.torahmusings.com/2010/08/women-leading-kabbalat-shabbat-some-thoughts/>.

<sup>117</sup> Aryeh and Dov Frimer, "Women, "Keri'at Ha-Torah," and "Aliyyot," 189.

<sup>118</sup> Aryeh and Dov Frimer, "Women, "Keri'at Ha-Torah," and "Aliyyot," 189. See Rabbi Shapiro's article, cited in footnote 29, for an argument of why *kol isha* does not apply in the context of *minyán*.

<sup>119</sup> Aryeh and Dov Frimer, "Women, "Keri'at Ha-Torah," and "Aliyyot," 189.

<sup>120</sup> Michael Broyde, "Women Leading Kabbalat Shabbat: Some Thoughts."

<sup>121</sup> Michael Broyde, "Women Leading Kabbalat Shabbat: Some Thoughts."

*tzibbur* is needed and where one is not, and thus a bad innovation, likely to lead people astray.<sup>122</sup>

Broyde concludes that, for these reasons, women may not lead even “those parts of davening that technical *halacha* does not formally prohibit them from leading.”<sup>123</sup>

Broyde’s belief that prohibitions on women’s ritual leadership extend beyond the technical boundaries of *hilkhot tefillah* directly counters Rabbi Daniel Sperber’s *modus operandi* and philosophy of *Halakha*. Sperber explains: “when things are permitted, they should be encouraged.”<sup>124</sup> In addition to having ruled that *kevod habriyot* overrides *kevod hatzibbur*,<sup>125</sup> countering one of the Frimers’ major objections, Sperber justifies Partnership *Minyanim* with the following *halakhic* principles:<sup>126</sup>

...in the same way it is forbidden to permit that which is forbidden, it’s also forbidden to forbid that which is permitted...it is not forbidden to permit that which is permitted, even if it wasn’t practiced in the past, because *Halakha* is dynamic and when cultural circumstances change, one has to face up to these changes and accommodate them...if you can find a position of leniency, you should do so.

By addressing technical solutions and embracing a new social reality, even those who accept women’s inability to lead parts of the service that require a *minyan* can justify alternative opportunities for women’s ritual leadership.

At this point, the discussion returns to Broyde’s and Meiselman’s approaches to women as *shlichot tzibbur* for parts of *tefillah* which require a *minyan*. They determined that an obligation gap in public prayer conclusively prohibits women’s leadership of such prayers. *Kevod hatzibbur*, *minhag*, and *tzniut* only become relevant when no technical prohibitions on a

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<sup>122</sup> Michael Broyde, “Women Leading Kabbalat Shabbat: Some Thoughts.”

<sup>123</sup> Michael Broyde, “Women Leading Kabbalat Shabbat: Some Thoughts.”

<sup>124</sup> Judy Maltz, “Just Don’t Call the Rabbi ‘Feminist.’”

<sup>125</sup> Daniel Sperber, “Congregational Dignity and Human Dignity: Women and Public Torah Reading”

<sup>126</sup> Judy Maltz, “Just Don’t Call the Rabbi ‘Feminist.’”

matter exist, allowing Broyde and Meiselman to close their argument without needing to defend their case through these mechanisms. However, because Broyde and similar authorities determined that technical prohibitions in the realm of *hilkhot tefillah* cannot disqualify women from serving as *shlichot tzibbur* in the limited capacity in which they do in Partnership *Minyanim*, they employed concerns of *kevod hatzibbur*, *minhag*, and *tzniut* to defend their prohibition.<sup>127</sup> It can be inferred that even if Broyde and Meiselman were convinced by Golinken and Tucker and Rosenberg that no meaningful obligation gap exists in public prayer and *devarim shebikdusha*, they would still prohibit women from being *shlichot tzibbur* for the *hazarat hasha"tz*<sup>128</sup> and *devarim shebikdusha* on the basis of their objections to Partnership *Minyanim*. Beyond analysis of her obligations, a woman's ability to be *sha"tz* depends largely on her community's understanding of the social and religious implications of women's ritual leadership.

### Category Shifts

Recognizing that today's social reality is radically different from that of the past, some redefine the parameters and assumptions of the discussion on whether or not women may be *shlichot tzibbur*. Arguments which more fundamentally reimagine the role of women in Jewish law and life make it possible to declare broader religious gender equality separate from the details of women's ability to lead particular *tefillot*.

In 2014, following decades of *halakhic* exchange in the Conservative Movement on whether women may serve as *shlichot tzibbur* and on their broader equality in *halakhic* life, Rabbi Pamela Barmash decided to concretize the Movement's commitment to robust and

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<sup>127</sup> Aryeh and Dov Frimer, "Women, "Keri'at Ha-Torah," and "Aliyyot," 165-174, 188-193; Michael Broyde, "Women Leading Kabbalat Shabbat: Some Thoughts," *Torah Musings*, August 20, 2010, <https://www.torahmusings.com/2010/08/women-leading-kabbalat-shabbat-some-thoughts/>.

<sup>128</sup> See footnote 59.

complete gender equality. In her *teshuva*, Barmash argues that women's exemption from positive time-bound commandments, a major manifestation of their inequality in religious life, was due to women's historically inferior and subordinate social status, not to their classification as positive time-bound mitzvot.<sup>129</sup> Now that women are, in theory if not in practice, social equals to their male counterparts, this exemption no longer applies.<sup>130</sup> Thus, Barmash rules that contemporary women are equally obligated in all *mitzvot*, except those determined anatomically.<sup>131</sup> Though the Movement permitted women to function as *shlichot tzibbur* prior to this *teshuva*, Barmash's argument for overarching gender equality removes doubt,<sup>132</sup> among those who accept her reasoning, about women's equality in any area of religious life.

Tucker and Rosenberg, too, craft a similar statement of sweeping gender equality.<sup>133</sup> After constructing a robust case for women's ability to serve as *shlichot tzibbur* by examining different details and facets of the issue, they close their *teshuva* by introducing a category shift. If accepted absolutely, this shift would render superfluous all preceding material in their *teshuva*.

Tucker and Rosenberg explain that the categories of "*nashim*" and "*isha*," as used by *Hazal*, can be understood not as "applying across history to all those who are biologically female," but as referring to a particular subservient social category occupied by women in the

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<sup>129</sup> Pamela Barmash, "Women and Mitzvot," 4-22, 32.

<sup>130</sup> Pamela Barmash, "Women and Mitzvot," 32.

<sup>131</sup> Pamela Barmash, "Women and Mitzvot," 32.

<sup>132</sup> Some Conservative communities who adopt this ruling still struggle to implement fully in practice, even if they accept it in theory. Rabbi David Booth, "International Seminar for Halakhic Study." Lecture, Congregation Kol Emeth, Palo Alto, December 2019.

<sup>133</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 144. See Ethan Tucker, "Category Shifts in Jewish Law and Practice," *Hadar* (Hadar Institute, October 2015), <https://www.hadar.org/torah-resource/category-shifts-jewish-law-and-practice> for more information.

time of *Hazal*.<sup>134</sup> They argue that contemporary women constitute a category and group separate from a historical conception of ‘*nashim*.’

Using the logic of Rav Yoel Bin-Nun, Tucker and Rosenberg explain that, given the expectations and norms of today’s society, contemporary women are considered *b’not horin* (liberated women) and are therefore equally obligated in the religious obligations from which they were traditionally exempt.<sup>135</sup> Accepting this paradigm shift, which confers upon women complete equality of ritual obligation and removes from them adjunct status in religious life, grants women automatic eligibility to serve as *shlichot tzibbur*.

In the face of these broad and comprehensive arguments, all prior analysis in the Conservative Movement and in Tucker’s and Rosenberg’s *teshuva* seems gratuitous. However, these over-arching arguments could not stand without all their preceding material, whether within the same book or within a movement’s cumulative historical literature. Tucker explains that a category shift redefining women’s obligations may seem too drastic independent of claims that women’s ability to be *shlichot tzibbur* can be addressed through other technical mechanisms of *Halakha*. These technical arguments narrow the gap between the historical reality of women’s ritual leadership and the gender equal standard the category shift would establish. Thus, after understanding these arguments, accepting a category shift is reasonable and manageable, if not natural.<sup>136</sup> Likely, the decades of discourse in the Conservative Movement prior to Barmash’s *teshuva* served a similar function by preparing the community to accept her larger statement of women’s complete equality.

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<sup>134</sup> Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 144.

<sup>135</sup> י. בן-נון, תגובה ל"ברכת התנים: האם מניין גברים הוא הכרחי?", גרנות 3 (תשסג): 172-173.

<sup>136</sup> Cheskin, Joy, and Ethan Tucker. Questions on Your Book. Personal, May 15, 2020.

Just as a category shift appears untenable without prior *halakhic* discourse, the reverse may also apply. Tucker suggests that if proponents of increased women's ritual leadership do not foresee a broader statement of *halakhic* gender equality, then technical *halakhic* arguments or workarounds to advance women's leadership opportunities are questionable. Elevating women as leaders where *halakhically* possible while maintaining their status as adjunct participants in religious life, may, in essence, cheapen and devalue the seriousness of the religious rituals which they lead.<sup>137</sup>

## Conclusion

Each movement's approach to women as *shlichot tzibbur*, as a function of their specific *halakhic* analysis, the way they conduct their analysis, and the goals of such analysis, seems to reflect their answers to the following 'questions behind the question': Is gender equality a supreme value in public religious life? Will matching the egalitarian nature of broader society in the synagogue strengthen or weaken communal religious commitment? Who is fit to represent the community before itself and before G-d? Those motivated by a belief that greater women's involvement is essential to creating a dignified and committed religious community are driven to engage the complexities of *halakhic* sources with an eye towards innovation.<sup>138</sup> Those who believe that changed social norms represent external influences likely to undermine the religious and *halakhic* system are driven by a desire to maintain and defend the traditional status quo.

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<sup>137</sup> Cheskin, Joy, and Ethan Tucker. Questions on Your Book. Personal, May 15, 2020.

<sup>138</sup>“Our own sense is that, in many communities, the exclusion of women from public roles poses a great risk to the ongoing stability and vitality of Torah in an increasingly egalitarian world.” Tucker and Rosenberg, *Gender Equality and Prayer in Jewish Law*, 102.

When responsibly choosing and floating between religious communities, it is worthwhile to evaluate not only the practical characteristics of a religious space and the unique *halakhic* reasoning that creates them, but also the underlying value statements which guide these choices and outcomes.

So, by whom shall G-d be publicly sanctified? The *halakhic* system's commitment to uphold *machloket* means that the dialogue on women as *shlichot tzibbur* and as broader equals in religious life is always evolving. Exploration concerning the dignity and equality of half the population is certainly a *machloket l'shem shamayim*. It merits continued search for understanding by all members of the Jewish community, all of whom must ultimately choose the community and answers best suited to them.

## Glossary of Hebrew Terms

*Achron/im*: Leading Rabbis and Torah scholars from the Renaissance period until today

*Aliyot*: honors during the Torah service

*Amidah*: central prayer of prayer services

*Asmachta b'alma*: a non-authoritative support brought for a claim

*B'not horin*: liberated women

*Chiddush*: Innovative/novel idea

*Devarim shebikdusha*: elements of the prayer service that can only be said in a quorum of ten

*Halakha/halakhic*: Jewish law

*Hazal*: an acronym referring to the Rabbis and Torah scholars from the Second Temple period to the sixth century C.E.

*Hazarat Hasha"tz*: repetition of the Amidah by the sha"tz during prayer services conducted with a minyan

*Isha/nashim*: woman/women

*Kabbalat Shabbat*: Friday night prayer service

*Kedusha/Kaddish/Barchu*: examples of devarim shebikdusha

*Kevod Habriyot*: dignity/honor of individuals

*Kevod Hatzibbur*: dignity/honor of the community

*Kiddush Hashem*: commandment to sanctify G-d in public

*Kol isha*: a halakhic principle traditionally understood to prohibit men from hearing women's singing voices in particular contexts

*Maariv*: evening prayer service

*Machloket*: debate

*Machloket l'shem shamayim*: debate for the sake of Heaven

*Mincha*: afternoon prayer service

*Minhag/im*: customs

*Minyan/im*: prayer quorum

*Mitzvah*: commandment

*Nekudot hamachloket*: points of contention in a debate

*Pesukei Dezimra*: introductory section of morning prayer service

*Rishon/im*: Leading Rabbis and Torah scholars from the mid-eleventh to the mid-sixteenth centuries C.E.

*Shacharit*: morning prayer service

*Shaliach Tzibbur/Shlichat Tzibbur/Shlichei Tzibbur/Shlichot Tzibbur*: leader of prayer service

*Takkanah*: a halakhic declaration/enactment to revise previous laws to fit new circumstances

*Tefillah/tefillot*: prayer

*Tefillah B'tzibbur*: public/communal prayer

*Teshuva/teshuvot*: responsa literature

*Tzniut*: laws of modesty

*Zilzul Hamitzvah*: denigration of a mitzvah

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