

An Advocate's Halakhic Responses on the Ordination of Women

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On November 7, 1984, a motion was passed by a vote of thirteen in favor and two opposed (13-2) to publish this paper without discussion or vote of approval. Voting in favor: Rabbis Kassel Abelson, Isidoro Aizenberg, David M. Feldman, Morris Feldman, David H. Lincoln, Judah Nadich, Mayer E. Rabinowitz, Barry S. Rosen, Joel Roth, Morris M. Shapiro, David Wolf Silverman, Henry A. Sosland and Alan J. Yuter. Voting against: Rabbis Phillip Sigal and Gordon Tucker.

The question of the ordination of women by the Jewish Theological Seminary of America has been debated within the Faculty and the Movement for nearly ten years. Proponents of both sides have written extensively on this issue, using both halakhic and non-halakhic arguments.¹ The purpose of this paper is to address some of the halakhic problems raised by the opponents of women's ordination.

The halakhic objections raised relate exclusively to functions that a rabbi is commonly but not necessarily expected to perform, such as acting as a *mesadder kiddushin*, *sheliaḥ tzibbur*, a witness to a *get* or *ketubah*, or to be counted in a *minyan*.

The opponents to ordination claim, on the basis of the fact that the *Halakhah* presently prohibits women from performing these functions, that ordaining them would place them in an equivocal position, tempting them to transgress the law.² Those who ordained them would thus be violating the biblical injunction of "Before one who is blind [in a certain matter] do not place a stumbling block" (Lev. 19:14) and the rabbinic prohibition against assisting transgressors.³

Before addressing the more substantive objections, one may question the validity of the charge of "misleading the blind." How could anyone be "blind" in this matter when so much has already been said and written? In regard to the substantive objections, the tradition records various opinions

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

concerning the status of women vis-à-vis these functions. To claim that one's own interpretation of halakhic tradition is the *only* tenable one is to close one's eyes to the realities of the historic development of the *Halakhah*.

A study of the sources dealing with the aforementioned functions reveals that while it was customary to have men perform them, it does not follow that their performance now must be restricted to men.

This paper will seek to demonstrate that from an authentic halakhic point of view, a woman –

1. may be a *mesadderet kiddushin*;
2. may be counted in a *minyán*;
3. may serve as a witness; and
4. may serve as what is now designated as a *sheliah tzibbur*.

Anyone having even a minimum knowledge of the history of the legal codes of any known society knows that legal definitions and applications are influenced by time and place, no matter what transcendent authority may be involved. The *Halakhah* was no exception to this universal experience of mankind. When the Rabbis defined a term or structured an institution, they did so both as interpreters of a historic tradition and as contemporary leaders mindful of the social realities of their own time. Hence, in some cases long-established halakhic procedures were dramatically changed because of significant changes in social conditions. Hillel's well-known institutionalization of the *prozbul*, as well as the less-well-known changes made in the requirements for questioning of witnesses in monetary cases, come to mind.⁴ As will be indicated later, in other cases the concept or the institution was retained, but the definition of the one and the function of the other were substantively changed.

I. MESADDER KIDDUSHIN (WEDDING OFFICIANT)

One of the arguments raised for prohibiting a woman from serving as a *mesadderet kiddushin* is that the *Halakhah* requires the presence of a *minyán* for the recitation of the *birkhat hatanim* (the wedding benedictions). It is argued theoretically that it is the community at large which is bestowing the blessing. The one who actually recites them is but the *sheliah tzibbur* (the emissary of the community), and a woman may not act in that capacity.⁵

It is also claimed that intimations of this idea are found in Genesis (24:60) and Ruth (4:2, 10) and that *Massekhet Kallah* attributes biblical origin to *birkhat hatanim*.⁶

An analysis of these arguments and sources reveals, however, that (1) the biblical sources quoted do not refer to *birkhat hatanim* at all; and (2) the reciter of the *birkhat hatanim* is not conceived as the emissary of the community and is, therefore, not a *sheliah tzibbur*.

The Biblical Sources

The verse in Genesis 24:60 reads: “And they blessed Rivkah and said to her, ‘O sister, may you grow into thousands of myriads.’” It was a blessing given by the family to a sister and daughter before she left their home. Indeed it could in no way be similar to the *birkhat hatanim* because the groom, Isaac, was not present. The Tosafot refer to this verse as but an *asmakhta*, as being but a tenuous biblical support for the rabbinic enactment regarding *birkhat hatanim*.⁷ The clear literal meaning of the verse does not indicate that it can in any way be construed as the prototype for the present-day *birkhat hatanim* or *birkhat erusin*.⁸

Nor do the verses in Ruth refer to *birkhat hatanim*. They refer, rather, to the witnessing of a legal transaction. Boaz collected ten men (4:2) in order to witness legal arrangements relating to the sale of Elimelekh’s property. Verse 9 clearly states: “and Boaz said to the elders and to the rest of the people, you are witnesses today that I am acquiring from Naomi all that belonged to Elimelekh.”

According to the Talmud, the verses from Ruth seem to indicate that a quorum of ten is required for *birkhat hatanim*.⁹ However, since the Talmud also accepts the fact that the bridegroom can be counted as one of those ten,¹⁰ why did Boaz gather ten men rather than nine plus himself? Obviously, the verse was not dealing with *birkhat hatanim* but, rather, with a legal transaction. The Tosafot state that this verse is only an *asmakhta*.¹¹

Is the Mesadder Kiddushin a Sheliah Tzibbur?

Before answering this question some terms must be defined. (1) *Birkhat erusin* is recited before betrothal takes place. There is no talmudic source that indicates that a *minyan* is required. In fact, there is a dispute among the codifiers concerning this issue.¹² According to Freiman,¹³ the reason that the requirement of a *minyan* was instituted by R. Ahai (680-752 C.E.) was to publicize the betrothal. This need arose to help overcome malpractice and secret marriages. (2) *Birkhat hatanim* or *sheva berakhot* (seven blessings) is recited after the betrothal takes place and at the conclusion of meals for a period of seven days following the wedding. The Talmud requires a *minyan* for the recitation of these blessings, and the *hatan* himself may be counted in the *minyan*.¹⁴

Birkhat erusin is recited by the *mesadder kiddushin*, while *birkhat hatanim* may be recited by other individuals as well. Since there is no talmudic source for requiring a *minyan* for *birkhat erusin*, and it may be recited without a *minyan*, it follows that the reciter of the blessings is not representing a community or serving as *sheliah tzibbur*. In fact, most codes permit the *hatan* himself to recite the blessing.

The Rambam states: "Anyone who betroths a woman, whether he does it himself or through an agent, either he or his agent must recite a blessing before the *kiddushin*."¹⁵ The *Tur* also states that the *hatan* may recite the blessing.¹⁶ The *Shulhan Arukh* concurs with the Rambam, and the Rema adds: "Some say that someone else recites the blessing, and that is the custom."¹⁷ Rabbi Moses of Coucy (13th century) says:

In the West it is customary for the man who betroths to recite the blessing himself before he betroths – unlike the practice in these countries [where Rabbi Moses lived] where the betrother himself does not recite the blessing but rather someone else does.¹⁸

Rav Sar Shalom (died ca. 859) says that if there is no one competent to recite the blessing except the *hatan*, then the *hatan* recites the blessing for himself.¹⁹ Obviously, the *hatan* is not serving as a *sheliah tzibbur*.

None of the reasons given for having someone other than the *hatan* recite the *birkhat erusin* is related to the concept of *sheliah tzibbur*. Rav Sar Shalom says: "If there is someone else who can recite the blessing, the *hatan* should not recite it, for it makes the *hatan* look like an arrogant person."²⁰ Rabbi Avraham ben Nathan Hayarhi (1155-1215) is of the opinion that the *hatan* cannot recite the blessings with the proper concentration or intention.²¹ Still others say that the custom was instituted in order not to embarrass a *hatan* who cannot recite the blessings.²²

Clearly, then, the *mesadder kiddushin* who recites the *birkhat erusin* is not acting as a *sheliah tzibbur* representing the community. The purpose of the blessing is similar to all other *birkhot mitzvah*, i.e., to recite a blessing before performing an act. Since the *mesadder kiddushin* may recite the blessings for the *hatan* (though he himself is not betrothing), the *mesadder kiddushin* is representing, at most, the *hatan* alone.

Rabbi Tzvi Hirsch Eisenstadt quotes the following discussion concerning *birkhat erusin*:

It is clear that if both the bride and groom are deaf, the *birkhat erusin* may not be recited, since neither one of the couple would hear it and the blessing would be recited in vain. However, if only the *hatan* is deaf, there are grounds to permit the blessing to be recited. The reason is that the bride would hear it and, therefore, the blessing would not be recited in vain.²³

Obviously, according to this reasoning the bride is considered as a party to the *birkhat erusin*.

This approach is most suggestive of the conditions we find today. The bride and groom are both involved in, and considered partners in, all aspects of the decision to marry. And since the *birkhat erusin* is being recit-

ed on behalf of the woman as well as the man, there is no reason to restrict the performance of this function to men alone.

Birkhat hatanim or *sheva berakhot* are blessings of prayer and praise.²⁴ The fact that they are recited at the conclusion of meals for seven days following the wedding indicates that they are not *birkhot mitzvah*, blessings to be recited before performing a specific act. Since women are not prohibited from reciting blessings of prayer and praise, there is no reason to prohibit them from reciting *birkhat hatanim*.²⁵

To summarize, a woman can be a *mesadderet kiddushin* because: (1) there is no *sheliah tzibbur* involved; (2) the bride is equally a part of *birkhat erusin*; (3) *birkhot hatanim* are blessings of prayer and praise which may be recited by women; and (4) there is no biblical basis for either *birkhat erusin* or *birkhat hatanim*.

II. MINYAN

Another objection that is sometimes raised against ordaining women involves counting women in a *minyan*. According to some, a *minyan* consists of people sharing the same *hiyuv*, (obligation of prayer). Since women's obligations in prayer are different from those of men, it is argued that women cannot be counted in a *minyan*.²⁶ According to this argument, women should not be ordained because it would be inappropriate to exclude a woman rabbi from the *minyan* in her synagogue.

An analysis of the sources dealing with *minyan* reveals that equality of obligation is not a consideration for being counted in a *minyan*. Other criteria were used to define who could be counted in a *minyan*, and we maintain that these very criteria, when applied today, would support the counting of women in the *minyan*.

Biblical Sources

The requirement of a *minyan* for acts of sanctification (*devarim shebeke-dushah*) is found in *Megillah* 23b. Commenting on the Mishnah which lists those acts requiring a quorum of ten persons, the Talmud states:

From where do we derive the rules? Rabbi Hiyya bar Abba said in the name of Rabbi Yohanan, "Scripture says: 'That I may be sanctified in the midst of the Israelite people' [Lev. 22:32]. All matters of sanctification require no less than ten." How do we derive this from this verse? As Rabbi Hiyya taught, we derive it from the fact that the term *the midst* occurs both here [in Leviticus 22:32], which reads: "That I may be sanctified in *the midst* of the Israelite people," as well as in Numbers 16:21, which reads: "Stand back from *the midst* of this communi-

ty." And just as in Numbers 14:27, which states: "How much longer shall that wicked community . . ." The term *community* refers to the ten wicked spies, so in Numbers 16:21 the term *community* refers to ten adults.²⁷

The Rabbis thus derive the requirement of the presence of a *minyan* (ten adult Jews) "for acts of sanctification" in two steps.

a. They equate the term "the Israelite people" which occurs in Leviticus 22:23 with the term *edah* ("community") which occurs in Numbers 16:21, by noting that the Bible uses the term *tokh* ("the midst") in connection with both of them.

b. They arrive at the definition of the term *edah* ("community") as referring to ten adult Israelites by interpreting the phrase "that wicked community" as referring to the ten spies who brought evil reports regarding the Promised Land.²⁸

The requirement of ten is, thus, based upon a tenuous connection established among three distinct verses – none of which is in any way associated with prayer or a quorum. This point was recognized by the Ran, who said that these verses are merely an *asmakhta*, since prayer itself was introduced by the Rabbis and therefore could not be biblical.^{28a}

The main thrust for the requirement of ten for acts of sanctification, however, is based upon Leviticus 22:32: "That I may be sanctified in the midst of the Israelite people."²⁹ This verse, which follows rules and regulations concerning sacrifices, states their purpose: "You shall not profane my Holy name, that I may be sanctified in the midst of the Israelite people." Disobeying these laws profanes God's name, while obeying them sanctifies God's name. That is all that the *pshat* (literal meaning) of the verses conveys.

The verse does not state that a quorum is necessary, nor did the Rabbis rule that the rituals mentioned in the prior verses require a *minyan*. Nor does the term "Israelite people" as used in the verse exclude women. Since women were neither prohibited nor exempt from bringing sacrifices, this verse might well be understood to include women. In fact, the Mishnah simply states "less than ten."³⁰ It does not specify "ten males," nor does it specifically exclude women as it does in other cases.³¹ The only ones specifically excluded are "slaves and minors." Thus also the early codifiers, when noting the requirements of a *minyan*, state merely *asarah gedolim u-vnai horin* – "ten adults who are free" (i.e., not slaves).³²

Some opponents to the ordination of women base their position on the following sources: (a) Rabbi Joseph Caro (d. 1575) states: "It [the *kaddish*] cannot be recited with fewer than ten adult free males."³³ (b) Rabbi Mordekhai Yafe (d. 1612) states that the most common meaning of *b'nai yisrael* ("Israelites," as used in the verse "so that I may be sanctified amongst

the Israelites”) is “adult males.”³⁴ He also adds that slaves, women, and minors do not count in the quorum because they are not “obligated” to recite the Shema and to pray. But Rabbi Joseph Caro does not explain why he felt it necessary to add the term “males” when the Mishnah and the codifiers who preceded him did not deem it necessary to do so.

Rabbi Mordekhai Yaffe does not deem it necessary to validate his position that equality of obligation is a requirement for being counted in a *minyān*. In fact, there is no basis for this requirement in the Talmud. It is a relatively late rabbinic addition to the *Halakhah* based not upon a Scriptural text but upon “reason” alone. Indeed, this very fact moved Rabbi David Feldman to try to validate this notion rationally.³⁵

As we have seen the basic criteria qualifying one to be included in a *minyān* are: (1) *gedolim* – belonging to the class of adults, and (2) *b’nai horin* – being free individuals. In the rabbinic period women were at a certain age classified as adults, but never as being completely free, because they started life as being legally subservient either to father or brother, and, when married, to their husbands. No one in our society today can reasonably argue that a woman is not as legally free as a man. Nor would any one today challenge her status as an adult. The criteria for eligibility to be counted in a *minyān* have therefore not changed. What has changed is the reality which now enlarges the number of those who meet the criteria.

III. SHELIAH TZIBBUR

Another objection to the ordination of women is based on the opinion that a woman cannot serve as a *sheliah tzibbur*. According to this view, since only one who is “obligated” can fulfill the obligation of others (*lehozi aherim yedai hovatam*), women – who are not obligated in the same manner as men to pray – cannot serve as *sheliah tzibbur*. Accordingly, women should not be ordained, since a rabbi is often called upon to lead services.³⁶

An analysis of the sources reveals that the historical function of the *sheliah tzibbur* has changed. Fulfilling the obligations of other is no longer the function of what we call the *sheliah tzibbur*. It is rather to ensure that the congregation prays together, and generally to enhance the service.

There are two terms used in rabbinic literature for the person who leads a congregation in prayer: *hazzan* and *sheliah tzibbur*. Although these terms are often used interchangeably,³⁷ they represent two distinct institutions,³⁸ and reflect the different functions which developed for different reasons.

Hazzan is used in tannaitic literature to indicate several functions. He was responsible for removing the Torah from the ark,³⁹ for giving instruction to the participants in the service,⁴⁰ and for determining the abilities of the prospective Torah readers.⁴¹ He was not necessarily the Torah reader, although he decided who would read and, on occasion, he himself might

read.⁴² In the rabbinic period the *hazzan* was a synagogue official whose functions were similar to those of a sexton or an elementary school teacher in our day.⁴³ *Sheliah tzibbur* was and is used to describe the person who actually leads the service and who may fulfill the prayer obligations of others (*lehozi et harabim yedei hovatam*),⁴⁴ who are present at the service but who for various reasons could not themselves fulfill their obligations.

When does a *sheliah tzibbur* fulfill the obligations of others? According to the Rambam, when the people listen to the *sheliah tzibbur* and answer "Amen" after every blessing, it is as if they are praying themselves (i.e., he has enabled them to fulfill their obligation).⁴⁵ But, continues the Rambam, he who knows how to pray cannot have his obligation fulfilled by anyone other than himself. The *Tur* agrees.⁴⁶ However, the *Beit Yosef* defines the term *aino yodeah le-hitpallel* ("does not know how to pray") as referring to an individual who does not know how to recite the prayers, but who understands what the *sheliah tzibbur* is saying.⁴⁷ For him the *sheliah tzibbur* cannot fulfill his obligation.

While the *Shulhan Arukh* states that any individual can prevent a particular person from serving as a *sheliah tzibbur* by insisting that he does not consent to being "represented" by him, the *Magen Avraham* qualifies this statement by saying that it refers only to those times (*bizmaneiheim*) when the *sheliah tzibbur* would fulfill the obligations of others by means of his own prayers. In those cases, says the *Magen Avraham*, the *sheliah tzibbur* is functioning as an agent, and must have everyone's consent. But now (*attah*), when everyone knows (*bekiim*) the prayers, the *sheliah tzibbur* serves not as the public agent, but, rather, for the recitation of *piyyutim*.⁴⁸ Note the change that has taken place in the concept of the function of the *sheliah tzibbur*. It is no longer that of "fulfilling the obligation of others," but rather that of leading in the recitation of prayers which in no way involve the concept of obligation.

The *Arukh Hashulhan* refers to a number of views regarding the manner in which one may fulfill his prayer obligations.⁴⁹ One may do so: (1) by reciting the prayers in Hebrew whether or not one understands Hebrew; (2) by reciting the prayers in another language which one does understand; or (3) by listening to and understanding every word which the *sheliah tzibbur* recites⁵⁰ and, some say, by reciting every word with the *sheliah tzibbur* even if one does not understand what he is saying.

Today, when all of our congregants have prayerbooks with translations for those who cannot read Hebrew, and often with explanatory notes, we are in the category of competent worshippers (*bekiim*), and our obligations cannot be fulfilled by a *sheliah tzibbur*.

The *Shulhan Arukh* does indeed stipulate that the *amidah* should be repeated by the *sheliah tzibbur* even if the entire congregation has prayed and is competent.⁵¹ But the reason given for this practice is not that of ful-

filling the obligation incumbent upon any of the congregants, but rather that of *lekayem takkanat hakhamim* – to preserve an ordinance promulgated by the sages.⁵² Obviously the repetition does not serve as an opportunity to have one's obligation fulfilled by the *sheliah tzibbur*. In today's synagogue the office of the *sheliah tzibbur* does not involve any concept of "agency." He is a *hazzan*, a leader of the communal prayer service, who ensures that the *minyán* prays *together*,⁵³ and who enhances the service by the manner in which he leads it. Hence the claim that a woman may not serve as a *hazzan* or *sheliah tzibbur* because she may not fulfill the prayer obligations of a male congregant has no halakhic validity today.

IV. EDUT

A major objection to the ordaining of women as rabbis is the fact that the *Halakhah* prohibits women from serving as witnesses in most cases. Since a rabbi is often called upon to serve as a witness to a *ketubah* or a *get*, a woman rabbi would be expected to serve in a presently halakhically prohibited role.

It has been demonstrated elsewhere that even if we assume that the prohibition of women as witnesses is biblical (*deoraita*), the Rabbis have themselves formulated the principle that under certain circumstances *yesh koah beyad hakhamim la-akor davar min hatorah*, "the sages are empowered to abrogate even a biblically rooted norm."⁵⁴ But, while this can be a rabbinically valid solution, it is by no means clear that the prohibition is, in fact, biblical. The sources indicate that even as the determining factors in the case of the prohibition of counting women to a *minyán* were not biblical verses but rather the social and functional realities of earlier times,⁵⁵ so also were these realities determinative in the case of the prohibition of having women act as witnesses.

To be sure the *gemara* derives the prohibition from biblical verses,⁵⁶ but the fact that the *gemara* cites biblical verses in answer to the question *menah hanei milei* ("how do we know . . .") is not proof that the injunction is biblical. It is often, rather, an attempt by the Rabbis to associate an existing practice with biblical verses. The rabbinic affirmation *adam dan gezeirah shavah lekayem talmudo* – that "one may have recourse to a *gezeirah shava* in order to validate a tradition or a practice" – indicates that the Rabbis were aware that a law or a widespread practice whose origin was unknown was by them at times "derived" from, or associated with, biblical verses by means of the principle of *gezeira shava*,⁵⁷ the logically most questionable of Rabbi Ishmael's thirteen principles by which the Torah was to be interpreted.⁵⁸

The Rambam considers as biblical the law prohibiting women from acting as witnesses. However, he rejects the proof-texts used by the *gemara*. Instead, he bases the prohibition upon the fact that the verse "by the mouth

of two witnesses" (Deut. 17:6) is stated in the masculine and thus specifically excludes women.⁵⁹ The *Kesef Mishneh* (ad loc.) is unhappy with this proof, since the Torah generally uses the masculine form when it wishes to include both men and women.⁶⁰ Thus, while the prohibition was generally accepted, its origin or source was not clear. Perhaps that is why the Rambam wanted to strengthen the prohibition by stating that it was biblical. The *Shulhan Arukh* simply states that a woman is unfit to serve as a witness without attributing this rule to the Bible.⁶¹ It seems clear, therefore, that some halakhic authorities recognized by the tradition did not consider the prohibition against women serving as witnesses to be indubitably biblical.

Moreover, the rabbis did permit women to serve as witnesses in certain cases. Commenting on the statement in the Mishnah that "any testimony for which a woman is not fit, those persons enumerated in the Mishnah also are not fit," the *gemara* says, "But if a woman is fit, they are also fit."⁶²

The areas from which they were excluded are those in which they were considered as not being knowledgeable or reliable due to their lack of experience or interest. For example, their material status depended upon their husbands or fathers and, therefore, women were not conversant with, or interested in, monetary matters. The social reality was that women did not fit the definition of *gedolim u'venai horin* ("free adults").⁶³ This is no longer the case. Contemporary women have careers, are involved in all kinds of businesses and professions, and have proved to be as competent as men. Therefore, we must reclassify the status of women vis-à-vis *edut* based upon the realities of our era. The general criteria established by the Rabbis whereby one is to be adjudged qualified to serve as a witness may very well remain the same. What has changed is the reality which now enlarges the number of those who meet the criteria.

It may well take time before the acceptance of women's testimony will be legitimized in traditional Jewish law. In any event, the politicized religious establishment in Israel would negate any position and denounce any action by the Conservative movement in the field of *Halakhah*. This fact has not stopped Conservative Judaism from acting in such areas as conversion and divorce. It should not stop us in the area of *edut* – or in the area of women's ordination.

NOTES

1. "On the Ordination of Women as Rabbis – Position Papers of the Faculty of the Jewish Theological Seminary of America," henceforth referred to as *Faculty Papers*.

2. Dr. Israel Francus, "On the Ordination of Women," *Faculty Papers*, p. 35.

3. Avodah Zarah 55b.
4. For discussion on *Prozbul*, see Mishnah Sheviit 10:2-3 and Gittin 36a-b. For questioning of witness see Sanhedrin 32a.
5. Dr. David Weiss Halivni, "On the Ordination of Women," *Faculty Papers*, pp. 3-7.
6. Chapter I.
7. See *Ketuboth* 7b, *Tosafot* s.v. *she-ne'emar*. See also *Bayit Hadash, Tur Even Haezer* 34, s.v. *hamekadash*.
8. *Bayit Hadash*, loc. cit. The *Bah* (*Tur Even Haezer* 62, s.v. *ein mevarkhim*) states that *birkhat hatanim* is only a rabbinical enactment (*takkanat hakhamim*). According to the Rambam (*Hilkhoth Ishuth* 10:6), the blessings *einan meakvot* are not a necessity for the validity of the marriage. See also *Arukh Hashulhan, Even Haezer* 62:12.
9. *Ketuboth* 7b.
10. *Ibid.* 8a and *Megillah* 23b.
11. See *Prisha, Even Haezer* 62, note 11.
12. *Rosh, Ketuboth*, chap. 1, 12; *Tur, Even Haezer* 34; *Shulhan Arukh Even Haezer*, 34, 4; The Rambam does not mention any requirement of a *minyán* for *birkhat erusin*.
13. *Seder Kiddushin ve-Nissuin*, pp. 16 ff.; see also I. Klein, *Guide to Jewish Religious Practice*, pp. 394-95.
14. See above notes 9, 10.
15. *Hilkhot Ishuth* 3:23.
16. *Even Haezer* 34.
17. *Ibid.*
18. *Sefer Mitzvot Gadol* (SEMAG) *Hikhot Kiddushin*, p. 125a. See also *Hagaot Maimoniyot Hilkhot Ishut* 3:23, note 40.
19. *Ozar Hagaonim*, B. M. Levin, *Ketubot*, p. 16.
20. *Ibid.*
21. *Sefer Hamanhig*, ed. Y. Rafael, vol. II, p. 540: "Even though in all the commandments the person who performs the commandments recites the blessing, the bridegroom, since he is harried and nervous, will not be able to concentrate on the blessing."
22. *Turei Zahav, Baer Haitev, Beit Shmuel Even Haezer* 34. For a full discussion of the reasons given for having someone else recite the blessings, see *Sedei Hemed Hashalaim*, vol. VII (*maarekhet hatan v'kallah*) p. 39, par. 18.
23. *Pithei Teshuvah, Even Haezer* 34, note 1.
24. See, for example, *Ketuboth* 8a, Rashi s.v. *sameah*. See also *Mahzor Vitry* (chap. 472, p. 590) and *Siddur of R. Solomon Ben Samson of Garmaise* (ed. M. Hershler, p. 248). The *Abudraham*, Wertheimer edition (Jerusalem, 5723), pp. 359 ff., has a complete discussion of all of these blessings. See also *Arukh Hashulhan, Even Haezer* 34, 2 ff.

25. For an example of the present-day debate on this issue, see Joel Wolowelsky in *Amudim*, Kislev 5743, pp. 86-88.

26 Weiss-Halivni, op. cit., pp. 8-9.

27. See *Berakhot* 21b for variants in this quotation both in names and in the text itself.

28. Numbers 14:27 obviously does not refer to the ten spies but, rather, to the community that accepted the report of the spies. This community must have included women as well.

28a. Ran to *Megillah* 23b, s.v. *ve-ein nosin*. See also E. Urbach *Hahalakhah-mekorateha Vehitpathutah Yad la-Talmud*, 1984, p. 80, where Urbach shows that laws derived by *midrash* were not considered biblical if another interpretation of the verse was possible.

29. *Berakhot* 21b. This verse is used to prove the opinion that the *kedushah* (which is recited during the repetition of the *amidah*) cannot be recited by an individual but requires a community. This opinion became the accepted *halakhah*. The opposing opinion does not consider this verse as proof that the *kedushah* requires ten.

30. *Megillah* 4:3.

31. See, for example, *Mishnah Berakhot* 3:3, 7:2; *Hagigah* 1:1; *Kidushin* 1:7.

32. Rambam, *Hilkhot Tefillah* 8:4. See *Kesef Mishneh*, *Hilkhot Berakhot* 5:7, and Rambam, *Hilkhot Berakhot* 2:9, where it is specified that the *minyán* cannot contain slaves or minors. The *Tur* (*Orah Hayyim* 55) states that these ten must all be free people and adults who have signs of puberty.

The *Beit Yosef*, *Orah Hayyim* 55, discusses the different points of view regarding the inclusion of one minor to complete the quorum. The *Kol Bo* 11 cites cases where even three minors could be counted. The proof-text of this is *Mishnah Megillah* 4:6, which prohibits a minor from fulfilling the obligation of others but does not prohibit a minor from being counted in a *minyán*.

Even though most authorities do not permit counting a minor, the fact that some authorities would include minors who are not obligated proved that the equality of *hiyyuv* is not a consideration for being counted in a *minyán*. The reason given that it is permissible to count minors is that the *shekhinah* requires a minimum of ten. Therefore, any group of ten conforms to the requirement "that I may be sanctified in the midst of the Israelite people."

The *Kol Bo* 11, quoting the *Sheilthoth* of *Rav Ahai*, states that ten people who have completed their prayers and have heard *kedusha*, *kaddish*, *barkhu*, and the whole order of the service, can be counted in another *minyán* to help one person who has not recited the prayers. If equality of obligation is a consideration, then people who have completed their obligation should not be eligible to be counted. Since they are counted, it follows that a *minyán* can be composed of people, some of whom are obligated and some of whom are not.

A person who is under a ban (*menudeh*) cannot be counted in a *minyán*. (Rambam *Hilkhot Talmut Torah* 7:4, *Tur, Yoreh Deah* 334). Even though a *menudeh* is obligated to pray, he cannot be counted. Once again, we see that equality of obligation is not a consideration for being counted in a *minyán*.

33. *Shulhan Arukh, Orach Hayyim* 55:1.
34. *Levush Hatekhelet* 55:4.
35. "Women's Role and Jewish Law," *Conservative Judaism*, XXVI, 4:36. He uses the case of an *onen* as proof. For a refutation of his argument, see *Birkhei Yosef* (the *Hida*), *Orach Hayyim* 55:5.
36. See above, note 26.
37. For example, *Arukh Hashulhan*, entry *hazzan*, and *Ikar Tosafot Yom Tov to Mishnah Shabbat* 1:3 and *Tur Orach Hayyim* 124. The *Abudraham*, p. 126, says that the *sheliah tzibbur* is customarily called the *hazzan*.
38. See *Rosh, Berakhot* chap. 5, 17; *Mordekhai, Megillah* 817; *Tosafot Berakhot* 34a, s.v. *lo*.
39. *Mishnah Yoma* 7:1; *Mishnah Sotah* 7:7.
40. *Tosefta Sukkah* 4:6, *Tosefta Taanit* 1:14.
41. *Mishnah Shabbat* 1:3, see *Shabbat* 11a and Rashi ad loc., s.v. *ha'hazzan*.
42. *Tosefta Megillah* 3:13 and *Tosefta Kifshuta* ad loc., p. 1196.
43. Salo Baron, *A Social and Religious History of the Jews*, vol. II, p. 367.
44. See, for example, Rambam, *Hilkhot Tefillah* 8:4, 9-10; *Tur Orach Hayyim* 128; *Shulhan Arukh Orach Hayyim* 53:19; 124:1; *Arukh Hashulhan Orach Hayyim* 124.
45. Rambam, *Hilkhot Tefillah* 8:4, 9-10, and 9:3, 9.
46. *Orach Hayyim* 124.
47. *Ibid.*, s.v. *u'leahar*.
48. *Orach Hayyim* 53:19, note 20. *Kaddish* is recited by mourners who are not acting in the capacity of *sheliah tzibbur*, and the congregation can be a respondent to the doxology. It may be recited only if a *minyán* is present but that does not mean that it requires a *sheliah tzibbur*. It is widely accepted that women may recite *kaddish* and the congregation may respond. Professor Saul Lieberman permitted it in The Seminary, and he listened and answered Amen.
49. *Orach Hayyim* 124.
50. Commenting on the word *yekhaven* used by the *Tur* and *Shulhan Arukh* (*Orach Hayyim* 124, 1), the *Beit Yosef* and *Magen Avraham* interpret it to mean "understand," for otherwise *yekhaven* is an inappropriate word.
51. *Orach Hayyim* 124, 3.
52. The reason why this repetition will not be considered a *berakhah levattalah* is precisely because of the *takkanah*. The rabbis did not want to differentiate between various *minyanim* and, therefore, decreed that the *amidah* should always be repeated. Similarly, in the case when there is no

one benefiting from the public recitation of *kiddush* and *berakhah ahah me-ein sheva*, the reciter is not acting as a *sheliah tzibbur*. To omit any of the above would result in a rule that varies according to circumstances (*natatah devarekha lesheiuirin*), and the rabbis refrained from doing that.

A different reason for the repetition of the *amidah* in a congregation that is competent is to enable the congregation to recite *kedush* (*Arukh Hashulhan, Orah Hayyim* 124:3, quoting the *Tur*). Once again, the person leading the service is not acting as an agent to fulfill the obligations of others.

53. With regard to *kaddish*, see note 48. In the recitation of *barkhu* the leader is not serving as an agent who fulfills the obligation of the congregation, but rather, offers the congregation the opportunity to respond. This is exactly what occurs when a person recites the blessing before the Torah reading. It is interesting to note that the Codes refer to fulfilling one's obligation only in the case of the repetition of the *amidah*. Concerning *kaddish* and *barkhu* the Codes talk about responding (*onim*). In addition, it was customary for the congregation to recite a prayer while the leader recited *barkhu* (see *Tur, Orah Hayyim* 57). If one must listen in order to have his obligation fulfilled, the leader in this case would not be fulfilling the obligation of the congregation, since the congregation is reciting a prayer at that time. As far as *kedushah*, there is no talmudic requirement to say it (*Kol Bo, Hilkhoth Tefillah* 11).

54. Joel Roth, "On the Ordination of Women as Rabbis," above, p. 761.

55. See above, p. 726ff.

56. *Shevuot* 30a.

57. T. P. *Pesahim* 33a (chap. 6:1). In this case we do not have to worry about the possibility of misusing this rule of hermeneutics due to the fact that the outcome is already unknown.

58. S. Lieberman, *Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary, 1962), p. 61.

59. *Hilkhot Edut* 9:2. See also SEMAG, *Lavim* 214. However, the SEMAG does not say *min hatorah* in the case of women, but he does say *min hatorah* in the case of *reshaim*. It is noteworthy that the *Tur, Hoshen Mishpat* 35, omits women from the list of incompetent witnesses.

60. Similar objections are raised by the *Kesef Mishneh* and *Lehem Mishneh* concerning the proofs used by the Rambam for prohibiting slaves and fools from serving as witnesses.

61. *Hoshen Mishpat* 35:1, 14

62. *Rosh Hashanah* 22a. See *Torah Temimah, Devarim* 19:15, note 44, and *Encyclopaedia Judaica*, vol. 16, 586, for a list of cases where women are admitted as competent witnesses.

63. See above p. 55. It is interesting to note that the *Encyclopedia Talmudit* (s.v. *ishah*), when discussing the status of women as witnesses, uses the term "trustworthiness" as the topical subheading rather than *edut*.