

## Women and the Minyan

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### שאלה

May women count in the minyan and serve as שליחות ציבור?

### תשובה

Since most Conservative congregations count women in the minyan, the answer to the question must by necessity turn to analysis of the proposed halakhaic bases for why women may count in the minyan and serve as שליחות ציבור, as well as address the question of whether women have an equal obligation to prayer with men.<sup>1</sup> Following the analysis, a new proposal is offered.

The Committee on Jewish Law and Standards permitted women to count in the minyan, and, by extension, to serve as שליחות ציבור, in 1973. However, the issue has continued to engender debate and halakhaic positions have continued to crystallize since then as the Conservative movement has become more and more egalitarian in its profile. A brief overview of the various stages and positions in the halakhaic discussion of women and minyan within the Conservative movement is necessary before an evaluation and new position can be proposed. Special attention will be devoted to the 1973 Law Committee decision since, in addition to its importance, not all of the papers relating to that decision are published, or even extant. The positions to date are, from the perspective of this paper, already precedented halakhaic responsa. As such it is crucial that our discussion begin with these papers, and that we determine whether there is anything new to add to a question that has already been “asked and answered” for some time.<sup>2</sup>

There are three stages of discussion to be analyzed: 1972-1976, 1977-1992, and from 1993 to the present.

### Stage One: 1972-1976

The halakhaic discussion of the status of women with regard to the minyan began in 1972 when Ezrat Nashim, a group of Conservative Jewish women activists, brought its platform of halakhaic reform of the status of women to the Rabbinical Assembly Convention.<sup>3</sup> On August 29, 1973, the Law Committee discussed the position papers of Rabbi Aaron Blumenthal and Rabbi Phillip Sigal (both in favor of women counting in the minyan) and of Rabbi David Feldman (opposed to women counting in the minyan).<sup>4</sup> It appears from the Minutes that the Law Committee began to hear a series of proposals

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*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.*

on the status of women from Rabbi Blumenthal on January 25, 1973, and May 3, 1973, with the first substantial discussion held on June 27, 1973.<sup>5</sup> At that meeting Rabbi Blumenthal urged the circulation of Phillip Sigal's paper. The discussion from that point on took the form of a debate between the suggestions of Rabbi Sigal (supported by Rabbi Blumenthal) and Rabbi Feldman.<sup>6</sup> The discussion concluded on August 29, 1973, with approval of a motion, by a vote of nine in favor and four opposed, which read: "Men and women should be counted equally for a minyan."<sup>7</sup>

All that was approved was the ruling, since those voting in favor could not reach agreement on the argumentation. In an October 5, 1973, circular to the Rabbinical Assembly membership about the decision to count women in the minyan from Rabbi Seymour Siegel, then Chairman of the Law Committee, four "basic attitudes of the members" of the Law Committee are described. The circular also contains a digest of the August 29th meeting and summaries of the papers by Rabbis Blumenthal, Sigal and Feldman. Rabbi Siegel wrote that two attitudes represented those voting in favor of the resolution and two attitudes represented those voting against. Those voting in favor were split between those who supported the halakhic argumentation proposed by Rabbis Blumenthal and Sigal and those who were not convinced by the halakhic argumentation. Those voting against the resolution were split between those who supported the halakhic argumentation of Rabbi Feldman and those who dissented on other than strictly halakhic grounds, being concerned with the wisdom of the decision and its consequences regarding the life of the family, the synagogue and the Movement. Rabbi Siegel did not publicize who on the Law Committee fell into which group, if there was overlap, and which sides were stronger than the others. He did not even report the vote, but concluded his letter with the words: "I wish to call your attention to the fact that the text of the resolution was as follows: *Men and women should be counted equally for a minyan*. The vote did not refer to the adoption of any particular teshuvah, though, of course, the discussion was generated by the material presented by our colleagues, Aaron Blumenthal, Phillip Sigal and David Feldman."<sup>8</sup>

Rabbi Sigal's paper proposes that there is no essential halakhic objection to women counting in the minyan. He first posits that "it is clear that public worship is not a mere option in the halakhah but a mandatory requirement."<sup>9</sup> Rabbi Sigal then argues that public prayer is constituted in a minyan consisting of ten. Rabbi Sigal emphasizes that not until the Shulhan Arukh (OH 55:1) is it explicitly stated that the ten means ten males, עשרה זכרים. Earlier codifications, including the Mishnah (Megillah 4:3) and Maimonides (Mishneh Torah, Hilkhoh Tefillah 8:4) are not so explicit, saying merely עשרה without specifying זכרים. That they meant to exclude women "may have been an assumption," Rabbi Sigal writes, "at first, in the light of women's exemption from certain mitzvot. But this cannot be stated unequivocally."<sup>10</sup> Rabbi Sigal then proceeds to argue that the halakhah is not essentially opposed to women's role in public prayer, in an attempt to interpret the codification of the Shulhan Arukh as מנהג rather than established law. He begins this section of his responsum with the perhaps astonishing words:

We must establish that women are obligated to pray. For if they are not obligated to pray, we could neither urge their attendance nor expect them to participate. Furthermore, if they are not bona fide worshippers, there would be no grounds to count them in a quorum to legitimize worship for others, since if one is not obligated he cannot serve as the instrument that enables others to fulfill their obligation. We will find, however, that the halakhah clearly established the obligation of women to participate in public worship.<sup>11</sup>

Rabbi Sigal refers to halakhic sources, including the beginning of Hilkhoh Tefillah in the Mishneh Torah, which assert women's obligation to prayer. Rabbi Sigal notes the injunction of Mishnah Rosh

HaShanah 3:8 that only one of similar or greater obligation can help fulfill the obligation of others. But from the fact that women are obligated to prayer Rabbi Sigal makes a significant jump in arguing that their obligation is to public prayer and equivalent to that of a man. Citing a series of talmudic and medieval rulings involving permission of women to participate in the Torah service, to blow the shofar, to read the Megillah, to perform ritual slaughter, and even to count as the tenth for a minyan of prayer,<sup>12</sup> Rabbi Sigal infers that women were present and expected to be present for public prayer. Therefore, a woman's obligation and status is the same as a man's. Therefore, the exclusion of women from the minyan as codified in the Shulhan Arukh is not based in halakhah but is rather a "מנהג" which has lost its reason and its appeal...which often runs counter to the best interests of Jewish communities."<sup>13</sup>

The classical source that permitted a woman to be counted as the tenth for a minyan belongs to R. Simhah and is reported in the Mordecai on B'rakhot 48a, note 173. While this point is underemphasized in the published version of Rabbi Sigal's paper, it receives greater prominence in the excerpt from the original paper which was included in Seymour Siegel's circular to the RA membership. There, Rabbi Sigal concludes:

In the light of the Mordecai on B'rakhot 48a, and in view of all of these considerations, our Committee on Jewish Law and Standards ought to declare that women may equally with men constitute a community of worshippers in order to fulfill the great mitzvah of public worship....[and] we would not limit the ratio of women in a minyan.<sup>14</sup>

The language of Rabbi Feldman's paper as presented in the "excerpt" in Seymour Siegel's circular is far stronger than the 1977 published version and speaks more directly to the arguments put forward by Rabbis Sigal and Blumenthal. Feldman is cited by Siegel as writing:

Rabbi Sigal demonstrates the importance of public prayer as opposed to private, then demonstrates the obligation of women to pray at least privately, and then concludes that *therefore* they are to be counted in the minyan. That this logical leap is inadmissible is evident from the very existence of separate halakhot governing public as opposed to private prayer....As to explicit halakhah on the subject of women in the minyan, he acknowledges that Karo in the Shulhan Arukh OH 55:4 legally excludes women from the count, but then opposes to him the earlier permitting view of Mordecai...He overlooks the fact that Mordecai *questions* [R. Simhah]....The telling fact is that, according to Be'er HaGolah, Mordecai is the very source of Karo's prohibition. To this lone and questionable reference, Rabbi Sigal adds speculative material to prove that such a view is indeed in the halakhic tradition. Speculation of this sort might have been in order, were it not for a formidable body of *explicit* halakhah to the contrary.<sup>15</sup>

Rabbi Feldman, after providing ten sources which contradict Rabbi Sigal's proposal, concludes with a critique of Rabbi Sigal's conclusion, writing that "even if this lone and questionable source [i.e. R. Simhah in the Mordecai] were an adequate basis" for the first part of Rabbi Sigal's conclusion that the Law Committee should declare women equally part of the community of worshippers, it does not argue that we not "limit the ratio" of women in the minyan, since R. Simhah in the Mordecai limits the ratio himself to 1 to 9.

Rabbi Blumenthal's approach differed from that of Rabbi Sigal in that he did not argue on the basis of women's obligation in regard to prayer. He critiqued Rabbi Feldman's assertion that "equality

of men and women is not at stake here, but equality of obligation.”<sup>16</sup> Citing the talmudic source permitting a minor to count in the minyan for Birkat HaMazon (B’rakhot 48a), Rabbi Blumenthal argues that since in that case the minor is not equally obligated but counts, obligation is not of issue. Rather, Rabbi Blumenthal focuses on Rabbi Sigal’s usage of R. Simhah as quoted in the Mordecai, and sees counting women equally with men in the minyan as a “logical extension of the opinion articulated by the Mordecai which originates with Rabbi Simhah of Spier and is shared by others” that women can count in order to help the community say the prayers which require a quorum. Rabbi Blumenthal argues that this is a conclusion that “Rabbi Feldman might have arrived at...but he refrains from taking that step.”<sup>17</sup>

Rabbi Feldman responded to Rabbi Blumenthal in his paper, explaining why he refrained from “taking that step” and insisting that equality of obligation is indeed the issue. The statement of the Mordecai cannot be divorced from the question of exempting others from their obligations. In answer to Rabbi Blumenthal’s argument of a minor permitted to be counted in the minyan for Birkat HaMazon, Rabbi Feldman cites a tosafot (to Rosh HaShanah 33a s.v. **הא**) on that very issue, which reads: **ומקטן דמברך ברכת המזון אף על פי שהוא פטור אין ראייה לאשה דקטן בא בכלל חיוב**, that is, the fact that a minor can count in the minyan for Birkat HaMazon even though he is exempt from the obligation cannot be used as an inference that so may a woman count, because the minor will come into the category of obligation (when he reaches the age of majority) while a woman will not. Therefore, a minor has a higher status than a woman because, unlike a woman, a minor will eventually become obligated. Rabbi Feldman thus dismissed Rabbi Blumenthal’s challenge that equality of obligation was not of issue and insisted that “no halakhic basis for counting women in the minyan is offered by the papers at hand.”<sup>18</sup>

Rabbi Siegel reported to the Rabbinical Assembly membership that many on the Law Committee were not convinced by the attempt of Rabbi Blumenthal and Rabbi Sigal to permit women to count in the minyan on the basis of the statement of the Mordecai in the name of R. Simhah. Agreeing with Rabbi Feldman, many thought that relying on this particular source is questionable since it is clear that the mainstream of halakhah forbids the counting of women, that “to suggest that counting women is within the halakhic process, based on the Mordecai, is untenable.”<sup>19</sup> However, others disagreed with that view. Even if we have the position of but one against the mainstream, if that position is preserved is that not a part of the halakhic process? Can we not lean on it for support if necessary? The necessity to go against the mainstream and depend on a minority view is perhaps created today because of the changing role of women in our society. That reality and the position of R. Simhah should justify the change. Others, while convinced that the societal change mandated a halakhic adjustment and the inclusion of women in the minyan, were unwilling to do so on the basis of the arguments put forward by Rabbis Blumenthal and Sigal. Perhaps agreeing with the halakhic reasoning of Rabbi Feldman but determined to resolve according to Rabbis Blumenthal and Sigal, this (unidentified) group in the Law Committee sought another alternative.

Since the resolution proposed did not make reference to the reasoning of either Rabbi Blumenthal or Rabbi Sigal, the alternative for those unconvinced by their arguments was to consider the resolution a **תקנה**. In his summary of the deliberations, Rabbi Siegel explained that the one group “of course, recognized that the weight of the tradition and traditional authorities were obviously opposed, but, in line with our philosophy of Jewish law it is possible to depend on even one authority when it is necessary to do so.” Regarding the other group Siegel wrote:

There were other proponents of the resolution who felt that halakhic considerations based on past authorities was too weak a standard upon which to depend. It was the view of these colleagues that the decision of the Committee should be viewed as a **תקנה**. The right to institute **תקנות** is vested in the authorities of each

age when they see the need to correct an injustice or to improve the religious and ethical life of the community. It was felt that since we have given a greater role to women in synagogue life and education, and since we wish women to attend synagogue services, that it was appropriate now to recognize the equality of men and women in regard to minyan.<sup>20</sup>

Neither Rabbi Siegel nor the Minutes record how many of the nine rabbis voting in favor of the resolution voted for it as a *תקנה* rather than on the basis of the arguments put forth by Rabbis Blumenthal and Sigal. However, it is not for us to question the procedure of a court that came before us, even if we might not desire to pass a *תקנה* by concurrence of less than half of the majority of the Law Committee. The fact that this position was reported and disseminated by mail to the membership of the Assembly by the Chairman of the Law Committee implies that this was a procedurally official position and not just an “interpretation” of the resolution.

While the issue of women and the minyan continued to be debated within the Conservative movement on the central and local level, the various positions argued during the 1973 deliberations of the Law Committee establish a theoretical typology for all the positions to be later articulated. What we might call the “school” of Rabbis Blumenthal and Sigal believes that it is acceptable to depend on a single position, if necessary, even if the weight of precedent and tradition speaks to the contrary. The “school” of Rabbi Feldman disagrees with that view of the halakhic process. It is not enough to find one source and make it say what you want it to say. On the contrary, the halakhah flows like a river and one cannot ignore the direction of the flow. There may be a point where the river can choose where it will go. But once that decision is made there is no going back.

Rabbi Sigal argued that an exclusion of women from the minyan was not a necessarily essential element of halakhah since women are indeed obligated to prayer as well as men. Therefore, he understands the codification of the Shulhan Arukh (and all who follow) as a *מנהג* and, as such, it can be modified with cause. But others disagreed. The fact that Karo codified the exclusion, and the fact that that codification is confirmed by all subsequent *אחרונים*, means that we are not talking about a mere *מנהג*. But even if it were a “mere *מנהג*” that is not to say that it is not binding. The principles of *מנהג הלכה*, *מבטל הלכה*, that a custom can even supersede a law, and *ההלכה כביתראי*, that the law is according to the later authorities, should not be dismissed as the antics of a fundamentalist wing of an otherwise progressive rabbinate. A jealous loyalty to precedent and established custom is what puts the “Conservative” into Conservative Judaism. This was the position which distinguished Zacharias Frankel from the more liberal German reformers in the 1840s. His opponents argued that since halakhah does permit prayer in any language there is no halakhic impediment to praying in German. In fact, all of the early German reforms were based on carefully argued halakhic defenses. But Frankel argued that that is not enough. The conservative spirit of the people through history, the *Volksgeist*, is even more determinative than halakhic discourse. We all recognize that a gifted halakhist can argue for almost anything. But a Conservative rabbi must above all be loyal to the historical spirit of the people which the halakhah only attempts to describe. The law as it develops through history is the concretization of the spirit of the people, and, perhaps, of God’s revelation. This is the key distinction between Conservative and Reform Judaism as they first developed. Reform Judaism sought to uncover the original pristine Prophetic Judaism before it became oppressed with talmudism and medieval rabbinism which reflected the nature of an inward looking ghettoized Jewry. Conservative Judaism, on the other hand, argued that there is no pristine original essence of Judaism which can be uncovered by a careful reading of the Bible and ancient history. On the contrary, the essence of Judaism is the experience of the Jewish people through history. The essence of Judaism is fluid since it develops through time. What is crucial and often misunderstood is that this is an emphatically “Conservative” position crafted as a

Romantic attachment to the experience of Jewish history in contradistinction to the liberal intellectualism of Reform Judaism. This too is what Solomon Schechter referred to as “Catholic Israel,” the totality of Jewish experience through history which argues for a religious conservatism.<sup>21</sup>

It may have been this sense of classical Conservatism that prevented the positions of Rabbis Blumenthal and Sigal from attaining a majority of the Law Committee. The centrists of 1973 could not but agree with Rabbi Feldman’s arguments that there was no reasonable way to argue that the halakhic sources could be used to support women’s inclusion in the minyan. Jewish law and practice developed so that it was indeed *the* law that women did not count in the minyan. However, they also believed that law can change. One cannot retroactively reroute a decision that was made upstream by the flow of the river. However, from where we stand the river continues on its journey. It has not emptied into a lake. While we cannot change what has already been determined upstream, we can direct the river from where we stand and influence where it will flow from us. For that reason, and because of the extraordinary circumstances of the changed societal nature of the role of women, these rabbis argued for a תקנה. The halakhic system, they claimed, gave them the authority to take an extraordinary measure against precedent if the situation warranted, and for the sake of the system itself. In order to save the river we are justified in redirecting it to avoid danger and provide for a safe course. In fact, such action would be praiseworthy. As such caretakers of the tradition, this group voted for the 1973 resolution as a תקנה, and their support insured its success.

Supporters of the halakhic changes in relation to the status of women in Jewish law in the Conservative rabbinate consistently argued that what distinguished us as a Movement was that we approached change *within* the halakhic system. We see from the 1973 discussion that there were three basic approaches to what it means to effect change within the system: through the use of classical minority positions, through extraordinary halakhic measures, and through loyalty to precedent and tradition. Even the third category, represented by Rabbi Feldman, was certainly not opposed to all change. There was a level of what Zacharias Frankel called “moderate reform” which was permitted and laudable within the precedented tradition. Tradition was never understood by Conservative rabbis to be a stagnant monolith.

## **Stage Two: 1977-1992**

As analyzed above, the 1973 resolution of the Law Committee permitting women to count in the minyan could not have passed without the belief that the Conservative rabbinate held the authority to effect an extraordinary change within the community of the Conservative movement. For many rabbis, perhaps a majority of the Assembly, the authority of the Committee on Jewish Law and Standards to effect a תקנה on the status of women or to adjudicate questions of law even against the clear weight of precedent was unquestioned. However, the authority of the Law Committee was not sufficient in resolving the issues facing the Jewish Theological Seminary in its decision on whether or not to admit women to its Rabbinical School.<sup>22</sup> At the 1977 Rabbinical Assembly Convention a resolution was passed requesting that Rabbi Gerson Cohen, the Chancellor of the Seminary, address the issue of the ordination of women. Many in the Rabbinical Assembly felt it improper to dictate halakhah to their teachers at the Seminary, although they felt no qualms in sending a clear message of how they felt. From this point, the locus of the discussion shifted from the Law Committee and the Rabbinical Assembly to the Seminary.

In 1979 the Seminary Faculty prepared position papers on the question and all related questions, among which was the concern that a rabbi should be able to count in a minyan and serve as ציבור שליח. And so the question was reopened. Two of these papers, by Rabbis Joel Roth and Mayer Rabinowitz, were voted into the record of the Law Committee on November 7, 1984. These papers, along with the dissenting papers of Rabbis David Weiss Halivni and Israel Francus, are directly rel-

evant for our discussion.

Of these four papers by Seminary Talmud professors, Rabbi Rabinowitz's was the only one which agreed with the 1973 Law Committee resolution in granting full equality to women in regard to counting them in the minyan. Although not referring to that discussion, Rabbi Rabinowitz agreed with Rabbi Blumenthal that "analysis of the sources dealing with minyan reveals that equality of obligation is not a consideration for being counted in a minyan."<sup>23</sup> His analysis of the talmudic sources leads him to conclude that:

The basic criteria qualifying one to be included in a minyan are: 1) גדולים—belonging to the class of adults, and 2) בני חורין—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 minyan have therefore not changed. What has changed is the reality which now enlarges the number of those who meet the criteria.<sup>24</sup>

While acknowledging the ruling of the Shulhan Arukh (OH 55:1) that kaddish can only be recited with ten adult free males, Rabbi Rabinowitz questions that "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."<sup>25</sup> Here Rabbi Rabinowitz is echoing Rabbi Sigal's dismissal of the Shulhan Arukh in favor of the Mishnah which does not explicitly say that women are excluded from a minyan.

Rabbi Rabinowitz's paper has the advantage of being a clear and cogent argument for an egalitarian approach to women and prayer based on halakhic sources. Flowing from the school of Rabbi Blumenthal and Sigal, Rabbi Rabinowitz goes a step further in arguing that not only can we base our halakhic position on one voice from the tradition even though precedent developed otherwise, but that in this case that one voice was the true authentic halakhah, presented in the Mishnah, and only later "forgotten" by the time of the Shulhan Arukh. There is nothing essential about the exclusion of women from the minyan, evidenced by the failure of the Shulhan Arukh to explain it. Women are not excluded by the Mishnah, and they should not be excluded today. Those who did not accept Rabbi Rabinowitz's argument, on the other hand, were, among other things, unconvinced by the argument that the Shulhan Arukh fails to *explain* why women are excluded from the minyan. The Shulhan Arukh rarely explains anything. That is, law is just as often based upon practice and precedent than reason. Rabbi Rabinowitz may have illuminated what the criteria of the Rabbis were for counting in a quorum, and we could certainly agree that were the Rabbis with us today they would consider women to fall within their criteria. However, at that time they did not. And that is how the law developed. Change in the societal nature of women should supply sufficient cause to reexamine the question, but that does not in and of itself overturn the precedent. We cannot ignore the fact that we are not the Rabbis determining the criteria of who counts in a minyan. Rather, we are the rabbis of our own time and have inherited a tradition which instructs us that women do not count in the minyan, and that is what we must address. That is, those flowing from the school of Rabbi Feldman were concerned primarily with precedent, which argued against counting women in the minyan, whereas those flowing from the school of Rabbi Blumenthal and Sigal were concerned primarily with the classical sources, which, at the least, could be used to argue either position with equal justification, and at the most, could be used to argue forcefully for women's inclusion in the minyan, as argued by Rabbi Rabinowitz.

The outstanding issue is the question of obligation. Rabbi Rabinowitz's opinion, following

Rabbi Blumenthal, was found by many to be unconvincing in holding that equality of obligation is not the central question. The contentious element in the approaches of Rabbis Blumenthal and Rabinowitz is that they seem to accept that women's obligation is *not* equal, and that *even so* they should count equally in the minyan (a paradox that Rabbi Sigal was careful to avoid). Rabbi Rabinowitz extends his approach to the question of שליח ציבור, arguing that the role today of the שליח ציבור has become eclipsed by the role of רחן. The "reader" no longer fulfills the role of agency when all have their own סידורים from which to pray. Rabbi Rabinowitz cites a ruling of the Magen Avraham that מי שבקי אינו על ידי אחרים יוצא, that one who is knowledgeable cannot fulfill his obligation through others<sup>26</sup> However, while it might be the case that the repetition of the Amidah does not completely satisfy our individual obligations, the fact that we all hold סידורים does not mean that we have no need of a שליח. Often our כוונה is unfocused and we benefit, then, from the public repetition. Saying "amen" through the repetition could still be very important in the fulfillment of our obligation to prayer.<sup>27</sup> Additionally, while one can accept Rabbi Rabinowitz's argument that agency is only an issue in the repetition of the Amidah rather than kaddish,<sup>28</sup> in general our congregants do see their rabbis and cantors as their agents in reaching the divine. We should not be afraid to recognize that the major function of clergy is to help our people reconnect with the holy. That is the function of prayer, to which rabbi and cantor are agents if nothing else. This is not to say that Jewish worship is a sacrament in the formal sense. Any Jew can pray individually. But prayer is often easier (and preferable) in community.

Ultimately, those who take issue with Rabbi Rabinowitz's approach argue that that *even if* we could accept his argument that a שליח ציבור no longer performs the function of agency, he has still implied that at one time that function was performed. And if that function was performed, then how can we say that minyan has nothing to do with obligation! Even if practical agency is no longer relevant and vestigial, a vestigial organ is still part of the organism and tells us something about its history and development. It is impossible to divorce minyan from the issue of obligation. Throughout history minyan has provided a forum wherein Jewish men have gathered to fulfill their obligations to prayer. Whether or not one can fulfill such obligations in private is irrelevant since what is critical is that the minyan fulfills the obligations. A woman, then, cannot count in the minyan if her obligation is not equal.<sup>29</sup>

Rabbi Rabinowitz reflected elements of the positions of Rabbis Blumenthal and Sigal in his approach. He would argue, theoretically, that even if the weight of tradition argued to the contrary, as long as one can interpret the sources in a certain direction, that direction is available to the פוסק when there is sufficient cause. Rabbis Roth, Halivni and Francus fall more under the "school" of Rabbi Feldman, that we must work with the weight of tradition and precedent rather than fight against it.

As discussed above, there were a number of centrist rabbis who, while they sympathized with the "school" of Rabbi Feldman, supported the 1973 decision as a תקנה because of the extraordinary circumstances of the changed societal reality regarding the role of women which created an injustice in the life of the synagogue. After 1979 these rabbis no longer had to choose between Rabbi Feldman's position and a תקנה because Rabbi Roth's paper provided for them what appeared to be the perfect solution to the dilemma of being caught between tradition and change.

The first section of Rabbi Roth's paper argues that a woman may accept upon herself the equal obligation to perform various mitzvot and by such can aid in the fulfillment of that obligation by others, i.e. count in a minyan and serve as שליח ציבור. Rabbi Roth never questioned what he understood to be the normative halakhah that in general women do not count in the minyan. Neither did he question Rabbi Feldman's explanation that the reason why women do not count in a minyan is because their obligation to prayer is not equal to that of a man. He attempted to argue, through the normative halakhic tradition, that there would be no objection to women *assuming* a greater obligation and hence qualifying for counting in the minyan.<sup>30</sup> Because of the importance of this responsum in our discus-

sion a brief summary is in order.

Rabbi Roth begins by asking, “May women perform those mitzvot from which they are exempt, and may they recite any blessings which may be appropriate to those mitzvot?”<sup>31</sup> Rabbi Roth demonstrates three positions in response to this question. The Ravad answers that women may not perform such mitzvot and they may not recite any blessings over them.<sup>32</sup> Maimonides answers that women may perform such mitzvot but they may not recite any blessings over them. Rabbi Roth explains that this may or may not be the view of Rashi, and that this was the view of Joseph Karo and the practice of the Sephardim. Finally, Rabbenu Tam, Rabbi Yitzhak HaLevi and later Askhenazic decisors held the view that women may perform and may recite the blessings for positive time-bound commandments.<sup>33</sup> Therefore, the majority Askhenazic tradition is that women may perform mitzvot from which they are exempt and may recite the blessings, even the words *אשר קדשנו במצוותיו וציוונו*. That is, once a woman takes upon herself the practice of a mitzvah she is as one commanded in its fulfillment. Rabbi Roth’s second question is: “If women may observe mitzvot from which they are exempt, is their observance of these mitzvot governed by all the same rules as is the observance by men of those same mitzvot?” That is, are women entitled to violate a Sabbath prohibition in the observance of such mitzvot?<sup>34</sup> Rabbi Roth finds a “direct and unequivocal response” in the statement of Rabbi Lazar in the Yerushalmi (Kiddushin 1:7): “The paschal sacrifice by women is voluntary, but it takes precedence over Shabbat.” Rabbi Roth finds a similar response of the Ravad.<sup>35</sup> The third question addressed by Rabbi Roth’s paper is: “Can voluntary observance of a mitzvah ever become in some significant sense religiously obligated?”<sup>36</sup> Rabbi Roth finds an affirmative answer in the words of the Magen Avraham: *נשים פטורות מספירת העומר דהוי מצוות עשה שהזמן גרמה* ׀ ומיהו כבר שווין עלייהו , חובה , that is, that women are exempt from counting the Omer because it is a positive time-bound commandment, but they have made it an obligation upon themselves.<sup>37</sup> Rabbi Roth finds precedent for this statement of the Magen Avraham in the Halakhot Gedolot (attributing the view to the gemara), Eliezar ben Joel HaLevi (the Ravia, thirteenth century), Samson Bar Zadok (a student of Rabbi Meir of Rothenberg), and Isaac Di Molena (late sixteenth century).<sup>38</sup> At this point, Rabbi Roth has cogently argued for a woman’s right to accept upon herself an obligation to a mitzvah she might not otherwise be obligated to perform. Up until this point, as we shall see below, Rabbi Halivni would agree with Rabbi Roth.

The final question which Rabbi Roth must ask is: “If it can, can that self-imposed obligation have the same legal status as the obligation of men which, legally speaking, is ‘other-imposed’ either by Torah or by rabbinic authority?”<sup>39</sup> The question revolves around the statement of Rabbi Haninah (Kiddushin 31a and parallels): *גדול המצווה ועושה ממי שאינו מצווה ועושה*, that is, that greater is the one who is commanded and complies than the one who is not commanded and complies. This statement must be harmonized with the rule of the Mishnah (Rosh HaShanah 3:8): *זה הכלל כל שאינו מחויב בדבר*: *אינו מוציא את הרבים ידי חובתן*, that is, that one who is not “obligated” may not aid in the fulfillment of obligation of those who are so obligated. The question is whether, when a woman accepts upon herself, voluntarily, an halakhic obligation, can she be *מחויבת* as one who “inherited” the obligation, or is she as one *שכר מצווה ועושה* and, hence, unable to perform agency for one *המצווה ועושה*? Rabbi Roth grapples with this problem and concludes that Rabbi Hanina’s statement refers to the *מצווה שכר*, the reward, rather than the obligation. That is, it is a theological, perhaps even aggadic statement and is irrelevant to the issue of equality of obligation. A woman may accept upon herself the practice or even the obligation of performing a mitzvah from time to time. Such a woman could not fulfill the obligations of others. But if the woman accepts upon herself the obligation to perform a mitzvah *equally with men*, and she understands that failure to comply is a “sin,”<sup>40</sup> then she is equally *מחויבת* and may perform agency.<sup>41</sup> Rabbi Roth clarified his conclusion that “women may be counted in a minyan and serve as ׀ only when they have accepted upon themselves the voluntary obligation to pray as re-

quired by the law, and at the times required by the law, and only when they recognize and affirm that failure to comply with the obligation is sin.”<sup>742</sup>

Rabbi David Weiss Halivni agreed with almost all of the steps of Rabbi Roth’s arguments. While he withdrew his paper after the Seminary decided to ordain women in 1983, and so his paper was not published in the 1988 volume edited by Simon Greenberg, he does in his 1996 autobiography make reference to his “responsum”:

I made some suggestions (among them, that women take upon themselves the observance of time-bound commandments from which, traditionally, they were exempted) which would symbolize submission to halakhah, to the divine writ, and hence to God, and which might have reflected precedents. I even wrote a responsum outlining this view, which I later withdrew. My proposal was rejected as insufficiently egalitarian, because it maintained some restrictions on women and because its effect would not have been felt until a new generation of women grew up whose mothers observed time-bound commandments, thus obligating their daughters halakhically to do the same, as an expression of *Torat imecha*, “the instruction of your mother” (Proverbs 1:8). But without antecedent support, I would not tamper with any law or custom.<sup>43</sup>

Rabbi Roth’s responsum also “maintained some restrictions on women.” The only difference, then, is that Rabbi Halivni held that women had to take upon themselves the obligation for certain mitzvot for a generation in order for their obligation to “hold” and be equal to that of a man’s and only then could women perform agency for men. Rabbi Halivni was bothered by the statement of Rabbi Hanina, the prospect that even a vow can be annulled, and the fact that he only expected but a few women to comply, then, with this voluntary acceptance of mitzvot. Until such observance becomes an established מנהג, he held, women cannot perform agency and the Seminary should not ordain women.<sup>44</sup>

Rabbi Francus strongly disagreed with both Rabbis Roth and Halivni. While he agreed that a woman may “acquire the status of a חייבית—of ‘one obligated’ in relation to mitzvot from which she is exempt,” he categorically rejected the notion that “the quality of her ‘obligation’ be of such a nature as to qualify her to be מוציאה—to act as an agent to perform mitzvot’ in behalf of men.”<sup>745</sup> Through his examination of the sources he concludes that there is no way that a voluntarily assumed obligation can ever equal that which is otherly “imposed by the Torah or the sages.”<sup>746</sup> Rabbi Francus makes clear his objection to the approach of Rabbi Halivni as well as Rabbi Roth when he writes: “A woman can never—not today, not tomorrow, not next year, and not next generation—acquire the status of a חייבית—of one ‘obligated’ in relation to a mitzvah from whose performance she is now halakhically exempt, which would qualify her to act as agent in the performance of those mitzvot in behalf of men.”<sup>747</sup> If his intent was not clear enough, he explains in his footnote: “See also the paper of Dr. Roth...and the paper of Dr. Halivni...for different views. According to the former, it can be accomplished here and now, and according to the latter, only after a generation. I respectfully disagree with both.”<sup>748</sup>

After a few years of debate, the Seminary Faculty decided to admit women to the Rabbinical School in 1983. The decision of the faculty was based upon the collective arguments of the faculty papers, but not officially accepting any particular approach. This was not unlike the decision of the Law Committee on women in the minyan in 1973. But in the case of the Seminary, Rabbi Roth’s proposal did, at least to some extent, succeed in becoming Seminary policy. To this day the Seminary’s *Academic Bulletin* lists as a requirement for admission to Rabbinical School that “women candidates are required to accept equality of obligation for the mitzvot from which women have been traditionally exempted, including tallit, tefillin and tefillah.”<sup>749</sup> Similarly, a second minyan of the Seminary Syna-

gogue was founded after the decision was made to ordain women, called at that time Schiff II,<sup>50</sup> where only women who accepted the equal obligation to תפילה could be counted in the minyan and serve as ציבור שליחות, a policy which remained in effect until 1994.

The ten years from 1983 to 1993 can be understood, in the context of women in the minyan, as a period of soul-searching within the Rabbinical Assembly and the Conservative movement. The decision of the Seminary to ordain women had a tremendous effect in bolstering the move toward greater egalitarianism in Conservative synagogues. "If the Seminary can ordain women rabbis," many Conservative Jews reasoned, "certainly we can count women in our minyan!" But the repercussions in the rabbinate were more complex. Rabbi Roth's responsum had served the purpose of not only legitimating the admission of women into the Seminary Rabbinical School but simultaneously of *delegitimizing* the practice of counting women *equally* with men in the minyan, as authorized by the Law Committee in 1973. Not a few members of the Rabbinical Assembly were quite influenced by Rabbi Roth's arguments, not only because of his scholarship, which had played such an important role in the Seminary's admission of women into the Rabbinical School, but also because of his role within the Rabbinical Assembly as Chairman of the Law Committee from 1984 to 1992. Many rabbis who were committed to egalitarianism came to question the halakhic basis of the 1973 decision which did not reach the criteria of Rabbi Roth's responsum. Indeed, Rabbi Roth's position was much closer to Rabbi Feldman's than the other views from 1973. Committed teenagers and college students trained in those years at Camp Ramah and the Seminary were confused since outside of those central institutions there were few, if any, synagogues that followed Rabbi Roth's ruling.<sup>51</sup> But the sociological trend towards greater egalitarianism far outweighed the halakhic concerns of certain rabbis and other educated laypeople. A rabbi of an egalitarian synagogue would not consider "opening up old wounds." Also rare would be a rabbi of a synagogue moving towards greater egalitarianism who would seek to "rock the boat" of the political struggle by introducing the restrictions of Rabbi Roth's responsum into the arena. Additionally, there were many who were bothered by Rabbi Roth's maintenance of a separate "subsidiary" category of women in relation to men in terms of classes of worshippers. Such more "orthodox" egalitarians were far more comfortable with Rabbi Rabinowitz's paper which sees women in the same primary class as male worshippers.

Some understanding of the historical and sociological context of the struggle for "egalitarianism" in Conservative synagogues is necessary in order to understand the ambivalence which Rabbi Roth's responsum engendered. What Jack Wertheimer has called "The Triumph of Egalitarianism" was achieved through this period up to the mid-1990s. "Perhaps the most dramatic and visible change in Conservative synagogues during the past quarter century," Professor Wertheimer writes, "has been the introduction of egalitarian practices in virtually every aspect of congregational life."<sup>52</sup> In the initial 1996 report of the survey which he coordinated of Conservative congregations, Professor Wertheimer describes the process towards greater egalitarianism:

The introduction of...egalitarian practices often prompted heated debates within congregations. These sometimes dragged on for years and, in some instances, provoked dissatisfied members to leave their congregations because the pace of change was either too fast or too slow. On the national level, battles over women's equality focused on the advisability of admitting women to the Rabbinical School of the Jewish Theological Seminary, a question that was resolved affirmatively in 1983. Since the early 1970s, local congregations debated similar questions concerning the expansion of women's roles. Our surveys indicate that, by the mid-1990s, most of these conflicts have been resolved in favor of women's equality.<sup>53</sup>

Focusing only on the question of women counting in the minyan, studies have shown that while in 1962 only 6 percent of Conservative congregations counted women in the minyan, and that by the mid-1970s one-third to one-half of congregations counted women in the minyan, by the mid-1990s 83 percent of North American Conservative congregations counted women in the minyan.<sup>54</sup> Egalitarianism came to be an essential and positive identifying characteristic of Conservative Judaism. As Steven M. Cohen writes:

Certainly by the 1980s, the largely egalitarian stance of the Conservative movement served to mark a clear boundary with the Orthodox. In the past, most differences between the two could be chalked up to Conservative concessions to the demands of modernity. In contrast, the egalitarian stance constituted the first major distinction with Orthodoxy where Conservative leaders could point to a clear difference of principle, rather than a surrender to the pressures of a religiously lax constituency.<sup>55</sup>

Egalitarianism had become the standard of the new vitality of the Conservative movement. No longer seeing themselves as “mere compromisers and concessionists,” Conservative rabbis were finally able to look upon their Judaism as a principled reading of Judaism into modernity. For many, the egalitarian mode of worship came to be, and is, a high religious ground.

Such an atmosphere provided little room for those sympathetic with Rabbi Roth’s argument to do anything about it. To openly question the legitimacy of the 1973 Law Committee ruling would be to question the legitimacy of the whole enterprise of egalitarianism in the Movement. The ordination of women by the Seminary was seen as a confirmation of that enterprise; it could not be used as a critique. Intentional or not, the five long years that it took the Seminary to publish its faculty papers after the decision to ordain women probably served to quiet any unrest that the papers may have caused after receiving wider distribution. Nevertheless, the halakhic questions remained, especially at the Seminary where Rabbi Roth’s responsum still governed the Rabbinical School and the Seminary Synagogue.

### **Stage Three: 1993 to the Present**

A decade after the decision was reached to ordain women, many felt that it was time to establish the egalitarian principle on firm halakhic grounds. Rather than do so on the basis of Rabbi Roth’s responsum which sprang from the “school” of Rabbi Feldman, the new attempts by Professor Judith Hauptman, Rabbi Ismar Schorsch and Rabbi David Golinkin appeared essentially as reformulations of the position of Rabbi Sigal.

Professor Judith Hauptman published an article in *Judaism* in the winter of 1993 which argued that according to the classical rabbinic sources women were indeed equally obligated with men in regard to prayer.<sup>56</sup> Her paper caused somewhat of an uproar both from the Orthodox world, which she criticized for not emphasizing the true teaching of the halakhah regarding women and prayer, and from within the Conservative world for challenging the bases of the halakhic discussion from 1979. While she does not mention Rabbi Sigal, she formulates a similar argument, that women are obligated to pray, that women rightfully have a place in public worship, and that the exclusion of women from the minyan was the custom of a society where women had a lower status. Today, when women’s societal status is equal to that of men, an exclusionary practice should be abolished and we should return to the essential halakhah which understood women and men as equals in regard to prayer.

*Judaism* published a response to Professor Hauptman by Michael J. Broyde, an academic and

Orthodox rabbi.<sup>57</sup> His response is also remarkably similar to Rabbi Feldman's response to Rabbi Sigal. Rabbi Feldman had written: "Rabbi Sigal demonstrates the importance of public prayer as opposed to private, then demonstrates the obligation of women to pray at least privately, and then concludes that therefore they are to be counted in a minyan."<sup>58</sup> Similarly, Rabbi Broyde writes that Professor Hauptman "assumes that because women are generally obligated to pray, they can fulfill the role of shaliah tzibbur/cantor in communal prayer."<sup>59</sup> That is, the demonstration that women have an obligation to pray does not mean that their obligation, according to classical halakhah as interpreted through the ages, is equal to a man's. On the contrary, there are ample halakhic sources which imply that it is not and state that women may not count in the minyan. Professor Hauptman's argument, which was articulated in her article and expanded in her rejoinder to Rabbi Broyde,<sup>60</sup> sought to separate minyan from שליחת ציבור. To count in a minyan one must be obligated to prayer, as women are. But to serve as a שליח ציבור one must also have social status. A woman lacked social status in the same way as a beardless man.<sup>61</sup> Rabbi Broyde argues that the analogy of a woman to a beardless man is "an erroneous analogy as that person is fully obligated in communal prayer and counts in the quorum, unlike women."<sup>62</sup> But Professor Hauptman was attempting to separate the issue of שליח ציבור from minyan, much the way Rabbi Rabinowitz had done in his responsum. By arguing that the requirement for leading the minyan was social status above obligation, she sought to make a clear case for halakhic "adjudication" since today women are certainly not considered to be of a lower social status than men. But Rabbi Broyde could not accept the argument, insisting that "any discussion of women as prayer leaders, without a discussion of minyan/quorum and who counts in it is incomplete."<sup>63</sup>

Rabbi Broyde's critique is very convincing for those who have trouble accepting the logic of Professor Hauptman's argument. As she herself explains it, the structure of her argument is:

- 1) Because women were always obligated to pray, and their obligations have even increased over time, prayer for women need not and cannot be regarded as a self-imposed obligation; 2) however, obligation alone is not sufficient. For a woman to lead a congregation, the community must view her social standing as equal to a man's.<sup>64</sup>

We can agree with her that social status plays a role in the determination of legal categories. Therefore, it is difficult to understand how she can separate the two. The *reason* why women were excluded from the minyan is because they were not considered to be of full status as were the men. For that reason their obligation to perform mitzvot was of a lesser degree, that of the category of minors and slaves. As she explains elsewhere, "The reason women are exempt from positive time-bound mitzvot is that only the full-fledged members of society are obligated to perform the ritual acts that define Jewish practice."<sup>65</sup> The first part of her argument should have been enough, that women are equally obligated with men to pray. That was, in fact, the only part of her argument that was utilized by Rabbi Golinkin in his responsum, to be discussed below.

That assumption of Professor Hauptman, that women are equally obligated to pray, is what is most contentious. She cites B'rakhot 20b to explain that women are obligated to pray דררחמי ניהו because they too are in need of petition. It is by no means clear whether the gemara was referring to the personal need to pray for mercy, or the need of the community as a whole to pray for the communal welfare, which is what a minyan does. As Professor Hauptman has explained, however, it makes sense that women would have been excluded from such a purpose since they were not considered full citizens of the community. While Professor Hauptman has demonstrated that the classical sources assert a woman's obligation to pray, many have not been convinced that a woman's obligation is equal to a man's, or relates to public prayer at all. Additionally, she must rely on the classical sources in opposi-

tion to the way they have been understood since at least the time of the Shulhan Arukh. It may be true that many later authorities have followed Nachmanides' position that women have the same time-bound obligations to prayer as men, at least for Shaharit and Minhah on weekdays (as opposed to the view of Maimonides, that the Toraitic prescription for prayer is a general obligation on all, but the specific time-bound liturgical requirements are rabbinic obligations solely upon men). But it is also the case that it is unclear whether that obligation extends to Maariv or to Shabbat and festivals, and that the halakhah was very lenient with classifying a woman for any number of reasons as a טרודה, busy or occupied, and hence exempt from the regular obligations for prayer.<sup>66</sup> And not all later authorities followed Nachmanides. According to Rabbi Aharon Ziegler, who has committed to writing many of the halakhic positions expressed orally by Rabbi Joseph Soloveitchik, Soloveitchik was concerned that only a full Amidah would satisfy the requirement of Maimonides rather than a simple Modeh Ani. He concludes that "Even women must say the entire *Shmoneh Esrei* every day, at least once a day. Once the children grow up and the women have more time available they should add to that basic requirement. But at no time can they be satisfied with less."<sup>67</sup> What is phrased as a *mahmir* position from the premier rabbinic authority of American modern Orthodoxy still falls far short of the *equal obligation* to prayer with men that Professor Hauptman reads from the halakhah.

Professor Hauptman recognized that she was departing from the general trend of interpretation, extending "an invitation to the halakhic and scholarly community to re-examine contemporary synagogue practices in the light of classical Jewish texts." She admittedly was seeking "a different conclusion," examining "the texts in question from fresh perspectives, with the hope of finding alternate, yet valid ways of interpreting them."<sup>68</sup> In this way she falls within the "school" of Rabbis Blumenthal and Sigal, since she is willing to rely on new readings of classical sources even when tradition and precedent developed differently through the intervening centuries. Her position is distinct from that of Rabbi Rabinowitz in that she does understand the issue of obligation as critical. Professor Hauptman anticipates the objections to her position, and argues, along lines similar to Rabbi Sigal, that the exclusion of women from the minyan is not an essential conclusion of the classical sources but "has been the prevailing practice—*minhag*—for centuries."<sup>69</sup> She then proceeds to argue that there are times when *מנהג* can be overturned. But several objections remain. Firstly, it is questionable whether the exclusion of women from the minyan can be relegated to *מנהג*. But even if it is, we are still faced with the already mentioned aversion of classical Conservative Judaism from dismissing a custom just because it is a custom. On the contrary, Conservative rabbis by definition are supposed to protect the customs and traditions of our people as developed through its history. This objection to Professor Hauptman's views is made clear by her argument that we may disregard this particular *מנהג* because the exclusion of women from an equal role with men in society is *חוקת הגויים*, a practice of the non-Jews, and, hence, not binding.<sup>70</sup> But counting in the minyan is a particularly Jewish practice! To say that Judaism is by nature egalitarian were it not for outside influence is a difficult argument to accept. As students of the Historical School, we understand that Judaism was formed out of the various environments which have given it sustenance. If we were to question every practice which was influenced by the non-Jewish world we would be left with a very empty tradition. Neither patriarchy nor egalitarianism are exclusively Jewish concepts.

These difficulties aside, Professor Hauptman's paper was extremely influential in reconfiguring the debate on women in the minyan. Rabbi Schorsch, the Chancellor of the Seminary, and Rabbi Golinkin, currently the President of the Schechter Institute, came to agree with her that women are indeed equally obligated to prayer, that their obligation is equal to a man's, that there is no need to specifically accept an equal obligation, and that men and women therefore count equally in a minyan.

Rabbi Schorsch's endorsement of Professor Hauptman's arguments coincided with other major changes in the Seminary Synagogue. After ten years of using the Old Reading Room,

the Women's League for Conservative Judaism decided to fund a project that would provide the "Schiff II" minyan with a more permanent synagogue space. The Old Reading Room was completely refurbished as a permanent synagogue, renamed "The Women's League Seminary Synagogue." While this project was underway, Rabbi Schorsch, as Rabbi of the Seminary Synagogue, agreed in the fall of 1994 to two major changes in the worship of that minyan: 1) the inclusion of the אמהות would be permitted as an option for the שליח ציבור in compliance with Rabbi Joel Rembaum's responsum approved by the Law Committee in 1990; 2) women would be counted equally with men in the minyan. Regarding the first change, Rabbi Schorsch explained that he was bowing to pressure from the community even though he himself thought that such a liturgical innovation "does violence to the text." He endorsed the second change, however, quite enthusiastically as motivated by his deep commitment to egalitarianism, because of the overwhelming practice in Conservative synagogues, and because of the convincing scholarship recently published by Professor Hauptman.<sup>71</sup>

While Rabbi Schorsch's decisions in 1994 were popular, there was some dissent. The inclusion of the אמהות was justified by a Law Committee responsum,<sup>72</sup> but the basis by which Rabbi Schorsch chose to count women equally in the minyan was not even phrased in any responsum! Rabbi Schorsch's response was that he, as the Rabbi of the Seminary Synagogue, invoked his authority as מרא דאתרא to make a halakhic decision. His decision was informed by Professor Hauptman's paper. It was not necessary for him to write up as a responsum considering what she had already written. A halakhic decision does not have to be committed to writing in order to take effect. And the conclusion he had reached, that women should count equally in the minyan, in fact conformed with the 1973 decision of the Law Committee, whereas Rabbi Roth's paper, while voted into the Law Committee record, was not discussed in that forum. Nevertheless, many in the Seminary community were bothered that there was no responsum written as such which justified the new practice of the Seminary Synagogue. Thus, the ambivalence caused by Rabbi Roth's responsum was renewed in a new form since we were still left to wonder what was in fact the halakhic grounding for the egalitarianism of Conservative Judaism.

In 1997 the Vaad Halakhah of the Rabbinical Assembly of Israel approved a responsum by Rabbi David Golinkin which argued, along lines similar to Professor Hauptman, that women are equally obligated with men in regard to prayer and can thus count in the minyan.<sup>73</sup> He lists the halakhic sources that argue for a woman's obligation, and posits that therefore her obligation is equal and she can fulfill the obligation of others. He recognizes that there is a vast halakhic literature forbidding women from counting in the minyan,<sup>74</sup> but emphasizes: איסור כזה אינו נזכר באף מקום בתלמוד או אצל הרמב"ם, that the prohibition is not explicit anywhere in the Talmud or Maimonides.<sup>75</sup> That is to say, of course, that the prohibition is quite explicit after Maimonides. Recognizing, then, that his conclusion, while based on the classical sources, does go against the אחרונים, Rabbi Golinkin argues that we are permitted to base ourselves on minority positions if necessary, and that we are permitted to rule against the prevailing custom and tradition if our situation varies from the situation of those who confirmed the inherited customs and tradition.<sup>76</sup> In this way we see that Rabbi Golinkin combines elements from various approaches: he agrees with Rabbi Feldman, et al., that equality of obligation is key. But he also agrees with Professor Hauptman and Rabbi Schorsch that a woman is in fact equally obligated to prayer according to the classical sources. Finally, he agrees with Rabbis Blumenthal and Sigal that one can rely on classical sources, even on minority views, and can use such sources to override precedent and tradition if conditions warrant.

One must understand that where we stand on practical issues and how we approach halakhah in theory is not easily defined into a left and right wing. Rabbi Golinkin's approach to halakhah, as seen in this responsum and others, is that if a source can be found as a support then the change can be argued. But if no source can be found for support then no change can be argued. While he is "liberal" in permitting innovation and change of precedent, he insists that changes in halakhah be supported in

previously existing halakhic sources. Rabbi Roth, on the other hand, is more flexible, since he argues that there are times when an authority can overturn precedent if there is sufficient cause and if the original reasons for the norm no longer exist, even if there is no specific source to support the change. The ultimate authority, for Rabbi Roth, is the rabbinate, which can even, theoretically, overturn matters *מדאורייתא*.<sup>77</sup> While Rabbi Golinkin's approach is more lenient in regard to the prevailing precedent, it is ultimately more stringent since it requires some kind of precedent on which to be based. In the case of women and the minyan, Rabbi Golinkin's approach is far more liberal than Rabbi Roth's since Rabbi Golinkin is able to free himself from precedent and tradition and rely on his (and Professor Hauptman's) reading of the classical sources, whereas Rabbi Roth must work with the prevailing precedent.

At the conclusion of his responsum Rabbi Golinkin takes issue with one point of Rabbi Roth's responsum. Rabbi Roth had argued against the general imposition of equal obligation upon women by a *תקנה* "because the imposition of legal obligation by *תקנה* would make noncompliance with the dictates of the *תקנה* sinful. That would result in the creation of a large class of sinners where none now exists."<sup>78</sup> Rabbi Golinkin, who through his responsum achieves a result similar to the imagined *תקנה* by Rabbi Roth, responds that he sees no other way to read the classical sources except to conclude that women are already obligated to pray the same as men.<sup>79</sup> That is, the "large class of sinners" already exists. Rabbi Roth had continued his theoretical objection that no "segment of the Conservative movement should seek to impose a set of obligations not already recognized by the tradition upon any woman who is satisfied with the status quo."<sup>80</sup> Rabbi Golinkin responds that the decisions of rabbis are not necessarily binding on those who do not choose to abide by them.<sup>81</sup> "Any woman who is satisfied by the status quo" will not be guided by a decision permitting women to count in the minyan. But while Rabbi Roth's concern might have been for traditionally trained women who did not consider themselves obligated equally with men for prayer, he was probably more concerned with the greater mass of women of "egalitarian" congregations who are counted in the minyan by virtue of the 1973 Law Committee decision which makes no demands on obligation. If we say that to count in the minyan women must be equally obligated to prayer and we then continue to count all women equally in a minyan we are then saying that a great mass of tens of thousands of women have suddenly become "sinners." We must consider what we mean by "sin" and then ask ourselves whether we see this as problematic. It is unlikely that women of the Conservative movement would consider their obligations and their shortcomings any differently than do the men of the Conservative movement. The "New Proposal" below discusses the halakhic and theoretical implications of this condition.

## Discussion

The preceding detailed account of the various positions on the question of women in the minyan to date was necessary because each stage of deliberation on the question has rested upon the arguments of the stage before. Such is indeed the natural flow of legal development, that each chapter directly follows the one that came before. We have seen that two basic schools of legal philosophy have been represented, one believing that new readings of halakhic sources and the introduction of alternative halakhic sources can be used to overturn a precedent, the other believing that precedent will stand unless new compelling circumstances warrant a reexamination of the law, and that a new position can be justified within the historical body of tradition. The approaches of both schools can and have been used to justify the counting of women in the minyan. The arguments from the first school permitting women to count in the minyan (and serve as *שליחות ציבור*) that flow from the arguments of Aaron Blumenthal and Philip Sigal, Mayer Rabinowitz, Judith Hauptman and David Golinkin, claim that the halakhah in its pristine form recognizes the equality of men and women. The practice of excluding women from counting in the minyan and from active participation in the liturgy developed

due to societal influences rather than from the law itself. Women should now be counted in the minyan, either because in fact their obligation is equal to men's and we must restore the original egalitarian intent of the halakhah (as argued by Rabbi Sigal, Professor Hauptman and Rabbi Golinkin), or because obligation is not a relevant issue here at all (as argued by Rabbis Blumenthal and Rabinowitz), but rather the fact that women are today the societal equals of men, and that this reality must be reflected in liturgical practice just as in the past the condition (perceived or real) of women's inequality with men was reflected in the liturgical practice of the past.

### **A New Proposal**

The other "school" of approach to Jewish law is divided between those who would permit women to count in the minyan, those who forbid, and those who are ambivalent. The author of this paper, wishing to permit women to count in the minyan, falls into this other school. He has expressed reservations with the positions of Rabbis Sigal and Blumenthal, Rabbi Rabinowitz and Professor Hauptman and Rabbis Schorsch and Golinkin at each stage of the discussion. The author of this paper would have supported the *תקנה* in 1973 as the only way to justify the change since his halakhic sensibilities would have sympathized with the arguments of Rabbi Feldman even if his desire to change the law would have agreed with Rabbis Blumenthal and Sigal. For this reason he had believed that Rabbi Roth's responsum was the perfect solution to the dilemma, if anything because it grew directly from the perspective of Rabbi Feldman which in its turn grew from precedent and tradition. But the technicalities of Rabbi Roth's solution proved difficult to execute in practice. How can one, in the few minutes that one has as a minyan is gathering, determine if a woman considers herself obligated to prayer equally with men if she has never thought of the issue that way and yet she is offended if we would suggest that she might not be equal to a man? Many Conservative rabbis have been moved by the arguments of the more egalitarian position, recognizing new halakhic interpretations as worthy of consideration in light of an overwhelming change in sociological reality, in this case, the role of women in public life, and, specifically, in Conservative synagogues. If we believe that such a reality is proper, that is, that egalitarian worship is a high ground, that it is God's will, then we must be able to ground it in precedent and tradition as well. The following proposal attempts to do so on the basis of Rabbi Roth's and even Rabbi Halivni's responsa, which flow from the "school" of Rabbi Feldman.

Through the history of its incorporation at the Seminary and the Ramah camps there have been two major misconceptions surrounding Rabbi Roth's responsum. One was that a woman had to wear tallit and tefillin in order to count in a minyan. Another was that a woman had to pray three times a day to count in a minyan. The source for the first misconception is that Seminary policy has been that candidates for Rabbinical School accept equal obligation to all mitzvot including tallit, tefillin and tefillah. The source for the second misconception was the reasoning that if a woman did not pray three times a day then how can we say that she has accepted the equal obligation to pray? That these are misconceptions is clear from Rabbi Roth's paper when he writes: "Women may be counted in a minyan or serve as *שולחן* only when they have accepted upon themselves the voluntary obligation to pray as required by the law, and at the times required by law, and only when they recognize and affirm that failure to comply with the obligation is sin."<sup>82</sup> According to Rabbi Roth, then, a woman does not have to accept the obligation of tallit and tefillin (where no agency is involved) in order to count in the minyan and serve as *שולחן* (where agency is involved).<sup>83</sup>

More crucially, according to Rabbi Roth, women do not have to comply with the obligation, but rather they have to understand that failure to comply is sin. Women need not demonstrate any special observance beyond that of men, but rather an equal obligation. Just as men are obligated to prayer and hence count in a minyan regardless of how often they pray, so too would a woman equally obligated to prayer with a man count in a minyan regardless of how often she prayed. That is, we need

to recognize the authority of the law over ourselves, whether we observe it or not. The law holds by virtue of our acceptance of its authority, not by virtue of our lawful behavior. An analogy is speeding: the fact that I speed does not mean that I do not recognize that I am in violation of the law. I may always break the law but I also always recognize that I am in violation of the law, whether or not I will be asked to account for that.

This paper proposes an acceptance of the reality that *women in the Conservative movement have, as a general class, accepted upon themselves the equal obligation to prayer with men*. Such an assumption is preceded in the statement of the Magen Avraham discussed in Rabbi Roth's responsum, that נשים פטורות מספירת העומר דהוי עשה שהזמן גרמהו ומיהו שווין עלייהו חובה מצוות, that women are exempt from counting the Omer but they have accepted the obligation upon themselves.<sup>84</sup> Rabbi Roth invokes this statement in his responsum, and invokes support from a number of subsequent halakhic authorities, as discussed above. The Magen Avraham does not say that a woman must individually accept the obligation to counting the Omer. Rather, he says that "women" as a general class, have accepted this obligation. We should say so today regarding prayer, that because of the context of co-education and egalitarian worship in our synagogues, women as a class have accepted upon themselves the equal obligation for prayer. By recognizing this reality we achieve the challenge of Rabbi Rabinowitz's paper, to consider women as a part of the primary class of worshippers rather than of a subsidiary class.

Several objections can be raised against this proposal, and are now addressed individually:

1) How can we say that women as a class have accepted the equal obligation to prayer when it is clear that the majority of women in Conservative synagogues, just as the majority of men, do not pray three times a day? We respond that, based upon Rabbi Roth's responsum, observance is not of issue but rather acceptance of obligation and understanding that failure to comply is a sin. Therefore, the question is not whether Conservative women pray three times a day, but rather whether they understand their obligation to pray to be equal to that of men, and whether they understand that the failure to comply is a sin. We are comfortable in responding affirmatively to both questions. We must not be too dismissive of our constituency. There is a substantial ideological difference, if not a practical difference, between Conservative and other Jews. Conservative Jews, as individuals, believe that Jewish law is binding even if they fail in compliance. They believe that tradition should remain authoritative even if they do not always have a personal stake in its preservation. They believe in the concept of obligation, even if they would not phrase it as such. Professor Hauptman is correct when she argues that obligation is tied to issues of social status. Now that women have equal social status it is absurd to imagine that they would not recognize for themselves an equal obligation next to men.

These assumptions can be confirmed by recent sociological research. Samuel Heilman writes that "in effect, egalitarianism may be defined most simply as a willingness to afford equal rights *and obligations* to men and women in the synagogue."<sup>85</sup> Nancy Ammerman writes that "strong majorities agree that Conservative Jews are obligated to be observant, but equally strong majorities claim that they are able to choose how to be so and that they can be 'religious' without being observant. On the surface, these appear to be contradictory or hypocritical statements. Surely one must either obey the law or simply bargain it away. Those are the alternatives posed by the modernist frame. But Conservative Jews appear to be doing something different, neither obeying in full nor absolving themselves of that obligation."<sup>86</sup> That is, the unique religiosity of the Conservative Jew is one who believes in the authority of tradition even if behavior does not always conform to that authority. While there is certainly much work to be done in terms of religious *behavioral* education in the Conservative movement, the basic mindset of respect for tradition is already there, is firmly there, and is the defining characteristic of the Conservative Jew.

The fact that Conservative Jews do not observe all the laws does not mean that they do not recognize the law as the law. Rather, they are, by self definition, already the “large group of sinners” that Rabbi Roth is hesitant to establish. But this need not be read as such a negative appraisal. We should not be afraid of the word “sin.” Some would prefer that we use only the Hebrew terms עבירה or חטא, since the English word “sin” is too much encumbered by its associative role in Christian theology. Others would insist that we recognize the religious act for what it is, that it is our obligation as rabbis to “translate” our theology. “Sin” means an act of noncompliance with God’s will. The theology of sin means that there is no behavior that is outside the prescription of the Torah. We either act according to God’s ways, or otherwise. “Sin is conceived as an act of rebellion,” Solomon Schechter wrote, “denying the root, that is the existence of God, or his providence, or his authority, indeed, excluding him from the world.”<sup>87</sup> To act in a way other than that prescribed by the Torah and Tradition is to exclude God from the world. But that is not as unusual an act as it might at first seem. Whenever one behaves in a way other than that prescribed, one is living a life in the “secular” world guided by concerns, personal or others, but leaving God and Judaism out of it. We all do that quite often. We strive to do so less often. The expectation to bring God further and further into our lives is the challenge of Rosh HaShanah and Yom Kippur. We meet the challenge by, first of all, recognizing where we have fallen short. That recognition is the first step towards improvement, sometimes called תשובה. Mitzvah and sin are two poles of religious life that go together. As Abraham Joshua Heschel explained: “Both poles, mitzvah and sin, are real. We are taught to be *mitsvah-conscious* in regard to the present moment, to be mindful of the constant opportunity to do the good. We are also taught to be *sin-conscious* in regard to the past, to realize and to remember our failures and transgressions. The power of both mitzvah and sin must be fully appreciated.”<sup>88</sup> Therefore, while sin is surely a negative, the *recognition* of sin is a positive religious attribute. The fact that Conservative Jews recognize that they fall short of tradition is a sign of their inner piety. We should all recognize that we fall short of expectations.<sup>89</sup>

Crucial to this theological perspective is the understanding that “sin” means falling short of religious expectations, rather than committing an offense for which real punishment awaits. Mordecai Kaplan questions the use of the term “sin” in contemporary religious vocabulary:

Traditionally, “sin” implied: (1) that the commission of an act, or its omission, as the case might be, was an infraction of a law commanded by God, and (2) that such an infraction carried with it a penalty to be inflicted by man, by God or by both. That notion of sin is clearly *incompatible* with a spiritual conception of God, free from anthropomorphisms. To be compatible with a spiritual conception of God, “sin” would have to be the commission of an act, or the omission of one, that runs counter to the self-fulfillment of the individual as an integrated personality, or of mankind as a fraternal cooperative society. As long as people still associate the term “sin” with the old meaning, as is often the case at the present time, it would be wrong to characterize a breach of ritual observance as “sin,” since that would imply that the observance was divinely commanded, in a literal and not in a figurative sense, and that the breach of it was a punishable offense. That, however does not mean that we have no obligation to maintain religious observances and strengthen our faith and resolution in the pursuit of Jewish ideals.<sup>90</sup>

Kaplan is correct that the valence of the word “sin” is crucial to its appropriateness in contemporary religion, yet we might both differ with his presentation of the “old meaning” and propose that we are

ready for the “new meaning.” Even in pre-modern times the punishment that followed from failing to observe Jewish law was more often theoretical than real. In ancient times, when the halakhah was being crafted, the authority of the Rabbis over the people as a whole was minimal if existent at all.<sup>91</sup> Only in the medieval period did rabbis have real coercive power over the Jewish people, and even then the extent of that power varied in different communities. Usually *persuasion* has served as the means of “enforcing” Jewish law. There is, of course, the ancient concept that punishment is meted out by the hands of heaven for certain offenses. In general, Jews beg forgiveness for their sins before God even though they may never be brought to real account. We bring the accounting on ourselves. Yes, God commands, even if in the figurative sense. Belief that God commands means, for many today, to feel commanded by God. The commandedness of Jewish law is independent of its enforceability. Rather, commandedness depends on our conception of God’s will, and our performance thereby. “Sin” should not depend on a literal commander and punisher. But even if it did, and even if we agreed with Kaplan that the term “sin” can no longer be used, we would still conclude with Kaplan that we are obligated “to maintain religious observances.” One either fulfills or fails to fulfill an obligation. The failure to fulfill the obligation has religious meaning, even if the word “sin” is not the first that comes to mind.

2) Even if we accept the fact that Conservative Jews feel obligated towards mitzvot that they do not as a whole observe, on what basis can we assume that women feel *equally obligated* to the mitzvah of prayer? In fact, we cannot make a similar assumption regarding tallit and tefillin. While many of us believe that women *should* wear tallit and tefillin and accept such practice as obligatory, we cannot yet say that women as a class have assumed such an obligation. Recent sociological research has shown that while 83 percent of Conservative synagogues count women in the minyan, only 36 percent of girls of the Bat Mitzvah class of 5755 “reported that they were taught to put on tefillin, compared with 76 percent of the boys.”<sup>92</sup> Nevertheless, Barry Kosmin concludes that “there is little conflict over gender roles between home and synagogue. For most of these teenagers and their parents, both environments are now egalitarian.”<sup>93</sup> In a follow-up study on the attitudes of this same Bar/Bat Mitzvah class of 5755 four years later, Barry Kosmin and Ariela Keysar found that “the gender differences were again statistically insignificant.” If anything, the few very minor differences show a greater commitment on the part of the girls.<sup>94</sup> Tallit and tefillin and kippah are not good indices of egalitarianism since many regard them (perhaps erroneously) as “male clothing.” A woman does not have to dress or appear as a man in order to be equal with a man. Minyan, however, is the best index of the new egalitarian society because counting in the minyan is understood as being a full citizen of the community. While girls educated in a Conservative synagogue might not think to don tallit and tefillin if not encouraged to do so, it would unlikely ever occur to them that their obligation to pray was any different from that of the boys.

Much educational work needs to be done to “convince” women to wear tallit and tefillin and to cover their heads for worship. But in regard to worship in general, women do not see themselves as separate from the men in any religious sense. Both are subject to Jewish law and tradition, and both fall short. Both say *ואלקיים את כל דברי תלמוד תורתך באהבה* (and to fulfill with love all the things taught in Your Torah) and both say *כי חטאנו לנו אבינו סלח לנו* (forgive us Our Father for we have sinned).<sup>95</sup> Both are voting members of the synagogue, and both are responsible for “minyan duty” where such is the custom.

This natural development of a popular sense of equal obligation is not new today, at the beginning of the twenty-first century. It can be traced back as early as 1855. In that year the Jewish women of Mannheim in Baden, Germany, wrote a petition protesting against the maintenance of the benediction thanking God “Who has not made me a woman” in their new liturgy. In the course of this petition the women wrote:

Dank den weisen Anordnungen der hohen Behoerden geniessen die israelitischen Maedchen in den Schulen von der fruehsten Kindheit denselben Religionsunterricht, sie werden von den Lehrern und Rabbinen zur Schulentlassung mid den Knaben unter voellig gleichen Religionsgrundsuetzen ausgestattet, finden in denselben nur Liebe, aber keine Auscheidung bei der Gottesverrehrung, zu welcher *wir uns ebenso verpflichtet erachten wie unsere Maenner und Brueder.*

That is: “Thanks to the wise directives of the venerable authorities benefiting Jewish women through schools from their earliest childhood with the same religious education from teachers and rabbis as boys, leaving school with fully equal religious grounding, finding in the same only love and no separation from the honor due to God, towards which *we consider ourselves just as obligated as our husbands and brothers.*”<sup>96</sup> Michael Meyer, in referencing this source, notes that this was “an exceptional example of female religious activism.”<sup>97</sup> The protest was exceptional, but the change of religious attitude was not. These woman were exceptional in articulating what many women must have felt, and how most Conservative Jewish women must feel today. Religious education breeds devotion to religious tradition. The result of co-education is that women will feel the same devotion *and obligation* towards the tradition as men. The most direct expression of religious devotion is prayer. How could modern educated Jewish women feel any less bound to pray to God than men? This is the argument of the women of Mannheim, and we can comfortably reason that if women could reach such a conclusion in 1855, that co-education yields a sense of equal obligation to prayer, all the more so would they in the Conservative Judaism of today.

Rabbi Halivni, in his responsum, argued that only when enough women take upon themselves equal obligation so that there is “assurance of the continuity of their observance” can “meaningful equality” be enacted. “That may take a generation or so,” he writes.<sup>98</sup> But while Rabbi Halivni is insistent that a generation of practicing observing women establish the מנהג of women’s obligation to prayer, Rabbi Roth is content with the understanding that failure to comply is a sin. If we combine that standard of Rabbi Roth with Rabbi Halivni’s standard of “a generation,” then we stand on solid ground. A generation has indeed passed since 1979.<sup>99</sup>

Some have proposed that we need merely argue that since the מנהג of counting women in the minyan has been clearly established in the overwhelming majority of Conservative synagogues, the halakhah must now reflect this change of practice notwithstanding any lingering halakhic issues, for מנהג מבטל הלכה, custom can supersede law. While such a proposal has some merits, its weakness is that the fact that rabbis and synagogue ritual committees have decided to count women in the minyan establishes more a change of policy than of ritual practice, or מנהג. Conservative Jewish women have not massively begun to pray thrice daily. The proposal put forward in this paper is based not upon a change in practice, but rather a change in perception. It is not that women observe more than they did—though perhaps many do—but rather that they, and the community as whole, perceive that they *ought* now observe the same as men. The distinction between permitted and obligated was the essential concern of Rabbi Roth’s paper. The argument is put forward here that that distinction exists, and has now existed for about a generation.

3) Even if we accept that women in egalitarian synagogues assume an equal obligation to prayer, how can we apply that to women as a general class, since not all of our synagogues are egalitarian? We respond that in making general assumptions it is a precedented procedure to “follow the majority,” אחר רבים להטות. And, as Rabbi Golinkin noted, not all responsa are binding on all Jews. Obviously,

this paper would not be used as guidance in synagogues not counting women in the minyan. But in general we can assume that since at least 85 percent of Conservative synagogues count women in the minyan, women as a general class in the Conservative movement have accepted an equal obligation to prayer.

We can reconcile the conclusions of this paper with the pluralism of our Movement and the Jewish world through the concept of *מנהג המקום*. If a woman from an egalitarian congregation or otherwise guided by this responsum were to attend a synagogue where women did not count in the minyan, she would not by virtue of her presence there suddenly lose her obligation to prayer equally with men. While she would not count in the minyan in such a community because of *מנהג המקום*, she would still retain her personal level of obligations as the *שיצא משם*, the stringencies of the place from where she came. And by joining with the congregation she still fulfills her obligation to prayer, even if the congregation does not count her in the minyan. Similarly, if a woman from a congregation where women did not count in the minyan or otherwise not guided by this responsum were to attend a synagogue where women did count in the minyan, she would not by virtue of her presence there suddenly gain an obligation to prayer equally with men. She herself would retain her personal level of obligations as *קולי מקום שיצא משם*, the leniencies of the place from where she came. However, the congregation would still count her in the minyan since by their reckoning women have as a general class accepted the equal obligation to prayer with men, and the individual should respect that position of the community as *לשם שהלך מקום*, the stringencies of the place in which she has arrived.<sup>100</sup>

It is possible that a woman raised and educated in an egalitarian synagogue (and all the more so one not so raised but belonging to such a community) might wish to not consider herself obligated to regular prayer equally with men, a decision reached through study of the halakhic development of the issue and concern not to transgress that which might otherwise be transgressed.<sup>101</sup> Such a woman would fall under the category of women belonging to congregations where women do not count in the minyan, as discussed in the previous paragraph. While at some point we might be able to say that *all* women are so obligated, as the Magen Avraham does with the counting of the Omer, at this point we recognize the plurality of practice and interpretation within our greater community. As long as such options exist, individual Jews could opt for them. The local rabbi is not always *the* authority for all personal halakhic issues. This paper does not argue that all women everywhere are obligated to regular prayer. Rather, the argument is that within egalitarian Conservative congregations we may legitimately *assume* such obligation. A woman may personally exempt herself from liability for the mitzvah of regular prayer, *תפילה בזמנה*. However, for public purposes she is still counted in the minyan in egalitarian contexts, as explained in the preceding paragraph.

4) How can we base halakhah on a practice when we have said that the practice itself may not have rested on solid halakhic grounding? While some reservations have been expressed about some of the arguments in favor of counting women in the minyan, solid ground rested with those who voted for the Law Committee resolution as a *תקנה* in 1973. At that time a *תקנה* was required. Now, a generation later, we no longer need to rely solely on a *תקנה*.

5) Why should an approach based upon sociological argument be preferable to arguments based upon the classical halakhic sources themselves? This paper is not the place for a defense of the use of sociological and other extralegal data in halakhic decision making. Such has already been well demonstrated in the theoretical writing of Rabbi Roth.<sup>102</sup> Sociological data can play a role in demonstrating a change in reality which can impinge on the appropriateness of a certain law in the eyes of the decisor.

Sociological data is especially important for those of the school of Jewish law who are most concerned with the preserverence of precedent. Arguing that a law needs to evolve because of changed circumstances preserves the organic unity of the law's evolution from its inception through its various implementations. Rather than choose to reread classical sources and thereby annul whole centuries of halakhic development, this approach has the advantage of accepting precedent and development and continuing that process, but this time in the direction of inclusion of women. The weakness of this approach is that it is not as purely "egalitarian" as the approach employed in this case by the school of Rabbis Blumenthal and Sigal, et al. According to that approach, the law itself was always essentially egalitarian in regard to women, men and prayer. According to that school, the Rabbis of the Mishnah intended for women to count equally in the minyan. The new proposal presented here, flowing from the school of Rabbi Feldman, can make no such claim. Rather, there was never an intent to count women equally with men in the minyan until now. This is a new development of Jewish law, albeit a development that is fitting and proper. According to the opposing position, the equality of men and women in prayer is essential to halakhah and Judaism. According to this new proposal, the counting of women equally with men in the minyan and permitting women to serve as שליחות ציבור is a result of historical and sociological development.<sup>103</sup>

### Summary

Conservative rabbis who permit women to count in the minyan and serve as שליחות ציבור argue such by various and opposing argumentations, either by reading the classical halakhic sources as obligating women to prayer equally with men and thereby permitting them to have equal liturgical status, or by understanding the classical halakhic sources as not mandating the liturgical inequality of women, or by accepting the legislative authority of the 1973 תקנה, or by recognizing that women in the Conservative movement have, as a general class, accepted upon themselves the equal obligation to prayer with men.

### Conclusion

Women may count in a minyan and may serve as שליחות ציבור.

### NOTES

- 1 This paper will focus on the question of minyan and שליחות ציבור, and assumes that these two issues are linked. Some might argue that they are not, but it seems to me that the only way one might argue that a woman may serve in a minyan but may not serve as שליחות ציבור is כבוד הציבור. Since the Law Committee already decided in 1955 that כבוד הציבור was not sufficient reason to continue to forbid women from taking aliyot since a woman's education is no longer an insult to our honor (but rather does us honor), such an approach should apply as well to this potential objection to women serving as שליחות ציבור. Neither do I consider אישה קול as a significant objection. The question of women and tallit, tefillin and head covering/kippah will be addressed by separate papers which have been commissioned of other authors.

I thank the members of the Law Committee for their encouragement, advice and criticism that have helped form this paper. I am also indebted to Dr. Anne Lapidus Lerner and Rabbi Joel Meyers for their helpful critiques. I thankfully acknowledge the influence of my father, Rabbi Robert Fine, who argued the conclusion of this paper with me for many years until I became convinced of it.

- 2 On a personal note, I was but five months old when the Law Committee voted to permit women to count in the minyan. However, the issues continued to reverberate through my schooling and upbringing in the less-than-calm Conservative movement of the 1980s. It is with some trepidation, though, that I venture to take issue with some of the later positions which belong to my teachers: Rabbis Joel Roth, Mayer Rabinowitz and David Golinkin.

- 3 For an overview of this “event” and its contextual significance in the American Jewry of the 1970s see Anne Lapidus Lerner, “Who Has Not Made Me a Man: The Movement for Equal Rights for Women in American Jewry” *American Jewish Year Book* 77 (1977): 3-38. For another and more recent account see Michael Panitz’s chapter on the Rabbinical Assembly since 1970 in Robert E. Fierstein, ed., *A Century of Commitment: One Hundred Years of the Rabbinical Assembly* (New York: Rabbinical Assembly, 2000).
- 4 Versions of the papers by Phillip Sigal and David Feldman are published in Seymour Siegel, ed., *Conservative Judaism and Jewish Law* (New York: Rabbinical Assembly, 1977), pp. 281-305. Unfortunately, the original papers by Rabbis Blumenthal, Sigal and Feldman do not appear to be extant in the archives and are preserved only in these later published forms and in the “excerpts” distributed by Seymour Siegel to the RA membership in a circular of October 5, 1973.
- 5 Minutes of the CJLS. The Minutes of the August 29, 1973 meeting note, however, that “The May 3, 1973, meeting was declared inoperative due to lack of a quorum. Therefore, it has no status.” Rabbi Blumenthal’s comprehensive paper was eventually published as Aaron Blumenthal, “The Status of Women in Jewish Law” *Conservative Judaism* 31 (1977): 24-40, but by then the focus was already turned beyond minyan. However, it does appear that Rabbi Blumenthal had presented an early form of this paper to the Law Committee in the spring and summer of 1973, although that form has not been preserved in the Law Committee archives. I wonder whether his paper, which addressed a comprehensive list of issues relating to women, was in direct response to Ezrat Nashim’s platform brought to the RA Convention, whether the influence was more mutual, or even coincidental. Certainly, both reflected a *Zeitgeist* of change.
- 6 This debate lived on in the pages of *Sh’ma* after the Law Committee concluded its deliberations. In late 1973 and early 1974 we see an ongoing exchange between Rabbis Sigal and Feldman (and involving other voices as well) with such titles as “Women in a Minyan: law rightly says no”; “Women in a Minyan: but law says yes”; “Women in a Minyan: no is still no”; “Rabbi Feldman’s law is not living”; “Rabbi Sigal’s Halakhah is Not Halakhah.” See the bibliography in David Golinkin, *An Index of Conservative Responsa and Practical Halakhic Studies: 1917-1990* (New York: Rabbinical Assembly, 1992), p. 75.
- 7 The CJLS Minutes report that those voting in favor were Rabbis Morris Goodblatt, Eli Bohnen, Phillip Sigal, Jacob Agus, Harold Kushner, Ephraim Bennett, Aaron Blumenthal, Seymour Siegel (chairman) and David Graubart. Those voting against were Rabbis Max Arzt, Isaac Klein, David Feldman and Edward Gershfield.
- 8 Siegel to “Colleagues,” p. 2.
- 9 Phillip Sigal, “Women in a Prayer Quorum” in Siegel, ed., *Conservative Judaism and Jewish Law*, p. 284. See pp. 289, nn. 4-8 for his sources. Chief among them is B’rakhot 6a, which states that a person’s תפילה is listened to only in the synagogue. One can argue, as I would, that such an extreme statement is of an aggadic rather than halakhic category. Nevertheless, the question of the obligatory status of public prayer is a matter of some dispute. It is interesting that Sigal takes the side of arguing that public prayer *is* mandatory, rather than arguing that women’s obligatory status in relation to prayer is irrelevant since there is no obligation to public prayer. The boldness of Sigal’s approach was recently noted by Orthodox Rabbi Michael Broyde. See Michael J. Broyde, “Communal Prayer and Women” *Judaism* 42 (1993): 390.
- 10 Sigal, “Women in a Prayer Quorum,” p. 285. Sigal does later note that Maimonides explicitly states that only males may be included in the minyan for reading the Torah (Hilkhos Tefillah 12:3). See p. 291, n. 16.
- 11 *Ibid.*, p. 286. I say “perhaps astonishing” because Professor Judith Hauptman, who argued in 1993 that a woman’s obligation to prayer is the same as a man’s (to be discussed below), wrote that “given this history of a consistently expanding obligation of women to pray, I find it hard to understand why the various responsa written recently on this topic fail to mention this trend at all.” She mentions the papers by Joel Roth and Israel Francus, but nowhere does she refer to the 1973 responsum by Phillip Sigal, which already stated her thesis. Ironically, as mentioned in the previous note, Sigal’s paper was noted by Michael Broyde in a critique of Hauptman’s paper. Judith Hauptman, “Women and Prayer: An Attempt to Dispel Some Fallacies” *Judaism* 42 (1993): 98, and 102, n. 17.
- 12 See Sigal, “Women in a Prayer Quorum,” pp. 286-288, 291-292, nn. 16-25.
- 13 *Ibid.*, p. 288.
- 14 Siegel to “Colleagues,” p. 10.
- 15 *Ibid.*, p. 11.
- 16 David Feldman, “Woman’s Role and Jewish Law” in Siegel, ed., *Conservative Judaism and Jewish Law*, p. 300.

- 17 Siegel to “Colleagues,” p. 5.
- 18 Ibid., p. 13. On Feldman’s understanding of women and Birkat HaMazon, see Feldman, “Woman’s Role in Jewish Law,” p. 302.
- 19 Siegel to “Colleagues,” p. 3.
- 20 Ibid., p. 1.
- 21 See my contribution in “The Open Forum: Positive-Historical Judaism” *Conservative Judaism* 47 (spring 1995): 71-81; and my “The Meaning of Catholic Israel” *Conservative Judaism* 50 (summer 1998): 29-47. See also, on the importance of custom and tradition in Conservative Judaism, Elliot N. Dorff, “Custom Drives Jewish Law on Women” *Conservative Judaism* 49 (spring 1997): 3-21, and the discussion the following year in “The Open Forum: Custom, Halakhah and the Status of Women” *Conservative Judaism* 51 (fall 1998): 63-73.
- 22 On the history of the decision to ordain women at the Seminary, see Beth S. Wenger, “The Politics of Women’s Ordination: Jewish Law, Institutional Power, and the Debate over Women in the Rabbinate” in Jack Wertheimer, ed., *Tradition Renewed: A History of the Jewish Theological Seminary of America* (New York: Jewish Theological Seminary, 1997), vol. 2, pp. 483-523. See also Pamella S. Nadell, *Women Who Would Be Rabbis: A History of Women’s Ordination, 1889-1985* (Boston: Beacon Press, 1998), specifically ch. 5. For the parallel story of ordination in the Christian world, see Mark Chaves, *Ordaining Women: Culture and Conflict in Religious Organizations* (Cambridge, Mass.: Harvard University Press, 1997). Unfortunately, Chaves focuses only on the Christian denominations.
- 23 Mayer E. Rabinowitz, “An Advocate’s Halakhic Responses on the Ordination of Women” in Simon Greenberg, ed., *The Ordination of Women as Rabbis: Studies and Responsa* (New York: Jewish Theological Seminary, 1988), p. 112.
- 24 Ibid., p. 115.
- 25 Ibid., p. 114.
- 26 Ibid., p. 116. Magen Avraham to Orah Hayyim 53:19, note 20.
- 27 For this reason I have always felt uncomfortable with the practice of a *כדי קדושה* as a regular standard of worship rather than restricted to special situations.
- 28 Rabinowitz, “An Advocate’s Halakhic Responses,” p. 122, nn. 48, 53.
- 29 In conversation, Rabbi Rabinowitz has argued that there are cases when obligation is not equal and that such does not effect counting in the minyan. For example, a *מנוודה*, one who has been placed under a ban, is obligated but cannot be counted in the minyan, and, as another example, a man who has already davened has no obligation to daven a second time (in fact he should not do so). And yet, he counts in the minyan. I respond that such a case is not as clear as that of the *אונן*, one who has not yet become a mourner since burial has not yet taken place, where one has no obligation and does not count in the minyan. Here, in the case of one who has already davened, surely he can still benefit from saying amen to the repetition of the Amidah, especially in case he did not properly recite everything himself. However, Rabbi Rabinowitz would argue that he cannot fulfill his obligation through the repetition since the *שליח* no longer functions as a true *שליח*. In either case, the individual who already davened has an obligatory status that is equal to others even if it is already fulfilled. In the case of the *מנוודה*, one could argue that there the exclusion from counting in the minyan is directly resultant of the ban, rather than the obligatory status. Rabbi Rabinowitz, on the other hand, sees these cases as further examples that obligation is not the essential qualifier for counting in the minyan, and would see the arguments to defend that explanation as strained. He rejects the contrary example of the *אונן*, where one is not obligated and not counted. See Ibid., p. 121, n. 35.
- 30 See Joel Roth, “On the Ordination of Women as Rabbis” in Greenberg, ed., *The Ordination of Women as Rabbis*, pp. 127-187.
- 31 Ibid., p. 128.
- 32 Ravad to Sifra, par. 2, Weiss ed., 4c. See Roth, “On the Ordination of Women,” pp. 129-130.
- 33 Maimonides, Mishneh Torah, Hilkhot Tzitzit 3:9; Shulkhan Arukh, Orah Hayim 589:6 and the Rama there who answers Karo: “Our custom is for women to recite the blessings on positive time-bound commandments.” See Roth, “On the Ordination of Women,” pp. 130-134, 174-176, nn. 17-37.
- 34 Ibid., pp. 128-129.

- 35 Ibid., pp. 134-135. The statement of the Ravad is the same as that referred to above, n. 31.
- 36 Roth, "On the Ordination of Women," p. 129.
- 37 Magen Avraham to OH 489, par. 1. See Roth, "On the Ordination of Women," p. 136.
- 38 See Roth, "On the Ordination of Women," pp. 136-141, 177-179, nn. 45-68.
- 39 Ibid., p. 129.
- 40 See the discussion below on the meaning of sin in Conservative Judaism.
- 41 Ibid., pp. 141-148, 179-185, nn. 69-90.
- 42 Ibid., p. 168.
- 43 David Weiss Halivni, *The Book and the Sword: A Life of Learning in the Shadow of Destruction* (Boulder: Westview Press, 1996), p. 105.
- 44 David Weiss Halivni, "On Ordination of Women," manuscript pp. 9-16, included in the unpublished 1979 collection *On the Ordination of Women as Rabbis: Position Papers of the Faculty of the Jewish Theological Seminary of America* which was later published as the volume edited by Simon Greenberg, without Halivni's paper. The 1979 collection is available in the Jewish Theological Seminary Library, BM 726.J48 1983.
- 45 Israel Francus, "On the Ordination of Women" in Greenberg, ed., *The Ordination of Women as Rabbis*, p. 36.
- 46 Ibid., p. 43.
- 47 Ibid., p. 36.
- 48 Ibid., p. 43, n. 1.
- 49 *Jewish Theological Seminary Academic Bulletin* (2001-2002): 73. In contrast, the Ziegler School of Rabbinic Studies at the University of Judaism maintains no such requirement.
- 50 "Schiff II" refers to the second floor of the Schiff Building, that is, the Old Reading Room, where the minyan met, and still meets today as the Women's League Seminary Synagogue, directly above the Stein Chapel.
- 51 Such was my experience, that I was taught at Camp Ramah and the Seminary *not* to be comfortable at my home synagogue.
- 52 Jack Wertheimer, ed., *Jews in the Center: Conservative Synagogues and Their Members* (New Brunswick: Rutgers University Press, 2000), p. 7. The term "The Triumph of Egalitarianism" is found on p. 10, n. 11, and refers to the initial report cited in the following note.
- 53 Jack Wertheimer, ed., *Conservative Synagogues and Their Members* (New York: Jewish Theological Seminary, 1996), p. 14. The title of this chapter of the report is "The Triumph of Egalitarianism."
- 54 For the figures from 1962 and the mid-1970s, see Jack Wertheimer, "The Conservative Synagogue" in Jack Wertheimer, ed., *The American Synagogue: A Sanctuary Transformed* (Cambridge: Cambridge University Press, 1987), p. 137. For the mid-1990s figures, see Wertheimer, ed., *Conservative Synagogues and Their Members*, p. 16, and Wertheimer, ed., *Jews in the Center*, p. 250. Restricting the survey to congregations within the United States would yield an even higher percentage (see Wertheimer, *Conservative Synagogues and Their Members*, p. 20).
- 55 Steven M. Cohen, "Assessing the Vitality of Conservative Judaism in North America: Evidence from a Survey of Synagogue Members" in Wertheimer, ed., *Jews in the Center*, p. 27.
- 56 See Hauptman, "Women and Prayer: An Attempt to Dispel Some Fallacies" *Judaism* 42 (1993): 94-103.
- 57 Michael J. Broyde, "Communal Prayer and Women" *Judaism* 42 (1993): 387-394.
- 58 Feldman in Siegel to "Colleagues," p. 11.
- 59 Broyde, "Communal Prayer and Women," p. 387.
- 60 Judith Hauptman, "Some Thoughts on the Nature of Halakhic Adjudication: Women and Minyan" *Judaism* 42 (1993): 396-413.
- 61 Hauptman, "Women and Prayer," p. 99, citing Hullin 24b: "When his beard grows in, he may serve as שליח ציבור and pass before the ark and lift his hands in the priestly blessing."
- 62 Broyde, "Communal Prayer and Women," p. 388.
- 63 Ibid.
- 64 Hauptman, "Women and Prayer," p. 100.
- 65 Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder: Westview Press, 1998), p. 237.

- 66 See Menachem Nissel, *Rigshei Lev: Women and Tefillah: Perspectives, laws and customs* (Southfield, Michigan and Nanuet, New York: Targum and Feldheim, 2001), ch.1. See also ch. 7, regarding the various views on the extent of a woman's obligation to daven with a minyan. What is clear is that the obligation, while present, is less than a man's. Nissel's volume contains much polemical material defending the role of women in halakhah, and argues against the "Orthodox feminism" of women's prayer groups. But the polemics aside, the volume is useful in presenting the halakhic views. A less polemical presentation, but far more condensed, can be found in Getsel Ellinson, *Women and the Mitzvot*, vol. 1, *Serving the Creator* (Jerusalem: World Zionist Organization, 1986), chs. 9-10.
- 67 Aharon Ziegler, *Halakhic Positions of Rabbi Joseph B. Soloveitchik*, vol. 2 (Northvale, N.J.: Jason Aronson, 2001), p. 87.
- 68 Hauptman, "Some Thoughts on the Nature of Halakhic Adjudication," p. 396.
- 69 Ibid., p. 404.
- 70 Ibid., p. 405.
- 71 Chancellor Schorsch announced his decision at the Rabbinical School/Cantorial School Kallah in Connecticut in the fall of 1994 as a surprise ending to his Friday evening דבר תורה. He explained that he chose that moment to make his ruling since we were "stuck with each other until after Shabbat." (I was there for what was one of the most dramatic moments of my Rabbinical School years.)
- 72 See Joel Rembaum, "The Inclusion of the Names of the Matriarchs in the Amidah," *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1986-1990* (New York: Rabbinical Assembly, 2001), pp. 485-490.
- 73 David Golinkin, תשובות ועד ההלכה של כנסת הרבנים בישראל כרך 10 ה'תשנ"ב בענין נשים במנין וכשליחות (Jerusalem: Schechter Institute, 1998), pp. 59-80. The paper was accepted by a vote of six to one.
- 74 See *ibid.*, pp. 75-76, n. 20.
- 75 Ibid., p. 68.
- 76 Ibid., pp. 70-72. Golinkin cites a passage from Schechter which argues that the codes of Maimonides and Joseph Karo are not perfect and that rabbi and scholar ought to read them critically. Golinkin himself understands Schechter as saying that halakhah is not frozen in the codes, that the codes are important guides to halakhah but not necessarily the final word. There is a difference, though, between extending analysis beyond the Shulkhan Arukh on the one hand, and overturning an entire tradition of precedent expressed through the centuries on the basis of new reading of the classical sources, on the other. That is not to say that one may not at times overturn precedent and invoke classical sources before the precedent was established. But we must still recognize that such a decision is an overturning of precedent, and should only be done for great cause. Golinkin does believe that he has such cause when he argues at the top of p. 72 that our situation, namely the societal role of women, is different than that of the society of the Aharonim and the Shulkhan Arukh. However, he later claims on p. 72 that all women have always been obligated to pray as men, that אמיני רואה דרך אחרת להבין את המקורות...המשנה התלמוד והראשונים. But while we might offer a fresh interpretation of classical sources as a support in overturning a precedent, surely we should accept that the Aharonim had the systemic authority to interpret the classical sources as they saw fit, כבתראי. Schechter's very point was that a legal system rests upon judicial autonomy and development of precedent rather than solely the codifications of law, be it classical or later. The context of Schechter's remark which Golinkin cites is a review of Isaac Hirsch Weiss's *דור דור ודורשי*, an account of the development of Jewish law through history. History, for Schechter, as I have argued elsewhere (see above, n. 21), is a conservative influence on practice. (See Solomon Schechter, *Studies in Judaism*, First Series [Philadelphia, 1896], p. 211).
- 77 Rabbi Roth maintains strong distinctions between what is permitted in theory and what ought to be done in practice. At various discussions of the Law Committee Rabbi Roth has argued against decisions that approached an uprooting of a Torah law because he felt that the Law Committee would be too presumptuous to assume the ultimate authority of amending the Torah itself. Such should be reserved for extremely rare moments and should be invoked only by authorities who are recognized as preeminent throughout the Jewish world (what Rabbi Roth calls "self-validating authorities"). Nevertheless, Rabbi Roth has always affirmed the theoretical right of the rabbinate of any age to uproot matters from the Torah. See Joel Roth, *The Halakhic Process: A Systemic Analysis* (New York: Jewish Theological Seminary, 1986), ch. 7.

- 78 Roth, "On the Ordination of Women," p. 166.
- 79 Golinkin, p. 72.
- 80 Roth, "On the Ordination of Women," pp. 166-167.
- 81 Golinkin, p. 72.
- 82 Roth, "On the Ordination of Women," p. 168.
- 83 When I once served as Rosh Tefillah at Camp Ramah in the Berkshires (summer of 1992) the Rashei Edot did not believe me that girls who did not wear tallit and tefillin could count in the minyan (if they accepted equal obligation to prayer) until I had Rabbi Roth personally confirm with them that it was permissible.
- 84 Magen Avraham to OH 489, par. 1.
- 85 Samuel C. Heilman, "Holding Firmly with an Open Hand: Life in Two Conservative Synagogues" in Wertheimer, ed., *Jews in the Center*; p. 190. Emphasis added.
- 86 Nancy T. Ammerman, "Conservative Jews within the Landscape of American Religion" in Wertheimer, ed., *Jews in the Center*; p. 371. The 1996 interim report (Wertheimer, *Conservative Synagogues and Their Members*, p. 10) records that 62 percent of Conservative Jews responded that they "are obligated to obey Halakha (Jewish law)" while 76 percent responded that "a Jew can be religious even if he/she isn't particularly observant." Obviously, this is the same group of people responding affirmatively to two supposedly contradictory statements. But apparently they are not contradictory for our constituency, and it is that situation, defined by the data, that Ammerman is explaining.
- 87 Solomon Schechter, *Some Aspects of Rabbinic Theology* (1909; reprint, New York: Schocken, 1961), p. 233.
- 88 Abraham Joshua Heschel, *God in Search of Man: A Philosophy of Judaism* (1955, reprint; Cleveland and Philadelphia: Meridian Books and Jewish Publication Society, 1963), p. 363.
- 89 The philosophical grounding for a popular sense of "commandedness" not necessarily connected with observance can be found in the writings of Franz Rosenzweig. For a recent discussion of such and its potential application to the religiosity of American Jews see Arnold M. Eisen, *Rethinking Modern Judaism: Ritual, Commandment, Community* (Chicago: University of Chicago Press, 1998).
- 90 Mordecai M. Kaplan, *Questions Jews Ask: Reconstructionist Answers* (New York: Reconstructionist Press, 1956), pp. 233-234.
- 91 For an excellent survey of contemporary scholarship, see Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tuebingen: Mohr Siebeck, 1997). See also Seth Schwartz, *Imperialism in Jewish Society, 200 B.C.E. to 640 C.E.* (Princeton: Princeton University Press, 2001), esp. ch. 3.
- 92 Barry A. Kosmin, "Coming of Age in the Conservative Synagogue: The Bar/Bat Mitzvah Class of 5755" in Wertheimer, ed., *Jews in the Center*; p. 250.
- 93 *Ibid.*, p. 253.
- 94 35% of the girls reported themselves as less observant than they were four years ago, and 27% as more observant, compared with 39% of the boys as less observant and 19% as more observant. Barry Kosmin and Ariela Keysar, *"Four Up": The High School Years, 1995-1999: The Jewish Identity Development of the B'nai Mitzvah Class of 5755* (New York: Jewish Theological Seminary, 2000), p. 35.
- 95 I thank Rabbi Joel Rembaum for this thought.
- 96 Cited in Adolf Lewin, *Geschichte der badischen Juden* (Karlsruhe, 1909), p. 331. Emphasis added. Translation my own.
- 97 Michael A. Meyer, ed., *German Jewish History in Modern Times* (New York: Columbia University Press, 1997), vol. 2, p. 324.
- 98 Halivni, "On the Ordination of Women," manuscript, p. 15.
- 99 One might argue that since Halivni withdrew his responsum it cannot be used as a halakhic source. However, in his autobiography, *The Book and the Sword*, Halivni restates the argument of his responsum (as discussed above) and gives no explanation for his withdrawal of the paper besides his political disenchantment with Chancellor Cohen and the Seminary. He was upset, and perhaps for good reason, that his halakhic efforts were not appreciated. But that is politics, not halakhah. Perhaps he felt that his halakhic arguments could not be applied to a community that did not want to hear them. (See Halivni, *The Book and the Sword*, pp. 103-114). That may be so, but this is a different situation here. I see no reason why we cannot use his responsum as support.

- 100 This terminology is found in Mishnah Pesahim 4:1.
- 101 I thank my teacher Rabbi Joel Roth for raising the question of this possibility.
- 102 See Roth, *The Halakhic Process*, ch. 9.
- 103 It is for this reason that the approach argued here cannot necessarily be used to obligate women to wear tallit, tefillin or head covering/kippah. Since these practices have not yet spread universally among women in the Conservative movement, we cannot argue that women have accepted these obligations upon themselves. Perhaps women ought to be obligated to these mitzvot, and perhaps an adherent of the school of Rabbis Blumenthal and Sigal, et al., will make the argument that in fact the halakhah always intended women to be so obligated. But that argument has not to date been made. While I do encourage women to cover their heads and wear tallit and tefillin, I would not consider such practices to be obligatory until I could be satisfied that women have taken the practice upon themselves as an obligation.