

## The Non-Fasting Shaliah Tzibbur on Yom Kippur

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*Approved by the CJLS on May 30, 2012 by a vote of 18 in favor, one opposed and two abstaining. In favor: Rabbis Aaron Alexander, Pamela Barmash, Miriam Berkowitz, David Booth, Elliot Dorff, Susan Grossman, Reuven Hammer, Joshua Heller, Adam Kligfeld, Jane Kanarek, Gail Labovitz, Amy Levin, Jonathan Lubliner, Daniel Nevins, Paul Plotkin, Avram Reisner and Elie Spitz. Opposed: Rabbi David Hoffman. Abstaining: Rabbis Baruch Frydman-Kohl and Jeremy Kalmanofsky.*

**שאלה:** May a person who is unable to fast on Yom Kippur for medical reasons nonetheless serve as shaliah tzibbur on that day?

**תשובה:**

**Introduction:** The obligation to fast, exemptions from fasting, and the status of the non-faster

Fasting on Yom Kippur is considered to be a *mitzvah d'oraitta*. Five times the Torah proclaims to the Israelites that on the tenth day of the seventh month “you shall practice self-denial” (תענו/ועניתם את נפשתיכם): Lev. 16:29 and 31, Lev. 23:27 and 32, and Num. 29:7. From this command, Jewish tradition derives that eating and drinking are forbidden on Yom Kippur, and that a willful violation is punishable by *karet* (b. Yoma 74a; Mishneh Torah *Hilkhos Sh'vitat Asur* 1:5, Shulhan Arukh O.H. 611:1). Moreover, throughout Jewish history, commentators, philosophers, and halakhic scholars have sought to explain the connections between atonement and fasting, between our spiritual goals and aspirations on Yom Kippur and abstention from bodily nourishment and pleasures. According to Maimonides (*Moreh Nevukhim*, 3:43), we leave aside the physical – not only eating and drinking, but also labor, and other bodily comforts – because our full attention during Yom Kippur should be given to the work of confessing to and atoning for our sins. Yehudah ha-Levi wrote (*Kuzari*, 3:5) that by fasting we transcend the animalistic elements of our nature and approach, for a time, an angelic state of being. Or as the commentary in the *Etz Hayim humash* states regarding Lev. 16:31,

Human beings are the only creatures who can control their appetites, who can be hungry and choose not to eat. By fasting on *Yom Kippur*, we proclaim that we are masters of our appetites, not slaves to them. In addition, fasting is meant to free us to focus on the spiritual dimension of our lives rather than worry about our physical needs. (684-85)<sup>1</sup>

There are those in the Jewish community, however, for whom fasting is not simply a matter of temporarily overcoming their appetites. For these Jews, failing to eat even for twenty-five hours

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<sup>1</sup> A very similar sentiment appears in the Hertz/Soncino humash, which was commonly used in many Conservative congregations prior to the publication of *Etz Hayim*, in its commentary to Lev. 16:29 (484).

would seriously endanger their health and well-being. No matter how strong their will, they are not able to forego the physical without serious threat to the spirit as well.

In such cases, then, also deriving directly from the Torah is a different injunction, that of Lev. 18:5:

ושמרתם את חקתי ואת משפטי אשר יעשה אתם האדם וחי בהם...

You shall keep My laws and My rules, which a person shall do and live by them...

Throughout rabbinic and subsequent halakhic history, one primary understanding of this verse has been **וחי בהם ולא שימות בהם**, “live by them – and not that one should die by them”;<sup>2</sup> from here comes the rule that preservation of life (from illness, injury, or even threatened martyrdom) overrides and allows the violation of almost all commandments, with only a few well known exceptions. As Maimonides notes in *Hilkhot Shabbat* 2:3 regarding the requirement to perform an otherwise forbidden act of labor to heal someone in grave danger on Shabbat:

הא למדת שאין משפטי התורה נקמה בעולם אלא רחמים וחסד ושלום בעולם, ואלו המינים שאומרים שזה חילול שבת ואסור עליהן הכתוב אומר וגם אני נתתי להם חוקים לא טובים ומשפטים לא יחיו בהם. Thus you learn that the laws of the Torah are not [a source of] punishment in the world, but rather [a source of] mercy and lovingkindness and peace in the world; and [regarding] those heretics who say that this is a desecration of the Shabbat and forbidden, Scripture says about them “Moreover, I gave them laws that were not good and rules by which they could not live.” (Ezekiel 20:25; in this context, see also verses 11 and 21)

So too regarding Yom Kippur, the sources are clear and unanimous that if a person’s life or health will be threatened by fasting, that person is exempt from fasting, indeed must eat.

A clear statement of this basic rule regarding illness and fasting is provided by Rabbi Yosef Karo in the *Shulhan Arukh*, *Orah Hayyim* 618:1:

חולה שצריך לאכל אם יש שם רופא בקי אפילו הוא עובד כוכבים שאומר אם לא יאכילו אותו אפשר שיכבד עליו החולי ויסתכן מאכילין אותו על פיו ואין צריך לומר שמא ימות. אפילו החולה אומר איני צריך שומעים לרופא. ואם החולה אומר צריך אני אפילו מאה רופאים אומרים אינו צריך שומעים לחולה. A sick person who needs to eat – if there is a trained doctor present, even one who is not Jewish, who says that if s/he is not fed it is possible that the illness will be exacerbated and s/he will be endangered, one feeds him/her according to (the doctor’s) instructions, and it is not necessary to state (that this is the case) if it is possible s/he might die. Even if the sick person says “I do not need (to eat),” one should listen to the doctor. And if the sick person says “I need (to eat),” even if one hundred doctors say that s/he does not need (to eat), one listens to the sick person.<sup>3</sup>

Therefore, the person who must eat on Yom Kippur in order to preserve her/his life and health may be violating one Torah commandment, but is doing so under the obligation placed on him/her by another Torah commandment. Indeed, in a similar case Karo rules (S.A. O.H. 196:2) that a person

<sup>2</sup> t. Shabbat 15:17; b. Yoma 85b, San. 74a, and A.Z. 27b and 54a; M.T., *Hilkhot Yesodei Torah* 5:1 and *Hilkhot Shabbat* 2:3; Tur, O.H. 328. See also *Sifra*, *Aharei Mot perek* 13:13, and y. Shabbat 14:4 (15a) and A.Z. 2:2 (41a).

<sup>3</sup> See also M.T., *Hilkhot Shvitat Asur* 2:8.

who ate a food that is otherwise forbidden in a situation of danger to his/her life must recite a blessing over that food.<sup>4</sup> Significant for the purposes of our discussion here is the commentary of Rabbi Yisrael Meir Kagan (the Hofetz Haim) in the *Mishnah B'rurah* (196:5):

ואפי' אכל איסור דאורייתא במקום סכנה כגון מפני חולי והטעם דכיון דסכנה הוא התירא קאכיל ואדרבה מצוה קעביד להציל נפשו וכדכתיב וחי בהם ואחז"ל וחי בהם ולא שימות בהם

And [this law applies] even if he ate something forbidden by Torah law in a case of danger, for example because of illness. And the reason is that since it was a case of danger, he (actually) ate something permitted, and on the contrary, he performed a mitzvah to save his life, as it is written, “and live by them,” and the Sages said, “and live by them’ – and not that one should die by them.”

It is not appropriate to consider this person, or similarly the one who must eat on Yom Kippur, as a sinner. Indeed, s/he may be deemed to be performing a mitzvah.

We should also take a moment, then, to delineate who falls into this category of being permitted or even commanded to eat, and thus to whom this teshuvah applies. There are, of course, a number of medical conditions that might make it dangerous for a person to fast, including diabetes and other problems with blood-sugar levels, weakness brought on by illness or treatment of illness (such as chemotherapy), or the need to take vital curative or life-preserving medications with food for effectiveness. Similarly, it may be dangerous for those who are in treatment for and recovery from eating disorders such as anorexia and bulimia to engage in restrictive practices around food consumption.<sup>5</sup> Whether pregnant and nursing women should refrain from fasting is a more complex question. Traditional halakhic sources expect pregnant and nursing women (other than those who have given birth within the prior 72 hours<sup>6</sup>) to fast, as, for example, in the *Shulhan Arukh*, Orah Hayyim 617:1:

עוברות ומניקות מתענות ומשלימות ביום הכפורים

Pregnant and nursing women fast the full day (literally: and finish [the fast]) on Yom Kippur.

Orthodox sources generally encourage pregnant women to fast, with proper precautions, such as being especially careful to hydrate before the fast, remaining in a cool environment during the fast, and resting as needed; a nursing woman might express extra milk before the fast to have available

<sup>4</sup> Similarly, in O.H. 618:10, he rules that an ill person who ate on Yom Kippur should make appropriate blessings for the food, and should even include the “*Ya'aleh v'yavo*” paragraph if *birkat hamazon* is called for. But see also p4 below.

<sup>5</sup> I thank my colleague Rabbi Daniel Nevins for bringing this issue to my attention. Note, for example, a press-release from 1999, “Jewish Women Worldwide Warned of Health Risk on Upcoming High Holy Day,” <http://www.riskworld.com/pressrel/1999/PR99aa77.htm>. See also Ariela Pelaia, “Yom Kippur Should You Fast if You’re Anorexic?” at <http://judaism.about.com/b/2009/09/15/yom-kippur-should-you-fast-if-youre-anorexic.htm> and Rabbi Debbie Young-Somers, “When fasting is not Teshuvah - Yom Kippur with Eating Disorders,” <http://www.ritualwell.org/ritual/when-fasting-not-teshuvah-yom-kippur-eating-disorders>.

Unless otherwise noted, all on-line sources referenced in this teshuvah were accessible as of April 9, 2012.

<sup>6</sup> See *Shulhan Arukh*, O.H. 617:4.

for her child.<sup>7</sup> A number of medical studies have examined the effects of fasting during pregnancy, particularly among Jewish women observing Yom Kippur or Muslim women observing Ramadan. Results of these studies are mixed and there is not a strong medical consensus at this time on the safety of fasting during pregnancy; should a medical consensus begin to emerge, then at that time a CJLS teshuvah providing guidance for pregnant and nursing women would be in order. In the meantime, some obstetricians do advise against fasting for pregnant women, and this is particularly the case if the pregnancy is considered to be “high risk” or the pregnant woman has already experienced complications. Thus, while pregnancy and nursing should not be considered an automatic reason to forego fasting, nonetheless pregnant and nursing women should seek the counsel of their physicians before deciding how to proceed. If a woman is advised by her physician not to fast, or to do a limited fast (for example, to drink liquids even if she is refraining from eating), she may – indeed, should – follow those instructions without any concern for violating the commandment to fast on Yom Kippur.

For the purposes of this teshuvah, then, the person unable to fast is a) one who has a prior condition diagnosed/known before Yom Kippur, or b) a pregnant or nursing woman, who has already consulted with a doctor as to the risks of fasting and received medical counsel to limit or forego fasting, either of whom is otherwise in a healthful condition sufficient to serve as shaliah/at tziibur (hereinafter: sh"tz). As noted by the Shulhan Arukh, the proscription of a competent medical authority against fasting is the primary consideration for halakhic permission not to fast, or even for a halakhic prescription to do what is necessary to maintain one's health and well-being (although patients are encouraged to consult with their rabbis as well as – certainly not in place of – their doctors). While the sources do also allow for eating and drinking also by the person who experiences a sudden onset of illness or physical danger during the course of the fast day,<sup>8</sup> it seems to me that in that case, before addressing whether the affected person can lead prayer services, those present should see to it that the person's medical condition is treated and that no further physical danger to the patient exists.

Establishing guidelines for *how* one should eat if it is medically necessary – for example, should one eat in small portions if possible so as not to eat in any one mouthful the minimal amount that makes one halakhically liable (to *karet*) for violating the fast,<sup>9</sup> should one avoid consuming bread so as to avoid having to make “motzi” and thereby give the eating the status of a

<sup>7</sup> On the obligation to fast if possible, see, for example, Baruch Finkelstein and Michal Finkelstein, *B'Sha'ah Tovah: The Jewish Woman's Clinical and Halakhic Guide to Pregnancy and Childbirth* (Jerusalem, New York: Feldheim Publishers, 1993), 57-59 (pregnancy) and 249 (nursing); J. David Bleich, *Contemporary Halakhic Problems*, Volume 4 (New York: Ktav, 1995), 371-75; <http://www.yoatzot.org/article.php?id=131> (pregnancy) and <http://www.yoatzot.org/article.php?id=132> (nursing); <http://jewishmom.com/pregnancy-inspiration/inspiration-for-pregnancy/ask-the-rabbi-fasting-on-yom-kippur-during-pregnancy/>, <http://www.ynetnews.com/articles/0,7340,L-3574839,00.html>.

On precautions for fasting safely, see also:

<http://yupnet.org/greenfield/2008/08/28/seven-guidelines-for-religious-fasting-in-pregnancy/>

Moreover, these sources tend to stress that fasting (as a toraitic prescription that carries the penalty of *karet* for non-observance) takes priority over attending services and praying with a community, and thus often suggest that pregnant women who do not feel well (but also are not seriously ill) should rather spend the day in bed than break the fast.

<sup>8</sup> See S.A., O.H. 617:3 and 618:9.

<sup>9</sup> Defined in the codes as foods that together come to “the size of a large date” (or liquids that constitute a “cheek-full”), consumed within “the amount of time it takes to eat half a loaf of bread” or “three eggs”: see tYoma 4:3, M.T. *Hilkhot Shvitat Asur* 2:1 and 4, S.A. O.H. 612:1 and 3.

“meal” (but see n4, above), what standards of discretion are to be expected while one is eating, etc. – is an issue related to those just discussed (and the more specific topic of this teshuvah), but worthy of attention in its own right. As of the moment, there is no CJLS teshuvah addressing this question, and I hope, God willing, that I or another colleague will be able to write such a piece at a future date. For now, it is sufficient to state that any eating which takes place should be done privately, in a way that will not be visible to the majority of the congregation who are fasting. Moreover, let me be clear that this teshuvah addresses only the situation of the person who would *already* be exempted in any case from fasting on Yom Kippur, prior to any question as the possibility of her/his serving as sh"tz on that day. Nothing in this teshuvah should be construed as permission to eat *so that* one may serve as sh"tz – or in other words, if one is capable of fasting without leading services, but would need to be able to eat in order to serve as sh"tz, then there is no question that the *d'oraitta* obligation of fasting takes priority over the non-obligatory privilege of leading the community in prayer.

### **The role and qualifications of the sh"tz generally and on the *Yamim Nora'im*:**

Were one to begin reading from the beginning of the Mishnah, the first redacted work of rabbinic Judaism, the first reference to the role of the sh"tz that one would encounter would be m. Berakhot 5:5:

**המתפלל וטעה סימן רע לו ואם שליח צבור הוא סימן רע לשולחיו מפני ששלוהו של אדם כמותו**  
 One who prays [says the *amidah*] and makes an error, it is a bad sign for him. And if he is the sh"tz, it is a bad sign for those who appointed him, because a person's emissary is like oneself.

The concept that a person can designate an emissary to accomplish a variety of legal tasks on his/her behalf (for example, make a purchase, enact a betrothal, convey or receive divorce documents, separate agricultural tithes from produce) is found multiple times in tannaitic sources, but intriguingly, this is the earliest source in which the principle, “a person's emissary is like oneself,” is articulated in this form. Clearly, this speaks to the significance of the representation the sh"tz performs for the prayer community.

There was debate, however, among the tannaim, as to how exactly the sh"tz does or does not fulfill the ritual obligations of other community members to pray:

**כשם ששליח צבור חייב כך כל יחיד ויחיד חייב רבן גמליאל אומר שליח צבור מוציא את הרבים ידי חובתן**

Just as the sh"tz is obligated (to say the *amidah* privately), so too each and every individual is obligated. Rabban Gamliel says the sh"tz exempts the public from their obligation. (m. Rosh haShanah 4:9)

**רבן גמליאל אומר שליח צבור מוציא את הרבים ידי חובתן וחכמים אומ' כל אחד ואחד מוציא את עצמו אמ' להם אם כן למה מורידין אותו לפני התיבה אמרו לו כדי להוציא את מי שאינו יודע אמ' להם אם כן למה מתפללין כל אחד ואחד לעצמו אמרו לו מפני ששליח צבור מתקין את עצמו אמ' להם אם כן למה מורידין אותו לפני התיבה אמרו לו להוציא את מי שאינו יודע אמ' להם כשם שהוא מוציא את מי שאינו יודע כך הוא מוציא את מי שהוא יודע**

Rabban Gamliel says the sh"tz exempts the public from their obligation; and the sages say each and every one exempts himself.

He said to them: If that is so, why do they send someone down before the ark [i.e., appoint someone as the sh"tz]?

They said to him: in order to exempt the one who does not know (how to say the prayers independently).

He said to them: If that is so, why does each and every one pray by himself [why must even the sh"tz say an independent *amidah*, rather than being exempted of his own obligation by the one he says aloud]?

They said to him: Because the sh"tz prepares himself.

He said to them: If that is so, why do they send him down before the ark [why is it necessary to have a repetition at all]?

They said to him: to exempt the one who does not know.

He said to them: Just as he exempts the one who does not know, so too he exempts the one who does know. (t. Rosh haShanah 2:18)

The Bavli, Rosh haShanah 44b, has a slightly different version of the exchange, in which both sides challenge each other, and also details amoraic discussion as to whether, and under what circumstances, the dispute was resolved. The thrust of the give and take there leads to the dual conclusions, codified in the classic codes (M.T. *Hilkhot Tefillah* 8:9-10; Tur and S.A. O.H. 124:1; Tur O.H. 591) that (a) on ordinary occasions, the sh"tz can fulfill the obligation of others, but only those who are not able to pray on their own, while those who are able to pray on their own must fulfill their own obligations; (b) on the High Holidays, when the liturgy is unusual and unfamiliar, the sh"tz may indeed fulfill the obligation of any others, and even those who are usually competent at independent prayer may rely on the sh"tz.

An important point flows from the latter of these two rules in particular. It is a well accepted principle in halakhah that in order for one person to exempt another from a ritual obligation, the first person must have the same level of obligation in that ritual as the person on whose behalf s/he is performing the ritual act.<sup>10</sup> Therefore, it should be established from the outset that the obligation to fast and "afflict the soul" (see discussion beginning on p14 below) and the obligation to pray the services and liturgy of Yom Kippur are two distinct obligations. Being exempted from the former does not exempt the individual from the latter. Thus, the individual who is unable to fast, even halakhically mandated to eat in order to preserve his/her health, still has the same level of obligation to pray as any other member of the community, and at least on the level of equal obligation should be able to exempt others by reciting the prayers on their behalf.

Other than the constant requirement that the sh"tz have an obligation to pray equal to that of other members of the congregation, are there any additional, specific criteria given for the sh"tz on the High Holidays? One of the clearest statements of a *posek* regarding the appropriate

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<sup>10</sup> Indeed, this principle has been at the heart of discussions within the Conservative Movement about whether and how women, traditionally exempted (or treated as exempted) from regular, fixed daily prayer, could come to have (or already did have, or should now be considered to have) an equal obligation to men such that they could serve as leaders of communal prayer and other ritual acts. See, for example, the extended review of CJLS and Conservative Movement debates on this topic in Rabbi David J. Fine's teshuvah "Women and the Minyan," adopted by the CJLS in 2002: [http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/oh\\_55\\_1\\_2002.pdf](http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/oh_55_1_2002.pdf).

characteristics and necessary qualifications of the sh"tz on the *Yamim Nora'im* is that of Rabbi Moshe Isserles (the Rema) in S.A., O.H. 581:1:

וידקדקו לחזור אחר שליח צבור היותר הגון והיותר גדול בתורה ומעשים שאפשר למצוא, שיתפלל סליחות וימים נוראים; ושיהא בן שלשים שנים, גם שיהא נשוי (כל בו). מיהו כל ישראל כשרים הם, רק שיהיה מרוצה לקהל...<sup>11</sup>

They should be punctilious to seek out the prayer leader who is most worthy, and the most distinguished in Torah and good deeds that it is possible to find, who will pray seliḥot and the High Holy days; and he should be (at least) thirty years old, and also should be married (*Kol Bo*). Nonetheless, all Israel are fit, so long as he (the chosen person) is acceptable to the congregation...<sup>11</sup>

In one sense, we could resolve the question right here. That is, we could rule according to the “bottom line” proposed by the Rema: all Israel are fit, so long as the chosen person is acceptable to the community. Indeed, this would seem to be the essence of what it means to be a *shaliah*, an emissary, of the community; the *shaliah* is the person chosen and appointed by the community to stand in as its representative. This suggests that if the community feels that someone who is unable to fast for medical reasons is otherwise fit to serve as its *shaliah*, then it is fully within the community’s rights to appoint that person. Are there, however, reasons for a community to be reticent to appoint such a person? One could observe that we do not in our day insist on High Holiday prayer leaders being married, thirty years old, or even the most distinguished scholar in the community. If we are not punctilious about these qualifications, should we insist on disqualifying a potential sh"tz for other circumstances beyond her/his control (considering furthermore that we have established above that this person’s eating on Yom Kippur should not be considered sinful)?<sup>12</sup>

Although we no longer apply these criteria literally, I would like to suggest that we can nonetheless gain additional insight as to what makes someone a more or less appropriate

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<sup>11</sup> Reference may also be made here to the well-known “Hineni” prayer, composed in the 16th century and commonly said by the sh"tz prior to *musaf* or the repetition of the *musaf amidah* on both Rosh haShanah and Yom Kippur. In it, the sh"tz, who is presumed to be male, requests as follows:

קבל תפילתי כתפלת זקן ורגיל ופרקו נאה וזקנו מגודל וקולו נעים ומעורב בדעת עם הבריות  
 Accept my prayer as if (it were) the prayer of an elder/scholar and experienced (leader), and he is of fitting maturity, and his beard is fully grown, and his voice is pleasant, and he is pleasant with (other) people...

Note, however, the “as if” formulation, suggesting that these are ideal characteristics that the sh"tz may not actually possess, as well as the repeated references by the sh"tz elsewhere in the prayer to her/himself as unworthy and a willful sinner. See also the somewhat modified version of the prayer, which removes the references to the elder/scholar and to specifically male characteristics, found in the recently published Rabbinical Assembly mahzor, *Mahzor Lev Shalem* (New York: The Rabbinical Assembly, 2010), pp. 312-13.

See also the sources of these images of the sh"tz – in reference to the prayer leader on communal fast days in rabbinic sources, mTa'anit 2:2, bTa'anit 16a-b; and in the codes as more general qualifications for any sh"tz, M.T. *Hilkhot Tefillah* 8:11, Tur O.H. 53, S.A. O.H. 53:4-5.

<sup>12</sup> Intriguing in this respect is a brief mention in *Sha'arei Teshuvah* (O.H. 681:7) regarding a man who was expected to serve as sh"tz on the High Holidays, but whose wife died in the interim, meaning, of course, that he was not married at the moment, through circumstances beyond his control. The conclusion there is that this man should not be replaced. The parallels to our case are intriguing, but not, I think, conclusive; while in both cases the sh"tz is facing a circumstance beyond her/his control, the requirement to be married was (even at the time it might have been enforced) a rabbinic enactment, and perhaps more easily set aside, while the mitzvah to fast is, as noted, *d'oraitta*.

representative of the community when we turn to the commentaries that attempt to explain the reasoning behind the qualifications suggested by the Rema, or that discuss how to prioritize these and other criteria. One important element is for the leader to be a person of prominence and leadership in the community. However it is not prominence in and of itself that is significant, but rather the approach and attitude such a person should have towards the community and the task at hand:

נהגו לעבור לפני התיבה פרנסים ומנהיגים שיודעים בצער הדור

It is the practice that administrators and leaders who know the sorrow of the times [literally: of the generation] go before the ark. (Rabbi Abraham Abele Gombiner, *Magen Avraham*, O.H. 581:6)

The *Mishnah B'rurah* (681:9) also cites this qualification, and adds:

והיינו דוקא כשהם נאמנים ומגינים על הדור ומרוצים לעם

And this is specifically when they are trustworthy men and defenders of the generation and acceptable to the people.

In addressing the Rema's requirement that the sh"tz be at least thirty years old, the *Mishnah B'rurah* (681:12) notes that this was the age at which Levites became eligible for their service in the *Ohel Mo'ed* (see Num. 4:30 and b. Hullin 24), but then also observes:

וגם שאז לבו נשבר ונדכה

...and also, since by then his heart has been broken and oppressed.

What these sources together suggest is that the true primary qualification for a sh"tz on the *Yamim Nora'im* is that this person be a person of experience, empathy, and understanding, who will take the responsibility of speaking for the members of the community seriously and with sympathy for those who appointed him/her. Indeed, one could quite readily argue that a person who is experiencing some of the kinds of medical conditions under consideration here would surely qualify as someone whose "heart has been broken and oppressed."<sup>13</sup>

Similarly, the preference is for the person who is the more capable representative, both in terms of skills in leading the liturgy and as the best model of valued Jewish traits and behaviors. These criteria ultimately take precedence, as the *Mishnah B'rurah* makes clear (O.H. 581:13):

ופשוט דאם מזדמן לו שנים אחד שהוא בן תורה וירא חטא ואין לו אלו הפרטים והשני הוא איש פשוט והוא נשוי ויותר מבן שלשים הבן תורה קודם:

And it is obvious that if there are two [candidates to be sh"tz] available, one who is a learned in Torah and fearful of sin but he does not have these characteristics, and the second is a simple person but is married and over thirty, the one learned in Torah takes precedence.

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<sup>13</sup> I thank my father, Judah Labovitz, for this insight.



In a similar vein, the *Turei Zahav* (Rabbi David b. Samuel ha-Levi), in his comments to the Rema’s statement that the sh”tz should be “acceptable to the congregation,” notes that although it is preferable that one *not* serve as sh”tz when one is in mourning, nonetheless “ולכא דעדיף מיני” “מותר להתפלל” “but if there is no one superior to him, he is permitted to lead prayer” (O.H. 581:3). So too, in our case, we can follow the logic of this statement to rule that if the non-faster is in every other way the most qualified person to lead services on Yom Kippur, s/he is eligible and even the preferred one to do so.

Finally, there is one other claim the non-faster may have to be the sh”tz on Yom Kippur. That is, the halakhic sources repeatedly suggest that if a person is the usual prayer leader for the congregation and/or has been the prayer leader on Yom Kippur in previous years, and/or has been selected/hired to lead services for the whole of the *Yamim Nora'im* (what we often refer to as a “*kol bo*”), then that person has a prior claim on the position.

נוהגים להדר להתפלל התפלו' שהוא רגיל בה

It is the practice that the one who is experienced in this should continue to lead the prayers. (*Turei Zahav*, O.H. 581:3)

נהגו שמי שמתחיל להתפלל או לתקוע אין ליתן המצוה לאחר

It is the practice that one who begins to pray or to blow (shofar), the mitzvah should not be given to another. (*Magen Avraham*, O.H. 581:6)<sup>14</sup>

ובעונותינו הרבים בדור הזה וכו' וכדי לתקן פרצה זו ראוי שיתפלל הש"ץ הקבוע:

And because of our many sins in this generation, etc., and in order to repair this breach, it is best that the set prayer leader pray. (*Mishnah B'rurah*, O.H. 581:9)

In citing these comments, my aim is not to legislate or endorse the practice of insisting that leadership roles in prayers on the High Holidays must given to a single person, or to the same person year after year; even the authors cited here each refers to such a practice as *minhag* rather than an absolute obligation. These sources do, however, lend themselves to the argument that if the person under consideration is a regular leader of the community and of services on the *Yamim Nora'im* more particularly – the rabbi, the hazzan, a person who has repeatedly lead such services in other years, a person who has been hired expressly for the purpose of leading High Holiday

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<sup>14</sup> Note that this sentence immediately follows the one already cited above, p8 on who the most “fit” persons are to be sh”tz; the context thus strongly suggests that the reference here is to retaining such a person as a prayer leader (or shofar blower).

It is also worth noting that the *Mishnah B'rurah* 581:11 echoes this statement and then adds:

ואם חלה הוא ביד הקהל להעמיד אחר ומ"מ כשחוזר לבריאותו המצוה חוזרת אל הראשון

And if he fell sick, it is in the hands of the community to appoint another, but in any case, when he returns to health, the mitzvah returns to the first [person].

Perhaps this could be taken to mean that the current physical ailment affecting the potential sh”tz disqualifies him/her. The passage can equally be read to refer, however, to a case in which the original sh”tz was physically unable to lead services on this particular occasion, whereas the person under discussion in this teshuvah remains otherwise capable of serving as sh”tz.

services – then that person not only may, but ought to continue to do so, and should not be removed if they are otherwise able to fulfill the task.<sup>15</sup>

Before we can conclude that this is so, however, there is an important potential objection arising from the law of fast days other than Yom Kippur that must be addressed.

### **The non-fasting sh"tz on a communal fast day**

The codes do not explicitly address the possibility of a sh"tz who is not fasting on Yom Kippur. However, a closely related issue – that of the person who is not fasting on a communal fast day (a fast declared by an individual community for whatever reason<sup>16</sup>) – is raised in *Hilkhot Ta'anit* in the Tur/Shulhan Arukh (O. H., 566). It is true that the sources surveyed in the first section of this *teshuvah* above lead to the conclusion that if the non-faster is the most qualified, or has a “prior claim,” s/he may serve as sh"tz on Yom Kippur. But if we were to find that on communal fast days the non-faster should not lead services, it might seem that a rather obvious *kal v'homer* argument could be constructed: if on the communal fast day, where the imperative to fast (and hence also the penalty for not fasting) is lesser, the non-faster should not lead prayers, then all the more so, one would think, on Yom Kippur when the obligation to fast is of the highest order. I would like to suggest, however, that this argument does not hold. One could argue instead that there is one over-riding reason to be stricter about the public participation of the non-faster on the communal fast day than on Yom Kippur, and that is the issue of (for want of a better term) enforcement: without communal participation, the fast, and therefore the ritual practices and liturgical changes that accompany it, cannot occur. Whether members of the community choose to participate in the fast or not is of the essence. The possibility of insisting that only participants in the fast on that day lead the community in prayer would function, then, as a kind of *סייג לדבריהם*, a protective restriction to bolster the authority of the communal leaders who declared the fast and to encourage participation in the fast itself. Yom Kippur, in contrast, is a fixed annual occasion, one that (as already noted) carries deep significance and theological import well beyond the restrictions on consuming food and drink, and that is observed ritually and liturgically in ways well beyond fasting alone, including by the non-faster. Instead, I will argue in this section, when we examine not only the conclusion but the reasoning brought to bear on the case of the public fast, we will in fact find that it allows us to come to a different answer regarding our question under consideration here regarding Yom Kippur.

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<sup>15</sup> In fact, as a colleague observed – and I sincerely apologize that I did not properly record which colleague it was – if it is impossible for the non-faster to ever serve in this role, might this mean that it would be functionally quite difficult if not impossible for someone with one of these conditions, such as a diabetic, to serve the community as a *hazzan*, or perhaps even as a rabbi? Moreover, as Rabbi Susan Grossman commented in discussion of an earlier draft of this *teshuvah*, to deprive a rabbi or cantor or experienced high holiday sh"tz the possibility of leading Yom Kippur services for this reason might very well be a serious blow to that person's financial well-being, his or her *parnassah*.

<sup>16</sup> And by extension, the several sun-up to sun-down “minor” fasts throughout the year, as they themselves may, in a way, be seen as optional fasts that the community has (until recently) agreed to and accepted upon itself as obligatory; see, for example, Tur, *Hilkhot Tisha b'Av v'Sha'ar Ta'anivot*, O.H. 550, or the commentaries of *Magen Avraham* and *Mishnah B'rurah* to S.A., O.H. 550:1. For a modern, Masorti approach, see Rabbi David Golinkin, *תשובה בענין צום עד* “לאחר תפילת מנחה בתשעה באב” (<http://www.responsafortoday.com/vol1/6.pdf>), in which the author argues that fasting on the minor fast days should be restored to an optional practice.

In the Tur, Rabbi Ya'akov b. Asher first cites Rav Natan,<sup>17</sup> to the effect that a person who is not fasting may not recite (the communal repetition of) the amidah, because such a person cannot say the "Anenu" prayer which is added to the *Amidah* on fast-days. He then comments, however:

ואיני יודע למה שאינו אומר ביום תעניתי אלא ביום תענית הזה ותענית הוא לאחרים ודאי אם אפשר שיהיה ש"צ המתענה טוב הוא מאחר אבל אם אי אפשר נ"ל שיכול להתפלל  
 And I do not know why, since he does not say "on this day of *my* fast," but rather "on this fast day," and it is a fast day for others. Certainly, if it is possible that there be a sh"tz who is fasting, he is preferable to another, but if it is not possible, it seems to me that he may lead prayer.

The *Bayit Hadash* (Bah; Rabbi Joel Sirkes) expands on the view of the Tur:

ונראה טעם סברת רבינו דמאחר דאיכא עשרה שמתענין דין תענית צבור יש לו לענין ענינו וקריאת ויחל והם מביאין החיוב על הצבור לתפילת ענינו אלא מפני שמשקר בדבריו צריך לומר ביום תענית זה ומ"ש דש"ץ המתענה טוב הוא מאחר היינו לפי שהש"ץ הוא שליח בשביל המתענין כמו משה אהרן וחור  
 And it seems that the reason for the view of our teacher is that since there are ten who are fasting, the rule of a public fast applies to him in the matter of (saying) "Anenu" and reading "V'y'hal" [Ex. 32:11], and they (the fasters) bring the obligation upon the community for the "Anenu" prayer, but because he would be lying in his words he must say "on this fast day." And regarding that which he says, that a sh"tz who is fasting is preferable to another, this is because the sh"tz is a representative for those who are fasting, like Moses, Aaron, and Hur.

In a related vein, *Magen Avraham* comments to the S.A. (see just below):

אם אין ש"צ אחר מוטב שיתפלל מי שאינו מתענה משיתבטל לשמוע קדיש וברכו  
 If there is no other sh"tz, it is preferable that one who is not fasting lead prayer, than that someone be prevented from hearing *kaddish* and *Barkhu*.

Karo, however, commenting on the Tur in the *Beit Yosef*, cites several other authorities who ruled as does Rav Natan, and writes:

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<sup>17</sup> This rabbi is not further identified by the Tur, or in any of the commentaries. My initial suspicion, after consultation with my colleague Rabbi Aaron Alexander on this point, was that it is Rav Natan b. Yehiel, author of *Ha'arukh*; elsewhere the *Beit Yosef* (Y.D. 375) makes such an identification for a citation of Rav Natan in the Tur. Subsequently Rabbi Avram Reisner also suggested a possible source in the *Seder Rav Amram Gaon*. At the end of the section on fasts, Rav Natan, who is cited several times in the *Seder* but whose identity is otherwise no longer known, is quoted to the effect that an individual praying on a fast day without a minyan does not recite the thirteen attributes of God. A subsequent ruling, presented without attribution, states that an individual does say the "Anenu" prayer, without a blessing, when praying the silent *Amidah*. This is followed by one more statement, also anonymous:

ולצבור שהן מתענין ושליח צבור שלהן לא נתענה, יורידו לפניו מי שנתענה שיאמר ענגו באמת, אבל מי שלא נתענה אי אפשר לו לומר ענגו  
 And as for a community [of people] who are fasting, and their *shaliah tzibbur* is not fasting, they should bring down before them someone who is fasting who will say "Anenu" truthfully; but one who is not fasting, it is not possible for him to say "Anenu."

It is possible that the latter two rulings were intended, or at least were known to Rabbi Ya'akov b. Asher, as a continuation of Rav Avram's citation of Rav Natan.

ודבריהם דברי קבלה ועליהם יש לסמוך

And their words are oral tradition, and one may rely on them.

This is, in fact, exactly how he rules in the Shulhan Arukh, O.H. 566:5:

בתענית צבור, ש"צ שאינו מתענה לא יתפלל.

On a public fast, a sh”tz who is not fasting should not recite (the repetition of) the *Amidah*.

The debate continues in the commentaries to the S.A., as may be observed in the *Magen Avraham*, above, or the *Turei Zahav*. As presented in these sources, the critical issue regarding the non-faster leading prayers on a communal fast day is whether, and how, that person can say the “*Anenu*” paragraph, including its *b’rakhah*, on behalf of the congregation and more particularly those in the congregation who *are* fasting. Can the non-faster be a *shaliah* for the faster? If the sh”tz is not fasting, is his (we would add, or her) *b’rakhah* of “*Anenu*” a *b’rakhah l’vatalah*, a blessing made in vain?<sup>18</sup>

In sum, in all the sources just reviewed regarding a lesser, communal fast, even the more lenient authorities (Tur, Bah, *Magen Avraham*) articulate a preference for the sh”tz to be a person who is fasting when such a person is available, and are at best ambivalent about giving a non-faster an aliyah to the Torah. If, then, there is another, equally qualified person other than the non-faster available on Yom Kippur, should we rule that this latter person takes precedence? Given the grounds for preferring a sh”tz (or an *oleh/ah laTorah*) who is fasting on a communal fast day, are those reasons also applicable to Yom Kippur? If we were to extrapolate from the communal fast day to Yom Kippur, several possible questions follow that could help us consider the question of a non-fasting sh”tz on that day:

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<sup>18</sup> As may be evident in the citation of the Bah, above, a similar issue arises regarding the Torah reading that is added at *minhah* on a fast day: may a person who is not fasting have an aliyah? Based on an assumption that the person has already said the appropriate blessing for Torah study at the start of the day (indeed, this blessing can be found at the beginning of the *shaharit* service in the various editions of *Siddur Sim Shalom*), one may only repeat the blessing if one has an obligation to the specific episode of learning represented by this Torah reading, but since on this occasion the reading is included specifically because of the fast/fasters, the obligation of the non-faster is questionable (see, for example, the *Turei Zahav* to O.H. 566:6). The sources generally agree that in practice it is preferable that the non-faster not be given, or take, the aliyah, a position Karo codifies, albeit somewhat tentatively, in the *Shulhan Arukh*, O.H. 566:6 (see also *Beit Yosef* to Tur, O.H. 566). The *Mishnah B’rurah*, O.H. 566:23, however, notes that there are both those who rule strictly and those who rule leniently regarding the aliyah, and concludes with a statement that has significant echoes to the situation under consideration in this *teshuvah*:

ובדעיבד אם קראוהו והוא איש ת”ח ומחמת איזה אונס אירע שלא מתענה בת”צ וצר לו לומר להם שלא התענה כדי שלא יהיה ח”ה  
 דבר נראה שיכול לסמוך בשעת הדחק על המקלין ויעלה

And after the fact, if they called him, and he is a scholarly man but because of some circumstance beyond his control it happened that he does not fast during communal fasts, and it pains him to tell them that he did not fast so that there will be no desecration of the Divine Name in the matter, (then) it seems that in (such) a moment of urgency one may rely on those who rule leniently, and go up (to the Torah).

This passage does not directly resolve our question – among other things, we are considering whether the non-faster can be chosen as the sh”tz from the outset, nor would we encourage someone to be ashamed of and hence hide their inability to fast – but I would suggest that the sensitivity to the spiritual and emotional well-being of the non-faster that is displayed here is to be noted.

- Is there any part of the liturgy and ritual of the day that is said or done only as a result of the fact that we are commanded to fast? Is there any part of the prayers or rituals that is not obligatory on the person who is not fasting?
- Are there prayers that the sh”tz says on behalf of the congregation that contain mentions of fasting, and more particularly *b’rakhoh*, that are not appropriately said by one who is not fasting?
- If there are, are there ways in which the liturgy can be adapted without vitiating the essential implications of that prayer?

A survey of the three mahzorim generally used in the Conservative Movement, those edited by Rabbis Morris Silverman and Jules Harlow,<sup>19</sup> and now also *Lev Shalem*, suggests that references to fasting in the Yom Kippur liturgy are (perhaps surprisingly) rare.

A) *Kol Nidrei/Ma’ariv*

*Lev Shalem* includes a personal meditation (p. 203) to be said prior to *Kol Nidrei/ma’ariv*, in which the speaker enumerates a list of body parts and the ways in which s/he has misused them for sin (“You created me with ears so I could listen to Your world and Your word, but instead I have listened to gossip and words of hatred.”), and then concludes:

לכן אני מקבל/מקבלת עלי קדושת יום הכפורים, חמשה ענויים שצוית לנו על ידי משה עבדך בתורתך הקדושה: אכילה ושתייה, רחיצה, סיכה, נעילת הסנדל, תשמיש המטה...  
 Therefore I come to you on this Yom Kippur—this Day of Atonement—and have taken on myself the mitzvah not to eat or drink, not to bathe or perfume myself, not to wear leather shoes or engage in acts of physical intimacy...

Since this is not a public, obligatory prayer, and does not entail a blessing, it may be omitted or modified by the person unable to fast.<sup>20</sup>

*Lev Shalem* also includes a *piyyut* in the public *s’lihot* section of *ma’ariv* (p. 230) that includes this line:

ורצה תענית דוה מערב עד ערב

and accept our fasting from one evening to the next

Since this is a *piyyut* and not a required part of the service, one obvious option is for the non-fasting sh”tz to simply omit it. Based on some of the considerations above, however, it is also possible for the sh”tz to lead its recitation. There is no *b’rakhah* involved and hence no possibility of a *b’rakhah l’vatalah*. Moreover, the reference to fasting is general and communal, not personal (a point emphasized in the translation), so the sh”tz does not say anything false by repeating these

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<sup>19</sup> Morris Silverman, *High Holiday Prayer Book* (Bridgeport, CT: The Prayer Book Press, 1951); Jules Harlow, *Mahzor for Rosh Hashanah and Yom Kippur: A Prayer Book for the Days of Awe* (New York: The Rabbinical Assembly, 1972).

<sup>20</sup> For example, the person might modify the passage to a more general statement: “I have taken on myself the obligation of self-affliction (עניני נפש)”; see also the further discussion of the commandment of self-affliction and its fulfillment by the non-faster below. It should also be noted that *Lev Shalem* includes a “Meditation before Yom Kippur for One Who Cannot Fast” on 200, in a collection of home rituals for erev Yom Kippur.

words; indeed, the sentiment that the fast of the Jewish people at large should be acceptable to God is one that ought to be shared by all, including those unable, and thus legitimately exempted from the obligation to personally fast.

### B) *Shaharit*

Fasting is mentioned briefly in several *piyyutim* for *shaharit* found only in the Silverman *mahzor* (see pp. 260-261, and 277). Again, since these are *piyyutim* and are not obligatory and do not include *b'rakhot*, they may be said by the sh"tz without concern, or omitted at his/her discretion.

### C) *Musaf*

The Amidah and its repetition during *musaf* is where the majority of direct references to fasting in the Yom Kippur liturgy are to be found. There is, first, a reference to “יום צום כפור,” “the day of the Fast of Atonement,” in the “*Un'taneh Tokef*” section; this is, in fact, the only direct mention in the Harlow *mahzor* (Harlow, 536; also Silverman, 358, *Lev Shalem*, 315). At the end of the *Avodah* section, the Silverman *mahzor* (p. 377) includes a passage requesting that in lieu of the sacrifices we can no longer bring in the absence of the Temple:

וענוי נפשינו תהא כפרתנו...

and our affliction of our souls should be our means of atonement...

The passage then goes on to note that this is a “day when eating is forbidden, a day when drinking is forbidden, a day when washing...anointing... sexual intercourse...wearing leather shoes are forbidden.”<sup>21</sup> Most significantly, as is inherent in the structure of the traditional *musaf* liturgy, the verses from Num. 29:7-8 that relate to Yom Kippur may be recited; Harlow does not include them<sup>22</sup> while Silverman and *Lev Shalem* do (although an alternative is also presented in the latter). Although the focus is the additional sacrifices brought in recognition of the day, verse 7 does also include the injunction, “ועניתם את נפשותיכם,” translated in *Etz Hayim* as “you shall practice self-denial” (934). Thus, for those congregations that pray from the Harlow *mahzor* or choose the alternate liturgical option in *Lev Shalem*, there is not a significant problem (see below regarding “*Un'taneh Tokef*”). For those using the Silverman *mahzor* or the traditional liturgy from *Lev Shalem*, however, some additional investigation is in order. In particular, two key, inter-related questions arise, which I will present and address in turn:

1) When the sh"tz makes reference to עינוי נפש in reading Num. 29:7, and similarly at the end of the *Avodah* service (if using the Silverman *mahzor*), is s/he is making reference quite specifically to fasting, which s/he is unable to do for medical reasons?

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<sup>21</sup> Harlow does not include the *Avodah* at all in the body of *musaf*, but presents it rather as an appendix (598-617) for those who wish to include it. Nonetheless, this concluding prayer is not included; it may be noted, though, that a citation of Isaiah 58:5-7, which does refer to fasting although not explicitly to Yom Kippur, appears in an preliminary reading in English (598-601; the reference is on 600).

<sup>22</sup> Harlow's text includes only a reference to “ואת־מוסף יום הכפורים הזה עשו והקריבו לפניך באהבה כמצות רצונך ככתוב בתורתך” (548).

2) If the answer to the previous question is yes, then how would having the non-faster recite either of these parts of the Yom Kippur liturgy be either similar to or different from the issues involved in the non-faster making mention of the fast day in the "Anenu" prayer?

1) As noted at the outset of this teshuvah, references to עינוי נפש, self-denial, appear five times in the Torah, and this repeated command is the source of the obligation to fast on Yom Kippur. There are, of course, other restrictions as well, as suggested just above; m. Yoma 8:1 (see also Sifra, *Aharei Mot*, *parashah* 5:3, and *Emor*, *parasha* 11:4) further lists washing, anointing, wearing sandals (understood in our day as leather shoes), and sexual intercourse. There is on-going disagreement among halakhic authorities, however, as to whether these latter restrictions are included in the category of "עינוי נפש," are Toraitically forbidden by derivation from related sources but not "עינוי נפש," or are forbidden by tradition.<sup>23</sup>

One possibility, then, is to read with Rashi, who includes the other four prohibitions in עינוי נפש, in his commentary to the first mishnah in Yoma, chapter 8 (73a):

מפרש בגמרא דכל הני איקרו עינוי וגבי יוה"כ ה' עינוי' כתיבי והני ה' הו' דשתיה בכלל אכילה  
It is explained in the gemara that all these (forbidden acts listed in the mishnah) are called  
"self-denial"; five mentions of self-denial are written (in Torah) regarding Yom Kippur  
and these are five, since drinking is included in the category of eating.

If one takes this approach, then one can take the references to self-denial in the Yom Kippur liturgy more generally (indeed, this might be said to fit with the actual text of the *Avodah* service, which lists all the prohibitions apparently equally), and as ones that the sh"tz is included in through refraining from washing, wearing leather shoes, etc. That is, although not fasting, the sh"tz would still be considered to be fulfilling the commandment of self-denial by refraining from the other forbidden acts. As a result, there would be no concern for the sh"tz saying something which does not apply to him/herself and which might therefore appear as a kind of "lie."

2) Rashi's view, however, is very much a minority opinion. Nearly all other sources either take the restrictions other than eating and drinking to be *d'oraitta* but derived from a source other than עינוי נפש, or to be *d'rabbanan*. From this perspective, a reference to עינוי נפש from the sh"tz is a reference to the prohibition on fasting, which the person under consideration here is unable to observe. Is that statement then to be considered as inappropriate when coming from the non-faster?

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<sup>23</sup> Thus Sifra, *Aharei Mot*, *parashah* 5:3, focuses on the words שבת שבתון היא of Lev. 16:31 and does not invoke עינוי נפש (see also b. Yoma 74a) to derive these latter prohibitions, whereas also in Sifra, *Emor*, *parasha* 11:4, the midrash draws attention to the juxtaposition of the words שבת שבתון הוא לכם and וענייתם in Lev. 23:32. The Bavli, too, appears to have more than one approach to the question. In addition to the passage on b. Yoma 74a noted just above, on 76a Rav H<sup>isda</sup> connects the five prohibitions (combining eating and drinking into one) to the five verses that mention self denial in connection to Yom Kippur. On 77a-b, there are attempts to demonstrate that each of the prohibitions does indeed qualify as self denial, עינוי, based on biblical verses, but these may be read as examples of אסמכתא, textual supports but not the actual sources of the prohibition. For a sample of later discussions of the status of these four prohibitions, see the comment of Rashi cited just below; also Tosafot haRosh to the opening of Yoma, chapter 8; Rabbenu Tam as cited in Tosafot, ד"ה דתנן, Yoma 77a; Rif to mYoma 8:1 (at the opening of his commentary to the tractate) and the commentary of the Ran printed with it; Maimonides, *Mishneh Torah*, *Hilkhot Sh'vitat Asur* 1:5 and the commentaries *Kesef Mishneh* and *Maggid Mishneh* thereto; Tur O.H. 611 and the commentaries of *Beit Yosef* and *Bah<sup>ai</sup>*; *Magen Avraham* to S.A. O.H. 611:1.

The most obvious way to deflect this concern is to follow the reasoning of the Tur in *Hilkhot Ta'anit* (O.H. 566), when he distinguishes between saying “on this day of *my* fast,” and “on this fast day.” Since there is no personal reference in the Yom Kippur liturgy in any of the mentions in *musaf* (that is, no reference to “my fast”), there would thus be no “lie” in the sh”tz’s words, and no need to forbid such a person to lead communal prayer.

Yet even if one takes the more stringent position that the non-faster may not recite a prayer/blessing, however worded, that is placed into the liturgy *particularly because of the fast*, it is still unnecessary to disqualify the non-fasting sh”tz on Yom Kippur. Parallels between the elements of the Yom Kippur liturgy discussed here and the “*Anenu*” prayer of communal fast days do not hold. The reading of Num. 29:7 takes place in the personal, “silent” *amidah* as well as the repetition, and must therefore be required of *all* those who pray on Yom Kippur, even those who are unable to fast; it is reasonable to assume that it is placed here because of the *musaf* obligation that once existed, and the mention of fasting is secondary, not integral to why this passage is being said. In a similar vein, the fact that the *Un'taneh Tokef* section is recited in the *musaf* repetition of Rosh haShanah as well as Yom Kippur must mean that this prayer is not particular to the Yom Kippur liturgy, and that the mention of “the fast of Yom Kippur” found therein serves a descriptive rather than prescriptive purpose.

The *Avodah* service more closely parallels the “*Anenu*” prayer in one aspect, in that it is added to the service, only in the repetition of the *amidah* and specifically for this day. In other aspects, however, the comparison does not hold here either. For example, whereas the obligation to say “*Anenu*” is already found in talmudic tradition (*y. Berakhot* 4:3 [8a] provides a version of the “ענינו” liturgy; the Bavli makes reference to *tefillat ta'anit* in *Ta'anit* 11b and 13b, and *Avodah Zarah* 34a), the *Avodah* is based on a *piyyut* not composed and added to the liturgy until the 10th century c.e.; that is, it is not halakhically required to the degree that “*Anenu*” is (one could, of course, also make a similar observation regarding “*Un'taneh Tokef*”). Most significantly, “*Anenu*,” especially in the sh”tz’ repetition, is structured as an additional *b'rakhah*, thus raising the possibility of a *b'rakhah l'vatalah*; the *Avodah*, in contrast, does not have a unique *b'rakhah* associated with it. Indeed, the *b'rakhah* that does conclude the section of the *amidah* in which both the reading of Num. 29:7 and the *Avodah* are included closes with a standard blessing that is the fourth blessing of every *amidah* said on Yom Kippur, and which fits the standard form of the fourth blessing of every holiday *amidah*, “the One who sanctifies Israel and [the occasion]” (in this case “מלך מוהל וסולה...מקדש ישראל ויום הכפרים”). It is clear, then, that fasting is not part of the theme of the *b'rakhah*, and that there is no concern for a *b'rakhah l'vatalah* when this blessing is recited by one who is unable to fast on Yom Kippur. Similarly, the *Un'taneh Tokef* is included within, but is not essential to, the *kedushah* blessing, which appears in every *amidah* said on every day of the year (albeit on Yom Kippur in the modified form – המלך הקדוש – used throughout the *Aseret Y'mai T'shuvah*), and is entirely unconnected to the obligation to fast on Yom Kippur.

#### D) *Minhah*

There are no problematic passages in the *minhah* service in any of the *maḥzorim*.

#### E) *Ne'ilah*

This service in its entirety is now added to the liturgy only on Yom Kippur, and solely because of the special nature of the day. It thereby already invokes associations with the “*Anenu*” prayer – and like the “*Anenu*” prayer, the *ne'ilah* service has long-standing rabbinic precedent (see b. *Yoma* 87b). This association is bolstered by rabbinic texts that assert that at one time a *ne'ilah*



was also added to the liturgy when public fasts were declared (due to drought or other communal threats) and as part of the *ma'amadot*, a practice which also included fasting.<sup>24</sup>

בשלשה פרקים בשנה כהנים נושאים את כפיהן ארבע פעמים ביום בשחרית במוסף ובמנחה ובנעילת  
שערים בתעניות ובמעמדות וביום הכפורים:

At three periods in the year, the priests raise their hands [to bless the people] four times in the day, at *shaharit*, at *musaf*, at *minhah*, and at *ne'ilat she'arim* [the closing of the gates]:<sup>25</sup> during a fast, and during the *ma'amadot*, and during Yom Kippur. (m. Ta'anit 4:1)

Is *ne'ilah*, then, to be particularly associated with fasting in a way the liturgy of the other services of Yom Kippur is not (as has been shown above)?

I would suggest rather that another element links these cases, that being the need of extra propitiatory intensity on these occasions, a need that both fasting and the additional prayer service respond to (i.e., both are subordinate to the needs of the day rather than *ne'ilah* being subordinate to fasting).<sup>26</sup> It may also be noted that even the Mishnah itself in describing the *ma'amadot* is addressing what would have to have been in its time already a no longer extant practice in the absence of the Temple. With the further passage of time the inclusion of *ne'ilah* on any day other than Yom Kippur has now entirely fallen out of Jewish practice, given the general abandonment of declaring public fasts (nor was *ne'ilah* ever included for the mandated fast days relating to the destruction of the Temple, even Tisha b'Av; see b. Pesahim 54b). Thus, while *ne'ilah* is clearly said because the day is Yom Kippur, it is reasonable to claim that especially at this point in Jewish history *ne'ilah* is not said (only) because of the *fast* of Yom Kippur, but rather ties into much larger theological themes of the day that transcend the fast. With that said, there are no direct mentions of fasting in the liturgy of *ne'ilah*,<sup>27</sup> and all members of the community are expected to say it. Once again, there is therefore no reason to suggest that the non-fasting sh"tz who might lead *ne'ilah* would be in some way making a false prayer, let alone a *b'rakhah l'vatalah*.

In summary: The reasons why it might be problematic for a non-fasting sh"tz to say the "Anenu" prayer on a communal fast day on behalf of the fasting members of the congregation (or

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<sup>24</sup> According to the rabbis, the *ma'amadot* were groupings of Israelites corresponding to the *mishmarot*, priestly rotations. When the priests of a *mishmar* went to the Temple for their turn to serve there, they were accompanied by a delegation from the *ma'amad*; meanwhile the rest of the *ma'amad* gathered in their own locations, held fasts from Monday to Thursday, and participated in special Torah readings and prayers.

<sup>25</sup> See also t. Ta'anit 3:1, which uses only the word *ne'ilah* in its parallel discussion of this law.

<sup>26</sup> My appreciation to Rabbi Avram Reisner, first for encouraging me to think more deeply about this question regarding *ne'ilah*, and then for his close reading of and comments to my response (including contributing some of the wording used here).

<sup>27</sup> Although mention should be made of a *piyyut* that appears in *Lev Shalem* on p. 418, which is built, in part, around the verse from Kohelet 9:7, "Go, eat your bread in gladness, and drink your wine in joy [for your action was long ago approved by God]" (following the new JPS translation rather than the slightly less literal version in *Lev Shalem*). In context, it is certainly possible to interpret the inclusion of this verse as an oblique reference to the impending end of the fast. If the *piyyut* is thus understood as a (somewhat inverted) reference to fasting, then all the considerations regarding such additions to the service that have been discussed above (notably regarding *piyyutim* of *ma'ariv* and *shaharit*) would apply here as well.

to have an aliyah to the Torah at *minhah*) do not set a precedent for forbidding or even discouraging a non-fasting sh”tz for any of the services on Yom Kippur. Even in those places where the Yom Kippur liturgy contains passages that may be understood as direct references to the obligation to fast, these references are neither personal (“my fast”), nor placed in the liturgy specifically and exclusively because of the fast day. None of the blessings of the Yom Kippur liturgy invoke fasting, nor are there any blessings added to the liturgy particularly because Yom Kippur is a fast day. Therefore, there is no concern that the non-fasting sh”tz might make a *b’rakhah l’vatalah* or recite anything that could be considered in any way “false,” and thus no reason to bar the non-faster from serving as sh”tz.

קפס: A person who is unable to fast on Yom Kippur for medical reasons (as defined in the introduction above), may lead any part or all of services on that day.<sup>28</sup>

Considerations that might lead a community to choose such a person as their sh”tz include that the person is:

- a) in all other ways acceptable to/preferred by the community;
- b) the most qualified person available in terms of ability to lead and/or as a model of Jewish values and behavior;
- c) a regular leader of prayer in the community during the year and/or on the *Yamim Nora'im*, or has been hired as a “*kol bo*” for the *Yamim Nora'im*.

It should be reiterated that this teshuvah is addressed to the person who has a prior reason for being exempted from fasting and obligated to eat. Nothing in this teshuvah should be construed as permission to eat *so that* one may serve as sh”tz, if one would otherwise be able to fast. Furthermore, although this point should be further developed in a future CJLS teshuvah on the “hows” of eating for those medically unable to fast, I would suggest that even for those already prohibited to fast, permission to eat does not extend to eating “extra” beyond that which is necessary to maintain one’s health and well-being in order to serve as sh”tz – or, to put this point in the reverse, the non-faster should not serve as sh”tz if s/he will thereby feel the need to eat beyond what would otherwise be sufficient for her/him to preserve her/his health and well-being. Finally, as noted above, the person who must eat should nonetheless do so discreetly and out of public view.

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<sup>28</sup> This is, as discussed at length above, in contrast to the case of the non-faster on a communal fast day; in that situation the non-faster should not serve as sh”tz since s/he cannot truthfully recite the “*Anenu*” prayer.