

# Putting the Silent Partner Back Into Partnership Minyanim

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## Introduction

Over the last few years a new phenomenon has appeared on the Jewish scene. This phenomenon referred to as “Partnership *Minyanim*”, claims to be Orthodox and/or *halakhic*, and to offer increased opportunities for women to participate in services.<sup>1</sup> Specifically, women are allowed to serve as prayer leader (in some venues a woman is always asked to lead) for *Kabbalat Shabbat*—but not for *Maariv* on Friday night. On *Shabbat* morning a woman may serve as *Hazan(it)* for *Pesukei Dezimra* but not for *Shaharit* and *Musaf*. So too, a girl may be asked to conclude the *Shabbat* morning services beginning with *Ein Kelokeinu*. Finally, women are given *aliyot* and read Torah at these services (in some places this is allowed only after the third *aliyah*).<sup>2</sup> There are some of these groups that follow somewhat different structures.<sup>3</sup>

The title of this article reflects a fundamental concern about how this new development has come to the community. Partnership *Minyanim* exist in many areas; Jerusalem, New York, Washington, DC, Boston, Chicago and elsewhere.<sup>4</sup> Yet there has, to the best of my

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<sup>1</sup> For a description and definition see the homepage of Congregation Kol Sason online at <http://www.kolsasson.org/index.html> and [http://www.jofa.org/Resources/Partnership\\_Minyanim/](http://www.jofa.org/Resources/Partnership_Minyanim/) for The Jewish Orthodox Feminist Alliance (JOFA) description of these services.

<sup>2</sup> This is based on Responsa R. Meir of Rothenberg (1215-1293) 4:108, a source that in my opinion does not apply to the question of women regularly receiving *aliyot* in a mixed setting, today. The discussion of *kevod ha-briyot* below serves to challenge this suggestion.

<sup>3</sup> See Elitzur A. and Michal Bar-Asher-Sigal, Guide to the “Halachic Minyan”, Shvat, 5768 online in Hebrew and English at <http://minyanurim.com/uploads/Guideline%20for%20Halachic%20Minyanim%20January%202019%20-%20English.pdf>. This text goes through the entire year indicating what roles women may, in their *halakhic* opinion, fill in the liturgy of the yearly cycle of prayers. For example on Rosh Hashanah and Yom Kippur at morning services a man must begin the repetition of the *Amidah* but he is replaced by a woman for much of the *piyut*, the man takes over again as the congregation approaches *Kedushah*, and so on. In the introduction they make the point that they are still studying the issue of women’s participation at the different points in the service and that what they are offering is advice because different *minyanim* of this type follow different rules.

<sup>4</sup> For a list that may not be up to date see the JOFA website referenced in n. 1. Some Rabbis in some of the communities listed who I spoke to about this topic were surprised to learn of the existence of a Partnership *Minyan* in their neighborhoods.

knowledge and research, not been any formal attempt to discuss in writing whether these practices are or are not *Halakhic*. In effect, *Halakhah* has been the silent partner in the development of Partnership *Minyanim*.

This article is written to at least begin the process of filling that gap. The focus here will be on *Kabbalat Shabbat* and the question of whether a woman can lead that service in a mixed gender setting.

I chose that aspect of Partnership *Minyanim* for several reasons. First, a number of these groups only meet on Friday night, or began their existence as only a Sabbath eve service. Some have then added a Shabbat morning *tefillah* while others have not.

Second, there has been some written discussion of women and *aliyot* over the past few years<sup>5</sup>—which we will reference below—but there has been nothing about women and *Kabbalat Shabbat*. Finally, the issues that we will touch on in this presentation will also deal with many, if not most of the questions that would be raised by women leading parts of the morning services. On the other hand there are more relevant areas of *halakhic* concern that can be examined when it comes to *Kabbalat Shabbat* than there are regarding any of the other parts of the services that are given to women at Partnership *Minyanim*.

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<sup>5</sup> Cf. Mendel Shapiro, *Qeri'at ha-Torah by Women: a halakhic analysis*, the Edah Journal, 1:2 Sivan 5761, online at <http://www.roshpinadc.org/ShapiroQeriatHatorahbywomen.pdf?attredirects=0>, Daniel Sperber, *Congregational Dignity and Human Dignity: Women and Public Torah Reading*, The Edah Journal 3:2, Elul, 5763, online at <http://www.roshpinadc.org/Sperber-CongregationalDignityandHuma.pdf?attredirects=0>, Idem, *Darkah shel Halakha Kiryat Nashim b'Torah*. Jerusalem 2007, Aryeh A. Frimer, *Review of Daniel Sperber's Darka shel Halakha* online at <http://seforim.traditiononline.org/index.cfm/2008/6/12/Aryeh-A-Frimer-Review-of-Daniel-Sperber8217s-Darka-shel-Halakha>, and Gidon Rothstein, *Women's Aliyyot in Contemporary Synagogues*. In *Tradition* 39, 2 (2005) 36-58. I associate myself with the positions of Frimer and Rothstein

## I. The Case for Partnership *Minyanim*

This is a difficult section to write in the absence of any in-depth published defense of the practices followed at Partnership *Minyanim*. What I describe here comes from conversations or reports of conversations held with those who support the *halakhic* permissibility of these groups-particularly as regards *Kabbalat Shabbat*. It is, therefore, in the nature of hearsay and I apologize in advance for any shortcomings in my presentation. These shortcomings would easily be rectified by someone coming forward with a written *halakhic* defense of Partnership *Minyanim*.

Inadequate though it may be, what follows is my understanding of the arguments in favor of a woman leading *Kabbalat Shabbat*, but not *Maariv* at a Friday night service. There appear to be three prongs to this argument. The first point is that the *Hazan* or prayer leader at a communal service helps fulfill the prayer obligation of the *tsibur* or community. Women have no obligation to be involved in *tefillah be-tsibur* (communal prayer). They, therefore, do not count towards a *minyan* for a required service such as *Maariv*. So too, they cannot lead a communal service because they cannot fulfill the obligation for men, who are required to pray communally.<sup>6</sup>

On the other hand, *Kabbalat Shabbat* is not part of the talmudic era requirement of *tefillah be-tsibur* and is not part of the rabbinic *mitzvah* of *davening*.<sup>7</sup> That is because its origin lies in the 15<sup>th</sup> and 16<sup>th</sup> centuries and not in the talmudic period (1<sup>st</sup> to 7<sup>th</sup> centuries).<sup>8</sup> *Kabbalat Shabbat* is, therefore, only a community custom. It also does not require a *minyan* for its recitation. As such, a woman may lead since there is no obligation that would remain unfulfilled by her leadership.

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<sup>6</sup> Sources for these points appear in section IV below.

<sup>7</sup> Why the Talmudic era is the cutoff point is surprising to me as we have many required prayers that post-date that era, and some of them are clearly communal, eg. *Selichot* or *Birkat ha-Hodesh*, see my *Why We Pray What We Pray: the Remarkable History of Jewish Prayer* (Urim Publications, 2010).

<sup>8</sup> Ismar Elbogen, *Jewish Liturgy: A Comprehensive History*, Philadelphia, 1993, 91. Actually one can argue that the origins of *Kabbalat Shabbat* can be found in the story of two Talmudic era Rabbis who had special personal Friday night rituals, B. Baba Kama 32a-b and B. Shabbat 119a.. On the other hand only one line from the *Kabbalat Shabbat* liturgy appears in these texts. The rest apparently waited for the Ari and the mystics of Tsfat in the 15<sup>th</sup>-16<sup>th</sup> centuries.

The second point: One of the major objections to a woman serving as a prayer leader is that *kevod ha-tsibur* (the respect of the community, or the respect due to the community or the respect that the community is required to give to G-d) will be violated.<sup>9</sup> In response, adherents of partnership services argue that *kevod ha-tsibur*, either does not apply today or that it can be vitiated by the congregation foregoing or forgiving its honor.<sup>10</sup>

Point three: Women should affirmatively be allowed to lead services under these circumstances because of the principle of *kevod ha-briyot* (the honor due God's creations).<sup>11</sup> Women are demeaned by being unable to function in the role of prayer leader. This causes them great distress. Therefore, the principle of *kevod ha-briyot* should be invoked to diminish that distress and allow women to have this expanded role in Jewish worship. In general *kevod ha-briyot* vitiates rabbinic prohibition in cases of personal distress.<sup>12</sup> This model should be followed here as well.

## II. Response to the Second Argument

The primary focus of my reaction to these arguments will be an in-depth discussion of *Kabbalat Shabbat* and what I described as the first point raised in defense of Partnership *Minyanim*. That is the argument that seems to me to have the most substance. Therefore, I will first discuss points two and three more briefly.

The *Halakhic* argument about expanding women's role in *davening* and the concerns of *kevod ha-tsibbur* center on the following two sources:

והכל עולין למנין שבעה אפי' אשה אפי' קטן אין מביאין את האשה לקרות לרבים

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<sup>9</sup> See Frimer and particularly Rothstein op. cit, and discussion below.

<sup>10</sup> See Sperber and particularly Shapiro op. cit.

<sup>11</sup> See Sperber

<sup>12</sup> See Frimer and discussion below.

And all come up as part of the count of seven (people called to the Torah on the Sabbath) even a woman, even a child; one does not bring a woman to read for the many.<sup>13</sup>

תנו רבנן: הכל עולין למנין שבעה, ואפילו קטן ואפילו אשה. אבל אמרו חכמים: אשה לא תקרא בתורה, מפני כבוד צבור.

Our Rabbi's taught: all come up for the count of seven, even a child and even a woman. But the sages say: a woman shall not read in the Torah because of the community's honor (*kevod ha-tsibur*).<sup>14</sup>

Even assuming that the first source is also concerned with *kevod ha-tsibur*—which it does not mention explicitly—and even assuming that these sources can be overcome to allow for women reading Torah or getting *aliyot* in the contemporary synagogue (a very questionable assumption),<sup>15</sup> there is still a profound and obvious problem.

Nowhere in these sources, nor in any other *talmudic* passage, is the issue of *kevod ha-tsibur* ever cited in relation to a woman leading a prayer service. Therefore, finding a path around the *kevod ha-tsibur* problem for Torah reading—if that can be done in keeping with *Halakhah*—does not speak to our question at all. Nonetheless, defenders of Partnership *Minyanim* often cite this issue and the contemporary attempts to find a *Halakhic* way around this concern when it comes to Torah reading, in relation to *Kabbalat Shabbat* as well.

In that regard Meiri says explicitly:

קטן קורא בתורה שאין הכוונה אלא להשמיע לעם ואין זו מצוה גמורה כשאר מצות שנאמר בה כל שאינו מחויב וכו' ואע"פ שהוא מברך הרי מ"מ יש לו שייכות בתלמוד תורה עד שאחרים מצווין ללמדו וכל שכן שהקטן רשאי לתרגם אבל אינו פורס על שמע ואינו עובר לפני התיבה ובתלמוד המערב אמרו שאינו פורס אא"כ הביא שתי שערות הא הביא שתי שערות פורס אע"פ שהוא קטן אבל אינו עובר לפני התיבה אע"פ שהביא שתי שערות עד שיראה כגדול ר"ל שיהיה גדול ובר מצוה הא כל שנראה כגדול עובר אע"פ שלא נתמלא זקנו

<sup>13</sup> Tosefta Megillah 3:11.

<sup>14</sup> B. Megillah 23a.

<sup>15</sup> See Rothstein.

A child may read in the Torah for the intent is only to have it (the reading) be heard by the people, and this is not a complete *mitzvah* like other *mitzvot* about which it is said “whoever is not required... (cannot fulfill the obligation of the many)<sup>16</sup>” And even though he says a blessing, after all he has a connection to Torah study to the point where others are required to teach him.<sup>17</sup> Similarly the child may translate (offer the Aramaic *targum*).<sup>18</sup> But he may not divide the *Shema* (understood to mean recite *Barhu* in the presence of a *minyan* that is not praying so that he can then go on to the sections of *Shema* and the *Amidah* having offered this important liturgy that requires a prayer quorum for its recitation) and he does not go down before the ark<sup>19</sup> (he cannot serve as *Hazan*).<sup>20</sup>

This comment of Meiri, which is often cited as a critically important source supporting the arguments of those who see *aliyot* for women as acceptable,<sup>21</sup> specifically excludes the extrapolation that it is also acceptable to have children (or women) lead services. Torah reading is simply different than prayer and Meiri is explicit about that claim.<sup>22</sup>

Similarly, Mendel Shapiro who authored the first article advocating that woman can get *aliyot* in a mixed service wrote in that article:

From the Orthodox point of view, it is clear that *halakhah* cannot endure the sort of egalitarian service that is now commonplace in the Conservative and Reform movements. By all Orthodox accounts, *Halakhah* prohibits the inclusion of women in the requisite *minyan* of ten as well as the mingling of the sexes during the synagogue service. But while these prohibitions appear both formally and ideologically to be insurmountable, there is one portion of the synagogue service—*qeri'at ha-Torah* (the public Torah reading)—where to bar women’s participation may not be absolute.<sup>23</sup>

Though not stated explicitly this, too, would seem to exclude women from leading *Kabbalat Shabbat* services regardless of what one does with *kevod hatsibur* in the context of Torah reading.

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<sup>16</sup> M. Rosh Hashannah 3:8 see below

<sup>17</sup> See below for a discussion of the *mitzvah* of *hinukh*

<sup>18</sup> An ancient custom still followed in Yemenite synagogues; cf. M. Megillah 4:4.

<sup>19</sup> M. Megillah 4:5-6. Significantly there are references here to Tosefta Hagigah 1:3 and B. Hullin 24b, discussed in section VIII below.

<sup>20</sup> R. Menachem b. Solomon Meiri (1249-1315), Beit ha-Behirah, Megillah 24a

<sup>21</sup> Shapiro p.7

<sup>22</sup> Cf. B. Berakhot 32b

<sup>23</sup> Shapiro p.2

### III. Brief Response to Point Three

I am always troubled by presentations that purport to speak for an entire group. In this case the claim is that women feel demeaned and distressed by their inability to lead services generally and *Kabbalat Shabbat* specifically. However, it is not clear to me that this claim is true for all women. Certainly there are some who do feel this way and that should be taken seriously—but there are also many who do not feel this way at all. In fact, in my experience I'm not even sure that a majority of Orthodox affiliated women react this way.

It seems to me that a claim like this needs several elements for it to be given the gravitas that its proponents seek. We would need to know who or what group is entitled to speak for women—all women, all Jewish women, observant women, orthodox women, etc. It is also necessary to have a clear idea of what percentage of women actually feel demeaned, troubled, or unhappy at not being able to lead services, and what percentage is happy or unconcerned with the status quo. To my knowledge no one has made a formal presentation of the data that exists on these questions—if any does exist. Absent an attempt to gather that information scientifically we are dealing with anecdote and hearsay.

Also important in this regard is the question of how many women would actually be willing to lead such a service? It seems to me that any consideration of this type needs to distinguish between those who are unhappy and those who are really willing to do something concrete if the opportunity is offered. As far as I know *kevod ha-briyot*, however one understands it, does not deal with cases of vicarious distress. Whatever leniencies it might allow, the person afflicted is the subject of the leniency, not others who might see and be concerned. In short, simply making the claim that “women are distressed” does not give that claim sufficient moment to be the basis for a change in *halakhic* practice.

In addition, this usage of *kevod habriyot* is *halachically* without precedent in classical sources. *Kevod habriyot* can be used to overcome rabbinic law in a specific situation of

distress. If someone discovers that they are wearing clothing that violates rabbinic prohibitions of *shatnez* they may wait to get home to disrobe rather than be embarrassed in public.<sup>24</sup>

That determination is a onetime leniency. It does not allow that individual to continue to wear these clothes in public day after day or week after week on the premise that once they have put them on they will be embarrassed to take them off. *Kevod habriyot* is not a lever that can be used to pry away the weight of *halakhah* on an ongoing basis.

It also never appears in relation to a class or group of people—only in regard to an individual in distress. In addition, that distress is never about the ability to perform a meaningful act. It is always about avoiding a clearly and overtly embarrassing situation for that individual. It is also, as we said, never vicarious, but always about the individual themselves. None of this would seem to conform with the idea of asking one particular women to lead *Kabbalat Shabbat* on any particular Friday night, and it certainly does not fit with granting the entire *halakhic* category of women the right to do so on every Friday night from now until eternity.<sup>25</sup>

There is also profound *halakhic* danger in this approach. All laws create some measure of burden and, therefore, of distress at some points in time. Using *kevod habriyot* in this way eliminates the binding nature of all rabbinic laws. If a rabbinic law is distressing I do not need to follow the law and can claim *kevod habriyot*.<sup>26</sup>

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<sup>24</sup> B. Berakhot 19b, J. Kilayim 9:1 (32a)

<sup>25</sup> Frimer makes many of these same points and adds some additional ones (with which I generally agree), indicating that a proper understanding of the parameters of *kevod habriyot* shows that it is inapplicable here. His sources, which are also the basis of my comments, support what I say in this section. My formulation of how to understand *kevod habriyot* is occasionally somewhat different in nuance than his and I disagree on one point (i.e. that *kevod ha-tsibbur* is merely the *kevod ha-beriyot* of the *tsibbur*. To my mind *kevod ha-tsibbur* is a permanent issue while *kevod ha-briyot* is more situational, though Frimer and I agree that *kevod ha-tsibbur* is the stronger concern.) However there is enough overlap that a careful reading of what he wrote will show that he is close enough to what I say above that for brevity's sake I do not need to reinvent his wheel, as it were.

<sup>26</sup> Frimer makes this point as well.

This slippery slope is already here. Daniel Sperber also wrote an article arguing that women could get *aliyot*.<sup>27</sup> He makes direct and repeated use of *kevod habriyot* as a rationale for this practice in this article.

Subsequently these words appeared in print:

In his essay “Congregational Dignity and Human Dignity: Women and Public Torah Reading,” Bar Ilan Professor Daniel Sperber assembles a diverse assortment of ways in which human dignity has been cited in recent centuries. Professor Sperber says that *kevod habriyot* “has been given wide application” and in various *halakhic* contexts. In the responsa literature, Sperber finds numerous references to human dignity superseding a rabbinic law.<sup>28</sup>

This quote is from the new lenient responsum of the Conservative Movement that eliminates all prohibitions of lesbianism (they are rabbinic), allows male homosexuals to engage in any physical contact that falls short of Biblical prohibition, and accepts homosexual commitment ceremonies. To my mind this is an obvious next step in the process of carrying *kevod habriyot* to its logical conclusion if one follows the path taken by defenders of women’s *aliyot* and Partnership *Minyanim*

In fact, simply using the issue of personal distress as one’s criteria, I have heard far more and far more painful distress expressed by virtually everyone whose physical attraction tends towards members of the same gender about the *halakhic* restrictions against their acting on that desire, than I have heard from women about the limitations on their leading services.<sup>29</sup>

*Halakhic* rulings do not exist in a vacuum. They, as any legal decision, have consequences, both anticipated and unanticipated. The *Posek* has to be sensitive to the potential impact of his decision in the community, and frankly this development was, to my mind easily foreseeable.

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<sup>27</sup> See n.5 above. The Conservative responsum I am about to describe came after this article and before Sperber’s book and in the quote cited here makes specific reference to that article.

<sup>28</sup> Elliot N. Dorff, Daniel S. Nevins & Avram I. Reisner, Homosexuality, Human Dignity & Halakhah: a combined responsum for The Committee on Jewish Law and Standards online at [www.rabbinicalassembly.org/docs/Dorff\\_Nevins\\_Reisner\\_Final.pdf](http://www.rabbinicalassembly.org/docs/Dorff_Nevins_Reisner_Final.pdf)

<sup>29</sup> Frimer’s arguments are sufficient to indicate why *kevod habriyot* doesn’t work here either. Interestingly, a smaller number (though still a sufficient amount) of his arguments apply to the Homosexual situation than apply to the women’s *aliyot* issue, in some cases precisely because of what I write here.

In addition, based on this reasoning I see no obvious reason to argue that a Rabbi should not officiate at an intermarriage. After all a restrictive approach is demeaning and causes pain both to the Jew in love and to her Gentile partner who is also G-d's creation. Since officiating at such a wedding is only rabbinically prohibited, *kevod habriyot* should win out here as well.<sup>30</sup>

It seems obvious that other *halakhic* criteria beyond distress and *kevod habriyot* need to be factored in when examining these questions.<sup>31</sup>

#### **IV. Argument One: The Nature of Kabbalat Shabbat**

The initial, more restrictive part of this argument detailed above seems to engender no disagreement within the Orthodox community. Nonetheless, a review of some of the sources on which this part of the analysis is based will help us in understanding the *halakhic* issues raised by Partnership *Minyanim*.

Point one: The prayer leader at a communal service helps fulfill the obligation of the community. As Rabbi Yitshak Yaakov Weiss writes:<sup>32</sup>

דמוכה מדברי הרמב"ם דהחזרת התפילה להש"צ אף שהתפללו כל אחד בפ"ע, מ"מ צריכים לשמוע עוד הפעם מהשליח צבור למען יהי' תפילה בצבור

It is clear from the words of Maimonides that the repetition of the prayer of the *Hazan* even though each one has prayed by himself, nonetheless they must hear it another time from the *Hazan* in order for it to be communal prayer.

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<sup>30</sup> Presumably such a Rabbi is an accessory to a wrongful act (מסייע ידי עוברי עברה), which is a rabbinic prohibition, cf. , Rabbi David ben Solomon ibn Avi Zimra (1479 -1573), Responsa Radbaz, 2:796, R. Joseph b. Meir Teomim (1727-1792), Pri Megadim, Orah Hayim, Eshel Avraham, 163, R. Moses Sofer (1762-1839), Hatam Sofer, Sukah 30a, Rabbi Moshe Feinstein (1895-1986), Igrot Moshe, Orah Hayim 2:66.

<sup>31</sup> See Frimer for these considerations

<sup>32</sup> (1902-1989), Responsa Minhat Yitshak 9:6

In addition to substantiating the point we are discussing, Rav Weiss also draws a distinction between communal and individual prayer. Many of the advocates of elements of the Partnership *Minyanim* blur this distinction consistently as we shall see.

Point Two: Women have no obligation when it comes to communal prayer. Rabbi Isaac Herzog makes this point when he says:<sup>33</sup>

אך כל המדובר כאן הוא מבהיכ"נ של אנשים, אבל בביהכ"נ של נשים קדושתו פחותה מעזרת אנשים, ... שביהכ"נ של נשים ג"כ מצוה כיון שהן מחוייבות בתפלה, אעפ"י שאינן חייבות בתפלה בציבור.

Everything spoken of here refers to the men's synagogue. But in the women's synagogue its sanctity is less than the men's sanctuary ... the women's synagogue is also a *mitzvah* because they are required to pray<sup>34</sup> even though they are not required to pray communally.<sup>35</sup>

Point 3: Women, therefore, cannot count towards a *minyan* (towards a *tsibbur* or community at prayer). Rabbi Menashe Klein writes:<sup>36</sup>

דאף שחייבות בתפילה פטורות מתפילה בציבור ולכן אין מצטרפות לי'.

Even though they (women) are obligated to pray, they are exempt from (the requirement for) communal prayer, therefore they do not count towards ten (for a *minyan*)

Similarly Mishnah Berurah says:<sup>37</sup>

ועיקר תפלה בצבור הוא תפלת י"ח דהיינו שיתפללו עשרה אנשים שהם גדולים ביחד

The essential part (but not the totality—see below) of communal prayer is the eighteen (*Shmoneh Esrei*) which means that ten adult males shall pray together.

Point 4: As a result, they also cannot lead the community at prayer. M. Rosh Hashanah 3:8 famously states:

זה הכלל כל שאינו מחויב בדבר אינו מוציא את הרבים ידי חובתו:

<sup>33</sup> (1888-1959), Responsa Heikhal Yitshak, Orah Hayim 12

<sup>34</sup> We will examine this requirement below

<sup>35</sup> He cites Maharam me-Lublin in support.

<sup>36</sup> B. 1925, Responsa Mishneh Halakhot, Tokhen ha-Inyanim, 15, Orah Hayim.

<sup>37</sup> Rabbi Israel Meir Ha-Kohen (1839 -1933), 90:28.

This is the rule: whoever is not required to do something may not exempt the many from their obligation (in that area).

It is in the next steps of the argument, that in my opinion the Partnership *Minyan* supporters deviate from accepted *halakhah* and appropriate Orthodox legal epistemology.<sup>38</sup>

The first point in question is their assessment of the *halakhic* reality of *Kabbalat Shabbat*. Their claim is that it is not a required prayer since it is only a 15<sup>th</sup>-16<sup>th</sup> century invention of the Ari and his circle.<sup>39</sup>

Before responding directly I would make a parenthetical observation. The parts of the service that women are allowed to lead in Partnership *Minyanim* are all said to be “non-required” or “non-essential”. Why this will help to alleviate women’s distress at being excluded in the long term escapes me. I can understand the novelty and excitement of the initial experience, but I wonder how long it will take for women to realize that their participation is—by the definition of the supporters of Partnership *Minyanim*—second class, and therefore unsatisfactory or only partially fulfilling in alleviating their distress. In fact some in the Partnership *Minyan* world have already expressed this concern.<sup>40</sup>

What was the Ari’s view of *Kabbalat Shabbat* to the extent that we can determine it? One of the ways to know that something is designed to be a communal prayer is if it contains a liturgy that requires a *minyan* for its recitation. In particular, one can look to *Kaddish* as an indicator. *Kaddish* is a concluding prayer that follows after a paragraph, a section, or an entire service to indicate that a conclusion has been reached.<sup>41</sup> Its presence would seem to indicate that there is some understanding that there is a communal dimension to the prayer even if it can also be recited by an individual (who obviously leaves out the *Kaddish*).

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<sup>38</sup> This is also true in their use of *kevod haberiyot*. Using a *halakhic* principle in this way to remove centuries of traditional practice is outside of the usual epistemology of Orthodox Halakha.

<sup>39</sup> See n. 8 above for possible Talmudic antecedents.

<sup>40</sup> Cf. the discussion at Apikorsus Companion, v. 2.0, online at <http://elfsdh.blogspot.com/2008/02/partnership-minyan-gabbai-guide.html>

<sup>41</sup> See the chapter on *Kaddish* in my *Why We Pray...*

At the end of our current *Kabbalat Shabbat* service there is a *Kaddish* that follows *Mizmor Shir Leyom ha-Shabbat* and *Hashem Malakh*, the last 2 paragraphs of the liturgy. The history of this *Kaddish* is quite interesting, but for our purposes at this point we cite Menashe Klein again:<sup>42</sup>

הנה קדיש זה הנהיג הר"י הקדוש ז"ל לאמרו וע"ש הכוונה

This *Kaddish* was instituted by the holy Rabbi Isaac (the Ari) for reasons of proper mental focusing (*ha-Kavanah*).

It is well known that the Ari taught his followers to have specific *kavanot* for each part of the prayers. If he, himself, added *Kaddish* to the *Kabbalat Shabbat* service that he created, then this 15<sup>th</sup> -16<sup>th</sup> century liturgy was designed to be a communal service. The fact that it is not a Talmudic era liturgy would seem to make no difference here.

Now *Kabbalat Shabbat* in general was a controversial addition and it and the *Kaddish* that concludes it were resisted by some and only gradually accepted.<sup>43</sup> Today in most places this *Kaddish* is recited by mourners and those who are commemorating a *Yahrzeit*, but as with at least one such *Kaddish* that appears at the end of each prayer service, it presumably should be recited by someone, (usually the *Hazan*) even if no mourner and no one with *Yahrzeit* is present.<sup>44</sup>

If this is true, then *Kabbalat Shabbat* clearly cannot be led by a woman. It was designed as a prayer that would have, at the very least, a communal aspect, reflected by a *Kaddish*, and by the logic previously discussed would not be something that would allow for a woman *Hazan* in a mixed gender setting.

In actuality, arguing this issue on the grounds of what it was like in the 15<sup>th</sup>-16<sup>th</sup> centuries is a mistake. I do so only because the proponents of Partnership *Minyanim* have argued that its sixteenth century origin means that it is not to be considered communal prayer.

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<sup>42</sup> Responsa Mishneh Halakhot: 3:27

<sup>43</sup> Klein, loc. cit.

<sup>44</sup> See the chapter on *Kaddish* in my, *Why We Pray...*

The more important question is the status of *Kabbalat Shabbat* today. It is actually somewhat troubling in an Orthodox context to find an argument for justification that simply skips 4 or 5 hundred years of *halakhic* history. That type of argument is usually associated with the Historic School and its impact on the Conservative movement.<sup>45</sup>

As I understand the *halakhic* process one must look first and primarily to the current practice and not to an abandoned understanding that existed at some other time and place in Jewish history.

Also, in our particular case, this argument from the 15<sup>th</sup>-16<sup>th</sup> century origins seems to me to be a classic example of the Genetic Fallacy. One definition of this fallacy is that it is “a line of reasoning... in which the origin of a ... thing is taken to be evidence for the ... thing. Genetic Fallacy is committed whenever an idea is evaluated based upon irrelevant history.”<sup>46</sup>

Whatever *Kabbalat Shabbat* was in the 16<sup>th</sup> century is essentially irrelevant to this discussion. I mentioned it only to respond to the proponents of Partnership Minyanim in their own terms.

How then to understand the *halakhic* reality of *Kabbalat Shabbat* today?

In a number of areas of *Halakhah* and particularly when it comes to liturgical practice, the regnant requirement is determined and becomes generally mandatory once a practice can be described as a *minhag she'nishpashet bechol Yisroel* (a custom that has spread

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<sup>45</sup> For an example see the Conservative responsum entitled "May a Non-Kohen be Called to the Torah in the Presence of a Kohen" online at [http://www.rabbinicalassembly.org/teshuvot/docs/19912000/mandl\\_nonkohen.pdf](http://www.rabbinicalassembly.org/teshuvot/docs/19912000/mandl_nonkohen.pdf) which overturns the common practice of always giving a *kohen* the first *aliyah* if one is present in the synagogue by citing historical sources that no one has followed for many years and even more so the three *teshuvot* on family purity in contemporary society discussed online at [http://www.rabbinicalassembly.org/teshuvot/docs/20052010/mikveh\\_introduction.pdf](http://www.rabbinicalassembly.org/teshuvot/docs/20052010/mikveh_introduction.pdf) that includes various authors returning to medieval authorities or even all the way to the Bible to determine how *Taharat ha-Mishpaha* should be practiced by people today. It goes almost without saying that the conclusions reached by these responsa would be unacceptable in an Orthodox context.

<sup>46</sup> See online at <http://www.nizkor.org/features/fallacies/genetic-fallacy.html> and <http://www.fallacyfiles.org/genefall.html>

through all Israel). In fact, in even more general terms Or Zarua says, that repeating a communal liturgical custom turns it into a requirement.<sup>47</sup>

To cite an example of a *minhag she'nishpashet bechol Yisroel*, the Mishnah describes the Torah readings for the yearly cycle of the holidays.<sup>48</sup> It does not match the custom that our communities follow. Rambam in his commentary to this Mishnah describes the current practice essentially as we have it today. He explains and defends this deviation by saying:

זה הדבר מבואר, וסדר הקריאה באלו הזמנים והוא מנהג פשוט בכל ישראל מה שאומר לך.

This thing is clear, and the order of the readings on these occasions, and it is a custom spread through all Israel (to follow) what I will tell you...

It is my understanding that everyone sees the current practice as binding and no one would argue that it is acceptable to go back to the *Mishnaic* list and follow what it says there. In fact to do so would mean committing the Genetic Fallacy as described above. The weight of universal contemporary Jewish practice simply carries the day as the *halakhic* reality.

Similarly, despite the fact that much of the Jewish world once followed a triennial cycle of Torah readings, in the Orthodox community the custom is to finish the Pentateuch each year on *Simhat Torah*.<sup>49</sup> Again I do not believe that anyone today would *halakhically* support a return to the triennial cycle, and in fact the Conservative movement's reinstatement of a form of such a cycle of Torah readings was not warmly received by the Orthodox community.<sup>50</sup>

Rambam<sup>51</sup> again cites the rationale as follows:

המנהג הפשוט בכל ישראל שמשלימין את התורה בשנה אחת

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<sup>47</sup> See R. Yitzchak b. Moshe (c.1180- c.1250), Or Zarua, Hilkhos Erev Shabbat 2:20.

<sup>48</sup> M. Megillah 3:5

<sup>49</sup> Heinemann, Joseph. The Triennial Lectionary Cycle, in *Journal of Jewish Studies*, 19, (1968),41-48; Charnov, B.H. Shavuot. "Matan Torah and the Triennial Cycle.", in *Judaism* 23, (1974), 332-336; Bloom, Norman. "The Torah Reading Cycle Past and Present." In *Journal of Jewish Music and Liturgy* 18, (1996), 37-59.

<sup>50</sup> R. Ben-Zion Meir Chai Uzziel (1880-1953, Responsa Mishpatei Uziel, Orah Hayim: 3:58.

<sup>51</sup> (1138-1204), Mishneh Torah, Hilkhos Tefillah 13:1

The custom that has spread throughout all Israel is that they conclude the Torah in one year...

Similar statements can be found regarding other areas of *halakhic* practice, some of which are not liturgical. In all cases they form the underpinnings of the particular laws' current legal reality.<sup>52</sup>

*Kabbalat Shabbat* would seem to fit that category. The overwhelming majority of synagogues that would be the natural home for Orthodox participants in Partnership *Minyanim* absent these services, have the custom of reciting *Kabbalat Shabbat* and it is certainly seen as a required part of communal Friday night davening. As such women who have no communal prayer requirements would be exempt here, while men would be obligated—a circumstance that would preclude a woman from leading this liturgy.

While it is true that in some corners of the Jewish world *Kabbalat Shabbat* is still done privately by individuals without a *Hazan* or with various people taking the lead for the different paragraphs<sup>53</sup>. That does not diminish its status as a general custom that has spread throughout Israel. In Maimonides discussion of the annual and triennial cycle of Torah readings he mentions:<sup>54</sup>

ויש מי שמשלים את התורה בשלש שנים ואינו מנהג פשוט.

But there are those who complete the Torah in three years, however it is not the widespread custom.

As such, these exceptions do not change the status of the annual Torah reading cycle as a custom that has spread throughout Israel, nor do they change the fact that most communities are required to use the yearly cycle in their practice.

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<sup>52</sup> Cf Tosafot Hullin 110b sv. Kavda ma, R. Abraham Zvi Hirsh Eisenstadt (1813 – 1868), Pithei Teshuva, Yoreh Deah 118, Mishna Berurha, 55:66, R. Shlomo Ganzfried (1804 -1884), Kitsur Shulkhan Arukh 122:8. This last source speaks of the practice of not eating meat and not drinking wine during the nine days before Tisha B'av and says that it too is binding because it is a custom that has spread throughout Israel. Certainly this custom is seen as a requirement and the fact that it derives from a widespread custom does not mean that people stop abiding by its restrictions even if it is distressing to be restricted in this way.

<sup>53</sup> I prayed in a Sephardic synagogue that follows this practice this past week (May 29 2010) in Jerusalem.

<sup>54</sup> Loc. cit.

So too, *Kabbalat Shabbat* for the vast majority of Jews who attend Partnership *Minyanim* is a required part of the davening—required as a custom that has spread throughout Israel.

It would also seem to have spread as a requirement only for men. Although in some places women do come to synagogue on Friday night, in many places they do not, and while some recite *Kabbalat Shabbat* at home it is certainly my impression that many do not. It is also my sense that women who do recite it see this as an optional act and not as a requirement.

As such the communal aspect of reciting *Kabbalat Shabbat* in the synagogue, which widespread Jewish custom mandates for men and not for women, cannot be fulfilled in a circumstance where a *minyan* of men is represented by a woman as prayer leader.

#### **V. Argument One: On the Definition of *Tefillah Betsibbur***

Proponents of Partnership *Minyanim* argue that communal prayer is defined by its content. Specifically that a group at prayer is not engaged in *tefillah betsibbur* unless the liturgy contains an *Amidah* as part of its texts.

This is both counterintuitive and difficult to sustain in light of common practice. *Selihot* or the penitential prayers said on fast days, in the run-up to Rosh Hashanah and during the ten days of penitence contain a number of texts that require a *minyan* in order for them to be recited in their entirety.<sup>55</sup>

In some communities during the High Holiday season, they are recited at a time (e.g. 10:00 p.m. or the middle of the night) which makes them completely disconnected from any *Amidah* recitation.<sup>56</sup> Yet they certainly seem to be a communal prayer when said in a

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<sup>55</sup> As *Selihot* is done in Ashkenazi circles today these include the section of the thirteen attributes which is often recited several times during each *Selihot* service and the Aramaic sections that appear towards the end of the liturgy.

<sup>56</sup> On the first night of *Selihot* leading up to Rosh Hashannah the middle of the night is the preferred time. Late night *Selihot* are done on the other days in this time period by some synagogues though this is

*minyan*. They even end with *Kaddish Titkabel* when said in that venue. This is a form of *Kaddish* that adds a paragraph that does not appear in the other forms of this liturgy and which asks God to accept the prayers of all Israel. It is hard to see *Selihot* as not being communal prayer.

Interestingly the origins of *Selihot* as we have it seem to be post-*talmudic*, coming first from the period of the Geonim<sup>57</sup> and later from the Rishonim<sup>58</sup> who contributed some of the sections that are recited. It has grown to become a custom that has spread throughout Israel though Ashkenazin and Sephardim differ considerably as to the actual liturgy and as to the dates of recitation.<sup>59</sup> Nonetheless, the requirement to recite *Selihot* simply because it is the general custom<sup>60</sup> does not seem to preclude considering this a mandatory communal prayer.

Similarly when communities gather to recite Psalms<sup>61</sup> for someone who is ill or for a perceived threat to the State of Israel or for other similar reasons,<sup>62</sup> is this not communal

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controversial. Cf. R. Joseph b. Ephraim Caro (1488 -1575) Shulhan Arukh, Orah Hayim 581:1, and R. Hayim Yosef David Azulai, Birkei Yosef, (1724-1806) ad. loc.

<sup>57</sup> The name first appears in Geonic literature but the liturgy was quite different than what we know. The individual paragraphs were not fixed, and whatever was said was only said as an insertion into the repetition of the Amidah. Cf. R. Amram b. Sheshna Gaon (9<sup>th</sup> century), Seder Rav Amram Gaon; Seder Ta'anit, Seder Tisha B'av, Seder Ashmorot, Seder Tefillat Arvit Shel Yom Kippurim, et. Passim, Teshuvot ha-Geonim ha-Hadashot, Emanuel, 169.

<sup>58</sup> Among the authors of *Selihot* are R. Gershom Me'or ha-Golah (10<sup>th</sup>-11<sup>th</sup> centuries, Rashi, and R. Samuel Ben Meir (Rashbam) (c. 1080 - c. 1160). Moshe Ibn Ezra (11<sup>th</sup>-12<sup>th</sup> centuries) was so well known as a composer of these prayers that he came to be called *ha-Salahò* (i.e., the author of *Selihòot*).

<sup>59</sup> Cf. Shulhan Arukh, loc. cit.

<sup>60</sup> That is the language of both Caro and Isserless ad. loc, in describing this requirement..

<sup>61</sup> The communal recitation of *Birkhat ha-Gomel* seems to follow the same pattern, cf. Rambam, Hilkhot Berakhot 10:8.

<sup>62</sup> R. Meir b. Yekutiel ha-Kohen of Rothenburg (c.1260 – 1298), Hagahot Maimanivot, Hilkhot Tefillah, 8:4, specifically endorses such prayers:

שרבים נוהגים להתפלל בשביל יחיד וראיה מאבל וחתן

That the many are accustomed to pray for the individual and the proof is from the mourner and the bridegroom.

We discuss *tefillat rabim* in the next section but I do not think this source is talking about that *halakhic* reality. Rather I believe it is using *rabim* as a synonym for *minyan* and *tsibbur* because this comment appears in relation to the paragraph in which Rambam defines *tefillah betsibbur*.

prayer?<sup>63</sup> And if it isn't what is it? What *halakhic* category would it fall into? I can find no answers to these questions from the supporters of Partnership *Minyanim*.<sup>64</sup>

So too, the section of the Friday night davening referred to colloquially as *Magen Avot* recited after the silent *Amidah* in *Maariv* that is a later addition to the liturgy is called by Rashi “*tefillat ha-tzibbur*”.<sup>65</sup> We discuss this part of the prayer and what it teaches us about *Kabbalat Shabbat* in section IX below.

In addition a number of sources indicate that it is not the particular liturgy but the presence of ten men at prayer that defines turning to God as *tefillah betsibbur*.<sup>66</sup>

R. Moses Feinstein in a series of responsa discusses the common practice of having a minimum of six men who have not yet *davened* add in four others who have already prayed, which then allows them as a group to recite *Barhu*, *Kaddish*, *Kedusha* and the repetition of the *Amidah* (*devarim shebikdusha*). If one follows the logic of the proponents of Partnership *Minyanim* this should constitute *Tefillah Betsibbur* as the *Amidah* is part of this service.

R. Feinstein explicitly tells us that this is not so.<sup>67</sup> To quote one instance among several.<sup>68</sup>

הנה בדבר מעלת תפלה בצבור ששמע שאמרתי שהוא דוקא כשכל העשרה מתפללין ולא  
סגי ברוב המנין הוא האמת. ומה שהוזכר שסגי ברוב מנין הוא רק לענין לומר דבר  
שבקדושה.

Regarding the superiority of communal prayer, where he heard that I said that this is only when all of the ten pray and that it does not apply when it is the majority of a *minyan*, that is true... and what is recorded that it is

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<sup>63</sup> See R. Betzalel Stern (1911-1989), Responsa Betzel ha-Hahma 4:46 who mentions that reciting paragraphs of Psalms at a time of trouble is in the manner of prayer for the needs of the many (לומר מזמורי). (תהלים בדרך תפלה ותחנונים בעת צרה לצורך רבים). See also Rabbi Eliezer Yehuda Waldenberg (1916-2006), Responsa Tsits Eliezer 8:2 and 17:3 and R. Ovadia Yosef (contemporary), Responsa Yabei'a Omer 6:30.

<sup>64</sup> It may be *tefilat rabim*, but as discussed below that is a form of *tefillah betsibbur* and see previous note.

<sup>65</sup> R. Shlomo Yitzchaki (R. Solomon b. Isaac) (1040 -1105) B. Shabbat 24b sv. Mishum Sakannah

<sup>66</sup> Rabbi Judah b. Isaac Ayash (d. 1760), Responsa Beit Yehudah, Orah Hayim 55 makes this comment

דכל י' מישראל נקראין צבור ויש לחוש לכבודם ואין חילוק בין מרובים למועטים

Any group of ten Israelites is called a *tsibbur* and we must be concerned for their honor, and there is no difference between if there are many or few.

This appears to be true whether they are reciting the *Amidah*, *Kabbalat Shabbat* or anything else.

<sup>67</sup> (1895-1986), Orah Hayim 1:28-30

<sup>68</sup> Ibid 28. He cites both R. Avraham b. R. Yechiel Michel Danziger (1748 -1820), Haye Adam ( and Mishnah Berurah as supporting his position.

sufficient with the majority of a *minyan*, that is only to permit the recitation of *davar shebikdusha*.

It is not the content of the prayer, but the presence of ten men praying that makes a service into a *tefillah betsibbur*.<sup>69</sup> That again prevents a woman from leading services in the Partnership *Minyan* venue whether for *Maariv* that has an *Amidah* or for *Kabbalat Shabbat* that does not.

In similar terms, R. Moshe discusses the status of the *Kaddish* recited after *Anim Zemirot* (also called *Shir Hakavod* or the Hymn of Glory) and of *Anim Zemirot* itself. He says quoting Levush in support:<sup>70</sup>

אבל בבתי כנסיות שאומרים אחר התפילה אנעים זמירות, אף שג"כ אינו מהחיובים, מ"מ מאחר שנהגו שייך זה להתפילה ושייך רק להחיובים

But in those synagogues that say *Anim Zemirot* after services even though it too (the *Kaddish* recited after *Shir Hakavod*) is not part of those which are required (to be recited by the mourners), since they are accustomed to say it (*Anim Zemirot*) it becomes an aspect of the prayer and it (the *Kaddish*) applies only to those who are required to recite *Kaddish*.<sup>71</sup>

Again it is not the content, but the venue and the frequency that makes a particular text into a part of the prayer. *Kabbalat Shabbat* is something we are accustomed to say. It is therefore an “aspect of prayer” and when said with a *minyan* present, it becomes an aspect of communal prayer which women cannot lead.

To round out our discussion of *tefillah betsibbur* as it applies to prayers other than the *Amidah* there are 2 points to be made.

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<sup>69</sup> R. Bezalel Stern, Responsa Betsel ha-Hahama 4:135, disagrees with R. Feinstein. He believes that *davening* with six who have not done so before and four who have, does constitute *tefillah betsibbur*. However he does not require particular content. Among other things he says: The people who do not pay attention to pray *Shmoneh Esrei* with the community because they think that the essential thing in praying with ten is only in order to hear *Kaddish*, *Kedushah* and *Barhu* and therefore they pray *Shmoneh Esrei* by themselves and not together with the community are mistaken, because the essential part of communal prayer is to pray together with the community which is ten.

כי האנשים שאינם שמים לב להתפלל ביחד תפלת י"ה עם הצבור בחושבם כי העיקר להתפלל בעשרה הוא רק כדי לשמוע קדיש וקדושה וברכו ולכן הם מתפללים י"ה לעצמם ולא ביחד עם הצבור טועים הם כי עיקר התפלה בצבור הוא להתפלל יחד עם הצבור דהיינו עשרה

Again even for him the content is not the issue, it is the structure of the group. *Shmoneh Esrei* is again the essential element and not the totality of *tefillah betsibbur*, see *Mishneh Berurah* 90:28, and see below.

<sup>70</sup> Rabbi Mordecai Yoffe (1530 -1612). #133

<sup>71</sup> Igrot Moshe, Yoreh Deah 4:61

First, though the *Amidah* is certainly the quintessential prayer and is often simply called “*Tefillah*”,<sup>72</sup> it is certainly not the only prayer so designated in rabbinic literature. *Tefillat Haderekh*,<sup>73</sup> *Tefillah Ketzara*<sup>74</sup> or even *tefillat shav*<sup>75</sup> (which are inappropriate prayerful requests) are all seen as a type of *tefillah*. The latter is particularly intriguing because the designation *Tefillat Shav* implies that appropriate requests are fine *tefillot* even if no *Amidah* is involved.

Second, we return to a quote from *Mishnah Berurah*<sup>76</sup> that also appears in *Haye Adam*<sup>77</sup> and is cited By R. Moshe in his discussion of the definition of *tefillah betsibbur*:<sup>78</sup>

עיקר התפלה בצבור הוא תפלת י"ח דהיינו שיתפללו עשרה אנשים שהם גדולים ביחד

The essential part of communal prayer is the eighteen (*Shmoneh Esrei*) which means that ten adult males shall pray together.

The fact that *Shmoneh Esrei* is the essential aspect (*ikar*) of communal prayer means that it is not the totality of communal prayer. This implies that there is a non-essential aspect to *tefillah betsibbur* as well.

To put this another way: the basic *hiyuv* of *tefillah betsibbur* is to recite the *Amidah* in a communal setting. But there can be a *kiyum* of *tefillah betsibbur* that is something other than this basic requirement. In the same way that the *hiyuv* to accept the yoke of heaven is fulfilled by twice daily recitation of *Keriyat Shema*,<sup>79</sup> but one can be *mekayem* that commandment with every breath and every action beyond *Keriyat Shema*, so too the *hiyuv* of *tefillah betsibbur* is fulfilled with the *Amidah*, but there can be a *kiyum* of *tefillah betsibbur* with any other prayer that is recited in a community of ten men.

Again only someone who is required to pray communally can lead such a service and fulfill the *Hazan*'s role in that *davening*. While women can be *mekayem* many of the

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<sup>72</sup> Cf. B. Berakhot 4b, J. Berakhot 4:2 (7d)

<sup>73</sup> B. Berakhot 29b

<sup>74</sup> M. Berakhot 4:2,4

<sup>75</sup> M. Berakhot 9:3

<sup>76</sup> 90:28

<sup>77</sup> 19:1

<sup>78</sup> Igrot Moshe, Orah Hayim 1:28.

<sup>79</sup> Cf. B. Berakhot 13b

*mitzvot* that they are not required to do, their status in doing so is not the same as that of a man who is required to fulfill the *mitzvah*. This is the essential principle underlying the quote from Rav Henkin cited above comparing the sanctity of the men and women's prayer domains.

Finally for this section, we must ask about the permissibility of boys who are younger than *Bar Mitzvah* leading *Kabbalat Shabbat*, *Pesukei Dezimrah* or concluding the services as they do in many places.

The end of the *tefillah* may be different in some ways than the other two. In those communities that recite *Anim Zemirot* they may have been influenced by a long standing custom that recommends recitation of this prayer by a minor. Whether for mystical reasons or to allow young mourners to have a role in the services, this prayer may have a unique history when it comes to using a young child as a prayer leader. That custom may then have spread to using a youngster for this entire section and then even to synagogues that do not recite *Anim Zemirot*. In any case this would not provide a precedent for women as leaders as the custom is specific to young boys.<sup>80</sup>

I must admit to always having been troubled when I encountered someone below *Bar Mitzvah* leading *Pesukei de-Zimra* and even more so *Kabbalat Shabbat*. I do not permit this in my synagogue. It always seemed to me that this practice diminishes the importance of these sections of the liturgy and particularly *Kabbalat Shabbat* with its spiritually dramatic transition from weekdays to *Shabbat* seemed to deserve better.<sup>81</sup> The only rationale for doing so that appeared to make any sense is that since there is a rabbinic *mitzvah* of *hinukh*—of educating a child to perform the *mitzvot* that he will need to fulfill as an adult<sup>82</sup>—a child could be used in the prayer leader's role in these parts of the service that are more generally derived from custom<sup>83</sup> than from rabbinic law.<sup>84</sup>

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<sup>80</sup> For sources and discussion see the chapter on *Anim Zemirot* in my *Why We Pray...*

<sup>81</sup> Aryeh and Dov Frimer have used a similar argument to challenge the idea of Partnership *Minyanim* see online at the Tradition website <http://text.rcarabbis.org/?p=909>

<sup>82</sup> Cf. Rashi Genesis 14:14

<sup>83</sup> B. Berakhot 4b requires an individual to recite God's praises and then pray. This requirement is understood to be the underlying basis of why we need to say *Pesukei De-Zimrah* as a lead-in to formal prayer. However the particular paragraphs that we recite developed over time and do not appear to be specifically required by this *talmudic* dictum. They seem to derive from custom more than specific law and

The problem with this argument is that the obligation to educate is a parental or communal *hiyuv*.<sup>85</sup> It is not the obligation of the child to get himself educated and as such he has no requirement with which to balance the community's obligation to recite these parts of the services. In any case, again there is no connection between this and women leading these parts of the davening. The obligation to educate applies only where at some point later in life the person being educated will need to—or be able to—perform the activity being taught.<sup>86</sup> Since women are not going to grow into a position where being a *Hazan* is a possibility in a mixed gender setting, there is no *mitzvah* of *hinukh* for them in this arena.

## VI. Argument One: Tefillat Rabim

Even assuming that the proponents of Partnership *Minyanim* are correct that *Kabbalat Shabbat* is not *tefilah betsibbur*, there is a little known category it would fall into if recited in a public setting. That category is *tefillat rabim* (the prayer of the many).

We find the definition of this type of prayer in R. David b. Barukh Kalonymus Sperber's responsa. He tells us that three people praying together constitute *tefillat rabim*.<sup>87</sup> He says that this flows from the general principle that any *mitzvah* done in a group is superior to one done alone. Similarly Maharsha says that the prayer of the many is more readily

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some sections are the same but others vary dramatically between for example Sefardim and Ashkenazim in their practices.

<sup>84</sup> R. Ben-Zion Meir Chai Uzziel (1880- 1953), *Mishpetei Uzziel*, 3 Miluim 2, R. Uzziel himself indicates significant difficulty with this practice even as he defends those places that allow it. This is part of a much larger issue, cf. Tosefos Berakhot 15a, sv. Verabbi Yehudah and particularly Tosefos Berakhot 58a-b sv. Ad Sheyohal, note the discussion in the last source of someone who has no *hiyuv* at all versus someone who has a reduced or a not yet realized *hiyuv*, which would distinguish between a woman and a child, see also Tosefos Megillah 19b sv. Verabbi Yehudah.

<sup>85</sup> R. Uziel tries to deal with this question by raising the obligation of the leadership of the *shul* to educate future *Hazanim*. There are other approaches, cf. the sources in the last note.

<sup>86</sup> Cf. the discussion of the lame or blind child and *hinukh* in regard to going up to Jerusalem for the three pilgrimage holidays B. Hagigah 6a

<sup>87</sup> (1875-1962) Responsa Afarkasta De-Anyah, *Inyanim Shonim* 4:372. For further details such as the claim that at least at some parts of the *davening*, if the *Hazan* prays and the congregation only responds *Amen* but does not pray along- that too is *tefillat rabim* see *Ibid*, *Orah Hayim* 2:93. This would be another challenge to the idea of a child leading *Pesukei Dezimra* since in many congregations the *Hazan* for *Pesukei Dezimra* recites *Birkhot Hashahar* and the congregation simply says *Amen*. From our discussion below only an adult male should be able to do that successfully in *halakhic* terms.

accepted by God<sup>88</sup> and importantly for our discussion, the term appears in contexts that have nothing to do with the *Amidah*.<sup>89</sup>

There are *halakhic* implications that come with the concept of *tefillat rabim*. Shulhan Arukh tells us that if one takes an oath that a particular individual may not enter his home, if there is a synagogue on the premises he may not prevent the fellow from coming to pray with the many (*rabim*).<sup>90</sup> And Shakh indicates that the *Mehaber* chose to word this section this way to include requiring this individual's entry even if less than a *minyan* is present for the prayers in question.<sup>91</sup>

What is the relationship between *tefillat rabim* and *tefillah betsibur* and then what is the relationship of women to *tefillat rabim*?

The answers to these questions emerge from an intriguing responsum. On *Rosh Hodesh* if one forgets to say *Ya'ale Ve'yavo* in the *Amidah* at *Shaharit* or at *Minhah* he must repeat the prayer.<sup>92</sup> R. Abraham Isaac ha-Cohen Kook was asked whether someone who is repeating the prayer in this way can count towards a *minyan*?

Rav Kook limits the question. Certainly if there are six others or more who are praying he can count to the *minyan* just as anyone who has prayed completely might. But if this error occurred when he was part of another *minyan* so that he heard the repetition and therefore fulfilled his obligation for communal prayer can he count as one of the six who are *davening* now, to which four others who have already prayed will be added, even though he has already fulfilled his *tefillah betsibur* obligation?

Although it would seem intuitive that he would count with the four who have already prayed, Rav Kook concludes that such an individual does count among the six since he is joining in the prayer. Even though it is not *tefillah betsibur* for this individual, it is *tefillat rabim* for him and that is sufficient to count him as part of the majority of a

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<sup>88</sup>R. Samuel Eliezer b. Judah ha-Levi Edels (1555- 1632) *Hidushei Aggadot*, Berakhot 64a

<sup>89</sup>See Sperber in n. 87 who calls the *Hazan's* reading of names in memorial prayers (similar to *Yizkor* in many synagogues today) to which the congregation simply answers *Amen, tefillat rabim* and interestingly see R. Yosef Albo(1380-1444), *Sefer ha-Ikarim* 4:8.

<sup>90</sup> *Yoreh Deah* 228:21

<sup>91</sup> R. Shabbetai ben Meir Ha-Kohen, (1621-1662) *Ad. loc.* 228:62.

<sup>92</sup> *Shulhan Arukh*, *Orah Hayim* 124:10

*tsibbur* that has not yet prayed. In other words *tefillat rabim* is not a larger form of individual prayer, which would mean that he could not count because as an individual he has already been part of communal prayer and cannot count again, it is instead a diminished form of *tefillah betsibbur* and therefore, he can count because he is engaged in a minor act of communal prayer which gives him enough standing *halakhically* to be part of the six that are necessary to have the majority of a *tsibbur* present for the holiest of our prayers to be recited.<sup>93</sup>

Once *tefillat rabim* is seen as falling into the category of *tefillah betsibbur* we again must preclude women from leading such a service.

In a very real sense the model of three at prayer constituting *tefillat rabim*, while ten at prayer constitute *tefillah betsibbur* seems to parallel the structure of Grace after Meals, where three are needed for *zimun* and ten allow for the addition of the word *Elokeinu* to that *zimun*.<sup>94</sup> While all agree that women do not count towards adding *Elokeinu*,<sup>95</sup> there is much debate about whether women can count among the three.<sup>96</sup> Nonetheless even for those who take the position that women can count in the three, no one suggests that a woman can lead if there are both men and women present.<sup>97</sup> This is either because their obligation is rabbinic while men's is Biblical or because the formal text of benching contains reference to things like circumcision which is not applicable to them.<sup>98</sup>

If we use that model for *tefillat rabim* the same conclusion emerges. Much of the discussion in relation to *Birkhat Hamazon* focuses on the difference in obligation between men and women when it comes to saying grace after meals. That same difference exists here, perhaps to an even greater extent. The issue is larger than this article and has been impacted by a remarkable historic error, but we can lay out the relevant parameters.

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<sup>93</sup> R. Abraham Isaac Kook(1865 -1935) Responsa Orah Mishpat, Orah Hayim 23

<sup>94</sup> Cf. M. Berakhot 7:3.

<sup>95</sup> R. Mordechai Yaakov Breisch (b. 1896), Responsa Helkat Ya'akov, Orah Hayim 232

<sup>96</sup> Cf. Breisch, loc.cit, Shulkhan Arukh, Orah Hayim 199:7, R. Betzalel b. Abraham Ashkenazi(1520-1594), Shitah Mekubetset, Berahot 45b, R. Jacob Joshua b. Tzvi Hirsh Falk, Pnei Yehoshuah (1680 -1756), ad. loc, R. Jacob ben Asher,(1269- 1343), Tur, Orah Hayim, 199, Mishnah Berurah 187:9, R. Meir Simha of Dvinsk (1843- 1926) Or Sameah, Hilkhot Berahot 5:3

<sup>97</sup> Falk, loc. cit.

<sup>98</sup> Cf. Tosefos Berakhot 20b, Breisch, loc. cit., Falk, loc. cit.

Approaching this in the broadest way possible, there are some who see three positions among *Rishonim* on this question. Obviously the closer to a man's *hiyuv* one believes a woman's obligation to be, the better for supporter's of Partnership *Minyanim*.

Arukh ha-Shulchan sees in Rashi the opinion that women must pray all three prayers every day.<sup>99</sup> He goes so far as to say that it is difficult to understand why women are generally not careful to pray all three *tefillot* each day in accord with this opinion. The fact that this is true—i.e. that the vast majority of observant women do not *daven Maariv*—means that de facto this position is not the accepted *Halakhah*.<sup>100</sup> Similarly, the fact that the majority of even observant women do not treat *Kabbalat Shabbat* as a *hiyuv* that they must recite each week would lead us to the same conclusion and would indicate that the obligation concerning Friday night prayer is not the same for men as it is for women.

Also, even Arukh ha-Shulchan says that though women may be required to pray three times a day, many parts of the liturgy such as the blessings before *Keriyat Shema* and significantly, *Pesukei Dezimra* are not a *hiyuv* for women.<sup>101</sup> This means that a woman's obligation in personal prayer is not the same as a man's.

The second opinion is that of Nahmanides. Ramban argues for twice a day recitation of the formal prayer by women at *Shaharit* and at *Minhah*. The problem is that Nahmanides is not the author of this position despite some like Mishnah Berurah who credit him with it.<sup>102</sup> I cannot find this position anywhere in Ramban's writings. In addition, if one looks in the same section of the Shulchan Arukh where Mishnah Berurah makes this statement it is clear that he is quoting R. Akiva Eiger.<sup>103</sup>

Eiger says that Nahmanides takes this position in section 89 of a work called *Responso Besamim Rosh*. At one time this book was attributed to a variety of important scholars

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<sup>99</sup> R. Yechiel Michel b Aaron ha-Levi Epstein (1829 -1908). *Hilkhos Tefillah*, *Orah Hayim* 106:7.

<sup>100</sup> See the comment by Mishnah Berurah that we are about to cite.

<sup>101</sup> *Ibid.* 70 1-4

<sup>102</sup> 106:4. Mishnah Berurah calls this the main (*Ikar*) opinion. There is confusion here between the question of whether the requirement to pray is biblical or rabbinic and the question of how many times a day a woman must pray. Those two issues are not the same, but they appear to have gotten conflated somehow.

<sup>103</sup> Rabbi Akiva b. Moses Eiger (1761-1837), *Hagahot Rabbi Akiva Eiger*, ad. loc.

including Ramban, but now it is known to have been written by Isaac Molina in the 16<sup>th</sup> century. It is also a work of questionable *halakhic* authority because of many of the stances that it takes on a variety of issues. It certainly would not have the standing to successfully debate positions taken by Rashi or Maimonides, who we are about to cite.

If one looks in section 89 of Besamim Rosh, Molina says, that women “in our area” are required to pray twice a day because “they have accepted this practice upon themselves”. This is hardly an indication that all Jewish women are required to recite the formal liturgy at *Shaharit* and *Minhah* as Mishnah Berurah claims. Further even Mishnah Berurah sees the woman’s obligation as applying only to the *Amidah*, but not to other parts of the services which men certainly have a *hiyuv* to recite. There is again no *halakhic* way here to equate men’s obligation with women’s.

That leaves us with Maimonides and the third opinion that women may say whatever they want, but that they are required to do so only once each day.<sup>104</sup> That certainly gives them an entirely different legal relationship with prayer than we find with men. Therefore, even if one were to argue that women count as part of the *rabim* for *tefillat rabim*, they cannot lead. Again men’s *halakhic* relationship to the communal custom of reciting *Kabbalat Shabbat* on Friday night is not the same as women’s relationship, and therefore only men can lead in a mixed setting.

To summarize these last two sections; *Kabbalat Shabbat* is likely a *kiyum of tefillah betsibbur* when offered with a *Hazan* and a *minyan*. If not it is certainly *tefillat rabim* when recited in public. *Tefillat rabim* appears to be a sort of *tefillah betsibbur* light. Even if it is an expanded form of *tefillat yahid* the individual obligation of a woman is different than that of a man regardless of whose opinion on the question of a woman’s *hiyuv* in *davening* we follow. As with *Birkhat ha-Mazon* that means that a woman cannot lead. That is certainly true if *Kabbalat Shabbat* is *tefillat rabim* and even more so if it is a form of or an actual experience of *tefilah be-tsibbur*.

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<sup>104</sup> Hilkhhot Tefillah 1:2

## VII. Argument One: The Tale of the *Tallit*

This discussion of *tefillat rabim* may truly only be theoretical because there is an additional indication from the way we function as a community that we treat *Kabbalat Shabbat* as *tefillah betsibbur*. I base this on the use of the *tallit* for *Kabbalat Shabbat*.

As a general rule one must not put on or even wear a *tallit* after the sun goes down.<sup>105</sup> It is for this reason that men are told to come to *shul* early on *erev* Yom Kippur to at least put on their *Tallit* before sunset.<sup>106</sup> The use of the *Tallit* for *Maariv* is explained as an aid to standing in awe and fear during the prayer, which is why there is an exception on this night. But the *tallit* should certainly be on before the sun departs for the day.

This issue is joined particularly in relation to *Selihot* (the penitential prayers) which are said well after sunset and even in the middle of the night. Nonetheless the *Hazan* wears a *Tallit* out of respect for the community or for the presence of God.<sup>107</sup> In fact, some say

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<sup>105</sup> Cf. Rabbi Asher ben Jechiel (c1250 –1327), Tosefot ha-Rosh, Shabbat 25b, Rabbi Chaim Yosef David Azulai (Chida), (1724 -1806), Birkei Yosef, Orah Hayim 18:1, Yosef Chaim mi-Bagdad (1832 –1909), Sefer Ben Ish Hai, Hilkhoh Shannah Rishonah, Parshat Vayakhel, and Parshat Shoftim, Mishnah Berurah 18:4

<sup>106</sup> Ramo, Orah Hayim 18:1. The *sefardi* Mahzor for Yom Kippur included on The Torah CD Rom gives the following instructions for *erev* Yom Kippur:

מנהג ישראל להתעטף בטלית גם בתפילת ערבית כדי לעמוד באימה ויראה להתפלל, והאשכנזים נוהגים ללבוש הקיטל, ויש לכל אדם להזדרז לבא לבהכ"נ כדי להתעטף בטלית ולברך עליה מבעוד יום, ואם שקעה החמה יתעטף בלא ברכה

The custom of Israel is to wrap oneself in a *tallit* also at *Maariv* in order to stand in awe and fear to pray. But the Ashkenazim are accustomed to wear a *kittle*. And each man should be diligent to come to synagogue in order to wrap himself in a *tallit* and to say the blessing over it while it is still daytime. But if the sun has set he should wrap without a blessing.

<sup>107</sup> Rabbi Solomon b. Jechiel Luria (Maharshal) (1510- 1574), Yam Shel Shlomo, Kiddushun 1. R. David b. Solomon ibn Avi Zimra (1479 -1573), Responsa Radbaz 4:244. See R. Yom Tov b. Avraham Ashvili (1250 -1320), Hidushei Ritvah Shabbat 25b, Chida, loc. cit, 619, and R. Shneur Zalman b. Baruch (1745- 1813), Shulchan Aruch Harav 18:3, who say that the reason for the *tallit* at *Maariv* on *Yom Kippur* is because we are to appear as angels. See also Klein, 15:23. See R. Elazar of Worms (1160 - 1230 ), Peirush Siddur ha-Tefillah la-Rokeah , Jerusalem, 1994, 610 based on the text from B. Rosh Hashanah cited in the next note. See also Rabbi David HaLevi (1586- 1667), Taz, Orah Hayim 14:4, 581:2 and R. Shlomo b. Aderet (123 5-1310) Hidushei ha-Rashba, Eiruvim 92b.

that it is impossible for the *Hazan* to lead a community at prayer at any time without wearing a *tallit*.<sup>108</sup>

*Kabbalat Shabbat* often begins after sunset. Even when it doesn't, it frequently stretches past sunset. In some places, particularly in some *Yeshivot* there may be a fairly lengthy pause between the end of *Kabbalat Shabbat* and *Maariv* for dancing or learning. Nonetheless the *Hazan* for *Kabbalat Shabbat* always wears a *tallit* and I know of no one who worries whether sunset has passed before he puts it on, or who rushes him to finish before the sun goes down.

This is an indication that we functionally treat *Kabbalat Shabbat* as a communal prayer, or else the issue of the *Tallit* would be raised somewhere and by someone. Again a *tefillah betsibbur* cannot be led by a woman. Similarly, in my experience when *Tehillim* are said communally at night, the *hazan* usually wears a *tallit*. Again this would seem to mean that it, too, is a *tefillah betsibbur* even without an *Amidah* as part of its liturgy.

### VIII. The Pre-requisites to Being a *Hazan*

We begin this section by citing this statement from Tosefta:<sup>109</sup>

תינוקת שהביאה שתי שערות חייבת בכל מצות האמורות בתורה או חולצת או מתיבמת וכן  
תינוק שהביא שתי שערות חייב בכל מצות האמורות בתורה ראוי להיות בן סורר ומורה  
נתמלא זקנו ראוי לעשות שליח צבור לעבור לפני התיבה

A young girl who has grown two (pubic) hairs is obligated in regard to all the laws of the Torah and she performs either *Halitza* or *Yibum*.<sup>110</sup>

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<sup>108</sup> Taz ad. loc, Mishnah Berurah ad. loc, Arukh ha-Shulkhan, Orah Hayim 53:18, and See R. Solomon b. Judah Aaron Kluger (1785 -1869) Responsa Ha-Elef Lekha Shlomo, Orah Haim 37, for an indication that removal of the *tallit* means that the individual has stepped down from the position of *Hazan*. Klein 15:8, claims that no one disagrees that a *Hazan* needs a *tallit* at all times. This would all seem to derive from this statement on B. Rosh Hashannah 17b: נתעטף הקדוש ברוך הוא כשליח צבור (The Holy One Blessed Be He wrapped Himself (in a *tallit*) as a *Hazan*. Apparently the apparel of a *Hazan* includes a *Tallit*.

<sup>109</sup> Hagigah 1:3. See also B. Hullin 24b.

<sup>110</sup> Deuteronomy 25:5-10

So too a young boy who has grown two (pubic) hairs is obligated in regard to all the laws of the Torah, He is qualified to be a rebellious son.<sup>111</sup> When his beard is filled in he is fit to be the representative of the community to go down before the ark (to lead services).

This text indicates that being a *hazan* is only something contemplated for men. Women are mentioned in this source as well, but the concept of a woman prayer leader is not even discussed. Contrast this with the two sources cited at the very beginning of this article that discuss who may read from the Torah, where women are mentioned and the issues of her reading in public and *kevod hatsibur* are raised. It would seem that a woman serving as *hazan* was never seriously considered by the Rabbis while women reading Torah was an issue they took up as a serious possibility.

Even on an occasional basis when many authorities allow a young man whose beard has not grown in to serve as an ad hoc prayer leader, no such exception is made for a woman and the language continues to focus on one who has a full beard as opposed to one who does not yet have a full beard.<sup>112</sup> Again everything we examine points us away from any claim that women may lead services.

### **IX. The Example of *Magen Avot***

On Friday nights after the *Maariv Amidah* the practice is to recite a series of paragraphs known officially as *Berakha Ahat Mei'en Sheva* (one blessing abbreviating seven-reflecting the fact that they are a sort of repetition of that *Amidah*)<sup>113</sup> and colloquially as *Magen Avot*.<sup>114</sup> Many people know that this was instituted because the synagogues were out in the fields and people might be slow in getting there for davening. This lengthening of the services allowed everyone to conclude their prayers at the same time so that all

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<sup>111</sup> Ibid 21:18-21

<sup>112</sup> Rambam Hilkhos Tefillah 8:11, Shulhan Arukh, Orach Hayim 53:6. See also the comment of Meiri cited at the beginning of this article that is so important to defenders of women's *aliyot*. Meiri also references the beard and the other signs of physical maturity that appear in the Tosefta text we are discussing here.

<sup>113</sup> See discussion in R. Judah b. Barzilai (11<sup>th</sup>-12<sup>th</sup> century), Sefer ha-Itim 139 and particularly the opinion of Notranai Gaon cited there.

<sup>114</sup> Cf. Rashi, B. Shabbat 24b sv. Shalich tsibbur

could return home together. This would provide them some protection from the dangers inherent in walking alone.<sup>115</sup> But there is far more to this history.

Uncharacteristically this prayer concludes with the blessing *mekadesh ha-shabbat* even when it is recited on a Sabbath that coincides with a holiday and even when *Yom Kippur* (which is itself a *Shabbat*)<sup>116</sup> falls on a Saturday.<sup>117</sup> Normally when this blessing appears in the *Amidah* or *Kiddush* it will be expanded to include mention of both Sabbath and the holiday, but in the case of this prayer that is not true.

This practice is based on the following talmudic passage:<sup>118</sup>

אמר רבא: יום טוב שחל להיות בשבת, שליח ציבור היורד לפני התיבה ערבית אינו צריך להזכיר של יום טוב, שאילמלא שבת אין שליח צבור יורד ערבית ביום טוב... בדין הוא דאפילו בשבת נמי לא צריך, ורבנן הוא דתקוני משום סכנה.

Rabba said: When a holiday falls on *Shabbat* the *Hazan* who goes down before the ark for *Maariv* does not need to mention the holiday, because were it not *Shabbat*, the *Hazan* does not go down for *Maariv* on a holiday... logically, even on the Sabbath this is not necessary, but the Rabbis were the ones who decreed it because of danger.

Amram Gaon in our earliest *Siddur* (Seder Rav Amram Gaon) adds some important detail.<sup>119</sup> He emphasizes that originally there was no *Hazan* for *Maariv* at all on days other than *Shabbat* and that even on *Shabbat* the *Hazan* only began his task after the silent *Amidah* recitation with the paragraphs of *Vayehulu* and *Magen Avot*. Rashi echoes this understanding in his commentary on this text.<sup>120</sup> Importantly, Rashi then refers to this section as *tefilat ha-tsibbur*.<sup>121</sup>

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<sup>115</sup> Cf. R. Mordechai b. Hillel, (1240 -1298) Mordechai, Shabbat 407, Rashi, ad. loc, sees the danger as supernatural i.e. from demons and R. Simhah of Vitry (12th century), Mahzor Vitri (105) expands and explains his position. R. Eliezer ben Yoel Halevi, (c.1140 - c.1220), Raviyah, Masekhet Shabbat 1:200, sees the danger as either physical or astrological.

<sup>116</sup> Leviticus 16:31, 23:32.

<sup>117</sup> Seder Rav Amram Gaon, Tefilat Arvit shel Leil Yom ha-Kippurim,

<sup>118</sup> B. Shabbat 24b

<sup>119</sup> Loc. cit.

<sup>120</sup> B. Shabbat 24b sv. Shaliah tsibbur

<sup>121</sup> Ibid s,v, Mishum Sakannah

Sefer ha-Itim adds another significant detail.<sup>122</sup> There is a well-known debate between Rabban Gamaliel and Rabbi Joshua as to whether *Maariv* is obligatory or discretionary.<sup>123</sup> Sefer ha-Itim tells us that at the point in time when there was no *Hazan* for *Maariv*, even though that was several hundred years after the era of these two protagonists, the *halakhah* was that *Maariv* was discretionary.<sup>124</sup> It is for this reason that the Talmud says that logically there was no need even on *Shabbat* for anyone to function in the role of *Hazan* until the decree mandating *Magen Avot* went into effect. This creates the connection between the presence of a *Hazan* and seeing a liturgy as mandatory communal prayer (*tefillah betsibbur*) that we discuss below.

The Rabbis made *Magen Avot* mandatory as a recitation that involved a *Hazan*, but no other part of that service and on no other day but *Shabbat* was *Maariv* at all mandatory. In fact, because *Maariv* was discretionary, one could consider oneself to have successfully prayed *Maariv* simply by listening to the *Hazan* recite *Magen Avot*.<sup>125</sup> This form of an abbreviated *Amidah* was sufficient for this reason. Mahzor Vitri the earliest Ashkenazi *Siddur* citing Rashi and others says much the same thing.<sup>126</sup>

Now all of this derives from the *halakhic* position that *Maariv* was a discretionary prayer and from a lack of a formal *Amidah* repetition that would have allowed latecomers to catch up. In fact the lack of an *Amidah* repetition appears to be an indication that *Maariv* was discretionary.<sup>127</sup> Raviyah draws this conclusion directly.<sup>128</sup>

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<sup>122</sup> Loc. cit.

<sup>123</sup> B. Berakhot 27b

<sup>124</sup> Sefer ha-Itim, loc. cit. takes an interesting position on this question. He says that *Maariv* is optional if one does not recite it, However once one begins to recite the liturgy it becomes compulsory and all the rules of compulsory prayer attach to it. If this model is correct and can be applied to *Kabbalat Shabbat* that too would make women ineligible to lead. See also R. Abraham b. Nathan (c. 1155- 1215) Sefer ha-Manhig Shabbat 139

<sup>125</sup> Again see Sefer ha-Itim, loc. cit.

<sup>126</sup> Loc. cit.

<sup>127</sup> If we follow the comment on B. Rosh Hashanah, through Rashi and add the teachings of Amram Gaon, Sefer ha-Itim and Mahzor Vitri this seems to be the case.

<sup>128</sup> Masekhet Shabbat 1:196.

Today we consider *Maariv* to be mandatory. The first movement in this direction was the newly ordained presence of a *Hazan* for *Magen Avot* on Friday night just discussed. That presence indicated that this section was mandatory.<sup>129</sup>

In our communities we always use a *Hazan* in the synagogue for *Maariv* every day of the year. This expanded use of a *Hazan* would seem to be part of the transition of *Maariv* from a private discretionary prayer to a mandatory communal prayer.

If the presence of a *Hazan* indicates that a prayer is mandatory, then *Kabbalat Shabbat*, which today has a *Hazan* in the vast majority of synagogues, is also mandatory. Just as *Magen Avot* developed after the time when Rabban Gamaliel made at least the daily *Shmoneh Esrei* mandatory<sup>130</sup> and it became a compulsory communal liturgy with the presence of the *Hazan*, then this same process applies to *Kabbalat Shabbat*. *Tefillah betsibbur* requires the presence of ten adult males and a *Hazan*. Since those elements are both present when *Kabbalat Shabbat* is recited in a synagogue, it too must be a required *tefillah betsibbur* and it cannot be led by a woman.

In those places which do not have a *Hazan* for *Kabbalat Shabbat*, that lack would indicate that they do not view this liturgy as either mandatory or communal. In that case putting a woman in the role of *Hazan* would still be problematic. Adding a *Hazan* into the mix makes the prayer mandatory and communal, but women cannot lead a mandatory communal prayer. So even in a setting that currently has no *Hazan* the presence of a *Hazan* who cannot serve as a *Hazan* for communal prayer creates a *halakhic* dissonance that is unsustainable.

Moving back to the use of a child to lead *Kabbalat Shabbat* and *Pesukei Dezimra*. Certainly in Ashkenazi synagogues that have employed a *Hazan* for these prayers for many generations this would seem problematic. But even in Sefardi synagogues that don't normally use a *Hazan* for either or both, the issues discussed in this section need to

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<sup>129</sup> A further step in that process may be represented by Sefer ha-Manhig loc. cit. who says, citing Geonic responsa, that if one forgot to recite *Atah Kidashta* (the central paragraph of the *Shabbat Maariv Amidah*) he must repeat, which would seem to indicate a sense that *Maariv* was now a requirement.

<sup>130</sup> M. Berakhot 4:3, around 90 CE. Rava who cites this teaching in B. Rosh Hashanah lived in the 3<sup>rd</sup>-4<sup>th</sup> centuries CE.

be faced. Particularly in light of the Tosefta cited in the last section that precludes a minor from serving as *Hazan*, this practice would seem problematic. The only redeeming argument is the claim that a young boy is being trained for the role of *Hazan* when he grows to be an adult. Again this is a consideration that does not apply to women.

## X. Conclusion

As women have become more educated and accomplished in contemporary life, many have reexamined their role within Judaism. For some the experience of the traditional structure of things has been examined and found acceptable, for others the limitations seem too restrictive. In exploring new roles and practices that might offer more opportunities the response of the religious establishment has not always been very supportive even of the quest itself.

People who follow this issue may remember the exceptionally well researched and erudite article by Aryeh and Dov Frimer in defense of women's *tefillah* groups that evoked two "responses" that did not deign to even reference their article—all in the pages of Tradition. Anyone and everyone was certainly free to disagree with the Frimers and challenge their sources and conclusions, but the disdain was uncalled for and raised unnecessary negative emotions.

Also, Hazal were famously concerned about women's negative feelings that arose because they were excluded from laying their hands on sacrifices in the Temple. They responded by allowing a modified type of hand-laying that would calm the women's souls but also conform to *Halakhah*.<sup>131</sup> We certainly could use more of that spirit.

But, as with women laying hands on the sacrifices, these changes—if they are to be implemented—must conform with *Halakhah* and appropriate *halakhic* epistemology. That means that innovation must come with serious *halakhic* analysis and *yishuv ha-daat* that explores not only the *halakhic* permissibility of any new step, but also its

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<sup>131</sup> B. Hagigah 16b

implications and consequences. In short the legitimate feelings of women cannot be allowed to create institutions that violate *halakhah* and that create a dynamic that steps outside of appropriate legal epistemology because the consequences of that are far more negative than the value of providing some comfort to some women and those men who agree with them as important as that may be.

For a woman to lead *Kabbalat Shabbat* one would need to respond to the sources requiring that the Cantor be able to grow a full beard at some point in his life and the *Magen Avot* precedent that even non-mandatory prayers become mandatory when custom has us recite them regularly in public with a *Hazan* leading the way. One would also need to claim that *Kabbalat Shabbat* is only *tefillat rabim* and not *tefillah betsibbur*; that *teffilat rabim* is an extension of *tefillah beyihidut* and not a minor form of *tefillah betsibbur*; that women count as part of *rabim* and that unlike the similar structure of *zimun* women can lead in a mixed setting here even though their basic *hiyuv* is different than that of a man. Given the overwhelming weight of our sources that oppose every one of those steps, it would appear that no legitimate *halakhic* conclusion can take the lenient position on this fundamental question central to the reality of Partnership *Minyanim*.

Instead we need to work even harder to try and find *halakhically* legitimate ways to respond to contemporary Orthodox women and their range of opinions and feelings and not open the door to practices that might split our community and lead to halakhic violation in many areas of Jewish law.