

# Communications

## PARTNERSHIP MINYANIM

TO THE EDITOR:

I have corresponded with Rabbis Aryeh and Dov Frimer from time to time for almost twenty years, particularly about women's *tefillah* groups and *aliyyot*, and recently, partnership minyanim. Generally we agree, if not in details then in conclusions. Their most recent article has since been published ("Women, *Keri'at Ha-Torah*, and *Aliyyot*," *Tradition*, 46:4, Winter 2013). I will briefly comment on it, especially as it affords me an opportunity to argue a point in *tzeniut* about which we have disagreed in the past.

First, as to the size of the ms., an intimidating 60 pages of text with another 112 pages containing 417 endnotes, much of which are tangential to the main topic. No one is going to look up most of the sources, nor even know which ones to look up, and most people will rely on the authors for accuracy of interpretation. But not everyone agrees.

For example, *Responsa Rivash* no. 326, cited in n. 112, states:

When they [Haza] enacted that there should be seven readers in the Torah, the enactment was that a minor... should be counted among the seven, in order not to trouble the congregation by requiring all the seven to be adults, for perhaps they might not find seven [adults] who know how to read. For this reason they permitted even a woman [to read], were it not for *kevod ha-tsibbur*.

Based on this, the authors maintain that:

It is not that women were obligated in *keri'at ha-Torah*... but along came *kevod ha-tsibbur*... and took this right away. On the contrary, women are not obligated in *keri'at ha-Torah* and, therefore, should have had no role to play therein. In an exceptional move... Haza considered allowing women to get *aliyyot*. It was a very special dispensation... However, because of *kevod ha-tsibbur* Haza decided that they would not allow this dispensation to become normative practice. (p. 81)

Meaning, women were never allowed *aliyyot* as a matter of course, even before the *takkana* of *kevod ha-tsibbur*. The authors refer to this as a key to understanding much of the issue of women and *aliyyot*. I find it an

impossibly convoluted reading of the Rivash, replete with details not present in the text.

From here to the crux of the article, the lengthy discussion of mechanisms, *shome'a ke-oneh*, and so forth. The assumption behind all of this is that women are unequal to men in *keri'at ha-Torah* and therefore cannot discharge men's obligations, even without *kevod ha-tsibbur*. But why not say that the original halakhah had women reading alongside men until, indeed, Hazal prohibited it because of *kevod ha-tsibbur*?

This is the simple import of the Rashba in the newly printed from ms. (1961) novellae to *Rosh Hashanah* 33a:

Also the blessing on [reading] the Torah is not because of study, for even if he [already] blessed on [studying] the Torah... he repeats and blesses in the synagogue, because this is how they enacted it, that it be a separate mitsva, and they said that **even a woman is fit for it**.

And similarly in R. Manoah, Hilkhhot Tefilla ch. 12:

Nevertheless they [women] were commanded in the mitsvot written in the Torah... and therefore they can bless... and read in the Torah **as men** do, were it not for *kevod ha-tsibbur*.

That is to say, *keriat ha-Torah* is a special case, and Hazal in that context decreed equality between men and women—were it not for *kevod ha-tsibbur*. There certainly is no unanimity on this point among the *Rishonim*. But following this approach, much of the authors' discussion is, in my opinion, rendered moot.

I nevertheless remain unalterably opposed to partnership minyanim. As I wrote years ago regarding women's *aliyyot*, "regardless of the arguments that can be proffered to permit women's *aliyyot* today... women's *aliyyot* remain outside the consensus, and a congregation that institutes them is not Orthodox in name and will not long remain Orthodox in practice." The introduction of partnership minyanim only confirms my approach. It does not help if some or even all of the innovations can individually be justified. Taken together, they represent too-much-too-soon, an unsustainable deviation from synagogue practice.

Now to the meaning of *kevod ha-tsibbur*. Elsewhere I have written, based on Ritva in *Megillah* 4a and R. Avraham Min ha-Har in *Megillah* 19b who explain it by reference to a curse on those who have not learned, that *kevod ha-tsibbur* refers to the dishonor of a community which lacks males qualified to read from the Torah and is forced to rely on women. It most certainly has nothing to do with sexual distraction of the males, for the following reasons:

1) Nowhere in Hazal is *kevod ha-tsibbur* found in a sexual context. On the other hand, we find a close parallel to dishonor in *Yoma* 60a, “one does not read from *humashim* [partial Torah scrolls] in the synagogue because of *kevod ha-tsibbur*,” i.e. the impression given that the community is unable or unwilling to afford a complete scroll.

2) Sexual distraction as a factor in women’s *aliyyot* is negated in the Rishonim. *Sefer ha-Meorot* in *Berakhot* 44a and R. Manoah in *Hilkhhot Berakhot* chapter 5 both write “a woman should not read from the Torah because of *kevod ha-tsibbur*, but there is no *peritsut* [in their reading].” No Rishon claims otherwise.

On the other hand, in their article and in correspondence the authors argue that various Rishonim implicitly subscribe to the sexual distraction school. I do not agree. What is certain, in any case, is that the above-mentioned Rishonim do not subscribe to it. Two explain *kevod ha-tsibbur* differently, and two explicitly negate it. As for the Aharonim, this certainly is a case of “where Aharonim have not seen the Rishonim, halakhah is not [necessarily] like the Aharonim.” As I wrote in *Responsa Benei Banim* 4:2:

I read... that ha-Gri”d Soloveitchik taught his students [the sexual distraction explanation]. It pains me for such a great man, for it is against the implication of *Responsa Maharam Bava Batra* and other Rishonim about a city which is all kohanim, that a kohen reads the first and second *aliyyot* and the remainder are read by women. If there was any stumbling-block involved, it would have been better to cancel the reading altogether rather than cause sexual thoughts among the males. And it is explicit in *Sefer ha-Meorot* and... R. Manoah... If ha-Gri”d had seen their words he would not have taught what he taught.

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TO THE EDITOR:

In their article, Rabbis Frimer briefly mention that there is a minority opinion that allows children to read the Torah for the *aliyya* of an adult. They quickly dismiss this opinion, but they should rather have noted that Syrian Sephardic communities have always held on to the ancient traditions of allowing a boy under thirteen years of age to read the Torah in the synagogue when adults receive the *aliyya*.

The Jewish community in Syria has been functioning since the biblical period, and its traditions have persisted with little change for

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close to 3,000 years. Many people in our Brooklyn Syrian community can offer first-hand testimony that that this tradition continued in Syria until the community emigrated. Indeed, this custom continues in many Brooklyn community synagogues where boys as young as seven years old are allowed to read for an adult *oleh* on Shabbat, Monday and Thursday. Simply brushing this off as a “minority” opinion disregards this ancient and current practice. This is not an opinion to be dismissed so casually.

The Talmud does not differentiate between the *hiyyuv* (if there even is a *hiyyuv*) of the child and the adult. Neither does the Rambam and the majority of Rishonim, as indeed the Frimers noted in their article and footnotes. This whole construct about the child being able to have an *aliyya* but not being able to read for others is a creation that does not have strong support in the Talmud or Rishonim and clearly was never accepted by our community in practice, which apparently follows the opinion that the only obligation is that the Torah be read aloud, and since there is no individual obligation there is no issue of *shome’a ke-oneh* (and hence no issue of a *berakha levattala*).

R. Ovadia Yosef (*Yehave Da’at* 5:25) discusses whether a child can be given an *aliyya* on Shabbat, given the view that one must hear the Torah reading from an adult. He concludes by saying that *le-khatehilla* one should allow a child to read up to only six of the *aliyyot*, but if there is no other reader available, the child can read all seven *aliyyot*.

Indeed, in a *teshuvah* to R. Raymond Harari that he graciously shared with me, Chief Rabbi Yitzchak Yosef writes that one should not protest against our well-established custom, noting that the position allowing the minor to read all seven *aliyyot* is not *le-khatehilla* “applies only when there is no well-established custom, but in those communities where it is well-known that this is the custom they certainly may, if they wish, keep their custom, although it would be better to have at least one adult read.”

I would also call to the attention of your readers a *shiur* by R. Yair Kahn of Yeshivat Har Etzion (available at <http://www.etzion.org.il/vbm/archive/kriathatorah-kahn.docx>) in which he shows that, contrary to the claim of the Frimers, R. Soloveitchik’s position was that according to the Rosh there was no issue of *shome’a ke-oneh* when the *ba’al kerī’ah* reads for the *oleh*.

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TO THE EDITOR:

The article by Rabbis Aryeh and Dov Frimer on the subject of Partnership Minyanim is the best substantive halakhic piece on the subject. It shows that the articles written in support of these minyanim, while scholarly, are tenuous halakhically. The authors of those articles must explain how they can deal with the points made in the Frimers' article.

Nevertheless, I think it would be an error to launch a crusade against these minyanim. This is not a non-Orthodox venture. We should not lose sight of the fact that, while the people involved in these minyanim may be mistaken, they are primarily Orthodox Jews committed to halakhic Judaism. They have chosen their *posekim* and act accordingly. They deserve to be seriously critiqued but not delegitimized.

The Conservative and Reform movements of the 19th and 20th century have failed and are no threat to Orthodoxy today. In my opinion, to adopt the 19th-century banishing strategy of Rav Hirsch and the Hatam Sofer in our day is a mistake. Indeed, I often wonder whether that strategy was a success or a failure. Perhaps a strategy of engagement instead of estrangement would have kept more Jews in the fold in those days. To delegitimize the participants in a partnership minyan today is to exclude people who are Orthodox in identification and practice. Many of them are well-educated graduates of our finest Orthodox schools of higher Jewish learning. The Frimers' article challenges them with solid issues to ponder and sources which must be seriously addressed. But the real challenge, I believe, is to continue the conversation without delegitimizing each other.

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ARYEH AND DOV FRIMER RESPOND:

We would like to thank each of the distinguished writers for their thoughtful remarks.

We discuss first the comments of R. Yehuda Herzl Henkin. R. Henkin is troubled by our understanding of *Resp. Rivash* 326 (cited in n. 102), which reads:

And when they instituted that seven should read from the Torah, the enactment was that a minor who knows how to read could be included in the seven - so as not to trouble the community that all seven should be

majors - for maybe they will not find enough able to read. And they permitted even a woman [to read] for this reason, were it not for the honor of the community.

This selection clearly demonstrates that the rabbinic allowance for non-obligated minors and women to be *olim* deviates from the normal rules of mitsva fulfillment and was a *special dispensation*, as we argue. Hence, as many scholars indicate (see n. 122), this leniency was to be invoked only when needed (*bi-she'at ha-dehak*), but not in a normative situation. In his present letter, R. Henkin intimates, however, that there was a period when women received *aliyyot* as a matter of course, which was later forbidden because of *kevod ha-tsibbur*. This suggestion is discussed by the scholars cited in nn. 19a and 122 and deemed by most (including R. Henkin himself cited in n. 19a) as unfounded. Thus there was no period under *takkanat Ezra* when women read regularly. We emphasize that, contrary to R. Henkin's impression, we do not invoke Rivash in this regard.

That women were never equal to men in *keri'at ha-Torah* is evidenced by the fact that there is near unanimity among *rishonim* and an overwhelming majority of *aharonim* (n. 84) that women are not obligated in a public Torah reading. In addition, under the old system, where blessings were only recited by the first and last *oleh*, women (and minors) could only receive the *middle aliyyot* which lack benedictions (see sources cited in Sec. V.D). Finally, Rema rules [nn. 117 and 178c] that when *kevod ha-tsibbur* is set aside, all or even the majority of *aliyyot* cannot go to women and minors.

To our mind, the comments of Rashba and R. Manoah cited by R. Henkin prove nothing in this regard. These *rishonim* are struggling with the fundamental question of whether women, who are not obligated in *keri'at ha-Torah*, can nevertheless recite the *keri'at ha-Torah* benedictions, should they be called up. (Similarly, see Tosafot, *Rosh ha-Shana* 32a, s.v. "Ha"). Their answer is in the affirmative. But they are referring to a case where *kevod ha-tsibbur* has been suspended, such as in *she'at ha-dehak* situations where no male is able to read. There is no proof whatsoever from these quotes that a woman's reading was ever a normative situation.

R. Henkin's position on the definition of *kevod ha-tsibbur* is indeed well known to us, and we cite it at the end of note 238. However, we also demonstrate in note 238 that among the *rishonim*, this "Sexual Distraction School" is supported by *Behag* according to *Tosafot*, *Sukka* 38a, *Sefer ha-Aguda*, and most likely the *Semag*. Among the *aharonim* we cite are

many who lived in the modern period and had access to *Sefer haMe'orot* and R. Manoah - and yet ruled otherwise. But even if they did not see these sources, there were other *rishonim* on whom they could rely. It is true that the comments of the *rishonim* we cite were said in the context of *Mikra Megilla* or *Kiddush*. But, as we demonstrate, the principle of *kevod ha-tsibbur* is not limited to *keri'at ha-Torah*. We believe that one cannot simply wave off such a large cadre of prominent *aharonim* - as R. Henkin would have us do - particularly if they can find support for their view in the positions of major *rishonim*.

What's more, in note 241, we cite a variety of sources - including the Jerusalem Talmud and many *rishonim* - that permit a non-Jewish slave to receive an *aliyya*, while forbidding women to do the same. Numerous prominent authorities, also cited in note 241, argue that the distinction between women and non-Jewish slaves is a natural outcome of what they believe to be the essence of *kevod ha-tsibbur* - namely, sexual distraction.

As for *Sefer ha-Me'orot* and R. Manoah, they undoubtedly align themselves with one of the other schools in *kevod ha-Tsibbur*. However, in light of the plethora of sources we have cited, there is no justification in ignoring the "Sexual Distraction School", as R. Henkin would advocate.

We turn now to the remarks of R. Henry Hasson. We are admittedly puzzled by the practice of those communities which allow minors to *le-khatehilla* read as *ba'alei keriah* for adults. Indeed, it is hard to speculate as to what rationale is used to justify this practice. Perhaps they are relying on the Rosh, as understood by R. Joseph B. Soloveitchik (see n. 181), according to which *keri'at ha-Torah* consists of two components. The first obligation is for the *oleh* to actually read (along with the *ba'al keriah*) from the parchment. The second requirement is that the Torah text be read out loud, which can be fulfilled by any Jew present, minor or adult, male or female. According to this analysis, there is no issue here of *shome'a ke-oneh* or *berakha levattala*, as long as the *oleh* reads along from the parchment. However, this understanding of the Rosh is subject to debate. Moreover, R. Soloveitchik himself states that, as a matter of halakhic practice, we hold like the contrary view of Maharil - and not the Rosh - who requires *shome'a ke-oneh*! Alternatively, these *Sefaradi* communities may maintain that a minor who is a *trei de-rabbanan* can assist a major who is a *had de-rabbanan* (see discussion at nn. 72 and 184 and in n. 181).

When we spoke with former Israeli Chief Rabbi Shlomo Moshe Amar about the issue, he made mention of both of these possible explanations, while noting their serious problematics. He therefore insisted that *Sefaradim* rely on them only *be-she'at ha-dehak*. Furthermore, R. Ovadya Hadaya (whose parents were from the Aleppo Syrian community and

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whose father was the *Av Beit Din* in Aleppo), in *Resp. Yaskil Ardi*, VII, sec. 5, rules out readings by minors completely. In any case, everyone would agree that *trei de-rabbanan* is not applicable to justify a woman reader.

As to the extremely sensitive and thoughtful comments of R. Heshie Billet, their application should obviously be left to the practicing rabbin-ate which has its hand on the pulse of the community. We are pleased that R. Billet believes that our article has made clear the limits of halakhic practice in the question of women's *aliyyot*.

### EMPLOYER'S LIABILITY FOR EMPLOYEE'S SEXUAL MISCONDUCT

TO THE EDITOR:

At the conclusion of my recent article, "An Employer's Vicarious Liability for an Employee's Sexual Misconduct" (Summer 2014), I propose that an agreement be executed between parents and a Jewish institution which would preempt the possibility of a *beit din* rendering a *pesak din* based on secular notions of strict liability.

After thoughtful reflection, though such a proposal will be recognized on halakhic grounds provided that the child's best interests remain uncompromised, on legal grounds a parent cannot waive the legal rights of his child(ren). Such an agreement between parents and a Jewish institution would be against public policy and therefore legally unenforceable.

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