

Communications

Tradition welcomes and encourages letters to the editor. Letters, which should be brief and to the point, should not ordinarily exceed 1000 words. They should be e-mailed to tradition-letters@rabbis.org. Letters may be edited.

MEDICAL MALPRACTICE AND JEWISH LAW

TO THE EDITOR:

“Medical Malpractice and Jewish Law” (*Tradition* 39:1, Spring 2005) is an important contribution to an underdeveloped area of halakhic inquiry. In this letter I propose an alternate analysis of some of the relevant source material and suggest for consideration a number of halakhic conclusions at variance with those advanced by R. Bleich.

R. Bleich begins with an analysis of the case in which a physician kills his patient as a result of error. He cites *Or Same’ah* and other *aharonim* who assume that the ruling of *Tur* (*Yoreh De’ah* 336), that the physician whose patient dies as a result of error is condemned to exile, refers to literal *galut*. These sources apparently understand that *Tur*, codifier of normative halakha, obligates the physician to flee from a blood avenger and confine himself in a city of refuge.

Tur, however, in his introduction to *Yoreh De’ah* defines its purpose as “providing knowledge to adjudicate laws that apply in these times.” Of course, the laws of *galut* had lapsed long before *Tur* wrote his work. Indeed, *Tur* (*Hoshen Mishpat* 425) expressly states that *galut* is one of the areas of Jewish law that can no longer be practically implemented. Perhaps, then, *Tur*’s ruling regarding *galut* does not refer to its conventional definition.

In fact, *Tur* (*Yoreh De’ah* 335) in his introduction to *Hilkhot Bikkur Holim u-Refu’a* states that his laws governing physicians are “a compilation derived from the great master, Ramban” and *Bet Yosef* explicitly attributes *Tur*’s ruling regarding *galut* to *Torat ha-Adam* (*Inyan ha-Sakkana*). In that work, Ramban explains that the verse “and He shall cause him to be thoroughly healed” (Exodus 21:19) exempts the physician from actual *galut*. Indeed, Ramban states that the seemingly unqualified declaration of the Tosefta (*Bava Kamma* 9:3), that a physician who errs and kills in the context of his work is condemned to *galut*, is not to be understood at face value. Instead, *galut* is the physician’s “obligation to heaven to exile himself for the death of his patient” and is incumbent only if “the physician is aware of having erred.” *Tur* apparent-

ly views Ramban's obligation to heaven as distinct from true *galut*. *Galut*, in this context, is symbolic and represents an ethical imperative for self examination and improvement. The physician must engage in soul searching and self-reflection if a patient has died at his hands. Cognizance of error is a prerequisite because, absent awareness, no self reflection can take place. *Tur*'s normative codification of *galut* refers to a timelessly applicable moral admonition for introspection and self improvement rather than a commandment to flee to a city of refuge.

In addition to addressing cases in which the patient dies due to physician error, R. Bleich's article deals with the physician who damages but does not kill his patient. Based on a number of sources, including the Tosefta (*Gittin* 3:13), R. Bleich asserts that "in terms of Biblical law the physician is fully liable [for damages] . . . [and] is exonerated solely by reason of [a] rabbinic enactment" (p. 88). According to R. Bleich's analysis, due to the societal need to attract skilled practitioners, the rabbis enacted a decree providing a degree of financial dispensation to the physician. From a Biblical standpoint, however, there exists an underlying classic *hiyyuv mamon* (monetary obligation) to the injured party.

Ramban in *Torat ha-Adam* writes, however, that a physician who through error, damages but does not kill his patient "is not free of *his obligation to heaven* until he pays the damages, *if he is aware of having erred*." As in the case of *galut*, Ramban substantiates his position by reference to the verse "and He shall cause him to be thoroughly healed." According to Ramban, this verse effectively removes the physician who has erred from financial liability for tortious battery. So long as the practitioner is expert and licensed, he is defined as a "physician" and thereby granted a Biblically based immunity from financial liability. Ramban makes no mention of the Tosefta *Gittin* or of a rabbinic decree in support of his ruling. He provides no basis for distinguishing between immunity from monetary liability and that of *galut*.

Apparently, just as Ramban's "obligation to heaven" for a physician to exile himself does not refer to a classic *hiyyuv galut*, so too, the monetary "obligation to heaven" does not refer to a classic *hiyyuv mamon*. Like *galut*, payment is symbolic and is a means of achieving self-improvement. It is presumably for this reason that Ramban requires awareness to generate liability. Absent awareness, no self-improvement can take place. According to Ramban, whom *Tur* identifies as his source, unlike tort litigation, which emphasizes the entitlements of the damaged party, payment by the physician, in the face of error, is a matter between the physician and God.

Two important practical differences arise between R. Bleich's position and the one I propose. R. Bleich states that in cases in which the physician erred, the patient enjoys the right of *tefisa*; seizing property owed him without the authorization of *bet din*. This is consistent with a position which views the monetary obligation as *ben adam le-havero* (between the tortfeasor and the injured party). The patient, being the interested party, can take the law into his own hands in cases in which *bet din* cannot act on his behalf. If, however, as I suggest, payment is a matter *ben adam la-Makom* (between man and God), the patient, who is the recipient of the funds but not a litigant, would not have recourse to *tefisa*.

Additionally, if, as I suggest, the physician's financial liability is an ethical imperative, factors other than restitution (e.g., recurrent error vs. first time error) could potentially play a role in determining the amount paid. R. Bleich's approach would presumably leave no room for such considerations.

This suggested reading of Ramban results in a position similar to that advanced by R. Judah Ayash in *Shevet Yehuda* (*Yoreh De'ah* 336) cited by R. Bleich in footnote 13. *Shevet Yehuda*, utilizing a line of reasoning different from that suggested herein, concludes that both *galut* and payment are non-statutory according to *Shulhan Arukh*. I believe that the conclusion, if not the rationale of *Shevet Yehuda*, deserves further consideration as it is consistent with the straightforward explication of *Torat ha-Adam*.

Finally, Ramban delineates the behavior to which the Biblical exoneration applies. Ramban states, "[the immunity from payment and *galut*] is present so long as the physician takes the appropriate precautions called for in life threatening situations and does not damage the patient through gross negligence." If the suggested readings in this letter are correct, a physician who exercises appropriate caution is exempt from statutory culpability according to *Torat ha-Adam*, *Tur*, and *Shulhan Arukh*. When, however, the physician learns that he has nonetheless erred, he must discharge an ethical obligation to heaven, having assumed agency for the One in whom all healing lies.

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J. DAVID BLEICH RESPONDS:

I fail to grasp Dr. Becker's point with regard to *galut*. No one has suggested that *galut* is operative in our era. Nevertheless, it is imprecise to describe references to *galut* as "symbolic." As I made clear in my article, *galut* is designed not only as protection from the blood-avenger but also as a means of achieving expiation and atonement. That point is clearly formulated by the Gemara, *Makkot* 2b, and is further evidenced by the explicit statement of the Sifri to the effect that the obligation of *galut* exists even in the absence of a blood-avenger and in the ruling of the Gemara, *Makkot* 11b, requiring exile of the "bones" of the perpetrator in the event of his death. Those who have suggested otherwise have met with sharp criticism. See *Encyclopedia Talmudit*, VI, 123, note 14.

Contrary to the writer's statement, personal obligation is indeed an essential component of the classic *kiyyum* of *galut*. Determination that an obligation of *galut* exists is a determination that a transgression requiring atonement has occurred and hence the reference to *galut* both in *Tur* and *Shulhan Arukh* is quite appropriate. The implication of a determination with regard to whether a particular act gives rise to an obligation of *galut* as a dispositive indication of a need for repentance and expiation even in our age is explicitly formulated by *Teshuvot Hatam Sofer, Orah Hayyim*, no. 177.

Bet Yosef not only attributes *Tur*'s ruling to Ramban but also implies that *Tur* is in agreement with Ramban's further statement that a physician who remains unaware of his error bears no culpability whatsoever. It is precisely that statement of Ramban that was the focus of my discussion.

Dr. Becker asserts that Ramban maintains that the physician is biblically exonerated from responsibility for monetary damages on the basis of a scriptural verse. Fine and dandy. But then Ramban is in direct contradiction to the presumably authoritative dictum of the Tosefta. Unlike the writer, I am not content to accept the contradiction. Moreover, if a biblical exemption does exist, where is the proof text establishing an "obligation to Heaven"? Furthermore, I am unaware of any tort obligation "at the hands of Heaven" in the annals of Halakhah that does not involve what the writer would describe as a "moral" obligation *vis-à-vis* the victim. If no such obligation exists, why should the victim be designated as the recipient of the funds? Assuming there is any basis for Dr. Becker's basic thesis, one cannot

read his novel distinction between “recurrent vs. first time error” into the words of Ramban. The text of Ramban simply does not support such a distinction.

Finally, Dr. Becker’s analysis is based upon a faulty reading of the text. Ramban does *not* substantiate his position regarding tort liability “by reference to the verse ‘and he shall cause him to be thoroughly healed.’” Upon completing his analysis of liability both with regard to *galut* and to monetary payment, Ramban turns to an entirely different issue, *viz.*, the need for biblical dispensation to practice the healing arts and proceeds to cite, not the verse itself, but the talmudic comment “authority was given to the physician to heal,” and then offers two distinct resolutions of the problem. The editor of the Mosad Harav Kook edition correctly understood the import of this passage in *Torat ha-Adam* and, accordingly, indicates that the citation serves as the beginning of a new sentence, not the conclusion of the previous discussion. Quite apart from the punctuation, the reader will quickly ascertain that Ramban does not predicate his position regarding tort liability upon a biblical verse.

WOMEN’S *ALIYYOT* IN CONTEMPORARY SYNAGOGUES

TO THE EDITOR:

Without imputing equality between them, three positions are represented in R. Rothstein’s article (*Tradition* 39:2, Summer 2005): (1) R. Shapiro’s position, that women’s *aliyyot* should be permitted anytime and anywhere a congregation so wishes; (2) R. Rothstein’s reaction, that women’s *aliyyot* should never be permitted; and (3) my opinion that a *heter* can be established, but that in practice women’s *aliyyot* are outside the consensus and, I predict, will remain so for the foreseeable future. Regrettably, there are those who confuse prediction with predilection, in keeping with the age-old practice of shooting the messenger who bears bad tidings.

The major part of R. Rothstein’s article consists of criticism of R. Shapiro on women’s *aliyyot*. To a lesser extent he criticizes my response in the *Edah Journal* and my views in *Benei Banim*. I will limit brief comments here to what pertains to me.

First, R. Rothstein has his chronology wrong, or at least obscured by a welter of conflicting statements. For example, he writes:

R. Henkin's reasoning supports Shapiro's claim that the institution of a *ba'al keri'a* should take away the problem. Since the men are being read for (precisely to avoid embarrassing the ignorant), a woman's standing next to the *ba'al keri'a* should mean nothing more than when a man does so. Accepting R. Henkin's view, in other words, means that we should come to agree with Shapiro in practice (at least because of the *ba'al keri'a*) (p. 48).

This puts the cart before the horse: R. Shapiro learned the above from *Benei Banim*, and not the other way around. Similarly;

R. Henkin accepted or anticipated Shapiro's basic reasoning on these two most central questions (as well as on the issue of the reader). . . . (p. 52).

There seems to be some confusion here. And while confusion about this could be expected on the part of those who read only the *Edah Journal*, R. Rothstein should know better, since he directly cites volumes one and two of *Benei Banim* (but not volume four, where I discuss women's *berakhot* on reading the Torah; *kol isha* in cantillation; the antiquity of the prohibition regarding *kevod tsibbur*; and the lack of any record of women receiving *aliyyot* in practice).

R. Rothstein writes:

R. Henkin explicitly rejects the difference between temporary and permanent surrender of "dignity" without supporting proof or argumentation.... [But] to temporarily forego "dignity" is [only] to yield to the force of circumstance. To ignore it permanently is to declare a lack of concern with the Rabbis' perspective of proper communal conduct (p. 43).

This ascribes to me a refusal to distinguish between *sha'at ha-dehak* and normal circumstances, which would be remarkable if it were true, but I never wrote it. Where did R. Rothstein get the idea that I held such an opinion? He cites *Benei Banim* 2:11, but gives no page number. I suspect that the explanation is as follows: He is referring to page 51 where I wrote regarding *kevod tsibbur*, "where have we [ever] found that it is permissible to read *be-akrai* from *humashim*, or for a woman to read *be-akrai* from the Torah?" But he misinterpreted *be-akrai* to mean "temporarily" rather than "randomly" or "by chance occurrence," and that accounts for his criticism. It should also be noted that a rhetorical question such as my "where have we [ever] found . . ." (*heikhan matsinnu*) is an accepted form of argument, contrary to R. Rothstein's charge that I brought none.

On page 45, he disagrees with my positing the need for unanimous *mehila* of *kevod tsibbur*, while completely overlooking the fact that I suggested it not on my own, but in order to explain *Sefer ha-Batim*'s singular opinion that distinguishes between a synagogue venue and that of a private home and permits women's *aliyyot* in the latter. R. Rothstein writes:

Aside from failing to provide any supporting evidence for that position, R. Henkin also fails to support his further claim that only occasional and private services have implicit unanimous consent.

There are a number of inaccuracies here. I did not "fail" in an attempt to support a claim but rather stressed the need for further corroboration. I wrote: "This [explanation of *Sefer ha-Batim*'s position] hinges on the assumption that . . . such a waiver [of *kevod tsibbur*] requires unanimous consent¹ rather than a simple majority; *substantiation of this latter point is needed*."

Moreover, I did cite analogous cases. One is the Mishna in *Pe'ah* (4:1): "Even if 99 [poor people] want [the field's owner] to distribute [the grain from the corner of the field reserved for the poor] and only one of them wants to grab [it directly], we listen to him because he opted for the halakha," i.e., unanimous consent was needed for change.

A more exact parallel can be found in *Shulhan Arukh Orach Hanyim* (153:6-7) which distinguishes between a village synagogue or *shteibel* and a synagogue in a large town. Congregants can sell the former but not the latter, the reason being that the town's synagogue is considered as having been built in trust for the many visitors from all over who will pray in it, and as *Mishna Berura* explains, "perhaps there is even one [former worshipper] from the end of the world who doesn't agree to the sale." Consent by all past and present worshippers cannot be determined, and without such unanimity the sale cannot go through. However, if the synagogue was built subject to the dictates of an individual—*kal va-homer* if located in his own home—he can do with it as he likes. The similarity between this and *Sefer ha-Batim*'s allowing women's *aliyyot* in a private home but not in a regular synagogue, should be clear. What is not clear is why R. Rothstein wrote that I adduced no support for the concept of unanimous *mehila*.

He makes a similar claim on page 48. In my response to R. Shapiro and later in *Benei Banim* volume four, I proposed that *kevod tsibbur* is not a factor on *Simhat Torah*: since according to our *minhag* every male receives an *aliyya*, women's *aliyyot* cannot be construed as indicating that some men are incapable of doing so.²

R. Rothstein objects to this, as follows:

R. Henkin is too quick to assume that only *Simhat Torah* does not imply ignorance. Consider, for example, a case where it is absolutely obvious that the assembled men know how to read on their own—a convention of professional Torah readers, for example. There, too, the woman's reading could not possibly imply anything about men, and R. Henkin should allow for women's reading.

But following the definition I derived from R. Avraham min ha-Har (not Rashi) and Ritva and which is the only definition clearly found in the *rishonim*, *kevod tsibbur* is a matter of how visitors and *outsiders* might misjudge the Torah literacy of the men of the community if women were to receive *aliyyot*. It is not about how the residents view themselves; they in any case know who among them are able or not to read from the Torah scroll. It is independent, as well, of whether or not visitors and outsiders are actually present at any particular reading of the Torah. Otherwise, any synagogue where all the men were in fact Torah-literate and no visitors were present could call up women, which no one has ever suggested. *Lo pelug* is certainly operative here.

At a “convention of professional Torah readers,” in what way is it “absolutely obvious” who they are? Nothing the outsider sees identifies them as being all *ba'alei kerī'a* other than perhaps convention hats or nametags, which are hardly sufficient to vitiate a rabbinical decree.

There are also a number of secondary comments to be made, and to avoid tedium I will give only an example: On page 49, R. Rothstein writes concerning the *me'era* curse on one who relies on his wife or sons to read *Birkat ha-Mazon* to him:

R. Henkin's reading of Ritva, though, sees the Sages as responding to the wrong problem. If the Sages were bothered by the man's ignorance, they should have turned their harsh language against the ignorance itself (“cursed be the man who does not know how to recite Grace”), not on his relying on others for assistance.

But there is no cause to curse a man just because he is ignorant, as he may never have had anyone to learn from. The curse applies specifically to one whose *wife and sons* read for him, because he has family members available to learn from and not having done so indicates negligence or lack of interest.

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TRADITION

NOTES

1. I.e., which cannot be assumed in the average synagogue. Picture a community with a synagogue and a private service. Most people attend the synagogue and would need a reason *not* to; to attend the small private service, by contrast, involves a conscious decision, and if *aliyyot* are granted there to women, attendance implies consent. This does not apply should the synagogue itself institute women's *aliyyot*: in that case, all that continuing to worship there proves is the lack of an alternative synagogue in town, and consent to women's *aliyyot* cannot be inferred.
2. I explained in *Benei Banim* 4:2, page 16:

According to the Baraita, women are not included in the count of seven *olim* to the Torah, but the law is unclear regarding additional *aliyyot*. I have not seen anyone discuss this. Following the rationale of the *rishonim* I cited that *kevod tsibbur* entails avoiding the appearance that insufficient men know how to read from the Torah and that therefore they called a woman, it would seem that this would apply only to the mandatory seven readers, but not to additional *aliyyot* which are optional.

However, it can be objected that for a woman to read part of the obligatory reading and thereby help discharge the congregation's obligation is prohibited because of *kevod tsibbur*, even if the reading is divided into more than seven parts. This is dependent on the disagreement between the *Shulhan Arukh* and Rema in *Orah Hayyim* 282:2. According to the former, it is permitted to add to the number of readers and read over with a blessing what was already read, and this is the Sephardic custom. In this way there can be no concern about *kevod tsibbur* if in addition to the seven readers a woman would read in repetition of what was already read, since the *tsibbur* doesn't need her reading at all.

On *Simhat Torah*, however, it appears that one can be lenient even according to Rema [who at other times prohibits repetitive readings with a blessing], since Ashkenazic custom is to read from the beginning of *Ve-Zot ha-Berakha* until *me'onah Elokei kedem* numerous times. And all the more so according to the custom that every male in the synagogue is called up to the Torah, since in that case it is impossible to think that there are those who don't know how, since they all do. In addition, the circumstances surrounding reading the Torah are already so different on *Simhat Torah* that it is unlikely that enabling women's *aliyyot* then would lead to women's *aliyyot* the rest of the year.

And see in *Benei Banim* there concerning technical arrangements.

TO THE EDITOR:

I was gratified to read R. Gidon Rothstein's article "Women's *Aliyyot* in Contemporary Synagogues." R. Rothstein's article is a critique of aspects of my own article "*Qeri'at ha-Torah* by Women: A Halakhic Analysis" that appeared five years ago in the online *Edah Journal* (1:2, Sivan 5761). The fact that *Tradition*, a journal that generally speaks for centrist positions in Orthodox Judaism, has joined the discussion of this controversial topic attests to the vitality of the issues and arguments raised in my paper, which seems to have tapped into a rich lode of concern, unease, and expectation about the halakhically acceptable role of Orthodox Jewish women in public prayer services.

In this letter I will limit my reply to R. Rothstein's major thesis—his redefinition of *kevod ha-tsibbur*—and to some other points where I believe my response can supplement what I wrote in my article. I will argue that R. Rothstein's definition of *kevod ha-tsibbur* is based on a troublesome halakhic strategy, and that it is not vindicated by the sources. Beyond that I would suggest that the interested reader read my article side by side with R. Rothstein's comments and decide who presents the more coherent and compelling argument.

R. Rothstein is not the first Orthodox scholar to challenge my conclusions. R. Yehuda Henkin, while agreeing with much of the reasoning of my article, dismissed women's *aliyyot* as being outside the acceptable Orthodox consensus. R. Hershel Schachter, in a piece entitled "On the Matter of *Mesorah*" (http://www.torahweb.org/torah/special/2003/rsch_masorah.html), regards women's *aliyyot* as outside the *mesora*: a violation of an ancient, universally accepted halakhic position, as well as a breach of principles of *tseni'ut* as most profoundly understood. Professor Eliav Shochetman (in *Kovets ha-Rambam* [Jerusalem: Mosad ha-Rav Kook, 2005], pp. 271-349) views *kevod ha-tsibbur* as an immutable standard that reflects age-old practice of public prayer and the unchanging differences between the natures and roles of men and women.

Unlike these scholars, who argue forthrightly from positions of deep Orthodox sensibility, values, and traditions, at least as they perceive them, R. Rothstein proposes to establish the prohibition of women's *aliyyot* on an objective, "scientific" halakhic basis, without reference to cultural or social issues or circumstances. According to R. Rothstein, in the context of *keri'at ha-Torah*, the principle of *kevod ha-tsibbur* speaks against the "denigration of the mitsva" of *keri'at ha-Torah* that occurs when the congregation turns to persons (i.e., women) outside the

“obligatory community” to perform an obligation (p. 14). In R. Rothstein’s words, permitting women to participate in *keri’at ha-Torah* “portrays it as a burden, an attitude the Rabbis reasonably found undignified” (p.15). *Kevod ha-tsibbur*, then, really means *kevod ha-mitsva*, and as such it is immutable and unwaivable, an independent, autonomous halakhic category unconnected to time and place. R. Rothstein leaves no doubt about his position when he writes that *kevod ha-tsibbur* is no more a social concept than are the rules of nullification of particles of forbidden foods (*bittul*) (p. 12). Just as the rules of *bittul* can be quantified with perfect accuracy, so too *kevod ha-tsibbur* presumably can be described and applied as a “one size fits all” halakhic category.

By transforming the socially sensitive concept of *kevod ha-tsibbur* into the objective demand for *kevod ha-mitsva*, R. Rothstein manages to skirt difficult halakhic issues arising from our community’s interaction with modern culture. Ratcheting up the concept of *kevod ha-tsibbur* to an objective standard relieves *poskim* of the need to engage in a decision making process that requires weighing competing demands and making difficult choices. Unlike Rabbis Henkin and Schachter and Professor Shochetman, who frame their implacable opposition to women’s *aliyyot* in value oriented terms that do not foreclose, but indeed provoke, further debate and discussion, R. Rothstein seeks to trump the argument, declaring an absolute, self sufficient halakhic opposition that is liberated from issues of *tzeni’ut*, *mesora*, and Orthodox institutional integrity. These latter issues, while important to R. Rothstein, call for their own, independent discussion (notes 57, 58).

This disengagement of halakhic issues from issues of values and mores is well suited for those sectors of the Orthodox community that are committed to traditional Orthodox practices, but are uncomfortable hearing about some aspects of them in sociological and gender terms that can be hard on the modern ear. It is nurtured as well by the prevailing mode of Orthodox theological/halakhic discourse, which posits an independent halakhic universe of rules and concepts quite similar to the immutable laws of physics and mathematics. This approach, frequently referred to as the Brisker method, favors precise, categorical formulation over pragmatic, functional application. R. Rothstein takes full advantage of the intellectual opportunity offered by this approach to suggest a formal, categorical defense of the exclusion of women from *aliyyot* that is not openly denigrating to women, or based on the unsatisfying argument “that we don’t do it because we haven’t done it.”

To reach his conclusions, R. Rothstein turns the concept of *kevod ha-tsibbur* on its head. What the Talmud describes as a concern for the dignity of the *tsibbur*, those congregations of mortals who attend synagogues, each with its own set of attitudes, sensibilities, and protocols, is reconstructed into a concern for the dignity of the divine, the *mitsva*. It is simply hard to believe that this is what the word *tsibbur* can mean. Not surprisingly, R. Rothstein is unable to cite any authority, classical or modern, who espouses or even mentions his interpretation, and it is sufficient for him that his interpretation is “implied” or rendered “plausible” (p. 14) by certain comments of Ritva and Rashi made in other contexts. Thus, with a radical reinterpretation based on a *biddush*, R. Rothstein proposes definitively to resolve a community issue that is sufficiently pressing to merit discussion in the pages of *Tradition*.

I will not expand on what I believe to be the long range consequences of R. Rothstein’s approach, which I believe is prevalent in modern Orthodoxy, but perhaps what I have to say about its application to the specific issue of women’s *aliyyot* will allude to what I see as its shortcomings. To my mind, *kevod ha-tsibbur* is a broad-spectrum concept that is inspired by the insight that only a community that holds itself with self-respect can stand before God respectfully. *Poskim* did not attempt to give *kevod ha-tsibbur* a single, overriding definition, nor did they suggest that the *kevod ha-tsibbur* of women’s *aliyyot* is essentially different from other cases of *kevod ha-tsibbur*. To me, this shows that *kevod ha-tsibbur* is a dynamic, functional, commonsense concept that is meant to uphold the dignity of the congregation in a way that makes sense in its particular social milieu. A young *shali’ah tsibbur* dressed in sandals, shorts and a t-shirt may be acceptable in synagogues of the *kibbutz ha-dati*, but it would be a clear violation of *kevod ha-tsibbur* (as a *katan pohe’ah*) in many other synagogues. Would any responsible *posek* claim that the *kibbutz ha-dati* is outside the pale of Orthodoxy or that it is forbidden to attend a synagogue of the *kibbutz ha-dati*?

Perhaps R. Rothstein would reply that his objective definition of *kevod ha-tsibbur* is the result of a halakhic exegesis that applies only to women’s *aliyyot*, and not to other cases of *kevod ha-tsibbur*. If that is the case, he should have explained how the same words—*kevod ha-tsibbur*—can express two entirely different concepts and why the Rabbis seem to have been uncharacteristically loose and casual in their choice of language when they chose to address such a varied array of concerns in terms of *kevod ha-tsibbur*.

R. Rothstein reads *kevod ha-tsibbur* so precisely that he strips it of anything but the narrowest of meanings. True, for the purpose of prohibiting women's *aliyyot* R. Rothstein's definition "scores a bull's eye," but having achieved this immediate goal, what remains of the concept to assure that the congregation will in fact conduct itself with dignity during *keri'at ha-Torah*? If *kevod ha-tsibbur* means only that the mitzva of *keri'at ha-Torah* must be performed by men as members of the "obligatory community," then the demands of *kevod ha-tsibbur* are completely satisfied by merely praying in a standard Orthodox synagogue that does not give women *aliyyot*. This bias for conceptual, tightly defined, technical halakhic definitions may explain in part why "contemporary" Orthodox synagogues are so consistently plagued by problems of talking and other disturbances (such as kiddush clubs) during *keri'at ha-Torah*, problems which in my experience arise much less frequently, if at all, at Shirah Hadasha or at more traditional haredi synagogues that (ironically) share a broader, value-oriented understanding of *kevod ha-tsibbur*. Beyond disturbing the plain meaning of the words, saying that *kevod ha-tsibbur* is unrelated to questions of social propriety dismantles an important line of defense against abuse in these areas.

All in all, I question R. Rothstein's determination to wrench the concept of *kevod ha-tsibbur* out of any social context that might impose certain behaviors that reflect the fundamental attitudes and qualities of the congregation. Like R. Rothstein, I find it difficult to accept *Bah's* attitude that women's *aliyyot* would disgrace the community because women are not worthy representatives. But that does not mean that we must reject *Bah's* underlying assumption that *aliyyot* are honors that should be given to worthy members of the community. Similarly, and as R. Rothstein acknowledges, Ritva's argument that women's *aliyyot* are a violation of *kevod ha-tsibbur* because they highlight the ignorance of the men of the congregation may not be compelling in a time when the Torah is read for all *olim* by a *ba'al kriah*, and when women are expected to have an exemplary Jewish education. Nonetheless, I would treasure and seek to apply Ritva's sensitive insight that no one should be made to feel uncomfortable or embarrassed in a synagogue because of gaps in his or her religious education.

It seems to me as well that R. Rothstein's approach to women's *aliyyot* represents a misuse of the Brisker method, one of the great Jewish intellectual achievements of the last several centuries. Classic Brisker *lamdanut* is mainly a way of explicating texts and resolving seeming contradictions by uncovering underlying and unstated categor-

ical discriminations that give the texts a better, clearer sense. Halakhic categories are born of textual dialectic tension. R. Rothstein does not point to any such tensions or intrinsic difficulties in the texts he explicates that require his redefinition of *kevod ha-tsibbur*. The only tension that R. Rothstein seems to face is between what *kevod ha-tsibbur* might mean if left to its simple meaning, and what it must mean according to his understanding of Orthodox necessity. Thus, R. Rothstein's overall analysis has a "bottom line" quality that is foreign to authentic Brisk.

Beyond following a tenuous halakhic strategy, R. Rothstein's interpretation of *kevod ha-tsibbur* is based on a far-fetched understanding of the texts he cites. The theories of *kevod ha-tsibbur* mentioned in the halakhic literature are those of *Bah*, who claims that women's *aliyyot* are a disgrace to the community that should choose more worthy representatives, and Ritva, who writes that calling women for *aliyyot* disgraces the men of the congregation, for it is only because of their illiteracy that women would be asked to read. With respect to *Bah*, R. Rothstein, echoing R. Henkin, acknowledges that "there is no justification . . . [for] explanations such as that *kevod ha-tsibbur* means that women's participation is intrinsically degrading and denigrating" (p.12). R. Rothstein also accepts my argument that Ritva's interpretation of *kevod ha-tsibbur* cannot apply in the usual case where the Torah reading is done by a *ba'al kerī'a*, who would cover for the *oleh's* illiteracy (p.13). R. Rothstein clearly needs an acceptable definition of *kevod ha-tsibbur*.

R. Rothstein proposes that women's *aliyyot* are a violation of *kevod ha-tsibbur* because it is a "denigration of the mitsva" of *kerī'at ha-Torah* for the Torah to be read by persons who are not members of the "obligatory community." The "obligatory community"—in this case, ten men forming a *minyan*—"betrays an undignified attitude towards the obligation itself" by "outsourcing" it to women. In order to adapt this theory to the full halakhic picture, R. Rothstein invests male children and slaves with some form of auxiliary status in the "obligatory community" and this accounts for their capacity to participate in *kerī'at ha-Torah* without denigrating the mitsva; male children, because they require training for the obligations they will assume upon adulthood; and slaves, because they can be freed by their masters and become full fledged members of the "obligatory community." R. Rothstein attaches this theory to Ritva and to a lesser extent Rashi.

R. Rothstein's new definition of *kevod ha-tsibbur* is based on a new and not convincing understanding of the *sugya* in BT *Sukka* 38a where the Mishna and Baraita place a "curse" (*me'era*) on a man who relies on

his wife or child to recite *hallel* or *birkat ha-mazon* on his behalf. *Me'era* is generally understood as the curse of illiteracy. Ritva (*Megilla* 4a) identifies the concept of *me'era* with the concept of *kevod ha-tsibbur* to explain why women, although they are as personally obligated as men in the mitzva of *mikra megilla*, should not read *megilla* on behalf of men. R. Rothstein argues that Ritva is not concerned with the socially sensitive “curse of illiteracy,” but with the possibility that a woman, despite her personal obligation to read *megilla*, should read on behalf of men who, in addition to their personal obligation, are part of the “obligatory community” associated with *mikra megilla*, thereby denigrating the mitzva.

R. Rothstein’s characterization (note 54) of *mikra megilla* as a public mitzva of the “obligatory community” contradicts the almost universally accepted opinion of Ramban that *mikra megilla* is a personal, not a communal obligation (*hovat ha-tsibbur*), and may be done privately. On this matter, *mikra megilla* stands in sharp contrast to *keri’at ha-Torah*, which, as a *davar she-biKedusha*, can never be performed without a *minyan* of ten men. The preference for reading *megilla* with a *minyan* of ten, or even better in a synagogue, is an attempt to achieve *pirsuma nisa* (proclaiming of the miracle) or *be-rov am hadrat melekh* (“In the multitude of people is the king’s glory”), and is not intrinsic to the obligation of *mikra megilla*, which stands as a personal obligation (*hovat ha-yahid*). (*Shulhan Arukh*, *Orah Hayyim* 690:18; *Mishna Berura*). Thus, Rema seriously considers the possibility that the requirement for *pirsuma nisa* might be met by a *minyan* of ten that includes women, as they too might be part of the community that “proclaims the miracle.” There simply is not a halakhic “obligatory community” associated with *mikra megilla* in the sense that R. Rothstein understands the term, and so his interpretation is out of place. Indeed, if we take seriously Rema’s suggestion that the *minyan* for *mikra megilla* might include women, the case of *mikra megilla* may point to a conclusion opposite of what R. Rothstein sets out to prove.

Similarly, the cases of *birkhat ha-mazon* and *hallel* do not involve matters of *kevod ha-tsibbur* and “obligatory communities,” and so R. Rothstein’s reading of them in that context is unjustified. Both cases involve women and children acting on behalf of men in private circumstances. Beyond that, the cases are not at all similar to the situation of the unobligated acting on behalf of the obligated. In the case of *birkat ha-mazon*, Ritva (*Sukka* 38a) writes explicitly that the case involves women and adult children who have as much a Torah obligation to say grace as the husband/father on whose behalf they are reading. Ritva also explains

that the ignorant husband /father deserves to be cursed because he is denigrated by his inability to read (“*ke-shelo lamad ve-hu boor*”), not because he chooses to denigrate the mitsva by performing it via an unobligated person, as R. Rothstein would have it. Neither can the case of *hallel* provide the support that R. Rothstein claims to find in the *sugya*. The *me’era* of *hallel* involves a minor or a woman who is not obligated to say *hallel*, but who is called upon to recite *hallel* for a man who repeats it after him or her word for word. The situation is of an ignorant man performing the mitsva for himself but requiring coaching; this is not a case of performing the mitsva of *hallel* by listening to an unobligated reader.

R. Rothstein sees in Rashi’s comment that *me’era* applies to a literate man who has a child or women recite *hallel* for him as proof that *me’era* and hence *kevod ha-tsibbur* apply to a case where the unobligated act on behalf of the obligatory community. As with Ritva, Rashi’s comments do not touch on the issues R. Rothstein wishes to press. As Rashi explains, *hallel* at the time of the Mishna was recited responsively, with the cantor reciting a verse and the congregation reciting *Haleluyah* after each verse of the cantor. A man, even a literate one, who used an unobligated women or child as “cantor” would have to repeat each of the words of *hallel* to himself, thereby not properly performing the mitsva as a responsive reading. This is why he deserves to be cursed. This has nothing to do with *kevod ha-tsibbur*, or the “obligatory community” supposedly denigrating a mitsva that is otherwise properly performed simply because it is performed by an unobligated person.

Even according to his own theory, R. Rothstein assumes too quickly that women stand outside the “obligatory community.” The Responsa of R. Meir of Rothenberg (Berlin 5691, para. 865) cites a ruling that single women residing in small communities may be taxed to pay for the hire of men to complete the *minyan* for the high holy days. Although these women are exempt from attending services, compelling them to pay their proportionate share of the cost of the *minyan* was justified on the grounds that women may be deemed to be obligated (*alayhu ke-hova*) because they have accepted upon themselves the obligation to attend services, much as women can self obligate themselves to the mitzvot of *lulav* and *shofar*. If women are included in the “obligatory community” that is compelled to pay for *keri’at ha-Torah*, perhaps their participation in *keri’at ha-Torah* should not be viewed as an outright denigration of that mitsva. It would seem that this basis justifies women’s inclusion as auxiliary members of the “obligatory community,” much as slaves and minors who may participate in *keri’at ha-Torah*.

In his discussion of women's *aliyyot* in services held outside of synagogues, R. Rothstein detects an "internal inconsistency" in my position that *kevod ha-tsibbur* may not apply in those cases (p. 11). If, as I argue, *keri'at ha-Torah* is a communal obligation, and if communal concerns are not applicable outside the synagogue, then it follows, according to R. Rothstein, that Torah reading should not be permitted outside the synagogue. The very fact that *keri'at ha-Torah* does occur outside the synagogue shows, according to R. Rothstein, that Torah reading in *ad hoc* services is on the same footing as Torah reading in a synagogue, and all the attendant rules, including *kevod ha-tsibbur*, should apply.

I believe that R. Rothstein's assumptions about *keri'at ha-Torah* outside the synagogue are not substantiated. Notwithstanding contemporary practice of freely permitting full services to be held outside of synagogues, it is not self-evident from the *poskim* that *keri'at ha-Torah* should take place outside the sanctuary of the synagogue. *Shulhan Arukh* (*Orah Hayyim* 135:14) prohibits removing a *sefer Torah* from a synagogue for a private *minyan* even to accommodate a prisoner or an ill person. *Mishneh Berurah* permits it only in special circumstances. R. Tsevi Pesah Frank (*Har Tsevi*, *Orah Hayyim* 1:71) is extremely reluctant to permit removing a *sefer Torah* from the synagogue to an *ad hoc* service and permits it only to prevent *mahloket*. The reluctance to remove a *sefer Torah* from the synagogue is reflected in our own *minhag* that a *sefer Torah* brought to the home of a mourner, *rahmana le-tselan*, is read from at least three times as if to show that it is disrespectful to move the Torah outside of its permanent dwelling, even for the purpose of *keri'at ha-Torah*. (The issue of moving a *sefer Torah* from the synagogue for an *ad hoc minyan* is discussed by Dror Fixler at <http://www.daat.ac.il/daat/kitveyet/shana/piksler-1.htm>) If, as R. Rothstein seems to assume, *keri'at ha-Torah* is an inherent part of any *minyan* of ten men, then what could be more natural and obvious than bringing a *sefer Torah* to such a *minyan*, much as one would bring any religious article required for the full and proper conduct of the service? In fact, there is a great deal of halakhic resistance to *keri'at ha-Torah* in a *minyan* outside the synagogue, and this, among the other factors I mentioned in my article, supports the view that *kevod ha-tsibbur* may not apply to such Torah readings.

R. Rothstein believes that I should have elaborated my discussion on which *aliyyot* women should be permitted to read, and my failure to do so allows a situation where synagogues that permit women's *aliyyot* will call women to read any section they choose. In fact, I did discuss the issue, but did not come to R. Rothstein's preferred conclusion that women should

only be entitled to receive the seventh *aliyya*. I would report to interested readers that I understand from the *gabba'im* of Shira Hadasha in Jerusalem that on any given Shabbat or holiday men receive the majority of *aliyyot* in accordance with the ruling of Rema (*Orah Hayyim* 282). Similarly, women do not read or receive *maftir* on *parashat Zakhor* or on similar Shabbatot where congregants are obligated to hear the *maftir*.

Finally, R. Rothstein takes me to task for what he sees as a correct but unsatisfactory response to an online question sent to me on the Edah website by Moshe Kirstein based on a responsum of R. Moshe Feinstein. R. Feinstein (*Iggerrot Moshe, Orah Hayyim* 2:72) had argued for the disqualification of a minor from acting as a *ba'al kria* based on the theory that the *ba'al kria* acted as the *shali'ah* for the *oleh* and a minor could not possibly act as a *shali'ah*. To Mr. Kirstein's question that the principles of *shelihut* should disqualify a women as well from serving as a *ba'alot kria* for men *olim*, I responded, correctly in R. Rothstein's view, that from the narrow point of view of the laws of agency women may be *ba'alot keria* because, unlike minors, they may be appointed as agents.

In this regard, R. Rothstein writes that "Shapiro can adopt a minority position of the role of the reader, but he cannot expect that to lay the groundwork for a significant halakhic innovation unless he proves it more fully than thus far." I really do not understand what R. Rothstein means by these lines, but I will say that I did not intend by my response to adopt R. Feinstein's (minority?) underlying theory that the relationship between the *oleh* and *ba'al kria* is one of principal and agent, but to show that my position could be adapted to such a theory. Be that as it may, I raise this matter only because I wish to conclude with my full response to Mr. Kirstein, which reiterates what I set up at the outset as the parameters of my basic argument with R. Rothstein.

This is what I wrote:

Mr. Kirstein omits the most significant part of Rabbi Feinstein's responsum: its operative conclusion. Rabbi Feinstein was asked whether a boy whose *bar mitzva* date had been mistakenly set before his thirteenth birthday could, while still a minor, read the *parsha* that he had studied and prepared. After considering other views, Rabbi Feinstein advanced his own opinion that the *ba'al kria* acted as the *shali'ah* for the *oleh* and, if a minor who could not possibly act as a *shali'ah* were the reader, it would be as if the congregation had not fulfilled the requirement of listening to the reading of seven *olim*. Rabbi Feinstein went on to say that his analysis, which he developed at length and emphatically espoused,

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did not allow for any leniency, even under extenuating circumstances (*sha'at hadbak*). Then Rabbi Feinstein tells his correspondent:

Nonetheless, as far as the law goes (*u'ledinah*), if it will cause great distress to the *bar mitzvah* and his family and [you] wish to adopt a more lenient position [according to those whose reasoning is different from mine] you should not be prohibited from doing so (*ein limhot beyado*).

It is one thing to assert a theory that prohibits a minor from acting as a *ba'al kriah*; quite another to look a youngster and his family in the eye and tell them that their celebration cannot go on as planned.

I sometimes get the impression that the Orthodox way of dealing with vexing issues is to turn them into insoluble ones based on a declaration of certain immutable halakhic categories. This strategy allows the community and its Rabbis to throw up their hands in helplessness and walk away from problems rather than try to solve or ameliorate them by engaging in a process that demands exercising responsible discretion and making uncomfortable choices. There are of course limits to halakhic elasticity, but these limits are discovered and reached at the end of the process; they are not an excuse for avoiding the process.

As this *teshuvah* beautifully illustrates, Rabbi Feinstein fully understood that halakhic decision-making involves sensitivity and adjustment to the unevenness and raggedness of life's circumstances, no less than an accurate statement of the law's timeless theoretical underpinnings. This is why he was probably the most authoritative, revered and beloved *posek* of his generation.

(RABBI) MENDEL SHAPIRO
Jerusalem, Israel

TO THE EDITOR:

I thank R. Gidon Rothstein for addressing this important phenomenon in Orthodox life. It has become one of the flashpoints of the creative tension between halakhic tradition and our contemporary spiritual sensibilities.

It is unfortunate though that R. Rothstein mentions, but then declines to explore Dr. Sperber's thesis regarding *kevod ha-beriyot* as a force which may outweigh *kevod ha-tsibbur*. For in truth, although R. Shapiro does not articulate his argument in terms of *kevod ha-beriyot*, it

is clearly the idea that animates his approach. In explaining why Hazal's definition of communal dignity needs to be reassessed for contemporary application, R. Shapiro writes, ". . . *Bab*'s opinion reflects a cultural attitude that is no longer shared by mainstream Orthodoxy. Orthodox women participate in all aspects of professional and communal life, and most Orthodox Jews would select a competent woman professional or representative without giving the matter a second thought. Does it make sense to accept as *halakhah*, an opinion that is based on anachronistic cultural presumptions?" (p. 36).

If we insert Dr. Sperber's halakhic category of *kevod ha-beriyot* into R. Shapiro's argument for re-examining our definitions of *kevod ha-tsibbur*, we emerge with exactly the thing that R. Rothstein claims is untenable, i.e., a justification for a *permanent* waiver of *kevod ha-tsibbur*. In the instance of *keri'at ha-Torah*, clinging to the prior application of *kevod ha-tsibbur* may be violative of the ongoing halakhic claims of *kevod ha-beriyot*.

In the final analysis though, I believe that it is R. Henkin's sociological observation, rather than the technical halakhic debate, that is likely to determine the outcome of this matter. R. Henkin wrote that, "women's *aliyyot* remain outside the consensus, and a congregation that institutes them is not Orthodox in name, and will not remain Orthodox in practice." If R. Henkin's projection is correct, and minyanim that institute this practice fail to generate bona fide Orthodox communities, then the experiment will inevitably fade, as Conservative minyanim will be equally attractive. On the other hand, if these minyanim actually succeed in raising a generation of Orthodox Jews who are meticulously observant of Shabbat, kashrut, and *taharat ha-mishpaha*, and who are steadfast in their commitment to *tefilla* and *talmud Torah*, the story will come out very differently. I'm guessing that time will tell.

(RABBI) YOSEF KANEFSKY
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TO THE EDITOR:

I read with care R. Rothstein's "Women's *Aliyyot* in Contemporary Synagogues," which was essentially a critique of R. Mendel Shapiro's recent article "*Qeri'at ha-Torah* by Women: a Halakhic Analysis" in *The Edah Journal* (1:2). While R. Rothstein points out some deficiencies in R. Shapiro's halakhic reasoning, the real issue is the one raised only at

the end of the paper, that both rabbis do not adequately address, namely “that of how and when halakha allows to Jews to consciously and proactively change their customs.” At least two examples come to mind.

The first, perhaps more trivial in that it involves “only” late rabbinic minhag, is R. Moshe Feinstein’s famous *teshuva* allowing individuals to change their custom of which days of the *omer* they observe for mourning, to allow the attending of a *simha*.

The second, and much more dramatic example, involves the selling of *hamets*, which allows Jews to avoid the *de-orayta* prohibition of *hamets she-avar alav ha-pesah*. The only example of such a sale in talmudic literature is an exceptional case quoted in the Tosefta (*Pesahim* 1:24-25) of a Jew and a gentile together on a boat. Yet when this case is cited in the *Tur* (448) it is matter-of-factly brought down without mentioning the boat, and *Bah* there explains that we have become more lenient due to economic necessity (because Jews were now saloon keepers). Clearly, these positions could have been criticized for having “not meaningfully succeeded,” but were not.

As with many such issues in our rightwardly drifting climate, the question is not one of pure halakha, but rather (to paraphrase R. Sperber) whether the halakhic value of *kevod ha-beryiot* is as important as that of economic necessity.

BEN TZION KATZ, M.D.
Skokie, IL

GIDON ROTHSTEIN RESPONDS:

I thank each of the respondents for their thoughts on my article; their passion indicates that I was correct in thinking that this is an important issue for the Orthodox Jewish community today.

R. Henkin is a prolific halakhic thinker, author of four volumes of responsa on many important topics. I did not intend to engage his views on women’s *aliyyot* nor to determine which of the ideas presented were his, borrowed by R. Shapiro. I noted their points of agreement only to stress the *Edah Journal*’s disingenuousness in choosing him as a respondent. Since *Edah* readers would expect the respondent to challenge R. Shapiro, I thought it important to note that that is not what they would find.

Other than that, I aimed to show places where even R. Henkin’s

ideas, creative as they are, needed greater argumentation to be fully convincing. For some examples, the comment “where have we seen?” is indeed a part of halakhic *rhetoric*, but not an argument or a proof.

R. Henkin points out that he did not advance the idea of unanimous consent on his own, but to explain the view of the *Sefer ha-Batim*. Since, however, the *Sefer ha-Batim* gives no indication that it held such a view, the idea is rightfully R. Henkin’s own.

R. Henkin also objects to my saying that he did not offer sufficient support for the idea of unanimous consent; he notes that he offered one analogous case in his original piece and another one in this later. Analogies are only as strong as the commonality among the cases, and R. Henkin does not defend his claim that these cases are sufficiently analogous to support a sociologically and halakhically significant idea.

R. Henkin similarly asserts rather than argues that attending one’s usual synagogue requires no new decision, and therefore implies no consent, whereas attending a non-synagogue service does. R. Henkin is not clear about what he means by consent, making the distinction hard to understand.

A person can decide to attend a non-synagogue service for numerous reasons, having little to do with actual consent to the way that service is run (non-Zionists, for example, may attend a service that recites the Prayer for the Government of the State of Israel despite their vigorous objections to that practice, because of other factors, such as convenience and/or family pressures). If R. Henkin means that the fact of attendance nonetheless signals consent, that should be equally true of a person’s continued attendance once his/her regular synagogue announces that they are switching to offering women’s *aliyyot*.

Finally, I fully agree with R. Henkin that Hazal were not cursing a man’s ignorance (a point R. Shapiro misunderstands in his letter), but disagree with his view that they were cursing him because his wife and children could have taught him. If so, the curse should have been on “one who has teachers available in his home, but neglects to learn.” That Hazal only cursed his *practical reliance* on them suggests we should look elsewhere for their motives.

R. Shapiro recognizes that my central argument was that the *kevod ha-tsibbur* invoked in the context of women’s *aliyyot* differs from all others, because Hazal gave it as their reason for *legislating* that women should not read. That Hazal legislated against women’s *aliyyot* is surely an uncomfortable point for R. Shapiro, first because it shows that they were not reflecting the social values of their time—if they were, no

women would have been allowed to read, and there would have been no need for them to step in. In addition, as I pointed out, *Bah* specifically saw this as Hazal's way of *preventing communities from making their own decisions* as to the nature of *kevod ha-tsibbur*, directly ruling out R. Shapiro's claim to be able to reinterpret the concept in our current social reality.

Once that is true, the definition of this *kevod ha-tsibbur* or of *me'era*, difficult concepts to pin down, becomes less crucial. We may explain them in numerous ways, but that will not change the simple fact that Hazal made a rule about this practice, and defined it as improper.

R. Shapiro cites the opposition to moving a Torah scroll from a shul to a private service as support for his claim that the private one does not qualify as a *tsibbur*. He seems not to realize that the argument is self-defeating, since if there is no *tsibbur* there, there should be no way of fulfilling the *tsibbur* obligation of reading the Torah. In addition, he assumes that those authorities oppose moving the Torah because it is not a *tsibbur*; it seems likely to me that they were objecting to the movement to an inferior *tsibbur*, one that does not meet regularly.

Even if he were right, however, citing those who oppose moving a Torah to such a venue would clearly object to having women read there (since they don't want the reading to occur at all!). So, too, he cites Maharam's view that women are required to support the local synagogue to support a halakhic concept whose application Maharam clearly opposed.

To clarify my comments about R. Moshe, R. Shapiro had claimed that the institution of the *ba'al kerit'a* made women's *aliyyot* acceptable independent of questions of *kevod ha-tsibbur*, since the women were not reading. He based that on the late R. Yosef Eliyahu Henkin's assumption that the reader *replaces* the *oleh*. If so, the woman is not reading, she is performing a ceremonial function, as the *ba'al kerit'a* reads.

It was this minority view I conceded R. Shapiro could adopt, but he cannot then cite R. Moshe as support for anything in this regard, since R. Moshe saw the *ba'al kerit'a* as *the agent* for the person getting the *aliyya*. There are times when an agent can act in ways that the sender cannot, but we have no evidence that this is one of them. For R. Moshe, were a woman to get an *aliyya*, she would be the one reading the Torah, through her agent. Whatever problems her own reading would have produced are still there when she appoints an agent.

The final two letters suggest that I have miscalculated the tenor of Orthodox Jews who care about whether or not women should be

allowed to receive *aliyyot*. R. Kanefsky and Dr. Katz both assume that we should be thinking of this case along R. Dr. Sperber's lines, not R. Shapiro's. To them, the issue is whether the damage done to *kevod ha-beriyot* in denying women *aliyyot* outweighs Hazal's determination that such an act creates a problem of *kevod ha-tsibbur*. R. Kanefsky goes so far as to assume that this logic lies at the heart of R. Shapiro's article as well.

I did not address R. Dr. Sperber's claims in my article mostly because of space considerations, and it would be unfair of me to summarize my reactions when I cannot address them fully. In lieu of that, Dr. Katz provides two examples that can serve as a reasonable start. One is irrelevant, as he notes, and the other shows that rather than simply stepping around inconvenient halakhot, Orthodoxy requires that we operate within a halakhic framework to see where we might have flexibility in our practice. (My goal in the original article was to deny that the case of women's *aliyyot* leaves room for such flexibility, however much we might want it to).

Dr. Katz is exactly right that the custom of which days one observes as Omer days is late and therefore more malleable to change than those rules that appear clearly in the Gemara. It is therefore not useful for our discussion.

In the case of selling *hamets*, he is incorrect that we are avoiding a *de-orayta* prohibition at all: *hamets she-avar alav ha-pesah* is generally assumed to be a rabbinic punishment for having failed to observe the rabbinic requirement to physically remove *hamets* from one's property.

At a *de-orayta* level, anyone who sincerely nullifies his/her *hamets* fulfills the requirement that we not own *hamets* on Pesah. The sale of *hamets*, therefore, avoids running afoul of a rabbinic requirement, not a *de-orayta* one. Even then, the sale that we perform strives mightily to forestall piercing the halakhic veil of the sale; it is to insure that the sale is fully valid from a halakhic perspective that rabbis have the non-Jew acquire the *hamets* in as many ways as possible. Finally, many important authorities resisted (and resist) this fiction and refrain(ed) from taking advantage of it.

All of which points, to my mind, to the flaw in the *kevod ha-beriyot* approach. It seeks to assume that the question of when we allow one value to override another is not a halakhic one, when in fact the halakhic process defines that as well. Those definitions may need sharpening, as in the line of my article that Dr. Katz notes, but they are the standard by which we need to operate when we consider such questions.

UNCOMMON ALIYYOT

TO THE EDITOR:

I am fearful and deeply concerned by the seriousness with which *Tradition* is discussing the issue of women's *aliyyot* for purposes of *halakha le-ma'aseh* ("On Kohanim and Uncommon *Aliyyot*," *Tradition*, 39:2, Summer 2005). We should not approach halakhah with a view towards simply finding a basis or rationale for doing what we want and thereby still swear fealty to halakhah. Even if we were all to agree that women's *aliyyot* are halakhically permissible, justifiable, or even required, we shouldn't institute it because it's not our *mesorah*. Indeed, that lack of *mesora* among so many is part of the reason for the pressure to have women's *aliyyot*.

The chasm between legitimate scholarly and academic investigation, on the one hand, and actual practice, on the other hand, is enormous in matters such as this, which have been debated since the first *ezrat nashim* was established in the *Beit HaMikdash*. There are many cases where our *poskim* acknowledged permissibility on a scholarly basis while nevertheless concluding that we shouldn't conduct ourselves that way. This is one of them. Our fathers and grandfathers didn't sanction women's *aliyyot* and, yes, if only for that reason alone, we shouldn't either.

We must avoid driving a wedge between the remaining halakhic community and the "traditional" community in much the same way the traditional element of the Conservative movement was divorced from the modern Orthodox stream of thought in the sixties. There are certain innovations which so incontrovertibly and decisively depart from the heretofore accepted norm in the broader halakhic community that it undermines the legitimacy and authority of those who do so—not so very unlike those in the Conservative movement whom we do not recognize as halakhic but who claim to be so and who put forth some often convincing halakhic arguments and justifications for doing what they do. This would also further unfairly marginalize the haredi community in the eyes of both the Jewish community and the world simply for maintaining age-old halakhic traditions and standards.

(GRAND RABBI) Y. A. KORFF
Zvihil-Mezbuz Rebbe
 Boston, MA

TO THE EDITOR:

As an addendum to Dr. Wolowelsky's article, note that *Arukh Ha-Shulkhan* (O.C. 135:24) quotes a responsa of Maharik (*siman* 9) which responds to a case where someone had given a substantial gift to light the synagogue, and practice was to reward the benefactor on the holiday with the first *aliyya*. One *kohen* refused to exit the sanctuary, and the Maharik thought it well within the rights of the congregation to physically remove the *kohen* from the sanctuary. Maharik points out that since it was an established practice that was done originally with priestly agreement and supported the Torah's honor, it was permitted to defend the practice. While *Arukh Ha-Shulkhan* views this case as *sui generis*, it would, nonetheless, seem to indicate that the congregation's preferences, particularly if they coincide with the overall honor of the Torah, can preempt the rights of a *kohen*.

(RABBI) ELIE WEISSMAN
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JOEL B. WOLOWELSKY RESPONDS:

I certainly agree that *mesora* should be an important part of our deliberations, but we cannot let it paralyze us. Indeed, if Hafets Hayyim and R. Joseph B. Soloveitchik זצ"ל had followed R. Korff's advice, not only would we not have *yo'atsot halakha* and *to'anut* pleading before Israeli *batei din*, but we would not have the whole Beit Ya'akov educational system. Of course, in mentioning this I do not mean to suggest that these or any other *gedolei Torah* would necessarily endorse *aliyyot* for women or any other particular innovation. But it does suggest that we cannot approach the sensitive issue of addressing Torah-committed women's changing religious self-perception and advanced learning with slogans and insinuations that acting creatively within halakha differently than one's grandmother or grandfather did consequently removes one from the Orthodox circle. These issues require more serious deliberations.

I thank Rabbi Weissman for his interesting reference.

KOL DODI DOFEK

TO THE EDITOR:

Professor Schwartz's fascinating analysis of the philosophy of R. Soloveitchik as expressed in *Kol Dodi Dofek* (*Tradition* 39:3, Fall 2006) notes R. Soloveitchik's disdain for metaphysics as a means of addressing the question of evil, and characterizes it as a critique of existing Jewish philosophy. While this is certainly true as regards the views of Maimonides and the early Kabbalists, R. Soloveitchik's approach may find some precedent in the work of R. Hayyim of Volozhin. R. Norman Lamm has noted that R. Hayyim, unlike early Hassidic thought which dwelt on God's nearness and the perception of Divine immanence, cautions against examining "the essence of the matter [of *Tsimtsum*] . . . (3:8). R. Hayyim acknowledges that God is immanent within all of creation, but prescribes that man behave as if He were transcendent, so as to forestall antinomian thoughts and practices. Metaphysics does exist, but cannot, or should not, be perceived.

R. Walter Wurzburger has noted the influence of *Nefesh ha-Hayyim* on R. Soloveitchik's work in other areas. Perhaps R. Soloveitchik's muse in matters of metaphysics was less Nietzsche and more *Nefesh ha-Hayyim*. Likewise, the brilliant distinction drawn by Professor Schwartz between R. Soloveitchik and R. Kook regarding their 'instrumental' versus 'ontological' approaches to Zionism may likewise be seen in light of the Mitnaggedic/Hassidic, or *Tanya/Nefesh ha-Hayyim* divide, which may play itself out in the non- or anti-Zionist views of other disciples of these respective camps (e.g., mainstream Mitnaggedic non-Zionism versus Munkacz, Satmar and Neturei Karta).

Incidentally, the identification of R. Soloveitchik with R. Hayyim of Volozhin's approach to metaphysics and his contrast with R. Kook on this point may play an important role in elucidating their differences in conceptions of repentance. See my comparative study of *Al ha-Teshuvah* and *Orot ha-Teshuvah* in *Hamevaser* 37:1 (Fall 1997) regrettably omitted from Jeffrey Saks' otherwise superb and comprehensive bibliography of comparative scholarship.

(RABBI) ATON M. HOLZER
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DOV SCHWARTZ RESPONDS:

The influence of existentialist philosophy on the Rav in the late 1950s is now a proven fact. Until a few years ago, *Kol Dodi Dofek* had been almost the sole evidence of this influence, but after several volumes have been published in the major series MeOtzar HoRav, we can trace the Rav's open and concealed dialogue with Kierkegaard and Emil Bruner, for instance. Thus, *Out of the Whirlwind* unequivocally reflects the influence of phenomenological and existentialist psychology on the Rav's thought. The rejection of metaphysics is well anchored in the Rav's engagement with American intellectual trends during the 1950s.

As for R. Holzer's illuminating comment, the difference between R. Hayyim of Volozhin and the Rav in *Kol Dodi Dofek* is that R. Hayyim was still concerned with the divine, that is, with what is "really" happening out there, whereas the Rav (in KDD) was not, and all that mattered to him is the meaning of the deity for human consciousness. For the Rav, the ontic meaning of the sentence "God is within all of us" is uninteresting and thus meaningless, since attaining any safe knowledge of God's presence is simply impossible.

Concerning the Rav's attitude to religious-Zionism, I deal with it in my book *Faith at the Crossroads: A Theological Profile of Religious Zionism* (tr. Batya Stein), Brill, Boston & Leiden 2002, pp. 206-208, and in my books in Hebrew on this subject.