

## On Women as Cantors

*May a diploma of Cantor legitimately be granted to a woman?*

A number of authorities question whether the Torah requires regular prayer or only praying for one's needs as they arise (Maimonides, *Book of Commandments*, Positives, no. 5 and RaMBaN's note *ad locum*; *Laws of Prayer* 1:1 and *Kesef Mishneh ad locum*.) It is clear, though, that according to Halakhah, prayer is required from every human being created in the image of God, man or woman, Jew or Gentile. It is essentially the need to beseech the mercy of the Creator upon Whom one's existence and destiny ever depend (See Mishnah *Berakhot* 3:3; *Berakhot* 20b; Rabbi Moshe Feinstein, *Responsa Iggerot Moshe, Orah Hayyim*, vol. 2, no. 25, pp. 196–198 re Isaiah 56:7 and RaSHI *ad locum*; *Hullin* 60a; *Bereshit Rabbah* 43.7 re Genesis 14:19, ed. Theodor-Albeck, p. 421; for a historical review, see Elbogen, *haTefillah beYisrael*, introduction; Kaufman, *The Religion of Israel*, trans. M. Greenberg, Chicago 1960, pp. 109, 309–11).

In the case of prayer as an obligation for Jewish men and Jewish women, the Talmud sees prayer as a necessity which transcends the specifically mandated times of worship and it is thus not comparable to those positive commandments of the Torah whose performance is limited to a certain time (*Berakhot* 20b re Psalms 55:18 and *Tosafot ad locum*, s.v. *batefillah*). Prayer is seen as the expression of an inwardness which transcends the outward distinctions of gender (see Mishnah *Kiddushin* 1:7). That is why prayer is called “the service of the heart” (*Sifre Deuteronomy*, ed. Finkelstein, Section 41, p. 88; *Ta'anit* 2a; Jerusalem Talmud, *Berakhot* 4:1, 7a; Maimonides, *Book of Commandments*, Positives, no. 5 and *Laws of Prayer* 1:1). At this essential level, one is to pray daily—whatever and whenever he or she chooses (Maimonides, *Laws of Prayer* 1:2; Rabbi Joseph Karo, *Shulhan Arukh, Orah Hayyim* 106:2 and Rabbi Abraham Gumbiner, *Magen Avraham ad locum*). Indeed, the very paradigm for this essential prayer is a woman: Hannah

(*Berakhot* 31a–b; Jerusalem Talmud, *ibid.* 1:1, 3a). Even after prayer became more systematized in worship, its original inward spontaneity was still encouraged by the sages. As Rabbi Yohanan mused: “Oh were it that a person would pray all day long!” (*Berakhot* 21a; Jerusalem Talmud, *ibid.* 1:1, 3a).

When prayer becomes worship, however, its frequency, content and timing are mandated by the law since worship is then a public act. Once prayer becomes worship, the distinction of gender endemic to every aspect of public Jewish ritual observance begins to appear. Thus, regularly mandated worship—as opposed to spontaneous prayer—is now compared to most positive commandments of the Torah, the observance of which is limited to a particular time and from which women are exempt (Mishnah *Sukkah* 3:10; *Sukkah* 38a and Tosafot *ad locum*, s.v. *mi*). Nonetheless, even here there does not seem to be any authoritative ruling which would prohibit women from worshipping in the regular manner of men, even by those authorities who do prohibit women from performing male commandments involving more tangible matters. (For the most stringent views see Jerusalem Talmud, *Eruvin* 10:1, 26a; *Eruvin* 96a and Tosafot *ad locum*, s.v. *Michal*; Rabbi Abraham ben David of Posquieres to *Sifra Leviticus*, ed. Weiss, 4c.)

The absolute legal difference between men and women emerges from the constitution of the quorum for public worship and the appointment of the leader of public worship. These two factors are essentially related. A *minyan* (prayer quorum) can never be made up of men and women together (see *Tomeikh kaHalakhah*, vol. 1, *Orah Hayyim*, no. 6, pp. 32–33 in English and pp. 36–40 in Hebrew. The status of an all female *minyan* is a matter of current halakhic debate. *ibid.*). Therefore, a woman is not part of the *minyan* in the legal sense. As such, she cannot very well be the leader of the congregation because, minimally, the leader must be “one of them”, i.e., bearing the same legal standing. (Maimonides, *Laws of Prayer* 8:4). In addition to being one of the congregation, the appointment of the prayer leader elevates him above the congregation. That is why this appointment enables him to fulfill their obligation to engage in public worship. This means that the leader alone can recite certain parts of the liturgy that can only be said when a congregation is present. In a legal sense, the leader must always have an equal or greater obligation, but never a lesser obligation, than the rest of the congregation. This is derived from Mishnah *Berakhot* 5:5 where the prayer leader is the paradigm for the general principle applying to all agency, namely, “one’s agent is like oneself.”

The idea of a leader of public worship can probably be traced to the non-sacrificial service held in the second Temple (see Mishnah *Tamid* 5:1). Later, criteria for the ideal prayer leader were developed (see *Ta’anit* 16a and Rabbi Joseph Karo, Shulhan Arukh, *Orah Hayyim* 53:4–5).

Origins and prerequisites aside, the prayer leader fulfills two functions. First, he is the agent of the individual worshippers in repeating the Amidah (see Mishnah

*Rosh Hashanah* 4:9 and 34b). Second, he is the agent of the congregation collectively in reciting those sacred prayers where a *minyan* is required (e.g., *Barekhu*, *Kedushah*, *Kaddish*; See Mishnah *Megillah* 4:3; Maimonides, *Laws of Prayer* 8:5). Even in those few congregations where no one really needs the first form of agency in that they can all pray for themselves (see Maimonides, *op. cit.* 8:9), all require the second form of agency in that no individual can perform public worship for himself. The Cantor today still fulfills the second function if not the first. Women therefore cannot fulfill this function. (Contrast with the view of Rabbi Mayer Rabinowitz, "An Advocate's Halakhic Responses on the Ordination of Women", *Judaism*, vol. 33, no. 1, Winter 1984, pp. 61–64.)

The minimal prerequisite for a prayer leader is expressed succinctly by the Mishnah (*Rosh Hashana* 3:8): "This is the principle: Whoever is not himself (or herself) obligated for something, cannot fulfill the public's obligation for it." Interestingly, in this Mishnah, Moses is the example of one who was both part of the congregation and yet above it in order to act on its behalf. (See also Deuteronomy 17:15 and *Sifre Deuteronomy*, ed. Finkelstein, Section 157, pp. 208–9; *Kiddushin* 32b; Leviticus 21:10 and *Targum Onqelos ad locum*; *Sifra*, Emor, ed. Weiss, 94c; Yoma 19a–b).

There are those who argue, however, that were women to take upon themselves the obligation of men for regular worship (and, presumably, for all other commandments as well), their self-mandated obligation becomes equal to the Rabbinically mandated obligation of men. As such, women could now function as leaders of a congregation containing male worshippers (see Rabbi Joel Roth, *On the Ordination of Women As Rabbis: Position Papers of the Faculty of the Jewish Theological Seminary of America*, 1988). A closer examination will reveal the flaws in this faulty attempt to justify an innovation for which there is no clear precedent.

Proponents for the appointment of women as prayer leaders point to the absence of women from the Mishnah's choice of exemptions from obligations. Rather, they argue, the Mishnah exempts only those who are incapable of being obligated at all. However, Rabbi Israel Francus in the Faculty Papers cited above rightly points out that women are not mentioned specifically because they do indeed have some (actually, many) obligations, and for those obligations which are identical to those of men, there is no reason in principle why they could not act on behalf of men in fulfilling their obligation as well (see *Megillah* 4a and *Tosafot ad locum*, s.v. *nashim*; Maimonides, *Laws of Megillah* 1:2; *Halakhot Gedolot*, ed. Hildesheimer, p. 406).

That the Mishnah uses the word "obligated" rather than "commanded" seems to imply that it does not matter who the source of the imperative may be. Thus, proponents of women as prayer leaders would argue that a self-imposed obligation

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could be of the same caliber as a rabbinically mandated one. This inference is incorrect. The nature of any imperative is ultimately determined by who ordered it, as will be shown below. Furthermore, an “obligation” suggests a stronger imperative than a “commandment” since the former is unconditional and unavoidable (see Maimonides, *Laws of Blessings* 11:2). Self-imposed imperatives cannot attain this unavoidable state.

Rabbi Francus delineates how Judaism establishes a hierarchy of obligations: first, those derived from Scripture (*d'Oraita*); second, those legislated by the Rabbis (*deRabbanan*); and third, those voluntarily assumed by the individual. An inferior source of an obligation can never enable one to have the same power as a superior source of obligation. This is true even if the intended purpose of the subject for the voluntary act is the same as the intended purpose for an externally mandated act. Thus, the Pharisee who in the days of the Second Temple took it upon himself to eat regular food according to the purity rules applied to food allowed only to *kohanim* could not thereby claim any of the privileges of the priests (*Tosefta Demai* 2:2–17 and Rabbi Saul Lieberman, *Tosefta Kifshuta*, Zerai'm, p. 212). In other words, a self-imposed obligation is never as strong as a rabbinic or scriptural obligation. For this reason, women cannot and should not act on behalf of men as leaders of congregational worship (see *Berakhot* 20b).

Moreover, even the strongest imaginable method of assuming a voluntary obligation, namely, taking an oath (*Shevu'ot* 29a–b; Maimonides, *Laws of Oaths* 2:15–16), is insufficient for elevating it to a higher level of obligation. Even an oath taken with the approval of a community can be released by a rabbinic court. Such a court, however, cannot exempt or release a person from a scriptural or rabbinic obligation, unless such an exemption was already made possible in the law itself (see *Gittin* 36a and *Tosafot ad locum*, s.v. *amar* and s.v. *aval*; *Shevu'ot* 29b, *Tosafot ad locum*, s.v. *ki*; Maimonides, *Laws of Oaths* 6:8–9. For scriptural exemptions from scriptural law see, for example, *Yoma* 85a–b. For rabbinical exemptions from rabbinic law see, for example *Berakhot* 22b).

One way suggested to overcome some objections is to create a ceremony which confers obligated status on women in order to make them eligible to serve as cantors. Yet, any ceremony intended to enable women to serve as cantor—which is clearly proscribed by Halakhah—is itself invalid because it includes what is permitted (women performing male directed obligations) with what is forbidden (fulfilling obligations for other males; see *Shevu'ot* 23b and Maimonides, *Laws of Oaths* 5:10). Even if public worship—including the requirement of a prayer quorum—is taken to be ordained by the Rabbis rather than by the Torah itself, one is not permitted to take an oath or a vow to violate it (see Maimonides, *Laws of Vows* 3:9 and *RaDBaZ ad locum*; *Laws of Oaths* 5:7 and *RaDBaZ ad locum*). Thus it would seem that those who would authorize any such ceremony would be in

violation of the proscription of "aiding transgressors" (see Mishnah *Gittin* 5:9 and *Avoda Zara* 55b). The nullity of this ceremony is assured no matter how many people approve it. (cf. Mishnah *Pe' ah* 4:1,2)

The theological point which underlies the entire issue under discussion is whether heteronomy (external authority) is more important than autonomy (internal or individual authority) in traditional Judaism. Proponents of the certification of women as cantors would argue that autonomy is equal to heteronomy while opponents argue that autonomy is inferior to heteronomy. Thus, Rabbi Roth argues that if women take upon themselves certain obligations so that they are no longer on a "take it or leave it basis" (see Rabbi Hanina's dictum, *Kiddushin* 31a and Tosafot *ad locum*, s.v. *gadol*) they will be as concerned as men with the consequences of neglecting their newly accepted obligations. But the Talmud itself (*Kiddushin* 31a) repudiates this dubious inference.

Rabbi Joseph said: Originally, I thought, that if anyone would tell me that the Halakhah agrees with Rabbi Judah, that a blind person is exempt from the precepts, I would make a banquet for the Rabbis, seeing that I am not obliged, yet fulfill them. Now, however, that I have heard Rabbi Hanina's dictum that he who is commanded and fulfills (the command) is greater than he who fulfills it though not commanded; on the contrary, if anyone should tell me that the Halakhah does not agree with Rabbi Judah, I would make a banquet for the Rabbis.

The blind sage Rabbi Joseph states that originally he would have been happy to learn that the law is according to Rabbi Judah who said the blind are exempt from all positive commandments, for this would make his own observance voluntary. In other words, he did more than what was required of him. Yet Rabbi Hanina's dictum, namely, "Greater is one who is commanded and acts than one who is not commanded and acts", makes such voluntary observance less, not more, than mandated scriptural observance. Thus Rabbi Joseph now wants the law not to follow the view of Rabbi Judah. He wants his own observance to be commanded, not just voluntary. But if a self-imposed obligation is equal to a scriptural obligation, why would Rabbi Joseph be happier to be obligated by the Torah than by himself? Thus a voluntary obligation cannot be elevated to the status of a commanded obligation, even for a rabbi who certainly would be fastidious and diligent in its observance (see also *Pesahim* 116b). Moreover, the motives or intent of Rabbi Joseph are not at issue. Certainly his intent would be noble and his motives only the best. But the efficacy of a ritual act is not determined by its intended purpose but by its source. This is precisely the point made by the Tosafot (*Kiddushin* 31a, s.v. *gadol*) who write that the reason why one who is commanded and acts is superior to one who is not commanded and acts is that the one commanded worries about his performance in that "he is continually concerned to

overcome his inclination in order to fulfill the command of his Creator" (Avodah Zara 3a, s.v. *gadol*). Because the source of the command is his Creator, one who is commanded is more inclined to take his obligation seriously. A self-imposed obligation is not from one's Creator. Autonomy is inferior to heteronomy.

While there are aggadic passages which seem to elevate autonomous obligation over heteronomous obligation (e.g., *Kiddushin* 32a–b re Psalms 1:2; Jerusalem Talmud, *Shevi'it* 6:1, 36b; *Genesis Rabbah* 30:9; *Leviticus Rabbah* 35:6), all of them deal with the individual's motivation for internalizing the *mitzvot*. They do not at all indicate anything about the objective, normative status of the *mitzvot* themselves. That is the thrust of Rabbi Hanina's dictum. Confusing subjective motivation with objective status was the fallacy of those Jewish thinkers who attempted to read Kantian notions of the primacy of autonomous obligation into Judaism (see, for example, Moritz Lazarus, *The Ethics of Judaism*, trans. Henrietta Szold, Philadelphia, 1900, vol. 1, p. 163 and Hermann Cohen, *Religion of Reason Out of the Sources of Judaism*, trans. S. Kaplan, New York, 1972, p. 81.)

The principle of heteronomy over autonomy is much more than ordinary *aggadah* which, as a rationale after the fact, as Nahmanides states can be accepted or overlooked (*Writings of RaMBaN*, ed. C.B. Chavel, Jerusalem, 1963, *Vikuach* 39, vol. 1, pp. 308–9). Rather, this principle is what Maimonides called "an essential point of faith", that is to say, a presupposition of the whole Torah and the system of Jewish religious thought (*Responsa of Maimonides*, ed. Blau, Jerusalem, 1960, no. 182, vol. 2, p. 333). That presupposition is that the source of Jewish religious authority is traditional revelation. It is revelation in the sense that God's will is primary and all else is secondary. It is traditional in the sense that revelation is transmitted and interpreted by the succession of the Sages of Israel. Once that is accepted, there is indeed room for individuality based on a desire for increased piety. However, if the individual innovation is considered to be even equal, let alone superior, to the authority of traditional revelation, then the roles of God and man are heretically reversed and the Torah ceases to be supreme. (On this point Rabbi Roth falls victim to the very theological error he warns us to avoid; Rabbi Joel Roth, *The Halakhic Process: A Systemic Analysis*, New York, 1986, p. 201.)

Therefore, the certification of women as cantors cannot be accepted on halakhic or theological grounds.

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