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Fall 2020

Survey of Recent Halakhic Literature: Coronavirus Queries (Part 1): Communal Prayer, Porch Minyan, A Missed Bar Mitzva

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SURVEY OF RECENT HALAKHIC LITERATURE

CORONAVIRUS QUERIES (PART I)

The coronavirus pandemic of 2020 has left no one unaffected. The untimely loss of rabbinic scholars, religious mentors, communal figures, family members, colleagues and neighbors has been devastatingly painful. Seemingly, Jewish enclaves throughout the world have been among the most seriously affected. The virus will dissipate, but lacunae in personal lives and in the life of our community will not disappear.

Closing of schools, shuttering of houses of worship and disarray of the marketplace have caused major financial, educational, societal and spiritual disruption. At the same time, with distractions curtailed, the circumstances have yielded time for reflection. The walls of the ghetto no longer create a barrier between our society and the world at large. The corona pandemic and its accompanying lockdowns caused everyone to retreat into a virtual cocoon. But from the narrow vantage point of that cocoon, one could readily perceive that not all cocoons are alike.

The pandemic has provided insights into the broader society in which we live as well as into our own society. Restricted mobility and socialization led to mass boredom. Newspapers understandably cater to readers' desires. With tiresomely long days, bread-baking, cooking and candy-making were readily available outlets. And since, for many, cooking in the modern age has become a forgotten art, a week's worth of menus and accompanying recipes appeared with regularity in American print media. Virtual cocktail hours became somewhat of a secular ritual. Liquor stores were classified as "essential services" and at least one website—an academic one at that—offered wine-pairing recommendations.

"*Anu mashkimim ve-hem mashkimim....*" In our society, the *bet midrash* may have been closed but Torah study continued unabated. *Shi'urim* of all levels of complexity were available to one and all and were met by an unprecedented level of participation. Telephone, video and computer were

I wish to express my thanks to Rabbi Joseph Cohen of RIETS and the Technion Medical School for his invaluable expert assistance. I owe a particular debt of gratitude to Rabbi Cohen for the inordinate amount of time he expended in providing sources and references which would otherwise have been unavailable to me during these difficult weeks. My appreciation also to Rabbi Moshe Schapiro of the Mendel Gottesman Library of Yeshiva University for his indefatigable efforts throughout the period during which libraries have been inaccessible. —J.D.B.

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repurposed with salutary effect. The Hebrew and Anglo-Jewish media featured quality material for adults and children alike.

It may have required a pandemic for us to comprehend why divine providence caused the internet to make its appearance in our age. Vast libraries are available upon pressing a few strokes on a keyboard. That these resources were widely utilized is attested to by the welter of monographs, responsa, essays, articles and practical compendia that have appeared online, primarily in Israel but in this country as well, and continue to be readily available on the internet. It would be most difficult to read, much less to master, everything that has been posted. Never have so many written so much in so short a time. It would be far too formidable a task even to list, let alone seriously to review, the copious material that has been produced.¹

Unsurprisingly, throughout this period rabbinic decisors were inundated with questions, many of which involved heartrending issues of triage and exposure to danger of self and others. There were also emotion-laden questions arising from quarantine and social distancing pertaining to burial rites, mourning rituals and bereavement practices. Those questions were indeed important in themselves and the accompanying anguish of the interlocutors was magnified by their isolation. The questions, traumatic as they were, involved novel circumstances rather than new issues.

The responses consisted of old wine poured into new vessels. Unique were questions prompted by social distancing and closure of synagogues. Those questions also involved age-old issues, but issues much less familiar to both laymen and rabbis. “*U-me-az yaza matok*”—of some solace is that an element of the sweetness of Torah may, at times, emerge from severe misfortune. In analysis of the issues raised in those queries, the coronavirus spurred investigation of halakhic sources and precedents together with their relevance to situations at hand. It is precisely because of their unique nature and relatively rare application that a number of those topics have been selected for discussion.

COMMUNAL PRAYER

I. The Obligation

Not surprisingly, the focus of attention has been on a common set of problems. Understandably, numerous scholars have applied a common

¹ See Eliezer Brodt, “Towards a Bibliography of Coronavirus-related Articles & Seforim Written in the Past Month (updated), Black Weddings and other Segulot,” <http://seforimblog.com/2020/05/towards-a-bibliography-of-coronavirus-related-articles-seforim-written-in-the-past-month-updated-black-weddings-and-others-segulot/>.

set of sources and precedents in their responses to those questions. Closing of synagogues affected everyone and begged for innovative solutions. One such solution—“porch *minyanim*”—will be discussed in detail anon. Among the rabbinic authors who address that issue is the prolific scholar R. Asher Weiss. Rabbi Weiss, *Minḥat Asher: Be-Tekufat ha-Koronah [Mahadura Kamma]*, (Jerusalem, Nisan 5780), pp. 36–40, quite appropriately prefaces his discussion of the propriety of “porch *minyanim*” with an analysis of the nature of communal prayer. Is *tefillah be-zibbur*, i.e., prayer with a mandated quorum of ten men, an obligatory *mizvah*, a discretionary *mizvah*, a beneficial expedient or a pious practice? Although he does not exhaust the possible number of categories, that issue is addressed by R. Moshe Feinstein in three separate places: *Iggerot Mosheh*, *Orah Ḥayyim*, I, no. 31, *Orah Ḥayyim*, II, no. 27 and *Orah Ḥayyim*, III, no. 7.

Tosafot, *Berakhot* 30b, rule that when two options are available, prayer in a synagogue with a quorum of ten or individual prayer in a house of study, a person should pray in the house of study. *Tosafot Rabbenu Yonah*, *Berakhot* 8a, states that such prayer should be preferred even by a person who is not in the category of an individual for whom “*torato umanuto* – Torah is his profession,” i.e., a person who does not spend time in pursuit of other activities. That position is predicated upon the dictum of R. Ḥiyya bar Ami in the name of Ula, *Berakhot* 8a: “From the day the Temple was destroyed, the Holy One, blessed be He, possesses only the four ells of Halakhah.” That dictum reflects the notion that a house of study enjoys enhanced sanctity because the Divine presence now dwells in the house of study rather than within the Temple precincts and hence prayer offered in a house of study is more likely to be favorably accepted.

On the other hand, in an obvious allusion to the dictum of R. Ḥiyya bar Ami, Rambam, *Hilkhot Tefillah* 8:3, reports that the Sages of old shunned synagogues for their personal prayer and gave preference to “the place in which they engaged in Torah.” Rambam urges that this practice be emulated but qualifies that statement with a caveat, “provided that they pray the communal prayer there.” Rambam clearly understood R. Ḥiyya bar Ami as giving no preference to private prayer in a house of study over communal prayer in a synagogue but as giving preference to prayer in one’s own modest place of study with a *minyan* over an enhanced mode of prayer in a synagogue where “in the multitude of the people is the grandeur of the king.” (Proverbs 14:28).

Iggerot Mosheh suggests an obvious basis for the disagreement between Rambam and *Tosafot*. Rambam regards communal prayer as a normative obligation and hence it cannot be superseded by other

considerations. *Tosafot* understand communal prayer to be something less than mandatory and hence subject to waiver in face of more weighty considerations.

Shulhan Arukh, Orah Hayyim 90:18, rules in accordance with the position of Rambam while Rema adds, “Some say even without ten it is preferable [for a person] to pray in his regular house of study but only a person whose Torah is his profession and who does not otherwise desist [from study].”

A close reading of *Tosafot* and Rema, *Orah Hayyim* 90:18, reveals that Rema differs from *Tosafot* and *Shulhan Arukh* in two particulars: 1) *Tosafot* fail to explicitly distinguish between a person whose profession is Torah and other individuals; 2) Rema speaks of a preference for prayer only in the individual’s “regular (*kavu’a*) house of study,” a limitation that is not found in *Tosafot* or *Shulhan Arukh*.

It is probably the case that Rabbenu Yonah, *Berakhot* 8a, differs from both Rambam and *Tosafot* and expresses a third position. According to Rabbenu Yonah, the issue is not preference of house of study over a house of worship or *vice versa* but the optimal use of time on the part of a person who never ceases from Torah study. Rabbenu Yonah assumed that it was because of that reason that R. Hiyya bar Ami prayed in the house of study. Accordingly, his position was limited to prayer in the individual’s own house of study. If he were to leave the house of study for any other reason R. Hiyya bar Ami would have found no particular advantage in seeking out an alternate house of study rather than a synagogue. Rema thus rules in accordance with the position of Rabbenu Yonah rather than according to the opinion of *Tosafot*.

Despite Rema’s ruling that a person for whom “Torah is his profession” may pray privately in his house of study, *Iggerot Moshel, Orah Hayyim*, II, no. 27, forcefully declares, “To pray with ten is a mandatory *mizvah* incumbent upon the person and not merely an embellishment or enhancement.” Arguably, that might be the position of Rambam but it is difficult to understand Rema’s ruling in that vein. The paradigm of *torato umanuto* is R. Shimon bar Yoḥai as described by the Gemara, *Shabbat* 11a. But such individuals are exempt even from individual prayer on the grounds that they are continuously engaged in the *mizvah* of Torah study and hence are exempt from all other *mizvot*. It is an accepted truism that such exemplary individuals do not exist in our day. The categorization of *torato umanuto* as employed by Rema in the context of his ruling refers to present-day scholars, as evidenced by the fact that Rema obligates the person he describes to pray, albeit not with a quorum of ten. The exemption of such an individual from

communal prayer seems reasonable only if communal prayer is not an absolute obligation.²

The strongest argument in support of the view that communal prayer is an absolute obligation is the ruling recorded in *Shulhan Arukh, Orah Hayyim* 90:16, stating that a wayfarer preparing to interrupt his journey “needs” (*zarikh*) to travel forward an additional four *mil* or to retrace his steps a distance of one *mil* in order to worship with a *minyan*. The term “*zarikh*,” asserts *Iggerot Mosheh*, connotes an obligation. However, that ruling may well serve as the basis for a counterargument. There is an upper limit to the expense that a person must incur in the fulfillment of a *mizvah*. The sum is generally limited to 20% of one’s financial resources. It is arguable that physical labor, and even anguish, can be monetized and hence inordinate labor or distress of comparable monetary value is not required. The exertion necessary to press on for an additional four *mil* or the frustration experienced in a retreat of a *mil* and subsequent return over the same ground seems to be entirely unrelated to the amount of toil and trouble a person is obligated to endure for purposes of fulfilling an obligatory *mizvah*. Those limitations are more readily understood if communal prayer is either a discretionary *mizvah*, an undertaking designed for material or spiritual benefit, or a salutary practice. The four *mil* and one *mil* provisions are designed to provide a balanced perspective with regard to communal prayer. Although communal prayer is not a mandatory *mizvah*, proper motivation requires undertaking some degree of inconvenience but not an inordinate physical burden.

It is also far from clear that Rambam regards communal prayer as mandatory. In *Hilkhot Tefillah* 8:1, he writes, “A person needs (*zarikh*) to associate himself to the community and not pray as an individual so long as he can pray with the *zibbur*.” Rambam carefully employs the phrase “*zarikh adam* – a person needs” rather than “*hayyav adam* – a person is obligated.” Rambam continues, “The prayer of the community is always heard. Even if there are sinners among them, the Holy One, blessed be He, does not disdain the prayer of the many. Therefore, a person needs (*zarikh*)³ to associate himself with the *zibbur* and not pray as an

² *Iggerot Mosheh*’s resolution of this difficulty is that *Tosafot* do indeed disagree with Rambam and that Rema basically agrees with Rambam and *Shulhan Arukh* but offers his own ruling granting even present-day scholars the privilege of relying upon *Tosafot*. That analysis of Rema is both novel and strained.

³ Cf., *Tur Shulhan Arukh* 219:3 as well as *Bet Yosef* and *Bah, ad locum*, with regard to other occurrences of the term “*zarikh*.” There are indeed occurrences of the word “*zarikh*” in which the word clearly connotes “must.” See, for example, *Nimmukei Yosef, Yevamot* 72a, who comments that “*zarikh*” implies a rabbinic obligation as distinct from “*hayyav*” which connotes a biblical obligation.

individual....” Rambam seemingly seeks to stress the tremendous advantage of communal prayer without labeling communal prayer an obligation. *Tur Shulḥan Arukh* 90:17 similarly declares, “A person should endeavor with all his might to worship with the *zibbur*.” Again, the word “*Ḥayyav* – a person is obligated” is remarkably absent.

Rabbi Weiss draws attention to a statement of the Gemara, *Gittin* 38b, referring to communal prayer as a *mizvah*. Manumission of a Canaanite slave constitutes violation of the biblical commandment “forever shall you cause them to labor” (Leviticus 25:46). However, objects the Gemara, R. Eliezer emancipated his slave so that the freed slave might serve as the tenth person for a *minyān* in order to offer communal prayer. The Gemara replies, “For a *mizvah* it is different.”

Ramban, in his commentary, *Gittin* 38b, *hashmattot*, finds the Gemara’s response unsettling because fulfillment of one positive *mizvah* does not justify abrogation of another positive *mizvah*. Ramban offers two explanations. Ramban suggests that the prohibition regarding emancipation of a Canaanite slave is rooted in the prohibition against conveying property to a Canaanite *ex gratia*. Since the act was designed for R. Eliezer’s benefit it was not *ex gratia*. Rashba objects that there is no such prohibition with regard to a *ger toshav* who has committed himself to observance of the Seven Noahide commandments and, *a fortiori*, not to a Canaanite slave whose obligation to fulfill commandments is parallel to the obligation incumbent upon women. Rashba offers a different rationale, namely, that the *mizvah* of the multitude prevails over the *mizvah* of the individual.

It seems to this writer that Rashba does regard communal prayer as a *mizvah* but as a *mizvah kiyyumit*, i.e., a discretionary *mizvah* such as visiting the sick and the like, rather than a *mizvah ḥiyyuvit*, a mandatory *mizvah*. The problem is not yet fully resolved because communal prayer, even if a *mizvah*, is a rabbinic *mizvah* and seemingly would not justify violation of a biblical commandment as occurred in R. Eliezer’s emancipation of his slave. It may well be the case that the *mizvah* of which Rashba and the Gemara speak is not the *mizvah* of prayer *per se* but the *mizvot* of *kaddish*, *kedushah* and *barekhu*. Those are all integral to communal prayer but are expressions of praise and adoration of the Deity rather than supplications. Those portions of communal liturgy are also rabbinic in origin. However, once instituted as part of the liturgy, those utterances become fulfillments of the biblical commandment “And I shall become sanctified among the children of Israel” (Leviticus 22:32). Rashba is then asserting that even a biblically commanded fulfillment of a “*mizvah* of the many” takes priority over the *mizvah* of an individual.

That underlying line of reasoning also serves to explain Ramban in a manner that avoids Rashba's objection. Ramban simply identifies the rationale underlying the prohibition against *ex gratia* conveyance of property to a gentile as the basis of a parallel prohibition against manumission of a Canaanite slave. Ramban means to say that the prohibition is limited only to circumstances in which the freedom granted to the slave is designed for the slave's benefit, but does not apply when the act is designed for the benefit of the master. The benefit of R. Eliezer's emancipation of his slave was indeed a fulfillment of a *mizvah*, either because Ramban regarded communal prayer as a nonbinding discretionary *mizvah* or because the ancillary *devarim she-be-kedushah*, viz., *kaddish*, *kedushah* and *barekhu*, constitute non-mandatory fulfillment of a biblical commandment "And I shall be sanctified among the children of Israel" (Leviticus 22:32).

The second resolution of the question offered by Ramban is illuminating in that it gives expression to a novel understanding of communal prayer. Ramban remarks, "Indeed, this *mizvah* supersedes a biblical positive commandment since when the Holy One, blessed be He, enters a synagogue and does not find ten, He immediately becomes angry." Communal prayer, asserts Ramban, serves to obviate Divine anger. According to Ramban, it is not communal prayer *per se* that constitutes the *mizvah*; rather, it is averting Divine anger that constitutes the *mizvah*. Averting Divine anger is not only a *mizvah* but a *mizvah* of the multitude.

II. The Definition

In an excursus to his discussion of porch *minyanim*, pp. 42–43, Rabbi Weiss seeks to define communal prayer. It is certain that it is only the *shemoneh esreh*, i.e., the eighteen benedictions, that constitute communal prayer. *Hatam Sofer*, *Likkutei Teshuvot*, no. 13, and *Derashot Hatam Sofer*, Leviticus 1:1, s.v. *va-yikra*, identifies communal prayer as the repetition of the *shemoneh esreh* by the reader or *hazzan*. As noted, with the exception of *kaddish*, *kedushah* and *barekhu*, other portions of the liturgy do not require a *zibbur*, i.e., a quorum of ten constituting a *minyan*. *Kaddish*, *kedushah* and *barekhu* are glorifications of G-d rather than supplications but were ordained only for communal expression on the basis of the verse "And I will be sanctified among the children of Israel" (Leviticus 22:32).

In his *Likkutei Teshuvot*, *Hatam Sofer* describes the *hazzan*'s repetition of the *shemoneh esreh* as *tefillah be-zibbur*, or communal prayer, because the *hazzan* serves as the agent of the community for purposes of that repetition. Since, according to *Hatam Sofer*, the purpose of the *hazzan*'s audible repetition is to recite the *shemoneh esreh* on behalf of each worshipper, any

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individual who has not previously recited *shemoneh esreh* may, if he so desires, join in the repetition by reciting each blessing word by word together with the *hazzan*. Surprisingly, *Hatam Sofer* comments that the practice of having the *hazzan* repeat the *shemoneh esreh* was instituted only because it is difficult for each individual to have proper concentration and intention during the course of the recitation of the entire *shemoneh esreh*.

R. Moshe Feinstein, *Iggerot Mosheh, Oraḥ Hayyim*, III, no. 9, draws attention to Rema, *Oraḥ Hayyim* 109:2, who rules that a person who was tardy in arriving to the synagogue and finds himself in the midst of the blessing following the *Shema* at the time that the *hazzan* commences the repetition of the *shemoneh esreh* should not recite the *shemoneh esreh* together with the *hazzan*. Rather, although he may not recite *kedushah* in the middle of the blessing following the *Shema*, he should stand silently but attentively until the *hazzan* concludes *kedushah* and only then should he begin his own repetition of the *shemoneh esreh*.⁴ *Hatam Sofer's* ruling is in stark contradiction to that of Rema.

Iggerot Mosheh takes strong exception to *Hatam Sofer's* comments and, declaring them to be “entirely erroneous,” concludes that “it is certain that these are not [the words of] the *Hatam Sofer*.” The Gemara states that the *hazzan's* repetition of *shemoneh esreh* was instituted only on behalf of those who were “not proficient,” i.e., persons who cannot read and have not committed the prayer to memory. Thus, since that was the stated reason for institution of the *hazzan's* repetition, early-day authorities grappled with the question of why the practice should survive now that “everyone is proficient.” *Bet Yosef, Oraḥ Hayyim* 124:3, cites Rambam, *Pe'er ha-Dor*, no. 148, who answers quite simply that the Sages promulgated the edict unconditionally for posterity. *Bah, Oraḥ Hayyim* 124:3, explains that there is a second reason for the *hazzan's* repetition, viz., the inclusion of *kedushah* in his repetition.

Iggerot Mosheh emphasizes that *tefillah be-zibbur* consists solely of the silent *shemoneh esreh* uttered by all members of the congregation simultaneously whereas an individual who recites *shemoneh esreh* together with the *hazzan* is not at all engaged in communal prayer.

A third position is that of *Pri Megadim, Eshel Avraham* 109:9 and 124:5, as well as of R. Abraham David Wahrman, the *Rav* of Butchatch, *Eshel Avraham* 55:1 and 124:2, who maintain that communal prayer can be achieved either by worshipping together with a minimum of nine other people or by accompanying the *hazzan* in his repetition of the *shemoneh esreh*. The position of those authorities is that, although a person

⁴ Cf., *Levush* 109:1-2 and *Eliyahu Rabbah* 109:9.

proficient in prayer must himself recite *shemoneh esreh* and may not rely upon the *hazzan*, nevertheless, since the prayer of the *hazzan* is that of the congregants on whose part he is charged to pray, any individual who has not already recited the *shemoneh esreh* may personally join in the *hazzan*'s prayer. That prayer is also deemed to be communal in nature because it accompanies the prayer of the *hazzan* whose supplication is offered on behalf of the community.

A fourth insightful position is expressed by R. Joseph B. Soloveitchik, in *Iggerot ha-Grid*, *Hilkhot Tefillah* 10:2. That material was also recorded by his students as heard by them in his oral presentations and published in *Reshimot Shi'urim*, *Berakhot* 26b, *Mesorah*, vol. 5, pp. 6–8, and *Nefesh ha-Rav*, no. 125. The latter versions include a number of comments that do not appear in *Iggerot ha-Grid*.

Rabbi Soloveitchik begins his discussion by posing a number of problems: The Gemara, *Berakhot* 29b, indicates that a person who realizes in the midst of *shemoneh esreh* on *Rosh Hodesh* that he forgot to include *ya'aleh ve-yavo* in his prayer while reciting the *shemoneh esreh* must return to the beginning of the blessing in which it is to be included. *Tosafot*, *ad locum*, s.v. *ta'ah*, cite *Ba'al Halakhot Gedolot* who maintains that if the person follows the words of the *hazzan* attentively he need not himself recite the *shemoneh esreh* a second time. *Tosafot* add that this is proper only for recitation of the *Rosh Hodesh* interpolation but a person who omits an entire blessing cannot rely upon the *hazzan*'s repetition but must repeat the *shemoneh esreh* himself. *Tosafot*'s comment begs for elucidation of the distinction drawn between an entire blessing and the special *Rosh Hodesh* insertion.

A person who omits *ya'aleh ve-yavo* and realizes his omission only after he has completed the *shemoneh esreh* must repeat the *shemoneh esreh* in its entirety. The general rule is that a person who forgets to recite *shemoneh esreh* must recite the *shemoneh esreh* twice in the immediately following prayer service. But what is the proper procedure if a person forgets *ya'aleh ve-yavo* in the afternoon prayer of *Rosh Hodesh*? A “makeup” recitation following the evening service would seem to serve no purpose because, since it is no longer *Rosh Hodesh*, it would be inappropriate to recite the *Rosh Hodesh* interpolation. If so, what purpose would be served by a second *shemoneh esreh* without that interpolation? Indeed, that is *Tosafot*'s position *contra* that of *Ba'al Halakhot Gedolot*. However, *Tosafot* cite, but do not explain, the position of Rif who rules that a second *shemoneh esreh* must be recited, albeit with the omission of *ya'aleh ve-yavo*.

As Rashi understands the Gemara, *Berakhot* 30b, a person worshipping with a *minyan* on *Rosh Hodesh* who forgets to recite *ya'aleh ve-yavo* need not repeat the *shemoneh esreh* because he can listen to *ya'aleh ve-yavo*

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as recited by the *hazzan*. There are two principles of which one must be cognizant: 1) On *Rosh Hodesh*, a *shemoneh esreh* in which *ya'aleh ve-yavo* is not included is not accounted as a *shemoneh esreh*. 2) A person who is proficient in prayer cannot rely upon the prayer of the *hazzan*. Why, then, can a worshipper rely on the *ya'aleh ve-yavo* of the *hazzan*, which itself must be recited as an integral part of the *shemoneh esreh*? Even more surprisingly, *Magen Avraham* 126:3 cites Rema of Fano who rules that even a person worshipping privately who finds himself in such a position need not repeat *shemoneh esreh* once he has recited *Mussaf*, i.e., the additional prayer, of *Rosh Hodesh*. The additional prayer does not serve as a substitute for an omitted *shemoneh esreh*. How, then, can it compensate for a forgotten *ya'aleh ve-yavo*?

Furthermore, Rambam, *Hilkhot Tefillah* 10:2, rules that a *hazzan* who errs in some manner in his recitation of one of the blessings of *shemoneh esreh* need not repeat that prayer but may rely upon his own public recitation because of “the inconvenience of the congregation.” Rambam adds that if the error is in one of the first three blessings, he must repeat the entire *shemoneh esreh* despite the inconvenience to the congregation. The implication is that, absent the rationale of inconvenience to the congregation, the *hazzan* would be obliged to repeat the entire *shemoneh esreh* privately before beginning his public recitation. If the rationale for non-repetition is inconvenience of the congregation, why is there a distinction between the first three blessings and the balance of the *shemoneh esreh*?

Rambam certainly accepts the principle that simultaneous recitation of the *shemoneh esreh* by members of the congregation constitutes *tefillah be-zibbur* as he states in *Hilkhot Tefillah* 8:1: “The prayer of the community is always heard. The Holy One, blessed be He, does not disdain the prayer of the many. Therefore, a person should join with the community and, so long as he can worship with the community, he should not worship as an individual.” From the halakhic provision that if an individual forgets *ya'aleh ve-yavo* he is exempt from private repetition of the *shemoneh esreh* only because of “inconvenience to the community,” Rabbi Soloveitchik infers that the *hazzan* must also recite *shemoneh esreh* together with the community in order to discharge his own obligation of *tefillah be-zibbur*. The *hazzan*'s repetition, he asserts, was not originally instituted simply as an expedient to enable the ignorant to pray. If that were the case, the *hazzan* would be in the same position as any other person who pronounces a blessing on the part of another. A procedure of that nature relies upon the principle of “*shome'a ke-oneh* – a person who listens is as if he has lifted his voice.” *Rosh ha-Shanah* 34b states in the name of Rabban

Gamliel that the *hazzan's* repetition was instituted on behalf of the "populace in the fields" who could not attend services in person. Those individuals certainly did not hear the *hazzan's* prayer. Moreover, the blowing of the shofar on *Rosh ha-Shanah* must accompany the three blessings interpolated in the *Mussaf* prayer of *Rosh ha-Shanah*. The practice of those who employ the Ashkenazic liturgy is to sound the *shofar* during the *hazzan's* repetition but not during the silent *shemoneh esreh*. If the *hazzan's* repetition was ordained only on behalf of the ignorant those proficient in prayer would be lacking the blowing of the *shofar* that must accompany the *Rosh ha-Shanah* blessings.

Rambam, *Hilkhhot Tefillah* 8:4, declares, "What is the prayer of the community? One person prays in a loud voice and all hearken." In *Hilkhhot Tefillah* 9:3, Rambam states, "All stand and hearken and respond 'Amen,' both those who have not discharged their obligation and those who have already discharged their obligation," i.e., those who have themselves already recited the silent *shemoneh esreh* and those who have not. It is to be noted that Rambam rules that all must stand during the *hazzan's* repetition of *shemoneh esreh* just as they must stand during their own recitation.⁵ *Hagah'ot Maimuniyot, Hilkhhot Tefillah* 9:2, cites one of the *Ge'onim* who emphasized that the entire congregation must listen attentively to the words of the *hazzan* "from beginning to end as does a person who prays by himself; it is not permissible to interrupt... one walks three steps backward" upon the *hazzan's* conclusion of his repetition.⁶

The communal prayer described by Rambam in *Hilkhhot Tefillah* 5:1 is certainly different from the nature of communal prayer described in *Hilkhhot Tefillah* 8:4 and in *Hilkhhot Tefillah* 9:3. Rabbi Soloveitchik explains that there are actually two aspects of communal prayer, each of which is obligatory, i.e., the individual silent prayers of ten persons who collectively constitute a community and the public prayer of the *hazzan*

⁵ *Ba'al ha-Ma'or, Rosh ha-Shanah*, p. 12a of the pages of Rif, who describes the blasts of the *shofar* blown during the repetition of the *shemoneh esreh* as "*teki'ot demeyushav* – the sitting blasts," would not categorize the *hazzan's* repetition of the *shemoneh esreh* in this manner.

⁶ There is some question with regard to the correct manuscript reading of the Ga'on of Vilna's reference to this regulation in *Ma'aseh Rav*, no. 43. See R. Moshe Sternbuch, *Ma'aseh Rav ha-Shalem* (Jerusalem, 5714), no. 43, *Nusahot Tosafot*. It seems to this writer that the correct version is "and not to say '*barukh hu u-barukh shemo*.'" That clause follows the Gra's admonition to hearken to the *hazzan's* repetition of the *shemoneh esreh*. "*Barukh hu u-barukh shemo*" is a *hefsek*, or interruption, and is never pronounced when one listens to another person's recitation of a blessing in order to discharge one's own obligation, e.g., the blessings pronounced before the blowing of the *shofar* or the reading of the *Megillah*.

acting on their behalf. In reciting the latter prayer, the *hazzan* acts as their agent. The notion of agency is reflected in the words of the Mishnah, *Berakhot* 34b: “If a person prays and errs, it is an unfortunate omen; if he is the agent of the congregation, it is an unfortunate omen for those who designated him as their agent for the agent of a person is as the person himself.” Rabbi Soloveitchik finds further evidence of that principle in a comment of *Bi’ur ha-Gra*, *Orah Hayyim* 581:17. Rema rules, “Any Jew may serve [as a *hazzan*] but he must be acceptable to the congregation. If, however, he prays by force one does not respond ‘Amen.’” *Bi’ur ha-Gra* identifies the source of that provision as the statement of the Mishnah, *Terumot* 1:1, to the effect that a person cannot serve as an agent without authorization of the principal. In that respect prayer is comparable to a sacrifice: the priest serves as the agent of the community in performing the sacrificial services; the *hazzan* serves as the designee of the community in offering prayer that has replaced the sacrificial service.⁷

It is also clear that Rambam maintains that the obligation of communal prayer is bi-faceted: 1) the simultaneous prayers of the members of the congregation; and 2) the further audible prayer offered by the *hazzan* as the delegate of the congregation as a whole.

A close reading of Rambam’s nomenclature finds this reflected in Rambam’s shift of terminology between *Hilkhot Tefillah* 8:1 and *Hilkhot Tefillah* 8:4. In *Hilkhot Tefillah* 8:1, in speaking of the need to pray *with* a community rather than as an individual, Rambam describes communal prayer as the “prayer of the *rabbim* – the many.” Later, in *Hilkhot Tefillah* 8:4, in describing the role of the *hazzan*, Rambam writes, “What is the prayer of *ha-zibbur* – the community?” There is a difference between “*rabbim* – many” and “*ha-zibbur* – the community.” The “many” are the aggregate of the individuals offering prayer simultaneously; the *zibbur* is the community as a collective that worships through delegation of the *hazzan*. To put the matter in more colloquial parlance: the distinction is between *tefillah be-zibbur* and *tefillat ha-zibbur* – prayer *with* the community and the prayer *of* the community. Both are essential elements of communal prayer.

Every individual, including the *hazzan*, is obligated to pray personally as part of a *zibbur* defined as an aggregate of individuals. Everyone is also obligated to offer prayer as a member of a congregation *qua* congregation, i.e., a corporate-like collective entity that is different from the sum of its individual members.

Rabbi Soloveitchik explains that *Tosafot*, *Berakhot* 29b, maintain that a *shemoneh esreh* on *Rosh Hodesh* that does not include *ya’aleh ve-yavo* is

⁷ See *Shiltei Gibborim*, *Rosh ha-Shanah* 35a.

not a valid prayer. Accordingly, if one fails to recite *ya'aleh ve-yavo* in the afternoon service of *Rosh Hodesh* one must recite a second *shemoneh esreh* at the conclusion of the evening service despite the fact that the person cannot recite *ya'aleh ve-yavo* at that time. The original *shemoneh esreh* recited without *ya'aleh ve-yavo* was not a valid prayer but since in the evening it is no longer *Rosh Hodesh* the identical prayer qualifies as a valid *shemoneh esreh* despite the absence of *ya'aleh ve-yavo*.

Ba'al Halakhot Gedolot maintains that, since *ya'aleh ve-yavo* cannot be recited during the evening following *Rosh Hodesh*, the prayer is pointless. However, the *hazzan* who forgets to recite *ya'aleh ve-yavo* may rely upon its inclusion in his repetition of the *shemoneh esreh* because *ya'aleh ve-yavo* need not necessarily be recited in the individual's personal *shemoneh esreh*; its recitation in the *shemoneh esreh* of the community, i.e., the *hazzan's* repetition, is sufficient for discharging the obligation of commemorating *Rosh Hodesh*. The *hazzan* who has omitted *ya'aleh ve-yavo* in his repetition of *shemoneh esreh*, and for some authorities even an individual who has already recited the additional prayer of *Rosh Hodesh*, need not repeat the *shemoneh esreh* of the morning service. Those authorities go even further in maintaining that commemoration of *Rosh Hodesh* in any prayer, including, for some authorities, the *shemoneh esreh* of *Mussaf*, satisfies the requirement of commemorating *Rosh Hodesh*. *Ba'al Halakhot Gedolot* maintains that an individual who has forgotten *ya'aleh ve-yavo* need not repeat the *shemoneh esreh* but may rely upon the *hazzan's* repetition because he maintains that *ya'aleh ve-yavo* need not necessarily be recited as part of an individual's personal *shemoneh esreh*; rather, the requirement with regard to commemoration of *Rosh Hodesh* in *shemoneh esreh* can be satisfied by its inclusion in any *shemoneh esreh* in which that person is a participant, even if only as a member of the *zibbur*.

Tosafot maintain that recitation of *shemoneh esreh* of *Rosh Hodesh* is valid *qua* prayer even if *ya'aleh ve-yavo* is omitted; later recitation of the omitted *shemoneh esreh* would be solely for the purpose of commemorating *Rosh Hodesh*. Since commemoration of *Rosh Hodesh* on the evening following *Rosh Hodesh* is impossible, repetition of *shemoneh esreh* would be superfluous. *Ba'al Halakhot Gedolot* maintains that the original prayer from which *ya'aleh ve-yavo* was omitted was entirely invalid when recited and therefore a later valid prayer must be offered.

Failure to recite an entire blessing intrinsic to the *shemoneh esreh*, *Tosafot* maintain, is far different. A person who omits even one of those eighteen blessings has not at all fulfilled his individual obligation with regard to prayer and, since he is proficient in prayer, the *hazzan's* prayer is of no avail to him.

COMMUNAL PRAYER DURING A PANDEMIC: PORCH *MINYANIM*

I. A Nineteenth-Century Lesson

In the early stage of the coronavirus pandemic an excellent translation by Rabbi Mordechai Torczyner of a responsum authored by R. Akiva Eger at the time of the second cholera epidemic of 1830-31 received wide circulation.⁸ That responsum provided detailed instructions regarding communal prayer during the period of contagion. The original responsum was published in *Iggerot Soferim*, Part 1, no. 29 and was reprinted in *Iggerot R. Akiva Eger*, 2nd ed. (Jerusalem, 5759), no. 71, and in *Hiddushei R. Akiva Eger: Nedarim* (Jerusalem, 5758), *Nedarim* 39b, sec. 1. The responsum is remarkable for its epidemiological advice as well. The instructions display a combination of knowledge surprisingly sophisticated for the early 1800s together with folk wisdom the modern reader will find amusing. The importance of personal hygiene and what we currently term “social distancing” was stressed at a time when germ theory was unknown and antiseptics as yet unheard of. Fresh air and use of vinegar as a disinfectant may or may not be of some benefit. Diet is unlikely to be of any great significance and wrapping flannel around the abdomen as well as eating an unspecified number of mustard grains on an empty stomach are surely without prophylactic benefit.

Most significant is the advice regarding communal prayer given by R. Akiva Eger to his student, R. Eliyahu Gutmacher, who at the time was the chief rabbi of the relatively small near-by community of Pleschen. In addition to providing a list of prayers to be offered and a recommendation for recitation of psalms to be selected by Rabbi Gutmacher during the duration of the plague, R. Akiva Eger required that *minyanim* be staggered and that no more than fifteen persons be permitted to participate in any single prayer service. In his own community, on the following *Rosh ha-Shanah*, R. Akiva Eger permitted only one half of the community to pray in the synagogue and the other half to pray in the synagogue on *Yom Kippur*.⁹ R. Akiva Eger apparently had the prescience to recognize that, despite the danger, such directives would not be obeyed with alacrity and so he advised his student to request the town authorities to provide a policeman to stand guard outside the synagogue for the purpose of

⁸ See the translation at <https://www.yutorah.org/lectures/lecture.cfm/948593/>.

⁹ See R. Nathan Gestetner, *Pesakim ve-Takkanot R. Akiva Eger* (Jerusalem, 5731), no. 20, reprinted in *Hiddushei R. Akiva Eger: Nedarim* (Jerusalem, 5758), *Nedarim* 39b, no. 4.

enforcing the rules. R. Akiva Eger had apparently been in earlier contact with those authorities regarding health measures and instructed Rabbi Gutmacher to invoke his name as *protektzia*. R. Akiva Eger was known to have vigorously espoused the “contagionist” view of the Prussian government regarding the nature of the epidemic and full-heartedly supported the strict lockdown requirement and exclusionary policies of the Prussian government against the “non-contagionist” business magnates who protested against interruption of trade and commerce as worse than the damage caused by the epidemic. For his endeavors R. Akiva Eger received a glowing letter of approbation from the Prussian Emperor Frederick William III delivered to him with much pomp and ceremony in Posen shortly before Rosh Hashanah 1831.¹⁰

We have no idea whether the social distancing demanded by R. Akiva Eger in Pleschen was achieved but, in our day, there are a plethora of eyewitness reports attesting to the fact that the recommended distancing of a minimum of six feet between individuals, use of face masks and frequent disinfecting of exposed surfaces have all too often been honored in the breach. To our misfortune, clandestine *minyanim* continued both here and in Israel even when banned by civil authorities.

There is a Yiddish aphorism that in translation runs as follows: If you see a person strolling to fulfill a *mizvah*, join him. But, if you see a person running to fulfill a *mizvah*, turn and run in the opposite direction because it is the Evil Inclination that is chasing him! The *Berditchever* surely would have agreed that endangerment of self and community even for the purpose of a *mizvah* constitutes a transgression but he would have offered a more charitable assessment of the underlying motivation. The skeptic will ascribe pursuit of questionable practices to the Evil Inclination; the *Berditchever* would recognize that the desire for the *mizvah* of communal prayer burns so deeply in the Jewish people that Jews pursue its fulfillment even in circumstances in which, at least for some authorities, the resultant *zibbur* is a halakhic mirage.

II. Creating a *Zibbur*

During the current pandemic, some devout individuals endeavored to find a solution by organizing outdoor prayer services and porch *minyanim*. The halakhic issue to be evaluated is whether it is possible to offer

¹⁰ See R. Pinni Dunner, “A Distinguished Rabbi Responds to the Threat of a Pandemic in 1831,” <http://rabbidunner.com/a-distinguished-rabbi-responds-to-the-threat-of-a-pandemic-in-1831/>. See also <http://rabbidunner.com/the-leadership-of-a-true-giant/>.

TRADITION

communal prayer under such conditions. By definition, *tefillah be-zibbur*, or communal prayer, requires a community. The criteria that serve to define a *zibbur*, or community, for purposes of communal prayer must be spelled out.

Fulfillment of the requirements for communal prayer is contingent upon two factors: time and place. Members of the *zibbur* must offer prayer simultaneously. They must also be assembled in one place. Nine people present in one locale and the tenth standing miles away quite obviously do not constitute a community for *tefillah be-zibbur*. Early halakhic sources do not explicitly address the definition of the “place” in which communal worship can be conducted in order to qualify as *tefillah be-zibbur*. With few variations,¹¹ the parameters of a “place” that qualifies for *tefillah be-zibbur*, according to most authorities, are extrapolated from regulations governing *zimmin*, the various liturgical preludes to the Grace after Meals that are recited when three or ten persons have broken bread together.

Teshuvot ha-Rashba, I, no. 96, cites the statement of the Mishnah, *Berakhot* 50a, declaring that two separate groups may associate for purposes of *zimmin* provided that they are within sight of each other. In addressing the question of communal prayer, Rashba adds the comment, “I further declare that it is possible to say that whenever they see each other¹² it is as if they are within one house and they can be combined, comparable to the *zimmin* of Grace after Meals.”¹³ Ra’avyah, *Berakhot*, no. 134, expresses a view similar to that of *Teshuvot ha-Rashba*. *Hiddushei R. Akiva Eger, Oraḥ Hayyim* 195:5, also rules in accordance with that view. *Teshuvot ha-Rashbash*, no. 37, disagrees fundamentally and maintains that the regulations governing communal prayer are different from those governing *zimmin* and consequently rules that people in different

¹¹ In particular, *zimmin* requires that the participants be visually connected even in the same room.

¹² With regard to *zimmin*, both *Reshash, Makkot* 6b, and R. Joseph Shalom Eliashiv, *Berakhot* 50a, rule that it is sufficient if one group sees the second group even though the second group cannot see the first group. See also *Zikbron Me’ir*, p. 497. Cf., however, R. Jacob Ettlinger, *Arukh la-Ner, Makkot* 6b. There is no explicit source indicating whether the entire first group must see the entire second group or whether visual observation of one person is sufficient. *Shulḥan Arukh* 195:1 employs the phrase “*mikzatan ro’im elu et elu*,” which can be understood either as “some of these see some of those” or as “some of whom see each other.”

¹³ R. Yechiel Michel Epstein, *Arukh ha-Shulḥan, Oraḥ Hayyim* 55:22, rules that such combination in assembling a minyan is possible only if nine people, including the *hazzan*, are in a single location. R. Joseph Chaim Sofer, *Kaf ha-Hayyim, Oraḥ Hayyim* 55:79, cites R. Chaim Joseph David Azulai, *Mahazik Berakbah* 55:11, as maintaining that at least six persons must be in a single place.

houses cannot form a *minyan* even if they are within sight of one another. *Bi'ur ha-Gra*, *Orah Hayyim* 55:31, similarly asserts that communal prayer is not analogous to *zimman*.¹⁴

Bet Yosef, *Orah Hayyim* 55:14, makes no mention of *Teshuvot ha-Rashba* but cites *Orhot Hayyim* in the name of Rabbenu Hai regarding a synagogue building with a window “several stories high” and rules that a person standing behind the synagogue can be counted to the *minyan* “if he shows them his face from there.” *Bet Yosef* precedes that citation with his own inference from an earlier source to the effect that a person can be included in a *minyan* only if “his head and the major portion” of his body are within the window “or within the width of the wall seen from inside the house” but cites Mahari Abohab who rules that it is sufficient for the individual to “place his head within the window.” *Orhot Hayyim* and Mahari Abohab seemingly disagree with Rashba as do *Or Zaru'a*, *Hilkhot Kri'at Shema*, no. 5, and Ramban, *Pesahim* 85b.

Bet Yosef subsequently codified the ruling of *Orhot Hayyim* in his *Shulhan Arukh*, *Orah Hayyim* 55:14. Later commentaries ascribe the underlying principle of that ruling to *Teshuvot ha-Rashba* and understand *Shulhan Arukh* as espousing the position of Rashba. Other authorities, including *Teshuvot Zera Emet*, I, no. 10, *Ikkarei ha-Dat*, no. 3, sec. 2, and R. Joseph Chazan, *Hikrei Lev*, I, no. 27, understand *Shulhan Arukh* as referring only to a situation in which the person in an upper floor of a building adjacent to a synagogue actually places his head through the window into the synagogue.¹⁵

¹⁴ *Bi'ur Halakhah* 195:1 cites authorities who maintain that a combination of persons within eyesight of one another for purposes of *zimman* is sufficient only if each group has the requisite number of individuals to form an independent group. If so, a porch *minyan* could not be constituted by combining persons on different porches unless each porch has the requisite quorum of ten.

¹⁵ See also *Hayyei Adam* 30:1 and *Kaf ha-Hayyim*, *Orah Hayyim*, 55:75.

R. Jacob Castro, *Maharikash*, *Erekh Lehem* 55:14, points to an apparently contradictory ruling in the immediately preceding paragraph of *Shulhan Arukh*. *Shulhan Arukh*, *Orah Hayyim* 55:13, rules that a person standing in a threshold cannot be included in a *minyan* if he stands in the portion of the threshold that is beyond the door when it is closed. *Maharikash* resolves the contradiction in two ways: 1) *Maharikash* postulates that such an individual cannot be included in the minyan because “he could enter without travail but does not enter.” *Maharikash* fails to provide a rationale for that distinction. Nevertheless, that distinction is accepted by R. Chaim Joseph David Azulai, *Mahazik Berakhah* 55:10-11. 2) *Maharikash* further suggests that *Shulhan Arukh*'s ruling 55:14 is limited to situations in which the individual put his head through the window. Addressing the same problem, *Pri Hadash* 55:13, offers the strained explanation that *Shulhan Arukh*'s ruling regarding a person standing in the threshold is limited to situations in which the individuals cannot see one another. The problem is also resolved if it is assumed, as postulated by *Arukh*

Addressing a situation in which there are “five people above and five people below,” *Shiyurei Knesset ha-Gedolah, Oraḥ Hayyim, Hagahot Bet Yosef* 55:6, rules that they cannot form a quorum. That view is endorsed by *Eliyahu Rabbah, Oraḥ Hayyim* 55:12, and is adopted by a host of Sephardic authorities, including *Teshuvot Zera Emet*, I, no. 10; *Ikkarei ha-Dat* no. 3, sec. 2; *Hikrei Lev*, I, nos. 27 and 29; as well as by R. Chaim Joseph David Azulai, *Mahazik Berakhah, Oraḥ Hayyim* 55:8. Nevertheless, *Pri Hadash, Oraḥ Hayyim* 55:13, and *Matteh Yosef*, II, *Oraḥ Hayyim*, no. 13, disagree with the position of *Shiyurei Knesset ha-Gedolah*.

Both *Mishnah Berurah* 55:7 and *Bi’ur Halakhah, ibid*, as well as R. Joseph Chaim Sofer, *Kaf ha-Hayyim, Oraḥ Hayyim* 55:75, cite a host of conflicting authorities who addressed the question of persons in separate domains who are within visual distance of one another, including those who speak of some persons occupying an outside veranda and others standing in a courtyard, and permit communal prayer when there is no other possibility. *Kaf ha-Hayyim* adds that those who permit the practice do so only if “the entire face without any interposition whatsoever” can be seen and, accordingly, rules that a lattice screen placed in a window prevents inclusion of individuals behind the window. He similarly cites authorities who state that a glass partition or window prevents combination of people on both sides.

Although *Mahazik Berakhah, Oraḥ Hayyim* 55:8, is in basic agreement with *Shiyurei Knesset ha-Gedolah, Mahazik Berakhah* 55:10, permits individuals standing on a veranda as well as persons present in the women’s gallery who situate themselves so that their faces may be seen from below to be counted toward a *minyan*. He predicates that ruling upon the condition that it is “not easy for them (*eino be-nakel*)” to descend to the main synagogue. In reaching that conclusion *Mahazik Berakhah* cites R. Jacob Castro, *Maharikash, Erekh Lehem* 55:14, who rules that individuals in different rooms cannot form a *minyan* if they can readily congregate in a single room.¹⁶

The immediately following paragraph, *Mahazik Berakhah* 55:11, addresses a question that arose during a quarantine. There were six men in one house and four in another. The smaller number were permitted to congregate in front of their house while the other six remained in their home with the result that the ten would be able to see one another.¹⁷ Since it was not

ha-Shulhan, that only one person, or according to other authorities, a maximum of four individuals, can be included on the basis of visual observation. See *supra*, note 13.

¹⁶ See *supra*, note 15.

¹⁷ See R. Yitzchak Zilberstein, *Haslukei Hemed, Pesahim 85b*, who compares a situation involving eight prisoners behind bars and two guards outside to the circumstances described by *Mahazik Berakhah*.

possible to gather in a single place because “of the edict of the King and the officers of the provinces” as well as the presence of a guard who prevented entry, *Mahazik Berakhah* ruled that they may rely upon the permissive authorities and form a *minyān* rather than go “forty days without communal prayer and without *kaddish* and *kedushah*.”¹⁸ *Mahazik Berakhah* refers parenthetically to his earlier ruling permitting including in a *minyān* the persons who are on the veranda or in the women’s gallery¹⁹ “for whom there is some minor inconvenience” in descending to the [main] synagogue.²⁰

Sha’arei Teshuvah 55:7 and *Mishnah Berurah* 55:52 advise that worshippers should not pray in the women’s gallery even if they can be seen from the main synagogue.²¹ In his *Sha’ar ha-Ziyyun* 55:53, *Mishnah Berurah* cites additional latter-day authorities who disagree with *Teshuvot ha-Rashba* and who note that Rashba himself expressed a degree of reservation by prefacing his statement with the word “perhaps.” *Mishnah Berurah* repeats his reservations in his *Bi’ur Halakhah, ad locum*.²²

¹⁸ Cf., however, R. Joseph Chazan, *Hikrei Lev, I, Oraḥ Hayyim*, no. 29, who dismisses the view of *Mahazik Berakhah*.

¹⁹ *Kaf ha-Hayyim, Oraḥ Hayyim* 55:58, cites a controversy with regard to the status of the wall of a *sukkah* that is designed “solely for purposes of a *mizvah*” rather than as a barrier. *Maharikash* maintains that it does not constitute a “wall” for purposes of forming a *minyān*. However, that position is rejected by a host of authorities.

A *sukkah* is more likely to be deemed a separate domain than a women’s gallery. Accordingly, ruling that a *sukkah* is a separate domain does not preclude an opposite conclusion regarding the wall of the women’s section in a synagogue. R. Yitzchak Yosef cites *Mahazik Berakhah, Malki ba-Kodesh* and *Hikrei Lev* (without fully citing published sources as he does meticulously throughout that document; this writer was unable to locate any of those references) who state that a women’s gallery is not a separate domain because the barrier is designed solely for purposes of “modesty” rather than as a wall erected to create a separate domain. A better rationale—or perhaps, the same rationale expressed differently—would be that such a barrier is not at all intended to create a separate domain; rather it is for the “use” or “need” of the synagogue. Cf., *infra*, note 24. Nevertheless, there are many sources that explicitly treat a women’s gallery as a separate domain. Those sources, however, may have been describing a gallery enclosed by floor to ceiling walls with spaces between slats permitting observation of the main synagogue as was the case in many European synagogues and have intended to limit their rulings to such enclosures. Cf., *infra*, note 24 and accompanying text.

²⁰ See also *Sha’arei Teshuvah, Oraḥ Hayyim* 55:7.

²¹ Cf., *Teshuvot ha-Radvaz*, no. 603, cited by *Hayyei Adam* 30:1, who states that a person in a closed room situated behind another room cannot be counted to a *minyān*, but that if there is a *minyān* in the larger room that person’s prayer does constitute *tefillah be-zibbur*. Cf., *Arukh ha-Shulḥan, Oraḥ Hayyim* 55:23. See also *Orḥot Rabbenu*, III, p. 208. *Hayyei Adam* 30:1 and *Mishnah Berurah* 55:58 also cite opposing views. See also *Piskei Teshuvot* 55:27.

²² See also *Mishnah Berurah* 55:57 and *Bi’ur Halakhah, ad locum*.

R. Yechiel Michel Epstein, *Arukh ha-Shulhan*, *Orah Hayyim* 55:20, does not comment upon *Bet Yosef's* failure to cite *Teshuvot ha-Rashba* but undoubtedly was prompted by an observation of that omission to presume that *Bet Yosef* did not regard his ruling regarding visibility through a synagogue window as dependent upon *Rashba's* previous ruling regarding people within sight of one another.²³ *Arukh ha-Shulhan* states that *Bet Yosef's* citation of *Orhot Hayyim's* ruling regarding a person standing outside and below the window of the synagogue is limited to those circumstances but does not extend to individuals in two different buildings with an open window or door between them or even to persons situated in the women's gallery. *Arukh ha-Shulhan* maintains that a single person outside a room or building can be considered as being within the "place" of the majority of the members of the prayer quorum if he can be seen, but only if he is not within the confines of another domain. *Arukh ha-Shulhan* maintains that presence in a separate domain disrupts any possible relationship with persons within the first domain according to all early-day authorities other than *Rashba*, whose opinion *Arukh ha-Shulhan* apparently assumes was rejected by *Bet Yosef*. Thus, *Arukh ha-Shulhan* states that individuals situated in the women's gallery cannot be included in a *minyan* together with persons in the main synagogue "even though there are windows from the women's gallery to the synagogue... since the walls are complete they are as two domains."²⁴ *Arukh ha-Shulhan* is clearly describing a completely enclosed gallery with windows or with spaces between the slats.²⁵

Outdoor *minyanim* with no physical barrier between worshippers would generally not be affected by this controversy, but porches with railings of ten handbreadths, i.e., 30 or 40 inches, in height, would constitute separate domains. If so, whether ability of the participants to see one another is sufficient to qualify them as a "single community" for the purpose of communal prayer is a matter of controversy.

²³ Cf., R. Asher Weiss, *Minhat Asher: Be-Tekufat ha-Koronah* (Jerusalem, Nisan 5780), pp. 49–50.

²⁴ *Bet Yosef*, *Orah Hayyim* 55:19, cites *Semak* who maintains that, for this purpose, only a floor to ceiling wall (or a barrier rising to within three handbreadths of the ceiling) creates a separate domain. Porches are generally enclosed by barriers but not by floor to ceiling walls. That position is at variance with the ruling of other authorities as is evidenced from the many discussions of rabbinic decisors who discuss a particular feature of bygone synagogues. Those synagogues had a raised cubicle or platform known as a *teivah*, encircled by a balustrade. The *hazzan* led the services from the *teivah* raised above the worshippers. That enclosed area is not considered a separate domain because the barrier "is for the use (*zorekh*) of the synagogue."

²⁵ Cf., *supra*, note 19.

In a letter dated 8 Sivan 5780, R. Moshe Sternbuch, head of the *bet din* of the Jerusalem *Edah ha-Haredit*, notes that *Mishnah Berurah, Sha'ar ha-Ziyyun* 195:6, rules that, although it is not necessary that all participants in the *zimmun* see one another, nevertheless, the individual leading Grace after Meals must be able to see the other participants. Similarly, argues Rabbi Sternbuch, the *hazzan* must have all participants of the *minyan* within eyesight. That condition cannot be satisfied if the *hazzan* faces the wall or if he faces east while others stand behind him.

III. Intervening Roadways and Paths

There is yet another hurdle that must be overcome. *Shulhan Arukh, Orah Hayyim* 195:1, rules that a thoroughfare between houses serves to impede combination of the residents of those houses for purposes of *zimmun*. *Pri Megadim, Eshel Avraham* 55:12, states that such is the case with regard to communal prayer as well. The source of that ruling is the *Mishnah, Pe'ah* 2:1, regarding *pe'ah*, i.e., the corner of a field that must be left unharvested for the benefit of the poor. The proprietor of many fields must leave a corner of each field unharvested. What constitutes a separate field? The *Mishnah* declares, *inter alia*, that “a road or pathway of the multitude and a road or pathway of an individual”²⁶ serve to effect a division of the field into two fields. Accordingly, *Taz, Orah Hayyim* 195:2, rules that no distinction should be made between a public road and a private road with regard to *zimmun* as well. It then follows that only houses on the same side of a street can be considered a “single place.”

Rabbi Sternbuch expresses the opinion that occupants of porches on both sides of a street or other divide may together form a *minyan* provided that the porches are located ten cubits, i.e., 15 or 20 feet,²⁷ above the ground. He cites the halakhic provision that, for purposes of carrying from one domain into another, there are no restrictions upon transporting items ten cubits above the ground. Rabbi Sternbuch concludes that since there are no separate private and public domains above ten cubits, multiple porches above that height can be considered as a single domain. To this writer, analogy of separation of fields to the height of Sabbath

²⁶ Rambam, *Hilkhot Matnot Aniyyim* 3:3, defines a private road as four *amot* wide, a public road as sixteen *amot* wide, a private path as less than four *amot* wide and a public path as less than sixteen *amot* wide. Ra'avad disagrees and regards “public” and “private” as denotations not of width but of use. According to Ra'avad “public” denotes use by wayfarers and “private” connotes use as a byway between “fields and vineyards.”

²⁷ For a detailed discussion of the conflicting opinions regarding the precise equivalent of talmudic units of measure see my *Contemporary Halakhic Problems*, VI (Jersey City, 2012), pp. 211–214.

domains seems inapt. Otherwise forbidden transportation of objects at the height of ten cubits is permissible, not because the area at that height is considered to be a single domain, but because there is “no private domain above ten cubits” (*Shabbat* 7a), i.e., there are no “domains” at that height. For purposes of *pe’ah*—and hence for forming a *minyan*—it is physical separation that establishes two separate places. There is no evidence that only such distancing within ten cubits of ground level constitutes a separation.²⁸ It would seem logical that two separated portions of a plot of land raised ten cubits above a thoroughfare should require separate designation of *pe’ah*. A more apt application to matters of *pe’ah* would be the notion that property rights extend “*me-tehom ar’a ad rom raki’a* – from the depths of the earth to the height of the firmament” (*Bava Batra* 63b).²⁹ The road or pathway dividing a field into two parcels should logically also ascend to create separate fields, each with its own property rights, and hence for purposes of *pe’ah* as well. The definition of a “place” for purposes of communal prayer would seem to parallel the definition of a separate parcel of property for purposes of *pe’ah*.

Rabbi Weiss, *Be-Tekufat ha-Koronah*, (Jerusalem, Nisan 5780), pp. 47–51, raises the question of whether a vestibule leading to a staircase constitutes a “path,” either private or public. If so, presence of such a structure between porches would serve to prevent formation of a *minyan* on the basis of the presence of apartment dwellers on separate porches astride a single entranceway to a building. To this writer that does not seem to be a problem. The stairway itself may well be a “path” but it is vertical and does not serve to separate one “field” or house from another. An entranceway or vestibule that traverses the ground floor from front to back might well constitute a “pathway.” In the United States block-long corridors going from one side of a building to the other are not rare. However, conventional buildings usually have a rather small entranceway or vestibule that culminates in a staircase. In the context of the Mishnah, a “road” or “pathway” connotes a means of entrance and egress used for the purpose of traversing a field. The effect is to sever one section of the field from the other thereby creating two fields. The terms do not seem to encompass a *cul de sac* from which there is no egress; the two sides remain united by land that extends beyond the culmination of the path. A vestibule or entranceway certainly does not sunder a single building into two.

²⁸ Cf., R. Chaim Rotter, *Hevi’ani ha-Melekh Hadarav* (Elad, 5780), no. 4.

²⁹ That is identical with the legal doctrine of “*Cuius est solum, eius est usque ad coelum et ad inferos* – Whoever owns land owns it up to the heavens and down to the depths.” For a discussion of what Jewish law regards as presumptively included in a conveyance from a seller to a purchaser see *Bava Batra* 63b–64a.

Left unaddressed is the more serious question of the status of a driveway between two houses. Is the driveway to be considered a pathway? That is probably rarely an issue in Israel but in the United States driveways are quite common. The resolution of the question, however, seems to be the same as in the case of an entrance to an apartment building. Driveways are rarely thoroughfares completely cutting off the house on one side from the house on the other side. If the driveway cuts through an entire block it would indeed constitute a “pathway” preventing formation of a single *minyan* by residents on both sides of the driveway. However, if, as is usually the case, it extends only as far as the length of the house it should not serve as a barrier preventing formation of a *minyan*.

IV. Porch *Minyanim* in Practice

The single-minded halakhist would readily perceive that participating in a porch *minyan* presents a dilemma. Most latter-day authorities accept Rashba’s ruling that visual contact is sufficient to establish a “joint place.” But, at the same time, although few forbid such *minyanim*, other latter-day authorities express strong reservations even though they refrain from forbidding the practice when no other option is available. According to the authorities who do not recognize such *minyanim*, recitation of the portions of the liturgy that require a quorum is forbidden and the *hazzan*’s repetition of the *shemoneh esrei* constitutes a transgression in the nature of a *berakhah le-vatalah*, i.e., a blessing pronounced in vain. When such *minyanim* are constituted, responsible advice might counsel the *hazzan* to obviate that problem by mentally stipulating that, if the arrangement does not qualify as a place for communal prayer, his repetition should be accounted as a *tefillat nedavah*, or a permissible voluntary prayer.³⁰ *Mahazik Berakhah* 55:7, quoted by *Sha’arei Teshuvah* 55:7, concludes his extensive discussion of this topic by addressing a situation involving two neighboring residences in a locale in which two houses were each placed under quarantine and the residents were forbidden to come into contact with one another. A quorum could be formed if the residents of

³⁰ See *infra*, note 33. With regard to a somewhat similar dilemma, *Iggerot Mosheh, Orah Hayyim*, II, no. 18, advised that the *hazzan* omit his own prior silent *shemoneh esreh*.

Advising the assembled to recite the *shemoneh esreh* simultaneously for purposes of communal prayer but to omit the *hazzan*’s repetition is not a viable option. There may or may not be an obligation to form an assembly of ten for communal prayer (see *supra*, section I, “The Obligation”) but, having assembled and having recited *shemoneh esreh* as a congregation, the *hazzan*’s repetition becomes rabbinically mandatory if the assembled do indeed constitute a *minyan*.

one house went outside and had visual contact with the inhabitants of the second house who remained indoors. *Maḥazik Berakhah* expresses strong reservation with regard to justification of communal worship in such circumstances but nevertheless sanctions leniency “so that they not be prevented from reciting *kaddish* and *kedushah*.”

In a letter dated 8 Nisan 5780, R. Yitzchak Yosef, the Sephardic Chief Rabbi of Israel, marshals a wide array of sources auguring against the propriety of “porch *minyanim*.” In rather forceful language, Rabbi Yosef admonishes his Sephardic coreligionists not to allow themselves to be influenced by permissive views of Ashkenazic authorities who rely primarily on the opinion of *Mishnah Berurah*.³¹

Rabbi Yosef offers one piece of salient advice. The Israeli health authorities sanctioned a limited number of *minyanim* under strictly controlled conditions, particularly at the Western Wall and at the Cave of the Patriarchs in Hebron. Rabbi Yosef urges that the scheduled times of prayer be announced in advance so that others would be accorded the opportunity to worship at the same time. Such prayer does not qualify as communal prayer but it does carry with it the enhanced propitiousness of “the time at which the community prays.”³²

The *Berditchever* would assuredly have commented that *Maḥazik Berakhah* advises leniency because a Jew needs communal prayer in a manner comparable to his need for air and water. Just as in an emergency he would risk taking drastic measures to acquire food and water he similarly “risks” relying upon otherwise unaccepted halakhic opinions to gain access to communal prayer. But only the Evil Inclination would push him to do so in face of significant danger to himself or others. At the same time, a person who eschews a “porch *minyan*” because of halakhic constraints need not feel pangs of guilt because he refrains

³¹ In point of fact, as has been noted, *Kaf ha-Hayyim*, a compendium of comparable authority and popularity in the Sephardic community, is no less permissive. Insofar as other authorities are concerned, the Ashkenazic authorities who would not sanction porch *minyanim* are neither fewer nor less authoritative than their Sephardic counterparts. The resolution of this issue is decidedly not one of Sephardic versus Ashkenazic decision-making.

³² See *Shulhan Arukh, Oraḥ Hayyim* 90:9.

To that advice a codicil—perhaps self-understood—should be added. Focus should be upon the precise time the assembled *minyan* reaches *shemoneh esreh*; the *hazzan* as well as those not physically present should pace themselves accordingly. Indeed, it would be advisable for rabbis and *gabbai'im* to adopt that practice even in normal times for the benefit of shut-ins and others who cannot attend synagogue services in person.

from fulfilling a *mizvah*.³³ But, if the yearning of his soul does not give rise to emotional turmoil in reaching that decision, he does have much to bemoan.

V. Responding “Amen”

A person who is present at, or within hearing distance of, a porch *minyan*, but considers the congregational blessings recited in conjunction with a porch *minyan* to be a possible violation of “Thou shall not take the name of the Lord your G-d in vain” (Exodus 20:4) is confronted with the question of whether he should respond “Amen.” “Amen” signifies acceptance and endorsement of that which has been heard; accordingly, it is deemed as if the person has himself vocalized the pronouncement that he has heard. “Amen” is a sort of “ditto-mark” signifying assimilation of an auditory phenomenon. Thus, responding “Amen” upon hearing the vocalization of an oath is itself considered to be an oath and all consequences of an oath are attendant thereupon. Rambam, *Hilkhot Berakhot* 1:15, and *Shulhan Arukh, Oraḥ Hayyim* 215:3, rule that one who pronounces

³³ The emotional aspect of the decision to organize porch *minyanim* is evidenced in the instructions issued by R. Moshe Sternbuch dated 8 Nisan 5780. In Israel, it is the practice for the *kobanim* to pronounce the Priestly Benediction together with the accompanying prefatory blessing each morning. Pronouncement of the Priestly Benediction constitutes fulfillment of a biblical commandment. A *kohen* who is present during the portion of the repetition of the *shemoneh esreh* at which the Priestly Benediction is customarily pronounced and does not come forward to bless the congregation is in violation of a biblical commandment. A *kohen* participating in a porch *minyan* is faced with a dilemma: If the arrangement constitutes a valid *zibbur*, failure to recite the Priestly Benediction is a biblical transgression. On the other hand, if the porch arrangement is not a valid means of creating a *zibbur*, the *kohen* fulfills no *mizvah* and may not recite the blessing preceding the Priestly Benediction. The *kohen* can escape from between the horns of the dilemma only by absenting himself. Accordingly, Rabbi Sternbuch advises the *kohen* to absent himself from that portion of the service because he regards the *kohen's* blessing recited before pronouncing the Priestly Benediction as possibly being a blessing in vain.

It is indeed the case that Rabbi Sternbuch also advises the *hazzan* to stipulate mentally that, if the porch arrangement does not constitute a valid *zibbur*, his repetition of the *shemoneh esreh* be deemed his own personal voluntary prayer. There is, however, no means of rendering *kaddish*, *kedushah* and *barekhu* permissible if those assembled on porches do not qualify as a *zibbur*. The resultant situation is paradoxical. The porch arrangement is accepted for purposes of *tefillah be-zibbur*, an institution that is rabbinic in nature. That decision is not to be criticized since it is consistent with responsible halakhic decision-making. But the same arrangement is eschewed for pronouncing the Priestly Benediction which constitutes fulfillment of a biblical commandment. The sole difference is a Jew's emotional need for *tefillah be-zibbur*. The *kohen* apparently does not have the same yearning for fulfilling the *mizvah* of pronouncing the Priestly Benediction.

TRADITION

“an unnecessary blessing” is accounted “as if he has sworn an oath in vain and it is forbidden to respond ‘Amen’ after him.” Rambam and *Shulḥan Arukh* equate an “unnecessary Amen” with an “unnecessary blessing.”³⁴ *Terumat ha-Deshen*, no. 34, cited by *Mahazik Berakbah* 4:4, rules that in cases of controversy among rabbinic authorities “no blessing should be recited unless we know that such is the practice of the people.”³⁵ R. Eliezer Papo, *Hesed le-Alafim* 215:9, declares that, because of the severity of the transgression involved in pronouncing a blessing in vain, “any matter that is the subject of controversy, even if the opinion of the *Shulḥan Arukh* and the majority of decisors is that one should pronounce the blessing, we should consider the minority and [therefore] passive non-performance is preferable unless the custom to pronounce the blessing has been established; [if so] follow the custom. The good and proper [practice], if it can be implemented, is to follow all opinions.” *Bi’ur Halakhah* 215:4 comments that, although it is forbidden to respond “Amen” to an improper blessing, “nevertheless, it seems that if one acts according to that opinion, and that opinion has not been totally dismissed by the decisors... there is no prohibition if one responds to that [blessing].”

“Amen” uttered in response to a blessing heard over the telephone or on Zoom is an entirely different matter. *Shulḥan Arukh*, *Orah Hayyim* 124:6, rules that “Amen” may be pronounced even by a person who has not actually heard the blessing. That ruling is based upon the report of the Gemara, *Sukkah* 51b, to the effect that during the talmudic period the capacity of the main synagogue of Alexandria was so large that the beadle found it necessary to signal the conclusion of each blessing by waving a flag so that all the assembled might respond “Amen.” Although it is not necessary actually to hear the blessing as it is being pronounced, if the blessing is not audible, a person must be in the actual location in which the blessing is pronounced in order to be permitted to respond “Amen.”

³⁴ *Bi’ur Halakhah* cites *Pri Megadim*, *Eshel Avraham* 215:1, who quotes *Ateret Zekenim* 215:1 as maintaining that a “doubtful Amen” does not involve a possible violation of “thou shall not take, etc.” That opinion seems to be in contradiction to the view of *Terumat ha-Deshen* and other earlier authorities. See also *Kaf ha-Hayyim*, *Orah Hayyim* 215:4, sec. 33.

However, examination of the text of *Ateret Zekenim* shows that the latter source states only: “[the obligation] of a doubtful blessing [is resolved] leniently (*safek berakbah le-bakel*)” which is indeed the accepted rule. The further inference that a person has the right to act stringently without fear of a corresponding violation of “Thou shall not take the name etc.” is *Pri Megadim*’s own questionable inference.

³⁵ See also *Kaf ha-Hayyim*, *Orah Hayyim* 4:1, sec. 50.

A voice heard over a telephone, on television or Zoom is comparable to a recorded voice. Both are electronic sounds rather than a human voice. Accordingly, R. Shlomoh Zalman Auerbach, *Minḥat Shlomoh*, I, no. 9, rules that one should not respond “Amen” to a blessing heard over the telephone. That is also the position of the overwhelming number of authorities cited in *Ha-Hashmal be-Halakhah*, I, (Jerusalem, 5738), 161–182. It seems to this writer that any opinion permitting “Amen” to be pronounced upon hearing a blessing over a telephone or on Zoom is both based upon faulty scientific understanding of the nature of electrical transmission of sound and may also be in the category of an opinion categorized by *Bi’ur Halakhah* as “totally dismissed by authorities (*deḥuyah le-gamri min ha-poskim*).”

VI. Torah Reading

Assuming there is no problem with regard to porch *minyanim* insofar as creating a *zibbur* for communal prayer, etc., there remains the question of permissibility of transporting a Torah scroll for purposes of public reading on Monday, Thursday and *Shabbat*. In general, it is considered a dishonor to the Torah to remove a Torah scroll from its designated place. *Zohar, Parashat Aḥarei Mot* 71b, forcefully decries such removal. There are exceptions, most of them subject to controversy, regarding removal of a Torah scroll to the house of a mourner or from one synagogue to another.³⁶

Many sources forbid transferring a Torah scroll even from one room to another in the same synagogue if such removal involves traversing a corridor. Hence, those authorities permit carrying the *Sefer Torah* from one room to another in order to accommodate different *minyanim*³⁷ but only if there is no hallway that must be crossed. Exceptions are made only on *Simḥat Torah* in order to accommodate all worshippers providing each one with an *aliyah* in honor of the Torah or for purposes of carrying the Torah to a larger synagogue in order to enhance the festivities in honor of the Torah.³⁸ However, there is no impediment to depositing a Torah scroll in a private dwelling for a

³⁶ See *Piskei Teshuvah* 135:23–28.

³⁷ See R. Shlomoh Drimmer, *Teshuvot Bet Shlomoh, Orah Hayyim*, no. 34. Cf., however, *Ma’aseh Rav* of the Ga’on of Vilna, no. 129, who prohibits removing a *Sefer Torah* even from one room to another. Cf., the discussion of R. Abraham David Wahrman, the *Rav* of Butchatch, *Eshel Avraham* 135:13.

³⁸ This does not necessarily imply that the Torah may be taken into a thoroughfare on *Simḥat Torah* for further festivities. Cf., R. Ovadiah Yosef, *Yabi’a Omer*, VII, *Orah Hayyim*, no. 56, who permits that practice as well.

period of time, preferably in a small ark or designated container, and carrying it to a porch opening off the same room in which the Torah scroll is stored.³⁹

A MISSED BAR MITZVAH

I. The Problem

R. Asher Weiss, *Minhat Asher: Be-Tekufat ha-Koronah, Mahadurah Telita 'ah* (Jerusalem, Sivan 5780), pp. 44–47, addresses a problem posed by the parents of a young man who was unable to celebrate his bar mitzvah in the usual manner due to the fact that all synagogues were shuttered during the period of the pandemic. Since it is highly unlikely that personal or family emergencies have not disrupted bar mitzvah plans in the past, it is surprising that this incident seems to be a case of first impression in rabbinic literature.

The problem must be understood in context. The magnitude of the significance of a bar mitzvah ceremony in the eyes of the adolescent and his family is in inverse proportion to the intensity of the child's Jewish education. Basically, there is no required ceremony. Upon reaching the age of halakhic maturity, the bar mitzvah is entitled to request the honor of being accorded one of the customary *aliyot* in the course of the usual Torah reading. He need not even read that text himself. He may recite the blessings and have the Torah reader chant the portion on his behalf as is the usual practice with regard to other honorees. Paradoxically, it has become *de rigeur* for the bar mitzvah to be accorded the honor of being assigned the prophetic reading after the completion of the weekly Pentateuchal reading—a reading that is entirely appropriate even for a minor. Customarily, the youngster also reads the last few verses of the weekly Torah portion that precedes the prophetic reading. In many but by no means all instances, the young man reads the entire portion of the week on behalf of the congregation.

All pre-bar mitzvah students invest much time and effort in mastering vocalization and cantillation of the designated reading in preparation for the event. The less familiarity the student has with similar texts, the more onerous is the preparation. The same disparity with regard to perception of the ritual as a rite of passage exists in the eyes of the family. Students who have received a rigorous foundation in Torah studies, and the

³⁹ See *Piskei Teshuvah* 135:23, notes 137–138.

families that have ensured they have done so, see the bar mitzvah ceremony itself in perspective. For others, the bar mitzvah celebration may become the final goal rather than a mere way station in the intellectual and religious development of the adolescent.

There was a time in this country when ability to read a *haftarah*, i.e., the weekly prophetic portion, at random was perceived as virtually the pinnacle of Jewish erudition. I have a vivid childhood memory of a synagogue that was considering two candidates to occupy its pulpit. One candidate was qualified; the other was decidedly underqualified. During the course of their respective visits to the community, both candidates were accorded the honor of reading the *haftarah*. The congregation was unimpressed by the first candidate's performance. The second delivered a beautiful and melodious rendition and on that basis was awarded the position.

It is in that context that one must empathize with the youngster and his parents who sought rabbinic advice. They regarded the time and travail expended in tutoring and preparation to have been for naught. The child was devastated, felt deprived, experienced feelings of estrangement from Judaism and was portrayed by the interlocutor as showing incipient signs of psychological distress.

The concerned parties would have liked nothing more than to celebrate the bar mitzvah on the first possible *Shabbat* following reopening of synagogues. But, of course, the Torah portion and the accompanying prophetic reading the bar mitzvah has already mastered would be inappropriate for that week. What, if anything, could be done?

II. Expedients

The obvious expedient would be to follow the maxim "The show must go on" by allowing the bar mitzvah to chant his prepared reading. But, since such a procedure is devoid of any liturgical import, that reading could not be in place of the prescribed reading for the *Shabbat* but in addition to that reading. Of course, the bar mitzvah celebrant would not be permitted to recite the usual blessings accompanying the reading. The child's rendition could take place at a focal point in the service, either before or after the regular Torah reading or at the close of the worship services. If the bar mitzvah would be content with reading the prophetic portion alone, there would be no problem in his reading that portion, without blessings, after the reading of the prescribed *haftarah* of the week has been completed. The problem arises only if the young man wishes to read from a Torah scroll, in whole or in part, the missed weekly Torah portion he had prepared.

Contrary to the impression of some, there is no impediment to the use of a Torah scroll for personal study or reading. The *Ari* consistently used a Torah scroll in fulfilling the personal obligation of reading the text of the weekly Torah portion twice together with its *Targum*.⁴⁰ Other hasidic masters adopted that practice as well. If the use of a Torah scroll for personal study is looked upon askance, it is because of trepidation associated with possible violation of the honor and dignity with which the Torah scroll must be treated. That should not be a concern with regard to a reading conducted in the context of a formal synagogue service.

1. Public Torah Reading Without a Blessing

Nevertheless, it is precisely the public nature of the event that poses a problem. Sometime in the latter part of the nineteenth century, a synagogue in Cincinnati acquired a new *aron kodesh* (Torah ark) and arranged a dedication ceremony on a Sunday accompanied by festivities and *hakafot*. One congregant desired that there also be a public reading of a Torah selection to accompany the celebration but was prevented from carrying out that plan by the rabbi of the congregation. Apparently, in the wake of that incident, a controversy arose and the rabbi, who suffered both insult and anguish, turned to R. Naphtali Zevi Judah Berlin, known as the *Neziv*, the head of the *yeshivah* of Volozhin, for approbation. The response of the *Neziv* is published in his *Teshuvot Meshiv Davar*, I, no. 16.

Meshiv Davar cites *Magen Avraham* 144:5 who records the practice of reading the verses appearing in Genesis 24:1–7 in honor of a groom. The source of that practice is *Hagahot ha-Tur*, *Orah Hayyim* 282:1, who speaks of that reading as occurring only on *Shabbat* when there is a public Torah reading. Genesis 24 supplements, but does not replace, the usual Torah reading. *Meshiv Davar* questions the basis for *Magen Avraham*'s limitation of the practice to *Shabbat* when the Torah is otherwise read. As noted earlier, there is no prohibition against removing a Torah scroll from the ark for purposes of private study. *Meshiv Davar* cites the Palestinian Talmud, *Berakhot* 7:1, as maintaining that the biblical obligation requiring recitation of blessings prior to the study of Torah applies only to public reading of the Torah and requires that a blessing be pronounced both before and after the public reading. The Palestinian Talmud, asserts *Meshiv Davar*, maintains that, contrary to the normative Halakhah, there

⁴⁰ See *Sha'ar ha-Kavanot*, p.12a cited by *Kaf ha-Hayyim*, *Orah Hayyim* 285:3.

is no biblical requirement for an individual to recite a blessing prior to engaging in Torah study.⁴¹

If there is a biblical obligation to pronounce such a blessing, argues *Meshiv Davar*, failure to pronounce the blessing before and after a public reading of the Torah constitutes abrogation of a biblical commandment. Accordingly, *Meshiv Davar* explains that public Torah reading in honor of a groom may be carried out only on a day when the blessings are recited in conjunction with a usual reading. Those blessings then satisfy the requirement for the special reading in honor of the groom as well. Otherwise, such a public reading, since it is not accompanied by the blessings, would be prohibited. *Magen Avraham*, in sanctioning the practice only on a day on which, in any event, there would be a public reading, was concerned not to act *contra* the position of the Palestinian Talmud. Consequently, rules *Meshiv Davar*, no public Torah reading may be undertaken other than on ordained occasions at which time the appropriate blessings are also recited.⁴²

If *Meshiv Davar's* analysis of *Magen Avraham's* ruling is correct, that source should not be an obstacle to the bar mitzvah reading the Torah selection he has prepared. *Magen Avraham* has no problem with a supplemental Torah reading in honor of the groom. The blessings ordinarily recited apparently suffice for the additional reading as well even though they are completed before the reading in honor of the groom. In a similar manner, if the bar mitzvah reads his selection after the appropriate Torah portion of the week, there would be no need for any further blessing.

It is remarkable that precisely an identical controversy arose between two "wise men" in Baltimore at approximately the same time as the Cincinnati incident. A new ark was fashioned for a synagogue and the question arose with regard to the propriety of reading Exodus 25:10–22, the biblical verses containing the commandment to fashion an ark for use in the Tabernacle, in conjunction with a public dedication of the ark. The dispute reached R. Yehudah Eliezer Anixter in Chicago whose responsum, dated 27 Nisan 5641, is included in his *Hiddushei Avi*, Part 2, no. 23. Rabbi

⁴¹ See *Neziv's* earlier exposition, *Ha'amek Davar*, Exodus 24:12, in which he asserts that, according to the Palestinian Talmud, every "*mizvah de-rabbim*," i.e., every communal *mizvah*, carries with it a biblical obligation to pronounce a blessing.

⁴² In his *Ha'amek Davar*, *Neziv* further asserts that the position of the Palestinian Talmud is also that of R. Yohanan, *Berakhot* 21a, whom he understands as referring to public reading of the Torah. However, the Gemara there concludes its discussion of R. Yohanan's position by declaring, "*Teyuvta* – It is rebutted!" Why *Magen Avraham* should be concerned with an opinion expressly rejected by the Babylonian Talmud is puzzling. *Meshiv Davar* apparently understood the Gemara's refutation of R. Yohanan as being only with regard to his parallel statement that a blessing is required before partaking of bread. See also R. Jacob of Karlin, *Mishkenot Ya'akov*, *Orah Hayyim*, no. 63.

Anixter not only failed to find an objection to the practice but commended it. He notes that it was customary for a scribe to read the final section of the Pentateuch in conjunction with the public completion of the writing of a Torah scroll. He also cites *Seder ha-Dorot* who reports that upon the death of Rambam the biblical selection containing curses for transgression of Torah precepts was read publicly in Jerusalem.

The narrative continues. The work *Hiddushei Avi* somehow came to the attention of Rabbi Raphael Shapiro, a son-in-law of the *Neziv*. Of his own accord Rabbi Shapiro wrote a letter in which he expresses strong disagreement with Rabbi Anixter's ruling. That letter appears in Rabbi Shapiro's *Torat Refa'el*, I, *Orah Hayyim*, no. 2. Although *Torat Refa'el* fails to cite the responsum of *Meshiv Davar*,⁴³ he reaches the same conclusion as did his father-in-law but on the basis of different sources. *Magen Avraham* 139:5 cites *Be'er Sheva* (New York, 5718), *Sotah* 41a, s.v. *le-fi* (p. 112), as declaring that the blessing pronounced before the public reading of the Torah is biblical in nature. *Magen Avraham* qualifies that opinion in stating that, if an individual has earlier recited the blessing as part of the morning service, his subsequent blessing before public reading of the Torah is rabbinic in nature and was ordained "for the honor of the *zibbur*." *Torat Refa'el* points out that *Magen Avraham*'s quotation is in error and should read "for the honor of the Torah" as the phrase appears in *Shulhan Arukh*, *Orah Hayyim* 139:8, and in the published text of *Be'er Sheva*. *Teshuvot ha-Rashba*, VII, no. 54, cited by *Bet Yosef*, *Orah Hayyim* 47:6, states that the blessing was ordained because public Torah readings on various occasions are the product of ordinances promulgated by Moses and the Men of the Great Assembly in a manner comparable to the reading to the Book of Esther and *hallel*, both of which are ordained by rabbinic decree and are accompanied by blessings both before and after the reading.

Torat Refa'el asserts that *Be'er Sheva* is misquoted by *Magen Avraham* and actually states that even a person who has already pronounced the Torah blessings in his recitation of the morning prayers must repeat the blessing before reading from the Torah in public because a blessing is biblically required before public reading of the Torah. *Torat Refa'el* further cites R. Jacob of Karlin, *Mishkenot Ya'akov*, *Orah Hayyim* no. 63, who rules that the Torah blessing is a biblical obligation only when the Torah is read publicly but that an individual's daily recitation of the blessing is rabbinic in nature.⁴⁴

⁴³ Both responsa are undated. Although *Meshiv Davar* was not published until 5654, it is not unlikely that this responsum was authored before the Baltimore controversy.

⁴⁴ *Mishkenot Ya'akov* goes beyond *Meshiv Davar* in declaring that, since R. Yohanan, *Berakhot* 21a, is in agreement with the Palestinian Talmud, there is no contradiction between the two Talmuds and consequently the normative rule must be established in accordance with the Babylonian Talmud. See *supra*, note 42.

In a manner quite similar to that of *Meshiv Davar*, *Torat Refa'el* concludes that it is not proper to place oneself in a situation which, according to *Be'er Sheva* and *Mishkenot Ya'akov*, involves transgression of a biblical commandment. Moreover, he advances a novel position in stating that, according to *Shulhan Arukh*, who maintains that the blessing on the occasion of public reading of the Torah is designed for the "honor of the Torah," any public reading not accompanied by a blessing is inherently a dishonor to the Torah and hence is forbidden by virtue of rabbinic edict.

Torat Refa'el concludes his responsum by decrying the practice of those scribes who publicly read the concluding verses of the Pentateuch upon completion of the writing of a Torah scroll. Presumably, both *Meshiv Davar* and *Torat Refa'el* would also decry the practice of those who read the entire Book of Deuteronomy on the first night of *Shavu'ot* and of those who follow *Nusah Sefarad* and, during the first twelve days of Nisan, publicly read the biblical verses describing the sacrifices offered by the chiefs of the various tribes in conjunction with the inauguration of the Tabernacle that took place on those days of the calendar.

2. Missed Portions

One additional factor must be taken into consideration. *Shulhan Arukh*, *Orah Hayyim* 135:2 rules that, if a congregation was unable to read the weekly portion on *Shabbat* morning, it should be read the following week together with the portion of that week.⁴⁵ R. Elijah of Vilna, *Bi'ur ha-Gra*, *Orah Hayyim* 135:3, explains that the rule applied in the case of an omitted Torah portion

⁴⁵ Rema's ruling is contradicted by *Petaḥ ha-Dvir*, *Orah Hayyim* 135:1; *Teshuvot Zera Emet*, III, no. 14; and *Maharikash*, *Erekh Lehem* 135:2. *Sha'arei Efrayim*, *sha'ar* 7, sec. 39, maintains that the obligation to read the missed portion is incumbent only if ten people had assembled but could not read from the Torah. *Bet Menuḥah*, *Dinei Ta'ut Sefer Torah*, secs. 3–4, maintains that there is such an obligation only if a quorum of ten assembled or if it was possible to assemble a *minyān* but only a majority assembled. As a matter of historical interest, it should be noted that on *Parashat Beshalah* 5547 there was snow in Jerusalem "above the height of a man." Synagogue services were not held but the missed Torah portion was read the following week. See R. Joseph Moses Mordecai Meyuchas, *Birkhat ha-Mayim*, *Orah Hayyim* 135.

There is no similar obligation to read a *haftorah* that has been omitted. See *Petaḥ ha-Dvir*, *Orah Hayyim* 135:5, followed by *Kaf ha-Hayyim*, *Orah Hayyim* 135:10. On an occasion on which *Parashat Parah* was omitted and read the following *Shabbat* on *Parashat ha-Hodesh*, *Petaḥ ha-Dvir* rules that *Parashat Parah* should be read before *Parashat ha-Hodesh*. His reasoning is that the *haftorah* reading must be the reading prescribed for that particular week, i.e., *Parashat ha-Hodesh*. Since the prescribed *haftorah* is related to the last of the Torah readings, the Torah reading to which it is connected, viz., *Parashat ha-Hodesh*, should be read last. It is clear that there is no option to read any *haftorah* portion other than the one assigned to the particular Sabbath.

parallels the provision governing the situation of an individual who forgot to recite *shemoneh esreh*, who must recite a second *shemoneh esreh* in the immediately following prayer service. The implication is that, even if several weekly readings have been missed, the congregation is required to read only the portion of the immediately preceding week as is the case with regard to a person who fails to recite several consecutive *shemoneh esreh* prayers.⁴⁶ That is certainly the position of *Teshuvot Maharam Minz*, no. 85, who rules that, if the missed reading occurred on a *Shabbat* on which a double portion was scheduled to be read, the missed portion is not read at all because “it is not found that three portions are read on a single *Shabbat*.” *Eliyahu Rabbah* 135:2, *Magen Avraham* 135:4 and *Mishnah Berurah* 135:7 as well as many other latter-day decisors disagree and maintain that both missed portions should be read. That is also the position of two early-day authorities, *Or Zaru’a*⁴⁷ and *Mordekhai*. Those early-day authorities refer to the practice of reading a missed portion as a custom rather than inherent in the ordinance promulgated by Moses but imply that the custom reflects the nature of that ordinance. Those authorities apparently maintain that the original ordinance promulgated by Moses stipulated not only that a minimum number of verses must be read publicly on every *Shabbat* but that integral to the ordinance was that the reading of the entire Pentateuch be completed each year. Accordingly, they regard the dual portions ordained for some Sabbaths as a single portion. That also appears to be the view of Rambam, *Hilkhot Tefillah* 13:1.⁴⁸

R. Yitzchak Yosef has compiled a long list of authorities, many of them Sephardic, who maintain that all missed portions should be read,

⁴⁶ See *Mishnah Berurah* 135:6. Cf., however, R. Menachem Auerbach, *Orah Ne’eman*, III, 135:9, who disagrees with *Mishnah Berurah’s* understanding of *Bi’ur ha-Gra* 135:3. It would seem that it is for this reason that the omitted portion can be read only on the immediately following *Shabbat*. Cf., also, *Pri Megadim*, *Eshel Avraham* 135:4, who rules that the missed portion should be read even if failure to read the omitted portion was intentional. *Bi’ur Halakhah* 135:2 observes that, according to *Bi’ur ha-Gra* 135:3, intentional omission cannot be rectified just as intentional failure to recite *shemoneh esreh* cannot be rectified. Cf. *infra*, note 52 and accompanying text.

If an omitted Torah reading is considered to be analogous to a missed *shemoneh esreh* it should also be the case that the reading appropriate for that *Shabbat* should be read first. R. Shalom Mordecai Shwadron, *Da’at Torah* 135:2, cites authorities who rule accordingly. However, *Da’at Torah* cites other authorities, including an oral ruling of *Noda bi-Yehudah*, who maintain that the portions should be read in consecutive order based on their interpretation of the verse “The Torah of God is *temimah*” (Psalms 19:8).

⁴⁷ However, *Teshuvot Maharam Minz* understands *Or Zaru’a* as agreeing with his own position that a double portion need not be read.

⁴⁸ The ancient practice of completing the reading of the Pentateuch in the course of a three-year cycle must either have been in disagreement with the view that completion of the cycle was integral to Moses’ ordinance or that they presumed that Moses actually promulgated a three-year cycle.

and he directed synagogues seeking his advice to follow that practice. Those instructions, dated 28 Nisan 5780, were endorsed by his brother, R. David Yosef. Most prominent among the authorities cited are *Eliyahu Rabbah* 135:2; R. Moshe Shick, *Teshuvot Maharam Shik*, no. 335, who reports that he heard from *Hatam Sofer* that R. Nathan Adler insisted upon reading “many” omitted portions; R. Yechiel Michel Epstein, *Arukh ha-Shulhan, Oraḥ Hayyim* 135:6; R. Chaim Joseph David Azulai, *Teshuvot Hayyim Sha'al*, I, no. 16 and no. 17, sec. 5; R. Chaim Pelaggi, *Sefer Hayyim*, no. 12, sec. 2; and *Kaf ha-Hayyim* 135:5.⁴⁹

Most interesting is a report found in *Tosefet Ma'aseh Rav* (Jerusalem, 5656), no. 34 (p. 7).⁵⁰ The Ga'on of Vilna was imprisoned for approximately a month.⁵¹ Upon his release, he summoned a Torah reader and

⁴⁹ It would seem that, in synagogues that permit *hosafot*, or “additional” discretionary *aliyot*, since the reading of the omitted portions is obligatory, *hosafot* may be assigned in that reading as well. If, in compliance with the opinion of the authorities herein cited, several omitted portions are read, the applicable rule should be different. Although, even for authorities who differ and maintain that there is no obligation to read those portions, it would seem that there can be no objection to reciting the blessings before commencing the reading and reading those additional portions together with part of the immediately previous week’s reading as the first *aliyah*. Presumably, all would agree that such reading is not a *hefsek*, or interruption, and the blessing pronounced with the intention to read those portions together with a reading assigned for that week is appropriate. However, *hosafot* in those portions are different. If the reading is not required, multiple *aliyot* are not appropriate and hence the blessings pronounced in conjunction with such *aliyot* are “blessings in vain.” In light of the controversy regarding the obligatory nature of reading such portions, those blessings constitute a *safek*, or possible, “blessings in vain” and are impermissible.

⁵⁰ Reprinted in R. Moshe Sternbuch, *Halikhot ha-Gra u-Minbagav* (Jerusalem, 5734), p. 131 and in the later edition (Jerusalem, 5753), p. 136.

⁵¹ The Gra was imprisoned twice. An eighteen-year old son of a member of the communal governing body became an apostate and was later abducted by members of the Jewish community with the intention of influencing him to return to Judaism. The Gra was denounced by a member of the community as being part of that conspiracy. He was one of a group of twenty-two people held in prison for questioning and was released in the early part of 1788 after approximately four weeks of incarceration. The following August, a trial was held; the Gra was found guilty and sentenced to prison. His imprisonment commenced on *erev* Rosh Hashanah, September 20, 1789, and he was released, apparently as part of a general amnesty, the following December 12, one day prior to Chanukah. During that period he was unimpeded in his studies. The Gra had a regular *minyān* and was also provided with a *sukkah* for eating and ultimately for sleeping as well. In the summer of 1791, further proceedings were instituted against him together with a group of other individuals. Although some of the accused were convicted and suffered punishment, the Gra was among a number of defendants who were released upon swearing a solemn oath attesting to their innocence. See Israel Klausner, *Vilna be-Tekufat ha-Gra* (Jerusalem, 5702), pp. 226–238 and 288–292 and Dov Eliach, *Ha-Ga'on: Hayyav u-Mishmato shel ha-Gra* (Jerusalem, 5762), III, 1075–1089.

directed that the four weekly portions that he had not read during his imprisonment be read on his behalf.⁵² Those portions were apparently read without benefit of a *minyān* and certainly without the presence of ten people who had not heard the reading of those portions.⁵³

III. The Nature of the Ordinance Governing Torah Reading

The various rulings regarding a missed Torah portion seem to be predicated upon differing views regarding the nature of the ordinance governing Torah reading on *Shabbat*. There are five different views:

1. There is no need to read the omitted portion on the following *Shabbat*. This view apparently regards the ordinance promulgated by Moses as requiring a public reading on *Shabbat* but not the reading of any particular portion. Accordingly, there is no reason for a “make-up” reading.
2. The omitted portion should be read on the following *Shabbat* but only a single portion need be read, not multiple portions that have been missed. This view maintains that there is an obligation to read a single portion each week in consecutive order. Accordingly, if a portion was omitted it must be read the following *Shabbat*. However, comparable

⁵² This seems to be at variance from *Bi'ur ha-Gra* 135:3 as cited by *Mishmah Berurah* 135:6. See *supra*, note 46.

It is reported that for two consecutive weeks *Hazon Ish* was unable to hear the reading of the Torah due to illness. The following week he directed that the two missed portions be read on his behalf. See *Pe'er ha-Dor*, ed. R. Shlomoh Cohen (Bnei Brak, 5730), III, 33.

R. Moshe Feinstein is reported to have been hospitalized on the *Shabbat* on which *Behar-Behukotai* were read. The following *Shabbat* he arranged for a *minyān* to read both portions together with *Bemidbar*. See R. Elimelech Bluth, *Le-Torah ve-Hora'ah: Sefer Zikaron* (New York, 5749), pp. 200–201 reprinted in R. Yerachmiel David Fried, *Yom Tov Sheni ke-Hilkhatah*, 6th ed. (Jerusalem, 1 Adar 5768), p. 434. In both sources there seems to be a typographical error. The phrase “ארתן ו” should read “ארתן.” Rabbi Feinstein apparently maintained that the obligation is personal in nature but can be fulfilled only with a *zibbur*.

⁵³ The text of *Tosefet Ma'aseh Rav*, no. 38 reads: “כשיצא הגר”א מבית האסורים קרא לבעל קורא שיקרא לפניו כל ד' סדרות מד' שבועות אשר ישב” —“When the Gra left prison he summoned the *ba'al kore* to read all four portions in his presence.” Although other authorities are quite clear in stating that “make-up” readings must occur on *Shabbat*, there is no indication that the Gra requested that the missed portions be read on his behalf on *Shabbat*. It is quite likely that he maintained that the individual obligation with regard to the reading of the Torah is simply that the entire reading be completed on an annual basis without any limitation upon when the reading must take place.

to the rule governing a missed *shemoneh esreh*, a “make-up” reading is possible for only the reading of a single week.⁵⁴

3. All missed portions must be read. This view maintains that the ordinance requires that the entire Pentateuch must be completed in the course of a yearly cycle.
4. *Sha'arei Efrayim*, *sha'ar* 7, sec. 39, rules that the missed portion must be read the following week only if ten people were actually present in the synagogue on the previous *Shabbat* but for some reason were unable to read the weekly portion. *Sha'arei Efrayim's* view is that public reading of the Torah is a communal obligation rather than a personal obligation but that the personal obligation can be discharged only with the presence of a quorum of ten. Accordingly, unless ten persons are actually assembled in one place, no obligation devolves upon anyone. Such an obligation might also be conceivable if ten persons “could have assembled” but did not do so because it might be maintained that there is an obligation to seek out a *zibbur* for fulfillment of that communal obligation. The notion advanced by *Bet Menuḥah*, *Dinei Ta'ut Sefer Torah*, secs. 3–4, to the effect that there is an obligation to read the omitted portion only if six persons were assembled, but no fewer than six, or if it was possible for ten to assemble but only six actually appeared, eludes explanation.
5. The position of the Ga'on of Vilna that even a single individual must read all portions he has missed. The Gra presumably maintains that there are three facets to the ordinance regarding public reading on *Shabbat*: (1) a communal obligation for a public reading; (2) an independent obligation for a personal reading; and (3) an obligation to read the entire Pentateuch within the course of a year. The Gra seems to be alone in the view that a weekly Torah reading in the absence of a *zibbur* is a personal obligation.⁵⁵

The question of whether public reading of the Torah is solely an obligation devolving upon a *zibbur*, whether one is obligated to assemble a *minyán* for that purpose or whether it is an individual obligation contingent upon assembly of a *zibbur* is a matter of significant controversy and beyond the scope of this discussion.

⁵⁴ It is, of course, logically consistent to regard the reading as a “make-up,” but to regard it as a “make-up” designed to complete the entire annual cycle. See *supra*, note 52 and accompanying text.

⁵⁵ See *supra*, note 53 and accompanying text.