

## ***When Change in Liturgy is Unacceptable: A Brief Response to R. Prof. Daniel Sperber***

**By: ARYEH A. FRIMER**

In my article “Feminism and Changes in Jewish Liturgy” [*Hakirah*, XII (Fall 2011) 65–87], I reviewed R. Prof. Daniel Sperber’s 2010 volume entitled *On Changes in Jewish Liturgy: Options and Limitations* (henceforth *Liturgy*). While I was laudatory of the volume as a whole, I critiqued three feminist innovations proposed in this work. The first was the modification of the morning benediction “...*she-lo asani isha*” for men and “*she-asani ki-retsona*” for women (*Liturgy*, pp. 39-40). The second was the possibility of introducing the names of the *Imahot* (four Matriarchs) in addition to those of the *Avot* (three Patriarchs) into the opening *berakha* of the *Shemone Esrei* (*Liturgy*, p. 111). And finally, the emendation of the phrase in *Taḥanun*: “*ve-shiktzunu ke-tum’at ha-nidda*”—and they [the nations] abominate us like the ritual impurity of a menstruant (*Liturgy*, p. 47). In support of such changes, R. Sperber cites as precedent the extensive additions of new prayers to the prayer book, and modifications in the text of the *Shemone Esrei*—beginning from the time of the *Geonim* and the early Cairo Geniza manuscripts, through the *Hassidei Ashkenaz*, the *Ari*, and students of the Besht, down to the modern period.

In our review, we noted that Prof. Sperber fails to discriminate between those prayers and benedictions that are ancient texts—authored and fixed by Ḥazal—and those that are much later introductions and purely optional. In his present rejoinder, R. Sperber reaffirms that he is cognizant of this distinction. But he does not explain why he explicitly invokes the acceptance of prayers for *Tu bi-Shvat* (*Liturgy*, p. 54), the recitation of *Tefilla Zaka* on *erev Yom Kippur* (*Liturgy*, p. 55-56), and the singing of *Lekha Dodi* (*Liturgy*, p. 112)—all optional prayers—as legitimate precedent for introducing the mention of the *Imahot* in the *Amida*. In addition, in our review of his book, we cite R. Natronai Gaon (cited by Tur, *O.H.* 131) and others,<sup>1</sup> that the recitation of *Taḥanun* is purely optional and, hence,

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1. *Shulḥan Arukh ha-Rav* no. 1; *Arukh haShulḥan*, no. 2.

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the text can indeed be varied and shortened.<sup>2</sup> Thus, the removal of “*ve-shiktzunu ke-tum’at ha-niddab*” is really a non-issue.

A more fundamental problem with R. Sperber’s analysis has to do with a blurring of the difference between *le-khattehila* (*pre-facto*) and *be-di-avad* (*post-facto*) or *bi-she’at ha-dehak* (dire circumstances). The author repeatedly suggests that *le-khattehila* means the “preferred” or “ideal” way of performance (*inter alia*, Liturgy p. 62), when in actuality *le-khattehila* refers to the way one is required to act under normative conditions. A benediction recited incorrectly is valid *be-di-avad* provided the basic structure and content has not been changed—but importantly the text, if possible, should be corrected prior to its next recitation! The fact that a sub-optimal performance of a ritual may be halakhically acceptable after the fact, or in dire situations, does not change the *le-khattehila* **necessity** to perform the ritual properly. Proceeding one step further, R. Hayyim Hezekiah Medini<sup>3</sup> discusses one who improperly performed a religious act or ritual *be-mezid* (on purpose)—despite knowing that it is forbidden *le-khattehila* and only valid *be-di-avad* or *bi-she’at ha-dehak*. He cites the *Kenesset ha-Gedola*,<sup>4</sup> as well as many other *rishonim* and *aharonim*, who rule that such individuals **do not fulfill their religious obligation whatsoever!**

Indeed, many changes have crept into the prayer texts because of forgetfulness—particularly in the pre-printing press period—while others were maliciously introduced by the censor. Many outstanding scholars have done their best to educate their community as to the correct *nusah*. Indeed, the tinkering with the text by the *Hassidei Ashkenaz*, the Ramban, the Maharil, the Arizal and his students, the *Hassidic Masters* and other great scholars throughout the generations—as thoroughly documented by Prof. Sperber—were all attempts to correct the text and return it to what they thought was the authentic version instituted by *Hazal*. But nowhere do we find examples where, under normative conditions, leading scholars consciously corrupted **what they knew to be a perfectly proper text**—so as to correspond to some passing fancy or ideology. Sadly, this is just what Prof. Sperber is proposing regarding changing “...*she-lo asani isha*” and the introduction of the *Imahot*, as we discussed in our review.

Prof. Sperber’s assertion that individuals consciously changed correct texts is particularly untenable, since tradition indicates that the prayers and benedictions were composed in large part by the *Anshei Kenesset ha-Gedola*

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2. R. Eliezer Melamed, *Peninei Halakha, Tefilla*, Chapter 21, p. 319.

3. *Sedei Hemed, Kuntres ha-Kelalim, Ma’arekhet ha-Dalet, Kelalim* no. 61; *Sedei Hemed, Pe’at ha-Shulhan, Ma’arekhet ha-Dalet, Kelalim, Kelal* 3 and *Kelal* 30, sec. 10.

4. *Kenesset ha-Gedola, Y.D.*, sec. 122, *Hagabot ha-Tur* no. 26 citing *Rashba, Ra’ah* and other *poskim*.

which included three bona fide prophets. How could anyone have the temerity to believe they knew better than the *Nevi'im* how to approach the Creator?! Rather, those who tinkered with the liturgy believed the text in their hand was incomplete, inexact or tampered with. They then proceeded to correct the wording—believing that Ḥazal themselves used the same considerations in writing the original prayers. Other scholars fought these emendations tooth and nail. But to change a perfectly accurate *berakha* because of an ideological agenda would be unacceptable.

Focusing specifically on the insertion of the *Imahot* into the opening *berakha* of the *Amida*, we argued that this change runs counter to the content and intent of the *berakha* as established by Ḥazal. Besides, the *Anshei Keneset ha-Gedola* were paraphrasing an explicit verse in Exodus (3:15): “Lord, God of your fathers, God of Abraham, God of Isaac and God of Jacob.” As explained by R. Bahya ibn Pakuda (to Genesis 35:10 and Exodus 35:11), this is the only place in the Torah where we find the Almighty identifying Himself as the God of given individuals. Nowhere in Tanakh do we find the concept of the four Matriarchs, let alone the “God of the *Imahot*.” Our covenantal relationship to God is through the *Avot*—not the *Imahot*, not *Moshe Rabbenu* and not King David. Hence, to include the Matriarchs, Moses or King David into the opening verses of the *Shemone Esrei* would be a misrepresentation of Jewish theology.<sup>5</sup>

All this does not trouble R. Sperber who in *Liturgy* (66–69) and again extensively in the present rejoinder cites manuscripts containing variants in the first and last three *berakhot*. (None of these manuscripts, by the way, mention the Matriarchs.) As a rule, these manuscripts are all quite ancient and we know little if anything about their authorship or halakhic authority. The fact that none of these changes have made it into our liturgy speaks reams! Nevertheless, R. Sperber argues: if changes could be introduced into the liturgy of the early post-Talmudic and Geonic period, we should be able to do the same now as well.

The facts, however, are that much has occurred halakhically speaking over the past millennium. By the end of the Geonic period, the text of these six benedictions was essentially universally fixed in the form we have it today. Simply compare, for example, the nearly identical texts of R. Amram Gaon; *Mahzor Vitri*; Rambam, *M.T.*, end of *Abava*; R. Yehuda ben R.

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5. In his rejoinder, R. Sperber raises the possibility of introducing the Matriarchs into the *Birkat ha-Mazon*. We assume he is referring to the first verse of the second benediction: “We thank You... for giving the land to our forefathers as a heritage...” The facts, however, are that the Land of Israel was promised to the Patriarchs, Abraham, Isaac and Jacob and through them to their children. The matriarchs were not party to these covenants.

Yakar; and Abudarham. What is more, after the ruling of Maimonides (*Maimonides, M.T., Hilkehot Tefilla* 1:9) and the clear majority of subsequent codifiers forbidding variations in these six benedictions (see note 37 in my review), the issue would seem to be closed.

In his rejoinder, after responding to my criticism, R. Sperber turns to attack Orthodox Judaism's resistance to changing "what nowadays appears to be mandatory practice (*din*) [but which] is actually custom (*min-hag*)." In his list of examples appear: "not to permit women to have *aliyyot* to the Torah [and] *disallowing* women to have positions of halachic authority..." The suggestion that these two issues are merely a matter of custom is very surprising. After all, there is an explicit ruling in the Talmud (*Megilla* 23a) and *Shulhan Arukh* (O.H., sec. 282, par. 3) that reads: "the Rabbis declared: a woman should not read from the Torah—because of communal honor."

It is true that R. Sperber<sup>6</sup> suggests that this statement describes what *Hazal* believed to be the **preferred** or **recommended** mode of conduct, the **ideal** way of performing *keri'at ha-Torah*; hence, he argues that if a community prefers to have women read, they should be allowed to do so. However, we have scoured the halakhic literature, interviewed dozens of *posekim*, and analyzed R. Sperber's stance from various perspectives; we find his position greatly wanting, as we have recently published.<sup>7</sup> Prof. Sperber must also be fully aware that there is not one *posek* of stature who concurs with his position in practice. On the contrary, at a conference (held ca. 2007) of the religious Zionist rabbinic organization "Tzohar," a halakhic forum comprised of Rabbis Yaakov Ariel, Shlomo Aviner, Chaim Druckman, and Aharon Lichtenstein, concluded that partnership *minyanim* had crossed the red line of what could legitimately be considered Orthodox practice.<sup>8</sup>

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6. R. Daniel Sperber, *Women and Men in Communal Prayer: Halakhic Perspectives*, ed. C. Trachtman, (JOFA/Ktav: Jersey City, 2010), pp. 27–205, esp. pp. 39–52.

7. (a) Aryeh A. Frimer and Dov I. Frimer, "Women, *Kri'at ha-Torah* and *Aliyyot* (with an Addendum on Partnership Minyanim)," *Tradition*, 46:4 (Winter, 2013), 67–238, available online at <[http://www.rcarabbis.org/pdf/frimer\\_article.pdf](http://www.rcarabbis.org/pdf/frimer_article.pdf)>. We demonstrate that if there are *posekim* who permit women to receive *aliyyot*, it is only in extreme *she'at ha-dehak* or *be-di-avad* cases. (b) Aryeh A. Frimer, "Lo Zo ha-Derekh: A Review of R. Prof. Daniel Sperber's *Darkah shel Halakha*," *The Seforim Blog* (12 June 2008)—available online at <<http://tinyurl.com/68pcur>>; (c) Aryeh A. Frimer and Dov I. Frimer, "Partnership *Minyanim*," *Text and Texture* (Rabbinical Council of America), May 23, 2010; available online at <<http://text.rcarabbis.org/?p=909>>.

8. See <<http://www.yrg.org.il/show.asp?id=33537>>.

As far as the question of women in communal leadership roles, this has been the subject of much heated debate and reams of responsa over the past 100 years.<sup>9</sup> Indeed, there are many scholars in the lenient camp; but to wave this issue off as a mere “custom” is a bit simplistic.

In summary then, we continue to be duly impressed with R. Prof. Sperber’s outstanding scholarship. But when it comes to applying the lessons learned to modern problems, *halakha le-ma’aseh*, many of his extrapolations and conclusions need special re-evaluation and re-examination. Halakha has not remained unchanged in the more than one thousand years intervening between the Geonic period and now. ❧

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9. (a) Aryeh A. Frimer, “*Nashim be-Tafkidim Tsibburyyim bi-Tekufa ha-Modernit*” (Women in Community Leadership Roles in the Modern Period), In “*Afikei Yehudab*—Rabbi Yehuda Gershuni zt”l Memorial Volume,” R. Itamar Warhaftig, ed., Ariel Press: Jerusalem, 5765 (2005), pp. 330–354. (b) Aryeh A. Frimer, “Women in Community Leadership Roles – Shul Presidents,” “Text and Texture” of the Rabbinical Council of America (June 2, 2010)—available online at <<http://text.rcarabbis.org/?p=931>>; (c) Aryeh A. Frimer, “The View of Rav Joseph B. Soloveitchik zt”l on the Ordination of Women,” by Aryeh A. Frimer, “Text and Texture” of the Rabbinical Council of America (June 26, 2010); available online at <<http://text.rcarabbis.org/?p=958>>.