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חירות ואחריות

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MAY A CHAZAN LEAD HIGH HOLIDAY SERVICES FROM A WHEELCHAIR? PART FIVE

Rabbi Aryeh Klapper, Dean

Dear Rabbi:

Mr. Toviah Goodman has davened 1st day Rosh Hashannah Shacharit and Yom Kippur Neilah for our shul since its founding in 1993. However, he suffered several health setbacks this year, and now is in a wheelchair full time. Should he continue to serve as shaliach tzibbur, or should we replace him with someone who is able to stand? Sincerely,

The Members of the Ritual Committee, Congregation Mevakshei Psak

To the Members of the Ritual Committee, Congregation Mevakshei Psak:

PART 5 - CONCLUSIONS

The halakhic tradition is unequivocal that disability, even a disability that would disqualify a priest from serving in the Temple, is from a purely halakhic perspective fundamentally irrelevant to serving as a shaliach tzibbur. The simplest proof of this is the universal agreement that a blind man can serve as shaliach tzibbur (so long as one adopts the consensus position that blind people are fully obligated in mitzvot).

One might raise nonetheless raise the technical objection that a shaliach tzibbur in a wheelchair cannot stand. However, there is no question that such a person is obligated to pray in a private capacity, and would be able to fulfill that obligation while seated in his wheelchair. There is no evidence that a shaliach tzibbur is more obligated to stand than an individual. It follows that inability to stand is not a fundamental bar to being a shaliach tzibbur.

One might nonetheless raise the concern that people who are able to stand will mistakenly learn that standing during prayer is unnecessary. This concern is found in Sefer Chasidim, and cited by some contemporary halakhists. However, it seems to me that the case in Sefer Chasidim is explicitly one of someone who had no externally obvious disability, but merely lacked strength, and therefore sat on occasion in an ordinary chair. A

casual observer might therefore conclude that he was choosing to sit, and imitate his behavior. By contrast, a person sitting in a wheelchair is presumably not doing so by choice, and there is no concern that members of the congregation will mistakenly learn from him that they too may sit.

There is accordingly no question that a person in a wheelchair may serve as a shaliach tzibbur, and that the tzibbur led by such a person fulfills all their halakhic obligations.

What remains is the question of whether, all other things being equal, selecting such a shaliach tzibbur is equal, preferable, or less desirable than selecting a person who is able to stand.

Chavot Yair cites kabbalistic reasons for preferring a non-disabled chazan. I am not competent to evaluate these arguments directly. But I am comfortable saying that they carry an implication that disturbs me. So far as I can see, they relate to the nature of the prayer itself, rather than to the quality of representation. As such, they suggest that a physical disability inherently damages the quality of a person's prayer. This is directly against the position of Maharam and Maharshah. Chavot Yair cites no precedents for applying his arguments in a halakhic context. One therefore need not be *choshesh* for them in our case against Maharam and Maharshah.

Chavot Yair further claims that there is a lack of kavod hamitzvah in appointing such a shaliach tzibbur. Even those who are not kabbalists, he says, should recognize that this is parallel to Malachi's criticism of the Jews for bringing lame animals as sacrifices. If such animals were brought as gifts to an overlord, they would generate disfavor rather than favor: why should we expect G-d to act differently?

Maharam explained why – "The dignity of G-d is not like the dignity of flesh and blood". But the truth is, Chavot Yair himself explained that it is the *tefillah* that is the sacrifice, not the *mitpallel* (pray-er). Otherwise, one would be devaluing the individual prayers of the disabled.

It is possible that Chavot Yair is not referring to G-d's

reaction, but rather to that of the community: they will perceive themselves as offering G-d the moral equivalent of blemished animals, and they will therefore devalue their own mitzvot. One might also suggest, as a supplement to Chavot Yair, that there is an issue of kavod hatzibbur in appointing such a shaliach tzibbur, meaning that **other communities** will see this community as devaluing itself.

I suggest that even if this is halakhically significant in cases where Torah is otherwise neutral, it is not true where Torah is morally committed to opposing and altering the public perception. In this case, it seems to me that Maharam and Maharshah understood Torah to have such a commitment, while Chavot Yair did not. On that analysis, I would be comfortable following Maharam and Maharshah.

The problem is that Maharam's position itself challenges contemporary sensibility regarding disability. Our social ideal is for men in wheelchairs to become shluhei tzibbur, or not, at the same rate as men on feet, and for the same reasons. We do not wish to regard disabled men as broken vessels, or for disabled men to relate to themselves as broken.

The reciprocal problem is that contemporary sensibility is also prima facie incompatible with the ban on kohanim with certain disabilities or blemishes serving in the Temple, and that ban is explicit in the Torah.

This difficulty can be raised against Maharam as well. As the Zohar points out, G-d bans such physically "broken vessels" from serving in the Temple, and therefore our midrash cannot be understood literally. Rather, it must refer to those with broken spirits or hearts.

Furthermore, Maharam in his teshuvah refers to the disabled man as one who "has been affected by G-d's attribute of justice", and it seems reasonable that the reason G-d's dignity is enhanced by the service of such men is that they remain attached to Him, rather than embittered against Him, despite having been punished. This too is difficult to square with contemporary sensibility.

Some have tried to resolve this conundrum by framing what I am calling "contemporary sensibility" in terms of the halakhic category of kavod haberiyot, human dignity. In other words, they seek to give our sensibility formal halakhic weight, and then to discuss our question in formal halakhic terms.

I prefer to avoid categorizing eligibility or ineligibility for public ritual roles as inherently an issue of kavod haberiyot. It seems to me that halakhah generally understands kavod haberiyot as a function of habit and reasonable expectations based on experience. Thus a *zaken* may

refrain from returning a lost object if picking it up is beneath his dignity, even if a non-*zaken* would be obligated. Similarly, people can receive private tzedakah to maintain their public standard of living, even if that standard is beyond their current means, and likely even if it is beyond the means of some of those donating.

I also find it deeply problematic to define kavod haberiyot halakhically in ways that conflict with incontrovertible halakhic precedents, let alone explicit Biblical categories.

However, it is very likely an issue of kavod haberiyot to deprive people who have been accustomed to lead services of the ability to do so when they become disabled. This is the basis for Mas'ei Binyamin's remarkably emotional teshuvah about aliyot for the blind, and for contemporary discussions of whether men with colostomy bags can receive aliyot.

In our case, Mr. Goodman has become accustomed to playing this role, and so our case is comparable to standard precedents regarding kavod haberiyot. Accordingly, one can add kavod haberiyot to the grounds for permitting him to continue his role without understanding it as a universal levelling principle

But we must be clear that it is an additional reason rather than a necessary reason. The fundamental halakhah remains that being in a wheelchair does not disqualify one from serving as a shaliach tzibbur. What we have failed to resolve is whether, all other things being equal, it is preferable to choose someone in a wheelchair, following Maharam, or preferable not to, following Chavot Yair. In the absence of such a resolution, the halakhah in fact if accidentally should track the contemporary sensibility and treat being in a wheelchair as halakhically irrelevant.

We have also failed to resolve the underlying question of the relationship between contemporary sensibility and halakhic precedent, and we have left numerous approaches unexplored. One might for example argue that in a fundamentally egalitarian society, equal treatment becomes a function of habit and a reasonable expectation. One might argue that the capacity to represent the community ritually has different significances in different societies. One might seek to embed principles of equal treatment in halakhic or hashkafic categories other than kavod haberiyot. One might argue that the weight of halakhic precedent should compel us to position ourselves as countercultural, whether in Maharam's way or in Chavot Yair's. However, none of these arguments are necessary to resolve our case, and so this teshuvah is not the proper place to evaluate them.