יח. אמרו פסוקי דזמרה בפחות מעשרה, ואחר שסיימו אמירתם נשלמו שם עשרה, רשאים לומר הקדיש שקודם "ברכו". והוא הדין שאם לא היו שם עשרה בתפלת ערבית כשאמרו קריאת שמע וברכותיה, ושוב אחר שסיימו הברכות קריאת שמע, נשלמו לשם עשרה, רשאים לומר הקדיש שקודם העמידה. [ראה משנ"ב סוף ס"ק ג בשם הפמ"ג]

הראוים להצטרף למנין

יט. כאמור (בהלכה א) שדוקא זכרים בני חורין גדולים שהביאו שתי שערות ראוים להצטרף למנין. [ש"ע ס"א]. אבל נשים ועבדים וקטנים אין מצטרפים למנין. [ראה ש"ע ס"ד]. והוא הדין שטומטום ואנדרוגינוס, וחצי עבד וחצי בן חורין, אינן מצטרפים. [משנ"ב ס"ק ג, כה"ח ס"ק טו]

Kaddish before *Shema* or *Amida*

18) If a congregation recited *Pesuke dezimra* of *shaḥarit*, and the tenth man arrived only after they finished that section of the prayers, the cantor may immediately recite the half-kaddish that precedes the blessings of the *Shema*. Likewise, if a congregation began the *arvit* prayer before there was a minyan, and the tenth man arrived only when they were up to the *Amida*, the cantor may recite the half-kaddish.

Day 56

Who Counts in a Minyan

Adult free Jews

19) As mentioned above in halakha 1, a minyan consists of ten adult Jewish men. Women, male slaves belonging to Jews, and children cannot count as members of a minyan.[322] A neuter who has no external genital organs, an androgyn who has both male and female external genital organs,[323] or someone who is half the slave of a Jew and half a free man,[324] cannot count as members of a minyan, either.

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recite the two verses of *Tikon tefillati*...upon the tenth man's arrival and then proceed with kaddish. This seems to run counter to the *Mishna Berura* (55:2, and repeated in 53:11, 54:9, and 581:4), who ruled that the kaddish should be proceeded by a *mizmor* or by at least three verses. The *Od Yosef Ḥai* (*parashat Vayak'hel* halakha 6) also cited the ruling of the *Magen Avraham* to recite a *mizmor* before kaddish. *Tikon tefillati* consists of only two verses, however.

Nevertheless, there is justification for the common custom. After all, the *Ture Zahav* (55:3) ruled that the kaddish is valid even if no verses at all are recited to precede it. This matter needs more research.

322. The *Mordekhi* (*Berakhot* #173) cited Rabbenu Simḥa ruling that a woman or a slave who belongs to a Jew can count as the tenth member of a minyan for the prayers or for a *zimun* of ten people. The *Bet Yosef* asserted that this ruling corresponds to that of Rabbenu Tam, who stated that the halakha follows the opinion of Ribbi Yehoshua ben Levi that a slave belonging to Jews can count as the tenth man of a minyan. See below in the following halakha and the footnote there. Apparently, Rabbenu Simḥa added that a woman can also count since women and slaves have equal status regarding the fulfillment of mitzvot. Nevertheless, Rabbenu Tam never permitted this leniency to be put into practice, and so we certainly cannot do so. Therefore, we never count a woman as the tenth member of a minyan. This is likewise the ruling of the *Shulḥan Arukh* (55:4).

323. These individuals cannot count as members of a minyan. We cannot argue that they should be counted on the basis of a compound doubt – perhaps the person is in fact a male, and even if the person is a female, the halakha might follow the opinion of Rabbenu Tam that a woman can count as the tenth member. It is definite that such intersex persons do not have the status of a male.

324. The *Yeshu'ot Yaakov* argued that a half-slave does count as a member of a minyan since the halakha

כ. קטן אינו מצטרף לעשרה כלל, ואפילו בשעת הדחק. ולכן גם בישוב או בכפר קטן שאין שם עשרה אלא בצירוף קטן, אינו מצטרף לדברים שבקדושה. ואם רואה אדם שהציבור מתכוננים לצרף קטן לעשרה, עליו לצאת מיד מבית הכנסת, כדי שלא תארע תקלה על ידו, ויכשלו בהזכרת השם לבטלה בתפלת החזרה של השליח ציבור, ובקריאת התורה. [הליכו"ע ח"א עמ' פז, יבי"א ח"ד סי' ט. חזו"ע אבלות ח"א עמ' שסז] **והוא** הדין לענין קריאת התורה, שאין הקטן מצטרף לעשרה (אף על פי שהוא עולה למנין שבעה, כשיש מנין בלעדו). [יבי"א שם אות ט-י]

Counting a child

20) A child under bar mitzvah age cannot be counted as a member of a minyan under any circumstances, even if the minyan is urgently needed and no other tenth person can be found.[325] If a small community or village has only nine adult men, they may not form a minyan using a child as the tenth member. In fact, if someone is one of the nine men present and he sees that his colleagues plan to count a child as the tenth men and proceed with the prayers as if a valid minyan is present, he should leave the synagogue. If he remains there, he will be guilty of enabling the others to sin by possibly reciting unwarranted blessings such as the cantor's repetition of the *Amida* and the blessings recited before and after the Torah reading.[326]

Likewise, a child cannot count as a member of a minyan to enable the congregation to read the Torah scroll. If there is a minyan besides the child, however, the child can be called up as one of the seven people who recite the blessings over the Torah reading.

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demands that the Jew who owns half of him must set him free, and so he is already considered a free man even before he is officially freed. The *Peri Megadim* (*Eshel Avraham* 55:4) disagreed, saying that the person must have the real status of a free man in order to count as a member of a minyan. The *Kaf Hahayim* Sofer (55:15) and the *Mishna Berura* (55:3) concurred with the *Peri Megadim*.

A person conjured by use of *Sefer Yetzira*

The responsa Hakham Tzevi (#93) ruled that a person conjured into existence through the use of *Sefer Yetzira* cannot count as a member of a minyan. He derived this halakha from the Talmud's account of such a being who the Sages reverted to the dust from which he was formed. This proves that he was never considered a human being with a soul. Harav HIDA (*Birke Yosef* 55:4) concurred with this ruling, and they are cited by the *Mishna Berura* (55:4) and the *Kaf Hahayim* Sofer (55:12). The *Hazon Ish* (*Y.D.* 116:1) stated that it appears that such a being does not have the privileges that the Torah gives to Jewish people, and that in all likelihood it does not have the basic rights to life that every human being possesses.

325. The *Mishna Berura* (55:24) commented that many *Aharonim* concurred with this ruling. Harav Shelomo Zalman Auerbach (*Halikhot Shelomo Tefilla* page 64) ruled that a congregation must never count a child as the member of a minyan even if this will result in the minyan disbanding afterward because the members feel that it was useless to attempt to assemble a minyan. This is what is meant by the words "even if it is urgently needed" used by the *Mishna Berura*. This is in contrast to the ruling of Harav Moshe Feinstein (responsa *Igrot Moshe* Vol. II, #18) that in such a case the people may be lenient.

326. Rabbenu Tam's famous ruling

The Talmud (*Berakhot* 47b) states: Ribbi Yehoshua ben Levi taught, "Although a child in his cradle does not count as the third member of a *zimun*, he can be counted as the tenth member." Ribbi Yehoshua ben Levi also taught, "Nine men and a slave can join to form a minyan." Rabbenu Tam, cited in Tosafot (ibid 48a), ruled like Ribbi Yehoshua ben Levi and allowed a child lying in his cradle to be counted as the tenth member of a *zimun* for *Birkat Hamazon* or of a minyan for the prayers.

Rabbenu Asher (*Berakhot* 7:20) and the *Mordekhi* (#172) cited Rav Hai Ga'on explaining that even an infant in his cradle can be counted since the holy Shekhina hovers over any place where ten Jews are present. This concept is expounded in *Sanhedrin* (39a) from the verse (*Vayikra* 22:32): "I will be sanctified among the people of Yisrael."

Therefore, if ten Jews are present, whether they are adults or children, they have the status of "among the people of Yisrael," and they may recite the *Kedusha*. This leniency is limited to counting one child together with nine adult male Jews, however. We may not count more than one child with adults to form a minyan.

The *Sefer Hamanhig* (#78) cited the opinion of Rabbenu Tam without comment. The Tosafot, Rabbenu Asher, and the *Mordekhi* all noted that in practice Rabbenu Tam never relied on this leniency and he never allowed a minyan to proceed unless there were ten adult male Jews present. Rabbenu Yitzhak ben Sheshat wrote (responsa #451) that even for those who permit counting a child as a member of a minyan, the child must be intellectually advanced. He must understand to Whom we recite our blessings and to Whom we pray. The child must be nine or ten years old, or at the very least six years old. If he is younger than that, he may not be counted no matter how brilliant and precocious he is.

The *Orhot Hayim* (*Tefilla* #73) related that Rabbenu Shimshon excommunicated the residents of a small village because they refused to obey his ruling and they formed a minyan by counting a child. Even so, the *Orhot Hayim* concluded that if there is no other possibility of forming a minyan in the community it is permissible to count a child as the tenth member of the minyan. He testified that this is the opinion of Rabbenu Avraham ben David and that this is the custom in many places. The *Kol Bo* took this even further, stating that in every community, the custom is to count one or two children as members of a minyan, and that when it is urgently needed, up to three children can be counted in the minyan.

The opposing ruling

Rabbenu Asher stated that Rabbenu Yitzhak disagreed with Rabbenu Tam. Although Ribbi Yehoshua ben Levi permitted this, it is the subject of a debate between Rav Ashi and Mor Zutra in *Berakhot* (45b) regarding the halakhot of a *zimun*. Rav Ashi did not permit people to count a child as the third member of a *zimun* but he permitted counting a child as the tenth member of a *zimun*. Ribbi Yehoshua ben Levi's ruling concurs with that of Rav Ashi, but the halakha follows the opinion of Mor Zutra who did not permit a child to be counted as the tenth member of a *zimun* or of a minyan for prayers. The child must reach puberty, meaning that he has grown pubic hair.

Rabbenu Avi Ha'ezri, cited by the *Mordekhi* (*Berakhot* #172), ruled that in light of this halakhic debate, anyone who possesses the fear of sin should not count a child for a *zimun* or as a member of a minyan for prayers. This is likewise the ruling of Rabbenu Yitzhak, cited in *Hagahot Maimoniyot* and *Sefer Mitzvot Gadol*, and likewise Rabbenu Yona (*Berakhot* page 35b) ruled that all ten members of a minyan must be bar mitzvah in order to recite kaddish, *Kedusha*, or *Barekhu*. Rabbenu Shelomo ben Aderet (responsa Vol. I, #451 and #718) concurred with this ruling, and in a third responsum (Vol. I, #239) he cited proof from a Midrash in *Bereshit Rabba*.

The *Bet Yosef* asserted that the *Arba'a Turim* ruled likewise, since its words are, "they must all be free men, adults who have grown pubic hair." This is clearly the ruling of Rambam (*Hilkhot Tefilla* 8:4). Harav Yosef Colon (#49) cited Rabbenu Asher and the *Arba'a Turim* ruling that all ten members of the minyan must be adults, and he concurred, explaining that even Rabbenu Tam refused in practice to actually count a child as a member of a minyan. He added that this is the opinion of Rabbenu Yitzhak, Rabbenu Yehuda of Paris, and the *Sefer Mitzvot Gadol*, and in the face of this lineup there is no room for leniency. Rabbenu Yitzhak ben Sheshat (responsa #451) concluded his discussion with the decision to follow the strict ruling of Rambam, and this is the decision of Maran in the *Bet Yosef*.

The *Darkhe Moshe* (55:3) suggested that it is possible that the *Poskim* agreed that when absolutely necessary it is permissible to count a child as the tenth member of a minyan. After all, he pointed out, Rabbenu Avraham ben David is among the *Poskim* who ruled stringently, and yet he permitted it in such a case.

A child holding a *humash*

The *Arba'a Turim* states that according to some *Poskim* it is permissible to count a child as a member of a minyan if he is given a *humash* to hold during the prayers. The *Bet Yosef* added that the Tosafot mentioned that such a practice exists, but added that Rabbenu Tam scoffed at it, saying, "Is the *humash* a person? We have no precedent for such a concept except regarding the ceremony of adding an extra month to a year. Besides, in that case a real Torah scroll is employed, not a bound book of a *humash* like we use today."

Rabbenu Asher (*Berakhot* 7:20) and the *Mordekhi* (#172) concurred with Rabbenu Tam. Rabbenu Asher noted that the Talmud Yerushalmi (*Berakhot* 7:2) states: "a child and a Torah scroll can count with the majority," but that means either a child or a Torah scroll, not the two together. At any rate, the halakha does not follow that passage. Rabbenu Asher's conclusion is: "It is best to refrain from counting a child as a tenth member of a minyan for *Birkat Hamazon* or for the prayers unless he has grown and has pubic hair." He makes no mention of handing the child a *humash* or a Torah scroll. This is likewise the ruling of the *Mordekhi* and *Hagahot Maimoniyot*.

In practice

The *Shulhan Arukh* (55:4) states that some *Poskim* permit counting a child over six years old who understands to Whom we pray as the tenth member of a minyan, but the major *Poskim* did not concur with this practice. The Rama added in his gloss that some communities are lenient in this matter when there is a great necessity. This concurs with his ruling in the *Darkhe Moshe*.

The *Mishna Berura* (55:24) objected to this, explaining that a great number of *Aharonim* ruled that a child may never be counted unless he has reached his thirteenth birthday. This is likewise the ruling of the *Kaf Hahayim*

כא. נער שמלאו לו שלש עשרה שנה, נעשה בר מצוה, וחייב בכל המצות, ומצטרף לעשרה לכל דבר שבקדושה. ומיד עם מלאת לו י"ג שנה עם צאת הכוכבים של הלילה של אותו היום שנולד בו, נעשה כגדול לכל דבר, ואין צורך להמתין עד לאותה שעה שנולד בה מעת לעת. כלומר, אם נולד למשל ביום ט"ו בסיון בשעות של אחר הצהרים, מיד בליל ט"ו בסיון נעשה בר מצוה, ואין צורך להמתין שלא לצרפו למנין עד לאותה שעה שנולד בה ביום ט"ו בסיון. וגם אין הדבר תלוי בהנחת התפילין, אלא במלאת לו י"ג שנה, וכאמור. [גילקו"י מהדו"ק עמ' צ, ע"פ יבי"א ח"ה חיו"ד סי' כה אות א. וע"ע משנ"ב ס"ק מב]

Day 57

The moment a boy becomes bar mitzvah

21) Once a boy reaches his thirteenth birthday, he gains the status of a bar mitzvah and he becomes obligated to observe and fulfill all the mitzvot. Moreover, he now can count as a member of a minyan and validate it for all purposes. A boy becomes a bar mitzvah at dusk of the evening that begins the date of his birth thirteen years earlier, even if he was born at a much later hour on that day. For example, if a boy was born in the afternoon of 15 Sivan, he becomes a bar mitzvah at the moment of dusk after the day of 14 Sivan thirteen years later. It is not necessary to wait until the following afternoon.

Also, a boy becomes bar mitzvah whether or not he puts on tefillin. It depends on his birthdate only.[327]

Sofer (55:42), noting that this appears to be the opinion of Maran in the *Shulhan Arukh*. Maran the Rishon Letziyon discussed this issue at great length in responsa *Yabia Omer* (Vol. IV, #9) and came to the same conclusion.

Responding Amen to a minyan that counts a child

The *Or Letziyon* (Vol. II, 5:4) ruled that if nine adults counted a child as the tenth member of a minyan, it is permissible to respond Amen to the blessings that they recite. In a footnote he noted that Sefardic Jews may never form such a minyan, but since there is a basis in the halakha for those who practice leniently, it is permissible to respond Amen.

This corresponds to the ruling of the *Or Letziyon* permitting a Sefardic Jew to respond Amen to Ashkenazic Jews who recite a blessing for Hallel on *Rosh Hodesh*. Maran the Rishon Letziyon, however, disagreed with this position, as explained in the *Yalkut Yosef Tefillin English Edition* (25:29).

327. The Mishnah states (*Avot* 5:25): "Age thirteen is for mitzvot." Rabbenu Asher asserted (responsa 16:1) that this is a halakha that was taught to Moshe Rabbenu when he was on Mount Sinai. It is one of the details of the general teaching of the Talmud (*Sukkah* 5b): "All halakhic measurements were taught to Moshe Rabbenu on Mount Sinai."

Rashi (comment to *Avot* 5:25; *Nazir* 29b) explained that a male is not called *ish* – man – until he is at least 13 years old. The proof is the verse (*Bereshit* 34:25): "וַיִּקְחוּ שְׁנֵי בְנֵי יַעֲקֹב שִׁמְעוֹן וְלֵוִי אִישׁ חַרְבּוֹ – The two sons of Yaakov – Shim'on and Levi – each *ish* took his sword...." Levi, the younger brother, was 13 years old at the time. Harav Yaakov Moelin (responsa of Mahari"l #51) countered that this is no proof, since this verse does not demonstrate that a boy younger than 13 cannot be called *ish*. He insisted that there is no textual proof to this halakha, and that it is a tradition directly from Mount Sinai. He added that there is an allusion to this halakha in the verse (*Yeshayahu* 43:21): "עַם זוּ יָצַרְתִּי לִי תְּהִלָּתִי יְסַפֵּרוּ – The nation that I formed for Me shall relate My praise." The word *zu* is spelled *zayin vav*, and the numerical value of the two letters equals 13. See more about this in responsa *Yabia Omer* (Vol. II, *Y.D.* #17:2).

According to the *She'iltot* of Rav Ahai Ga'on (#116), a boy becomes bar mitzvah only on his thirteenth birthday at the time of day that he was born. Several *Poskim* concurred with this, but in practice this is not the halakha. According to Tosafot (to *Nidda* 47b), Ramba"n, Rashb"a, Rashbe"tz, Rashba"sh, Mahari"l, *Sefer Me'irat Enayim* and *Sifte Kohen* (on *H.M. Siman* 35), *Bayit Hadash* (*O.H. Siman* 53), a boy becomes bar mitzvah at the moment of dusk when his thirteenth birthday begins. See more about this in responsa *Yabia Omer* (Vol. V, *Y.D.* #25:1).

A boy born during twilight

If a boy is born during twilight (*ben hashemashot*), we cannot know whether the moment of birth counts as part of the previous day or part of the new day that is just