

Women's Aliyyot: le-Khattehila, be-di-Avad and bi-She'at ha-Dehak

By: ARYEH A. FRIMER

Introduction

For millennia, it was accepted without challenge that women could not halakhically receive *keri'at ha-Torah aliyyot*. This was based on a *baraita* cited in *Megilla* 23a which reads:

תנו רבנן: הכל עולין למנין שבעה, ואפילו קטן ואפילו אשה. אבל אמרו
חכמים: אשה לא תקרא בתורה, מפני כבוד צבור.

The Rabbis taught: All are eligible to receive one of the seven [Sabbath] *aliyyot*, even a minor and even a woman. However, the Sages said: A woman may not read from the Torah, because of the honor of the community.

Although this very source indicates that women are theoretically eligible to receive an *aliyya* and read their portion, in practical terms, however, this was ruled out because of the consideration of *kevod ha-tsibbur* (honor of the community). This negative ruling of the *Talmud* is cited in Maimonides' *Yad* and R. Joseph Caro's *Shulhan Arukh*¹ and in all subsequent codes—without exception. Nevertheless, over the past decade and a half, there have been several attempts to reopen this issue. Two major approaches have been suggested—one penned by R. Mendel Shapiro² and

¹ Maimonides, *M.T., Hilkhot Tefilla*, sec. 12, par. 17; R. Joseph Caro, *Shulhan Arukh, O.H.*, sec. 282, par. 3.

² See (a) R. Mendel Shapiro, “*Qeri'at ha-Torah* by Women: A Halakhic Analysis,” *The Edah Journal* 1:2 (*Sivan* 5761), 1–55, online at <http://tinyurl.com/35d9bx>. This article was reprinted in *Women and Men in Communal Prayer: Halakhic Perspectives*, Chaim Trachtman, ed. (JOFA/Ktav: New York, 2010), 207–290. (b) R. Mendel Shapiro and R. Yehuda Herzl Henkin, “Concluding Responses to *Qeri'at ha-Torah* for Women,” *ibid.*, 1–4, online at <http://tinyurl.com/377f9x>; (c) R. Mendel Shapiro, “Communications,” *Tradition* 40:1 (2007), 107–116; (d) R. Mendel Shapiro, “Response to Shlomo Riskin,” *Meorot* 7:1 (*Tishrei* 5769), 2–12,

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the other by R. Prof. Daniel Sperber³—which attempt to build a case for women’s *aliyyot* at a normative halakhic service in the modern period.⁴ They argue that the change in women’s social status in contemporary society should impact upon the contemporary halakhic relevance of *kevod ha-tsibbur*—such that *bona fide aliyyot*, with their attendant blessings, should no longer be out of bounds for women. R. Shapiro further posits that if the major barrier to women getting *aliyyot* is *kevod ha-tsibbur*, then the community should be sovereign to forgo its honor. Prof. Sperber, on the other hand, maintains that if there is a community of women who are insulted by their not receiving *aliyyot*, then *kevod ha-beriyot*, the honor of the individual, should trump *kevod ha-tsibbur*, the honor of the community. The proposals of Rabbis Shapiro and Sperber were quickly put into action in various “egalitarian halakhic” or “Partnership” *minyanim* (e.g., *Shira Hadasba* in Jerusalem and *Darkhei Noam* in Manhattan) where women were called to the Torah and served as *ba’alei kerī’a*.

online at <http://www.yctorah.org/content/view/436/10/> and reprinted in *Women and Men in Communal Prayer* *ibid.* 389–406.

3. See (a) R. Daniel Sperber, “Congregational Dignity and Human Dignity: Women and Public Torah Reading,” *The Edah Journal* 3:2 (Elul 5763), 1–14, online at <http://tinyurl.com/2rstyz>; (b) R. Daniel Sperber, “*Kevod ha-Tsibbur u-Kevod ha-Beriyot*,” *De’ot* 16 (Sivan 5763, June 2003), 17–20 and 44, online at <http://toravoda.org.il/files/sperber16.pdf>; (c) R. Daniel Sperber, *Darkah shel Halakha—Kerī’at Nashim ba-Torah: Perakim bi-Mediniyyut Pesika* (Jerusalem: Reuven Mass, 2007); (d) R. Daniel Sperber, “Congregational Dignity and Human Dignity: Women and Public Torah Reading,” in *Women and Men in Communal Prayer*, *supra* no. 2a, 27–205.
4. It should be emphasized that we are discussing a Torah reading where there is a *minyan* of men present. If there are only women attending, as in a women’s *tefilla* group, the *birkot kerī’at ba-Torah* recited are clearly *berakhot le-vattala*; see Aryeh A. Frimer and Dov I. Frimer, “Women’s Prayer Services: Theory and Practice. Part 1—Theory,” *Tradition*, 32:2 (1998), 5–118; online at: <http://tinyurl.com/cj8ow9n>.

These novel practices have been analyzed and critiqued at length by the present author⁵ and many others.⁶ Briefly summarizing our arguments, we posited that the vast majority of *Rishonim* and *Aharonim* simply disagree with R. Shapiro's analysis; *kevod ha-tsibbur* has absolutely nothing to do with social standing. Thus, while *mamzerim* are among those lowest in Jewish social standing, they can receive *Aliyyot*. This is because they,

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5. (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, online at www.rcarabbis.org/pdf/frimer_article.pdf. (b) A Hebrew translation of this article (with corrections and additions) is available at http://rcarabbis.org/pdf/Aliyyot_Wmn_Heb_Rev.pdf. For related articles by these authors, see: (c) Aryeh A. Frimer, "Lo Zo ha-Derekh: A Review of Rabbi Prof. Daniel Sperber's *Darka shel Halakha*," *The Seforim Blog* (12 June 2008); online at: <http://seforim.blogspot.com/2008/06/aryeh-frimer-review-of-daniel-sperbers.html>. (d) Aryeh A. Frimer and Dov I. Frimer, "Partnership Minyanim," *Text and Texture* (Rabbinical Council of America; May 23, 2010), online at <http://text.rcarabbis.org/?p=909>. (e) Aryeh A. Frimer and Dov I. Frimer, "Kevod ha-Tsibbur bi-Keri'at Nashim ba-Torah" *Tehumin*, 36 (5776/2016), pp. 300–308.
6. Inter alia, see: (a) R. Eliav Shochetman, "*Aliyyat Nashim la-Torah*," *Sinai*, vv. 135–136 (2005), 271–349; a slightly abridged form of this article appears in English translation: R. Eliav Shochetman, "*Aliyyot for Women*," in *Women and Men in Communal Prayer*, *supra* note 2a, 291–358; (b) R. Gidon G. Rothstein, "Women's *Aliyyot* in Contemporary Synagogues," *Tradition* 39:2 (2005), 36–58; (c) R. Ephraim Bezalel Halivni, *Bein ha-Ish la-Isha* (Jerusalem: Shai Publishers, 5767), 58–71, 102–105 and in the English section, 12–21. See also R. Ephraim Bezalel Halivni, *ha-Tehinna ve-ha-Keri'a le-Hai ha-Olamim: Iyyunim be-Tefilla u-be-Keri'at ha-Torah* (Jerusalem: 5772), 156–164; (d) R. Shlomo Riskin, "*Aliyyot Nashim la-Torah*," *Tehumin*, 28 (5768), 258–270—republished in English "Torah *Aliyyot* for Women," *Meorot* 7:1 (Tishrei 5769), 2–19, online at <http://www.yctorah.org/content/view/436/10/>. This article was reprinted in *Women and Men in Communal Prayer*, *supra* note 2a, 361–388; (e) R. Shlomo Riskin, "Response to Mendel Shapiro," *Meorot* 7:1 (Tishrei 5769), Shapiro/Riskin 13–15, online at www.yctorah.org/content/view/436/10/, reprinted in *Women and Men in Communal Prayer*, *supra* note 2a, 407–411. (f) R. Michael J. Broyde, "Women Receiving Aliyot? A Short Halakhic Analysis," in *Wisdom and Understanding: Studies in Jewish Law in Honor of Bernard S. Jackson*, Jewish Law Association Studies, XXII, Leib Moscovitz and Yosef Rivlin eds., (The Jewish Law Association, 2012), 1–16; published online without notes on November 26, 2009 at *Hirhurim-Musings*, <http://torahmusings.com/2009/11/women-receiving-aliyot/>; (g) R. Yuval Cherlow, "*Keri'a ba-Torah le-Nashim*" online at <http://tinyurl.com/6a9q6wb>; (h) Rabbi David Stav, in a public lecture given on November 15, 2014 (22 *Marbeshvan* 5775) to the members of his community in Shoham, ruled *halakha le-Ma'aseh* against the practices of the Partnership Minyan that had opened there.

like other males, are obligated in *keri'at ha-Torah*; women, on the other hand, are free from any obligation in the public Torah reading.⁷

So what is *kevod ha-tsibbur* all about? The vast majority of *Poskim* maintain that this consideration stems from the fact that women are not obligated in Public Torah reading. This lack of obligation expresses itself in one of two ways: either through considerations of *tsni'ut* (modesty), or via *zilzul ha-mitsva* (disparaging or belittling one's halakhic obligation). The *Tsni'ut* School argues that since women are not obligated in *keri'at ha-Torah*, they should not unnecessarily be at the center of communal religious ritual. The synagogue is the one place where we try to sanctify our thoughts; and we make particular efforts to avoid all sexual distraction. The concern here is for unnecessarily being at the center of communal religious ritual. If, however, a woman is obligated to fulfill a particular ritual, such as reciting *Birkat ha-Gomel*, *Kaddish Yatom* or *Kiddush*, many of the *gedolei ha-poskim* see no problem in her reciting these texts publicly. The second *Zilzul ha-Mitsva* School maintains that the men, who are obligated in *keri'at ha-Torah*, should be the ones fulfilling the *mitsva*—not those who are not obligated. To act otherwise would reveal that they do not value their mitzva obligations—reflecting *zilzul ha-mitsva*. This analysis also leads to the conclusion that in the case of *women's aliyyot* a community cannot choose to set aside *kevod ha-tsibbur*. A congregation cannot simply say: *Halal* were concerned about *tsni'ut* or *zilzul ha-mitsva* and hence forbid women's *Aliyyot*—but we won't.

As to R. Sperber's suggestion that *kevod ha-beriyot* should defer *kevod ha-tsibbur*, our survey of the responsa literature makes it clear that *kevod ha-beriyot* **cannot be invoked indiscriminately**. Indeed, the *Poskim* make apparent that there are clearly defined rules—we have found eleven—which Prof. Sperber seems to ignore and violate. Hence, R. Sperber's application of *kevod ha-beriyot* to the issue of women's *aliyyot* is seriously flawed.

Having found these novel suggestions untenable, it should not be surprising there is no recognized authority who supports their innovations under normative conditions. On the contrary, at a conference of the religious Zionist rabbinic organization *Tzohar* (ca. 2006), a halakhic forum

⁷. (a) Re: *mamzerim*, see: Rema, O.H., sec. 282, no. 3; *Levush*, sec. 282, no. 4; *Shulhan Arukh ha-Rav*, sec. 282, no. 8; Baḥ, O.H., sec. 135; *Mishna Berura*, sec. 135, note 38; *Resp. Petah ha-Devir*, II, *Kuntres Aharon le-Petah ha-Devir*, I, sec. 55; *Resp. Tsits Eliezer*, XX, sec. 10; R. Isaac Zilberstein, *Hashukei Hemed, Megilla* 23a—who also indicates that this is the opinion of his father-in-law R. Joseph Shalom Elyashiv. (b) Re: women's lack of obligation, see note 29, *infra*.

of leading halakhic personalities was asked as to the practices of *Kehillat Shira Hadasha*. The panel comprised of Rabbis Yaakov Ariel, Shlomo Aviner, Chaim Druckman, and Aharon Lichtenstein, concluded that *Shira Hadasha* had crossed the red line of what could legitimately be considered Orthodox practice.⁸ Many leading *Poskim* have come out publicly against partnership *minyanim*—including Rabbis David Feinstein, Hershel Schachter and Gedalia Dov Schwartz in the United States, Rabbis Nachum Rabinovich, Avigdor Nebenzahl and Asher Weiss in Israel, and British Chief Rabbi Ephraim Mirvis.⁹

All the above notwithstanding, the halakhic literature does record the possibility of women receiving *aliyyot* under dire situations known as *she'at ha-dehak* situations. This raises fascinating issues that are worthy of our attention and further discussion.

II. *le-Khattehila, be-di-Avad* and *bi-She'at ha-Dehak*

Before we begin our discussion of women's *Aliyyot* under non-normative conditions, it is important to clearly distinguish between three halakhic categories: *le-khattehila*, *be-di-avad* and *bi-she'at ha-dehak*. *le-Khattehila* means “before the fact,” *pre-factum* or *a priori*, and defines the **necessary** mode of performing an act or ritual.¹⁰ *Be-di-Avad* refers to an action performed after the fact, *post-factum* or *a posteriori*. It includes those instances in which

8. Cited in a lecture given in July 2009 by R. Joshua Shapiro reporting on a conference (held several years before); see www.yrg.org.il/show.asp?id=33537. R. David Stav, Chairman of Tzohar (conversation with Dov I. Frimer, Oct. 16, 2009), confirmed the accuracy of this report.

9. (a) R. Hershel Schachter, “*Al Devar ha-Minyanim ha-Meshutafim*,” *Shevat* 5774, online at http://www.rcarabbis.org/pdf/Rabbi_Schachter_new_letter.pdf. (b) R. Gedalia Dov Schwartz, online at www.rcarabbis.org/pdf/Rabbi_Schwartz_letter_Frimer.pdf; (c) R. Nachum Rabinovich, online at www.rcarabbis.org/pdf/RNRabinovitch.pdf; (d) In personal conversations with the author, Rabbis David Feinstein, Avigdor Nebenzahl and Asher Weiss concurred with the stringent view. (e) British Chief Rabbi Ephraim Mirvis has also come out publicly in opposition to Partnership Minyanim. See: <http://tinyurl.com/h63gvka>. In this article, R. Mirvis is quoted as writing: “The view that ‘partnership minyanim’ are not permitted according to halacha is one that is shared by every major *posek* in the Orthodox world.”

10. R. Asher Weiss, discussion with Dov I. Frimer, Dec. 20, 2007; R. Eliav Shochetman, *supra*, note 6a, pp. 287–289; R. Gidon G. Rothstein, *supra*, note 6b at p. 46ff; and R. Ephraim Bezalel Halivni, *supra*, note 6c, pp. 92–93, note 2. See also: “*di-Avad*,” *Encyclopedia Talmudit*, VII, p. 406ff; Shai Akavya Wosner, “*Al Koharentiyyut ve-Efectiviyyut be-Halakha: Birrur Rishoni shel ha-Havhana bein le-Khatthila ve-di-Avad*,” *Dinei Yisrael*, 20–21 (5760–5761), pp. 43–100.

the *pre-factum* principles have been partially violated; the question then becomes whether one may nevertheless continue performing the ritual, or whether the ritual is void and needs to be repeated properly. Finally, *she'at ha-dehak* refers to an action to be performed under dire or pressing circumstances. In *she'at ha-dehak* cases, there is generally a clash between two principles that prevents a ritual from being performed—unless one of the principles gives. Commonly in Jewish law, the rulings for *be-di-avad* and *she'at ha-dehak* are equated (*kol she'at ha-dehak ke-di-avad dami*).¹¹

III Setting Aside *Kevod ha-Tsibbur* in Dire Circumstances

We turn now to the specific question of women's *aliyyot* in dire circumstances. Such a situation would be one in which there is no one but a woman who is suitable to read from the Torah. If we do not set aside the rabbinic ruling against women receiving *aliyyot*, we won't be able to carry out a *keri'at ha-Torah* service.

¹¹. For leading sources, see: R. Joel Sirkis, *Resp. Bayyit H'adash ha-Yeshanot*, sec. 111, *s.v.* "Im ken hu hadim;" R. Moses Isserles (Rema), *Torat H'atut*, sec. 16; Rema, *E.H.*, sec. 169 sec. 12, R. David ha-Levi, *Turei Zahav (Taz)*, *Y.D.*, sec. 91, note 2; R. Shabbetai ha-Kohen, *Sifte Kohen* (Shakh), *Y.D.* sec. 142, note 10 and *H.M.*, sec. 43, note 31; R. Samuel Feivish, *Bet Shmuel*, *E.H.* sec. 62, note 4; R. Jacob Reisher, *Resp. Shevut Ya'akov*, III, *Y.D.* sec. 102 (as the ruling of "gedolei ha-poskim rishonim ve-aharonim"). For a general review, see: "di-Avad," *Encyclopedia Talmudit*, VII, pp. 406–419, at p. 417 and note 140.

In this regard, Maimonides,¹² Semag¹³ and several later *posekim*¹⁴ are of the opinion that in the specific case of women's *aliyyot*, *kevod ha-tsibbur*

- ¹² Maimonides, *M.T., Hilkebot Tefilla*, sec. 12, no. 17, writes: "A woman may not read because of the honor of the community." R. Masud Hai Rokei'ah, *Ma'ase Rokei'ah, ad loc.*, argues that this terse language (in contrast to that of the *baraita* of *Megilla* 23a) indicates that Maimonides maintains that women's *aliyyot* are totally forbidden in this rabbinic edict, even *bi-sbe'at ha-dehak*. Several later scholars have concurred in this understanding of Maimonides; see: R. Isaac ha-Levi Segal of Lemgo, *Toldot Yitshak, Tosefta Megilla* 3:5, R. Avraham Shoshana, ed. (Jerusalem: Machon Ofek, 5762), p. 217; R. Ben-Zion Lichtman, *Benei Zion*, IV, O.H. sec. 282, no. 3, note 6; R. Joseph Messas, *Mayyim Hayyim*, II, O.H., sec. 140; R. Zalman Nehemiah Goldberg, in *Resp. be-Mareh ha-Bazak*, V, addendum to sec. 113, pp. 225–228; R. Zalman Nehemiah Goldberg, *Resp. Binyan Ariel*, E.H., "Birkat Hatanim bi-Se'udat Sheva Berakhot al yedei Isha," pp. 135–141; *Tebilla leYona—Masekhet Megilla*, R. Solomon Shalom ha-Kohen Kahn, ed. (*Makhor Be'er ha-Torah*: Lakewood NJ, 5759), *Megilla* 23a, s.v. "ha-Kol Olin," p. 218; R. Barukh Gigi, public lecture, February 14, 2008. This point is also made by R. Henkin in the original responsum to R. Levinger, 14 Nisan 5754, which appears in slightly revised form as *Resp. Bnai Vanim*, IV, sec. 3.
- ¹³ R. Moses ben Jacob of Coucy, *Sefer Mitsvot Gadol* [Semag], *Esin* 19 s.v. "Kamma" in his discussion of the number of *aliyyot* writes: "A minor who knows how to read and to Whom he is reciting the benediction counts among the seven." R. Ben-Zion Lichtman, *Benei Tsyyon*, IV, O.H. sec. 282, no. 3, n. 6, notes that only a minor is mentioned—but not a woman—because women are totally forbidden from receiving an *aliyya*. In addition, in *Sefer Mitsvot Gadol, Divrei Soferim, Aseh*, no. 4, *Hilkebot Megilla*, s.v. "Tanya be-Tosefta" Semag forbids a woman, despite her obligation to read the *Megilla*, to be *motsi* even a single man—based on an analogy to Torah reading, where women cannot read for men. R. Elijah Mizrahi, *Hiddushei ha-Re'em al ha-Semag* and R. Hayyim Benveniste, *Dina de-Hayei, ad loc.*, indicate that the analogy is based on a common rationale, *kevod ha-tsibbur*. (See the related comments of R. Aharon Lichtenstein, "Women's Obligation to Light Chanukah Candles," online at <http://etzion.org.il/vbm/english/chanuka/chan67-ral.htm>.) The view of Semag is cited *le-balakha* by R. Abraham Gombiner, *Magen Avraham*, O.H., sec. 689, note 5, and later codifiers: *Arukh ha-Shulhan*, no. 5; *Mishna Berura*, no. 7; *Kaf ha-Hayyim*, no. 13. Several scholars explicitly state that Semag and *Magen Avraham* maintain that women cannot be *motsi* men—even *be-di-avad*; see: R. Moshe Gedalia ha-Levi, *Hemed Moshe*, O.H., sec. 690, note 1; R. Abraham Pinso, *Resp. Ezrat mi-Tsar*, sec. 23; R. Joseph Teomim, *Pri Megadim, Mishbetsot Zahav*, note 1; and *Tebilla le-Yona—Masekhet Megilla, supra*, note 12. R. Teomim points out further that the rules of *kevod ha-tsibbur* are *not* uniform: in some cases, one is *yotsei be-di-avad* despite *kevod ha-tsibbur*; but this is not the case regarding women reading *megilla* for men, which is invalid even *be-di-avad*. Thus, Semag's analogy between *keriat ha-Torah* and *Megilla* reading clearly indicates that just as a woman cannot be *motsi* a man in *mikra megilla*, so too *kevod ha-tsibbur* cannot be set aside to permit women's *aliyyot*, even *be-di-avad*;

can never be set aside. According to this school, Haza”l decreed through a formal enactment that women should never be called up for an *aliyya*. Once the decree was formalized, the original motive for the enactment is no longer relevant.¹⁵ Thus, these *posekim* maintain that, even *bi-she’at ha-dehak*—even if there is no one else present who is capable of reading the Torah, a woman cannot be called upon to do so.

Nevertheless, the majority of *posekim* would seem to disagree with this position—and have permitted women to receive *aliyyot* and read their portion under non-normative extreme circumstances.¹⁶ Indeed, many of these authorities indicate that the *baraita* in *Megilla* 23a records its ruling via a two-tiered formulation so as to anticipate *she’at ha-dehak* cases. Not surprisingly, these instances fall into the two major categories, *be-di-avad* and *she’at ha-dehak*, which, as noted above, are commonly equated in Jewish law. A survey of the instances discussed in the codes and responsa literature follows below.

see: *Tebilla le-Yona—Masekhet Megilla*, *supra*, note 12. Nevertheless, R. Yehuda Herzl Henkin, *Resp. Bnai Vanim*, IV, sec 3 disagrees, maintaining that even according to Semag, a woman can be *motsi* a man in *Megilla* and *keri’at ha-Torah* in *be-di-avad* or *bi-she’at ha-dehak* situations.

14. R. Abraham Pinso, *Resp. Ezrat mi-Tsar*, sec. 23; R. Matsli’ah Mazuz, *Resp. Ish Matsli’ah*, O.H., sec. 10; R. Zalman Nehemiah Goldberg, in *Resp. be-Mareh ha-Bazak*, V, addendum to sec. 113, pp. 225–228; R. Zalman Nehemiah Goldberg, *Resp. Binyan Ariel*, E.H., “*Birkat Hatanim bi-Se’udat Sheva Berakhot al yedei Isba*,” pp. 135–141; R. Isaac Zilberstein, *Hashukei Hemed, Megilla* 21a, pp. 277–279; R. Akiva Meller, *ha-Keri’a ba-Torah ve-Hilkeboteha* (Jerusalem, 5769), Ch. 50, note 2.
15. Once a *takana* has been enacted, it often functions independently—irrespective of the original reason of the *takana*. Thus, the particulars of the law as practiced do not always correspond to the original rationale. See: R. Abraham Dovber Kahana Shapiro, *Resp. Devar Avraham*, I, sec. 17, *s.v.* “*u-beEmet*,” *Resp. Devar Avraham*, III, sec. 19, *s.v.* “*u-le-Fi ha-Peirush*,” R. Aharon Lichtenstein, *Shi’urei ha-Rav Aharon Lichtenstein, Pesahim, Bedikat Hamets le-Ahar Bittul*, p. 30, *s.v.* “*ka-Muvan*”; R. Aharon Lichtenstein, *Shiurei ha-Rav Aharon Lichtenstein, Gittin, Takanat Zeman be-Get, ha-Yahas bein Ta’am ha-Takana le-Tokhen ha-Takana*, p. 52.
16. R. Aaron ben Abraham Aberle Worms, *Me’orei Or, Kan Tsippor, mabadura batra, Megilla* 23a, *s.v.* “*ha-Kol olin*”; R. Gur Aryeh ha-Levi, cited in R. Isaac Lampronti, *Pahad Yitschak*, “*Isha*”, no. 146; R. Jacob Emden, *Hagabot Rav Yaakov Emden, Megilla* 23a; R. Jacob Emden, *Mor u-Ketsi’a, Tur*, O.H., sec. 282; *Sedei Hemed, Ma’arekhet Daled, kelalim* 59–61 and *Pe’at ha-Sadeh, Ma’arekhet Daled, kelal* 30; R. Gedalia Felder, *Yesodei Yeshurun*, IV, *Ma’arekhet Keri’at ha-Torah*, 405; *Mi-Shiurei Maran ha-Rishon le-Tsion Rabbenu Ovadiah Yosef Shelita*, I, *Gilyon* 19, *va-Yera* 5756, sec. 2; R. Jacob Epstein, *Resp. Hevel Nabalato*, XI, sec. 6, available online at <http://tinyurl.com/mjzutaa>; “*di-Avad*,” *Encyclopedia Talmudit*, VII, p. 417 and note 140 therein; sources cited in notes 17–19 and 21 below.

(a) **If there aren't seven men who can read:** Several *posekim* maintain that if there aren't seven men who can read from the Torah, a woman may be called to do so.¹⁷

(b) **Birthing mother whose husband is out of town:** R. Jacob Emden¹⁸ deals with the case of a *yoledet* (mother of a newborn) who comes to shul for the first time after birth. Normally, her husband would receive an *aliyya*, which R. Emden indicates was established in lieu of a *Korban Todah* (Thanksgiving Sacrifice). However, in the case under discussion, the *yoledet's* husband is out of town. R. Emden considers this an instance of *she'at ha-dehak* and permits the mother to receive an *aliyya* (presumably so that the requisite Thanksgiving can be expressed despite the husband's absence). R. Emden permits this leniency provided that it is done in a private one-time *minyán* of just ten (*metsumtsam*). Also of import is R. Emden's stipulation that his lenient ruling is contingent on the approval of his colleagues (“*Kakh da'ati noteh im yaskimu immi haverai.*”). We are unaware of any other *posek* who concurs with this leniency.

(c) **A woman who already rose for an aliya:** Several scholars maintain that if a woman was mistakenly called to the Torah, and already rose for an *aliyya* (though she hasn't yet recited the *berakha*), this is also considered a *be-di-avad* situation, and the *keri'at ha-Torah* may proceed.¹⁹

(d) **A city of only kohanim:** In the rare instance of a city where all the males are *kohanim* (*ir she-kula kohanim*), the question arises as to how to carry out the Sabbath Torah reading. On the one hand, the *Gemara* in *Megilla* 23a indicates that a *Shabbat keriat ha-Torah* requires seven males for the seven *aliyyot*. On the other hand, the *Talmud* in *Gittin* 59b rules that it is prohibited for two *kohanim* to receive *aliyyot* one after the other due to a fear of *pegam kabuna* (stigma to his priestly lineage). This is because a challenge to

¹⁷. See: R. Gur Aryeh ha-Levi, cited in R. Isaac Lampronti, *Pahad Yitschak*, “*Isba*,” no. 146; R. Jacob Emden, *Hagabot Rav Yaakov Emden*, *Megilla* 23a; R. Jacob Emden, *Mor u-Ketsi'a*, *Tur*, O.H., sec. 282; *Mi-Shiurei Maran ha-Rishon le-Zion Rabbenu Ovadiah Yosef Shelita*, I, *Gilyon* 19, *va-Yera* 5756, sec. 2.

¹⁸. R. Jacob Emden, *Birat Migdal Oz* (Berditchev 1836), *Birkbot Shamayim*, *Nahal Krit*, *Shoket* 2, secs. 9 and 10, p. 28b.

¹⁹. See: *Shiyyarei Keneset ha-Gedola*, O.H., sec. 690, *Hagabot ha-Tur*, no. 1; R. Joel Sirkis, *Bah*, *Tur*, O.H. sec. 144, s.v. “*Medallegin ba-Navi.*”; Resp. *Tsedaka u-Mishpat*, O.H., sec. 4; R. Samuel Avigdor of Karlin, *Minhat Bikkurim*, *Tosefta*, *Megilla*, 3:11; R. David Pardo, *Hasdei David*, *Tosefta*, *ibid*; R. Joseph Teomim Rabinowitz, *Rosh Yosef*, *Megilla* 4a, s.v. “*u-be-Tosafot s.v. Nashim.*”; R. Samuel Avigdor of Karlin, *Minhat Bikkurim*, *Tosefta*, *Megilla*, 3:11; *Arukh ha-Shulhan* O.H., sec. 282, no. 10; *Mi-Shiurei Maran ha-Rishon le-Tsiyyon Rabbenu Ovadiah Yosef Shelita*, I, *Gilyon* 19, *va-Yera* 5756, sec. 4.

his lineage might result were a *kohen* to receive an *aliyya* normally reserved for non-*kobanim*. The *Talmud* indicates,²⁰ however, that the same *kohen* can receive both the first (*kohen*) and second (*levi*) *aliyyot* of a Torah reading, since every *kohen* is also from the tribe of *Levi*. However, giving a *kohen aliyyot* three through seven, normally reserved for *yisraelim*—as would be necessary for an *ir she-kula kobanim*—might raise the suspicion of *pegam kehuna*. Thus, it would seem that we are in an insoluble situation unless something gives.

R. Meir ben Barukh (Maharam) of Rothenburg²¹ rules as follows:

...ועיר שכולה כהנים ואין בה [אפי'] ישראל אחד, נראה לי דכהן קורא פעמיים ושוב יקראו נשים - דהכל משלימי' למנין ז' אפי' עבד ושפחה וקטן (מגילה כ"ג ע"א). ונהי דמסיק עלה אבל אמרו חכמי' לא תקרא אשה בתורה מפני כבוד הצבור, היכא דלא אפשר ידחה כבוד הצבור מפני פגם כהנים הקוראים - שלא יאמרו בני גרושות הם.

...And a city whose male population is exclusively comprised of *Kobanim*, and there isn't [even] one *Yisrael*, it would seem to me that a *Kohen* should read the first two *aliyyot*, and then women read the rest. This is because all may [theoretically] complete the seven *aliyyot*—even a male or female slave and a minor (*Megilla* 23a). And although the *Talmud* concludes that “a woman should not read because of the honor of the community,” [nevertheless,] where there is no alternative [lest the *keri'at ha-Torah* be cancelled because of an absence of readers], let the honor of the community be deferred by the possible damage to the reputation of the *Kobanim*. Otherwise, people will assert that the *kobanim* who read are the sons of divorced women [*halalim*, lacking kohanite sanctity].

In this exceptional *she'at ha-dehak* situation, Maharam permits women to receive the third through seventh *aliyyot*. Maharam's lenient position is widely cited,²² though not in the *Shulhan Arukh*, as we will discuss in the next section.

²⁰. *Gittin* 59b; *Shulhan Arukh*, O.H., sec. 135, no. 8.

²¹. R. Meir ben Barukh of Rothenburg, *Resp. Maharam ben Barukh me-Rotenberg* (Prague edition), IV, sec. 108.

²². See: R. Moses Parnes of Rothenburg, *Sefer ha-Parnes*, sec. 206; Mordechai, *Gittin*, chap. 4, sec. 404; *Hagabot Maimoniot*, *Hil. Tefillah*, 12:17, note *resh*; Abudarham, *Dinei Keri'at ha-Torah*, s.v. “*ve-Katav ha-Rav Meir*”; *Bet Yosef*, *Tur*, sec. 282, s.v. “*ha-Kol Olin*”; *Darkei Moshe ha-Arokh Tur*, sec. 282, s.v. “*ha-Kol Olin*.” Rabbenu Yerusham, *Toldot Adam ve-Hava*, *Netiv* 2, *Chelek* 3, p. 20b, cites the same decision in the name of Ramah (R. Meir [haLevi] Abulafia? —perhaps the citation should be Ram, not Ramah).

IV Lessons to Be Learned from A City of Kohanim

Three comments need to be made regarding Maharam's ruling on a city of *kobanim*.

(1) In Mishnaic and Talmudic times, there was no *ba'al korei* and each *oleh* read their Torah portion aloud for the entire congregation.²³ It was under such a system that the theoretical statement of the *baraita* in *Megilla* 23a was made: any female *olah*, like all other *olim*, would read for herself.²⁴ In the post-Talmudic Geonic period,²⁵ we find the establishment of a *ba'al korei*, with the role of the *oleh* divided into two. The *oleh* made the *berakhot*, while the *ba'al korei* did the *mitsva* action (*ma'aseh ha-mitsva*) of reading aloud to the community. As we have discussed at length in our previous papers on women's *aliyyot*,²⁶ for one person to make *berakhot* and another to do the *ma'aseh ha-mitsva* is contrary to all other cases in Jewish law, where the one who does the *mitsva* action is the one who makes the *berakha*. For example, the *mohel* is designated by the father to do the circumcision; hence, the *mohel* recites the *mitsva* benediction "*al haMila*." For there not to be a *berakha le-vatala* (blessing recited in vain), there must be some mechanism that transfers the Torah reading—the *ma'aseh ha-mitsva*—from the *ba'al korei* to the *oleh*.

^{23.} *Tosafot*, *Megilla* 21b, *s.v.* "Tana ma"; *Tosafot*, *Bava Batra* 15a, *s.v.* "Shemona pesukim"; *Tosafot*, *Menahot* 30a, *s.v.* "Shemona pesukim"; R. Asher ben Yaakov (Rosh), *Piskei ha-Rosh*, *Megilla*, ch. 3, sec. 1 (to 22b). To this day in Yemenite communities, *olim* generally read for themselves.

^{24.} See the end of note 25.

^{25.} R. Eliyya Shapira, *Eliyya Rabba*, O.H. sec. 282, no. 8; R. Moses Feinstein, *Resp. Iggerot Moshe*, O.H., II, sec. 72; R. Yehudah Yudel Rosenberg, *Resp. Yehaveh Da'at*, O.H., sec. 2; R. Ovadiah Yosef, *Hazon Ovadya, Hilkebot Shabbat*, part 2, *Hilkebot Keri'at ha-Torah*, sec. 9, *s.v.* "Amnam ra'it"; R. Chaim Kanievsky cited in R. Aharon Grandish, *Teshuvot ha-Grav*, II, sec. 1746. For an excellent in-depth discussion of the evolution of this institution, see: R. Benjamin Solomon Hamburger, "ba-Korei ba-Torah," *Zekhor le-Avraham* (Holon, Israel), 5762-5763: 679–726. R. Shlomo Goren, *Resp. Meshiv Milhama*, II, Gate 7, sec. 107 assumes that the institution of the *ba'al keri'ah* occurred in the time of the *rishonim*, while R. Hamburger (p. 697) suggests that *ba'alei keri'ah* may have been in use as far back as the mid-seventh century CE. Since all agree that its inception was post-Talmudic, R. Shapira, R. Feinstein and R. Kanievsky have completely rejected suggestions of isolated authors that a minor or woman might be *oleh* in Talmudic times only if a *ba'al keri'ah* read for them; see: *Levushei Serad*, O.H. sec. 282 to *Magen Avraham* no. 6; R. Jehiel Meir Weingort, *Kokhavei Or, Megilla* 23a, sec. 146.

^{26.} See references in note 5.

The mechanism that enables this transfer is *shome'a ke'oneh* (listening attentively is equivalent to reciting).²⁷ However, this mechanism requires that the *ba'al korei*—who does the *mitsva* action of reading aloud, and the *oleb*—who recites the *berakha*, both be inherently obligated in *keri'at ha-Torah*.²⁸ Otherwise, there is no transfer mechanism to make it one unified act. The *berakhot* will not be connected to the *mitsva* act and will, therefore, be in vain. Males are obligated in Torah reading, but women are not!²⁹ Thus, even if *kevod ha-tsibbur* is set aside, as in a *she'at ha-dehak* situation, a woman would still have to read for herself and make the appropriate *berakhot*; when she does so, there is no need for a transfer mechanism, since the same person does both acts. As noted above, this is indeed the situation of which the *baraita* in *Megilla* 23a speaks. But, she cannot read for

27. B.T. *Sukka* 38b; J.T. *Megilla* 4:1 (*shome'a ke-korei*). For in-depth analysis of this concept, its parameters and application, see extensive sources cited in reference 5a, note 30 therein.

28. Without inherent obligation there can be no *areivut*, a discussion of which is beyond the scope of this paper. For an extensive review of the origin, mechanics and application of *areivut*, see: discussion in ref. 5a; “*Kol Yisrael Areivim Zeh la-Zeh*,” *Encyclopedia Talmudit*, XXVIII, pp. 472–519; R. Reuben M. Rudman, “*Kol Yisrael Areivim Zeh ba-Zeh*,” *Tradition* 42:2, pp. 35–49 (Summer 2009).

29. (a) **Rishonim**—Tosafot, Rosh ha-Shana 33a, s.v. “Ha”; Rosh, *Kiddushin* 31a; Meiri and Ran on Rif, *Megilla* 23a, s.v. “ha-Kol Olin”; R. David ben Joseph Abudarham, *Sefer Abudarham, Sha'ar ha-Shelishi*, s.v. “Katav ha-Rambam zal”; R. David ha-Kokhavi, *Sefer ha-Batim, Bet Tefilla, Sha'arei Keri'at ha-Torah* 2:6. We know of no Rishon who maintains that women are obligated; hence, the view of Magen Avraham obligating women, cited at the end of note 29b below, is all the more astounding.

(b) **Aharonim**—*Inter alia* see: R. Joseph Caro, *Bet Yosef, O.H.* sec. 28, s.v. “*ha-Kol*”; R. Joshua Falk, *Derisha, O.H.* sec. 28; R. Jacob Reisha, *Resp. Shevut Ya'akov, O.H.* I, sec. 40; R. Elijah Kramer, the Gaon of Vilna (Gra), *Alim li-Terufa* (letter by the Gaon of Vilna that advises the women of his family not to attend the synagogue), Aram Tsova (Syria) 5626 (1856) edition; R. Shneur Zalman of Liadi, *Shulhan Arukh ha-Rav, O.H.*, sec. 282, no. 5; R. Shalom Mordechai ha-Kohen Shvadron, *Resp. Maharsham, I*, end of sec. 158; R. Hayyim Yosef David Azulai (Hida), *Kisei Rahamim* (complete edition, Jerusalem: 1959), *Masekhet Soferim* 14:14 *Tosafot s.v. “she-Mitsvat”* and 18:4, *Tosafot s.v. “she-ha-Nashim”*; R. Jacob Emden, *Mor u-Ketsiah, O.H.*, sec. 417; R. Joseph Te'omim, *Rosh Yosef, Megilla* 23a, s.v. “*Leima*”; R. Jehiel Michel Epstein, *Arukh ha-Shulhan, O.H.* sec. 282, no. 11; R. Ovadiah Yosef, *Resp. Yabia Omer, VII, O.H.*, sec. 17, no. 4 and VIII, *O.H.*, sec. 54, no. 7; *Resp. Yehave Da'at, IV*, sec. 23, note 1; R. Efrayim Greenblatt, *Resp. Rivevot Ephrayim, VI*, sec. 153, no. 21. The above sources take issue with R. Abraham Abele ha-Levi Gombiner, *Magen Avraham, O.H.* sec. 282, no. 6.

others, nor can others read for her—since in the absence of a transfer mechanism, the benedictions of the *oleb* will be in vain.

Among the authorities cited above (in sec. III), who permit women to receive *aliyyot* under *she'at ha-debak* or *be-di-avad* situations, R. Yaakov Emden does mention that the *olah* reads for herself. Thus, in his case of a *yoledet* who comes to *shul* for the first time, in her husband's absence, R. Emden writes that she is “*olah ve-korah ba-Torah*” (receives an *aliyya* and reads from the Torah). The other responsa, however, do not clearly mention that women need to read for themselves. This is presumably because the discussions of women's *aliyyot* were purely theoretical and academic in nature, dealing with extremely rare situations – not practical cases. Indeed, these authors see themselves as elucidating the original Talmudic statement in *Megilla* 23a, in which each of the *olim* reads for themselves, and not normative situations.³⁰ Alternatively, they may be referring to cities that still maintained the original Talmudic custom according to which each *oleb* read for himself, much the way Yemenite Jews do to this day. This, indeed, seems to be the case with the responsum of R. Meir ben Baruch of Rothenburg. The responsum of Maharam seems to be a direct response to a question asked him by his student R. Asher ben Moshe, a manuscript of which has recently been published.³¹ This letter is incomplete, and ends with a query regarding “*ir she-kulam kobanim*.” The questioner makes it clear that the city under discussion had the original Talmudic custom according to which each *oleb* read for himself. This is indeed reflected in the language of the original responsum of Maharam who writes: “...*de-koben korei pa'amayim ve-shuv yikre'u nashim*” (...the *Koben* reads twice and then the women read). Note the use of the term “*korei*” rather than the mishnaic formulation of “*oleb*.” Thus it is clear that each *oleb/olah* actually read his or her portion.

(2) A careful reading of Maharam's responsum makes it clear that the honor of the community is being set aside by the dire circumstances—not by a volitional decision of the community. As the Maharam writes: “...where there is no alternative, let the honor of the community be deferred by the possible damage to the reputation of the *Kobanim*.” This corresponds well to the view of R. Joel Sirkis, noted author of the *Bayit*

³⁰. See the related comments of R. Shlomo Goren, *Resp. Meshiv Milhama*, II, Gate 7, sec. 107, *s.v.* “*Ken nireb*” and R. Eliav Shochetman, *supra*, note 6a, pp. 305-306.

³¹. *Teshuvot Maharam me-Rothenburg ve-Haverav*, ed. Simcha Emanuel (Jerusalem, 2012), II, sec. 450.

Hadasb (*Bah*), and other scholars,³² that *Hazal* intended their decree for normative situations—not for such *she'at ha-dehak* cases. In the latter instances, the *kevod ha-tsibbur* decree simply falls aside automatically.

(3) Maharam's responsum makes it clear that the honor of the community can be set aside only by dire circumstances. This is critical, for if any community could volitionally set aside its honor, so can a city of only *kobanim*! Why, then, should the issue of *ir she-kula kobanim* ever be a problem? The community could simply set aside its honor. Nevertheless, in their presentation of women's *aliyyot*, Rabbis Mendel Shapiro³³ and Daniel Sperber³⁴ totally ignore this point and maintain that a community may indeed set aside its honor at will.

R. Sperber begins his discussion of Women's *Aliyyot* by analyzing the Talmudic statement in *Megilla* 23a: "However, the Sages said (*aval amru hakhamim*): a woman may not read from the Torah, because of the honor of the community." He surveys the places in the Talmud where the formulation "*aval amru hakhamim*" appears and argues that, while some cases refer to things that are forbidden, others are merely expressions of the ideal. He concludes with confidence (but to my mind, with little evidence) that the phrase in *Megilla* 23a describes what *Hazal* believed to be the preferred or recommended mode of conduct, the ideal way of performing *keri'at ha-Torah*.³⁵

³² See *Bah*, *Tur*, O.H. sec. 144, s.v. "*Medallegin ba-Navi*." See R. Hayyim Palagi, *he-Hafets Hayyim*, sec. 39, nos. 13 and 22, who argues that the position of *Bah*—that *kevod ha-tsibbur* ceases to be in effect in *she'at ha-dehak* situations—is actually precedented in *Ritva*, *Yoma* 70a, s.v. "*le-Fi she-ein*." See also R. Meir ben Barukh of Rothenburg, *Resp. Maharam ben Barukh me-Rotenberg* (Prague edition), IV, secs. 108 and 174; references cited in note 16, *supra*. In discussing *keri'at ha-Torah*, R. Judah Leib Graubart, *Resp. Havalim ba-Ne'imim*, I, sec. 29, no. 2—based on *Hagahot Mordekhai*, *Gittin* 60a, sec. 463, citing R. Samson of Sens—explains the rationale of this school as follows: *kevod ha-tsibbur* may be set aside where otherwise the fundamental rabbinic enactment of *keri'at ha-Torah* could not take place at all; if, however, there is another alternative whereby *keri'at ha-Torah* could still be performed, then *kevod ha-tsibbur* cannot be ignored. See also R. Jacob Epstein, *Resp. Hevel Nahalato*, XI, sec. 6, available online at <http://tinyurl.com/mjzutaa>. R. Epstein maintains that Rema and Gra both maintain that the edict of *kevod ha-tsibbur* in *Megilla* 23a prohibits all women's *aliyyot* except for *she'at ha-dehak* situations.

³³ See note 2, *supra*.

³⁴ See note 3, *supra*.

³⁵ *Supra*, note 3a, p. 21.

This position is untenable for a variety of reasons. Firstly, a reexamination of those cases that R. Sperber describes as recommendations reveals that this assignment runs counter to the explicit ruling of Maimonides—who uses the words “*hayyavim*” (obligated) or “*assur*” (forbidden).³⁶

Secondly, the fact that those who permit a woman to receive an *aliyya* do so **only** in dire *she'at ha-debak* or *be-di-avad* cases clearly refutes this “recommendation” approach. In addition, we have cited above that Maimonides, Semag and several later *posekim*³⁷ maintain that in the specific case of women’s *aliyyot*, *kevod ha-tsibbur* can **never** be set aside, even in dire *she'at ha-debak* or *post factum* cases. Thus, their reading of this *baraita* certainly can’t be taken as a recommendation. Meiri writes: “All are eligible for an *aliyya* among the seven—even a woman and a minor...; however, the Rabbis **objected** (*mibu*) to a woman because of *kevod ha-tsibbur*.”³⁸ The word “*mibu*” appears many times in the Mishnaic and Talmudic literature and it refers to strong verbalized objection, remonstrance and public reproof.³⁹ R. Elijah Mizrahi writes that women cannot be *motsi'ot* men by *keri'at ha-Torah* or *megilla*—clearly indicating that this is not a recommendation but a determination.⁴⁰ Indeed, *Magen Avraham* reformulates the words of R. Elijah Mizrahi thusly: “and [women] are *pesulot* (invalid) [from reading the *Torah* or *megilla*] because of *kevod ha-tsibbur*.”⁴¹

^{36.} R. Shlomo Pick (personal communication, March 2009) has reexamined some of the cases cited by R. Sperber as precedent for the suggestion that “*aval ameru hakhamim*” is merely a recommendation. He finds that R. Sperber’s interpretation runs counter to the explicit ruling of Maimonides—who uses the word *hayyavim* (obligated) or *assur* (forbidden). In particular, regarding *Yoma* 87b, see *M.T.*, *Hilkhot Teshuva* 2:7; regarding *Yoma* 69a, see *M.T.*, *Hilkhot Kilayyim* 10:12. See also *Hullin* 59a (not cited by R. Sperber) and *M.T.*, *Hilkhot Mamrim* 6:14. A similar critique is expressed by R. Ephraim Bezael Halivni, *ba-Tehinna ve-ha-Keri'a le-Hai ha-Olamim: Iyyunim be-Tefilla u-be-Keri'at ha-Torah* (Jerusalem: 5772), 156–164, in particular at 158–160 where he discusses *Yoma* 69a, *Beitsa* 14b, *Sota* 7a, *Nidda* 67b, and *Tosefta Shabbat* 6:14. Moreover, argues R. Halivni, even in those cases where there is no explicit prohibition—e.g., *Berakhot* 20b, *Pesahim* 50b and *Bava Metsi'a* 74b—the Rabbis make it eminently clear that they strongly disapprove of such behavior. There is clearly a readily apparent instruction of how to act.

^{37.} See *supra*, notes 12, 13 and 14.

^{38.} Meiri, *Kiryat Sefer*, *Ma'amar* 5, sec. a.

^{39.} See, for example, *Mishna Pesahim* 4:8 (56a) and the commentary of Maimonides *ad loc.*

^{40.} R. Elijah Mizrahi, *Hiddushei ha-Re'em al ha-Semag*, *Hilkhot Megilla*, s.v. “*ba-Zeb lo bekeilu*.”

^{41.} R. Abraham Gombiner, *Magen Avraham*, *O.H.*, sec. 689, note 5.

R. Sperber seems to have missed the critical distinction made above between *le-kbattehila* and *be-di-avad* or *she'at ha-dehak* situations. As noted above, in technical halakhic terms, *le-kbattehila* refers to the **obligatory** way one is required to act under normative conditions.⁴² For example, Ḥazal say that one should not use a dairy spoon *she-eino ben yomo* (not used in the last 24 hours) to stir hot chicken soup.⁴³ Similarly, Ḥazal indicate that one should not place food into utensils that have not been immersed in a *mikva*.⁴⁴ In both cases, *be-di-avad* the food remains perfectly kosher. Nevertheless, Ḥazal's ruling in both cases is not a **recommendation**—but rather a clear **directive** on how one is required to act. Under normative conditions, it is **forbidden** to act otherwise.⁴⁵ This is also true regarding women's *aliyyot*—Ḥazal forbade them *le-kbattehila*, even though *be-di-avad* or *bi-she'at ha-dehak* the *aliyya* may be valid. Thus, contrary to R. Sperber's suggestion, *kevod ha-tsibbur* is not the recommended mode of communal conduct but the *ab initio* required way of performing a ritual. The fact that a sub-optimal version may also be halakhically acceptable after the fact, or in dire situations, does not change the *le-kbattehila* necessity of the proper mode of fulfillment.⁴⁶ But more importantly, R. Ḥayyim Hezekiah Medini cites many *Rishonim* and *Aḥaronim* who state explicitly that if one performed an act *be-meizid* (on purpose) that is normally valid only *be-di-avad*, **one did not fulfil their religious obligation whatsoever!**⁴⁷

V. Further Analysis of *Ir she-Kula Kohanim*

Recently, R. Michael Broyde⁴⁸ reexamined the case of *ir she-kula kohanim* from a different perspective. He notes that how one proceeds in such a

⁴² See note 10, *supra*.

⁴³ *Shulḥan Arukh*, Y.D. 93:1 and 94:4.

⁴⁴ *Shulḥan Arukh*, Y.D. 120:16; R. Zvi Cohen, *Tevilat Kelim*, Fourth ed. (5742), Chap. 4, secs. 1 and 9.

⁴⁵ See note 10, *supra*.

⁴⁶ R. Sperber makes the very same error elsewhere; see: Aryeh A. Frimer, "Feminism and Changes in Jewish Liturgy: A Review of Rabbi Prof. Daniel Sperber's *On Changes in Jewish Liturgy: Options and Limitations*," *Ḥakirah, The Flatbush Journal of Jewish Law and Thought*, XII (Fall 2011) 65–87, available online at www.hakirah.org/Vol%2012%20FrimerA.pdf.

⁴⁷ R. Ḥayyim Hezekiah Medini, Sdei Ḥemed, *Kuntress ha-Kelalim, Ma'arekhet ha-Dalet, Kelalim* no. 61; Sdei Ḥemed, *Pe'at ha-Shulḥan, Ma'arekhet ha-Dalet, Kelalim, Kelal* 3 and *Kelal* 30, sec. 10.

⁴⁸ *Supra*, note 6f.

situation is actually a dispute between two major medieval authorities, Maharam of Rothenburg and R. Solomon ben Aderet (Rashba). As we have seen in section III, Maharam rules that, in this exceptional *she'at ha-debak* situation, *kevod ha-tsibbur* is set aside; women may receive the third through seventh *aliyya*, for otherwise, because of the lack of *olim*, the Torah reading would not be able to take place.

Rashba, however, suggests an alternative approach.⁴⁹

שבמקום שכולה כהנים, ... כהן קורא אחר כהן, שאין כאן משום פגם. שהרי הכל יודעים, שאין שם אלא כהנים. ואין כהן שני קורא, משום פגם ראשון, אלא מפני שאין שם ישראלים. וכן שלישי, וכן רביעי, וכן כולם.

In a place whose male population is exclusively comprised of Kohanim, ... one *kohen* after another receives an *aliyah*, and there is no stigma (*pegam*) for everyone knows that there are only *kobanim* present. And the second *kohen* knows that he is reading—not because of the stigma of the first *kohen*, but because there are no *yisraelim* present. This is true for the third and the fourth and for all of them.

Rashba argues that the case of an *ir she-kula kobanim* is so unique, everyone appreciates that this situation requires non-normative solutions—such as calling one *kohen* after another. Under such conditions, no one will raise questions of lineage. With this solution in hand, there is no need to discuss setting aside *kevod ha-tsibbur*—as suggested by Maharam. As R. Broyde documents, the solution of the Rashba was widely adopted, including by R. Joseph Caro in his *Shulhan Arukh*⁵⁰ and by all subsequent codes.

R. Broyde takes the dispute regarding *ir shekula kobanim* one step further, by analyzing why each of the protagonists rejects the position of his fellow. R. Broyde's approach is to link the question of a city of *kobanim* (*Shulhan Arukh*, O.H., sec. 135) with the seemingly unrelated question of whether women can receive *aliyyot bi-she'at ha-debak* (*Shulhan Arukh*, O.H., sec. 282).

According to R. Broyde, Maharam maintains that concern for a kohen's good name is inviolable; however, *kevod ha-tsibbur* is only a *le-khat-tehila* consideration. As a result, *kevod ha-tsibbur* can be set aside when it is deemed necessary, and *keri'at ha-Torah* can continue by calling women to the Torah. As far as Rashba is concerned, R. Broyde proposes that he

⁴⁹. R. Solomon ben Aderet, *Responsa ha-Rashba ha-Meyuhasot la-Ramban*, sec. 186; see also *Resp. ha-Rashba*, I, secs. 13 and 733 for a similar statement.

⁵⁰. *Shulhan Arukh*, O.H., sec. 135, no. 12. The view of the Rashba finds convincing support from the Jerusalem Talmud, *Gittin* 5:9 (47b).

maintains that it is totally forbidden by rabbinic decree to give women *aliyyot* (like Rambam, Semag and others cited above⁵¹) even under dire circumstances; however, the extent of our concern for a kohen's good name depends very much on the situation. In a city of only *kobanim*, everyone understands that *kobanim* are being called up one after the other—not because of *pegam*, but because there are no non-*kobanim* present. Calling up women, for Rashba, is not an option!

Now, since R. Joseph Caro and all subsequent codes have ruled like Rashba on the issue of a city of *kobanim*, R. Broyde concludes that the overwhelming halakhic consensus is to totally forbid women from ever receiving *aliyyot*. This is certainly true when a community simply decides to set aside its honor, but even *bi-she'at ha-dehak* as in the case of a city of only *kobanim*.⁵² This conclusion thus undermines the suggestions of Rabbis Mendel Shapiro and Daniel Sperber to the contrary.

As we have argued above (section I), R. Broyde may well be correct that the majority of halakhic authorities rule against allowing women to receive *aliyyot*—even if a community decides to set aside its honor. Nevertheless, we believe that he errs in his analysis of the dispute between Maharam and Rashba. Indeed, R. Broyde's approach linking the question of a city of *kobanim* (*Shulḥan Arukh*, O.H., sec. 135) with the eligibility of women to receive *aliyyot* under dire circumstances (*Shulḥan Arukh*, O.H., sec. 282) can be shown to be untenable based on two lines of argument. Firstly, despite ruling like Rashba in O.H. 135, both R. Joseph Caro and R. Moses Isserlish⁵³ on *Tur* O.H. 282 cite Maharam to prove that in the absence of *kevod ha-tsibbur* considerations, “*ha-kol mashlimim*”—even women can complete the necessary seven *aliyyot*. If indeed sections 135 and 282 were inextricably linked, why is the Rashba not cited as refutation of the Maharam? Secondly, if sec. 135 is so conclusively linked to sec. 282, how is it possible that a whole cadre of leading *aḥaronim* explicitly state that *kevod ha-tsibbur* by women is only a ruling *le-khattehila*?⁵⁴

We read the sources somewhat differently. To our mind, both Maharam and Rashba agree that giving *kobanim* back-to-back *aliyyot* engenders questions about the *kobanim*'s lineage, for they will be receiving *aliyyot* normally reserved for *Yisraelim*. This concern for *pegam* is inviolable. Both also agree that giving women *aliyyot* is rabbinically forbidden because of *kevod*

⁵¹. See notes 12, 13 and 14, *supra*.

⁵². Based on this analysis, he wants to refute the suggestions of Rabbis Shapiro (*supra*, note 2) and Sperber (*supra*, note 3) permitting women's *aliyyot*.

⁵³. To *Tur*, O.H. sec. 282, see: R. Joseph Caro, *Beit Yosef*, s.v. “*ha-Kol Olin*” and R. Moses Isserlish, *Darkei Moshe ha-Arokh*, s.v. “*ha-Kol Olin*.”

⁵⁴. See the references cited in notes 16–19 and 21.

ha-tsibbur. Thus, in the absence of any other options, we have reached a stalemate—*pegam* versus *kevod ha-tsibbur*—and the *keri'at ha-Torah* ritual will not take place—a true *she'at ha-dehak* situation. For Maharam, the resolution of this impasse stems from the realization that *kevod ha-tsibbur* is a *le-khattehila* ruling. Like the majority of *posekim*, Maharam maintains that in such a *she'at ha-dehak* situation, *kevod ha-tsibbur* and the prohibition against women's *aliyyot* simply falls away. As Maharam states: “Where there is no alternative, let the honor of the community be deferred by the possible damage to the reputation of the *Kobanim*.”⁵⁵

The Rashba does not disagree with Maharam's analysis of how to respond were this really a *she'at ha-dehak*. Rashba's *hiddush* (novel approach) is that this situation is NOT a *she'at ha-dehak*! Calling up only *kobanim* in this case will engender no *pegam* because of the uniqueness of the situation and universal awareness of it: “*she-harei ha-kol yodin she-ein sham ela kobanim*—for everyone knows that there are only *kobanim* present.” There is no ameliorating *ha-kol yodin* if there are Israelites or Levites present, because the latter normally get *aliyyot*; hence, they engender *pegam*. But this is not true for women. Women never receive *aliyyot*—except for extremely rare situations where no one knows how to read. This is certainly not the case here.

VI. *She'at ha-Dehak* Generation

Over the past decade, I have repeatedly heard a new application of the concept *she'at ha-dehak*.⁵⁶ This is because there are many who are not truly committed to *halakha*, but want a ritual-based service that “feels” like *halakha* and reflects the congregants' own more egalitarian values. The latter group threatens that if *halakha* won't show greater flexibility, they will bolt.

These arguments notwithstanding, we find it hard to accept this claim as more valid now than it was at the turn of the 20th century, during the

^{55.} See also R. Solomon Aaron Vertheimer, *Divrei Shlomo on Abudarham* who writes: “*she-ha-Kol mashlimim le-minyan shiva, ve-ein korin le-isha ela mipnei kevod ha-tsibbur. Aval heikha de-i efsar, shaini.*” R. Broyde errs in thinking that this setting aside of *kevod ha-tsibbur* is a volitional decision taken by the community. It is not. It happens automatically in dire circumstances—as argued by Baḥ, note 32 *supra*—for the Rabbis did not make their edict for such exceptional circumstances.

^{56.} Such an approach is also mentioned in passing by R. Michael Broyde, *supra* note 6f, at note 10 therein. See also Shaul Seidler-Feller, “Reality Check: *Lo Tikrevu le-Gallot Errah* and *Shemirat Negi'ah*,” *Kol Hamevaser* III:2 (November 6, 2009), pp. 19–21, available at www.kolhamevaser.com/wp-content/uploads/2015/05/Tanakh-in-the-21st-Century-Looking-Back-Looking-Ahead-2.pdf.

periods of the World Wars, and again in the Fifties or Seventies. R. Aharon Lichtenstein has asserted that while there may well be *she'at ha-dehak* situations, these must be judged on a case-by-case determination. To label a whole generation as *she'at ha-dehak* in order to permit [wholesale] leniencies reserved only for extreme situations would seem totally unfounded and uncalled for.⁵⁷ Besides, *she'at ha-dehak* describes instances where a ritual **cannot** be performed because the congregants are not physically or halakhically **able** to do so, not because they lack the desire.⁵⁸ On the contrary, millennia of Jewish history have taught us that we will not be able to preserve Judaism by watering it down. Over the past two centuries, others have tried this approach and failed—certainly over the long term. Yet Orthodoxy overall continues to thrive, to the surprise of some and the chagrin of others.

Traditional Judaism is in a constant struggle to discover the Divine will. It has guided its actions by using the halakhic process—which has always been about the honest search for *truth*—Divine truth.⁵⁹ To adopt one particular approach simply because it yields the desired result lacks intellectual honesty and religious integrity. May those of us who are concerned with the integrity of *Halakha* succeed in maintaining our stamina and conviction in these troubling and challenging times. ❧

⁵⁷. R. Asher Weiss has indicated that according to most *posekim* one can rely on a minority position against a clear majority only in cases of great financial loss (*hefsed merubeh*), but not in all dire situations (*she'at ha-dehak*). Moreover, he cites the *Hazon Ish* to the effect that even in such extreme cases, it depends on how seriously the majority related to the minority position. See R. Asher Weiss, “*ba-Torah Hāsa al Mamonam shel Yisrael*,” *Shi’urei Moreinu ha-Rav Shlita*, XI, *kovets* 25 (439), *Tazria-Metsora* 5773, secs. 2 and 3. In a subsequent personal conversation (with Dov I. Frimer, April 12, 2013), R. Weiss indicated that in *bona fide* instances of *she'at ha-dehak* his willingness to rely on a minority position would depend greatly on the nature and degree of severity of the crisis. But it is clearly easier to rely on a minority opinion when the *she'at ha-dehak* is *hefsed merubeh*.

⁵⁸. R. Aharon Lichtenstein (April 13, 5772) in a conversation of R. Dov. I. Frimer and R. M. Zev Frimer. In a talk delivered on Shabbat *Parashat Hukat* 5754 (1994), R. Lichtenstein stated: “In our times, ... [many suffer from] spiritual weariness. It reflects a desire to do only that which is pleasant and convenient—even where this aspiration is not compatible with the rigorous demands of Torah, whether on the halakhic level or in terms of spiritual consciousness.” See also R. Aharon Lichtenstein, “The Spirit of the People Grew Impatient,” accessible at <http://vbm-torah.org/archive/sichot68/39-68chukat.htm>.

⁵⁹. See: Aryeh A. Frimer, “Feminist Innovations in Orthodoxy Today: Is Everything in Halakha—Halakhic?” *JOFA Journal*, 5:2 (Summer 2004/*Tammuz* 5764), pp. 3–5, online at: www.jofa.org/sites/default/files/uploaded_documents/jofa_journal_summer_2004.pdf.