Abstract: Mendel Shapiro offers a comprehensive review and analysis of the halakhic issues raised by women's participation in qeri’at ha-Torah (public Torah reading) in a traditional minyan (quorum) of men. The author argues that the only tenable halakhic objection to women's aliyyot in such a service is the one raised by the Talmud—that the practice violates kevod ha-tsibbur (the dignity of the congregation)—and that there are certain circumstances where women's aliyyot should be permitted.

Biography: Mendel Shapiro holds B.A., M.S. degrees from Yeshiva University and a J.D. from Columbia University. He was awarded Semikhah (Rabbinic Ordination) from Rabbi Isaac Elchanan Theological Seminary of Yeshiva University. Rabbi Shapiro practices law in Jerusalem.
Qeri’at ha-Torah by Women: A Halakhic Analysis

Mendel Shapiro

1. Introduction

In recent years a number of important studies have appeared on the halakhic issues raised by the growing participation of Jewish women in areas of religious life traditionally regarded as being in the domain of men. Although these studies have considered a variety of issues, their main contribution has been to argue the legitimacy of separate women's prayer services that may include Megillah reading and Torah reading in one form or another. Not surprisingly, the question of women's active participation in a "regular" minyan, i.e., one formed by ten adult Jewish males, has been treated gingerly, if at all. Inclusion of women in the classic synagogue service is apparently so foreign to received halakhic axioms that any deviation from it is regarded as "breaking of the vessels." Must this be so?

From the Orthodox point of view, it is clear that halakhah cannot endure the sort of egalitarian service that is now commonplace in the Conservative and Reform movements. By all Orthodox accounts, halakhah prohibits the inclusion of women in the requisite minyan of ten as well as the mingling of the sexes during the synagogue service. But while these prohibitions appear both formally and ideologically to be insurmountable, there is one portion of the synagogue service – qeri’at ha-Torah (the public Torah reading) – where the bar to women's participation may not be absolute. This paper proposes a fresh analysis and synthesis of the halakhic factors involved in including women in qeri’atha-Torah, either as readers or as recipients of aliyyot.

I present my conclusions at the outset so that the critical reader will know my direction and be able to assess on an ongoing basis if I have veered off course. In my opinion, where a man reads the Torah, there should be no halakhic impediment to calling women to the Torah for at least some of the aliyyot. In impromptu services held outside the synagogue, or in synagogues where there is consensus that a woman's Torah reading does not violate community standards of dignity, women may be permitted to read the Torah (or at least portions of it) as well. Finally, I argue that a critical analysis of the role of minhag (custom) in determining religious practice shows that women's aliyyot and Torah reading in the circumstances I described may not be attacked on the grounds that they violate binding minhag.

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This paper is not a manifesto to alter existing Orthodox Jewish synagogue practice. Although I believe that women's aliyyot and Torah reading may be halakhically sanctioned, it is clear that there is no live tradition of such a practice, or indeed any evidence that it was ever more than a sporadic phenomenon that took place in unusual circumstances. It would be wrong to create dissension in communities and synagogues by challenging hallowed practices that are seen as the hallmark of Orthodox Judaism, and I would not want this paper to be used for that purpose. By the same token, if my analysis of the sources is tenable, by what moral justification may women be denied a halakhic privilege if they exercise it in self-selected groups without directly impinging on others' sensibilities? I believe that the course for which I am arguing is at the very least a legitimate halakhic option that, by restoring to Orthodox women their halakhic capacity to participate in the qeri'at ha-Torah portion of the synagogue service, will invigorate and bring fresh energy to public religious life.

II. Some Preliminary Observations

“Our Rabbis taught: All may be included among the seven [called to the Torah on Shabbat], even a minor and a woman, but the Sages said that a woman should not read in the Torah because of the dignity of the congregation (kevod ha-tsibbur)." This baraita is the point of departure for all discussion of the issue of women’s aliyyot, and the major task of this paper will be to understand the baraita’s practical application by the major commentators and poseqim (decisors): does the baraita categorically prohibit women’s aliyyot and Torah reading, or are there bases for a more permissive approach? Can we legitimately distinguish between the case where a woman reads the Torah and the case where she is only called to the Torah for an aliyyah? These issues are not cleanly resolved, largely because they were never the subjects of sustained halakhic “give and take.” But one point is clear: the baraita declares emphatically that women are eligible to participate in qeri’at ha-Torah, being barred only because it is regarded as an affront to the “dignity of the congregation” for a woman to read the Torah.

Despite the Rabbis’ unequivocal position that there is no other principled objection to qeri’at ha-Torah by women, I frequently encounter other, more conceptually refined, objections to Torah reading by women, which I sense are raised to shore up a prohibition that is judged to be on slippery ground in an age when women, including the majority of Orthodox Jewish women, are emancipated from most social disabilities and biases. These supplementary arguments can generally be reduced to the claim that men, who are obligated in the mitsvah (commandment) of Torah study, cannot possibly fulfill their obligation of listening to qeri’at ha-Torah (and the associated blessings) where the Torah reading, or a portion of it, is read by a woman, who is exempt from the mitsvah of Torah study and hence of qeri’at ha-Torah. In my view, these objections cannot withstand critical examination, and focusing on them distracts from the key issue of kevod ha-tsibbur. Before we turn our attention to the sources dealing with the issue of qeri’at ha-Torah by women, it is important, as a preliminary matter, to clear the conceptual thicket that has arisen around the topic so that we may see clear to the genuine issues.

A. Qeri’at ha-Torah - The Nature of the Obligation

It is indeed true that the most serious halakhic obstacle to women’s participation in communal ritual life on an equal footing with men is the rule enunciated in Mishnah Rosh

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2 Such unusual circumstances would include the case of a town populated entirely by kohanim, in which case Maharam of Rothenberg and the Mordecai held that all aliyyot, after the first two, be given to women, and reports that R. Isaac Luria would in some stressing circumstances ("sha' at ha-dehaq") permit women to receive the seventh aliyyah. Siddur me-ha-Ari Zal ha-Niqra be-Shem Qol Ya’aqov, p. 35.

3 For a presentation of such arguments, see Weiss, Women at Prayer, pp. 67-80.

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ha-Shanah (3:8): “This is the general principle: one who is not himself under obligation to perform a religious duty cannot perform it on behalf of a congregation.” For a variety of reasons of both general and specific application, women frequently are not invested with the same level of halakhic obligation as are men, and as a result cannot perform religious obligations on behalf of men. Nonetheless, it is clear that this principle cannot be applied to the case of qeri’atha-Torah.

The clearest refutation of this argument is from the baraita of “All may be included among the seven.” Given that qeri’atha-Torah is a time bound obligation (from which women are generally exempt) involving the mitsvah of Torah study (from which women are exempted as well), two solid, principled bases for excluding women from qeri’atha-Torah easily come to mind. Why did the Rabbis ignore these seemingly unassailable arguments and base their prohibition of qeri’atha-Torah on the secondary ground that the practice would be an affront to the “dignity of the congregation”? The conclusion must be that no primary objection to women’s reading can be adduced.

A number of reasons can be suggested for why, according to the baraita, women are at least theoretically capable of performing qeri’atha-Torah on behalf of men. The first is as suggested by R. Avraham Avli Gombiner in Magen Avraham, who concludes, based on the rule of “All are included among the seven...” and on a passage from...
Masekhet Soferim states that “women are obligated to hear the reading of the book (sefer) as are men,” that men and women are equally obliged with respect to qer'i'at ha-Torah. This is so because the model for qer'i'at ha-Torah is the mitsvah of haqhel, in which women participated together with men. R. Hayyim David Azulai (Hida) in Birkot Yoʃa 14 follows Magen Avraham, and finds an additional link between women and qer'i'at ha-Torah in the Tur Shulhan Arukh’s explanation that four aliyyot (instead of the usual three) are read in the synagogue on Rosh Hodesh because women in any event refrain from work on that day, and so the additional aliyyah will not unduly extend the service and keep people from their work (bittul melakhah).15 Yet another explanation for why woman may read on behalf of men is offered by R. Samuel Halevi Kolin in Mahatsit ha-Sheqel16, and R. Aryeh Leib Gunzburg in Turei Even17, based on the principle of the Tosafot18 that rabbinically ordained mitsvot (such as qer'i'at ha-Torah) may be performed by the non-obligated on behalf of the obligated.

But the matter is best and most comprehensively resolved if we first understand the nature of the obligation of qer'i'at ha-Torah.19 It is well established that qer'i'at ha-Torah is a communal, rather than a personal, obligation. That is to say, the community, for this purpose a quorum of ten adult Jewish males, is obligated to provide a public Torah reading on Mondays, Thursdays, Shabbat and festivals, but the individual is not obligated to hear the reading.20 This principle, although dominant among rishonim, is generally identified with R. Moshe ben Nahman (Ramban)21 who, in explaining why the reading of the

for a public Megillah reading.

Magen Avraham identifies the issue of a minor being included in a minyan with that of a woman being included in a minyan and concludes that the issue is unsettled.

According to R. Yehuda Henkin (Benei Banim II, Chap. 10, p.43), Magen Avraham’s opinion is a misinterpretation of the passage in Masekhet Soferim as the “sefer” referred to therein is the Book of Lamentations (Eikhah) read on Tish’a be-Av, and not the sefer torah.

- The mitsvah of haqhel appears in Deut. 31:12:

Gather the people - men, women, children, and the strangers in your communities - that they may hear and so learn to revere the Lord your God and to observe faithfully every word of this teaching.

- Barci kippur, d’mei me’olam yisira. (Yirmiyah 1:5). This is the source of the phrase: “the Torah is a light unto the nations.”

- The mitsvah of qer'i'at ha-Torah is performed in the community, rather than by the individual. Therefore, if a woman is included in the community, she is included in the mitsvah.

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- According to tradition, public torah reading on the mornings of Shabbat and Mondays and Thursdays was enacted by Moses so that three days not go by without Torah study. Ezra supplemented Moses’ enactment by introducing Torah reading on Shabbat afternoons as well in order to provide a productive activity for the idle (Yevamot 86a). Ezra also introduced the practice of having three aliyyot read on Monday and Thursday. See Rambam, Hilkhot Tefillah, chapter 12.

- In halakhic parlance qer'i'at ha-Torah is a communal activity that involves the entire community, rather than an activity that is performed by the individual. Therefore, if a woman is included in the community, she is included in the mitsvah.

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Megillah was not included in the list set forth in Mishnah Megillah of religious ceremonies requiring a quorum of ten, explained that the Mishnah included only rites, such as qeri’at ha-Torah, that are communal obligations, reading of the Megillah being an individual obligation. While it is preferable to hear the Megillah with a minyan, a person is obligated to read the Megillah privately, if a minyan is for any reason unavailable. By contrast, the obligation of qeri’at ha-Torah rests exclusively on the community, represented by ten men. Without a minyan, an individual is not obligated to read the Torah privately.23

The Ramban’s principle is echoed by numerous other rishonim, including R. Menachem Ha-Meiri,24 Rabbenu Nissim (Ran),25 and Rabbenu Asher (Rosh), who describe the enactment of qeri’at ha-Torah as placing an obligation on the congregation to provide a Torah reading. It is suggested as well by Rambam, who, in his Mishnah Torah, presents the rules of qeri’at ha-Torah in chapter 12 of the Laws of Prayer (Hilkhot Tefillah), only after first summarizing the rules of prayer generally in the first ten chapters, and laying down the duty of the community to build and maintain synagogues in chapter 11. This arrangement of the rules of prayer and qeri’at ha-Torah suggests Rambam viewed qeri’at ha-Torah as essentially a communal obligation revolving around the religious life of the synagogue.27 Ramban’s position is accepted as halakhah by R. Elijah of Vilna28 and, among contemporary poseqim, by R. Moshe Feinstein29 and by R. Ovadiah Yosef.30

22 See Shulhan Arukh, Orach Hayyim 135:14, which is reluctant to permit a sefer torah to be removed from the synagogue even in order to accommodate an individual prisoner or sick person. See Rema and Magen David, who explain that this is to avoid the appearance that qeri’at ha-Torah may take place privately.

24 “社會務活動”עכיבת מטרות כ’ד. מ.”

25 “ㆬ sehen בתריון על ממסת מملابس כ’ד.”

26 “倫理 dependence on the com-

27 Ramban’s organization of the rules of qeri’at ha-Torah follows that of chapter 3 of Mishnah Megillah, beginning with a description of the sanctity of the synagogue and concluding with the rules of qeri’at ha-Torah. Ramban’s principle finds practical application in the rulings cited by R. Joseph Karo in the Shulhan Arukh (Orach Hayyim 146:2) that congregants may quietly discuss “matters of Torah” during the time of qeri’at ha-Torah, provided that at least ten persons remain attentive to the reading; that a person may devote the time of qeri’at ha-Torah to his own review of the weekly Torah portion or other Torah studies; and that it is permitted to leave the synagogue (presumably not to return) between aliyyot. Although these practices are not encouraged and may be seen as breaches of synagogue etiquette, they do not violate the essential law (הידך הרות). Ramban’s opinion also accounts for our practice of not requiring a person who misses qeri’at ha-Torah, even due to his own negligence, to attend a compensatory qeri’at ha-Torah. See Iggerot Mosheh (Orach Hayyim 4:23), where R. Moshe Feinstein urges his correspondent to listen carefully to qeri’at ha-Torah in the synagogue as he will not hear it again.

28 See Issachar Ber of Vilna, Ma’aseh Rav, Section 175, cited in R. Ovadiah Yosef, Resp. Yabba’a Omer, v. 1, Orach Hayyim, Section 14. “倫理 dependence on the com-

29 “倫理 dependence on the com-

30 R. Moshe Feinstein’s practical purpose in this short response was, apart from halakhic theory, to urge attendance at qeri’at ha-Torah.

Despite R. Moshe Feinstein’s assertion that Ramban’s position is “universally” accepted, there are some dissenters. Among rishonim there is Zedekiah ben Abraham Anaw who, in Shibbolei ha-Leqet (cited in Bet Yosef, Orach Hayyim 146), held, unlike the Tur and the Shulhan Arukh, that it was prohibited to study during qeri’at ha-Torah because everyone was obliged to hear the reading. R. Yisrael Meir Kagan (Hafetz Haim) cites the Shibbolei ha-Leqet in Beur ha-Golah (Orach Hayyim 146:2) with approval, but admits that the halakhah appears to be otherwise. In Mishnah Berurah (Orach Hayyim 146:2:8), Hafetz Haim holds that one may study quietly during qeri’at ha-Torah as long as there are at least ten persons listening to the reading.

See R. Hershel Schachter, Nefesh ha-Rav (Jerusalem Reishit Yerushalayim 1994), p.130, who reports that R. Yosef Dov Soloveitchik, following the practice of his grandfather, R. Chaim Soloveitchik, would organize a qeri’at ha-Torah for mincha on those weekdays when he missed qeri’at ha-Torah in
If there is no personal obligation to hear qeri’atha-Torah, then a woman should be eligible to read the Torah on behalf of men, and this is the position so clearly enunciated by the baraita: “All may be included among the seven, even a minor and a woman.” The sticky issue of a woman who is exempt from the mitsvah performing a personal religious obligation on behalf of men simply does not come into play; since the obligation of qeri’atha-Torah is communal and not personal, the Rabbis were apparently of the view that, in principle, the congregation could discharge this duty through its representatives, including women and minors who were not themselves obligated to study Torah. This is the forthright conclusion of Meiri:

A minor may read the Torah because the purpose [of qeri’atha-Torah] is only to make it heard to the people, and this is not a full mitsvah like other mitsvot concerning which it is said that whoever is not himself obligated may not fulfill the obligation on behalf of others. 

R. Ovadiah Yosef clarifies that this principle applies to women as well:

And the reason [a woman] may receive an aliyyah even though she is not obligated [to study Torah] and we hold that “one who is not himself under obligation to perform a religious duty cannot perform it on behalf of a congregation” [requires explanation], for how can she perform the obligation [of qeri’atha-Torah] on behalf of the congregation? The answer is as follows: the purpose of qeri’atha-Torah is that [the congregation] should understand and hear the Torah. It makes no difference who reads, for even a woman or a minor may read and fulfill the congregation’s obligation, because in the final analysis all hear the Torah and learn. Therefore, in such a case we do not require that [the mitsvah be performed] by a person who is himself obligated. This is what the Meiri and the Rosh have written: that qeri’atha-Torah is not a personal obligation, but a communal obligation, and only for [mitsvot that are] personal obligations do we require that the one who performs on behalf of others be himself obligated. 

Hence, the disability of women in the area of qeri’atha-Torah came about only because of concern for the “dignity of the congregation.”

B. Birkhot ha-Torah

It is also notable that the Rabbis did not object to women reading the Torah on the grounds that they could not recite (either for themselves or on behalf of the congrega-
tion) the blessings over the Torah reading before and after the aliyyot. The fact that the Rabbis did not a priori exclude women from reciting the birkhot ha-Torah highlights that they did not consider the birkhotha-Torah an obstacle to women's Torah reading, and anticipates the principle spelled out centuries later by the Ramban that qeri'at ha-Torah is not a personal religious obligation, and that the blessings recited with the reading are therefore not typical birkhoth ha-mitsvah (blessings recited prior to performing a mitsvah).

Birkhotha-Torah are recited in two versions: as part of the daily preliminary morning service, and by persons receiving aliyyot during qeri'at ha-Torah. The conceptual relationship between these two versions is not altogether clear, but in both cases, these blessings are not regarded by most rishonim as typical birkhoth ha-mitsvah.33 Ramban, in his glosses on Rambam's Sefer ha-Mitsvot,34 reckons the daily obligation to recite birkhoth ha-Torah before studying Torah as a positive Torah commandment (mitsvat aseh) to thank God for giving us the Torah; birkhoth ha-Torah are not blessings arising out of the mitsvah of Torah study, but blessings of thanksgiving (birkhoth hoda`ah). Ramban's position is endorsed by R. Isaac b. David de Silva in Peri Hadash,35 and by R. Aryeh Leib b. Asher Gunzburg in Sha'agat Aryeh.42 Among later poseqim, Ramban's opinion that birkhotha-Torah, being of biblical origin, are not birkhoth mitsvah relating to the mitsvah of talmud torah, is adopted by R. H. Ezekiah ben David De Silva in Peri Hadash,42 and by R. Israel M'er Kagan in Mishnah Berurah regards Ramban's position as the predominant view.44

If birkhotha-Torah are not a function of the mitsvah of talmud torah (from which women are exempt), women as well as men should be obligated to recite them. Accordingly, R. Yosef Karo, in Shulhan Arukh, rules that...
women recite birkhot ha-Torah” in the daily morning prayers despite their exemption from the mitsvah of Torah study. Shulhan Arukh’s position is particularly significant in light of R. Yosef Karo’s general view that women may not recite blessings when voluntarily performing mitsvot from which they are exempted.

The specific birkhot ha-Torah of qeri’at ha-Torah are also generally not regarded as birkhot ha-mitsvah arising out of the mitsvah of Torah study. As initially enacted, only the first and last olim said the blessings on qeri’at ha-Torah, the former before the reading began and the latter at its conclusion. The current practice of reciting blessings before and after each aliyyah, including the intermediate ones, was instituted during the talmudic period in order to avoid error on the part of “people entering and leaving the synagogue” during qeri’at ha-Torah, who might erroneously conclude that qeri’at ha-Torah did not require an introductory or concluding blessing, thereby causing injury to kevod ha-Torah. The Geonim, Rabbenu Tam, R. Moshe of Coucy in Sefer Mitzvot Gadol, R. Eliezer b. R. Joel ha-Levi of Bonn (Rayyah), R. Isaac of Vienna (Or Zaru’a), Rosh, Meiri, R. Yaakov b. R. Asher in the Tur, R. David Abudarham and R. Yosef Karo in Shulhan Arukh understand this to mean that the blessings recited over qeri’at ha-Torah are not birkhot ha-mitsvah associated with the mitsvah of talmud torah, but rather blessings enacted specifically to enhance qeri’at ha-

Danzig in Chayyei Adam.

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The apparent contradiction between the Shulhan Arukh’s rulings in Siman 47 (women say birkhot ha-Torah) and in Siman 17 (women may not say blessings on mitsvot from which they are exempt) is discussed at length by R. Eliezer Waldenberg in Tsits Eliezer and by Hida in Yosef Ometz.

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The entire matter is well summed up by Rosh, who explains in the name of Rabbenu Tam why minors, slaves and women may be included among the seven olim to the Torah and recite the birkhot ha-Torah even though they are exempt from the mitsvah of Torah study:

And the fact that a minor and a slave and a woman who are not [obligated] in Torah study are included in the quorum of seven [who receive aliyyot to the Torah on Shabbat] is because the sefer torah is there for the purpose of being heard, and the blessing is not said in vain, for they do not bless “Who has sanctified us with his commandments and commanded us in the words of the Torah” but rather “Who has chosen us and given us [the Torah].”

According to Rosh’s view, minors, women and slaves, even if they are not among the “commanded,” are among the “chosen.” The `oleh who recites birkhot ha-Torah, as one expressing his thanksgiving for having been chosen to receive the Torah, is not discharging the listeners’ obligation to hear these blessings. This is the halakhic conclusion reached as well by Tosafot,60 by R. David b. Solomon ibn Avi Zimra (Radbaz),61 and by R. Ezekiel b. Judah Landau (Noda bi-Yehudah).62 On this basis, we can remove the objection that women are excluded from qer'i'at ha-Torah because they cannot say birkhot ha-Torah on behalf of male congregants.

The theoretical underpinning for this position was articulated by R. Chaim Soloveitchik (and others of the Soloveitchik family) who, in classic “Brisk” fashion,63 posited that the basis (mehayyev) of birkhot ha-Torah is not the mitsvah of Torah study, from which women are generally exempt, but that “Torah essentially requires a blessing”; anyone, man or woman, who studies or reads

The point of departure for both the Tur and the Shulhan Arukh is the case of a person who arrives late to the synagogue and is called for an aliyyah just as he completes reciting the birkhot ha-Torah of the daily morning prayers. Must this person now say the birkhot ha-Torah for his aliyyah, or is the repetition regarded as a berakhah le-vattalah? Tur (following Rosh) and Shulhan Arukh held that the birkhot ha-Torah must be repeated in such a case, inasmuch as they were enacted for kevod ha-Torah, and standard rules of berakhot do not apply. R. Yosef Karo in Bet Yosef (Orah Hayyim 139) cites R. Isaac (II) Aboab who deduced from this ruling of Tur that it is not necessary for the congregation to hear the birkhot ha-Torah of qer'i'at ha-Torah.

58 The substance of R. Chaim’s interpretation was anticipated by R. Joseph Babad in Minhat Hinukh (Positive Commandment 430), who explained that Shulhan Arukh’s ruling that women are required to recite birkhot ha-Torah even though they are exempt from the mitsvah of talmud torah was based on Ramban’s view of birkhot ha-Torah as birkhot hoda’ah; anyone who studies Torah, even a woman who is not so commanded, must first say a blessing of thanksgiving.

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Torah must recite birkhot ha-Torah. R. Chaim invoked this principle to reconcile our baraita that, in theory at least, permits women to read Torah and recite birkhot ha-Torah on behalf of men, and the ruling of the Shulhan Arukh that women should recite the daily birkhat ha-Torah even though they are exempted from talmud Torah. Similar positions are attributed to R. Isaac Ze’ev Soloveitchik and to R. Yosef Dov Soloveitchik.

Although Ramban’s and R. Chaim’s interpretation of birkhotha-Torah provides a congenial conceptual basis for women’s recitation of those blessings, it is by no means the only one. Some posekim, such as R. Moshe of Coucy in Sefer Mitzvot Gadol and R. Joshua Falk in Derishah, who hold that the birkhat ha-Torah recited daily are implicated with the mitsvah of talmud Torah, hold as well that they should be recited by women, who have an obligation of talmud Torah at least with respect to those laws that apply to them. R. Joseph Teimim in Peri Megadim and R. Israel Meir Kagan in Beur Halakha observe that this limited obligation of talmud Torah is sufficient to empower women to say birkhat ha-Torah on behalf of men.

R. Elijah of Vilna, who views the daily birkhat ha-Torah as being birkha-mitsvah with respect to the mitsvah of talmud Torah, rejects the notion of women having a partial obligation of talmud Torah, but nonetheless holds that women can say birkhatoha-Torah insomuch as they are generally entitled to recite blessings when voluntarily performing time-bound mitsvot. In yet another vein, R. Jacob Landau in Agur and R. Abraham Gombiner in Magen Avraham argue that birkhat ha-Torah, being part of the daily prayer service, should be

To be sure, R. Chaim’s position is not identical with that of Tur and Shulhan Arukh and others who held that the question of fulfilling an obligation on behalf of others did not arise with respect to the birkhotha-Torah recited on qeri’at ha-Torah, because this sort of birkhat ha-Torah was enacted for kevoda-Torah and was therefore not a typical birkhat ha-mitsvah. R. Chaim’s position is much more far-reaching; men and women are on equal footing with respect to birkhat ha-Torah and women may in all cases recite the blessing on behalf of men.

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Thus, according to R. Waldenberg, women must recite birkhat ha-Torah even if their study is limited to those areas of practical halakhah that concern them.

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67. As cited in Bet Yosef (Orah Hayyim 47).

68. Sefer Mitzvot Gadol cited in Bet Yosef (Orah Hayyim 47).

69. מִנְבָּט מְרֶשֶׁה של חָרָב (וּרְשִׁישֵׁל השיל”) עָם 31: Desde el momento que una ley de halakhah es publicada en el Or código, debe ser recitada por todas las mujeres, incluso las que no estén en la edad de matrimonio, pero que están en el tiempo de oración.

70. מְשַׁבְּתוֹן אַפְרָא תִּשְׁמֵש מ”ט (משתת לברא). בּוֹא תָּכֹנֶה, גַּתּוֹן חָרָב אַפְרָא תִּשְׁמֵש מ”ט (משתת לברא).

71. בּוֹא תָּכֹנֶה, גַּתּוֹן חָרָב אַפְרָא תִּשְׁמֵש מ”ט (משתת לברא).

72. Cited in Bet Yosef (Orah Hayyim 47).
recited by women who are obligated to pray.\textsuperscript{75} Finally, with reference to the specific birkhot ha-Torah recited with qeri‘at ha-Torah, R. Simhah of Vitry in M\textsuperscript{ah}zor Vitry\textsuperscript{76} regards these blessings as birkhot ha-mitsvah on talmud torah, but concludes on the basis of the baraita of “all may be included” and the general principle that women may recite blessings when voluntarily performing mitsvot from which they are exempted, that they may be recited by women.

A dissenting opinion that birkhota-Torah are birkhot ha-mitsvah that may not be said by women, who are exempt from the mitsvah of Torah study, is cited by M\textsuperscript{eiri} in the name of “there is one who explains,” as follows:

There is one who explains that the rule [that all may be included in the number of seven] could be said only at the time when the middle [aliyyot] were read without a blessing, and a women could read in the middle. H\textsuperscript{o}wever, now when all [olim] say the blessings, a woman may not read at all. And this stands to reason for how can she say the blessing if she is exempt?\textsuperscript{77}

This view is occasionally attributed to M\textsuperscript{eiri} himself.\textsuperscript{78} This is an uncertain attribution, as we have already seen that M\textsuperscript{eiri} accepted the view that the birkhota-Torah recited on qeri‘at ha-Torah are not birkhot ha-mitsvah related to talmud torah,\textsuperscript{79} and are instead “blessings of

\textsuperscript{75} Arguably, this is the position of Rambam as well. Rambam cites the obligation to recite birkhota-Torah in chapter 7 of Hilkh\textsuperscript{o}t Tefillah, which contains as well the laws relating to birkhot ha-shahar generally. However, unlike birkhot ha-shahar which, according to Rambam, should be recited only if there is a specific obligation to do so (e.g., one may say the blessing of birkhot ha-shahar only if one actually hears the morning call of the rooster), birkhota-Torah must be included in the prayer service in any event, presumably also by women who, according to Rambam (Hilkh\textsuperscript{o}t Tefillah 1:2) are obligated in the mitsvah of prayer. Thus, although Rambam, unlike Ramban, does not reckon birkhota-Torah as one of the 613 biblical (mi-de-oreita) commandments, he does appear to view these blessings as an integral part of the rabbinically formulated daily prayer service arising out of the Torah commandment to engage in daily prayer. See Arukh ha-Shul\textsuperscript{an} (Or\textsuperscript{ah} H\textsuperscript{ay}im 47:2), who argues that Rambam in fact viewed birkhota-Torah as being of biblical origin.

\textsuperscript{76} A dissenting opinion that birkhota-Torah are birkhot ha-mitsvah that may not be said by women, who are exempt from the mitsvah of Torah study, is cited by M\textsuperscript{eiri} in the name of “there is one who explains,” as follows:

R. Avraham Weiss (Women at Prayer, p. 76) cites M\textsuperscript{eiri} for the proposition that women may not recite birkhota-Torah “and fulfill the obligation of the listeners with respect to qeri‘a-Torah betshabbur.” R. Weiss actually inserts these words as a bracketed clause appearing after the words “for how can she say the blessing” in his translation of M\textsuperscript{eiri}. R. Weiss’s interpretation/interpolation, which assumes that there exists a personal obligation to listen to qeri‘at ha-Torah, attributes to M\textsuperscript{eiri} a position he could not possibly have held. I have shown that no such personal obligation exists, only a communal obligation to provide a reading. Indeed, this view was explicitly held by M\textsuperscript{eiri}, who writes later on in his commentary with respect to Torah reading by a minor: “A minor may read the Torah because the purpose [of the reading] is only to make [the reading] heard to the people, and this is not a full mitsvah without a blessing, and a women could read in the middle. However, now when all [olim] say the blessings, a woman may not read at all. And this stands to reason for how can she say the blessing if she is exempt?\textsuperscript{77}

This view is occasionally attributed to M\textsuperscript{eiri} himself.\textsuperscript{78} This is an uncertain attribution, as we have already seen that M\textsuperscript{eiri} accepted the view that the birkhota-Torah recited on qeri‘at ha-Torah are not birkhot ha-mitsvah related to talmud torah,\textsuperscript{79} and are instead “blessings of
praise (birkhot ha-shevah).” Furthermore, Meiri introduces his presentation of the rule “that all may be included” with the observation that it applies to all instances of qeri’at ha-Torah, including those where fewer than seven olim are called. This being the case, even prior to the enactment that all olim recite blessings, a woman receiving an aliyyah in the Monday, Thursday or Shabbat afternoon readings would necessarily be the last reader, who would be required to recite birkhotha-Torah. Also, when discussing whether women may join a zimmun (“invitation” for grace after meals) with men, Meiri briefly surveys other areas where the question of women’s inclusion in a required minyan arises and, while acknowledging the opinion that women are now excluded entirely from qeri’at ha-Torah, states what appears to be his own view that women are excluded from qeri’at ha-Torah only because of kevod ha-tsibbur, and they might therefore be included in the quorum of ten required for the public Torah reading. Nonetheless, since Meiri is the primary source for those who prohibit qeri’at ha-Torah by women on the grounds that women may not say the birkhotha-Torah, it would be instructive to examine the origins of this opinion and evaluate its halakhic weight.

The opinion cited by Meiri rests on two assumptions: birkhotha-Torah (at least with respect to qeri’at ha-Torah) are birkhot ha-mitsvah; and women may not recite birkhot ha-mitsvah when voluntarily performing mitsvot from which they are exempt (in this case the mitsvah of Torah study). With respect to the first assumption, the general question of whether women may recite berakhot when they perform mitsvot from which they are exempt is the subject of a long-standing dispute among the poseqim, generally breaking along an Ashkenazic/Sephardic divide. Rambam, in Hilkhot Tshit (3:9) holds that:

women and slaves who want to wrap themselves in tsitit wrap themselves without [reciting the] blessing. And similarly, with the rest of the positive commandments from which women are exempt, if they wish to perform them without the blessing, we do not protest.

R. Yosef Karo in Beit Yosef rules, like Rambam, that women may not recite blessings on mitsvot they fulfill vol-

Raban apparently agreed with the position of R. Jonah. R. Zvi Pesach Frank does not resolve the issue.

See R. Yehuda Herzl Henkin:

שָׁליֵי בְּסֵבֶנִים (רָצוֹמִים שֵׁנָּא) סִימוֹנָא ד (שֶׁמֶחָד מְבֹרָא בְּתוֹנִיָּה בְּכָלָּה בְּכָלָה) עֹשֵׂה: משָׁלוֹ הַשָּׁלוֹחֲנָה דְּבַרְבָּן שֵׁלָמְתָה שלַק לַקְּלִים שֶׁיָּכְלִים.

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The opinion is cited as well by Rosh, who, as we have seen, rejects it.

See R. Yehuda Herzl Henkin:

לָא נָא עָלֶה לְמַלְכָּה לְשֵׁלַק מִצְוָתָה. וּכְלֵיהֶם שֵׁפַעְאוּן לְעָלַיָהוּ לְמַלְכָּה.

Rav. Zvi Pesach Frank does not resolve the issue. See R. Yehuda Herzl Henkin:

לָא נָא עָלֶה לְמַלְכָּה לְשֵׁלַק מִצְוָתָה. וּכְלֵיהֶם שֵׁפַעְאוּן לְעָלַיָהוּ לְמַלְכָּה.

The opinion is cited as well by Rosh, who, as we have seen, rejects it.

See R. Yehuda Herzl Henkin:
R. Mosheh Isserles (Rema), in his gloss on Shulhan Arukh, demurs in favor of the opinion of Rabbenu Tam, and writes:

Nonetheless if [women or slaves] wish to wrap themselves [in a tallit] and make a blessing on it they may do so, as is the case with the rest of “time determined” positive commandments.

Contemporary Sephardim halakhic practice continues to follow Rambam and R. Yosef Karo; Ashkenazic practice follows Rabbenu Tam and Rema.

Rabbenu Tam, the chief proponent of the view that that women are permitted to recite blessings when voluntarily performing “time-determined” positive commandments, presented his position in numerous instances, and it was discussed at length by the Tosafists. At one point in the discussion, R. Yitshaq ben Yehudah suggested to Rabbenu Tam that the baraita of “All may be included in the number of seven...even women” supports Rabbenu Tam’s position. Given that women are exempt from the commandment of Torah study, their eligibility under the baraita (in theory at least) to receive aliyot and presumably to recite the birkhot ha-Torah seemed to R. Yitshaq ben Yehudah to be powerful evidence in Rabbenu Tam’s favor. Rabbenu Tam, to whom the suggestion was apparently directly made, declined the offer of support on the grounds that the blessings recited on qeri’atha-Torah are not birkhot ha-mitsvah and cannot therefore be implicated in the discussion of whether women may recite such berakhot.

Rabbenu Tam’s discussion with R. Yitshaq ben Yehudah included an aside that is the source of the restrictive opinion cited by M. Meiri in the name of “there is one who explains.” In the course of their exchange, Rabbenu Tam pointed out to R. Yitshaq ben Yehudah that the baraita of “all may be included” was in any case not conclusive evidence that women could recite birkha ha-mitsvah. The rule of the baraita was promulgated at a time when only the first and last olim recited blessings, and possibly women were then allowed to receive only the intermediate aliya, for which no blessings were said. This, of course, would have suggested that women could not recite the blessings, the opposite of what Rabbenu Tam had set out to prove. Rabbenu Tam counters this possible implication by saying that the language of the baraita suggests that a woman can receive the seventh aliya (“All may be included for the count of seven”), which all agreed required blessings. In any event, it is clear that Rabbenu Tam’s primary objection to R. Yitshaq ben Yehudah’s proffered proof text was that the berakhot recited on qeri’ath-Torah were not birkhot ha-mitsvah.

We have seen that the great majority of poseqim, for a
variety of reasons, see no impediment to women reciting the birkhot ha-Torah. The sole opinion that explicitly precludes women from qeri’atha-Torah because they may not say the attendant blessings has its origins in an aside mentioned in Tosafot whose purpose is to prove the very opposite, and it rests on the assumption that women may never recite blessings when performing mitzvot from which they are exempt. We may safely say that the weight of halakhic authority comes down heavily in favor of women’s capacity to recite the birkhot ha-Torah.90

C. The Ba’al Qeri’ah and the “Inclusive Bias”

It is also worthwhile pointing out at the outset that the institution of the ba’al qeri’ah, the designated reader for all those called to the Torah, was firmly entrenched by the period of the rishonim. As originally enacted, qeri’at ha-Torah was performed by those who received aliyyot; each oleh read his own portion. After the introduction of the ba’al qeri’ah, the common practice was for the ba’al qeri’ah to read the Torah aloud while the person who received the aliyyah either listened or read along silently, taking his cues from the ba’al qeri’ah. According to most rishonim,94 the Rabbis enacted that the Torah be read by a ba’al qeri’ah in order to avoid embarrassing those who could not read themselves and would otherwise be denied the honor of being called to the Torah, or perhaps even withdraw from services entirely for fear of being called upon to read publicly.96 For our purposes, it invites us to query whether, even if we concede

90. I have heard the argument put forward that women may not say birkhot ha-Torah of qeri’atha-Torah because they are davar she-bi-qedushah (rites of sanctification of God’s name), which women may not recite, but I have found no evidence to support this conclusion. Devarim she-bi-qedushah require an appropriate minyan. Absent such a minyan, they may not be said by men or women. Where there is such a minyan, there is no reason to suppose that women may not say devarim she-bi-qedushah.

91. I have also heard it argued that women are precluded from saying the barekhu that precedes the birkhot ha-Torah said by those called to the Torah. I have found no basis for this position and can only speculate that its origin may be in the perception of barekhu as a davar she-bi-qedushah that women may not say. Again, there is no reason to believe that women may not say devarim she-bi-qedushah in the presence of a minyan of ten men. Indeed, R. Moshe Sofer (Hatam Sofer) suggests that even prior to the enactment that birkhot ha-Torah be said before and after each aliyyah, all olim (presumably including women) introduced their aliyyot saying barukh.

92. Similarly Tosafot, Ran and Ritva cited in footnote 91 above.

93. But see Rosh, who held that the ba’al qeri’ah was introduced in order to improve the general level of qeri’atha-Torah, and not to placate the ignorant. He held that education was the remedy for illiteracy.
that a woman may not read the Torah aloud, she may be called to the Torah for an aliyyah where the Torah is read by a male ba`al qeri`ah.

Of equal if not greater significance was the spirit of inclusiveness that animated the enactment. The rishonim who introduced the practice of having a ba`al qeri`ah were faithful to halakhic precedent that went to lengths to include women and the unlearned in the life of the religious community, even to the point of finessing explicit prohibitions. The outstanding exemplar of this approach is R. Yosi who held that women bringing sacrifices in the Temple might voluntarily “lay hands (somekhot) on their offering prior to its slaughter.97 Both R. Yosi and his dis-putant, R. Yehudah, agreed that women were exempt from the “semikhah” requirement. R. Yehudah, citing a verse from the Torah, held that women were prohibited from “laying hands.” R. Yosi disagreed and permitted women to lay hands, if only to give them “satisfaction (nahat ruah)”.98 Rambam rules according to R. Yehudah's opinion that women may not voluntarily “lay hands,”99 a view consistent with Rambam's ruling that women may not recite blessings on mitsvot they perform voluntarily. Rabbenu Tam, while acknowledging that general princ-

96 rimp. 1:2 סמייקות כוס תרטוע כשת.Small text: Shapiro 16

97 98 99 101 102 103

R. Yosi's inclusive bias has informed halakhic decision-making through the ages. Thus, despite the unchallenged Tannaitic prohibition recorded in Pesahim 49b against accepting testimony from ammei ha-arets,102 the Talmud, in order to avoid social animosity (eivah), preferred to adopt in practice the minority view of R. Yosi, who taught: “Wherefore are all trusted throughout the year in regard to the cleanliness of the wine and oil [they bring for temple use]? It is in order that everyone may not go and give and build a high place and burn a red heifer for himself.” The implication of R. Yosi's position was not lost on the rabbis of the Talmud, who extended it even further: “R. Papa said: According to whom is it that we accept nowadays the testimony of an am ha-arets? According to whom? According to R. Yosi.”103
The risk of having everyone “build his own altar” was grasped as well by the rishonim who, despite an explicit Tannaitic prohibition, permitted an am ha-aretz to join the quorum of three required for reciting the grace after meals with zimmun. The Talmud (Berakhot 47b) cites a bariata: “It has been taught: An am ha-aretz is not reckoned for the zimmun.” Nonetheless, Tosafot (on Hagigah 22a) cite R. Elhanan, one of the Tosafists, as follows:

R. Elhanan says that we rule like R. Yosi, who is concerned about animosity, and we therefore now include every am ha-aretz in the zimmun, even though it is said in Berakhot that an am ha-aretz is not reckoned for the zimmun.

R. Elhanan’s position is today common practice.

The implications for the case of qeri’at ha-Torah by women should be clear: a genuine doubt about the propriety of Torah reading by women should be resolved in favor of the inclusive, rather than the exclusive, position. The “slippery slope” arguments that warn of the dire consequences of change to the delicate fabric of communal religious life rarely give much consideration to the countervailing risk that attitudes that suppress the halakhic impulse to embrace and “give pleasure (nahat ruah)” to a wide audience as possible may lead to the estrangement and alienation of many religiously serious persons from the Orthodox community. The call for greater participation by women in synagogue life has by and large been met with a willingness to consider, and on occasion encourage, separate women’s prayer services. The conduct of these services raise knotty halakhic and social issues that are arguably far more serious than those posed by the question of women’s aliyyot and Torah reading in a minyan. It is remarkable that Rabbis would seriously consider an innovation that actively calls on half the community to “build its own altar,” before exploring the option of uniting kedal yisrael in a single prayer community to the extent that it is halakhically feasible. Perhaps it is less unsettling simply to remove the “problem” from the synagogue and the direct responsibility of the rabbi, but is that in keeping with the spirit of responsibility and inclusiveness expressed in the halakhah?

But if matters are so straightforward, why is there such resistance to women’s participation in qeri’at ha-Torah? Do the classical sources, the rishonim and poseqim in any way sanction it? What is called for is a comprehensive

R. Yose was concerned that if the wine and oil that the ammei ha-aretz brought for Temple use would not be acceptable, the ammei ha-aretz would leave the community and form their own religious associations.

...
review of the sources beginning with the baraita and Tosefta and ending with contemporary considerations. What will appear is that not only halakhah comes into play, but also people’s attitudes towards the halakhic process.

Let us now study the sugya.

III. The Primary Sources: Baraita, Tosefta and Yerushalmi

A. “Everyone may be included among the seven...”

The baraita cited in the previous section— “All may be included among the seven [called to the Torah on Shabbat], even a minor and a woman, but the Sages said that a woman should not read in the Torah because of the dignity of the congregation (kavod ha-tsibbur),”— has its parallel in the Tosefta (Megillah 3:11), which states: “All may be included among the seven [called to the Torah on Shabbat], even a woman, even a minor. We do not bring a woman to read to the public.”

The opening statements in the passages from the baraita and the Tosefta are similar: Everyone, including women, may be included among the seven called to the Torah on Shabbat. The texts diverge in their formulation of the prohibition against women reading the Torah. The Tosefta simply states: “We do not bring a woman to read to the public,” leaving open the possibility that there may be circumstances where a woman might read. The baraita is more sweeping in its prohibition, proposing as well an explanation: “a woman should not read in the Torah because of the dignity of the congregation.”

How are the baraita and Tosefta to be understood in relation to each other? Are they complementary sources, opposing sources, or must each be understood alone on its own terms? To what circumstance does the Tosefta’s term “bring a woman to read to the public” refer, and how does it relate, if at all, to the formulation of the baraita? May minors and women be included only on Shabbat, when there are seven aliyyot, or may they be included as well in readings where there are fewer than seven aliyyot? Because of the paucity of source material that addresses these issues directly, the answers to many of these questions can only be inferred by playing out the concepts inherent in the sources we do have. Although the exercise does not guarantee indisputable results, I believe it is valuable, if only for providing a framework for classifying and comparing the various possibilities.

According to R. Isaac ben Moshe of Vienna (Or Zaru’a) and R. Isaiah of Trani (Rid), the Tosefta’s statement that “we do not bring a woman to read to the public” must be understood in light of the ensuing passage in the Tosefta: “In a synagogue where there is only one person who can read, [that person] stands and reads...”

108. Hana and Shmuel Safrai, “Ha-Kol Olin le-Minyan Shiv’a,” Tarbiz 66 (Nisan, Sivan 5757): 395, 400, point out the internal contradiction in the formulation of the baraita: an inclusory introduction followed by a blanket prohibition. This formulation would indicate that the practice of giving women aliyyot existed at one time. Otherwise, it is difficult to understand why the baraita would permit women to read Torah, only immediately to forbid it. By contrast, the formulation of the Tosefta begins with an inclusory introduction that is then qualified, but not entirely negated.

109. Note, however, that the baraita gives priority to minors while the Tosefta gives priority to women.

110. Shapiro 18
and sits, stands reads and sits, even seven times.”

According to this interpretation, the Tosefta speaks to a situation where a reader must be brought to a congregation that is without a Torah reader. The Tosefta rules that in such an event, the congregation may not “bring” a woman to read, presumably even at the price of canceling qeri’at ha-Torah, because qeri’at ha-Torah cannot take place where a woman is the only reader. However, at a service where there are male readers, it would appear that the Tosefta would allow a woman to be included among the seven who are called to the Torah to read.

Two reasons come to mind for prohibiting women from being the exclusive Torah readers. The most obvious, of course, is the reason offered by the parallel baraita, namely, that having the Torah read only by women is an affront to the “dignity of the congregation.” But another plausible explanation may be that the initial enactment of qeri’at ha-Torah provided that the communal obligation could not be properly fulfilled where women were the only readers. That is to say, the prohibition on women’s participation in qeri’at ha-Torah on an equal footing with men is inherent in qeri’at ha-Torah, and is not an “afterthought” arising out of concern for kedov ha-tsibbur.

This second reason for the Tosefta’s prohibition on women being the exclusive Torah readers may be derived from understanding the difference of opinion between R. Isaac ben Moshe of Vienna (Or Zaru’a) and Rid with respect to another, related issue: namely, whether a minor can be called for one of the three aliyyot read in the synagogue on Mondays, Thursdays and Shabbat afternoons. Or Zaru’a, following the lead of Rabbenu Simhah, held that minors and women are in principle eligible for all aliyyot, including on days when the qeri’at ha-Torah was divided into only three portions.

According to this view, only concern for the “dignity of the congregation” prevents women from being Torah readers, and the only reason why the baraita spoke in terms of the seven aliyyot of Shabbat is because on that day the synagogues are fully attended and the issue of kedov ha-tsibbur is particularly acute.

A divergent view is held by Rid, who construes the Tosefta/baraita narrowly, as permitting qeri’at ha-Torah by minors and women only on Shabbat, when they can be included among the seven aliyyot. Women and minors, however, may not read the Torah on days when there are only “three or four” aliyyot. According to Rid, the enactment of qeri’at ha-Torah included the proviso that there be a core group of adult male readers, with minors and women being permitted to join only as “associate” participants. It seems then that according to Rid, women are excluded from being the sole Torah readers not on account of kedov ha-tsibbur, but because giving them that primary role would violate the terms of the

See also Saul Lieberman, Tosefta Ki-Feshutah, Part 5 (Seder Moed) (New York: The Jewish Theological Seminary of America 5762), p.1176, who follows Or Zaru’a and Tosafot ha-Rid.

113. Recall that at the time of the Tosefta there was not yet a ba’al qeri’ah and each person read the portion of the torah associated with his aliyyah.

114. According to Or Zaru’a, the number of aliyyot allocated to the various days is not significant. The prerequisite for qeri’at ha-Torah is the presence of ten men, not the minyan of seven or three. See Or Zaru’a I, 1982.

115. According to Or Zaru’a, the number of aliyyot allocated to the various days is not significant. The prerequisite for qeri’at ha-Torah is the presence of ten men, not the minyan of seven or three. See Or Zaru’a I, 1982.

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enactment of qeri’atha-Torah; i.e. such a qeri’atha-Torah would not fulfill the communal obligation to provide a public Torah reading. Kevod ha-tsibbur explains why women may not read the remaining four aliyyot.\textsuperscript{120}

An entirely different interpretation of the Tosefta and baraita is offered by R. Jacob Emden in his glosses and novellae on Megillah, who explains that the first clause of the baraita (“All may be included among the seven...”) applies to a situation where there are not seven men qualified to read the Torah, in which case aliyyot may be allocated to women and minors. The second clause (“a woman should not read in the Torah because of the dignity of the congregation”), in contrast, applies to the typical case where there are seven men present in the synagogue who can read.\textsuperscript{121} R. Emden does not cite the Tosefta, but his understanding of the baraita within the context of the “missing ba’al qeri’ah” discussion shows clearly that the Tosefta was on his mind. R. Emden appears then to dispute the interpretation of the Or Zarua’ and Rid, who understood the Tosefta as barring women only from being the exclusive Torah readers, because that would violate the terms of the enactment of qeri’atha-Torah, which called for at least one adult, male reader. The clause in the baraita that provides that a woman may not read the Torah “because of the dignity of the congregation” is, according to R. Lieberman, an innovation of the Babylonian Talmud that, by having the issue turn on kevod ha-tsibbur, excluded women from qeri’atha-Torah altogether.\textsuperscript{122}

A fourth interpretation is that of R. Saul Lieberman,\textsuperscript{123} who appears to view the baraita and Tosefta as conflicting sources. R. Lieberman interprets the Tosefta along the general lines of Or Zarua’/Rid as barring women only from being the exclusive Torah readers, because that would violate the terms of the enactment of qeri’atha-Torah, which called for at least one adult, male reader. The clause in the baraita that provides that a woman may not read the Torah “because of the dignity of the congregation” is, according to R. Lieberman, an innovation of the Babylonian Talmud that, by having the issue turn on kevod ha-tsibbur, excluded women from qeri’atha-Torah altogether.\textsuperscript{124}

Finally, there is the version of the baraita as quoted by R. Meir Hakohen of Rothenberg\textsuperscript{125} in his Hagghahot Maimuniyyot: “All can conclude (mashlimim) [qeri’ath-a-}

\textsuperscript{118}Rid does not address the situation of five (festivals other than Yom Kippur) or six (Yom Kippur) aliyyot.

\textsuperscript{119}This may be as well the view of R. Simon b. Zemach Duran who suggested that women and minors could be included among the seven as long as a core group of adult men were included as well. The expansion of qeri’atha-Torah on Shabbat to seven aliyyot reflected the honor of the day and was not intrinsic to the obligation of qeri’atha-Torah. Thus, women and minors were eligible to receive the “extra” aliyyot.

\textsuperscript{120}This understanding of Rid’s position somewhat modifies the conclusion in the previous section that qeri’atha-Torah, being a communal rather than a personal obligation, is approached by men and women on an equal footing, provided, of course, that it is performed with a minyan of ten men. According to Rid, that may be an overstatement. True, women may receive aliyyot, but only if at least some of the readers are men.

\textsuperscript{121}According to Or Zarua, the ba’al qeri’ah has to be a man. Thus, the baraita would have permitted women to read the Shabbat aliyyot if there was a male ba’al qeri’ah. R. Meir Hakohen of Rothenberg, however, understood the Tosefta to mean that only men can serve as ba’al qeri’ah.

\textsuperscript{122}Rid does not address the situation of five (festivals other than Yom Kippur) or six (Yom Kippur) aliyyot.

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Torah] with the seventh [aliyyah].”‒ According to this reading, women and minors are eligible only to receive the seventh aliyyah. The application of kevod ha-tsibbur according to Haggahot Maimuniyyot is unclear. One's initial inclination would be to understand Haggahot Maimuniyyot as precluding women from being called even for this last aliyyah because of the “dignity of the congregation.” But Haggahot Maimuniyyot cites his version of the baraita as explaining why the Talmud Yerushalmi permitted Canaanite slaves to read the Torah; the slaves read only the seventh aliyyah, which the baraita permitted. Apparently, Torah reading by a slave, who is generally regarded as having the same obligation to perform mitsvot as a woman, did not constitute an affront to the congregation. Arguably, then, a woman's reading of the seventh aliyyah likewise would not raise the objection of kevod ha-tsibbur. This possibility is given credence by reports that R. Isaac Luria in exceptional circumstances permitted women and minors to receive the seventh aliyyah.

We can sum up the various interpretations of the baraita/Tosefta as follows:

a. Or Zaru’a holds that minors and women are theoretically eligible to read all aliyyot; in practice women may not read because of kevod ha-tsibbur.

b. Rid holds that minors and women are theoretically eligible to read only four (or three) of the aliyyot; in practice women are barred from reading even these aliyyot because of kevod ha-tsibbur.

c. R. Jacob Emden permits women to read the Torah only where there is no man available to read.

d. R. David Pardo in principle permits women to read all aliyyot, but prohibits it in practice, ab initio.

e. R. Saul Lieberman distinguishes between the permissive view of the Tosefta, which would permit women’s aliyyot in all circumstances where women are not the sole readers, and the baraita as cited by the Talmud, which appears to prohibit the practice in all cases because of kevod ha-tsibbur.

f. R. Meir Hakohen of Rothenberg (Haggahot Maimuniyyot) reads the baraita/Tosefta as permitting women and minors to receive only the seventh aliyyah. It is unclear whether in practice kevod ha-tsibbur precludes women from reading even this aliyyah.

B. The Talmud Yerushalmi

Yerushalmi Megillah (4:3) and Yerushalmi Ketubot (2:10) cite the opinion of R. Ze’ira in the name of R. Yirmiyah that a Canaanite slave can be included among the seven readers of the Torah on Shabbat. In both sources, the Talmud accepts the ruling as a matter of

124. R. Lieberman is followed by R. Yosef Karo in Beit Yosef, Orah Hayyim 135:13 and in 282:3 quotes the Haggahot Maimuniyyot slightly differently: “זו עלול [& ינפוי], אך הכתה מימה ערבי (יהוספ מימא האברויי ב”), עמוד 395. See as well R. Yehudah Leib Graubart in Havalim ba-Ne’imim (Jerusalem Feldheim 5735), V. I, Chapter 29, p. 87, who argues that according to many rishonim in the Talmud Yerushalmi, in all cases, simply did not regard kevod ha-tsibbur as a halakhic category.

125. R. Yosef Karo in Beit Yosef, Orah Hayyim 135:13 and in 282:3 quotes the Haggahot Maimuniyyot slightly differently: “זו עלול [& ינפוי], אך הכתה מימה ערבי (יהוספ מימא האברויי ב”), עמוד 395. See as well R. Yehudah Leib Graubart in Havalim ba-Ne’imim (Jerusalem Feldheim 5735), V. I, Chapter 29, p. 87, who argues that according to many rishonim in the Talmud Yerushalmi, in all cases, simply did not regard kevod ha-tsibbur as a halakhic category.

126. It could also be argued that with respect to qeri'atha-Torah women are on a lower level even than slaves, who, if they are freed, become fully obligated in mitsvot. In this sense, a slave is closer to a minor than to a woman. But see Meiselman, Jewish Woman in Jewish Law, p.59 fn. 59, who attributes to Haggahot Maimuniyyot the view that qeri’atha-Torah by a slave does not violate kevod ha-tsibbur, which is a gender-based principle.
course, wondering only how a gentile slave could possibly know how to read, and answering that the reference was to an autodidactic slave or, alternatively, to a particularly wise slave whose master had taught him Torah. There is no hint that the practice of calling gentile slaves to the Torah might be regarded as an affront to the dignity of the congregation.

The Babylonian Talmud frequently mentions the rule that gentile slaves generally have the same obligation to perform mitsvot as do women: “Every mitsvah that is obligatory on a woman is obligatory on a slave; every mitsvah that is not obligatory on a woman is not obligatory on a slave.” Applying this rule to qeri’atha-Torah, R. David Frankel in Qorban ha-Edah observes that the Yerushalmi’s understanding that slaves were eligible for aliyyot was founded on the identification of slaves’ and women’s halakhic standing, implying that the Yerushalmi would permit women as well to receive aliyyot. Given the equation between women and gentile slaves in matters of mitsvah, why did the Yerushalmi not object to qeri’atha-Torah by such slaves on the grounds of kevod ha-tsibbur? Several answers suggest themselves.

The first is that the dignity of the congregation is a gender-sensitive concern. Even if women and slaves rate equally by the standard of halakhic obligation, the synagogue remains intractably the man’s domain, and it is more jarring to the congregation to see a woman receive an aliyyah than a slave. Thus, kevod ha-tsibbur is the measure of women’s social status, not her halakhic status.

Second, it is arguable that, unlike the Babylonian Talmud, the Yerushalmi simply did not recognize kevod ha-tsibbur as a factor in the issue of qeri’atha-Torah by women. We have already noted R. Lieberman’s observation that the clause “but the Rabbis said that a woman may not read the Torah because the dignity of the congregation” is the Bavli’s explanation for the Tosefta’s exclusion of women from aliyyot. R. Yehudah Leib Graubart in Havalim ba-N’im carries this argument further and writes that according to many mishenim the Yerushalmi simply did not recognize kevod ha-tsibbur as a halakhic category in any matter. If this true, we can perhaps posit differing Land-of-Israel and Babylonian traditions on qeri’atha-Torah by women. The Bavli totally rejected qeri’atha-Torah by women because of kevod ha-tsibbur, whereas the Tosefta and Yerushalmi prohibited the practice only where a woman would be the exclusive reader.

A third solution is as suggested by the interpretation of the Yerushalmi by the Haggahot Maimuniyot, namely, that a slave was permitted to read only the seventh aliyyah, and that such minimal participation does not violate kevod ha-tsibbur.

C. What is the “Dignity of the Congregation (Kevod ha-Tsibbur)”?

The baraita, as we have seen, disqualified women from qeri’atha-Torah because of kevod ha-tsibbur. What is the halakhic nature of the disability? Is kevod ha-tsibbur a durable, timeless perception that withstands shifting cultural sensibilities, or is it a temporal statement of local...
mores and customs that is authoritative only as long as its underlying assumptions remain vital and convincing? Does a violation of kevod ha-tsibbur essentially corrupt the performance of a mitsvah (or some associated act), or does it present at most an ab initio objection? Also, and more specifically, just how is the dignity of the congregation injured if women should read the Torah?

There are no reasoned discussions in the Talmud or other texts of where, and under what circumstances, kevod ha-tsibbur might be applied. Thus, the best clues as to the proper application of kevod ha-tsibbur come from those few cases where the rabbis of the Talmud and later poseqim invoke the concept to account for or to initiate certain practices. In these cases, the authorities are valuable not only as decisors, but as commentators as well.

In addition to being the reason why women may not read Torah, kevod ha-tsibbur is invoked by the Talmud to forbid a child dressed in rags from reading the Torah; removing the adornments from the ark in the presence of the congregation; scrolling the sefer torah in the presence of the congregation; and reading the Torah portion in a synagogue from a humash rather than from a sefer torah. From these talmudic cases, it appears that kevod ha-tsibbur generally covers a range of related but distinct concepts, whose common purpose it is to prohibit conduct that imposes unnecessary bother on the congregation (tirha de-tsibbura), or that disturbs the seriousness and propriety of the synagogue service.

Of these cases, the matter of reading the Torah portion from a humash is of particular interest, as it first alerts us to the possibility that kevod ha-tsibbur might be a relative observation that need not be universally asserted. The Talmud (Gittin 60a) reports that the Galileans inquired of R. Helbo, a third generation Land-of-Israel amora, whether it was permissible to read from a humash in public. R. Helbo did not know the answer, and referred the question to the bet midrash, where it was not conclusively settled. The matter was finally resolved by Rabbah and R. Yosef, third generation Babylonian amoraim, who held that reading from humashim in the synagogue violated kevod ha-tsibbur. It appears, then, that Rabbah and R. Yosef’s colleagues in the Land of Israel had a different sense of the application of kevod ha-tsibbur to this particular circumstance.

In addition to the talmudic cases mentioned above, R. Yosef Karo in Shulhan Arukh writes that the dignity of the congregation requires ab initio that the reader of the Megillat Ester stand when reading it publicly and precludes a person who has not yet grown a full beard from being appointed to the permanent position of sheliah tsibbur (cantor). In both these cases, the Shulhan Arukh’s ruling is based on Rambam (Hilkhot Tefillah 8:11; Hilkhot Megillah 2:7), who, without apparent talmudic basis, independently applied the principle of kevod ha-tsibbur.

134. See Meiselman, Jewish Woman in Jewish Law, p.143 (“Women distract, slaves don’t!”). See n. 170 below for a discussion of R. Meiselman’s interpretations of kevod ha-tsibbur.

I am grateful to Rabbi Dov Frimer for drawing my attention to this source.

135. Recall Magen Avraham’s reading of Masekhet Soferim (Chapter 19), a work that reflects Land-of-Israel tradition, to suggest that men and women have equal obligation with respect to qeri’at ha-Torah.


137.சேவைதல உல்ல: ஆண்களும் பெண்களும்சுற்று நிர்வாகத்துடன் பதின் சுற்றில் சுற்று நிர்வாகத்துடன் பதின் சுற்றில் சுற்று.

138. סופרין ב”ד: כל לפני מהר רביבי והHashtableאיkeit מהר רביבי והHashtableאיkeit מהר רביבי.

The prohibition against scrolling the sefer torah in the presence of the congregation is unique in that it shows that the dignity of the congregation must be upheld even at the cost of relaxing halakhic requirements. In order to avoid inconveniencing worshippers by scrolling the Torah scroll during the Yom Kippur service, the High Priest recited portions of the Yom Kippur Torah portion from memory, despite the rule set forth in Gittin 60b that “the written Law may not be recited from memory.”
ha-tsibbur to explain certain proprieties of communal prayer and Megillah reading. Also, R. Yom Tov Ishbili (Ritva) invokes kevod ha-tsibbur to bar women, who are themselves obligated to read the Megillah, from reading it on behalf of men.\footnote{144}

In the case of the immature cantor, Rambam's statement that the "dignity of the congregation" requires that services be led by a physically mature sheliah tsibbur appears to be an original explanation of the Talmud's statement (Hullin 24a) that "he whose beard is fully grown is worthy (rä'ui) to act as the representative of the community and to descend before the ark [i.e., to lead prayers]."\footnote{143} This sense that a notion of kevod ha-tsibbur could clarify the worthiness of a specific practice suggests that Rambam viewed kevod ha-tsibbur as defining what were viewed as the ab initio limits of propriety and not the absolute limits of permissible or forbidden conduct.

The impression that kevod ha-tsibbur is an ab initio concept is reinforced when we consider Rambam's reliance on kevod ha-tsibbur to require that the reader of the Megillah stand when reading publicly. In view of the Mishnah's statement (Megillah 4:1) that the "Megillah may be read standing or sitting," Rambam's insistence that the dignity of the congregation demanded (at least ab initio) that the reader of the Megillah stand lacked any apparent talmudic basis, a fact duly noted by the commentators, who understood, as did Rambam, that the requirement could only be of ab initio effect. Indeed, preceding Rambam, Rashi held that the Megillah, at the choice of the reader, could be read publicly standing or sitting,\footnote{146} and Rambam's subsequent application of kevod ha-tsibbur to this case did not deter Ran\footnote{147} and Rashba\footnote{148} from ruling like Rashi. They apparently did not believe that a sitting Megillah reader in any way offended the dignity of the congregation. Again, despite Shulhan Arukh's ruling in favor of Rambam, R. Israel Meir Kagan in Beur Halakhah\footnote{149} accepts Rashi's and Ran's decision on the issue of kevod ha-tsibbur, but holds that the reader should at least stand supported in deference to Rambam's custom. On the basis of the case of standing during the Megillah reading, R. Yoel Sirkus in Bayit Hadash (Bah) concludes that kevod ha-tsibbur in all circumstances, including qeri'at ha-Torah by women, is to be regarded as no more than an ab initio demand.\footnote{150}

The perception that kevod ha-tsibbur is an ab initio concept that might be applied differently in various times and places emerges again from Ritva's ruling that women not read the Megillah for men because of kevod ha-tsibbur. Commenting on the statement (Megillah 4a) that: "R. Yehoshua b. Levi also said: Women are under obligation to read the Megillah, since they also benefited from the miracle then wrought," Ritva remarks:

> And since we hold like R. Yehoshua b. Levi that women are under obligation [to read the Megillah], they also can fulfill [this religious duty on behalf of others], but this would be inconsistent with the dignity of the congregation, and is subsumed within the class of things that are "cursed (m'arah)."\footnote{152}
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Ritva's allusion to "cursed" practices is a clear reference to Sukkah 38a, where the Talmud, in describing the order of the hallel service on Sukkot, includes the following caveat: "If a slave, woman, or minor recited [the hallel] to him, he must repeat after them what they say, and a curse be upon him." Ritva explains that it was the practice for hallel to be recited by an adult male on behalf of the entire congregation. Where the hallel was recited by a slave, woman, or minor, persons themselves exempt from the obligation of reciting the hallel, the listener was required to repeat the hallel responsively word for word. A person who fulfilled his obligation in this manner deserved to be cursed, "because he had not learned, for if he had learned they [i.e., the slave, the woman, or the minor] would not read for him".

The Talmud draws an immediate association between this rule of the Mishnah and a similar rule set forth in a baraita:

Our Rabbis have taught: It has truly been laid down that a son may recite [the blessing after meals] for his father, a slave may recite it for his master, and a wife for her husband; but the Sages said, may a curse come upon that man whose wife and sons have to recite the blessing for him.

Further mention of a "cursed" practice appears in a baraita cited at Qiddushin 32a: "R. Yehudah said: May a curse alight upon him who feeds his father with poor tithe (ma`aser ani)."

All these examples show that kedov ha-tsibbur, defined by Ritva as "me`arah," is not an essential halakhic category. Persons who fall within the category of the "cursed" are those who fulfill the narrow requirements of the law in a manner that discloses their own spiritual impoverishment. Such persons' conduct is "cursed," but not formally prohibited. At least as understood by Ritva, an illiterate man should recite hallel or birkat ha-mazon by repeating after a woman or hear Megillah from a woman reader rather than forgo performance of the mitsvah. But woe unto him who is reduced to such shame and disgrace.

Certainly, we today would feel an aversion towards any person of means who supported his parents from funds that should be allocated to charity. But would we intuitively feel the same towards a person who had his wife or son say the grace after meals on his behalf? Most Orthodox synagogues encourage the participation of youngsters in the service and, Shulhan Arukh notwithstanding, would vigorously dispute the claim that such participation somehow shames and exposes the ignorance of the adult congregants. Perhaps it is time to consider whether, at least for some Orthodox groups, the same approach should be extended to women, and whether the dignity of the congregation should be defined to include all synagogue attendees, men, women and youngsters.
Although Orthodox halakhah has yet to concede this broad point, at least one contemporary poseq, R. Ben Zion Abba-Shaul, has cautiously suggested that kevod ha-tsibbur may not apply in all circumstances:

Incidentally, there is room to comment on the Master’s [R. Yosef Karo’s] statement in Shulhan Arukh (Orah Hayyim 282:3) that “All may be included in the number of seven [persons called for aliyyot on Shabbat], even a woman and a minor who understands to whom he is reciting the blessing, but the Rabbinis said that a woman should not read in public because of the dignity of the congregation.” This matter requires consideration, for if in any event a woman may not go up to the Torah because of kevod ha-tsibbur, what relevance is there to the introductory statement that a woman is “included in the number of seven,” and why did the Master write this rule? Therefore it would appear that the statement that all are included in the number of seven is relevant in circumstances where there can be no concern for kevod ha-tsibbur, as, for example, where all the worshippers are from one family, and the woman is the head of the household and the rest of the worshippers are her children and grandchildren, and there is no injury to kevod ha-tsibbur when she goes up to the Torah. In such a case she may well go up to the Torah and be included in the number of seven. But from the practical point of view, the matter requires further consideration.

Having arrived at some conclusions about the general nature of kevod ha-tsibbur we may still inquire: what does it mean in the specific context of qeri’at ha-Torah by women? Just asking the question—“what is kevod ha-tsibbur?”—confirms that we have lost the immediate, intuitive understanding of why women may not read the Torah. Kevod ha-tsibbur is a social sensitivity, and the fact that it must be interpreted to us shows how far removed we are from the social culture of the Talmud. It is not surprising that the commentators on the baraita did not explain why qeri’atha-Torah by women violated the “dignity of the congregation.” In light of women’s cultural situation and status at the time, no explanation was required.

In the cases of scrolling the sefer torah and removing the adornments from the ark, it is clear that the violation of kevod ha-tsibbur constitutes inconveniencing the congregation by having it sit idly during the performance of ministerial tasks that should be done before or after the service. In the cases of the woman reading the Torah, the ragged child reading the Torah, qeri’at ha-Torah from the humash, and the immature sheliah tsibbur, the object of the halakhah’s solicitude is less apparent: are we concerned for kevod ha-tsibbur or, rather, for kevod shamayim, the glory of heaven that is desecrated if the congregation approaches the service with the irreverence implicit in permitting a woman or child in rags to read Torah, or a young, beardless sheliah tsibbur to represent the congregation before God?

The question is significant because, as we shall later see, it

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154. According to Riva’s interpretation of this baraita, both the woman and the son referred to are obligated in birkat ha-mazon on the basis of biblical law; women’s obligation with respect to birkat ha-mazon is generally of biblical origin, and the son referred to is an adult.

155. This comment appears at the end of a discussion of whether one who desecrates the Sabbath may be called to the Torah. Interestingly, the comment is offered gratuitously, and is not a response to a specific inquiry.
has direct bearing on the pivotal issue of whether kevod ha-tsibbur may be waived; even if the congregation may waive its own dignity, it may hardly be allowed to waive kevod shamayim. R. Yosef Karo in Beit Yosef, who holds that kevod ha-tsibbur is waivable,\(^\text{161}\) appears to be of the opinion that kevod ha-tsibbur means only that: the dignity of the congregation as it understands it. Bah sharply disagrees, writing (with respect to the appointment of a beardless sheliah tsibbur):

> The term kevod ha-tsibbur does not refer to the dignity of the congregants . . . but [means] that it is not dignified for the congregation to be represented and commended before the Almighty by a person lacking in imposing appearance (hadrat panim). Similarly, one would not send a representative of unimposing appearance to commend the community before a mortal king, even if [the representative] were exceedingly wise . . . Similarly a woman may not read publicly... because it is a disgrace (genai) to the congregation.”\(^\text{162}\)

In a similar spirit, R. Mordecai Yaffe in Levush Tekhelet explains that women, even in principle, may not receive all the aliyyot because it is degrading to the Torah to take it out just to be read by women.\(^\text{163}\)

The assessment that the dignity of public ceremonies is diminished by a woman's presence or participation may perhaps be traced to the statement of the Tosafists that although there is no formal objection to a woman's entering the Temple court, her presence there would be a disgrace (bizzayon).\(^\text{164}\)

We have already seen that R. Joel Sirkus regarded kevod ha-tsibbur as an ab initio concept. Thus, despite his position that the congregation may not waive its dignity, it would appear that Bah considered the disqualification of women from qeri'atha-Torah, even if it is said to protect kevod shamayim, to reflect essentially aesthetic, cultural sensitivities. Just as a community should choose the imposing figure over the wise man to represent it before the Lord, so the congregation should not denigrate qeri'ath ha-Torah by performing it through women. This line of thought is out of tune with modern perceptions, even those of most Orthodox circles. Orthodox Jewish women are widely represented in the professions, including those, such as law and public office, which demand that they act as representatives and advocates for others. Orthodox organizations typically include women in delegations sent to represent the community before world leaders. It is not surprising, therefore, that a refurbished version of kevod ha-tsibbur has been put forward.

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159. R. Ben Zion Abba-Shaul, Sefer Or le-Tsion, Tehuvot II, Hilkhot Pesuqot - Orah Hayyim I (Jerusalem 5753), p. 86. I thank Rabbi Dov Frimer for bringing this source to my attention.

160. Thus Rambam (Hilkhot Tefillah 12:23) writes: אזיא ו пользу בנו יבגדי יבגודlixir.

161. Bah's distinction between kevod ha-tsibbur and kevod shamayim is suggestive of the Talmud Yerushalmi's inquiry whether the requirement that the Torah reader stand is solicitous of the dignity of the community or the dignity of the Torah:

162. מיילしてくれる, ממית פורק ד discontinued by, נספח א. ה... שמחה א. 활א עתית תקנות בסיסית ה... שמחה א. החיזוק פורק ד discontinued by, נספח א. ה... שמחה א. החיזוק פורק ד discontinued by, נספח א. ה... שמחה א. החיזוק פורק ד discontinued by, נספח א. ה... שמחה א. החיזוק פורק ד discontinued by, נספח א. ה... שמחה א. החיזוק פורק D discontinued by, נספח א. ה... שמחה א. החיזוק פורק D discontinued by, נספח א. ה... שמחה A. החיזוק פורק D discontinued by, נספח א. ה... שמחה A. החיזוק פורק D discontinued by, נספח א. ה... שמחה A. החיזוק פורק D discontinued by, נספח א. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נספח A. ה... שמחה A. החיזוק פורק D discontinued by, נסח
According to this theory, women reading the Torah would shame the unlettered men who were unable to read.\(^{165}\) This “kinder,” more benign explanation, based on Ritva’s interpretation of kevod ha-tsibbur as a means to avoid “cursed” practices, presents as a model the educated, self-effacing woman who forgoes her right to read Torah to avoid embarrassing less educated men. This explanation is plausible to the extent it reflects the attitude that women not be permitted to outshine men, and is even welcome as recognition that traditional explanations of kevod ha-tsibbur in this context are inadequate. But it is difficult to accept it as the plain meaning of the term kevod ha-tsibbur.

Anyone who attends synagogue understands full well that aliyyot are not awarded on the basis of a person’s ability to read the Torah.\(^{166}\) This has been true for centuries, since the introduction of the ba`al qeri’ah and, unless we assume women’s inferior social status, no one would believe that a woman was being honored with an aliyyah only because the pool of literate men in the congregation had been exhausted. Quite the contrary, we have already seen that the rishonim solved the problem of declining literacy by finding means, in this case the institution of the ba’al qeri’ah, to include the wider community, not by excluding the literate. Denying women aliyyot does not improve the religious situation of the unlearned. The real remedy to the problem of illiteracy is increased education and learning.\(^{167}\)

### IV. The Poseqim

In this section we shall review how the issue of qeri’at ha-Torah by women fared with the major poseqim, asking the following specific questions: may a woman receive an aliyyah if she does not read; may a woman who reads Torah in a minyan held outside the synagogue be regarded as not reading in public; may kevod ha-tsibbur, even if it is deemed to apply, be waived or superseded; does Torah reading by women violate the prohibition against listening to a woman sing (qol ishah); and may a woman enter the men’s section of the synagogue for the purpose of receiving an aliyyah or reading the Torah?

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\(^{165}\) This theory is suggested by R. Avraham Weiss (Women at Prayer, p. 68, describing kevod ha-tsibbur as preventing the “shame of ignorance”) and by R. Yehuda Herzel Henkin in Benei Banim, V. 2, p. 45.

\(^{166}\) The Shulhan Arukh prescribes the order for awarding aliyyot: following kohen and levi, aliyyot were allocated on the basis of status: scholars, children of scholars, heads of the community and finally, the rest of the people.

\(^{167}\) Other theories of “kevod ha-tsibbur” have been advanced. R. Moshe Meiselman (Jewish Woman in Jewish Law, pp. 141-144) proposes two interpretations of kevod ha-tsibbur. The first is that women distract men and so kevod ha-tsibbur reflects a sexual reality, not a legal difference between men and women” (p.143.) R. Meiselman bases this interpretation on the rule of the Yerushalmi, accepted by the Haggahot, that slaves may receive aliyyot. R. Meiselman concludes that the Yerushalmi’s permission includes only slaves and not women, and that kevod ha-tsibbur is gender-based. As we have seen earlier, the Yerushalmi and the Haggahot submit to a number of interpretations with respect to their attitude to kevod ha-tsibbur. Even if we should accept that kevod ha-tsibbur is gender-based, it does not necessarily follow that women were excluded because they distract and not because of their perceived inferior social status. There is no evidence that kevod ha-tsibbur reflects a concern for sexual discretion. R. Yehuda Herzel Henkin, Benei Banim, V. 2, p.36, points out that there is no evidence in the sources that the notion of kevod ha-tsibbur expresses the concern for sexual modesty. See also R. Yehuda Herzel Henkin, “The Significant Role of Habituation in Halakhah,” Tradition 34,1 (Fall 2000):30, pp. 40-41, and D avid Golinkin, “Ha-kol Olin le-Minyan Shiva,” Tarbiz 68,3 (5759):431, who points out that the Talmud uses other terms when expressing concern for sexual modesty: ervah, peritsut, yetser ha-ra and qalut rosh.
A. Rambam

R. Isaac Alfasi (Rif) in his Halakhot cites in full and without amplification the baraita that “All may be included among the seven [called to the Torah on Shabbat], even a minor and a woman, but the Sages said that a woman should not read in the Torah because of the dignity of the congregation (kevod ha-tsibbur).”

Rambam (Hilkhot Tefillah 12:17) departs from Rif’s formulation and cites only the last clause of the baraita—“A woman should not read before the congregation because of the dignity of the congregation,” but with a significant variation. The baraita had provided that a woman may not read the Torah (ishah lo tiqra ba-torah) because of kevod ha-tsibbur; Rambam writes that a “woman may not read before the congregation” (ishah lo tiqra be-tsibbur) because of kevod ha-tsibbur. While it is possible that Rambam had a variant reading of the baraita, neither Diqdque Soferim nor the Venice edition of the Talmud reports any such variant readings. But regardless of whether Rambam’s formulation reflects the text he had or constitutes his interpretation of the baraita, it would appear that Rambam, unlike R. Yoel Sirkis, cited earlier, understood kevod ha-tsibbur as protecting the dignity of the congregation rather than the dignity of heaven.

Be that as it may, Rambam’s rule that women may not read the Torah in public (however defined) is unequivocal. This is not surprising, given that Rambam, unlike most poseqim, does not give halakhic recognition to the institution of the ba‘al qeri‘ah. If only those capable of reading can be candidates for aliyyot, there cannot ordinarily be many opportunities for incorporating women into qeri‘ath Torah.

B. Shulhan Arukh and Commentaries

Before turning to the Shulhan Arukh’s treatment of the specific issue of qeri‘ath Torah by women, it is important to recall the halakhic environment in which the issue is raised. According to the Shulhan Arukh, qeri‘ath Torah is typically done by a ba‘al qeri‘ah, and birkhot ha-Torah were enacted to add to the dignity of the reading; they are not birkhot ha-mitsvah.

1. Shulhan Arukh and Rema

The Shulhan Arukh (Orah Hayyim 282:3) presents the rule governing qeri‘ath Torah by women and minors as follows:

All may be included in the number of seven [persons called for aliyyot on Shabbat], even a woman and a minor who understands to whom he is reciting the blessing, but the rabbis said that a woman should not read in public because of the dignity of the congregation.

In this passage, R. Yosef Karo adopts the rule of the baraita with two qualifications, both taken from Rambam: a minor may read only if he is intellectually mature enough to grasp the serious religious nature of the reading and the attendant berakhot; and women are prohibited from...
The Shulhan Arukh did not restrict the number of women and minors eligible to receive aliyyot: “All may be included.” Rema qualifies this by stating that the proper rule is not that “all may be included” but rather that “all may join” (mitstarefin). Rema contributes the following gloss:

“And these [i.e., women and minors] may only join the number of those called [to the Torah] but they may not all be women or minors (Ran, Rivash [R. Isaac b. Sheshet]). The rule for a Canaanite slave is the same as the rule for a woman [he may only join], but if his mother is an Israelite he may be [fully] included (Haggahot Maimuniyyot Chapter 12 of Hilkhot Tefillah). It is forbidden to read with an uncovered head. There is no prohibition against calling a dignified and wealthy ignoramus who is a great man in his generation before [calling] a scholar because this is not a sign of contempt for the scholar but rather shows respect for the Torah that is exalted by such people (Or Zarua'). An offspring of a forbidden union (mamzer) may be called to the Torah.”

The plain reading of the Shulhan Arukh, which was meant to be a practical halakhic guide, is that a woman may be called to the Torah for an aliyyah, but may not read: “All may be included in the number of seven...but the Rabbis said a woman may not read...”; women may be included, they simply may not read. But because the plain meaning of the text is so contrary to our current practice, we should examine in detail why the Shulhan Arukh should be understood as meaning what it says.

I have already mentioned that by the time of the rishonim the institution of the ba‘al qeri‘ah was well entrenched. The Shulhan Arukh was thus written at a time when any practical compendium of the rules and practices of qeri‘atha-Torah would be expected to take the ba‘al qeri‘ah into account. For that reason alone, the Shulhan Arukh’s statement that a woman may be included among the aliyyot but may not read should be accepted at face value.

We have observed as well that the Shulhan Arukh cited the baraita with Rambam’s qualifications that qeri‘atha-Torah by women was only prohibited in public, and that only a minor who was sufficiently mature could read the Torah. This is not surprising, as the commentators were already aware of R. Yosef Karo’s heavy reliance on Rambam’s halakhic formulations. What is notable is that despite his acceptance of Rambam’s qualifications with respect to qeri‘atha-Torah by women and minors, R. Yosef Karo, following Rif and R. Yaakov ben Asher’s Tur Shulhan Arukh, departs from Rambam and cites the entire text of the aliyyah.

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the baraita, including the introductory clause that “all may be included in the number of seven,” which Rambam had excluded. Given that R. Yosef Karo was clearly reworking Rambam’s formulation, his addition of this introductory, inclusive clause of the baraita (missing from Rambam) must have been calculated to have halakhic significance; it cannot be read as merely a casual quotation of the baraita. Again, we may conclude that the author of the Shulhan Arukh intended his formulation to include the possibility that women receive aliyyot.

2. Ran, Rivash and Haggahot Maimuniyyot

This is also the conclusion that follows from Rema’s gloss and the rishonim cited therein. As we have seen, Rema introduces his gloss with the observation that women and minors may join the adult men who receive aliyyot but may not themselves receive all of the aliyyot. Again, given the avowed practical nature of the Shulhan Arukh, it is difficult to accept that Rema’s gloss was entirely theoretical, intended only to set the halakhic picture straight in a hypothetical world where kevod ha-tsibbur did not apply. Also, Rema’s formulation is precise: women may join those “called” to the Torah (qeru’im); he thus seems to take care to point out that they may not themselves read. The practical tone of Rema’s gloss characterizes as well the commentary of Ran, whom Rema cites as one of the sources of his position that women and minors may not receive all of the aliyyot.

Ran’s commentary was well known to R. Yosef Karo, who, in Beit Yosef, quoted it in its entirety. Given that both Rema and R. Yosef Karo recognized Ran as a pivotal text in the discussion of qeri’at ha-Torah by women and minors, I believe it should be studied directly. Ran, in his commentary on the Halakhot of R. Isaac Alfasi, writes:

All may be included in the number of seven, even a woman and even a minor. This means that they may be included to complete [the number of seven] but not that all of them should be minors or women, for since they are not themselves obligated, they cannot entirely fulfill [the obligation] for others. And according to the original rule that only the first and last [olim] recited berakhot, a woman and a minor could not read first or last on account of the blessing because the other readers could not fulfill their obligation with their blessing. However, now that the Rabbis enacted that all [olim] recite the blessings, a woman and a minor may read even first and last, and since they read they certainly may recite the blessing, just as does a minor who says the maftir and recites the blessings over the haftarah. \(^{177}\)

Ran’s comments require explication. His declaration that all the olim may not be women or minors because they cannot “entirely fulfill” the obligation of qeri’at ha-Torah for others appears to suffer from imprecision, and to contradict the opinion of Ramban (accepted by Ran) that qeri’at ha-Torah is a communal, rather than a personal obligation. However, if we recall RId’s interpretation of the baraita/Tosefta of “All may be included in the number seven...,” Ran’s view falls into place. RId had declared that women or minors could theoretically not be the exclusive recipients of aliyyot because the enactment of qeri’at ha-Torah included the proviso that at least some of the readers be adult males. Thus, when Ran says that women may not “entirely fulfill” the obligation he is not to be accused of careless formulation; he is echoing the opinion that the communal obligation of qeri’at ha-Torah is not met when the readers are “entirely” women or minors, and this is because women do not bear in the communal obligation to provide public Torah readings.

\(^{175}\) It is worth noting the enigmatic formulation of the rule by R. Mordecai Jaffe in the Levush. The Levush prefaces the citation of the baraita with the words “by law (יתן יד)”: “By law all may be included in the number of seven... but the Rabbis said...” It is unclear to me whether the Levush meant by this addition to say that women may by law receive aliyyot even if they may not read, or he meant to say the exact opposite: the possibility of women receiving aliyyot is only theoretical, but that in practice they may not receive aliyyot. But no matter whether we interpret the Levush as permitting or as pro-

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Be that as it may, Ran's words—"now that the Rabbis enacted that all [olim] recite the blessings, a woman and a minor may read even first and last"—carry a sense of the here and now. The enactment that a blessing be recited by every oleh was introduced after the baraita had already effectively precluded qeri'at ha-Torah by women because of kevod ha-tsibbur. What could Ran possibly have meant when he suggested that "now" the problem of women's aliyyot had been solved if the obstacle of kevod ha-tsibbur was still in place? Again, it is possible that Ran was engaged in an entirely speculative discussion, but it seems as likely that Ran actually could envisage circumstances where women might receive aliyyot without violating the "dignity of the congregation," such as where the woman's aliyyah is read by a ba'al qeri'ah.

Rema cites two additional authorities to support the proposition that women and minors may not receive all of the aliyyot. We have already encountered the Haggahot Maimuniyyot, who read the Tosefta/baraita as permitting women, minors and slaves to "complete" the number of seven aliyyot, i.e., to receive only the seventh aliyyah. In addition, Rema cites Rivash to support the proposition that women and minors may only "join" a group of adult male olim. Rivash holds that despite the baraita of "All may be included in the number of seven, even a minor..." a minor was eligible only for maftir. In response to the objection that this restriction flew in the face of more inclusive language of the baraita, Rivash declared: "The Amoraim did not set out every novel interpretation that might be introduced in the future, and they left room for us."

Rema, then, leaves us with unclear instructions. All of the authorities he cites – Ran, Haggahot Maimuniyyot, and perhaps Rivash – do indeed stand for the proposition that minors and woman may only "join" the "number of seven olim" as associate members, yet each applies this rule differently. Ran holds that women and minors may receive any aliyyah as long as they are not the exclusive olim; Rivash holds that they may receive only maftir; and Haggahot Maimuniyyot holds that they may receive only the seventh aliyyah. What is Rema's opinion about all this?

3. R. Akiva Eiger

This question appears to have been on R. Akiva Eiger's mind when he joined the discussion with this remarkable comment:

[All may be included in the number of seven...] but not in the number of three [citing Magen Avraham]. It is explained there that [on days where there are fewer than seven olim, as for example on a festival and Yom Kippur, he may not receive an aliyyah; he [a minor] is eligible only on a day when there are seven aliyyot. According to this it is obvious that on Shabbat only one woman may receive an aliyyah but not two women, because without them there would then not be at least six [adult males] called [to the Torah], and Shabbat may not be regarded as inferior to Yom Kippur where a woman may not join the six [olim]. H owever, from Rema's language – "but all of them should not be

hibiting the practice, it seems that he did recognize that the baraita and Shulhan Arukh could be read to permit aliyyot for women as long as they did not read.

176. R. Yoel Sirkis writes in a responsum: "In most matters it is impossible to rule [solely on the basis of the] Shulhan Arukh because almost all his words are taken directly from the Rambam, especially in matters of civil law."
women”—this does not appear to be the case.182

R. Akiva Eiger clearly identifies Rema’s position with that of Ran,183 a conclusion that fits well with the text of the Rema, and spells out for us explicitly the application of the different views to the issue of women’s aliyyot on Shabbat: women may receive some, but not all aliyyot.

4. R. Joshua Falk

The comments of R. Joshua Falk should dispel any doubt that major poseqim read the Shulhan Arukh as permitting aliyyot for women. In the Perishah commentary on the Tur Shulhan Aruch, R. Joshua Falk prefaces his remarks on the rule of “All may be included. . .” with a brief halakhic excursus on the question of whether women may recite the blessings over qeri’at ha-Torah. Perishah concludes that they may not do so because the blessings relate to a mitsvah, that of Torah study, from which women are exempt; and women may not recite blessings when voluntarily performing mitswot from which they are exempt. The seemingly permissive rule of the baraita of “All may be included. . .” applied only to the intermediate aliyyot at a time when only the first and last olim recited birkhot ha-Torah. This is the view that we encountered previously in Meiri, and which I have already pointed out is a minority opinion. At the end of his presentation, R. Joshua Falk explains why he at all raised the issue of birkhot ha-Torah: “And I have presented all this in order to ‘justify our custom (leyashev et minhageinu’) of why a minor and a woman do not receive aliyyot.”184 In Rabbinic literature, the term “to justify the custom” generally introduces an effort to find some halachic ground for a custom that is inconsistent with formal halachic rules.185 In this case, Perishah’s proffered halakhic basis for the “custom” of barring women from aliyyot is the opinion that women, being exempt from the mitzvah of Torah study, may not recite birkhot ha-Torah, and so are effectively excluded from qeri’atha-Torah.186

This excerpt from Perishah confirms that the plain meaning of the Shulhan Arukh is that women can receive aliyyot, and that it is the custom of excluding women that demands justification; and this understanding is according to no less an authority than R. Joshua Falk.187 But of equal significance is the fact that R. Joshua Falk was almost certainly aware that his justification was at best a tenuous apologia. Perishah is on record as holding that

178. However, R. Lieberman, Tosafot ki-Feshutah on Megillah Chapter 3, p. 1178, understands Ran’s statement that “now” women and children may receive all aliyyot as being theoretical.

179. שִׁלֵּאֶת יְבִטֶּשׁ, סימן סלע.  

180. Rema rules that women may not recite the thanksgiving for “Your Torah that You have taught us (יִתְנָהוּ לַעֲבוֹדַת), and which I have already pointed out is a minority opinion.

181. שִׁלֵּאֶת יְבִטֶּשׁ, סימן סלע.  

182. Schlussel toke`ah ani, שִׁלְׁכָּס חַיּוֹת, that the blessings relate to a mitsvah, that of Torah study, from which women are exempt; and women may not recite blessings when voluntarily performing mitswot from which they are exempt.

183. See as well R. Meir Eisenstadt in Responsum Panim Meirot (2:54), who holds that R. Yosef Karo also subscribes to Rema’s opinion with respect to the number of women and minors who might be called for aliyyot.

184. פריטות, טו“רב אמא ירבד פּּּוּז, סָפּוּג: אכרונימון הוא כי לייבש מאורזין להמח את הקטן והיילה游乐.

185. Examples of this usage are numerous. A particularly apropos example appears in Shulhan Arukh, Orah Hayyim 187:2, where Rema rules that women may not recite the thanksgiving for “Your Torah that You have taught us (לכָּזֵאת).” That appears in the second blessing of birkhat ha-mazon.

R. Abraham Gombiner in Magen Avraham points out that in his time women did say this portion of birkhat ha-mazon, and cites several authoritative who resorted to “forced” arguments in order to “reconcile this minhag.”
women should recite birkhot ha-Torah in the morning prayer even though they are generally exempt from the mitzvah of talmud torah, because they have a limited obligation to study Torah. This is hardly surprising, for we have seen that the Shulhan Arukh already accepted this view as halakhah. Perishah also appears to hold that women may generally recite blessings on mitzvot from which they are exempt. Thus, it is questionable whether R. Joshua Falk himself accepted as normative halakhah either of the bases of his justification.

5. Modern Poseqim

Our understanding that the Shulhan Arukh permits women to receive aliyyot where the Torah is read by a man appears to be shared, among modern authorities, by R. Ovadiah Yosef, R. Yehuda H. Henkin and R. Dov Eliozrov. But all of these authorities reject the practice because it smacks of Reform or feminism.

R. Yehuda H. Henkin reports his grandfather R. Eliyahu Henkin’s observation that contemporary synagogue practice, where one reader reads for all olim, reflects the practice of the Tosefta (Megillah 3:6), which provides that at a service where only one person can read, that person reads seven times, rather than that of the baraita, which speaks of seven olim, each of whom presumably reads his own portion. On that basis, R. Henkin writes the baraita’s objection of kevod ha-tsibbur no longer applies. However, R. Henkin is unwilling to give practical application to this opinion on the grounds that denying women aliyyot is an entrenched minhag, and that tampering with it would encourage the “assimilationists,” presumably the Conservative and Reform movements. R. Dov Eliozrov in Sha’ali Tseyon expresses a similar position, adding that having women in the men’s section of the synagogue would abrogate rules of modesty and cause improper thoughts. R. Ovadiah Yosef holds that women should not receive aliyyot because it is a departure from

For another example, see Noda bi-Yehudah: שאלת דרבניא מדרבניא פשיטא – איה סימן ט: ... ודוחפי סמואל פס הבוכבי הילט משמאל והירא הילט זאת...

186. Perishah attributes the opinion to Rosh in Qiddushin 31a (siman 49), who refers to the Tosafot upon which M eiri’s opinion appears to be based. Rosh, as we have seen (Berakhot 37b), held that women could say birkhotha-Torah.


188. פירוש,... נודא ביהודה,...

189. פירוש,... נודא ביהודה,...

190. There are other indicators that R. Joshua Falk recognized the weakness of his halakhic justification for denying aliyyot to women. If a minor may not recite birkhotha-Torah, how do we account for the fact that minors do recite maftir and recite birkhotha-Torah thereon? Perishah asks this question, and answers that since the maftir is not a very significant aliyyah, the Rabbis allowed it to be given to a minor, who was permitted to recite the blessing over it for “the honor of the Torah.” But the relative importance of the maftir notwithstanding, it is the settled halakhah that the maftir is reckoned as one of the aliyyot, so that Perishah’s distinction between the blessings over the maftir and the blessings over the other aliyyot is difficult to sustain.

Even more telling is Perishah’s response, again to his own inquiry, as to why minors, whose participation in qeri’atha-Torah presumably does not offend kevod ha-tsibbur, are not in fact seen to read the Torah and receive aliyyot. Perishah answers that minors are absent from the aliyyah lineup because of the priority enjoyed by others, and there simply are no spare aliyyot for children. Now if R. Joshua Falk had regarded his own justification of why women and minors may not receive aliyyot as settling the issue, this question would have been out of place; minors would be unable to receive aliyyot because they would be unable to recite birkhotha-Torah. Apparently, this answer was not sufficient for the author of the Perishah himself. It is interesting that R. Joshua Falk did not distinguish between minors and women on the basis that minors, though exempt from mitzvot, should nonetheless recite the blessings as part of their education to fill their future adult responsibilities, a distinction made by M eiri.
entrenched minhag in the direction of feminism.\(^{193}\)

In addition to these poseqim, we have already noted the more liberal view of R. Ben Zion Abba-Shaul, who tentatively suggests that in special circumstances, such as where the worshippers are all members of one family, kevod ha-tsibbur may be said not to apply, and the Shulhan Arukh may be read as permitting women, or at least the matriarch of the family, to read Torah.\(^{194}\)

C. Can Kevod ha-Tsibbur Be Waived or Superseded?

We have seen previously that kevod ha-tsibbur is arguably a relative, ab initio concept that may, at least in some circles, no longer apply to the issue of qeri’at ha-Torah by women. But assuming a more cautious approach that recognizes kevod ha-tsibbur as a continuing factor in the issue, may a congregation waive its dignity and permit women’s participation in qeri’at ha-Torah? May kevod ha-tsibbur be superseded by extenuating circumstances?

Although these are distinct, if overlapping issues, the poseqim have not treated them separately, but consider the underlying issue whether kevod ha-tsibbur can yield to countervailing considerations.

The reader will recall the opinion of R. Yosef Karo, who held (in the case of the young, beardless sheliah tsibbur) that kevod ha-tsibbur could be waived, and the vigorous opposition of R. Yoel Sirkis (Bah), who held that kevod ha-tsibbur in fact represented kevod shamayim and hence could not be waived.\(^{195}\) Bah further argued that decentralizing the concept of kevod ha-tsibbur would splinter the community into groups (agudot), each with its own brand of synagogue service.

R. David Halevi (Taz),\(^{196}\) R. Menachem M endel Aurbach (Ateret Zekenim),\(^{197}\) and R. Shmuel Ha-Levi Kolin (Mahatsit ha-Sheqel) all accept R. Yoel Sirkis’ equation of kevod ha-tsibbur with kevod shamayim and hold that kevod ha-tsibbur may not be waived. R. Yosef Karo’s posi-
tion is embraced unequivocally by R. Hezekiah ben David D e Silva (Peri Hadash) and by R. O vadiyah Yosef, who cites numerous other poseqim who hold that kev od ha-tsibbur is waivable. Magen Avraham strikes a compromise position, agreeing with R. Yosef Karo that kev od ha-tsibbur may in principle be waived, but noting that doing so should be avoided, ab initio. R. Jacob Alfandari appears to resolve the issue in favor of Bait Yosef, even in the case of qeri’at ha-Torah by women. Rema in Darkhei Mosheh, R. Yisrael Meir Kagan in Mishnah Berurah and R. Yehiel Mikhel Epstein in Arukh ha-Shulhan also appear to hold that kev od ha-tsibbur might be waived.

At least three arguments come to mind for accepting the position of R. Yosef Karo. First, as we have seen, kev od ha-tsibbur is generally regarded as an ab initio concept, which by definition anticipates a fallback, post factum position. Indeed, Bah’s opposition to waiver of kev od ha-tsibbur must be seen as acting along a very narrow band, as Bah himself holds that kev od ha-tsibbur is no more than an ab initio concept.

Second, the opinion of Bah (and his supporters) is a corollary of their perception that women’s participation in qeri’ath-Torah is disrespectful to God. Just as one would not send a youngster, however talented and eloquent, to plead his case before the local lord, so the community should not enlist women to fulfill its duty to provide a Torah reading. In both cases, the choice of representative shows disrespect and a lack of seriousness.

However, as I have already pointed out, Bah’s opinion reflects a cultural attitude that is no longer shared by mainstream Orthodoxy. Orthodox women participate in all aspects of professional and communal life, and most Orthodox Jews would select a competent woman professional or representative without giving the matter second thought. Does it make sense to accept as halakhah an opinion that is based on anachronistic cultural presumptions? It is, to say the least, ironic that many of those who would today rely on Bah to exclude women from qeri’at ha-Torah reject his position with respect to young, beardless ba`alei tefillah, and permit, if not encourage, the young to participate in leading the service. Also, if Bah is correct that women’s Torah reading disgraces kevod shayim, how could the practice have been sanctioned before its prohibition by the Rabbis because of kevod ha-tsibbur?

R. Yosef Karo (Bait Yosef, Orah Hayyim 53) attributes the opinion that “kev od ha-tsibbur” is waivable to Rambam, Rashba, and Rabbenu Yerucham, but concedes that Rosh appears to hold otherwise. Bah denies that this is the position of Rambam. Because the above cited rishonim, with the exception of Rabbenu Yerucham, do not address the issue directly, the interpretations of R. Yosef Karo and Bah are on this point inconclusive.

196. סדרי יזבכ, מיי, ישמע, עדי, סעיף ב. 197. ועוד, יש מעניין מצב שלsetImage עבקיםכבמות. 198.如果您, מיי, ישמע, עדי, סעיף ב. 199. secondo il capitolo di Maharam,iliatedi con la presenza di una. 200. começam, מיי, ישמע, עדי, סעיף ב. 201. שלמה מתה, מיי, ישמע, עדי. Shapiro 36

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A third reason for favoring the opinion of R. Yosef Karo is based on more traditional considerations of halakhic decision-making. Not only is waivability of kevod ha-tsibbur accepted by many of the preeminent commentators on the Shulhan Arukh—Magen Avraham, Peri Hadash, Arukh ha-Shulhan and Mishnah Berurah—but it is supported by clear precedent, not merely by reasoned argument (sevarah), as is the opinion of the Bah. Basing himself on Rabbenu Yeruham b. R. Meshulam and R. Mordecai b. Hillel H-a-Kohen, Peri Hadash argues on three occasions for R. Yosef Karo’s position, and applies it explicitly to the issue of qeri’at ha-Torah by women. R. Ovadiah Yosef regards Peri Hadash’s arguments as decisive.207

In connection with the question of whether a community may appoint an underage sheliah tsibbur, Peri Hadash writes as follows:

The Bah mentioned in his work that wherever reference is made to kevod ha-tsibbur, waiver by the congregation is to no avail, as for example in the case of not rolling a sefer torah in public, and also in the cases of a woman not reading in public because of kevod ha-tsibbur, and [a kohen] dressed in rags not saying the priestly blessings because it is a disgrace to the congregation, and a minor not saying the priestly blessing because it is an affront to the dignity of the congregation to be subject to his blessing.

And I am surprised [by the Bah], for it is said in Ha-Nizaqin “We may not read [the Torah] from humashim because of kevod ha-tsibbur,” and the Beit Yosef in [Orah Hayyim] Chapter 143 has written that it “appears from Rabbenu Yeruham that if the congregation is willing to forgo its dignity we may read from [humashim],” and the Mordecai has written similarly at the end of H-a-Qomets... As far as kevod ha-tsibbur is concerned, the congregation is permitted to waive its dignity according to the opinions of Rabbenu Yeruham and the Mordecai.208

According to Peri Hadash, kevod ha-tsibbur is not an absolute, unyielding consideration, but one that can be overcome by other prevailing factors. Thus, Peri Hadash explains the Shulhan Arukh’s rule that a congregation with only one sefer torah may scroll the sefer torah in public “and disregard kevod ha-tsibbur,”209 as follows:

Peri Hadash’s perception of kevod ha-tsibbur as a relative concept is well illustrated by the dispute among rishonim concerning the practice of reading Torah from a humash or from an unfit sefer torah where a proper sefer torah is

...202

207 Thus, it is not only Bah’s attitude towards women that is now anachronistic. It is my sense that Orthodox synagogues are now more receptive to participation by youngsters than they were in the past. Indeed, their participation as ba’al tefillah and ba’al qeri’ah is encouraged as a means to draw them into synagogue life. When I was growing up it was unheard of in my shul for a younger to be asked to be a ba’al tefillah and unusual for him to receive aliyah. In this area, Orthodoxy, to its credit, has kept pace with the “youth culture.” As another example, it is common practice for synagogues to disregard the ban on rolling the sefer torah while the tsibbur waits.

208 This argument is made as well by R. Yehuda Henkin:...206

209...205

204 אדיכ בצא את קשון והthroat את קשון ה brushed על תולים על הכותל והארון הכותל על קשון הקירה והthroat את קשון...203

202 מוסער על בדד...201

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in Mishneh Torah (Hilkhot Tefillah 12:23), Rambam rules without qualification “that we may not read from humashim in the synagogue because of the dignity of the congregation.” Nonetheless, this ruling did not prevent Rambam from writing in a responsum that it was permissible to read from a humash where there was no fit sefer torah. Rambam took it for granted that kevod ha-tsibbur must yield to extenuating circumstances; his response to the inquiry does not even discuss the issue beyond stating that kevod ha-tsibbur is the only possible objection to reading from a humash. Similarly, the Sages of Narbonne, responding to a similar inquiry, considered it unthinkable that kevod ha-tsibbur was adequate reason to require that a community without a fit sefer torah dispense with qeri’ath-Torah rather than read from a humash, just as it was unthinkable that the oral tradition and law should be forgotten rather than be committed to writing.

However, from our point of view, the most dramatic example of kevod ha-tsibbur yielding to countervailing considerations is the case of the “town inhabited entirely by kohanim.” The general practice is for a kohen to receive the first aliyyah of qeri’at ha-Torah (and the second as well if a Levi is not present).

And a town which is inhabited entirely by kohanim and where there is not even one Israelite, it appears to me that a kohen should read twice [i.e. the first two aliyyot] and thereafter women should read, for all can complete the number of seven, even a slave, a maidservant and a minor... and with respect to the conclusion “but the Rabbi said a woman shall not read in public because of kevod ha-tsibbur,” where there is no choice the dignity of the congregation is pushed aside in order to avoid casting suspicion on the kohanim called to read, that people should not say they are the children of divorcees.

His student R. Mordecai ben Hillel Ashkenazi ha-Kohen cites Maharam of Rothenberg’s ruling with approval.

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To be sure, the case of the town inhabited entirely by kohanim does not involve waiver (mehilah) of kevod ha-tsibbur but rather its being superseded (dahui) by overriding considerations. But both cases share the underlying perception of kevod ha-tsibbur as a relative consideration, one applied with sensitivity and selectivity to the situation at hand after balancing conflicting interests. Certainly, R. Yosef Karo’s position makes sense, that in a town where there were only kohanim no one would conclude that kohanim were being called after each other to the Torah because all of them, other than perhaps the last one, were disqualified for the priestly role. Nonetheless, Maharam of Rothenberg and the Mordecai held that the dignity of the community should be set aside in order to avoid even a penumbral offense against the dignity and honor of the individual kohanim. Should not the feelings and dignity of those women who wish to participate in qeri’at ha-Torah receive the same empathetic consideration?

D. Where does Kevod ha-Tsibbur Apply?

We have seen that Rambam’s organization of the Laws of Prayer (Hilkhot Tefillah) suggests that Rambam, like Ramban, viewed qeri’at ha-Torah as essentially a communal obligation revolving around the religious life of the synagogue. This initial assessment is corroborated by Rambam’s formulation of the prohibition against qeri’at ha-Torah by women. The baraita provides that a woman may not read the Torah because of “kevod ha-tsibbur.” Rambam, however, writes (Hilkhot Tefillah 12:17) that a “woman may not read before the congregation (ba-tsibbur)” because of kevod ha-tsibbur, suggesting that a woman might read in a service held outside the synagogue. Rambam’s identification of the term “tsibbur” with the synagogue, at least insofar as concerns the prayer service, arises as well in Hilkhot Tefillah 8:1, where Rambam writes that:

The prayer of the congregation (tefillat ha-tsibbur) is always heard, and even if there are sinners amongst them, the Holy One Blessed be He does not refuse the prayers of the multitude. Accordingly, a person should participate with the congregation (ha-tsibbur) and should not pray alone (be yahid) whenever he can pray with the congregation, and one should visit the synagogue in the morning and evening because it is only in the synagogue that his prayer will always be heard, and whoever has a congregation in his city but does not pray in it with the congregation (ha-tsibbur) is deemed a bad neighbor.

Rambam’s distinct formulation of the prohibition of qeri’at ha-Torah by women as applying only to public reading may be the conceptual basis for the following passage in Sefer ha-Batim of R. David b. Samuel of Estelle:

One of the great teachers wrote that [with respect to] those who pray in their homes with [a minyan of] ten, a woman may read the Torah there, because [a minyan] is regarded as a congregation (tsibbur) only when they pray in the synagogue.
This understanding of kevod ha-tsibbur as referring to public settings appears also in Bah:

In all matters where the issue of the “dignity of the congregation” arises with respect to qeri’atha-Torah, it is of concern as well with respect to the reading of the Megillah, because the same reasoning applies to both cases. Accordingly, it would appear that although Rambam holds that women may read Megillah on behalf of men, nonetheless a women should not ab initio read [the Megillah] before the congregation because of kevod ha-tsibbur, just as is the case of qeri’atha-Torah.222

Presumably, a woman may read the Torah, just as she may read the Megillah, if she does so privately, and not before the congregation.224

The view that ad hoc services held outside of the synagogue are not subject to all the halakhot of the synagogue is well known. With respect to the specific issue of kevod ha-tsibbur, it is expressed in the Talmud’s statement (Gittin 60a) that reading from a humash violates kevod ha-tsibbur only where the reading takes place in a synagogue.225 More generally, Rabbenu Simha in Mahzor Vitry226 writes, with respect to the reading of hallel on Rosh Hodesh, that “perhaps ten who left the congregation are regarded as individuals when they pray by themselves behind [i.e. outside] the synagogue,” and therefore need not recite the hallel. This explains as well why hallel is not said at services held in the home of a mourner.

There is, then, strong basis for permitting women to read the Torah at ad hoc private services held outside the synagogue.227

E. Qol Ishah

The halakhic prescription for modesty in the relationship between the sexes includes the rule that “qol be-ishah ervah,” that a woman’s voice, particularly her singing voice, is regarded as nakedness, or as a form of sexual incitement,228 from listening to which a man should refrain.

The question of whether qeri’atha-Torah by women...
accordance with the prescribed musical notations (ta'amē ha-miqrā) violates qol ishah has not, to my knowledge, been directly addressed by poseqim. There is, however, ample collateral evidence that normative halakhah does not prohibit the practice on this ground. First, as R. Ovadiah Yosef points out, the Talmud’s declaration that women may not read the Torah because of kevod ha-tsibbur, and for no other reason, is strong evidence that the rabbis did not regard qol ishah as a relevant consideration.  

Second, and more directly on point, the halakhic discussions concerning the analogous case of women reading the Megillah on Purim on behalf of men, where the issue of qol ishah is actually broached, show clearly that the great majority of poseqim did not consider a woman’s public chanting of a cantillated text as a violation of qol isha.

F. Women in the men’s section of the synagogue

Perhaps the most discordant aspect of women’s participation in qeri’ath ha-Torah is the mere presence of women in the men’s section of the synagogue during the prayer service. Orthodox synagogues are distinguished by the mehitsah (partition) separating the men’s area from the women’s, an architectural feature that fulfills not only technical halakhic requirements, but reflects a deeply rooted sense of modesty. Without considering the possibility that the physical layout of the synagogue might somehow be altered to allow for a woman to stand before the sefer torah while remaining within the physical confines of the mehitsah, does the mere presence of a woman in the men’s section during qeri’at ha-Torah undermine the halakhic integrity of the Orthodox synagogue?

The baraita of “all may be included” suggests that the presence of a woman in the men’s section of the synagogue is halakhically feasible. As I have argued previously, the baraita’s unequivocal position that kevod ha-tsibbur is the only objection to qeri’ath-Torah by women shows that the rabbis could adduce no other objection to the practice, including the objection that a woman’s presence in the men’s section of the synagogue would be unacceptable.

we term a minyan. The requirement that Torah (or Megillah in some circumstances) be read with a minyan is expressed in terms of requiring asarah. See, for example, Shulhan Arukh, Orah Hayyim 690:18, especially the comment of M.ishnah Berurah that “even if one has a minyan in his home nonetheless he should cancel Torah study or work, so that he may go and read [the Megillah] with the congregation (tsibbur) because ‘the glory of the King is in multitudes.’”

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Whether women may read the Megillah on behalf of men is the subject of a dispute among poseqim that is recorded by R. Yosef Karo in Shulhan Arukh (Orah Hayyim 689:2). Rashi (Arakhin 3a s.v. ’a’atuye nachsim), Rambam (Hilkhot Megillah 1:1-2), and Or Zaru’a (Hilkhot Megillah ch. 368) hold...
that men may discharge their obligation by listening to a woman's reading of the Megillah. R. Joshua Boaz b. Simon Barukh in Shittei Gibborim on Rif (Megillah 2b) and R. Ovadiah Yosef (Resp. Yeheveh Da`at III:51) attribute this view to R. Isaac Alfasi as well. This is the opinion cited in the Shulhan Arukh as the general view on the matter, and is presumably the view of the Shulhan Arukh as well. See Resp. Yeheveh Da`at III:51. According to these authorities, it is clear that a woman's public reading of the Megillah (and presumably the Torah as well) is not regarded as gil'ish.

Shulhan Arukh presents as well the alternative view of the Ba`al H alakhot Gedolot (Bahag) that men do not meet their obligation to hear the Megillah when a woman reads it. Rishonim adduce at least three bases for this more stringent opinion. Tosafot (Arakhin 3a s.v. la`atuyei nashim), Rosh (on M megillah 4a) and Rema (Orah Hayyim 689:2, citing M ordeca) explain Bahag as holding that women are required only to hear (and not to read) the Megillah and therefore may not read on behalf of men, whose duty it is to read the Megillah; a man may read on behalf of other men, but a woman, who

A similar conclusion is reached by R. Yehuda Herzl Henkin, who cites, among other authorities, R. Jacob Emden, Rashi, Tosafot, Rabenu Tam, and Rosh as permitting the presence of a small number of women in the men's section of the synagogue.232

G. Conclusion

I believe that I have presented a strong argument for permitting women to receive aliyyot where the ba`al qeri`ah is a man, and for permitting women to read the Torah in congregations that agree to the practice (i.e., waive kevod ha-tsibbur) or at services held outside of synagogues. If the essential halakhah (iqqar ha-din) can countenance qeri`atha-Torah by women in one form or another, how do we account for the Orthodox community's refusal seriously to face this possibility? It seems to me that the explanation lies not in halakhah per se, but in an ingrained conservatism, naturally suspicious of change, which is heightened by the perception of being under siege from a dynamic, attractive and sometimes unsavory general culture. Also not to be underestimated is the fear that flexibility on this issue would play into the hands of the Reform and Conservative movements. The terms of reference of this reflexive, intuitive opposition are not the open, precise, give and take of classical halakhic argumentation, but the evocative language of minhag (custom), poretsgeder (breaker of norms), and lo tikgodedu (do not splinter the community). Women may not receive aliyyot or read the Torah because it goes against ingrained minhag; it upsets the received religious order. The implied operative halakhic principle, even if not explicitly enunciated, is simple and direct: “essential halakhah (iqqar ha-din) must submit to minhag.”
Iqqar ha-din need not necessarily be translated into practice. Common sense tells us that not everything that is permissible is advisable. There are legitimate arguments against enlarging women’s active role in the synagogue, and they deserve the same respect and consideration that I expect for my own arguments. Nonetheless, the halakhic possibilities suggested in this paper should not be dismissed simply because they are innovations that disturb accepted norms. Minhag should not be taken as a decisive, meta-halakhic category that places ultimate halakhic authority with conventional wisdom of “the people.” This issue will be addressed in the final section of this paper.

V. Minhag and Qeri’atha-Torah by Women

Assuming that aliyyot and qeri’atha-Torah by women are sanctioned according to iqqar ha-din, may they nevertheless be prohibited as contrary to prevailing minhag even in those special circumstances I defined: namely, in private services held outside of a synagogue, or in a synagogue where the practice is not deemed to injure kevod ha-tsibbur?

A. The Power of Minhag

Minhag undoubtedly plays a crucial role in shaping halakhic society, and its vitality and authority is, within bounds, unquestioned. Minhag links us to earlier generations and strengthens our own sense of identity and culture. By providing a stable, congenial environment for religious life, minhag provides a sturdy foundation for ongoing religious quest and growth. But it seems to me that in our own day, the authority of minhag has been exaggerated to such an extent that it threatens to smother the possibility of the creative application of halakhah to modern life.

I contend that matters of basic religious and moral principle—such as, in my opinion, women’s participation in qeri’atha-Torah—must be decided on the basis of iqqar ha-din. Resolving such defining issues on the basis of convention is morally corrosive, for it denies halakhah’s authority in the one area where it should be paramount and its guidance most eagerly pursued. A halakhic system that concedes priority to minhag and convention—to the “fashionable intelligence” of an exclusive halakhic community—will ultimately lose its moral and spiritual force, and sink into soul-deadening historicism and conformity.

This is the classic halakhic view. As we shall see, poseqim recognized that the authority of minhag as an inflexible halakhic category is limited largely to matters of civil law (dinei mamot). In matters of ritual law (issur ve-heter), halakhah is supreme: “There is no wisdom, nor understanding, nor counsel against the Lord” (Prov. 21:30).

Our discussion of minhag is best introduced and given perspective by Rashi’s commentary on the Talmud’s metaphor of minhagim as “rivers that follow their own course.” Rashi observes that “every river follows its own course.”

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hag." Isadore Twersky, in describing Rambam's attitude towards minhag, likewise observes that minhag as a halakhic concept is intended to allow for nuance and dimension in religious life. Minhagim are almost by definition local in origin and provide relief and avenues for local expression in the face of halakhic demands for uniformity. People speak of “my minhag,” “my family's minhag,” “our minhag.” True, there are minhagim that have become widespread, but the notion of a minhag as binding all of kehal yisrael without exception— of a totalitarian minhag— seems almost a contradiction in terms. The claim that women's participation in qeri'at ha-Torah conflicts with some universal minhag is on its face suspect.

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The study of minhag is now coming into its own with the appearance of several important studies. Because the subject is vast, the most convenient point of departure for our discussion is the two statements of minhag encountered in our study of qeri'at ha-Torah by women.

The reader will recall R. Abraham Gombiner's statement in Magen Avraham that women have an identical responsibility to that of men with respect to qeri'at ha-Torah. Magen Avraham's position was based on the baraita of "All are included ..." and on certain passages from Masekhet Soferim, and was proposed to account for the egalitarian tone of those sources. After setting forth his theory that men and women are equally obligated with respect to qeri'at ha-Torah, Magen Avraham concludes with this astonishing observation: "And here it is the custom for women to leave [the synagogue for qeri'at ha-Torah]." Magen Avraham does not disclose his own attitude towards this minhag, although it seems to have received his passive acceptance.

The minhag for women to leave the synagogue for qeri'at ha-Torah is instructive on many counts. First, it shows that the "old time religion" that contemporary Orthodoxy is so intent on retrieving was not always ideal, and that there is room for later generations to improve on halakhic observance, contrary minhag notwithstanding. Second, Magen Avraham's matter-of-fact report of the minhag appears to call into question women's capacity for halakhic observance. Would a minhag of men that so blatantly contradicted halakhah escape without criticism?

I am not aware of any Orthodox synagogue that requires or encourages woman to abide by the minhag reported in Magen Avraham and to leave the women's section during qeri'at ha-Torah. On the contrary, I am certain that women who were to follow the minhag of leaving for qeri'at ha-Torah would today be looked down upon as not

To my mind the best such argument is as suggested by R. Moshe M. Eshelman, that the mingling of sexes in the synagogue may lead to an immodest, even frivolous atmosphere. M. Eshelman, Jewish Woman in Jewish Law, pp. 142-143. I believe that R. M. Eshelman's identification of this argument with kedos ha-tzibbur is unsubstantiated, but that does not detract from the weight of the argument itself. But I do believe that the strength of the argument is dissipated by the general ease and familiarity with which Orthodox men and women today mingle in general society outside the synagogue. In any event, for the foreseeable future the practice of giving aliyyot to women will remain peripheral and be limited to those women who feel that participating in qeri'at ha-Torah is an important expression of their spiritual participation in the community, and as such will maintain a serious character, perhaps more so than the standard service. In any event, as in any area of life, we must always be on guard against excesses.
How did it happen that the minhag for women to leave the synagogue for qeri’at ha-Torah was replaced by our current minhag for women to remain? We have no record of how the change occurred, and here I would ask the reader to join me in exercising a bit of historical imagination to describe the evolution of minhagim.

There probably were groups of learned and devout women who, aware of the importance of qeri’atha-Torah, wanted to listen to the reading of the Torah portion. The community may have viewed these women with suspicion as bearers of modern, enlightenment notions, perhaps even as harbingers of Reform, who went against the “halakhic community’s” perception of what was “halakhically correct.” Now how did it happen that these “new thinking” women prevailed and created a new minhag whereby women do remain in the synagogue for qeri’at ha-Torah? The answer apparently lies in their persistent commitment to listening to qeri’at ha-Torah, until they succeeded in swaying the majority to their practice.

Perhaps my presentation is somewhat exaggerated – perhaps the process of change was less perceptible than I described; perhaps the minhag of the Magen Avraham was confined to a small locality -- but I do not think I am far off the mark in describing one aspect of the development of Jewish practice. This understanding of halakhic evolution views the development of halakhah as “just happening,” or as a result of competition between different practices, the most resilient of which survives. This halakhic worldview is notably non-teleological; it does not propose to advance any particular moral value or religious vision, but only to insure a sense of social cohesion and stability as well as traditional mores and values. The question of whether women should or should not listen to qeri’at ha-Torah is of little interest; what matters are the conventional perceptions of the “fashionable intelligence.” According to this determinist version of the halakhic process, halakhah is the result of inexorable social and historical processes, not of conscious decision-making and religious leadership. But this view, however accurately it may describe aspects of halakhic practice that are shaped by social circumstances of time and place, must not be seen as exhaustive. One must recognize as well the halakhic moment, when the halakhah breaks free of historical and social constraints to assert and demand its own vision of what should be. Also illuminating is the second instance of minhag we encountered in the course of studying the issue of qeri’at ha-Torah by women: R. Joshua Falk’s attempt in the Perishah to justify “our minhag” of not calling women and minors for aliyyot. After going to lengths to “justify” the minhag, R. Falk speculates as to its origin, at least with respect to minors: perhaps, he writes, minors never received aliyyot because their low standing in the social order made it impractical for them to receive public honor and recognition that was generally reserved for the learned and wealthy. Minhagim,
then, even those that appear to reflect some halakhic purpose, frequently originate in entirely casual circumstances, and only after time are invested with halakhic cachet. Perhaps the “minhag” of excluding women from aliyyot began the same way. Given the relative scarcity of available synagogue honors, aliyyot for women, initially something unlikely, became impossible.

Although this is concededly speculation, the underlying inquiry is significant. We shall later see that a practice must be formally elevated to the status of minhag before it can be regarded as halakhically enforceable; a practice cannot be transformed into a minhag simply because the community chooses to call it a minhag. The fact that an innocent and justifiable routine of allocating aliyyot as described by Perishah might in time be elevated by popular imagination to the status of binding minhag is recognized as well by R. Ovadiah Yosef:

And the fact that we have not seen that a minor is included in the number of three aliyyot on Monday, Thursday and Shabbat afternoon is not because the minhag is according to those who say that a minor is included only for the number of seven aliyyot on Shabbat, but because there are many men in the synagogue who want to receive aliyyot, and it would not be appropriate to overlook the adults and give aliyyot to minors instead. And this is the necessary conclusion, for we see that minors are not included among the seven olim even on Shabbat, and we have never seen nor heard that a minor should be included in the number of olim, even though from the point of view of the law (din) he can certainly be included in the number of seven aliyyot. And we must say that the reason [why a minor will not receive an aliyyah] is that there are many men in the synagogue who want to receive aliyyot, and it would not be appropriate to overlook the adults and give aliyyot to minors instead. And indeed, if they wish to call a minor to the Torah they may do so, both for the number of three and the number of seven aliyyot, and there is absolutely no basis for prohibiting it.

Thus, while there certainly is a presumption in favor of following established practice and custom, minhag as an enforceable halakhic category is reserved for special classes of recognized minhagim, particularly those involving civil matters (diné mammonot). Minhagim cannot be created ex nihilo. If there really exists a minhag of denying women aliyyot, we may fairly inquire into its origins and relative authority.

B. Types of Minhagim

I am able to discern at least four types of authoritative minhagim. The minhag of excluding women from aliyyot and qeri’at ha-Torah does not appear to fall into any of these categories.

The first type of minhag is one that enhances and enriches ritual life. There are countless minhagim of this sort, but I would draw attention in particular to the minhag of drowning out Haman’s name during the reading of the Megillah in the synagogue on Purim, which was the basis for Rema’s well-known pronouncement on the inviolability of reports that it is the minhag for most women to dispense with the amidah and to fulfill their obligation by saying “some entreaty (some entreaty)” in the morning.

242. Aryeh A. Frimer & Dov I. Frimer, “Women’s Prayer Services - Theory and Practice: Part 1: Theory,” Tradition 32,2 (winter 1998):17 cite the custom recorded in Magen Avraham to prove that women are exempt from the requirement of public worship (tefillah be-tsibbur) and therefore may choose to pray in separate women’s services. They give greater halakhic weight to Magen Avraham’s minhag than to Magen Avraham’s stated halakhic opinion that women are obligated to hear qeri’at ha-Torah. R. Yehuda Henkin (Bnei Banim II, Chap. 10, p.43) understands this custom against the background of the requirement in Masekhet Soferim (18:6) that women be provided with a proper translation of the Torah reading. If women were to remain in the synagogue for qeri’atha-Torah, the men would be obliged to offer a translation, a custom that is no longer practiced. R. Henkin concludes that the min-
ity of minhag. After setting forth the minhag and its origins, Rema remarks: “One should not abrogate any minhag or mock it, because it was not established for naught.”

Rema’s comment is frequently cited as arguing for the immutability of minhagim, but this can hardly be said to be Rema’s conclusive, comprehensive statement on the subject. Magen Avraham cites a responsum of Rema that, while upholding the authority of minhag, concludes: “But if circumstances have changed from what they were originally, we may change the minhag according to the times.”

A review of the actual responsum of Rema cited by Magen Avraham will show how emphatic Rema was in asserting the ascendancy of halakhah over minhag. After reciting some of the various standard formulae for the unimpeachable authority of minhag, Rema writes: “I say that all this is nothing (omer de-khol zeh eino kelum),” and wonders how later generations could ever innovate if we claim “that it is impossible under any circumstance to change the early minhag.”

Minhagim should be cherished, faithfully observed, and certainly never mocked, but they may, indeed should, change with the times.

The second type of minhag is one invoked to resolve issues where the halakhah is unsettled. In such matters the rabbis may instruct their disciples:
“Go forth and see how the public are accustomed to act.” This type of minhag is described in the Talmud Yerushalmi as follows: “Every halakhah that is unsettled in court (rofeṭet be-bet din) and whose nature you do not know, go out and observe how the public practices and we shall practice as they do.” Although I have heard these sources cited to support the ascendancy of minhag, this is hardly the conclusion to be drawn from them. The doctrine of “go forth and see” is explicitly limited to those few cases—generally quite technical in nature—where the rabbis admit that the halakhah is unsettled and in doubt. Rishonim justify this appeal to minhag with the argument that the common practice likely reflects halakhic traditions that were lost; in no event is the practice of “go forth and see” to be viewed as an abdication of rabbinic responsibility in favor of halakhic populism.

The third type of minhag is one that adopts a stringent practice in order to place a “fence” around a religious prohibition. The prototype for this sort of minhag is found in the Talmud (Pesahim 50b), which states:

The citizens of Beyshan were accustomed not to go from Tyre to Sidon on the eve of Shabbat. Their children went to R. Jochanan and said to him, “For our fathers this was possible; for us it is impossible.” Said he to them, “Your fathers have already taken it upon themselves, as it is said, ‘Hear my son, the instruction of thy father and forsake not the teaching of thy mother’ (Prov.1:8).”

Rashi explains that the elder merchants of Beyshan took upon themselves not to travel to Sidon on Friday in order not to interfere with Sabbath preparations. When their children wished to be relieved of this stringent minhag, they were told that the minhag was binding on them and could not be breached.

Clearly this type of minhag carries great authority, as it was adopted for the express purpose of preventing practices that might lead to violations of religious law. Nonetheless, Ran points out that even minhagim of this sort are only locally authoritative, and one who moves from the city where they are practiced may cease to observe them. More generally, Rosh and Rema hold that even such minhagim do not bind if they are counterproductive or if circumstances have changed. The fourth type of minhag is one that sets down rules of communal and economic organization, particularly matters of representation, taxation, and commercial practices. Such minhagim are often formally adopted by vote of the community leadership, or acquire their authority on the basis of well-known and accepted business conventions reflecting standard commercial practice. The full force of the statement that “minhag overrides (mevattel) halakhah” is

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reserved for this type of civil law minhag, where the operative principle is that "a person may contract out of the law of the Torah." A typical statement of this type of minhag appears in the responsa of Rashba:

The laws of taxation in every place do not have their basis in the holy heights of the Talmud, and one finds in every place different laws based on convention and on the agreements of their elders. Townspeople are permitted to make binding enactments and publicized minhagim, to the extent they wish without regard to halakha, because these are civil matters. Therefore, if they have a publicly known minhag on this matter, follow the minhag; for in such instances the minhag overrides halakha.

Outside of the realm of civil law, minhagim that abrogate halakha are rare.

Perhaps the best summary of these views is found in the responsa of Rosh, who lays down the following guidelines for the authority of minhag in matters of ritual law. Minhagim that place a "fence" around religious prohibitions should be observed, unless they no longer serve their purpose; minhagim that abrogate the halakha are not to be observed; in cases where the halakha is not well settled (halakha rofeqet), minhag controls, on the presumption that the minhag reflects the decision of the rabbis.

If this is representative of the normative, halakhic attitude towards minhag, it is difficult to attack women's participation in qeri'at ha-Torah on the grounds that it runs counter to minhag. What sort of minhag would the practice violate? The sort of minhag—described by Magen Avraham—that encourages women to leave the synagogue for qeri'at ha-Torah even if their obligation with respect to Torah reading is equal to that of men? The type of minhag alluded to by Perishah in suggesting that the minhag that minors (and perhaps women as well) do not receive aliyyot arose because there was no room for them in the gabai's aliyyah roster? It would be difficult to argue that minhagim of such humble origin can withstand the halakhic and moral claim of women who wish to share more fully in the religious life of the synagogue.

The case for prohibiting women's participation in qeri'at ha-Torah on the basis of minhag is hardly made stronger by attempting to place the prohibition within one of the categories of halakhically recognized minhagim described above. The minhag of barring women from qeri'at ha-Torah—if it actually can be said to exist—is obviously not a minhag involving a civil matter concerning which we might say that "minhag overrides halakha." Nor is it a minhag invoked to resolve an unsettled halakhah concerning which we might invoke the "go out and see" doctrine. There certainly exists no rabbinic consensus that the matter is unsettled, and, in any event, the issue is one of basic principle that cannot be resolved by the "people."
Neither may the minhag be said to be one that builds a “fence” to safeguard against the violation of serious prohibitions, particularly those that may arise from the frivolous or improper mingling of the sexes in the synagogue. Admittedly, this is a legitimate concern that must be dealt with in the general context of preserving the decorum and propriety of prayer service; the question of preserving the dignity of the prayer service is one that vexes almost all synagogues. As we have shown, there is no evidence that the rabbis accepted this as the reason for excluding women from qeri’at ha-Torah. The rabbis forbade women from reading Torah because they saw it as a violation of kevod ha-tsibbur, and, as we have seen, kevod ha-tsibbur is a notion that reflects women’s social status.

Some argue with genuine sincerity that barring women from qeri’at ha-Torah is an example of the first sort of minhag—a minhag that enhances and enriches and, to an extent, defines the traditional synagogue experience. In their view, a service where women receive aliyyot and read Torah will be different from the service to which we are accustomed. This is an argument that I believe should be respected in those synagogues and communities that assert it. But, as we have seen, a minhag of this sort cannot be generally binding if it does not serve its enhancing purpose. There are women for whom the issue of participation in qeri’at ha-Torah goes to the heart of their religious self-definition and to whom prevailing Orthodox attitudes and practice are painful. Their concerns should be addressed from the perspective of halakhah, and may not be dismissed simply because they make others uncomfortable.

D. Porets Geder (“Breaking a Fence’); Lo Titgodedu (Splitting the Community)

A final word must be said on the issues of “porets geder” and “lo titgodedu,” concepts to which those who oppose departure from custom and convention frequently appeal. Porets geder (breaker through a fence) is a term applied by the rabbis to those who fail to observe rabbinic enactments and decrees. The expression is based on Eccl. 10:8: “May a serpent bite whoever breaks through a fence,”269 which is interpreted as calling for divine retribution against those who do not respect the “fences” established by the Rabbis, even if they fully observe the commandments of the Torah.270

The Shulhan Arukh cites four instances of porets geder, all of them cases of failure to observe rabbinic enactments or binding minhagim.271 The term is used similarly by other poseqim. Porets geder is not a catch-all category for the condemnation of all residual unacceptable behavior that cannot be disapproved of on some other grounds. If my halakhic analysis of the issues is correct, there are circumstances where it is permissible for women to receive aliyyot or read the Torah. The notion of porets geder is out of place in such a case; it is a rhetorical flourish rather than an argument with controlling halakhic weight.

The same is true of “lo titgodedu,” a prohibition against communal division into groups that follow different

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261. See footnote 246 above.
Rabbis. The prohibition is based on a play of words in the verse “You are the children of the Lord your God. You shall not gash yourself (lo titgodedu) or shave the front of your heads because of the dead” (Deut. 14:1). The Talmud (Yevamot 13b) reads the words “lo titgodedu” as prohibiting the formation of conflicting groups, or agudot. It is clear from the discussion in the Talmud that it is not the purpose of lo titgodedu to enforce universal halakhic uniformity. The exact application of lo titgodedu is the subject of a dispute between Abbayei and Rava. According to Abbayei:

The warning against opposing sects is only applicable to such a case as that of two courts of law in the same town, one of which rules in accordance with the views of the School of Shamai while the other rules in accordance with the views of the School of Hillel. In the case, however, of two courts of law in two different towns [the difference in practice] does not matter. Said Rava, the warning against opposing groups is applicable to such a case as that of one court of law in the same town, half of whose members rule in accordance with the views of the School of Shamai while the other half rule in accordance with the views of the School of Hillel. In the case, however, of two courts of law in the same town [the difference in practice] does not matter.

Rambam rules, in accordance with Rava, that one town may not host two conflicting courts of law. R. Yosef Karo reports that R. Yeruham held, in accordance with Abbayei, that two differing courts of law may operate in the same town, and it appears that this was R. Yosef Karo’s own opinion. Be that as it may, it is clear that lo titgodedu was never intended to be the halakhic vehicle for guaranteeing uniformity in observance. The argument is frequently invoked, by way of analogy, as a general call against action that might lead to communal strife or division, but its halakhic application is more limited than would appear from its free use.

The lo titgodedu argument must also be evaluated against contemporary reality. Jerusalem, where I live, has two Chief Rabbis, Ashkenazi and Sephardi, and many religious courts, including those of the Chief Rabbinate, former chief rabbis and the Eidah ha-Haredit. The city has countless synagogues of varying minhagim and styles of prayer. New synagogues are always being organized along political, religious and social lines, including country and yeshiva of origin. None of these developments are deemed to violate lo titgodedu. The argument that a service that includes women’s participation in qeri’at ha-Torah would upset the harmony of religious life in Jerusalem is simply disingenuous.

VI. Summary

To recapitulate, there appears to be sound halakhic basis for the argument that, where a man reads the Torah,
women might be called to the Torah for at least some of the aliyyot. In impromptu services held outside the synagogue, or in synagogues where there is consensus that a woman’s Torah reading does not violate community standards of dignity, women may be permitted to read the Torah (or at least portions of it) as well. The only serious objection to qeri’at ha-Torah by women is the one raised by the baraita, namely that women’s Torah reading violates kevod ha-tsibbur, and kevod ha-tsibbur should be regarded as a relative, waivable objection that is not universally applicable.

Because qeri’at ha-Torah by women would be a radical innovation, the practice should not be introduced in a way that directly challenges existing practice or causes disension within established synagogues, whose minhagim should be respected. However, where women’s aliyyot and Torah reading take place in self-selected groups, the practice may not be attacked on the grounds that it violates binding minhag.