

***Qeri'at ha-Torah* by Women: A Halakhic Analysis**

Mendel Shapiro

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

I. Introduction

In recent years a number of important studies¹ 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'at ha-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*.

¹ See, for example, Moshe Meiselman, *Jewish Woman in Jewish Law* (New York:Ktav, Yeshiva University Press 1978); Aryeh A. Frimer, "Women and Minyan," *Tradition* 23,4 (summer 1988): 54; Aryeh A. Frimer & Dov I. Frimer, "Women's Prayer Services – Theory and Practice; Part 1: Theory," *Tradition* 32,2 (winter 1998):5; Avraham Weiss, *Women at Prayer, a Halakhic Analysis of Women's Prayer Groups* (Hoboken: Ktav 1990); Avraham Weiss, "Women and the Reading of the *Megillah*," *The Torah U-Madda Journal*, 8 (1998-1999):295; Eliezer Berkovitz, *Jewish Women in Time and Torah* (Hoboken:Ktav 1990); Joel B. Wolowelsky, *Women, Jewish Law, and Modernity: New Opportunities in a Post-Feminist Age* (Hoboken: Ktav 1997); Yehuda Henkin, *Equality Lost: Essays in Torah Commentary, Halacha, and Jewish Thought* (Jerusalem: Urim Publications 1999). In Hebrew, see the *responsa* of R. Yehuda Herzl Henkin, *Benei Banim*, v. 1-3 (Jerusalem 5741-5758).

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.² 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*)."³ 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'atha-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'atha-Torah*.⁴ 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'atha-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*

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 . מגילה כג. ת"ר הכל עולין למנין שבעה ואפילו קטן ואפילו אשה אבל אמרו חכמים אשה לא תקרא בתורה מפני כבוד צבור

⁴ For a presentation of such arguments, see Weiss, *Women at Prayer*, pp. 67 - 80.

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.”⁵ For a variety of reasons of both general⁶ and specific⁷ 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 exempt⁸) involving the *mitsvah* of Torah study (from which women are exempted as well⁹),

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* by women 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.¹⁰

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*,¹¹ who concludes, based on the rule of “All are included in the number of seven...” and on a passage from

5 . ראש השנה פ"ג מ"ח: זה הכלל, כל שאינו מחויב בדבר אינו מוציא את הרבים ידי חובתו

6 Women are generally exempted from positive commandments whose observance is “determined by time” (מצוות עשה שהזמן גרמן). משנה קידושין פ"א מ"ז: וכל מצות עשה שהזמן גרמא, אנשים חיבין ונשים פטורות...

7 For example, women are exempted from the obligation of circumcising their sons and of redeeming their first born sons. For our purposes, it is significant that women are exempted as well from the commandment of Torah study (תלמוד תורה). See *Qiddushin* 29a-29b.

8 This exemption is taken to apply even to rabbinically enacted commandments, such as *qeri’at ha-Torah*. See תוספות, מסכת ברכות דף כ. שו"ת יחוה דעת, חלק ג סימן י. See also R. Ovadia Yosef, ד"ה בתפילה: דהא הלל דרבנן ונשים פטורות מהאי טעמא דמצות עשה שהזמן גרמא הוא... However, Rashi (*Berakhot* 20b, s.v. *hakhi garsinan*) appears to hold that the exemption does not extend to rabbinic commandments.

9 . קידושין כ"ט:

10 The assessment of *kevod ha-tsibbur* as a secondary argument appears as well in the issue of whether, where a fit *sefer torah* is unavailable, *qeri’atha-Torah* can be from a defective *sefer torah*. The Talmud (*Gittin* 60a) states that “we may not read [*qeri’atha-Torah*] from *humashim* [scrolls containing only a portion of the torah] in the synagogue because of the ‘dignity of the congregation.’” Rambam in *Mishneh Torah* (*Hilkhot Tefillah* 12:23) accepts this rule and its underlying reasoning without qualification. This did not deter Rambam from ruling (Responsum 294) that it was permissible to read from a defective *sefer torah* if no other was available. Rambam disagreed with those *rishonim* who held that reading from a defective *sefer torah* was prohibited because the blessings recited on it were blessings said in vain (*berakhah le-vattalah*), as follows: “And evidence for my position is adduced from what we say that ‘we may not read from *humashim* because of the ‘dignity of the congregation.’” There is no conceivable defect [in a *sefer torah*] more serious than that of a *humash*... so why did [the Talmud] give the reason of *kevod ha-tsibbur*? They should have given the reason [for the prohibition against reading from *humashim*] that it is defective and the blessing would be a *berakhah le-vattalah*.” In other words, offering a secondary reason such as *kevod ha-tsibbur* shows that there is no primary objection.

שו"ת הרמב"ם סימן רצ"ד: וראיה לדבר זה היא דאמרינן אין קורין בחומשין מפני כבוד צבור. וכי יש בעולם פסלות כמו פסלות חומש... ולמה נתנו הטעם מפני כבוד צבור והיה להם לתת הטעם מפני שהוא פסול שנמצא ברכה לבטלה.

11 מנן אברהם או"ח סימן רפ"ב סק"ו: משמע מכאן דאשה חייבת לשמוע קריאת התורה ואע"פ שנתקנה משום תלמוד תורה ונשים אין חייבות... בתלמוד תורה מכל מקום מצוה לשמוע כמו מצות הקהל

Magen Avraham even entertains the possibility that women are eligible to be included in the quorum of ten required for *qeri’atha-Torah*. In *Orah Hayyim* 55, *Magen Avraham* cites an opinion that anyone who is “included in the number of seven” olim may be included as well in the quorum of ten required for *qeri’atha-Torah*. *Magen Avraham* then refers the reader to *Orah Hayyim* 690, where the issue remains unsettled.

מנן אברהם, אורח חיים, סימן נ"ה סק"ד: ומיהו לענין קריאת התורה ל"א דמצרפינן אותו [קטן] לעשרה מאחר שעולה למנין ז' [תשב"ץ]. ובסוף סימן תר"ץ משמע דיש להסתפק בדבר.

The reference to *Orah Hayyim* 690 is to *Hilkhot Megillah*, where Rema expresses doubt as to whether women are included in the quorum of ten required

Masekhet Soferim that states that “women are obligated to hear the reading of the book (*sefer*) as are men,”¹² that men and women are equally obliged with respect to *qeri’at ha-Torah*. This is so because the model for *qeri’at ha-Torah* is the *mitsvah* of *haqhel*,¹³ in which women participated together with men. R. Hayyim David Azulai (Hida) in *Birkei Yosef*¹⁴ follows *Magen Avraham*, and finds an additional link between women and *qeri’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-*

*Sheqel*¹⁶, and R. Aryeh Leib Gunzberg in *Turei Even*¹⁷, based on the principle of the *Tosafot*¹⁸ that rabbinically ordained *mitsvot* (such as *qeri’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 *qeri’at ha-Torah*.¹⁹ It is well established that *qeri’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.

רמ"א, אורח חיים, סימן תר"ץ: ויש להסתפק אם נשים מצטרפות לעשרה. *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.

מסכת סופרים, פרק י"ח הלכה ה': הנשים חייבות לשמוע קריאת ספר כאנשים... 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`ah be-Av*, and not the *sefer torah*.

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

הקהל את העם האנשים והנשים והטף וגרך אשר בשערך למען ישמעו ולמען ילמדו ויראו את ה' אלוהיכם ושמועו לעשות את כל דברי התורה הזאת. 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.

14 . ברכי יוסף, אורח חיים, סימן רפ"ב סעיף ז. ויש קצת ראייה דהנשים חייבות בשמיעת קריאת ס"ת ע"ד מצות הקהל ממ"ש הטור ריש הלכות ר"ח דמוסיפין עולה ד' בס"ת בר"ח מפני שאין בו ביטול מלאכה לנשים משמע כי יש להם שייכות בשמיעת קריאת ס"ת, וכבר הרב מגן אברהם הביא ממס' סופרים שחייבות בשמיעת קריאת ס"ת.

Is Hida suggesting that prior to being excluded from *qeri’at ha-Torah* because of *kevod ha-tzibbur* women customarily received *aliyyot* on *Rosh Hodesh*?

15 . טור שולחן ערוך, אורח חיים, סימן תל"ז סעיף א': תקנו להוסיף אחד ולקרות ד' בתורה, והיא לנשים קאמר מפני שהנשים בטלות בו ממלאכה.

16 . מחצית השקל, או"ח סימן רפ"ב סק"ו

17 . טורי אבן, מסכת מגילה כג., כד., עמודים קיט-קכא

18 . תוספות מסכת ראש השנה ל"ג. ד"ה הא: ומיהו יש לומר דרשות יכול להוציא בר חיובא דרבנן כמו קטן דמברך לאביו... דאם אכל האב שיעורא דרבנן... ועולין למנין שבעה ומוציא אחרים ידי חובתן.

19 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 (ישיבי קריות). Ezra also introduced the practice of having three *aliyyot* read on Monday and Thursday. See Rambam, *Hilkhot Tefillah*, chapter 12.

20 In halakhic parlance: *qeri’at ha-Torah* is חובת הצבור and not חובת היחיד.

21 מלחמות ה' על הר"ף עמוד ג. אמר הכותב השנויים במשנתנו כולם חובת הצבור הן... אבל במגילה כשם שהצבור חייב כך כל יחיד ויחיד חייב

Megillah was not included in the list set forth in *Mishnah Megillah* of religious ceremonies requiring a quorum of ten²², 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'atha-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 *Mishneh 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'atha-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. משנה מגילה פ"ד מ"ג.

23 See *Shulhan Arukh*, *Orah 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'atha-Torah* may take place privately.

24. בית הבחירה על מסכת מגילה כ"ד.

25. ר"ן על הרי"ף מסכת מגילה ל"ג: ד"ה ואין קורין בתורה: דתקנתא דרבנן הוא ולא תקון אלא בצבור.

26. רא"ש, מסכת ברכות פרק שביעי, סימן כ: דספר תורה לשמיע קאי.

27 Ramban's organization of the rules of *qeri'atha-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'atha-Torah*.

Ramban's principle finds practical application in the rulings cited by R. Joseph Karo in the *Shulhan Arukh* (*Orah Hayyim* 146:2) that congregants may quietly discuss "matters of Torah" during the time of *qeri'atha-Torah*, provided that at least ten persons remain attentive to the reading; that a person may devote the time of *qeri'atha-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 (ידיה רקיע). Ramban's opinion also accounts for our practice of not requiring a person who misses *qeri'atha-Torah*, even due to his own negligence, to attend a compensatory *qeri'atha-Torah*. See *Iggerot Mosheh* (*Orah Hayyim*4:#23), where R. Moshe Feinstein urges his correspondent to listen carefully to *qeri'atha-Torah* in the synagogue as he will not hear it again.

28- Issachar Ber of Vilna, *Ma'aseh Rav*, Section 175, cited in R. Ovadiah Yosef, *Resp. Yabbi'a Omer*, v. 1, *Orah Hayyim*, Section 14.

29. אגרות משה, אורח חיים, חלק א', סימן כ"ח, עמוד ע"ג: ... לענין קריאת התורה דביה לכולי עלמא הוא חובת הצבור ...

"With respect to *qeri'atha-Torah*, it is universally accepted that it is a communal obligation..." See however *Iggerot Moshe* (*Orah Hayyim* v.4, #40, Par. 4), where R. Feinstein writes that every individual has an obligation to hear *qeri'atha-Torah*. (... חייב קריאת התורה היא על כל אחד לשמוע...). R. Feinstein makes this statement without reference to Ramban or any other authority, and it appears inconsistent with R. Feinstein's position elsewhere. Perhaps R. Feinstein's practical purpose in this short response was, apart from halakhic theory, to urge attendance at *qeri'atha-Torah*.

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

See R. Hershel Schachter, *Nefesh ha-Rav* (Jerusalem *Reshit Yerushalayim* 1994), p.130, who reports that R. Yosef Dov Soloveitchik, following the practice of his grandfather, R. Chaim Soloveitchik, would organize a *qeri'atha-Torah* for *minha* on those weekdays when he missed *qeri'atha-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'at ha-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.³¹

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 know, 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.³²

Hence, the disability of women in the area of *qeri'at ha-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-

the morning. The Rav's maternal grandfather R. Elya Feinstein objected to this practice because it contradicted Ramban's opinion. The Rav himself, unlike R. Chaim, held according to Ramban that *qeri'atha-Torah* was a communal obligation. The Rav summed up the matter as follows: “Of course, the Ramban is right. There is no doubt about. However, R. Elya [Feinstein] told me: ‘You know your Zayde with his ironclad words. What he did not like, he did not like. Once his mind was made up, you could not budge him!’” Quoted in Aaron Rakeffet-Rothkoff, *The Rav: The World of Rabbi Joseph B. Soloveitchik*, Vol. 1 (Ktav 1999), p. 241.

30. שו"ת יביע אומר, חלק ח' אורח חיים סימן י"ד; שו"ת יביע אומר, אורח חיים, חלק ז' סימן ט' אות א; יביע אומר, יורה דעה, חלק ד, סימן ל"א אות ג'.

31. בית הבחירה, מסכת מגילה כד., קטן קורא בתורה שאין הכוונה אלא להשמיע לעם, ואין זו מצוה נמורה כשאר מצוות שנאמר בו כל שאינו מחויב וכו'.

32. ספר משיעורי מרן הראש"ל רבינו עובדיה יוסף שליט"א (מיסן תשנ"ח) עמוד ק"ג: והטעם שיכולה לעלות אף שאינה מחוייבת, אף דקיימא לן דכל שאינו מחוייב בדבר אינו מוציא אחרים ידי חובתם, והרי אינה מחוייבת – כיצד תוציא את הרבים. התשובה לכך, עיקר קריאת התורה היא שידעו ויבינו וישמעו את התורה, ואין נפקא מינה מי קורא, דאף שהיא אשה או קטן יכולים לקרוא ולהוציא את הרבים, דסוף סוף כולם שומעים התורה ולומדים. וע"כ לא בעינן בכגון זה שתהא בר חיובא, כ"כ המאירי והרא"ש, שאין קריאת התורה חובת יחיד אלא חובת הציבור, ורק בחובת היחיד בעינן שהמוציא יהיה בר חיובא.

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 *birkhot ha-Torah* an obstacle to women's Torah reading, and anticipates the principle spelled out centuries later by the Ramban that *qeri'atha-Torah* is not a personal religious obligation, and that the blessings recited with the reading are therefore not typical *birkhot ha-mitsvah* (blessings recited prior to performing a *mitsvah*).

Birkhot ha-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 *birkhot ha-mitsvah*.³³ Ramban, in his glosses on Rambam's *Sefer ha-Mitsvot*,³⁴ reckons the daily obligation to recite *birkhot ha-Torah* before studying Torah as a positive Torah commandment (*mitsvat aseh*) to thank God for giving us the Torah; *birkhot ha-Torah* are

not blessings arising out of the *mitsvah* of Torah study, but blessings of thanksgiving (*birkhot hoda'ah*). Ramban's position is endorsed by R. Isaac de Leon in *Megillat Ester*,³⁵ and is followed as well by R. Isaiah of Trani (Rid),³⁶ R. Solomon ben Adret (Rashba),³⁷ Meiri,³⁸ R. Aaron Halevi in *Sefer ha-Hinukh*,³⁹ and by R. Simon b. Zemach Duran (Rashbaz).⁴⁰ Among later *poseqim*, Ramban's opinion that *birkhot ha-Torah*, being of biblical origin, are not *birkhot mitsvah* relating to the *mitsvah* of *talmud torah*, is adopted by R. Hezekiah ben David De Silva in *Peri Hadash*⁴¹ and by R. Aryeh Leib b. Asher Gunzberg in *Sha'agat Aryeh*.⁴² R. Yehiel Mikhel Epstein in *Arukh ha-Shulhan* writes that "all" of the authorities agree with Ramban,⁴³ and R. Israel Meir Kagan in *Mishnah Berurah* regards Ramban's position as the predominant view.⁴⁴

If *birkhot ha-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

My thanks to Prof. Dov Frimer for bringing this source to my attention.

³³ In addition to the various opinions presented in this section, it is worth noting the unusual opinion of R. Naftali Zvi Yehudah Berlin, based on *Yerushalmi Berakhot* 11b (*Halakhah* 1), that the obligation to recite *birkhot ha-Torah* on the public *qeri'atha-Torah* is of biblical origin.

ש"ת משיב דבר, חלק א סימן טז; פירוש הרחב דבר על התורה, שמות כד יב.

³⁴ השגות הרמב"ן על ספר המצוות להרמב"ם, מצות ששכח אותן הרב ממצות עשה כפי דעת הרמב"ן, מצוה ט"ו: שנצטוונו להודות לשמו יתברך... בכל עת שנקרא בתורה על הטובה הגדולה שעשה לנו בתתו תורתו אלינו

³⁵ מגילת אסתר, מצות עשה לדעת הרמב"ן (מצוה ט"ו): נראה לי כי דברי הרמב"ן צודקים בזה המקום...

³⁶ פסקי הרי"ד למסכת ברכות, דף כ"א.

³⁷ חידושי הרשב"א על הש"ס, ברכות מ"ח:

³⁸ בית הבחירה על מסכת ברכות, דף י"א, דף כ"א.

³⁹ ספר החינוך, מצוות עשה ת"ל.

⁴⁰ ש"ת תשב"ץ, חלק ב', סימן קס"ג.

⁴¹ פרי חדש, אר"ח הלכות ברכת השחר, סימן מ"ז.

Peri Hadash attributes this view as well to R. Yaakov ben Asher (*Tur*), disputing the position of R. Moshe Benveniste in *Penei Moshe* (v.1, resp. no. 1), who argued that those authorities who did not explicitly state their agreement with Ramban should be read as holding that the obligation to recite *birkhot ha-Torah* is of rabbinic origin.

⁴² שאגת אריה, סימן כ"ד-כ"ה.

⁴³ ערוך השולחן, אורח חיים, סימן מ"ז; סעיף ב: וכל הגדולים הסכימו לדבריו שברכה זו היא מן התורה...

⁴⁴ משנה ברורה, אורח חיים, סימן מ"ז, סעיף א; סעיף קטן א.

R. Isaac Yosef in *She'erit Yosef* (Chap. 47; p. 476) lists the following additional authorities as supporting Ramban's view: R. Eliezer b. Joel HaLevi of Bonn (Ravyah), R. Yom Tov b. Abraham Ishbili (Ritva), R. Isaiah b. Elijah Di Trani (the Younger, Riaz), R. Jacob Emden, and R. Abraham

“women recite *birkhot ha-Torah*” in the daily morning prayers despite their exemption from the *mitsvah* of Torah study.⁴⁵ *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.⁴⁶

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”⁴⁷ 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,⁴⁸ Rabbenu Tam⁴⁹, R. Moshe of Coucy in *Sefer Mitsvot Gadol*,⁵⁰ R. Eliezer b. R. Joel ha-Levi of Bonn (Ravyah),⁵¹ R. Isaac of Vienna (Or Zaru'a),⁵² Rosh,⁵³ Meiri,⁵⁴ R. Yaakov b. R. Asher in the *Tur*,⁵⁵ R. David Abudarham⁵⁶ and R. Yosef Karo in *Shulhan Arukh*⁵⁷ 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 *Chayei Adam*.

45 . שולחן ערוך, סימן מ"ז סעיף י"ד: נשים מברכות ברכת התורה.

46 . שולחן ערוך, אורח חיים, סימן ל"ז סעיף ב.

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*.

שו"ת יוסף אומץ סימן ס"ז; שו"ת צ"ץ אליעזר חלק ט"ו סימן כ"ד.

47 . מגילה כ"א: תנא הפותח מברך לפניו והחותם מברך לאחריה. והאידיא דכולהו מברכי לפניו ולאחריה היינו טעמא דתקינן רבין גזירה משום הכנסין ומשום היוצאין.

In mishnaic times only the first and last Torah readers recited a blessing. See Mishnah *Megillah* 4:1

משנה מגילה פרק ד משנה א: הפותח והחותם בתורה מברך לפניו ולאחריה.

48 . אוצר הגאונים, מסכת ברכות, התשובות – דף ל"א: כתב הר' יהודה בר' ברזילי ברצלוני בשם רבי' סעדיה אעפ"י שכבר בירך על התורה בבוקר קודם פרשת התמיד חוזר ומברך אשר בחר בנו כשקורא בתורה ולא הוי ברכה לבטלה דמשום כבוד התורה נתקנה כשקורא בצבור.

49 . ראש השנה ל"ג. תוספות ד"ה הא: ואומר רבינו תם ... דברכת התורה לפניו ולאחריה לאו משום תלמוד תורה ... והאידיא כולהו מברכי גזירה... משום הכנסים ומשום העולין... עירובין צ"ו. ד"ה דילמא: ואומר רבינו תם ... דברכת קריאת התורה לאו משום מצות תלמוד תורה.

50 . ספר מצות גדול, מצות עשה ל"ט (הלכות תפילה). ואל יקשה לך העומד אחר כך לקרות בתורה שמברך, כי אותו אפילו בירך מיד על עסק התורה שעסק בפני עצמו הוא צריך לחזור ולברך על קריאתו בצבור שנתקנה שם ברכה לפניו כמו שנתקנה ברכה לאחריה וכמו שנתקנה ברכה גם על ההפטרה.

51 . ספר רבי"ה, חלק שני, סימן תקצ"ז (עמוד 833): ... דברכות דקריאת התורה אינן בכלל מצות לימוד תורה...

52 . אור זרוע, חלק א, הלכות קריאת שמע סימן כ"ב. הרי למדת שאין ברכה זו אלא מחמת חיבת התורה שנתקנה ברבים לכבוד התורה...

53 . פסקי הרא"ש, מסכת ברכות מ"ז:

54 . בית הבחירה על מסכת ברכות, דף ל"א: ... ועכשיו שנהגו לברך בכל שחרית אותן ברכות שתקנו חכמים על התורה... אין צריך לברך כל אותו היום ברכת התורה אלא בקריאות המתקנות מתקנת עזרא בספר תורה שהם מצוה בפני עצמה ואינם בכלל תלמוד תורה.

Meiri appears to regard the *birkhot ha-Torah* recited for *qeri'at ha-Torah* to be “blessings of praise (*birkhot ha-shevah*)”:

בית הבחירה על מסכת ברכות, דף מ"ו: ... אבל ברכת הפטרה הרי היא וספור הנבואה והברכה שבה, וכן בתורה ובמגלה...

55 . טור, אורח חיים סימן קלט: ואף על פי שכבר בירך על התורה בבוקר קודם פרשת הקרבנות חוזר ומברך אשר בחר בנו כשקורא בתורה ולא הוי ברכה לבטלה דמשום כבוד התורה נתקנה כשקורא בצבור.

56 . ראש השנה ל"ג. תוספות ד"ה הא: ואומר רבינו תם דברכות התורה לפניו ולאחריה לאו משום תלמוד תורה...

57 . אבודרהם השלם (ירושלים תשכ"ג), דיני קריאת התורה דף קלב.

57 . שולחן ערוך, אורח חיים, סימן קל"ט סעיף ח': אפילו בך ברכת התורה לעצמו ותכף קראוהו לקרות בתורה צריך לחזור ולברך אשר בחר בנו כשקורא בתורה דמשום כבוד התורה נתקנה כשקורא בצבור.

Torah.

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]."⁵⁸

According to Rosh's view, minors, women and slaves,

even if they are not among the "commanded," are among the "chosen."⁵⁹ 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 *qeri'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 *Beit 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 *qeri'atha-Torah*.

58 . פסקי הראש, מסכת ברכות מז:--"והא דסלקי קטן ועבד ואשה דליתנהו בתלמוד תורה למנין שבעה, משום דס"ת לשמיעה קאי וברכה אינה לבטלה... דלא מברכים אשר קדשנו במצותיו וצונו על דברי תורה אלא אשר בחר בנו ואשר נתן לנו עד הנה דברי ר"ת.

59 . פסקי הראש שם: ועבד נמי איתיה בכלל ונקדשתי דשכינה שרויה אכל מחויבי מצות בני ברית,

60 . תוספות, סוכה נ"ב, ד"ה וכיון שהגיע: ... והא דעונין אמן בהנפת סודרין היינו בקריאת ספר תורה ... ולא בדבר ששלית צבור מוציא רבים ידי חובתן.

61 . שו"ת רדב"ז חלק א' סימן תקע"ב: ... אבל ברכת התורה אין קריאה בספר תורה בפחות מעשרה ולפיכך מזכיר את ה' ואומר ברכו את ה' המבורך.. לפי שהוא לבדו בא לקרות והצבור לא נתחייבו בברכה זו.

62 . שו"ת נודע ביהודה מהדורה תנינה – אורח חיים סימן ט"ו: ... ובפרט לדין שכל אחד מהעולים מברך אם כן שום אחד אינו מכויץ להוציא.. אחרים בברכתן.

63- 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.

מנחת חינוך, מ"ע ת"ל: ... ומבואר שם בשולחן ערוך דנשים חייבות לברך ... ומכל מקום דבר זה צריך עיון כיון דאינם חייבים במצות לימוד התורה למה חייבים ... ואפשר כמו ברכת המזון שאינו מצוה לאכול רק התורה צותה שאם יאכל יברך והוא מצות עשה, הכי נמי כתבה התורה מי שלומד אף על פי שאינו מחויב, מצות עשה לברך. אך על כל פנים הנוסח אשר קדשנו וכו' לעוסק בדברי תורה צריך עיון, אך אפשר דאשר בחר בנו דהוא שבת מחויבים כמו ברכת המזון אך אשר קדשנו במצותיו וצונו כו' אינם מברכים. אך לדין רשות להם לברך בכל המצות אע"פ שאינם חייבים והדברים עתיקים. עכ"פ ברכת השבת הוא מצות עשה אע"פ שאינם חייבים בלימוד התורה כמו ברכת המזון ולפ"ז נשים ועבדים מוציאים האנשים כי חייבים מן התורה...

64 . הרב אריה פומרנצ'ק, עמק ברכה (מהדורה שלישית תשל"ד), עמוד מ"ו: ... דברכת התורה אינה על המצוה של לימוד תורה ... אלא עיקר חיובא דברכת התורה הוא משום התורה גופא דתורה צריכה ברכה וכל מי שלומד או קורא בתורה צריך לברך. וכך שמעתי מכ' מורי ורבי הגאב"ד דבריסק שליט"א בשם אביו הגר"ח הלוי ז"ל.

Torah must recite *birkhot ha-Torah*.⁶⁴ 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,⁶⁵ 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 Soloveitchik⁶⁶ and to R. Yosef Dov Soloveitchik.⁶⁷

Although Ramban's and R. Chaim's interpretation of *birkhot ha-Torah* provides a congenial conceptual basis for women's recitation of those blessings, it is by no means the only one. Some *poseqim*, such as R. Moshe of Coucy in *Sefer Mitsvot Gadol*⁶⁸ and R. Joshua Falk in *Derishah*,⁶⁹ who hold that the *birkhot 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 Teomim in *Peri Megadim*⁷⁰ and R. Israel Meir Kagan in *Be'ur Halakhah*⁷¹ observe that even this limited obligation of *talmud torah* is sufficient to empower women to say *birkhot ha-Torah* on behalf of men. R. Elijah of Vilna,⁷² who views the daily *birkhot ha-Torah* as being *birkhot ha-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 *birkhot ha-Torah* inasmuch as they are generally entitled to recite blessings when voluntarily performing time-bound *mitsvot*. In yet another vein, R. Jacob Landau in *Agur*⁷³ and R. Abraham Gombiner in *Magen Avraham*⁷⁴ argue that *birkhot 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 *birkhot ha-Torah* recited on *qeri'atha-Torah*, because this sort of *birkhat ha-Torah* was enacted for *kevod ha-Torah* and was therefore not a typical *birkhat ha-mitsvah*. R. Chaim's position is much more far-reaching; men and women are on an equal footing with respect to *birkhat ha-Torah* and women may in all cases recite the blessing on behalf of men.

65 . שם, ותיירך בזה קושית הטורי אבן במגילה ד' כ"ג, בהא דאשה עולה למנין שבעה קראים אפילו בסוף שבעה, שחוטמת בתורה ומברכת לאחריה ומוציאה בברכתה את כל הקראים, והקשה, הרי אשה פטורה מתלמוד תורה ואיך מוציאה אותם, הא כל שאינו מחויב בדבר אינו מוציא אחרים; ולפי הנ"ל ניחה, דכיון דברכת התורה אינה על המצוה אלא על התורה גופה דצריכה ברכה, ועל כן גם נשים חייבות בברכת התורה מן התורה ושפיר מוציאות בזה את האנשים.

I am grateful to Prof. Dov Frimer for bringing this source to my attention

Turei Even answered his own question based on the principle of the *Tosafot* that rabbinically prescribed *mitsvot* (such as *qeri'atha-Torah*) may be performed by the non-obligated on behalf of the obligated. See text accompanying footnotes 17-18, above.

66- As cited by R. Eliezer Waldenberg:

שו"ת ציץ אליעזר חלק ט"ו סימן כ"ד: אולם עולה בדעתי לומר דאולי המכוון בזה (הסתירה בשו"ע בין האמור בסימן מ"ז והאמור בסעיף י"ז) אל הביאור וההסבר שמביא בחידושי הגר"ז הלוי ז"ל בפ"א מהלכות ברכות הט"ז בשם אביו הגאון הגר"ח ז"ל, שהסביר דלכן נשים מברכות ברכת התורה, מפני דברכת התורה אין הברכה על קיום המצוה של תלמוד תורה רק דהוא דין בפני עצמו דהתורה בעי ברכה, ונשים פטורות רק מהמצוה של תלמוד תורה אבל אינן מופקעות מעצם החפצא של תלמוד תורה.

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

67 . מבית מדרשו של הרב (ירושלים תשל"ח) עמוד 31 : ... דברכת התורה לא היו על החיוב ללמוד או על הקיום של החיוב, אלא על החפצא של תורה. ואף בלימוד נשים יש חפצא של תורה ... וראיית הגר"ח לזה מדנשים עולות למנין שבעה אף דאינן מחויבות בדבר, ומ"מ מוציאות, דלא בעינן אלא חפצא של תורה.

I am grateful to Prof. Dov Frimer for bringing this source to my attention.

68- *Sefer Mitsvot Gadol* cited in *Beit Yosef (Orah Hayyim 47)*.

69 . דרישה, אורח חיים סוף סימן מ"ז.

70 . משבצות זהב, אורח חיים, סימן מ"ז.

71 . באור הלכה, אורח חיים סימן מ"ז סעיף קטן ל"ד (משנה ברורה).

72 . ביאור הגר"א, אורח חיים, סימן מ"ז סעיף קטן ל"ד ד"ה נשים.

73- Cited in *Beit Yosef (Orah Hayyim 47)*.

recited by women who are obligated to pray.⁷⁵ Finally, with reference to the specific *birkhot ha-Torah* recited with *qeri'at ha-Torah*, R. Simhah of Vitry in *Mahzor Vitry*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 *birkhot ha-Torah* are *birkhot ha-mitsvah* that may not be said by women, who are exempt from the *mitsvah* of Torah study, is cited by Meiri 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 woman 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?⁷⁷

This view is occasionally attributed to Meiri himself.⁷⁸ This is an uncertain attribution, as we have already seen that Meiri accepted the view that the *birkhot ha-Torah* recited on *qeri'at ha-Torah* are not *birkhot ha-mitsvah* related to *talmud torah*,⁷⁹ and are instead “blessings of

74. מגן אברהם, אורח חיים סימן מ"ז סעיף י"ד, סעיף קטן י.

75- Arguably, this is the position of Rambam as well. Rambam cites the obligation to recite *birkhot ha-Torah* in chapter 7 of *Hilkhot Tefillah*, which contains as well the laws relating to *birkhot ha-shahar* generally. However, unlike *birkhot ha-shachar* 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 *shachar* only if one actually hears the morning call of the rooster), *birkhot ha-Torah* must be included in the prayer service in any event, presumably also by women who, according to Rambam (*Hilkhot Tefillah* 1:2) are obligated in the *mitsvah* of prayer. Thus, although Rambam, unlike Ramban, does not reckon *birkhot ha-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-Shulhan* (*Orah Hayyim* 47:2), who argues that Rambam in fact viewed *birkhot ha-Torah* as being of biblical origin.

76. מחזור ויטרי, סימן שנ"ט ד"ה כן הורה.

77. בית הבחירה על מסכת מגילה, דף כ"ג: ? : ויש מי שמפרש שלא נאמרו הדברים [הכל עולין למנין שבעה...] אלא בזמן שהיו קוראין אמצעיים בלא ברכה ואשה יכולה לקרות באמצע, אבל עכשיו שכולן מברכין אין אשה קוראה כלל, וכן הדין נותן שהרי האיך מברך והיא פטורה? According to Meiri, the enactment that all *olim* recite *birkhot ha-Torah* effectively precluded women from participating in *qeri'atha-Torah*.

78. ר' חיים יוסף דוד אזולאי (חיד"א), ברכי יוסף, אורח חיים סימן רפ"ב סעיף ז'.

R. Avraham Weiss (Women at Prayer, p. 76) cites Meiri for the proposition that women may not recite *birkhot ha-Torah* “and fulfill the obligation of the listeners with respect to *qeri'atha-Torah* betibbur.” 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 Meiri. R. Weiss's interpretation/interpolation, which assumes that there exists a personal obligation to listen to *qeri'atha-Torah* attributes to Meiri 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 Meiri, 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* like other *mitsvot* with respect to which it is said that whoever is not himself obligated etc.”

בית הבחירה, מגילה כד: . קטן קורא בתורה שאין הכוונה אלא להשמיע לעם, ואין זו מצוה גמורה כשאך מצות שנאמר בה כל שאינו מחויב וכו' Hida cites Meiri in *Birkei Yosef* (*Orah Hayyim* 282:7), but it appears from his responsa *Yosef Ometz* (*Siman* 67) that Hida did not accept this position as *halakhah*, but held that women might recite *birkhot ha-Torah* when called to the Torah.

Other possible dissenters: R. Isaac (II) Aboab (cited in *Beit Yosef* [*Orah Hayyim* 139] and in *Bayit Hadash* [*Orah Hayyim* 139]) quotes R. Jonah b. Abraham Gerondi as holding that the *birkhot ha-Torah* of *qeri'atha-Torah* must be recited aloud as the congregation is obligated to hear them and fulfill its obligation through the blessing of the *oleh*. R. Jonah's opinion is not accepted as *halakhah* by R. Isaac (II) Aboab, R. Yoel Sirkis (*Bayit Hadash*) or by R. Yosef Karo. R. Isaac (II) Aboab does not relate his holding to the case of *qeri'atha-Torah* by women.

R. Zvi Pesach Frank in *Har Zvi* (*Orah Hayyim* v. I, *siman* 58) cites the responsum of R. Eliezer b. Natan of Mainz (Raban), as follows: וכן מבואר בתשובת הראב"ן (סימן ע"ג) שכתב וז"ל: שאלני אחי, הקורא בתורה למה אומר לצבור ברכו את ה' המבורך... השבתי לו לפי שעזרא תקן לישראל קריאת התורה והקורא בתורה מוציא הרבים יד"ח, לפיכך הרי הוא אומר לצבור אתם צריכים לברך ולקרות כמוני תסכימו לקריאתי וברכתי עמי, והם עונים ומברכים.

praise (*birkhot ha-shevah*).⁸⁰ 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.⁸¹ 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 *birkhot ha-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’atha-Torah* only because of *kevod ha-tsibbur*, and they might therefore be included in the quorum of ten required for the public Torah reading.⁸² 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 *birkhot ha-Torah*, it would be instructive to examine the origins of this opinion and evaluate its halakhic weight.⁸³

The opinion cited by Meiri rests on two assumptions:

birkhot ha-Torah (at least with respect to *qeri’atha-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, we have already seen that most authorities, including Meiri, do not regard *birkhot ha-Torah* as *birkhot ha-mitsvah*, and that even those who do still maintain, for a variety of reasons, that they might be said by women. With respect to the second 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 Tsitsit* (3:9) holds that:

women and slaves who want to wrap themselves in *tsitsit* 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.⁸⁴

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.

⁷⁹ . בית הבחירה על מסכת ברכות, יא; כא.

⁸⁰ . בית הבחירה על מסכת ברכות, דף מ"ו.

⁸¹ . בית בחירה, מגילה כ"ג עמוד א: הכל עולין למנין שבעה, או לאיזה מנין של קריאת התורה, ואפילו אשה ואפילו קטן...

See R. Yehuda Herzl Henkin:

שו"ת בני בני (ירושלים תשמ"א) סימן ד (נשים בודדות בעזרת הגברים בבית הכנסת) עמוד יז: ומהר"ם הביא דברי רבינו שמחה שלא רק למנין שבעה היתה עולה אלא גם למנין שלשה ואם כן היתה מברכת... והיא אומרת ברכו את ה' המבורך והוי דבר שבקדושה...

⁸² . בית הבחירה על מסכת ברכות, מ"ו:

ואעפ"י שבמקרא מגילה מצטרפות לעשרה ומוציאות את הרבים בזה חיובם שוה. אע"ג דבקריאת התורה לא אמעוט אלא מפני כבוד צבור, מ"מ אינה עולה למנין ל' של מעמד ותפלה. ויש אומרים שאף אין עולה למנין ה'...

⁸³- The opinion is cited as well by Rosh, who, as we have seen, rejects it.

רא"ש, קידושין פרק א סימן מט: ... דילמא מה שאשה וקטן עולין למנין שבעה היינו באמצע...

⁸⁴ . רמב"ם הלכות ציצית, פ"ג ה"ט: נשים ועבדים שרצו להתעטף בציצית מתעטפים בלא ברכה, וכן שאר מצות עשה שהנשים פטורות מהן אם רצו לעשות אותן בלא ברכה אין ממוחין בידן.

untarily.⁸⁵ 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.⁸⁶

Contemporary Sephardim halakhic practice continues to follow Rambam and R. Yosef Karo;⁸⁷ 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,⁸⁸ 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 *aliyyot* 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*.⁸⁹

Rabbenu Tam’s discussion with R. Yitshaq ben Yehudah included an aside that is the source of the restrictive opinion cited by 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 *birkhot 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 *aliyyot*, 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 *aliyyah* (“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’atha-Torah* were not *birkhot ha-mitsvah*.

We have seen that the great majority of *poseqim*, for a

85 . בית יוסף או"ח סימן י"ז: ...ולענין הלכה נקטינן כהרמב"ם ז"ל דספק ברכות להקל.

86 . רמ"א, או"ח סעיף י"ז סק"ב: ומ"מ אם רוצים לעטפו ולברך עליו הרשות בידם כמו בשאר מצות עשה שהזמן גרמא.

87 . רב עובדיה יוסף, שו"ת יבע אומר, חלק ה' – אורח חיים, סימן מ"ג (בדין ברכת הלולב ושאר מצות עשה שהזמן גרמן לנשים)

88 . תוספות, קידושין לא. ד"ה דלא מפקידנא; תוספות עירובין צו. ד"ה דילמא; תוספות, ראש השנה לג. ד"ה הא.

89 . תוספות ד"ה הא, ראש השנה ל"ג: ...ור"י ב"ר יהודה מביא ראיה דנשים מברכות על כל מצות עשה שהזמן גרמא מדאמרין הכל עולה למנין שבעה ואפילו אשה ואפילו קטן ואע"ג דאשה אינה מצווה לעסוק בתורה... ואור"ת דאין זו ראיה דברכת התורה לפני ולאחריה לאו משום תלמוד תורה שאפילו ברך ברכת הערב נא או נפטר באהבה רבה חוזר ומברך. תדע שבמקום שאין לוי כהן קורא במקום לוי ומברך אע"פ שכבר ברך בקריאה ראשונה.

R. Yitshaq ben Yehudah’s “proof” from the case of *qeri’atha-Torah* that women may recite blessings when performing *mitsvot* from which they were exempt, although failing to impress Rabbenu Tam, already appeared in R. Simhah of Vitry’s *Mahzor Vitry*, where it was accepted as conclusive proof that women should say *berakhot* when performing the *mitsvot* of *sukkah* and *lulav*:

מחזור ויטרי; סימו ש"ט ד"ה כן הורה: כן הורה ר' יצחק הלוי שאין מונעים מן הנשים לברך על לולב וסוכה. דהא אמרינן בפ"ק דקידושין כל מצות עשה שהזמן גרמא נשים פטורות, אבל אם חפצות להביא עצמם בעול המצוה הרשות בידה ואין מוחין לה ... ומאחר דמקיימת מצוה אי איפשר בלא ברכה. תדע דהא אמרינן הכל עולין למנין שבעה ואפילו אשה, אלמא אשה עולה ומברכת אע"ג דפטורה מתלמוד תורה ... שמעינן אם רצת לקיים מצות עשה הרשות בידה ואין כאן משום ברכה לבטלה.

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 *mitsvot* 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*.⁹¹ 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 listened⁹² or read along silently, taking his cues from the *ba'al qeri'ah*.⁹³ 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.⁹⁵

The introduction of the *ba'al qeri'ah* is of more than historical interest. Having the Torah read by a person other than the *oleh* paved the way for the blind and the ignorant to receive *aliyyot*, persons who had hitherto been excluded because of their inability to read.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 a such a *minyan*, there is no reason to suppose that women may not say *devarim she-bi-qedushah*.

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* by saying *barekhu*.

שו"ת חתם סופר, חלק א' (אורח חיים) סימן ס"ו: ... ע"כ נלע"ד אפילו בזמן המשנה וגם מיד בתקנת עזרא אפשר אפילו בתקנת מרע"ה מיד תקנו לומר כל אחד ואחד שעלה אמר ברכו את ה' המבורך והם ענו ברוך ה' המבורך לעולם ועד רק ברכת התורה לא אמרו אבל ברכו אמרו ... אבל ברכה ממש נתקן מפני הנכסין ויוצאים.

91 . תוספות, מגילה כ"א; ד"ה תנא: תוספות, בבא בתרא ט"ו, ד"ה שמונה (בשם ר"ת); רבינו ניסים על הר"ף, מגילה עמוד י"ב ד"ה קראה אחד; רא"ש, מגילה כ"א. ד"ה קראה שנים יצא; חידושי הריטב"א, מגילה כ"א; טור, אורח חיים, סימן קמ"א; שולחן ערוך, אורח חיים, סימן קמ"א סעיף ג.

92 . כסף משנה על הרמב"ם, הלכות תפילה, פ"ב ה"ו, ד"ה ולא יקראו שנים.

93 . שולחן ערוך, אורח חיים, סימן קמ"א סעיף ב'.

94 . תוספות, בבא בתרא ט"ו, ד"ה שמונה: ומה שנוהגים עתה לקרוא שנים אומר ר"ת כדי שלא יתבייש מי שאינו יודע לקרות בעצמו כענין שמצינו במסכת ביכורים (פ"ג מ"ז) דתנן כל מי שיודע לקרות קורא בעצמו ושאינו יודע לקרות מקרין לפניו נמנעו מלהביא ביכורים התקינו שיהיו מקרין את מי שיודע לקרות ואת מי שאינו יודע לקרות.

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

95- 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.

רא"ש מגילה כ"א. פרק ג' סימן ב': ומה שנהגו האידינא ששליח צבור קורא היינו שלא לבייש את מי שאינו יודע לקרות כדתנן גבי בכורים ... ואין הדמיון נראה לי דהתם נמנעו מלהביא בכורים ועברו על מה שכתוב בתורה אבל הכא בקיאין יקראו והאחרים ימנעו ומחמת הבושה יתנו לב ללמוד הפרשה, אלא נראה הטעם לפי שאין הכל בקיאין בטעמי המקרא ואין צבור יוצאין בקריאתו והוא בעיניו כיודע ואם לא יקראוהו בתורה אתי לאינצויי עם ש"ץ לכך התקינו שיקרא שליח צבור שהוא בקי בקריאה.

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 disputant, 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 princi-

ples of halakhic decision-making favored ruling according to R. Yehudah, held like R. Yosi, in large part on the strength of R. Yosi’s argument that women not be denied the satisfaction of participating in religious ritual life, and on that basis held that women might say *berakhot* when voluntarily performing *mitsvot* from which they are exempt.¹⁰⁰

R. Yosi’s inclusive bias has informed halakhic decision-making through the ages. Thus, despite the unchallenged Tannaitic prohibition recorded in *Pesahim* 49b¹⁰¹ 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

96. רמ"א או"ח סימן קל"ט סעיף ג': ומהר"ל כתב דעכשיו קורא סומא כמו שאנו מקרין בתורה לעם הארץ.
97. עירובין צ"ו; ראש השנה ל"ג; חולין פ"ה.

98. This is the term used by R. Yosi to explain why he held that women may “lay on hands” (סומכות) when they bring an animal offering to the Temple. In the *Sifra*, R. Yose explains that his motive in permitting “*semikhah*” in such a case was to give “satisfaction” (נחת רוח) to the women. (See also *Hagigah* 16b).

ספרא ויקרא דבורא דנדבס פרשה ב' ד"ה פרשתא ב': ... דבר אל בני ישראל, בני ישראל סומכין ואין בנות ישראל סומכות. רבי יוסי ורבי שמעון אומרים הנשים סומכות רשות. אמר רב יוסי אמר לי אבא אלעזר היה לנו עגל זבחי שלמים והוצאנוהו לעזרת נשים וסמכו עליו הנשים לא מפני שהסמיכה בנשים אלא מפני נחת רוח של נשים.

99. רמב"ם הלכות מעשר קרבנות, פרק ג' הלכה ח'.

תוספות, ראש השנה ל"ג. ד"ה הא רבי יהודה, אומר ר"ת אע"ג דסתם מתניתין כרבי יהודה הלכה כר' יוסי דימקוקו עמו ומעשה רב דהמוצא תפילין.
100.

(עירובין צו). מיכל בת שאול היתה מנחת תפילין ואשתו של יונה היתה עולה לרגל וההוא עובדא דפרק אין דורשין (חגיגה ט"ז): דהבאנוהו לעזרת נשים וסמכו עליו נשים כדי לעשות נחת רוח לנשים. ומותרות לברך על מצות עשה שהזמן גרמא אע"ג דפטורות מן דבר המצוה החיא.

101. פסחים מ"ט: תנו רבנן, ששה דברים נאמרו בעמי הארץ אין מוסרין להן עדות ואין מקבלין ממנו עדות...

102. In talmudic times the term “*am ha-arets*” referred to a person who was lax in matters of ritual purity and tithing, the opposite of a *haver*. During the period of *rishonim* the term referred to an ignorant or uncultured person generally lax in observance, the opposite of a *talmid hakham*. (See Soncino Talmud (London: Soncino Press [no date]), Nashim III, Glossary p. 187.)

103. חגיגה כ"ב: דתניא אמר רבי יוסי: מפני מה הכל נאמנן על טהרת יין ושמן כל ימות השנה – כדי שלא יהא כל אחד ואחד הולך ובונה במה לעצמו,

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-arets* 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-arets* is not reckoned for the *zimmun*.”¹⁰⁴ 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-arets* in the *zimmun*, even though it is said in *Berakhot* that an *am ha-arets* is not reckoned for the *zimmun*.¹⁰⁵

R. Elhanan’s position is today common practice.¹⁰⁶

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 coun-

tervailing risk that attitudes that suppress the halakhic impulse to embrace and “give pleasure (*nahat ruah*)” to as wide an 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*.¹⁰⁷ 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 *kelal 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

104. תשורף פרה אדומה לעצמו. אמר רב פפא: כמאן מקבלין האידינא שהדוּתא מעם הארץ, כמאן – רבי יוסי.
R. Yose was concerned that if the wine and oil that the *ammei ha-arets* brought for Temple use would not be acceptable, the *ammei ha-arets* would leave the community and form their own religious associations.

105. ברכות מ"ד: דתניא אין מזמנין על עם הארץ.

106. חגיגה כ"ב. תוספות ד"ה כמאן: הר"ר אלחנן אומר דקיימא לן כרבי יוסי וחיישינן לאיבה לפיכך מזמנין על עם הארץ אף על גב דאמרין בברכות אין מזמנים על עם הארץ.

107. שולחן ערוך, אורח חיים, סימן קצט סעיף ג': עם הארץ גמור מזמנין עליו ברכת המזון.

107- Especially difficult is the issue of whether *devarim she-bi-qedushah* can be said without a *minyan* of ten men. The reader will recall *Magen Avraham's* unresolved doubt as to whether women might be included in the quorum required for *qeri'atha-Torah*. See footnote 11 above. This possibility represents a minority view, and I have not heard proponents of women’s *tefillot* rely on it. The semantic solution of referring to women’s services as “*tefillot*” rather than *minyanim* does not ameliorate this basic objection. The halakhic term for the requirement of a quorum of ten is not *minyan* but “*asarah* (עשרה)”. The term *minyan* refers to a number of different quorums constituted for various purposes, in some of which women may indeed participate. On this subject generally see the fine article by Aryeh Frimer, “Women and Minyan,” *Tradition* 23,4 (summer 1988):54. The statement that women may read the Torah without *asarah* because they are a *tefillah* group and not a *minyan* does not have much halakhic meaning. As long as rabbis are unwilling to consider the possibility of women’s participation in “regular” *minyanim*, there will be no alternative to women’s *tefillot*. On the other hand, we should con-

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 (*kevod 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."¹⁰⁸

The opening statements in the passages from the *baraita* and the *Tosefta* are similar:¹⁰⁹ 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."¹¹⁰

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*)¹¹¹ and R. Isaiah of Trani (Rid),¹¹² 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

sider whether women's *tefillot*, as a long-term phenomenon, are halakhically and culturally wrongheaded. The *halakhah* does not appear ever to have contemplated the possibility of separate women's services, as it did the possibility of women's receiving *aliyyot* in a "regular" *minyan*. From the cultural point of view, sponsoring separate men's and women's religious services may be an ideological concession to radical feminism, and in the long term an unhealthy and communally destabilizing phenomenon.

¹⁰⁸ . תוספתא, מגילה פרק ג, י"א : והכל עולין למנין שבעה, אפילו אשה אפילו קטן. אין מביאין את האשה לקרות לרבים.

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

¹¹⁰- 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 inclusive 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 inclusive introduction that is then qualified, but not entirely negated.

¹¹¹ . אור זרוע, חלק ב סימן שפג.

and sits, stands reads and sits, even seven times.”¹¹³ 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.¹¹⁴ 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 *kevod 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.¹¹⁵ 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 *kevod ha-tsibbur* is particularly acute.¹¹⁶

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*.¹¹⁷ Women and minors, however, may not read the Torah on days when there are only “three or four”¹¹⁸ *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.¹¹⁹ It seems then that according to Rid, women are excluded from being the sole Torah readers not on account of *kevod ha-tsibbur*, but because giving them that primary role would violate the terms of the

112 . פסקי הרי"ד למסכת מגילה (ירושלים תשל"א) עמוד רס"ז: וסיומא דברייתא איתה הכי, בפ"ג דתוספתא דמגילה בני הכנסת שאין להם מי שקורא אחד עומד וקורא יושב, ועומד וקורא ויושב עד שבעה פעמים.
See also Saul Lieberman, *ToseftaKi-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 . בית הכנסת שאין להם מי שיקרא אלא אחד, עומד וקורא ויושב, עומד וקורא ויושב אפילו שבעה פעמים. תוספתא מגילה פ"ג, י"ב.

114- 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*.

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:

דהא שלושה ושבעה דקרו אינם אלא כנגד בעלמא דהא בלאו הכי איכא עשרה בני י"ג כדתנן אין קורין בתורה פחות מעשרה... והמי שלושה אינם אלא כנגד בעלמא ואפילו חד היכא דליכא דידיעי לקרות בתורה תניא בתוספתא דיחיד קורא ויושב ועומד וקורא ויושב לשלומי מנין רואי פני המלך.

116 . והא דת"ר הכל עולין למנין ז' אפילו אשה אפילו קטן דסד"א הואיל וכבוד שבת חמירא ותו דאיכא כינופיה דהכל בטלים ממלאכתם ובאים לבית הכנסת משום כבוד שבת וכבוד צבור דרבים הם לא יהא קטן עולה קמ"ל

117 . פסקי הרי"ד למסכת מגילה (ירושלים תשל"א) עמוד רס"ז: הכא משמע דדוקא לענין שבעה דנפישו גברי עולה הקטן, אבל שלשה וארבעה לא.

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-tibbur* explains why women may not read the remaining four *aliyyot*.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.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 Zaru'a* and Rid, who understood the *Tosefta* as barring a woman from being the sole reader. According to R. Emden, a woman may read the Torah *only* where she is the sole available reader.

R. David Pardo in *Hasdei David* suggests a third interpretation of the *Tosefta/baraita*. Unlike R. Emden, *Or*

Zaru'a, and Rid, R. Pardo does not link our *Tosefta* to the case of a congregation that finds itself without a reader, but explains the *Tosefta* on its own terms. According to R. Pardo, the prohibition of “bringing a woman to read the Torah” applies only *ab initio* (*le-khathilah*). But if a woman should be called to read or should present herself for the honor she need not be removed, for women are as obliged as men to listen to *qeri'at ha-Torah*, and are prohibited from reading only because of *kevod ha-tibbur*.¹²²

A fourth interpretation is that of R. Saul Lieberman,¹²³ who appears to view the *baraita* and *Tosefta* as conflicting sources. R. Lieberman interprets the *Tosefta* along the general lines of *Or Zaru'a*/Rid as barring women only from being the exclusive Torah readers, because that would violate the terms of the enactment of *qeri'at ha-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-tibbur*, excluded women from *qeri'at ha-Torah* altogether.¹²⁴

Finally, there is the version of the *baraita* as quoted by R. Meir Hakohen of Rothenberg¹²⁵ in his Haggahot Maimuniyyot: “All can conclude (*mashlimim*) [*qeri'at ha-*

118- Rid does not address the situation of five (festivals other than *Yom Kippur*) or six (*Yom Kippur*) *aliyyot*.

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*.

ש"ת תשב"ץ, חלק א (סימן קלא)... וכן נמי לעלות למנין ז' הקלו בה אפילו באשה ועבד וקטן דלאו בני חיובא משום שהצבור כבר יצאו ידי חובתן בקריאות השאר שאין קריאת ז' אלא לכבוד היום דכל דטפי מילתא מחבריה טפו ליה גבריה וכיון דמשום כבוד היום הוא הקלו בו בקטן...

120- This understanding of Rid's position modifies somewhat 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.

121 . אבל אמרו חכמים אשה לא תקרא בצבור מפני כבוד הצבור. נראה דהיינו היכא דאפשר ורישא מיירי בדליכא שבעה (בהני עשרה דמצטרפי לדבר שבקדושה) דבקיאי למקרי ואיכא אשה בקיאה דלא סיגי בלא דידה. הגהות וחדושים על מסכת מגילה, מהר"ע ז"ל, כ"ג. ד"ה אבל אמרו.

122 . ונראה דעכ"פ אם עלתה לא תרד הואיל ומדינא עולה למנין ומה גם לפי מה שכתב המגן אברהם בסימן רפ"ב דנשים חייבות לשמוע ספר כאנשים אם כן מסתברא דמאחר דשייך חיובא בדידה אם כן אם עלתה לא תרד. וטפי משמע הכי מלשון התוספתא שלפנינו דאין מביאין את האשה לקרות הא עלתה מעצמה עלתה הואיל ואינו אלא מפני כבוד הצבור. חסדי דוד, תוספתא מגילה פ"ג ה"ה ד"ה הכל עולין.

123 . שאול ליברמן, תוספתא כפשוטה (נויארק תשכ"ב) סדר מועד, מגלה פ"ג עמ' 356, עמוד 1176-1178.

Torah] with the seventh [*aliyyah*].”¹²⁶ 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 women’s reading of the seventh *aliyyah* likewise would not raise the objection of *kevod ha-tsibbur*.¹²⁷ This possibility is given credence by reports that R. Isaac Luria in exceptional circumstances permitted women and minors to receive the seventh *aliyyah*.¹²⁸

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)¹²⁹ and *Yerushalmi Ketubot* (2:10)¹³⁰ 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

חנה ושמואל ספראי, הכל עולין למניין שבעה, תרביץ (ניסן סיון תשנ"ז חוברת 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* the *Talmud Yerushalmi*, in all cases, simply did not regard *kevod ha-tsibbur* as a halakhic category.

¹²⁵- Not to be confused with his teacher, R. Meir ben Barukh of Rothenberg (Maharam of Rothenberg). It is likely that Maharam of Rothenberg had a similar reading.

¹²⁶ . הנהגות מיימוניות על הרמב"ם, הלכות תפילה פרק י"ב הל"ז, סימן ס': לשביעי הכל משלימין. R. Yosef Karo in *Beit Yosef, Orah Hayyim* 135:13 and in 282:3 quotes the *Haggahot Maimuniyyot* slightly differently: הכל משלימין לשביעי. R. Yosef Karo regards *Haggahot Maimuniyyot* as having a different text and not as offering an interpretation of the text in the Talmud: הכל עולין למנין שבעה.

¹²⁷- 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 Talmud¹³¹ 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.”¹³² 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*.¹³³ Given the equation between women and gentile slaves in matters of *mitsvah*, why did the *Yerushalmi* not object to *qeri’at ha-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.¹³⁴ 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’at ha-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-Ne’imim* carries this argument further and writes that according to many *rishonim* the *Yerushalmi* simply did not recognize *kevod ha-tsibbur* as a halakhic category in any matter.¹³⁵ 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’at ha-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.¹³⁶

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’at ha-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

128 . סידור מהארי ז"ל הנקרא בשם קול יעקב, עמוד ל"ה: ולפי ששביעי הוא נגד העטרה שהיא סוד המלכות דז"א שלעולם היא בסוד נוקבא וסוד הקטנות, לכן לשביעי ע"פ הדחק מותר לקרוא לשביעי אף אשה או קטן.

129 . תלמוד ירושלמי מגילה פרק ד' דף ע"ה. הלכה ג': ר' זעורה בשם רב ירמיה העבד עולה למניין שבעה...לא כן אמר רבי חמא בר עוקבה בשם רבי יוסי בי רבי חנינה אסור ללמד את עבדו תורה? תיפתר שלמד מאיליו או שלימדו רבו כטבי.

130 . תלמוד ירושלמי כתובות פרק ב דף כ"ו עמוד ד, הלכה י': א"ר זעירא בשם רב ירמיה העבד עולה משבעה קריות...תיפתר שלמד מאיליו או שלימדו רבו כטבי.

131- *Hagigah* 4a; *Nazir* 61a; *Keritot* 7b.

132 . כל מצוה שהאשה חייבת בה – עבד חייב בה, כל מצוה שאין האשה חייבת בה—אין העבד חייב בה.

133 . קרבן העדה תלמוד ירושלמי מגילה פרק ד דף עה עמוד א הלכה ג', ד"ה העבד: דהא תניא אשה עולה למנין שבעה הוא הדין עבד.

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;¹³⁷ removing the adornments from the ark in the presence of the congregation;¹³⁸ scrolling the *sefer torah* in the presence of the congregation;¹³⁹ and reading the Torah portion in a synagogue from a *humash* rather than from a *sefer torah*.¹⁴⁰ 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 seri-

ousness 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 publicly¹⁴¹ and precludes a person who has not yet grown a full beard from being appointed to the permanent position of *sheliah tsibbur* (cantor).¹⁴² In both these cases, the *Shulhan Arukh*'s ruling is based on Rambam (*Hilkhot Tefillah* 8:11; *Hilkhot Megillah* 2:7),¹⁴³ who, without apparent talmudic basis, independently applied the principle of *kevod*

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.

136- 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'atha-Torah*.

137 . מגילה כ"ד: קטן פוחח מהו שיקרא בתורה? ותיבעי ליה לך ערום? ערום מאי טעמא לא – משום כבוד צבור, הכא נמי – משום כבוד צבור.

138 . סוטה ל"ט: אין שליה צבור רשאי להפשיט את התיבה בצבור מפני כבוד צבור.

139 . יומא ע. לפי שאין גוללין ספר תורה בצבור מפני כבוד צבור.

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.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 (*ra'ui*) to act as the representative of the community and to descend before the ark [i.e., to lead prayers]."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,¹⁴⁶ and Rambam's subsequent application of *kevod ha-tsibbur* to this case did not deter Ran¹⁴⁷ and Rashba¹⁴⁸ 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 *Be'ur Halakhah*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'atha-Torah* by women, is to be regarded as no more than an *ab initio* demand.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,"¹⁵¹ 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 (*me'arah*)."¹⁵²

140 . גיטין ס. אין קוראין בחומשין בבית הכנסת משום כבוד צבור.

In the Talmud, the term *humash* refers to a partially written torah scroll, not to a printed *humash*.

141 . שולחן ערוך, אורח חיים סימן תר"צ סעיף א: קורא האדם את המגילה בין עומד בין יושב אבל לא יקרא בצבור יושב לכתחלה מפני כבוד הצבור.

142 . שולחן ערוך, אורח חיים סימן נ"ג סעיף ו: אין ממנין אלא מי שנתמלא זקנו מפני כבוד הצבור.

143 . רמב"ם, הלכות תפילה פ"ח ה"א: ...ומי שלא נתמלא זקנו אע"פ שהוא חכם גדול לא יהא ש"ץ מפני כבוד צבור; רמב"ם הלכות מגילה, פ"ב ה"ז: ... קראה עומד או יושב יצא ואפילו בצבור, אבל לא יקרא בצבור יושב לכתחלה מפני כבוד צבור.

144 . חידושי הריטב"א על מסכת מגילה ד. : ... וכיון דקיימא לן כר' יהושע בן לוי דחייבות אף מוציאות, אלא שאין זה כבוד לציבור והן בכלל מארה.

145 . רש"י, מגילה כא. ד"ה הקורא: אם רצה עומד אם רצה יושב. 146- חולין כ"ד. ת"ר נתמלא זקנו, ראוי ליעשות שליח ציבור ולירד לפני התיבה. עיין כסף משנה, הלכות תפילה פ"ח ה"א.

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."¹⁵³ 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"¹⁵⁴

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.¹⁵⁵

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*)."¹⁵⁶

All these examples show that *kevod ha-tzibbur*, 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 law¹⁵⁷ 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.

147 . רבינו ניסים על הר"ף, מגילה יא: (דפי הר"ף) ד"ה הקורא: ...לאו דווקא דיעבד אלא אפילו לכתחלה נמי...

148 . חדושי הרשב"א על מסכת מגילה כא: . הקורא את המגילה יושב יצא אע"ג דקתני יצא אפילו לכתחלה קאמר.

149 . ביאור הלכה, אורח חיים סימן תר"ץ סימן א.

150 . בית חדש, אורח חיים סימן תר"ץ ד"ה הקורא: ...דלכל מילי דחיישינן לכבוד צבור בקריאת התורה ה"ה במגילה דהא טעם שניהם אחד ולפי זה יראה דאע"פ דלדעת הרמב"ם נשים מוציאות לאנשים במקרא מגילה ואפילו הכי בצבור לכתחלה לא תקרא אשה מפני כבוד הציבור כמו בקריאת התורה; בית חדש, אורח חיים סימן קמד ד"ה מדליגן.

151 . מגילה ד: . ואמר רב יהושע בן לוי נשים חייבות במקרא מגילה שאף הן היו באותו הנס.

152 . חידושי הרשב"א, מגילה ד: . וכיוון דקיי"ל כריב"ל דחייבות אף מוציאות, אלא שאין זה כבוד לציבור והן בכלל מארה.

153 . משנה סוכה לח: . מי שהיה עבד או אשה או קטן מקרין אותו, עונה אחריהן מה שהן אומרים, ותבא לו מאירה.

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,¹⁵⁸ 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 Rabbis 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.¹⁵⁹

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.¹⁶⁰ 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

154 . חידושי הריטב"א, סוכה ל"ל: ותהא לו מארה, פי' שלא למד, שאילו למד לא היו מקריין אותו, אבל כשהגדול מקרא אותו ומוציאו לא אמר שתהא לו מארה, שדרך הגדול להקרות לאחרים אע"פ שהם יודעין לקרות.

155 . סוכה ל"ח: באמת אמרו, בן מברך לאביו, ועבד מברך לרבו, ואשה מברכת לבעלה. אבל אמרו חכמים תבא מאירה לאדם שאשתו ובנו מברכין לו. קידושין לב: . אמר רבי יהודה: תבא מאירה למי שמאכיל את אביו מעשר עני. 156

157- According to Ritva'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.

חידושי הריטב"א, מסכת סוכה לח:למאי דקי"ל דאשה מדאורייתא מחייבה מתניתא כפסטה בן גדול...

158- 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,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.”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.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*).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'atha-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.

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

ואגב יש להעיר במה שכתב מרן בשו"ע בסימן רפ"ב סעיף ג', הכל עולים למנין שבעה, אפילו אשה וקטן שיודע למי מברכין, אבל אמרו חכמים אשה לא תקרא בציבור מפני כבוד הציבור, וצריך עיון, שאם עכ"פ אין אשה עולה מפני כבוד הציבור, מאי נפק"מ שאשה עולה למנין שבעה, ולשם מה כתב מרן הלכה זו. ולכן היה נראה לומר שנפק"מ במקום שאין חשש משום כבוד הציבור, כגון במקום שהמתפללים הם בני משפחה אחת, והאשה היא ראש הבית וכל שאר המתפללים הם בניה ונכדיה, שאז אין חסרון כבוד הציבור במה שתעלה לתורה, בכה"ג שפיר יכולה לעלות לתורה ולהצטרף למנין שבעה. ולמעשה צ"ע.

¹⁶⁰- Thus Rambam (*Hilkhhot Tefillah* 12:23) writes: ואין גוללין ספר תורה בציבור מפני טורה הציבור.

¹⁶¹ . בית יוסף, אורח חיים, סימן נ"ג ד"ה וכתב: אם רצו הציבור למחול על כבודם נראה שהרשות בידם.

¹⁶² . ב"ח, אורח חיים סימן נ"ג ד"ה ואין: דאין פירוש מפני כבוד הציבור שהוא כבוד לפני בני אדם... אלא שפירושו שאין זה כבוד הציבור שישלחו לפניו יתעלה מי שאין לו הדרת פנים להליץ על הציבור, דאף לפני מלך בשר דם אין שולחין להליץ על הציבור אפילו אם הוא חכם גדול אלא אם כן שהוא בעל צורה ויש לו הדרת פנים...וכן אשה לא תקרא בציבור מפני כבוד הציבור... דגנאי הוא לציבור.

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:

ירושלמי, מגילה פרק ד דף עד עמוד ג, משנה א: ... זה שהוא עומד לקרות בתורה מפני מה הוא עומד? מפני כבודה או מפני כבוד הרבים? ירושלמי, מגילה פרק ד דף עד עמוד ג, משנה א: ... זה שהוא עומד לקרות בתורה מפני מה הוא עומד? מפני כבודה או מפני כבוד הרבים?

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 *minyān* 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 islah*); and may a woman enter the men’s section of the synagogue for the purpose of receiving an *aliyyah* or reading the Torah?

ירושלמי, מגילה פרק ד דף עד עמוד ג, משנה א: ... זה שהוא עומד לקרות בתורה מפני מה הוא עומד? מפני כבודה או מפני כבוד הרבים?

163 . לבוש תכלת, אורח חיים סימן רפ"ב סעיף ג': ודווקא להצטרף עם אנשים להשלים מניין הקוראים אבל לא שיהיו כולם נשים או קטנים שאין כבוד לתורה להוציאה בשבילם.

164 . תוספות, קידושין נב: ד"ה וכי אשה בעזרה מנין: הרי אין רגילות שתכנס לשם כדי להתקדש שהרי בזיון הוא ומילתא דלא שכיחא... זילא ביה מילתא: Similarly, *Tosafot* (*Sukkah* 38a; s.v. *be-emet*) write that it is a disgrace for women to lead the blessing after meals on behalf of men: shame of ignorance” and by R. Yehuda Herzl Henkin in *Benei Banim*, V. 2, p. 45.

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 Herzl 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.

שולחן ערוך, אורח חיים, סימן קל"ו: ... קורים אחר הלוי תלמידי חכמים הממונן על הצבור ואחריהם תלמידי חכמים הראוים למנותם פרנסים על הצבור (רמ"א: ששואלים אותו דבר הלכה בכל מקום ואומר) ואח"כ בני תלמידי חכמים שאבותיהם ממונים על הצבור ואח"כ ראשי כנסיות וכל העם.

167 . רא"ש מגילה פרק ג כ"א. סימן ב': ... אבל הכא בקיאות יקראו והאחרים ימנעו ומחמת הבושה יתנו לב ללמוד הפרשה.

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 Maimuniyyot* and Maharam of Rothenberg, 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 Maimuniyyot* 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 Herzl 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 Herzl Henkin, “The Significant Role of Habituation in Halakha,” *Tradition* 34,1 (Fall 2000):30, pp. 40-41, and David 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,”¹⁶⁸—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 *Diqduqei 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*.¹⁶⁹ If only those capable of

reading can be candidates for *aliyyot*, there cannot ordinarily be many opportunities for incorporating women into *qeri’at ha-Torah*.

B. *Shulhan Arukh* and Commentaries

Before turning to the *Shulhan Arukh*’s treatment of the specific issue of *qeri’at ha-Torah* by women, it is important to recall the halakhic environment in which the issue is raised. According to the *Shulhan Arukh*, *qeri’at ha-Torah*¹⁷⁰ 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’at ha-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.¹⁷¹

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*,¹⁷² and women are prohibited from

R. Meiselman also cites authorities, in particular Rema (*Shulhan Arukh Orach Hayyim* 282:3) who seem to interpret *kevod ha-tsibbur* “as reflecting women’s lessened obligation in communal Torah reading.” (Meiselman, p. 142). I do not believe that this is Rema’s interpretation, and if it were it would suggest the surprising result (probably unacceptable to R. Meiselman) that *kevod ha-tsibbur* is not violated if women receive only some, but not all, *aliyyot*. Similarly, R. Avraham Weiss (Women at Prayer, p. 75) claims that *kevod ha-tsibbur* is violated when women read Torah because “[n]ot having the same obligation, women cannot fulfill their male counterparts’ responsibility in regard to public Torah reading.” I have already shown in the preceding section that this is not so. R. Weiss supports this argument with the observation that the root of the word *kevod* is the same as that of the word *kaved*, meaning heavy: “The greater the responsibility (*kaved*), the greater the potential honor (*kavod*) once these obligations are fulfilled... Lacking the same *kaved*, as her male counterparts, a woman is not permitted to recite the Torah blessings required for the public Torah reading.”

reading in public (but not from reading the Torah *per se*).

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 Zaru`a*). An offspring of a forbidden union (*mamzer*) may be called to the Torah.”¹⁷³

The plain reading of the *Shulhan Arukh*, which was meant to be a practical halakhic guide,¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶ What is notable is that despite his acceptance of Rambam's qualifications with respect to *qeri`at ha-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

¹⁶⁸ . רמב"ם הלכות תפילה פ"ב הל"ז: אשה לא תקרא בציבור מפני כבוד הצבור.

¹⁶⁹- See commentary of R. Yosef Karo in *Kesef Mishneh, Hilkhot Tefillah* 12:6.

¹⁷⁰ . שולחן ערוך, אורח חיים, סימן קמ"א; כסף משנה על הרמב"ם, הלכות תפילה, פרק י"ב הלכה ו' ד"ה ולא יקראו.

¹⁷¹ . שולחן ערוך, אורח חיים סימן רפ"ב סעיף ג: הכל עולים למנוח ז' אפילו אשה וקטן שיודע למי מברכין אבל אמרו חכמים אשה לא תקרא בצבור מפני כבוד הצבור.

¹⁷² . רמב"ם, הלכות תפילה, פרק יב הלכה יז: קטן היודע לקרות ויודע למי מברכין עולה ממנין הקוראים.

¹⁷³ . רמ"א שם: הנה ואלו דווקא מצטרפים למנין הקוראים אבל לא שיהיו כולם נשים או קטנים (ר"ן וריב"ש). ודין עבד כנעני כדין אשה אבל אם אמו מישראל מותר לעלות (הגהות מ"י פ"ב מהל' תפילה) ואסור לקרות בראש מגולה. ואין איסור לקרות עם הארץ נכבד ועשיר וגדול הדור לפני תלמיד חכם כי אין זה בזיון לתלמיד חכם רק כבוד לתורה שמתכבדת באנשים גדולים (אור זרוע). וממזר מותר לעלות לספר תורה.

¹⁷⁴- See Isadore Twersky, "The *Shulhan 'Arukh*: Enduring Code of Jewish Law," in Judah Goldin, ed., *The Jewish Expression* ([New York: Bantam, 1970), p. 330: ("Perhaps the single most important feature of the *Shulhan 'Arukh* is its unswerving concentration on prescribed patterns of behavior to the exclusion of any significant amount of theoretical data. The *Shulhan 'Arukh* is a manual for practical guidance, not academic study.")

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-tzibbur* 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 Rambam (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 (בין הדין)”: “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-

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.¹⁷⁸ 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*.¹⁷⁹ 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*.¹⁸⁰

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."¹⁸¹

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*]. However, 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."

¹⁷⁷ . מגילה, רבינו ניסים על הר"ף, י"ג. : הכל עולין למנין שבעה ואפילו אשה ואפילו קטן. פי' עולין להשלים קאמר לא שיהו כולם קטנים ולא נשים דכיון דלאו בני חיובא נינהו לא מפקי לגמרי. ולפום עיקר דינא נמי שאינו מברך אלא הפותח והחותם אשה וקטן אין קורין ראשון ולא אחרון משום ברכה לפי שאי אפשר לקורין האחרים שיצאו בברכתם. ומיהו השתא דתקון רבנן שיברכו כולם אשה וקטן קורין אפילו ראשון ואחרון וכיון דקורין ודאי מברכין מידי דהוה אקטן דמפטיח בנביא ומברך ברכת הפטרה. שו"ת הב"ח החדשות, סימן מ"ב: אי אפשר לפסוק ברוב הדינים מהשולחן ערוך כי כל דבריו כמעט הם סתומים כלשון הרמב"ם ובפרט בידי ממונות.

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 *mitsvot* 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 halakhic ground for a custom that is inconsistent with formal halakhic 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, *Tosefta ki-Feshutah* on *Megillah* Chapter 3, p. 1178, understands Ran's statement that “now” women and children may receive all *aliyyot* as being theoretical.

תוספתא כפשוטה, מגילה פ"ג: ומיהו השתא דתקון רבנן שיברכו כולם, אשה וקטן קורין (כלומר, מן הדין)

The underlined words in parentheses appear in R. Lieberman's commentary.

179. שו"ת ריב"ש, סימן שכ"ו.

180- Ran viewed the *ba'al qeri'ah* as universally accepted practice.

ר"ן על הרי"ף, מגילה דף י"ב. ד"ה קראה אחד: דהאינדא קרי תרי דלעולם קרי שליחה דצבורא בהדי ההוא דקרי...

181. שו"ת ריב"ש שם: שלא בארו האמוראים כל שעתידי להתחדש, ומקום הניחו לנו.

182. הגהות רבי עקיבא איגר, שו"ע או"ח סימן רפ"ב סעיף ג, ד"ה מג"א סק"ה: לא למנין שלשה. מבואר שם דהיכי דעולים פחות משבעה כגון יום טוב ויום הכפורים אינו עולה ורק למנין ז' עולה ע"ש. לפי זה נראה פשוט דבשבת רק אשה אחת עולה אבל לא ב' נשים כיון דמבלעדנה ליכא ששה קרואים ולא גרע שבת מיום הכפורים דלששה לא מצטרף אשה. ואולם מלשון הרמ"א אבל לא שיהיו כולם נשים לא משמע כן.

183- See as well R. Meir Eisenstadt in *Responsa Panim Me'ivot* (2:54), who holds that R. Yosef Karo also subscribes to Ran's opinion with respect to the number of women and minors who might be called for *aliyyot*

184. פרישה, טור או"ח סימן רפ"ב, סק"ג: והעתקתי זה כדי ליישב מנהגינו למה אין קטן ואשה עולה.

185- Examples of this usage are numerous. A particularly *apropos* example appears in *Shulhan Arukh, Orach Hayyim* 187:2, where Rema rules that women may not recite the thanksgiving for “Your Torah that You have taught us (ועל תורתך שלימדתנו)” 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 authorities 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 *mitsvah* of *talmud torah*, because they have a limited obligation to study Torah.¹⁸⁸ 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 *mitsvot* from which they are exempt.¹⁸⁹ Thus, it is questionable whether R. Joshua Falk himself accepted as normative *halakhah* either of the bases of his justification.¹⁹⁰

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 Eliezrov. 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.¹⁹¹ R. Dov Eliezrov in *Sha'ali Tsiyyon* 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.¹⁹² R. Ovadiah Yosef holds that women should not receive *aliyyot* because it is a departure from

מגן אברהם, א"ח, שם, סעיף קטן ב: ... וצ"ע על מה שמכּו עכשיו הנשים לאומרן? והלחם חמודות [ר' יום טוב ליפמן הלר] נדחק לתת טעם לדבר ... נדחקו כדו ליישב המנהג...

For another example, see *Noda bi-Yehudah*:

ש"ת נודע ביהודה מהדורה תנינה – א"ח סימן ט"ו: ... והמשפטי שמואל לא כתב זה לדינא אבל כתבו ליישב המנהג .. הרי שהוא עצמו ראה חולשת הטעמים...

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

187- According to Menachem Elon, "Falk's work contributed greatly in making the *Shulhan Arukh* an authoritative source of codified Jewish law." *Encyclopedia Judaica* (Jerusalem: Keter Publishing House Jerusalem Ltd., 1972), v.6 p.1158 (entry on Joshua Falk)

188 . פרישה, אורח חיים סוף סימן מ"ז: כתב מורי [הרש"ל] אפילו נשים מברכין אותה דמצוה להם ללמוד המצות המחוייבות בהן...
189 ., פרישה, אורח חיים, סימן י"ז.

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 *birkhot ha-Torah*, how do we account for the fact that minors do receive *maftir* and recite *birkhot ha-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 *birkhot ha-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 *mitsvot*, should nonetheless recite the blessings as part of their education to fill their future adult responsibilities, a distinction made by Meiri.

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-tzibbur* 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-Tzibbur* Be Waived or Superseded?

We have seen previously that *kevod ha-tzibbur* 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-tzibbur* as a continuing factor in the issue, may a congregation waive its dignity and permit women's participation in *qeri'atha-Torah*? May *kevod ha-tzibbur* 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-tzibbur* 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 tzibbur*) that *kevod ha-tzibbur* could be waived, and the vigorous opposition of R. Yoel Sirkis (*Bah*), who held that *kevod ha-tzibbur* in fact represented *kevod shamayim* and hence could not be waived.¹⁹⁵ *Bah* further argued that decentralizing the concept of *kevod ha-tzibbur* would splinter the community into groups (*agudot*), each with its own brand of synagogue service.

R. David Halevi (*Taz*),¹⁹⁶ R. Menachem Mendel Aurbach (*Ateret Zekenim*),¹⁹⁷ and R. Shmuel Ha-Levi Kolin (*Mahatsit ha-Sheqel*) all accept R. Yoel Sirkis' equation of *kevod ha-tzibbur* with *kevod shamayim* and hold that *kevod ha-tzibbur* may not be waived. R. Yosef Karo's posi-

191. רב יהודה הרצל הנקין, שו"ת בני בני (ירושלים תשמ"א) סימן ד, עמוד י"ז: והגמון מורי זקני] זצלה"ה פירש... שהכל היום הוא לפי דין התוספתא כיון שהחזן קורא שבע פעמים... וכך נתבטל ענין כבוד הצבור לגבי עלית נשים, שכיון שאינה קוראת בעצמה ליכא גנאי לצבור שהלא אמרו אשה לא תקרא בתורה ולא אמרו אשה לא תעלה לתורה שתלוי בקריאתה והרי אינה קוראת, ואם מצד הברכה ליכא גנאי שהכל יודעים לברך. אבל מנהג ישראל תורה שלא תעלה, ועוד כיון שנעשו עליות נשים פתח למתבוללים לכן אפילו אם עלתה תרד ואפילו למפטר.

Rabbi Y. Henkin raises the issue again in *Responsa Bnei Banim* II, chapter 7 (p. 30) in response to a question as to whether, in light of his grandfather's understanding our *qeri'at ha-Torah* follows the *Tosefta's* model, the prohibition on *qeri'atha-Torah* by women should be regarded as an "erroneous *minhag*" (תועט נהגה). Rabbi Y. Henkin writes that the prohibition is still in effect because Rabbi E. Henkin's opinion is not universally accepted, and that in any event since the prohibition is based on a Rabbinic enactment, it remains in effect even if its purpose is no longer valid. Rabbi Y. Henkin concludes that even if the prohibition is an erroneous *minhag* it should not be changed since it is universally accepted and its retraction would do more harm than good.

192. שאלו ציון תנינה, חלק א' (ירושלים תשמ"ט) סימן י"ט: ... ובראשונה רחש לבי לומר שיש הבדל בין להעלות לתורה כדרך הקרואים לבין להיות מקריא בתורה ולהיות בעל קורא, ולפיכך היה מקום לומר שהאשה עולה לתורה כדרך כל הקרואים כמו האנשים, אך מכבוד הצבור לא תהא היא כבעל קורא... אבל חלילה שייאמר דבר כזה... שהלא הדין הוא שאסור לבטל שום מנהג... ואפשר שיש ליתן טעם לשבח למנהג קדוש זה... די"ל דיש מקור בהלכה והוא... שקול באשה ערוה... ומכשילים את הצבור בהרחורי עבירה.

I am grateful to Prof. Dov Frimer for pointing out this source to me.

193. יכולה. מרן הראש"ל, (שיעורי השנה ראשונה שיעורים א-ג) עמוד קנ"א: למעשה, כיום שישנם רפורמים הרוצים לשנות ולקלקל, להשוות נשים לגברים, יש להמנע מלהעלות נשים כדי להתרחק מהם וממעשיהם הרעים והמקולקלים, ולא שמענו ולא ראינו מעולם שאשה עולה לתורה, אע"פ שמן הדין משיעורי

I am grateful to Prof. Dov Frimer for pointing out this source to me.

194. See text accompanying footnote 162 above.

195. See footnote 165 above, quoting *Bah's* argument that *kevod ha-tzibbur* is in fact *kevod shamayim*. With respect to the issue of waiver, *Bah* writes (*Orah Hayyim* 53):

אלא הדבר פשוט כיון שכך תקנו חכמים דחששו לכבוד צבור אין ביד הצבור למחול ותו דאם כן כל הני תקנות שתקנו חכמים מפני כבוד צבור שלא לגלול ספר תורה בצבור וכן אשה לא תקרא בצבור מפני כבוד הצבור ופוחח לא ישא כפיו דגנאי הוא לצבור... אם אתה אומר דרשאין למחול

tion is embraced unequivocally by R. Hezekiah ben David De Silva (*Peri Hadash*) and by R. Ovadiah Yosef,¹⁹⁸ who cites numerous other *poseqim*¹⁹⁹ who hold that *kevod ha-tsibbur* is waivable. *Magen Avraham*²⁰⁰ strikes a compromise position, agreeing with R. Yosef Karo that *kevod 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 *Beit Yosef*, even in the case of *qeri'at ha-Torah* by women.²⁰¹ Rema in *Darkhei Moshah*,²⁰² R. Yisrael Meir Kagan in *Mishnah Berurah*²⁰³ and R. Yehiel Mikhel Epstein in *Arukh ha-Shulhan*²⁰⁴ also appear to hold that *kevod 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, *kevod 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 *kevod ha-tsibbur* must be seen as acting along a very narrow band, as *Bah* himself holds that *kevod 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'atha-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.²⁰⁵ Also, if *Bah* is correct that women's Torah reading disgraces *kevod shamayim*, how could the practice have been sanctioned before its prohibition by the Rabbis because of *kevod ha-tsibbur*?²⁰⁶

אם כן לא התעילו תקנתם כלום דכל צבור יהיו מוחלים ותו דנעשו ישראל אגודות אגודות צבור זה ימחול וצבור זה אינו ימחול אלא ודאי אין בידם למחול לעקור תקנת חכמים... ועוד לפירושינו פשיטא שאין יכולין למחול על מה שאינו כבוד צבור שישלחו לפניו יתעלה וכו' כאילו אינו חוששין על מה שאינו נוח ומקובל לפניו יתעלה.

R. Yosef Karo (*Beit Yosef, Orah Hayyim* 53) attributes the opinion that "*kevod 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. טורי זהב, או"ח סימן נ"ג סעיף ו', סק"ב: ...אלא ודאי שלא מהני מחילה בדברים אלו שנומעים בכבוד שמים.

197. עטרת זקנים, או"ח סימן נ"ג, סעיף ו': ואף אם רוצים למחול על כבודם לא מהני וכן בכל מקום שתקנו חז"ל מפני כבוד הצבור אין ביד הצבור למחול על כבודם כגון לגלול ספר תורה בצבור וכן אשה לא תקרא בצבור וכן קטן לא ישא את כפיו (מורי בב"ח).

198. רב עובדיה יוסף, שו"ת יביע אומר חלק ו – אורח חיים, סימן כ"ג. (בעניין אם יש שני חתני בר מצוה, ביום שני או ביום חמישי, ושניהם ישראלים, מהו להעלותם לספר תורה אחר הכהן והלוי, או אין להוסיף על מנין העולים בשום פנים).

199- Including Radbaz and R. Mordecai Cremieux (*Ma'amar Mordecai*).

200. מגן אברהם, או"ח סימן נ"ג, סעיף ו' סק"ט: ואם רצו הצבור למחול על כבודם רשאים... ומ"מ לכתחילה אין לעשות כן...

201. שו"ת מצל מאש, סימן י"א.

R. Jacob Alfandari leaves open the issue of whether the congregational waiver must be unanimous.

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 Ha-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 *Ha-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:

And it seems to me that this is the reason, for since the reason [that a *sefer torah* may not be scrolled in public] is the dignity of the congregation and they want to waive their dignity and scroll [the *sefer torah*], they act properly.²¹⁰

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. דרכי משה, אורח חיים סימן קמ"ד סעיף קטן א: ... וכשצריכים לגלול בשעת הקריאה גוללין בצבור כדברי המרדכי [שסובר שהצבור מוחל על כבוד].

203. משנה ברורה, אורח חיים, סימן קמד סעיף קטן טז: ... דמסתמא הצבור מוחלין על כבודם כדי לקיים קריאת המפטיר כדן.

204. אורח חיים, סימן קמ"ד סעיף ו ... אבל כל ציבור בפני עצמו און סהדי שמוחלים על כבודם ועל טרחתם וניחא להו להמתין עד שיגלוו על מקום הקריאה ושיקרא המפטיר בס"ת ולא בעל פה.

205- Thus, it is not only *Bah's* attitude towards women that is now anachronistic. It is my sense that Orthodox synagogues are now much more receptive to participation by youngsters than they were in the past. Indeed, their participation as *ba'alei tefillah* and *ba'alei 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 youngster to be asked to be a *ba'al tefillah* and unusual for him to receive *aliyyah*. 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.

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

ש"ת בני בנים, חלק שני (ירושלים תשנ"ב) עמוד נא: וקריאת נשים בתורה בודאי אינה פגיעה בכבוד שמים שאם לא כן האך התירו לנשים לקרוא בתורה קודם התקנה ולכן תועיל מוחילת הצבור אצל עליות נשים.

unavailable. 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.”²¹¹ 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*.²¹² 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'atha-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.²¹³

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'atha-Torah* (and the second as well if a *levi* is not present).²¹⁴ A *kohen* may not be called to the Torah after another *kohen* for fear that this

will cast doubt on the first *kohen's* priestly lineage. The question arose as to whether *kohanim* may be called for *aliyyot* serially in a community where there are only *kohanim*. The *Shulhan Arukh* ruled that they may, for in such a case it was obvious that this was the only option, and the family reputation of each of the *kohanim* would remain unsullied. Other *poseqim* proposed other solutions,²¹⁵ but the most original must certainly be the one suggested by R. Meir ben Barukh of Rothenberg (Maharam of Rothenberg), who wrote:

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 Rabbis 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.²¹⁶

His student R. Mordecai ben Hillel Ashkenazi ha-Kohen cites Maharam of Rothenberg's ruling with approval.²¹⁷

²⁰⁷ רב עובדיה יוסף, שו"ת יביע אומר חלק ו – אורח חיים, סימן כ"ג. (בעניין אם יש שני חתני בר מצוה, ביום שני או ביום חמישי, ושניהם ישראלים, מהו להעלותם לספר תורה אחר הכהן והלוי, או אין להוסיף על מנין העולים בשום פנים).

²⁰⁸ . פרי חדש, או"ח סימן נ"ג, אות ו': והעלה בספר הב"ח דכל היכי דקתני מפני כבוד הצבור לא מהני מחילת הציבור כגון אין גוללין ספר תורה בצבור וכן אשה לא תקרא בצבור מפני כבוד צבור ופוחח לא ישא את כפיו דגנאי היא לציבור וכן קטן לא ישא את כפיו שאין כבוד לצבור להיותן כפופין לברכתו ע"כ... ותהמני עליו דהא דאמרין בפ' המיזקין אין קורין בחומשין מפני כבוד צבור כתב הבית יוסף בס' קמ"ג ששמע מדברי ר' ירוחם שאם רצו הצבור למחול על כבודם קורין בו וכך כתב המרדכי בסוף פרק הקומץ... אבל לפי טעם כבוד צבור כל דמחיל הצבור על כבודם רשאים לדעת ר' ירוחם והמרדכי.

Peri Hadash repeats this position in *Orah Hayyim* Chapter 143 (reading from a *humash*):

אין קוראין בחומשין בבית הכנסת משום כבוד צבור וכיון דטעמא משום כבוד צבור יראה שאם הצבור ירצו למחול על כבודם רשאים... וכך כתב בבית יוסף בשם רבינו ירוחם והמרדכי... וכן נראה עיקר ודלא כהב"ח.

²⁰⁹ שולחן ערוך, אורח חיים סימן קמ"ד סעיף ג': אין גוללין ספר תורה בצבור מפני כבוד הצבור ואם אין להם אלא ספר תורה אחד והם צריכים לקרות בשני עניינים גוללים וידחה כבוד הצבור.

²¹⁰ . פרי חדש שם סק"ג: וידחה כבוד הצבור כך כתוב בבית יוסף בשם המרדכי והריטב"א וכך כתוב בכל בו בס' קריאת התורה בשם גדולי נרבוה ויראה דהיינו טעמא דכיון דטעמא הוי משום כבוד צבור והם רוצים למחול על כבודם וגוללים שפיר עבדי.

²¹¹ . רמב"ם, הלכות תפלה, פרק י"ב הלכה כ"ג: אין קורין בחומשין בבתי כנסיות משום כבוד הצבור.

²¹² . תשובות הרמב"ם, מהדורת בלאו, סי, רצד: על דבר קריאת התורה בכל יום, אם אין להם ס'ת מהו שיקראו בחומשים ויברכו לפניה ולאחריה, ..

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'atha-Torah* as essentially a communal obligation revolving around the religious life of the synagogue.²¹⁸ 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-tsib-*

bur)" because of *kevod ha-tsibbur*,²¹⁹ 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 synagogue in his city but does not pray in it with the congregation (*ha-tsibbur*) is deemed a bad neighbor.²²⁰

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 teachers²²¹ wrote that [with respect to] those who pray in their homes with [a *minyán* of] ten, a woman may read the Torah there, because [a *minyán*] is regarded as a congregation (*tsibbur*) only when they pray in the synagogue.²²²

או ימנעו מהקריאה כל עיקר...? תשובה: מותר לברך... וראיה לדבר זה הא דאמרין אין קורין בחומשין מפני כבוד הציבור. וכי יש בעולם פסלות כמו פסלות חומש... ולמה נתנו הטעם מפני כבוד הציבור? והיה להם לתת הטעם מפני שהוא פסול.

213- The *responsum* of the Sages of Narbonne is cited by R. Aaron ha-Kohen of Lunel in *Orhot Haim, Hilkhot Qeri'at Sefer Torah*, p. 51: זאת התשובה השיבו חכמי נרבונה ז"ל על זאת השאלה ה"ל ועל קריאת החומשים ששאלת אנו כך דעתנו נוטה. אמת א"ל אין קורין בחומשין בצבור מפני כבוד הציבור וכן הלכה אך זה תשיב על דעתך... ומוטב שתעקר מצות העיבוד ממקומו ולא נתבטל מקריאת התורה... וכמו שהתירו גם כן בכתיבת האגרות והתלמוד, וה"נ באותם כפרים שהם רחוקים שאין להם ס"ת מוטב שיקראו בחומשים הכל כקריאת ספר תורה בג' או בז' ויברך כל אחד כתקנו ולא יתבטלו מקריאת התורה. ועוד ראיה ממ"ש ז"ל אין גוללין ספר תורה בצבור מפני כבוד הציבור והיכא דמתרמי דזכתא דלית להו אלא חד ספרא גוללין בצבור ולא חיישינן לכבוד צבור כדי שלא יתבטלו מקריאת התורה.

214- *Shulhan Arukh, Orach Hayyim* 135:3, 7-8.

215- For a summary see *Beit Yosef, Orach Hayyim* 135, ד"ה כתב ה"ב.

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 woman should not *ab initio* read [the *Megillah*] before the congregation because of *kevod ha-tsibbur*, just as is the case of *qeri’atha-Torah*.²²³

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 Vitry*²²⁶ 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’at ha-Torah* by women in

שו"ת מהר"ם מרוטנברג חלק ד (דפוס פראג) סימן ק"ח: ... ועיר שכולה כהנים ואין בה [אפילו] ישראל אחד נראה לי דכהן קורא פעמים ושוב יקראו - משים דהכל משלימי' למנין ז' אפילו עבד ושפחה וקטן (מגילה כ"ג). ופ' רבינו שמחה זצ"ל דלאו דווקא למנין ז' אלא אפילו לשלשה ... ונהי דמסיק עלה אבל אמרו חכמים לא תקרא אשה בתורה מפני כבוד הצבור היכא דלא אפשר ידחה כבוד הצבור מפני פגם כהנים הקוראים שלא יאמרו בני גרושות הם.

217- Mordecai, *Gittin, Ha-Nizakin*, Paragraph 404.

218- See text accompanying footnote 27 above.

219 . הלכות תפילה, פרק י"ב הלכה י"ז: אשה לא תקרא בציבור מפני כבוד הצבור.

220 . הלכות תפילה, פרק ח הלכה א: תפילת הצבור נשמעת תמיד ואפילו היו בהן חוטאים אין הקדוש ברוך הוא מואס בתפילתן של רבים, לפיכך צריך אדם לשתף עצמו עם הצבור, ולא יתפלל ביחיד כל זמן שיכול להתפלל עם הצבור, ולעולם ישכים אדם ויעריב לבית הכנסת שאין תפילתו משמעת בכל עת אלא בבית הכנסת, וכל מי שיש לו בית הכנסת בעירו ואינו מתפלל בו עם הצבור נקרא שכן רע.

221- The identity of the “great teacher” is so far unknown.

222 . ספר הבתים, בית תפילה, שערי קריאת התורה, שער שני סעיף י"ב: יש מן הגדולים שכתב שהמתפללין בבתייהם בעשרה אשה קוראה שם בתורה, שלא נקרא צבור אלא כשמתפללין בבית הכנסת.

Sefer Habatim cites as well the opinion of those who reject the possibility of women’s Torah reading on the grounds that women may not recite the *birkhot ha-Torah*.

223 . בית חדש, אורח חיים סימן תרנ"ד ד"ה הקורא: ... דלכל מילי דחיישינן לכבוד צבור בקריאת התורה הוא הדין במגילה דהא טעם שניהם אחד. ולפי זה יראה דאף על פי דלדעת הרמב"ם נשים מוציאות לאנשים במקרא מגילה ואפילו הכי בצבור לכתחילה לא תקרא אשה מפני כבוד הצבור כמו בקריאת התורה.

224- In this context the term “*tsibbu* (congregation)” should not be confused with the term “*asarah* (ten),” which describes the requisite quorum for what

accordance with the prescribed musical notations (*ta'amei ha-miqra*) violates *qol islah* 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 islah* as a relevant consideration.²²⁹ 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 islah* 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 islah*.²³⁰

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

Perhaps the most discordant aspect of women's participation in *qeri'atha-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'atha-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 unaccept-

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 *Mishnah 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.'"

משנה ברורה, אורח חיים סימן תרץ סעיף יח ס"ק סד: ... דאף אם יש לו מנין בביתו אפילו הכי מבטלין תלמוד תורה ועבודה לילך ולקרוא בצבור משום ברוב עם הדרת מלך..

225. מיטין ס. אין קורין בחומשין בבית הכנסת משום כבוד צבור.

226. מחזור ויטרי, סימן רמ"א: ... ואפשר בעשרה שפירשו מן הצבור הרי הן כיחידים שמתפללין לעצמן אחרות בית הכנסת ... ומעשה בא על ידו שהלכו להתפלל בבית האבל בראש חודש ורצו המניין לקרות הלל והורה הלכה למעשה דלא צריכין דעשרה שפירשו מן הצבור הרי הן כיחידים.

Cited also in R. Yehuda Herzl Henkin, *Benei Banim*, V.II. p.30.

227- R. Yehuda H. Henkin accepts this conclusion in theory, but holds that it should not be followed in practice: "It is *halakhah*, but we do not rule accordingly."

שו"ת בני בנימין, חלק ב, סימן ז' עמוד ל: ולכן אולי אפשר להקל במנין בבית באקראי, והלכה ואין מורים כן, אבל בבית כנסת או במנין קבוע אין להקל כלל.

228- Such is the Soncino Talmud's translation of Shemuel's statement in *Berakhot* 24a: קול באשה ערוה .

The rule is cited as *halakhah* in the *Shulhan Arukh*: ואסור לשמוע קול ערוה.

229. שו"ת יחוה דעת, חלק ג' סימן נ"א: "...ומכל מקום קשה לי מהגמרא, הכל עולים לקריאת התורה למנין שבעה אפילו אשה וקטן, אבל אמרו חכמים אשה לא תקרא בתורה מפני כבוד הצבור. הרי שלא חששו לאסור משום קול באשה ערוה, אף על פי שסתם קריאה בתורה עם טעמי המקרא. וצ"ע.

שו"ת יחוה דעת חלק ד סימן טו (האם הנשים חייבות לברך ברכת הגומל לאחר מחלה או לאחר לידה): ... הואיל ומן הדין עולה היא למנין שבעה .. משום שבמקום השראת שכינה לא חששו חכמים להרהור.

230- 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. *la'atuyei nashim*), Rambam (*Hilkhot Megillah* 1:1-2), and Or Zaru'a (*Hilkhot Megillah* ch. 368) hold

able. This is R. Moshe Feinstein's interpretation of the *baraita*, as appears from the following *responsum*:

You asked whether it is necessary to have a *mehitsah* to separate only one or two women. In *Iggerot Moshe* (Volume 1, *Orah Hayyim* No. 39, end) I brought proof . . . that there is no requirement to have a *mehitsah* to separate only a few women. But it is necessary to elucidate just how many women may be present without requiring a *mehitsah*. For example, in a house of mourning, or in a *bet midrash* without a *mehitsah* where daily services and the afternoon *Shabbat* service are held, is it permissible to allow a few women to enter and sit in the back of the room? In all generations it was customary that occasionally a poor woman would enter the *bet midrash* to receive charity, or a [woman] mourner [would enter the *bet midrash*] to recite *qaddish*, and the practical *halakhah* in such cases must be examined and depends on a variety of factors. Nonetheless, it appears that we should not be lenient and permit a woman to pray regularly without a *mehitsah* in a *bet midrash* where the afternoon service is conducted every *Shabbat*, and it may be permitted [only if a woman comes] occasionally (*be-akrai*). And it is possible to permit, on an occasional basis, no more than two women to appear. And indeed, there is proof, as you point out, that according to the law one woman may be permitted to enter the *bet midrash*, from the rule cited in the *Shulhan Arukh* . . . that a woman may be included in the number of seven called [to the Torah].²³¹

A similar conclusion is reached by R. Yehuda Herzl

Henkin, who cites, among other authorities, R. Jacob Emden, Rashi, *Tosafot*, Rabbenu 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'at ha-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), *porets geder* (breaker of norms), and *lo titgodedu* (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*".

that men may discharge their obligation by listening to a woman's reading of the *Megillah*. R. Joshua Boaz b. Simon Barukh in *Shiltei Gibborim* on *Rif* (*Megillah* 2b) and R. Ovadiah Yosef (*Resp. Yehavveh 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. Yehavveh 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 *qol islah*.

Shulhan Arukh presents as well the alternative view of the *Ba'al Halakhot 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 *Megillah* 4a) and Rema (*Orah Hayyim* 689:2, citing Mordecai) 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

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.²³³ 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-tsubur*?

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 mamonot*). 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).²³⁴

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."²³⁵ Rashi observes that "every river follows its own course, that is to say, each place follows its own *min-*

has a different level of obligation with respect to *Megillah*, may read only for other women. According to Ritva (*Hiddushei ha-Ritva* on *Megillah* 4a), *Bahag* holds that men and women have identical obligations with respect to *Megillah*, but women may nonetheless not read for men because of *kevod ha-tsubur*. Finally, R. Aaron ben Jacob Hakohen in *Sefer ha-Kol Bo* (chap 45 s.v. *qeri'at megillah*) attributes to R. Isaac b. Abba Mari (author of *Sefer ha-Ittur*) the view that women may not read the *Megillah* for men because of *qol ishah*. Among modern *poseqim*, both R. Yehiel Mihel Epstein in *Arukh ha-Shulhan* and R. Yisrael Meir Kagan in *Mishnah Berurah* cite only the first two interpretations of *Bahag* and do not even mention *qol ishah* as a possible reason for prohibiting women's public *Megillah* reading.

It is clear from this review that for the great majority of authorities, including those who, for whatever reason, do not permit women to read the *Megillah* for men, *qol ishah* is not adequate grounds for barring women from reading the *Megillah* or the Torah. R. Yehuda Herzl Henkin (*Resp. B'nai Banim* II, p.37) argues further that even the author of *Sefer ha-Ittur*, who prohibits women from reading the *Megillah* because of *qol ishah*, would concede that *qol isha* does not apply to *qeri'atha-Torah*, where there is no need for the special diligence called for by the general merriment surrounding the Purim service.

231 . אגרות משה, אורח חיים חלק חמישי, סימן י"ב (עמוד כ): שאלת אם צריך מחיצה לחצוץ רק בפני אשה אחת או שתיים. שהנה באג"מ ח"א א"ח סימן ל"ט בסופו, הבאתי ראיה מקידושיין נ"ב ע"ב תוד"ה וכי אשה בעזרה מנין, שאין חיוב מחיצה להפסיק לפני כמה נשים בלבד. וצריך לבאר

hag”²³⁶ 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.²³⁷ *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,²³⁸ but the notion of a *minhag* as binding all of *kelal 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.

The study of *minhag* is now coming into its own with the appearance of several important studies.²³⁹ 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*].”²⁴⁰ *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.²⁴¹ 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

עד כמה נשים אין צריך מחיצה. כגון בבית אבל, או בבית מדרש שמתפללים שם בימי חול ובמנחה בשבת, שאין שם מחיצה, האם מותר להניח שכמה נשים יכנסו וישבו בסוף החדר. והנה בכל הדורות נהגו שלפעמים נכנסת אשה ענייה לבית המדרש לקבל צדקה, או אבלה לומר קדיש, והלכה למעשה בענין זה צריכה עיון ותלויה בהרבה עניינים. ומכל מקום נראה שבבית מדרש שבכל שבת תרצה אפילו אשה אחת לבוא למנחה בקביעות, שאין להקל להתפלל בלא מחיצה, ורק באקראי אפשר להתיר. ואפשר להתיר, באקראי, רק עד ב' נשים ולא יותר. והנה יש ראייה, כען שהזכרת, שלדינא אפשר להניח לאשה אחת להכנס לבית המדרש, מן הדין בשולחן ערוך או"ח סי' רפ"ב סעיף ג' דאשה עולה למנין שבעה קרואים.

. שו"ת בני בנים סימן ד' ("נשים בודדות בעזרת גברים בבית הכנסת"), עמוד טז. ²³²

²³³- To my mind the best such argument is as suggested by R. Moshe Meiselman, that the mingling of sexes in the synagogue may lead to an immodest, even frivolous atmosphere. Meiselman, *Jewish Woman in Jewish Law*, pp. 142-143. I believe that R. Meiselman’s identification of this argument with *kevod ha-tibbur* 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.

²³⁴ . משלי (כ"א, ל'): אין חכמה ואין תבונה ואין עצה לנגד ה'.

being sufficiently serious in their observance.²⁴² 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 happen-

ing,” 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 historic processes, not of conscious decision-making and religious leadership.²⁴³ 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.²⁴⁴ *Minhagim*,

See *Tosafot, Sanhedrin* 18b, s.v. *me'id*, where *Tosafot*, based on this verse, take for granted that the *Mishnah*'s blanket prohibition against taking testimony from a king (המלך...לא מעיד ולא מעידין אותו) does not apply to matters of ritual law, where no one is above the law.

²³⁵ . חולין יח: נהרא נהרא ופשטיה.

²³⁶ . רש"י חולין י"ח: ד"ה נהרא נהרא -- כל נהר מתפשט במקום שהוא רגיל שם, כלומר כל מקום הולך אחר מנהגו.

²³⁷ - Isadore Twesky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven and London: Yale, 1980), p. 124.

²³⁸ . המנהג הפשוט בכל מקום.

²³⁹ - See

תא-שמע, הלכה, מנהג ומציאות באשכנז 1350-100 (ירושלים: מאגנס, תשנ"ו); יצחק זימר, עולם כמנהגו נוהג (ירושלים: מרכז זלמן שזר, 1961). שפרבר, מנהגי ישראל (ירושלים: מוסד הרב קוק, 1990-1994), חלקים א-ה; ישראל תא-שמע, מנהג אשכנז הקדמון (ירושלים: מאגנס, תשנ"ב); ישראל מנחם אלון, המשפט העברי (ירושלים: מאגנס, תשל"ח) חלק א' עמודים 713-767; דניאל

²⁴⁰ . מגן אברהם, שו"ע אור"ח סימן רפ"ב סק"ו: וכאן נהגו הנשים לצאת חוצה.

²⁴¹ - Similarly, despite *Shulhan Arukh's* ruling (*Orah Hayyim* 106:1) that women are obligated to pray the amidah, *Magen Avraham (Orah Hayyim* 106:1:2)

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*.²⁴⁵ 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 [*olim* who receive *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 [*olim* 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 [*olim*]. 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.²⁴⁶

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 (*dinei mamonot*). *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'atha-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 inviolabil-

reports that that it is the *minhag* for most women to dispense with the *amidah* and to fulfill their obligation by saying “some entreaty (השקב הניא)” 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-tibbur*) 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."²⁴⁷

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."²⁴⁸ *Magen Avraham* goes on to conclude that a "*minhag* for which there is no evidence in the Torah is nothing more than a mistake in judgment."²⁴⁹

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*,²⁵⁰ 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*."²⁵¹ Rema's final word:

Where circumstances have changed in a way that our predecessors were not aware of, for example where we should be concerned for some damage (*qilqul*) or prohibition for which our predecessors had no need to be concerned, certainly we are permitted to enact enactments of the sort mentioned in the Talmud, for we may say that our predecessors did not set down their *minhagim* on this basis.²⁵²

Minhagim should be cherished, faithfully observed, and certainly never mocked, but they may, indeed should, change with the times.²⁵³

The second type of *minhag* is one invoked to resolve issues where the *halakhah* is unsettled (*halakhah rofefet*). In such matters the rabbis may instruct their disciples:

hag of the *Magen Avraham* is no longer to be observed, for *humashim* with side-by-side translations of the Torah reading are now widely available.

²⁴³⁻ There is an ironic ideological affinity between the position of those who espouse the ascendancy of *minhag* and that of the positivist-historical school of Judaism, the forerunner of Conservative Judaism. Zacharias Frankel held that most *halakhah* was essentially an expression of the "will of the people," a formulation that allowed for moderate reform; those elements of *halakhah* that no longer were compelling to the people would naturally fall by the wayside. Consider as well the following statement by Solomon Schechter, and query whether the Orthodox "minhagists" could not adopt it as their own creed: "[T]he norm as well as the sanction of Judaism is the practice actually in vogue. Its consecration is the consecration of general use – or, in other words, of Catholic Israel." *Studies in Judaism*, Series One, (Jewish Publication Society, 1896), xix, cited in *Encyclopedia Judaica*, v. 14, p. 949. Orthodox "minhagists," with their exaggerated sense that "*minhag* overrides *halakhah*" likewise view "the people" as the ultimate halakhic arbiters. Minhagism and Conservatism obviously differ on the identity of the social group that defines the *minhag/halakhah*, and on their assessments of the relative durability of *minhag* versus *halakhah*. The Conservative school believed that *minhag* is easier to "reform" than *halakhah*. Minhagists seem to have greater confidence in the "people's" allegiance to man-made *minhag* than in their devotion to divine *halakhah*.

²⁴⁴⁻ *Perishah (Orah Hayyim 282:5)*. *Shulhan Arukh (Orah Hayyim 136:1)* requires that *aliyyot*, other than *kohen* and *levi*, be awarded with a clear preference to scholars and community leaders (i.e. the wealthy) and their children. I dare say that a modern day *gabbai* who followed the *Shulhan Arukh* on this matter would find his term in office cut short. *Magen Avraham* in *Orah Hayyim* (282: end) proposes a more democratic distribution of *aliyyot* based on events in the life cycle (birth, marriage, *yahrzeit*), concluding that "there are still other *minhagim*; every river follows its own course (נהרא ופשטיה) (נהרא)." .

²⁴⁵ . בית יוסף, יורה דעה סימן רנט, ד"ה מהרי"ק: ... הלא ידעת שאין המנהג מבטל הלכה אלא אם כן הוא מנהג קבוע על פי חכמי המקום לא. על פי המון בעלי בתים.

²⁴⁶ . שו"ת יחוה דעת חלק ד סימן כג: ומה שלא ראינו שקטן עולה למנין שלושה, אינו משום שהמנהג כדברי האומרים שקטן עולה רק למנין שבעה ולא למנין שלשה, אלא משום שיש אנשים רבים בבית הכנסת הרוצים לעלות לספר תורה, ואין להניח גדולים ולקריות קטנים במקומם. וטעם זה מוכרח הוא, שהרי עיינו הרואות שאפילו בשבת אין הקטן עולה למנין שבעה, ולא שמענו ולא ראינו שיעלה קטן למנין, אף על פי שמן הדין בודאי יכול לעלות למנין שבעה, ובעל כרחך לומר שהטעם משום שיש גדולים רבים הרוצים לעלות לספר תורה, ואין מן הראוי להניח גדולים ולקריות קטנים, ואין הכי נמי שאם רצו להעלות קטן לספר תורה הרשות בידם בין למנין שבעה ובין למנין שלשה, ואין כאן בית מיחוש ולא צד איסור כלל.

²⁴⁷ . רמ"א שולחן ערוך, אורח חיים, סימן תר"ץ סעיף י"ז: ואין לבטל שום מנהג או ללעוג עליו כי לא לחנם הוקבע.

“Go forth and see how the public are accustomed to act.”²⁵⁴ This type of *minhag* is described in the *Talmud Yerushalmi* as follows: “Every *halakhah* that is unsettled in court (*rofefet 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.”²⁵⁵ 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;²⁵⁶ 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).”²⁵⁷

Rashi²⁵⁸ 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.²⁵⁹ More generally, Rosh²⁶⁰ and Rema²⁶¹ 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

248 . מגן אברהם, שם סעיף קטן כ"ב: וכתב רמ"א בתשובה סימן כ"א ... מיהו אם נשתנה הענין מאשר היה בזמן הראשונים רשאים לשנות המנהג לפי הזמן.

249 . שם: אבל מנהג שאין לו ראיה מן התורה אינו אלא כטועה בשיקול דעת.

250 . שו"ת הרמ"א סימן כ"א: אסור לבטל מנהג שמנהג כשר הוא ואין לך ותיקין גדולה מזו ... אם נמצא המנהג באיזו פוסק אמרינן אי תניא תניא ואין לבטלו ... אף בשעת הדחק אין לשנות מנהג ... מנהג העשוי לכבוד התורה דוחה אפילו איסור שבות ... אין לשנות מנהג המקום אע"ג דאין מתוקן כשאר מנהגים ... אפילו כנגד ההלכה אזלינן בתר מנהג היכא שהמנהג הוקבע על פי חכמי המקום ... אפילו אם יש במנהג צד איסור אין לבטלו ... אומר דכל זה אינו כלום.

In some editions this *responsum* appears as סימן יט. Rema was reacting to a *responsum* of R. Joseph Colon (Maharik) (שו"ת מהרי"ק סימן ט) who generally upheld the inviolability of *minhagim*. Elements of Maharik's position were disputed as well by *Peri Hadash* (אות י) ונהגי איסור, סימן תצ"ו אות י) and by R. Moses Sofer: (פרי חדש, או"ח דיני

שו"ת חתם סופר, חלק א (או"ח) סימן קנ"ט: ... אמנם מה שכתב ... בשם מהרי"ק דבכל מנהג אפילו יש בו צד איסור אין לבטלו, אין אנו שומעין לו, דכבר דחה ליה פרי חדש במנהגי איסור שלו סימן יו"ד בראיות ברורות.

251 . שם, וא"כ יש לדקדק האיך חזר ר' יוחנן והתקין דבר שהיה נגד התקנות ומנהג הראשונים אם אי אפשר לשנות מן המנהג הראשון בשום ענין.

reserved for this type of civil law *minhag*²⁶² where the operative principle is that “a person may contract out of the law of the Torah.”²⁶³ 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 *halakhah*, 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 *halakhah*.²⁶⁴

Outside of the realm of civil law, *minhagim* that abrogate *halakhah* 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,²⁶⁵ unless they no longer serve their purpose;²⁶⁶ *minhagim* that abrogate the *halakhah* are not to be observed;²⁶⁷ in cases where the *halakhah* is not well settled (*halakhah rofefet*), *minhag* controls, on the presumption that the *minhag* reflects the decision of the rabbis.²⁶⁸

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 gabbai'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 *halakhah*.” 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.”

²⁵² . שם, אבל במקום שנתחדש דבר שלא ידעו הראשונים, כגון דאיכא למיחש לקלקול או לאיסור שלא היה לו לחוש בימים הראשונים, ודאי מותר לתקן דבר ככל תקנות האמורים בתלמוד משום דאיכא למימר אדעתא דהכי לא הנהיגו הראשונים.

²⁵³ See as well:

רבי שמואל בן משה די מדינה, שו"ת מהרשד"ם, חלק או"ח, סימן ל"ה: נראה, דאע"ג שיש עניינים שדבר הגון ונראה טוב לאחוז האדם במנהג אבותיו וקרוב הוא שנכנס זה באזהרת ובל תטוש תורת אמן, מכל מקום [בעניין שינוי נוסח התפילה] זה טוב ויפה להניח המנהג ההוא ולאחוז בסדר מנהג ספרד. והטעם שאני אומר כן, כי לעניות דעתי לא מצאנו ולא ראינו שאין לשנות מנהג אבותינו כי אם בדבר שיש בו נדנדוד איסור... הא במידי דליכא צד איסור כלל, פשיטא שאין קפידא כלל... ואפילו במנהג איסור, דווקא בדעתו לחזור למקומו, אבל אם אין דעתו לחזור, פקע מיניה חומרי מקום שיצא משם, ויכול לנהוג כאנשי העיר שבא לשם, ואפילו להקל.

²⁵⁴ . ברכות מ"ה.ף; עירובין י"ד.; מנחות ל"ה: פוק חזי מאי עמא דבר.

²⁵⁵ . ירושלמי פאה פרק ז' הלכה ה'; ירושלמי מעשר שני פרק ה' הלכה ב'; ירושלמי יבמות פרק ז' הלכה ג' כל הלכה שהיא רופפת בבית דין ואין אתה יודע מה טיבה צא וראה מה הציבור נוהג ונהוג.

²⁵⁶ . תשובת הרא"ש, כלל נ"ה, סימן י'.

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’atha-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’atha-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. *Poretz 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

257 . פסחים נ: - בני ביטן נהוג דלא הוו אזלי מצור לצידון במעלי שבתא. אתו בנייהו קמיה רב יוחנן, אמרו ליה: אבהתיך אפשר להו, און לא אפשר לך. אמר להו: כבר קבלו אבותיכם עליהם, שנאמר "שמע בני מוסר אביך ואל תטוש תורת אמן."

258 . רש"י שם, ד"ה מצור לצידון: והם מחמירים על עצמם שלא להיבטל מצורכי שבת.

259 . ר"ן: ונמצינו למידין התורת המנהגות, שכל מנהג איסור שהוא מעיר אחת, כל שאינו מנהג טעות, אלא שהם החמירו על עצמם לעשות סייג לתורה או לדבר שהוא מחלוקת בין חכמי ישראל ונהגו כדברי האוסר, כל בני העיר חייבין בו מן הדין, שנאמר ואל תטוש ... עד שיעקור דירתו משם ויקבענה בעיר אחרת, דבכי האי גוונא פקעי מיניה חומרי המקום שיצא משם.

260 . תשובות הרא"ש, כלל נ"ה, סימן י': ... אלא אפילו מנהג שעשו לסייג והרחקה ויכול לבא ממנו קלקול, יש לבטל המנהג.

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)²⁷². The Talmud (*Yevamot* 13b) reads the words “*lo titgodedu*” as prohibiting the formation of conflicting groups, or *agudot*.²⁷³ 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 Abbaye and Rava. According to Abbaye:

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 Shammai 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 Shammai 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.²⁷⁴

Rambam rules, in accordance with Rava, that one town

may not host two conflicting courts of law.²⁷⁵ R. Yosef Karo reports that R. Yeruham held, in accordance with Abbaye, that two differing courts of law may operate in the same town,²⁷⁶ and it appears that this was R. Yosef Karo’s own opinion.²⁷⁷ 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.²⁷⁸

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-Hareidit*. 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’atha-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,

²⁷² . אלו, המשפט העברי, חלק א', עמ' 734-739.

²⁷³ . רמב"ם, הלכות שכירות פרק ז הלכה א: ... שמתנה אדם כל תנאי שירצה במקח וממכר; שולחן ערוך, חושן משפט, סימן שטו סעיף ב.

²⁷⁴ . תשובת הרשב"א חלק ד, סימן ר"ס: דיני המס בכל מקום אין יסודותן בהררי קודש התלמוד. ובכל מקום תמצא בו דינים מחולפים על פי הנהוג והסכמת גדוליהם אשר גבלו ראשונים. ורשאיין הן בני העיר לעשות תקנות קבועות ומנהגים ידועין, כפי מה שירצו שלא על פי ההלכה, שזה דבר שבממון הוא. ועל כן, אם יש מנהג ידוע להם בדבר זה, הלך אחר המנהג. שהמנהג מבטל את ההלכה בכיוצא בזה.

²⁷⁵ . שו"ת הרא"ש כלל נ"ח סימן י': כל המנהגים שאמרו חכמים שיש לילך אחר המנהג, זהו מנהג שנהגו לעשות סייג והרחקה, כגון ההיא דתניא.... מקום שנהגו לעשות מלאכה בערבי פסחים עד חצות עושים... כל אלו המנהגים הם לדבר מצוה, לעשות סייג והרחקה, ואמרו חכמים שאין לשנותן.

²⁷⁶ . שם: אלא אפילו מנהג שעשו לסייג ולהרחקה ויכול לבא ממנו קלקול יש לבטל המנהג....

²⁷⁷ . שם: אבל אם נהגו לעקור דבר מן התורה ... בקום ועשה ואפילו הוא נביא אין שומעין לו... ולא מיבעיא מנהג של עבירה שיש לשנותו...

²⁷⁸ . שם: אם יש רפיון בהלכה שאין ברור לך כמי נפסקה ההלכה, וראית שנוהגין הלך אחר המנהג, דיש לתלות שנראה לגדולים שהנהיגו המנהג שהלכה כן. אבל במקום שאין רפיון בהלכה, אין לך לילך אחר המנהג שהוא כנגד ההלכה.

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 uni-

versally 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 dissension 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*.

269. קהלת יח: פורץ גדר ישכנו נחש.

270. ירושלמי ברכות פרק א הלכה ד: תדע לך שחביבין דברי סופרים מדברי תורה ... על שם פורץ גדר ישכנו נחש. תני ר' ישמעאל, דברי תורה יש בהן איסור ויש בהן היתר יש בהן קולין יש בהן חומרין אבל דברי סופרים כולן חמורין הן.

271. "א יורה דעה סימן קצ"ו סעיף י"ג (וכל הפורץ גדר בדברים אלו [ספירת שבעה נקיים אם ראתה דם לאחר תשמיש] במקום שנהגו להחמיר ישכנו נחש). אורח חיים, סימן קל"ד סעיף א (ואם לא אמרו [תחנון בשני וחמישי] מעומד עובר על התקנה ונקרא פורץ גדר); אורח חיים סימן תקנ"א סעיף (וכל מי שאכל בשר [בתשעת הימים] במקום שנהגים בו איסור פורץ גדר הוא); יורה דעה סימן ל"ט סעיף א (וכל הפורץ גדר לאכול [בשר בלי בדיקה] ישכנו נחש);

272. דברים י"ד א: בנים אתם לה' אלקיכם לא תתגודו ולא תשימו קרחה בין עיניכם למת.

273. יבמות י"ג: לא תתגודו, לא תעשו אגודות אגודות.

274. יבמות י"ד. אמר אבי כי אמרין לא תתגודו כגון שתי בתי דינים בעיר אחת הללו מורים כדברי ב"ש והללו מורים כדברי ב"ה, אבל שתי בתי דינים בשתי עיירות לית לן בה ... אמר רבא כי אמרין לא תתגודו כגון ב"ד בעיר אחת פלג מורין כדברי ב"ש ופלג מורין כדברי ב"ה אבל שתי בתי דינים בעיר אחת לית לן בה.

275. רמב"ם, הלכות עבודה זרה פרק י"ב הלכה י"ד: ובכלל אזהרה זה [לא תתגודו] שלא יהיו שני בתי דינים בעיר אחת זה נוהג כמנהג זה וזה נוהג ... כמנהג אחר, שדבר זה גורם למחלוקת גדולת.

276. בית יוסף, יורה דעה סימן רמ"ב אות ד (Z) ד"ה גרסינן בפרק: והרמב"ם ... פסק כאביי ורבינו ירוחם בנתיב ב' פסק כרבא...

277. בית יוסף, אורח חיים סימן תרכ"ד אות ה ד"ה ומ"ש ומיהו: ודוני אבי ז"ל היה מוחה בידם [לקיים שני ימי יום כיפורים]. נראה שטעמו משום ... לא תתגודו ... ואע"ג דפרק קמא דיבמות אמרין דהיינו בית דין אחד שלא יהיה פלג מורין כבית שמאי ופלג כבית הלל אבל שני בתי דינים בעיר אחת לית לן בה, הכא כבית דין אחד דמי.

278- For a relevant discussion of *lo titgodedu*, see

דוד דישון, תרבות המחלוקת בישראל (שוקן, ירושלים ול אביב 1984), עמ' 75-82.