

# Rishon or Kohen

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## שאלה

The question has been raised as to whether calling *rishon*, *sheni*, *shlishi* may be substituted in place of calling *kohen*, *levi*, *yisrael* for the first three *aliyot* to the Torah.

## תשובה

A survey of the various sources dealing with this issue reveals that there is disagreement as to whether calling a *kohen* first is *מדאורייתא* (from the Torah) or *מדרבנן* (from the Rabbis).

In order to understand the reason for calling a *kohen* first, we must turn to *Mishnah Gittin*<sup>1</sup> which states:

אלו דברים אמרו מפני דרכי שלום כהן קורא ראשון ואחריו לוי ואחריו ישראל  
מפני דרכי שלום.

“The following rules were implemented in the interests of peace. A *kohen* is called up first and after him a *levi* and after him a *yisrael*.”

This source implies that calling up a *kohen* first is a *תקנה*, i.e. it is *דרבנן*. The rabbis explain that they instituted this rule to prevent fighting among the worshipers, all of whom would want to be called up first. Nowhere does this source indicate that calling a *kohen* first is a Biblical requirement.

## Sources Claiming *מדאורייתא*

A different perspective is presented in the *Bavli*<sup>2</sup> which quotes a number of biblical verses to try to prove that the calling up of a *kohen* is *מדאורייתא*. The *Bavli* finally states:

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

תנא דבי רבי ישמעאל וקדשתו לכל דבר שבקדושה לפתוח ראשון ולברך ראשון וליטול מנה ראשון א"ל אביי לרב יוסף מפני דרכי שלום דאורייתא היא א"ל דאורייתא ומפני דרכי שלום כל התורה כולה נמי מפני דרכי שלום היא . . . אלא אמר אביי לכדמר דתניא . . . ואם בא לחלוק כבוד לרבו או למי שגדול ממנו הרשות בידו ואמר מר עלה לא שנו אלא בסעודה אבל בבהכ"נ לא דאתו לאינצויי.

A *Tana* of the school of Rabbi Ishmael taught: 'וקדשתו' in every matter involving sanctification: to open proceedings first, to say grace first, and to choose his portion first. Abaye said to Rabbi Joseph: Is this rule only in the interests of peace? Isn't it biblically derived? He answered: It is biblically derived but it is also in the interests of peace. But the whole Torah is in the interests of peace? . . . No, said Abaye: it is in accordance with the Master, as it has been taught: . . . but if he wishes to honor his teacher or a superior he may do so. Commenting on this, the Master said: this applies only in the case of a meal, but not in the synagogue, for it may lead to quarreling.

Rashi<sup>3</sup> explains the Mishnah based upon the *Bavli* as follows: The *kohen* reads first as it is written in the Torah (וקדשתו), and the *kohen* can not forgo his honor and change the order because of the תקנה of מפני דרכי שלום (in the interests of peace). According to Rashi the procedure of calling the *kohen* first is דאורייתא.

Rabbi Moses ben Jacob of Coucy states that this procedure is a מצות עשה.<sup>4</sup> The Rambam simply states:

בכל קריאה וקריאה מאלו כהן קור ראשון ואחריו לוי ואחריו ישראל<sup>5</sup>

On every occasion, a Kohen reads first, after him a Levi and after him an Israelite and the *Shulhan Arukh* follows suit.<sup>6</sup> The Tur<sup>7</sup> says the same thing, but adds:

אלו דברים שאמרו מדום דרכי שלום כהן קורא ראשון וכו' כדגרסינן בפרק הניזקין

These are matters that were ordained in the interests of peace . . . Rabbi Meir of Rothenburg<sup>8</sup> accepts Rashi's point of view, but adds that once the *kohen* forgoes his honor it is no longer דאורייתא but rather מדרבנן.

## מדרבנן Claiming Sources

The *Yerushalmi*<sup>9</sup> understands that there is disagreement as to whether this procedure is דאורייתא or מדרבנן.

*Tosafot* and *Tosafot Harosh* say explicitly that the verses are an אסמכתא:

ואע"ג דררשינן וקדשתו לכל דבר שבקדושה לפתוח ראשון ולברך ראשון אסמכתא בעלמא היא כמו ליטול מנה יפה רשין דאין יכול לגבות בב"ד.<sup>10</sup>

Even though we interpret the verse 'וקדשתו' in every matter of sanctification, to open proceedings first and to say grace first, it is only an אסמכתא, just as is the case with to choose his portion first, for he cannot collect it in court.

According to the *Yad David*<sup>11</sup> this procedure is indeed an Amoraic one:

ואמנם נראה כי הוא מחלוקת של האמוראים בכאן, כי הך אמוראי דלא דרשי מוקדשתו, ס"ל דהוא רק אסמכתא בעלמא וקדשתו איצטריך למאי דדרשינן ביבמות שם (פ"ח, ב) שאם לא רצה דפנו, ובוודאי צ"ל הכי דאל"כ מאי טעמא דהך אמוראי דנפקא לה מפסוקי אחרינא.

And indeed it seems that we have here an Amoraic disagreement, for those *Amoraim* who do not interpret it from 'וקדשתו', are of the opinion that this interpretation is only an 'אסמכתא' and 'וקדשתו' is necessary for that which we interpret in *Yevamot* (88b) 'if he refused, he is to be compelled,' and it definitely must be so, for if it were not so, what is the reasoning of those *Amoraim* who derive it from another verse.

The *Rivash* makes this most explicit statement:

ומה שעולין לקרוא בתורה בראשונה אינו אלא מנהג.<sup>12</sup>

"And the fact that they are called up first is nothing but a custom."

In his commentary to the Mishnah, the Rambam writes:

... לפי מה שבא לנו בקבלה כמו שאגיד וזה שהכהן קודם ללוי ולישראל לפי שנאמר וקדשתו כי את לחם אלהיך גו' ובא בקבלה בכל דבר שבקדושה לפתוח רשון ולברך ראשון וליטול מנה יפה ראשון.<sup>13</sup>

... according to that which we have received by tradition, as I will elaborate, the fact that the *kohen* precedes the *levi* and the *yisrael* is based on the verse 'and you shall sanctify him since he offers the food of your God . . .,' and we have received it as a tradition that in all matters of sanctification to open proceedings, to say grace first and to choose his portion first.

According to the *Rambam*, the law existed by virtue of tradition, and the verse is merely a support for an already accepted tradition, but it is *not* the source for the law.

## Analysis: דאורייתא or מדרבנן

As we can see, there is significant disagreement as to whether the calling of a *kohen* first is דאורייתא, and this disagreement is stated clearly in the Arukh HaShulhan.<sup>14</sup>

There would seem to be sufficient reason to follow those *Amoraim* and *Poskim* who view this procedure as מדרבנן for the following reasons:

1. The Mishnah clearly says that it is מפני דרכי שלום (in the interests of peace) which is not a case of דאורייתא. In fact, Rashi, in his commentary to the Mishnah in Gittin, calls this a תקנתא דרבנן (rabbinic enactment).<sup>15</sup> Rashi and all the others who claim that it is דאורייתא based on the verse “santify him”, force the question of על כבודו (a *kohen* foregoing his honor) into the Mishnah. In fact, if we accept Rashi’s interpretation, then העיקר חסר מן הספר (the main item is missing), since the question of a *kohen* foregoing his honor, is not mentioned in the Mishnah.

2. If the midrash וקדשתו לכל דבר בקדושה was the only application of the verse, then a case could be made for considering the law as דאורייתא. However since this verse is used to derive other laws as well<sup>16</sup> it is clear that the פשט is not identical to this midrash. Therefore, the *midrash* does not have the status of דאורייתא.<sup>17</sup>

3. Since there are several authorities who clearly say that the verse is only an אסמכתא, and others who do not use the term דאורייתא when quoting the law, and still others, who quote the law with the explanation of מפני דרכי שלום (in the interest of peace) there seems to be significant support for the position that this practice is not דאורייתא, but rather מדרבנן.

4. Throughout the ages various cases have been discussed in which someone other than a *kohen* has been called first:

- a) רב הונא קרו בכהני.<sup>18</sup>  
“Rav Huna read in the *kohen* position.”
- b) אם הכהן ע"ה ת"ח קודם לא עשה כן חייב.<sup>19</sup>  
“If the *kohen* is not learned, a scholar precedes him. If he does not act accordingly, he is guilty.”
- c) Or in a case where the only *kohen* could not read and the *Rashba* was asked if a *yisrael* could read and he answered:

דברים אלו פשוטים הם שמותר וראוי ומחוייב כיון שאינו יודע לקרות היאך יברך על התורה ויקרא אדרבה אסור לו שהרי מברך לבטלה ולא עוד אלא מן הדין כהן שאינו חכם ישראל חכם קודם לו.<sup>20</sup>

This matter is simple. It is permissible and proper and obligatory. Since he does not know how to read, how can he recite the blessings for the Torah and then read? On the contrary, he is forbidden, for he

is reciting a blessing in vain. And furthermore, according to the law a *kohen* who is not learned is preceded by a *yisrael*.

c) An interesting case is the following:

דאם המנהג לקנות במעות מי שיקרא ראשון בהתחלת התורה בבראשית אם קונה ישראל מוחל הכהן על כבודו ויוצא מבית הכנסת ופעם א' לא רצה הכהן לצאת מבית הכנסת מותר לכפות ע"י השלטון לצאת מבית הכנסת כדי שלא יתבטל המנהג וכבוד תורה... ובשם כנה"ג כתב דאפילו לא יצא יקרא הישראל.<sup>21</sup>

Where there exists a custom that one can purchase the first *aliyah* when the book of *Bereshit* is begun, if a *yisrael* buys it, then the *kohen* forgoes his honor and leaves the synagogue. One time it happened that the *kohen* refused to leave. It is permissible to call the local authorities to force him to leave so that the custom and the honor of the Torah are not abolished... Quoting the *Kneset HaGedolah*, he wrote that even if the *kohen* does not leave, the *yisrael* should read.

d) The author of the *Arukh HaShulhan* laments the fact that *kohanim* were not called up first:

יש עתה שאינם בני תורה ונתפשטה הספחת ביניהם קאין משגיחין על הכהנים כלל וקוראים ישראל במקום חהן אף שיש שם כמה חהנים וגם אין מבקשים מחילתם... וצווחתי עליהם עד שקבלו שלא לעשות כן וכמעט היה הדבר לפלא בעיניהם.<sup>22</sup>

There are communities today that are not learned and the disease has spread among them that they pay no attention at all to the *kohanim*, and call a *yisrael* instead of the *kohen* even though there are a number of *kohanim* present. They also do not ask the *kohanim* to forgo their honor... I shouted at them until they agreed not to do this anymore, and this matter was almost amazing to them.

e) Or the following:

וצ"ע למה אין נוהרין עכשיו להקדים הכהן לכל הנך.<sup>23</sup>

“The matter needs investigation – why aren't they careful today to give precedence to the *kohen*.”

If the practice of calling a *kohen* first was מדאורייתא, all these varying customs and explanations would not have developed; but rather the opinion of Rav Amram would have prevailed:

כל היכא דאיכא כהן לית ליה רשות לישראל למיקרי קמיה אפי' הוא נשיא שביראלי וכ"כ רב נטרונאי דאפי' כהם ע"ה קודם לישראל ת"ח.<sup>24</sup>

Wherever there is a *kohen* present a *yisrael* cannot be called before him, even if he is a Prince in Israel. Rav Natronai wrote similarly that a non-learned *kohen* precedes a *yisrael* who is a scholar.

The fact is that this opinion did not prevail. And the very variety of sources and explanations cited above, would seem to indicate that the practice is not מדאורייתא but rather מדרבנן.

## CONCLUSION

The procedure is מדרבנן. The rationale for the procedure is מפני דרכי שלום – (in the interest of peace) a concept which is historically and sociologically impacted. Therefore, as historical and sociological realities change, so must our application of מפני דרכי שלום.

Today all *kohanim* are ספק כהנים בחזקת ספק כהנים (considered doubtful Kohanim). The Rambam says:

מי שבא בזמן הזה ואמר כהן אני אינו נאמן ואען מעלין אותו לכהונה על פי עצמו ולא יקרא בתורה ראשון וכו'.<sup>25</sup>

If someone approaches us today and says I am *kohen*, he is not to be believed, and he is not elevated to the *kehunah* on the basis of his own testimony, nor should he read first from the Torah.

Since “authenticity” in the matter of כהונה is questionable and not totally reliable, it would seem more consistent with the concept of מפני דרכי שלום (in the interests of peace) as it applies to a voluntary honor (not an obligation) to consider all recipients of aliyot on equal footing, rather than maintaining a hierarchy, based on questionable personal status.

מפני דרכי שלום is a sociological norm and as such it changes with time and circumstances. In certain congregations and situations the limitations and restrictions created by maintaining the *kohen*, *levi*, *yisrael* procedure, rather than maintaining מפני דרכי שלום, tend to interfere with them. Where a rabbi feels that a congregation or service would be better served by calling people up to the Torah as *rishon*, *sheni*, *shlishi*, it is entirely permissible to do so. This system allows any congregant who may normally be granted an *aliyah* at the service, to be honored with any of the aliyot during the service.

## NOTES

1. 5:8
2. Gittin 59b
3. שם, ד"ה אבל
4. Semag, Asin 171

5. Hilkhot Tefilah 12:18
6. Oraḥ Ḥayyim 135:3
7. Ibid.
8. Teshuvot, P'sakim Uminhagim, ed. Kahana, Vol I, p. 94
9. Gittin 5:9
10. Ḥullin 87a ד"ה וחייב
11. Yad David Hidushei Masekhet Gittin, Joseph Zintzenheim, Gittin 59b, ד"ה מנה"מ
12. Rivash 94
13. Gittin 5:8
14. Oraḥ Ḥayyim 135, #8
15. Gittin 59a ד"ה ראשון כהן קורא
16. See Sifra ad locum, and Yevamot 88b
17. See E. Urbach מהלכה מקורותיה והתפתחותה, יד לתלמוד p. 80
18. Megillah 22a
19. Beit Yosef to Tur, Oraḥ Ḥayyim 135 ד"ה ומ"ש רבינו in the name of Rashba
20. Ibid.
21. Magen Avraham, Oraḥ Ḥayyim 135, ס"ק 6
22. Oraḥ Ḥayyim 135, #9
23. Perisha to Tur, Oraḥ Ḥayyim 135, #3
24. Beit Yosef to Tur, Oraḥ Ḥayyim 135 ד"ה אבל
25. Hilkot Issurei Biah 20.13. See also Tur and Shulhan Arukh, Even HaEzer 63 and Magen Avraham, Oraḥ Ḥayyim, the end of #457. That is why the money received by the Kohen at a redemption of the first born should be returned. See Magen Avraham, Oraḥ Ḥayyim 211.4