MAY A NON-KOHEN BE CALLED FIRST TO THE TORAH IN THE PRESENCE OF A KOHEN?

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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.

At one of the recent meetings of the CILS, the question was raised as to whether the first Torah aliyah may be given to a non-kohen (especially on a weekday when there may be as few as one aliyah available should a kohen be called first to the Torah) without having to ask the kohen to leave the sanctuary or chapel within which services are being conducted.

The halakhah itself in a number of settings presents a series of situations which help create the “problem” necessitating the “passing over” of the kohen for the first Torah aliyah. The halakhah and Jewish tradition speak of קיתובים for an aliyah to the Torah, e.g. for a Bar-Mitzvah, בצל ברית (Sandek, Mohel, and father of a new born son are all called בצל ברית), groom on the day of his wedding, Yahrzeit — that day — for a parent, etc. Since obviously the vast majority of Jews are not kohanim and the calling of a kohen first to the Torah automatically restricts all Israelites to but one Torah aliyah on a normal Monday or

[1] This paper is written only according to the traditional halakhic view that a kohen normally must be called first to the Torah based on the Mishnah in Gittin and according to many authorities basing themselves as per the discussion in Gittin 59b that such a calling up of a kohen first is סת״ר. The purpose of this paper is not to discuss or debate whether this practice is Toraitic or Rabbinic — that has been ably debated in other
Thursday morning or Saturday afternoon, it takes but two such events (a highly common event in even a small congregation) to create a potential conflict among members truly deserving of an aliyah on any given weekday by the mere presence of a non-obligated kohen.

Traditionally, these kinds of circumstances have led our Rabbis to recommend that a kohen or kohanim “leave the synagogue” so that the Reader then can call an Israelite first to the Torah using the formula “There is no kohen present, therefore, let an Israelite ascend in the place of the kohen.”

The Maharik (Rabbi Joseph Colon) writes that if the custom in any given community dictates that the first honor of the year for שמה הפארת is “auctioned” to the highest bidder, and that such funding is a major factor in the financial stability of the synagogue for the entire year, then the kohen “waives his honor” provided he leaves the synagogue. The Maharik stresses that this is a special case and not to be used as a carte blanche for ignoring the kohen’s first aliyah in general.

Rabbi Joseph Colon (Resp. Shoresh 9) mentions two fifteenth-century traditions occurring apparently around the end of the Sukkot festival (שבת באהしこ and Simhat Torah). The Jews of France and Germany would auction aliyot on those occasions in that century for synagogue capital funding for the year.

Apparently, even synagogue lighting was paid for by such aliyah auctions around that time of year. Such an honor was apparently seen as prestigious and lucky for the beginning of the new year. The Maharik states that if an Israelite purchases that first aliyah, the kohen waives his rights to the first honor. Should he not, he could be forcibly removed from the synagogue even by the non-Jewish authorities (an interesting note for anyone who may challenge the right of gabbaim, ritual committees or even the clergy to control who receives an aliyah).

As Rabbi David Novak recently pointed out in a responsa dealing with the broader issue of whether a kohen may be overlooked for the first aliyah in general, there is another side to the issue. There are authorities (Rabbi David Halevy, Turay Zahav on Orah Hayyim 135:3 sub 3) who base themselves on the Gaonim who rule that an Israelite, even if learned, may not be called up in the place of a kohen. Rav Huna was an exception in as much as the Talmud states that he was called first to the Torah though an Israelite, even on Shabbat and holidays (Gittin 59b). The Talmud, however, points out that Rav Huna’s case was a special one since Rabbi Ami and Rabbi Asi, who were the most distinguished kohanim of that era, paid deference to him.

Rabbi Novak points out that even the stricter view of Rabbi David Halevy can only apply if there are kohanim present, so if they absent themselves from or at least leave the chapel or sanctuary, they do not violate this stricter view that they cannot waive their honor. This procedure is seen as similar to the Priestly Benediction when, if some kohanim absent themselves when ברכת כהנים is called, they do not violate any of the three positive Torah commandments to bless the Jewish people (Rambam’s Hilkhot B’rakhot 11:2 and Beur HaHalakhah Orah Hayyim 128:39).

A survey of the Aharonim yields the conclusion that most authorities seem to agree
that Toratatively a kohen may waive his honor even if present, but some of those poskim hold that the Rabbis forbade this practice as possibly creating conflict in the synagogue. The Responsa of the Maharsham (siman 214, section 1) seems to make a distinction between occasional instances of such waiving of priestly rights to the first Torah honor and a regular ongoing practice which would be forbidden.

The view of the Hatam Sofer (Responsum O.H. 25) forbids a permanent קנה which would have seen the kohanim automatically leaving the synagogue en masse whenever asked to do so, regardless of the circumstances (in other words: for example, if it were on Shabbat or Yom Tov and there were adequate opportunities to afford as many aliyot as one wanted to everyone who needed or wanted one, why should the kohenim be forced to cede their first honor?!). He points out that the случае case of Rabbi Joseph Colon was just a special exception to the rule.

The point is also made in the Mor Uktziyah (siman 135) that קנה still supersedes the honor of the kohen and, therefore, under certain circumstances it might be actually in the honor of the Torah for the kohen not to be called first.

The Maharam Schick (siman 59) even forbids selling aliyot to replace the kohen, again pointing out that the fifteenth-century case of the Maharik was an unusual one and occurred only once annually, where perhaps the whole synagogue annual budget was raised from that first honor to the Torah.

Getting closer to our issue at hand, there appears to be no reluctance to ask kohanim to leave the synagogue on weekdays when there is a non-kohen or several of them who have a הרבין. Rabbi Zalman Druk of Jerusalem rules in one of his volumes, Mikdash M’at (Laws of Torah Reading), that it is appropriate for the kohen to waive his honor when there are numerous הרב铆 in the synagogue. Furthermore, in this fashion, such a waiver of one’s “honor” would not lead to controversy as it is but occasionally and only for הרב铆 which is certainly understandable and justifiable and not just done for “some special individual.”

The Kaf Hahayyim (Laws of Torah Reading, siman 135) writes that the Gaon Maharash Kluger states that the Ashkenazim in Israel would call an Israelite in the place of a kohen (when there was need) and the hazzan would say קנה especially because visitors (who needed to be recognized with an aliyah) were always present in the synagogue. The presumption was made that the kohanim would automatically want to waive the honor under these circumstances. (If there were not guests present, the kohenim automatically went up first.)

Finally, Rabbi Aron Pichnik writes in Shanah B’shanah, a publication of Heichal Shlomo (1972-73 edition) that קנה but that the Talmud limits that principle to weekdays and Saturday afternoons only. He points out as well that the Rosh and the Tur agree with this principle and its limitations (vis-à-vis not on Shabbat or Yom Tov) as well. Rabbi Pichnik paraphrases the Shulchan Arukh by saying:

גמ שמושים פセンター שלשלו חכמים של רוח פסכם זה קוראים ישראלי
במוקמי על קמרודנא זלאמה מברחת אימא רבי זילא קוראים ישראלי
ר׳ ע׳י

Rabbi Pichnik proposes that rather than “playing games” and having kohanim “step out” momentarily and possibly even be visible through a glass door entrance way to a synagogue, that if there be multiple הרב铆 of the honor

2 Hatam Sofer, Sha’arei HaT’fillah, Nisiat Kapayim V’Kriat HaTorah 19 in Sefer Da’at, Orah Hayyim 17.
3 Hashmatot, Hilkhot Sefer Torah 8, p. 96.
of the kohanim by the reader or hazzan calling one of the two Israelite רביים by saying simply רכשת הרוחות as we do when an Israelite leads Grace after Meals in the presence of a kohen. However, Pichnik adds that this procedure would apply once again only on weekdays or Saturday afternoons but not on Shabbat or Yom Tov.

I would personally suggest that the phrase be replaced with מマחטת חזן, which is found in numerous places in our tradition regarding kohanim and does not really give more power to the kohanim then the tradition ever intended.

Hence, after surveying the sources, the presumption can be made that calling an Israelite who has a חזן on a weekday in the presence of a kohen is acceptable without necessitating the kohen leaving the synagogue provided the phrase ממקחתת חזן is utilized. With issues such as those referred to above, it is evident that various socio-historical evolutions and developments have clearly occurred within the halakhah or Tradition itself, especially with larger congregations where the necessity for additional congregants to receive aliyot exists and where fewer would be available. I would add that if possible, a word in advance explaining the procedure to the когда present as to what was happening would be highly advisable.

An alternative procedure can be developed as a result of the writings of the great nineteenth-century German scholar, Rabbi David Hoffman, the head of the Rabbinical Seminary in Berlin, who quotes the following question (obviously posed to him from a smaller community):

Until now our community had not had a kohen. We have now engaged a teacher who happens to be a kohen. Inasmuch as we do not have a levi, does he now need to be called to the Torah twice every time the Torah is read, and we do not even have the option of his leaving inasmuch as he is the Torah reader himself? By our having required him to take two Torah honors each time the Torah is read, funding in the synagogue is down because people normally pay contributions for their Torah honors. Our community is very small and we cannot afford this kind of loss. What shall we do?

Rabbi Hoffman responds that for many centuries the question of whether a kohen can waive his honor has been discussed by the great authorities of old. He responds that he cannot answer in depth to the question at the moment, but suggests that the writer consult with the ruling of the Maharam Shick in his Responsa, section Orah Hayyim, chapter 60, that a kohen is allowed to waive his honor, but that one should not cause the sanctity of the kohanim to disappear totally, but rather, that even if the kohen does waive his honor regularly, that on special occasions, maybe once a month, or on a special Shabbat, that the kohen should be called first to the Torah. Furthermore, in order to avoid any possible or concern that there might be something invalidating the kohen, it should be said ... This is in response to the possible objection that Maimonides appears to have in not permitting the kohen to waive his honor, Rabbi Hoffman refers the reader to the Responsa of Rabbi Yehuda Aszod, renowned Hungarian contemporary, who quiets the objections of Maimonides, and permits the kohanim to waive their honor, except for very special occasions.

Rabbi Aszod, in his Responsa No. 45 states that, “The honor of the Torah supersedes the honor of that due the kohen, and concludes that if the person who receives the honor is a great scholar, that כל הכהן אליהו לא zewnętrzn בכרותת מעשה חיות משה. Rabbi Aszod is trying to explain how the honor for the kohen can be a Toraitic Law and yet may be over-
ridden. The question Aszod poses is: does the mitzvah of calling the kohen first derive from the expression קדשתה, implying that the commandment is on every Jew, regardless of the desire of the kohen (meaning he cannot give up his honor) or rather, does it derive from later in that verse in Lev. 21:8 קרשות רבי נ ל, an expression which had implied that the kohen can forego the honor due him? Aszod accepts the second possibility and, thereby, permits the kohen to forego his own honor by yielding that first aliyah, and yet, still stating that giving the kohen that first aliyah is קדורתא command.

Actually, Rabbi Aszod discusses his question from the point of view of whether or not a kohen should be permitted to take a second consecutive honor should there be no levi in the congregation, inasmuch as it would lead to his saying the Torah blessings a second time and possibly, therefore, in vain. Rabbi Aszod concludes that it would be better to give the kohen the honor of taking out and returning of the Torah, and let him not receive a speaking honor during the Torah reading! This view, therefore, shows that a kohen can "step aside" for a variety of reasons.

Furthermore, the Ritva, commenting on Tractate Gittin 59a-b dealing with our subject states, “In a synagogue, one should not extend a kohen’s honor to a levi or an Israelite if a kohen is in synagogue on Shabbat and Yom Tov, but on weekdays אמר רבי הלל, חסידא If, however, the Israelite is a scholar of standing, then the kohen can step aside even on Shabbat and Yom Tov!” From this we learn that though the Ritva seems to qualify the calling of an Israelite in the place of a kohen on Shabbat and Yom Tov to the case of a scholar; nevertheless, that flexibility, in conjunction with Rabbi Aszod’s view (that under necessary circumstances [such as the Torah reader who was a kohen in the small community], the practice of calling an Israelite in the place of a kohen on Shabbat or Yom Tov is permissible [provided it does not become a habitual practice Shabbat after Shabbat without at least reserving some special occasions and circumstances when a kohen will be honored]), enables us, I feel, to be flexible in terms of permissibility of calling an Israelite or a levi in the presence of a kohen every Shabbat or Yom Tov if and when needed.

Alternatively, one could utilize the stricter procedure recommended by the highly respected Rabbi Pichnik. One could thus honor the view of those concerned Talmudic and post Talmudic scholars to avoid any possible disgrace to kohanim by calling the kohen in his proper aliyah position on the Shabbat when there is a larger congregation present and the opportunity exists to easily add aliyot as needed. One could “halakhically skip over” the kohanim (in the above-described fashion only) when the need for those few aliyot so desperately exists – namely, on weekdays or Shabbat afternoons.

**Conclusion**

Where the kohen-levi system is used, an Israelite or a Levi may be called to the Torah for the first aliyah in the presence of a kohen on Shabbat and Yom Tov when needed. A stricter view would limit this to those who have a רוחב (for example, an aufruf) on weekdays and Shabbat afternoons. The words במפלה חכית should be used in calling up the Israelite.