

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.

שאלה

At one of the recent meetings of the CJLS, the question was raised as to whether the first Torah aliyah may be given to a non-kohen¹ (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.

תשובה

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 חיובים for an aliyah to the Torah, e.g. for a Bar-Mitzvah, בעל ברית (Sandek, Mohel, and father of a new born son are all called בעל 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 דאורייתא. 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 **חייבים** (a highly common event in even a small congregation) to create a potential conflict among members truly deserving of a *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 **שבת בראשית** 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. Shores 9) mentions two fifteenth-century traditions occurring apparently around the end of the Sukkot festival (**שבת בראשית** 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 responsum 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 כוהנים** 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

papers as recently as this past season of the CJLS (see Mayer Rabinowitz, “Rishon or Kohen,” *PCJLS* 86-90, pp. 437-443) – but rather to analyze and probe into traditionally acceptable halakhic alternatives to calling up a kohen first when such situations arise that mandate this variation (with the understanding that the above-stated premise of traditional halakhah always calling a kohen first to the Torah, is the underpinning of this paper). While the *Mitzvah* of honoring a kohen is Toraitic, this particular format, namely, Torah reading, is Rabbinic. Therefore, it would follow that according to those who feel that certain **חייבים** that are Rabbinic themselves can apply in the area of honoring a kohen during the Torah reading service, inasmuch as it itself is Rabbinically mandated.

that Toraitically 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 תקנה 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 kohanim be forced to cede their first honor?!). He points out that the שבח בראשית 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 כבוד התורה still supercedes 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 חיוב.² 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 חיובים 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 חיובים 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 Maharshak 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 *אף על פי שיש כאן כהן* 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 kohanim automatically went up first.)³

Finally, Rabbi Aron Pichnik writes in *Shanah B'shanah*, a publication of Heichal Shlomo (1972-73 edition) that מחלת כהן מותר, 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:

גם משום פגמא שלא יחדשו שהכהן הוא פגום מפני זה קורים ישראל
במקומו ועל כן מוכרח הוא לצאת מבית הכנסת אם רוצים לקרוא ישראל
ראשון.

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 חיובים, that one actually decreases the בזיון 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 **חיובים** by saying simply **ברשות הכוהנים** 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 **במחילת הכהן**, which is found in numerous places in our tradition regarding kohanim and does not really give more power to the kohanim than the tradition ever intended.

Hence, after surveying the sources, the presumption can be made that calling an Israelite who has a **חוב** on a weekday in the presence of a kohen is acceptable without necessitating the kohen leaving the synagogue provided the phrase **במחילת הכהן** 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 kohen 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 **פגם** or concern that there might be something invalidating the kohen, it should be said ... **יעמוד**. **במחילת הכהן**. Furthermore, 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 Responsum 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 **אפילו בשבתות וימים טובים** **יכול הכהן לחלוק לו כבוד**. Rabbi Aszod is trying to explain how the honor for the kohen can be a Toraitic Law and yet may be over-

