

## ***Qeri'at Ha-Torah* by Women: Where We Stand Today**

Yehuda Herzl Henkin

**Abstract:** This essay is a response to and analysis of the arguments presented in the previous article, "*Qeri'at ha-Torah by Women: A Halakhic Analysis*" by Mendel Shapiro. The author articulates practical and theoretical conclusions on the questions of women's *aliyyot* and Torah readings.

**Biography:** Yehuda Herzl Henkin has published three volumes of *responsa* "*Benei Banim*," and the author of "*Equality Lost: Essays in Torah Commentary, Halacha, and Jewish Thought*" (Urim), and the forthcoming "*New Interpretations on the Parsha*" (Ktav). He lives in Jerusalem.



# *Qeri'at Ha-Torah* by Women: Where We Stand Today

Yehuda Herzl Henkin

I agree with much of Rabbi Mendel Shapiro's comprehensive and thoughtful article. I had the opportunity to read and comment on an earlier draft, and the author follows the exposition in my *responsa*, *Benei Banim*<sup>1</sup> on a number of issues. That notwithstanding, I have reservations about parts of his discussion, particularly in sections III, "The Primary Sources: *Baraita*, *Tosefta* and *Yerushalmi*," and IV, "The *Poseqim*."

"Everyone can be counted towards the seven [who are called to the Torah on *Shabbat*], even a child and even a woman, but the Sages said, a woman should not read in the Torah because of the dignity of the congregation (*kevod ha-tsibbur*)." This *baraita* in *Megillah* 23a is the point of departure for all discussion of women's *aliyyot*, as the author notes. It is paralleled by the *Tosefta* in chapter 3, paragraph 5: "Everyone can be counted towards the seven, even a woman and even a child. [We] do not bring a woman to read in (or: to the) public." According to the author (section III A), the *Tosefta* leaves open the possibility that there may be circumstances where a woman might read, while the *baraita* is more sweeping in its prohibition. It is difficult to see the basis for this assertion. The *baraita* and *Tosefta* may be saying the same thing, the *baraita* simply explaining that the reason we do not bring a woman to read in public is *kevod ha-tsibbur*. Moreover, even if they do differ, we could just as well say that the *Tosefta* is the more sweeping in its prohibition; it flatly prohibits women from reading to the public, while the *baraita* links the prohibition to *kevod ha-tsibbur*, leaving

open the possibility that where this does not apply women can indeed read to the public.

In paragraph 6, the *Tosefta* rules: "In a synagogue where they have no one [who knows how] to read other than one [man], he stands and reads and sits down, and stands and reads and sits down, even seven times." The author comments that according to *Or Zaru'a* and *Tosafot ha-Rid* who cite both statements of the *Tosefta*, the statement in paragraph 5 that "we do not bring a woman to read to the public" must be understood in light of the passage in paragraph 6 that follows it; he explains that the *Tosefta* speaks to a situation where a reader must be brought to a congregation that is without any Torah reader at all, and that only in such an event the *Tosefta* rules that the congregation may not bring a woman to read for the public, because *qeri'at ha-Torah* cannot take place where a woman is the sole reader. However, where there are also male readers, the *Tosefta* would permit a woman or women to be included among the seven who read. The author thus sees the *Tosefta* as a source for leniency in women's *aliyyot*.

There indeed exists an opinion that as long as one man is included among the seven the rest could be women (if not for *kevod ha-tsibbur*): this is the first view brought in the Meiri in *Megillah* 23a. But this makes no sense in the *Tosefta*, for if so, why should the solitary male reader read all seven *aliyyot* himself, to the evident exclusion of women? "We do not bring a woman to read to the pub-

<sup>1</sup> Volumes I-III (Jerusalem 5741-5758)

lic,” followed by “In a synagogue where they have no one [who knows how] to read other than one [man]...” would rather seem to indicate that a woman may not read the Torah in public so long as even one man knows how to read in her place, even though she would be sharing the reading with him and would not be the sole reader. The reason the *Tosefta* mentions a case when there is only one reader is for emphasis: even when there is only one reader, he should read everything himself if he is capable of doing so rather than have a woman read even part, and all the more so when there are a number of men reading. Only when the men are incapable of reading the whole *parashah* by themselves might they be able to be supplemented by a woman or women, although this is not explicit in the *Tosefta*; it is the *hiddush* of R. Jacob Emden in his glosses to *Megillah* 23a with, however, a major difference: the implication in R. Emden, who does not cite the *Tosefta*, is that when there are not seven men capable of reading the seven *aliyyot*, we can call up a capable woman or women to complete the roster of seven *without* preferentially resorting to men having multiple *aliyyot*. I explained the reasons for this in *Benei Banim*, I, no. 4. The *Tosefta*, by contrast, seems to permit women to read only as a last resort, and would thus be a source of stringency rather than leniency.

Contiguity of paragraphs in the *Tosefta*, however, is not proof that they are essentially interrelated, as it is characteristic of the *Tosefta* to list disparate laws dealing with the same general topic. In this case *Or Zaru`a* simply quotes the *Tosefta* without any discussion or amplification, while *Tosafot ha-Rid* refers to paragraph 6 in the *Tosefta* as being the “conclusion (*siyyuma*) of the *baraita*”—which suggests that the *Tosefta* and the *baraita* in the gemara are saying the same thing rather than disagreeing. It is therefore difficult to adduce anything “according to” *Or Zaru`a* and *Tosafot ha-Rid* simply from their citations of the *Tosefta*. But in this case the arbitrariness of interpretation is not the author’s. His exposition here is taken from *Tosefta ki-Peshutah* of R. Saul Lieberman who argues (unconvincingly, in my opinion) for disagreement between the *baraita* and *Tosefta*, for the intentions of *Or Zaru`a* and

*Tosafot ha-Rid*, and for the significance of the contiguity of the paragraphs in the *Tosefta*. Footnote 115, “see also Lieberman, p. 1176, who follows *Or Zaru`a* and *Tosafot ha-Rid*” is misleading: Lieberman does not “follow” what *Or Zaru`a* and *Tosafot ha-Rid* say, but rather interprets them as saying it.

Nevertheless, the *Tosefta* is central to our discussion, and there are three aspects of it which deserve special comment. The first is the wording in paragraph 5, “We do not bring a woman to read in public.” What is implied by use of the verb? *Hasdei David*, as the author notes (section III A), explains it as limiting the prohibition to cases *ab initio*: we may not call a woman up to read the Torah, but if she came by herself she need not step down. Lieberman considers *Hasdei David*’s interpretation to be “very forced”; this may or may not be so, and see *Benei Banim*, I, no. 4 for some substantive arguments.

The wording, however, may have bearing on a singular view among the *rishonim* which is very much germane to our topic. *Sefer ha-Batim*, in *Sha`arei Qeri`at ha-Torah* 2:6, writes in the name of an unidentified “one of the great [scholars]” that the prohibition against a woman reading in the Torah because of *kevod ha-tsibbur* refers to Torah readings specifically in the synagogue, but not to a group gathered in a private home. The wording “we do not bring a woman to read in public” fits this interpretation nicely, since it implies bringing her to a place where she is normally not present, i. e. the men’s gallery of the synagogue. It does not fit well with a Torah-reading in a private home where the woman may have been living all along.

This possible support from the *Tosefta* does not counterbalance the fact that *Sefer ha-Batim*’s is very much a unique opinion among the *rishonim*. The author is, I think, wrong in suggesting that Rambam may be the source for *Sefer ha-Batim* (section IV D). The opposite is true: regarding reading from scrolls of the individual books of the Torah (*humashim*), Rambam writes in *Hilkhot Tefillah* 12:23, following the language in *Gittin*

60a, “[We] do not read from *humashim* in the synagogue, because of *kevod tsibbur*.” By contrast, regarding women’s reading the Torah he writes, in 12:17: “A woman may not read in public (*be-tsibbur*) because of *kevod tsibbur*,” and does not mention a synagogue. In other places where Rambam mentions *kevod ha-tsibbur*, he also does not mention a synagogue. The import is unmistakable: the factor of *kevod ha-tsibbur* is contingent on a synagogue only in the case of reading from *humashim*, but not in the case of women’s *aliyyot*. I suggested the difference between them in *Benei Banim*, II, no. 11.

Nor are the handful of *rishonim* who do distinguish between some aspect of prayers in a synagogue and those in a private home, of much practical support for *Sefer ha-Batim*. The author (section IV D) cites *Mahzor Vitry* who frees ten individuals praying outside a synagogue from the obligation of saying *Hallel* on *Rosh Hodesh*, as does *Teshuvot Rashi* (no. 347) and *Sefer Rokeach* (no. 317). This, probably, is also *Sefer ha-Ittur’s* reason (*Hilkhot Megillah* 1) for permitting reading outside the synagogue from a *Megillah* written as part of the Writings rather than as a separate scroll. If the opinion brought by *Sefer ha-Batim* is related to these opinions, then in the same way that we do not rule according to *Mahzor Vitry*, etc., so, too, we would not rule like *Sefer ha-Batim*; as *Tur Orach Hayyim* 691 declared, “Every [*minyan* of ten men] is considered a *tsibbur* for all purposes, whether in a synagogue or not.” Better to explain *Sefer ha-Batim’s* as being *sui generis* and unrelated to the above opinions, to give it the status of a view which, if not seconded by other *rishonim*, is at least not explicitly controverted by them. I have suggested the following explanation: A woman is prohibited from reading the Torah because of *kevod ha-tsibbur*, which can be waived; however, such a waiver requires the unanimous consent of the community. Such unanimity cannot be demonstrated or assumed on the part of a synagogue congregation; however, in the case of a *minyan* in a private home, if anyone objected to a woman’s reading the Torah he would not pray there but rather with the main congregation, and so a waiver of *kevod ha-tsibbur* can be established. This hinges on the

assumption that the *hazal*-decreed factor of *kevod ha-tsibbur* can be waived and that such a waiver requires unanimous consent rather than a simple majority; substantiation of this latter point is needed, although there is a parallel to it in *Mishnah Pe’ah* 4:1-2.

As to the meaning of *kevod ha-tsibbur* as it relates to women reading the Torah, *Petah ha-Devir* 282:9 explains it as the need to avoid creating the impression that there were not enough men literate enough to read from the Torah themselves and that women had to be brought in to supplement them. I demonstrated this to be the view of Ritva in *Megillah* 4a, which the author discusses (section III C), but also of R. Avraham *Min ha-Har* in *Megillah* 19b who is even more explicit: “Certainly, *le-kha-tehillah* she should not fulfill men’s responsibility [by reading the *Megillah* for them], as is stated in [*Berakhot*], ‘let there come *me’eirah* [a curse] upon a man whose wife and children bless on his behalf.’ And it is stated in [*Megillah*] ‘Everyone is counted towards the quota of people who read the Torah, even a woman or a minor, but the Sages said that a woman may not read the Torah because of *kevod ha-tsibbur*.’ ”

Since two prominent *rishonim* clearly share this explanation and other *rishonim* do not dispute them, it is strange to read (section III C) the author’s claim that it represents an attempt to develop a “refurbished...kinder, more benign” explanation of *kevod ha-tsibbur* in place of inadequate “traditional” (?) ones. It is even odder to read that “it is difficult to accept it [Ritva’s explanation] as the plain meaning of the term *kevod ha-tsibbur*. Anyone who attends synagogue understands full well that *aliyyot* are not awarded based on a person’s ability to read the Torah. This has been true for centuries, since the introduction of the *ba’al qeri’ah*...” But we are discussing the Talmudic concept of *kevod ha-tsibbur*, which long preceded the introduction of the *ba’al qeri’ah*, and the explanations given by *rishonim* who also preceded general use of the *ba’al qeri’ah*!

The author seems strangely disinclined to accept Ritva’s

understanding of *kevod ha-tsibbur*, which he himself describes as being to some degree “plausible... and is even welcome...” What seems to be at work here is the propping up of a straw man in the form of an alternative and unpalatable interpretation of *kevod ha-tsibbur*, the easier to knock the whole concept down. But I think there is no justification for having recourse to explanations such as that *kevod ha-tsibbur* means that women’s participation is intrinsically degrading and denigrating to the Torah, rather than that of R. Avraham *Min ha-Har* and Ritva. To be explicit: besides its plausibility, their explanation of *kevod ha-tsibbur* as tied to male literacy is the *only* one clearly elaborated in the *rishonim*, and as such takes precedence over alternative explanations suggested by some *aharonim*. This is even more the case when the alternative explanation is explicitly rejected by *rishonim*, as in the case of the recent attempt to link *kevod ha-tsibbur* to possible sexual distraction on the part of men should a woman read the Torah, which is denied by *Sefer ha-Me’orot* in *Berakhot* 45b and *Sefer ha-Menuhah* in *Hilkhhot Berakhot* 5:7, and see *Benei Banim*, II, no. 10 and my article in *Tradition*, Fall 2000 (34:3) pp. 40-49. The fact that the explanation of R. Avraham *Min ha-Har* and Ritva fits in nicely with my noting, below, that the *baraita* proscribes a woman’s reading and not her going up to the reading desk or reciting the blessings, is an added attraction.

The second aspect of the *Tosefta* relates again to paragraph 6: “In a synagogue where they have no one [who knows how] to read other than one [man], he stands and reads and sits down, and stands and reads and sits down, even seven times.” My grandfather\* *z”l* wrote that today’s custom of the *ba`al qeri’ah* reading all the *aliyyot* is based on this *Tosefta*: there is, in effect, only one person reading the entire portion, and the original enactment of seven indi-

vidual readers has been superceded. The *poseqim* comment that the blessings recited by the *olim* demarcate between the *aliyyot*, making it unnecessary for the reader to physically sit down and stand up each time.

I added that according to this, considerations of *kevod ha-tsibbur* are put in abeyance as well: the *baraita* stipulates that “a woman should not read in the Torah,” while today the *ba`al qeri’ah* reads and not the woman herself. The author quotes this (n. 186) in the Hebrew. He apparently considers the distinction to be self-evident, as he casually reads it into the *Shulhan Arukh*, *Orah Hayyim* 282:2 (n.168). In this he overstates his case, it seems to me. In the time of the Talmud, being called up to the Torah always involved reading from it, and the phrase “to read in the Torah” was interchangeable with receiving an *aliyyah*. Therefore, the conclusion I drew from the language of the *baraita* that if reading is not involved there is no issue of *kevod tsibbur*, although highly plausible, is not in itself proven. Conceivably, other factors might be involved. And while starting from sometime during the period of the *rishonim* when use of a *ba`al qeri’ah* became widespread, a distinction could have been made between a woman’s reading the Torah and her having an *aliyyah*, this is nowhere spelled out. Apparently, this distinction was suggested only recently, when women’s Torah readings became an issue.

To read into the *Shulhan Arukh* a conscious intention that “women may be included, they just may not read” as the author does, is anachronistic, and to suggest that the *Shulhan Arukh* and its commentators would imply such an innovation in practical *halachah* without openly calling attention to it, lacks credibility. The author’s attempt to show that such is indeed the opinion of the *Shulhan Arukh*, Rema, and others is unconvincing. Nothing spe-

\* R. Yosef Eliyahu Henkin (1881-1973) was born in Byelorussia and immigrated to the United States in 1924. A major *poseq*, for many years the preeminent halakhic authority in America, he was also widely revered as a *tzaddiq*, in part because of decades of devotion to the Ezras Torah charity he headed. The reference here is to his *Eidut le-Yisrael*, no. 87. For a biography, see my *Equality Lost: Essays in Torah Commentary, Halacha, and Jewish Thought* (Jerusalem: Urim Publications, 1999), chap. 16.

cial can be adduced from the language of the *Shulhan Arukh*, which was copied precisely from the *Tur* and not from Rambam (other than the reference to the intellect of the minor, which stems from Rambam but does not use his wording). I have already disputed the suggestion that Rambam distinguishes between women reading the Torah in a synagogue and in a private *minyán*, and consequently he cannot be a source for what the author claims the *Shulhan Arukh* means.

The author's central argument in this regard (section IV B 4) concerns the statement by R. Yehoshua Falk in *Perishah*, "...I have presented all of this to justify our custom of why a minor and a woman do not receive *aliyyot*." If women in his time were in any case prohibited by *kevod ha-tsibbur* from receiving *aliyyot*, why did *Perishah* exert himself to find new reasons? A good point, but not enough to prove the author's interpretation of the *Shulhan Arukh*. First, *Perishah* is a commentary on the *Tur* and not on the *Shulhan Arukh*. Prof. Elon's comment that R. Falk's work contributed greatly to making the *Shulhan Arukh* an authoritative source of codified Jewish law, cited in note 190, presumably refers to R. Falk's *Sefer Me'irat Einayim* which is a commentary on *Shulhan Arukh Hoshen Mishpat*. Second, *Perishah* may be explaining why women in his time never received an *aliyyah* in spite of circumstances that might occasionally permit it, such as those I mentioned above or "in a city composed wholly of *kobanim*." Finally, it is not uncommon in Rabbinic writings for matters that are usually mentioned together, such as "a woman and a minor" (*ishah ve-qatan*), to be paired even when the immediate context pertains to only one of them.

The third aspect of the *Tosefta* that bears our attention pertains to the initial *halakhah* in paragraph 5: "On a festival [there are] five [readers]; on *Yom Kippur*, six; on *Shabbat*, seven; and if they wished to add [readers] they may add." This is followed by "Everyone can be counted towards the seven, even a woman and even a child. [We] do not bring a woman to read in public." The *halakhah* about adding readers is also found in Mishnah *Megillah*

3:1, but only the *Tosefta* juxtaposes it with the prohibition of women's *aliyyot*. Even without this contiguity, however, the question fairly begs to be asked: a woman may not read from the Torah as part of the mandatory seven. But what about the optional *aliyyot* that come in addition to the seven: is a woman prohibited from reading in them as well?

If *kevod ha-tsibbur* means not fostering the impression that there are insufficient men who know how to read, then in the case of additional *aliyyot* that are wholly voluntary, no misapprehension as to men's qualifications can result from a woman's taking one of these *aliyyot*. It may still be objected, however, that if she reads part of the portion the *tsibbur* is required to read, *kevod ha-tsibbur* would apply regardless of how many *aliyyot* there are. Only if her *aliyyah* is superfluous from the standpoint both of its ordinal number and its contents would *kevod ha-tsibbur* not apply. In practice, this hinges on a controversy between *Shulhan Arukh* and Rema in *Orah Hayyim* 282:2; the former permits additional readers to repeat sections of the Torah portion that were already read and this is the practice in Sephardic congregations, while the latter writes that the practice in Ashkenazic communities is to forbid doing so, other than on *Simhat Torah*. Certainly on *Simhat Torah*, when the custom today is for every male to be called to the Torah serially, there is no possibility that if women are also called up anyone might think this casts doubt on the men's capabilities.

The remainder of my brief remarks concerns the author's concluding chapter, which offers a typology of *minhag*. This is a vast topic, partially because in casual usage *minhag* can refer to almost any repeated activity or lack of same. Our concern, however, is rather with that type of *minhag* that carries some degree of obligation with it, which can be properly termed a "halakhic" *minhag*. Not every activity is subject to classification as such a *minhag*. Eating apples dipped in honey on *Rosh Ha-Shanah* has religious significance and is a *minhag*, but eating *hamantaschen* on Purim is not. Even some practices pertaining to prayer and the synagogue do not become binding *min-*

*hagim*; see the recently published *Arukh ha-Shulhan* on *Hilkhot Nedarim*, *Yoreh De'ah* 214:22-23. Magen Avraham in *Orah Hayyim* 282:6, who wrote “and here the custom is (*kan nahagu*) for women to leave [the synagogue for *qeri'at ha-Torah*]” (n. 235), is not suggesting that a woman who remains and listens to *qeri'at ha-Torah* is violating a *minhag*; a more accurate translation of his words is “and here women usually go outside [for *qeri'at ha-Torah*].”

The author writes that “the notion of a *minhag* as binding all of *kelal Yisrael* ...seems almost a contradiction in terms.” It is not clear why. The difference between binding *minhag* and other *halakhah* is that the former has its origins in community practice rather than rabbinic decision, but the results can be identical. In any case, the author is mistaken: there are many *minhagim* that are universally accepted. Rambam alone mentions nine cases of *nahagu kol Yisrael* or *minhag kol Yisrael*, *Beit Yosef* cites at least twelve that he accepts, and *Shulhan Arukh*, another three; among these are praying *Ma'ariv*, fasting on *Ta'anit Ester*, not eating meat during the weekdays preceding *Tish'ah be-Av*, and having separate knives for meat and milk.

The author is correct in rejecting the claim that “women’s participation in *qeri'at ha-Torah* conflicts with some universally [binding] *minhag*” above and beyond *kevod ha-tsibbur*; the reason, however, is not that such a *minhag* could not exist but that there is insufficient proof that it does. *Minhag* is halakhically and etymologically a noun connoting activity, best translated as “practice” rather than “custom.” It is typically established by repetition of an action a number of times over a period of time. To derive what may not be done from what has *not* been done, on the other hand, it must first be determined that there had been a real option that was not exercised. Where women were illiterate in Hebrew, for example, it cannot be claimed that there was a *minhag* for them not to read the Purim *Megillah* for other women, since the possibility did not exist.

*Minhag*, however, is also not identical with mere habit or inertia. There needs to have been a presumptive volitional choice of one form of activity or lack of activity, over other possibilities. Following the above example, the continued absence of cases of women reading the *Megillah* for other women for a period of time even after they became schooled, or of women saying their own *zimmun*, does not yet prove that these options were considered and rejected, particularly as there are no valid grounds for prohibiting them; on reading the *Megillah* see my *Equality Lost*, chapter 7. So, too, with women’s *aliyyot*: if *kevod ha-tsibbur* and other considerations can be shown to no longer apply, such *aliyyot* cannot be automatically seen as violating a hypothetical *minhag*. Nevertheless, the absence of evidence that women ever had *aliyyot* in practice justifies caution in advocating what would at the very least be an innovation, and see *Shah* in *Hoshen Mishpat* 37, sub-paragraph 38, and *Sefer Urim ve-Tumim* there.

Where does all this leave us? Regardless of the arguments that can be proffered to permit women’s *aliyyot* today—that *kevod ha-tsibbur* can be waived, that it does not apply today when everyone is literate, that it does not apply when the *olim* rely on the (male) *ba'al qeri'ah* and do not themselves read—women’s *aliyyot* remain outside the consensus, and a congregation that institutes them is not Orthodox in name and will not long remain Orthodox in practice. In my judgement, this is an accurate statement now and for the foreseeable future, and I see no point in arguing about it.

That leaves us with the possible exceptions. I have already written in *Benei Banim* that if done without fanfare, an occasional *aliyyah* by a woman in a private *minyán* of men held on *Shabbat* in a home and not in a synagogue sanctuary or hall can perhaps be countenanced or at least overlooked, and compare *Benei Banim*, III, no. 27 concerning *sheva berakhot*.

What I suggested above about *Simhat Torah* I have not seen discussed. *Simhat Torah* is already marked by unusu-

al leniencies, and what goes on then does not necessarily affect the rest of the year. In many synagogues a number of readings take place simultaneously inside and outside the main sanctuary, and another could be added largely for women. This would obviate the need for women go up to the *bimah* in the men's section. Also, according to a number of *shitot* and depending on its structure, women in the *ezrat nashim* may be halakhically considered to be in the presence of the *minyan* in the men's section in spite of the *mehitsab*, see *Benei Banim*, II, no. 7; since writing

it I found that a key argument had already been put forward by *Resp. Avnei Neizer, Orach Hayyim*, no. 35, paragraph 15. If so, it might be possible for women to have *aliyyot* even in the *ezrat nashim* without ten men being on the women's side.

Such an innovation should only be considered where women strongly desire to participate in the central activity of *Simhat Torah*, and its implementation should be subject to the decisions of a local halakhic authority.