

***Jewish Ethics in Torah Reading:
Balancing Hatred, the Ways of Peace, Holiness,
Communal Dignity, and the Obligation to Read Torah
on Shabbat when Five Israelite Men are not Present***

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Preface

Ethics within Judaism are not measured simply by what is right and wrong. Grounded in Judaism's moral compass is also the prioritization of competing virtuous ends, and when something improper must be done, ensuring that the wrong is minimized. This short paper examines an area of halakha—Torah reading on Shabbat when less than five Israelite Jews are present—that at first glance seems to lack ethical overtones, and examines it for its underlining ethical values. We wish to show that a dispute about ethical priorities pervades even the halakhic discussion in as “ritual” an area of Jewish law as Torah reading. In particular, the classical halakhic authorities are divided about how to balance the prohibition of generating hatred (*eivah*), the obligation of the ways of peace (*darkei shalom*), the idea of communal dignity (*kavod ha-tzibur*), and the obligation to sanctify those worthy of holiness (*ve-kedashto*), all while keeping in mind the general rabbinic obligation to read from the Torah on Shabbat.

Introduction

While this article addresses a small detail in the rules of Torah reading, it raises a set of fascinating issues in balancing three sometimes incompatible rabbinic decrees:

1. The requirement that a *kohen* get the first *aliyah*.
2. The obligation to read at least seven *aliyot* on Shabbat.
3. The rule that a different *yisrael* receives each of the final five *aliyot*.

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Under normal conditions, these decrees produce the classical order of *kohen* (K), followed by a *levy* (L) followed by five *yisraelim* (Y) (abbreviated as KLYYYYY), with which all who attend synagogue are familiar.

Unusual quorum constituencies present a challenging dilemma in weighing the multiple obligations present. In general, four aspects of Torah reading present themselves as pressing ritual and communal concerns:

- the *mitzvah* of sanctification (“ויקדשתו”), namely that the *kohen* must be granted priority;
- the fear that congregants will think a *kohen* or *levi* defective in his lineage (*p’gam*) if one *kohen* reads after another;
- the centrality of maintaining the *kohen-levi-yisrael* order;
- the fear that congregants will fight over the *aliyot* (“*darkhei shalom*”).

This paper will focus on a small subset of widely discussed cases when there is a quorum of ten men with fewer than five Israelites. These cases are initially discussed in the rubric of a city composed solely of *kohanim*, but more scenarios are possible. Consider the following set of cases:

Case	Number of <i>Kohanim</i>	Number of <i>Levi'im</i>	Number of <i>Yisraelim</i>	Total
One	10 or more	0	0	10 +
Two	1 or more	5	4	10+
Three	4	3	3	10
Four	4	4	2	10
Five	6	0	4	10
Six	9	0	1	10
Seven	8	0	2	10
Eight	8	1	1	10

Each of these cases raises a slightly different set of religious and ethical problems. In the first case, there are simply no Israelites present to fulfill the obligation. In the second case, there are not enough Israelites to receive the last five *aliyot*, but enough to have a *kohen-levi-yisrael* (KLY) set, albeit only once. In the third case, two KLY rotations are possible, followed by a final *yisrael*. In the fourth case, two KLY sets are possible, but the final *aliyah* must go to a *kohen* or *levi* given that both *yisraelim* have already been called up. In the fifth case, neither group has enough to com-

plete all seven *aliyot*. In the sixth and seventh cases, many options are possible, but no KLY set or even *kohen-yisrael* alternation can be achieved. Finally, in the eighth case, only one KLY rotation is possible.¹

This paper will show that in response to the inability to fulfill all of the aforementioned obligations involved in Torah reading, four basic solutions are advocated by various Jewish law authorities. Undergirding each of these choices is an ethical view. One view argues that the most fundamental rule—the rule of holiness, namely that the *kohen* must be sanctified by means of the first *aliyah*—must always be obeyed, no matter what other ethical problems arise, even if hatred is generated. Another group rules that the most basic imperative is to never imply that any given *kohen* is invalid—to focus on the ethical problem of false reputational damage (*p'gam*), and not the positive obligation of holiness. To this group, the most essential rule is that two *kohanim* can never be *oleh* one after another—even if it means giving women *aliyot* to avoid this issue. A third view sees the preservation of communal peace as the ultimate, overriding concern, and may be willing to forgo the entire rabbinic obligation of Torah reading in order to uphold it. The final view thinks that none of these problems are too hard to overcome, and that they can be addressed through synagogue announcements and public disclosure; this may be precisely because ethical problems of the reputational kind can be addressed by disclosure and announcement, also an ethical claim at its core. Hence, this approach is able to suggest multiple solutions which focus on retaining the KLY set as the primary unit of *kriyat ha-Torah*.

Before examining the later commentators and their conception of the issues, it is crucial to become acquainted with the central Talmudic texts present: *Bavli* in *Gittin* 59a–b, and *Yerushalmi*, *Gittin* 5:9.

¹ The case of one *kohen* and no *levi* or one *levi* and no *kohen* is not discussed directly in this article as it addresses a different set of issues. The first case is clear: if a *kohen* is present but there is no *levi*, the same *kohen* who received the first *aliyah* gets called up again to receive the second as well; see *Shulhan Arukh*, OH 135:8. What is the ideal practice when there is no *kohen* but there is a *levi* is a matter of some dispute relating to the proper explanation of a related Talmudic text. In *Gittin* 59b Abaye notes that when no *kohen* is present *nitparda havilab* (“the bundle has come apart,”) and there are three interpretations of this. One group avers that a *levi*'s status derives from his service to the *kohen*, and in the absence of a *kohen*, the *levi* has no special status. Another group posits that absent a *kohen*, there is no specific order for *aliyot* and the third view insists that a *levi* still take precedence. For more on this, see Rabbi Avi Zivotofsky, “What the truth about giving the Levi the First Aliyah” at <https://www.ou.org/jewish-action/06/2014/whats-truth-giving-levi-first-aliyah/>.

The Talmudic Sources

The locus classicus for the basic KLY order is the Gemara, *Gittin* 59a–b:

מש': אלו דברים אמרו מפני דרכי שלום: כהן קורא ראשון ואחריו לוי ואחריו ישראל, מפני דרכי שלום. **גמ':** מנה"מ? אמר רב מתנה, דאמר קרא "ויכתוב משה את התורה הזאת ויתנה אל הכהנים בני לוי", אטו אנא לא ידענא דכהנים בני לוי נינהו? אלא כהן ברישא והדר לוי. רבי יצחק נפחא אמר, מהכא: "ונגשו הכהנים בני לוי", אטו אנן לא ידעינן דכהנים בני לוי נינהו? אלא כהן ברישא והדר לוי. רב אשי אמר, מהכא: "בני עמרם אהרן ומשה ויבדל אהרן להקדישו קדש קדשים." ר' חייא בר אבא אמר, מהכא: "וקדשתו" - לכל דבר שבקדושה. תנא דבי רבי ישמעאל: וקדשתו - לכל דבר שבקדושה, לפתוח ראשון, ולברך ראשון, וליטול מנה יפה ראשון. א"ל אביי לרב יוסף: מפני דרכי שלום? דאורייתא היא! א"ל: דאורייתא, ומפני דרכי שלום.

MISHNA: These are the things they said due to *darkei shalom*: a *kohen* reads first, and after him a *levi*, and after him a *yisrael*, because of *darkei shalom*. GEMARA: What is the source for this law? Rav Matna states, “and Moshe wrote this Torah and gave it to the *kobanim* of the tribe of Levi.” Don’t we already know that *kobanim* are of the tribe of Levi? Rather, [this teaches us that] a *kohen* receives first, and then a *levi*. R’ Yitzchak Nafḥa says, from here: “and the *kobanim* of the tribe of Levi shall come forward.” Don’t we already know that *kobanim* are of the tribe of Levi? [This teaches us that] a *kohen* receives first, and then a *levi*. R’ Ashi says, from here: “the sons of Amram were Aharon and Moshe, and Aharon was separated to sanctify him as holy of holies.” R’ Ḥiya son of Abba says, from here: “and you shall sanctify him”—for all matters of holiness. It was taught in the study hall of R’ Yishmael: “and you shall sanctify him”— for all matters of holiness: to begin first, to bless first, and to receive a good portion first. Abbaye said to R’ Yosef: because of *darkei shalom*? It is of biblical origin! He said to him: it is biblical, and due to *darkei shalom*.

All opinions cited in this Talmudic source plainly assert that the requirement for a *kohen* to receive the first *aliyah* is biblical in nature, offering a litany of potential sources rooted in biblical verse. While *darkei shalom* is presented as the motivation behind the biblical mandate, it seems not to mitigate the strength of the obligation at all. This Talmudic passage is essential in establishing the nature of our well-known KLY arrangement utilized under normal circumstances. Aside from a later case in which no *levi* is present, this Gemara does not address the abnormal quorum composition cases.

If this Talmudic source were the only one discussing the *aliyot* order, the problems would be simple to understand and resolve: the obligation

to honor the *kohen* would be a Biblical one and trump all rabbinic concerns.²

But, in fact, this Talmudic source is elaborated and perhaps contradicted by a simple statement of the *Jerusalem Talmud* in *Gittin* 5:9. Here the Gemara addresses what to do in a city full of *kobanim*:

מילתיה דרבי חנינה אומר שהוא מדבריהן דמר ר' חנינה עיר שכולה כהנים ישראל
קורא ראשון מפני דרכי שלום.

From the words of R' Hanina we can deduce that he holds [the *kohen* receiving first] is rabbinic. For R' Hanina says: a city of all *kobanim*, a *yisrael* reads first due to *darkei shalom*.

Since R' Hanina sets aside the proper order in a city of *kobanim* due to concerns of belligerence, **he must view the *kohen's* precedence as merely a rabbinic obligation and implicitly argue with the *Babylonian Talmud***. Otherwise, the social factor of *darkei shalom* (surely rabbinic in nature) could not overcome a biblical mandate.³

As there is no alternative solution offered by the *Jerusalem Talmud*, most decisors consider R' Hanina's statement to be normative. Thus, in a community consisting of all *kobanim* and one Israelite, the Israelite goes first to prevent infighting among the *kobanim* for the right to the first *aliyah*.⁴

How to balance the two contradictory Talmudic statements in the *Bavli* and *Yerushalmi* is a fascinating dispute with four distinctly different ethical priorities.

² This would be consistent with the general rule of Jewish law and ethics, namely that when hierarchical decisions need to be made, biblical law always trumps rabbinic mandates.

³ A key difference between the two Talmudic passages is the nature of the *darkei shalom* concern each cites as a motivating factor. While R' Hanina is concerned about *kobanim* fighting among themselves for the first *aliyah*, the Mishna in the *Bavli* worries about fighting between *kobanim*, *levi'im*, and *yisraelim*. This difference is utilized by later commentators to solve the apparent dispute between the two statements as to the nature of the *kobanic* precedence requirement.

⁴ The *Yerushalmi* makes no mention of what to do when there truly are only *kobanim* present without any *yisrael* (case #1 above). This will leave the door open for later *poskim* to offer their own solutions to this complicated dilemma, which may or may not reflect the same concerns R' Hanina had in crafting his original solution.

The First View: Preserving the *Kohen's* Right to Precede

The first general approach, espoused chiefly by the Maharik as well as a number of Spanish *rishonim*, rules that the obligation to sanctify the *koben* is of paramount importance in this discussion. Therefore, all efforts to keep the *koben* in his primary slot will be employed, even if infighting or reputational damage ensues. The main *Rishon* advocating this line of thinking is the Maharik, quoted by the Beit Yosef:⁵

והירושלמי הזה שהביא כתב עליו מהר"י קולון דהיינו למאן דאמר דאין כהן קורא ראשון אלא מדרבנן אבל למאן דאמר דאורייתא לא.

And [pertaining to] this *Yerushalmi* that he [Rashba] brought, the Maharik wrote that this is only according to the opinion which says that a *koben* reading first is rabbinic. But according to the one who holds it is biblical, [this would] not [hold true].

Maharik dismisses the *Jerusalem Talmud* on the basis that normative Jewish law follows the *Babylonian Talmud*, which clearly asserts that the holiness obligation, the mitzvah of “*ve-kidashto*,” is a biblical one. R’ Hanina’s solution must then be abandoned, according to the Maharik, since the biblical imperative to place the *koben* first forces us to disregard internal *darkhei shalom* concerns and give a *koben* the first *aliyah* even in a congregation of all *kobanim* but one—this despite the resulting hatred and lack of peace. The Maharik represents an extreme solution since it disregards all other factors while upholding the one it considers biblical and therefore most critical to preserve.

A View Similar to the Maharik

Others adopt a similar view to the Maharik, albeit with an ethical twist. They solve the problem of the community thinking a second *koben* unfit with technical solutions such as public pronouncements. The Ritva, quoting his teacher the Ra’ah, is one of the first to explain the ethical importance of disclosure:⁶

שרשאין לקרוא כהן או לוי בכל מקום שירצו ובלבד שיאמר אע"פ שהוא כהן או אע"פ שהוא לוי ולא חיישינן לנכנסים שלא שמעו את הקריאה דאינהו מישל שיילי ואמרי להו, [...] ולפי מנהגנו יכולין לקרוא כהן אחר כהן כשיאמרו לכל אחד אע"פ שהוא כהן.

⁵ *OḤ* 135:12. The *Hakhmei Sefarad*, while not as explicit as the Maharik, also seems to reject the other concerns at the expense of “*ve-kidashto*.”

⁶ *Ketuvot* 25b, s.v. “*be-bezkat*.”

That they are allowed to call a *koben* or *levi* in any place they choose, as long as they state “even though he is a *koben*” or “even though he is a *levi*.” And we are not concerned for those entering who did not hear the announcement since they will surely ask and people will tell them. [...] And according to our custom, they can call *koben* after *koben* if they say for each “even though he is a *koben*.”

Ritva maintains that a *koben* can be given any non-inaugural *aliyah* as long as the *gabbai* announces that he is being given the *aliyah* despite his *kobanic* status. This will ensure the congregation does not think that the previous *koben* had a defect which precipitated a repeat of his *aliyah*. Elsewhere, Ritva emphasizes that the first *oleh* is always presumed to be a *koben* unless otherwise noted, and that the *koben's* precedence is critical. Hence, he places the *koben's* entitlement as the primary concern, whereas communal assumption of reputational damage is easily alleviated with a simple announcement. This approach, unlike the Maharik, is not predicated on the hierarchy of biblical versus rabbinic values, but on the ethical claim that disclosure can solve the problem of reputational damage.

Following this approach, Beit Yosef⁷ also permits the calling up of a *koben* after another *koben*, although he does not allow them to be called up in direct succession. This is in conjunction with the practice of R' Amram Gaon as quoted by the Beit Yosef. He explains the practice as an attempt to avoid a direct conflict with the Talmudic passage⁸ which states that a *koben* should not follow another *koben*. Despite the fact that the public pronouncement can indeed remove communal doubt regarding the first *koben's* status, the Beit Yosef insists on having a *yisrael* in between to maintain strict concordance with the statement of the *Babylonian Talmud*. He repeats this ruling in the *Shulhan Arukh*,⁹ while adding that no *p'gam* concerns arise when strictly only *kobanim* are present.

Rashba in his responsa¹⁰ contends that in a city of only *kobanim*, calling up seven different *kobanim* is not an issue of *p'gam* since it is plainly obvious that circumstances are the driving factor. He vociferously argues against calling up the same *koben* seven times. Synthesizing the Sefardic positions, R' Ovadia Yosef¹¹ rules like the *Beit Yosef* that in a normal *tzibbur* setting, a *koben* cannot be called up after another *koben* without a *yisrael* in between, and even then the *gabbai* must announce his *kobanic* status. But,

⁷ *OH* 135:7.

⁸ *Gittin* 59b.

⁹ *OH* 135:10, 12.

¹⁰ Attributed to Ramban, responsum no. 186.

¹¹ *Yalkut Yosef*, *OH* 135:28, 30.

like the Rashba, he holds that in a quorum with only *kobanim*, all seven *aliyot* should go to seven different *kobanim*.

What is imperative is the obligation that the *koben* receive the first *aliyah*. Because many of these Spanish *rishonim* do quote R' Hanina's position from the *Jerusalem Talmud*, we can infer that they consider the requirement that the *koben* receive the first *aliyah* to be only rabbinic. Even so, they treat the requirement very seriously and are willing to downplay concerns of communal misconception to preserve it.

Let us summarize this view as follows:

- The obligation to sanctify the *koben* is primary.
- Fears of reputational defamation can be addressed by announcement and are not a real obstacle.
- *Darkhei shalom* and concerns about hatred are both secondary and narrow.

The Second View: Extraordinary Concern for Perceived Reputational Defect (*P'gam*)

A second approach, advanced chiefly by the Maharam of Rothenburg and other early Ashkenazi *poskim*, views the issue of reputational defect (*p'gam*) as paramount and unable to be solved by technical arrangements. Therefore, any concern that the *tzibbur* will presume a *koben* defective will precipitate radical solutions to alleviate this problem. Further, this view certainly holds that the obligation to place a *koben* first is merely rabbinic, and can therefore be overridden by more pressing interests.¹² The Mordechai, an important disciple of the Maharam, champions this viewpoint:¹³

ועיר שכולה כהנים ואין בה כי אם ב' או ג' ישראלים לא יקראו כהנים במקום
הישראלים להשלים מנין ז' דכהן אחר כהן לא יקרא וברביעי ובחמישי כ"ש לא
יקרא משום פגם כו'. [...] ועוד אם יקרא כהן אחר בד' או בה' יש לו פגם לעצמו
כי יאמרו שאינו כהן אלא חלל כיון שקרא במקום ישראל. ועיר שכולה כהנים
ואין בה אפילו ישראל אחד נ"ל דהכהן יקרא שני פעמים ושוב יקראו נשים דהכל
משלימין למנין ז' ואפילו עבד ואשה וקטן. [...] ונהי דמסיק עלה אבל אמרו
חכמים אשה לא תקרא בתורה מפני כבוד צבור היכא דלא אפשר ידחה כבוד צבור
משום כהנים שלא יאמרו בני גרושות הן... ועיר שכולה כהנים ואין בה נשים
ועבדים וקטנים וישראלים לא יקראו בתורה כלל.

And a city of all *kobanim* which has but one or two *yisraelim* should not call *kobanim* in place of the *yisraelim* to complete the seven *aliyot*. This is because a *koben* cannot read after another *koben*, all the more

¹² See Tosafot, *Hullin* 87a, and Mordechai, *Gittin* no. 656.

¹³ *Gittin*, no. 402–404.

so the fourth and fifth *aliyot*, due to *p'gam*. [...] And further, if a different *kohen* is called for the fourth or fifth *aliya*, he himself will be presumed defective, as they will say he is not a *kohen* but rather a *hallal* since he read in place of a *yisrael*. And in a city of all *kobanim* without even one *yisrael*, it appears to me that a *kohen* should receive the first two, and then women should be called up, since all can complete the seven *aliyot*, even a slave, woman, or minor. [...] Granted that we conclude that the Talmudic Sages said women may not read the Torah due to *kavod ha-tzibbur*, but when it is not possible, *kavod ha-tzibbur* must be superseded by *p'gam* of the *kobanim*, that the congregants will not say they are sons of divorcees. And a city of entirely *kobanim* without women or slaves or minors or *yisraelim* should not read the Torah at all.

Undoubtedly, this position takes *p'gam* concerns extremely seriously. It does not allow for a *kohen* to be called up after another *kohen* in any circumstance, due to the community thinking one is defective. Mordechai, apparently aware of the solution of the Ritva, says that no public announcement can solve issues of reputational defect since the whole practice of calling up by name is anyway just a custom lacking true halachik weight.¹⁴ This Ashkenazi view will never permit a *kohen* to follow another *kohen*, as reputational damage is the overriding concern, which cannot be simply discarded with minor adjustments to synagogue practice, such as an announcement. For this reason, Maharam must necessarily reject the solution of R' Hanina, since it involves calling up multiple *kobanim* in succession after a *yisrael* receives the initial *aliyah*.

This view becomes even more fascinating in cases where there are no adult male *yisraelim* present at all. Maharam advocates calling up women to fill the remaining *aliyot*, rather than calling up other *kobanim* and risking misperceptions of *p'gam*. As the Mordechai plainly delineates, the concern that people will assume a *kohen* to have defective lineage in fact trumps the rabbinic rule of *kavod ha-tzibbur*¹⁵ which normally precludes women from receiving *aliyot*.

The setting aside of a widely applicable rule influencing several synagogue traditions due to apprehension over *p'gam* demonstrates two broader notions. One, these *rishonim* elevate the concern of *p'gam* to unprecedented levels of importance, viewing it as superior even to the obligation of holiness towards the *kobanim*. Second, they view *kavod ha-tzibbur* as a less serious rabbinic directive that is easily upended by other rabbinic concerns, such as the fear of reputational damage.

¹⁴ See *Or Zarua*, *Hilkhos Shabbat* 42:12.

¹⁵ Lit. "honor of the congregation," see *Megillah* 23a.

But perhaps most surprising is Mordechai's final contention that if there are no women or minors present, we abandon Torah reading entirely. That the possibility of perceived reputational defect could force the community to forgo the practice instituted by Moses and Ezra¹⁶ represents a truly novel position. The true novelty of this view is that it holds social concerns to be so vital that they overcome deeply-rooted synagogue practice and communal obligation.

A few *rishonim* and *aḥaronim* also embrace this heightened concern for *p'gam* even as they reject the solution of the Maharam. Rabbenu Yeruḥam¹⁷ is an example of a *rishon* who agrees fully with the Maharam's analysis and proposition. The Mahari Abuhav¹⁸ actually advocates calling up the same *koben* seven times to avoid any issues of perceived *p'gam*. R' Shlomo Luria (Maharshal)¹⁹ forcefully defends the Mordechai's first contention, namely that a *koben* may never be called up after another *koben* even with a *yisrael* intervening. He also states that a *koben* may not receive an *aliyah* after a *yisrael*, with the exception of *aḥaron* and *maftir*. However, Maharshal is not willing to go as far as to allow women to receive *aliyot* in a case of only *kobanim*, instead opting for the Rashba's resolution to call up seven different *kobanim*. Even among those who hold *p'gam* to be the highest of concerns, we see reluctance to infringe upon the well-established rabbinic practice of excluding women due to *kavod ha-tzibbur*.²⁰ Still, these halakhic decisors all share in common the elevation of *p'gam* above the other issues surrounding Torah reading in unusual situations.

To summarize this view, we can state:

- Reputational damage is the primary concern and overrides all other rabbinic obligations, including the holiness obligation to the *kobanim* and even the rabbinic decree to read Torah itself. It cannot be avoided by disclosure.

¹⁶ *Bava Kamma*, 82a.

¹⁷ Quoted in *Beit Yosef*, OH 135:7.

¹⁸ *Ibid.*

¹⁹ *Yam Shel Shlomo*, *Gittin* 5:23-25.

²⁰ This material serves as well as a reflection to the thoughtful discussion found Aryeh A. Frimer, "Women's *Aliyyot*: *le-khattevilla*, *be-de-Avad* and *be-She'at ha-Debak*," *Hakirah*, 22:151 at pp. 168-169 which discusses an article by one of us on women receiving *aliyyot*. The Maharam's view about women receiving *aliyyot* is rejected even both *bedeavad* and *besheat hadebak* by the consensus of *poskim*, exactly because of concerns noted in this article.

The Third View: Utmost Avoidance of Hostilities

A third view we find is also willing to radically depart from age-old practices in order to preserve a rabbinic social objective. However, this view is fixated on averting potential belligerence. This general category, termed *darkei shalom*, is what motivated the possibly radical position of a leading late codifier, the Levush:²¹

עיר שכולה כהנים ואין ישראל אחד ביניהם וכן אם כולן לויים, הרי הם כאילו הם כולם ישראלים, וקורא כהן אחר כהן או לוי אחר לוי ואין שם משום פגמו, שהכל יודעים שאין שם אלא כהנים או לויים. ואם יש שם ישראל אחד ביניהם או לוי אחד, קורא ישראל או הלוי ראשון משום דרכי שלום, ואח"כ יעלו הכהנים, שאם יעלו הכהנים ראשונים מפני מעלתם עליו יבואו לידי מחלוקת ביניהם שכל אחד יאמר אני עולה ראשון, כיון שהקדימה היא מפני המעלה, אבל אם יעלה הישראל ראשון אז ודאי לא יהיה מחלוקת גם בין הכהנים, כי כל אחד שעולה עולה במקום ישראל. [...] אבל אם יש כהנים ולויים ואין ישראל ביניהם, או כהנים וישראלים ואין לוי ביניהם, או לויים וישראלים ואין כהן ביניהם, ואין במין אחד לבדו שיעור מניין הנקראים, לא מצאתי להם תיקון דלא ליתי לנצויי.

A city of all *kobanim* or *levi'im*, with no *yisrael* among them, it is as if they are all *yisraelim*, and they read *koben* after *kohen* (or *levi* after *levi*) without any concern for *p'gam* since everyone knows that there are only *kobanim* or *levi'im*. But if there is one *yisrael* or one *levi* among them, he reads first due to *darkei shalom*, and then the *kobanim* are called up. Because if the *kobanim* go first owing to their stature, it will lead to dispute between them, as each [Kohen] will say "I want to go first," because the precedence is due to stature. But if the *yisrael* goes first, then surely there will not be fighting even among the *kobanim*, since each one is in place of a *yisrael*. [...] But if there are only *kobanim* and *levi'im* without any *yisraelim*, or *kobanim* and *yisraelim* with no *levi'im*, or *levi'im* and *yisraelim* with no *kobanim*, and no group alone has the requisite number, I cannot find a solution that will not lead to fighting.

Levush clearly rejects Maharam's excessive concern for *p'gam*, dismissing it immediately in cases where the reasoning is abundantly obvious. Yet, he maintains that if there are two groups (either *kohen* and *levi*, *koben* and *yisrael*, or *levi* and *yisrael*) and neither has six members, there is no solution that will not lead to fighting. Implied, perhaps, is that Torah reading is in fact omitted due to the inability to alleviate concerns of *darkei shalom*, a tremendously novel conclusion, although not unprecedented since such is also noted as an option by Maharam. The fact that the obligation to publicly read from the Torah can be discarded because of communal

²¹ OḤ 135:12–14.

fighting is nothing less than remarkable. Like the Mordechai with regard to concerns of *p'gam*, the Levush holds this social value of *darkhei shalom* to be of supreme importance and is even willing to take extraordinary steps to preserve it.

This sensitivity to potential fighting within the community can be detected in yet another ruling of the Levush. In that same piece, he writes:

ולפי זה נ"ל שאם יש שם ישראל אחד ולוי אחד והשאר כולם כהנים יהפכו ממש הסדר, יקראו ישראל ראשון ואח"כ הלוי ואח"כ הכהנים כהן אחר כהן.

According to this [line of reasoning], it appears to me that if there is one *yisrael*, one *levi*, and the rest *kobanim*, we actually switch the order. The *yisrael* should read first, then the *levi*, and then the rest *koben* after *koben*.

The Levush's ruling reverses the normal KLY set because, as the Taz later suggests, the regular order will in fact trigger the same infighting concerns that R' Hanina was troubled by, since the *kobanim* will jockey for the first *aliyah* just the same. For the Levush, the concern of *darkhei shalom*, even amongst the *kobanim* alone, is enough of a factor as to scuttle the KLY of the Mishna. In contrast to the Taz (see later) who views this order as so critical that it overrides internal *darkhei shalom* amongst the *kobanim*, Levush's more tempered view considers the Mishna's sequence to be important but not at the price of even slight potential communal unrest. For Levush, averting hostility (*eivah*) in the community is the ultimate priority in weighing potential solutions, with the upholding of the KLY order only of secondary value.

The Magen Avraham²² wonders why the Levush promotes YLK as an alternative to the Taz. Instead, if concern for *darkhei shalom* precludes the *koben* going first, the correct order of the first three should be *levi-yisrael-koben* (LYK), given the fact that a *levi* always precedes a *yisrael*. Still, the Magen Avraham fundamentally agrees with the Levush against the Taz that in a case of one *levi*, one *yisrael*, and the rest *kobanim*, we cannot start with KLY due to quarreling among the *kobanim*. He too is willing to forgo the traditional order of the Mishnah to preserve *darkhei shalom*.

This view is summarized as follows:

- The possibility of igniting hatred and fighting, both across groups and within the *kobanim* themselves, is the principal concern, one which sets aside the proper KLY order and which may even override the entire ritual obligation of Torah reading itself.

²² *OH* 135:20.

The Fourth View: Maintaining the KLY Order

The majority of Ashkenazi *poskim* reject the Maharam and Levush, and instead advocate solutions which chiefly aim to preserve the Mishnaic KLY arrangement at all costs. The Tur²³ follows the Ra'avyah when he dismisses all issues of *p'gam* in cases where there are only *kobanim* or *levi'im* present. Siding with the Rashba against the Maharam, he maintains that when there are only *kobanim*, we give seven *aliyot* to seven different *kobanim* since it is clear to all that the lone motivating factor is extenuating circumstance. This position never confronts the clash of *p'gam* with *kavod ha-tzibbur*, since it believes there is simply no worry of *p'gam* in such plainly apparent cases.

The Taz best outlines this wider view that retaining the correct KLY order is of chief importance:²⁴

ונ"ל דהך מפני דרכי שלום נלמד מן הדרכי שלום שנזכר במשנ' דתקנו כהן לוי וישראל מפני דרכי שלום וע"כ נ"ל דאם יש לוי ג"כ באותה עיר דהיינו שיש ישראל א' או ב' ולוי א' או ב' והשאר כהנים דאז אזלי' בתר סדר המשנה וקורא כהן לוי ישראל ואח"כ הכהנים ולא חיישינן לאנצויי בין הכהנים דהך דרכי שלום הנזכר במשנה הוא יותר חשוב מדרכי שלום זה שבין הכהנים עצמן וקורא ראשון הכהן יותר חשוב ביניהם ואין מקום לדרכי שלום של הכהנים אלא בענין שאין לקיים סדר המשנה.

It appears to me that this reason of *darkei shalom* was learned from the *darkei shalom* mentioned in the Mishna, and that they established the KLY order due to *darkei shalom*. And it seems that we are forced to say that if there is a *levi* also in that city, namely that there are one or two *yisraelim*, one or two *levi'im*, and the rest *kobanim*, then we follow the order of the Mishna, and we call up KLY and then the *kobanim*. We are not concerned for fighting amongst the *kobanim* since the *darkei shalom* mentioned in the Mishna [between groups] is more important than the *darkei shalom* between the *kobanim* themselves. The *koben* who receives the first *aliyah* is more eminent in their eyes, and there is no place for concerns of *darkei shalom* of the *kobanim* except in cases where the [KLY] order of the Mishna cannot be fulfilled.

Here, Taz makes a distinction between two types of *darkei shalom*: a) the *darkei shalom* between different factions, used by the Mishna in Gittin as the basis for the KLY template; and b) the *darkei shalom* amongst the *kobanim* themselves, used by R' Hanina in the *Yerushalmi* as the motivation for his solution. Taz limits the latter type of *darkei shalom* strictly to cases

²³ OḤ 135 and 143.

²⁴ OḤ 135:11.

where the KLY set of the Mishna cannot be fulfilled, such as R' Hanina's case in which no *levi'im* are present. But, if there is at least one *levi* in addition to the *yisrael*, R' Hanina's solution is abandoned in favor of fulfilling one KLY set. For Taz, concern for infighting amongst *kobanim* pales in comparison to implementing, at least once, the proper order of the Mishna. While the Levush could not adopt even one KLY round if it might lead to any communal unrest, Taz does not view infighting as significant enough to derail a KLY set. Accordingly, only when there are no *levi'im* (such as in R' Hanina's case) do we place the *yisrael* first due to *darkei shalom* within the ranks of the *kobanim*. Taz's reading of the *Yerushalmi* is novel in that it severely limits its application by restricting R' Hanina only to situations where not even one KLY set is attainable. Evidently, completing even one round of the proper order of the Mishna in *Gittin* is the dominant concern, so essential as to precipitate a novel, minimalist reading of the *Yerushalmi*.

The *Mishnah Berurah*²⁵ adopts the mainstream Ashkenazi position which aims to preserve the KLY order. When there is one *levi*, one *yisrael*, and the rest *kobanim*, we do one KLY set and the remainder go to *kobanim*. He too emphasizes the importance of fulfilling the KLY order of Chazal, and if there is enough for two KLY sets, the proper order is KLYKLYK. If there is more than one *yisrael* and no *levi*, however, the Mishna Brura rules that we abandon the *Yerushalmi* and give a *koben* the first two, followed by as many *yisraelim* as possible, followed by *kobanim*. Like the Magen Avraham, he is convinced that the *Shulhan Arukh* holds this way as well. Finally, if there are only *kobanim* and *levi'im*, the *Mishnah Berurah* rules against the Taz (who says a *levi* should go first because of *darkei shalom*) and instead advocates alternating *koben-levi* sets.

The *Arukh ha-Shulhan*²⁶ rules like the Taz against the Levush, citing the centrality of executing the order of the Mishna. However, he also goes on to synthesize the two Talmudic passages cited at the start of our discussion. R' Epstein writes that even if the requirement of "*ve-kidashto*" is biblical, as *Gittin* 59b makes clear, the *kobanim* may still relinquish their *kevod* in cases where the preservation of *darkei shalom* is at stake. R' Hanina's solution of placing a *yisrael* first is therefore dependent on the *kobanim* consenting to surrender their rights to the first *aliyah*. What follows is that any solution placing a non-*koben* first (such as that of the Levush) must include the *kobanim* actually agreeing to surrender their privilege of "*ve-kidashto*," a novel yet entirely sensible constraint.

²⁵ OḤ 135: 43–45.

²⁶ OḤ 135:26–27.

To summarize the mainstream view of the Ashkenzic tradition:

- There are two kinds of fighting to be avoided—fighting within a group and fighting between groups—and one must ideally try to avoid both of them.
- Avoiding infighting within a group is less important than fulfilling even one KLY set.
- We generally do not suspend the ritual obligations of Torah reading merely to avoid problems of infighting or outfighting. But we do reorder to the best of our ability to reduce such fighting, assuming the KLY order has been properly satisfied.
- Communal dignity is not lightly suspended and is therefore a higher priority to protect than is fighting.
- Reputational damage cannot be circumvented by announcements.

Conclusion

We have seen four approaches in dealing with unconventional quorum constituencies, each with its primary ethical concerns. Other than the lone view of the Maharik, all assume that the stakes here are purely rabbinic and that they are a balance between five rabbinic obligations:

1. The prohibition of generating hatred and causing fighting, both within groups and between them (*darkhei shalom*).
2. The prohibition against causing slander of reputation (*p'gam*).
3. The preservation of communal dignity (*kavod ha-tzibur*).
4. The obligation to sanctify those worthy of holiness (*ve-kedashto*).
5. The general rabbinic obligation to read from the Torah on Shabbat, and more specifically, the obligation to fulfill KLY.

One group emphasizes the holiness obligation and thinks that problems related to hatred and peace can be mitigated by disclosure and conversation in order to ensure that Torah reading—the core obligation—continues unabated.

A second group stresses the obligation to avoid slandering people, and views it as irreparable even through disclosure. This concern for personal reputation is even strong enough to suspend general rabbinic duties like Torah reading and certainly general concerns of communal dignity.

A third group accentuates the ethical problems of infighting and is even prepared to suspend Torah reading if no peaceful solution can be found.

The final group thinks that social concerns of reputational damage or infighting should be addressed as much as possible, but ultimately, these

concerns do not suspend the rabbinic obligation to read the Torah. Rather, we seek to mitigate the issues on a case by case basis with specific solutions, always striving to fulfill our ritual obligation to the fullest possible extent.

The divergence in values is both ethically stunning and virtually without specific textual support. Ethical intuition is the core of this discussion.

We are interested in this topic for several reasons. Cases where multiple rabbinically-mandated values cannot all be fulfilled due to unusual settings is one of the best ways to prioritize the values of Jewish law. Notions of *kavod* (honor), *eivah* (hostility), *p'gam* (defamation), *ve-kedashto* (holiness), and *kavod ha-tzibbur* (communal dignity) are all present here and need to be balanced against the obligation to follow the decrees of the Sages. All cannot be balanced well; one or two have to be abandoned—but which one/s? This poses a more universal question with greater application outside the rubric of the technical rules of Torah reading.

When the Mordechai states in the name of Maharam that it is better to violate the Mosaic decree to read Torah on Shabbat with seven *aliyot* rather than to violate the *kavod* of an individual, this represents a far-reaching and important ethical claim. So does the idea that fear of *p'gam* is more pressing than problems of *darkei shalom*, or the reverse. The same is true for the Mordechai's assertion in the name of Maharam that a general violation of the dignity of the whole community is less problematic than a specific violation of any particular *koben's* feelings. As insisted on by the Ritva, announcements that a *koben* is not actually disqualified (*pagum*) can turn what appears to be a sully of a reputation into a meaningful ritual void of any moral concerns.

This fascinating example of practical Jewish triage of ethical values demands that we examine our own conduct. 