

Psak, Policy, and Inclusion: Nesiat Kapayim as an Iconic and Ironic Example

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In the first section of Parshat Emor, the determination appears that kohanim who have physical blemishes are not fit to serve in the Temple.

The continuation of the parsha describes the sacrifices themselves, and they too are required to be whole in their bodies with no blemishes at all.

This parsha, which excludes the physically disabled from serving in the Temple, arouses opposition in a society that strives to recognize the status of all human beings as equal. The answers that have been given by the Torah commentators, ancient and modern, do not ease the mind.

Responsa of Rabbi Meir of Rothenburg, (1215-1293), cited by Rabbi Shlomo Luria, (1510-1573)

You asked whether a person who has been injured by the Attribute of Justice, [and his arms are paralyzed], is fitting to be a shaliach tzibbur?

[Answer:] Obviously he is more than fitting; on the contrary, it is the mitzvah min hamuvchar (to select him),

because the King of all Kings wishes to make use of broken vessels, unlike flesh and blood authorities, as Scripture says (Psalms 51:19): *A broken and downtrodden heart, G-d, You will not despise;*

Only kohanim are disqualified for physical blemishes.

ש"ת מהר"ם מרוטנבורג דפוס קרימונה סימן רמט

וששאלת אם אדם שפגעה בו מדת הדין [ונפל זרועו] ראוי להיות שליח ציבור?
פשיטא דראוי וראוי הוא, ואדרבה מצוה מן המובחר,
דמלך מלכי המלכים חפץ להשתמש בכלים שבורים, ולא כדרך שרים בשר ודם,
שנאמר [תהלים נא:יט] לב נשבר וגומר [=ונדכה א-להים לא תבזה],
דאין נפסל במומים אלא כהנים:

"Standing" in Awe: Birkat Kohanim and Inclusion

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Can kohanim who use wheelchairs give the priestly blessing)?

Responsa Shevut Yaakov 2:1 (R. Yaakov Reischer, 1670-1733) argued in the affirmative, but his position was attacked by Responsa Noda b'Yehuda OC 5 (1713-1793) and others.

Generally these attacks were seen as compelling.

20th century posek R. Shmuel HaLevi Wosner states (Responsa Shevet haLevi 10:28) that R. Reischer's position was "pushed aside from Halakhah without any uncertainty."

I suggest that the rejection of Shevut Yaakov should be reconsidered in light of analysis bolstered by new evidence . . .

Notes:

Rabbi Dov Linzer seeks to permit wheelchair using kohanim to duchen by considering them as standing, whereas I argue in the above-referenced essay that the physical requirements of Temple service do not apply to duchening.

Rabbi Binyamin (Benny) Lau at one point tried to argue that because the disqualifying blemishes for Birkat Kohanim are socially dependent, that should also be true for the disqualifying blemishes for Temple Service, but this position is unsustainable within current halakhic tradition, and he withdrew it.

Rav Moshe Feinstein (1895-1986)

28 MarCheshvan, 5710. To my dear friend the famous rabbi and gaon R. Shlomo Yehuda Leib Levitan, the gaon Av Beit Din of Rock Island, (Illinois).

Your Honor's letter [] regarding whether public Sabbath-desecrators can duchen – I received [].

My failure to respond was because this is among the matters that are hard to speak of,

But after receiving your second letter pushing me to respond – I am responding lest you suspect me G-d-forbid of disrespecting Your Honor.

As a matter of law,

even though a public Sabbath desecrator is considered to be an apostate to idolatry, and for this reason the achronim hold that he is invalid to duchen – see Mishnah Berurah [OC 128]:134 -

but there is much room to pick this argument apart, because that equation is not an all-encompassing rule – I don't have the time to go on at length –

but regardless, the position of Rambam is that one who worships idols is invalid even after repenting, and should public Sabbath desecrators also be invalidated after repenting!? That position is unspeakable, and therefore we see that for the purpose of duchening – he is not like an idolater . . .

Since the comparison to idolaters is only in that he appears to be a denier – this applies only when that is his motive for desecrating Shabbat, but if his motive is inability to withstand the test of financial gain or satisfying a desire – we must not consider him a denier,

and therefore, a private Shabbath desecrator can claim that his motive for sinning is desire,

and even if he says nothing – because he is presumptively valid, we can assume that his motive was desire and not denial,

but a public Sabbath-desecrator – his motives and intents are “matters of the heart” unknown to observers, and observers will presume that he is doing it out of denial, and therefore he has acted as a denier regardless of his intentions, even if at heart he believes in Hashem and is acting only out of desire . . . Therefore, here, where it is known that most Sabbath desecrators are acting out of desire for money, and many go to synagogue and afterward to their businesses, its possible that even public is judged as private . . . Therefore, as a matter of law, he cannot be invalidated . . .

Yeriot Shlomoh 6

Motzaei Rosh Hashannah 5710 . . . This is a life-and-death question, and I have an urgent need to know before Yom Kippur. There is a layman here, president of one of the local synagogues, who drives to synagogue on Shabbat, and his store is publicly open in a nearby town. Until now, kohanim who are Sabbath desecrators have not duchened, but now a cantor has come and persuaded this man that he ought to duchen, and there are no other kohanim in that synagogue . . .

Igrot Mosheh redux**Rav Moshe Feinstein (1895-1986)**

28 MarCheshvan, 5710. To my dear friend the famous rabbi and gaon R. Shlomo Yehuda Leib Levitan head of the beit din of Rock Island, (Illinois).

Your Honor's letter [from between Rosh HaShannah and Yom Kippur] regarding whether public Sabbath-desecrators can duchen – I received [promptly] . . .

Therefore, as a matter of law, he cannot be invalidated, but in practice, it is possible that this involves an element of *migdar milta*, and it is more appropriate not to allow them to duchen, as Your Honor has practiced throughout your time there, even if there is no other kohen there, as for *migdar* – a beit din is permitted to do this , since this is not the nullification of a SO, since unless they call him up , he does not violate the DO . . .so it is better for them not to call him up, even if there is no other kohen present, as you have done. But to object strongly to the towns where they allow them to duchen –

even though the spirit of the Sages is discomfited, it seems right that they are not obligated to object.

Igrot Mosheh YD 2:258

Regarding a kohen taken into the army during war who killed in the war –

It's obvious that he may duchen,

Because it is explicit that a kohen who is compelled (by others) to to kill may duchen . . .

even (if he killed) in situations where he was obligated to die rather than transgress . . .

Yechaveh Daat 5:16 (Rabbi Ovadiah Yosef)

Question: A kohen who was driving and caused a fatal accident – is he permitted to duchen?

Answer:

Berakhot 32a

Said Rabbi Yochanan:

A kohen who killed a *nefesh* may not duchen, as Scripture says: *When you spread your palms, I will hide My eyes from you – your hands are full of blood . . .*

But Peri Megadim wrote to question this, and concluded that even when coerced – one should be stringent *lekhatchilah* that he should not duchem. And it seem proper to be concerned for the position of Peri Megadi, since this involves a concern for *berakhah levatalah . . .* and *safeik berahhot lehakel*.

Yechaveh Da'at 2:14

Question:

Kohanim IDF soldiers who participated in battles against the armies of Egypt, Jordan, and Syria in the ranks of Israel, and injured and killed enemy soldiers, may they duchen?

Answer:

Berakhot 32a . . .

But truthfully in our case we have no need of all the above argument (regarding kohanim who killed nonJews), because aside from Peri Chadash's position that a kohen who was coerced to kill may duchen . . . and if so, a kohen who stands against the enemy armies and is endangered – there is no greater coercion than this, and the one who comes to kill you – arise and kill him first; and that case is much greater than that of Peri Chadash, as in Peri Chadash's case he was obligated to die rather than transgress . . . and nonetheless was not invalidated to duchen . . . all the more so here, where the kohanim are IDF soldiers standing to protect Israel and our holy land, where there is no doubt that they are doing a great mitzvah to greet the enemy hosts that are coming to sow destruction and to kill and destroy men, women, and children . . .

Footnote 1 to Yechaveh Da'at 2:14

Prima facie, one can challenge (the claim that soldier kohanim can duchen) from 1 Chronicles 22:8, where Hashem says to King David *You have spilled blood in abundance, and made great wars – you will not build a house for My name, because you have spilled much blood to the ground before Me. Even though he fought the wars of Hashem, the Holy Blessed one did not with the Temple to be built by his Hand.* (See also Rambam, Eight Chapters, Chapter 7). But RaDaK in his commentary there writes: That which it says “*You have shed blood in abundance*” – refers to innocent blood, specifically that he caused the destruction of Nov and was the reason for the destruction of the kohanim who inhabited it . . . also the blood of the nations that he spilled, who were not *bonei milchamto*, and perhaps among them were good and pious people. Nonetheless, he was not punished for this, because his intent was to wipe out the wicked lest they make a breach in Israel. However because abundant bloodshedding came about through him – the Holy Blessed one prevented him from building the Temple, which is for piece and atonement for sin and the crown of prayer.

This implies that for the wars themselves it would not have been proper to prevent him (from building the Temple) . . .

While the acharonim wrote extended responsa regarding whether kohanim soldiers returning from the ranks of war are valid for duchening when they know that they killed the enemy . . . they were speaking for their place and time, and their deliberations mostly revolved around the killing of soldiers in enemy armies which included drafted Jews, but here – this is a war of defense, where they have placed their live in their hands to greet the enemy in order to save Jewish lives, so just the opposite – it is appropriate to say to them “May your hands strengthen and your strength focus!” It is clear beyond the shadow of a doubt that they are valid and proper for duchening, and they will be blessed from on High, and through their hands will be fulfilled *and they will place My name on the Children of Israel, and I will bless them.*

Chashukei Chemed

Question:

A soldier fought in Gaza in the terrible war in the Month of Av 5774. In the course of the war he was fired at by terrorist enemies of Israel who came to kill him, and “the one who comes to kill you – arise and kill him first!”. After returning from the war, the soldier asks: “It now seems to me that among the soldiers there was one who raised his hands (in surrender), and I fired at and killed him too, because it was hard to focus and check that he was not tricking me. I suffer greatly from this, lest I have killed an innocent man, to the point that I cannot sleep at night, because the killed man appears to me in my dreams again and again. How can I atone for this deed?”

Answer:

. . . 1 Chronicles 22:8 . . . RaDaK . . .

Therefore, in wartime, when enemies arise to wipe us out – it is very hard to determine who is good and who is wicked. Rather, one must defend against the wicked even when to our sorrow this also causes good people to be killed [although *lekhatchilah* one must avoid this . . .]

So too in our case: the soldier has no sin, **but he should refrain from building the Temple.**

But it will regardless descend from the Heavens whole, as we say in the Nachem prayer on 9 Av: “You set it aflame, and in flame you will ultimately build it, speedily and in our days”.