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A Tale of Two Pandemics? How a Law for Torah Reading Became a “Dead Letter” in the Wake of the Black Death—and Was Brought Back to Life by COVID-19

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INTRODUCTION

Must one who receives an *aliya* read a portion of text from the *Sefer Torah* themselves, at least quietly? Or, after reciting the blessing, is it permissible for an *oleh* to listen passively to the *ba'al qoreh* (Torah reader) like the rest of the congregation? Strict social distancing during the COVID-19 pandemic has suddenly brought sharp, new relevance to this old halakhic question. Individuals who receive an *aliya* must keep a safe distance away from others, and so cannot possibly get close enough to the *Sefer Torah* to read along (quietly) as a *ba'al qoreh* reads aloud. Is it permissible to give *aliyot* to such individuals? If not, then what to do?¹

Medieval and early modern halakhic authorities debated this question in other contexts. *Shulḥan Arukh*² rules that one who cannot read from the scroll cannot be given an *aliya*—even if someone else reads—and so forbids giving *aliyot* to individuals who cannot read due to illiteracy or blindness. Seemingly there is precedent for this view in the Tosefta,³ which rules that if only one literate person is present in a *minyān*, then all of the *aliyot* must be given to that one person. However, the Maharil (Rabbi Yaakov ben Moshe Levi Moelin, also known as Mahari Segal, a preeminent halakhic authority of Ashkenazic Jewry who lived c. 1365–1427) was more lenient and permitted *aliyot* for illiterate⁴ and blind individuals. Ashkenazic authorities (but not Sephardic) ultimately universally accepted Maharil’s lenient ruling in practice.

In this article we examine a fascinating dispute among contemporary *posqim* (and communities) about public Torah reading under conditions of social distancing. One school of thought avers that an *oleh* need not actually read from the Torah scroll—listening is sufficient—and so distant *aliyot* are permitted. This view invokes Maharil’s leniency regarding illiterate or blind individuals and is likewise comfortable assigning *aliyot* to individuals who must stand too far away to read from the *Sefer Torah*.⁵ The second school of thought disagrees. They are not comfortable relying upon Maharil’s ruling in the new context of social distancing, and so instead they assign all *aliyot* by default to the *ba'al qoreh*, per the Tosefta’s original ruling for a *minyān* where only one member can read.⁶

Tracing the roots of both approaches highlights a challenging, important question that we do not believe has yet been clearly or sufficiently addressed. Maharil’s decision permitting *aliyot* for those who cannot read seems stunningly innovative. It was *not* a traditional, long-standing practice. To our knowledge, as discussed below in detail, virtually no *rishonim* until Maharil disputed the long-standing precedent in the Tosefta that every *aliya* must be assigned to a person who can read. If seven literate people are not present (on Shabbat) then assigning them to the same person, if necessary, before giving an *aliya* to an unlettered individual is mandatory. Maharil’s lenient, contrary ruling seems, at least at first blush, to be completely unprecedented in halakhic literature.

Why and how could Maharil take the bold step of endorsing a practice in violation of a traditional rule uniformly endorsed by so many of his predecessors? Why did whatever halakhic rationale lay behind Maharil's surprising leniency escape (or fail to persuade) earlier authorities? Can significant changes in factual (social) circumstances explain and justify the evolution of Halakhah in this way?

This paper attempts to clarify the halakhic rationale behind Maharil's important, controversial position, including a hypothesis about the impact of one pandemic (Black Death) on that innovation. We also examine the disagreement as to whether Maharil's leniency should be relied upon for purposes of socially distant *aliyot* during our contemporary pandemic. In addition to this Introduction and a Conclusion, the paper includes five sections. Part II reviews the Talmudic and post-Talmudic literature mandating that the *oleh* be able to read the text. In Part III, we discuss the innovation of the Maharil and its acceptance by Ashkenazic authorities, and we summarize the difficulties with several classic defenses that have been offered for that innovation. In Part IV, we propose a novel explanation for the underlying halakhic logic of the Maharil, and in Part V we apply this insight to the contemporary problem of socially distant *aliyot*. In Part VI, we explain our views on the normative Halakhah, and we propose a new rule of Jewish law to address the situation of "mixed" *minyanim*, which include participants from both Ashkenazic and Sephardic communities.

MUST AN OLEH READ FROM THE SEFER TORAH? A LONG-STANDING PRECEDENT

The Tosefta in T. Megillah 3:12 states:

בית הכנסת שאין להם מי שיקרא אלא אחד עומד וקורא
ויושב ועומד וקורא ויושב עומד וקורא ויושב אפילו
שבעה פעמים.

If a synagogue has only one person capable of reading [from the *Sefer Torah*], then that person

should stand up and read; then sit down; then stand [again] and read; then sit down; then stand [again] and read; then sit down—even seven times.

The implicit premise of this Tosefta is that *individuals unable to read (Hebrew) may not receive aliyot*. After all, if non-readers were eligible, why award all of the *aliyot* to the lone reader, who "sits down" between sections in order to delineate separate *aliyot*? Why not distribute *aliyot* among the congregants, per normal practice?

Although this Tosefta is not cited in Talmud Bavli, a similar law appears in Talmud Yerushalmi (regarding a congregation of non-Hebrew speakers)⁷ and in *Masekhet Sofrim* 11:1 (in a city with only one capable reader, this reader receives all *aliyot* and "sits down" between them), as well as in several Geonic responsa.⁸ Moreover, the law enunciated in the Tosefta is endorsed by a very broad spectrum of *rishonim* including: Rif, Rambam, Rosh, Tur, Or Zaru'a, Ravva (and citing his grandfather Ravan), Sefer ha-Pardes, Tosafot, Tosafot Rid, Pisqei Riaz, Shibbolei ha-Leqet, Rashba, Maharam me-Rotenberg, Mordechai, Sefer ha-Itim, Sefer ha-Agudah, Ran, Rivash, R. Yerucham.⁹ This list—by no means exhaustive—represents an impressive consensus of both Ashkenazic and Sephardic *rishonim*.

Conversely, we are hard-pressed to identify even a single *rishon* until Maharil¹⁰ ruling that *aliyot* may be given to illiterate individuals.¹¹ At most, we find that *aliyot* may be given to a *blind* person in limited cases according to Sefer ha-Eshkol (for a blind groom) and Sefer ha-Agudah (for a blind man who is the sole *kohen* present).¹² But even those two authorities do not specifically permit *aliyot* for a (not blind but) illiterate person. In fact, Agudah expressly affirms the Tosefta's rule that that all *aliyot* must be given to the *ba'al qoreh* in a *minyan* whose other attendees are illiterate!¹³

The Rosh, a very influential authority among the *rishonim*, asserted that an *oleh* who cannot read from the Torah recites a *brakha levatala*—an invalid blessing, taking God's name in vain.¹⁴ He

argued¹⁵ that this is implicit in the Tosefta’s original ruling: after all, if it were merely *preferable* when possible to avoid giving *aliyot* to individuals who cannot read, then in the exceptional case of the Tosefta—where only one literate person is present—surely it would have been better to allocate *aliyot* among the other attendees instead of breaching standard protocol and assigning all of the *aliyot* to a single reader. Evidently, the Rosh argued, an *aliya* for an *oleh* who does not read from the Torah himself is categorically invalid and hence a *brakha levatala*.

Tur and R. Yerucham (respectively the Rosh’s son and student) took the same position, as did Shibbolei ha-Leqet¹⁶ and several other *rishonim*. This position is codified in *Shulḥan Arukh, Oraḥ Ḥaim* 141:2: an *oleh* must read along quietly lest he be deemed to have recited a *brakha levatala*.

MAHARIL’S SURPRISING INNOVATION AND ITS ACCEPTANCE BY ASHKENAZIM

Nevertheless, Maharil (*Minhagim*, Laws of Torah Reading) ruled that *aliyot* could indeed be given to *amei ha-aretz* unable to read, as well as to blind individuals.

אמר מהר"י סג"ל קורין לתורה אפ"י עם הארץ. וכן הסומא, ולא נהגינן כהרא"ש דפסק דהסומא לא יקרא.

Mahari Segal ruled that we call to the Torah even illiterate people and also blind people. We do not follow the Rosh who rules that a blind person cannot be called to the Torah.

Maharil was undeterred by the strong consensus of earlier *rishonim* who affirmed the Tosefta, nor was he persuaded by Rosh’s argument that such *aliyot* are a *brakha levatala* and invalid. Indeed, he explicitly notes his dissent from the Rosh. What justified Maharil in staking out such an exceptional, lenient stance?

R. Isaac Tyrnau, a close contemporary of Maharil and author of *Book of Customs*, an important source on Ashkenazic *minhagim*, already wondered about this. In his *Book of Customs*,¹⁷ R. Tyrnau initially presents the

traditional, strict view that *aliyot* may not be given to the blind. He then notes Maharil’s leniency—but asks how it can possibly be squared with Rosh’s ruling that such *aliyot* are forbidden? He leaves that question unanswered.

Moreover, at least as puzzling is the fact that Maharil’s lenient opinion prevailed within the Ashkenazic world, despite the contrary ruling of so many influential *rishonim* and the contrary ruling in *Shulḥan Arukh*. Rama, whose halakhic opinions are highly authoritative in the Ashkenazic world, is a perfect case in point. In *Darkhei Moshe* (Rama’s glosses on Tur) he twice mentions Maharil’s lenient view, and both times Rama registers his *disagreement*.¹⁸ Yet, in Rama’s glosses to *Shulḥan Arukh (Oraḥ Ḥaim* 139:3) he cites Maharil’s practice without disagreeing. Evidently, despite Rama’s objections in principle to Maharil’s lenient ruling, he ultimately endorsed what had become widespread Ashkenazic practice.¹⁹ A solid consensus among subsequent Ashkenazic authorities is that Maharil is to be followed on this issue as a matter of normative Halakhah, and hence *aliyot* may indeed be given to blind or illiterate individuals.²⁰

How can the lenient practice of allowing *aliyot* for those unable to read be halakhically justified, when it stands against such a strong consensus of earlier authorities who affirmed the Tosefta’s ruling against such *aliyot*?

Commentators offer various explanations for Maharil’s ruling. We shall now review several of the better-known suggestions and discuss why we believe they are incomplete when standing alone. In the next section, we will propose a more complete rationale for Maharil’s ruling, which builds on earlier explanations but addresses the outstanding problems.

1. Eshkol’s Leniency for the Blind

Perhaps the simplest explanation for the Maharil is also the easiest to critique, namely: that the Maharil simply followed the view of the Eshkol²¹ allowing a blind groom to get an *aliya*, and generalized it to unlettered *olim* as well. The

problem with this idea is that, without more, it would mean that two lone voices (instead of one) directly opposed a numerous, broad spectrum of prominent *rishonim* and contradicted the Tosefta. That the lenient view of such a small minority among the *rishonim* should prevail (in Ashkenaz) seems surprisingly inconsistent with the typical norms of Jewish law. Moreover, there is no evidence that Eshkol intended his leniency for a blind groom to extend to cases of illiteracy.²²

To the contrary, we see that although the Agudah²³ adopted a similar leniency for a blind *kohen*, he expressly endorsed the Tosefta's ruling against granting *aliyot* to the illiterate.²⁴ Thus, Maharil's broad approval of *aliyot* for illiterate individuals seemingly remains an isolated, outlier position with little or no prior support.

2. *Shome'a K'oneh*

Another, important defense of Maharil's stance is that an *oleh* who listens passively to the *ba'al qoreh's* reading is deemed as if they read it themselves, under the general halakhic concept *shome'a k'oneh*. In Talmud Yerushalmi, this concept is specifically applied in the context of Megillah reading, for example: one person may read the *megillah* while another person recites the *brakhot*.²⁵ This idea is advanced by *Hagahot Ashri* on Rosh Megillah 3:1, and is reiterated in Taz 141, *Bi'ur ha-Gra* 139, and *Mishnah Berurah* 139:12.²⁶

The problem with this explanation is that it seemingly proves too much. Why did the Tosefta, and the many *rishonim* who endorse it, evidently not consider *shome'a k'oneh* to be applicable? If *shome'a k'oneh* means that an *oleh* can simply listen and need not read, then why not simply distribute *aliyot* normally to congregants in the Tosefta's case—why give all *aliyot* to the *ba'al qoreh*? Evidently, the Tosefta and the many authorities who affirm it held that for some reason an *oleh* must read from the Torah themselves, despite *shome'a k'oneh*.²⁷ How could

Maharil dispute—and prevail over—a solid consensus of prior authorities on this point?

3. Establishment of *brakhot* for middle *aliyot* (Vilna Gaon).

An ingenious explanation is suggested by the Vilna Gaon. In a characteristically terse comment, the Gaon posits that the Tosefta's rule reflected the Tannaitic custom according to which *brakhot* were recited only by the first and final *olim*. *Olim* for the middle *aliyot* recited no *brakha* and simply read the assigned Torah portion. Hence, an *oleh* who could not read was meaningless in those days, at least for the middle *aliyot*, since reading from the Torah is the only role an *oleh* had. Once the law was revised to require *brakhot* even for the middle *aliyot*—as recorded in the Talmud (B. Megillah 21b)—the grounds for the Tosefta's rule against *aliyot* for the illiterate disappeared and the rule itself was rendered obsolete (it was no longer good law), because even an *oleh* who could not read from the Torah participated actively by simply reciting the *brakhot* and as such was a valid *oleh*.²⁸

However, this approach raises a similar problem. The Gaon in effect claims that the Tosefta's rule has been inapplicable since adoption of the “newer” practice to recite *brakhot* on the middle *aliyot*—which is described in the Gemara itself and was already well-entrenched before the earliest *rishonim*. If the Gaon is right, then why was the Tosefta adopted and codified by Rif, Rambam, and so many other *rishonim*? If indeed the Gra's defense of Maharil requires us to assume that the Rif, Rambam, Rosh, and so many other *rishonim* (except Maharil) *all* misunderstand the Tosefta, then it seems even more surprising that Ashkenazim accept Maharil's unique, lenient position as normative Halakhah.

4. The Shift to a *Ba'al Qoreh*.

Some suggest Maharil's innovation can be understood in light of the shift in practice toward

reliance on a single *ba'al qoreh* to read the Torah aloud.²⁹ For example, the *Mishnah Berurah* (139:12) explains Maharil's position as follows:

וטעמו דכיון שאנו נוהגין שהש"ץ קורא והוא קורא מתוך הכתב שוב לא קפדינן על העולה דשומע כעונה.

His reasoning is: Because our *minhag* practice is that the *shaliah tzibur* (that is, *ba'al qoreh*) reads—and he reads (properly) from an actual scroll—we are no longer particular about the *oleh* reading, for “one who listens is as if he spoke” (*shome'a k'oneh*).

We have already discussed above the claim that Maharil can be justified based on *shome'a k'oneh*. But, the *Mishnah Berurah* does not rely on *shome'a k'oneh* standing alone. Instead, its author first states that Maharil's stance is predicated on the relatively newer practice of relying on a *ba'al qoreh*. *Mishnah Berurah* seems to suggest that *because* we commonly utilize a *ba'al qoreh*, it is therefore now also possible to rely on *shome'a k'oneh*. By proposing that Maharil's view is predicated not only on *shome'a k'oneh* but also on adoption of the universal custom to use a *ba'al qoreh*, *Mishnah Berurah* neutralizes the objection that we previously raised. Why was *shome'a k'oneh* not good enough for the Tosefta and the many early *rishonim* who endorsed it? *Mishnah Berurah's* approach nicely resolves that problem, because the Tosefta as well as early *rishonim* like Rif and Rambam presumably predate widespread adoption of using a *ba'al qoreh*, at least in their communities.

However, this approach poses a different logical challenge. How and why would the legal efficacy of *shome'a k'oneh* be altered by virtue of *ba'al qoreh* use becoming common practice? If *shome'a k'oneh* was not effective for an *oleh* in the days of the Tosefta and early *rishonim*, then how could the newer custom of using a *ba'al qoreh* change that? On the other hand, if *shome'a k'oneh* was legally effective even before *ba'al qoreh* usage, then why did the Tosefta and *rishonim* rule that all *aliyot* should be given to a single reader if nobody else in the congregation can read? Why

not distribute the *aliyot* and rely on *shome'a k'oneh*?

Thus, we still face the seemingly strong and convincing proof brought by Rosh from the Tosefta that a non-reader cannot have an *aliya*. For some reason, *shome'a k'oneh* was evidently not good enough grounds for the Tosefta, or for the solid consensus of *rishonim* who affirm it, to permit granting *aliyot* to non-readers even in the exigent circumstance of a shul with few readers. Why should that law change due to the popularity of using a *ba'al qoreh*, a practice that Rosh himself³⁰ was very familiar with and accepted?

OUR PROPOSED EXPLANATION OF MAHARIL'S VIEW

We propose three interrelated ideas to explain the adoption of the Maharil, which in total explain well our practice. First, Maharil understood the Tosefta's reason differently than the Rosh. Second Maharil's novel explanation of the Tosefta was grounded in the Rambam and many others and was only argued with by the Rosh and his students. Third, the devastation of the Black Death forced this to the fore to avoid the destruction of communal Torah reading.

a. Maharil's Ruling Reflects a *Kavod*-Based Interpretation of the Tosefta

In order to more fully explain the Maharil's ruling, it is very helpful to begin by asking ourselves what exactly was the rationale for the Tosefta's traditional rule against granting *aliyot* to non-readers? The Tosefta itself does not explain this rule, and most of the early *rishonim* who cite the Tosefta as law do not explicitly explain it either.

One possible explanation is to interpret the Tosefta as reflecting a *fundamental* requirement: reading from the *Sefer Torah* is an *essential* aspect of the *aliya*, and hence an inability to read invalidates that *aliya*. This seems to be the approach adopted by Rosh and his followers, whom we can refer to as the *brakha levatala* camp.

However, an alternative is to understand the Tosefta's rule as a *le-khathila* requirement, that is, a preference against granting *aliyot* to those who cannot read. Various other halakhic rules and protocols for the assignment of *aliyot* are certainly based on considerations of communal dignity (*kavod ha-tzibbur*) or personal dignity. For example, women are fundamentally eligible but are traditionally not given *aliyot* because of *kavod ha-tzibbur*.³¹ A *kohen* must not be given an *aliya* other than the first *aliya*, to avoid tarnishing his reputation.³² Such laws are requirements *le-khathila*: it is normally forbidden to violate these rules, but nonetheless if an *aliya* is granted in breach of these protocols it is valid *bedi'eved* and is not a *brakha levatala*. We shall refer here to such rules generally as *kavod*-based preferences, which may be set aside when no better choice is available or (arguably) when appropriate communal standards of *kavod* have significantly changed.³³

Our claim is that Maharil—and perhaps many of the *rishonim* who affirmed the Tosefta—understood the rule against *aliyot* for non-readers as a *kavod*-based preference, not a fundamental requirement *bedi'eved*. In addition, and crucially, if the Tosefta represents only a *kavod*-based preference, then a reasonable halakhic argument was available for Maharil to revise that *kavod* rule due to new social circumstances, because the standard for what constitutes public dignity is arguably contingent (at least to some extent) on social/communal realities.

We therefore propose that Maharil's lenient and innovative position can be halakhically explained in two logical steps. First, holding that the traditional rule that *olim* be able to read was a *kavod*-based preference, and not a fundamental requirement. Maharil could draw upon a fair amount of supporting evidence for this conclusion, and he could moreover contend that many of the prior *rishonim* agreed with him on this front (excluding Rosh and the *brakha levatala* camp), as we shall discuss in detail in the next section. Second, *updating kavod preferences* in view of changed social realities. Here, Maharil

could argue that those same earlier *rishonim* would have considered his view legitimate and reasonable because the relevant social facts and circumstances had changed over time.

What new realities modified the *kavod* calculus for Maharil? The emergence of widespread reliance on a *ba'al qoreh* was almost certainly one compelling factor. When usage of a *ba'al qoreh* is the norm, one consequence is that the congregation is much less likely to notice whether an individual *oleh* reads along—because at most an *oleh* only reads along very quietly, and communal attention is focused on the *ba'al qoreh*. An *oleh* who cannot read barely stands out (if at all) from other *olim*, and so is far less of an affront to public decorum in such environments. Furthermore, widespread adoption of the *minhag* to use a *ba'al qoreh* suggests the likelihood that an increasing number and/or percentage of Jews could no longer be expected on-demand to read competently from the Torah. Judged against realistic expectations, the failure of an *oleh* to read no longer constituted an insult or affront—rather, it was simply the new standard. The bottom line is that for multiple reasons, the popular adoption of a *ba'al qoreh* meant that the failure of an individual *oleh* to read constituted far less of an affront to public *kavod*.

Our proposed explanation aligns quite well with the terse commentary we quoted earlier from *Mishnah Berurah* (139:12):

מתוך הכתב שוב לא קפדינן על העולה דשומע כעונה
וטעמו דכיון שאנו נוהגין שהש"ץ קורא והוא קורא

His reasoning is: Because our *minhag/practice* is that the *shaliah tzibur* (i.e. *ba'al qoreh*) reads—and he reads (properly) from an actual scroll—we are no longer particular about the *oleh* reading, for “one who listens is as if he spoke” (*shome'a k'oneh*).

As we observed above, the *Mishnah Berurah* in effect combines two different points: the change in popular *minhag* regarding use of a *ba'al qoreh*, and the doctrine of *shome'a k'oneh*. However, it

does not spell out why both of these two different points are necessary or how they logically work together. Our proposed explanation is one possible way to fill those critical gaps. (1) The traditional doctrine of *shome'a k'oneh* is the reason why reading by each individual *oleh* is not necessary *bedi'eved* in order to satisfy the minimum requirements of an *aliya* and avoid *brakha levatala* status. (2) *Shome'a k'oneh* does not address the *kavod*-based concern of reading *le-khathila*; what removed that concern was the communal shift toward using a *ba'al qoreh*, taking public attention away from the *oleh* and greatly mitigating the *kavod* issue.

b. Evidence Supporting a *Kavod*-Based Interpretation of the Tosefta

Is our theory plausible that the rule in the Tosefta requiring *olim* to read from the Torah was a *kavod*-based preference? We believe so, and we submit that a variety of evidence supports this theory: contextual, textual, and legal.

First, we present *contextual* evidence. In the Tosefta (T. Megillah 3:11–12), the law regarding assignment of *aliyot* when only one reader is present is juxtaposed to the familiar *kavod*-based law that women may not receive *aliyot*:

(יא) . . . והכל עולין למנין שבעה אפי' אשה אפי' קטן.
 אין מביאין את האשה לקרות לרבים.
 (יב) בית הכנסת שאין להם מי שיקרא אלא אחד עומד
 וקורא ויושב ועומד וקורא ויושב עומד וקורא ויושב
 אפי' שבעה פעמים.

(11) . . . Everyone is included in the counting of seven, even a woman, even a minor. One does not bring a woman to read to the public.
 (12) If a synagogue has only one who is able to read, he stands, reads, and sits; stands, reads, and sits; stands, reads, and sits—even seven times.

Rambam³⁴ follows suit:

אשה לא תקרא בציבור מפני כבוד הציבור, קטן היודע
 לקרות ויודע למי מברכין עולה ממנין הקוראים. . . .

ציבור שלא היה בהם יודע לקרות אלא אחד, עולה
 וקורא ויורד וחוזר וקורא שנייה ושלישית עד שיגמור
 מנין הקוראים של אותו היום.

A woman should not read the Torah publicly, as a token of respect for the community. A minor who knows how to read and is aware of the One who is being blessed may be counted as one of the required number [of people called to the Torah]. . . . If there is only one person in the community who knows how to read [from the Torah], he should be called to the Torah, read, descend [from the platform], return and read again a second and a third time until he completes the number of *aliyot* designated for that day.

Seder Rav Amram Gaon (in his *Shabbat Shaharit* portion) maintains the very same juxtaposition, even though he replaces the Tosefta's phrasing with R. Natronai Gaon's formulation:

הכל עולים למנין שבעה ואפילו אשה ואפילו קטן, אבל
 אמרו חכמים אשה לא תקרא בתורה מפני כבוד הציבור.
 הכי אמר רב נטרונאי גאון: דוכתא דמצלו בה בי עשרה
 ולית להון דידיעי למקרי בס"ת, קרי כל גברא תרי זמני
 ושפיר דמי.

Everyone is included in the counting of seven, even a woman, even a minor. But the rabbis of the Talmud stated that a woman should not read from the Torah as a matter of communal dignity. This is what Rav Natronai Gaon stated: in a place where ten come to pray and there are not [enough] who can read from the Torah, the ones who can should read two [that is, multiple times] and that is acceptable.

Several other *rishonim*, including Sefer ha-Pardes, Or Zaru'a and Pisqei Riaz,³⁵ similarly juxtapose the Tosefta's ruling and the *kavod ha-tzibbur* policy of no *aliyot* for women. Thus, contextual placement of the law against illiterate *olim*, in both the original Tosefta as well as in Rambam and at least several other *rishonim* who adopt it, provides evidence that this law is a *kavod*-based preference.

Secondly, we offer *textual* evidence. The notion that calling up an *oleh* who cannot read from the Torah offends *kavod ha-tzibbur* and/or *kavod ha-Torah* finds sharp expression in the words of several *rishonim*. For example, Meiri (*Megillah* 22b) writes that although our *minhag* is to give a *kohen* preference for *aliyot* even if he is an *am ha-aretz*, that is only true if he can read from the Torah. But woe to the *kohen* who is unable to read:

הא כל שאינו יודע לקרות ארור הוא וארור שמו
ואין מעלין אותו כלל ואין חוששין למנהג

But if he does not know how to read—cursed is he, cursed is his name, and we do not give him any *aliya* regardless of the *minhag*.³⁶

Similarly, Shibbolei ha-Leqet (#35) quotes the Tosafist R. Ephraim of Regensburgh as sharply criticizing communities who rely upon a *ba'al qoreh* and who summon “six simpletons to ‘honor’ the Torah when [in truth] it shames the Torah.”

ותיפה רוחם של הזנים שהעומד לקרות בתורה
מברך לפניו ולאחריה והחזן קורא . . . והחזן
מברך ששה [פשיטים] לכבוד התורה והוא
קלון התורה.

Blasted be the soul/spirit of *ḥazanim* (!) when the *oleh* makes the *brakha* before and after and [yet] the *ḥazan* reads. . . . *The ḥazan calls up six simpletons to “honor” the torah but it is [in truth] a disgrace to the Torah.*

A third category of evidence for the *kavod*-based nature of the law regarding illiterate *olim* is found in the relatively lenient legal decisions promulgated by some authorities regarding *aliyot* for blind individuals. Among *rishonim*, the Agudah is an excellent example. On one hand, the Agudah dutifully records the precedent in the Tosefta as good law, indicating that *aliyot* must not be given to *illiterate* congregants, even if the only alternative is giving all of the *aliyot* to a single reader.³⁷ Yet Agudah also ruled that *aliyot* may be given to a *blind* person at least in the

limited case of a blind man who is the only *kohen* present:³⁸

קד. ונראה לי במקום דליכא כהן בעיר אלא סומא,
נראה דמותר לקרותו לס"ת ולא יאמר אין כאן
כהן . . . דבזה"ו אינו קורא אלא החזן.

It seems to me that in the place in which the only *kohen* in a city is blind, it is proper to call him to the Torah and you need not say “there is no *kohen*” . . . since nowadays the *ḥazan* reads.

How can these two rulings of Agudah be reconciled? It seems the inescapable conclusion is that according to the Agudah, the requirement that an *oleh* must read is only *le-khatḥila*, and an inability to read does not render the *aliya* invalid or a *brakha levatala*. Moreover, it is evident that according to Agudah, the obligation to honor a *kohen* is pertinent in determining whether we should enforce the *le-khatḥila* rule or not. All of that makes very good sense if we explain the Tosefta’s rule as embodying a *kavod*-based preference, which can give way in favor of an even stronger *kavod* concern such as the honor due Biblically to *kohanim*. Furthermore, it well explains why the social policy of the Torah not being honored by an illiterate person does not apply to a blind person, even though on a technical level blind people also cannot read the text and so can be, for legal purposes, formally considered technically illiterate.

Analogously lenient rulings regarding *aliyot* for the blind can be found in the Eshkol,³⁹ and in Levush who, like Agudah, nonetheless clearly prohibits *aliyot* for the illiterate (*Orah Haim* 141:2–3).

Of course, R. Yosef Karo (*Beit Yosef* and *Shulḥan Arukh*), Rosh, Tur, and others who sit squarely in the *brakha levatala* camp could certainly reject our proposed reading of the Tosefta, Rambam, and other sources as based only on *kavod*.⁴⁰ But ultimately, we do not need to claim decisive proof that the rule against *aliyot* for non-readers in the Tosefta or Rambam is only

le-khathila and is only based on *kavod*. Our proposal is simply that *Maharil* understood the Tosefta as a *kavod*-based preference, and moreover we find considerable evidence that he was not alone in this among the *rishonim*. *Maharil* could have very well deemed his understanding of the Tosefta to be consistent with the views of many prominent *rishonim*, including Rambam, Rif, and others, based on the supportive evidence we have noted. That is why *Maharil* notes that he argues only with the Rosh, and not with Rambam and so many others.

A TALE OF TWO PANDEMICS

a. Was *Maharil's* Ruling Triggered by a Devastating Pandemic?

We explained above that the widespread phenomenon of reliance on a single *ba'al qoreh* to read aloud from the Torah for his congregation significantly reduced the *kavod* implications for *olim* of reading or failing to read. While that rings true, we suspect that other social factors may have also contributed to a reassessment of the *kavod* standard in *Maharil's* time.

In particular, we are tempted to theorize that the devastation inflicted by the Black Death—which mercilessly ravaged Europe in the middle of the fourteenth century, killing an estimated thirty to sixty percent of the overall population⁴¹—might have weighed significantly in *Maharil's* revision of the *kavod*-based preference for *olim* who can read. If communal expectations regarding the ability of individuals to read Torah competently were already in decline, it seems likely that this trend was tragically accelerated and magnified by the Black Death. Not only did European Jews die as a result of the plague itself, they were also murdered in vicious pogroms and massacres by antisemitic populations inflamed with panic who ignorantly blamed Jews for the plague.⁴² Thus, the Black Death left European Jewish communities devastated and Ashkenazic yeshivot decimated, presumably reducing Torah literacy in the

post-pandemic generation. The introduction to *Sefer ha-Minhagim* (R. Tyrna), written in the decades shortly after the Black Death, explains the urgent need to compile a record of Ashkenazic Jewish customs as follows:

יען כי נתמעטו הלומדים ותלמידי חכמים בעונותינו הרבים. [ומ] אחר שאבדו ואפסו אנשי אמנה ותורה ומעשים [טובים] שבאושטריך, עד שראיתי ישוב או אפילו קהילות שלא נמצא בהם ב' או ג' אנשים היודעים אמתת מנהג עירו על בוריו וק"ו [של] עיר אחרת.

Because the students and scholars have become few, in our many sins. And because people of faith, Torah, and good deeds have been lost and annihilated in Austria, to the extent that I have seen towns and even larger communities in which there are not even two or three individuals who know the true customs of their own city—and *kal va-homer* [they do not know the customs] of other cities.

Simply put, the faithful remnant of Ashkenazic Jewry who still came to synagogue in the years following Black Death were a smaller group, placing even greater weight on the inclusion and involvement of every precious individual. From that remnant, even fewer had received the education necessary to read the unpunctuated Torah text. It would have been deeply tragic and counterproductive to alienate many of the faithful Jews who survived, even if unlettered, in the name of *kavod* standards held over from an earlier era. With many *minyanim* necessarily dependent on a very small number of capable Torah readers, would the traditional practice of giving *aliyot* only to those who could read weaken those communities even further by disenfranchising their less erudite members? In towns like those described in *Sefer ha-Minhagim*, the traditional practice would mean giving every *aliya* every week to a tiny elite circle—indeed, maybe the same lone person over and over. The result could be insulting and demoralizing for other congregants, whose active participation was more important than ever in order to rebuild shattered communities.

Maharil was born in Germany a few years after the Black Death and lived from approximately 1365 to 1427. A preeminent rabbinical leader, he devoted himself intensely to the project of rebuilding and strengthening the Jewish communities of Ashkenaz.⁴³ It is very tempting to speculate that Maharil advocated a more inclusive standard for participation in public Torah reading as part of his heroic, successful efforts to strengthen and rebuild the communities of Ashkenaz following the devastation of Black Death.⁴⁴ Once again, we suggest that he did so halakhically through two logical steps:

1. Holding that the traditional rule that *olim* be able to read was a *kavod*-based preference, and not a fundamental requirement.
2. Updating *kavod* preferences in view of religiously appropriate, realistic communal standards.

The second step may have reflected demographic changes wrought by the Black Death. While that claim remains speculative, it seems reasonable based on what we do know.

b. A New Pandemic Brings a Dead Letter Law Back to Life!

Acceptance of Maharil's leniency effectively turned the Tosefta's rule into a kind of "dead letter" law in the Ashkenazic world. In other words, the Tosefta's conclusion in principle that all *aliyot* should be given to the *ba'al qoreh* in the absence of a better alternative was not overturned and remained "on the books." However, the need in practice for such an option was simply rendered moot. Once *aliyot* were permitted *le-khathila* in Ashkenazic communities for those who cannot read, even in ordinary circumstances, it became hard to imagine a practical scenario in which assigning all *aliyot* to the same individual would be a necessary option.⁴⁵ Assuming that a valid *minyán* is present—which, of course, is a necessary condition for public

Torah reading—why not simply allocate *aliyot* among those present? Why would those present be ineligible for *aliyot*, yet valid for a *minyán*? Only very far-fetched cases might fit that bill.⁴⁶

Surprisingly, strict social distancing rules that have emerged during the recent/current COVID-19 pandemic create a common scenario fitting that bill. Individuals who receive an *aliya* must keep a safe distance away from others, and consequently they cannot possibly stand close enough to the Torah to see the text and thus read along (quietly) as a *ba'al qoreh* reads aloud. We now have a scenario in which those present for a *minyán* are unable to read. Is it permissible to give *aliyot* to such individuals? If not, then what to do?

Many Ashkenazic congregations during the current pandemic have relied upon the Maharil's leniency and grant *aliyot* to individuals present at a *minyán* despite their inability to come close enough to read from the *Sefer Torah*.⁴⁷ Other communities, however—even some Ashkenazic ones—have been reluctant to invoke Maharil's ruling in the new context of social distancing,⁴⁸ and so instead assign all *aliyot* by default to the *ba'al qoreh* per the Tosefta's original recommendation for a *minyán* with only one member who can read.⁴⁹ The practice of these latter congregations confirms that in their view, the Tosefta's ruling to give all *aliyot* to the lone capable reader remained good law in principle. The Tosefta became moot in practice—effectively a "dead letter"—once Maharil's lenient ruling was accepted and *aliyot* were permitted for illiterate and blind individuals. The underlying idea in the Tosefta of giving multiple *aliyot* to a single individual when no better options exist remained good law in principle.

If our theory is correct, and Maharil's ruling—consigning the Tosefta to "dead letter" status in Ashkenaz—was triggered by the Black Death pandemic, then how remarkable that a new pandemic, COVID-19, has resuscitated that "dead letter" law and brought the Tosefta's

practice back to life within some communities in the Ashkenazic world!

But why indeed do some Ashkenazic *posqim* and congregations view social distancing conditions as falling outside the scope of Maharil’s leniency, necessitating this revival of the Tosefta? And why do other Ashkenazic authorities disagree? While recent responsa have discussed this question,⁵⁰ we submit that the halakhic rationale we propose here for the opinion of Maharil can shed further light on this debate, as we explain in the next section.

ALIIYOT AND SOCIAL DISTANCING: AN ANALYSIS OF NORMATIVE HALAKHAH FOR ASHKENAZIM, SEPHARADIM, AND “MIXED” MINYANIM

a. Choosing between the Maharil Option and the Tosefta Option

When social distancing restrictions apply and it is considered medically unsafe for an *oleh* to stand close enough to the *ba'al qoreh* to read along from the *Sefer Torah*, many communities select from among two alternatives. Each of these alternatives is endorsed by a different group of contemporary rabbinical authorities:

1. “The Tosefta Option”: award all seven *aliyot* to one reader (the *ba'al qoreh*). This option prefers to follow the Tosefta in the context of social distancing, and not rely upon the leniency that Maharil established for blind and illiterate non-readers.
2. “The Maharil Option”: distribute each *aliya* to a different person. Even though the *olim* stand too far away to read, this option relies on Maharil’s allowance of *aliyot* for non-readers.

It is easy enough to see why a Sephardic *minyan* would choose the first option. Many Sephardic halakhic authorities, following the lead of the *Beit Yosef* and its codification in *Shulhan Arukh*, reject the Maharil’s view entirely in favor of the Rosh’s position that it is prohibited and is a

brakha levatala to ever give an *aliya* to one who cannot read from the Torah. If only a single reader is present, then he must receive every *aliya*.⁵¹ If so, then there is no reason to permit distant *aliyot* in the case of social distancing, and the Tosefta Option is the clear choice.

But why do even some Ashkenazic authorities opine that the Maharil should not be relied on for social distancing purposes?⁵² At first blush, that position seems illogical. After all, Ashkenazim rely on Maharil in granting *aliyot* to illiterate and blind individuals *le-khathhila* even when other eligible *olim* are present who can read. It would seem to follow *a fortiori* that we should be comfortable granting *aliyot* to *olim* who cannot read due to social distancing, when our only alternative is to breach a norm by giving multiple *aliyot* to a single person.

We think the choice of the Tosefta Option by some Ashkenazic authorities reflects their *tentative* acceptance of the Maharil’s lenient innovation. In other words, this view cautiously accepts the Maharil’s leniency as normative, but maintains a lingering concern for the contrary opinion of the Rosh and *Shulhan Arukh*. This view approves relying on the Maharil only because singling out the blind or illiterate by permanently denying them *aliyot* would be humiliating. But when there is no risk of shame—such as in a social distancing context, where denying *aliyot* to everyone (except the *ba'al qoreh*) does not stigmatize anyone—we should not risk running afoul of the pronouncement by the Rosh and *Shulhan Arukh* that such *aliyot* are a *brakha levatala*.

Mishnah Berurah exemplifies this approach very well. Thus, in *Bi'ur Halakhah* on 141:2, he argues that the Rama did not endorse the Maharil’s opinion except for purposes of preventing shame, precisely because of the Rama’s doubts about the correction of Maharil’s position:

לבטלה—... והנה לפי מה דפסק הרמ"א לעיל
בסימן קל"ט ס"ג דנוהגין לקרות לסומא וע"ה אף
שאינו יכול לקרות עם הש"ץ וא"כ היה לו להגיה

גם כאן דלדידן אפילו אם אינו קורא עם הש"ץ שפיר דמי ואפשר דסמך אדלעיל ויותר נראה לומר דלא סמך הרמ"א אדברי מהרי"ל אלא לענין סומא וע"ה דאם לא יקראום לעולם איכא כיסופא טובא וגם אתו לאנצויי. . . דהא כבר כתב בעצמו בדרכי משה שלא נראה לו דברי מהרי"ל אלא דברי הב"י שהביא בשם כמה ראשונים דאם אינו יכול לקרות עם הש"ץ אין יכולין לקרותו לתורה. . .

In Vain: . . . According to that which the Rama rules in 139:2 that our practice is to call a blind person and an illiterate person up the Torah even though they cannot read with the *hazan*, he should have noted here that according to our view, even if he cannot read with the *hazan* it is proper; maybe he relied on what he noted before. However, it is more logical to say that the Rama did not rely on the Maharil except for a blind person or an illiterate person, since if we do not accept the Maharil they will never be called up and there will be great shame and also fighting. . . . For indeed the Rama himself wrote in *Darkhei Moshe* that Maharil's words do not seem correct to him, but rather the words of Beit Yosef [seem correct] who brought in the name of *rishonim* that one who cannot read along with the *hazan* [from the scroll] cannot receive an *aliya*. . . .

Consistent with this view, *Mishnah Berurah* 139:13 avers that although we generally accept the Maharil's permissive view on blind and illiterate *olim*, we should *not* rely on Maharil for purposes of Biblically mandated Torah readings (*d'orayta*):

כמו שאנו וכו'—ר"ל שאנו נוהגין להקל אפילו אם אינו יכול לקרות עם הש"ץ מלה במלה מתוך הכתב . . . וה"ה בסומא. ולדינא כבר כתבו האחרונים דנהגו להקל כמהרי"ל ומ"מ לפרשת פרה ופרשת זכור נכון שלא לקרותו לכתחלה:

In other words, our custom is to be lenient even if [an *oleh*] cannot read along with the *hazan* word-for-word from the script . . . and likewise if he is blind. Bottom line, the *aharonim* have already written that the practice is to be lenient like the Maharil. *However, for parshat Para and*

*Zahor it is proper not to call them up, le-khathila.*⁵³

The *Mishnah Berurah* in effect only accepts the Maharil on a tentative basis. He points out that even the Rama doubted whether Maharil's view was correct. *Mishnah Berurah* therefore holds that we should rely on this leniency only when necessary to prevent stigma or fighting—but not otherwise, nor when doing so endangers our fulfillment of a Biblical commandment like *parshat Zahor*.⁵⁴ Following in the *Mishnah Berurah's* footsteps, some contemporary *posqim* may prefer the Tosefta Option because social distancing poses no risk of stigma, and hence there is insufficient justification to rely on Maharil and discount the Rosh in this new context. This view reasons that the Tosefta Option is the better approach because *all* halakhic authorities agree that Torah reading is fulfilled at least *bedi'aved* by that option,⁵⁵ whereas the Rosh and *Shulhan Arukh* would insist that the minimal halakhic obligation is *not* satisfied by the Maharil Option.

A second group of *posqim* instead champions the Maharil Option, including Rabbi Moshe Sternbuch and (after due consideration⁵⁶) Rabbi Asher Weiss. We think this camp can respond to the concerns of the Tosefta Option camp in at least two different ways. First, endorsing the Maharil Option may simply reflect a *confident* acceptance of the Maharil, halakhically speaking. In other words, this camp may feel that having adopted Maharil's leniency, Ashkenazim need not look cautiously over their shoulder at dissenting opinions, and so there is no reason to limit the leniency. Many *posqim* including the *Arukh ha-Shulhan*, the *Taz*, and others who endorse the Maharil's practice as proper to follow *le-khathila* do not express the limitations urged by the *Mishnah Berurah*. The *Arukh ha-Shulhan* (OH 139:3), for example, writes:

אבל כבר כתבו גדולי עולם דאפילו ע"ה גמור שאינו יכול לקרות גם אחר הש"ץ מ"מ עולה

לתורה דשומע כעונה ויכול לברך [ט"ז שם סק"ג
 וכנה"ג] וגם רבינו הב"י בעצמו בספרו הגדול שם
 כתב ע"פ זוהר ויקהל דבזה שומע כעונה ע"ש וכן
 הוא המנהג הפשוט ברוב תפוצות ישראל

But Torah giants of the world have already written that even an utterly unlettered person who cannot [even] read in repetition of the *hazan* nonetheless can receive an *aliya*, since listening is like answering, and he can make the blessing. Even the *Beit Yosef* himself writes this in the name of the Zohar (Vayakel) that here listening is like reading. And this is the simple custom in most Jewish communities. . . .

Importantly, Arukh ha-Shulḥan never cautions us against giving the *aliya* for Zaḥor or Parah to a blind or illiterate person, nor does he confine the Maharil to situations of potential humiliation or anger. This is not to say that *poskim* in this camp have no questions about the Maharil’s position as a theoretical matter;⁵⁷ rather, they maintain that, as a matter of halakhic methodology, the dispute is over once we have ruled in the Maharil’s favor, and dissenting views (like the Rosh) whom we ruled against need not constrain our practical halakhic choices.⁵⁸

In addition, there is a second way to defend the Maharil Option, even if we admit to some lingering reluctance to rely on the Maharil’s leniency. In a social distancing context, the only alternative to the Maharil Option is the Tosefta Option—which, in turn, conflicts with our normal policy against assigning multiple *aliyot* to the same person. Which concern is paramount?⁵⁹ Advocates of the Maharil Option may contend that any lingering worries about relying on the Maharil’s opinion are simply outweighed by our traditional opposition to granting multiple *aliyot* to the same individual when not absolutely necessary.

In summary, a reasonable case can be made for both sides of this dispute. If Ashkenazic acceptance of the Maharil’s leniency is halakhically confident, per the Arukh ha-Shulḥan and others, then the Maharil Option is appropriate;

but if such acceptance is only cautious, per the *Mishnah Berurah*, then the Tosefta Option is arguably best.⁶⁰ However, a “tie breaker” favoring the Maharil Option is the fact that granting multiple *aliyot* to one person is generally disfavored and is only an option of last resort.⁶¹ Therefore, even if our endorsement of Maharil is tentative, any reservations about relying on his leniency are arguably outweighed by our reluctance to unnecessarily give one person multiple *aliyot*. Furthermore, we submit that the Maharil Option is buttressed by our proposal in this paper reconciling the Maharil’s position with the views of many earlier, authoritative *rishonim*. Those *rishonim* arguably objected to illiterate *olim* on *kavod* grounds only, and they may well have accepted Maharil’s updated reassessment of *kavod* standards; or would at most object to Maharil only *le-khathila*.⁶² Our perspective on the *rishonim* thus lends further support to contemporary *poskim* who recommend the Maharil Option.

Of course, we recognize that Sephardic communities have traditionally adopted the view of the Rosh and the *Shulḥan Arukh* as normative. According to this view, since *aliyot* for the blind are not allowed, neither are *aliyot* for *olim* who are too far away to read because of social distancing. Adopting the Tosefta Option is thus a viable option for such communities; distant *aliyot* are not.

b. “Mixed” *Minyanim*: A Proposal

From our analysis of the debate over whether to adopt the Maharil Option or the Tosefta Option, we think an important insight emerges with respect to *minyanim* that are regularly attended by a mixture of Ashkenazim and Sephardim. In the United States, it is very common to find a mixture of Ashkenazic and Sephardic Jews in shuls that align along ideological lines (for example, Haredi or modern) rather than along ethnographical lines. Sephardim often find themselves in the minority, perhaps on average making up five to ten percent of a typical

Modern Orthodox community in America.⁶³ There are of course numerous Sephardic *minyanim*; but in some communities, and especially where overall numbers are smaller, Orthodox Sephardim must frequently participate in *minyanim* that are predominantly Ashkenazic. For “mixed” *minyanim*, the question of how to handle *aliyot* during social distancing is even more complex. Ashkenazic congregants and leaders might incline toward the Maharil Option; but what about the needs of Sephardic members, whose halakhic tradition forbids distant *aliyot* and considers them a *brakha levatala*?

We propose the following rule for such situations:

Synagogues that serve both Ashkenazic and Sephardic congregants should adopt the halakhic position that Ashkenazic and Sephardic *posqim* both agree minimally fulfills the communal obligation—even if it is less than “ideal” for one or both communities.⁶⁴

Following the clear lead of the *Shulhan Arukh*, many Sephardic authorities adopt the view that the *oleh* must read along and that the Maharil is not to be relied upon, with many holding that such *aliyot* are a *brakha levatala* and that such a Torah reading does not even fulfill their obligation *bedi’aved*.⁶⁵ Therefore, we submit that in ethnographically mixed shuls (even if Ashkenazic in overall ritual practice and rabbinate), the Tosefta Option is the better choice. The *ba’al goreh* who reads the Torah should receive all of the *aliyot*, so that all congregants including Sephardim at least minimally fulfill their obligation.⁶⁶

Special consideration for mixed *minyanim* is especially important during the pandemic, when many Ashkenazic synagogues which normally hosted separate *minyanim* for Sephardic congregants were compelled to contract their operations and ceased offering separate Sephardic services. If such a synagogue elects the Maharil Option, instead of the Tosefta Option, then

Sephardic members will effectively be disenfranchised: *aliyot* will only be given to Ashkenazim, because Sephardim cannot accept distant *aliyot*, which they believe violate Halakhah;⁶⁷ moreover, the granting of distant *aliyot* (to Ashkenazic congregants) precludes Sephardim from properly fulfilling their obligation of Torah reading.⁶⁸

In conclusion, the Maharil Option, endorsed by Rabbi Moshe Sternbuch, seems very appropriate for Ashkenazic shuls of the type he is presumably addressing—namely, an Ashkenazic *minyana* with no Sephardic members who depend on that *minyana*. However, for typical “mixed” *minyanim* in the United States, where the ritual practices of the shul follow Ashkenazic practice and the rabbi is Ashkenazic but a noticeable percentage of the community identifies as Sephardic, we suggest that adopting the Tosefta Option in order to minimally fulfill the obligations of all members is better than the Maharil Option—because while the latter choice is ideal for Ashkenazim, it is not even minimally sufficient for many Sephardim.⁶⁹

SUMMARY AND CONCLUSION

This article has analyzed the question of *aliyot* for non-readers from several angles: historical and contemporary; theoretical and normative. We have shown that the view of the Tosefta that when only one person can read from the Torah Scroll, that lone reader should receive every *aliya* is universally accepted by the *rishonim* as proper halakhic practice—but its basis is actually subject to an important dispute among the *rishonim*. One group, led by the Rosh, holds that this is the law because a person who cannot read is ineligible for an *aliya*: his blessings are void and the obligation to read is unfulfilled. Others including Rambam (we think), and certainly the Agudah and Eshkol, hold the Tosefta’s requirement that each *oleh* actually read is merely a rule of proper decorum and conduct, and not an essential element of the *aliya* or of Torah reading. Consequently, this latter group

allows for exceptions. Maharil expanded those exceptions, since by his time the Torah was virtually always read aloud in any case by a single *ba'al qoreh*, and so it was reasonable to conclude that there was no longer any lack of public decorum in allowing a blind or illiterate person to receive an *aliya*. Subsequent authorities split as to whether the Maharil's leniency should be (1) rejected entirely, (2) relied upon but only cautiously and when warranted (to avoid shame), or (3) relied upon broadly.

In the times of the modern pandemic, this question has returned in full force: Given the need to distance, contemporary halakhic authorities disagree over whether to have a single *ba'al qoreh* receive all seven *aliyot* on Shabbat or allow people to be *oleh* from a distance despite being too far away to read from the text. Sephardic

authorities generally follow the Tosefta's original rule (per the Rosh and *Shulḥan Arukh*) of giving a single reader all of the *aliyot*, while Ashkenazic decisors are split. We explained both sides of this dispute and argued (for Ashkenazim) in favor of granting distant *aliyot* in reliance on the Maharil. Finally, we also argue that a special halakhic policy is warranted in many North American communities where Ashkenazim and Sephardim commonly pray together in “mixed” *minyanim* and synagogues. In such an environment, we propose that communities adopt the rule of consensus: select the option that both Ashkenazic and Sephardic decisors all agree is minimally satisfactory. In the context of social distancing, the rule of consensus means following the *Shulḥan Arukh* and assigning all *aliyot* to the *ba'al qoreh*.

REFERENCES

- 1 Some propose creative ways enabling *olim* to read along despite social distancing; see Rabbi Yitzchak Yosef's various suggestions such as assigning extremely short *aliyot* (three verses each), “Halakhic Provisions due to the Easing of the Guidelines of the Ministry of Health” [Hebrew], 28 Nissan 5764 (April 19, 2004), https://7d4ab068-0603-408d-89df-fac4580e17c4.filesusr.com/ugd/8b9b1c_6657f207a1194e788f2d257c2d3bb610.pdf. His suggestion of positioning a second Torah at a location where each *oleh* can read along quietly, thus preserving the basic traditional model is the most novel and merits separate discussion beyond the scope of this paper. For COVID Halakha generally see Kol Corona, <https://www.kolcorona.com/halachot>. The responsa of Rabbis Rimon, Sternbuch, Weiss, Schachter, Willig, and Yosef all cited in this article can be found at this webpage and are not specifically linked to beyond this reference.
- 2 *Orah Haim* 139:2 (one who cannot read from the *Sefer Torah* even when prompted by a skilled reader may not receive an *aliya*); 141:2 (an *oleh* who does not at least read quietly is deemed to have recited a *brakha levatala*); and 143:5 (endorsing the Tosefta's rule for a *minyan* with only a single capable reader)
- 3 T. Megillah 3:12.
- 4 We use the terms “illiterate” and “unlettered” in this paper as shorthand to denote an individual who does not know how to read Hebrew text. Those terms are not intended to include the blind or vision-impaired, for example, or those unable to read from a text because they are standing too far away. We use the term “non-readers” instead when we intend to include all those who, for whatever reason, cannot (or will not) read from a text.
- 5 Following, for example, Rabbi Moshe Sternbuch response at Kol Corona; and Rabbi Asher Weiss #31 *ibid*.
- 6 Following, for example, Rabbi Hershel Schachter responsa above; see also Rabbi Asher Weiss #26, discussed at length below.
- 7 “If [only] one person knows [how to read] the *parsha*, then he reads all of it; if seven know [how to read] at least three verses each, then they can each read; and if [only] one person knows [how to read] three verses, then he reads them over and over.” Y. Megillah 4:3.
- 8 See for example, *Geonim ha-Hadashot* #34; citations in *Shibbolei ha-Leqet* 37 to R. Netronai and R. Nissim.

- 9 Rif Megillah 14a; Rambam, Rules of *Tefillah* 12:17; Rosh Megillah 3:1, 3:10; Tur, *Orah Haim* 141; *Or Zarua*, *Hilkhot Qri'at ha-Torah* 2:383 and *Hilkhot Shabbat* 2:24; Ravya Megillah 577; *Sefer ha-Pardes, Sha'ar ha-Ma'aseh—Birkat Qri'at ha-Torah*; Tosafot Gittin 59b, s.v. *ki ka-amrinan*; Tosafot Rid Megillah 23a, s.v. *zeh ha-klal*; Pisqei Riaz Megillah 3:12; *Shibbolei ha-Leqet* 36; Shut Rashba 1:13; Shut Maharam me-Rotenberg (Levov) 402; Mordechai Megillah 3:811; *Sefer ha-Itim* 182; *Sefer ha-Agudah Megillah* 21b; Ran Megillah 14a (Rif pages); Shut Rivash 204; R. Yerucham, *Toldot Adam v'Hava* 2:3.
- 10 Maharil's opinion is discussed in parts III and IV below.
- 11 Interestingly, a student of Maharam me-Rotenberg named R. Asher bar Moshe sent a letter to his teacher in which he argues, in passing, that the Tosefta's rule should no longer apply in our times because we are accustomed to having a single *ba'al qoreh* read for the congregation. See Shut Maharam me-Rotenberg, *Krimona* edition, 8. But as noted, Maharam himself endorsed the Tosefta, as did his leading students Mordechai and Rosh. While an argument in favor of waiving or loosening the rule against illiterate *olim* may well have been raised a generation or two before Maharil (or perhaps even earlier), we found no *rishonim* who actually ruled counter to the Tosefta until Maharil. To the contrary, the leading authorities before Maharil—including Maharam, his students, and many others—evidently were not persuaded by such arguments and continued to endorse the Tosefta's rule as good law.
- 12 We analyze and discuss the Agudah and Eshkol below at length in the material between notes 36 and 40.
- 13 Agudah Megillah 3 (21b).
- 14 Rosh Megillah 3:1, 3:10, Teshuvot ha-Rosh 3:12. From the latter source:

ובור לקרות בתורה אין דבר הגון, כי מאחר שהוא מברך צריך שיקרא שלא תהא ברכה לבטלה. אמנם אם קורא עם החזן ויודע להבין ולהברר האותיות ולקרותם עם החזן מקרי שפיר קריאה. אבל שיברך הוא על מה שהחזן קורא והוא לא יקרא כלל לא יתכן כלל.

It is improper for an ignoramus to read from the Torah, for since he makes a blessing, he must also read in order to avoid a *brakha levatala*. However, if he reads along with the *hazan* and knows how to connect the letters and read the words with the *hazan*, that is called reading. But for him to recite a blessing on what the *hazan* reads while he himself does not read is utterly improper.

- 15 Rosh Megillah 3:10.
- 16 *Supra*, note 9.
- 17 *Sefer ha-Minhagim, Minhag shel Shabbat, Hagahot ha-Minhagim* #40.
- 18 *Darkhei Moshe, Orah Haim* 135:4, 141:1. Some propose that this *Darkhei Moshe* has been misconstrued: the acronym ו"ל"נ in 141:1 was incorrectly expanded to ולי נראין ("I agree with [the words of Beit Yosef]") when in actuality Rama intended ולא נהירא ("Incorrect are [the words of Beit Yosef]"). (If so, it is also necessary to invert the analogous acronym in 135:4, in the opposite direction.) This suggestion is quoted in the name of Rabbi Ovadya Hadaya (Sephardic *dayan* and mystic, 1889–1969) by Rabbi Ovadia Yosef in *Yabia Omer* OC 9:83, but Rabbi Yosef rejects it.
- 19 See, for example, *Mishnah Berurah, Sha'ar ha-Tziyun* 139:6:

[ו] דדין זה של מהרי"ל, כבר כתב הדרכי משה בסימן קל"ה ובסימן קמ"א שלא נראה לו, בין בסומא ובין בעם הארץ [אם אינו יכול לקרות עם הש"ץ], אלא מפני שנהגו העולם להקל בזה העתיקו הרמ"א.

For as to this rule of the Maharil, the *Darkhei Moshe* in OC 135 and 141 has already written that he does not agree with it, both for a blind person and an illiterate one [if he cannot read along with the *hazan*]. But since the community follows the Maharil, the Rama cites it.

Arukh ha-Shulhan 139:7 comments similarly:

ורבינו הרמ"א כתב דעכשיו קורא סומא בתורה כמו שאנו מקרים בתורה לעם הארץ עכ"ל. וכתב זה בשם מהרי"ל כלומר דכן המנהג אף שדעתו אינו כן כמ"ש בספרו דרכי משה ע"ש.

Our teacher, Rama, writes that nowadays we call a blind person to the Torah like we call an illiterate person. He writes this in the name of the Maharil to say that this is the custom even as Rama does not agree as he writes in the *Darkhei Moshe*.

- 20 See Taz 141:3; *Magen Avraham* 139:4; *Elya Rabbah* 139; as well as *Mishnah Berurah* 139:12 and 143:33 and *Arukh ha-Shulhan* 139:3, 139:7–8 and 141:5. One is hard-pressed indeed to find an Ashkenazic authority who rejects the Maharil.
- 21 Eshkol, *Hilkhot Qri'at ha-Torah*, 68b
- 22 Interestingly, R. Yosef Karo in *Beit Yosef* OC 141 seems to posit that the holdings of Eshkol and Agudah reflect the position that even if an *oleh* is absolutely required to read, it may suffice legally if the *oleh* simply repeats *b'al peh* (by heart) what he hears the *ba'al qoreh* read—even without reading himself from the written text of the *Sefer Torah*. In other words, *Beit Yosef* treats Eshkol and Agudah as a kind of workaround for non-readers to receive *aliyot* if—and only if—they can accurately repeat the words that they hear the *ba'al qoreh* recite. R. Karo goes on to reject the Eshkol and Agudah on the issue of reading by heart, concluding that they are opposed by a solid majority of authorities (“ואין לסמוך על דבריהם נגד כל הני רבוותא”), including Rambam and Rashba who both forbid a Torah reader from reciting even a single word by heart. In any case, per the *Beit Yosef*, even the Eshkol fails to support the Maharil’s broad leniency for illiterate individuals, as Maharil never specified a limitation that an illiterate person may only have an *aliya* if he is capable of reading along by heart. Indeed, subsequent Ashkenazic *posqim* who follow Maharil state clearly that the illiterate may receive *aliyot* even if they cannot read along at all, see, for example, *Arukh ha-Shulhan* 139:3 and sources cited there.
- 23 *Supra*, note 12.
- 24 Agudah on Baba Qama ch. 8 #104.
- 25 Y. Megillah 4:1.
- 26 It is also raised in *Beit Yosef* 141, without citing Maharil, in the course of analyzing the view of Rosh and Tur that an *oleh* must read from the Torah and not merely listen. R. Karo raises a concern: the Zohar cautions against two people simultaneously reading in public from a *Sefer Torah*. R. Karo therefore questions Rosh’s requirement that each *oleh* read along quietly with the *ba'al qoreh*. Contending that the Zohar takes priority over *rishonim* like Rosh, R. Karo tentatively suggests (in the *Beit Yosef*) that perhaps an *oleh* should *not* read along, and he defends this tentative suggestion—*contra* Rosh—by invoking *shome’a k’oneh*. However, R. Karo ultimately concludes that quiet reading along by the *oleh* does not violate the Zohar, and in *Shulhan Arukh* he adopts Rosh’s position normatively as we have seen.
- 27 Commentators have suggested various reasons why *shome’a k’oneh* may be inapplicable or insufficient for purposes of Torah reading by an *oleh*. See, for example, Minhat Asher, Responsa #31 (blessing must be recited by one who physically performs a mitzvah, not by their agent). Or perhaps Torah reading is a purely *communal* obligation, like a *hazan’s* repetition of *tefillah*, and the role of the audience is simply to *listen* to the reader, not to read vicariously; whereas *shome’a k’oneh* is only applicable for a listener who is obligated to *read*. An *oleh* who listens passively is like any other member of the congregation and is not deemed to have *read*. *Bi’ur Halakha* 141:2.
- 28 *Bi’ur ha-Gra, Oraḥ Haim* 139:3, s.v. *u-Maharil katav*.
- 29 A brief review of the background to this shift may be helpful. During the Talmudic period, each *oleh* would typically read their *aliya* aloud to the congregation *themselves* from the Torah. Thus, the Mishnah (M. Megillah 4:2) formulates the rule for the number of *aliyot* on various days in terms of the number of *readers*: “The general rule is: On any day when a *musaf* sacrifice is brought but it is not a “holiday” [that is, work is permitted]—four *read*; on a holiday—five; on Yom Kippur—six; on Shabbat—seven.” Rambam’s formulation (Rules of *Tefillah* 12:16) is similar: “How many *readers* are there? On Shabbat morning seven *read*; on Yom Kippur—six, and on holidays—five . . . and on Rosh *Hodesh* and *Hol ha-Moed* four *read*. . . .” However, during the era of the *rishonim*, the practice of using a *ba'al qoreh* gradually took hold in many Jewish communities. For example, Tosafot (Rosh ha-Shana 27a, s.v. *aval shnayim lo*) discusses use of a *ba'al qoreh*, and so does Rosh (thirteenth century) and many who follow; whereas Rambam never mentions a *ba'al qoreh*, and *Shibbolei ha-Leqet* (35) quotes twelfth-century Tosafist R. Ephraim of Regensburg as sharply critical of the practice (ותיפה רוחם של חזנים שהעומד לקרות בתורה מברך לפניו ולאחריה והחזן קורא).
- 30 Rosh Megillah 3:1.
- 31 B. Megillah 23a.
- 32 B. Gittin 59b.
- 33 See Aryeh A. Frimer, “Women’s Aliyyot: *le-Khatteḥila, be-di-Avad* and *bi-She’at ha-Deḥak*,” *Hakira* 22/157 (2017), <http://www.hakirah.org/Vol22Frimer.pdf>.

- 34 Rambam, *Rules of Tefillah* and Priestly Blessings 12:17. Rambam consistently refers to *olim* as *qor'im* (readers). This suggests Rambam viewed reading as a core element of the *aliya*; but it provides no clear basis to assume he considered passive reading invalid (*shome'a k'oneh*).
- 35 See *supra*, note 9.
- 36 *Elya Rabbah* (139, s.v. *suma*), which concurs with Maharil, in a similar spirit permits *aliyot* for *amei ha-aretz*, blind, and *mamzerim*—all in one breath. The only conceivable issue raised by *mamzerut* is *kavod*, which is an excellent example of our point.
- 37 See *supra*, note 12 and text.
- 38 Agudah on Baba Qama, ch. 8 #104.
- 39 Eshkol, *Hilkhot Qri'at ha-Torah*, 68b.
- 40 See above, note 22.
- 41 "Black Death," https://en.wikipedia.org/wiki/Black_Death, citing Suzanne Austin Alchon, *A Pest in the Land: New World Epidemics in a Global Perspective* (Albuquerque: University of New Mexico Press, 2003).
- 42 See Robert S. Gottfried, *The Black Death: Natural and Human Disaster in Medieval Europe* (New York: Simon and Schuster, 2010), 74: "The overall impact of what can only be called a holocaust was calamitous. By 1351, 60 major and 150 smaller Jewish communities had been extirpated, and over 350 separate massacres had taken place." See also "Persecution of Jews during the Black Death," https://en.wikipedia.org/wiki/Persecution_of_Jews_during_the_Black_Death.
- 43 Rabbi Aviad Tabory, *The Black Death 1347–1351*, <https://www.etzion.org.il/en/shiur-08-black-death-1347-1351> (link inactive now): "An entire generation of Torah scholars perished, along with their *yeshivot* and Torah centers. The challenge of rebuilding the world of Torah fell on the shoulders of a new generation. . . . One of these rabbis was the Maharil, Rav Ya'akov ben Moshe Levi Moelin. . . ."
- 44 We know of no grounds to assume that *blindness* became more common during or after the Black Death. But our point is simply that concern for including illiterate congregants was the key driver to remove the *kavod*-based requirement that *olim* read. As a consequence, blind individuals could have *aliyot* too. The original description of Maharil's ruling by his students is aptly worded to convey this nuance: *וכן הסומא, וכן הארץ, עם הארץ, וכן הסומא*.
- 45 See *Mishnah Berurah* 143:33 and *Arukh ha-Shulhan* OH 143:8, commenting on the rule of the Tosefta as affirmed by the *Shulhan Arukh*:

משנה ברורה קמג:לג: אכן לפי מה שכתב הרמ"א שם בסעיף ה' דאנו קוראים אפילו לע"ה ואפילו אינו יכול לקרות אחרי המקרא וכמו שכתבנו שם במ"ב וא"כ ישתנה האי דינא דלדידן לעולם צריך לקרות שבעה קרואים ויברכו והש"ץ יוציאם בקריאתו.

Mishnah Berurah 143:33: But according to that which Rama 139:5 [in our text it's 139:3] wrote that we give an *aliyah* to an illiterate person even if he cannot read along with the *hazan* as we note there in the *Mishnah Berurah*, therefore this rule has changed and we must always call up seven people who make the *brakha* and the reader fulfils their obligation with his reading.

ערוך השולחן אורה חיים סימן קמג סעיף ח: כתב רבינו הב"י בסעיף ה' בהכ"נ שאין בהם מי שיודע לקרות אלא אחד יברך ויקרא קצת פסוקים ויברך לאחריהם ויחזור לברך תחלה וקורא קצת פסוקים ומברך לאחריהם וכן יעשה כמה פעמים כמספר העולים של אותו היום עכ"ל ונראה דדין זה לא שייך בזמנינו שאין העולים קוראים בעצמם אלא הש"ץ קורא דבכה"ג הלא כולם יכולים לעלות לתורה וזה שיודע לקרות יהיה הוא הקורא וכן נוהגים:

Arukh ha-Shulhan 143:8 Our teacher the Beit Yosef in 143:5 notes that in a synagogue which lacks anyone but one to read, that one person should read some verses, bless and conclude with the blessing and then return and bless, read more verses and bless again; and he should do this as many times as needed for the *aliyot* of this day. But it seems that this rule is not applicable in our times as the *olim* do not read themselves, but rather the *hazan* reads, and so in such a situation [that is, a synagogue with only one capable reader] it is obvious that all of them can be *oleh* to the *Torah* and the one who knows how to read will read, and this is our practice.

- 46 Such as a *minyan* of mute men and a single person who can speak serving as the *ba'al qoreh*.
- 47 Following, for example, Rabbi Sternbuch.
- 48 Below we explore more deeply why this may be so.
- 49 Following, for example, Rabbi Schachter; see also Rabbi Weiss #26, discussed *infra*, note 56. This is what the CRC and the OU recommend. See for example, the instructions of Rabbi Yona Reiss, Av Bet Din of the Chicago Rabbinical Council:
- At this time, it is still recommended for only one person to stand at the opening of the Aron or at the bimah at any moment in time. Accordingly, the *ba'al keriya* should ideally receive all the *aliyos*. If the *laining* needs to be split between two people (such as with double *parshiyos* that may be difficult in certain cases for one person to prepare or *lain* alone) the *aliyos* should be split between those two individuals, with each receiving all the *aliyos* that relate to the portion of the double-*parsha* read by them.
- Rabbi Yona Reiss, “Issues For Shuls’ Reopening,” https://docs.google.com/document/d/1unDFVOggYW5xb37Vzdnj_yfoD7zKKhsb8hffTHjCGIM/edit.
- 50 Rabbi Asher Weiss #26, and compare with Rabbi Asher Weiss #31 and Rabbi Moshe Sternbuch.
- 51 *Shulhan Arukh* OH 143:5.
- 52 Responsa of Rabbi Schachter; recommendations of CRC (Rabbi Yona Reiss), *supra*, note 49.
- 53 See also his *Sha’ar ha-Tziyun* 136:6 in which he discusses the sources further and concludes that “it is certainly proper to be strict for these [*d’orayta*] Torah readings” (לענין פרשיות אלו בודאי נכון להחמיר) and we should not give the *aliyot* of *Zaḥor* or *Parah* to blind or illiterate individuals.
- 54 This approach is consistent with the *Mishnah Berurah’s* overall methodology of seeking to satisfy all halakhic opinions from major authorities when possible. For more on this, see Michael J. Broyde and Ira Bedzow, *The Codification of Jewish Law and an Introduction to the Jurisprudence of the Mishna Berura* (Boston, MA: Academic Studies Press, 2014), especially chaps. 5 and 6 (discussing *Mishnah Berurah’s* preference to be strict when possible in order satisfy all reasonable views).
- 55 Rabbi Mordechai Willig notes that some have expressed concern that if the Tosefta Option is followed, the *ba'al qoreh* should not repeat blessings on each *aliya* lest he recite a *brakha levatala*:

ויש שהציעו שאחד יקרא כל העליות אבל יברך רק לפני העליה הראשונה ואחרי האחרונה. . . ומקורו בספר העיטור (הלכות הלל) שסובר שאם מברך על ב' עליות רצופות ברכה לבטלה היא. . . אבל מנהגנו דלא כהעיתור כשאין לוי וה"ה כשאחד קורא כל העליות.

As Rabbi Willig states, the source that most clearly opposes giving a person consecutive *aliyot* and reciting blessings each time is the *Sefer ha-Ittur* (Ten Commandments, *Hallel*, 95d), which rules that when no Levite is present but a *kohen* is, the *kohen* receives the first *aliya* but should *not* be given the second *aliya* because for the same *kohen* to recite a blessing over both *aliyot* would be a *brakha levatala*. Thus, the *Ittur* reads:

ואמר אביי נקטינן אין שם לוי כהן קורא במקום לוי ודוקא אותו כהן אבל כהן אחר לא משום פגמו של ראשון. . . ויש לפקפק על ברכת התורה שקרא כבר וחוזר ומברך שנייה ונראה שהיא ברכה לבטלה. . . ו"ל קודם תקנה. . . שהפותר והחותם בתורה מברך לפני ולאחריה וקורא ראשון ועומד ויושב ועומד וקורא כמה פעמים. ומסתב' בלא ברכה אבל רב עמרם אמר מברך בכל פעם ופעם ואינו נראה דעדיין לא היה תקנה משום הנכנסין והיוצאין. ועכשיו לא יקרא אותו במקום לוי ואפ"ל עומד ויושב דברכה לבטלה היא. ואומר אני החזן יאמר יעמוד ישראל במקום לוי ואין בו חשש. א"נ יעמוד כהן במקום לוי. . .

Abaye says (B. Gitin 59b) that if no Levite is present, then a *kohen* should be *oleh* instead of a Levite—but only the same *kohen* [who received the first *aliya*], because [calling up a different *kohen* for the second *aliya*] would tarnish the first *kohen’s* reputation. . . [However, it seems] one can question the blessing on the Torah, seeing as he [the same *kohen*] has already read and would now be making a blessing for the second time, and that seems like a *brakha levatala*. We can answer that [Abaye’s suggestion that the same *kohen* receive two consecutive *aliyot*] comes from a time before the enactment [of blessings on the middle *aliyot*], when only the first and last *oleh* recited a blessing and one

could therefore read the first *aliya* and stand, and [then] sit down and stand back up again and read multiple times; while [Abaye's ruling that the same *kohen* receives the both *aliyot*] is presumably without making a [second] blessing. But Rav Amram [Gaon] says a blessing is recited each time—but this does not seem correct, because [at the time of Abaye's law] there was no enactment yet [that blessings be recited by every *oleh*]. *Nowadays however we should not call [a kohen up] in lieu of a Levite*, even if he stands and then sits [between the two *aliyot*], *as this a blessing in vain*. Instead I say that the *hazan* should announce "Arise Israelite, in place of a Levite" and there is no concern [of offense to the *kohanim*], or alternatively "Arise *kohen* in place of a Levite" [that is, a different *kohen* than the one who received the first *aliya*].

As Rabbi Willig points out, present practice *rejects* this *Ittur*: we commonly grant consecutive *aliyot* to a *kohen* if no Levite is present, and the *kohen* recites the blessings on both *aliyot*. Therefore, Rabbi Willig concludes, a reader who receives all of the *aliyot* in the case of social distancing should similarly recite the blessings on each *aliya*.

- 56 Initially, Rabbi Weiss contended (responsum #26, in one argument) that the Maharil's leniency for blind and illiterate people should *not* be extended to new scenarios ("אין לך אלא חידושו והבו דלא לוסף עליה") such as social distancing. However, Rabbi Weiss himself *retracts* this argument in a later responsa (#31) published in the same collection, and he concedes that Maharil may be relied upon in common situations of social distancing. He still maintains that a different problem exists if an *oleh* is located on a different balcony or rooftop than the *Sefer Torah* (a common situation in Israel, and the scenario that he addressed in #26)—namely, that each *oleh* must "approach" the Torah. That position is fascinating and creative, but the fact pattern is less common in North America and lies outside the scope of our present paper.
- 57 *Arukh ha-Shulhan* 139:7–8, for example, notes that Rama was critical of Maharil in Darkhei Moshe, and he questions the Taz's proof for the applicability of *shome'a k'oneh*. But this is by way of analysis, and not bottom-line *halakhic* conclusion.
- 58 We believe this approach is methodologically characteristic of the *Arukh ha-Shulhan*.
- 59 One side of the equation is how negatively to view the option of giving all *aliyot* to a single reader. Everyone knows that normally we do not give multiple *aliyot* to one individual. When the Tosefta rules that one individual gets every *aliya* in a shul with only one capable reader, we understand this as anomalous and as permitted *only* because no better option exists. Thus, Bach OH 143 writes:

דהך קריאה דאחד יקרא ז' פעמים לא התירו חכמים אלא מתוך הדוחק שאין להן מי שיקרא אלא אחד

For this reading—in which the same person reads seven times—*was only permitted by the Sages for exigent circumstances* where only one person can read.

The implication is that assigning multiple *aliyot* to one person is an option of last resort. Moreover, one of us contends that the very fact that the Tosefta became a "dead-letter law" and fell out of practice for centuries (for Ashkenazic Jews) weighs further against returning it to practice; and he finds support for this position in the way that *Mishnah Berurah* 143:33 and *Arukh ha-Shulhan* OH 143:8 (*supra*, note 45) both seem to characterize the Tosefta as permanently obsolete. In any case, there is room for debate as to whether invoking the Tosefta Option is warranted and permissible for Ashkenazim merely in order to accommodate the stricter view of the Rosh that *olim* must read.

- 60 Surprisingly, a third camp argues that unless each *aliya* can be assigned to a different *oleh* and each *oleh* can somehow come close enough to read, Ashkenazim should not read the Torah at all during social distancing! This camp insists that the Tosefta Option may not be invoked unless absolutely necessary—and that in situations of social distancing, other alternatives are indeed available, as a practical matter and as a theoretical legal matter:
- as a practical matter, in the sense that there are might be other people in the room who can read at least the minimum requisite verses [even if barely], or who can stand at a safe distance but at a suitable angle to see the text in the *Sefer Torah* well enough to read along. See *infra* note 1, regarding the resourceful suggestions of Rabbi Yitzchak Yosef.
 - as a theoretical legal matter, in the sense that per the *Mishnah Berurah*, as discussed, we accept the Maharil but only tentatively. Therefore, we cannot use the Maharil Option, because it may be a *brakha levatala* if the Rosh is right; but on the other hand, we should not use the Tosefta Option either,

because if the Maharil is correct, then in truth there are plenty of eligible *olim* and giving the *ba'al qoreh* every *aliya* is unnecessary and improper.

This position rests on two premises: (1) that unnecessarily giving multiple *aliyot* to the same individual is halakhically worse than not *leyning* altogether, and (2) that the practical and/or legal-theoretical alternatives they identify mean the Tosefta Option is unnecessary here. In our view, both premises are highly questionable. The first premise lacks authoritative sources. Perhaps the closest analogy is a disputed ruling by Maharam me-Rotenberg, quoted by his prominent disciple Mordechai (Gittin no. 404), that in a community whose members are *all* adult male *kohanim* the Torah should not be read at all (!), because assigning *aliyot* after the first *aliya* to *kohanim* would risk impugning their reputation. However, this opinion reflects specific, exceptional concern for the reputation of *kohanim*, and thus *kohanim* cannot be called *even* if there is no alternative. No light is shed on our question of awarding multiple *aliyot* to a single individual—which is clearly a far lesser concern, as it is expressly permitted when there is no alternative, unlike *aliyot* with reputational risk for *kohanim* (per Maharam). Moreover, the Mordechai himself (ibid.) goes to cite a conflicting view which holds that in a town of only *kohanim*, all *aliyot* should indeed be granted to a single *kohen*. We are hard-pressed to find a convincing source for the proposition that granting multiple *aliyot* to a single non-*kohen* is worse than not *leyning* at all.

The second premise—that the Tosefta Option is unnecessary—at best turns on the question of how to define “necessary” in this context. Rabbinical authorities might well believe that in their communities, for example, pressuring individual *olim* to read aloud verses from the Torah publicly without adequate preparation, subject to audible correction and coaching, would result in public humiliation, and a highly selective approach to *olim* would lead to stigma. The “alternative” of compelling each *oleh* to read aloud is thus arguably not a true alternative. Nor is the theoretical availability of the Maharil Option a true alternative for a community whose leadership determines they are halakhically obligated to defer to the Rosh’s opinion and avoid distant *aliyot* if possible, per the *Mishna Berurah*.

In sum, we do not see sufficient merit in support of this camp’s extreme position to opt for no *leyning* at all over either the Tosefta Option or the Maharil Option. That said, Rabbi Yitzchak Yosef’s creative suggestions for a “third way” that assigns each *aliya* to a different *oleh* who can each read despite social distancing surely deserve consideration by rabbinical leaders for their respective communities. Such options are likely better suited for some communities than others.

61 See above, note 57.

62 In addition, some authorities view inability to read the Torah due to blindness as far less of an affront to *kavod* than illiteracy (*Levush* 141:3), because the blind individual has not shirked a duty of learning to read. The same is true for *olim* who cannot come close enough to the Torah to read because of social distancing restrictions. Therefore, to permit *aliyot* for socially distant *olim*, we need not even go as far as Maharil did in permitting *aliyot* for the illiterate. It suffices to hold the obligation to read is *kavod*-based and that this concern is easier to overcome if an *oleh*’s inability to read is not due to ignorance. As we have noted, the Eshkol and Agudah evidently embraced this position; and there is scant evidence that other *rishonim* outside the *brakha levatala* camp disagreed with them.

63 See “More Ashkenazi Jews Have Gene Defect that Raises Inherited Breast Cancer Risk,” *The Oncologist* 1/5 (1996): 335, which notes a slightly smaller number than we see in our own communities. Perhaps the Sephardic community is larger in Modern Orthodox communities in America than other Jewish communities in America.

64 This approach is implied in the writings of Rabbi Yosef Zvi Rimon, “Porch and Yard Minyanim,” which can be found in the *Kol Corona*, when he notes:

It is thus clear that for Sepharadim, it is preferable for the *ba'al qoreh* to receive all the *aliyot*. And since this solution is acceptable for Ashkenazim as well, it is best to have one unified solution, and not divide *Am Yisrael* into two with an additional ruling unnecessarily, especially when there are minyanim consisting of both Sepharadim and Ashkenazim.

65 This is the view of the Rosh, *Shibbolei ha-Leqet*, Tur, and *Shulhan Arukh*, as we have noted many times, and it should come as no surprise that historically this has been the normative Sephardic view, since it is the view of the *Shulhan Arukh*, the foundational source of modern Sephardic practice. See for example *Peri H'adash* 139:3; *Hidah, Le-David Emet* 5:9; and *Kenesset ha-Gdola* commenting on *Beit Yosef* OC 141, who notes that this is the view of the Sephardic

community. This is also noted by *Kaf ha-Haim* 139:16 as the view of those who follow the *Shulḥan Arukh*. This makes much sense as a matter of Sephardic practice.

- 66 Of course, like other diverse traditions, Sephardic practice is not uniform. We are aware of the view that Sephardim should follow the Maharil and give the blind *aliyah*; see, for example, Rabbi Ben Zion Abba Shaul, *Ohr le-Tzion* 2, 86, note 6, but our understanding is that this is not the dominant view in the Sephardic community. More importantly, we are also aware of the remarks of Rabbi Eliahu Hazon, *Talumat Lev* OC 1:3, who—after endorsing the view that a blind person cannot get an *aliyah* as the proper Sephardic practice—concludes his discussion with the following statement:

סו"ד אני אומר שבמקום שנהגו כוותיה דמרן ז"ל ככל מילי כא"י וערי המערב אין ראוי להעלות סומא אפ"ל ת"ח לס"ת . . . ואם עכ"פ עלה לתורה לא ירד ואין נכון לגעור בו כיון דעכ"פ יש לו על מי לסמוך ואיכא חשש מחלוקת ח"ו וכפרט כעת קריאת ס"ת וגדול השלום שראוי לסמוך על המתירים.

In summary, I say that in a place that follows the view of the *Shulḥan Arukh*, like all the land of Israel and the Orient, it is not proper to give an *aliyah* to a blind person, even a Torah scholar. . . . If, notwithstanding this fact, he goes up to the Torah, he need not descend and it is not proper to rebuke him since nonetheless he has [authority] to rely on and there is the possibility of a fight (God forbid) particularly at the time of Torah reading and great is the value of peace, such that one can rely on those who are lenient.

Rabbi Yitzchak Yosef (*Yalqut Yosef* OC 139), current Chief Sephardic Rabbi in Israel, follows his father Rav Ovadia Yosef (*Yabia Omer* 9:83 and 9:108[74]) in ruling that *aliyah* for the blind are prohibited, but if a blind person is nevertheless called up for an *aliyah* they may proceed and should not be forced to descend from the *bima* or rebuked, based on this *Talumat Lev*. *Yabia Omer* reads as follows:

מסקנא דדינא . . . יש להעמיד הדבר על עיקר הדין, והואיל ואנו קבלנו הוראות מרן שפסק שאין להעלות סומא לס"ת, אפילו כשהשליח צבור מקרא אותו, שב ואל תעשה עדיף, וכיון שהוא שומע ברכות העולים לס"ת וקריאת התורה מפי הש"צ ומכוין לבו אליהם הרי הוא יוצא ידי חובתו כאילו עלה בעצמו. (וכמ"ש התעלומות לב ח"א סוף סי' ג.) ומכל מקום אם עלה לס"ת לא ירד, ואין גוערים בו, כיון שיש לו על מה שיסמוך.

The conclusion as a matter of the law is that . . . the fundamental law should be followed: because we accept the *Shulḥan Arukh's* rule that a blind person cannot get an *aliyah*, even if the *hazan* helps him read, it is better that he "be passive, not active" [and not receive an *aliyah*], and since he hears all the blessings from the other *olim* and the Torah reading from the reader he fulfils his obligation as if he was *oleh*. (As is written in *Talumat Lev* 1:3.) Nonetheless, if he has gone up for an *aliyah*, he should not descend and not be rebuked since he has [authority] to rely on.

Yalqut Yosef codifies:

- ד. לכתחלה אין להעלות סומא [עיוור] לספר תורה, גם לא לעליית מוספים, ובפרט במקומות אלו שהם אתריה דמרן, אולם אם עלה לא ירד, ואין גוערים בו, כיון שיש לו על מה שיסמוך. [ומכל מקום בשמחת תורה שמעלים את כל הקהל לספר תורה, או בשמחה משפחתית כאשר מעלים את כל הקרובים, יש נוהגים להקל ולהעלות סומא לס"ת לעליית מוסף, משום עגמת נפש.]

4. *Le-khatḥila* one may not give a blind person an *aliyah* to the Torah, even for "extra" *aliyah*, and especially not in these areas [that is, Israel] that are under the jurisdiction of Rabbi Karo. Nonetheless, if a blind person ascends for an *aliyah*, he need not descend and we do not rebuke him, since he has [credible authority] to rely on. [Furthermore, on Simḥat Torah when the whole congregation gets an *aliyah*, or at a family joyous event when all family members get an *aliyah*, one can call a blind person up for an "extra" *aliyah* to avoid suffering.]

This more liberal view, which does not force a blind *oleh* to descend once called up, is, we think, predicated on the general approach of both Rabbis Yosef that one should not be rebuked for their action, as long as they have even minimal halakhic support for their act and rebuke would likely generate public fighting and contempt. In such a situation, one should instead explain to the person privately that their conduct is wrong. The phrase אין גוערים בו is

used in this way by Rabbis Yosef in *Yalqut Yosef Qitzur* 207:26, *Yalqut Yosef Shabbat* 1 267:18, *Yabia Omer* OC 4:21, and many other places. (One of us contends that *Yalqut Yosef* can perhaps be read as only permitting the blind *oleh* not to descend once he has been called up for a *hosafa*, that is, an “extra” *aliya* after the minimum requisite Torah reading is complete. Such “extra” *aliyot* do not fulfill any obligation, and if the *oleh* is content to make a blessing based on his understanding of the *halakha*, there is no problem or concern for others or the community. In this reading, even according to the relatively liberal view of the Yosefs, a blind *oleh* does not satisfy the Torah reading obligation. The alternative to this view is to acknowledge that the Yosefs believe that one can actually rely on the Maharil *bedi’eved*, against the rule of the *Shulhan Arukh*.

67 For example, Rabbi Asher Weiss in responsa #32 discusses the case of an Ashkenazic *minyān* with only a single *kohen*—who happens to be Sephardic and thus unable to accept a distant *aliya*. Rabbi Weiss rules that *aliyot* should simply be given to (Ashkenazic) non-*kohanim*, in accordance with the Maharil Option, and that our normal obligation to honor *kohanim* does not apply when the *kohen* who is present cannot accept an *aliya* for whatever reason.

68 See *supra*, note 62.

69 Our recommended approach is also applicable in analogous cases. For example, consider the case of an Ashkenazic and Sephardic roommate who want to hang a mezuzah; vertical or slanted? We claim that since Sepharadim rule that a slanted mezuzah does not fulfill the obligation, while Ashkenazim aver that slanted is preferable but vertical is acceptable *bedi’eved*, a mixed apartment should hang a mezuzah vertically. (This is indeed suggested in note 517 of a draft work *Sefer mi-Mizraḥ umi-Ma’arav* by Rabbi Yonatan Nacson). Of course, our rule does not apply in cases where neither choice satisfies both communities *bedi’eved*—such as אָדָם or דָּקָה in a Torah, or choosing which *haftarah* to say. The broader question of optimal ritual conduct in “mixed” communities merits further analysis and discussion.