

Women's Eligibility to Write *Sifrei Torah*

Jen Taylor Friedman

Abstract: This article explores the topic of women writing *sifrei Torah*, *tefillin*, and *mezuzot*, as found in the talmudic and post-talmudic halakhic canon. The question of a woman's eligibility to write a sefer Torah is discussed in detail, and a path of reasoning is described that would permit a woman to write a sefer Torah for use in the public Torah reading.

Biography: Jen Taylor Friedman studied at Machon Pardes and the Drisha Institute.



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A – Introduction

In the course of this exploration, we shall attempt to ascertain why a woman is considered ineligible to write a *sefer Torah*, looking first at the standards of production for *kitvei qodesh*, the sacred texts, and then at why women in particular are considered ineligible to write them. We will look closely at the differing functions of *kitvei qodesh*, the extent to which the aforementioned standards apply, and the degree to which there is consensus on the various positions we will encounter. We will explore several instances of discord, and show that they may be harmonized; one consequence of our harmonization will be that there exist circumstances in which women may be considered eligible to write *sifrei Torah*.

Let me emphasize that this is intended more as a theoretical exercise than as either *pesaq* or exhortation. The implications of permitting women to take part in any ritual activity from which they have traditionally refrained are far-reaching and have been discussed at length elsewhere by persons more qualified so to do. Whether a community should permit its women to write *sifrei Torah* is an entirely separate question, and I do not pretend to offer advice as to the merits or otherwise of such a decision, except to say that as with any communal decision it should be approached with care.

a1. Approaches to egalitarianism

The entire question of women's eligibility to write anything at all is irrelevant if one views *sofrut* (the scribal arts) from a completely egalitarian perspective. This paper does not

aim to discuss the wider topic of egalitarianism in general. In brief, however, the egalitarian approaches are:

Summary dismissal of all considerations of gender. Here, there clearly would be no problem with a female *soferet* (scribe; the masculine form of the noun is *sofer*), but summary dismissal of halakhic texts is not generally considered a valid halakhic mechanism.

b) *Equation of acquired and from-birth obligations.* The contention here is that an acquired obligation, either voluntarily undertaken or assumed as a matter of cultural identity, is identical in nature to an obligation with which one was born. With this approach, one may say that a woman who commits herself to observance of the *mitsvah* of *tefillin* has a *de-orayeta* obligation (an obligation grounded in biblical, as distinct from rabbinic, law) just as does a normal adult male, and may therefore function as a scribe just as a man, since, as we shall see, women's halakhic exclusion from ritual writing stems entirely from their exemption from donning *tefillin*. The validity of this premise is questioned by many.

c) *Redefining the halakhic category of "woman."* The halakhic category "woman" is here redefined in such a way as to place contemporary women outside it, because of their altered social status, their performance of *mitzvot*, and so on. Any talmudic reference to "a woman" is then to be read as referencing these "other women," and is not necessarily applicable to "today's women," to whom quite different rules may apply. Again, the validity of this approach is questioned by many.

a2. *Kitvei qodesh* - the holy texts

Sifrei Torah are the most conspicuous specimens of the *sofer's* craft, but ritualized writing is also mandated in various other situations. In the home, the verse “You shall bind them for a sign upon your hand, and they shall be for a sign between your eyes. And you shall write them on the doorposts of your house and on your gates” (Deut. 6:8-9) taken literally results in the wearing of sections of text in *tefillin*, and their display as *mezuzot*. The *megillah* (scroll) of Esther, read on Purim, is also a ritualized text that must be read from a halakhically valid scroll; some communities also read the other *megillot* (four other biblical books read at various times) and the *haftarot* from valid scrolls. All of the *kitvei qodesh* are written in accordance with essentially the same set of rules, a few leniencies and stringencies derived from *Torah* or hallowed by tradition being applicable in various instances.

B. Criteria for valid *kitvei qodesh*

b1 - Who may not write?

A list of persons ineligible to write *kitvei qodesh* appears at *Gittin* 45b, and this list is incorporated into most of the subsequent halakhic discussion of the topic. This crucial passage is cited here in its entirety.

Mishnah: One may not buy *sifrei Torah*, *tefillin* and *mezuzot* from non-Jews¹ for more than their fair price, for *tiqqun ha-olam*.

Gemara: Rav Budya said to Rav Ashi: One may not buy them when they are overpriced, but may buy them when they are at a fair price. Learn from this that a *sefer Torah* found in the possession of a non-Jew may be read from, or perhaps it should be buried. Rav Nahman said: We learn that a *sefer Torah* written by a heretic is burned and one written by a non-Jew is buried; if found in the possession of a heretic it is buried, if in the possession of a non-Jew,

some say it should be buried and some say it may be read from. A *sefer Torah* written by a non-Jew: one *tanna* says burn it, one *tanna* says bury it, and one *tanna* says read from it! This is not a difficulty—the one who says burn it is Rabbi Eliezer, who said: A non-Jew may be presumed to direct his acts towards idolatry. The one who says bury it is the one who taught as Rav Hamnuna the son of Rava from Pashronia taught: *sifrei Torah*, *tefillin* and *mezuzot* written by (*some editions*: a heretic,) an informer, a non-Jew or a slave, a woman or a child, a Cuthean or an apostate Jew, are invalid, as it is said, [Deut 6:8-9] 'Bind them...write them'—anyone who is commanded to bind is commanded to write, and anyone who is not commanded to bind is not commanded to write. The one who says “read from it” is the one who taught: “One may buy *sefarim* from non-Jews in any place, provided they were written correctly.”

The tannaim are by no means unanimous as to the fate of a sefer Torah written by a non-Jew

Opinions range from the most extreme to the most lenient. There is nothing here to say. The *tannaim* are by no means unanimous as to the fate of a *sefer Torah* written by a non-Jew; whether the positions other than Rav Hamnuna's would permit using a *sefer Torah* written by a woman, although given that the distinction between Jew and non-Jew tends to overshadow the distinction between male and female Jews, one might suppose that if a *sefer Torah* may be written by a non-Jew, it may certainly be written by a Jewish woman.

In any case, Rav Hamnuna is the most specific about persons other than non-Jews, and his reasoning is that only one who is obligated by the *mitsvah* to don *tefillin* may write *tefillin* or any other *sifrei kodesh*.

¹ Some texts here have “*oved kokhavim*,” idolater, which is a common censorship for “non-Jew.” It is possible that an idolater could be halakhically Jewish, but a Jewish idolater would count as a heretic in this context, and the heretic is mentioned explicitly in the *gemara* independently of the *oved kokhavim*. Therefore here we may suppose “*oved kokhavim*” to indicate a non-Jew

The obvious objection concerns the heretic, informer, and apostate—those who are commanded to don *tefillin*, but are nevertheless disqualified from writing sacred scrolls. If the issue is simply one of obligation, should they not be eligible to write? We see, therefore, that there is another issue in play, namely one's commitment to the obligation. These three have all demonstrated contempt for rabbinic Judaism: the heretic denies the validity of the *mitsvot*; the betrayer by deliberately setting himself aside in some way from the community (opinions differ as to the precise nature of his betrayal² and the apostate by altogether abandoning performance of *mitsvot*. There is a presumption that if one has demonstrated disdain for the *mitsvot*³ it is unlikely that he is writing with appropriate *kavannah* (sacred intention)⁴

The remaining people identified as ineligible are all discounted on the basis of their exemption from the *mitsvah* of *tefillin*; why exemption from donning *tefillin* should disqualify one from writing *sifrei Torah* is examined in greater detail below. The non-Jew and the minor⁵ are exempt from all commandments of a ritual nature, and the slave

and woman are exempt from having to perform time-bound positive commandments. *Tefillin* not being obligatory at night or on Shabbat or festivals, slaves and women are held to be exempt.⁶

The remaining people identified as ineligible are all discounted on the basis of their exemption from the mitsvah of tefillin;

Evidence of a different, possibly tannaitic, opinion is found in *Masekhet Soferim* (1:14):

A sefer Torah written by a heretic, a non-Jew, a slave, a deaf-mute, one who is mentally impaired, or a child, is not read from. This is the principle: if one is eligible to discharge the obligation of the community, his writing may discharge the obligation of the community.

This list adds the deaf-mute and mentally incapacitated, who do not qualify to read Torah for the congregation, and omits the woman, the Cuthean and the apostate. These latter two are presumably not eligible to read—they are more or less synonymous with the

² The *Beit Yosef* summarizes the various opinions, cf *Orah Hayyim* 39 s.v. “*Tefillin*”

³ The Cuthean is presumed to lack *kavannah* because Cutheans were a caste descended from persons who were thought to have converted to Judaism under duress, and they are therefore suspected to be not entirely committed to Jewish practice. Consequently, it is likely that if a Cuthean were to write a *sefer Torah*, his intent would not be fixed on the sanctity of the text, and we discount his work for this reason.

⁴ A lack of *kavannah* can invalidate large amounts of writing and be extremely expensive to fix; only the *sofer* knows whether he in fact had *kavannah*, and the temptation to lie is strong. An indifferent attitude to *mitsvot* could strengthen that temptation beyond bearing, the immediate financial loss being far more compelling than the potential divine retribution.

⁵ One view bars boys from writing until the age of eighteen: as a matter of biblical law, a thirteen-year-old boy remains a minor until physical maturity is also attained, and since delicacy precludes examination of thirteen-year-old boys, they are deemed ineligible until they reach an age at which physical maturity may be conclusively presumed. See *Pithei Teshuvah*, *Yoreh De'ah* 281. Minors who are mature enough to be educated are obligated by the *mitsvot*, but their obligation is not of the same nature as an adult's, and the difference is sufficient to exclude the educable minor from eligibility to write *sifrei qodesh*.

⁶ *Pithei Teshuvah* (ibid) turns his attention to other people who are often excluded from ritual activity. Persons of indeterminable gender (*tumtum* and *androgynos*) are ruled ineligible to write since they may be women. The deaf-mute and the mentally incapacitated are generally classed with minors with regard to obligation in *mitsvot*, exempted on the grounds of impaired understanding, so why are they not mentioned in this *baraita*? He suggests in the name of the *Shinat Tsiyyon* that they are indeed exempt, but are not mentioned in the *baraita* because their writing such things is exceedingly unlikely—no one would ever think they would write, so there is no need to say that they can't. Alternatively, perhaps they are in fact obligated by the *mitsvah* of *tefillin*, and consequently if they were to write *sifrei qodesh*, they would be considered valid. The Mordekhai (*Hilkebot Matanot*, 14:3) also disqualifies a *mamzer* (the offspring of an adulterous or incestuous union, subject to various disqualifications).

non-Jew and the heretic, after all—but, by omission, the woman is qualified to write since she is qualified to read.⁷

Having seen that there are several different potential approaches to the question of who may and may not write *sifrei Torah*, we shall look in more detail at the idea that the obligation to don *tefillin* affects one's validity to write *sefrei Torah*, *tefillin* and *mezuzot*, a premise that is the basis for R. Hamnuna's list.

b2 – The effect of an obligation to don *tefillin* on one's eligibility to write *ketvei qadosh*

By its terms, the principle that one not obligated to fulfill a *mitsvah* cannot perform that *mitsvah* on behalf of one who is so obligated should pose no barrier to a non-obligated person writing *tefillin* fit for use, for the *mitsvah* is to wear the *tefillin* and not to write them (or, in the case of *mezuzah*, to attach it, not to write it). After all, women are exempt from hearing the *shofar* blown and may not blow it for a man, yet a woman may take a horn and make a *shofar*, and it is generally the case that one exempt from a commandment may make the used in fulfilling it. Yet, that seems not to be the case: In his *beraita*, Rav Hamnuna seems to think that writing is an integral part of donning *tefillin*, and therefore one exempt from donning *tefillin* may not write them on someone else's behalf.

We must now consider how and why the relationship among *tefillin*, *mezuzot* and *sifrei Torah* results in eligibility to write any of them being conditioned on the obligation to don *tefillin*. The three texts are closely associated in the halakhic canon, but we have not yet inquired as to why this should be. Rav Hamnuna asserts an exclusive correlation between those who don *tefillin* and those who may write not only *tefillin*

but also *mezuzot* and *sifrei Torah*. The connection has to do with writing: Since *mezuzot* are referred to as being written as is a *sefer Torah*, we infer that essentially similar rules of writing apply to all three texts. The next section deals with this deduction in more detail.

b2i - Some link *tefillin* and *mezuzot* and thence infer information about *sifrei Torah*

The *mitsvot* of *tefillin* and *mezuzah* are derived from Deuteronomy 6:8-9:

You shall bind them as a sign upon your hand, and they shall be as *totafot* between your eyes. You shall write them upon the doorposts of your house and upon your gates.

A straightforward reading tells us that *mezuzot* are to be written, and rabbinic logic infers that they are to be written according to the laws of sacred texts.⁸ The juxtaposition of the verses commanding *tefillin* and *mezuzot* justifies extension to *tefillin* of the requirement that a *mezuzah* be “written”; and, in general, *tefillin* and *mezuzot* are to be approached in similar ways. Here too is the link between binding and writing to which *Gittin* referred; the *mitsvah* of binding is inextricably linked to the process of writing. Rosh (on *Gittin* 4:46), Ran (on *Gittin* 45, s.v. “*Sefer Torah*”), and Ritva (ibid.) accept this association, treating *tefillin* and *mezuzot* as a conceptual unit.

For Rosh, the association with the word “write” continues to the verse “*write this as a memorial in a book*” (Ex 17:14). This is taken to refer to the *Torah*, and so the conditions of manufacture are extended from *tefillin* and *mezuzot* to *sifrei Torah*. Ritva and Ran take a different approach: working from the premise that a *sefer Torah* is holier than either *tefillin* or

⁷ Of course, if reading for the community is the issue, why is the child in the list of those who may not write? A child may read. Possibly the one source refers to children who are not old enough to understand and the other source refers to those who are – this is a slightly forced reading, but arguably no worse than the maneuvering we saw in the passage in *Gittin*.

⁸ *Menahot* 32b infers this by *gezerah shavah* (verbal analogy) on the term “*ketav*” that a *mezuzah* is to be written like a “*sefer*” – since an instance of “*ketav*” elsewhere is in the specific context of “*sefer*”, so too in this instance. Since in that context an injunction for “*ketav*” was apparently not significant and required the additional term “*sefer*,” we infer that “*sefer*” implies a further degree of precision.

mezuzah, they reason that if an individual unfit, for whatever reason, to write *tefillin* or *mezuzot*, *a fortiori*⁹ the individual is unfit to write a *sefer Torah*.

b2ii - Some link *tefillin* and *sifrei Torah* and thence infer information about *mezuzot*

By contrast, *Tosafot Rid (ibid.)* starts from the premise that a woman may not write *tefillin* or a *sefer Torah* and derives the same rule for a *mezuzah*, on the grounds that writing a *mezuzah* is no less holy an act than writing *tefillin* or *sifrei Torah*. This is somewhat strained, since it is generally accepted that a *mezuzah* has rather less sanctity than either *tefillin* or *sifrei Torah*.¹⁰ Be this as it may, *Tosafot Rid* is clearly deriving the rule for a *mezuzah* from the rule for *tefillin* and *sifrei Torah*.

Masekhet Soferim, as we saw above, appears to keep the case of a *sefer Torah* distinct from those of *tefillin* and *mezuzot*. However, neither *Masekhet Soferim* nor *masekhtot sefer Torah*, *tefillin* or *mezuzah* mention the corresponding question of who may write *tefillin* or *mezuzot*, so it is perhaps less surprising that the *baraita* in *Gittin*, bearing more information, is the position adopted as *halakhab*, despite the lack of apparent foundation for the major logical step of connecting donning with writing.

However the association is constructed, the three texts of *sifrei Torah*, *tefillin* and *mezuzot* form a conceptual triad, and it is generally assumed that the related *halakhot* are the same for all three unless otherwise discussed.

b3 - An obligation to place a *mezuzah* does not make one eligible to write a *mezuzah*

We have seen that writing and donning *tefillin* are, as it were, bound together, such that the writing is seen as a definitive part of the *mitsvah*

rather than an unavoidable preliminary. This is not an intuitive step by any means: people are certainly not expected to write their own *tefillin* (compare the *sefer Torah*, which people are theoretically expected to write for themselves at least once). Given this, why should the writing be considered so closely linked to donning? Despite the association being decidedly unclear, it seems to be accepted without question by the major *rishonim* (scholars who lived between, roughly, the eleventh and sixteenth centuries); there is a good deal of discussion of the effects of the association, but apparently none regarding the validity of making the association in the first place. Without that association, however, all objections to women or anyone else's writing *tefillin* in a stroke is removed.

She is no more eligible to write mezuzot than she is to write tefillin.

Writing and binding being inextricably associated, it is reasonable that a woman, not obligated to don *tefillin*, could not write *tefillin* for a man subject to that obligation. By contrast, a woman is certainly obligated by the *mitsvah* of *mezuzah*, so it would seem perfectly logical that she might write one—yet this is not so: she is no more eligible to write *mezuzot* than she is to write *tefillin*. But if she is obligated by the *mitsvah* of *mezuzah*, why may she not write a *mezuzah*?

We have seen that the texts are generally treated as a unit: *tefillin* and *mezuzot* are commanded in such close proximity that those who cannot write *tefillin* also may not write *mezuzot*, and that this association extends to the third member of the triad. Specifically, considerations of obligation *vis-à-vis mezuzot*

⁹ That is, since we know that a scribe for *tefillin* and *mezuzot* must meet certain standards, it would be absurd to suggest that lower standards apply to a scribe writing a holier object. Hence the heretic, the informer, the non-Jew, and so on may not write *sifrei Torah*, for they are ineligible to write *tefillin*..

¹⁰ For example:

ש"ע י"ד רצ"א:ספר תורה או תפילין שבלו, אין עושים מהם מזוזה. ואין כותבין אותה על גלינין ספר תורה, לפי שאין מורידין מקדושה חמורה לקדושה קלה."

and *sifrei Torah* are entirely irrelevant. This seems counter-intuitive, but it is so. Although obligated to fulfill the *mitsvah* of *mezuzah*, a woman may not write one for herself or others. It is obligation or lack thereof with respect to the *mitsvah* of *tefillin* that determines eligibility to write *mezuzot* and *sifrei Torah*.

Rabbeinu Tam (*Gittin* 45b, s.v. "Kol") drew from this ruling the rigorously logical conclusion that because women are not obligated by the *mitsvah* of *tsitsit*, they may not tie *tsitsit* for men; and since they are not obligated to take up a *lulav*, they may not bind together *lulavim* for men. This was rejected by the anonymous Tosafist, who cited *baraitot* in *Menahot* 42a and *Sukkah* 8b that permit women to tie *tsitsit* and build *sukkot*, despite being exempt from both. The general position is that one who is not obligated by a *mitsvah* may nevertheless validly produce the objects associated with the performance of that *mitsvah*, and Tosafot conclude that the case of *tefillin* (and its associates *sifrei Torah* and *mezuzot*) presents an anomalous exception to that rule.

C. Reading the *Torah* and Writing a *Sefer Torah*

c1 - The Role of the *Sefer Torah*

The *sefer Torah* has acquired a special significance in the Jewish tradition. No other ritual object is afforded such a degree of veneration—we stand as it is carried by and take on communal fasting if it suffers an indignity. This is not simply because the scroll contains the fundamental text of the religion; a printed *humash* is not afforded the same respect as a *sefer Torah*. In addition to the formal

property of *qedushah* (sanctity) attained in its writing, the scroll itself carries tremendous symbolism, and as such is a focal point of any synagogue. Which *mitsvot*, then, is the *sefer Torah* used in fulfilling?

c1i – *Qeri`at ha-Torah*

The context in which we most frequently encounter the *Torah* scroll is the communal *Torah* reading, *qeri`at ha-Torah*, which occurs minimally four times a week. Most opinions hold that the communal *Torah* readings on Shabbat, festivals and certain weekdays were variously enacted by Moses and Ezra.¹¹ Moses instituted readings to give vigor to the faltering Israelites in the wilderness, who had been three days in the wilderness without water, and by associating one form of sustenance with another, we infer that after three days with no *Torah* the people were weary. Hence regular *Torah* readings were enacted in order that the people be continually nourished on their journey.¹²

The sefer Torah is venerated as a representative not merely of the law but also of the revelation.

Torah reading being such an invigorating experience is perhaps more comprehensible if we view the ritual as being, in some degree, a re-enactment of the revelation at Sinai. The *sefer Torah* is venerated as a representative not merely of the law but also of the revelation, and by reading from the *Torah* in the desert,

¹¹ תלמוד ירושלמי מגילה פרק ד הלכה א - 'משה התקין את ישראל שיהו קורין בתורה בשבתות ובימים טובים ובראשי חודשים ובחולו של מועד שנ' וידבר משה את מועדי יי' אל בני ישראל עזרה התקין לישראל שיהו קורין בתורה בשני ובחמישי ובשבת במנחה' or:

'בבא קמא פבא, דתניא: (שמות ט"ו) וילכו שלשת ימים במדבר ולא מצאו מים - דורשי רשומות אמרו: אין מים אלא תורה, שנאמר: (ישעיהו נ"ה) הוי כל צמא לכו למים, כיון שהלכו שלשת ימים בלא תורה נלאו, עמדו נביאים שביניהם ותיקנו להם שיהו קורין בשבת... וקורין בשני... וקורין בחמישי.'

¹² Another possible rationale is discussed in *Berakhot* 21a, which infers public Torah reading by a fortiori reasoning from the blessing after a meal. That blessing is biblically ordained, and Torah, having greater importance than food, should certainly be followed by a blessing as well. Accordingly, some occasion for that blessing must be ordained, for individual Torah study is of unlimited quantity and therefore does not lend itself to a concluding blessing. The public reading is of prescribed quantity and therefore has a definite end, following which the blessing may be said. This rather contrived derivation does not seem to represent a majority opinion.

Moses was able to sustain the people's sense of divine commission.¹³

The public reading itself follows, more or less, the model of *haqbel* - the septennial reading of the *Torah*. According to the *Torah* itself, all Israel is to assemble once every seven years, and “read this *Torah* before all of Israel to their ears. Assemble the entire nation: men, women, and children, and the strangers who dwell within your gates, in order that they hear, and in order that they learn to fear the Lord their God and keep the words of this *Torah*. And their children, who do not know, will listen and will learn to fear the Lord your God, all the days that you live upon the land which you are crossing the Jordan to inherit.” (Deut. 31:11-13).¹⁴

This message of eternal assurance is transmuted into the commandment of ketivat sefer Torah.

The purpose of *haqbel* is clearly educational—the nation is to hear the law read in order to observe its decrees. Equally clearly, its purpose is not merely—or even primarily—the propagation of the law. The reading has a spiritual purpose as well: to inspire awe in those who hear it, an awe that results in observance of the law. Through this means the *Torah* will be revealed to the children, who are as yet ignorant of the fear of God, and *haqbel* thus serves as a revelatory experience to each new generation. Maimonides¹⁵ is quite clear that *haqbel* is to be a re-enactment of the original giving of the *Torah*—“strangers who do not understand must direct their hearts to understanding and their ears to comprehension, to listen in fear and joy and

trembling, as on the day it was given at Sinai; even great sages who know all the *Torah* must listen very attentively, and one who is not able to listen must direct his heart to this reading, which was given to enhance the true law—he should view himself as being commanded in the law there and then, hearing it directly from God.” That is to say, the function of this reading is not merely the communal propagation of the law, but the inspiration and renewal of spiritual ardor amongst the community.

Historically, *haqbel* in all its glory became impractical following the dispersal of the Jewish people. It has been reinstated in modern Israel, with the head of state replacing the king as reader. In a more modest form, the giving of the law is re-enacted in the synagogue during *Torah* reading. The reverence for the scroll translates into reverence for the divine revelation, culminating in the lifting of the scroll and the communal declaration “This is the *Torah*, which Moses put before the children of Israel, from the word of God.”

c1ii. *Ketivat ha-Torah*

From a biblical perspective, it seems that periodic rehearsal of the *Torah* is insufficient; in addition to *haqbel*, the written law is to be propagated on an individual basis as well. At the end of Moses' lifetime, once he has communicated God's law to the people, he is commanded to ensure that Israel shall remember that they are part of a divine plan: “And now, write for yourselves this song and teach it to the children of Israel, put it in their mouths; in order that this song will be a testimony to me among the children of Israel” (Deut. 31:19). Certainly the law is to be studied by the individual and transmitted to his

¹³ See, e.g., the *Bah* to *Orah Hayyim* 47

¹⁴ The Sages interpret the *mitsvah* of *haqbel* as applying only while the Temple is standing. The modern state of Israel has revived the practice, but even in the Diaspora traces of the *mitsvah* remain—in public *Torah* reading, as we see, and in the celebration of *Simhat Torah*. On the ancient triennial cycle, it took three-and-a-half years to read the *Torah*. Two such cycles took seven years, and it made sense to complete the cycle at *Simhat Torah*.

¹⁵ רמב"ם ה' הגיגה ג:ו' "וגרים שאינן מכירין חייבין להכין לבם ולהקשיב אזנם לשמוע באימה ויראה וגילה ברעדה כיום שניתנה בו בסיני, אפילו חכמי גדולים שידועים כל התורה כולה חייבין לשמוע בכונה גדולה יתרה, ומי שאינו יכול לשמוע מכין לבו לקריאה זו שלא קבעה הכתוב אלא לחזק דת האמת ויראה עצמו כאילו עתה נצטוו בה ומפי הגבורה שומעה, שהמלך שליח הוא להשמיע דברי האל."

offspring, but he is also to obtain a tangible statement of God's involvement in his life.¹⁶

In the rabbinic tradition, this message of eternal assurance is transmuted into the commandment of *ketivat sefer Torah* (writing a *Torah* scroll). Each and every Jew is to have his own copy of the written law, a physical copy of God's communication for each Israelite. One might think from the verse that only the song is required, or perhaps a briefer message still—why the entire law and not just the song? The reasoning runs thus: Granted, the song is the only part requiring transcription, but writing down only parts of canonical texts is troublesome; books should only be written in complete form (*Gittin* 60a). The *Torah* consists of five books, so one might think it sufficient to write only the book containing the song; but the *Torah* was given at Sinai as a unit of five books in a scroll, and should therefore remain as five books in a scroll.¹⁷

It is possible that the scroll constitutes part of the requirement of *Torah* study (*talmud Torah*). Women are exempt from most aspects of *Torah* study—Maimonides rules that women are by no means obligated to learn *Torah* like men (*Mishneh Torah, Hilkebot Talmud Torah*, 1:13), although they may if they wish. He exempts women entirely from writing a scroll (*Sefer ha-Mitsvot*, pos. commandment 18, and in the summary of positive commandments), consistent with the idea that women's exemption from *Torah* study implies exemption as well from the scroll-writing aspect of *Torah* study.

The most extreme view of this relationship is found in the Rosh, whose basic premise is that

writing a scroll is wholly and exclusively a means toward the end of *Torah* study.¹⁸ In his *Tur* (*Yoreh De'ah* 270) the Rosh's son codifies his father's conclusions:

My respected father the Rosh wrote that this was only said of the first generations, who would write *sifrei Torah* and learn from them. But nowadays, when we write *sifrei Torah* and place them in synagogues to read from at the public *Torah* reading, the commandment on every Israelite who is able is to write the five books of *Torah*, and *Mishnah*, and *Gemara*, and their commentaries, for him and his sons to peruse. This is the *mitsvah* of writing the *Torah*: to learn from it, as it is written “Teach the children of Israel, put it in their mouths,” and from the *Gemara* and its explanation we know the meaning of the *mitsvot* and the laws clearly. Thus these are the books that one is commanded to write and may not sell, except to [use the proceeds to] learn *Torah* or to get married.

That is to say, in our day the *sefer Torah* has only a symbolic presence in the synagogue, and the learning that used to be done from it is now done from books. The focus of the *mitsvah* has shifted away from the scroll and into the codex, and accordingly the scroll is no longer relevant to its performance. There is no longer a requirement to write a *sefer Torah*, but rather to obtain a Jewish library and use it both for one's personal learning and for teaching one's children.¹⁹

In his *Beit Yosef* (*Yoreh De'ah* 270 s.v. “*U-ke'etav*”), R. Joseph Karo disagrees with this interpretation of the *mitsvah*; while the *sefer*

¹⁶ The song seems to have been read alone as part of the temple services (*Rosh ha-Shanah* 31a), and Tigay's excurses on the JPS edition of Deuteronomy (*JPS Torah Commentary*, Jewish Publication Society 1996, Excursus 30, p. 513) mentions a Qumran scroll (4QDeut.) containing only the song, presumably from a ritual context.

¹⁷ See e.g. the *Beit Yosef* in *Yoreh De'ah* 270, s.v. “*Mitsvat asef*.” Note further echoes of the revelatory theme.

¹⁸ Discussions of women writing *sifrei Torah* often commence with the topic of women's obligation to study *Torah*. Given the tenuous link between the two, it is not entirely clear that this is the most productive approach.

¹⁹ According to the *Tur*, Rosh believes that in our days, *sifrei Torah* are housed in the synagogue and used for public reading; they are irrelevant to the *mitsvah* of writing a scroll because they are not used for learning. It follows that in the view of the Rosh, *Torah* reading is not within the rubric of learning.

Torah may not be the most relevant learning tool, he cannot go so far as to say that the *mitsvah* has been altered to such a degree. Here, the scroll itself is the essential component of the *mitsvah*, not the study of it. Even if the only purpose of writing a *sefer Torah* was to be able to study from it, the fact that nowadays we do not study from it should not be a basis for abandoning the *mitsvah*. On the contrary, if people are no longer observing the requirement to study in their *sifrei Torah*, we should emphasize that this is compulsory, not provide an alternative! Consequently, his ruling in the *Shulhan Arukh* is that one must write one's own *sefer Torah*, and the acquisition of a Jewish library is a meritorious, but distinct, act.

The focus of the mitsvah has shifted away from the scroll and into the codex.

R. Karo does not go so far as to make learning from one's *sefer Torah* compulsory. If the scroll is in some way related to *Torah* study, we might expect that one would be required to use it for studying—but this requirement does not seem to exist. Indeed, *Shakh* (ad. loc.) goes so far as to suggest that the scroll really should not be used for study at all since books are available for this relatively mundane task. The contents of the *Torah* are certainly to be passed from generation to generation, and a *sefer Torah* could be useful in doing so, but the scroll *qua* scroll is not essential to this process;²⁰ in fact, it is insufficient, since even if one inherited a *sefer Torah*, he is still required to write his own.²¹ It seems that the scroll for the *mitsvah* has no ritual function beyond that of being created. While transmission through the generations of the oral *Torah* is a requirement, transmission through the generations of the written *Torah*, in

the form of inheriting an already-written scroll, appears to be insufficient. Accordingly, writing a scroll is not related in this respect to *Torah* study.²²

c2—An unfit (*pasul*) *Torah* scroll: Talmudic discussion

The *mitsvot* of reading and writing are distinct, as we have seen, and the differences between them affect the circumstances in which a *Torah* scroll will be considered unfit for use.

The people living in Galilee sent to R. Helbo, asking: May we read from a *humashim* in the synagogal *Torah* reading? He did not know. The question came to R. Isaac Nafha, and he did not know. The question came to the study hall, and they said the answer was clear from a statement of R. Samuel b. Nahmani in the name of R. Yohanan: “A *sefer Torah* that is missing one sheet may not be read from.” But [the anonymous voice of the *gemara* objects], the case is not comparable! There it is missing a part, and here it is not missing a part! Rabbah and R. Joseph both said, “A *humash* may not be read from in the synagogue because it is demeaning to the congregation.”

Let us first consider reading. If the only available scroll is discovered to be unfit (*pasul*)—perhaps the parchment becomes suspect or a scribal error is discovered on Shabbat when it cannot be remedied—must the community forgo its *Torah* reading? If the scroll is not fit for performance of the *mitsvah*, the community in which it is read from might not fulfill its obligation of *qeri'at ha-Torah*. Even worse, the blessings said over the reading might be *berakhot le-vattalah* (blessings said in vain), which must be avoided.

Gittin 60a addresses the case of a *homesh*, a

²⁰ In response to this apparent redundancy, R. Moses Feinstein requires one's scroll to be available to him for personal study should one wish it. (*Iggerot Mosheh, Yoreh De'ah* 163, s.v. 'Ve-ba-ta'am pasbut') Overall, he wants the owner of the scroll to have a certain amount of interaction with it—studying from it, for one, but also in the manner of its acquisition. He is not certain that one can fulfill the *mitsvah* by being given a *sefer Torah* as a gift, preferring that the individual invest in the *mitsvah* financially or by participation.

²¹ בפרק ב' דסנהדרין (כא:) אמר רבא אע"פ שהניחו לו אבותיו לאדם ס"ת מצוה לכתוב משלו.

²² See e.g. the *Pithei Teshuvah, Yoreh De'ah* 270:10

²³ See e.g. Mendel Shapiro's extensive discussion in “*Qeri'at ha-Torah* by Women: A Halakhic Analysis,” *The Edab Journal*, vol.2, no. 1 (2001)

single book of the five, made like a *sefer Torah* but without the other four books (Rashi *ad loc*). At the public reading, may one read from a *homesh be-tsibbur*?

Although a *homesh* is by no means a kosher *sefer Torah*—though it is made like a *sefer Torah*, it lacks the other four books and is undoubtedly *pasul* as we understand the term—the only reason given for not reading from it is that it reflects badly on the community. No other potential and weightier problems are raised, suggesting that there are none. The question of whether a community may waive its dignity is too long to explore here; let us assume for the sake of argument that it may.²³ In that event, a

Although a homesh is by no means a kosher sefer Torah, the only reason given for not reading from it is that it reflects badly on the community.

community with a *homesh* that waived its own dignity would be able to read from that *homesh*, even though it is *pasul* according to our understanding, inasmuch as it is not a complete *Torah* scroll. It thus seems possible that some types of pentateuchal texts are fit to be read from (even in the first instance and not merely after-the-fact) even though unfit for purposes of fulfilling the commandment to write a *Torah* scroll.

c3 – The question of practice: reading from a complete but *pasul sefer Torah*

A *sefer Torah* is used to perform two distinct *mitsvot*. As we have seen, a *homesh*, being only one-fifth of the *Torah*, is not sufficient for one's obligation to write, but can sometimes be considered sufficient for one's obligation to read. May a scroll that is invalid in some other way be used for reading? Our interest lies ultimately with a *Torah* that is invalid by virtue

of having been written by a woman, but we find more discussion concerning other types of invalid scrolls—specifically, those with missing or malformed letters. The case most commonly discussed is when a mistake in the text is discovered during the public reading. What is the status of the reading that has taken place to that point? Did it fulfill the *mitsvah* or not? And what is to be done subsequently?

c3i Rosh and Rashba – the reading is invalid

The most stringent opinion says that as soon as the mistake is found, one should stop and repeat the entire reading from the beginning in a kosher scroll. Rashba (*Teshuvot ha-Rashba*, 1:227) and Rosh (*Teshuvot ha-Rosh*, 3:11), for example, state that if a kosher scroll is not present, one has not fulfilled one's obligation, and the reading that has already taken place is completely void. Just as one cannot use an invalid *lulav* to fulfill one's obligation in that regard—and, having discovered that the *lulav* he used was invalid, must repeat the action using a kosher *lulav*—so too does reading from an invalid scroll fail to fulfill the *mitsvah*. The reading that preceded discovery of the flaw is deemed void, and the congregation must repeat the entire reading in a kosher scroll. The blessings made for the invalid reading were made in vain, unless we view the reading under the rubric of *Torah* study rather than public *Torah* reading (e.g. Rabbeinu Yeruham, *Toledot Adam ve-Havah*, 2:3).

c3ii Rashba permits reading the *maftir* from memory.

In *Yoma* 70a the subject is the Yom Kippur reading in the Temple. Two passages are read, one in Leviticus and one in Numbers (referred to as *humash ha-pequdim*, “the *humash* of the census”); the latter begins with the word *u-ve-`asor* (“on the tenth day”). Regarding that second passage, we find the following discussion:

²³ See e.g. Mendel Shapiro's extensive discussion in “*Qeri'at ha-Torah* by Women: A Halakhic Analysis,” *The Edah Journal*, vol.2, no. 1, 2001).

“On the tenth” in the *humash* of the census, he [the High Priest] recites from memory. But why?—surely they should roll it and read? R. Huna b. R. Joshua said in the name of R. Sheshet: because we do not roll a *Torah* scroll before the congregation, because of *kevod ha-tsibbur* [congregational dignity]. But then why do they not bring a second scroll and read? R. Huna b. Judah said: because the first would be impugned..... But who would say the first is impugned? Did not R. Isaac Nafha say: [On] *Rosh Hodesh Tevet* [which is also *Hanukkah*] which falls on Shabbat, they bring three *Torah* scrolls, and read the day's reading from one, the *Rosh Hodesh* reading from another, and the *Hanukkah* reading from another? - Three people reading from three scrolls does not impugn [any of them]; one person reading from two scrolls impugns [the first].

Faced with a situation such as a *Shabbat Rosh Hodesh* reading, where two *sifrei Torah* are required (or three, if *Hanukkah* is factored in as well), what should happen if only one kosher scroll is present? On the one hand, we want to read from a kosher scroll; on the other hand, rolling the *Torah* during the service has been prohibited. Mordekhai and Ritva are in favor of rolling the scroll (see *Beit Yosef, Orach Hayyim* 144, where he cites both), and *Magen Avraham* later distinguishes between the congregation in the Temple and those in synagogue congregations, suggesting the latter having the prerogative to waive their dignity in this regard (*Orach Hayyim* 144). Rashba, however (again quoted by the *Beit Yosef*), thinks that rather than roll the scroll and inconvenience the congregation, the precedent of *Yoma* 70a shows that the *maftir* may be recited even from memory and implies that it may be read from a printed *humash*.

c3iii - Mordekhai permits continuing if one had already started

During *Torah* reading, there are certain places in the text where it is considered appropriate to

stop, and certain places where it is not. For instance, if one has read less than three verses, it is not appropriate to stop reading. (The obligation is not fulfilled with fewer than three *pesuqim*, and if one stops sooner, the preceding blessing was wasted). On *Rosh Hodesh*, we cannot stop in the middle of the fourth *aliyyah*, because we cannot add another *aliyyah* to the reading but we need to complete the section. If a flaw is identified in a scroll after reading has begun but at a point where stopping is inappropriate, what is to take precedence: the interest in not reading from an unfit scroll, or the interest in not pausing before an acceptably long portion has been read?²⁴

R. Karo does not want to subject congregations to having the entire reading repeated; neither does he accept that one recites a blessing over an invalid scroll.

In the case where a mistake is found during the *Torah* reading, Mordekhai says that one should continue to a permitted stopping-place, recite the blessing that follows the reading and then continue from that stopping-place in a kosher scroll (*Megillah* 794). That one should continue in a kosher scroll is logical; it seems reasonable to say that, in the first instance, one ought not to read from an unfit scroll. What is odd, however, is knowingly reciting a blessing even after a disqualifying flaw has been found and one knows the scroll is invalid. If one thinks blessings ought not to be said over an invalid scroll, one should not recite this blessing. On the other hand, if the blessing may be recited even though the scroll has been invalidated, why is there a need to continue in a different scroll?

Yet this is Mordekhai's position: one should recite the final blessing over the invalid scroll despite knowing that it is invalid and then change to a kosher scroll. The reading need not be repeated from the beginning, implying that it was considered acceptable after-the-fact, even though not read from a kosher scroll.

²⁴ A full discussion the rules of Torah reading is beyond scope of this article.

c3iv. Attempts to harmonize the existing positions: *Shulhan Arukh* and Rema

Mordekhai's position sits awkwardly with that of Rosh. R. Karo recognizes this tension: he does not want to subject congregations to having the entire reading repeated, that is to say declaring the reading entirely invalid; but neither does he want to accept Mordekhai's decision that one recites a blessing over an invalid scroll, since this would mean the scroll is sufficiently kosher to merit a blessing. Rather, the *Shulhan Arukh* rules that upon finding a flaw, one should pause in the reading while a kosher scroll is brought and then continue from the point of the mistake as before, reciting no extra blessings, just as if only one scroll had been used throughout (*Orah Hayyim* 143:4).

While the *Shulhan Arukh* would agree that ideally one should repeat the entire reading in the kosher scroll, rabbinic discretion is again applied (to avoid undue burden on the community), and the reading from the invalid scroll declared acceptable after-the-fact. The blessing following the *aliyyah* in which the mistake was found is said over the kosher scroll, thus obviating concern about reciting a blessing over an invalid one. This procedure applies even if the passage to be read had been completed and all that remained was the final blessing; in that instance, a new scroll would be brought, and the blessing said over it.

Rema (*ibid.*) finds this problematic, wondering how a concluding blessing can be recited over a scroll that had not been read from. He therefore harmonizes two views: if they were not at a stopping-place, they should follow the *Shulhan Arukh*, pause, switch to a new scroll, and continue as normal. If they were at a stopping-place, they should follow Mordekhai, stop, recite the concluding blessing, and then bring out a new scroll.

Mishnah Berurah (143:19) asks why it is not necessary to recite a blessing over the replacement scroll before commencing to read

from it. After all, if the *mitsvah* is to read from the scroll, a new scroll surely merits a new blessing. By way of solution, he suggests that the initial blessing was said over the reading, not the scroll, and replacement of the scroll therefore does not require an additional blessing.

c3v – Maimonides rules permissively even in the first instance

The central figure who rules permissively is Maimonides; in his responsum *Pe'er ha-Dor*, 9, he rules that an invalid *Torah* scroll may be used for the entire reading just as a kosher one, blessings and all.

How is this accomplished?

Firstly, the reading itself is the subject of the *mitsvah* and the focus of the blessing. The case thus differs from taking an invalid lulav or dwelling in an invalid *sukkah*: there, the *mitsvah* is not fulfilled, and the associated blessing is recited in vain. Here, in contrast, “the *mitsvah* is the reading from a *Torah* scroll, whether kosher or invalid, and even if one reads from memory he blesses, because the reading itself is the *mitsvah*, and on it we bless. Do we not see that one who, in the morning before he prays, reads *Mishnah*, *Talmud*, *halakhab* or *midrash*, blesses, and after that reads or expounds? Learn then that reading from the *Torah* is the *mitsvah*, and on this we bless...”

By comparison with *Torah* study, where the focus of the blessing must be the commanded study, the focus of the blessings for public *Torah* reading is also the commanded reading. Since the blessing is over the reading, as long as a reading takes place, there is no problem with blessing even if no valid scroll is present (compare the *Mishnah Berurah* above, who held a similar position).

“...The proof of this is that we say we do not read from a *homesh* because of congregational dignity. One could make an argument based on a *homesh* being invalid; even if a *Torah* scroll

lacks one letter it is invalid, and all the more so a *homesh* [which is missing a great many letters], so why do we attribute the invalidity of the blessing to congregational dignity, when we could attribute it to the invalidity of [the *homesh*]?"

That is, had the *gemara* seen a more severe reason to forbid the reading, it would have used that reason, as we have already seen. A full *Torah* scroll is apparently not an integral part of the proceedings, from a strictly technical perspective.

Rashba was unconvinced that the scroll is incidental, seeing the presence of a scroll as the crucial difference between Torah study and public Torah reading.

Furthermore: "...the Sephardim used to read from a *Torah* scroll whose parchment had not been processed at all, and they blessed before and after it in the presence of wise people, such as Rabbeinu Joseph ha-Levi and Rabbeinu Isaac Alfasi and others like them, and they never protested, because all of them had great understanding and were very knowledgeable..."

Nevertheless, "...it is appropriate for each congregation to have a kosher scroll, and given the choice it is preferable to read from this in public, but if this is not possible for them, they may read even from an invalid scroll..." In other words, the *mitsvah* certainly ought to take place in the presence of a kosher scroll, but where this is simply not possible, it may be dispensed with.

c4 - Objections to Maimonides' permissive ruling

Rashba dissects this proof at length (cited fully in *Sefer Abudraham, dinei Qeri'at ha-Torah*, s.v. "*Ve-katuv bi-teshuvat ha-ge'onim*"), asserting its invalidity.

He commences by asking what it means to say that an invalid *Torah* scroll may be used for reading, for if one may always read from a *Torah* scroll whatever its condition, how can "invalid" have any meaning? "Invalid" (*pasul*) means "unfit for use," and the scroll is never unfit for use since it may always be read from, so the entire question is nonsense! He explains that the scroll is void in the first instance, (*le-khatelilah*), but in pressing circumstances the

Rashba was unconvinced that the scroll is incidental, seeing the presence of a scroll as the crucial difference between Torah study and public Torah reading.

rule may differ. The actual question, then, is "Do there exist circumstances in which an invalid *Torah* scroll may be used for public reading?" That is, "invalid" is shorthand for a scroll that fails to meet one or more specifications of Rambam's original list of criteria, rather than an adjective necessarily meaning "unfit for use."

Rashba continues:

The Rav's [Maimonides'] central claim upon which he relies is that we bless upon the reading itself, even if recited from memory. I am incredulous at this, since the reading enacted to take place in the synagogue was not to take place from memory but from a *sefer Torah*—since if reading from memory had been enacted, why is reading from *homeshim* prohibited? Reading from *homeshim* is surely better than reading from memory... One who had already recited a blessing over reading [the *Torah*-study passages in the early morning service] and...afterward wanted simply to read or learn does not have to recite a [further] blessing. But if he read in the [reading of the] *Torah*, even immediately

[after studying], he must recite a blessing on the *mitsvah* of *Torah* reading...and one who does not read in a scroll, a kosher scroll, does not bless, because he is not reading as per the enactment. The proof he brings from the *ge'onim* is even stranger to me; it seems to show precisely the opposite! [he quotes *Gittin* 60a] ...Even according to the opinion that we read from a *homesh*, we do not read from a deficient or invalid *Torah* scroll: *homeshim*, which are intact and not invalid, are better than a *sefer Torah* that is somehow invalid or deficient...

Maimonides asserted that the reading was the focus of the ceremony and of the blessings and that the scroll was incidental. Rashba was unconvinced that the scroll is incidental, seeing the presence of a scroll as the crucial difference between *Torah* study and public *Torah* reading. The blessings are essentially the same for both, but since one who has just recited the blessing for *Torah* study must nevertheless repeat it upon being called for public *Torah* reading, a blessing for the one purpose will not suffice for the other. We may conclude that the scroll must be a definitive element of public reading. This proof is questionable, however. In trying to show that the scroll is a central part of the ritual, he asserts that the ritual was enacted to take place over a scroll and declares that a kosher scroll is essential. That circular claim, however vigorously pressed, does not constitute proof.

Further, Rashba asks, if the reading were the only issue, why would the *gemara* not have permitted a *homesh*? A reading can be rendered from a *homesh* far better than from memory. Maimonides held that a *homesh* was theoretically permissible but not dignified; Rashba, on the other hand, reasons that forbidding the *homesh*, regardless of the reason, is sufficient to show that a complete and kosher scroll is always necessary.

Maimonides, in his final point, says that while public reading without a *sefer Torah* could be technically permissible, it would be far from ideal situation; for purposes of public perception, a *homesh* is really not sufficient, and a *Torah* scroll is necessary. Nevertheless, he prepared to allow the community to waive its dignity and use an alternative to the scroll. Not so Rashba: communal dignity may not be waived, and a kosher scroll is somehow an integral part of public *Torah* reading. Compare his ruling regarding *Rosh Hodesh* falling on Shabbat where only one *Torah* scroll is present: there, the presence of the one scroll satisfies the element of public display and preserves

May a community lacking a sefer Torah read from a homash, just as they would read from a scroll?

kevod ha-tsibbur by demonstrating that they own a scroll; since no loss of face is then involved in reading *maftir* from a *homesh*, he permits it rather than force the congregation to endure rolling the single scroll to the site of the second reading. Maimonides' essential point remains—the reading need not actually be conducted from a scroll—but Rashba seems to think that the effect given by a kosher scroll is essential, and he will not go so far as to allow reading without at least one kosher scroll being present.

The most central problem is Maimonides' apparent dismissal of a large body of halakhic precedent. *Masekhet Soferim* is replete with statements that if a scroll is invalidated, it is not to be read from. Maimonides himself stated this later, but even if he changed his mind during his lifetime, how did he justify ignoring all the existing precedent? Rashba asks this rhetorically, and thus concludes his refutation. We suggest an alternative answer below.

We shall return to the analysis of Maimonides' positions after considering how this responsum in its raw form bears on the question of women writing *Torah* scrolls.

c5 - Permitting female scribes to write *Torah* scrolls on the basis of Maimonides' responsum

If one wanted to adopt Maimonides' ruling outright for all circumstances, one might say at this point that reading from an invalid *Torah* scroll is permissible even *ab initio*, and that Maimonides' admonition that ideally congregations should have a kosher scroll available may be attributed largely to *kevod ha-tsibbur*. Accordingly, if having a woman write one's *Torah* scroll is not shameful, there should be no impediment to anyone's reading from that scroll. If barring women from the scribal arts were considered to be a slur of sufficient proportions on communal dignity, a community could choose to waive the dignity attached to a kosher scroll in this respect only, and read from an otherwise valid scroll that is arguably invalid only by reason of having been written by a woman. The problem with this approach is that Maimonides' ruling is not widely accepted as first-instance (*le-khattehilab halakhab*), and we don't adopt radically different practices on the basis of minority opinions unless there is strong pressure so to do. Were the times sufficiently pressing, we might do this, but there is not at present the social impetus.

c6 - Writing *Torah* scrolls as a rabbinical commandment

Kol bo (*Siman* 20, s.v. “*Ve-zot ha-teshuvah*”), permitting reading from an invalid scroll, cites Maimonides as the main support for his position and offers a further proof: We no longer know the technique of proper parchment production as ordained by Moses at Sinai, but we continue to make scrolls approximating the

scrolls of old, so that public *Torah* reading not be forgotten. Just as the prohibition against committing the Oral *Torah* to writing was lifted when its oral transmission became imperiled, so, too, may a community lacking a *sefer Torah* read from a *humash* just as they would read from a scroll, lest the community come lose the connection with the experience of hearing the *Torah* read?

The only potential problem, he says, is *kevod ha-tsibbur*, and in the opinion of *Kol Bo* a community may waive its dignity in pressing circumstances. If there are two scheduled readings but only one scroll, for instance, he permits rolling from one place to another; although rolling the scroll while the congregation waits is generally forbidden as also demeaning, given a choice between forgoing the second reading and rolling the scroll, we choose to waive our collective dignity and roll the scroll. Similarly, even though reading from an improperly produced scroll is considered demeaning, we may waive our dignity and use that scroll rather than forgo the entire reading. Recall that Rashba permitted the *maftir* portion for *Shabbat Rosh Hodesh* to be read from a *humash* (which he absolutely forbade in ordinary circumstances) to avoid the need to roll the scroll.

Sha'agat Aryeh (§35) reaches the same conclusion as the *Kol Bo* by observing that we no longer know the rules governing *plene* and defective spellings in the *Torah*. The implication is the same: since the obligation is now rabbinic rather than biblical (because we no longer know how to fulfill the commandment as biblically prescribed), the rules may be altered. *Kol Bo* alters the rules to permit congregational reading from an invalid scroll; *Sha'agat Aryeh* alters the rules to exempt women altogether from the *mitsvah* of writing.²⁵

²⁵ In brief, *Sha'agat Aryeh* notes that Maimonides exempts women from the commandment to write a *Torah* scroll, apparently without reason, as no previous source considers gender in the context of this *mitsvah*. He then offers three possible justifications for Maimonides' position but rejects all of them. Still wishing to demonstrate that women are exempt from the *mitsvah* (one suspects that the women of his community were not in the habit of performing it), he does so by demonstrating that the *mitsvah* of writing in our day is not of a biblical status, and therefore people (such as women) may be exempted from it by rabbinic decree.

R. Moses Feinstein (*Iggerot Mosheh, Yoreh De'ah* 1:163) dismisses this rationale, since even though it seems likely that we have lost the correct method of producing the *Torah* scroll, it remains possible that the method we are using is the correct one. In a case of doubt concerning a biblical commandment, he is inclined to stringency, and therefore says we should assume that this is the correct method of fulfilling the *mitsvah* even though the probability is small, rather than discard the possibility altogether. This precludes any possibility of bending the rules on account of the *mitsvah* being “only rabbinic” as was suggested above; making a deliberate change is certain to cause incorrect performance of the *mitsvah*, whilst maintaining the *status quo* retains the possibility that it is now being correctly performed.

A claim made on the basis that leniency is permissible for rabbinical commandments is only justified when there was communal pressure in that direction.

In any case, a claim made on the basis that leniency is permissible for rabbinical commandments would only be justified when there was communal pressure in that direction. Although some communities choose to read from invalid scrolls rather than never read at all, most would rather forgo their reading altogether than use an invalid *sefer Torah*, in order to maintain the delineation between kosher and invalid scrolls; accordingly, *Kol Bo's* rationale remains a minority opinion. Insofar as women's obligation to fulfill the *mitsvah* of writing is ever discussed, *Sba'agat Aryeh's* approach means to provide a justification for women who do not fulfill it (an example of a ruling driven by communal pressure, one

suspects), by declaring leniency possible for rabbinical commandments and exempting women, although it seems unlikely that this is the rationale adopted by those women *ab initio*.

c7 - Maimonides both forbids and permits reading from an invalid scroll *ab initio*

It is widely accepted that, after-the-fact, a reading from an invalid scroll is considered acceptable; few if any congregations today will repeat a whole reading if a mistake is found. The rationale relies on the minority opinions that base themselves on Maimonides, which are invoked to spare people from having to listen to the reading again. Minority opinions are often accepted after-the-fact, when rectifying a mistake would be unduly expensive or time-consuming. In this case, we might question whether having to repeat a couple of passages is really sufficient reason for invoking a minority opinion, except that centuries of tradition have decided that it most certainly is. We therefore accept Maimonides' responsum in order to be able to continue with our reading after finding a mistake.²⁶

In his *Mishneh Torah*, Maimonides seems to cast doubt on whether he himself accepts his own responsum. When describing what makes a scroll kosher, he characterizes a deficient scroll as resembling a children's primer, certainly not to be used in public reading (*Mishneh Torah, Hilכות Tefillin* 10:1). On the other hand, as we have just seen, he states emphatically in his responsum that the scroll itself is not the issue; not only may one read from an invalid scroll, but it was the common practice of various *gedolim*, highly-respected figures, of his time.

What is one to make of this?

Rashba (in the responsum cited above) explains that the rulings are not contradictory

²⁶ Again, we might stop here and say that if saving ten minutes of the congregation's time is sufficient reason to rely upon a minority opinion, giving women a sense of religious fulfillment by permitting them to write *sifrei Torah* is surely sufficient reason also. But wanting to escape ten extra minutes of hearing the Torah read (recall that hearing the Torah read is, like *haqhel*, supposed to be an immensely spiritual experience) is a well-established, widely-accepted Jewish value, so relying on a minority opinion is permitted. Giving women religious fulfillment by allowing them to extend their spheres of practice, *nahat ruah le-nashim* notwithstanding, is a rather less developed Jewish value, so such reliance on a minority opinion is much less likely to be acceptable.

because they were never applied at the same time. Maimonides wrote the responsum in his youth but later changed his mind, coming to realize that reading from an invalid scroll was, in fact, impermissible. This would explain the more stringent ruling in the *Mishneh Torah*, written in his older age. But *Beit Yosef* (*Yoreh De'ah* 279) points out that even if this is the case, Maimonides mentioned that reading from an invalid scroll was a widespread practice among the great halakhic figures of his era; and even if Maimonides changed his mind, presumably the *gedolim* he mentions also thought it was a legitimate practice. Moreover, if we suggest that Maimonides changed his mind, this would imply that those *gedolim* were wrong.

Having to conclude that great authorities acted in error is never a comfortable situation, and it would be more satisfactory if we could attribute legitimate paths of reasoning to both. That is, to demonstrate that Maimonides' two statements can co-exist, despite seeming mutually exclusive, is a more elegant result than simply rejecting one statement outright.

c8 - A potential solution

We should clarify that the term “invalid” (*pasul*) as applied to a *sefer Torah* has different meanings depending on context: in one sense it is absolute; in another, it is relative. In the absolute sense, “*pasul*” refers to the list of production criteria—for example, Maimonides' list of twenty or those derived from it. A *Torah* scroll failing to meet any one criterion has the shorthand term “*pasul*” applied to it. This, however does not necessarily reflect its fitness for use; “*pasul*” as a relative term may or may not be applicable. A *humash* (that is, a *sefer Torah* missing four of the five books), though obviously *pasul* in the absolute sense, is nevertheless fit—kosher—for use in congregational reading, as long as the congregation waives its dignity.

Formalizing this idea, the next suggestion demonstrates the existence of two classes of *Torah* scrolls. One class of *Torah* will be shown to be neither “relatively” nor “absolutely” invalid; it is made exactly according to specification and is kosher for both public reading and for the commandment of writing. The other class of *Torah*, we will see, is invalid in relative terms, and while it is not fit for fulfillment of the commandment to write a scroll, it may potentially be used for reading.

D - Evidence for two types of *sefrei Torah*

Proposing the formal existence of two different types of *sefer Torah* solves several problems.

d1 – Resolving Maimonides' self-contradiction

As noted, Maimonides appeared to contradict himself, on the one hand writing a responsum permitting reading from an invalid scroll even *ab initio* and, on the other hand, codifying a law forbidding it. Let us suppose that in the responsum, “*pasul*” is to be taken in the absolute sense—the scroll is not produced in full compliance with the list of criteria. Whilst invalid in the absolute sense, it is still fit for public reading. Let us further suppose that the subject of the *Mishneh Torah* is scrolls to be used for fulfilling the commandment to write a *Torah* scroll; such a scroll is not fit for that purpose.

If this is so, one would expect that if a *sefer* were written with the commandment of writing in mind but happened to be missing a letter, it could still be used for reading. However, the *Mishneh Torah* specifies that such a scroll *cannot* still be used for reading. Why, if according to the responsum one may read from scroll missing a letter? A possible answer is that the two classes of scrolls are completely distinct; a scroll for reading is not merely a failed scroll for writing but was conceived thus at the outset.²⁷ This answer continues below, when we consider the *Beit Yosef* on the subject.

²⁷ *Ipsa facto*, a scroll in the class “for writing” that became damaged could never, even after the fact (*be-di-`avad*), be used for reading. A scroll in the class “for writing” that became damaged, on the other hand, could still be used. R. Feinstein discusses ways in which a scroll can acquire one status or another.

d2 – Resolving a conflict between two *baraitot*

Earlier, we compared two *baraitot*—one (R. Hamnuna's) in the Babylonian Talmud and one in *Masekhet Soferim*—that appeared to be mutually contradictory, most notably on the question of women writing *sifrei Torah*. The *Masekhet Soferim* source is rejected and R. Hamnuna's *baraita* is cited as the *halakhah*, the *Bavli* having greater authority in such cases.

Recall, however, that R. Hamnuna's *baraita* referred to the triad of *sifrei Torah*, *tefillin* and *mezuzot*, whereas the *baraita* in *Masekhet Soferim* referred to *sifrei Torah* only, and then cited a general rule referring to communal obligation. If our concept of two classes of *sifrei Torah* is valid, we could interpret the more permissive *baraita* from *Soferim* as pertaining to scrolls

From a tannaitic perspective, a woman may technically read Torah for the congregation; so it would follow that technically she may write the Torah that is to be read from.

intended for communal reading, while R. Hamnuna's more restrictive *baraita* pertains to a *Torah* scroll meant to fulfill the writing requirement, consistent with its grouping in the ritual triad of *sifrei Torah*, *tefillin* and *mezuzot*.²⁸

Masekhet Soferim states: "This is the principle: if one is eligible to discharge the obligation of the community, his writing may discharge the obligation of the community." Since the

subject of the *baraita* is specifically *Torah* scrolls—not *tefillin* or *mezuzot*—the obligation is presumably the obligation of the community to read *Torah*. We know that from a tannaitic perspective, a woman may technically read the *Torah* for the congregation²⁹ and so it would follow that technically she may write the *Torah* that is to be read from.³⁰3 - Ran and invalid *Torah* scrolls

Explicit support for the idea of two types of *sifrei Torah* is found in Ran's commentary to *Megillah* (*dapei ha-Rif 5b*, s.v. "u-*kebetav*").

In *Megillah* 18b, the *gemara* discusses the case of a *megillah* (Book of Esther scroll) from which letters or verses were omitted. The *mishnah* (on 17a) had already taught that a *megillah* reading rendered from memory does not fulfill one's obligation; nevertheless, an anonymous *baraita* taught that if the reader from the defective scroll supplies the missing letters or verses from memory, the reading is valid. But, the voice of the *gemara* objects, we have learned that illegible letters invalidate a scroll! A harmonization is reached: if a *megillah* is mostly intact, the remainder may be supplied from memory, but if most of the *megillah* is damaged, the reading is not valid.

Ramban (to *Megillah* 17a) takes pains to point out that this leniency is only applicable to *megillot*. A *Torah* scroll is quite different, and can be invalidated by omission of a single letter. Ran agrees that production of a *megillah* is generally governed by a set of rules different from those applicable to *sifrei Torah*, *tefillin* and *mezuzot*—that is, one may do certain things in

²⁸ The *sefer Torah* for *haqhel* would fall into the category of "communal reading." The division is not made along rabbinical/biblical lines, but rather functional ones: writing (the triad of *Torah* scrolls meant to be written, *tefillin*, and *mezuzot*) on the one hand, communal reading on the other. It follows that even if the weekly reading is modeled after *haqhel* halakhically as well as spiritually, so that it is governed by the principle of *kol de-tiqqun rabbanan ke-`ein de-`oraita tiqqun* (a rabbinical enactment should be treated like a biblical statute), the presence of biblical-decree level requirements does not necessarily invalidate our suggestion.

²⁹ Our rabbis taught: All may be numbered among the seven [who are called to the *Torah* on *Shabbat*], even a minor and even a woman, but the Sages said: a woman is not to read from the *Torah* on account of the congregation's dignity" (*Megillah* 23a).

³⁰ If this is so, one may ask, why is a minor's writing unacceptable even though the minor may read *Torah* for the congregation? The answer appears to be that *Masekhet Soferim* included the minor in the context of deaf-mutes and the mentally impaired, who are not normally considered capable of coherent thought; the minor's inclusion as part of this triad may indicate that he is not considered capable of the required intention, and since intention is essential to imbue the scroll with sanctity, the minor's writing will not have sanctity and therefore will be unfit for ritual reading.

writing a *megillah* that would invalidate *sifrei Torah*, *tefillin* and *mezuzot*. He does not agree, however, that omission of a single letter always renders a *Torah* scroll invalid, and he permits reading from a *Torah* scroll missing some letters.

Recall that *sifrei Torah*, *tefillin* and *mezuzot* are generally treated as a unit, the same rules applying to each, unless we are taught otherwise. Ran stresses an aspect in which *sifrei Torah* differ from *tefillin* and *mezuzot*. *Tefillin* and *mezuzot*, he observes, are not scrolls that are used *qua* scrolls. One is required to affix the *mezuzah* to the doorframe, and one is required to wear the *tefillin*, but neither scroll is to be read from. Similarly, each Jew is required to write a *sefer Torah* for himself, but he is not actually required to read it. And that *sefer Torah*, says Ran, indeed is subject to the same requirements as are *tefillin* and *mezuzot*; it is invalidated by omission of a single letter:

Why should a *sefer Torah* be equal in this [requirement] to *tefillin* and *mezuzot*? *Tefillin* and *mezuzot* are not items from which one reads; rather, everyone is obligated to affix a *mezuzah* and to don *tefillin*. Similarly, everyone is obligated to write a *sefer Torah* for himself, and in this *mitsvah*, just as one letter invalidates *tefillin* and *mezuzot*, so too one letter invalidates the *sefer Torah*, and the *mitsvah* is not fulfilled until it is fixed. But with regard to *Torah* reading, which was instituted by the prophets, we do not infer the rules governing the *Torah* scroll from those applicable to *tefillin* and *mezuzah*.

It follows for Ran that rules concerning a *Torah* scroll used for public reading cannot be derived from the *tefillin* and *mezuzah*; the cases are simply not comparable. One may say that from the perspective of public *Torah* reading, a *sefer Torah* with missing letters functions very much like a *megillah* with missing letters— even

missing verses may be supplied by the reader from memory, and the reading remains valid. Hence, there are two types of *sefer Torah*—one valid both for reading and for fulfilling the requirement to write; one valid only for reading.³¹

d4 – The *Tur* and the *Drishab*; a mysterious lacuna and its absent explanation

The *Tur*'s list of people who may write *sifrei Torah* is marked by a curious omission. In *Orah Hayyim* 39, in the codification of the laws of *tefillin*, both the *Tur* and the *Shulhan Arukh* cite R. Hamnuna's list of people who are ineligible to write *tefillin*.

In *Yoreh De'ah* 281, when codifying the laws relating to *sifrei Torah*, the *Shulhan Arukh* follows the order of the *gemara*. It first discusses *sifrei Torah* written by heretics or found with non-Jews—“a *Torah* scroll written by a heretic is burned; by a non-Jew, buried”—and then reports R. Hamnuna's *baraita* in full. The *Tur* similarly begins by disqualifying *sifrei Torah* written by heretics or found with non-Jews, but it then moves on to different topics, entirely omitting R. Hamnuna's *baraita*.

In *Yoreh De'ah*, the *Shulhan Arukh* reads: “*Torah* scrolls written by an informer, a slave, a woman, a minor, a Cuthean, or an apostate Jew, are invalid.” (The non-Jew has at this point already been dealt with by the *Shulhan Arukh*; his omission here is not significant).

The *Tur*, however, reads simply: “A *sefer Torah* written by a non-Jew is buried.” It makes no reference at all to the slave, the minor, the woman, the Cuthean, the informer, and the apostate. We have seen that *Masekhet Soferim* omitted the Cuthean and the apostate as more or less repetitions of the non-Jew and the heretic, and there is no reason the *Tur* should not have followed this pattern as well. But that

³¹ It is worth noting that when Ran talks about finding a mistake during reading, he introduces a new concept—that if there is a mistake in one *hamesh*, the other *hameshim* may be read from. This does not contradict the point just made: it's true he could have suggested that a mistake in one *hamesh* doesn't affect the *sefer* as a whole, but since the discussion of finding a mistake during reading appears in the context of a scroll for which it is actually a problem, it's fair to say that his reference there is to a writing-class *Torah* being used for reading.

still leaves the slave, minor, woman and informer. Why did the *Tur* not forbid explicitly the *sifrei Torah* written by these people?

The commentary of the *Drishab* asserts that the *Tur*'s omission of these people was deliberate—that is, the *Tur* thinks that slaves, women and the like *are* in fact eligible to write Torah scrolls. Perhaps, *Drishab* suggests, the *Tur* left them out because the subject under discussion was scrolls that ought to be burned or buried. Since a *sefer Torah* written by one of the ineligible Jews may be used for study and need not be buried (unlike the scroll written by the heretic, which *must* be burned), the *Tur* may have left them out on that account.

This explanation is somewhat strained, however, and the *Drishab* rejects it accordingly. After all, it says, a *sefer Torah* written by a non-Jew could surely be used for study just as well as a *sefer Torah* written by a slave, so why disqualify the non-Jew but not the slave? In any case, “buried” and “may be retained for study” have been more or less synonymous in the development of the subject hitherto; there is no particular reason the *Tur* should suddenly choose to be precise about the difference. For this reason, and from context, it is much more likely that the *Tur* is talking about factors that make a *Torah* scroll kosher or invalid, and not only about scrolls that should be burned or buried.

The *Drishab* states that “the Rif and the Rosh were also silent on this matter.” Indeed, the Rif and the Rosh make the same distinction as does the *Tur*; compare *Hilkebot Tefillin* 3 with *Hilkebot sefer Torah* 20 in the Rosh, and *Tefillin* 7a with *Sefer Torah* 4b in the Rif. Both have the same wording as the *Tur*, all three leaving untreated the question of *mezuzot* and *sifrei Torah*. From this, *Drishab* suggests that the *Tur* believes, justifiably, that women, children and slaves, at any rate, are eligible to write a *sefer Torah*.

No proof is offered here by the *Drishab*; he refers the reader to a responsum that has not survived.³² But emphasizing the differences between two types of scrolls gives us a way to justify his conclusion: perhaps the scroll need only be one suitable for reading, not necessarily for anything else. In the view of Rosh, a *sefer Torah* is suitable only for *Torah* reading, never for the requirement of writing; perhaps the *Tur* is influenced by this to the point that his context is essentially *Torah* scrolls that are to be read from. Granted, he begins this section by reintroducing the *sefer Torah* to the *mitsvah* of writing against his father's limiting the *mitsvah* to books, indicating that he recognizes *sifrei Torah* as suitable for purposes other than *Torah* reading, but he still may see a *sefer Torah* as primarily a vehicle for *Torah* reading. Recall that Ran demonstrated a strong association among *Torah* scrolls for the *mitsvah* of writing, *tefillin*, and *mezuzot*, and was

Having two classes of sefrei Torah helps us explain why Tur used such apparently strange wording that leaves women eligible to write sifrei Torah in a reading-only context.

at pains to show that this association did not extend to other types of scrolls: a *baraita* applicable to the *sefer Torah*, *tefillin*, *mezuzah* triad is not necessarily applicable to *Torah* scrolls used for reading. That is to say, when R. Hamnuna refers to *sifrei Torah*, his referent is *sifrei Torah* for the *mitsvah* of writing, rules for which are linked to *mezuzot* and *tefillin*; hence *Tur*'s citation of R. Hamnuna's *baraita* regarding the laws of *tefillin*. But R. Hamnuna was not referring to scrolls used for reading, and his *baraita* is inapplicable in that context. Its prohibitions do not extend to scrolls for reading, and *Tur* sensibly omitted it from the laws of reading as irrelevant. The expected list

³² The *Shakh* (ibid.) mentions this responsum, saying that one cannot give it great weight as the proof is missing. Even so, this suggests that the *Shakh* thinks the idea is not of itself risible.

of ineligible scribes is truncated precisely because the list of those disqualified from writing scrolls to be read from is shorter than the list of those disqualified to write scrolls to fulfill the *mitsvah* of writing.

Thus, having two classes of *sefrei Torah* gives us a hypothetical rationale for *Drishab*, and helps us explain why *Tur* used such apparently strange wording, wording that leaves women eligible to write *sifrei Torah* in a reading-only context.

d5 - Support from the *Beit Yosef*

We proposed two classes of *sefrei Torah* as a possible way to resolve Maimonides' seeming self-contradiction: when he says a mistake invalidates a scroll, he is referring to writing; when he says it does not invalidate it (in pressing circumstances), he is referring to reading.

Beit Yosef (*Yoreh De'ab* 279) offers a similar explanation:

[if one found a mistake during reading...] since Maimonides wrote in his responsum that the reading was kosher, we do not require reading again from the beginning; and we must say that the ruling in the *Mishneh Torah* is not applicable to reading the *Torah*, but only to the positive commandment incumbent on everyone to write a *sefer Torah*. A mistake in the scroll does not invalidate the *Torah* reading; therefore, after-the-fact, we can rely on [Maimonides' leniency].

Beit Yosef cites arguments both for and against this position, including the Ran's comment that we have seen. Further, he himself supports it, integrating it into the *Shulhan Arukh*, as we saw above: if a mistake is found, the reading up to that point need not be repeated.

The context of the foregoing citation is another apparently strange choice of words by the *Tur*, which is noteworthy in that the solution proposed by *Beit Yosef* involves positing that a scroll may be kosher for reading though not for the requirement of writing and stating that a prohibition is applicable to some, but not all, scrolls—the same mechanism used earlier, to explain the *Tur's* phrasing of §281.

In detail, the situation is this: In *Yoreh De'ab* 279, the *Tur* rules that a damaged *sefer Torah* must be mended within thirty days.³³ After that time, a reading from that scroll is invalid even after-the-fact and must be repeated entirely. Now, why should the *Tur* say that “even after-the-fact the reading was invalid” only in this case? The implication seems to be that during the initial thirty days, the reading is accepted after-the-fact. But how can a reading from an invalid *Torah* scroll be accepted even after-the-fact? After all, Rosh ruled that one must repeat the entire reading if a scroll was deficient in any way at all. By showing that it can be accepted after-the-fact if one posits two differing interpretations of “invalid scroll” and assumes *Tur's* referent to be the less exacting of the two, Beit Yosef justifies *Tur's* position.

He is more explicit still: “since it does not fulfill the commandment, it is not suitable that they read from it, but if one had fulfilled the commandment with another scroll, there is no impediment to his reading from it in public, and this is the case if it is communally owned.”

That is to say, if a scroll that had been used to fulfill the commandment to write a *sefer Torah* no longer met its original criteria, it was no longer fit for the that purpose, and was therefore unfit also for the reading as well. If, however, it had not previously been used for writing, the reading from it would have been acceptable (although it would be more meritorious to start from the beginning, as observed above).

³³ This is specifically with reference to the letters; manuscripts are not to be left in a damaged state lest they be mistaken for correct versions. *Beit Yosef* summarizes various positions on the point.

If R. Karo really thought that the idea of two categories of *sefer Torah* could solve practical problems, why did he not codify it explicitly? The *Shulhan Arukh* contains not a hint that there might be more than one interpretation of “invalid *Torah* scroll.”

The most obvious answer is that in a synagogue context, there is no universally reliable way to tell what kind of *sefer Torah* one has, and it is statistically very likely that it was written for the sake of writing it. It hardly ever happens that someone writes a *Torah* to fulfill the commandment to write and then has another one produced for synagogal reading. Much more common (today as in the time of the Rosh) are scrolls written for the sake of writing and then loaned to the synagogue for reading. Given this, the *Shulhan Arukh* is sensibly cautious, ruling on the safe side that a blessing should not be recited over the reading when a scroll is damaged, especially since there are very few cases when the distinction would be of major significance.

A scroll written by a woman would be invalid for the former purpose but potentially kosher for the latter.

This leaves us with two categories of *sefer Torah*, the production of which is governed by different rules: those intended for fulfillment of the commandment to write a *sefer Torah* and those intended for use in public *Torah* reading. In context, a scroll written by a woman would be invalid for the former purpose but potentially kosher for the latter. Even were that so, however, the scroll must not be owned by one who has not already fulfilled the commandment of writing, and reading from it may be valid only after-the-fact.

d6 - Comparison between *sifrei Torah* and *megillot*

Assuming a *Torah* scroll is owned by one who has fulfilled his obligation to write a scroll, we

know that if it is damaged, a reading from it is acceptable only after-the-fact. But if was written by a woman, may it be read even in the first instance? The scroll of Esther poses a comparable case.

Ran originally claimed that *Torah* scrolls for reading and *megillot* function similarly, and we have used this claim to support a distinction between “invalid” (*pasul*) as applied to scrolls for reading and “invalid” as applied to those meant to fulfill the requirement of writing. To what extent are they similar?

d6a - Some comparison exists

Mordekhai is sufficiently convinced of their similarity that he derives rules regarding a *sefer Torah* from rules established for a *megillah*. He does this in the case we saw above – the procedure upon finding a mistake during reading. He ruled that one should there render the omission from memory, proceed to a suitable stopping-point, and recite the concluding blessing. This position seemed curious, since *devarim she-bikhtav i attah rashai le-omram al peh*, one may not recite written texts from memory. Moreover, reciting a blessing over an invalid *Torah* scroll is at the root of our entire discussion, yet it seems not to bother Mordekhai at all!

Mordekhai reasons from the example of the *megillah*. The invalidity of a *megillah* affects one's ability to use it in fulfilling the commandment to read it, and the prohibition on reading from memory applies. Nevertheless, if a mistake is found in the course of reading, the omission may be supplied from memory, and the reading is considered valid. Recall that if a lesser portion were omitted, a *sefer Torah* would be fit for use, and only where a greater portion is flawed must the reading be repeated. Mordekhai, commenting on this (*Megillah* 792-3), says:

If 'the lesser part' [is invalid], [but the *megillah* as a whole] is still written according to the enactment of the rabbis, it therefore is kosher and reading from it is reading

from a scroll; the prohibition on reciting written texts from memory does not apply. From this we may learn that [if] a *sefer Torah* lacks letters or words or a verse, there is no need to break to bring another *sefer Torah*, but it is read from memory.

Mordekhai is inferring a rule applicable to a *sefer Torah* from a rule applicable to a *megillah*: since one may fill in small gaps in the *megillah* by reciting from memory, one may do so in *Torah* reading as well and need not replace the scroll. This is noteworthy, since a *megillah* is generally subject to fewer stringencies than a *sefer Torah*, and we do not usually derive rules for a situation entailing greater stringency from one requiring less.

If, however, we read Mordekhai as referring only to *sifrei Torah* meant for reading, and relying in some way on their similarity to *megillot*, the *sefer Torah* is not necessarily subject to more stringencies and the cases are comparable. On this view, Mordekhai can infer rules for a *Torah* scroll from those for a *megillah* without violating canons of halakhic reasoning.

d6b - If *sifrei Torah* and *megillot* are comparable...

If *sifrei Torah* for reading and *megillot* are generally comparable, we may reason from a woman writing a *megillah* to a woman writing a *Torah* scroll for reading. If women may write the *megillah*, it would follow that women could write *sifrei Torah* to be read.

Since *megillot* are not included in R. Hamnuna's *baraita*, there is no clear prohibition on women writing them. Whether the *baraita* in fact applies to a *megillah* is a point of dispute.

A *sefer Torah* and a *megillah* differ in that the *megillah* is described both as *sefer* (scroll) and *iggeret* (epistle), while a *sefer Torah* is solely a *sefer*.

The difference is discussed in the context of the parchment to be used: must the parchment for a *megillah* be processed *li-shemah* (with the specific intention that it be used in writing a *megillah*) as is the case with respect to a *sefer Torah*? Rabbeinu Tam held that a *megillah* was essentially the same as a *sefer Torah* unless specific guidance to the contrary was available; its parchment therefore required processing *li-shemah*. The *Maggid Mishneh*, on the other hand, took “*iggeret*” as the dominant characteristic, stating (*Hilkebot Megillah*, 2:9) that a *megillah* did not resemble a *sefer Torah* unless specific guidance to that effect was available. Like Maimonides, he therefore permitted the use of ordinary parchment.

A respectable body of aharonim reason that since a woman can fulfill the communal obligation of reading the megillah she may write the megillah.

To state it differently, on the *Maggid Mishneh*'s view, R. Hamnuna's *baraita* does not apply to *megillot*; on Rabbeinu Tam's view, it does.

We hear of this opinion of Rabbeinu Tam from its citation in Mordekhai (*Megillah* 795), in the context of communal reading. Let us suppose that Rabbeinu Tam's context is limited to communal reading, in which case Rabbeinu Tam and the *Maggid Mishneh* could concur that a scroll meant to meet the requirement of writing is essentially dissimilar to *megillah*. Further, if the *Maggid Mishneh* recognized a difference between a scroll for writing and one for reading (as Maimonides apparently did), he could agree with Rabbeinu Tam that the one for reading broadly resembles a *megillah*. Positing two types of *sefer Torah* thus allows us to harmonize the two opinions.³⁴

³⁴ The requirement that the parchment be processed *li-shemah* must then be inferred for both types of *sefer* from elsewhere. Conceptually, it is logical that a *sefer* for any kind of ritual use should be processed *li-shemah*; the sources (*baraitot* in *Gittin* 45b and 54a) could be applicable to both types of *sefer Torah*.

It follows that *Torah* scrolls for reading, along with *megillot*, are subject to the same rules as *Torah* scrolls for writing, *tefillin* and *mezuzot* only when guidance to that effect is available. As we have already seen, the disqualification of women from writing the triad of *sifrei Torah*, *tefillin* and *mezuzot* is an unexpected position, and the balance of opinion is that the anomalous restriction is applicable only to that triad. It follows that the *baraita* applies neither to *megillot* nor to *Torah* scrolls for reading.

We saw above, in *Masekhet Soferim*: “This is the principle: if one is eligible to discharge the obligation of the community, his writing may discharge the obligation of the community.” With respect to the *megillah*, a respectable body of *aharonim* (later authorities) reason that since a woman can fulfill the communal obligation of reading the *megillah* she may therefore write the *megillah*.³⁵ Once comparison between *Torah* scrolls for reading and *megillot* is permitted, it follows that if a woman may read the *Torah* for the community, she could in principle write a *sefer Torah* for communal reading.

Whether a woman may read *Torah* for the community is the subject of Mendel Shapiro's extensive article “*Qeri'at ha-Torah* by Women: A Halakhic Analysis,” *The Edah Journal* 1:2. Shapiro summarizes his conclusions as follows; the reader is referred to the article for further detail and analysis:

In my opinion, where a man reads the *Torah*, there should be no *halakhic* impediment to calling women to the *Torah* for at least some of the *aliyyot*. In impromptu services held outside the synagogue, or in synagogues where there is consensus that a woman's *Torah* reading

does not violate community standards of dignity, women may be permitted to read the *Torah* (or at least portions of it) as well. Finally, I argue that a critical analysis of the role of *minhag* (custom) in determining religious practice shows that women's *aliyyot* and *Torah* reading in the circumstances I described may not be attacked on the grounds that they violate binding *minhag*.

If a woman may read *Torah* for the community without restriction, we reach the end of a line of reasoning that permits women to write *sifrei Torah* for reading.³⁶ But the proposition that women may read “at least portions” of the *Torah* affects our question. We wish to show that a woman can fulfill the communal obligation of *Torah* reading; must she be able to fulfill it in its entirety? Does ability to participate in the *mitsvah* only partially mean that a scroll written by a woman is invalid?

There are two aspects of minhag that affect women's writing Torah scrolls: a visceral reaction to violation of the status quo, and a cautionary measure employed to prevent potential transgressions.

The limitation on women's participation stems from *Tosefta Megillah* 3:11, which some have read to mean that the ritual of public *Torah* reading requires the participation of men and is meaningless without it; even though women may participate, they may not be the sole participant. Again, a respectable body of

³⁵ Those who rule that a woman's obligation is to hear the *megillah* rather than to read it also rule that a woman may not write the *megillah*. See R. Singer's article “Women and Writing the Megillah” [*The Edah Journal* 4:2/Kislev 5765] for a detailed discussion of the opinions involved.

³⁶ One could very easily extend this to permit a child to write *sifrei Torah* as well, though congregations that permit women to read generally do not permit children to read. Some congregations place (male) children before women in the ritual hierarchy; congregations that accord women and men equal levels of communal recognition tend not to place children of either sex on the same level as adults. There is a social trend towards permitting women to read *Torah* with men; there is no such social trend towards permitting children to do so. Likewise, there may be communities that would be comfortable permitting women to write their *sifrei Torah*; I doubt there are many communities that would be comfortable having children participate on this level. This is genuinely a question of *kevod ha-tsibbur*: do social circumstances suggest elevating children to the same levels as adult men and women? In our times, almost certainly not.

aharonim differ, prohibiting women only on the grounds of *kevod ha-tsibbur* and making no claims about the inherent indispensability of males. *Magen Avraham (Yoreh De'ah 282)* goes so far as to suggest that since public *Torah* reading is a small-scale version of *haqhel*, in which women are obligated, it is possible that women are similarly obligated with respect to public *Torah* reading and may even be counted towards the requisite ten. The issue is left unresolved there, but the public nature of the reading is clearly a factor; the presence of the congregation is itself an essential element of public *Torah* reading, and women are potentially part of the congregation in this respect.

We need not go so far as to assert that women must be counted in the *minyan*; we could say that there is no restriction on which parts of the reading a woman may do, and therefore no restriction on which parts of the *Torah* scroll she may write. The only restriction is temporal; she may not perform the whole of a reading at any one time. Alternatively we might say that women are part of the community to the point that it is plausible to follow those *aharonim* who agree that a woman may perform the whole reading for the congregation. This puts *Torah* reading on the same plane as reading the Scroll of Esther with respect to women's ability to fulfill the obligation of others, and so by comparison with the *megillah*, she may write the scroll as well—provided that her participation in reading is not seen as a slur on the collective dignity of the congregation.

d7 - Difference between a damaged scroll and one written by women

We have seen that a *Torah* scroll for reading having a damaged letter falls into the same

³⁷ The only way it might be described as sub-standard is that there exist authorities who forbid it, and depending on one's approach to halakhic philosophy, this may make a woman's *megillah* less than ideal. But if one wishes to permit something, it is generally necessary to reject the views of those who forbid it, and the fact that there exists a dissenting position does not necessarily make one's own position less valid. Women writing the *megillah* is perfectly permissible according to many authorities, and if one accepts their view and agrees to disagree with those who rule otherwise, there is no reason for women to abstain. If one's approach to *halakhab* dictates that it is always better to comply with as many authorities as possible, then certainly a *megillah* written by a woman is out of the question; this approach is valid, but perhaps unduly restrictive.

category as a *megillah* with a damaged letter: after-the-fact, the reading is acceptable, and if there is no other scroll available, the damaged one may be used in the first instance, rather than forgo the reading. It is clear, however, that such a scroll is decidedly sub-optimal.

Let me emphasize the difference between such a scroll and a scroll written by a woman. It is clear that a damaged letter makes a *megillah* sub-standard, but it is equally clear—assuming one accepts the idea of a woman writing a *megillah*—that such a *megillah* would not be halakhically sub-standard.³⁷ And just as a *megillah* written by a woman is kosher in the first instance because she may read *megillah* for the congregation, so too is a *Torah* scroll (in the for-reading category) that is written by a woman kosher in the first instance because she may read for the congregation. Just as a reading from a woman's *Megillah* is not viewed as a concession, analogous to permitting reading from an invalid *megillah*, so too a reading from a woman's *sefer Torah* should not be viewed as a concession; it is reading from a fully kosher scroll. In the context of reading, a *Torah* scroll written by a woman is neither invalid in the first instance nor in any way sub-standard.

E - Summary: customs and precautions

We have shown that there exists a position, described and endorsed by such authorities as Ran, Maimonides, and *Beit Yosef*, that could permit women, *ab initio* and with no conditions other than those applicable to men, to write *sifrei Torah* to be used for the public reading, *geri'at ha-Torah*.

The sight of women reading *Torah* in the congregation has raised hackles, and violation of *minhag* (practice; custom) is not to be taken

lightly. There is some small evidence of women having served as scribes for various Jewish communities in the past, and it seems that in their communities they were, by and large, accepted. However, it is undeniably true that the vast majority of scribes are men, and many could prefer it to remain so.

Excellent discussions of the role of *minhag* in halakhic development may be found elsewhere; R. Shapiro examines *minhag* in the context of *alzyot* for women, and many of the general comments he makes are applicable in this case also. There are two aspects of *minhag* that affect women's writing Torah scrolls; the first, a visceral reaction to violation of the status quo, and the second, a cautionary measure that may not strictly speaking be necessary but that is employed to prevent potential transgressions.

The visceral reaction, voiced in advance of any halakhic analysis, objects to female scribes on the basis of a perception that writing holy texts is a man's job and it is simply wrong for a woman to participate.³⁸

But while change to the status quo may be uncomfortable for many, increased women's participation in all aspects of ritual life is more or less inevitable. The acceptance of female scribes may be seen as part of a greater trend, the merits and demerits of which are not our current focus. Suffice it to say that women continue to do jobs in traditionally male spheres despite protests that such a change is wrong.

The cautionary measure is worthy of more discussion. The difference between a scroll meant for public reading and one meant to fulfill the commandment to write is theoretically subtle and physically nil. We have already suggested that R. Karo may have been aware of the distinction but chose not to codify it, for the benefits of noting the distinction are minimal and the potential problems significant. Again, this is a judgment a community must make for itself, pitting the status quo against allowing its women to take a

greater part in one more ritual event, albeit a significant one. The community's response will be influenced by the degree to which it deems its ability to handle the inherent risks to be greater than its desire to alter the status of its women.

While change to the status quo may be uncomfortable for many, increased women's participation in ritual life is inevitable.

Given the mobile nature of *Torah* scrolls, any congregation's decision is likely to affect the wider community. A *sefer Torah* written by a woman is essentially indistinguishable from one written by a man, and a woman's *sefer Torah* might make its way into a synagogue that would consider such a thing an appalling affront; that might argue for congregations taking account of the greater good in deciding whether to permit its women to write. On the other hand, it is already wise (many would say essential) for a buyer to investigate the provenance of any *sefer Torah*, since the market is riddled with scrolls that are invalid in one way or another—written by non-Jews or minors, for example, or passed as kosher without adequate checking and in fact containing a vast number of errors. I see no reason to think that the market will purify itself over time, the temptations of business practice having remained more or less the same over a couple of millennia, and *caveat emptor* will continue as the byword. Adding scrolls written by women to the market would not make the issue any worse, and, in fact, could be beneficial: since opposition to women's *sifrei Torah* is a great deal stronger and more politicized than opposition to *sifrei Torah* with a few flawed letters, congregations might well become more inclined to check the origins and *kasbrut* of their scrolls.

Practically, there is already the means in place to accomplish this. It is possible to identify *sifrei Torah* uniquely, based on certain

³⁸ Although the reaction is not authoritatively documented, I have experienced it personally.

measurements and characteristics of script; there is an international register of *sifrei Torah* (coordinated by Machon Ot) that attempts to guard against theft by holding details of ownership (a stolen scroll can be identified as such to a potential purchaser), and a register that holds information about a scroll's owners can also hold information about its scribe. Thus any registered *sefer Torah* can have its *kasbrut* reliably identified. Visceral reaction to a *Torah*'s having been written by a woman seems to be a great deal stronger than a *Torah*'s having

been stolen, and if precautions against the former resolve themselves by means of precautions against the latter, the entire Jewish world, not merely the egalitarian-inclined portion of it, benefits.

In conclusion, while there are real social considerations to be taken into account, and various halakhic conditions that must be met, there exist circumstances in which a woman may write a *sefer Torah* quite as valid as one written by a man.