

# A Response to “Women’s Eligibility to Write *Sifrei Torah*”

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Jen Taylor Friedman has written an engaging article that argues that a *sefer Torah* written by a woman with the purpose of using it for the sake of *qeri’at ha-Torah* should be deemed as kosher *le-khathilah*, that is, valid for use, *ab initio*. Although the Talmud *Gittin* (45b) records the position of Rav Hamnuna that a *sefer Torah* written by a woman is invalid, and this position is treated as authoritative by the *rishonim*, Rambam, and *Shulhan Arukh*, the author sets this passage in opposition to one from *Masekhet Soferim* (1:14) which does not explicitly exclude women. She argues that women are implicitly included as eligible to write a valid *sefer Torah*, according to *Masekhet Soferim*, and to reconcile this contradiction, the author posits a distinction, based on Ran, between two classes of *sifrei Torah*: one that is written for the sake of fulfilling the *mitsvah* of *ketivat sefer Torah* (writing a *sefer Torah*) and one that is written expressly for the purpose of reading in a synagogue. A *sefer Torah* written by a woman, she argues, is invalid for the first category but valid for the second category.

I can strongly sympathize with Taylor Friedman’s desire to find a halakhic basis that will allow her and other women to fully participate in the field of *safrut*, and she has invested a great degree of effort and learning in attempting to find such a basis. However, while this resolution may be elegant as a *hiddush Torah*, it fails as a halakhic argument both because the textual evidence does not support this reading of *Masekhet Soferim* and because we do not rule in accord with the Ran’s distinction, and certainly not as applied to a *sefer Torah* written by a woman. The bulk of my response will

elaborate on these points and demonstrate that *le-khathilah*, such *sifrei Torah* are invalid for use.

The author argues, further, that even if such a *sefer Torah* were invalid, we may be able to use it regardless. Rambam rules in a responsum that one can use an invalid *sefer Torah* if no valid one is available; and we rely, *le-halakhah*, on this ruling when we discover that we have read from an invalid Torah and consider ourselves nevertheless to have fulfilled the *mitsvah be-di’avad* (as a practical matter, after the fact). Hence, we should allow congregations to use such an invalid *sefer Torah*, because recognizing women in the role of scribes would constitute a reasonable measure in a time of exigency (*she’at ha-dehaq*) situation. In my conclusion, I will address this argument, as well as other considerations regarding this phenomenon.

## 1. *Masekhet Soferim*

Much of the author’s argument rests on *Masekhet Soferim*’s supposed validation of *sifrei Torah* written by women. Let us look at this text:

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. (*Masekhet Soferim* 1:14).

Inasmuch as the text does not mention women and women can discharge the communal obligation since they can—in principle—receive *alzyyot*, it is argued that this text implicitly permits women to write *sifrei Torah*.

Let me raise a number of objections. First, the marginal notes on *Masekhet Soferim* attest to a number of manuscripts that explicitly include “a woman” in the list of those who cannot write a *sefer Torah*. The author should have addressed this issue of textual variants and established the correct manuscript before making her argument.<sup>1</sup>

In terms of the argument itself, an argument from silence is always tricky, as there is no reason to assume that a list is exhaustive; there is always the possibility, as the *gemara* puts it, of *tanna ve-shiyyer* (some items on the list were mentioned; others were not). There could be many reasons why a particular person is not included in the list, not least of which is that it may have just been considered obvious.

However, the argument is not just that women are not explicitly invalidated, but that the principle given—“if one is eligible to discharge the obligation of the community, his writing may discharge the obligation of the community”—would include women. Is this the case? To argue such, one has to assume that women may, in principle, receive *aliyyot* and as such are in the same category as men when it comes to discharging the obligation of the community. However, this is far from clear. First, while the *gemara Megillah* 23a excludes women from being called to the Torah only on the basis of *kevod ha-tsibbur* (dignity of the congregation), the *tosefta Megillah* (3:11), after stating that a woman may be *olah le-minyan shevah*, count towards the seven people called to the Torah on Shabbat, goes on to say that “a woman may not be brought to read from the Torah in public,” which sounds like a more fundamental exclusion.

<sup>1</sup> It is worth noting that the Vilna Gaon in his marginal notes to *Masekhet Soferim* (printed in the Vilna *Shas*) emends the text to include women in the list of those who are invalid, presumably to conform to the text in *Gittin*. R. Eliezer Waldenberg (*Tzitz Eliezer*, 14:19) likewise, quotes *Masekhet Soferim* as including women in the list.

<sup>2</sup> It is disconcerting that while the author clearly is aware of these positions, she chooses to ignore this possibility and simply assumes that *Masekhet Soferim* adopts the most inclusive reading of the principle that all may be counted toward the seven..

<sup>3</sup> These texts and the halakhic issues that surround women’s *aliyyot* are discussed at length in Mendel Shapiro’s article and Yehuda Herzl Henkin’s response in *The Ediv Journal* 1:2 (*Sivan* 5761). It is not my focus here is to discuss the halakhic issue of *aliyyot* for women. Regardless of how one might rule on this issue, it is necessary to assess the positions of the tannaitic sources and *Masekhet Soferim* on the issue of a woman writing a *sefer Torah* so that Taylor Friedman’s reading of *Soferim* may be determined. For that purpose, I am also not distinguishing between receiving an *aliyyah* and the actual reading, as these functions were collapsed in the tannaitic period.

How to reconcile this with the principle of *ha-kol olin* (all may be called to the Torah) is unclear. It is possible that the exclusion came chronologically later than the inclusive principle, in which case, the rabbinic ruling might *prohibit* a woman from reading, either totally or at least *ab initio*. Alternatively, it is possible that this exclusionary language refers to a woman’s ineligibility to discharge the community’s *fundamental obligation* of Torah reading; she can be called up only after the fundamental requirement of Torah reading has been met by calling men for the first *aliyyah* or the first three *aliyyot*. This is the position adopted by some *rishonim* and many of the *geonim*, and is the reading that R. Saul Lieberman prefers in his commentary on this statement in the *Tosefta* (pp. 1176).<sup>2</sup> According to either of these readings, it is clear that one could not say that a woman could discharge the community’s obligation with respect to Torah reading.<sup>3</sup>

Given the *Tosefta*’s exclusionary language, in contrast to the *baraita* quoted by *gemara* in *Megillah*, it can by no means be taken for granted that *Masekhet Soferim* assumes that women can discharge the fundamental obligation of *qeri’at ha-Torah*. And, in fact, *Masekhet Soferim* does address itself to the question of who can read from the Torah:

A minor may read from the Torah, but he may not lead the *shema*... (14:12).

A minor is explicitly included, but there is no mention made of a woman. Women are, however, mentioned in another context regarding the reading of the Torah:

.... And he translates the Torah passage so that the entire congregation (lit., the remainder of the people) can understand it, and the women, and the infants (sic), because women are responsible to hear the reading of the Torah as men, and certainly men are obligated, and they (women) are also obligated in the recitation of the *shema*, in prayer, in blessing after meals, and in *mezuzah*... (18:5)

*Masekhet Soferim* then, takes explicit notice of women's presence during the reading of the Torah, and explicitly obligates them to *hear* the reading, but when it comes to the act of reading itself, *Masekhet Soferim* only addresses itself to the minor. Even if we were generally reluctant to accept arguments from silence, in this case it is quite reasonable to conclude that according to *Masekhet Soferim* a woman may not read from the Torah. Thus, the principle of "whoever can discharge... is eligible to write" would serve to *exclude* women, and the absence of women from the list of those ineligible to write a *sefer Torah* is no different from the absence of their mention in the ruling of who can read from the Torah—they are just assumed to be excluded from both.

Thus, the argument from *Soferim* fails on one of its fundamental assumptions. But the argument is more problematic, still. Consider the case of the minor. Why is he excluded? As we have seen, *Masekhet Soferim* is explicit that he may read from the Torah, but states that he may not write the Torah. Consider the irony: this list does not explicitly exclude women, although *Soferim* nowhere says explicitly that they can read from the Torah. At the same time the list explicitly excludes minors, although *Soferim* says elsewhere that they *can* read from the Torah. Does this not show that either this passage is corrupt, or that we have not understood it in some fundamental way?

<sup>4</sup> It may also be noted that *Soferim* already addressed such a case of a minor who cannot read in the immediately previous law "And one may not write if he is unable to read" (*Soferim* 1:13). Hence, the ruling in (1:14) that excludes a minor is clearly referring to a different case.

<sup>5</sup> Elsewhere the author tries to explain away the case of the minor by attributing his ineligibility to his inability to have the proper intent. If this were the case, the same would also be true of the deaf-mute and the mentally impaired, and then the principle of the list that one must be able to discharge the community's obligation to read in order to be eligible to write would not be describing *anyone* on the list of exclusions.

Rather than admit to this, however, the author argues that the minor that is being excluded is a minor who cannot understand what he is reading, but who presumably has the skill to write a *sefer Torah*, a rare case indeed!<sup>4</sup> It stretches credulity to assume that *Masekhet Soferim* would use the term minor to refer to one who cannot read, when it elsewhere (14:12) uses it to refer to one who can read and whose reading is valid. Moreover, it is unreasonable to assume that *Soferim* would misleadingly invalidate a minor without qualification if it were referring only this very small group.<sup>5</sup>

The problematic nature of the list does not end with the case of the minor, for the full list was not actually quoted by the author. In both available editions of *Masekhet Soferim* (Vilna and Higger), the list includes among those who are ineligible "the convert." There is no good reason to assume that a convert should be excluded, and certainly not on the principle of excluding one who cannot discharge the community's obligations. Either we are to assume that the "the convert" means something else (*Or Zaru'a* interprets it to mean a *ger toshav*, a resident alien), or that the text is corrupt, or that the list is not actually a reflection of the general principle of the ability to discharge the community's obligation.

Finally, we have the case of the slaves, who also appear on this list and which the author omits from any discussion. Slaves, as we know, are generally assumed to have the same halakhic status as women. If slaves are ineligible, would it not follow that women are also ineligible? Perhaps it will be countered that slaves are excluded from reading the Torah publicly, but women are not. The evidence, however, is to the contrary. *Yerushalmi Ketubbot* 2:10 states:

Did not R. Zeira say in the name of R. Yirmiyah: “The slave is counted amongst the seven readings”?

In almost identical language to that used in regards to women—all may be counted among the seven, including women—we are told that a slave can receive an *aliyyah*.<sup>6</sup> Thus, if a slave is nevertheless invalid to write a *sefer Torah*, it must be either because: (a) *Masekhet Soferim* would rule that slaves could not receive *aliyyot*, or (b) the although slaves could receive *aliyyot*, they cannot receive the initial ones, and hence cannot be said to be able to discharge the community’s obligation or (c) the principle that “anyone who can discharge...” is not what is actually operative in this list. For whatever reason a slave is ineligible, however, we should assume that women would be ineligible as well: for without evidence to the contrary, *halakhab* assumes that the same laws pertain to both. And, as we have seen, *halakhab* does not recognize a difference between them with regard to their eligibility to receive *aliyyot*.

To sum up, we have a reading of a passage in *Masekhet Soferim* which (a) may not be based on the correct text, (b) makes assumptions about women’s eligibility to read the Torah according to *Soferim* that are unfounded and quite possibly demonstrably incorrect, (c) ignores the case of the convert and (d) ignores or radically reinterprets the directly relevant yet contradictory cases of the slave and the minor in order to sustain the reading.

All of this goes to the issue of the validity of the author’s reading of the text. Regarding the question of *halakhab le-ma`aseh*, there are two points that need to be made. First—and obviously given the foregoing—an innovative reading that is seriously suspect and problematic cannot serve as a basis for a ruling. Second, this list from *Soferim*, or at very least the omission of women from it, was completely ignored by the *rishonim*. Almost no *rishon* quote this list, and thus its halakhic weight therefore must be considered minimal at best. The only weight

<sup>6</sup> This position is later reflected in *Haghot Maymoniyot* (on Rambam *Hilkehot Tefillin* 12:17, letter *samekh*), and in the Vilna Gaon’s commentary to *Shulhan Arukh* 282:3.

<sup>7</sup> To the best of my knowledge, the only other *rishon* to quote the list is *Mahzor Vitri* (*Siman* 524). This citation is not meaningful, as it is part of a complete transcription of *Soferim*, with no associated halakhic discussion.

given to it can be said to derive from the fact that *Or Zaru`a* (*Hilkehot Tefillin* 555, quoted in Mordekhai, end of *Halakhot Qetanot*) quotes it and discusses its halakhic significance.<sup>7</sup>

*Or Zaru`a* focuses on the exclusion of the convert and the *mamzer* (which was in his text), and discusses the implications of this at length; these discussions are reflected in the rulings of the *Shulhan Arukh* (*Yoreh De`ab* 281:4). At the same time, *Or Zaru`a* completely ignores the absence of “woman” from the list, although he had just ruled above that women, among others, cannot write a *sefer Torah*. Either we are to believe that he assumed the reconciliation developed at length in the author’s article, and that this was so obvious that it required no discussion or analysis, or the much simpler proposition—that he did not see the absence of “woman” from the list as indicative of their intended inclusion. Additionally, it is possible that *Or Zaru`a* was only willing to consider this list as having halakhic weight *le-humra*, that is to rule strictly and add to the *gemara*’s list of disqualifications. What *Or Zaru`a* is unwilling to do is to be lenient against the *gemara* and to compromise on the basis of a passage from *Masekhet Soferim* that is not even explicit, the *gemara*’s simple ruling that women are ineligible.

In summary, the author’s attempt to read the passage in *Masekhet Soferim* as inclusive of women is not tenable in its own right for all the reasons discussed above. In addition, to the degree that the passage has any halakhic weight at all, it has not been understood to in any way to challenge or qualify the conclusion of the *Bavli* that women are ineligible to write a *sefer Torah*.

## 2. The Halakhic Argument based on Ran

Leaving aside the proof-text in *Soferim*, the author may still argue her position based on Ran on *Megillah* 5b, (s.v. *ve-katav*), namely that there are two types of *sifrei Torah*, one type that is valid for fulfilling the *mitsvah* to write a *sefer Torah* and one type that is valid for reading in

the synagogue. Based on conflicting textual evidence regarding whether a *sefer Torah* that was missing some words was or was not kosher, Ran posited that such a *sefer* could be used for synagogue reading but not for the *mitsvah* of writing. Why not, then, say the same for a *sefer Torah* written by a woman, that it would at least be valid for synagogue reading, inasmuch as a woman can discharge the community its obligation to read the Torah, and the purpose of this type of Torah is only for such a *mitsvah*. To make this argument, we would have to assume the following points:

- 1) Ran's ruling is extendable to cases where there is no textual support for it.
- 2) Women may indeed discharge the community's obligation with respect to Torah reading.
- 3) We rule, in practice, in accordance with the Ran.

Of these three assumptions, it can be demonstrated that the first two are questionable, and the third is incorrect. Regarding the first assumption, there is no basis on which to assume that Ran would extend his concept to cases where there was not already strong textual evidence for their validity. Consider the case that Ran was addressing, that of small number of missing words. Other *rishonim* also ruled that such a *sefer Torah* was kosher (see, for example, *Tosafot to Megillah 9a* (s.v., *Bi-sbleima*), *Tosafot ha-Rosh, ad. loc.*, Ritva on 18b (s.v., *Minah hanei milei*) and 9a (s.v., *Targum*)), although not on the basis of Ran's principle. The key, however, is that Ran was explaining a ruling based on a text; he was not creating a principle to allow for recognizing the validity of cases lacking textual support. Such a qualification is almost necessary in this case, for how else are we to know which shortcomings are acceptable in a Torah that is to be used for synagogue reading, if not on the basis of textual evidence? There must be proof that a certain known flaw does not invalidate a scroll for synagogue reading, and only then can Ran's distinction be used to explain this anomaly.

Regarding the second assumption—that women can discharge men's obligation with respect to Torah reading—we have already discussed above that there is a basis in the *Tosefta Megillah*, and it is the opinion of some *rishonim* and a number of *geonim*, that even if considerations of congregational dignity are disregarded, a woman cannot read the first one or the first three *aliyyot* because she cannot discharge a man's fundamental obligation regarding Torah reading.

This brings us to the third question, that of whether we rule in accordance with Ran as a practical matter. There is no evidence that *Shulhan Arukh* ever considers Ran's categories as operative. In the case of missing words, *Shulhan Arukh* rules against Ran (and *Tosafot, et. al.*) and states that a *sefer Torah* is *pasul* (invalid) if there are errors or words are missing (*Yoreh De'ab 279:2*, and *Beit Yosef, ad. loc.*). He does rule, as the author discussed at length, that *post facto* one can rely on Rambam that the community fulfils its obligations with an invalid *sefer Torah*, but he rules that it is invalid nonetheless. The author, however, would have us make a couple of new assumptions in order to salvage Ran as a matter of practical *halakhab*, namely:

- a) *Shulhan Arukh* actually rules in accordance with Ran.
- b) There is a twist to Ran's two categories, namely, that the purpose for which a *sefer Torah* was written—for the *mitsvah* or writing or for use in the synagogue—defines its identity. Hence, if it were written for the sake of the *mitsvah* of writing and was missing words or contained errors, it cannot be used for reading in the synagogue. An identical *sefer* with such errors that was written for the purpose of synagogue reading, however, can be used in the synagogue.
- c) The reason *Shulhan Arukh* invalidates a *sefer Torah* with missing letters is because it talking only about a *sefer Torah* that was written for the sake of the *mitsvah* of writing.

It is hard to take these arguments seriously. There is no evidence, nor any reason to think that Ran would distinguish between the purposes for which the Torah was written. Ran simply states that certain criteria must be met if a scroll is deemed to satisfy the obligation to write one, while fewer criteria must be met if it is to be used in the synagogue. The author's introduction of the purpose for which the Torah was written as determinative of its status has far-reaching implications, and if Ran took that position, he most certainly would have said so. To now take this novel idea, read it into Ran, and then posit that *Shulhan Arukh* affirms it, all without any supporting evidence, and in the face of the simple ruling of the *Shulhan Arukh* to the contrary, cannot be maintained. Occam's razor must be applied here, and we must assume that the *Shulhan Arukh* rules against Ran, and that a Torah with missing letters or with mistakes is invalid.

We should be clear that while the author of the *Shulhan Arukh* rules against Ran, it is true that he accepts a Torah reading from a *sefer* with mistakes as valid *post facto*, in accordance with Rambam's responsum. In such a *post facto* situation, he uses Ran's position for support:

ואע"פ שרב שלמה בר רשב"ץ השיב שם על דברי הר"ן מורי הרב הנזכר היה תופס דברי הר"ן עיקר וקרוב לשמוע כדי ליישב דברי הרמב"ם בתשובה עם דבריו בחיבור וכך אנו נוהגים אחריו

And although R. Shlomo bar Rashbatz responded to [i.e., critiqued] the words of Ran, my teacher, the aforesaid rabbi [Rav Yaakov bei Rav] affirmed the words of Ran as fundamental and persuasive, in order to reconcile the position of Rambam in his responsum with his position in his treatise (*Mishneh Torah*) and so our practice follows him. (*Beit Yosef, Yoreh De'ah* 279).

That is to say, Ran's explanation can be used to explain why Rambam would rule that a *sefer Torah* with errors was both invalid and yet could

be used in the Torah reading, i.e., that it was invalid for the *mitsvah* of writing, but valid for synagogue use. However—and this is the key point—*Shulhan Arukh* relies on this only *post facto*. When a mistake is found, the reading does not have to be done over, but one must immediately switch to a valid *sefer Torah*. Ran, like Rambam's responsum, is relied upon *be-di'aved*, never *le-khatzilab*, and even then only in case of missing words or mistakes.

In fact, *Avnei Nezer* (Rabbi Abraham Bornstein, the *Av Bet Din* of Sochaczew, 1839-1910) already dealt with the question of the relevance of Ran's categories in a responsum dealing with the validity of a *megillah* written by a minor, and his words on this issue deserve to be quoted in full:

ט) והנה יש מקום להכשיר בספר תורה שכתבו קטן שהגיע לחינוך לשיטת הר"ן בפרק ב' דמגילה שהכשיר ספר תורה שהשמיט בה הסופר אותיות... דהתם לענין קריאתו שהוא מתקנת עזרא לבד אין לנו עיין שם. הרי דאף שאין בו קדושת ספר תורה כשר מן התורה אף על פי כן יוצא בו ידי תקנת עזרא. והכי נמי יש לומר בנידון דידן בכתבו קטן שהגיע לחינוך:

י) אולם באמת אין מדברי הר"ן רא' שהוא הכשיר רק מדאיתא בגיטין (דף ס' ע"א) ספר תורה שחסר יריעה אין קורין בו משמע הא פחות מיריעה קורין בו. הא בשאר דברים אין לנו. ופשיטא שאין ללמוד משם. דהתם מכל מקום מה שכתוב קדושת ספר עליו ומגילה שנשתיירה בה פ"ה אותיות... מטמא הידים מה שאין כן בשכתבו כולו מי שאינו בר חיוב בתפילין מן התורה. גם לא קיימא לן שם כהר"ן:

9. Behold, there would be the possibility to validate a *sefer Torah* written by a minor who had reached the age of instruction (*hinnukh*), according to the position of Ran in the second chapter of *Megillah*, who validated a *sefer Torah* which was missing some letters. ... For regarding the issue of reading from it, which is only an institution of Ezra, we need not assume that it is invalid; see

there. Behold, although it does not biblically have the sanctity of a kosher *sefer Torah*, nevertheless, one fulfills the obligation of the institution of Ezra (i.e., synagogue reading). And we can thus make a similar argument here regarding a case when it is written by a minor who has reached the age of instruction.

10. But, in truth, there is no proof from the words of Ran. For he validated [his case] based only on what was stated in *Gittin* 60a, that a *sefer Torah* that was missing one parchment cannot be read from, which implies that if it is missing less than a parchment, that it may be read from. But regarding anything else [i.e., any other invalidities] we have no basis (to assume Ran would allow them for reading). And it is obvious that one cannot learn from Ran's case [to others]. For in that case, [although some parts were missing] what was actually written still had the sanctity of the *sefer*, and a scroll [of Esther] that has 85 letters remaining... renders the hands impure [that is, has the sanctity of holy Scripture], which is not the case when it is written by someone who is not biblically obligated to don *tefillin*. Moreover, we do not rule in accordance with Ran.

(Resp. *Avnei Nezer*, *Orach Hayyim*, no. 516)

The comments of *Avnei Nezer* are directly relevant to our case. Ran's ruling was issued only with respect to the case of missing words. It would not be applicable to a *Torah* written by a woman, for the validity of which there is no prior textual basis that it is valid, and which would not have the sanctity of a *sefer Torah*, for a woman is among those declared ineligible by *Gittin* 45b, inasmuch as she is not obligated to don *tefillin*. And, finally, we don't rule in accord with Ran.

Let us examine the *Avnei Nezer's* point regarding the sanctity of the *sefer Torah* and how it bears on the article under review here. The author, throughout the article, tries to take the sting out of the word "*pasul*," ("invalid") as applied to a *sefer Torah* written by a woman, claiming it means merely that it cannot be used for the mitzvah of writing a *Torah*, but that it is valid *ab initio* for public reading. We should not be fooled by such semantics. If a *sefer Torah* is *pasul*, that means that it is invalid, and Rambam is actually quite clear on the matter:

נמצאת למד שעשרים דברים הן שבכל אחד מהן פוסל ספר תורה, ואם נעשה בו אחד מהן הרי הוא כחומש מן החומשין שמלמדין בהן התינוקות ואין בו קדושת ספר תורה ואין קורין בו ברבים, ואלו הן... (י) שכתבו אפיקורוס או כיצא בו משאר פסולין.

You may thus learn that there are twenty things each of which invalidates a *sefer Torah*, and if it was made with one of these flaws, behold it is like one of the *humashim* used to teach infants, but it has no sanctity of a *sefer Torah*, and it may not be read in public, and these are they... (10) that it was written by a heretic, or anyone of the other people who are disqualified [from writing].

(Rambam, *Mishneh Torah*, *Hilkehot Sefer Torah*, 10:1)

It is possible, in line with the *Beit Yosef* and on the basis of Rambam's responsum, to limit Rambam's declaration that it cannot be used for public reading to cases of *le-khatahilab*, such as when others are available, or it has not yet been read from. What is not possible, however, is to avoid Rambam's clear statement that such a *sefer* does not have the sanctity of a *sefer Torah*.<sup>8</sup> This is why *Avnei Nezer* states that one cannot extrapolate from the case of missing letters to a *sefer* written by one of the people categorically excluded by *Gittin* 45b. In the latter case, the *sefer* would not have sanctity of a *sefer Torah*, and there is no reason to think that such a *sefer* would be valid for the purpose of reading in the

<sup>8</sup> Again, I am not willing to give serious consideration to the author's contention that this Rambam, like similar texts in the *Shulhan Arukh*, and all other texts that contradict her position, is referring only to a *sefer Torah* that was written to fulfill the *mitsvah* of writing, and that a *sefer Torah* written for synagogue reading would have a different status. This is an imagined distinction, with no logical basis, and it is absurd to read it into all these texts.

synagogue. If Rambam would allow reading from such a *sefer*, as he does in his responsum, it is only because he allows, *post facto*, a reading done from an invalid *sefer Torah*.

Beyond the question of such a *sefer's* fitness for use *le-khatzilah*, one must ask whether the author has considered the implications of arguing for the use of such a *sefer* that lacks *qedusbat sefer Torah*. Even if such a *sefer* were valid, which it is not, it would merely be an object used to do the *mitsvah* of reading in the synagogue and would not merit being treated with the special veneration of a *sefer Torah*, as described so well by the author: “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.... [T]he scroll itself carries tremendous symbolism, and as such is a focal point of the synagogue.” The author is asking us to consider purchasing, owning, and using a Torah that would have no *qedusbat sefer Torah* and would warrant none of this veneration.

Thus, Ran cannot be used as a halakhic basis to validate a *sefer Torah* written by a woman, a Torah which anyway would at most only be able to be used for synagogue reading, but would lack *qedusbat sefer Torah*.

The other proofs that the author offers in this vein are equally without basis. We have already demonstrated at lengths the problems of relying on the *Maskhet Soferim* text. We will add here that to claim that Rav Hamnuna's statement, in contrast to that of *Soferim*, is referring only to the *mitsvah* of writing and not to the *mitsvah* of reading, is to ignore the context of *Gittin* 45b, which introduces Rav Hamnuna into a discussion of *sifrei Torah* written by non-Jews. The *gemara* quotes three opinions about such *sifrei Torah*: they must be burned, they must be buried, or they may be read from. Clearly, the context is not fulfilling the *mitsvah* of writing, but the use of such *sifrei Torah* in a synagogue context. Even the phrase “they must be buried” is understood to mean that they cannot be used

in a synagogue (see, for example, *Shab*, *Taz*, and *Arukh ha-Shulhan* on *Yoreh De'ah* 281:1). The context, then, is the use of such *sifrei Torah* in the synagogue, and it is in this context that Rav Hamnuna is quoted.

Regarding the *Tur's* position, *Drishab* already noted the absence of “woman” from the *Tur's* list of those who are ineligible to write a *sefer Torah*. We do not know how *Drishab* would have argued for validating scrolls written by women; his responsum is lost to us. Perhaps he would have argued against ruling in accordance with Rav Hamnuna. Be that as it may, there is no basis to use Rif, Rosh, and *Tur* to support the author's arguments.<sup>9</sup> While these three do not mention the invalidity of women in their laws of *sefer Torah*, Rif and Rosh quote Rav Hamnuna's statement invalidating women for writing a *sefer Torah* in their laws of *tefillin*. The author's claim is that this refers only to the *mitsvah* of writing, and that when Rif, Rosh, and *Tur* dealt with a Torah for reading, they did not explicitly exclude women and would have validated women as scribes. But in the *hilkhot sefer Torah* of each of these three *rishonim*, where they do not explicitly exclude women, the context is not that of reading from a *sefer Torah*, but rather the *mitsvah* of writing a *sefer Torah*:

R. Yehoshua bar Abba says in the name of Rav Gidal in the name of Rav: One who purchases a *sefer Torah* from the marketplace is like one who stole a *mitsvah* from the marketplace. If he wrote it, it is as if he received it from Mount Sinai....

(Rif, opening of *Hilkhot Sefer Torah*, paralleled in Rosh, *Hilkhot Sefer Torah*, 1:1)

It is a positive *mitsvah* on every Jewish person to write for himself a *sefer Torah*, and one must pursue this greatly, for R. Yehoshua ben Levi said, “One who purchases a *sefer Torah*...

(*Tur*, *Yoreh De'ah*, 270, opening of *Hilkhot Sefer Torah*)

<sup>9</sup> It is also questionable in this case whether to consider these three positions or one, inasmuch as Rosh's *Hilkhot Sefer Torah* are patterned after, and in some way a commentary on, those of Rif, and *Tur*, in turn, is following his father's (Rosh's) work.

It is later in these very sections that Rif, Rosh and *Tur* discuss the disqualification of a non-Jew without explicitly mentioning the disqualification of women. If their silence is intended to include women, then it can only be understood to include women even for the *mitsvah* of writing a *sefer Torah*, a contention that even the author is not prepared to make.

Finally, the author's attempt to find support for Ran's position in *Beit Yosef* relies on a faulty reading of *Tur* and a tortuous explanation of the *Beit Yosef. Tur* in *Yoreh De'ah* 279 understood correctly states that if one reads from an uncorrected *sefer* at any time, one does not fulfill the obligation, not—as the author would have it—only in the case when it is read from after 30 days. Similarly, the author misunderstood the comments of the *Beit Yosef* in the *Bedeq ha-Bayit* as commenting on this line in *Tur*, when they were really a postscript to his later discussion of Rambam's position, as is made clear in the notes in the new edition of *Tur*. And, as we already discussed, the attempt to read in the position of Ran and to posit a distinction of *sifrei Torah* based on the purpose for which they were written, is all without foundation.

In summary, it is impossible to consider the author's contention that a *sefer Torah* written by a woman could be valid. To do so would be to read sources in convoluted ways with no justification; to make certain debatable assumptions about a woman's ability to discharge a man's obligation with respect to Torah reading; to assume that we rule in accord with Ran when we do not; to extend Ran to cases in which there is no textual basis and where logic dictates otherwise; and to consider using a *sefer Torah* which has no *qedushat sefer Torah*. A halakhic innovation on any issue, let alone one as important as this, cannot be based on such a series of doubtful propositions, and all the more so when some of the assumptions can be shown to be incorrect. We must definitively conclude that there is no halakhic basis on which to validate a *sefer Torah* written by a woman for reading in the synagogue.

### 3. Rambam's Position

We are left with Rambam's position in his responsum that the use of invalid *sifrei Torah* is only a problem of *kevod ha-tsibbur* (the dignity of the congregation), and they can therefore be used if there are no alternatives. Although we do not rule in accord with Rambam, we rely on him *be-di-`avad* (*post facto*)—when a Torah scroll has already been read from and an invalidating flaw is found, we do not require that the reading be repeated. Why, the author wonders, can we not say that the need to be inclusive of women as scribes is the equivalent of cases of when the invalid scroll has already been read from: “Again, we may 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.” (footnote 26).

The first issue to consider here is not whether giving women greater religious fulfillment carries at least the same weight as saving ten minutes of time, which it certainly does, but whether in the case of an invalid *sefer Torah* we consider extenuating circumstances (*she`at ha-dehag*) situations as equivalent to *be-di-`avad*. While there is a general principle that equates the two, the question is whether such a principle applies in this case. On a general level, R. Jacob Jehiel Weinberg made the point that a extenuating circumstances should have the status of *post facto* only when the extenuating circumstances are an exceptional case, and we are being lenient only because of a chance event. But we would not apply the principle to consider an ongoing situation as extenuating and to be lenient on that basis as a general rule:

אך מכל המקומות שהביאו דשעת הדחק כדיעבד  
דמי נראה רק במקרה כשאירע כן בשעת הדחק...  
אבל לא לעשות לכתחלה לדבר חוק והסתדרות  
בכל פעם.

But wherever they [decisors—*poseqim*] have cited the principle *she`at ha-dehag* is

considered to be the same as a *be-di`avad*, it appears to have been a case where an event occurs that makes this a *sh`at ba-deḥaq*...but not that *ab initio* we should establish the [permissive] ruling as a matter of law and fixed policy for all cases. (Resp. *Seridei Aish*, 2:6).

More specifically, in this particular case of relying on Rambam's ruling, the *Shulhan Arukh* itself makes clear that extenuating circumstances are not equivalent to a *post facto* situation. Although R. Karo rules that one need not repeat a reading that was done from what was later discovered to be an invalid *sefer Torah* (*Orah Hayyim* 143:4), he rules in the previous section, *Orah Hayyim* 143:3 that:

In the villages where there is no valid *sefer Torah*, they should not make blessings on it [i.e. an invalid *sefer*].

That is, according to *Shulhan Arukh*, *she`at ba-deḥaq* is not to be considered the same as a *be-di`avad*, and the reading must be forgone, rather than done from an invalid *sefer Torah*. Rema quotes two opinions on this matter and in 143:4 states:

In a *she`at ba-deḥaq*, where the congregation has only an invalid *sefer Torah*, and no one is available to fix it, there are those who say that it may be read from in the congregation and blessings may be said over it, and there are those who invalidate it.

As a rule, we would assume that the practice is in accordance with the last opinion of Rema (especially considering that his next ruling assumes the strict approach), and thus we find that *Mishneh Berurah* states that all the *aharonim* have ruled that one should not use such a *sefer Torah*, even if no other one is available. At most what should be done is that there should be a reading without the blessings (*Mishneh Berurah* 143:29 and 9).

Given that we do not use an invalid *sefer Torah* even if there are no alternatives, there is no way

to argue that we should use a *sefer Torah* written by a woman, which is thereby invalid regardless of the degree of need.

One final comment, however, is in place. I certainly sympathize with the author's felt exclusion and desire to have a greater sense of religious fulfillment. This, however, cannot constitute a *sh`at ba-deḥaq* if the way to address it is by pretending that an invalid *sefer Torah* is valid. Although I may be wrong, it seems to me that the author is asking us to give women *sofrot* a greater sense of inclusion not merely by using their *sifrei Torah* while clearly recognizing and identifying them as invalid, but by using their *sifrei Torah* as if they were valid. To me it is incomprehensible that we should consider the desire to blur halakhic categories, to present something as it is not, as a legitimate *she`at ba-deḥaq* that would then warrant halakhic leniencies. If what is being asked for is to have such a *sefer* clearly identified as *pasul*, but used anyway, that is a different matter; but, as I have shown above, there is no halakhic basis for allowing invalid *sifrei Torah ab initio*, regardless of the extenuating circumstances.

#### 4. Conclusion

In summation, there is certainly no basis to allow a *sefer Torah* written by a woman as valid either *le-kbathilah*, or, in reliance on Rambam, *bi-she`at ba-deḥaq*. The most that can be said is that if one does read from such a Torah, it is no worse than reading from *sifrei Torah* with other disqualifying flaws, and such a person fulfills his obligation *be-di`avad*. The author, at the end of her article, wishes to argue that one should not object to the production of such *sifrei Torah*. Although such *sifrei Torah* are indistinguishable from those written by men, and a congregation may unwittingly use such a *sefer Torah*, this should not be the concern of the *soferet*. Rather congregations must make this their responsibility and refer to an international register to ascertain who is the scribe of a given *sefer*. This policy recommendation is against *halakhab*. It is unrealistic and irresponsible to assume that congregations will actually do such checking. Placing a *mikhsbol* (a stumbling block)

before a person and thereby leading him or her to unwitting transgression, is at times a rabbinic and at times a biblical prohibition, depending on the particulars of the case. Yes, people are responsible to look out for themselves and not stumble over such stumbling blocks, but we are equally enjoined not to place such blocks in their way. And in the case of the invalid *sefer Torah* itself, we have an explicit ruling of *Shulhan Arukh* that a *sefer Torah* with errors must be repaired or put in *genizah* (*Yoreh De'ah* 279:1) and that one that is written by a non-Jew must likewise be put in *genizah* (*Yoreh De'ah* 281:1). *Taz* (281:1) takes this statement literally, and states that a *sefer Torah* whose invalidity is not visible cannot be used even in private, out of concern that it might eventually be used for public Torah reading. *Shah* (*Nequdot ha-Kesef*, *ad. loc.*) allows it to be used in private, because it is obvious from the fact that it is kept in private that it is invalid for public use. Both agree, however, that one cannot allow it to circulate if its invalid status is not clear to all. Thus, if a woman who is committed to *halakhab* intends to write *sifrei Torah*, it would be incumbent upon her to ensure that such a

Torah could not reasonably find its way to a halakhic congregation, or that she made obvious the fact that it was written by a woman, say, by writing on the back of each parchment panel: נכתב על ידי הסופרת פלונית אלמונית (written by the woman scribe\_\_\_\_\_).

I empathize with the author and others like her who want to participate fully in the field of *safrut*. I do not know what I can say to them, other than that this is one of many sacrifices that must be made for the sake of *halakhab*. While it is necessary for us to explore opportunities to allow for greater inclusion of women in areas of ritual, we cannot allow such an impulse to compromise a rigorous approach to *halakhab* and the halakhic process. If we rightfully take offense when *halakhab* is misread to exclude women's participation when such a conclusion is not warranted, then we must be extremely careful ourselves not to misread *halakhab* to include women's participation when the sources do not allow for such a reading. Only if we fully internalize our absolute need to be true to *halakhab* can we be responsibly responsive and inclusive.