

# May a *Kohen* in a Same-Sex Relationship *Duchen*? May A Shul Prohibit Such as a *Migdar Milta*?

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## 1. Introduction and Roadmap

About 1.2% of all households in the United States are in a same sex relationship, and about 4% of Jews define themselves as LGBTQ.<sup>1</sup> Statistics about LGBTQ Orthodox Jews are hard to find and the data is hard to determine, but anyone who is part of the Orthodox community sees that questions related to SSR and SSM are sadly becoming increasingly common.<sup>2</sup> This article will focus on one small question related to these situations: may a *kohen* in a SSM or a SSR be allowed to *duchen*.

For the sake of intellectual focus, this article will ponder five cases, along the spectrum of the relevant issues. The first is a father-son situation. Father is Orthodox and shomer Shabbat with a son who is generally observant (other than being in a SSM) and does keep all the laws related to being a *kohen*. They are somewhat estranged, but still loving. Son stays with parents for the *chaggim* and is happy to *duchen* with his father – as that makes both him and his father happy. Since he grew up learned and understands the issues, he asked what the shul rabbi wanted him to do. The son did not want to cause controversy, but he wants to make his dad happy by *duchening* with him (instead of having to walk out). Father would like to *duchen* with his son.

The second involves a deeply closeted *kohen* congregant in an active gay relationship, which he has told the rabbi about pastorally. However, the relationship is generally secret – his own parents do not know. The rabbi wants to know if he should tell this person to stop *duchening*.

The third involves a SSM but traditional *kohen* who is staying with a shomer Shabbat relative over *chag* as this man's father is in a local hospital. The shomer Shabbat family member asked if they should seek to invite or encourage the relative to come to shul over *chag*, knowing that he would *duchen* and no one knows this person is in a SSM.

The fourth involves a gay public figure who is a *kohen*. He is friends with a congregant and came to shul on Shavuot wearing his “pink *tallit*.” The gabbai gave him *kohen* without asking the rabbi (as is the

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<sup>1</sup> <https://www.census.gov/library/stories/2022/11/same-sex-couple-households-exceeded-one-million.html> and see <https://www.pewresearch.org/religion/2021/05/11/jewish-demographics/>. **Sexual orientation among U.S. Jews** “The survey finds that 4% of U.S. Jews identify as gay or lesbian, and an additional 5% say they are bisexual. About nine-in-ten U.S. Jews (88%) say they are straight. Compared with Jews by religion, somewhat fewer Jews of no religion say they think of themselves as straight (81% vs. 91%). Instead, Jews of no religion are more likely than Jews by religion to say they are bisexual (10% vs. 3%).”

<sup>2</sup>Throughout this article, we will use “SSR” as an acronym for person in a same sex relationship and “SSM” as an acronym for a person in a same sex marriage. In the public health universe, the acronym MSM is used to denote both of these, but exactly because it homogenizes two different statuses, this article does not use it.

practice in the shul to give guests' aliyot), and a congregant complained to the rabbi that this person should not be allowed to *duchen*.

The final case involved a *kohen* who is getting divorced from his wife and is struggling with his sexuality. He is clearly bi-sexual by his own description, and many in the community understand this, but the matter is not genuinely public. This man is presently involved with another man, and has children with his wife who he is divorcing, who are also *kohanim* and come to shul with him. He wants to *duchen* with them, as he always has. Keeping him connected to shul and community is good for the children.

It is the common practice in many shuls to let a non-shomer Shabbat *kohen duchen*, as Igrot Moshe advocates, against the Mishnah Berurah.<sup>3</sup> Many shuls only prohibit a *kohen* from *duchening* when he does not keep the *dinai kehuna*, and being in a same-sex relationship is not a violation of these laws. Many shuls have an even more liberal policy of stopping no one from *duchening* in the real world – there simply is no mechanism. If someone asks the rabbi, the rabbi answers, but no one “tackles” someone who comes up to *duchen* who should not.

This article reviews the issues in the five sections as follows. The first reviews how the Talmud and *rishonim* address this topic. The second addresses its codification in the Shulchan Aruch and beyond and then dives into the details of the codes. The next section discusses the grounds to be strict as a matter of technical halacha and a summary of the halacha follows. The final substantive section discusses *migdar milta* as a halachic category. The conclusion to this article sets forth the author's views on how best to deal with these complex situations .

## 1. The Talmud and *Rishonim*: A Simple Review

The Talmudic sources on the question of which *kohen* may *duchen* are diverse, with none exactly on point. Although the Talmud in Bechorot 43a-45b (and in other places) asks about which *kohen* can conduct services in the *Bet Hamikdash*, these sources are almost exclusively focus on physical abnormalities of the *kohen*, a topic which does not interest us here. The Mishnah in Bechorot 45b does note that a *kohen* who marries a woman prohibited to him (which Rashi and others understand to be a divorcee or *chaltza*) is not permitted to work in the Temple. So, too, the Talmudic discussion of a *kohen* who cannot pronounce the words as customarily enunciated (Megillah 24a-b) is equally irrelevant here. The same might even be true for the discussion of a *kohen* who killed another person (Berachot 32b), since it is derived from a very narrow and focused set of verses that seem to uniquely address killing. The same is true for the Talmudic discussion of how much wine may a *kohen* drink (Keretut 13a-b) before becoming ineligible to *duchen*.

The most on-point Talmudic discussion is found in Menachot 109a, which bans a *kohen* who worked in the ‘alternative temple’ in Egypt from other priestly service. It makes it clear, as Rashi notes, that there is a prohibition for a *kohen* who worships idols to subsequently work in the *Bet Hamikdash*, since one who leads service to a pagan god cannot lead temple services. To no surprise, disputes among the *rishonim* can be found in all of these matters, specifically regarding whether repentance reduces or eliminates the penalty or does not, be it in the Temple era or nowadays.

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<sup>3</sup>Igrot Moshe OC 1:33. See Mishnah Berurah 128:134. For an excellent summary of this issue, see Rabbi Zvi Ryzman, *Ratz Ketzvi* on Dinai Kehuna, Essay 16 (Volume 1, pages 215 to 231), which is on this topic. At some technical level, one could claim that we do not “let” kohanim bless, but rather, such conduct is mandatory by a *kohen* present when called up. For a fuller understanding of the context of this teshuva of Rabbi Feinstein, see Rabbi Shlomo Yehudah Levitan, *Yeriot Shlomo*, OC 6. (Rabbi Levitan is the questioner to Rabbi Feinstein).

The major *rishonim* – Rambam, Rif and Rosh, as well as nearly all others – simply do not discuss many of the issues concerning whether a *kohen* in an illicit sexual relationship can *duchen*. Indeed, the Tur summarizes the rules and makes clear that general sinfulness does not prevent a *kohen* from blessing the people, since in reality, other than a few specific defects (murder, idol worship, discoloration of hands, and the like), and drunkenness, nothing should prevent the blessing:

לא היו בו מדברים המונעים נשיאות כפים אף על פי שאינו מדקדק במצות וכל העם מרננין אחריו נושא כפיו שמצות עשה היא לכל כהן לישא כפיו ואין אומרים לרשע הוסף רשע והמנע מן המצות ואל תתמה ותאמר מה תועיל ברכת הדיוט שאין קבלת הברכה תלוי בכהנים אלא בהקב"ה שנא' ואני אברכם:

If this was not from one of the acts that prohibited for the priestly blessing, even though one does not meticulously observe the commandments and the whole people run after him, he raises his hands [in blessing] because it is a positive commandment for every priest to raise his hands [in blessing], and we do not tell a wicked person to increase wickedness and refrain from commandments. And do not wonder and say, 'What is the use of the blessing of a layman?' Because the reception of the blessing does not depend on the priests, but on the Holy One, blessed be He, as it says, 'And I will bless them.'

However, Rashba and Mahari Abuhav substantially change the halachic discourse. Rashba in his responsa 7:21 states simply:

עוד נשאל כהן שנשא גרושה ועודה תחתיו ויש לו בנים ממנה מהו לעלות לס"ת במקום כהן: תשובה כהן שנשא אשה בעבירה זרעו מחולל אבל הוא אינו מחולל אבל כופין אותו ואפי' בשוטים עד שיגרש וכדאמ' ביבמות (דף פ"ח) דאם לא רצה כופין אותו שנאמר וקדשתו אפי' בעל כרחו וכל שלא גירש אין נוהגין בו קדושה דתנן בבכורות בפ' אלו מומין (ד' מ"ה) הנושא אשה בעבירה פסול עד שידיר הנאה ונראה דאפי' גרשה ואפי' מתה פסול עד שידיר הנאה מהנשים שאסור בהן ושידור על דעת רבים כדי שלא יוכל להתירו חכם וכדאיתא התם בגמ':

Another question was asked about a priest (Kohen) who married a divorced woman and she is still living with him, and he has children from her, what is his status regarding ascending [being called] to the Torah in place of a Kohen: Response - A Kohen who marries a woman in sin, his offspring are invalidated, but he himself is not invalidated. However, we compel him, even with lashes, until he divorces her, as it says in Yevamot (88b) that if he doesn't want to, we compel him, as it says 'you shall sanctify him,' even against his will. And anyone who has not divorced her does not have sanctity practiced in him, as we learned in Bechorot in the chapter 'these are the blemishes' (page 45) one who marries a woman in sin is disqualified until he relinquishes pleasure with her. And it seems that even if he divorces her or even if she dies, he is disqualified until he relinquishes pleasure from the women that are forbidden to him, and relinquishing should be done in the name of the whole community ["knowledge of many"] so that no scholar can permit him, as it is in the Gemara there.

Mahari Abuhav is even clearer in his commentary on the Tur, OC 128. He states:

נשתמד לא ישא כפיו כו'. נ"ל שלדעת הכל, כהן שהוא נשוי עם גרושה אין לו לישא כפיו ולא לעלות בתורה, שהרי בכל שעה הוא עומד במרדו, ולדעת הכל צריך שיעשה תשובה.

An apostate should not raise his hands, etc. It seems to me that according to all opinions, a priest (Kohen) who is married to a divorcee should neither raise his hands [in priestly blessing] nor be called up to the Torah, because he is in a state of rebellion at all times, and according to all opinions, he needs to repent."

Both sources seem to make clear the following idea. Even though the Talmudic sources do not say explicitly and directly that a *kohen* who is in intentional violation of the rules of *kehunah* cannot *duchen* or get the first aliya, such is the case.

Most *rishonim* do not present this idea – they are simply silent in the modern applications of the Talmudic rules about the Temple – but no less an authority than the Bet Yosef reviews and summarizes the literature as follows:

תנן בפרק שביעי דבכורות (מה:): הנושא נשים בעבירה פסול עד שידיר הנייה ומטמא למתים פסול עד שיקבל עליו שלא יהיה מטמא למתים ולא הזכירו פסולים הללו הפוסקים לענין נשיאת כפים... אבל רבינו הגדול מהר"י אבוהב ז"ל כתב שנראה לו

דלדעת הכל כהן שהוא נשוי עם גרושה אין לו לישא את כפיו ואין לו לעלות בתורה שהרי בכל שעה עומד במדרו. ובסימן קל"ה כתב וזה לשונו ועוד כתוב משמיה דמר שמואל כהן שנשטמא למתים שאינם משבעה מתי מצוה במזיד יפסל מן הדוכן ומכל מעלות הכהונה עד שישוב דתנן הנושא נשים בעבירה פסול עד שידור הנאה והמטמא למתים עד שיקבל עליו. וגם הרשב"א כתב בתשובה (ח"ז סי' כא) דכהן שנשא גרושה אין נוהגים בו קדושה אפילו לקרות בתורה ראשון ואפילו גירשה או מתה פסול עד שידור הנאה על דעת רבים מהנשים שהוא אסור בהן כדאיתא בבכורות ע"כ: ולענין הלכה כיון דהפוסקים לא התירו בפירוש נקטינן כדברי מר שמואל והרשב"א שאסרו בפירוש.<sup>4</sup>

In Tractate Bechorot, Chapter 7 (45b), it is taught: "A person [a *kohen*] who marries women sinfully prohibited to marry is disqualified [to work as a *kohen*] until he abstains from this practice. And one [a *kohen*] who becomes impure due to contact with the dead is disqualified until he accepts upon himself to not become impure again. However, the Poskim did not mention these disqualifications regarding the lifting of the hands [the priestly blessings]; ... However, our great Rabbi Mahari Abuhav (may his memory be a blessing) wrote that it seems to him that according to everyone's opinion, a priest who is married to a divorced woman should not lift his hands [in the priestly blessing], and he should not ascend in Torah, for at every moment, he stands in rebellion. And in [OC] chapter 135, he wrote this in his words, and he further states in the name of Mar Shmuel [The Eshkol] that a priest who [intentionally] becomes impure due to contact with bodies of non-relatives who are not among the seven close relatives who are obligated in mourning laws is disqualified from the platform [priestly blessing] and from all the ranks of the priesthood until he returns. As we have learned: A person who marries women while in a state of sin is disqualified until he abstains from deriving benefit [from them], and one who becomes impure due to contact with the dead is disqualified until he accepts upon himself [to refrain from becoming impure again]. Additionally, Rabbi Shlomo ben Aderet [Rashba] wrote in a responsum (Volume 7, Siman 21) that a priest who marries a divorced woman is not treated with holiness, even to be called up for the first Torah reading. And even if she divorced him or died, he is disqualified until he abstains from deriving benefit according to the opinion of many regarding women whom he is forbidden to marry, as stated in Bechorot: In terms of halacha, since the decisors did not explicitly permit it, we follow the opinions of Mar Shmuel and the Rashba, who explicitly prohibited it.

Thus, by the time the Shulchan Aruch was written, the rule was clear: a *kohen* who violates the rules governing how *kohanim* uniquely should conduct themselves are not allowed to *duchen*. Even though one could imagine some dissent over this rule,<sup>5</sup> in fact no dissent is found, and this is the well-established halacha.

## 2. Who May *Duchen*: Shulchan Aruch and Beyond

The well-established halacha is codified in Shulchan Aruch in OC 128 subchapters 35 to 41. Subsections 35-6 address a *kohen* who has killed someone, and Rama notes in 128:36 that one who kills and repents can *duchen*. Subsection 37 prohibits an apostate who worshipped false gods from *duchening*, and some say that if he repents, he may. Subsection 38 addresses how much wine a *kohen* can drink and still *duchen*. Subsection 39 notes that other than the things that specifically prevent a *kohen* from *duchening*, a general lack of observance of mitzvot – even when public – does not stop a person from *duchening*, as Rama notes “other sins do not prevent a person from giving the priestly blessing.” Subsection 40 notes that a *kohen* who is married to someone prohibited to a *kohen* in marriage cannot *duchen*. Indeed, there is no mitzvah to treat him with holiness or to give him the first aliya – even after the marriage ends. Moreover, until the *kohen* makes it clear that that he will not marry such a person again, he cannot *duchen*. Subsection 41 rules that a *kohen* who willfully touches dead bodies (other than the seven close relatives when such is permitted) may not *duchen*.<sup>6</sup>

The halacha is clear [OC 128:40-41]. A *kohen* who does not observe the rules of *kehuna* is not entitled to *duchen*, nor is he treated as a *kohen* for any purposes of honor, even though he is a *kohen* as a matter

<sup>4</sup>The Mar Shmuel quoted is found in the commentary of Mahari Abuhav OC 135.

<sup>5</sup>Since, in fact, one could infer that the Rambam and others by implication do argue with the Mahari Abuhav. Bet Yosef seems aware of this.

<sup>6</sup>Rama at the end of 41 then discusses the case of a *kohen* whose daughter apostatizes, a topic we will not discuss.

of halacha. So, too, it is clear that a *kohen* who worships other gods is prohibited to *duchen*, and most adopt the view that such a *kohen* is always prohibited from *duchening*. Rama, however, disagrees and adopts the view that such a repentant *kohen* can *duchen* since we do not wish to prevent repentance. Whatever the exact contours of this debate, it is clear that it uniquely applies to one who worships another god.

Yet the Mishnah Berurah adds in 128:134<sup>7</sup> that וכן אם הוא מומר לחלל שבת בפרהסיא הרי הוא כעו"ג ולא ישא כפיו [“And similarly, if he is a transgressor who publicly desecrates Shabbat, he is considered like a non-Jew and should not perform the Priestly Blessing”]. This holding is based on the general rule that one who publicly violates Shabbat is like an idol worshipper. Many poskim argue with this Mishnah Berurah. Indeed, Rabbi Moshe Feinstein in Igrot Moshe OC 1:33, Rabbi Shlomo Zalman Auerbach Minchat Shlomo 2:4(10), and Rabbi Shalom Yosef Elyashiv (Avnei Yashfeh 1:20) all permit a typical modern sabbath violator to *duchen*. Adding to this, Tzitz Eliezer (7:6 and 13:14) notes that Rabbi Chaim Ozer Grozinski posits that it is unwise to be strict on this question, lest a *kohen* incorrectly conclude that he can marry women who are prohibited to a *kohen*!

However, even the Mishnah Berurah’s approach is not generally applicable to every sin. It is limited to those few sins Chazal ruled make a person akin to an idol worshiper. Homosexual conduct is not one of those sins.<sup>8</sup> Furthermore, it seems that none of the general sexual prohibitions – other than intermarriage, and even this is far from certain<sup>9</sup> – are on this list, as is made clear by OC 128:39, which states:

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<sup>7</sup>Based on Peri Megadim, Mishbatzot Zahav 128:39.

<sup>8</sup>In the formulation of Yalkut Yosef 128:73-74:

כהן שאינו מדקדק במצות, [אבל אינו מחלל שבת בפרהסיא], או שהיו הבריות מרגנים אחריו שעובר עבירות חמורות, או שלא היה משא ומתנו באמונה, הרי זה עולה לדוכן ונושא כפיו, ואין מונעים אותו מלישא כפיו. ואף על פי שעדיין לא חזר בתשובה. לפי שזו היא מצות עשה על כל כהן הראוי לנשיאת כפיים, ואין אומרים לאדם רשע הוסף רשע והמנע מן המצות.... אולם אם הכהן מחלל שבת בפרהסיא במזיד, הרי הוא כעכו"ם לכל דבר, ואינו עולה לדוכן לנשיאת כפיים.

A priest who is not meticulous about commandments, [but does not publicly desecrate the Sabbath], or people grumble about him because he commits severe transgressions, or his business dealings lack integrity, he ascends to the platform and lifts his hands, and they do not prevent him from lifting his hands. Even though he has not yet repented. Because this is a positive commandment on every priest who is fit for lifting his hands, and they do not tell a wicked person "add wickedness and abstain from commandments"... However, if the priest publicly desecrates the Sabbath intentionally, he is like a non-Jew in all respects, and he does not ascend to the platform for the Priestly Blessing.

See also Yabia Omer OC 7:15 who endorses this view.

<sup>9</sup>See Rabbi Gedalia Felder, Yesodea Yeshurun 2:63-64 quoting the famous Teshuva Binyan Tzion 1:6 who notes that a *kohen* who is living with a gentile woman may *duchen*. Rabbi Felder seems to endorse that view. The contrary view seems to be endorsed by Piskai Teshuva 128:82 around note 365. Actually, one who examines the underlining sources cited sees that this matter is a dispute in EH 6:8 around the words בת ישראל between the Bet Shmuel and Chelkat Mechokeq. Even if this case [a *kohen* and a gentile woman] is governed by the category of rabbinic *zonah* (נשג"ז decree), one still has no clear idea or precedent supporting the idea that homosexual conduct prevents a *kohen* from *duchening* since the MB 128:143 and the AHS 128:53-56 and the Shulchan Aruch HaRav 128:51 all make it clear that there is a category of sexual sin that still allows a *kohen* to *duchen*, which is the sins that are unrelated to being a *kohen*. The category of *zonah* is a *kohen*-related category -- a *yisrael* can marry a *zonah* and a *kohen* cannot. Thus, the whole idea that the category of *zonah* applies to homosexual acts is wrong as the act is prohibited to all and at all times according to Jewish law and there is no male correspondence to *zonah*. It is not a *kohen*-related prohibition at all.

It is worth understanding that almost all accept the rule that a *kohen* who has married someone who a *kohen* cannot marry is a penalty (קנס) and not a decree; See Magen Avraham 128:54, but see Chatam Sofer, Likutim 12 and Teshuvot R. Eliyahu Mizrahi 1:59. One could claim that the penalty is not imposed until the conduct is public and in overt violation; hence the Mishna (Bechorot 7:7) uses the word הנושא [=married] to denote a formal relationship. Based on this, we can explain the view that a *kohen* who is intimate [but not married] with a woman classified as a *zonah* by rabbinic decree perhaps ought to be allowed to *duchen*. A few reasons incline one that way: First, it is possible that this rabbinic penalty only applies to one who

לא היו בו מהדברים המונעים נשיאת כפים, אף על פי שאינו מדקדק במצות וכל העם מרננים אחריו, נושא את כפיו שאין שאר עבירות מונעין נשיאת כפים.

If none of the factors that prevent the priestly blessing are present in him, even though he is not meticulous in observance of the commandments and all the people grumble after him, he raises his hands [in blessing], for other transgressions do not prevent the priestly blessing.

As the Bach states in OC 128:

ומ"ש אבל על שאר עבירות אין מונעין. כן כתב הרמב"ם ורצונו לומר אפילו במזיד וגם לא עשה תשובה נמי אין מונעין ואם תאמר כיון דאיצטריך קרא גבי הרג את הנפש ונשתמד א"כ כל היכא דליכא קרא פשיטא דאין מונעין ואפשר כיון דקיימא לך דעל שלש עבירות יהרג ואל יעבור סלקא דעתך אמינא דדינן שוה ג"כ לענין נשיאת כפים קא משמע לך דעל שאר עבירות אין מונעין אפילו עבר על גילוי עריות במזיד ולא עשה תשובה כיון דליכא קרא וטעמא דמילתא דאשכחן דקודשא בריך הוא נעשה סניגור על עברה וְ וקאמר לפתח חטאת רובץ כדאיתא פרק קמא דיומא (סוף דף י"ט) א"כ לא חמיר כעבודה זרה ושפיכות דמים לענין נשיאת כפים:

And what it says 'but other transgressions do not prevent [the priestly blessing]:' So wrote Rambam (Maimonides), and he means to say, even if it was done intentionally, and even if he did not repent, it also does not prevent [the priestly blessing]. And if you will say that since it required a verse regarding one who murdered a person or an apostate, then wherever there is no verse it is obvious that it does not prevent [the priestly blessing]. And it is possible that since we hold that there are three transgressions for which one should be killed rather than transgress, you might think that their law is the same also regarding the raising of hands. It is implied to us that for other transgressions it does not prevent [the priestly blessing], even if he transgressed incest intentionally and did not repent, since there is no verse. And the reason for the matter is that we find that the Holy One, blessed be He, becomes a defender over this transgression, and He says 'sin crouches at the door' as it is written in the first chapter of Yoma (end of page 19), thus it is not as severe as idol worship and shedding blood regarding the raising of hands.<sup>10</sup>

This is essentially based on the Rambam (Tefillah 15:6) who notes:

כהן שלא היה לו דבר מכל אלו הדברים המונעין נשיאת כפים אף ע"פ שאינו חכם ואינו מדקדק ה במצות או שהיו הבריות מרננים אחריו או שלא היה משאו ומתנו בצדק הרי זה נושא את כפיו ואין מונעין אותו, לפי שזו מצות עשה על כל כהן וכהן שראוי לנשיאת כפים ואין אומרים לאדם רשע הוסף רשע והמנע מן המצות.

A priest who does not have any of the factors that prevent the raising of hands [priestly blessing], even though he is not wise and is not meticulous in the observance of commandments, or if the people grumble after him, or if his business dealings are not just, he still raises his hands [in blessing] and we do not prevent him from blessing. This is because it is a positive commandment for every priest. And a priest who is eligible to raise his hands, we do not say to a wicked person 'add sin to sin' and prevent him from the commandments.

Although there is a dispute between poskim<sup>11</sup> about whether this halacha applies only in cases in which the status of the person as a sinner is unclear, both the Mishnah Berurah and the Aruch HaShulchan rule that even a person who is a well-known and certain sinner in other areas (not a unique *kohen* sin and not

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is married or perhaps the penalty is limited to people who marry in accordance with Jewish law, which is particularly defiant. Second, maybe this penalty simply does not apply to a *zonah*, rather than a *gerusha*, *chalutza*, or *challalah*, all of which are public statuses, in contrast to a *zonah* which is based on her -- invisible -- personal conduct. This might be why so many (Shulchan Aruch, Levush, Magen Avraham, Peri Chadash, Machatzit haShekel, Magen Giborim and more) leave out *zonah* from the list found in SA OC 128:40. (But see Olat Tamid, Eleya Rabba, Mishnah Berurah all of whom list *zonah*.) As precedent for this idea, one can note that many poskim permit a *kohen* who is a *petzua daka* to marry a *giyoret* (= *zonah*) but no other person *pasul lekehunah*; See SA EH 5:1 and the dispute between the CM and BS.

<sup>10</sup>This last comment about God becoming a defender of Israel may mean that for reasons we do not understand God chooses to treat sexual transgressions less seriously in this context than other cardinal sins. More probably, it means that God treats them less seriously in the context of the duchening (even though one must give one's life rather than be forced to transgress) because these sins frequently involve overwhelming temptation and are close to hand (as in "sin crouches at the door"). See also Rambam's Guide to the Perplexed III:49 who explains that *arayot* are enumerated because they are so hard to control. Thank you to Rabbi Dr. Don Seeman of Emory for this reference and his daughter Rachel Seeman who reviewed the translations in this work generally.

<sup>11</sup> Compare Magen Avraham 128:56 with Gra 128:39.

a sin that makes one like an idol worshipper) is allowed to *duchen*. In 128:144, the Mishnah Berurah notes “אפי' ריגון של אמת שהוא מפורסם לכל ברשתו” [“even if the grumbling is true and well known to many in his evilness”], and in 143, he adds that this is true even for sexual sins. As he states, “היינו אפילו מצות” [“For example, even serious sins like adultery or incest and the like”]. In 146, he is clearly dealing with an unrepentant sinner, since he states:

אין מונעין - היינו אפילו לא עשה תשובה על חטאיו והטעם כתב הרמב"ם לפי שזו מ"ע על כל כהן וכהן שראוי לנשיאת כפים ואין אומרים לאדם רשע הוסף רשע והמנע מן המצות ואל תתמה ותאמר ומה תועיל ברכת הדיוט זה שאין קבול הברכה תלוי בכהנים אלא בהקב"ה שנאמר ושמו את שמי על בני ישראל ואני אברכם הכהנים עושים מצותן שנצטוו בה והקב"ה ברחמיו מברך את ישראל כחצו עכ"ל:

We do not prevent [him] - This means even if he did not repent for his sins. And the reason, as the Rambam wrote, is because this is a positive commandment for every priest who is eligible to raise his hands [in blessing], and we do not say to a wicked person 'add sin to sin' and prevent him from the commandments. And do not wonder and say, 'What use is the blessing of this ignoramus?' since receiving the blessing is not dependent on the priests, but on God, as it is said: 'They shall place My name upon the children of Israel, and I will bless them.' The priests fulfill their commandment that they were commanded, and God, in His mercy, blesses Israel as He wishes, so it is.

Mishnah Berurah explicitly rejects the strict view of Raanach in the Shaar Hatziyun on this note (113):

עולת תמיד ופרי חדש ואלהי רבה והגר"א ומגן גבורים, דלא כראב"ח

This is the view of the Olat Tamid, Peri Chadash, Elya Rabba and Magen Giborim and not the Raabach.<sup>12</sup>

Identical rules are found in Aruch HaShulchan 128:51-52 and 56:

כתב הרמב"ם בפט"ו דין ו' כהן שלא היה לו דבר מכל אלו הדברים המונעים נשיאת כפים אף ע"פ שאינו חכם ואיני מדקדק במצות או שהיו הבריות מרגינין אחריו או שלא היה משאו ומתנו בצדק ה"ז נושא את כפיו ואין מונעין אותו לפי שזו מצות עשה על כל כהן וכהן שראוי לנשיאת כפים ואין אומרים לאדם רשע הוסף רשע והמנע מן המצות... אבל הרמב"ם שם מקודם כתב כהן שהרג את הנפש אף ע"פ שעשה תשובה לא ישא את כפיו שנאמר ידיכם דמים מלאו ובפרשכם את כפיכם אעלים עיני מכם וכהן שעבד כוכבים בין בזדון ובין בשגגה בין באונס אף על פי שעשה תשובה אינו נושא את כפיו לעולם שנאמר לא יעלו כהני הבמות וגו' וברכה כעבודה היא שנאמר [מלכים ב' כג, ט] לשרתו ולברך בשמו וכן כהן שהמיר לכוכבים אף על פי שחזר בו אינו נושא את כפיו לעולם ושאר העבירות אין מונעין עכ"ל... כבר נתבאר דשאר עבירות אין מונעין נשיאת כפים ויש מי שאומר דזהו דוקא כשעשה תשובה [מג"א סקנ"ו בשם ראנ"ח] ודברים תמוהים הם דלהדיא מבואר מדברי הרמב"ם והירושלמי שהבאנו דאפילו הוא רשע עתה מ"מ יכול לעלות לנשיאת כפים ואין לפקפק בזה כי אין שום ספק בזה:

The Rambam wrote in chapter 15, law 6, that a priest who does not have any of these things that prevent the priestly blessing - even though he is not wise, not meticulous in the commandments, or the people murmur against him, or his business dealings are not just - he still raises his hands and we do not prevent him because this is a positive commandment for every priest who is eligible for the priestly blessing. We do not tell a wicked man 'increase your wickedness and refrain from the commandments'. . . . But the Rambam there previously wrote that a priest who killed a soul, even though he repented, should not raise his hands [in priestly blessing], as it is written "Your hands are full of blood," and "When you spread out your hands, I will hide My eyes from you." And a priest who worshipped idols, whether intentionally or unintentionally, whether by coercion, even though he repented, he should never raise his hands because it is written, "The priests of the shrines shall not ascend [to God's alter]," and a blessing is like service, as it is written [2 Kings 23:9], "To minister to him and to bless in his name." Similarly, a priest who converted to idolatry, even though he returned to Judaism, should never raise his hands. But for other sins, they do not prevent him from doing so.... It has already been explained that other sins do not prevent the priestly blessing, and some say that this is specifically when he repented [Magen Avraham 128:56 in the name of Raanach]. And these are puzzling words because it is explicitly clear from the words of the Rambam and the Jerusalem Talmud that we brought, that even if he is wicked now, he can still ascend for the priestly blessing and there is no doubt about this.

### 3. The Argument to be Strict

<sup>12</sup> Rabbi Eliyahu ben Chaim Mizrahi [1530 to 1613], Shelut Uteshuvot Raanach [Mayim Amukim] 2:42. He is sometime called Raabach and not Raanach.

At the core of the argument to prohibit a person in a SSM from *duchening* is the notion of “מכל מקום כיון” [“Nonetheless, since he denies the torah of Moshe, he is an apostate”]. This very principle is invoked by the Machatzit Hashekel and many others with regards to whether a *kohen* who converted to Islam can ever *duchen*. It also underscores the perspective on all homosexual activity adopted by Rabbi Moshe Feinstein in Iggrot Moshe OC 4:115, especially when combined with an opinion of the Pri Megadim about any “rebellious sins.” Rabbi Moshe Feinstein in Iggrot Moshe OC 4:115 writes:

והנה ראשית הידיעה דחומר האיסור דסקילה וכתר וגם שנקרא תועבה והוא מחטאים המגונים ביותר ואף בני נח נצטוו ע"ז הוא כח גדול לעמוד כנגד היצר הרע, ושנית שהוא דבר שלא מובן שיהיה ע"ז ענין תאוה דכבריאית האדם בעצם ליכא תאוה מצד טבעו להתאוות למשכב זכור, \*\*\* עכ"פ תאוה למשכב זכור הוא נגד עצם התאוה וגם רשעים אין להם תאוה לזה בעצם אלא שכל התאוה הוא רק מחמת שהוא דבר אסור והיצה"ר מסימו להמרות נגד רצון הקדוש ברוך הוא וידיעה זו הוא חזוק גדול נגד יצה"ר שכבר נצחתו שאתה מאמין בהקב"ה ובכל הי"ג עיקרים ובכל התורה ...

Firstly, the severity of the prohibition that carries the punishment of stoning and karet, and is also called an abomination, is one of the most disgraceful sins. Even the Noahides were commanded about this. Great strength is required to stand against the evil inclination. Secondly, it is not understood why homosexuality should be a matter of desire; in human nature, there is no desire to have homosexual intercourse. \*\*\* In any case, the desire for homosexual intercourse is against the very essence of desire, and even wicked people do not have a desire for this intrinsically. Rather, any desire is only because it is forbidden, and the evil inclination incites him to rebel against the will of the Holy One, Blessed Be He. This knowledge is a great reinforcement against the evil inclination, because you have already defeated it by believing in God, in all of the Thirteen Principles of Faith, and in all of the Torah.

If this view is correct and one combines it with the famous view of Peri Megadim OC 55, (Eshel Avraham 4) who notes:

מומר לע"ז וחילול לשבת או להכעיס בדבר אחד הרי הוא כעכו"ם ואין מצטרף. ובסי"א עבריין מצטרף מיירי לתיאבון הא לאו הכי לא.<sup>13</sup>

A person who willingly worships idols or desecrates the Sabbath, or who intentionally transgresses a single matter in order to provoke anger, is considered like a non-Jew and is not included in a minyan (quorum for prayer). But in

<sup>13</sup>This is not the place to address this issue, other than to note that many halachic authorities do not agree. For more on this, see Iggrot Moshe OC 1:23 and 2:19 and many other places. In 1:53 Rabbi Moshe Feinstein notes:

נשאלתי מתלמידי הרב ר' אברהם יוסף ראזענבערג שליט"א אם יש בשעת הדחק לצרף מחללי שבתות לעשרה, והשבתי דלמנהגנו שאף בשביל יחיד פורסין על שמע ואומרים קדושה כתלמידי רש"י בשם רש"י שהביאו תוס' במגילה דף כ"ג ואיפסק כן בש"ע או"ח סי' ס"ט יש לצרפם, דהא כיון שמקרא אחד ילפינן הדין בקדוש השם ליהרג בשאר עבירות שהוא בעשרה, והדין שאין אומרים דבר שבקדושה בפחות מעשרה, ולכן כשם שקדוש השם ליהרג הוא מחוייב אף לפני עשרה כופרים ומומרים אם אף הם מירשאל כדמוכה כן מהא דסנהדרין דף ע"ד דפשיט בעית ר' ירמיה בתשעה ישראל ונכרי אחד שאינו מחוייב אלא בכולהו ישראל דאתיא תוך ממרגלים שהיו כולהו ישראל כדפרש"י והתם הא היו כופרין בפרהסיא שגרעי מחללי שבתות עיין בערכין דף ט"ו אלמא שלזה עדיפי מומרים מנכרים א"כ בהכרח שגם לענין לומר דברים שבקדושה מצטרפי.

I was asked by my student, Rabbi Avraham Yosef Rozenberg, may he live long, whether in pressing circumstances we can include Sabbath desecrators to make up a minyan (quorum of ten), and I answered that according to our custom, even for an individual, we recite the Shema and say the Kedusha in the manner of Rashi's students in the name of Rashi, as brought by the Tosaphot in Megillah 23b, and ruled as such in the Shulchan Aruch, Orach Chaim 69, we can include them. Because we learn from the same source about the law of sanctifying God's name to martyrdom in other sins which is in the presence of ten, and the law that we do not say a matter of sanctity with fewer than ten. Therefore, just as the sanctification of God's name through martyrdom is required even before ten heretics and apostates if they are also from Israel, as proven from Sanhedrin 74b, it's clear in Rabbi Yirmiyah's situation with nine Israelites and one gentile that he is only obligated with all Israelites, as 'toch' (within within) is derived from the spies who were all Israelites, as Rashi explains. And there, indeed, they were public deniers which is worse than Sabbath desecrators, see Arachin 15b, hence apostates are better than gentiles. If so, it is necessarily also the case for matters of sanctity that they can be counted.

See also Iggrot Moshe OC 3:12 where a distinction is made between one who believes in God or not.



subchapter 11, it is stated that a habitual transgressor can be included in the minyan - this is specifically in cases where the transgressions are driven by desire; but if this is not the case, then he is not included.

then one can conclude that anyone in a public SS relationship is considered להכעיס בדבר אחד [“an intentional transgressor of a single matter”]. Hence, this person is הרי הוא כעכו"ם [“like a gentile”] and cannot *duchen*, since he is like one who worship idols. This view is explicitly reenforced by the conclusions of the Peri Megadim (EA 128:40, really in the name of the Tosaphot Yom Tov) that דכהן דכהן [“A Kohen (priest) who has committed murder is forbidden from performing the Priestly Blessing (*nesiat kapayim*), and all the more so from performing the Temple service. The same applies to one who has committed sexual immorality.”]<sup>14</sup>

Rabbi Feinstein’s approach – that all people who are in SS relationships do not do so out of sexual desire but out of rebellion against God and thus cannot *duchen* – appears inconsistent with current scientific understanding. Almost no one engages in SS activity without a deep sexual interest in it, and they thus have the status of at most a *mumar le'tayavon*.<sup>15</sup> Then there are the famous competing formulations of Rabbi Norman Lamm and Rabbi Aharon Lichtenstein,<sup>16</sup> who propose such different approaches. It is much too contrary to the medical and scientific data as we understand it to think that SS is being done without a sexual desire and that it is instead merely an act of rebellion. To define someone who does not keep Shabbat as under some duress, but not someone in a SS relationship, particularly a person who is otherwise shomer Shabbat, strikes one as counter intuitive. Nearly everyone who remains part of the Orthodox community and yet is in a SSR is certainly not a *mumar lehachis*.

Furthermore, most halachic authorities do not accept the Peri Megadim. They instead view violating Shabbat and a few other unique prohibitions as different (and less different in our times), and this is even more true in the context of *duchening*, where we have a firm rabbinic tradition that even a *רשע* is allowed to *duchen* so long as he is not an “evil *kohen*” who willfully violates the rules of being a *kohen*.<sup>17</sup> We have no rule in the context of *duchening* that an evil person should not *duchen*. Indeed, Rambam [Tefillah 15:6] is clear that “We do not tell a wicked person [in the context of *duchening*]: Increase your wickedness [by] failing to perform mitzvot.” Exactly because the *kohen* is merely the vessel and God is

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<sup>14</sup>As noted in note 18, one suspects that this is because such a woman becomes a *zonah*. The broadest recitation of the principle that all *arayot* prohibit a *kohen* from *duchening* is found in the Magen Giborim 128:30 in the Eleph Hamagen 77 which posits that:

ולפמ"ש א"ש דכיון דחזינן דבשפיכות דמים אינו נושא כפיו דומיא דע"ז אף שאינו מחלל עבודה וע"כ מטעם דחמור דהוא בכלל ג' מצות שיהרג ואל יעבור וא"כ ה"ה גילוי עריות דהוא ג"כ ביהרג ואל יעבור וכל אביזרייהו דידהו בכלל ולכך אינו נושא כפיו ....

[A]according to what was explained earlier, it seems that since we see that for murder, one cannot lift his hands, similar to idolatry, even though he does not desecrate idolatry. Therefore, because of the reason that it is severe and it falls under the three mitzvot one should die rather than transgress, so too should be the case for sexual immorality which is also under the category of 'die rather than transgress', and all its secondary categories included, and therefore he cannot lift his hands [for the Priestly Blessing].....

But, as noted above, this is not accepted by most halachic authorities.

<sup>15</sup>As Tosaphot Sanhedrin 9b sv לרצונו makes clear in Tosaphot’s view. I am aware of the discussion in Shulchan Aruch YD 2:2-7 about the nuances of the status of *mumar*, and particularly the disputes about whether *le'hachis* denotes uncaring or “to provoke God” but (at least to me) it is in the context of SSR that this is driven by physical desire.

<sup>16</sup>For Rabbi Lamm’s formulation, see “Judaism and the Modern Attitude to Homosexuality” Originally appeared Encyclopedia Judaica Yearbook 1974, pg. 197 and for Rabbi Lichtenstein’s see “Perspectives on Homosexuals” at <https://pagesoffaith.wordpress.com/2012/12/02/perspective-on-homosexuals/>.

<sup>17</sup>Killing is the exception, which is unrelated to being a *kohen* but driven by a unique exegesis of the verses as Tur OC 128 and Bet Yosef there.

blessing, we are more liberal. This is exactly what the Mishnah Berurah and the Aruch HaShulchan aver, as noted above.<sup>18</sup>

In brief then, we see that even the intentional violation of most of halacha does not prevent a *kohen* from *duchening* (as the poskim note in OC 128:39]. Moreover, the expansion of the ineligibility of a “sinful” *kohen* from *duchening* to include anyone who is a willful violator of Jewish law is not accepted by most poskim. It is thus reasonable to understand the Machatzit Hashekel (and those who follow his view) as classifying “one who joins another faith” as an apostate [*mumar/meshumad*], as opposed to someone who is simply sinning.<sup>19</sup> While a *kofer* (heretic) cannot do many things (slaughter, testify, and more), he can *duchen*, since the Rambam clearly holds that a *rasha* is allowed to *duchen*. It is only specific failures to act as a *kohen* or the murder of another that prevents a *kohen* from *duchening*. That is exactly why all the general restrictions on a *shochet* are not extended to a *kohen* who wants to *duchen*.

It is therefore incorrect to claim that just as a *kohen* is not allowed to *duchen* when in a relationship with a woman prohibited to him as a *zonah*, he ought to be prohibited when in a SSM.<sup>20</sup> While some might see this as ironic or confusing, the rule is easy to understand. A *kohen* is only prohibited to *duchen* if he is engaged in conduct a *kohen* is uniquely prohibited from doing, such as marrying someone a *kohen* is explicitly forbidden to marry, rather than marrying someone no Jew can marry or having a SSR.<sup>21</sup> Thus, a *kohen* who is married to a *mamzer*<sup>22</sup> is allowed to *duchen*. The same is true for other non-uniquely *kohen* sexual sins as well, not because these are trivial sexual sins, but because they are not *kohen*-related sexual sins. This is exactly what Mishnah Berurah means when he writes in 128:147:

קמז) כהן שנשא גרושה וכו' - וה"ה חללה וזונה או חלוצה ומה שנתבאר בסמוך שאין שאר עבירות מונעים נ"כ היינו דוקא בעבירות שאין שאר הכהנים מוזהרים יותר מישראל אבל במה שהכהנים מוזהרים יותר מישראל שקדושת כהנים גרם לו והוא חיללו לפיכך פסול מדרבנן לכל דבר כהונה עד שיודור ע"ד רבים וכו' :

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<sup>18</sup>While sharing a draft of this article with some readers, Dr. Marc Shapiro, ever an encyclopedia of interesting material, shared a copy of Rabbi Arlah Harel's work *Sh"ut Yishrai Levav* which in 16 discusses this exact issue. He concludes, in a letter to the Orthodox man in the SS relationship who asked him the question, that it would be better if he left the room before *duchening*, and in note 8 he quotes Rabbi Shmuel David, the Chief Rabbi of Afula, as permitting them to *duchen*. I believe this teshuva is analytically wrong (and Rabbi David is correct). A *kohen* who is married to a woman prohibited to him by an *issur erva* is prohibited to *duchen* as that woman becomes a *zonah* – see EH 7:8 and thus there is a unique *kohen* prohibition. This is not true in a SSM or a SSR and there is no male version of a *zonah*. See above for more on this. See also <https://net-sah.org/faq/48668> in the name of Rabbi Ratzon Arusi. There is a teshuva from Rabbi Yisrael Pesach Feinhandler (the author of the 8-volume *Shu"t Avnei Yashfeh*) in which he notes that a man in a SSR is allowed to *duchen*. It is published in *Iggeros Malchei Rabbanan* (Scranton, 5779) at pp. 34-35. He notes:

ובענין נשיאת כפים יפה ציינת דברי המ"ב ס' קכ"ה ס"ק קמ"ג דאף שאינם מדקדקים בעריות כיון שאין בהם מן המונעים נשיאת כפים עדיין עולים לדוכן.

Regarding the matter of the Priestly Blessing, you correctly cited the words of the Mishnah Berurah 128:143, that even though they are not meticulous with sexual immorality, since these sins are not among those that prevent the priestly blessing, they may still ascend the platform for the Priestly Blessing.

In the next paragraph of the *teshuva*, he is opposed to such in practice as it is desecration of God's name, which is discussed at the end of this paper..

<sup>19</sup> This is against the implied idea found in the Dirshu commentary on the Mishnah Berurah OC 128:134 who quotes the famous Chazon Ish Kovetz Igrot 1:15 that one who doubts Chazal is a *kofer*, implying that a *kofer* cannot *duchen*.

<sup>20</sup> See Bach and others above.

<sup>21</sup> Related to this is a *kohen* who is or who has worshipped idols is prohibited, since having acted in worship for idols, he is not allowed to lead worship of God. On top of that, there is a special Talmudic rule for one who kills, grounded in unique verses.

<sup>22</sup> See HaEshkol, *Berkat Kohanim* 15 and Yesodai Yeshurun 2:63 who notes and endorses this view. It is worth noting that in most cases where the heterosexual relationship is prohibited to all, the woman becomes a *zonah* and is then also uniquely prohibited to subsequently marry a *kohen*; see also the second paragraph in note 9.

(147) A priest who married a divorced woman etc. - And the same applies if he married a 'chalalah' (a woman disqualified from marrying a priest), a 'zonah' (a woman who has had forbidden sexual relations), or a 'chalutzah' (a woman who underwent the chalitzah ceremony with her brother-in-law). What was explained earlier that other sins do not prevent him from performing the Priestly Blessing applies specifically to sins that other priests are not warned more severely than the rest of Israel. But in matters where the priests are warned more severely than Israel, and it was the holiness of the priesthood that caused it and he violated it, he is therefore disqualified rabbinically from any priestly duty until he publicly repents etc.

Many others note this as well.<sup>23</sup>

In sum, a *kohen* is not allowed to *duchen* when he is in a marital relationship that is prohibited to a *kohen* but permitted to a *Yisrael*. Sexual relationships prohibited to all do not prevent a *kohen* from *duchening*.

#### 4. Summary of the Halacha

From all of this, it is clear to most poskim and agreed to by both the Mishnah Berurah and the Aruch Hashulcha that:

1. A *kohen* who does not observe the rules of *kehuna* cannot *duchen*.
2. A *kohen* who is an unrepentant killer cannot *duchen*. Whether he can *duchen* if he killed another accidentally (or even as a mitzvah) and then repented is a matter of dispute.
3. A *kohen* who worships idols cannot *duchen*. However, the matter is in dispute if he subsequently repented.
4. In modern times, whether a *kohen* who is a sabbath violator may *duchen* is a matter of dispute. Most of the Torah giants of the last century permit said *kohen* to *duchen*, and some actually encourage it. Mishnah Berurah prohibits, and many follow his view.

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<sup>23</sup> See for example Levush 128:40 who notes that when a *kohen* sins in a way that violates Jewish law for any person, that *kohen* may *duchen*:

ודקא שאר מצות שהכהנים וישראלים שוים בהן אין מונעים אותו מנשיאות כפים, אבל כהן העובר על מצות המיוחדים לקדושת כהונה מונעים אותו ג"כ מנשיאות כפים מפני שהוא מחלל קדושתו, לפיכך כהן שנשא גרושה לא ישא כפיו, ואין נוהגין בו קדושה אפילו לקרותו ראשון לתורה, ואפילו גרשה או מתה פסול, עד שידור הנאה על דעת רבים מהנשים שהוא אסור בהם:

This applies specifically to other commandments where priests and Israelites are equal, they do not prevent him from performing the Priestly Blessing. However, a priest who violates the commandments specific to the sanctity of the priesthood is also prevented from performing the Priestly Blessing because he desecrates his sanctity. Therefore, a priest who married a divorced woman should not perform the Priestly Blessing, and we do not apply priestly sanctity to him, even to call him first to the Torah reading. Even if he divorces her or if she dies, he remains disqualified until he publicly renounces benefit, in the presence of the community, from the women he is forbidden to marry.

See Bach and others above cited in that section. Note the similar formulation as well of the Shulchan Aruch HaRav 128:51: ושאר עבירות חוץ ממימר דתו ושופך דמים אפילו גילוי עריות אין מונעין נשיאת כפים אפילו לא חזר בו כמו שיתבאר.

Other transgressions, apart from idolatry and murder, even sexual immorality, do not prevent the Priestly Blessing, even if he has not repented, as will be explained.

But he adds in 128:53

במה דברים אמורים כשעובר על מצות שישראל וכהנים שוין בהם אבל אם עובר על מצות המיוחדות לכהנים קנסוהו חכמים ופסלוהו מכל מעלות הכהונה כגון כהן שנשא גרושה או חלצה או שנשטמא למת שאינו מז' מתי מצוה אינו נושא כפיו ואין נוהגים בו קדושה אפילו לקרות בתורה ראשון.

When are these words said? When he violates commandments that are equal for Israelites and priests. But if he violates the commandments specifically for priests, the Sages have penalized him and disqualified him from all priestly functions. For instance, a priest who has married a divorced woman or a woman who has undergone the levirate marriage ceremony (chalutzah), or who has become impure by contact with a corpse not considered one of the seven 'mitzvah-related' corpses, he should not perform the Priestly Blessing, and they do not treat him with priestly sanctity, even to read the Torah first.

5. Both the Mishnah Berurah and the Aruch HaShulchan explicitly permit a *kohen* to *duchen* who violates non-*kohen* related sins, including *arayot* sins.
6. None of this is relevant to a man who is in a SSM. If he is *shomer Shabbat* and *shomer kehuna*, he may *duchen*. If he is *shomer kehuna* and not *shomer shabbat*, this is case 4.

Based on these holdings, a *kohen* who is *shomer Shabbat* – even if he is in a SSM or a *moser* (an informer, denunciator)<sup>24</sup> or a bank robber or otherwise engaged in any unrepentant public sin unrelated to being a *kohen*, worshipping idols or killing people – is allowed to *duchen* as a matter of technical halacha in all cases.<sup>25</sup> A *kohen* who is not *shomer Shabbat* can or cannot *duchen* depending on the minhag of the shul, whether or not he is in a SSM.

## 5. What is the Status of the Synagogue Rabbi's Right to Exclude People based on *Migdar Milta*?

In general, a synagogue rabbi is not obligated to permit in his building any and all conduct that is permitted by halacha and has the authority to not allow in the synagogue conduct that is permitted, but which the rabbi thinks is unwise or will lead people astray. This is called in rabbinic parlance, *migdar milta*. Maybe this is grounds to prohibit a *kohein* in a SSR from *duchaning*? This question is discussed in the last paragraph of Igrot Moshe OC 1:33, where R Feinstein writes:

נמצא שלדינא אין לפוסלו, אבל למעשה אפשר יש בזה משום מיגדר מלתא וראוי יותר שלא להניחם לישא כפיהם כדנהג כתר"ה כל הימים שהוא שם, ואף אם ליכא כהן אחר דלמגדר ודאי רשאים הב"ד, דהרי אין בזה הפקעת עשה דכשלא אמרו לו אינו עובר בעשה אבל אם אמרו לו שיעלה באופן שיעבור בעשה מסתבר שצריך לישא כפיו דאף שרשאין הב"ד לעקור עשה למיגדר מילתא אבל הא לא מצינו בגמ' שהפקיעו זה הב"ד וגם לא הגאונים דאח"כ וגם עכשיו לא היה קבוצין ב"ד לתקן זה, אבל יותר טוב שלא יאמרו לו אף בליכא כהן אחר אף שלא יתקיים מצות נ"כ כמו שעשה כתר"ה. אך למחות ביד חזקה באלו עירות שמניחים אותם לישא כפיהם אף שאין רוח חכמים נוחה מזה מסתבר שאין מחוייבין. ידידו. משה פיינשטיין.

It follows that according to the law (halacha) we do not have the authority to disqualify him [from performing the Priestly Blessing], but in practice, it might be the case due to a concern for upholding the dignity of the religious act (*migdar milta* [literally “to fence the matter in”]) in which case it is more appropriate not to allow them to raise their hands in blessing, as is your custom, all the days that you were the rabbi, even if there is no other Kohen (priest) present. Certainly, due to upholding the dignity of the act, the Bet Din (Rabbinical Court) is permitted [to stop him]. since there is no infringement of a positive commandment in this [situation], for when they do not tell him [to go up to perform the blessing], he is not transgressing a positive commandment. But if they tell him to go up [to *duchen*] in a way that he will transgress a positive commandment, it seems he would need to raise his hands. Even though the Bet Din has the authority to uproot a positive commandment for the sake of upholding the dignity of the act, we

<sup>24</sup> In *Yeriyot Shlomo*, OC 6 at page 21, there is an otherwise unpublished teshuva where Rabbi Moshe Feinstein notes that a *moser* should *duchen*, even if he is in the category of *moderim velo maalim*. Since this work is perhaps obscure, I quote the teshuva here:

ומסתבר שמוסר רשאי לישא כפין אף להפוסלין לשחיטה אף שג"כ הוא מאילו שמורדין ולא מעלין ורק לענין עדות כתב הרמב"ם שגרועים מעכו"ם ואין להאמינם שאין לך רשע גדול מזה, ולא שייך זה לענין נ"כ ושאר ענינים.

<sup>25</sup> See for example, the modern work, Piskai Teshuvot who notes (128:81) who notes this rule directly.

סעי' ל"ט, שו"ע: אף על פי שאינו מדקדק במצוות וכל העם מרננים אחריו נושא את כפיו שאין שאר עבירות מונעים נשיאת כפיים. ואפילו עבירות המורות כערייות בפרהסיא וכיוצ"ב (מ"ב ס"ק קמ"ג), ואפילו בעבירות שבין אדם להבירו כגזלן ובעל זרוע המוציא כספים במרמה, ואין משאו ומתנו באמונה, והוא עז פנים ובליעל, כל זמן שאינו במצב שהציבור שונאים אותו שנהא גמורה או הוא שונא את אחד מהציבור (עיין בפרטי דינים לעיל אות ל"ו), אסור למנוע ממנו לישא כפין.

Section 39, Shulchan Aruch: Even though he does not meticulously observe the mitzvot and the entire congregation grumbles after him, he can raise his hands [for the Priestly Blessing] since other transgressions do not prevent the Priestly Blessing. This applies even to serious transgressions, like publicly committing sexual immorality and the like (Mishnah Berurah 128:147), and even for interpersonal transgressions such as being a thief, using force to dishonestly obtain money, conducting business without integrity, and being brazen and wicked. As long as he is not in a state where the community completely hates him, or he hates one of the community members (see details of the laws above in section 36), it is forbidden to prevent him from performing the Priestly Blessing.

do not find in the Talmud or among the Geonim that the Bet Din has abrogated this particular commandment. Moreover, now there has not been a gathering of the Bet Din to make this ruling, but it would be better for them not to tell him, even if there is no other Kohen present, even though the commandment of raising the hands (Nesiat Kapayim) will not be fulfilled, as is done by the Rabbi of the synagogue. But to protest strongly against those communities that allow them to raise their hands, even though the spirit of the wise is not content with this, it seems that they are not obligated. Your friend, Moshe Feinstein.

One is uncertain what exactly Rav Moshe means. Perhaps this temporary fence is limited to debatable cases, such as one where a person is not shomer shabbat, since it may be that this person is a *mumar lechalal shabbat* and technically *pasul*. Or maybe Rabbi Moshe Feinstein is arguing that משום מיגדר מלתא, any sin fits this category even if this person is not disqualified according to any halachic authority.<sup>26</sup> Certainly *migdar milta* is driven by the need to deter others from violating. There are no firm rules for מלתא מיגדר, and these types of matters are determined according to time and circumstances. It is, however, reasonable to read this teshuva as not endorsing as appropriate such a *migdar milta* in this case. This is even more so true in this case where asking a kohen not to be in the room when the kohanim are called up simply obviates the obligation but is not a sin, as Rabbi Feinstein notes.

Reviewing the five cases discussed herein, it would seem that in all the cases where the SSM is not public information (or in the last case, where there was a SSR but no marriage, and the context was one of divorce with general communal realization of the virtues of letting this person *duchen* with their children), the calls of *migdar milta* are less clear, as is the case to prevent someone from doing a mitzvah. Absent other reasons, perhaps the wiser policy is to do nothing. One compelling factor could be that the congregation's negative reaction to allowing this *kohen* to *duchen*, particularly since a *kohen* should not *duchen* if he hates the congregation or they hate him.<sup>27</sup>

In the first and fourth cases above, both involving people publicly known to be in a SSM, the situation seems more complex, and it strikes one as logical to treat the fourth case as more closely calling for a consideration of *migdar milta*, since the person in question is public, as opposed to the first case, where silence is mandated by concerns of intergenerational tranquility.

More generally, it is hard to have a universal personal opinion on the question of applying temporary rules like *migdar milta* since the technical halacha permits a SSM man to *duchen*. These concepts are (by their very nature) left to local rabbis, *vaads*, and communities. The idea – that there must be a single

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<sup>26</sup>*Migdar milta* is contextual and is thus left to the local rabbinate since these issues can be seen in many different ways. On the one hand if you don't allow it, people will question why the rabbi distinguishes between this and other *aveirot*. On the other hand, maybe in the context of our times this conduct is different on a social level. Yet one could also argue that *l'migdar milta* presumes that the exclusion of *kohanim* in SSMs from *duchening* would discourage others from entering such relationships, which seems less true. And one can also argue that one who is in a homosexual relationship would only be a *mumar le'teyavon*, one who is in a SSM arguably has taken it one step beyond this. This might help distinguish this from Tosaphot Sanhedrin 9b sv לרצונו who seems to clearly understand SS as *mumar le'teyavon*.

<sup>27</sup> As is noted by many, when the *kohen* hates the congregation or the reverse, the *kohen* should decline to bless the community. Grounded in the Zohar Parashat Naso [classical Zohar pages, 147b] it is cited by many including Mishnah Berurah 128:37. In the real world, this could very well be a factor in many cases. [In conversation on May 19, 2023, Rabbi Mordechai Willig noted his view that he is inclined to think that if the *kohen* loves the community, even if they hate him, as a matter of theory, he is inclined to think that the *kohen* may *duchen* as a matter of halacha, and the Mishnah Berurah's claim to the contrary is not obviously correct. He agreed that the Peri Medadim was not normative, and the view of Iggrot Moshe on SS conduct was not to be followed. He thought as a general matter, aside of *migdar milta* issues, a *kohen* could *duchen* even if in a SSM. The *migdar milta* issue was crucial, he thought.]

uniform rule of *migdar milta* – is itself wrong. The exact parameters of *migdar milta* as an idea is itself beyond this paper, but it is clear that there is a dispute among the poskim about its parameters.<sup>28</sup>

These concerns depend on the local reality. Some battles are lost and should not be re-fought, as the outcome will be yet another loss. Other battles we have won already and need not be refought. Sometimes, even losing ideas need to be articulated so that people understand the intricacies of the situation. Some battles need to be fought in one place and not in another. In some places and in some times, the rabbi decides that the battle can be fought and won, but the casualty rate is too high and not worth the cost in terms of observance by others. One cannot universalize.

Even this, perhaps, is opposed by the formulation of many, favoring the unique obligation of the *kohen* to bless the people. For example, Rabbi Yitzchak Yosef (Yalkut Yosef, 128:73) notes -- in a formulation mostly derived from Rambam -- that:

כהן שאינו מדקדק במצות, [אבל אינו מחלל שבת בפרהסיא], או שהיו הבריות מרננים אחריו שעובר עבירות המורות, או שלא היה משאו ומתנו באמונה, הרי זה עולה לדוכן ונושא כפיו, ואין מונעים אותו מלישא כפיו. ואף על פי שעדיין לא חזר בתשובה. לפי שזו היא מצות עשה על כל כהן הראוי לנשיאת כפים, ואין אומרים לאדם רשע הוסף רשע והמנע מן המצות. ואל תתמה ותאמר ומה תועיל ברכתו של הדיוט זה, לפי שאין קיבול הברכה תלוי בכהנים, אלא בהקדוש ברוך הוא, שנאמר ושמנו את שמי על בני ישראל ואני אברכם, הכהנים עושים מצותם שנצטוו בה, והקדוש ברוך הוא ברחמיו מברך את ישראל כהפצו.

A priest (Kohen) who is not meticulous in observance of the commandments, [but who does not publicly desecrate the Sabbath], or who is known among people to commit serious sins, or who does not conduct his business faithfully, may ascend the platform (*duchen*) and raise his hands for the priestly blessing, and he is not prevented from doing so. This is true even if he has not yet repented. Because this is a positive commandment for every priest who is eligible for the priestly blessing, and we do not say to a wicked person, 'increase your wickedness and abstain from the commandments.' And do not wonder, saying 'what good is the blessing of this common person?' Because the reception of the blessing is not dependent on the priests, but on the Holy One, blessed be He, as it is said, 'And they shall place My name upon the children of Israel, and I will bless them.' The priests perform their commandment as they were instructed, and the Holy One, blessed be He, in His mercy, blesses Israel according to His will.

But the very nature of *migdar milta* can be very local and changing and need not immutable or technically halachic.<sup>29</sup>

## 6. Conclusions

There is no normative<sup>30</sup> halachic basis for mandatorily and categorically excluding a shomer Shabbat *kohen* who also keeps the rules of *kahuna* but is in a SSM from *duchening* in all cases (as there is for a *kohen* married to a divorcee), even though there might be a basis for excluding him from leading some other ritual activities. There can be a basis to invoke the *migdar milta* rationale, but it is complex when

<sup>28</sup>Can it prohibit only the debatable, or even the clearly *mutar*, and can it punish the innocent or only the debatably guilty and is it only about interpersonal or even ritual matters. For more on this, see Maharik Shoresh 1 and 180, Mordechai BB 481 and more. Practically, there is a consensus of modern poskim that *l'migdar milta* could apply in this situation at least to the extent that the rabbi asks people to leave the synagogue before the kohanim are called up. As Rabbi Feinstein notes, instructing someone to be *mevatel* a positive commandment is no simple matter.

<sup>29</sup>Rabbi Yona Reiss in a stellar essay in Kanfei Yona on page 228 notes that the AHS (OC 128:56, and the AHS He-Atid (Biat Hamikdash 45:12) have different formulations about the question of whether a flagrant sinner can *duchen* or work in the Temple, reflecting the Rambam's idea that *duchening* is a lower standard. This essay is worth reading.

<sup>30</sup>This means that adopting the *chumras* of both Rabbi Moshe Feinstein's view of SS relationships and the Pre-Megadim's view of *mumar lehachis* is jointly not normative as a matter of technical halacha, particularly since Rabbi Feinstein's view runs deeply counter to the scientific data we have now that indicates SS conduct is not merely an act of rebellion. [Even in a situation where a person is a bisexual, there is no clear indication that they are a *mumar lehachis*, just like a married heterosexual man who is committing adultery with a married woman is considered *le'tayavon*.] Most poskim [including Rabbi Feinstein; see OC 3:12] do not adopt the Pre-Megadim's view, as is widely known.

dealing with a SSM<sup>31</sup> person who is shomer Shabbat in a shul that allows non-Shomer Shabbat people to *duchen*.

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<sup>31</sup>When dealing with people who are SSM, it is reasonable to assume they are engaging in acts prohibited by Torah law. Some have questioned this, and there is not data, but perhaps reasoning by analogy in the absence of data helps. If a shomer Shabbat man were dating a shomer Shabbat woman who was secularly divorced, but still halachically married, we would assume that no intimacy is taking place, as shomer Shabbat people have a *chezkat kashrut*. When they move in with each other [and only then], they lose that *chezkat kashrut*, but maybe one does not assume that people who violate *yichud* are engaging in Torah violations. [Maybe they are -- in the wonderful turn of a rabbinic phrase by Rabbi Ezra Schwartz, "*shomer biah*," which is somewhat common.] Once this couple get civilly married, it is safe to assume that they are having a full relationship. One can assume that the same thing is true here.