

May a *Kohen* in a Same-Sex Relationship *Duchen*?

With an Appendix entitled:

AI and Jewish Law: Seeing How ChatGPT 4.0 Looks at a Novel Issue

Rabbi Michael J. Broyde*

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.¹ 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 becoming increasingly common.² This article will focus on one small question related these situation: 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

*Broyde is a Professor of Law of Law at Emory University, the Berman Projects Director in its Center for the Study of Law and Religion and the Director of the SJD Program at Emory. In the past, he has been the Director of the Beth Din of America and the Rabbi of the Young Israel in Atlanta as well as holding other rabbinic roles. The initial translation of the Hebrew rabbinic texts were first done in ChatGPT4.0 with a paid subscription. It was asked “This is a text from [name of work]. Can you translate it? You are an expert rabbinic translator and this is for halacha scholars.” The style used in this translation is thus somewhat idiosyncratic; while sometimes this translation was lightly additionally edited by the author or others, the basic structure of the AI translation was retained. GPT4.0 noted after every translation “Please note that translating and interpreting religious texts often requires nuanced understanding of the specific religious context, and different scholars might interpret or translate this slightly differently.”

¹ <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%).”

²Throughout 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.

Broyde: May a Man Who is Kohen and in a Same Sex Relationship *Duchen*? May A Shul Prohibit Such as a *Migdar Milta*?

Draft of 11/22/2023 -- Do not cite or circulate (translations need another edit) Questions/comments? Email mbroyde@emory.edu Page 1

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 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.³ 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 *chalutza*) 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

³Igrot 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).

notes, that there is a prohibition for a *kohen* who worships idols to subsequently work in the *Bet Hamikdash*, since one who leads service in to a pagan god can not 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.

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 שנושא אשה בעבירה זרעו מחולל אבל הוא אינו מחולל אבל כופין אותו ואפי' בשוטים עד שיגרש וכדאמ' ביבמות (דף פ"ה) 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 שידייר הנאה ונראה דאפי' גרשה ואפי' מתה פסול עד שידייר 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 במרדו. ובסימן קל"ה כתב וזה לשונו ועוד כתוב משמיה דמר שמואל כהן שנטמא 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.⁴

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,⁵ 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

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

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

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*.⁶

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 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 128:134⁷ 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.⁸ Furthermore, it seems that none of the general sexual prohibitions

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

⁷Based on Peri Megadim, Mishbatzot Zahav 128:39.

⁸In the formulation of Yalkut Yosef 128:73-74:

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 והוסף רשע והמנע מן המצות.... אולם אם הכהן מחלל שבת בפרהסיא במזיד, הרי הוא כעו"ג לכל דבר, ואינו עולה לדוכן לנשיאת כפים.

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.

– other than intermarriage, and even this is far from certain⁹ – are on this list, as is made clear by OC 128:39:

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 לן דעל שלש עבירות יהרג ואל יעבור סלקא דעתך דמינא דדינן שוה ג"כ לענין נשיאת כפים קא משמע לן דעל שאר עבירות אין מונעין אפילו עבר על גילוי ערוות במזיד ולא עשה תשובה כיון דליכא קרא וטעמא דמילתא דאשכחן דקודשא בריך הוא נעשה סניגור על עברה זו וקאמר לפתח חטאת רובין 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

⁹See 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 בן ישראל between the Bet Shmuel and Chelkat Mechoke. 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 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.

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.¹⁰

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 מרנגים 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 poskim¹¹ 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 clearly rule that even a person who is a well-known and certain sinner in other areas (not a unique *kohen* sin and not 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 המורות כעריות וכדומה” [“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 ושמנו את שמי על בני ישראל ואני אברכם הכהנים עושין מצותן שנצטוו בה והקב"ה ברחמיו מברך את ישראל כחפצו 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 ואליה רבה והגר"א ומגן גבורים, דלא כראב"ה

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

¹⁰This 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.

¹¹ Compare Magen Avraham 128:56 with Gra 128:39.

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

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 ואינו מדקדק במצות או שהיו הבריות מרננין אחריו או שלא היה משאו ומתנו בצדק ה"ו נושא את כפיו ואין מונעין אותו לפי שזו מצות עשה על כל כהן וכהן שראוי לנשיאות 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 נשיאות כפים ויש מי שאומר דזהו דוקא כשעשה תשובה [מג"א סקנ"ו בשם ראנ"ח] ודברים תמוהים הם דלהיא 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 altar]," 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

At the core of the argument to prohibit a person in a SSM from *duchening* is the notion of “מכל” מומר [“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 Igrot Moshe OC 4:115, especially when combined with an opinion of the Pri Megadim about any “rebellious sins.” Rabbi Moshe Feinstein in Igrot 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 דבבריאת 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 מסיתו להמרות נגד רצון הקדוש ברוך הוא וידיעה זו היא הזוק 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.¹³

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 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 reinforced by the conclusions of the Peri Megadim (EA 128:40, really in the name of the Tosaphot Yom Tov) that דכהן שהמית אסור לנשיאות כפים וכל שכן עבודה. והוא הדין מגלה עריות [“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.”]¹⁴

¹³This is not the place to address this issue, other than to note that many halachic authorities do not agree. For more on this, see Igrot 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 דלמנהגו שאף בשביל יחיד פורסין על שמע ואומריין 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 אומריין דבר שבקדושה בפחות מעשרה, ולכן כשם שקדוש השם ליהרג הוא מחוייב אף לפני עשרה כופרים ומומרים אם אף הם מישראל כדמוכה כן מהא דסנהדרין דף ע"ד דפשיט בעית ר' ירמיה בתשעה ישראל ונכרי אחד שאינו מחוייב אלא ככולהו ישראל דאתיא תוך ממרגלים שהיו כולהו ישראל כדפרש"י והתם הא היו כופרין בפרהסיא שגריעי ממחללי 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 Igrot Moshe OC 3:12 where a distinction is made between one who believes in God or not.

¹⁴As 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

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* – seems scientifically mistaken. 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*.¹⁵ Then there are the famous competing formulations of Rabbi Norman Lamm and Rabbi Aharon Lichtenstein,¹⁶ 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*.¹⁷ 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 blessing, we are more liberal. This is exactly what the Mishnah Berurah and the Aruch HaShulchan aver, as noted above.¹⁸

[A]ccording 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.

¹⁵As Tosaphot Sanhedrin 9b sv לרצינו 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.

¹⁶For 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/>.

¹⁷Killing 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.

¹⁸While 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"ח ס"ק קמ"ג דאף שאינם מדקדקים בעריות כיון שאין בהם מן המונעים נשיאת כפים עדיין עולים לדוכן.

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.¹⁹ While a *kofer* 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.²⁰ 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.²¹ Thus, a *kohen* who is married to a *mamzer*²² 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 שידור ע"ד רבים וכו':

(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.²³

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.

¹⁹ 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*.

²⁰ See Bach and others above.

²¹ 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.

²² 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.

²³ 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*:

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.
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.

ודוקא 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 ממימיר 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 חלוצה 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.

Broyde: May a Man Who is Kohen and in a Same Sex Relationship Duchen? May A Shul Prohibit Such as a Migdar Milta?

Based on these holdings, a *kohen* who is shomer Shabbat – even if he is in a SSM or a *moser* (an informer, denunciator)²⁴ 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.²⁵ 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 Rabbis' Right to Exclude People based on *Migdar Milta*?

The final question left to answer is found 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 שרשאיין הב"ד לעקור עשה למיגדר מילתא אבל הא לא מצינו בגמ' שהפקיעו זה הב"ד וגם לא הגאונים דאח"כ וגם עכשיו לא היה קבוץ 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. יידו. 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 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.

²⁴ 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.

²⁵ 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 חמורות כעריות בפרהסיה וכיוצ"ב (מ"ב ס"ק קמ"ג), ואפילו בעבירות שבין אדם לחבירו כגזלן ובעל זרוע המוציא כספים במרמה, ואין משאו ומתנו באמונה, והוא עז פנים ובליעל, כל זמן שאינו במצב שהציבור שונאים אותו שנאה גמורה או הוא שונא את אחד מהציבור (עיין בפרטי דינים לעיל אות ל"ו), אסור למנוע ממנו לישא כפיו.

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.

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.²⁶ 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 some 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.²⁷

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 uniform rule of *migdar milta* – is itself wrong. The exact parameters of

²⁶*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 *kohenim* 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*.

²⁷ 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 Igrot 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.]

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.²⁸

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 מרגנים 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 כפיים, 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 ושמר את שמי על בני ישראל ואני אברכם, הכהנים עושים מצותם שנצטוו בה, והקדוש ברוך הוא ברהמי 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 be fixed or technically halachic.²⁹

6. Conclusions

There is no normative³⁰ 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

²⁸Can 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 Shores 1 and 180, Mordechai BB 481 and more. Practically, there is a consensus of modern poskim that *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.

²⁹Rabbi 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.

³⁰This 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

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 dealing with a SSM³¹ person who is shomer Shabbat in a shul that allows non-Shomer Shabbat people to *duchen*.

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.

³¹When 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.

Appendix to: *May a Man Who is Kohen and in a Same Sex Relationship Duchen?* AI and Jewish Law: Seeing How ChatGPT 4.0 Looks at a Novel Issue

Michael J. Broyde

Introduction¹

In the article that precedes this, I analyze whether a man who is in a same sex relationship may engage in the priestly blessing (*duchaning*, in Hebrew) as a matter of halacha and the article concludes that such is permitted in Jewish Law, and can only be prohibited exigently. This is a novel question of halacha, with virtually no prior works written that directly discuss this point.

As the first and star [*] footnote in the article observed, I uploaded all the text² in this article one-by-one and asked ChatGPT 4.0 to translate them as an expert for a halachic audience. It did a very good – but not perfect – job. ChatGPT 4.0 skills as a translator of rabbinic Hebrew does not interest me in this appendix, although they are much better than Googles. My question to ChatGPT 4.0 [paid subscription], after asking it to translate all these texts, was as follows:

Now that you have seen all these texts, do you think a man who is a priest and in a same sex marriage can perform the priestly blessing as a matter of halacha. Write me about 500 words.

I felt that this was a fascinating question to ask it, as there is virtually no discussion of the issue of a same sex married kohen duchening in either Hebrew or English on the internet and none of the sources I uploaded discuss this issue. ChatGPT had to derive and reason this from the sources I uploaded (and which it knew from other sources) about what was the halacha in this case. It could not simply “google” to find out what others have said, as this is a matter of first impression. Indeed, what is needed to answer this question is nuanced reading of sources about the various categories present and the classification of sins into proper groupings, as well as other ideas, as my article shares. I was quite surprised how excellent a job ChatGPT did. Furthermore, when I asked it in the end to state a contrary view, it highlighted the correct issue and focused on it.

Answers Provided by ChatGPT

It answered at first:³

In traditional Jewish law, known as Halacha, the interpretation of commandments, prohibitions, and guidelines for behavior is derived from the Torah and subsequent rabbinic literature. As an AI, I don't express personal opinions, but I can provide an analysis based on the texts provided.

Regarding the question of whether a man who is a priest (a Kohen) and in a same-sex marriage can perform the Priestly Blessing (Birkat Kohanim), we must delve into the complexity of Jewish law and its approach to several interconnected issues.

The texts we examined from the Shulchan Aruch HaRav, Aruch Hashulchan, Piskei Teshuvot, and Yalkut Yosef, collectively suggest that even priests who have committed transgressions may

¹This material is conceptually unrelated to the question in the main article and is not part of the article. It certainly is not *lehalacha*.

² I did not ask it to translate material less than 20 words including the short material in note 18 of the main article.

³Occasionally, it stopped at 500 words mid-sentence and I would prompt it to finish the paragraph or thought.

still be permitted to perform the Priestly Blessing. This is based on the concept that we do not say to a sinner “add sin and abstain from commandments”. The central reasoning is that the efficacy of the Priestly Blessing is not dependent on the personal righteousness of the priests, but rather on the mercy of God, who ultimately bestows the blessings.

However, there are certain instances where a priest may be prevented from performing the blessing. For example, a priest who publicly desecrates the Sabbath is treated as a non-Jew for all matters, including the Priestly Blessing. In addition, priests who transgress commandments specifically related to the priesthood, such as marrying prohibited women, are disqualified from performing their priestly duties.

Now, to address the specific question: the status of a priest in a same-sex marriage is complex within Halacha, as traditional Jewish law prohibits homosexual relations. However, it is important to note that there’s a clear difference between committing a transgression and the status of a person who commits a transgression. Traditional Jewish law views same-sex relations as a serious transgression, but does not prescribe a change in personal status (like in cases of desecrating the Sabbath publicly or marrying prohibited women).

Therefore, based on the aforementioned sources, a priest who is in a same-sex marriage may technically still be allowed to perform the Priestly Blessing. This is because the core purpose of the blessing is not negated by the transgressions of the individual priest, and that stopping him might be considered adding sin to sin by preventing a commandment.

Nevertheless, it should be noted that this is a contentious issue within the Jewish community, with different scholars likely to have divergent views based on their interpretation of Jewish law and its applicability to contemporary issues. Many Orthodox rabbis may prohibit such a priest from performing the Priestly Blessing due to the severity of the transgression. Conversely, more liberal streams of Judaism might allow it, as they often reinterpret or dismiss traditional prohibitions against same-sex relationships. This topic is thus not only a matter of halachic interpretation but also of broader communal norms, values, and the dynamic tension between tradition and modernity in contemporary Jewish life.

I then asked it to “regenerate,” and it provided me with a second answer. It said:

The question about whether a priest (Kohen) who is in a same-sex marriage can perform the Priestly Blessing (Birkat Kohanim) raises complex halachic issues and considerations. As with any complex halachic question, it is always recommended to consult with a competent halachic authority or a posek for personalized guidance. Here, we’ll explore this matter based on the texts provided, understanding that this is a theoretical analysis and not a halachic ruling.

One of the crucial points in the sources you have provided is the concept that, except for two extreme violations (idolatry and murder), transgressions generally do not disqualify a Kohen from performing the Priestly Blessing. The Shulchan Aruch HaRav (128:51) states that even serious transgressions such as illicit sexual relations do not prevent a Kohen from performing the Priestly Blessing. This perspective seems to be reinforced in the Aruch HaShulchan (128:57) and the Piskei Teshuvot (128:81). Therefore, strictly based on these sources, it may seem that a Kohen who is in a same-sex marriage could potentially perform the Priestly Blessing.

However, the halachic discussion is more nuanced. The Shulchan Aruch HaRav (128:53) introduces the idea that transgressions specific to the priestly status could disqualify a Kohen from performing the Priestly Blessing. But the issue of same-sex relations does not fall solely within the purview of priests; it's a prohibition that applies to all Jewish men. Therefore, it's uncertain whether this principle would apply in this case.

The Yalkut Yosef complicates this matter further by discussing the case of a Kohen who publicly desecrates the Sabbath. Here, the Kohen is seen as akin to a non-Jew and is not initially allowed to perform the Priestly Blessing. However, the Yalkut Yosef also acknowledges that for the sake of peace, if the Kohen is insistent, it may be allowed, even if the community disapproves.

All these sources show that a Kohen who is known to be living in ways that are not in line with Jewish law can still, in certain circumstances, be eligible to perform the Priestly Blessing. However, it's important to note that each community and its rabbinic leadership may address these issues differently, taking into account various factors such as public sentiment, respect for Torah law, and peace within the community.

While the texts do not specifically mention a Kohen in a same-sex marriage, they imply that the primary disqualification for a Kohen to perform the Priestly Blessing would be for transgressions uniquely applicable to Kohanim or for very severe transgressions that affect the community's integrity and faith. A same-sex relationship might be viewed as a severe transgression according to traditional interpretations of Jewish law, but how this applies in the context of Birkat Kohanim is a complex issue.

In conclusion, the texts imply that even a Kohen who is not fully observant may still have the right to perform the Priestly Blessing, although this is subject to various considerations. In the case of a Kohen in a same-sex marriage, the matter would require careful halachic deliberation considering all these factors. Ultimately, this question would have to be resolved by a competent halachic authority, taking into account the specific circumstances of the individual and the community.

As many have noted, asking ChatGPT4.0 to regenerate produces better answers than the first answer and that was the case here as well, I think.

I then asked, "Can you try again with even more complex analysis?" and it said:

The question of whether a Kohen, a man who identifies as a priest, who is in a same-sex marriage can perform the Priestly Blessing (Birkat Kohanim) in accordance with Jewish law (halacha) is a complex one that engages multiple layers of halachic thought and interpretive principles.

We'll start by discussing the sources provided. In the Aruch HaShulchan (OC 128:57), there is a clear differentiation made between a priest who is prohibited to marry a divorcee and his ability to perform the Priestly Blessing. This ruling implies that certain transgressions that apply uniquely to a Kohen can prevent him from performing the Priestly Blessing. However, it doesn't directly address the question of a Kohen in a same-sex marriage, as the prohibition of same-sex relations applies to all Jewish males, not just Kohanim.

Conversely, the Piskei Teshuvot (128:81) suggests that a Kohen who is not careful with mitzvot can still perform the Priestly Blessing, even when he commits severe transgressions publicly. This approach seems more permissive and suggests that even substantial transgressions may not disqualify a Kohen from performing Birkat Kohanim.

The Yalkut Yosef introduces another critical factor. It emphasizes the role of the community's sentiment. If the public despises the individual, it would disqualify him from performing the blessing. However, the text also acknowledges that maintaining peace is of paramount importance, and in certain circumstances, even a Kohen who desecrates the Shabbat publicly can perform the blessing for the sake of peace.

These sources give us a framework for analyzing our question, but they do not provide a definitive answer. We have two points of tension here. On the one hand, halachic texts suggest that significant transgressions do not disqualify a Kohen from performing the blessing. On the other hand, public sentiment and violations specific to the priestly status are factors that can disqualify a Kohen.

Applying these considerations to a Kohen in a same-sex marriage presents unique challenges. Same-sex marriage, while a serious transgression according to traditional Jewish law, is not a transgression specific to Kohanim, making the Aruch HaShulchan's ruling less directly applicable. However, public sentiment might play a crucial role here, as indicated by the Yalkut Yosef. This factor is highly dependent on the specific community in question. In some communities, a Kohen in a same-sex marriage might be widely accepted, while in others, he might be subject to censure.

We should also consider the implications of the changing societal norms and legal definitions of marriage. Although traditional Jewish law defines marriage as a relationship between a man and a woman, secular law and societal norms in many places now recognize same-sex marriages. The interaction between these secular societal changes and Jewish law is a complex issue that modern rabbis grapple with.

To complicate matters further, while homosexuality is viewed as a transgression according to traditional Jewish law, some modern halachic authorities have suggested that the classical prohibitions might not apply to individuals who identify as homosexual and didn't choose their orientation. These authorities often draw a distinction between the act of homosexual relations, which remains prohibited, and the state of being homosexual, which they suggest might not fall under the classical prohibitions. How this distinction impacts the eligibility of a Kohen in a same-sex marriage to perform the Priestly Blessing is an open question that would require careful deliberation by competent halachic authorities.

In summary, this question highlights the complex interaction between the strictures of traditional Jewish law, the nuances of individual circumstances, and the evolving norms of the broader society. As such, it exemplifies the challenges and intricacies of applying ancient halachic principles to contemporary situations. It is evident that a definitive answer to this question would require a deep understanding of halacha, a profound sensitivity to human experience and societal change, as well as the wisdom and authority of a seasoned halachic decisor. Given these

considerations and the potential real-life implications, it would be most appropriate for such a question to be posed directly to a knowledgeable and trusted halachic authority.

Then I asked it to “Please write me about 2,500 words on the question of whether a priest in a same sex marriage can perform the priestly blessings.” I gave it the ability to write a small essay, so to speak and not just a page. This is what it said:

As an AI, I am providing an analysis based on existing Jewish law and texts up until my knowledge cutoff in September 2021. Given the complex nature of the topic, I highly recommend engaging in dialogue with a knowledgeable halachic authority for a more personalized and nuanced understanding. Also note that this is a sensitive topic and the aim here is not to marginalize or judge any individual or group, but to provide an analysis within the framework of Jewish law.

The Priestly Blessing and Its Requirements

The Priestly Blessing, also known as Birkat Kohanim, is a ritual conducted by Kohanim, the descendants of Aaron, the brother of Moses, as instructed in the Torah (Numbers 6:22-27). This ritual is performed during the Jewish prayer service under specific conditions and has a series of legal requirements (Halacha) governing who can perform this ritual and under what circumstances.

Halacha has set requirements for the Kohen, mainly around ritual purity, but it also extends to the Kohen’s conduct. The question at hand, whether a Kohen who is openly gay and in a same-sex marriage can perform the Priestly Blessing, sits at the intersection of two domains of Jewish law: the laws specific to the Kohanim, and the laws pertaining to sexual conduct.

Sexuality in Halacha

The Torah (Leviticus 18:22) traditionally has been interpreted as prohibiting homosexual acts, specifically male same-sex sexual activity. This law, like all others in the Torah, is considered binding on all Jews. However, it is important to note that the prohibition focuses on the act itself and does not categorize or stigmatize individuals based on their sexual orientation. Halacha does not recognize the concept of a homosexual or gay identity in the way contemporary society does.

As a result, a Kohen who identifies as gay but does not engage in prohibited sexual activity would not, by that fact alone, be barred from performing the Priestly Blessing. It is the commission of prohibited acts that potentially raises concerns.

Being a Kohen in a Same-Sex Marriage

If a Kohen is in a same-sex marriage, it’s implicit that he is engaging in a relationship which Halacha views as involving prohibited sexual conduct. Halacha has traditionally seen marriage as involving a sexual relationship, and the same would be presumed of same-sex marriages.

Impact on the Kohen’s Status and Abilities

How, then, does a Kohen’s engagement in prohibited behavior, specifically same-sex sexual activity, affect his ability to perform the Priestly Blessing? There is no straightforward answer, as different authorities have interpreted the laws in various ways.

According to some interpretations of Halacha, a Kohen who willingly and publicly violates prohibitions of the Torah, particularly those associated with sexual conduct, is no longer considered "fit" to perform the Priestly Blessing. This is based on the concept of "Chillul Hashem" - the desecration of God's name which can occur when a Jew publicly violates Jewish law.

However, another opinion argues that only violations that are related to the specific laws of the Kohanim would impact their ability to perform the Priestly Blessing. This opinion argues that the status of Kohen is an innate one, unaffected by personal conduct unless it directly violates the specific laws of the Kohanim.

Still others argue that a Kohen who has violated major prohibitions can restore his ability to give the Priestly Blessing by performing Teshuva, a process of repentance and return to observance of the Torah's commandments.

Modern Perspectives and Challenges

The increased acceptance of LGBTQ+ individuals and relationships in modern society has prompted some to re-evaluate traditional interpretations of Halacha in this area. One such attempt to reinterpret the Torah's prohibitions has been to argue that they only apply to certain types of homosexual activity or were only relevant in the historical and cultural context in which they were given. However, these interpretations are not widely accepted in Orthodox Judaism, which generally adheres to the understanding that the Torah's commandments are universally and eternally binding.

These modern societal changes have also brought to light the very real emotional and psychological pain experienced by many LGBTQ+ individuals in religious communities. This has led to calls for greater acceptance and inclusion within these communities, while still upholding the tenets of Halacha.

Furthermore, the very concept of a same-sex "marriage" poses a challenge in Halachic terms. As noted earlier, Halacha has traditionally viewed marriage as a relationship involving permissible sexual relations. The institution of a same-sex marriage implies an ongoing homosexual relationship, which is in direct contradiction to the Halachic prohibition on same-sex sexual activity.

Application to the Case at Hand

With all this in mind, what can we say about the situation of a Kohen in a same-sex marriage? As discussed earlier, being a Kohen is an innate status, but the ability to perform the Priestly Blessing is contingent on adherence to certain laws. A Kohen in a same-sex marriage, which implies engagement in behavior prohibited by Halacha, would likely be seen by many Halachic authorities as ineligible to perform the Priestly Blessing.

However, some authorities might allow him to perform the blessing if he goes through the process of Teshuva. Others might argue that his behavior does not impact his Kohen status and abilities, since it does not involve violations of the specific laws of the Kohanim.

Regardless of the Halachic conclusion, the situation highlights the importance of balancing adherence to Jewish law with compassion and sensitivity towards all individuals. If a Kohen in a same-sex marriage is barred from performing the Priestly Blessing, it should be done with utmost sensitivity and care, recognizing the personal and communal difficulties such a decision might cause.

Conclusion

In conclusion, the issue of a Kohen in a same-sex marriage performing the Priestly Blessing is complex and multifaceted, touching on different areas of Jewish law and ethics. There is not a single universally agreed-upon answer, but a range of opinions reflecting the complexity of Halacha and its application in changing societal contexts.

Regardless of the Halachic stance one takes, it is crucial to approach the issue with sensitivity and a commitment to upholding both the values of the Torah and the dignity of all individuals. As society continues to evolve, such challenging questions will continue to arise, pushing us to delve deeper into the richness and complexity of Halacha and to strive for a balance between tradition and inclusion. Ultimately, the conversation on this topic, like all matters of Halacha, should be guided by knowledgeable and compassionate Rabbinic leadership.

Again, this answer provides an analysis up until my knowledge cutoff in September 2021. For up-to-date and personalized guidance, please consult with a competent Halachic authority.

I then asked it, “Can you write me about 1,000 words stating in the strongest way you can why Jewish Law would prohibit a priest in a same sex marriage from participating in the priestly blessing?” It answered as follows:

The question of a Kohen who is in a same-sex marriage performing the Priestly Blessing (Birkat Kohanim) touches upon complex layers of Jewish law and requires a nuanced understanding of the intersection between Halacha (Jewish law) and modern societal dynamics. To assert that Jewish law would unequivocally prohibit such a Kohen from participating in the Priestly Blessing is a multifaceted task, requiring an exploration of the Halachic status of a Kohen, the principles of Birkat Kohanim, the prohibitions concerning homosexuality, and the implications of a same-sex marriage. Please note that the following analysis represents a stringent perspective based on traditional interpretations of Halacha up until my knowledge cutoff in September 2021.

The Status of a Kohen

In Jewish law, the status of a Kohen (priest) is an inherent one. A man is a Kohen by virtue of his patrilineal descent from Aaron, the first High Priest. This status comes with privileges, such as the mandate to bless the Jewish people, and restrictions, such as prohibitions on marrying certain women or coming into contact with a corpse. The status is inalienable; nothing a Kohen does can strip him of this status.

However, the privileges of this status, specifically the ability to confer the Priestly Blessing, are contingent upon adherence to certain behavioral standards. For instance, the Talmud (Berachot 32a) discusses cases where Kohanim who have committed various transgressions are disqualified

from giving the Priestly Blessing. While being a Kohen is an inherent status, performing the Priestly Blessing is a role or function that can be lost due to improper behavior.

Homosexuality in Halacha

The Torah explicitly prohibits male homosexual relations in Leviticus 18:22 and 20:13. This prohibition has been consistently upheld by Halachic authorities throughout Jewish history. While the Torah does not explicitly mention female homosexuality, most authorities consider it to be prohibited as well under the general proscription against immodest behavior.

While modern societal views on homosexuality have evolved, leading to greater acceptance and rights for the LGBTQ+ community, Halacha's stance remains firm. The Halachic prohibitions concerning homosexuality are not contingent upon societal norms or views but are derived from divine commandments which are considered eternal and unchanging.

It's important to note that while Halacha prohibits homosexual behavior, it does not necessarily pass judgement on homosexual orientation or identity. The Halachic concern is specifically with the act of homosexual intercourse, not with feelings or attractions. Nevertheless, the prohibition does present serious challenges for individuals with same-sex attractions who strive to live in accordance with Halacha.

Implications of a Same-Sex Marriage

In Halacha, the concept of a same-sex marriage presents a considerable challenge. As noted above, Halacha unequivocally prohibits homosexual intercourse. The institution of marriage in Jewish law implies a permissible sexual relationship, and hence, a same-sex marriage indicates an ongoing engagement in prohibited behavior.

Further, entering into a same-sex marriage can be seen as a public violation of the Torah's prohibition against homosexual acts. Jewish law places a strong emphasis on 'marit ayin' – considerations of public perception. Actions that may lead others to misunderstand or misinterpret the requirements of Halacha are generally avoided, even if technically permissible. In this case, a same-sex marriage might publicly signal that Halacha condones homosexual relations, which it does not.

The Confluence of these Factors in the Case of a Kohen

With this background, the prospect of a Kohen in a same-sex marriage performing the Priestly Blessing presents a clear conflict. On the one hand, the Kohen has a Halachic obligation and privilege to bless the Jewish people. On the other hand, by entering into a same-sex marriage, he is engaging in behavior that is in direct conflict with the Halachic norms that govern his status and responsibilities as a Kohen.

Notably, as we observed earlier, the performance of the Priestly Blessing can be influenced by the Kohen's behavior. If a Kohen's actions are in serious violation of Torah prohibitions, this can, according to several authorities, disqualify him from performing the Priestly Blessing. Given that Halacha strictly prohibits homosexual acts, a Kohen in a same-sex marriage is willingly and publicly transgressing a significant Torah prohibition. This could reasonably be argued to disqualify him from performing the Priestly Blessing.

Furthermore, the role of the Kohen in the Birkat Kohanim is not just about the individual Kohen, but about the sanctity and unity of the community as well. The Priestly Blessing is intended to be a conduit of divine blessing and sanctity, and the Kohen who performs it is meant to be a representative of the people, standing before God. A Kohen who openly violates fundamental Torah prohibitions might be seen as disrupting this role and potentially causing a breach in the spiritual unity of the community.

Moreover, allowing a Kohen in a same-sex marriage to perform the Priestly Blessing could potentially create a 'marit ayin' issue, suggesting to the community a tacit approval of his actions by the Halachic system. This may inadvertently lead to misunderstandings or misinterpretations of Halachic views on homosexuality and same-sex marriage.

In conclusion, based on a traditional understanding of Halacha, there are strong reasons to suggest that a Kohen in a same-sex marriage would be prohibited from performing the Priestly Blessing. This conclusion is based on the seriousness of the prohibition against homosexual acts, the potential disqualification from performing the Priestly Blessing due to serious transgressions, and the communal implications of a Kohen's public violation of Torah norms.

However, it is crucial to note that this analysis does not constitute a definitive Halachic ruling. Every case has unique circumstances that must be taken into account, and Halachic rulings should always be sought from knowledgeable and respected authorities. Additionally, it is of utmost importance to approach these sensitive issues with compassion, understanding, and respect for the dignity of all individuals involved.

A Few Observations:

A: Jewish Reasoning

ChatGPT 4.0 did something interesting. It examined a set of sources, none of which discussed whether a kohen in a SSM can *duchen*. It applied these sources as a form of rabbinic reasoning that did not seem all too farfetched, although incompletely. Furthermore, it introduced terms from its general knowledge of halacha not found in any of the uploaded sources to sharpen concepts, such as *marit ayin* and the like. Lastly, when it was asked to rebut its own view, it did so well enough to be functional. ChatGPT writes elegantly while reflecting grand values;⁴ but as a language module of AI, we should not be surprised that its linguistic ability exceeds its analytical ability.

ChatGPT 4.0 seems quite aware of other ideas, such as being hesitant to issue rulings or the need to not be exactly loyal to specific sources without first making sure it "understood them," an idea that Rabbi Feinstein notes about in Igrot Moshe YD 1:101 ואף בדין הנמצא בספרים ודאי שצריך המורה ג"כ להבין אותו בדעתו קודם שיוורה ולא להורות רק מחמת שנמצא כן דהוי זה כעין מורה מתוך משנתו שע"ז נאמר התנאים מבלי עולם ולהכריע שמורין הלכה מתוך משנתם בסוטה דף כ"ב עיי"ש בפרש"י. It is apparent that ChatGPT 4.0 was not just stringing together sources; it was doing more than that. It understood the sources and examined them.

⁴ Consider for example "This topic is thus not only a matter of halachic interpretation but also of broader communal norms, values, and the dynamic tension between tradition and modernity in contemporary Jewish life" found in its reply as one of many examples of such.

Consider for example, its invocation of *marit ayin*, a concept unfound directly in the sources I provided, but which is both a Talmudically poor one and socially a very useful one. In the Talmud, *marit ayin* is limited to a case where a person does a permitted action that in the eyes of an outsider looks like a prohibited action, or sometimes (in what we now call *chashad*), one does an act that causes one to doubt if the person in question obeys Jewish law. Whereas, ChatGPT 4.0 understands this concept in a high level of abstraction about the importance of public perception generally and stretches it to this case, almost the way people within the community sometimes use the term. It presents more of the colloquial use of the term than the rabbinic-halachic use of the term, which reflects a level of awareness.⁵

B: How Impressive is ChatGPT's Answers?

Judging the impressiveness of an answer is – like grading law school exams (something I do every semester) somewhat subjective. But, yet, it is worth noting that ChatGPT did the basic analysis in this case, well in its first answer, better in its second, less well in its longer answer and then replied well to its own view. ChatGPT figured out that most achronim (as it notes “Shulchan Aruch HaRav, Aruch Hashulchan, Piskei Teshuvot, and Yalkut Yosef, collectively suggest that even priests who have committed transgressions may still be permitted to perform the Priestly Blessing.”) and it also figured out that some sins are different from others (and mentions sabbath desecration). Then it reasons that SSRM are a serious violation but does not prescribe a change in one’s status. It concludes that “Therefore, based on the aforementioned sources, a priest who is in a same-sex marriage may technically still be allowed to perform the Priestly Blessing” which is the core reasoning that is needed. The regenerated answer is even better saying directly that “While the texts do not specifically mention a Kohen in a same-sex marriage, they imply that the primary disqualification for a Kohen to perform the Priestly Blessing would be for transgressions uniquely applicable to Kohanim or for very severe transgressions that affect the community’s integrity and faith.”

Indeed, in the more complex answer, ChatGPT goes even further and notes that one can “draw a distinction between the act of homosexual relations, which remains prohibited, and the state of being homosexual, which they suggest might not fall under the classical prohibitions,” which is something it must have reasoned on its own, but is not directly in the sources at all. Its longer answer is even more nuanced and complex and when I asked it to state the strongest case against letting a kohen in a SSM duchen, it well notes “the performance of the Priestly Blessing can be influenced by the Kohen’s behavior. If a Kohen’s actions are in serious violation of Torah prohibitions, this can, according to several authorities, disqualify him from performing the Priestly Blessing.” It then follows up with the following strong and clear statement of values “Given that Halacha strictly prohibits homosexual acts, a Kohen in a same-sex marriage is willingly and publicly transgressing a significant Torah prohibition. This could reasonably be argued to disqualify him from performing the Priestly Blessing.”

And then it add something really fascinating by telling the reader that “allowing a Kohen in a same-sex marriage to perform the Priestly Blessing could potentially create a ‘marit ayin’ issue, suggesting to the community a tacit approval of his actions” as a form of *migdar milta*, which as I noted above is very well done as a form of reasoning from the sources.

C: Looking Closer at How it Reasoned From the Sources

⁵ Rabbi Uri Charlap first suggested this to me.

A way to emphasize what ChatGPT 4.0 did in its reasoning here was suggested to me by my colleague (and friend) at Emory, Dr. Paul Wolpe, who helped me mightily sharpen this point. He logged into ChatGPT 4.0 with his own account and asked it two questions. First, he asked ChatGPT if it retains texts fed it by other users, and it said “No, as an AI language model, I do not have the ability to store or retrieve any information from previous interactions with user. Your personal texts are only used during our conversation to provide you with the best possible response. Additionally, as an AI language model, I do not have the ability to share or distribute any information with anyone else. Your privacy and confidentiality are of the utmost importance to me.” Then he asked it “Do you think a man who is a Jewish priest (Kohen) and in a same sex marriage can perform the priestly blessing as a matter of halacha. Write me about 500 words.” By doing this, he asked it to reason without the sources, allowing one to see what adding how the sources changed its analysis.

ChatGPT answer without the sources provide (found in this note⁶) was without legal substance, lacked in any cited sources and was almost valueless as a matter of Jewish Law. The source-less answer is much less halachically coherent as well. One can see distinctly by comparing the results that ChatGPT 4.0 provided after I gave it the sources to translate with the answer that it gave to Dr. Wolpe, that it reasoned with the sources and processed them as a matter of substantive Jewish law – it engaged in legal reasoning with binding text. This more than implies that ChatGPT 4.0 understood the sources and examined them

⁶ This was the answer provided:

The question of whether a Jewish man who is a Kohen (a descendant of the priestly lineage) and is in a same-sex marriage can perform the priestly blessing as a matter of Halacha (Jewish law) is a complex and multifaceted issue. It touches upon several intersecting aspects of Jewish law, including the status of homosexuality, the obligations and restrictions placed upon Kohanim, and the evolving understanding of gender and sexuality in contemporary society. Firstly, it's important to note that the issue of homosexuality is a contentious topic within Jewish law. Traditional interpretations of Halacha generally consider homosexual relations to be prohibited. However, there are varying perspectives within Jewish communities, and some individuals and denominations interpret and apply Jewish law in ways that are more inclusive and accepting of LGBTQ+ individuals.

Regarding the priestly blessing, the Torah prescribes that Kohanim, who are descendants of Aaron, the brother of Moses, have the responsibility to bless the congregation. This blessing is commonly known as the "priestly blessing" or the "birkat kohanim." It is traditionally recited during certain prayer services and is considered a special and sacred act.

The ability of a Kohen to perform the priestly blessing depends on several factors. One key consideration is whether the Kohen is in a state of ritual purity. According to traditional Halacha, a Kohen must maintain a higher level of purity due to their sacred role. Certain conditions, such as contact with a deceased person, render a Kohen impure and disqualify them from performing the priestly blessing.

When it comes to the specific case of a Kohen in a same-sex marriage, opinions within Jewish law vary. Some more traditional interpretations may view a same-sex marriage as conflicting with Halacha's understanding of marriage, which is typically understood as being between a man and a woman. According to this viewpoint, a Kohen in a same-sex marriage might be considered to have violated Halacha and could be disqualified from performing the priestly blessing.

On the other hand, more progressive interpretations of Jewish law may challenge the traditional understanding of marriage and embrace inclusivity. These perspectives argue for the acceptance and affirmation of same-sex relationships within Jewish communities. Within such frameworks, it is plausible to argue that a Kohen in a same-sex marriage should be allowed to perform the priestly blessing, as long as they fulfill the other requirements of ritual purity.

It is essential to note that Jewish law is not monolithic, and there is no single authoritative interpretation or ruling on this matter. Different Jewish communities, denominations, and rabbis may approach this question differently, based on their individual understandings of Halacha and their views on LGBTQ+ issues.

Ultimately, the decision of whether a Kohen in a same-sex marriage can perform the priestly blessing as a matter of Halacha will depend on the particular Jewish community and its approach to matters of gender, sexuality, and inclusivity. As societal attitudes and understandings continue to evolve, it is likely that Jewish law will engage in ongoing discussions and debates to address these complex and sensitive issues.

(Thank you to Dr. Paul Wolpe for this great insight.)

(and then forgot them!). It also indicates that if it ChatGPT 4.0 had a large database of substantive Jewish law sources even in Hebrew – which it did not forget after each use – it could reason with them and derive new rules of Jewish Law from them.⁷ Of course, it is fair to say that its current reasoning ability is still growing and the interplay between the sources does seem disjointed, and incomplete.⁸ But, it does bode well for future improvements.

D: Is Jewish Law Different?

A harder question is whether ChatGPT 4.0 is doing anything different in its halachic analysis than it does in so many other fields. I do not know the answer at all and can only make a few somewhat speculative observations.

1. I suspect that all of this AI reasoning field is a mix between the ability of the engine to think and the data it has at its ‘fingertips.’ Our topic double-discounts this, as ChatGPT 4.0 has only a small collection of data on halacha in Hebrew (the *lingua franca* of halacha) and this particular case has no direct precedent. Thus, it is a good test of its ability to engage in legal reasoning in rabbinics without reference to what others have said about this problem.
2. I have generally found in my experience that machine learning and computation is most powerful when the task is a mix of database searching and reasoning. For example, I am a mediocre chess player at best (never ranked higher than 1800) and by now all chess programs easily beat me (and everyone else). Yet, when I play transposed chess⁹ online, I do much better than ‘real chess’ against a computer exactly because the computer has no database of moves to use. This case has a general database, but little precedent and one cannot find out what others think. As the database grows and its reasoning improved, it will become much more powerful.
3. Exactly because it does have access to the specific sources that I uploaded to it, it had enough data to form both an argument and a counterargument and also invest in thinking about extra-judicial reasoning (what this article calls *migdar milta*) and the role of decisors in making decisions not directly supported by Jewish law sources. It did a fine job both reasoning within the specific sources and outside of them, although – of course – it could have done better.

The core of the question might be whether “Jewish Law” is different from any other legal field. Jewish law has many different parts:

⁷On the other hand, my friend, Steven S. Weiner, noted the following caveat (even before Dr. Wolpe ran his experiment): "I wouldn't underestimate how much heavy lifting you did by manually selecting the relevant sources that you wanted the system to focus on. It's true, as you point out, that none of these sources dealt directly with the question of SSM duchening, but they did address closely related questions. Handing the system a relatively small set of sources to focus on is a big assist. It makes the task more like reading comprehension -- which ChatGPT excels at -- and less like the hard work you did when you confronted the question yourself and had to analyze it in order to figure out which sources were most pertinent. There are zillions of sources about duchening and qualifications, and zillions of others about homosexuality. If ChatGPT had ingested all of those without your help in prioritizing a few, it might have generated a bunch of much less promising arguments." (emphasis added) Further experimentation is needed to test that caveat and better assess how well ChatGPT would actually perform on a task of this nature if trained on a more comprehensive database of Jewish law responsa, but without expert human input as to which particular responsa should be focused on for a given question..

⁸ Consider for example, the putative tension between its use of the Aruch Hashulchan, Piskai Teshuva and Yalkut Yosef in the regenerated answer (which was the best answer provided) still misses a core analytical point, which is that all three of these sources seem to permit a kohen who is not in a sexual relationship uniquely prohibited to priests to duchen.

⁹“Transposed chess” follows the same rules as chess except the positions of the bishop and the knight have been switched in their initial placement. <https://greenchess.net/rules.php?v=transposed>. Few people play it, and there are no tournaments and no databases of games played.

- One is a logical data-driven inference from information – if we know in case “X”, “A” is the halacha, how does the rule of “A” apply to case “Y” – what is the rule of decision?¹⁰
- The second is a weighting of the sources to determine what is the normative Jewish law. Given that not all sources are weighed equally (and not even weighed identically in different communities), that is not a purely logical determination.¹¹
- The third is made up of an even more subjective idea, what this article calls *migdar milta*, which is the idea that a community can prohibit that which Jewish law permits when the needs of the times are such. Jewish law is somewhat different from American law in that this kind of activity is not done by the courts in American, but by the legislative branch, whereas in the Jewish tradition, these two functions reside in the same place and are done by the same people.
- Jewish Law has a groundbreaking function where the ancient precedent is examined anew and renewed with innovative reasoning from the ancient sources. This process, commonly referred to as *chiddish* (novel insights), reflects the evolving understanding of the sources of halacha – it also represents a source of growth and regeneration.¹²

Let me make a comparative observation, about Jewish law and American law in connection to AI reasoning. The reasoning of AI is unlikely to take the place of district court judges – those trial court judges who make factual determination based on the demeanor of the witnesses and so many more visible and subjective clues. So too, they are unlikely to replace Supreme Court judges, since much of the Justices do is decide when they ought to change the rules and replace one rule of interpretation with another – delegating this decision to AI is no different than delegating the role of Congress to AI and is unlikely. On the other hand, the strengths of AI reasoning could take the place of United States Court of Appeals judges, who are (1) rigidly bound by precedent, (2) functionally interchangeable with each other, (3) randomly assigned to cases, (4) sit in panels, and (5) do almost all their work based on a written record. These five characteristics are more easily AI supplanted given the current state of technology that either policy decisions about the law ought to be or credibility determinations .¹³

In contrast, Jewish law has many scholars who function like district court judges (determining facts and applications) and many scholars who think of themselves like supreme court justices (able to change the rules as applied), but nothing like the courts of appeals judges in the United States, who review decisions on the written record of other rabbis and issue binding decisions within a geographical area.¹⁴

¹⁰The idea of a rule of decision is explained to law students as “what is factor that makes the rule binding on other cases”. When a brown dog bites a person, the rule the court gives governing compensation in the case governs white dogs and not brown bears, since in dogs, color is not thought relevant. Or as a casebook from many years ago puts it “The decision to let your oldest 14 daughter wear high-heals to a school function provides precedent for your second oldest daughter to ask for high-heals when she is 14 also, but not your son.”

¹¹

¹² I discuss these processes in my book, *Innovation in Jewish Law: a Case Study of Chiddush in Havineinu* Jerusalem: Urim Publications (2010).

¹³ See for example, James Baker, Laurie Hobart and Matthew Mittelsteadt, “[AI for Judges: A Framework](#) (Center for Security and Emerging Technology, December 2021).

¹⁴ For more on this, see Michael Broyde and Mark Goldfeder, *The Behavior of Jewish Judges: A Theoretical Study of Religious Decision-making* in: Bekhol Derakhekha Daehu: Journal of Torah and Scholarship 33 (2018), 63–81. For an example of this, see Rabbi Yuval Chelov, “Artificial intelligence can emulate the rulings of the rabbis, but there is a dimension it cannot provide” (“בינה מלאכותית יכולה להקות את פסיקת הרבנים, אבל יש ממד שהיא לא תוכל לספק”) at <https://www.makorrishon.co.il/news/582503/>.

E: AI and Determining Normative Jewish Law (*Psak*)

A grand view of the bigger picture is taken by Rabbi David Cohen of Gvul Yavetz.¹⁵ In a podcast on AI, he argues that there is a critical, two-fold central aspect of *horah* – issuing a decision of Jewish law. One must take religious responsibility for their rulings, and the answer provided must be correct for the person who asked the question. This view, which I think is a correct read of normative Jewish law, is driven by the flexibility of Jewish law to provide the ‘right’ answer in context. Since many minority opinions are possibly correct in a time of need (דכדאי הוא דעת יחיד לסמוך עליו בשעת הדחק), and views that are minority opinions (but more than an opinion of a single authority) can be relied on in even more diverse situation. It is the religious job of the *posek* to provide the ‘right’ answer in each particular context. That is a hard job for any artificial intelligence machine as it requires more than mere information about the sources. Sometimes, people require a more lenient or more strict answers than a straight read of the sources might direct.¹⁶

Of course, the extent to which one believes that most legal disputes of Jewish law (maybe even all, at least in theory) can be resolved internally and textually by reference to the Talmud’s accepted logical rules, the more useful and powerful one will view AI in mastering texts and applying logical rules.¹⁷ Without question, universally accepted rules within traditional Jewish jurisprudence would make AI all the more effective in its analysis and resolution of Jewish legal issue.

AI’s method of ‘thinking’ might even be valuable according to a second school of thought, which essentially adopts the same outcome – all disputes can be conclusively resolved – but does so from a very different starting point. This school of thought posits that almost no disputes can actually be resolved by reference to first tier rules of Jewish jurisprudence (unlike school one above), since -- at least among giants of Jewish law -- it is exceedingly rare that one view is demonstrably incorrect. Rather,

¹⁵In the [Halacha Headlines](http://podcast.headlinesbook.com/e/61023--shur-422--can-ai-pasken-will-artificial-intelligence-ever-replace-rabbonim/) podcast on AI in June 2023 at <http://podcast.headlinesbook.com/e/61023--shur-422--can-ai-pasken-will-artificial-intelligence-ever-replace-rabbonim/>. See also Rabbi Gil Student’s argument in “[Is an AI Posek Kosher?](#)” for a discussion of the religious issues in *psak* where he notes “Issuing a new halakhic ruling is not just about providing a reference — it is a religious activity. I suggest that only those within the religious community, only those who are part of the covenant and fulfill commandments, can create a halakhic reality by issuing a ruling.” I am inclined to think that this issue is less important, as if AI turns out to be accurate and predictive, this issue can be addressed in the same way in *psak* as it was with machine *shmura matzah* – the intent is attributed to the operator and not the machine. There are extremely good policy reasons why we do not want to let people decide for themselves whether their situation is one of dire need that justifies undo liberality. The job of the *posek* is to decide this issue, at some basic level and not the questioner decide for themselves. As the old Latin maxim relays, *nemo iudex in causa sua*, “no one should be a judge in their own case;” **but see Taharat Habayit missing cite on this.**

¹⁶Indeed, sometime AI in 2023 is just simplistic and wrong. For example, I logged into <https://chat.ravgpt.ai/> (which says it specializes in halacha) and asked it “Can man in a same sex marriage who is a kohen duchen?” and it answered:

A man in a same-sex marriage who is a Kohen would not be permitted to perform the priestly blessing (duchan) according to traditional Jewish law. The role of a Kohen carries specific requirements and restrictions, including those related to marriage. A Kohen is expected to maintain a higher level of sanctity and adhere to certain marital restrictions, such as not marrying a divorcee or a convert. While the topic of same-sex marriage is beyond my jurisdiction, it is important to note that traditional Jewish law does not recognize same-sex marriages. Consequently, a Kohen in a same-sex marriage would not be fulfilling the expected sanctity and marital restrictions associated with his role, and therefore would not be permitted to perform the priestly blessing (duchan).

Which is a well written but just wrong answer, as the opening article here note. Nor are these websites unique to Judaism or halacha. If you want to see an example of sharia law done by AI, see <https://modernmuslim.ai/>. (Thank you to Rabbi Jonathan Ziring for noting this site.)

¹⁷Of course, this group concedes that matters of ritual custom and other secondary matters cannot be resolved this way and matters of no practical import cannot be resolved and matter of theology cannot be resolved but matters of functional Jewish law generally can. We can, this school of thought, claims resolve disputes of the previous generations by dint of logic.

there are a collection of second tier rules which are binding and which resolve disputes, such as “follow the current majority”, or “be strict on matters of Biblical law”, and many more which must be followed.¹⁸

A related school of thought argues that the first or second school is functionally correct as to how people and communities ought to function regularly, and this is the power of custom (מנהג) in ritual, commercial, and family law matters, since in the real world, law needs consistency of outcomes and certainty of results. These rules are binding because they are followed and not the other way around. This is the way (this school of thought notes) Jewish legal theory has evolved over time, and it allows (if you will excuse me for saying this) Jewish law to be considered a legal system, rather than merely a personal ethical system.¹⁹

However, the final school of thought mostly rejects this approach, both as a matter of legal theory and also as a matter of actual practice, at least in a time of need, whether personal or communal. This school of thought proposes three basic ideas. First, very few opinions are ever truly and completely rejected as definitively wrong. Second, in a time of need, many opinions can be relied on unless it is one of those few and rare opinions that is distinctly considered wrong. Third, this matter is left to the judgment of lone Jewish law authorities who may decide for themselves and their followers what the rules ought to be. There is no real hierarchy at all. In this model, Jewish law is much more open, and the customs mentioned in school three above are social and not jurisprudential. The contrast between Jewish law and American law here is complete: minority opinions in American law are just for study but are of no legal value at all.²⁰

Conclusion

Anyone connected to Jewish law in practice and not just as an academic discipline knows that Jewish law is not a pure logical science and that the final approach (Rabbi Cohen’s) is viewed as correct in practice. Minority opinions can and are resurrected all the time in cases of need and in situations of complexity. This is actually the heart of the approach to Jewish law taken by the Mishnah Berurah in his work.²¹ In practical terms, this helps us understand why Jewish law is much more open and less structurally jurisprudential than American law, and the contrast between Jewish law and American law is sharp. There is, for example, neither a highest court nor even an appellate court in Jewish law and forum shopping is normative. Furthermore, while minority opinions in American law are just for study

¹⁸This issue is discussed in Building the Set Table: An Introduction to the Jurisprudence of Rabbi Yehiel Mikhel Epstein’s Arukh ha-Shulchan in Contrast to the Mishnah Berurah, Dine Israel (2019) 1-70.

¹⁹This is essentially the view of Rabbi Yitzchak Yosef as to why the Shulchan Aruch is binding in Israel. See for example, Rabbi Yitzchak Yosef, *Derech Pesika*, Chapter 3. Rabbi Ovadia Yosef (*Yechave Daat* 5:33) indicates – based on this -- that a convert in Israel ought to become Sephardi as the community has accepted the views of Rabbi Yosef and the phrase קבלה דעת מרן is used many times in his works to explain results. While this example is not accepted by Ashkenazi Jews, this idea plays a role in many halachic communities. But, even in these communities, concepts such as a time of need play an important role.

²⁰In this same podcast, Rabbi Hershel Schachter proposed that a Jewish Law AI model could be taught to both ask and answer the right questions about need and then would assume the religious identity (my phrase) of the person or rabbis programming. The heart of this argument is verified by anyone who uses AI, where the questioner locates themselves on the religious spectrum when asking the question. So when I asked ChatGPT 4.0 “I am a member of the Pupov Chasidic community. Do we eat *gabrakz* on Pesach?” should (and does) get a different answer than “I am a member of the Edot Hamizrach community. Do we eat *gabrakz* on Pesach?”

²¹For more on this, see my work, with Ira Bedzow, The Codification of Jewish Law and an Introduction to the Jurisprudence of the Mishna Berura Academic Studies Press (2013). (co-author: Ira Bedzow) at pages 27 to 61.

but are of no legal value at all, in Jewish law, minority opinions are often resurrected in time of need and in other cases by rabbinic authorities.

Moreover, we have not considered to this point a subset of innovative legal rulings that are critical to the functioning of Jewish Law in the modern world. Thus far, we have examined questions for which there are opinions already developed or logically derived from other sources -- already pieces of the halachic pie. Those opinions have to be found, examined, and weighed and AI will learn, I suspect, to do this very well as it will make significant progress towards formalistic legal reasoning. But there are questions that arise for which there really is no literature. Formulating answers to these novel questions takes deep novel readings of Talmudic texts and their medieval commentaries. Principles – new principles! – are discovered by noting subtlety and nuance in competing texts. The eureka moments that are necessary for Jewish law to develop come only through creativity and insight. That is not what we ask of AI in its current iterations, and we have no way of knowing whether AI will ever be able to deliver in the area of Jewish law.²²

All of this just reminds us that ChatGPT 4.0 is pretty good at what it seems to be doing, which is reasoning within a text, even in Jewish Law. One suspects it will only get better at purely text driven reasoning and furthermore the database of Jewish law texts it understands will increase, as well.

So, in dealing with the subject of whether excellent AI will ever be able to issue *psak*, the real question is “what is *psak*?” To those who consider *psak* to be the application of cold and dry rules to clear and established facts, the answer will eventually be “yes,” even as such is not the case yet. To those who have a broader understand of what it means to be a *posek*, and what exactly *psak* is, AI has much farther to go that just to be able to master the sources – it will have to develop a way to understand the needs of the questioner, and the implications to society of answers to questions, and so much more than merely the sources.

Will ChatGPT be able, then, to issue *psak*? To those who prefer a definitive answer, I say “You define your terms and you take your choice”.²³

²² The ideas in this paragraph and the material found around note 12 were developed first in conversation with Rabbi Yitzchok Adlerstein of the Wiesenthal Center.

²³ See Rabbi Aharon Lichtenstein, [Does Jewish Tradition Recognize an Ethic Independent of Halakha](#), in Marvin Fox (ed.), *Modern Jewish Ethics*, p. 68-88 at page 83 for a similar concluding paragraph on a different topic.