

Hilkhot Nashim
Halakhic Source Guides
Volume I



HALAKHIC SOURCE GUIDES

HILKHOT
NASHIM
הלכות נשים

Volume I

Kaddish
Birkat Hagomel
Megillah

EDITED BY

Raḥel Berkovits

JOFA
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Hilkhot Nashim
Halakhic Source Guides
Volume I: Kaddish, Birkat Hagomel, Megillah

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Dedication

This entire project is dedicated to my father, Jacques Censor (Ya'akov ben Moshe veTemerel), *a"h*. A diamond merchant all his adult life, he was a man of few pretensions but he was brilliant, innovative, and had a wry, wicked sense of humor. He was fluent in six languages and was widely read.

He knew vast sections of the Talmud by heart, but never made a display of his knowledge or capabilities. When I had a halakhic question during my internship and residency, I would simply call him on the phone from the hospital, tell him the problem and on the spot he would quote me a seemingly relevant piece of Gemara and explain how to deal with the issue. I was always a bit suspicious of his convenient Gemara "quotations" since the rabbis of his Talmud always seem to rule exactly as I had hoped. One day, however, as I was reading Rabbi Dr. Lord Imanuel Jacobovits's book on medical ethics, there was one of the Gemaras, exactly as Dad had quoted! I quickly called him and confessed to my previous doubts and apologized. I never could understand how he knew so much, since I knew he did not have the time to learn as we were growing up. He laughed and explained that he had learned with his mentor, Rabbi Berger, in Antwerp, Belgium, after work from age eighteen until he was twenty-six, when Rabbi Berger went on *aliya* to then Palestine. "I just remember it all," he said.

When I was growing up, the tradition was to send boys to *yeshiva* and girls to public school. However, I was sent to Ramaz along with my brother. My father's expectations were exactly the same for both of us. He studied Gemara and *Ḥumash* with me just as he did with my

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brother. In fact, his greatest pleasure later in life was to learn Gemara with my oldest child, a daughter, right up until the day he suffered his devastating stroke.

He died in 2005, unfortunately before this project was conceived. He would have loved these source guides. My father was a firm believer that the way we would be most likely to keep *halakhah* was if we understood the issues behind the rulings and made the determination for ourselves, rather than him telling us what we had to do.

He is sorely missed.

Monique (“Nicky”) C. Katz, M.D.

Abbreviations

M.	Mishnah	Meg.	Megillah
B.T.	Babylonian Talmud	Hag.	Ḥagigah
J.T.	Jerusalem Talmud	Yev.	Yevamot
T.	Tosefta	Ketub.	Ketubbot
		Ned.	Nedarim
Sh. Ar.	<i>Shulḥan Arukh</i>	Sot.	Sotah
O.Ḥ.	<i>Oraḥ Hayyim</i>	Git.	Gittin
E.H.	<i>Even Ha'ezer</i>	Kid.	Kiddushin
Ḥ.M.	<i>Ḥoshen Mishpat</i>	B. Kam.	Bava Kamma
Y.D.	<i>Yoreh De'ah</i>	B. Mets.	Bava Metsia
		B. Bat.	Bava Batra
Ber.	Berakhot	Sanh.	Sanhedrin
Shab.	Shabbat	Shevu.	Shevuot
Eiruv.	Eiruv	Eduy.	Eduyot
Pesah.	Pesahim	Avod. Zar.	Avodah Zarah
Suk.	Sukkah	Menah.	Menaḥot
Beits.	Beitsah	Arakh.	Arakhin
Rosh Hash.	Rosh Hashanah	Nid.	Niddah

Preface

גדול תלמוד שהתלמוד מביא לידי מעשה.

Great is Torah study for it leads to observance. (Sifrei Devarim 41)

This series presents an in-depth look at halakhic topics that affect a woman's obligation and involvement in Jewish ritual life. These essays aim to increase awareness of relevant halakhic issues among women and men so that they can make deliberate choices about their observance. We believe that placing great value on the Jewish tradition of learning and developing the skills needed to understand *halakhah* and its processes are crucial in maintaining a passionate and informed commitment to observance among Jews. One of the main goals of this series is to clarify what the texts actually say, with the hope that increased knowledge and a better understanding of the reasons behind common practice will lead to increased observance. The aim of an in-depth analysis of these sources is that the reader will learn not only what the normative *halakhah* is, but will understand how it developed; that under the surface of what is considered normative *halakhah* is a dialectic of multiple and valid attempts at understanding and interpreting our earliest halakhic literature.

In these essays, the rabbinic texts themselves are presented not as references but as the main focus of the discussion. All sources are explained and translated into English to enable the reader with a limited Hebrew language background to also work through the original texts. We invite you, the reader, to come and learn the relevant Talmudic, Geonic, medieval, and modern rabbinic texts; to become more knowledgeable

about the rich halakhic discussion on each topic; and to find your place in the chain of the *masoret* – the tradition.

In this first volume of the series we focus on some of the rituals connected to the synagogue, where in the modern day, women first started to take a more active participatory role – reciting *kaddish* to mourn the loss of a loved one; blessing *hagomel* after a dangerous experience, childbirth, or illness; and reading *Megillat Ester* to publicize the Purim miracle. Besides learning the texts on your own, we encourage you to invite a friend to study the sources in a *havruta* partnership or to organize a study group in your community. It is our wish that these essays bring fervor for a knowledge of the halakhic sources to communities, study groups, classes, and the individuals who learn them.

We dedicate this series to women who are committed to *halakhah* and are struggling to embrace more of our beautiful heritage, to better fulfill the *mitsvot* of *ahavat Hashem* (love of God) and *avodat Hashem* (service of God), and in doing so, enrich the entire Jewish community.

גל עיני ואביטה נפלאות מתורתך.

Open my eyes so I will see the wonders from Your Torah. (Psalms 119:18)

ACKNOWLEDGMENTS

With *shevakh* and *hoda'ah leHashem* on the printing of this first volume in the *Hilkhoh Nashim* series, we would like to thank the following people for their expertise, creativity, and contributions to the series: Carol Newman, Robin Bodner, Adina Gerver, Adam Parker, Leslie Rubin, Miles B. Cohen, Jonathan Kremer, Dina Najman, Devorah Zlochower, and Debby Koren. The series would not be possible without the support and dedication of current and former JOFA professional staff. We would also like to thank the staff at Maggid Books, Gila Fine, Tomi Mager, Mikhael Reuven, Nechama Unterman, and Shira Finson, who devoted countless hours to turning the series into a printed reality.

Raḥel Berkovits, Halakhic Editor
Monique C. Katz, Patron
Gail A. Katz, Project Coordinator

A Daughter's Recitation: Women and Mourner's *Kaddish*

Raḥel Berkovits

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INTRODUCTION

The emotionally charged recitation of mourner's *kaddish*¹ for a deceased loved one stands at the heart of the Jewish bereavement experience. A strong sense of parental honor and duty creates a feeling of obligation among Jews of all backgrounds and pulls them to the synagogue daily to recite the mourner's *kaddish*. Traditionally, this public testimony to bereavement and personal crisis has been seen as the job of the son; however, the possibility of a daughter reciting *kaddish* for a deceased parent is not purely a modern concept. The earliest texts in the halakhic literature on this topic deal with the situation in which there are no sons to recite *kaddish*. Many of the cases record that fathers, concerned with their lack of sons, willed or commanded their daughters to recite *kaddish* on their behalf and even arranged a structure for them to do so. These texts make up the basis for discussion in the modern sources when a daughter wishes to honor her deceased parents through the recitation of *kaddish*, regardless of the existence of male siblings. The halakhic literature discusses and analyzes this issue of *kaddish* by addressing the following questions:²

1. This chapter will use the accepted English expression "mourner's *kaddish*." However, it is important to note that this phrase is not an accurate translation of the Hebrew *kaddish yatom*, which literally means "orphan's *kaddish*." The reframing of the English translation to include all mourners and not just those who have lost their fathers (or parents) reflects a major shift in the evolution of the *kaddish* ritual itself, which will be discussed later in this chapter.
2. Many of the questions listed point in opposite directions. This oddity is an outgrowth of the complex issues involved in the topic and understanding of mourner's *kaddish* itself and will be explained in the course of this chapter. This topic also deals with another subset of interesting questions:
 - Are daughters considered halakhic offspring?
 - Should *ben/banim* be read exclusively to refer to son/sons or inclusively to refer to child/children?
 - Can women also bring *naḥat ruah* (peace of spirit) to the deceased?
 - Are women obligated in *kiddush Hashem* (public sanctification of God's name)?
 - What is the interplay among social norms, custom, and law?

1. May a daughter recite mourner's *kaddish*?³
2. Is there a difference between a daughter reciting *kaddish* in the synagogue or in a private *minyán* (prayer quorum of ten) at her home?
3. May she recite *kaddish* from the women's section of the synagogue?
4. Must she recite *kaddish* from the women's section of the synagogue?
5. May she recite *kaddish* alone or must it be in conjunction with a man?
6. Must she recite *kaddish* aloud or only quietly?⁴

Clearly, women are obligated in the laws of mourning⁵ and are required to honor their parents.⁶ However, the ritual of *kaddish*, although strongly linked to these two halakhic categories,⁷ does not fall clearly into either of them. To fully understand the issues surrounding women's recitation

3. Leon Wieseltier, in his book *Kaddish* (New York: Alfred A. Knopf, 1998), eloquently states on p. 178:

May a woman say *kaddish*? It is a controversial question. It sounds to some like a feminist provocation. But ask the question differently. May a daughter say *kaddish*? Suddenly the controversy disappears, at least for me. If you deny the *kaddish* to the daughter, then you do not understand the *kaddish*. The *kaddish* is not an obligation of gender. It is an obligation of descent. This is not about men, this is about sons. This is not about women, this is about daughters.

4. Does the *minyán* need to hear the words to respond and therefore she must say *kaddish* aloud or is there a prohibition against hearing a woman's voice in the synagogue and so she should recite it quietly? Is it sufficient for just other women, and not the men who constitute the *minyán*, to hear her recitation and respond to her *kaddish*?
5. See Rambam, *Sefer Hamitsvot* Positive Commandment 27 and *Mishneh Torah*, *Hilk. Avel* 2:1; *Sefer Hahinnukh*, end of 264; *Mordekhai Mo'ed Katan*, end of 890; *Responsa Mahari Veil* 13; *Sh. Ar.*, *Y.D.* 374:4 and 390:5; and *Be'ur Hagra*, *Y.D.* 390:7.
6. See *Exod.* 20:11; *Deut.* 5:15; *Lev.* 19:3, Rashi ad loc.; *M. Kid.* 1:7; *T. Kid.* 1:1; *B.T. Kid.* 29a and 30b–31a; Rambam, *Hilk. Mamrim* 6:6; *Tur*, *Y.D.* 240; *Sh. Ar.*, *Y.D.* 240:17 and *Shakh* ad loc. 19.
7. The general idea that a child must honor his or her parents after their deaths is reflected in *B.T. Kid.* 31b; Rambam, *Hilk. Mamrim* 6:5; and *Sh. Ar.*, *Y.D.* 240:9. See *Levush*, *Y.D.* 376:4, who permits a child to say *kaddish* for the mother while the father is still alive, as he conceptualizes *kaddish* as honoring the mother after her death.

of mourner's *kaddish*, the unique nature of this *kaddish* must be examined and its many complexities and nuances explained.

MOURNER'S KADDISH: A GENERAL OVERVIEW⁸

The general history and development of *kaddish* is unclear and its origins debated among scholars.⁹ The term *kaddish* is never used in the Mishnah or Talmud. It is first mentioned in Tractate *Soferim*.¹⁰

1. Tractate Soferim 10:6

מסכת סופרים פרק י הלכה ו

And do not say *kaddish* and *barekhu* with fewer than ten. ואין אומרין קדיש וברכו פחות מעשרה.

8. The length and breadth of this chapter does not permit a thorough discussion of the development of *kaddish* in general or even specifically of mourner's *kaddish*. The subject will be discussed only through its presentation in the rabbinic sources. No attempt will be made to specifically date the origin of mourner's *kaddish*, the location of its inception, or possible links to any particular historical phenomenon. This chapter will also not attempt to discuss the content and meaning of *kaddish* and why it was appropriated as part of the mourning ritual.
9. See David de Sola Pool, *The Kaddish* (New York: Union of Sephardic Congregations, Inc., 1964); Daniel Sperber, *Minhagei Yisra'el Mikorot Vetoladot* (Jerusalem: Mossad Harav Kook, 1989), ch. 6 (Sperber's first note lists many articles); Yisrael Ta Shma, "Ketsat Inyanei Kaddish Yatom Uminhagav," *Tarbitz* 53 (1984): 559–568; Ismar Elbogen, *The Historical Development of Jewish Prayer* (English translation) (Philadelphia: Jewish Publication Society, 1993), 80–84; Shmuel Glick, *Or Le'avel: Lehitpathutam Shel Ikrei Minhagei Avelut Bemasoret Yisra'el Mile'ahar Hakevurah Ad Tom Hashivah* (Israel: Keren Ori, 1991), 147–158; Leon Wieseltier, *Kaddish* (New York: Alfred A. Knopf, 1998); Andreas Lehnardt, "A New Book on the Kaddish," *Jewish Studies Quarterly* 8 (2001): 190–203. For some traditional explanations and discussions of *kaddish*, see Maḥzor Vitry 87; Rambam *Seder Tefillot Nussah Hakaddish*; *Responsa Harambam* 208; *Tur*, O.Ḥ. 56; *Arukh Hashulḥan*, O.Ḥ. 55:4; and *Responsa Mishpetei Uzziel*, Vol. 1, O.Ḥ. 2. For an article on women reciting *kaddish*, see David Golinkin, "Teshuvah Be'inyan Amirat Kaddish Yatom Al Yedei Nashim," *Va'ad Hahalakhah*, Vol. 3 (1988–89), Schechter Institute of Jewish Studies, <http://www.responsafortoday.com/vol3/6.pdf>.
10. Written after the codification of the Talmud in the time period of the Savora'im, Tractate *Soferim* reworks M. *Meg.* 4:3, which lists the rituals that require a quorum of ten. M. *Meg.* does not mention *kaddish* even though it does mention other mourning and prayer rituals. See Tractate *Soferim* 16:9, 18:10, 19:9, and 21:5–6 for other references to *kaddish*.

Based on this source, rabbinic tradition requires a prayer quorum for all recitations of *kaddish*.¹¹ However, this text cannot actually refer to all the various forms of *kaddish* in the liturgy¹² today, as each type of *kaddish* has different historical origins and developed at a different time.¹³

The first mention of a *kaddish* linked to death is found in the period of the Ge'onim. *Kaddish* was recited by the *hazzan* (cantor) at the burial or following the eulogy upon the recitation of *tsidduk haddin*.¹⁴ However, it is clear from the sources that this *kaddish* is said only in response to the Torah verses found in the prayer¹⁵ and not as an expression of mourning.

11. See, for example, *Sh. Ar.*, O.H. 55:1, *Taz* ad loc., and *Mishnah Berurah* 55:2.

12. There are five different types of *kaddish*:

- Complete *kaddish* קדיש שלם
It includes "תתקבל צלותהון" ("may their prayer be accepted") with "יהא שלמא רבא" ("may great peace"). This *kaddish* is recited at the end of the service.
- Half *kaddish* קדיש חצי
It ends with the words "דאמירין בעלמא ואמרו אמן" ("which are said in the world and we say Amen").
- Mourner's *kaddish* קדיש יתום
It is the complete *kaddish* minus the sentence "תתקבל צלותהון" ("may their prayer be accepted").
- Rabbinic *kaddish* קדיש דרבנן
It adds "על ישראל" ("For Israel") before "יהא שלמא רבא" ("may great peace"). This *kaddish* is recited after learning *halakhah* or *Mishnah* with *Aggadah*. (Rambam thinks it is recited only after learning *Aggadah*.) It is recited by mourners.
- *Kaddish gadol* קדיש גדול (Also known as *kaddish tehiyyat hameitim*.)
It is said after finishing a tractate or after *tsidduk haddin* at a burial. Its content deals with belief in resurrection of the dead.

13. The phrase "יהא שמייה רבה מברך לעלם ולעלמי עלמיא" seems to be the earliest fragment of *kaddish*. It is based on Ps. 113:2 and Dan. 2:20 and mentioned in B.T. *Ber.* 3a and 57a and B.T. *Shab.* 119b as bringing merit to those who proclaim it. See also *Sifrei Devarim* 306; *Targum Yerushalmi* Gen. 49:1 and Deut. 6:4. In the Talmudic period, the phrase was said following a public sermon. See B.T. *Sot.* 49a and Rashi ad loc. s.v. *akiddusha desidra*.

14. *Tsidduk haddin* weaves together numerous verses to declare an acceptance of God's decree. It is based on the verses uttered by R. Haninah b. Teradyon and his family upon their deaths, as cited in B.T. *Avod. Zar.* 18a.

15. See *Responsa Rashi* 189:2:

ובשעת הקבורה היו שם מוחים ואומרים שלא לומר צידוק הדין מפני המועד ואף לא קדיש מפני שהקדיש לא בא אלא כשביל הפסוקין של צידוק הדין.

2. Otsar Ge'onim

Mashkin (Mo'ed Katan)

#139, p. 49

R. Natronai Ga'on, Sura, Babylonia (ninth century)

אוצר גאונים

משקין (מועד קטן)

סימן קלט, עמוד מט

And that which you asked: One who has died, and one year later, his relatives brought his bones [for reburial], do they recite *tsidduk haddin* and *kaddish* on him or not?

Know that *kaddish*, i.e., *yitgadal*, we have found its purpose is not for the dead; rather, it is to follow the eulogy or to follow *tsidduk haddin*. For anywhere that there are words of Torah, we respond afterward, "Amen yehei shemeih rabba." So, similarly, with eulogy and *tsidduk haddin*. All of this is if within the twelve months [the body] was brought and the skeleton is still extant, then it is appropriate to eulogize him and afterward we recite *kaddish*, and so it is appropriate to do... We learn from this that it is inappropriate to eulogize him after twelve months and since there is neither eulogy nor *tsidduk haddin*, there is no place for *kaddish*.

וששאלתם מי שמת ולאחר שנה הביאו קרוביו עצמותיו אומרין עליו צידוק הדין וקדיש או לא?

הוי יודע כי קדיש שהוא יתגדל לא מצאנו לו עיקר על המת אלא לאחר המספד או לאחר צידוק הדין שכל מקום שיש שם דברי תורה עונין אחריהם אמן יהא שמיה רבא, וכן הספד וכן צידוק הדין. וזה אם [בתוך] י"ב חדשים הובא ושלדו קיימת ראוי להספידו ולאחר ההספד אומרין קדיש וכן ראוי לעשות... למדנו ממנו שאינו ראוי להספידו לאחר שנים עשר חדש וכיון שאין הספד ולא צידוק הדין אין דרך לקדיש.

See also *Orhot Hayyim Hilck. Avel 11 and Beit Yosef, Y.D. 401:6.*

Mahzor Vitry, a compilation of the traditions of Rashi, is the first legal source to link *kaddish* to mourners. The text cites a *midrash*¹⁶ about R. Akiva¹⁷ to explain this practice.

3. *Mahzor Vitry*

#144 *s.v. nimtsa bisfarim*

R. Simḥah of Vitry, France (d. 1105)

A story of R. Akiva who was walking on a path in a cemetery and met a man who was naked, black as coal, and carrying a large load of thorns on his head. R. Akiva, thinking he was alive, ran like a horse, shouting at him, and stopped him. He [R. Akiva] said to him: Why is this man doing such hard work? If you are a slave, and your master treats you like this, I will redeem you from his control. And if you are poor and people are playing tricks on you, I will make you rich. He [the man] said to him: Please, do not delay me lest those who are appointed over me become angry with me. He [R. Akiva] said to him: What is this and what is your work? He [the man] said to him: This man [himself] has died and every day they send me out to chop wood. He [R. Akiva] said to him: My son, what was your work in the world from which you came? He said: I was a tax collector and I showed favor to the rich and killed

מחזור ויטרי

סימן קמד ד"ה נמצא בספרים

מעשה בר' עקיבא שהיה מהלך בבית הקברות בדרך ופגע באדם אחד שהיה ערום ושחור כפחם והיה טעום [טעון] משאוי גדול של קוצים על ראשו. כסבור עליו ר' עקיבא שהוא חי והיה רץ כסוס. גזר עליו ר' עקיבא והעמידו. אמר לו מה לאותו האיש לעשות עבודה קשה כזאת. אם עבד אתה [ואדונך] עושה לך [כך] אני אפדה אותך מידו. ואם עני עתה ובני אדם באים עליך בעקיפין אני מעשיר אותך. אמר לו בבקשה ממך אל תעכביני שמא ירגזו בי הממונין עלי. אמר לו מה זו ומה מעשיך. אמר לו אותו האיש מת. ובכל יום שולחים אותי לחטוב עצים. אמר לו בני מה היה מלאכתך בעולם שבאתה ממנו. אמר לו גבאי

16. The story appears in a number of different versions in such texts as Tractate *Kallah Rabbati* 2:9, *Seder Eliyahu Zuta* 17, and *Otsar Midrashim* pp. 351, 450, and 458. For a full list of citations and versions, see de Sola Pool (*Kaddish*, 102n3), Glick (*Or Le'avel*, 157n110), and Ta Shma (*Tarbitz* 53, 559n1).

17. *Seder Eliyahu Zuta*, which some scholars think is the most correct version, has Rabban Yoḥanan b. Zakkai as the main protagonist, instead.

the poor. He [R. Akiva] said to him: Have you heard from those who oversee your punishment something that you can do as repair? He said: Please do not delay me lest those who oversee my punishment become angry with me for this man [himself] cannot repair. But I have heard from them something that is impossible. If, perhaps, this poor man [himself] had a son who would stand in the congregation and recite "*Barekhu et Hashem hamevorakh*,"¹⁸ and they [the congregation] will respond after him, "*Vihei shemeih rabbah mevarakh*,"¹⁹ immediately they will release him from the punishment. Now this man [himself] had never had a son, and [when he died] he left behind a pregnant wife, and I do not know if she gave birth to a male. And if she did give birth to a male child, who would have taught him Torah? For this man has never

המכס הייתי. והייתי נושא פנים לעשירים והורג את העניים. אמר לו כלום שמעת מאותם הממונין עליך לפורענות איזו דבר שיש לו תקנה. אמר בבקשה ממך אל תעכביני שמא ירגזו עלי בעלי פורענות שאותו האיש אין לו תקנה. אלא שמעתי מהם דבר שלא היה יכול להיות. שאלמלא היה לו לעני זה בן שהוא עומד בקהל ואומר ברכו את ה' המבורך והם עונין אחריו ויהא שמיה רבה מברך מיד מתירין אותו מן הפורענות. ואותו האיש לא היה לו בן מעולם. והניח את אשתו מעוברת. ואיני יודע אם ילדה זכר. ואם ילדה זכר מי מלמדו תורה שאין לאותו האיש אוהב

18. The earlier versions of this story, like that quoted here in *Mahzor Vitry*, do not mention *kaddish* explicitly, unlike what will appear in the sources below. See also n19 below.

19. At the end of this particular text, the congregation responds with the usual response of "*barukh Hashem hamevorakh*." However, based on other versions and texts, some scholars suggest that "*vihei shemeih rabbah mevarakh*" was an earlier response to *barekhu* than what is recited today. Others claim that, originally, *barekhu* and *kaddish* were one inseparable liturgical unit.

Ta Shma, *Tarbitz* 53, p. 559 states:

וכבר העיר גינצבורג... וכל הקטע מדבר באמירת 'ברכו' ובעניית הקהלת שלא נוסחה אז כבימינו. ואף על פי שספר אור זרוע ביקש ללמוד מכאן על עצם מקורו של קדיש-יתום, אין הדבר כך לפי רוב הנוסחאות שבידינו.

pp. 563–564:

נראה לי, כי יש מקום לחלוק על תפיסתו של גינצבורג. לדעתי, אין כוונת המעשה הזה לאמירת 'ברכו' בניגוד לקדיש דווקא, אלא משתקפת בו תפיסת 'ברכו' והקדיש כיחידה ליטורגית אחת, וכפי שאכן היו פני הדברים אליבא דאמת בימים מקדם. קרוב לוודאי, כי מתחילה היה 'ברכו' צמוד תמיד לקדיש, כחלק הסיום הקבוע שלו.

See also the articles mentioned in n16.

had a friend. Immediately, R. Akiva pledged to go and find out if a male son had been born to him in order to teach him Torah and stand him before the congregation. He [R. Akiva] said to him: What is your name? He said to him: Akiva. And your wife's name? He said to him: Shoshniva. And the name of your city? Ludkeya [possibly the city Laodicea]. Immediately, R. Akiva became extremely distressed and went and inquired about him. When he reached the city, he asked about the man. They told him: May the bones of that man be ground up! He [R. Akiva] asked about his wife. They said: May her memory be blotted out from the world! He asked about his son. They said: He is uncircumcised. Even the commandment of circumcision we did not do for him. Immediately, R. Akiva went and circumcised him and sat him with a book before him, but he [the son] could not receive the Torah until he [R. Akiva] had sat forty days in fasting. A heavenly voice came out and said to him: For this one you fast?! He [R. Akiva] said: Master of the universe, have I not set him before You? God immediately opened his [the son's] heart and he [R. Akiva] taught him Torah, the recitation of *shema*, and Grace after Meals. And he [R. Akiva] stood him before the congregation and he [the son] recited *barekhu* and they responded after him, "*Barukh Hashem hamevorakh.*" At that moment, they released him [the father] from punishment. Immediately the man came to R. Akiva in a dream

מעולם. מיד קיבל עליו ר' עקיבא לילך לחפש אם הוליד לו בן זכר כדי ללמדו תורה ויעמידנו לפני הציבור. אמר לו מה שמך. אמר לו עקיבא. ושם אשתך. אמר לו שושניבא. ושם עירך לודקייא. מיד נצטער ר' עקיבא צער גדול והלך ושאל עליו. כיון שבא לאותו מקום שאל עליו. אמרו לו ישחקו עצמותיו של אותו האיש. שאל על אשתו. אמרו לו ימחה זכרה מן העולם. שאל על בנו. אמרו לו הרי ערל הוא. אפילו מצות מילה לא עיסקנו בו. מיד מלו ר' עקיבא. והושיבו בספר לפניו ולא היה מקבל התורה עד שישב (א') (מ') יום בתענית. יצתה בת קול ואמרה לו לזה אתה מתענה. אמר לפניו רבוננו של עולם והלא לפניך ערכתי אותו. מיד פתח הק' (הקדוש ברוך הוא) את לבו ולמדו תורה. וק"ש (וקריאת שמע) וברכת המזון. והעמידו לפני הקהל ואומר ברכו. והם ענו אחריו ברוך ה' המבורך. באותה שעה התיירו אותו מן הפורענות. מיד בא אותו האיש לר' עקיבא בחלום. ואמר יהי רצון מלפניך הקב"ה (הקדוש ברוך הוא) שתנוח דעתך בגן עדן שהצלת אותי מדינה של גהינם. מיד פתח ר' עקיבא ואמר (תהלים קל"ה:י"ג) "י שמך לעולם י"י זכרך לדור

and said: May it be the will before You, the Holy One, Blessed be He, that your soul rest in the garden of Eden for you have saved me from the punishment of Gehenna. Immediately, R. Akiva opened and said (Ps. 135:13): "God, Your name is forever, God, Your remembrance is from generation to generation." **And therefore, it is customary on Saturday night to have a person who has no father or mother lead the prayer service [lit., pass before the ark] to say *barekhu* or *kaddish*.**

ודור: ועל כן נהגו לעבור
לפני התיבה כמוצאי שבת
אדם שאין לו אב או אם לומר
ברכו או קדיש.

Although *Maḥzor Vitry* quotes a version of this *midrash* that does not mention explicitly that the son recited *kaddish*,²⁰ the text concludes that this story is the source of the custom for an orphan to lead the prayers on *motsa'ei Shabbat* (Saturday night) so that, as the leader, he may recite *kaddish* or *barekhu*. This jump is understandable as *kaddish* and *barekhu* serve the same liturgical purpose, inviting the congregation to bless God's name. *Maḥzor Vitry* explains that just as the son in this story was able to release his deceased father from the torments of Gehenna through the merit of his actions, so, too, any individual may do the same by acting similarly. *Maḥzor Vitry* states explicitly that the orphan's recitation takes place on *motsa'ei Shabbat*. The reason for this custom is the belief that during Shabbat, souls receive a reprieve and respite from Gehenna²¹ and only return there to be tormented at Shabbat's conclusion.²² *Maḥzor Vitry* also specifies that the orphan is to act as *sheliaḥ tsibbur* (prayer leader) and, in that capacity, lead the community

20. See n18 and n19 above.

21. See *Bereishit Rabbah*, 11, s.v. *vayevarekh Elohim*.

22. *Sefer Or Zarua*, Vol. 2, *Hilk. Motsa'ei Shabbat* 89:10 expands on this theme and explains further what the prayer leader can do:

כתב מורי ה"ר אלעזר מוורמש במוצ"ש [לאחר שאומרים] והוא רחום יכפר עון גוי' ה'
הושיעה המלך כו' מיד חזן או' ברכו במשך גדול מפני שהנשמות חוזרות לגיהנם לאחר
מיכן ובעוד שמושך אינם חוזרים...

in the evening prayer service.²³ The orphan recites *kaddish* a number of times that are part of the daily evening liturgy. *Mahzor Vitry* makes no reference to an additional *kaddish* specifically for mourners.

Or Zarua, a century later, cites the same *midrash*²⁴ and explains that this source is the basis of the custom for minors to recite an additional *kaddish* for a deceased father.

4. *Sefer Or Zarua*

Vol. 2, *Laws of Shabbat* #50

R. Yitshak ben R. Moshe, Vienna (ca. 1180–ca. 1250)

ספר אור זרוע

חלק ב הלכות שבת סימן נ

Our custom in the land of Canaan²⁵ and, similarly, the custom in the Rhineland is that after the congregation says *ein keloheinu*, the orphan stands and says *kaddish*... And our custom is logically [the correct one] because of an event that happened, the story of R. Akiva²⁶...

And so found my teacher, R. Eliezer of Worms, in *Tanna Devei Eliyahu Rabbah*

מנהגנו בארץ כנען וכן מנהג בני רינוס לאחר שיאמרו הצבור אין כאלהינו עומד היתום ואומר קדיש... וכמנהגנו מסתברא משום מעשה שהיה דמעשה בר"ע... וכן מצא מורי ה"ר אלעזר מוורמשא דתנא דבי אליהו רבא דקטן האומר יתגדל מציל אביו מן הפורענות.

23. This custom to have an orphaned *sheliaḥ tsibbur* became so prevalent that at a certain point (around the fourteenth and fifteenth centuries) rabbinic authorities had to specifically state that it was permissible for an individual with living parents to lead the service on *motsa'ei Shabbat*. See *Leket Yosher*, Vol. 1, O.H. p. 56, #3:

פ"א במוצאי שבת לא היה כביה"כ שלו [של ר' ישראל איסרליין] חזן שאין לו אב ואם, ואמר לי עמוד והתפלל אע"פ שיש לך אב שאין איטור בדבר, כי תפלת ערבית לא נתקן ליתומים.

He continues to state that the same applies to the recitation of mourner's *kaddish*, which can also be said by others. See also *Responsa Maharil* 64 and *Sefer Ha'agur Hil. Tefillat Arvit*, the end of 334.

24. There are some slight variations.

25. In his introduction to *Piskei Or Zarua*, R. Moshe Yehudah Hakohen Blau explains that *Or Zarua* was born in Bohemia (in what is currently the Czech Republic), which was called "the land of Canaan."

26. Though the story is quoted in full, it has been omitted here for the sake of brevity. *Or Zarua*'s version contains slight variations from the *Mahzor Vitry* version and does explicitly mention *kaddish*:

"אמר יתגדל ועונין אחריי יש"ר מברך מיד מתירין אותו האיש מן הפורענות."

**that a minor who says *yitgadal* [*kaddish*]
saves his father from punishment.**

This text is the first to mention the custom of a mourner reciting a specific *kaddish* at the end of the service in addition to those that the prayer leader recites. *Or Zarua* states that the story of R. Akiva is the basis for this practice. The content and description of the boy in the *midrash* implies that the son was a youngster without specifically stating his age. However, *Or Zarua's* teacher, R. Eliezer of Worms (Germany, 1140–1225), known as Roke'ah, rules from the parallel version of the text found in *Tanna Devei Eliyahu Rabbah*,²⁷ which states that the son was five years old, that this *kaddish* is recited by a minor²⁸ to save his father.

It is clear from both *Mahzor Vitry* and *Or Zarua* that mourner's *kaddish* developed as a custom of practice and is not an obligatory commandment. Originally, it was recited by young children who had not

27. *Eliyahu Zuta (Ish Shalom)*, #17 states:

אמר ר' יוחנן בן זכאי פעם אחת הייתי מהלך בדרך מצאתי אדם אחד שהוא מלקט עצים, דברתי לו [דבר] ולא החזיר לי (דבר), ואחר כך בא אלי ואמר לי אני מת ולא חי, אמרתי לו אם מת אתה עצים למה לך, אמר לי רבי האזין לי עד שאומר לך דבר אחד, כשהייתי חי [אני] וחבירי בפלטר היינו עוסקים, כשבאנו כאן גזרו עלינו גזר דין שריפה, כשאני מלקט עצים שורפין את חברי, וכשהוא מלקט עצים שורפין אותי, אמרתי לו דינכם עד מתי, אמר לי כשבאתי לכאן הנחתי אשתי מעוברת ויודע אני שזכר הוא, בבקשה ממך הוי זהיר בו משעה שנולד עד שיהיה בן חמש שנים, הוליקהו לבית רבו למקרא, בשעה שהוא אומר ברכו את ה' המבורך מעלין אותי מדינה של גיהנם.

See also *Perushei Siddur Hatefillah Leroke'ah* 77 where he cites the *midrash* to explain why the orphan recites *kaddish*.

28. Interestingly, at some point the custom of having a mourner lead services on *mots'ei Shabbat* and the custom of having a minor recite *kaddish* merged. R. Yosef Caro in *Beit Yosef, O.H. 53:6 (b) s.v. vekatav hakolbo* speaks out strongly against this practice. ומדברי רבינו ודברי המפרשים שכתבתי משמע בהדיא שקטן אינו רשאי לירד לפני התיבה אפילו באקראי בעלמא ויש לתמוה על מה שנהגו שקטן יורד לפני התיבה במוצאי שבתות להתפלל תפלת ערבית... ושמעתי שהרב ה"ר יוסף אבודרהם קרא תגר על מנהג זה שנהגו הקטנים לירד לפני התיבה במוצאי שבתות והסכים על ידו הרב הגדול מה"ר יצחק די ליאון ז"ל לבטל...

Further on, he does offer a number of fascinating explanations to justify the behavior and in *Sh. Ar., O.H. 53:10* he codifies as follows (with Rema's note attached):

יש ללמוד זכות על מקומות שנוהגים שהקטנים יורדין לפני התיבה להתפלל תפלת ערבית במוצאי שבתות. הגה: ובמקומות שלא נהגו כן, אין לקטן לעבור לפני התיבה אפילו בתפלת ערבית.

yet reached the age of obligation in *mitsvot*.²⁹ Although Roke'aḥ based his practice of minors reciting mourner's *kaddish* on the text of the *midrash* itself, over a century later, Maharil was asked to legally justify why a minor is halakhically permitted to recite a portion of the liturgy that requires a *minyan*.³⁰

5. *Responsa Maharil Haḥadashot*

#28

R. Ya'akov Moellin, Germany (1360–1427)

The great one of the generation, my teacher Rabbi Ya'akov Moellin, was asked... What is the reason it is called the "orphan's *kaddish*" and why do minors say this *kaddish*, since it is a *davar shebikdushah* [which requires a *minyan*]?

Answer... And it is the orphans who say it because they cannot say *barekhu* until they become adults, for all who are not obligated in the matter [*mitsvah* act] cannot fulfill the obligation on behalf of others. And all forms of *kaddish* are generally rabbinic decrees, but this *kaddish* is not obligatory, therefore, minors can say it. And in the story of R. Akiva, "*yehei shemeih rabba*" is also mentioned... as this *kaddish* is an addition

שׁו"ת מהרי"ל החדשות

סימן כח

נשאל גדול הרור מוהר"ר יעקב מולין... הטעם למה נקרא קדיש יתום. ולמה הקטנים אומרים זה הקדיש הואיל והוא דבר שבקדושה.

תשובה.... והיתומים שאומרים אותו לפי שאין יכולים לומר ברכו אלא א"כ [אם כן] נעשו גדול, דכל מי שאינו מחוייב בדבר אינו מוציא אחרים ידי חובתו, וכולהו קדישי דעלמא תקנתא דרבנן נינהו אבל קדיש זה לאו דבר שבחובה הוא הילכך יכולין קטנים לאומרם ובעובדא דר' עקיבא הוזכר ג"כ [גם כן]

29. Possibly, the fact that *kaddish* is not formulated in Hebrew and does not contain God's name nor the normative blessing formula made it a part of the liturgy that a minor could recite. See *Responsa Iggerot Moshe, Y.D.* Vol. 1, #258, where he discusses a leniency with *kaddish* due to these factors.

30. See also *Sefer Ha'agur Hilik. Tefillat Arvit* 334 and *Mishnah Berurah* 132:10. See also *Hikrei Lev, O.H.*, toward the end of 45, who offers a different reason why one should allow minors to recite *kaddish*.

and not obligatory...and all these are not rabbinic decree but rather custom.³¹ היא שמ"ה רבא... משום דקדיש זה הוי תוספת ולא חובה... וכל הני גופייהו לאו תקנתא דרבנן נינהו אלא מנהג.

R. Moellin states that mourner's *kaddish* is a ritual addition, and not obligatory.³² Thus, it is different from all other forms of *kaddish*, which must be recited by an adult who is obligated in *mitsvot*. Adult mourners would lead the prayer services and the congregation would praise God's name by responding to *barekhu* (as was the custom stated in *Mahzor Vitry*), but a minor is barred from leading the service.³³ Consequently, an extra *kaddish* that was not instituted by the rabbis was added for the minor to recite.³⁴ It is specifically because of the status of mourner's *kaddish* as a custom and not an obligation that minors are permitted to recite it.

The custom of mourner's *kaddish* is not codified in any of the major codes; Rambam, *Tur*, and *Shulhan Arukh* do not mention the

31. Maharil states the following at the end of this text:

ומה שכתבת במקום שאין יתומים אם יתבטל קדיש יתום, חלילה וחס אלא לעולם אחר הדרשות והפסוקים חייבין להקדיש כמו שכתב המיימוני בהדיא אפי' קדיש דרבנן היו אומרים אלא שנתבטל דלא רגילי בהו אינשי ומ"מ אינ' חובה ותקנת' דרבנן כמה הני קדישי דתפילה דבמה מדליקי' וכל הני גופייהו לאו תקנתא דרבנן נינהו אלא מנהג. והא ודאי פשיטא דאין להם לירא לאות' שהוריהן בחיים מלומר קדיש או להתפלל במוצאי שבת, ואדרבא שפיר קעבדי וקורת רוח למתים בארכת ברכו במ"ש כמו שכתב א"ז מיהו אם אביו ואמו מקפידין ישמע להם כמו שכתוב בתשבץ [ושל' על ישר']. ושלום הק' הלוי.

See n23 for a similar statement. See also Rema's gloss on *Sh. Ar., O.H.* 132:2, in a case where there are no orphans present.

32. *Shulhan Arukh Harav, O.H.* 55:5 states a practical application of this concept when discussing using a minor as the *senif le'asarah* (an adjunct to the tenth to complete the *minyan*).

ומכל מקום לא יאמרו אלא ברכו וקדיש שהוא חיוב אבל לא קדיש שאחר עלינו שאינו אלא מנהג.

33. Further on in the responsum, Maharil does suggest an alternative method open to minors that would enable them to recite *barekhu*.

ומהר"ז רונקיל ז"ל אמר לנערים יתומים קטנים להרבות בהפטרות כדי לומר ברכו...

34. See *Sefer Maharil (Customs) Hilck. Tefillah*, s.v. [14] *sha'alu* where he states that if the child is very young, one should read *kaddish* aloud and have him repeat it word for word afterward.

practice. However, in one of his longest notes³⁵ on *Shulhan Arukh*, Rema outlines many of the particulars of this ritual. Five centuries after it is first mentioned by *Or Zarua*, Rema describes mourner's *kaddish*. Note some of the differences and changes that have already occurred by Rema's time. Rema's depiction of this *kaddish* is useful for understanding key concepts relevant to the discussion of women reciting *kaddish*, which will arise later on.

6. Rema

Yoreh De'ah 376:4

R. Moshe Isserles, Poland (1525–1572)

Gloss: We find in various *midrashim* that one says *kaddish* for one's father (*Kol Bo* and *Rivash* in the name of *Tanhuma* and *Sifrei*, *Bahya* in the name of Tractate *Kallah*, *Beit Yosef* in the name of the *Zohar*, and in *Or Zarua* in the name of *Tanna Devei Eliyahu Rabbah*); thus, they had a custom to say the final *kaddish* for one's father and mother for twelve months³⁶ and, similarly, they had a custom to read the *haftarah* from the Prophets, and to pray [as the leader] the evening service on *motsa'ei Shabbatot*, which is the time that the souls return to Gehenna. And when the son prays and sanctifies God's name in public, he redeems his father and mother from Gehenna (*Kol Bo* in the name of *Haggahot*). And we have the custom of reciting *kaddish* for the mother even when the father is still alive, [a father] cannot prevent his son from

רמ"א

יורה דעה סימן שעו סעיף ד

הגה: ונמצא במדרשות לומר קדיש על אב (כל בו וריב"ש בשם תנחומא וספרי, ובחיי בשם מסכת כלה, וב"י [ובית יוסף] בשם הזוהר, ובא"ז [ובאור זרוע] בשם תנא דבי אליהו רבא); ע"כ [על כן] נהגו לומר על אב ואם קדיש בתרא י"ב חדש, וכן נהגו להפטיר בבניא, ולהתפלל ערבית כמוצאי שבתות שהוא הזמן שחוזרין הנשמות לגיהנם, וכשהבן מתפלל ומקדש ברבים, פודה אביו ואמו מן הגיהנם (כל בו בשם הגהות). ונהגו לומר קדיש על האם אע"פ [אף על פי] שהאב חי עדיין, אינו בידו למחות לבנו שלא יאמר קדיש על אמו (סברת הב"י [הבית יוסף] ע"פ [על פי] המנהג)....

35. For the ease of the reader, selections from the full text are presented here in a number of shorter sections.

36. See also *Darkhei Moshe* on *Tur*, *Y.D.* 376:9.

reciting *kaddish* for the mother. (*Beit Yosef's* opinion, based on the custom.).... There is only room for this *kaddish* for one's father and mother alone, but not for other relatives (*Or Zarua*).

ואין מקום לקדיש זו אלא על אב ואם בלבד, אבל לא בשאר קרובים (בא"ז [באור זרוע]).

Rema begins by noting that the various midrashic sources prescribe the recitation of *kaddish* for one's father. However, it is clear from his gloss that in his time period, it is already the accepted norm to recite *kaddish* for one's mother as well.³⁷ Rema states that *kaddish* is recited exclusively for one's parents and not for other relatives.

Rema's notion that mourner's *kaddish* is only for children to recite for parents and not for any other relatives is based on the following statement in the Babylonian Talmud.

**7. Babylonian Talmud
Sanhedrin 104a**

**תלמוד בבלי
מסכת סנהדרין דף קד.**

The son can [earn] merit for the father, the father cannot [earn] merit for the son: as it is written (Deut. 32:39): "And from My hand there is no rescuer." Avraham cannot save Yishma'el, Yitshak cannot save Esav...³⁸

ברא מזכי אבא, אבא לא מזכי ברא, דכתיב (דברים ל"ב:ל"ט) ואין מידי מציל, אין אברהם מציל את ישמעאל, אין יצחק מציל את עשו...

Referring to this passage, Rashba explains (*Responsa Harashba*, Vol. 5, #49) that since parents bring children, who are their flesh and blood, into this world and educate them to serve God, parents live on physically after death through their offspring and children's good deeds reflect meritoriously upon the parents. However, the reverse relationship

37. See *Responsa Harivash* 115 and *Levush*, Y.D. 376:4. *Torah Temimah* notes on Deut. 32, note 86 explains:

אבל ברא מזכי אבא, ולכאורה צ"ע לפי הפסוק ואין מידי מציל למה ברא מזכי אבא, וי"ל בטעם הדבר משום דעפ"י רוב חנוך הבן תלי באב, וא"כ מכיון שהבן הגיע למדרגה שראוי לזכות בודאי גרים האב לזו, ולכן ראוי הוא ליהנות מזכותו, ולפי"ז נראה דגם את האם מזכה הבן, כי מתעורת האשה לחנך את הבנים, וא"כ גם לה חלק במעלותיו וכשרון נפשו.

38. See also *Sifrei Devarim* 329, s.v. *ve'ein miyadi*.

cannot be said to be true;³⁹ the parent is not made from the child and so the parent's actions cannot bring merit to the child. When a child causes the congregation to bless God's name, the parent is redeemed from Gehenna, since parents leave a part of themselves behind to live a life that blesses God. Because of this genetic gift to the world by the parent, mourner's *kaddish* cannot be effective with anyone other than children reciting it for their parents.⁴⁰

Rema also discusses the logistics of the original custom of reciting mourner's *kaddish*: one mourner alone functioned as the prayer leader and led the congregation in the ritual.⁴¹ For if the child's actions were to bring merit to their loved one, it had to be their act alone that caused the congregation to respond in praise of God and, thus, brought merit to the deceased parent. Because *kaddish* was recited by one per-

39. Rashba explains:

תשובה: דע... והאב מוליד לבנים, והבן חלק מהאב בגוף: הבשר, והגידין, והעצמות. והאם נותנת אודם שבפנים... אבל מה שאמרו: ברא מזכה אבא, ואבא לא מזכה ברא; הוא בעולם הנשמות. והוא, כי הבן עם היות גופו לבד חלק מחלקי האב ולא נפש, כמו שאמרנו, מ"מ הרי הוא מסובב מן האב. ועל כן הבן מצווה בכבוד האב ובמוראו, ואין האב מוזהר כן כבן. שהמסובב לעולם חייב להמסבב לכבודו, ואף על פי שהוא מסובב מאליו הכרחי, לא רצוני. וע"כ כשהוא מוליד בן צדיק עובד אלהים, נראה כאילו מסיבובו הוא עובד אלהים, שהוא הביאו לעולם להיות צדיק, מושל בבית אלהים ועובד תחתיו... כי זהו תכלית כל שכן האדם, שישאר ממנו בעולם הגשמי עובד אלהים. ואז נראה לו, כאלו הוא בעצמו העובד, ואינו מת אלא חי, שהוא הוליד מי שעובד להש"י [להשם יתברך]. וע"כ ראוי באמת שיזכה האב בזכות הבן. אבל האב, למה יזכה את הבן בנפש, והאב אינו חלק מן הבן, ולא מסובב ממנו: לא בגוף ולא בנפש. א"כ מה יועיל זכות האב, לבן?

He also states that *zekhut avot* (merit of the forefathers) only works to bring merit to children in this world and not in the world to come. See also B.T. *Sot.* 10b, *Tosafot* s.v. *deatai lealma deati* and the end of *Torah Temimah* notes on Deut. 32, note 86.

40. Rema, further on in his note, does mention a few customs that would lead to the practice today that *kaddish* may be recited for other relatives, although some understand Rema to be speaking exclusively about grandsons reciting for grandparents (see source #20).

ואם אין בב"ה אבל על אביו ואמו, ואמר אותו קדיש מי שאין לו אב ואם, בעד כל מתי ישראל. ויש מקומות שנהגו ששאר קרובים אומרים קדיש על קרוביהם כשאין אבלים על אביהם ואמם, ויש מקומות שאפילו יש אבלים על אביהם ואמם, אומרים שאר קרובים, אלא שעושים פשרה ביניהם שאין אומרים כל כך קדישים כמו האבלים על אב ואם (מהרי"ק שורש מ"ד:ל); והולכין בכל זה אחר המנהג, ובלבד שיאה מנהג קבוע בעיר...

41. This practice is still the custom today in some congregations, particularly those that follow German traditions.

son, Rema goes on to discuss how to apportion the recitation of *kaddish* when more than one mourner is present.

8. Rema

Yoreh De'ah 376:4

R. Moshe Isserles, Poland (1525–1572)

If there are three brothers and one foreign man [a non-relative] [present], the three brothers take the three recitations of *kaddish* [one for each brother] and the stranger takes one. They have a custom that on the anniversary of the death of one's parents [*yahrtseit*], one always recites mourner's *kaddish* and one who is capable of praying the whole prayer [service as leader] prays. And if there are other mourners, they have a custom that mourners within *shivah* take precedence and he [the one observing a *yahrtseit*] does not have a *kaddish* at all; [if mourners] in *sheloshim* [are present], he [the one observing a *yahrtseit*] has one *kaddish*; [if mourners] after *sheloshim* [within the first year][are present], all [recitations of] *kaddish* for that day are his [the one observing a *yahrtseit*]. And we count the seven and thirty [days of mourning] from the day of burial, even if the mourner did not hear [of the death immediately] (Maharil). As to whether a stranger is counted as a citizen of the town for the purposes of reciting this *kaddish*, we follow the custom [of that place] (*Agur*). There is only room for this *kaddish* for one's father and mother alone, but not for other relatives (*Or Zarua*).

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שלשה אחין ואיש נכרי, השלשה אחין נוטלין השלשה קדישין והאחר נוטל קדיש אחד. ונהגו שאם מגיע לאדם יום שמת בו אביו ואמו, שאומרים עליהם קדיש יתום לעולם, ומי שיודע להתפלל כל התפלה, מתפלל; ואם יש אבלים אחרים, נהגו שתוך שבעה לאבלם הם קודמים, ואין לו קדיש כלל; תוך שלשים, יש לו קדיש אחד; לאחר ל', כל הקדישים של אותו היום הם שלו. ומניין שבעה ול' מיום הקבורה, אע"פ [אף על פי] שלא שמע האבל מיד (במהרי"ל). ואם נכרי הוא כאחד מבני העיר לענין קדיש זו, הולכים אחר המנהג (אגור). ואין מקום לקדיש זו אלא על אב ואם בלבד, אבל לא בשאר קרובים (בא"ז [כאור זרוע]).

Rema outlines a clear hierarchy of who has priority in reciting *kaddish* among mourners who are still in *shivah* (the first seven days after burial), mourners in the following thirty-day period, and *yahrtzeit* (the anniversary of death) observers, as well as among residents and visitors.⁴²

In summary, various versions of the *midrash* of R. Akiva are the basis for the custom of an individual young son inviting the *minyán* to respond and praise God's name so as to ease the deceased father's torment in Gehenna. The son, even a minor, recited mourner's *kaddish* according to a set prioritization order and hierarchy within the community of other mourners. This non-obligatory custom of reciting mourner's *kaddish* took root in about the late twelfth century and, by the sixteenth century, had already become a central part of the bereavement process.

THE EVOLVING CUSTOMS OF MOURNER'S KADDISH

As *kaddish* developed and evolved as a ritual, so did the customs surrounding its practice. Unlike obligatory *mitsvot* that originate in Torah or rabbinic sources and, to a greater or lesser extent, have been observed with some uniformity throughout the ages, the rules and regulations for the recital of mourner's *kaddish* today are significantly different from years past. The customs of reciting *kaddish* have changed from one place or generation to the next.

An extreme illustration of this phenomenon is found in the writings of R. Avraham bar Hiyya Hanasi, who regards the whole notion of a ritual that brings merit to one who has died as ludicrous and unfounded in Jewish tradition.⁴³

42. *Magen Avraham* 132:2 expands on this process with a new set of numerous rules for how to run a lottery to divide the various recitations of *kaddish* amongst the different individual mourners.

43. A century later, Rashba discusses a similar question quoting from the period of the Ge'onim. See *Responsa Harashba*, Vol. 7, #539 and also Vol. 5, #49. See also R. Menahem Kasher, *Torah Sheleimah*, Vol. 16, #19, an article titled "Kapparah Lemetim," pp. 257–259 (in the additions in the back), for an overview of the issue of whether the living can affect the dead. He specifically discusses the views of Roke'ah, *Shibbolei Haleket*, and Rav Hai Ga'on, who hold that the living can have only a limited effect on the dead and cannot bring them merit.