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Emergency Ruling in Regard to Livestreaming Services

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Psak Din: *In the current state of emergency, where most of our congregations have closed their doors in the midst of the containment efforts of the COVID-19 crisis, live streamed services of even a single individual (the shaliah tzibbur) may be deemed a minyan when at least nine others eligible to count in a minyan are connected to the site at the time of the live streaming.*

In 2001, the Committee on Jewish Law and Standards of the Conservative movement (CJLS) approved a responsum by Rabbi Avram Israel Reisner by a vote of 18-2, that permitted one to perform one’s obligation to participate in prayer, hear the Torah, shofar, megillah and say kaddish when connected to a minyan through the internet. However, Rabbi Reisner required a minyan of ten eligible Jews to constitute a live minyan at the source of the “broadcast.” That decision was reasoned through a careful reading of the relevant precedents regarding when one can fulfill an obligation when in “ear-shot” but not in the same room as the minyan, and gave important consideration as well to the importance of live face-to-face gatherings. In the nineteen years that have passed since Rabbi Reisner’s paper was approved by the CJLS, we have seen an extraordinary increase in the development and use of technology towards virtual meeting space. At the same time, the very increase in such technology and its applications have made that much more acute Rabbi Reisner’s warnings that “community demands proximity of place.”¹ Distance learning is no substitute for the live interaction of a teacher with students, or between study partners. The technology of virtual meeting-space has permitted individuals to connect more frequently than they might have been able to given the confines of real time and space. But the value of a face-to-face, the force of a handshake, cannot be understated. Jewish worship in particular is about community. For that reason we call a synagogue a house of assembly, בית כנסת. Therefore, because of the precedent of Rabbi Reisner’s paper, because of the soundness of his reading of the sources and because of the increasingly acute concern that our communities retain their power of connection, the conclusions of Rabbi Reisner’s paper are sustainable in normal circumstances.

But these are not normal circumstances. The necessity of closing synagogues along with other gathering places in society as a part of the containment efforts of the COVID-19 crisis, a necessity driven by the concerns for saving lives, פיקוח נפש, and complying with the directives of the state, דינא דמלכותא, דינא, have made the suggestion that a core minyan of ten conduct a minyan for live streaming, while in accordance with Rabbi Reisner’s responsum, untenable and unwise in these unique and extraordinary circumstances. The following argument and guidance is offered, then, as a הוראת שעה, a ruling driven by and restricted to this particular time and circumstance.

There are grounds to permit a minyan to constitute itself even if ten are not fully visibly present. The relevant discussion in the Shulhan Arukh, Orah Hayim 55:13-14, is based on the precedent of the

¹ Avram Israel Reisner, “Wired to the Kadosh Barukh Hu: Minyan via Internet,” p. 4.
<https://www.rabbinicalassembly.org/sites/default/files/2020-03/ReisnerInternetMinyan.pdf>

mishnah in Pesahim that defines the parameters of “inside” and “outside” as the paschal lamb had to be consumed “inside.” According to the Mishnah: מן העגף ולפנים כלפנים, מן העף ולחוץ כלחוץ, החלונות ועובי הדלת, “From the jamb of the door inwards counts as inside, and from the jamb of the door outwards counts as outside; the windows and the thickness of the wall count as inside.”² The definition of “inside” and “outside” is what is relevant to our question, especially because the gemara immediately extends the Mishnah’s distinctions to the physical requirements of a minyan: אמר רב יהודה אמר רב--וכן, אמר רב יהודה אמר רב--וכן, לתפילה, Rav Yehudah said in the name of Rav—so too with prayer.³ Joseph Karo (1488-1575) codifies these distinctions in application to the laws of a minyan:

יג: צריך שיהיו כל העשרה במקום אחד ושליח ציבור עמהם והעומד בתוך הפתח מן העגף ולחוץ דהיינו כשסוגר הדלת ממקום שפה פנימית של עובי הדלת ולחוץ כלחוץ.

13: There must be ten in one place and the shaliah tzibbur among them. And if one stands in the entry from the jamb of the door outwards, that is, if one were to close the door, from the spot where the inner edge of the thickness of the door rests, and outward counts as outside.

יד: מי שעומד אחורי בהכ"נ וביניהם חלון אפילו גבוה כמה קומות אפילו אינו רחב ארבע ומראה להם פניו משם מצטרף עמהם לעשרה.

14: If one is standing outside the synagogue and there is a window between them [separating the individual from the worshippers within] even if it is several stories high and even if it is less than four cubits wide and the individual is shown to them [within] from there [the outside the window], the individual is counted with them towards the ten [required for the minyan].⁴

Paragraph 13 uses the same words as the Mishnah in Pesahim, but seems to limit even the area of the threshold, and even when the door is still open, as “outside” the room and not inclusive of the geographic space of the minyan. Both Yechiel Michel Epstein (1829-1908), author of the Arukh Hashulhan, and Yisrael Meir Kagan (1838-1933), author of the Mishnah Brurah, the two most prominent codifiers of the last century, note that Karo opted to take a stringent position here. As the Arukh Hashulhan says: ובאמת יש חולקים בזה...גדולי הפוסקים חולקים בזה, “but for sure there are those who disagree with this...the gedolim of the poskim disagree with this.”⁵ The fact of the ambiguity on the definition of “inside and “outside” can lead us to flexibility on allowing an individual to count in a minyan who is not quite physically in the same space as others.

Paragraph 14 in the Shulhan Arukh takes a more lenient position than paragraph 13 in extending the definition of “inside.” One who stands outside the building and can hear the service through a “window” is perhaps even more analogous to the internet live streamer than one standing on the threshold of the doorway. This stems directly from the words of the Mishnah, החלונות ועובי הדלת, that the windows and the thickness of the walls count as inside. The analogy seem apropos as our virtual connections are through “windows.” The Shulhan Arukh requires only that the individual’s presence be shown, something that we can easily accomplish through virtual connections.

Yechiel Michel Epstein considers another case, that of a bimah that is so high or divided by clear partitions where it might be considered a different space from that occupied by the worshippers. Epstein dismisses the concern, arguing דהבימה והבהכ"נ כחד ממש חשיבא לענין צירוף, “that the bimah and the synagogue are considered as one in regard to counting [towards the minyan].”⁶ That is, even when the separation is the type that would usually define a different room and exclude some from one or the other

² Mishnah Peshaim 7:12. Danby translation.

³ Babylonian Talmud, Pesahim 85b.

⁴ Shulhan Arukh, Orah Hayim 55:13-14.

⁵ Arukh Hashulhan, Orah Hayim 55:18. And see Mishnah Brurah 55:50.

⁶ Arukh Hashulhan, Orah Hayim 55:24.

spaces in counting together for a minyan, that is, if they cannot even see each other, in this case they do count together because both are considered as part of the same room. That consideration is not based on spatial definitions but rather on context and intention. We can extend the same reasoning to worshippers connected through live streaming. While they do not occupy the same physical space, and while their geographic separation would in other cases exclude their counting together for a minyan, in this case, because they are directing their intentions toward each other in common worship, the spatial distance is in a sense broken down and they are considered as occupying one space, כחד ממש חשיבא.

While these extensions of precedent may seem to some to extend beyond the reasonable intent of the authors, one need remember that these extensions here are intended only as an emergency measure. The principle of extending precedent through lenient interpretation as an emergency measure is well-established principle of the halakhic process. And especially in this matter of law! The debates over extension of the definition of “inside” as against “outside” for purposes of counting in a minyan are often phrased in terms of exigent circumstances where it is difficult to constitute a full minyan of ten in a single room, as would always be preferable. More than once in his discussion of this section of the Shulhan Arukh does Yechiel Michel Epstein invoke this principle: יש להקל בזה אם צריכין לכך, “there is room to be lenient here if it is necessary,” and אולי בשעת הדחק יש לסמוך ולהתיר, “perhaps in exigent times there is room to rely on this [leniency] and permit.”⁷

Returning to the gemara in Pesahim where the application of the definitions of “inside” and “outside” in regard to eating the paschal lamb are applied by Rav Yehudah in the name of Rav to prayer, that is to constituting a minyan, the gemara raises a contradiction: ופליגא דריב”ל דא”ר יהושע בן לוי אפילו, “he differs from R. Joshua b. Levi. For R. Joshua b. Levi said: Even an iron partition cannot interpose between Israel and their Father in Heaven.”⁸ Rabbi Yehoshua ben Levi appears to directly contradict Rav Yehudah in the name of Rav on the issue of whether one who is “outside,” however that is defined, is excluded from the minyan. Rabbi Yehoshua ben Levi seems to argue that there is no barrier that can separate a worshipper from other worshippers. Granted, the Tosafot on the page resolves the dispute in arguing that the two statements related to two separate issues. Rabbi Joshua ben Levi holds that even an iron partition cannot divide, meaning that as long as one can hear the service one can fulfill one’s obligation to hear the Torah or Megillah or the shofar, or to respond to the Kaddish, while Rav Yehudah in the name of Rav holds that one must be “inside” to constitute the minyan of ten.⁹ Rabbi Reisner follows the interpretation of the Tosafot in his responsum.¹⁰ However, while it makes sense that the standard halakhah should follow the interpretation of the Tosafot, one can still, בשעת הדחק, in an emergency situation, rely on an opinion stated in the gemara, especially as a more lenient reading of Rabbi Yehoshua ben Levi’s statement may be closer to the pshat than Tosafot’s reading of his words.¹¹

The statement of Rabbi Yehoshua ben Levi is particularly relevant to our circumstances. He imagines the situation of a would-be-worshipper who is unable to be in the same space as other worshippers. If the worshipper can communicate with the other worshippers through a partition, how can that partition prevent access to the community and ultimately with God? The particular term used for the divine here, אביהם שבשמים, “their father in heaven,” is poignant, because “father” points to God’s

⁷ Arukh Hashulhan 55:18 and 55:20.

⁸ Babylonian Talmud, Pesahim 85b. Soncino translation.

⁹ Tosafot to Pesahim 85b, s.v. וכך לתפילה.

¹⁰ Reisner, “Wired to the Kadosh Barukh Hu,” p. 3.

¹¹ In this case, we would be applying an “originalism” approach for purposes of leniency.

immanence, whereas “in heaven” points to God’s transcendence. Worship is a means of communion with each other and God, as we use ritual to bridge the distance and feel God’s nearness. In our case, the technologies available for us to bridge the distance between each other can help us draw closer to God. While God is transcendent, God is also nearer than other human beings. If we can bridge the distance between each other, then, *kal vahomer*, we can argue that we can certainly bridge the distance between us and God.

The mishnah and gemara in Pesahim are driven by the Torah’s command that the paschal lamb “be eaten in one house; you shall not take any of the flesh outside the house.”¹² The mitzvah to eat the paschal lamb within a house describes the practice of the Seder where the ritual is observed in the home around the table. But the biblical context of “within the house” sheds further insight on our circumstances. The reason why the Israelites were commanded to stay indoors was because the Angel of Death was outside smiting the first born. If the Israelites observed the rituals of the Passover and spread the blood on the doorposts “the Lord will pass over the door and not let the Destroyer enter and smite your home.”¹³ We too are being asked, to an extent, to quarantine ourselves in our homes and thereby remain safe from an unseen but deadly threat. How striking that Rabbi Yehoshua ben Levi’s statement that even an iron partition cannot separate us from God, is drawn from a biblical context where the Israelites stayed each in their own homes, and yet were connected to each other and found solace through a common ritual and worship.

Specific Details of Application

1. As has been stated, this ruling that one may live stream a minyan applies to the current emergency situation only.
2. This ruling requires that at least ten individuals be “shown” to be present. That conforms to the Shulhan Arukh’s ruling in Orach Hayim 55:14 that one “appear” through the window. If the rabbi or someone else is serving as shaliah tzibbur, that individual acting as the leader must be able to know that there are at least nine eligible worshippers connecting. I am informed by my technical advisors that such is simple enough to set up.
3. One may use a computer to live stream on Shabbat and holidays. The CJLS has permitted the use of electricity on Shabbat when the use does not involve any other violation of Shabbat,¹⁴ or when the use of electricity “enhances the enjoyment of the Sabbath.”¹⁵ The use of a computer for the purpose of live streaming Shabbat services should satisfy both standards.¹⁶

¹² Exodus 12:46a.

¹³ Exodus 12:23b.

¹⁴ Arthur H. Neulander, “The Use of Electricity on the Sabbath,” in Mordecai Waxman, ed., *Tradition and Change: the Development of Conservative Judaism* (New York: Rabbinical Assembly and United Synagogue, 1958), pp. 401-407.

¹⁵ Morris Adler, Jacob Agus and Theodore Friedman, “A Responsum on the Sabbath,” in Waxman, *Tradition and Change*, pp. 351-374, esp. pp. 366-368.

¹⁶ For a more recent and stringent approach, see Daniel S. Nevins, “The Use of Electrical and Electronic Devices on Shabbat.” <https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/2011-2020/electrical-electronic-devices-shabbat.pdf>

4. If possible, a remote camera should be used to “broadcast” the live stream. In either case, concerns about כתיבה, the digital “writing” of a service, can be resolved if we understand that there is no intention to preserve the live streaming. One might have one’s congregation put a qualifying tag on the website such as “not be recorded off of this site.”¹⁷
5. The Torah can be read by the individual “broadcasting” the live stream, with brakhot recited for each of the aliyot read (but with no additional aliyot). If there is no concern for repeating the brakhot to the Torah twice when a kohen stays for the second Aliyah when there is no levi,¹⁸ then there should not be a concern for the “broadcaster” to recite the brakhot three times or more depending on if it is a weekday or Shabbat or holiday service.

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¹⁷ See the various opinions on recording Shabbat services by David H. Lincoln, Mayer Rabinowitz, Dvora Weisberg, Gordon Tucker, Arnold Goodman, Elliot N. Dorff, Amy Eilberg and Howard Handler in David J. Fine, ed., *Responsa 1980-1990: The Committee on Jewish Law and Standards of the Conservative Movement* (New York: Rabbinical Assembly, 2005), pp. 212-242.

¹⁸ Shulhan Arukh, Orah Hayim 135:8.