

Kol Nidre: Why Timing is Everything

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We recite the Kol Nidre prayer – actually, it's more a legal formula than a prayer – at the beginning of the worship service on the night of Yom Kippur. And the word “beginning” hints at a major halakhic issue: when *precisely* should we say Kol Nidre? Should we wait until sundown, when the holy day has officially begun? Or is it preferable to say it before sundown, that is, on *Erev* Yom Kippur, a few minutes prior to the onset of the Day of Atonement? Does it make a difference? Yes it does, and this essay will explain why.

But first, let's note that Jewish tradition is split on this point. The 16th-century codifier R. Moshe Isserles, whose glosses to the *Shulhan Arukh* are widely accepted as authoritative among Ashkenazim, writes: ונוהגים לומר כל נדרי בעודו יום, “it is customary to recite Kol Nidre while it is still daylight” (*Shulhan Arukh Oraḥ Ḥayyim* 619:1). Among S'fardim, by contrast, no less an authority than R. Ovadyah Yosef remarks:¹

יש אומרים שצריך להקדים את תפלת "כל נדרי" לאומרה מבעוד יום, אבל מנהגינו לאומרה בלילה ממש... והנח להם לישראל שיש להם על מה שיסמוכו.

Some require that the “Kol Nidre” prayer be recited early, that is before sundown, but our *minhag* (custom) is to recite it at night... Both positions are legitimate, as they can draw support from the tradition.

Rabbi Yosef's conclusion seemingly reflects a pragmatic attitude: if *halakhah* offers support for either custom, there's no reason to object to it. Still, even if both *minhagim* are “kosher,” it would be wrong to assume that there's nothing at stake in this *mahloket* (dispute). Each practice reflects an *intentional* decision. Somewhere along the line, the community that adopted it determined that it was better to recite Kol Nidre either before or after sundown. But why? On what grounds? Is a community's timing of Kol Nidre simply a matter of convenience? Or does it reflect some larger theological or halakhic point?

We think that the *mahloket* is a meaningful one. Whether it recites Kol Nidre during the last moments of 9 Tishri or during the first moments of 10 Tishri, a congregation makes an important statement. Our purpose here is to consider what that statement is and, on that basis, to think about how our progressive halakhic communities might approach their own decisions of practice.

A Release of Vows? Or a Stipulation Concerning Future Vows?

We begin with the text of Kol Nidre: what does this prayer or legal formula actually say?

¹ *Kitzur Yalkut Yosef, Oraḥ Ḥayyim* 619, par. 11.

כָּל נְדָרִי, וְאֶסְרִי, וְשָׁבוּעִי, וְחֲרָמִי, וְקוֹנָמִי, וְקוֹנָסִי, וְכַנּוּיִי, דְּנִדְרָנָא, וְדִאֲשַׁתְּבַעְנָא, וְדִאֲחַרְמְנָא עַל נִפְשָׁתָנָא. מִיּוֹם כְּפֻרִים זֶה עַד יוֹם כְּפֻרִים הִבָּא עָלֵינוּ לְטוֹבָה. כְּלִהוֹן אֲחַרְטָנָא בְּהוֹן. כְּלִהוֹן יְהוֹן שְׁרוֹן, שְׁבִיקוֹן, שְׁבִיתוֹן, בְּטַלּוֹן וּמְבַטְלוֹן, לָא שְׁרִירוֹן, וְלָא קִימּוֹן. נְדָרָנָא לָא נְדָרִי, וְאֶסְרָנָא לָא אֶסְרִי, וְשָׁבוּעָתָנָא לָא שָׁבוּעוֹת.

All vows, obligations, oaths, and anathemas, whether called “*konam*,” “*konas*,” or by any other name, which we may vow, or swear, or pledge, or whereby we may be bound, from this Day of Atonement until the next (whose happy coming we await), we do repent. May they be deemed absolved, forgiven, annulled, and void, and made of no effect; they shall not bind us nor have power over us. The vows shall not be reckoned vows; the obligations shall not be obligatory; nor the oaths be oaths.²

This text, which we’ll call “Version A,” refers explicitly and only to future vows and obligations, those that might be made during the coming year (“from this Day of Atonement until the next”). As such, it is not a form of *hatarat n’darim*, a legal process for the *release* of vows that one has already made, and from which one wishes to be excused or exempted. To be clear, there *is* such a thing as *hatarat n’darim* in the *halakhah*.³ One’s existing vows *can* be released or cancelled, but Kol Nidre has nothing to do with that.

Except when it does. The Babylonian *ge’onim*, who were not at all enthusiastic about the custom of Kol Nidre,⁴ tell us of an alternate text (“Version B”) that declares “All vows, oaths, etc. whereby we have bound ourselves (ושנשבוענו ושקיימנו על עצמנו בשבועה)”⁵ – i.e., the formula is designed to release vows already made. Version B, which as we’ll see survived well into the Middle Ages, does present itself as *hatarat n’darim*. The difference between it and the text we recite today (Version A) is substantive, no mere matter of language and style.

While we can’t say for sure just which version was the “original” one,⁶ the Talmud offers clear support for Version A.

B. N’darim 23b⁷

הרוצה שלא יתקיימו נדריו כל השנה, יעמוד בראש השנה ויאמר כל נדר שאני עתיד לידור יהא בטל, ובלבד שיהא זכור בשעת הנדר.
אי זכור, עקריה לתנאיה וקיים ליה לנדריה!
אמר אביי, תני: ובלבד שלא יהא זכור בשעת הנדר

² Translation from the [Jewish Encyclopedia](#).

³ The rules are contained in the 51 paragraphs of *Shulhan Arukh Yore De`ah 228*.

⁴ See *T’shuvot Rav Natronai Gaon*, ed. Brody, *Orah Hayyim* no. 185, and *T’shuvot Hage’onim Sha`arei T’shuvah* 143 (Rav Hai Gaon).

⁵ *T’shuvot Hage’onim Sha`arei T’shuvah* 143-13.

⁶ The Geonim are the first to mention Kol Nidre, and they’re divided on this. Rav Hai Gaon speaks of Kol Nidre as a legal “evasion” (*ha’aramah*) dealing with vows to be made during the coming year (*T’shuvot Hage’onim Sha`arei T’shuvah* 143), while Rav Sa`adya Gaon understands it as referring to vows made during the past year (see the preceding note).

⁷ The text is presented as an emendation or correction of the *mishnah* on *N’darim 23a* (*M. N’darim* 3:1).

If one wants his vows during the entire year to be of no effect, one should declare at Rosh Hashanah:⁸ “Any vow that I shall make shall be annulled,” provided that he remembers the stipulation at the time he makes the vow.

[*Kashya/Objection*] If he remembers (and still makes the vow), he has repealed his stipulation and upheld his vow!⁹

Abaye said: the text should read: “provided that he does not remember the stipulation at the time he makes his vow.”

The Talmud therefore contemplates a process whereby an individual makes a stipulation (*t'nai*, תנאי) that nullifies all his vows in advance. And although there was some Amoraic opposition to such a process,¹⁰ the codified *halakhah* accepts it:¹¹

מי שהתנה ואמר : כל נדרי שאדור עד זמן פלוני יהיו בטלים, ונדר בתוך הזמן, אם הוא זוכר לתנאו בשעת הנדר, נדרו קיים שהרי מבטל תנאו בשעה שנודר. ואם אינו זוכר לתנאו בשעת הנדר, התנאי קיים והנדר בטל.

If one stipulates as follows: “All vows that I shall make until such-and-such a date shall be annulled” and then makes a vow during that time, his vow shall be valid should he remember the stipulation when he makes the vow, for in the act of making the vow he annuls his stipulation. But if he does not remember the stipulation when he makes the vow, the stipulation is valid and the vow is annulled.

This is precisely the model for Kol Nidre Version A, the one we recite today, with the exception that the stipulation is made at Yom Kippur rather than Rosh Hashanah.¹² Again, because this is a stipulation regarding future vows, it is *not* an instance of *hatarat n'darim*, the process for releasing vows that have already been made and taken effect.

The Tikun of Rabbeinu Tam.

Meanwhile, Version B remained widely in practice until at least the 12th century, when it drew the attention of R. Meir b. Shmuel, the son-in-law of Rashi and the father of the great Tosafist R. Yaakov Tam, “Rabbeinu Tam.” It was R. Meir who ordered that the text be changed, although that change (*tikun*) has been widely attributed to Rabbeinu Tam, probably because the latter reports it and explains the reasons for it in his *Sefer Hayashar*, *Hidushim*, no. 100:¹³

⁸ This may be the source for the practice in some communities to perform *hatarat n'darim* on *erev* [i.e., the day before] Rosh Hashanah.

⁹ See Rabbeinu Nisim *ad loc.*: שאלם לא כן למה הוא נודר עכשיו - “were this not the case (i.e., that he repeals his stipulation), why is he making the vow at this time?”

¹⁰ See at note 16, below.

¹¹ *Shulhan Arukh Yore De'ah* 211:2. See also Rambam, *Hil, N'darim* 2:4.

¹² Why the switch? The 13th-century Italian halakhic work *Shibolei Heleket* (*Seder Yom Hakippurim*, ch. 317) suggests several reasons: Yom Kippur is a day where absolutely no work is performed (ביטול מלאכה); it is a time when the entire community gathers at synagogue (איכא כינופיה טובא); and because the prophet Ezekiel (40:1) uses the term “Rosh Hashanah” to denote the tenth day of Tishri.

¹³ See Naftali Wieder, *Hitgabshut nusah hat'filah bamizrah uv'ma'arav* (Jerusalem: Makhon Ben-Zvi/Hebrew University, 1998), vol. 1, p. 368.

כל נדרי. דאמרינן בלילי יום הכפורים הגיה אבא מרי זצ"ל מיום כפורים זה עד יום כפורים הבא עלינו לטובה כולהון דאיחרטנא בהו. וכן עיקר. והאומר מיום כפורים שעבר עד יום כפורים הבא עלינו לטובה כולהון דאיחרטנא בהון אינו אלא טועה שאי אפשר להתיר את עצמו ובלא חרטה דמעיקרא ובלא יחיד מומחה או ג' הדיוטות. ועוד שהלכה כרב פפא דהוא בתראה דאמר בהשולח גט שצריך לפרט הנדר. והכי נהגינן. אלא מיום כפורים זה עד יום כפורים הבא עלינו לטובה. עיקר. וסמך לדבר דאמרי' בד' נדרים...

Regarding Kol Nidre, which we recite on the night of Yom Kippur, my father emended the text to read “from this Yom Kippur to the next, whose happy coming we await, may they be absolved.” This is the correct practice. The version “from last Yom Kippur until this Yom Kippur...” is erroneous. For one cannot release one’s own vows, or do so without an explicit expression of regret, or without the presence of a knowledgeable judge or three ordinary judges. Moreover, the *halakhah* follows Rav Papa, the latest Talmudic sage to speak on the matter who says: “one must explicitly declare the vow that one seeks to have released”: (*B. Gitin* 35b). That is our custom. Thus, “from this Yom Kippur to the next” is the correct practice, drawing support from *B. N’darim* 23b...

Rabbeinu Tam raises four distinct halakhic objections to Version B of Kol Nidre, all of which stem from the fact that its wording - “from last Yom Kippur until this Yom Kippur...” – presents Kol Nidre as a form of *hatarat n’darim*. This is an absurd claim, he says, because the formal release of vows involves four elements that are absent from Kol Nidre.

1. The release of vows requires the presence of a *beit din* of three lay judges or one knowledgeable or “expert” judge.
2. “One cannot release one’s own vows.” Another person or persons, either a rabbi or a *beit din*, must pronounce that one’s vow has been released. Thus, if the *ḥazan* who recites Kol Nidre releases the congregation’s vows, who releases the *ḥazan*’s vows?¹⁴
3. One must express “regret” (חרטה) for the vow from which one wishes to be released (e.g., “Had I only known thus-and-such when I made the vow, I certainly would not have made it”). This does not happen at Kol Nidre.
4. “One must explicitly declare the vow that one seeks to have released.” Although congregants traditionally recite Kol Nidre in an undertone along with the *ḥazan*, they do not state the vows for which they seek release.

Since Kol Nidre involves none of these elements, it is clearly not *hatarat n’darim*, a release of vows already made. Rabbeinu Tam’s emendation, which changes the verbs from past to future tense, makes sure we understand Kol Nidre as a *t’nai*, a stipulation about the validity of oaths that one might make during the coming year, in the manner envisioned in *B. N’darim* 23b, which he cites as support and which, as we’ve seen, uses the language of *t’nai* to describe the process.

The Defense of the Old Custom

While the emendation of Rabbeinu Tam (or his father), or Version A, is now universally accepted as the text of Kol Nidre, Version B did not disappear immediately. Nor did all halakhists agree with Rabbeinu Tam’s reasoning. R. Yeshaya di Trani (13th-century Italy), for example, writes the following:¹⁵

¹⁴ A rhetorical question asked by *Beit Yosef to Tur, Oraḥ Ḥayyim* 619.

¹⁵ *Piskei R’yed, N’darim* 23b. Cited as well in *Shibolei Haleket*, note 12, above.

ראיתי שרבינו תם זצוק"ל פירש בספר הישר והלא טעם כל נדרים שאנו אומי בלילי יום הכיפורים על דרך זו שכל נדרים שאנו עתידים לעשות מהיום ועד יום הכיפורים זה של שנה הבאה בטלים, ושיבש הלשון שאומי העולם מיום הכיפורים שעברנו ועד יום הכיפורים הזה, אלא צריך לומי מיום הכיפורים זה עד יום הכיפורים העתיד לבוא עלינו, וגם שיבש שנדרנו אלא שעתידינו אנו לידור. ואינם נראים לי דבריו כלל.

I notice that Rabbeinu Tam writes in his *Sefer Hayashar* that “the purpose of Kol Nidre that we recite on the night of Yom Kippur is as follows: ‘all vows that we shall make from this Yom Kippur to Yom Kippur next year are annulled.’” In this, he incorrectly changes the text recited by everyone: “from last Yom Kippur to this Yom Kippur.” Rather, he says, we should speak of vows that we shall make from this Yom Kippur to the next. I am not at all persuaded by this.

Di Trani objects on two grounds. First, while Rabbeinu Tam cites *B. N'darim* 23b in support of his version of Kol Nidre, the Talmud goes on to quote Rava as opposing the practice of cancelling one's future vows at Rosh Hashanah.¹⁶ His second objection:

ונר' לי מה שאנו אומי שנדרנו וגם מיום הכיפורים שעברנו ועד יום הכיפורים הבא עלינו והוא עיקר. ולמה תיקנו הראשוני לומי כך בלילי יום הכיפורים, משום דקימי לן דכל עונות שבתורה אם עשה תשובה מתכפרין לו, וראו הראשוני ששום עוון אינו מעכב את הכפרה אם יעשה תשובה שיום הכיפורים מכפר.

It seems to me that the text we recite “the vows we have already made” and “from last Yom Kippur to this Yom Kippur” is the correct one. Why did the *rishonim* instruct us to recite it on the night of Yom Kippur? Because we hold that Yom Kippur effects atonement for all the sins in the Torah. The *rishonim* determined that there is no sin that stands in the way of atonement should one do *t'shuvah* [repent], since Yom Kippur effects atonement.

In other words, if we have made vows that we have been unable to fulfill, repentance and Yom Kippur are sufficient to wipe away the stain of our culpability. Of course, this begs the question: why do we *ever* require a formal *hatarat n'darim* to release one from vows if a simple recitation of Kol Nidre at Yom Kippur accomplishes the same purpose?¹⁷

R. Asher b. Yechiel (Rosh; Germany-Spain, d. 1327) also pushes back against Rabbeinu Tam: we should recite Version B (“vows whereby we are bound... from last Yom Kippur to this Yom Kippur”), because Kol Nidre *does* serve as a form of *hatarat n'darim*. “The text of Kol Nidre indicates that it was instituted to release vows that the people have violated during the past year, so that they may be spared punishment” (ולשון כל נדרי מוכיח שנתקן על הנדרים שעברו עליהם השנה)

¹⁶ See *B. N'darim* 23b and note 7, above. While the Talmud emends the *mishnah* (*N'darim* 3:1, 23a) to include the annulment of future vows at Rosh Hashanah, Rava prefers the original text of the *mishnah*, which makes no mention of such a *t'nai*. The Talmud does not reject Rava's critique; therefore, di Trani asserts that the *sugya* opposes the *t'nai*. On the other hand (see note 9, above), the leading codifiers read the *sugya* differently.

¹⁷ Di Trani himself goes on to limit the power of Kol Nidre to release vows already made. It does not annul vows we make concerning things we are obligated to do (e.g., to give *tz'dakah*), and it applies only to vows that one made during the past year but has since forgotten.

(שעברה ומתירין אותם כדי להציל מן העונש).¹⁸ He refutes each of R. Tam's four halakhic objections to considering Kol Nidre as a release of vows. Must one express "regret" (חרטה) for one's vows? "It's obvious to all that one who has violated a vow regrets having done so" (אין סהדי כל מי שעבר) (נדרו הוא מתחרט). Do we require a *beit din*? The fact that each individual recites Kol Nidre in an undertone suffices for this purpose (ומה שהקשה דבעיא שלשה הדיוטות הרי כל הקהל אומרים אותו) (איש איש בלחש וגם החזן הקהל) (מתירין אותו)! And there is no need to state the vow explicitly, because that requirement applies only to vows concerning *mitzvot* and ritual obligations for which one *must* consult a rabbinical authority (הוא דאמר רב פפא צריך לפרט הנדר היינו כשהנודר בא לפני החכם להתיר לו נדרו אולי נדר על) (דבר מצוה ולא יתיר לו החכם נדרו).

The Matter of Timing

What does all this have to do with timing, our original question? Well, we face a clear choice: either Kol Nidre is a *hatarat n'darim* or it isn't. If it is, we should recite it before sundown, that is during the last moments of 9 Tishri, Erev Yom Kippur. Why? Because *hatarat n'darim* is a legal process that normally requires the presence of a *beit din* and the *beit din* does not convene on Shabbat and festivals. If, on the other hand, we follow Rabbeinu Tam that Kol Nidre is a *t'nai* concerning future oaths, then a *beit din* is not necessary and we can recite it after sundown, when Yom Kippur has begun. The timing of Kol Nidre signifies how the community understands the prayer's function and purpose. The point is that we must choose one way or the other.

An Attempted Compromise

Or maybe not. Halakhic history is filled with examples of compromise, of efforts to follow two conflicting rationales so as to be *יוצא שתי הדעות*, to satisfy each of them just in case it's the correct one. And that's the case here. We begin with the 15th-century German sage Rabbi Yaakov Molin (Maharil), who writes:¹⁹ "it is preferable to begin Kol Nidre while it is still daylight, because it is a *hatarat n'darim*, and we do not release vows on Shabbat or *yom tov*" (טוב הוא לאתחולי כל נדרי מבעוד יום משום דהתרת נדר הוא. ואין מתירין נדרים לא בשבת ולא ביי"ט). On the surface, this is no compromise; perhaps Maharil (like di Trani and Rosh) prefers Version B and rejects Rabbeinu Tam's emendation. But Rabbi Yoel Sirkes, the author of the *Bayit Hadash* (*Bach*) commentary to the *Tur*, discounts that possibility:²⁰

וקשיא לי דלמאי דנהגין כרבינו תם ואינו אלא מדין תנאי אם כן שרי אפילו בשבת עצמו... והלא לרבינו תם אין כאן התרת נדר אלא מדין תנאי

(Maharil's words raise) a difficulty: given that we hold with Rabbeinu Tam that Kol Nidre is nothing more than a stipulation concerning future vows, it ought to be permissible to recite it on (Yom Kippur) itself... After all, Rabbeinu Tam understands Kol Nidre not as a release of vows but as a stipulation.

¹⁸ For citations in this paragraph see *Hilkhot Harosh, Yoma* 88.

¹⁹ *Sefer Maharil, Hilkhot Leil Yom Kippur*, par. 5.

²⁰ *Bayit Hadash to Tur, Oraḥ Ḥayyim* 619.

According to Bach, Rabbeinu Tam's understanding of Kol Nidre is now the accepted one. Even Maharil would agree; so why does he say that Kol Nidre should be recited before sundown? Bach explains:

צריך לומר מאחר דהתנאי הוא לבטל ולהתיר הנדר שידור אם כן דומה קצת לדין התרת נדרים

One must say thus: since the stipulation comes to release [*l'hatir*] future vows, it somewhat resembles *hatarat n'darim*.

This “somewhat resembles” is a middle ground between Version A (= Rabbeinu Tam) and Version B (his opponents): we should conduct the ritual of Kol Nidre *as though* it effects a release of vows, even though we know it doesn't. Bach makes it clear that this is not an absolute requirement: Maharil, he reminds us, tells us that it is “preferable” (טוב) – i.e., not obligatory - to begin Kol Nidre before sundown. All of which accounts for the language of R. Moshe Isserles quoted at the start of this essay: “it is customary to recite Kol Nidre while it is still daylight.” “Customary” (נוהגין), like “preferable,” does not mean “obligatory,” leaving room for other communities who follow other *minhagim*.

Compromise is for Wimps

Okay, we don't mean that literally. Sometimes, maybe often, compromise is the very best solution to otherwise difficult situations. But here, we think that the caution of Rabbis Sirkes and Isserles is indeed wimpy. Are we in any doubt as to the meaning of Kol Nidre *today*, as to how it functions *for us*? Consider the words of R. Yechiel Mikhel Epstein, *Arukh Hashulhan* (late 19th-early 20th-century Lithuania), *Orah Hayyim* 619, paragraph 3:

וכבר בארנו ... דאין זה מועיל לשום דבר לא מיבעיא בנדר ושבועה שנשבע לאחרים שהרי לא על דעתו נשבע אלא על דעת המשביעו וכ"ש בשבועות שנשבעים למלך המדינה שאין ביכולתם להתיר כלל! אלא אפילו בשבועות ונדריים השייכים רק לו לעצמו כגון נשבע או נדר שלא יאכל בשר או שיתענה וכיוצא בזה אין זה מועיל אלא במתנה על להבא ... והיא רק תפלה ככל התפלות ומרמזת שתקובל תפלתנו.

We have already explained²¹ that *Kol Nidrei* releases no vows. That is certainly the case with vows and oaths made to other people, for the validity of those vows rests upon the consent of others. All the more so with vows made to the government! But even with oaths and vows that involve oneself alone – for example, one who swears or vows not to eat meat or to fast – *Kol Nidrei* is effective only with respect to vows that one might make during the coming year... It is simply a prayer like all other prayers, expressing the desire that our prayer be accepted.

Although Rabbi Epstein sides with Rabbeinu Tam's take on Kol Nidre, the conclusion of his paragraph indicates much, much more. He doesn't regard Kol Nidre as much of a legal formula at all; not only does it not release existing vows, it's also not really a *t'nai* about future vows. It is a prayer, a *t'filah* like all others, and should be understood and experienced as such.

²¹ See *Arukh Hashulhan Yore De'ah* 211, end.

And we ask: doesn't this reflect our own understanding? When we sing Kol Nidre softly with the *ḥazan* on Yom Kippur, it's hardly likely that we're thinking about vows that we might perchance make in the coming year. It's much more probable that we read past the literal meaning of the text and take it as a metaphor, as an expression of our realization of the fragility of life, of those unpredictable circumstances that bring our plans to nought and ruin our good intentions. Perhaps we think of those Jewish communities throughout history whose dreams for the coming year were shattered by forces beyond their control. If so, then Kol Nidre is for us a prayer that we do the best we can, that on this Yom Kippur we begin the work of spiritual purification that we need to face the new year with as much strength and hope as we can muster. If this is *our* Kol Nidre – and the commentaries in our contemporary liberal *maḥzorim* suggest that it is – then it most certainly is not (nor does it “somewhat resemble”) a release of vows.

If so, let us make sure to wait till nightfall to recite it.²²

²² We are aware of the monkey wrench that daylight savings time throws into the calculations here, especially when Yom Kippur occurs in mid-September. Sometimes, a community has no choice but to begin services while the sun is still relatively high in the sky. We can only say that this essay is meant as food for thought, a recommendation, and not a *p'sak halakhah*. Much like Kol Nidre itself, it calls upon us to do the best we can.