

COVID-19 as *Sha`at Hadaḥak* (A Time of Urgency)

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Jewish law, like other legal systems, makes provisions for times of urgency or emergency, commonly referred to as *sha`at hadaḥak* (שעת הדחוק).[1] During such times the normal halakhic rules and standards are modified so as to enable an individual or community to fulfill religious obligations under the changed circumstances. Frequently, this involves a transition from an “ideal” (לכתחילה, *l'khatilah*) standard of observance, the one normally expected of the observant Jew, to a “minimally acceptable” (בדיעבד, *b'di'avad*) standard.[2] The current coronavirus pandemic would certainly seem to qualify as *sha`at hadaḥak*, particularly in light of the regime of social distancing and stay-in-place that has been forced upon us. So much of Jewish religious life assumes the setting of a community, the presence of a *minyan*, yet this has become impossible given the restrictions placed on social gatherings. How are halakhic thinkers coping with the challenge of permitting virtual communities to serve as the equivalent of physical ones?

The Responsa Committee of the (Reform) Central Conference of American Rabbis (CCAR) has issued a [decision](#) (5780.2) permitting “virtual *minyanim*,” that is, recognizing as a valid *minyan* a group of ten adults connected via interactive technology though not present together in one room. While this responsum seemingly conflicts with [an earlier *t'shuvah*](#), no. 5772.1, that prohibits the virtual *minyan*, it justifies its ruling on the grounds that “we are now in an emergency situation” that warrants this temporary measure. It’s important to note, though, that the “temporary measure” is based upon more than simply a declaration of *sha`at hadaḥak*. Responsum 5772.1, in considering the halakhic sources on the *minyan*, suggests that “a good argument can certainly be made” in favor of the acceptability of the virtual *minyan* even in normal circumstances, although it ultimately rejects that argument on the basis of our definition of “community” and the distinctions we still draw in this technological age between reality and virtual reality.[3] The Responsa Committee’s new ruling could be said to accept that “good argument” as sufficient to justify changing the rules in a case of *sha`at hadaḥak*.

The Committee on Jewish Law and Standards (CJLS) of the (Conservative) Rabbinical Assembly has issued a statement offering “guidance” (as opposed to a formal responsum) [“for Remote *Minyanim* in a Time of COVID-19.”](#) The statement (like all good CJLS *t'shuvot*!) offers more than one approved position. The majority of the committee uphold [the existing CJLS responsum](#) that requires a physical *minyan* gathered in one space so that additional worshipers, joining via electronic means, may fulfill such obligations as Kaddish. In the absence of a physical *minyan*, those joining electronically do not say Kaddish or any other “rubrics of sanctity” (*d'varim shebik'dushah*) such as *Bar'khu*, *k'dushah*, the reading from the Torah scroll and so forth. According to this view, *sha`at hadaḥak* is not a sufficient cause to relax the rules concerning the definition of a *minyan*. This doesn’t mean that the Law Committee majority is insensitive to the spiritual needs of worshipers. Mourners and those observing *yahrzeit* may avail themselves of the long-standing *minhag* of reciting prayers written as substitutes for Kaddish when a *minyan* is not present. And “rabbis must reassure mourners that they are fulfilling their

Jewish legal obligations under the circumstances and should feel no guilt whatsoever in remembering and honoring the deceased in this way.”

The statement notes that “a number of the members of the CJLS believe that in the current dire circumstances [i.e., *sha`at hadaḥak* – Freehof Blog] a more lenient position on constituting a minyan remotely may be acceptable, especially since there has been significant advances in technology.” Those holding this opinion rely upon reasoning similar to that cited in the CCAR Responsa Committee’s 5772.1 (see above) in support of the “good argument” that can be made on behalf of the virtual *minyan*. Some committee members who hold this lenient view apply it to all *d’varim shebi’k’dushah*. Others utilize this reasoning to permit *only* the recitation of the Mourner’s Kaddish (*Kaddish Yatom*) and not the other *d’varim shebik’dushah*, since the status of the Kaddish as a ritual obligation is not firmly set in the classical *halakhah*.

In the Orthodox camp, we should note the much-discussed [heter](#) by a group of S’fardi community rabbis in Israel for the seder to be held over Zoom or other electronic platforms during this “emergency time” (*sha`at heirum*), provided that the computer is turned on and the connections made prior to the onset of the festival. The rabbis justified this leniency on the grounds that it is essential for children to participate in the warmth of an extended-family seder. This decision has been roundly condemned by the Orthodox establishment in Israel and elsewhere, to the point that some of the rabbis who signed the permit have since withdrawn their agreement to it. Others, however, have [defended it](#) as a valid expression of S’fardic halakhic tradition.

Rabbi Herschel Schachter, *rosh yeshivah* and *rosh kollel* at Yeshiva University’s RIETS (Rabbi Isaac Elchanan Theological Seminary), has published a series of (thus far) twenty-two rulings, appropriately entitled [Piskei Korona](#), concerning various halakhic challenges posed by the pandemic and the resulting period of social distancing. While Rabbi Schachter permits some rituals that normally require a *minyan* to take place in the presence of less than ten, he relies in these cases upon long-established precedents and does not break new halakhic ground.[4] In one instance, he comes tantalizingly close to a remarkable *heter* (permissive ruling), but then backs away. This is ruling #8, “Krias Hatorah.” Rabbi Schachter begins by reminding the reader that a *minyan* is required for a public Torah reading but that “some suggest” (יש שיעצו) that an individual who cannot attend a *minyan* may fulfill the *mitzvah*[5] by reading the weekly portion from a printed *ḥumash* without reciting the *b’rakhot* before and after the reading. He proceeds to construct an argument to support this suggestion. In a famous responsum, Rambam rules that required Torah readings can be successfully accomplished by using a *sefer torah pasul*, a Torah scroll that is ritually defective. Although that responsum is contradicted by Rambam’s own ruling in his *Mishneh Torah* and is rejected by the majority of the other “early” authorities (*rishonim*), it continues to influence halakhic decision, to the point that some *poskim* permit a community to read from a *sefer torah pasul* – and to recite the *b’rakhot* – in a case of *sha`at hadaḥak*, for example, when they do not have access to ritually fit (*kasher*) Torah scroll.[5] Therefore, if the requirement of a “real” *sefer torah* might be waived at a time of urgency, why not also waive the requirement of a *minyan*?

Rabbi Schachter refuses that invitation. While we do have a precedent that permits reading from a *sefer torah pasul* (i.e., Rambam’s minority opinion), we have no similar precedent permitting the reading of Torah (whether from a scroll or from a printed book) in the absence of a *minyan*.

In other words, no halakhic authority has ever suggested that one can fulfill the *mitzvah* of *k'ri'at hatorah* by reading Torah in the absence of a *minyan*. And Schachter isn't about to go out on a limb and issue such a ruling on his own authority.

Partly, we suppose, this is a case of *yir'at hora'ah*, the traditional rabbinical fear or reluctance to issue far-reaching *p'sak* (rulings) that might draw criticism from their colleagues. But Rabbi Schachter's decision is also evidence of his *hashkafah*, the Jewish worldview he brings with him into this discussion. That worldview is expressed by four words he adds to the end of the relevant paragraph: לא ירויח בזה כלום, that is, since the *mitzvah* cannot be fulfilled by reading without a *minyan*, "one gains nothing" by doing so. All that matters is that the *mitzvah* cannot be fulfilled in any way, shape, or form by individuals praying without a *minyan*; thus, there's nothing to see here, no problem to solve. The possibility that individuals might feel a sense of loss at the absence of a Torah reading and might "gain" a great deal from employing an admittedly imperfect substitute is entirely missing from Schachter's thinking. He doesn't bother to acknowledge this sense of loss, as the majority of the CJLS do when speaking of individuals prevented from saying Kaddish. His halakhic *hashkafah* inures him to this loss and to the opportunity of *acting* on behalf of the Jews who turn to him for guidance and, certainly in this case, comfort. It is irrelevant to him in this instance that we are living at a time of *sha`at hadaḥak*, when a *posek* might rely on minority opinions in order to devise a halakhic response suited to the moment.

Let's be clear: *sha`at hadaḥak* and extraordinary circumstances do not by themselves *require* a change in the standards of Jewish observance. Sometimes, even at times like these, stringency may be the right response. But our devotion to established practice ought not to blind us to the possibility that the *halakhah* offers tools for responding to what this time demands of us.

[1] The term appears 62 times in the *Shulḥan Arukh* (whatever did we do before searchable digital databases?).

[2] An example: the best, preferable (*l'khatḥilah*) time to recite the morning *t'filah* is at sunrise, but in a case of *sha`at hadaḥak* (e.g., when one needs to begin a journey before sunrise), it is permissible to pray at dawn (*Shulḥan Arukh Oraḥ Ḥayyim* 89:1, 8).

[3] As the responsum puts it: "But so long as we are capable of distinguishing between reality and virtual reality, so long as we conceive of the ideal prayer community as one that is physically constituted, whose members occupy a shared physical space, we cannot expand the definition of *minyan* to include those whose presence with us is virtual rather than real."

[4] See no. 18, "Getting Married with Less Than Ten Men Present," where he permits the recitation of *berkat ḥatanim* (the "*sheva b'rakhot*") without a *minyan* given the difficulty or impossibility of gathering an assembly of that size. Here he relies upon the *halakhah* as expressed by the commentaries to *Shulḥan Arukh Even Ha'ezer* 62:4.

[5] On all this see the CCAR responsum [5760.3](#), “A Defective ‘Holocaust’ Torah Scroll.”