

“What I would give to have this conversation with you at a real cafe table with people buzzing around, the smell of coffee in the air.”

There was a shuffle to the right, to get comfortable. After a second or two the webcam refocused - sharp, clear. I could see the whites of his eyes. We were looking at each other over computer screens but by the camera going from fuzzy to focused there was some small measure of redemption. Ironically, I felt a deeper connectivity than I expected despite the physical distancing. Here we were “in” each other’s apartments seeing the messy bookshelves, the family photos on the wall and the art behind us.

“What kind of coffee are you drinking?” he asked. I was holding my favorite green mug in plain sight.

“Tanzanian or Costa Rican...it’s one of those Fairway roasts.” As I raised my mug towards my lips I pronounced the blessing, the sacred affirmation that affirms I would dare not steal from the bounty of the world without thanking the Master of Creation. And how I love that wonderful ingredient - coffee!

“Barukh Atah Adonai, Eloheinu Melekh HaOlam ShehaKol N’hiyeh B’dvaro.” [Blessed is God, Ruler of the Universe, through whose word the world came to be.] I drew the cup nearer in order to go from blessing to action. I didn’t realize that I had said my blessing loud enough for him to hear over ZOOM.

“Amen!” ...songfully, faithfully, came through the computer’s speakers. That “amen” made my first sip a more salient moment of gratitude and even a shared religious experience. This feeling I get at daily minyan and when we gather for Or Zarua classes on ZOOM. This uplift happens for me when we share Shabbat or holiday spirit in virtual space.

When the Coronavirus Pandemic hit the United States and our local officials called for physically distancing ourselves, we had to cease operations at our building. Our sanctuary was no longer available for weekday minyan or Sabbath and holiday use. Halakhic decisions regarding our standards of religious practice had to be made, including how to deal with Shabbat and holidays, as well as daily minyan.

I set ZOOMing Into and Out of Shabbat and the Holy Days as a way to approach the question of how to celebrate Shabbat and Yom Tov without violations of using electronics or being in pictures or videos on the Sabbath.

On weekdays, however, we are permitted to use computers and electronics. This responsum will clarify the halakhic reasoning behind why a virtual minyan on using synchronous software constitutes a true minyan for the purposes of reciting Kaddish and other prayers requiring a quorum of ten.

For weekday minyanim, when we are permitted to use electronics, the question I deal with is: with software platforms and apps that allow us to see one another and create space in which to be present together in a synchronous mode, would being in a such a virtual space with at least 10 people be considered like gathering together for the purpose of making a minyan and saying Kaddish and *Devarim B'kedushah* (prayers that require a minyan)? On weekdays, when using computers and phones is permissible by Jewish law, the question centers on whether sources regarding making minyans deal with circumstances that could be parallel to our own, at this hour of emergency known as *sha'at ha'dhak* in halakhic terms (an hour of pressing need).

While the tradition allows for individuals to daven much of the set liturgy privately on our own, we know the power of praying together in a minyan and including Barkhu, Kaddishes, Mourner's Kaddish and the Kedusha during the Amidah. I permit saying Kaddish and prayers for which a minyan is required on ZOOM based on a reading of Talmudic and Jewish legal sources that I will present below. Not only do those sources address our being in different physical spaces they also indicate that our intention to form a prayer group, to connect with one another and with God are all possible despite barriers and being in different windows on our computer screens.

The relevant discussion about constituting a minyan when conditions are not ideal is seen in both the Talmud and Jewish law codes. In the Shulhan Arukh, *Orah Hayim* 55:13-14, a Mishnah in Pesahim is quoted that defines the parameters of who is “inside” and “outside” a space for a minyan. The discussion at first deals with the sacrifice and meal associated with the first Passover sacrifice, the lamb, which had to be consumed “inside.” According to the Mishnah: החלונות ועובי, מן העף ולחוץ כלחוץ, החומה כלפנים, “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.”[1] 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 לתפילה, Rav Yehudah said in the name of Rav—so too with prayer. [2] Joseph Karo (1488-1575) codifies these distinctions in his section on 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* (prayer leader) 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].[3]

Section 13 uses the same words as the Mishnah from Pesahim. This section seems to limit who is counted as inside even when the door is still open. You are outside if you are standing too deeply in the threshold towards the outer area. Both Yechiel Michel Epstein (1829-1908), author of the *Arukh Hashulhan*, and Yisrael Meir Kagan (1838-1933), author of the *Mishnah Brurah*, two of the most influential codifiers of the modern age, note that the Shulchan Arukh took a stringent position. 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.”[4] In other words someone tucked into a doorway a little out of sight is counted in the minyan. *The fact of the ambiguity on the definition of “inside” and “outside” already leads to some flexibility on counting who is inside and who outside the space of a minyan.* And law has to be applied to new possible situations by reader-interpreters, rabbis of their times.

So we turn to Section 14 in the Shulchan Arukh which takes an even more lenient position than paragraph 13 in extending the definition of “inside.” I began thinking about being “inside a virtual space with others.’ There will be those who say, though, that our sources address physical space and not windows on the computer (pictures or video images of people in windows) or virtual space. This of course does not take into account the way that people gather and create groups in our time. It is shortsighted to limit our application of texts to new situations and possibilities when it comes to fulfilling mitzvot with electronics during the week. Outside of Shabbat and Yom Tov when we have to work vigilantly about keeping technology-free, to ensure the salience of human encounters and for seeking the Divine, we must be able to align technological tools and the performance of mitzvot especially in emergencies. Halakha is a living system that must provide responses to questions that arise in our time, in our milieu and given our material and existential realities. We must be prepared to accept limits like on the use of

computers and software in sanctuary spaces on Sabbaths and holidays. Yet, we must also recognize the Rabbis encouraged praying with a minyan on weekdays despite our busy lives. Can we facilitate that possibility in modernity given the new tools at our disposal and the permission we have to use those tools during yamei hol (weekdays)?

We must apply these legal texts to the question about minyanim in virtual spaces during this time that we are forbidden from making a minyan in our sanctuary. For now, we hold that a virtual room or space on ZOOM or other similar software is a place where we may constitute a prayer quorum. We can hear the t'fillot in real time and link ourselves intentionally to the assembled group who seeks God's presence and abides by halakhic standards of Jewish prayer. [The ease of being distracted while in a virtual meeting may feel disproportionate and militate against the comparison to being physically present for some for that reason, but the challenge of minyan-goers feeling the fullest degree of kavannah - intentionality - or maintaining focus is an issue for minyan-goers in the synagogue as well as in virtual space.]

One who stands outside the building and can hear the service through a "window" is more analogous to the ZOOM minyan-goer than one standing in the threshold or the doorway. When she does this on days when we are permitted to use technology, she may join the minyan by being present in her window. This has its roots in the words of the Mishnah, החלונות ועובי החומה כלפנים, that the windows and the thickness of the walls count as inside. The Shulhan Arukh requires only that the individual's presence be shown, something that we can easily accomplish through virtual connections. As members of the minyan appear in windows on the screen we may delight in the parallel between our ancient text and unfolding reality, in this time of need.

Let us be mindful that permissions granted in one situation, at one or another hour of need, are applicable for that specific time only. Our ideal continues to be to daven together, in person, and we look forward to getting back to that reality. As my colleague Rabbi David Fine wrote in his responsum to his congregation, examining the same sources:

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 a 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." [5]

To revisit the Mishnaic and Talmudic passages mentioned above, the discussion of "inside" and "outside" in regard to eating the paschal lamb are applied by Rav Yehudah in the name of Rav to prayer. He relates directly to our question about what constitutes a minyan. It is there that the Gemara brings an alternative position of a well-known Sage whose idea deeply influenced me and allowed me to substantiate my ruling: ופליגא דריב"ל דא"ר יהושוע בן לוי אפילו מחיצה של ברזל אינו מפסקת בין ישראל לאביהם שבשמים, "...Rav taught all must be in one physical place to constitute a quorum. He differs from R. Yehoshua b. Levi. For R. Yehoshua b. Levi said: **Even an iron partition cannot interpose between Israel and God - their Father in Heaven.**" [6] Rabbi Yehoshua ben Levi directly contradicts Rav Yehudah in the name of Rav on the issue of ruling people can be "outside" the physical space of the minyan! Rabbi Yehoshua ben Levi argues that there is no barrier that can separate a worshipper from other worshippers - should their body and image be near enough and discernable. No partition can separate between God and Israel. Thus I ruled, in this hour of our emergency, there is no partition - including an electronic one - that can keep a worshipper from connecting with the minyan and with God, when we are synchronized and our intention is to worship as a minyan.

We must mention that in the halakhic system we often go with the Tosafot rulings or positions on a page of Talmud versus the Sages' quoted in the Gemara text. About our passage, the Tosafot resolve the dispute between Rav Yehuda in the name of Rav and R. Yehoshua ben Levi by positing that the two statements of our Sages are related to two separate issues. Rabbi Yehoshua ben Levi, they maintain, 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 reading of the Torah or Megillat Esther, hear the shofar, or to respond to the Kaddish. In contrast, the Tosafot explain that Rav Yehudah in the name of Rav holds that one must be "inside" to be counted as part of a minyan of ten. [7] "Inside" is defined here as being in one room. While it makes sense that the standard halakhah should follow this interpretation of the Tosafot, however, one can in an emergency situation, בשעת הדחק, in an emergency situation, rely on a p'shat reading of Rabbi Yehoshua ben Levi's statement. Where there's a Jew on the other side of an iron partition or in a window, go ahead and count him or her (in our understanding of the law) in the minyan. That is the *p'shat* read, the simple sense of his teaching. We do not rely on the Tosafot's novel reading of the Talmudic argumentation that Rav Yehoshua ben Levi is only discussing a person positioned to hear a Torah reading or the Megillah. [8] Our read of the texts allows us to understand that the minyan is constituted by all those who are behind an "iron partition" - or a glass screen - who appear in a window in this

case in audio-video mode. We on ZOOM can see and hear one another, see and hear the prayer leader, and connect metaphysically as a prayer quorum. Nothing divides between us and God during these times.

My approach and intent remains to encourage in-person attendance at religious services and for classes. This ruling should only be applied during this unprecedented time when we are unable to gather in person. Despite the famous assertions of Rabbi Dr. Abraham Joshua Heschel about Shabbat and Yom Tov being palaces in time and not space, Judaism on the whole asserts the sanctity of space as well as time through the experience of worshipping in a physical synagogue in each others' physical presence.

Virtual spaces provide spiritual sustenance during this Pandemic in a way that I did not expect. I continue to have inspirational and prayerful experiences during our weekday ZOOM minyans. I continue to feel uplifted during and after our on-line Pirke Avot, Talmud and Siddur classes. I encourage congregants to come join us during this time, to share such inspiration.

Returning to the blessing over coffee I was once asked: Rabbi, should we not have a special or unique blessing for coffee and another for chocolate?! My answer was and remains: through studying our Talmud and our law codes we find a canon of poetic blessings that cover all the wonders of the world and the delectables on our menus. When it comes to making a minyan, though, there is a new way to hold space as a group and appear before one another through windows. The words of Rabbi Yehoshua ben Levi come to life in a new way in 2020 during this hour of our need. The technology was available just when we needed it. There are some tools that we keep in the box to use when we are permitted to do so and when we need them most. Yet we will be happy to put them away and keep our laptops closed and phones off for our *minyanim* once this pandemic is over and we can return to our physical prayer and learning spaces.

[1] Mishnah Peshaim 7:12. Danby translation.

[2] Babylonian Talmud, Pesahim 85b.

[3] Shulhan Arukh, Orah Hayim 55:13-14.

[4] Arukh Hashulhan, Orah Hayim 55:18. And see Mishnah Brurah 55:50.

[5] Arukh Hashulhan 55:18 and 55:20 quoted in Rabbi David Fine, Zooming Minyan - Livestreaming Services.

[6] Babylonian Talmud, Pesahim 85b. Soncino translation.

[7] Tosafot to Pesahim 85b, s.v. וּכְרַחֵם לְתַפִּילָה.

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