

**“Streaming Services on Shabbat and Yom Tov” -- A Dissent  
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There is a wonderful story that illustrates the conflicting religious visions of the Hasidic and Lithuanian communities of the 18<sup>th</sup> and 19<sup>th</sup> Centuries. Rabbi Menachem Mendel of Kotzk encountered an eminent *mitnagdish* scholar who told him that he had studied the entire *Shas*. The Kotzker paused, turned to him and asked, “To what end?”

I found myself asking this question each time I studied Rabbi Heller’s responsum. I believe that Rabbi Heller’s motivation for this responsum is to enable our communities to pray together and thus stay bonded. But with all of Rabbi Heller’s characteristic brilliance and compassion for the Jew struggling to stay engaged during this pandemic, I am afraid that the end result will be a profound depreciation of the sacred, which will be extremely challenging to recover. There are different strategies that achieve his goals without creating situations in which our community members violate *hilchot* Shabbat.

Rabbi Heller’s responsum is extremely well-written and researched. In my opinion, he makes a very strong case for the permissibility of streaming a **one-way** service (not an interactive video conference) on Shabbat and holidays if it is set up prior to candle lighting. If Rabbi Heller had separated one-way livestreaming from the other aspects of his responsum, I would have voted for it, but the scope of his work became too far-reaching.

Rabbi Heller does not offer virtual platforms for Shabbat services as a last option after sincere attempts to engage our communities in less *halachically* problematic ways. I would be more comfortable with a *teshuvah* that guides rabbis to avoid streaming services until it is clear that all other approaches have failed (I will list these below). This would indicate a true *she’at hadehak*. Rather than writing this as a *teshuvah*, I think it should have been a *hora’at sha’ah* that concludes in Elul of 5782, with an extension if needed. Instead, this *teshuvah* was not written to expire with the pandemic. What we have here will be the cornerstone responsum for a new Shabbat engagement on Zoom and other interactive virtual platforms for Conservative Judaism and I am opposed to this concept.

In this dissent I aim to share the following: rabbinic guidance for creative leadership that should replace the need to Zoom on Shabbat and would lead to spiritual and religious growth for our congregants; my disagreement with Rabbi Heller’s application of some fundamental halachic concepts to this pandemic and subsequently, my conclusion that multi-way video conferencing is a violation of *hilchot* Shabbat; and my assessment of the ways in which this responsum fundamentally shifts the theological underpinnings of what we often refer to as “the spirit of Shabbat.” I also aim to amplify the voices of the rabbis whose lay leadership partners are inappropriately using this *teshuvah* to place undue pressure on them to violate their principles as well as some of the core concepts esteemed by Judaism and the Conservative Movement.

***Strong Religious Leadership in Destabilizing Times***

Rabbi Heller began his responsum by stating that part of the mission of his *teshuvah* is to provide our communities with guidance, which we desperately needed at the onset of this pandemic. He writes, “As a Conservative movement, we value *halakhah*, and as a committee, we seek to provide guidance to rabbis and laypeople as to how to live lives strengthened and inspired by its observance.” I wished to see this guidance reflect the belief that our rabbis can inspire people to discover new ways to meet their religious and spiritual needs during this time without violating our core belief in the sanctity of Shabbat. We have multiple ways to sustain the bonds of our communities, and all of these should be employed prior to relying on leniencies that contravene Shabbat.

At the onset of this pandemic, the job of a religious leader was to ensure the well-being of their congregants and offer comfort and reassurance. Once systems of support were established, religious leaders had to pivot in order to inspire people to discover new dimensions of their spiritual lives. As the world destabilizes, a leader must ask, “Is there an opportunity for growth in this challenge? Is there wisdom to be harvested that we would not have unearthed without the painful circumstances that we face?” Rather than create new opportunities for religious and spiritual growth, we very quickly found ways to replicate exactly what we did before this pandemic but on virtual platforms. Rabbi Heller’s responsum is an endorsement of replicating exactly what we did before this pandemic but on virtual platforms, some of which violate shabbat. Instead, he should have first required attempts to engage our communities in new ways that do not violate *hilchot* Shabbat while also educating and facilitating our congregants’ religious growth.

For many Jews in the Conservative movement, the synagogue is the focal point of religious observance and spiritual meaning. This is often due to the fact that they have not been educated and empowered to engage in ritual practice on their own. As such, there is a dependency on the synagogue to provide religious observance and spiritual meaning to people. Since our synagogues have been shut down, those who depended on our institutions for their religious and spiritual fulfillment have felt lost. As a movement, we could have seized upon this moment as an opportunity to strengthen the skills and confidence of our members to “do Judaism” at home, to wit, become more Jewishly independent. Instead, we provided them with the same, largely passive, Shabbat morning experience that we offered before the pandemic. I wish this responsum encouraged a totally different educational and halachic approach to this moment, guiding rabbis to first build educational frameworks to empower and educate Jews in new ways. What follows are the stages of guidance that I wish this *teshuvah* articulated, only permitting Zoom Shabbat services after all of these steps are implemented and determined to be insufficient to maintain communal bonds:

- Harness financial resources to build an initiative to educate individual Jews and families to learn how to observe Shabbat at home, on their own. The goal of this initiative is to create opportunities for Jews to feel confident that they can have a meaningful spiritual life outside of the synagogue, build their skills and independence, and thus begin to reduce the dependency on the synagogue to provide them with the totality of their Jewish experience.

- Invest in a rich, engaging, and spiritually uplifting virtual Kabbalat Shabbat service that will offer the community an opportunity to experience communal bonding, prayer, and moments of inspiration.
- If, despite these concerted efforts, the rabbinic and lay leadership of the synagogue determine that the communal bonds are fraying, at this point, it would be permissible to offer a virtual platform for Shabbat morning services as a means to, quite literally, save the community from falling apart. This would justifiably become a *she'at hadehak* (more on this below).

This *teshuvah* skipped too many steps that are critical to justify the leniencies that Rabbi Heller offers. Even if Rabbi Heller were to argue that these or similar educational approaches do not appropriately fit in a *teshuvah* but rather a letter of guidance to our communities, he could have made reference to such steps and argued that the permission he gives to Zoom on Shabbat and holidays is predicated on first attempting to survive and thrive during this pandemic without violating Shabbat.

### *What About Shabbat Morning Services? They Hold our Communities Together!*

Many of my colleagues justify Zooming on Shabbat because they say that they must preserve the core value of large communal prayer on Shabbat. The instinct to preserve that value is wise, however, I have not seen one convincing argument as to why this *must* be done on Shabbat morning rather than Friday night. Most Conservative synagogues have a much larger Shabbat morning attendance than they do on Friday nights. During this pandemic, we simply could have reversed this trend and established Friday night as the time for large communal prayer (in the winter months when Shabbat starts early, a Saturday night *maariv*, *havdalah* and *melaveh malkah* would suffice to keep the community together and engaged). When using a virtual platform, Friday night services are preferable to Shabbat morning. Since Kabbalat Shabbat is before Shabbat begins, people can use their computers without compromising Shabbat observance in any way. The service is about one hour, which is the limit of effective engagement on Zoom. My colleagues tell me, “But David, my community prefers Shabbat morning services to Friday night!” Yes, of course. People also prefer to shop without gloves and jog without masks and occasionally go out for dinner. But this is a time in which people understand that they must be flexible. When provided with a compelling reason to change our ways, we will rise to the occasion. Had this *teshuvah* directed rabbis to make a compelling case for large communal prayer gatherings on Friday nights and a framework of support for people to learn how to build a robust religious and spiritual experience alone on Shabbat mornings, we would have signaled that we believe that people will understand what is at stake in preserving the sanctity of Shabbat, while demonstrating our commitment to their personal growth and our communal cohesiveness.

Rabbi Heller acknowledges the approach that I just outlined in his paper, but quickly rejects it with an assumption that I am not ready to accept. He writes,

It must also be pointed out that there are six other days of the week on which there are much lower halakhic barriers to using technology. Why not focus our energies on those days, and preserve the sanctity of Shabbat and Yom Tov as

“screen free” times? There is certainly an argument to be made in this direction, and some communities may choose to offer kabbalat shabbat and havdalah and leave Shabbat intact. However, for most Jews, communal prayers on Shabbat and holidays (to say nothing of the High Holidays) are a central focus of the prayer experience, and it may not be possible to shift this focus.

His answer assumes that most Jews would not be able to shift their focus from a large Shabbat morning prayer experience to Friday night, but why? He leaves this question unanswered and does not outline an approach that suggests the permissibility to Zoom on Shabbat is linked to sincere attempts at first engaging our community in other ways. This assumption minimizes the potential impact of strong leadership and underestimates the convictions of our congregants, while defaulting to the already existing dependency on the synagogue to facilitate religious and spiritual experiences.

There is, of course, a consumer market issue at play here. Once the leadership of our movement failed to unify rabbinic and lay leaders around the above approach to Shabbat prayer during the pandemic and rabbis began Zooming on Shabbat, it became harder and harder to lead against that trend. Rabbis willing to compromise their own commitments to *halacha* were lifted up as being more flexible to meet their congregants’ needs than those of us who felt there was a better way. This responsum gave halachic credence to that claim, which will only intensify as more and more synagogues demand the same Shabbat morning product offered by their “competitor synagogues.”

### ***Points of Halachic Disagreement***

The leniencies on which Rabbi Heller’s work relies are premised on the application of some fundamental halachic concepts to this moment in time. He applies the concepts of *she’at hadehak* and *pikuah nefesh* to this pandemic without making a strong enough case for either. Without establishing the basis for these principles in a convincing way, I cannot accept the attendant leniencies upon which he relies to permit two-way video conferencing, like Zoom. Though this is a trying time with many challenges, I think Rabbi Heller’s claims are exaggerated. I will outline them below.

### ***Minyan***

Rabbi Heller’s *teshuvah* gets *halachically* complicated around the issue of *minyan*. He cites the *hora’at sha’ah* of the CJLS that states very clearly that the majority of its rabbis and scholars rule that it is forbidden to use Zoom to constitute a minyan from ten different physical locations. This creates a paradox for Zooming on Shabbat. In Rabbi Heller’s words:

If, due to the pandemic, 10 Jews cannot gather in a single physical location, then the options for participation would be the same as those permitted to such a group during the week by CJLS rulings. For some congregations, this would mean that no items requiring a minyan would be included. Congregations that rely on the temporary “Zoom ruling” to include items requiring a minyan would have to use a multi-way link that allowed participants to see and hear each other.

In other words, if one follows the majority opinion of the CJLS with regard to how to establish a minyan when ten Jews can't gather in one place, neither one-way streaming nor multi-way video conferencing enables a person to recite *kaddish*, *barchu*, the repetition of the *amidah*, or have a Torah reading on shabbat. Therefore, regarding liturgy, this service is no different than a person who prays alone at home. The only reason to stream such services is to enable the community to stay connected, which could be done on Friday night without violating Shabbat. If one accepts the *minority* ruling of the CJLS that says one may establish a minyan from ten different locations, this would only work if one utilized multi-way video conferencing, a far more problematic *halachic* option on Shabbat. Though Rabbi Heller leaves these choices up to the *mara d'atra*, to actually make a minyan through Zoom on Shabbat requires the use of a more *halachically* problematic virtual platform while relying on a position that the majority of the CJLS rejects (that one can establish a minyan through Zoom).

There is an incoherence to this logic, which might stem from the fact that a majority of the CJLS ruled that one may not establish a minyan on Zoom, but then overwhelmingly voted in favor of a responsum that permits using Zoom on Shabbat to do that very thing. From anecdotal evidence it seems that most synagogues use this *teshuvah* to justify Zooming on Shabbat *and* reciting the prayers for which one must have a minyan.

### *She'at Hadehak*

Rabbi Heller asserts that this moment in time is a *she'at hadehak*, a dire time of unusual circumstances. It is certainly unusual, but to argue that one may engage in the violation of prohibitions because of the uniqueness of this particular moment is a stretch. He does not offer any working definition of the concept of *she'at hadehak*, nor does he define its parameters. What are the precedents in our history that help us determine whether this time fits this *halachic* concept?

It is true that we should not attend synagogue at this time, but we must ask whether or not that inability to attend communal prayer triggers a *heter* to violate Jewish Law. I do not think that Rabbi Heller effectively makes the case that it does.

Rabbi Heller writes,

The principle of *she'at hadehak* exists because we recognize that unusual situations arise, and we are in the midst of such a situation...Offering electronic access to services could be essential to maintaining the cohesiveness of many communities until for [sic] many more months after that.

I would argue that daily congregational engagement from Saturday night Havdalah through Friday Night Kabbalat Shabbat is sufficient to meet the needs for communal prayer and study while maintaining the strength of communal bonds and cohesiveness. This is especially true if, like I suggested above, synagogues invest in creating a widely attended and interactive Friday night Kabbalat Shabbat service. If a synagogue does all of this, is it really such a pressing need to

pray together on Shabbat morning, such that we might be willing to violate serious *halachic* prohibitions and the sanctity of Shabbat?

One way for Rabbi Heller to have addressed this question would have been to define what it means for a community to lose cohesiveness and suggest that if a community meets these criteria, it would be then considered a *she'at hadehak* for that synagogue. This would then trigger the attendant leniencies that would enable the synagogue to use virtual platforms on Shabbat. In this sense, the justification for the leniencies he employs would be derived from the fact that every attempt to hold the community together failed and there really was no other option. Each community would therefore assess whether this time was a *she'at hadehak* for themselves.

The confirmation of this misapplication of *she'at hadehak* can be seen in Rabbi Heller's *psak*. There he writes (the bold is my emphasis), "After the current crisis is over, some of the leniencies discussed here **may** no longer apply, but there will still be real human needs and demands to be met through electronic access to ritual." This suggests a more lasting change that will live among us beyond the time that he describes as pressing.

### *Pikuah Nefesh*

Rabbi Heller makes two claims about *pikuah nefesh*. The first is that in-person services could actually unwittingly spread disease and take many lives. He is correct about this. But why does this mean that it is permissible to violate rabbinic and maybe *Toraitic* prohibitions by Zooming services on Shabbat? Again, a synagogue could simply focus its Shabbat prayer experience on Friday night to maintain communal bonds. Since when is one permitted to violate Shabbat in order to pray with one's community when one prayed with them the night before?

This brings me to Rabbi Heller's second claim about *pikuah nefesh*, which is that the loneliness of sheltering at home itself poses a danger to the lives of those who are isolated. If a community is engaging its membership all week, it is difficult to make this claim. One can feel the ambivalence that he has while making this claim. First he writes,

While most people who might access a stream are not ill at a life-threatening level, there is also precedent for setting aside some Shabbat and Yom Tov prohibitions for the sake of those experiencing severe emotional distress, even in the absence of immediate physical danger... There is significant research that regular attendance at religious worship has psychological benefits, and while that research has not been extended to remote participation in services, anecdotal evidence suggests that for those who are home-bound, being able to experience communal worship, even to the limited extent enabled by virtual means, is a tremendous source of comfort and encouragement.

Yet the very next line casts his own ambivalence into the responsum and the possibility that this is not really a case of *pikuah nefesh*:

There may be particular benefits for those using a multi-way system that allows members of the community to see each other and interact, **though obviously those opportunities could also be created during the week** (my bold for emphasis).

In my opinion, his resolution of this tension is not compelling enough:

However, Shabbat and holidays have a special place in the Jewish heart. Prolonged, enforced absence from this worship, or being excluded from a unique lifecycle milestone, may have more serious negative psychological effects.

For the overwhelming majority of our congregants, this will be a challenging year with many disappointments and a stinging loneliness. We can minimize this loneliness and the negative psychological effects of our isolation with a robust virtual engagement all week, including Friday night services. To argue that violating Shabbat in order to save lives of Jews who are dealing with emotional distress stretches the principle of *pikuah nefesh* too far. If Shabbat has a special place in the Jewish heart, if inspired and provided with the right guidance, then Jews can find new ways to pray together while preserving that sanctity.

This is also a time in which synagogues must be vigilant about offering support to those who are in deep psychological distress. Regular communication with members that reinforces all of the ways in which they can get help and support is crucial. Rabbis must facilitate this while decreasing the stigmas attached to mental illness and emotional distress.

### *Unrealistic Application of Halachic Recommendations*

Rabbi Heller strives mightily to create a traditional method of utilizing virtual platforms for Shabbat services, but to make this work, an unrealistic amount of consistency and dependability on technology is required. For example, Rabbi Heller writes, “Participants at other locations should be guided to be silent or hushed while the leader is singing, or be muted in a halakhically manageable way, so that the leader can be heard clearly.” He prefers that Gentiles be designated to “produce” the Zoom service so that Jews do not have to interact with their computers in this way, but shortly after his responsum passed, Zoom changed its program to remove the ability for a host to unmute people without them interacting with their machines. Technology is not shaped by rabbis and we will not be able to control the ways in which it will demand interaction from us that will violate the prohibitions and spirit of Shabbat.

It is highly likely that large numbers of people, including the clergy, will be required to fix the technological glitches that inevitably unfold in order to run services. In fact, many of my colleagues who are using Zoom on Shabbat morning have shared the ways in which, despite all of their planning, the technology fails to act as planned and they, fellow staff members, and / or congregants must violate Shabbat in order to rectify these issues in real time. The theoretical possibility of producing a service that doesn't violate Shabbat is not sufficient when on the ground, we know that this is highly unlikely.

### *Summary of Main Halachic Disagreements*

In their dissents, Rabbis Levin and Reisner shared the other aspects of Rabbi Heller's halachic reasoning with which I disagree. Suffice it to say, since I do not agree that the principles of *pikuah nefesh* and *she'at hadehak* apply at this time, I do not accept the leniencies that Rabbi Heller permits, such as interacting with our computers, muting and unmuting ourselves, changing the Zoom viewer through speech, actively and intentionally recording prayer services, and asking Gentiles to do things for us that are not for the sake of fulfilling a mitzvah (i.e. spotlighting people, muting speakers, etc.).

### ***The Sanctity and Spirit of Shabbat***

A *teshuvah* as significant as this one ought to provide a robust exploration of the theological changes that it creates. *Halacha* is a means to actualize values, concepts, and principles. The theological underpinning of Shabbat is the notion that God created the seventh day as holy, and our observance of the day actualizes that holiness as an expression of our covenant with God. How might using technology as a means to observe Shabbat impact its holiness?

When teaching about the concept of Shabbat, Conservative rabbis have religiously turned to the work of one of our movement's greatest intellectual heroes, Rabbi Abraham Joshua Heschel. There is hardly a class on Shabbat that does not include Heschel's *The Sabbath* as its conceptual anchor. Heschel has written masterfully on the sublime and transformational power of Shabbat, and we rabbis, his students, have preached this tirelessly for the last seventy years. In this book, Heschel teaches the following:

Menuha which we usually render with 'rest' means here much more than withdrawal from labor and exertion, more than freedom from toil and strain or activity of any kind. Menuha is not a negative concept but something real and intrinsically positive... 'What was created on the seventh day? Tranquility, serenity, peace, and repose.' (Genesis)... To the biblical mind menuha is the same as happiness and stillness, as peace and harmony...

To set apart one day a week for freedom... a day for being with ourselves, a day of detachment from the vulgar, of independence of external obligations, a day on which we stop worshipping the idols of technical civilization... is there any institution that holds out a greater hope for [humanity's] progress than the Sabbath?"

Rabbi Heschel teaches that Shabbat observance actualizes our liberation from the ceaseless societal demand to produce, and it transforms us into partners with God in creating tranquility, peace, and repose. In our communities, computers, iPads, and smartphones are the machines that maximize our production and enable labor. Does logging into a computer enable us to partner with God to actualize the tranquility of Eden and liberate ourselves from the demands of productivity? I am highly skeptical. To my thinking, this is a return to Egypt, not the liberation from it.



It is highly likely that during a virtual Shabbat service, participants will be tempted to open other windows on their computers and send work emails, read the newspaper, send text messages, or even purchase something online. Knowing that people are multitasking online during Shabbat morning prayers undermines the sanctity of this experience for everyone, and I do not believe that it is realistic to expect people to refrain from doing this in the privacy of their homes. The thought that during the recitation of the Amidah someone may be sending a work email or buying a new tennis racket impacts the sanctity of the service that we are trying to create. If we are going to sanction virtual services then these questions should be explored in more depth.

## Conclusion

This pandemic has instigated a time of great destabilization, loss, and fear. Rabbi Heller uses his brilliance and sensitivity to offer our communities a way to pray together on Shabbat without what he understands to be a violation of the core principles of *halacha* or our values. To be honest, many of our communities were already doing this prior to the publication of his *teshuvah*. Rabbi Heller's work aims to provide these communities with a thorough investigation of the *halahic* issues involved in that choice, and a way to legislate the leniencies that they were already employing. This impulse is to be lauded.

I am afraid, however, that what he wrote will be used in ways that he did not intend. As Rabbi Resiner wrote in his dissent, "The policy so carefully set out in this *teshuvah* falls into a trap we have fallen into before – it makes that which we do not feel is the right thing to do that which is probably going to happen. It legislates the realistic over the ideal." These words are an echo of the Kotzker's question, "To what end?" Despite Rabbi Heller's commendable intentions and his impressive halachic research and thought, I think this *teshuvah* and its overwhelming support from the CJLS will create a new norm in communal prayer which will, in the long run, weaken communal bonds, lower the commitments that we can expect from people to show up for one another, and diminish the sanctity of Shabbat.

The rabbis in our movement who have tried to lead their communities through this pandemic without utilizing virtual platforms on Shabbat, in particular multi-way video conferencing software like Zoom, are now under tremendous pressure to do so. The market forces will prioritize competitive offerings over the principles and values that have always shaped our communities, and our colleagues are unlikely to be able to withstand this pressure for too long. I want to express my support for my colleagues who have felt isolated in their leadership by the Conservative Movement's embrace of this responsum. I also want to suggest that when the leaders of our movement speak about this change, they take special care to also lend their support of and appreciation for the rabbis whose vision does not align with this shift.

May our communities be strengthened by our disagreements and the love of Torah that we share.