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Counting a Minyan via Video Conference

Approved on July 23, 2021. The P'sak offers several options. For this paper, the committee voted on options for counting a minyan individually. Each option was subject to a separate vote, and vote totals can be found with the P'sak, on page 50.

She'elah May a minyan be constituted when more than 10 adult Jews can see each other videoconference, but are not physically located in the same place?

Teshuvah¹ During the COVID pandemic, when in many communities gathering 10 Jews in one place was considered unsafe, or perhaps even illegal, the CJLS issued emergency guidance² allowing for the possibility of counting a minyan via remote means. This guidance, presented as a minority opinion, was limited in three key ways:

1. This was constituted as a *hora'at sha'ah*- a temporary measure for unprecedented times that would not extend beyond the pandemic.
2. There was consensus that this approach would not suffice for the public reading of the Torah with the traditional *berakhot* (the Torah could be read from a Humash, or from a scroll without the traditional *berakhot*).
3. Some limited the permission further only to Mourner's *Kaddish*.

Still others suggested that videoconferencing can be used for communal prayer, but that in the absence of a physical minyan, these gatherings omit all *devarim shebikedushah* (items that specifically require a minyan, including *Kedushah*, *Kaddish* and Torah reading.

Zoom became the most common technology for minyanim of this type.

I. Introduction

As of this writing (July, 2021), communities are in different phases of the pandemic. The original *hora'at sha'ah* will no longer be considered to apply in a particular community at such time that the pandemic is considered to be ended in that community. The time when it is minimally safe and legal to gather 10 people in person may arrive long before it is possible to gather in larger numbers without precautions, and neither of these milestones may align with when people feel

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah. This teshuvah was submitted by the CJLS in a fast-track process intended to provide answers expeditiously.

¹ Thank you to all the members of the CJLS who offered invaluable feedback, including Rabbis Pamela Barmash, Elliot Dorf, Avi Susan Grossman, Barry Leff, and Tracee Rosen. I owe a particular debt of gratitude to Rabbi David Fine, whose thoughtful opposition strengthened the paper significantly. My thoughts were informed by conversations with many colleagues and scholars beyond the CJLS, as well. The work of Rabbi Yonatan Rosenzweig suggested several sources that I had not already discovered. In addition, some of the ideas for this *teshuvah* were workshopped with a "Professional Learning Collective" as part of the 2021 Rabbinical Assembly Convention. I am grateful to the members of the Collective, Rabbis Jeffrey Abraham, Rachel Ain, Joshua Ben-Gideon, Margaret Cella, D'ror Chankin Gould, Fredda Cohen, Tirza Covell, Meslissa Crespy, Barry Cytron, Warner Ferratier, Vernon Kurtz, Nathalie Lastreger, Jonah Layman, David Lerner, Mark Mallach, Rachel Marder, Peretz Rodman, David Rosen, Marcus Rubenstein, Steven Rubenstein, Rachel Salston, Elliot Schoenberg, Michael Schwab, Steven Schwarzman, Bryan Wexler, and K'vod Wieder. Emily Volz served as a CJLS fellow and offered feedback as well.

² <https://www.rabbinicalassembly.org/story/cjls-guidance-remote-minyanim-time-covid-19>

comfortable returning to pre-pandemic levels of activity. For a deeper analysis of when pandemic restrictions and permissions might expire in a given community, please see “Are We there Yet? What Happens after the Pandemic.”³

The “Zoom Minyan” became popular in unanticipated ways. Many communities that offered services through virtual means found that attendance increased compared to the number of Jews attending before the pandemic, especially for weekday worship.⁴ Some smaller communities that did not have the numbers to sustain a daily minyan suddenly found that they were able to do so⁵ through Zoom. Individuals who had previously not been able to participate in daily communal prayer began doing so. In many cases, these individuals who joined Zoom Minyanim had not been engaging in daily prayer even as individuals! However, other communities did not accept this option, even during the pandemic, and there is well-justified concern as to whether this practice can be justified, particularly in the absence of the unprecedented circumstances. Furthermore, even if a theoretical basis can be found for this practice, its continuation is a fundamental change to the nature of minyan as a *halakhic* category and it may alter the fabric of community that minyan is meant to inspire.

In this paper, I will present guidance for communities that might seek new grounds to continue the Zoom Minyan post pandemic. Some readers will expect that a *teshuvah* will present a single targeted answer to a question asked by a specific individual or community. In fact, sometimes *teshuvot* may take a more open form, more similar to a monograph or even the approach that might be found in a code, by presenting several approaches that may be considered, even while rejecting others. Even though the author might see one approach as preferred, there might be more than one validated answer, and such a *teshuvah* will lay out the reasons why each approach might be most appropriate for a particular community or situation. My goal here is provide this latter type of guidance, and to suggest several conclusions that can be drawn from the tradition, in the spirit of *eilu v'eilu*, these and those are both the words of the Living God, and give rabbis the tools to make the most appropriate choice for their own communities.

³ Rabbi Joshua Heller “Are we there yet? What Happens After the Pandemic.” HM 427:8:2021γ
<https://www.rabbinicalassembly.org/sites/default/files/2021-07/heller%20pandemic%20end%20teshuva.pdf>

⁴ In my own B’nai Torah community, pre-pandemic, our daily minyan would miss a minyan as often as several times a month. We missed a “virtual” minyan only once during fifteen months of pandemic, and often had more than 20 households participating, a number that we almost never attained for daily minyan in person.

Outline:

While only the full paper provides the detail needed to decide how the *halakha* would apply in a given community or situation, the following outline may be helpful for those who seek a roadmap through its reasoning.

- I. (page 4) Minyan is an ancient and essential Jewish concept. In 2001, the CJLS agreed overwhelmingly that if a minyan is constituted in one place others may participate remotely, and during the COVID-19 pandemic, this practice became more widely accepted across the spectrum of Jewish observance.
- II. (page 6)The need for a minyan, a quorum of 10, for certain prayers and rituals can be understood as having three possible motivations:
 - A. In order to properly honor God, God must be in the “midst” of a community.
 - B. A minyan is needed in order to make a ritual act “public.”
 - C. To create a sense of God’s presence, the *Shekhinah*, in a group.
- III. (page 9) Most of the classic sources on Minyan define the key criterion to be presence in the same physical space, borrowing from sources and concepts regarding the *eiruv* and the Paschal lamb.
- IV. (page 11) There is, however, another thread in the *halakhic* literature which defines the criterion for being counted in the minyan based whether one is visible to the rest of the group, which comes in part from discussion of the grace after meals, but has precedent from medieval quarantines as well.
- V. (page 16) Ironically, the leader being seen by the participants and vice versa may be more important than the leader being able to hear the participants. This makes it easier to overcome the audio limitations of virtual presence technology currently available.
- VI. (page 20) There are some precedents for technologically mediated presence, including midrashic sources regarding the song at the sea, as well as *halakhic* sources regarding witnesses to the new moon, the ceremony for reciting a blessing of the new moon, as well as lantern glasses, eyeglasses and telescopes. Newer attempts to apply these precedents to one-way television broadcasts and closed circuit television are of limited relevance.
- VII. (page 26) Traditional sources regarding participation at a distance raise concerns regarding a “public space” or something inappropriate interposing between an individual worshipper and the rest of the minyan. I resolve these concerns for the context of virtual minyan.
- VIII. (page 29) Going beyond the precedents in the *halakhic* literature, the way that society sees virtual presence has changed significantly, and this conceptual change must be taken into account.
- IX. (page 35) There are issues of implementation, including the distractions of technology, privacy, and shiva, which I will address. Other concerns, like time zones, implications for remote aliyot to the Torah or service leaders, have broader implications and would benefit from further analysis.
- X. (page 40) There are alternatives to virtual minyan, including trying harder to get a minyan, individual prayer, communal prayer without a constituted minyan, bringing a minyan to those who cannot travel, and combining communities.
- XI. (page 42) In the CJLS’s original *she’at hadehak*, we explored the possibility of permitting a minyan to be counted virtually for some purposes and not others. Is there merit to this approach?
- XII. (page 45) Beyond the *halakhic* argumentation, whatever decision is made will have a profound impact on communities, and those implications cannot be ignored.

A. A Historical Framework

The history of Judaism has always reflected a tension between centralization and decentralization of worship. During the 40 years of the Israelites' wandering in the desert, the Tabernacle was never out of walking range. Deuteronomy contemplates a time when the Israelites would be living spread across the Land of Israel and potentially distant from the Tabernacle. Under those limited circumstances, local altars would be permitted to spring up, but then would later be prohibited with the establishment of a central sanctuary. With the dedication of the First Temple, this prohibition of alternate worship sites was theoretically enacted, but in fact observed mainly in the breach, as most of latter prophetic literature and archaeological evidence attest. However, King Solomon's speech of dedication of the Temple⁶ speaks repeatedly about the Israelites (and even other nations) directing their words of prayer and their hands towards the Temple, even from exile.

In some sense, the most ancient precedent for virtual prayer was the system of the *mishmarot* and *ma'amadot*. The Biblical basis for the system is found in I Chronicles 24-26, as priests and Levites were divided into shifts that rotated service in the Temple. Rabbinic texts⁷ preserve a tradition that these 24 divisions were paralleled by 24 divisions of Israelites. Each division would send representatives to the Temple in Jerusalem for two weeks out of the year, and the remainder would gather in the town square and recite a liturgy that complemented the ritual being conducted in the Temple itself, copying some of the elements, adding unique ones, and, of course, omitting the sacrificial order. Worship at the periphery was differentiated from worship at the center, but still meaningful.

When the Temple was destroyed, the synagogue became the focus of Jewish prayer life, though individual prayer was certainly to be encouraged as well. For centuries, Rabbinic Judaism thrived on the continued tension between centralized and decentralized ritual, with two poles no longer being Temple and synagogue, but synagogue and home.

The COVID-19 pandemic and the rise of technologically facilitated forms of communication have created a new dimension to this tension. They have magnified the forces and counterforces pulling more insistently away from the neighborhood synagogue towards the home and towards new centers. During the pandemic, many rediscovered home-based ritual and prayer. Meanwhile, others made a virtue of necessity. As services from hundreds of congregations could be accessed through technological means, the sights and sounds of synagogues around the world could be brought into the home as well. Paradoxically, online worship, while coming into the home, has the potential to create a greater pull towards new centers, as centralized synagogues⁸ can now reach Jews around the world, potentially marginalizing local neighborhood congregations.⁹ For the first time in thousands of years, there is no geographic barrier to having a single, central worship service witnessed by every Jew in the world!

⁶ I Kings 8.

⁷ Mishnah *Ta'anit* 4:2-4:4, Mishnah *Tamid* 5:6.

⁸ Or indeed Central Synagogue.

⁹ For one assessment of these challenges, see Rabbi Ariel Stofenmacher, "On Live Streaming and Competition" 2020 <https://www.rabbinicalassembly.org/story/live-streaming-and-competition> .

B. Rabbi Reisner and the One-way Minyan

It has become widely accepted that if there is a minyan constituted in one place, those who are able to see or hear and respond can join in and fulfill the obligations associated with communal prayer, including reciting mourner's kaddish and *kedushah*, or hearing and responding to the words of the leader, and the reading of the Torah. Rabbi Avram Reisner¹⁰ has already laid out the parameters for extending this approach to virtual means. When he wrote his responsum in 2001, the idea of multi-way video conferencing was in its infancy, and so his assumption was that participants would either be watching a one-way stream or participating via audio conference. Today, technology makes it possible for all the participants in a group to see each other if they choose to do so. This method of joining community together is even more powerful than a one-way stream, because it allows for a much greater sense of connection.

During later stages of the COVID-19 pandemic, as in-person worship was able to resume in limited numbers, communities across the spectrum began offering remote access to services constituted with a minyan in one place, whether or not they were aware that they were following Rabbi Reisner's reasoning.

While providing a multi-way solution presents challenges to the letter and, even more so, the spirit of Shabbat and Yom Tov, these challenges are not necessarily greater than those of providing a one-way stream. As such, I will address the issues of videoconferencing on holy days separately in an update to my paper on streaming on Shabbat and Yom Tov.

However, the approach suggested by Rabbi Reisner in our own movement and embraced by many other poskim during the pandemic still assumes an important restriction. It is predicated on the premise that there is a full minyan constituted in a single location, and others are joining in remotely, as reflected in the *Shulhan Arukh*.¹¹

היו עשרה במקום אחד ואומרים קדיש וקדושה אפ"י מי שאינו עמיהם יכול לענות וי"א שצריך שלא יהא מפסיק טינור
או עכו"ם :

If ten are located in one place, and they say Mourner's *Kaddish* or *Kedushah*, even one who is not with them can answer, and there are those who say that there should not be filth or idolatry¹² between them.

Can this limitation, requiring that ten Jews must be in the same physical space in order to constitute a minyan, be overcome in order to permit doing so through technological means? Should it be?

¹⁰ Rabbi Avram Reisner, "Wired to the Kadosh Baruch Hu: Minyan Via Internet" OH 55:15.2001.

¹¹ *Shulhan Arukh* OH 55:20.

¹² There is a lively debate among *aharonim* as to whether the abbreviation עכו"ם in this context refers to idolatrous materials, or idol worshippers. Karo, in the *Beit Yosef* (OH 55:20), seems to feel that the prohibition refers to idolatrous materials, and cites the Mahari Aboab. Rabbi Hayim David Azulai (*Mahazik Berkhah* 55:15-16) agrees. However, Eliyah Rabba OH 55:18, Magen Avraham OH 55:16 and Be'er Heitev OH 55:17 all reject this idea and apply it to the idolatrous materials, not people. The Mishnah Berurah (OH 55:65) says that perhaps it is both. The answer to this question has other implications, but does not significantly affect my analysis.

II. The Meaning of Minyan

The concept of minyan is one of the most essential and distinctive concepts in Jewish practice as opposed to that of other faith traditions. While a comprehensive comparative analysis is far beyond the scope of this paper, there are many faith traditions whose rituals require the presence of the “community,” but I am not aware of others specifying a number with the same level of certitude. For the purposes of comparison: Islam encourages group prayer. For most services even two worshippers are sufficient, while for the Friday *Juma'ah*, different authorities might require anywhere from three¹³ to forty.¹⁴ In Christian groups that observe mass, there is no minimum number of attendees required, only the presence of the officiant.

The concept of minyan and the number required to constitute it are presented as settled law in Mishnah Megillah 4:4:

אין פורסין על שמע ואין עוברין לפני המיכה ואין נושאין את כפיהם ואין קורין בתורה ואין מקטירין בנביא
ואין עושין מעמד ומושב ואין אומרים ברפת אבליים ומנחזימי אבליים וברפת חתנים ואין מונמניו בשם פחות
מעשרה ובקרקעות תשעה וכהו ואדם פיוצא בהו:

We do not recite the liturgy surrounding the *Shema* or pass before the ark to repeat the *Amidah*, or have the priests raise their hands to bless the people, nor do we read from the Torah or conclude with a prophetic reading, nor do we stand and sit at a funeral, nor do we say the blessing of the mourners or stand in rows for them, nor do we recite the wedding blessings, or invite to recite grace with God's name, with less than ten. Assessing the value of consecrated land requires nine and a Cohen, as does the value of a person.

As is typically the case, the Mishnah does not provide the reasoning behind the practice. The classic source explaining origins of the practice, in the Babylonian Talmud,¹⁵ makes an unusual stretch of argumentation. It begins with a statement attributed to Rabbi Yohanan that the source for this practice is Leviticus 22:32: “I shall be sanctified in the **midst** (*betokh*) of the children of Israel. A secondary analysis attributed to Rabbi Hija uses the maneuver of *gezerah shavah*- linking two verses by a common term. It connects the verse in Leviticus to a verse in Numbers describing the rebellion of Korah:¹⁶ “Separate yourselves from **the midst** (*mitokh*) of the **congregation** (*ha-edah*).” However, the rebellion of Korah consisted of 250 individuals! A second *gezerah shavah* is needed to reach the number ten, linking the word congregation to another verse (Numbers 14:27) that does refer to ten participants in the rebellion of the spies. “How long will I bear with this evil **congregation** (*eidah*).” This bit of textual analysis is, in fact, as much of a stretch as it might seem. While the *gezerah shavah* is a routine rabbinic exegetical tactic, two of them linked together is uncommon.

In fact, there are many easier ways to reach this conclusion. For example, the parallel text in the Jerusalem Talmud¹⁷ does not quote the original anchor verse from Leviticus and cites two alternative readings. One connects the word *eidah* from the spies directly to a different, unquoted source.¹⁸ The other connects the word *betokh* (presumably from Leviticus 22, as cited in the

¹³ <https://www.amjaonline.org/fatwa/en/87735/the-ruling-on-praying-jumuah-through-broadcast>

¹⁴ <https://en.wikipedia.org/wiki/Jumu%27ah>

¹⁵ B. *Megillah* 23b and see also B. *Berakhot* 21b.

¹⁶ Numbers 16:21.

¹⁷ Y. *Megillah* 30a.

¹⁸ Most likely Psalms 82:1 “God stands in the *eidah* of the divine,” which is cited in other places.

Babylonian Talmud) directly to the 10 children of Jacob who come to Egypt in the midst (*betokh*)¹⁹ of a larger group who arrived seeking sustenance. It is possible that the two-jump version in the Babylonian Talmud using both *betokh and eidah*, is a conflation of these two separate one-jump explanations. None of the textual linkages cited in so far is obvious.

In theory, the rabbinic tradition could have offered any number of more felicitous sources for the concept of a minyan. Abraham bargains with God that Sodom must be saved if there are even 10 righteous people left in the city.²⁰ In Ruth 4:2, Boaz gathers a crowd of 10 to witness his marriage to Ruth (and indeed another Talmudic source²¹ cites this as the reason for a minyan being needed for the recitation of the marriage blessings). It is just as plausible that the origins of the concept of 10 as a quorum date back to the time of the writing of the book of Ruth, if not earlier and the views recorded in the Talmud are seeking to assign specific reasoning to application to the practices that were of interest to them.

While these passages present very similar reasons for minyan, there are shades of distinction between them. The assumption of the Babylonian Talmud in Megillah is that the reason for minyan is that God's holiness is only properly asserted in community. In that sense, the requirement of minyan is necessary for God's honor.

The idea that God is better honored when many participate is reflected in many contexts beyond that of minyan. The verse "A numerous people is the glory of a king"²² is cited at least eight times in the Babylonian Talmud, and in many later sources, to indicate that a mitzvah is better performed when multiple individuals each play a role²³, or when one individual performs it in the presence of many.²⁴

The passage from Ruth, and the parallel mishnaic rulings, related to assessment of property,²⁵ suggest a slightly different shade of reasoning for minyan, namely that 10 constitutes a "public" gathering, suitable for something to be known.

There is a third possibility, which is that the presence of 10 creates a different spiritual sense among those assembled. For example, Berakhot 6a cites a view attributed to Ravin bar Rav Ada "From where it is it derived that when ten pray, that the *Shekhinah* is with them? As it says (Psalm 82:1) "God stands in the *eidah* of the divine."

However, this is not only true for prayer: Pirkei Avot 3:6 offers the same possibility for those gathered for study, using the same verse: "Rabbi Halafta of Kefar Hanina said: when ten sit together and occupy themselves with Torah, the *Shekhinah* abides among them, as it is said:

¹⁹ Genesis 42:5.

²⁰ Abraham Ibn Ezra suggests this approach in his comments on Genesis 18:28.

²¹ B. *Ketubot* 7a.

²² Proverbs 14:28.

²³ For example, B. *Yoma* 26a and B. *Pesahim* 64b, with regard to having the elements of the Temple ritual assigned to multiple individuals.

²⁴ See B. *Berakhot* 53a in reference to reciting blessings, and other examples I will cite below.

²⁵ This aspect story of Ruth is an example of the blurring of lines between marriage and property law in some Biblical sources. For a discussion of the conflation of marriage and ownership in rabbinic and Biblical society, see Rabbi Gail Labovitz, *Marriage and Metaphor: Constructions of Gender in Rabbinic Literature*, 2009, and Dvora Weisberg, *Levirate Marriage and the Family in Ancient Judaism*, 2009.

“God is present in the congregation of God” (Psalm 82:1). The discussion in Talmud Berakhot continues to find prooftexts for the *Shekhinah*’s presence in even smaller groups, based on the activity in which they are engaged.

How one approaches the question of virtual minyan depends, in some sense, on how one understands the essence of minyan. If the issue is that God’s honor requires an assembly, then one might argue that only a physical assembly will do. This view is reflected even more clearly in a discussion of the *zimun*- the invitation to recite the grace after meals, which requires a minimum of three, and includes God’s name when a minyan has dined together. The Talmud²⁶ concludes that if 10 ate together and one left, that the missing person must return:

כִּיִּן דְּבָעֵי לְאַדְפוּרֵי שְׁמֵי שָׁמַיִם — בְּצִיר מְעַשְׂרָה לְאוֹרַח אֶרְעָא

Because they wish to mention God’s name, less than 10 present is not considered dignified.

The assumption is that God’s dignity requires 10 Jewish individuals to be present if God’s full praise is to be offered. We must (and will) ask whether a virtual gathering creates this level of dignity.

If the issue is one of “public gathering” then the question remains open as to whether a virtual gathering with a given number of participants is any more or less public than a gathering of the same number in an enclosed physical space, and depends, perhaps to a greater extent, on contemporary societal considerations of what constitutes “public.”

The question of how the composition of a group determines whether God’s presence is felt within it is even more open to interpretation. The Talmud²⁷ offers the story of a debate between Rabban Gamliel and a heretic:²⁸

א"ל כופר לרבן גמליאל אמריתו כל בי עשרה שכינתא שריא כמה שכינתא איכא קרייה לשמעיה מחא ביה באפתקא א"ל אמאי על שמשא בביתיה דכופר א"ל שמשא אכולי עלמא ניחא ומה שמשא דחד מן אלף אלפי רבוא שמשי דקמי קודשא בריך הוא ניחא לכולי עלמא שכינתא דקב"ה על אחת כמה וכמה

A heretic said to Rabban Gamliel “You say that the Divine Presence dwells anywhere there are ten. How many Divine Presences are there?” Rabban Gamliel summoned the man’s servant and hit him on his neck. Rabban Gamliel said to him: Why did you allow the sun to enter the house of the heretic? He responded: The sun rests upon all the world; [no one can prevent it from shining] Rabban Gamliel said to him: and if the sun, which is one of a thousand, thousand myriad servants before the Holy Blessed One can rest on all of the world, the Divine Presence how much more so?

This aggadic text acknowledges that groups of wildly different locations and compositions can simultaneously experience God’s presence. It opens the door for us to consider whether physical distance necessarily limits our experience of God’s presence.

III Minyan Defined by Physical Space

²⁶ B. *Berakhot* 45b.

²⁷ B. *Sanhedrin* 39a.

²⁸ Some emend from “heretic” to “Emperor.”

In the *Shulḥan Arukh* the most widely accepted code of Jewish law,²⁹ the primary driver for determining whether a group constitutes a minyan is their presence in a single space. However, the *halakhic* literature offers broader criteria, which for the most part ignore the reason for the law and focus on the definition of being “*in the midst*.”

Much of the rabbinic reasoning surrounding the definition of a shared and distinctive space is found in the Talmudic tractate called *Eiruv*. The primary concern of the tractate is whether different types of spaces can be considered to be joined or separated for the purposes of transporting objects on Shabbat. B. *Eiruv* 92a-b extends this question to the idea of a minyan for prayer. If a small space is open to a larger space, whether they are considered joined or not is determined by where the majority are located. If the leader is in the smaller space, and the minyan is in the larger space, it does not matter because it is as if he³⁰ is in the bigger space. However, if the leader is in the larger space, and the rest of the community in the smaller, he does not “drag” the group into the larger space. Rabbi Aaron Alexander³¹ offered a thoughtful analysis of this question with respect to constituting a minyan of individuals in adjacent spaces. What is relevant for the purposes of this discussion is that *Eiruv* assumes that in order to constitute a minyan, ten must be present in the same physical space, as defined by *halakhah*.

An alternative view is found in the Talmud tractate *Sotah*.³² The priests may offer their blessing even to individuals who are not physically present (in fact, they may be out in the fields, able neither to see nor hear the blessing), as long as those individuals were *anisi*-compelled to be away from the service.

גופא תנא אבא בריה דרב מנימין בר חייא עם שאחורי כהנים אינן בכלל ברכה פשיטא אריכי באפי גוצי לא
מפסקי תיבה לא מפסקא מחיצה מאי ת"ש דאמר רבי יהושע בן לוי אפילו מחיצה של ברזל אינה מפסקת בין
ישראל לאביהם שבשמים

The Gemara returns to the matter itself cited above: Abba, son of Rav Minyamin bar Ḥiyya, taught: The people who are standing behind the priests are not included in the benediction. It is obvious that tall people standing in front of short people do not interpose between the priests and the shorter people with regard to the Priestly Benediction. Similarly, a chest or ark containing a Torah scroll does not interpose between the priests and the people. However, what is the *halakhah* with regard to a partition? Come and hear an answer from what Rabbi Yehoshua Ben Levi said: Even an iron partition does not interpose between the Jewish people and their Father in Heaven; the people are included in the benediction.

In this case, the assumption is that there is a minyan present where the blessing is taking place, but neither presence in the same place nor even the ability to see or hear are necessary- intent alone is sufficient. However, this is only true if unavoidable factors prevented them from appearing in person. Another *sugya*³³ cites this one and extends its reasoning to prayer. Again, the assumption is that there is a minyan present for prayer, but even those who cannot hear or see

²⁹ *Shulḥan Arukh* 55, which I will cite extensively.

³⁰ Whenever I translate pre-modern sources, I will reflect their assumptions about the gender of leaders and participants, even if we might not share those assumptions.

³¹ <https://www.rabbinicalassembly.org/story/counting-minyan-under-one-roof-separate-rooms> .

³² B. *Sotah* 38b.

³³ B. *Rosh Hashanah* 35a.

the leader are excused from their obligation by virtue of the leader's actions, provided they were *anisi*- they were unable to attend due to reasons beyond their control.

The concepts in *Eiruv* and *Sotah* come together in a source discussing the Paschal Lamb, which must be eaten in a single place:³⁴

מִן הָאֵגֶף וְלִפְנֵימֵי, מִן הָאֵגֶף וְלַחוּץ — כְּלַחוּץ. הַחֲלוּנוֹת וְעוֹבֵי הַחוּמָה — כְּלִפְנֵימֵי. אָמַר רַב יְהוּדָה אָמַר רַב: וְכֵן לְתַפְלָה. וּפְלִיגָא דְרַבִּי יְהוֹשֻׁעַ בֶּן לִוִי. דְּאָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לִוִי: אֶפְיֵלוּ מְחִיצָה שֶׁל בְּרִזָּל אֵינָה מַפְסְקַת בֵּין יִשְׂרָאֵל לְאַבְיָהֶם שְׁבַשְׁמִים.

From the inside of the doorway inward is considered as inside, and from the doorway out, is like outside. The windows and the width of the wall are considered as inside. Rav Yehudah, son of Rav, says that the same is true for prayer, and Rabbi Joshua ben Levi disagrees, for he says: “even a barrier of iron will not separate Israel from their father in Heaven.”

The Tosafot³⁵ harmonizes the two views (whether physical presence is necessary or not) by explaining there that the discrepancy between Rav Yehudah and Rabbi Joshua Ben Levi is not with regard to constituting a minyan, but rather as to whether one who hears an already constituted minyan can join in, and this is the most common interpretation of this text.

However, there is yet another approach, which relies not on physical space, but rather on mutual visibility, though granted with regard to *birkhat hamazon*, rather than the daily liturgy. The Mishnah³⁶ explains:

שְׁתֵּי תְּבוּרוֹת שֶׁהָיוּ אוֹכְלוֹת בְּבֵית אֶחָד, בְּזִמְן שֶׁמְקַצְתָּן רוֹאִין אֶלֶּי אֶת אֱלוֹ, הָרִי אֱלוֹ מְצַטְרְפִים לְזִמּוֹן. וְאִם לֹא, אֱלוֹ מְזַמְּנִין לְעַצְמָן, וְאֱלוֹ מְזַמְּנִין לְעַצְמָן

Two groups who were eating in a single home, when some of them can see each other, they join for a *zimun* (summoning to recite the grace after meals), and if not, these summon for themselves and those summon for themselves.

While it might be possible to assert that this text still assumes that both groups are located in the same physical space, the Jerusalem Talmud³⁷ explains that the text is referring to two homes, and the Penei Moshe, one of the classic commentaries on the Jerusalem Talmud, explains that in fact we are referring to two homes that are open to each other, so that the groups can see each other but are not in the same physical space. The Shulhan Arukh³⁸ asserts this latter view as law.

Rabbi Reisner (and most other poskim) reject these as precedents for constituting a minyan for prayer, based in no small part on the conclusion of the discussion in the Babylonian Talmud (cited above) that if one of the 10 leaves, he must return in order to constitute a minyan for the purpose of *zimun*. This is true despite the fact that the Talmud³⁹ clearly allows for a *zimun* of three to go on even if one is not present.

IV. Minyan Defined Visually

The Shulhan Arukh assumes, for the most part, that presence in the same physical space is necessary to constitute a minyan. It replicates the reasoning in *Eiruv* regarding large and small

³⁴ B. *Pesahim* 85b.

³⁵ Tosafot on B. *Pesahim* 85b s.v. v'ken l'tefilah.

³⁶ Mishnah *Berakhot* 7:5.

³⁷ Y. *Berakhot* 7:5

³⁸ Shulhan Arukh OH 195:1.

³⁹ B. *Berakhot* 45b

spaces.⁴⁰ There are, however, two key exceptions to this trend, where the Shulhan Arukh cites criteria based on visual contact, rather than presence in the same physical space:

The first⁴¹ is based on the construction of many European synagogues. The central Bimah would often be raised and/or enclosed to such an extent that it would have to be considered a separate space from the rest of the synagogue. Karo concludes that the bimah is still considered part of the synagogue space. His view is clearly based on a *teshuvah* of the Rashba.⁴²

The Rashba offers two lines of reasoning. The first assumes, but circumvents, the physical configuration reasoning of Eruvin. The bimah should by rights be considered its own disconnected space based on its elevation and the presence of walls. Nevertheless, since it is constructed for the support of the synagogue as a whole, and is contained in its entirety within the larger synagogue space, it is considered part of a unified synagogue space despite the physical dimensions.

The second argument of the Rashba acknowledges that there is still a physical barrier, and perhaps the visual criteria used for *zimun* are equally relevant:

עוד אני אומר שאפשר לומר שכל שרואין אלו את אלו כאילו הן בבית אחד דמי ומצטרפין.

I also say that it is possible to say that as long as they see each other, it is as if they are in one house, and they combine.

The Shulhan Arukh does not specify which line of reasoning of the Rashba he accepts, but the Mishnah Berurah apparently holds that Shulhan Arukh is following the latter (visually oriented) reasoning of the Rashba, because in his comments on OH 55:14, he adds this: “even though there is a barrier between them, because he shows them his face, it is similar to the case of the grace after meals, that as long as some see each other they combine.”⁴³ To be clear, the Mishnah Berurah concludes by saying that this is not his preferred approach, but he provides a window into Karo’s reasoning.

The more significant exception in the Shulhan Arukh is OH 55:14:

מי שעומד אחורי בית הכנסת וביניהם חלון אפ"י גבוה כמה קומות אפילו אינו רוחב ארבע ומראה להם פניו משם מצטרף עמהם לעשרה

One who stands behind the synagogue and in-between them is a window - even if it is several stories high [and] even if it's not four [handbreadths] wide - and he makes his face seen to them from there, he joins with them to become ten.

The person standing behind the synagogue is clearly not in the same physical space as the rest of the group but is still counted merely because he is visible.⁴⁴

⁴⁰ See Shulhan Arukh 55:15-19.

⁴¹ Shulhan Arukh OH 55:14.

⁴² Responsa of the Rashba I:96.

⁴³ Mishnah Berurah 55:52.

⁴⁴ A student asked me how is someone looking through a window several stories up? We are not talking about pious window washers! I believe that this text needs to be understood in the context of restrictions imposed on synagogue architecture in many medieval communities. The local authorities restricted the height of synagogue construction, as one of the ways of enforcing the dominance of the majority faith, whether Christianity or Islam. In order to overcome these restrictions and achieve the desired interior height, Jewish communities built synagogues with the main floor and main worship space of the synagogue one or more stories below ground level, and only the top of the structure extending above street level. The small window several stories high as described here was at street level,

A review of the Beit Yosef⁴⁵ indicates that Karo had a choice of ways to interpret this text. He could have taken the view of Mahari Aboab, who argues that in order to count, a person who is at the window must literally stick his head in, “בדמכניס ראשו בחלון” so he is physically located in the space. Instead, he uses the phrasing of the Orhot Hayim, ומראה להם פניו, that he must “show his face,” implying that visibility, not physical presence, is sufficient.

The idea of visual presence being sufficient is expanded much further in the views of Rabbi Chayim David Azulai, an 18th century rabbi who travelled extensively to raise money for the Jewish community in the land of Israel. During the pandemic, many have cited his recollection of a real-world situation that he may well have encountered in his travels:⁴⁶

בלאזאריתו שנוהגים בערים האל אם יש ב' כתות שם שאינם יכולים ליגע זה בזה ויש ששה בבית א' וד' בבית אחר והם חלוקים במספרם כמשפט שמעתי מרב אחד אהובינו נר"ו שנסתפק הן בעודנו שם אם הד' יכולים להיות לפני פתח הבית ויצטרפו לעשרה כיון שרואים זה את זה או אינם מצטרפים ולי ההדיוט נראה לפי מה שכתבנו דמצטרפים דהרי אלו אינם יכולים לבא בבית והשומר עמם בשדה לפני הפתח וגם אשר בבית לא יוכלו לצאת חוץ כי המקום צר בחוץ וגם הוא מעבר לרבים ובכי האי גונא דאינם יכולים להיות ביחד מטעם המלך ושרי המדינות וכבר השתדלו אלו הד' לבא נגד הפתח ומראים להם פניה' הו"ל כמראה פניו דרך חלון דמצטרף והכא נמי דכוותא וכל שכן הוא כי לא אפשר בשום פנים להיות יחד ולא קרב זה אל זה וכיון דאיכא כמה פוסקים נראה לסמוך עליהם ולא יתבטלו מ' יום מלהתפלל בצבור ולא ישמעו קדיש וקדושה ומה גם כי אפי' בואראנדאדו ועזרת נשים כתבנו בעניותנו דכל שהוא טורח קצת לירד לבהכ"נ והם מראים להם פנים יש לסמוך לומר דמצטרפים וכמש"ל וכ"ש וק"ו בנדון זה.

In the Lazaretto (quarantine house) that is enacted in these communities, if there are two groups who cannot reach each other, and there are six in one house and four in another one, and they are divided in number by law, I have heard in the name of a particular beloved rabbi who wondered while he was there if the four can stand before the entrance of the house, and combine to make ten, since they see each other, or do they not. And to “simple me” it seems to me based on what I have written that they combine. For they cannot come to the same house, and there is a guard with them in the field before the door, and those who are in the house cannot come out for the place outside is narrow and it is a place where the masses pass by. In this way they cannot be together by decree of the king and the lords of the lands. These four have tried to come to the door and show their faces. This is like the case of one who shows his face in the window, who combines [to make a minyan] ... and how much more so when it is not possible in any way to be together and one cannot approach the other. And since there are several decisors [who agree], it seems that it is worthy to rely on them that they should not go 40 days without public prayer or hearing Mourner's *Kaddish* and *Kedushah*. Even in a veranda or a women's section, we wrote that any situation where it is a bit of a hassle to descend to the synagogue, but they show their faces to them, we can say that they combine, and how much more so in this case.

When I originally encountered this source, I was reluctant to apply it to any situation beyond the unusual and harsh conditions of quarantine. However, before this practical case, Azulai offers a more detailed theoretical analysis. He notes⁴⁷ that the Orhot haHayim that he had in his hands had a more restrictive view than the one quoted by the Beit Yosef:

and therefore at elevation with respect to the below-ground worship space. Someone standing in the street could look into the synagogue relatively easily, and be visible to the worshippers below as well, but might not easily navigate the descent into the synagogue proper.

⁴⁵ Beit Yosef OH 55.

⁴⁶ Mahazik Berakhah OH 55:11.

⁴⁷ Mahazik Berakhah OH 55:8.

מי שביתו קרוב לבהכ"נ אעפ"י שחלונו פתוח לבהכ"נ ושומע קול ש"ץ אינו מצטרף עמהם
 One whose house is close to the synagogue, even though his window is open to the
 synagogue and he can hear the voice of the leader, he does not combine with them to
 form a miynan.

Azulai then goes on, however, to offer a remarkable reading:

אמנם ודאי דלהשוות הדעות נאמר דזה שכתב הגאון אע"פ שחלונו פתוח אינו מצטרף היינו באינו מראה להם
 פניו אבל אם מראה להם יודה הגאון דמצטרף.

However, in order to harmonize the views, we must say that when the gaon said that even
 if the window was open he does not join the minyan, **this is when he does not show his
 face, but if he shows his face, the gaon would concede that they do combine!**

Azulai continues to explore a number of other views that support the idea that visual contact is
 sufficient, even without physical presence in the same space.

For a more recent analysis of this question that synthesizes many of the views we have seen we
 can turn to Rabbi Yehiel Mikhael Epstein's *Arukh HaShulhan*⁴⁸

וכתב רבינו הבית יוסף בסעיף י"ד: מי שעומד אחורי בית הכנסת, וביניהם חלון אפילו גבוה כמה קומות, אפילו
 אינו רחב ארבע ומראה להם פניו משם – מצטרף עמהם לעשרה. עד כאן לשונו. כן הביא בספרו הגדול בשם
 גאון, עיין שם. וסבירא ליה דראיית הפנים בענין זה הוי ככל הגוף. ואפשר דכיון דכל בי עשרה שכינתא שריא,
 ועיקר השראת השכינה היא על הפנים, כדכתיב: "כי קרן עור פניו". ויש מי שכתב דאף על גב דעליות אינן
 מצטרפות להעומדים בבית, מכל מקום אם העליות אינם במחיצות גמורות אלא בכלונסאות, באופן שרואין אלו
 שלמטה אותן שלמעלה, וקשה עליהם לירד למטה – מצטרפין זה עם זה. ויש מגמגמין בזה (עיין אליה רבה
 סעיף קטן י"ב, ושערי תשובה סעיף קטן ט"ו). ואולי בשעת הדחק יש לסמוך ולהתיר. מיהו זה וודאי העומדים
 בעזרת נשים לא יצטרפו עם העומדים בבית הכנסת, אף שיש חלונות מעזרת נשים להבית הכנסת, ורואים אלו
 פניהם של אלו, כיון שמחיצות גמורות הן – הוויין שתי רשויות. ולא דמי לעומד אחורי בית הכנסת דמצטרף
 בראיית פנים, דהתם אינו עומד בבית בפני עצמו אלא בחצר או ברחוב, ולכן חשבינן ליה כאילו עומד בבית
 הכנסת. אבל לא בעומד בבית בפני עצמו. (כן נראה לעניות דעתי. וגם בהעומד אחורי בית הכנסת – אינו
 מצטרף אלא אחד ולא יותר, דכן משמע לשון השולחן ערוך, והבו דלא לוסקיף עלה. כן נראה לעניות דעתי
 בדינים אלו)

Our rabbi, the Beit Yosef, taught in Seif 14: One who stands behind the synagogue, and
 between them is a window, even if it is several stories up, even if its narrower than four
 handbreadths, but he shows his face, joins them to constitute a minyan.” In the Beit Yosef
 he cites this view in the name of a gaon. And he holds that seeing the face, in this case, is
 like the entire body. And it is possible that this is because whenever there are ten
 together, the divine presence rests, and the essence of the resting of the *Shekhinah* is on
 the face, as it says [regarding Moses] “for his face shone.” There is one who writes that
 even though loft spaces do not combine with those standing in the home, in any case, if
 the loft spaces are not separated by complete partitions, but rather by columns so that
 those below can see those above, and if it is hard for those above to come down, they do
 combine. There are those who stutter about this, but perhaps in a *she'at hadehak* one may
 rely on this position and permit. However, those who stand in the women's section do not
 combine with those in the synagogue, even though there are windows, for those are
 complete walls, and they are like two separate domains. This is not like the case of one

⁴⁸ *Arukh HaShulhan* 55:20.

who stands behind the synagogue, who is combined by visual contact, for there he is not standing in a separate house, rather in a courtyard or the street, and therefore it is as if he is standing in the synagogue. But this is not the case if he is in his own home. And furthermore, one who stands after the synagogue, this can only be used to combine one, and not more, for this is the language of the Shulhan Arukh, so it seems to me.

In this text, the Arukh Hashulhan affirms the idea that the ability to see the face of another is the essence of minyan, but Rabbi Epstein restricts this idea in three key ways:

The first is that this approach applies in *she'at hadehak*, not under regular circumstances.

The second is that this approach applies only when those who are “outside” are truly outside, and not in another space.

The third is that it can be only used if there are nine already present, and the “remote presence” is the 10th.

However, we have seen that Azoulai certainly rejected at the very least the latter two of these limitations, since the participants were in groups of less than nine, and were in different spaces.

One other key outcome of the Arukh Hashulhan, despite the limitations that he imposes, is that he connects the concept of minyan to the question of the *Shekhinah* being present, as opposed to the question of being in public, or the need to honor God by having an assembly of suitable magnitude.

One final source which deserves particular attention is the Tur,⁴⁹ quoting his father, the Rosh:

בני החופה שלא היו מספיקים כולן לאכול בבית אחד עם החתן ונתחלקו לחבורות אפילו אם אכלו בבתים
שאינן פתוחים למקום שהחתן אוכל כולן מברכין ברכת חתנים לא מיבעיא אם השמש מצרפן אלא אפילו אם
אין שמש מצרפן כיון שהתחילו אותם שבשאר בתים כשהתחילו אותם של בני החופה כולן חשובין כאחד
לברך ברכת חתנים כיון שאוכלין מסעודה שתיקנו לחופה

The members of the wedding party who could not all eat in one home with the groom, and divide into smaller parties, even if they eat in houses **which are not open to the place where the groom is sitting**, may all say the seven wedding blessings, not only if the server unites them, but even if there is no server who unites them. If the people in the other homes have started when the members of the wedding party begin, then they are all considered as one group to recite the seven blessings since they are eating from the meal which was established for the huppah!

The text offers something remarkable: The seven wedding blessings require a minyan, and the presence of the groom, and yet they can be recited by divided groups, where the groom is not physically present (and perhaps not a minyan either!) Groups that are in different homes, and specifically cannot see each other or the groom, at all, are considered bound together into one group for the purpose of prayer. Even if we assume that the group divides in such a way that there is a minyan in the home of the groom, so that we are closer to the situation of Shulhan Arukh OH 55:20, it is still a remarkable precedent for prayer in the absence of physical presence.⁵⁰ Granted, many later poskim reject this p'sak, but the Taz stands by it, and the Taz, Tur and the Rosh certainly provide a leg to stand on.

⁴⁹ Tur OH 195:1.

⁵⁰ Rabbi Reisner pointed out that the reasons for needing a minyan for *sheva berakhot* may not be the same as those for requiring a minyan for statutory prayer. It is true that the Talmud in B. *Ketubot* identifies a different verse for *sheva berakhot* than the interpretation found for communal prayer in B. *Megillah* and *Berakhot*. As we see later,

Based on what we have seen, there are grounds to constitute a minyan of those who can see each other, even if they are not in the same physical space, so long as they can see each other, but given the minority nature of this view, it is most likely to be relied upon *bisha'at hadehak*.

Indeed, variations of this approach were cited by many Israeli poskim⁵¹ to permit “*mirpeset minyanim*,” where a minyan was constituted by individuals standing on their balconies who could see each other but were clearly located in different “places” by the definition of *eiruv*.

V. Why Should a Minyan be Seen, not Heard?

It is perhaps surprising that almost all views on how can be counted in a minyan rely on either presence in the same space, or using visibility to extend the concept of presence beyond a single *halakhically* defined space. We would have expected that being able to hear the prayer would be the most relevant criterion, since, reduced to its essential aspects, we would typically think of prayer as a verbal and auditory experience, rather than a visual one. After all one may pray with one’s eyes closed, unable to see the other daveners, (and as we will see the sources sometimes suggest or even require this). A blind person may serve as the leader,⁵² and, it is assumed, count in the minyan as well.

In fact, being able to hear, but not see, enables one to respond amen and participate in a minyan, but not to be one of its members. This is the implication of Shulhan Arukh OH 55:20, and is a primary conclusion of Rabbi Reisner. Rabbi Ephraim Oshry (1914–2003) served as a spiritual leader for the Jews of Lithuania during the Holocaust. His She’elot Uteshuvot Min Hama’amakim offer a harrowing vision of Jews seeking to preserve our traditions in the most horrific conditions imaginable. In one of his *teshuvot*,⁵³ he discussed the case of a minyan in the ghetto. The able-bodied young men had to hide in a secret room behind the ark, lest they be seized by the Nazis for work details that were likely to be fatal. Rabbi Oshry concluded, based on many of the sources that we have seen, that if there was a minyan in the main sanctuary, the young men in hiding, who could hear the prayers but could not themselves be seen, could consider themselves to be participants in communal prayer, but could not be counted towards the core minyan. Despite the source from the Tur OH 195 above, it is too much of a stretch to permit counting a minyan based on an audio link alone.

And yet, while hearing might not be sufficient to constitute a minyan, under some circumstances it might not even be necessary either! In the Talmud⁵⁴ Rabbi Judah is cited as describing the great synagogue of Alexandria, which was so huge that it was impossible to hear the Hazzan, and flags would be waved to inform the congregation that it was time to respond with amen.⁵⁵ It is not clear whether the Talmud sees this phenomenon as praiseworthy, particularly given that the conclusion of the story is that the community was later wiped out. Nevertheless, the assumption was that the congregation could see the hazzan, even if they could not hear him, and that was

there are some poskim who express different requirements for minyanim constituted for different purposes. Nevertheless, *sheva berakhot* and daily prayer are cited together in the same Mishnah.

⁵¹ See, for example, Rav Moshe Sternbuch, פ"ק ליקוט מכתבים ומאמרים בעניין מגיפת הקורונה ניסן תש"פ and Rav Shmuel Eliyahu, “מניין מרפסות או מניין פתחי בתים” <https://www.srugim.co.il/p=436525>

⁵² Shulhan Arukh OH 53:14.

⁵³ She’elot uTeshuvot Min HaMa’amakim 4:4.

⁵⁴ B. *Sukkah* 51b.

⁵⁵ The same issue may be encountered in much smaller synagogues, but for other reasons.

sufficient. Furthermore, it is reasonable to assume that at least a minyan of the participants closest to the leader could hear, and the flags were for the benefit of those sitting further away.

Perhaps this is the exception that proves the rule? It is quite important to the classic sources that the minyan be able to hear the leader. Tosafot,⁵⁶ commenting on the story of the synagogue of Alexandria, cites B. *Berakhot* 47a that one may not respond amen to a blessing that one has not heard, and the Shulhan Arukh⁵⁷ concurs. The classic sources do set a clear precedent for counting a person in a minyan even though he cannot hear, so long as he can speak,⁵⁸ but this was an unusual circumstance. It is clear that in typical circumstances, the attendees must be able to hear the leader/reader.

But must the converse be true? Perhaps a participant must hear the prayer of the leader in order to be counted in the minyan, but need one be heard by the leader as well? First of all, one need not hear one's own recitation of the liturgy. The Talmud and later sources explore the idea that one reciting the *Shema* and other prayers must be able to hear their own recitation in order for that recitation to be valid, but ultimately conclude that while it may be preferable, it is not required.⁵⁹ However, perhaps a more limited level of hearing is still needed. Must the leader hear the required responses (amen, *yehei shmei rabba*, etc) of the community? I will show that in fact, even the leader need not necessarily hear the responses of all of the participants.

The challenge in videoconferenced prayer is that even though there is the theoretical possibility of all participants hearing each other, in practice, often there is a single leader unmuted, with the remainder of the participants visible but unheard. There is actually surprising precedent to assume that the leader does not technically need to hear the communal response. The Shulhan Arukh⁶⁰ notes that:

כש"צ חוזר התפלה הקהל יש להם לשתוק ולכוין לברכות שמברך החזן ולענות אמן ואם אין מכוונים לברכותיו קרוב להיות ברכותיו לבטלה

When the prayer leader repeats the *Amidah*, the community must be quiet, and focus on the blessings from the Hazan and answer amen. And if there are not 9 people with focusing on his blessings, this is *close to* a blessing in vain.

A naïve reader might conclude that the leader's repetition is considered invalid if there is not a community responding. However, a careful reading of this text reveals that only listening, and not a response is not required. The first half of the text talks about the congregation listening and responding, but the phrase that says that the prayer may be in vain refers only to a congregation listening, and omits the need for a response. Furthermore, the Derishah⁶¹, commenting on similar language in the Tur, notes the use of the words "close to," indicating that the leader's prayer is in fact valid even if a minyan does not respond, citing the practice that even if some of the members of the minyan have left during the reader's repetition, the leader may continue to the end of the repetition, even though there is no hope that those who left will respond.

⁵⁶ Tosafot B. *Sukkah* 51b s.v. *v'keyvan*.

⁵⁷ Shulhan Arukh OH 124:8.

⁵⁸ Shulhan Arukh OH 55:8 requires either one or the other, but not both.

⁵⁹ Shulhan Arukh OH 62:3-4.

⁶⁰ Shulhan Arukh OH 124:4.

⁶¹ Derishah OH 124:1.

A review of the commentaries on this passage in the *Shulhan Arukh* and *Tur* makes clear that the real life experience of prayer did not match the ideal. During the reader's repetition in particular, but during other parts of the service as well, the members of the congregation were not always offering their attention in the ways that the sages might have preferred. In a preferred scenario, they might be inattentive because they were reciting supplications, engaged in study, or caught up in singing along to such an extent that they were not focused on the prayers of the leader. In other cases, they would be engaged in less pious distractions.

The *Magen Avraham*⁶² goes further, noting the case of counting a person who is sleeping or has left the room, or an infant who cannot respond.⁶³ In each of these cases, it is obvious that such a person is not an active participant in the prayer community. In contrast, in a virtual situation, the leader can be aware of whether participants are engaged, and know whether they have answered amen, even if she cannot hear.

We can take this idea to the logical extreme. Some⁶⁴ permit one who is deaf and therefore can speak, but cannot hear the response of the congregation, to lead the minyan. Modern *poskim*⁶⁵ have extended this to permit a minyan constituted and conducted entirely in sign language, with no sound at all.

If hearing is not enough, why should seeing be? It is possible that visibility is simply a shorthand for physical closeness, but I believe there is another factor at play, which is that our human brains are much more readily able to determine the number of people around us based on visual stimuli rather than audio stimuli. We cannot differentiate more than a few voices at a time. While the sound of tens, or hundreds of voices raised in song can be deeply inspiring, and is one of the things most missed by many during the pandemic, in practice most of us must open our eyes to accurately determine how many are singing. Also, it is not an accident that those elements of the service that require a minyan are structured as a call and response (or, in the case of Torah reading, a solo reading bracketed by call and response). In the absence of artificial amplification, those are the most practical ways that a prayer can be led. A large group that can hear, but not see each other, will have a harder time synchronizing for a call and response prayer without visual cues.

It is widely acknowledged that virtually linked prayer does not make it easy for multiple worshippers to be heard at one time. Zoom and similar technologies make it easy for more than ten⁶⁶ individuals or households to see each other at the same time, but in practice it is difficult to join multiple voices together to create an auditory sense of community. Some of this is due to the technology used by Zoom, which attempts to choose one "speaker" at a time. In practice, most participants must be muted or quiet so as not to drown out the leader.

However, this limitation is not only a function of Zoom's approach to processing audio; it is also a function of the laws of physics. There is a limit to how fast sound can travel in any

⁶² OH 55:8.

⁶³ This view is based on the words of Rabbeinu Tam, cited in the *Tosafot* Rabbenu Yehudah Sirleon on B. *Berakhot* 47b.

⁶⁴ See *Biur Halakha* 55 s.v. *heresh* for views on both sides.

⁶⁵ Rabbi Pamela Barmash "The Status of the *Heresh* and of Sign Language." <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/Status%20of%20the%20Heresh6.2011.pdf> HM.35:11, and note the other contemporary *poskim* cited there.

⁶⁶ And indeed, with the right settings, as many as 49.

medium. At room temperature, at sea level, sound travels at about 1125 feet per second, or 1.125 feet every thousandth of a second (millisecond, abbreviated ms). This means that every foot of distance between individuals in a the same space creates a delay of slightly less than 1 ms. This delay between when the sound is made and when we hear it is called latency. When we engage in sequential conversation, we easily tolerate latency of up to 150ms (1/6 of a second), provided that there is no echo. This is our experience of a shouted conversation across an open space, or an international phone call. When we are trying to sing together, the tolerances are much tighter. In practice, humans can perceive sound events as short as 5 ms.⁶⁷ At delays of 15-25 ms (the equivalent of standing 15-25 feet away) our brains start to hear the sound as out of synchronization. At delays of 25-100 ms, the audio will sound increasingly muddy, and by 100ms, we perceive a full echo, and it becomes incredibly challenging to sing in unison.

Large prayer spaces are often architecturally designed to carry or deaden sound in particular patterns to improve the experience. In addition, liturgy designed for large physical spaces, compensates for this by using music with tempos and melodic/harmonic structures that extend human tolerance for this muddiness. In the largest prayer spaces, the liturgy may rely more on call and response, or the fact that those singing nearby drown out the “out of synch” sounds from those further away.

Electronically transmitted audio can travel at much faster speeds once it gets going. As a rough estimate, in fiber optic cables and copper wires, signals can travel about 2/3 of the speed of light in a vacuum, about 500,000 times the speed of sound, though the speed may vary. The distances can be much greater than the distance between participants, since the signal must travel to a central server, which might well be thousands of miles away. Another major source of latency is that time must be added for each “hop.” Each piece of equipment that processes or refreshes the signal causes a delay. The source computer must encode the audio, then each of the stops for the audio to get from the source computer’s local network to the larger internet causes a lag, as does processing at the data center. The steps must then be reversed to reach the receiver’s computer and ear. In real world situations, latencies from remote mouth to local ear of 50-100ms are common. With the right hardware configurations and specialized software, latency can be brought down as low as 20ms for participants who are not too geographically distant, but these techniques are impractical for the lay members of a typical prayer community.⁶⁸

However, people are even more adaptable than technology, and, with practice, can develop a facility for navigating greater latency. In one famous example, a group of people around the world staged a live vocal performance of “The Lion King” through the clubhouse audio platform.⁶⁹ While that performance was undertaken by professional musicians, there are lay communities that have become adept at creating a more communal audio experience even via Zoom. Experienced participants will remain muted or pray quietly enough that they are not picked up by their microphone, for most of the service. The congregation will then unmute or respond more loudly for *Kaddish*, *Kedushaha* and *Barkhu*, which are the key elements of the service requiring a minyan, for other liturgy that depends on a call and response, and even to

⁶⁷ In fact, our ability to locate the source of a sound using stereo hearing requires detecting timing variations of a fraction of a millisecond, the time it takes sound to travel the fraction of a foot between our ears, but we typically can’t consciously discriminate sounds this short.

⁶⁸ See <https://www.ianhowellcountertenor.com/soundjack-real-time-online-music> to get a sense of what is involved.

⁶⁹ <https://www.forbes.com/sites/williamhochberg/2021/02/28/clubhouse-is-fast-becoming-a-music-mecca--and-a-hot-mess/?sh=46c90cef413a> .

respond amen. A talented leader can lead a communal call and response with a sense of timing that allows individual participants to remain more synchronized.

Maximizing other responsive elements of the liturgy (*Ashrei, Hallel*) can also create more opportunities to feel part of the service. In addition, while some may find it aesthetically off-putting, I have grown to appreciate the “muddle of voices” created by a group attempting to sing *Aleinu* or the chorus of *Lekha Dodi* together despite the limitations of the technology. It recreates, digitally, the experience of a *shtiebel* where a sense of reverberating communal prayer can be created even as individual worshippers are far from synchronized.

The audio experience of virtual prayer does not have to be a concert from a central location or frustrating muddle, but in any case, not every “amen” need be heard by the leader or the congregation for a community to be constituted.

VI Precedents for Technologically Mediated Presence?

There is already extensive literature on the question of the *halakhic* status of sound heard through digitally assisted means. While there are diverse views among the *poskim*, the CJLS has concluded elsewhere⁷⁰ that electronically transmitted sound is considered to have the same status as sound heard directly through the air, for all purposes with the possible exception of shofar.

Ironically, many more recent *poskim* must bend over backwards to reject earlier views permitting fulfilling mitzvot via electronically transmitted audio, claiming that previous sages did not understand the nature of the technology. In approaching the topic of presence via video, I would propose a parallel approach. Whether or not the views of previous sages, with regard to audio and video, were appropriate for the technology available to them, the nature of the technology, and our understanding of it, has changed significantly. This approach will guide us as we seek to explore the topic of presence via video.

A. Midrashic Sources

There is sometimes great value in turning aggadic and midrashic sources to *halakhic* ends. The story of Rava creating a human through mystical means⁷¹ has been used to explore the implications of artificial intelligence⁷², and midrashim about the Patriarchs creating animals through mystical means have been used as a precedent for artificial (lab-cultured) meat.⁷³ The rabbinic imagination, applied to narrative, does not necessarily have the ability to overturn legal precedent, but certainly gives us an insight into how our predecessors might have ruled when presented with a situation not otherwise contemplated in legal texts.

For most of the duration of Jewish practice, and rabbinic literature, there was no real-life precedent for the types of technologically assisted virtual presence we now take for granted. In prayer, anyone could turn one's heart to the Temple in Jerusalem, but this certainly did not entitle one to participate in the ritual there.

A precious few were granted the gift of prophetic vision, but with rare exceptions, they were usually presented with metaphors and riddles, rather than with direct sight. One exception is a story relayed in the early midrash⁷⁴ regarding Jacob. The midrash explains that Jacob was denied prophecy as long as he mourned Joseph, but then saw in an *aspeklaria* that Joseph was still alive. The word *aspeklaria*, which will be important to my analysis below, has been variously translated as a speculum (meaning a mirror), a looking glass, a specularia (perhaps a greenhouse?) or a partition.⁷⁵ If the word is translated as a lens or mirror, the implication is that it grants the ability to see what would otherwise not be visible. Jastrow, in his dictionary,⁷⁶

⁷⁰ Reisner loc cit, Rabbi Gordon Tucker, "The Use of a Remote Audio and Video Monitor on Shabbat and Yom Tov," OH 340:3.1989a, and Heller "Streaming on Shabbat and Yom Tov."

⁷¹ B. *Sanhedrin* 65b.

⁷² Rabbi Daniel Nevins, Halakhic Responses to Artificial Intelligence and Autonomous Machines. HM 182.1.2019a.

⁷³ Rabbi Daniel Nevins, "[The Kashrut of Cultured Meat](#)" YD 81:10.2017.

⁷⁴ Bereshit Rabba 91:6.

⁷⁵ I had hoped to find a conclusive interpretation from Rabbi Dr. Shaul Lieberman, the master at interpreting Greek and Latin words borrowed into rabbinic literature, but came up short. In what is perhaps a posthumous victory in the faculty clashes of JTS in the 1960's, Rabbi Abraham Joshua Heschel offered a clearer answer. He used the word in the title of his book "Torah Min Hashamayim B'Aspeklaria Shel HaDorot," translated as "Heavenly Torah" by Rabbi Gordon Tucker with the assistance of Rabbi Leonard Levin. See the translator's notes on page 308, which indicate that *aspeklaria* could imply either a lens or a mirror.

⁷⁶ Dr. Marcus Jastrow "Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature, Vol 1, p. 96 s.v *ispaklaria*.

translates the word *aspeklaria* as a window glass, (that which simply facilitates seeing what is already there) but notes that it often has the implication of prophecy beyond physical sight. In ancient times, window glass was a rare product, and that which was available was often cloudy or blurry. A large, clear glass window was indeed unusual.

Leviticus Rabbah⁷⁷ uses two variations on this idiom to define the prophecy of Moses. One version suggests that Moses's prophecy was seen through a single *aspeklaria*, as opposed to the other prophets who saw through nine (implying that each one degraded the image), while another suggests that Moses saw through a polished one, while the other prophets saw through a dirty one. The Talmud⁷⁸ explains that only a few prophets were blessed to see through an *aspeklaria ha-meirah*; literally a bright glass, but probably, idiomatically speaking, an illuminating glass. This formulation became common in later Jewish literature, particularly in mystical contexts.

Vision at a distance was rarely invoked by the classical prophets themselves. Balaam, the Chaldean prophet for profit, even though he was apparently as great a prophet as Moses,⁷⁹ could neither curse nor bless the Israelites from afar; he had to travel to where he could physically see them in order to offer his praise of their goodly tents. The tradition ascribes many supernatural powers to Elijah, including serving as messenger between heaven and earth. The stories told by the sages tend to assume that he appeared in person to deliver his tidings.

One midrashic source that has been cited by some as an analogy for viewing via video is the experience of the Israelites crossing the Red Sea. In the Talmud⁸⁰ Rabbi Meir explains that even fetuses in their mother's wombs participated in the Song at the Sea. The anonymous gemara asks how they could participate in that song, blessing something they did not see? Rabbi Tanhum responds that "the belly became like an *aspeklaria meira*." The not-yet-born Israelites could see, literally, because their mothers' uteri and abdominal walls became like clear glass, but the implication of the idiom is that there was an aspect of prophetic vision as well.

However, Rabbi Yosef di Trani (son of Rabbi Moshe ben Yosef di Trani) in his commentary on the Torah,⁸¹ takes this text a step further. He explicitly connects this source to the language regarding two groups of individuals wishing to combine for grace after meals, who can only see each other, and suggests that seeing "through a glass" in this text implies not literal (though certainly miraculous) sight through transparent flesh, but vision mediated by spiritual means, which serves to unite a community. It is an interesting model for the topic at hand, of unnatural vision providing a link to share communities in responsive song.

These midrashic sources, though offering an opening for further discussion, are insufficient on their own. Within the *halakhic* discourse, there are a number of precedents that have been suggested as models for virtual presence, and some well-respected poskim considered them to permit the use of video for certain purposes, but rejected them for the purposes of constituting a minyan. I will review several of these models, but I will ultimately suggest that a more conceptual approach is needed.

⁷⁷ Leviticus Rabba 1:14.

⁷⁸ B. *Sukkah* 45b.

⁷⁹ Sifrei Deut 357.

⁸⁰ B. *Sotah* 30b-31a.

⁸¹ Zapanat Paneah, *Beshallah*, first derashah.

B. The Waxing Moon

One text that is often cited is the context of the ancient practice of setting the new month based on the testimony of witnesses who had seen the new moon.⁸²

תָּנוּ רַבָּנָן רְאִינוּהוּ בְּמַיִם רְאִינוּהוּ בְּעֵשֶׂשִׁית אֵין מְעִידִין עָלָיו חֲצִי בְּמַיִם חֲצִי בְּעֵבִים חֲצִי
בְּעֵשֶׂשִׁית אֵין מְעִידִין עָלָיו

The Sages taught in a *baraita*: [if the witnesses say:] we saw [the moon] reflected in the water, or we saw it reflected in a lantern glass or we saw it through thin clouds, they may not testify about it, [as only a direct sighting of the moon is acceptable]. If they say: We saw half of the moon's reflection in the water, or we saw half of it through the clouds, or we saw half of it in a lantern, they still may not testify about it.

The implication of this text is that seeing something indirectly does not count for the purpose of testimony. However, it is not clear that we can draw the analogy to prayer. The criteria for testimony are particularly strict, and with regard to the sanctification of the new moon, even more so, given that the first sliver of the new moon is particularly hard to distinguish unequivocally, and given the desire of sectarian groups to disrupt the calendar as set by Rabbinic authority.

Furthermore, Rabbeinu Hananel in his comments on the text, provides an alternate reading

הָיוּ מַיִם לְפָנָיו וְרָאָה בָהֶן צוּרַת לְבָנָה וְהָרִים רָאָשׁוּ לְרֵאוֹת הַלְּבָנָה בַּשָּׁמַיִם וְלֹא רָאָה כְּלוּם.

There was water before him and he saw the form of the moon, but he lifted his head to see it in the sky, and he saw nothing.

Rabbeinu Hananel understands that in all of these cases, the interposition of a distorting presence means that we cannot be sure that it is really the moon. Testifying regarding the moon is a special case because extra precision is required, and there is a significant possibility and motivation for error. The comparable case with technology would be uncertainty as to whether one were watching a live person or a recording or simulation, but it is still relatively easy to determine, in a real-time video context, whether one is interacting with other live humans or not.

In contrast, there is also a practice of blessing the new moon when it is more fully visible (often on the first Saturday night of the month). Many *poskim*⁸³ are more lenient regarding the question of seeing the moon through glass, since the need there is to see the moon, not for a specific degree of precision. If anything, any concern about glass is tied up with the preference that that blessing be recited outdoors.

⁸² B. *Rosh Hashanah* 24a.

⁸³ See *Sha'arei Teshuvah* 426:1, *Sha'ar Hatziyur* 426:25.

C. Havdalah

Another precedent that some have suggested is that of Havdalah. Havdalah must be said over a flame which is reminiscent of the fire discovered by Adam after the very first Shabbat.⁸⁴ The Babylonian Talmud⁸⁵ demands clear that the flame must be directly visible.

הִיְתָה לוֹ גֵר טְמוּנָה בְּחִיקוֹ, אוֹ בְּפָנָיו, אוֹ שְׂרָאָה שְׁלֵהֶבֶת וְלֹא נִשְׁתַּמֵּשׁ לְאוֹרָהּ וְלֹא רָאָה שְׁלֵהֶבֶת — אֵינּוּ מְבָרֵךְ עַד שִׁירָאָה שְׁלֵהֶבֶת וְיִשְׁתַּמֵּשׁ לְאוֹרָהּ .

One who had a candle hidden in his lap or placed inside an opaque lamp (“*panas*”), or if he saw a flame and did not utilize its light, or if he utilized its light and did not see a flame, may not recite a blessing until he both sees the flame and utilizes its light.

Rashi⁸⁶ offers the explanation that a *panas* is not a covered lantern, but rather a transparent lantern glass. He is perhaps doing so in light of the Jerusalem Talmud⁸⁷ which adds a further restriction, if the candle is seen through an *aspeklaria*. Some read this text to imply that even if the flame is completely visible, the fact that it is seen through glass invalidates its visibility for the purpose of Havdalah. The Rashba argues that a cover invalidates the Havdalah flame only if it renders the flame itself invisible. Later *poskim* line up on both sides of the debate. For example, Rav Ovadiah Yosef⁸⁸ cites a number of *poskim* who hold this view, in order to prove that Havdalah cannot be said over an electric light, because it is covered by glass, but Rabbi Chaim Brisker would specifically make Havdalah over a glass-covered electric light.⁸⁹

The Mishnah Berurah⁹⁰ while ultimately counselling not to say Havdalah over a flame seen through glass, acknowledges the view of many *Aharonim* who do allow this, as long as the flame is visible. In the parallel Beur Halakhah,⁹¹ Rabbi Kagan offers the clarification that in general, an object is considered to be seen if it is visible through glass, but in the case of Havdalah, there is a specific requirement to use a flame that is similar to Adam’s flame, and therefore the interposition of glass would invalidate its use. The implication would be that seeing through glass would not normally be an impediment.

D. The Lantern Glass

In approaching the question of Havdalah, the Rashba invokes a precedent from the Talmud⁹² that is more directly related to prayer, in the context of items that would prevent one from praying:

אָמַר רַבָּא צוֹאָה בְּעֵשְׂשִׁית, מוֹתֵר לְקִרּוֹת קְרִיאַת שְׁמַע כְּנֻגְדָּה. עֶרְוָה בְּעֵשְׂשִׁית, אָסוּר לְקִרּוֹת קְרִיאַת שְׁמַע כְּנֻגְדָּה. צוֹאָה בְּעֵשְׂשִׁית מוֹתֵר לְקִרּוֹת קְרִיאַת שְׁמַע כְּנֻגְדָּה דְּצוֹאָה בְּכִיסוּי תְּלִיא מִלְתָּא, וְהָא מִיפְסָא. עֶרְוָה בְּעֵשְׂשִׁית אָסוּר לְקִרּוֹת קְרִיאַת שְׁמַע כְּנֻגְדָּה, “וְלֹא יִרְאָה בָּהּ עֶרְוַת דְּבָר” אָמַר רַחֲמֵנָא. וְהָא קְמִיתְחִזְיָא .

Rava said: if there is feces [seen] in a lantern glass, it is permitted to recite *Shema* opposite it. If there is nakedness [seen] through a lantern glass, it is prohibited to recite *Shema* opposite it. Opposite feces [seen] in a lantern glass, it is permitted to recite *Shema*

⁸⁴ See B. *Pesahim* 54a-b, and Bereishit Rabbah 11:2.

⁸⁵ B. *Berakhot* 53b.

⁸⁶ Loc cit, s.v. “*b’penas*.”

⁸⁷ Y. *Berakhot* 8:6.

⁸⁸ Yabia Omer I OH 17.

⁸⁹ though granted, in the context of a larger polemic that electricity still was to be considered fire.

⁹⁰ Mishnah Berurah OH 298:37.

⁹¹ Beur Halakhah 298:15.

⁹² B. *Berakhot* 25b.

because with regard to feces, the ability to recite *Shema* is contingent upon covering, as it is said: “And cover your excrement” (Deut. 23:14) and although it is visible, it is covered. On the other hand, opposite nakedness covered only by a lantern- it is prohibited to recite *Shema*; the Torah said: “And no indecent thing shall be seen in you” (Deut 23:15) and here it is seen.

Following Rashi’s interpretation, the implication is not that the item is literally in a lantern, but rather that it is covered by translucent covering. In the case of the feces, the waste is considered covered, perhaps because the barrier prevents its smell from reaching the person praying. In the case of nudity, even though the view is distorted, and there is a physical barrier, it is still considered seeing.

Indeed, the Mishnah Berurah⁹³ goes further to suggest that even if the nudity is in another home altogether, it is still sufficient to prevent the recitation of the *Shema*, and in fact to require that it be recited again. It is true that the criteria for preventing prayer need not align with the criteria for constituting it, but it is worth considering: if the distorted vision of a person in another home is considered sufficient to impede prayer, should it not also be sufficient to enable it? This would seem to me to be among the strongest of the halachic precedents to consider.

The converse idea that the lantern precedent may be used to permit, not just to forbid, is found in a question first raised by Rabbi Yisrael Ya’akov Hagiz (17th century Jerusalem):⁹⁴ if a drop of wax falls on the Torah scroll and partially obscures the letters, on Shabbat when one may not remove the wax, may one still read from it? He concludes that one may do so, based on the same reasoning.⁹⁵

E. Early Responsa on Television.

Rabbi Ovadiah Yosef,⁹⁶ after reviewing many of the sources that we have seen, concludes that one may not recite a blessing over the moon or other sights seen via television, but argues that one must be more strict and may not pray while an indecent image is visible on a screen (and indeed, he concludes his *teshuvah* with a polemic against having a television at all!) However, the *teshuvah* needs to be seen in the light of the black and white, low-definition technology of his time. The *teshuvah* was undated, but the volume in which it appears was published in 1976. While color TV broadcasts were available in Israel from neighboring countries as early as 1974, the first Israeli broadcast in color was in 1977.⁹⁷ While today Israeli-produced television is admired and imitated world-over, Israeli television in the early 1970s was indeed hardly worthy of a blessing.

Similarly, Rabbi Betzalel Stern offers a similar view in a *teshuvah*⁹⁸ published in 1967, differentiating between testimony of something seen on television/video, where mere awareness of the matter is sufficient, as opposed to saying a blessing, which requires seeing the thing itself.

⁹³ Mishnah Berurah 75:26. As modern readers, we cannot ignore that this and many of the other sources that approach this question may begin by speaking about nudity of any kind, but sometimes place a focus on how men react to women’s bodies, and must acknowledge the concerns raised by that focus.

⁹⁴ Rabbi Yisrael Ya’akov Hagiz, Sefer Hilkhot Ketanot 1:99.

⁹⁵ I specifically do not extend this permission to the reading of a Torah scroll seen by the reader through a video link, because the specific materials of ink and parchment, handwritten by a scribe, are required, and these requirements are not met by a video image.

⁹⁶ Yabeah Omer 6 OH 12.

⁹⁷ https://en.wikipedia.org/wiki/Television_in_Israel.

⁹⁸ B’tzel Hkchma 2:18.

F. Glasses and Telescopes

However, the challenge of applying these texts to the question of remote prayer is the assumption that the lantern-glass, the *aspeklaria* available to those of lesser stature than Moses, and imperfect technological media (like black-and-white, low-definition TV) obscures or distorts the thing being viewed. In the case of modern video technology, the image may well be quite clear. Indeed, the video and audio of a streamed service may be far clearer than the sight and sound experienced by someone in the back of a large sanctuary. We might do better to explore the precedents of assistive technology. What about technologically assisted sight?

It is widely established that eyeglasses do not impede the performance of almost any mitzvah. So, for example, while Rabbi Ovadiah Yosef prohibited reciting a blessing over an event seen over black and white television, he permitted it if seen through eyeglasses.⁹⁹ Other sources¹⁰⁰ discuss whether witnesses viewing a *halitzah* (the ceremony that breaks the bond between a widow and the brother of her deceased husband) may wear glasses. There is a debate whether a Cohen inspecting a possible affliction of *tzara'at* may wear glasses. The Boaz commentary on the Mishnah¹⁰¹ permits the use of glasses for almost every other purpose (including blessing the new moon and reading Torah), but is cautious in the case of diagnosing *tzara'at*, because, similar to the testimony of the new moon, merely seeing is not enough, because even a slight distortion might lead to an error. The common practice is that glasses may be worn for the fulfillment of almost any day-to-day observance that requires seeing.

The view on telescopes is more divided. The Talmud¹⁰² recounts the case of Rabban Gamliel, who had a “tube” that enabled him to determine conclusively whether he was within the Shabbat boundary while still at sea. The exact nature of the technology is unclear. Rashi¹⁰³ seems to suggest that it was a telescope. Maimonides¹⁰⁴ identifies it with an astrolabe, but vision through the device is seen as sufficient to establish the Shabbat boundary.

As the telescope became widely available, *poskim* explored whether it would be sufficient to recite the blessings over astronomical phenomena. Several modern writers have suggested that Rabbi Samuel Aboab¹⁰⁵ was the first to argue that a person seeking to say the blessing over the new moon may not do so if he sees the new moon through a telescope. However, having reviewed an early printing of Aboab's *teshuvah*, I'm not sure that he actually says what others claim that he says. First of all, while telescopes were becoming widely known in his day (he lived in Venice and was a contemporary of Galileo) he did not use any specific terminology other than the *aspeklaria* and lantern-glass, and cited the concerns we saw above regarding whether the moon was truly seen, or it was a false image. Second, and most significantly, he concludes that if one saw the moon only through such a glass, of whatever type, but could confirm that the moon was truly present (by virtue of another person nearby seeing it without benefit of such an instrument) then the blessing should in fact be said!

G. Closed Circuit Video

⁹⁹ Yeḥeveh Da'at 4:18, paragraph 13.

¹⁰⁰ Shevut Yaakov 1:126

¹⁰¹ Boaz, on *Nega'im* 2:4

¹⁰² B. *Eiruv* 43b.

¹⁰³ Rashi on B. *Eiruv* 43b, Sv *shefoferet*.

¹⁰⁴ Maimonides Commentary on the Mishnah *Eiruv* 4:2.

¹⁰⁵ D'var Shmuel 242, cited in Be'er Heitev 426:1.

Other potential halachic precedents for Zoom minyan come from the realm of video surveillance. For example, classic texts require that milk obtained from non-Jews cannot be considered kosher unless its milking was at least supervised by a Jewish person, lest the non-Jewish farmers adulterate it with non-kosher ingredients, (e.g. milk from a non-kosher animal). Milk which has been obtained under this type of supervision is called *Halav Yisrael*.¹⁰⁶ Rabbi J. David Bleich¹⁰⁷ offers a summary of views on whether video surveillance is sufficient to give this kosher status to milk. At least according to some views it is, though other *poskim* still require additional on site inspection. This precedent may not be sufficient for our case because, according to those who permit, the relevant criterion is not that a Jewish person is actually present, but rather that non-Jewish farmers will experience anxiety that they will be caught if they attempt to adulterate the milk with non-kosher ingredients.¹⁰⁸ Video monitoring is in increasing use in other fields of kashrut supervision¹⁰⁹, and in supervision of fertility treatments labelled as under “rabbinic supervision.” There are also those who have suggested that video monitoring is sufficient to avoid any concerns of “*yihud*”- a couple being isolated in private where they might succumb to temptation.¹¹⁰ However, in these cases as well, the parallel is imperfect because the role of the video link, just as in the case of *Halav Israel*, is not to make the observer “present” but rather to for those being observed to know that they are being watched and therefore refrain from inappropriate behavior.

VII. The Problem of Interpositions

The classic text cited to justify remote participation in a minyan¹¹¹ notes that if one is attaching oneself to a minyan from outside the space where it is constituted, there must not be any human waste or idolatry in between the worshipper and the main body of the minyan. Rabbi Reisner’s *teshuvah* on joining an in-person minyan via technological means¹¹² states that

With an Internet or telephone connection, it is safe to dispense with any concern about the intervening space, for the sound does not travel freely through the space, but is contained in wires that do not interact with their surroundings. Even cellular telephone connections, which propagate through waves as did the sound considered in the case before us, are sent in a scrambled signal that is inaudible to the human ear and are intended only to be unscrambled by the specific receiver for which they are intended. Unlike sound waves, that were audible to the human ear at the place where filth is interposed, these signals are carried in the form of electromagnetic waves and cannot be said to interact at all with the biological structures in the environment prior to their arrival and retranslation at their destination. Moreover, this concern for the intervening space is the stringency of only some.

¹⁰⁶ Or, despite the CJLS transliteration guidelines, more often, *Cholov Yisroel*.

¹⁰⁷ Rabbi J David Bleich, “Survey of Recent Halakhic Literature, Video Surveillance.” Tradition Vol 45 no 2.

¹⁰⁸ This is the reason why, in countries with strict food control laws, some *poskim* consider government supervision/inspection to be equivalent to having a Jewish person present. It is not that they reject the need for supervision, they feel that can be accomplished with the government inspectors and penalties serving in lieu of the Jewish observer.

¹⁰⁹ For examples, see <https://hamodia.com/2019/07/23/londons-kashrus-agencies-hold-unique-meeting/> , <https://www.theyeshivaworld.com/news/general/1509476/vaad-hakashrus-five-towns-now-requires-food-establishments-to-install-cameras-with-full-access-to-mashgichim.html>

¹¹⁰ See Rabbi Gavriel Zinner, Nitei Gavriel *Hilkhos Yihud* 45:8-9 and Rabbi Ya’akov Skoczylas *Ohel Ya’akov* pp. 176-180,

¹¹¹ *Shulhan Arukh* OH 55:20.

¹¹² Reisner, Loc Cit.

Rabbi Reisner's views stand on their own merit, but the issue bears further analysis. First of all, Reisner points out, the issue of waste or idolatry is cited in the context of a “*yesh omrim*”- a minority view which Karo does not necessarily see as authoritative. It might be tempting to say that the issue is that the waste or idolatry is a distraction, but the Mishnah Berurah¹¹³ notes that there is an interruption even if the worshipper is far enough that he cannot smell the waste or turns away so she cannot see it (which is all that is needed to permit her own prayer). He explains that it still interrupts the spiritual connection of the *Shekhinah* that bridges the worshipper to the minyan. In the case of a video link, we can follow Rabbi Reisner's reasoning that these disruptive elements are assumed to be invisible and imperceptible to all involved.

Of course, the challenges of inappropriate sights are not totally eliminated in a virtual setting. In the Atlanta community, during the COVID-19 pandemic there were well-known cases where a minyan was constituted in person in a synagogue sanctuary, but many of the participants were engaged via Zoom, and individual participants allowed themselves to be seen unclothed or even using the restroom (!) on screen.

I have drawn the permission to connect disparate groups if they can see each other from, among other places, the idea that two groups of diners in different domains may join for the grace after meals. The Shulhan Arukh,¹¹⁴ however, in citing this law, adds a new twist, which is that there cannot be a *reshut harabim* (a “public domain”) between them. This concept is not found in the Talmud, but rather was originated by Rabbeinu Yonah, in his comments on the Rif B. *Berakhot* 37b. Karo cites this opinion using the phrasing, ויש מי שאומר, “there is one who says.” This phrasing clearly implies that it is a lone view, though clearly many of those that followed found it to be authoritative. The implication is that if there is a public space between two groups, it prevents them from joining together. The quote from Rabbi Azulai I cited above regarding quarantine did not seem to have this concern, even though a public path passed between the groups. Though he was willing to draw one aspect of the law from grace after meals, perhaps he did not draw that stringency as well?

In fact, the technical definition of a *reshut harabim*, as defined in the context of *eirubin*, is quite limited. The criteria vary, as the term could refer to any road wider than 16 cubits, or only to a major highway, a main shopping street or city square which hundreds of thousands of people traverse. In any case, any area inside an *eiruv* is, by definition, not a *reshut harabim*!

And yet, many of those who sought to constitute *mirpeset minyanim* were concerned even about more minor roads, based on the Taz¹¹⁵ who indicated that the issue is not a literal *reshut harabim* but rather even a more minor thoroughfare. This issue is raised in a *teshuvah* of Rabbi Yitzchak Zilberstein,¹¹⁶ who describes the case of people gathered in a cemetery who wished to say Mourner's *Kaddish* but did not have a minyan. They called to cemetery workers, who would not come over to them, but agreed to participate from a distance. Zilberstein concludes that the roads inside the cemetery did not constitute a barrier, but that others would.

¹¹³ Mishnah Berurah 55:64.

¹¹⁴ Shulhan Arukh 195:1.

¹¹⁵ Taz OH 195:2.

¹¹⁶ Hashukei Hemed Berakhot 21b.

There are several ways to resolve this issue. One is using the technical language of *eiruv*. The zone of *reshut harabim* only extends 10 handbreadths off the ground. Anything above that is considered a *makom patur*: a null space. Therefore, if two groups were on porches one or more stories up, even if there was a path or road between them, their elevation meant that the path or road was not considered to be “between” them from a *halakhic* perspective. This is one of the justifications used for *mirpeset minyanim* in cases where the worshippers were separated by public spaces.

I suppose if those participating in a virtual minyan are on the second floor or higher of their homes, the same reasoning might apply. Similarly, if they are all located inside an *eiruv*, a similar, literal argument might apply, since the entire area is considered a single *reshut*, a single domain.¹¹⁷ However, we do not want to rely on the participants being at a particular physical elevation or on the existence of an *eiruv*.

In practice, we can't know the route that the signal takes from one site to another. It may be transmitted as radio or microwaves through the air, or through cables underground, under water, or above ground, or ironically, even through wires that constitute part of an *eiruv* boundary! What matters most is that these paths of transmission can be assumed to be a *makom patur*, a place that has no impact.¹¹⁸

More useful to our case is whether the *reshut harabim* is a conceptual imposition. The reason why a public thoroughfare might disrupt two groups seeking to join for grace after meals is that the groups feel separated, and indeed, individuals are passing between them, interrupting the contact between the two groups. With regard to an electronically transmitted prayer experience, the signal passes through that public space in an encapsulated format. As we saw with waste and idolatry, any of these interposing phenomena are invisible to the participants. The worshippers are unaware of and unaffected by any passers-by travelling over or under the wires and waves carrying their sound and image.

¹¹⁷ It would be a bit of a stretch to make this parallel to the case of the bimah in Shulhan Aruch 55:14 which would otherwise be seen as a separate domain, and consider everyone inside an *eiruv* to be inside a single “prayer space,” but at the very least, we can consider any streets to be nullified.

¹¹⁸ Thanks to Rabbi Susan Grossman for helping clarify this point.

VIII A Conceptual Approach

A. Different Modes of Argumentation

Some scholars have suggested that within the field of *halakhic* reasoning, one can differentiate two different approaches to *p'sak*. One approach takes a more narrow, precedent-based view, by asking, “Has someone permitted or forbidden something like this thing in the past?” Most of the reasoning that we have applied has been of this vein, seeking ancient or medieval precedents for the type of virtual communication and presence that has become available in the last few decades. I believe that the usefulness of these precedents with regard to virtual presence is fundamentally limited, because the idea of virtual presence, as created in the last few decades, does not have a ready parallel in classic *halakhic* sources.

Another view is more conceptual and philosophical in nature, looking beyond the letter of the law to consider the broader meaning and intention of the law in light of lived experience. So, for example, in moving towards egalitarian prayer practice, some have sought justification through previous precedents where women were permitted to participate in the same ways as men, albeit under limited circumstances. Others argued more broadly that the relevant criterion to being a full participant in prayer is being a full participant in society as a whole. In a society in which women are considered to have all of the same other rights and responsibilities as men, they no longer fall into the same category as slaves and minors.

In the case of virtual presence, we have the same opportunity. Rather than seeking precedents based on previous situations that might theoretically be analogous, trying to compare a laptop to a lantern glass, we can ask how virtual presence is seen as a phenomenon in the larger world today. We can ask what the role is of virtual presence in the 21st century and assign it to a *halakhic* category on the basis of how it is perceived. This approach has the advantage of not changing the law itself, rather choosing a different category of law to apply.

The COVID-19 pandemic accelerated a trend that was already well underway, of considering virtual presence to be closer in nature to physical presence, and perhaps equivalent to it. During the pandemic, virtual means were considered acceptable for almost every type of procedure that had previously required physical presence. Many legal systems allowed for the possibility of legal proceedings to be held virtually. People held virtual celebrations of lifecycle events and fundraising galas.¹¹⁹ Business meetings occurred, and binding votes were taken, virtually. Final examinations in high schools and universities were taken virtually. Telemedicine became the order of the day in many specialties. Some of these trends will certainly reverse themselves with the end of the pandemic, but it is likely that for many types of human activities where physical presence was previously demanded, virtual presence will forever remain an acceptable or even preferred solution.

If that is indeed the case, then Jewish communities guided by the *halakhic* system must contemplate each type of activity and determine whether there is a specific aspect of the activity, rooted in its biblical or conceptual origins, that demands physical presence, or whether virtual presence is in compliance with the intent of the law, even if the letter of the law does not contemplate that possibility. These criteria may vary subtly, even within regard to different aspects of the same ritual practice. So, for example, we have seen that a person who cannot see the Havdalah candle directly may not make the blessing over it (with a debate only over whether

¹¹⁹ Admittedly, these were sometimes even less riveting than the in-person ones that community leaders are frequently expected to attend, without the benefit of *hors d'oeuvres*.

a clear covering is considered an impediment), but it was common practice in many communities to allow a person to fulfill their obligation to hear Havdalah by saying amen to hearing its recitation over the telephone, as long as the person reciting Havdalah was able to see the candle.¹²⁰

As another example, the witnesses that a husband has authorized the writing of a *get* merely have to assert the veracity of what they heard and saw, and that can be true even if their contact with the husband was over a video link.¹²¹ On the other hand, the witnesses to the writing of the *get* must still be present in person while the *get* is written. This discrepancy makes sense given that on the one hand, we want to take every advantage of any opportunity to get the approval of a recalcitrant husband, but on the other, we also want to eliminate any possible aspect of the writing of the *get* that might lead to its disqualification.

With that caveat in mind, we can return to the three possible reasons for minyan that we approached above; sanctifying God, making an act public, or creating a sense of community and divine presence, and consider how each of them might be interpreted in light of the role of virtual presence in 21st century society.

B. Sanctifying God

The classic source for minyan is the verse from Leviticus 22: “*venikdashti betokh benei yisrael*”- “I shall be sanctified among the children of Israel.” Does an online gathering have the capacity to honor God and evince God’s holiness? If one believes that it does not, then the concept of virtual minyan falls flat on its face. And yet, the criterion of evincing God’s holiness may be relative to the circumstances, with an absolute threshold for the number of the group, but not the manner of its composition.

One might argue that an online gathering, though conveying some degree of honor, is not as respectful as an inperson one. During the pandemic, we saw many communities where, at the very least, the intent was to evince God’s holiness.

It is certainly possible to argue that, when physical presence is possible, making the effort to attend in person conveys a greater level of respect than being present online. However, being present in person does not automatically convey honor and holiness. The classic Talmudic source for minyan refers to the ten spies, and the 250 rebels of Korah who scoffed at God’s blessings, certainly not models of piety and respect. There are a number of threads in *halakhic* literature that assume that those individuals counted for a minyan must be physically present, but need not be mentally present. For example, there is a debate as to whether those who are sleeping can be counted in a minyan.¹²² The Shulhan Arukh¹²³ holds that at least one sleeping person may be counted. The Taz¹²⁴ rejects this view, but as we noted above, the Magen Avraham¹²⁵ cites views that permit counting even several sleeping people, and while he retreats somewhat from those views, he concludes with the view of the Maharil that even those who are talking and not paying

¹²⁰ As reflected in writings of Rabbi Moshe Feinstein, *Igrot Moshe*, 4:91:4, even though he was concerned about the use of microphones for other purposes.

¹²¹ הידוש בבית הדין הרבני: נתינת גט באמצעות שיחת וידאו July 24, 2019, <https://g.kipa.co.il/944306/1/>.

¹²² Potentially a more serious concern immediately following the sermon.

¹²³ Shulhan Arukh OH 55:6.

¹²⁴ Taz OH 55:4

¹²⁵ Magen Avraham OH 55:8.

attention may be counted. The Mishnah Berurah¹²⁶ would prefer to say no, but acknowledges the validity of the permissive views.

Those who are participating virtually can show presence and respect in a number of ways. In the contemporary world, turning on one's camera is one significant way to show that one is engaged in what is occurring. While Zoom disabled a feature that enabled the computer to use artificial intelligence to see if someone is paying attention, in a videoconference it is still possible to assess if someone is praying or is engaged in some other activity. Those who choose to engage in remote prayer have the same obligations to be respectful and engage as those who are present in person.

It's also possible to approach the question of maximizing God's sanctity not from the perspective of the "quality" of the participants, but rather the quantity. We saw above that the criterion of *berov am hadrat melekh*, that God is glorified by a greater number of participants, while not specifically invoked in the context of constituting a minyan, is invoked often to express a preference that a ritual be performed when more are able to witness it, even if they do not participate directly. The Temple ritual of Yom Kippur was structured so that more people could hear the Torah reading of the High Priest.¹²⁷ The Talmud¹²⁸ also raises the possibility that the reason why the shofar is sounded during Musaf on Rosh Hashanah is so that the largest crowd can be present. Though it later rejects this view, the concept of seeking a larger assembly remains valid. Even in non-pandemic conditions, there are many communities that are able to attract many more Jews to a virtual minyan than they ever could in person. Some might take this reasoning only far enough to justify virtual participation in a minyan that is already constituted, but others might argue that the qualitative difference between in-person and virtual participation might be outweighed by quantitative factors.

C. The requirement of a deed being public.

The question of whether virtual presence is considered "public" can, I believe, be resolved easily in the affirmative. Indeed, a virtually transmitted event is often accessible to more than can be present in person. In 21st century society, the most significant public events are those which are transmitted and preserved via video, and it is often expected that the viewership via remote means will far exceed the number of participants in person.

¹²⁶ Mishnah Berurah 55:34,36

¹²⁷ B. Yoma 70a.

¹²⁸ B. Rosh Hashanah 32b.

D. Sense of community

The question of whether a sense of community is created, and God's presence is felt, is subjective. Sociologists may debate the meaning and purpose of community in the abstract. Is it about having common goals and values? Shared previous experiences? A shared commitment to a joint activity? Providing mutual support and encouragement? Informal social connections?

There is a lively debate as to whether online community can be seen as comparable to live presence for all of these purposes. After all, over Zoom one cannot shake hands, hug, or share kiddush. Then again, COVID-19 precautions prevented many from doing so even when meeting in person. A virtual community can have shared goals, values, and experiences, provide mutual support and encouragement, and even foster informal social connections. Many who have gathered for virtual prayer have felt a remarkable sense of community, despite the limitations of the medium. My own community, like many others, has picked up a number of members who live elsewhere, but who have developed a strong connection through our daily minyan.

In fact, there is widespread evidence, even pre-COVID, of virtual communities (even over asynchronous connections) creating strong bonds, which often result in later in-person connections. One of the earliest "virtual communities" was Usenet, which was most active in the 1980's-90's. The conversations were simple text messages, with discussions unfolding over days and weeks. Some groups spawned in-person meet-ups. Many of the phenomena seen in 21st century social networks like Facebook and Twitter were first observed in this primitive environment. While these online communities were asynchronous, and could in no way be confused with an in-person gathering, they spawned long-term friendships among people who had never met in person.

From 1997-2004, I served as the Director of Distance Learning for the Jewish Theological Seminary. At the time, multi-way video was not easy to achieve, but we found that the class groups created especially strong bonds if we were able to create occasional gatherings by video link. As technology for high-fidelity multi-way conferencing became more readily available at the consumer level through the 2010's, it became increasingly common for use not only in business settings, but for education, and there were even some early attempts to use it for worship. Business leaders were already thinking twice about when it was truly worth it to spend a whole day travelling for a two hour meeting, or how frequently an entire team needed to be gathered at one site. Supplementary school educators were exploring Zoom as an alternative to carpooling, and as a way to better serve children in outlying areas.

The COVID-19 pandemic dramatically accelerated and exaggerated these trends that were already present in society, as in many communities, literally everything became remote over the course of days. Some have suggested that the pendulum will swing back just as quickly, as people experiencing "Zoom fatigue" want to be able to see each other face to face. The first few times that I received a "gift box" so that I could enjoy a meal, snack or a drink during a virtual event were impactful, but the practice lost its novelty. The appeal of being able to "hang out" and eat and drink together cannot be underestimated.

Location is also an important mediating factor for creating a sense of community. Whether the space is private or shared, indoors or outdoors, the arrangement of seating, all impact the feel of

a gathering taking place there. Simply changing place changes attitude,¹²⁹ and being out of one's typical environment creates new opportunities. Many attempts have been made to come up with platforms that seek to replicate or surpass key aspects of the real world gathering experience, and it is too soon to tell which, if any, will flourish and which ones will fizzle out.

Rabbi David Fine, in his response to this *teshuvah*, notes the issue of live sporting events. The view and sound from one's living room may in fact be clearer than that available at the stadium. In practice, many sports fans make choices as to when to attend in person and when to watch remotely, and participation in one format reinforces and encourages participation in the other. Teams that offer a worthwhile experience have increased participation and viewership in both formats, and those that don't offer a meaningful experience will suffer in both realms.

However, for a minyan, a community alone does not suffice. That community must also create a sense of divine presence. A group which includes only nine Jewish adults, with the tenth being someone who was not born Jewish, is part of the community and engaged in the conversion process but has not completed it, may feel a profound sense of community, but cannot constitute a minyan. The question remains as to the mechanism by which a community (and in particular, a community of ten) causes the *Shekhinah*, the divine presence, to dwell in the midst of a group.

Some might answer that the Talmud says so based on a *gezerah shavah* textual interpretation going back to Moses, and no other discussion is necessary or even possible. However, our tradition rarely stops asking "why." In this case, even though the number ten might be set, our sages still needed to understand the reasoning behind the law in order to determine which individuals meet the criteria to be counted. Seeking the underlying mechanism by which a gathering of ten, rather than nine actually invokes the *Shekhinah* is very deep theological water indeed, perhaps better addressed in a homiletic rather than a *halakhic* setting.¹³⁰

The Talmud does not explain why ten is the magic number, but goes deeper into its significance. Berakhot 6a, in addition to explaining that a group of ten causes the *Shekhinah*, the Divine presence, to dwell in a group, cites criteria by which smaller groups may also welcome the Divine presence: three who sit in judgment, or two scholars who study together, or even one who studies and invokes the Divine name. The discussion concludes that a minyan is unique because with a smaller group engaging in judicial proceedings or Torah study, God's presence engages only after they have begun their efforts. In contrast, when ten gather for prayer, God's presence actually arrives even before the tenth, and begins supporting their efforts before they have even begun. Perhaps the simplest explanation is found later in the same extended stretch of *aggada*,¹³¹ as a number of sages are quoted to indicate that the prayer of a community is never rejected, even though the prayers of the individual might be.

If we refer back to the discussion of Rabban Gamliel and the heretic in B. *Sanhedrin*, there does not seem to be any reason why a physical barrier or physical distance should prevent the

¹²⁹ B. *Rosh Hashanah* 16b, but see also Danny Sanderson, "Yo Ya" 1973.

¹³⁰ A few examples: since the ten evil spies are cited as the origin for the practice, perhaps the ten worshippers are a *tikkun*, a corrective, for the sin of the ten spies? Ten creates a sense of completeness? Since the world was created with ten utterances, ten individuals are necessary to create a world of prayer? Perhaps each of the ten *sefirot* of the kabbalistic system must have a place to rest within the minyan, with the 10th and final being the *Shekhinah*?

¹³¹ B. *Berakhot* 8a.

Shekhinah being present in a group, provided that the group is constituted of the appropriate number of people with the proper qualifications and intent.

Our view of the role of community may continue to evolve, since the communal significance of virtual presence may also have a generational aspect. In the United States,¹³² demographers divide the population into the “Silent Generation” (those born before 1945), Baby Boomers (born 1946-1964), Generation X (1965-1980), Millennials (1981-1996) and Gen Z (1997 or later). Many studies have looked at the sociological differences among these generations and how they engage with the Jewish community and its institutions.

The conventional wisdom is that the youngest Jews (younger millennials, and Generation Z) have grown up as “digital natives.” They have lived with always-available smartphone communication and two-way video conferencing like skype or facetime since a very young age, and this drives their view of virtual presence. Some futurists have suggested that this generation is likely to continue to see virtual presence as being on an equal footing with physical presence. Recent studies show that some digital natives would rather give up their car than their cellphone,¹³³ and value their appearance and reputation in the virtual realm more than in the physical realm.¹³⁴ Whereas previous generations (older millennials, Gen X or older) would have gone to the movies, many members of this generation are as likely to hang out with friends watching streamed content “alone together.” For example, the “Twitch” platform, which allows people around the world to watch other people play video games, has over 26 million daily users, most of whom are under 35.¹³⁵ Many members of this rising generation do indeed see virtual and physical community as parallel and co-equal.

The question of how these results will play out in the Jewish community are less clear. When I first presented the question of streamed services on Shabbat to the CJLS, in November 2019, many members, Generation X and older, were curious as to why the issue was so pressing. Informal conversation with the Millennial and Gen Z rabbinical students observing the meeting revealed that some were in favor, some opposed, but all recognized that the need for discussion was obvious.

A survey conducted by Park Avenue Synagogue in early 2021¹³⁶ indicated that older generations of Jews were far more likely to want to retain online programming, while younger ones were more likely to be eager to return to in-person activities. Some of this may reflect the fact that those of older generations were more concerned about health risks than those who were younger.

There is also some research about on-line presence being better at strengthening existing social groups than creating new ones. This dynamic played out within a narrow demographic during the pandemic, as colleges prioritized having their first-year and final-year students on campus. Members of an older generation who have already established strong friend groups may get more of what they need from online contact with those existing contacts than younger people who are looking to expand their networks.

¹³² Results in other countries and cultures may be quite different.

¹³³ https://www.huffpost.com/entry/millennials-car-ownership_n_2789454 .

¹³⁴ <https://newsroom.squarespace.com/blog/squarespace-survey-reveals-genz> .

¹³⁵ <https://backlinko.com/twitch-users> .

¹³⁶ <https://ejewishphilanthropy.com/younger-jews-prefer-in-person-synagogue-engagement/> .

Based on my own experience, I believe that there may also be a particularly strong draw for those who are in the age bracket of raising children. They may specifically want in-person activities for their children, but while balancing their own work, caring for children, and perhaps even aged parents, they may be less willing or able to carve out time for their own spirituality, and remote options are more likely to be practical.

There is a saying that “when all you have is a hammer, everything looks like a nail.” Remote presence is obviously not the solution to all needs, as some attempted to make it during the pandemic, but it will undoubtedly remain an important tool, and it may take several years of a “new normal” for communities, organizations and individuals to understand its proper place in the toolbox. What is clear is that there are some segments of society, in every age group, that already see virtual presence as a legitimate avenue for creating and sustaining community. It’s also possible that commodity availability of technologies like holographic projection or immersive virtual reality, reduced latency audio and video, and improved reliability, will expand the impact and acceptance of virtual presence in ways that we cannot anticipate.

IX Issues of Implementation

A. Distractions.

Our tradition is concerned about distractions during worship. We saw above that one may not pray in the presence of nudity or waste. However, even aesthetically neutral or positive distractions are a problem. The *Shulhan Arukh*¹³⁷ indicates that it is forbidden to pray while looking at illustrations:

הבגדים המצויירים אע"פ שאינ' בולטת אין נכון להתפלל כנגדם ואם יקרה לו להתפלל כנגד בגד או כותל מצויר יעלים עיניו: הגה ולכן אסור גם כן לצור ציורים בספרים שמתפללים בהם שלא תתבטל הכוונה
 “[Regarding] illustrated garments, even though [the image] does not protrude (which would make it a forbidden graven image), it is not proper to pray in front of them. And if one happens to pray in front of an illustrated garment or wall, he should close his eyes. Rem" a: And therefore, it is also forbidden to illustrate books [of prayer], so that those who pray should not lose their focus.”

One might think that the issue is the prohibition of idolatry, associated with praying in the presence of a three-dimensional portrayal, but this does not seem to be the case. Rabbi Karo, in his *Beit Yosef*,¹³⁸ concurs with Rabbi Isserles as cited above that this is not the reason. While there is a Talmudic source¹³⁹ which discusses the general concern that nothing be between the worshipper and the wall, the larger issue for Karo and Isserles is that these images will be a distraction. Of course, we know that many synagogues, ancient, medieval and modern, had significant iconography, particularly around the ark, which was intended to create increased spirituality and focus, so perhaps these rabbis were responding to perceived excesses.

This concern is rendered less relevant to this conversation by the previous simanim in the *Shulhan Arukh*.¹⁴⁰ Both Karo and Isserles agree that human beings are not necessarily considered an interposition. As Rabbi Elliot Dorff pointed out, if we are considering live images of one’s

¹³⁷ *Shulhan Arukh* OH 90:24.

¹³⁸ *Beit Yosef* OH 90:29.

¹³⁹ B. *Berakhot* 5b.

¹⁴⁰ *Shulhan Arukh* OH 90:22-23.

fellow *daveners* to constitute community for this purpose, their presence is not considered to be an interpolation, any more than the presence of other people praying in the same space would be. While Karo says that it is “good to be concerned” about the presence of other people being a distraction, the Mishnah Berurah¹⁴¹ makes it clear that there cannot possibly be a prohibition, otherwise prayer in a synagogue would be impossible.

Even if the letter of these concerns can be addressed, technology offers distractions undreamt of by the sages. On a personal phone or computer, “push notifications” serve to remind the user that there is a great wide world out there that continues to exist and insist that one pay attention to it. One estimate from 2017¹⁴² suggests that a typical cellphone user receives 46 push notifications a day, 3 or more every waking hour, but I believe that that estimate is laughably low for some individuals. However, even before COVID-19, the widespread availability of siddur apps for mobile devices meant that praying while looking at a screen was already a concern to be addressed.

On a computer set up in synagogue, it is certainly possible to eliminate extraneous applications and notifications, and every effort should be made to do so, but it is often the case in a daily minyan setting that the service leader or one of the other participants is also tasked with managing the technology (admitting people to the Zoom, muting and unmuting, sharing a screen, monitoring chat, etc). Some people actually enjoy the role of “Zoom Gabbai” but its impact on the davening experience must be considered.¹⁴³ Leaving aside the important question of whether any of these interactions with technology would be permitted on Shabbat, even during the week they have an impact on the prayer experience.

There is a further concern regarding praying in front of a mirror.¹⁴⁴ The Radbaz,¹⁴⁵ who was active in 16th century Egypt, was among the first to express it, in the context of potential idolatry. While the Shulhan Arukh does not pick up on this concern, the Mishnah Berurah¹⁴⁶ does, asserting that it appears that one is bowing to and worshipping one’s own reflection. While no one today would have the idea that one is actually praying to the computer, or to one’s image on the screen, it is still worth noting that Zoom and other conferencing systems often give the user the ability to show or conceal one’s own image. There may be situations where the service leader or someone monitoring the system needs to be able to see their own feed¹⁴⁷, and that need would override this concern. Nevertheless, in general, if one is participating in technologically facilitated davening, the goal is to be aware of the presence of others, not to focus on one’s own appearance.

B. Privacy

One of the concerns created by any type of worship is that of privacy. In my paper on streaming on Shabbat and Yom Tov, I address the privacy concerns that arise when a stream of a service is

¹⁴¹ Mishneh Beruah 90:69.

¹⁴² <https://askwonder.com/research/times-people-interrupted-push-notifications-163c8n1hc> .

¹⁴³ During COVID-19 times, we had a non-Jewish Zoom monitor for Shabbat services, but during the week, I sometimes found myself unable to avoid being the “shammes” during Zoom minyan and as a result, sometimes ended up having to do my own personal davening at another time.

¹⁴⁴ There are some *poskim* who prohibited males from looking in a mirror in general (cf Shulhan Arukh YD 156:2) but we follow the Rema there who permits.

¹⁴⁵ Responsa of the Radbaz 4:107.

¹⁴⁶ Mishnah Berurah 90:7.

¹⁴⁷ For example, if that is what enables them to see an entire minyan.

made available on the open internet for all to see. In a scenario where we are literally counting each Jew on the screen, these concerns are mitigated. The service is much more likely to be private to that community, with some form of access control, and recording much less likely.

On the other hand, bringing the service into one's home, to the fullest extent, means bringing one's home into the service as well. Participants in the service may end up witnessing background activities and conversations that were not intended to be made public. In addition, individuals may choose to turn off their cameras for a variety of reasons. In my own community, we had a husband and wife who joined regularly from the wife's hospital room in the final months of her life. Their participation brought them tremendous comfort, but she did not wish to be seen by the other participants in her weakened state. Sensitivity to privacy is an ongoing concern.

C. The Position of Prayer?

Ideally one would recite the *Amidah* facing Jerusalem,¹⁴⁸ and synagogue architecture is usually oriented to facilitate this practice. One praying outside of a synagogue context should also attempt to fulfill this practice, but there are times when the use of technology makes it less practical to do so, because the available screen and camera may dictate a particular physical orientation. If one cannot face Jerusalem, the classic sources¹⁴⁹ regard it as sufficient to turn one's face, or even one's heart towards Jerusalem. It is clearly preferable to stand for the *Amidah* and other prayers, though one's prayer is valid even if one did not do so,¹⁵⁰ and it is therefore strongly encouraged to arrange a home prayer space to make this possible.

D. Partial View and "Hybrid" Minyanim

One question that comes up in a "virtual minyan" setting is whether all members of the group must see all other members. This can be an issue in a "virtual only" minyan if some participants have Zoom switched into spotlight mode, rather than grid mode, or some are on a device with a smaller screen that can only show a few participants at a time. It can be a particular challenge in a "hybrid" setting where a subset of the minyan is together in person (typically at the synagogue or at a shiva home), and others are participating from other locations, but neither group has numbers sufficient to be considered a minyan on its own.

In a live minyan, constituted on the principles of presence in the same space, the prayer leader might be facing Jerusalem, near the center front of the room, and need not see any of the other participants. However, in a situation where the participants cannot see each other, the leader takes on an increased significance. We can draw this conclusion from the Shulhan Arukh's¹⁵¹ understanding of the role of the leader in the context of a physical minyan:

אם מקצתן בפנים ומקצתן בחוץ וש"ץ תוך הפתח הוא מצרפן

If some are inside and some are outside, and the leader is in the doorway, he merges the two groups.

Rabbi Moshe Sternbuch¹⁵², writing on the topic of *mirpeset Minyanim*, offered a similar p'sak for that context, based on the Sha'arei Hatziun 195:6, and emphasizes the point that it is not only

¹⁴⁸ B. Berakhot 30a, Shulhan Arukh OH 94:1.

¹⁴⁹ B. Berakhot 30a, Shulhan Arukh OH 94:3-5.

¹⁵⁰ See Shulhan Arukh OH 94:9, but also Mishnah Berurah 94:27.

¹⁵¹ Shulhan Arukh OH 55:15.

¹⁵² *Loc Cit.*

necessary but also sufficient for the leader to be able to see the minyan participants, if they cannot all see each other. Based on these sources, while it is clearly preferred for all participants to be able to see each other, if some of the members can only see a portion of the group, then technically speaking it is sufficient for the leader to be able to see a full minyan.

This technical point imposes an additional requirement on a “hybrid” service. In such a service, the leader might be present with several individuals in person, while others are visible via video only, with neither of these subgroups being sufficient to constitute a minyan on its own. In such a case, these sources would theoretically allow the leader to serve as the link joining the two subgroups, even though the live participants are not visible on screen to the remote participants, and the virtual participants are not visible on screen to the live participants.

Sometimes in a live minyan, the leader cannot see the entire congregation, but this does not present a problem because the principle of presence in the same place is being used to constitute the minyan. However, one cannot have it both ways- one cannot constitute a minyan based on the leniencies of the concept of physical presence and the leniencies of mutual visibility. Therefore, if there is not a minyan present with the leader, she must actually see at least ten in order to combine them, which means that the leader must be able to see the screen, and also have a view of the worshippers who are in the room with her as well.

In practice, it seems reasonable to impose the additional stricture that in a hybrid setting, no less than in a purely virtual one, a combined total of ten participants actually be able to see each other and not rely only on the leader joining them. This means having cameras and screens set appropriately to enable this to happen. In contrast, in the case where a minyan is already constituted in person for a larger service, there could be circumstances where it is disadvantageous to have screens and cameras facing worshippers located together at the synagogue, due to concerns of privacy or the spirit of Shabbat/Yom Tov.

E. Shiva

One area where virtual minyan and presence during the COVID-19 pandemic has had a unique effect is on shiva. In theory, shiva is meant to be an opportunity for the community to truly embrace the mourners. Ideally, the mourners are sustained by meals brought by friends and neighbors, and the community gathers to offer comfort, share stories and join for prayer. Unfortunately, the reality sometimes falls short. The shiva home may be overrun by people looking for a free meal, and side conversations about other topics have the potential to drown out the voices of those remembering the deceased offering comfort. In those circumstances, shiva can feel like a burden. I believe that sometimes the desire that some mourners express to observe a shortened shiva does not reflect a disregard for their loved one, or Jewish tradition, but rather an aversion to shiva as experienced in their community.

Conversely, there are times when the mourners do not have strong roots in the community, and there is a struggle to convene a minyan quorum in the shiva home. As a result, the only possible minyan in the home of the mourners is a minyan of acquaintances or even well-meaning strangers. Ideally, this experience will represent the best of what community can be, going out of our way to support a fellow member of our community in pain, and creating a new relationship of caring and support. For others this can feel uncomfortable.

During COVID times, many communities suffered far more losses than in any other year, and grieving families felt a pain of loss further exacerbated by isolation. In the midst of this challenging context, I had a number of powerfully positive Zoom shiva experiences. When there were many people seeking to participate, the virtual medium lent itself to focusing conversation more directly on the mourners, and those who wished to speak about the deceased, and removing some of the temptations and externalities. People who lived in other communities, and indeed, around the world, were able to join the experience, which brought special comfort when there were not many in our local community who were in a position to comfort the mourners. Some communities even created scheduling so that the mourners were “accompanied” throughout the day. Of course, the same efforts could be applied to in-person shiva.

Many families and communities, will, rightfully, bid farewell to the Zoom shiva experience without ever looking back. Others will see it as a useful tool for certain situations, especially to extend the public observance of shiva when a family is reluctant to open its home for the full week or to include family and friends of the deceased or the mourners who live at a distance or have limited mobility.

F. Time Zones

One of the questions that has arisen repeatedly is whether someone may fulfill their obligation to pray, or enable others to do so by helping constitute a minyan, by participating in a service which is in a different time zone (participating in a minyan which is davening the afternoon service when at one’s own location it is after dark and time for Ma’ariv, or vice versa. Rabbi Reisner begins to address this question in the context of Mourner’s *Kaddish*, but this question deserves attention in a separate *teshuvah*.

G. Remote Shatz

If one is conducting a service on the basis of this *teshuvah*, then by definition, the leader/shaliah tzibbur need not be in the same place as the rest of the minyan. However, it is fair to ask, whether if a full minyan (or the majority of a minyan) is constituted in one place, the reasoning of this *teshuvah* would permit the service leader or Torah reader to be somewhere else, and that question must be addressed separately as well.

X. Alternatives

Just because something *can* be justified does not mean that it *should*. Continuation of the practice of a minyan via Zoom and similar technologies will undoubtedly lead to disruptions and revisions of Jewish communal life in ways we can only begin to imagine. Are there not alternatives?

A. Trying Harder.

The challenge of gathering a minyan in small communities is not new. The Shulḥan Arukh¹⁵³ notes the real-life situation of a community where there were only 10 or 11 eligible to complete a minyan, and one or two of them wished to leave. If they wished to leave for the High Holidays, the community could force them to hire a replacement.

Today a community might undertake concerted, organized efforts to ensure a minyan physically located in one place by assigning “Jewry duty” to its members on a rotating basis. In this way, the spirit of the *ma’amadot* is carried on! Others create cohorts within the congregation who take responsibility for a specific night, or dovetailing minyan with other activities (religious school, classes and meetings) to make it easier to ensure a quorum.

However, the same paragraph in the Shulḥan Arukh OH 55:21-22, concludes that in many cases, there is no parallel requirement for times other than the High Holidays. The assumption was that the community might continue to have communal prayer, but without the benefit of a minyan.

For many communities today, the issue of relying on virtual presence to constitute a minyan is only relevant during the week, and it is assumed that in the absence of unusual circumstances, Shabbat worship will draw at least ten in-person participants. However, this is not universally true. There are certainly some smaller communities where there may be a challenge drawing a minyan even for Shabbat services.

B. Individual Prayer

Individual prayer is always an option. According to many (though not all) *poskim*, while there are obligations and opportunities that fall upon a community when a minyan is constituted, there is no individual obligation to pray with a minyan. For example, the Shulḥan Arukh says this:¹⁵⁴

ישתדל להתפלל בב"ה עם הציבור, ואם הוא אנוס שאינו יכול לבוא לב"ה יכוין בשעה שהציבור מתפללים, והוא הדין בני אדם הדרים בישובים ואין להם מגין, מ"מ יתפללו שחרית וערבית בזמן שהציבור מתפללים.

[One] should try to pray in the synagogue with the community, and if he is forced and cannot come, he should intend to pray at the time when the congregation prays. This is also the case for people who dwell in smaller settlements and have no minyan: in any case they should pray *shaharit* and *arvit* at the time when the community prays.

The Maharil in his “Minhagim”¹⁵⁵ says as well that “To pray with ten is not ‘so much’ of a mitzvah, for one can focus his prayer in his home, for we do not find that the sages required a person to pray with ten.”

There were many individuals who during the pandemic sustained themselves with meaningful individual prayer, though this meant going months without participating in communal Torah

¹⁵³ Shulḥan Arukh OH 55:21-22.

¹⁵⁴ Shulḥan Arukh OH 90:10.

¹⁵⁵ Maharil, laws of Eiruvei Hatzeirot.

reading, hearing *Kaddish* or *Kedushah*. Our tradition contemplates the reality that an observant Jew might choose to live in a community where regular prayer with a minyan is not available. Indeed, many rabbis who serve smaller communities do so with the understanding that they might only have the opportunity to pray with a minyan twice a week.

C. Group Prayer without a Minyan

It is important to note that there can also be value in gathering for prayer in a small group, even if, for whatever reason, those assembled do not constitute a minyan. While the passages that require a minyan must be omitted, there are ways to maximize the sense of shared *tefillah* even in their absence, and there can certainly be a sense of communal support and camaraderie, shared presence and purpose. Our movement has offered meaningful alternatives to Mourner's *Kaddish* specifically designed for these types of gatherings,¹⁵⁶ and while traditional Torah reading would not be possible, the Torah portion may still be read from a *Humash*, and other prayers with emotional resonance, including the *Misheberakh* for those in need of healing, and the *El Maleh* memorial prayer could still be recited.

D. Radical Inclusion

There are many ways other than virtual participation in services to include those who cannot travel to synagogue due to health issues. Members of the community may come to visit, and indeed, a minyan may be gathered in their home, if their condition permits. Creating opportunities for communal prayer for those who cannot come to a synagogue, whether in senior residences or other settings, is a worthy endeavor.¹⁵⁷ Several long-lived minyanim began with the gathering of a group desiring to bring prayer to a specific individual. However, this is rarely logistically feasible on a large scale, and the Talmud¹⁵⁸ notes that even the sage Rav Nahman prayed alone rather than summoning a minyan to his home

E. Combining communities

Rabbi Robert Scheinberg pointed out an excellent solution for smaller communities, which falls well within the precedents already confirmed in Rabbi Reisner's *teshuvah*. They could "patch in" to a larger community (operating in the same time zone) that has a more regular minyan. There are certainly ways for the "subsidiary" minyanim to sustain their own pride of community despite their reliance on another community. It's also possible to imagine a scenario where several smaller communities support each other by forming a rotation "hosting" the minyan in person while others are remote. I am concerned that constituting an online worship community where the members do not at least have the option of joining face to face will weaken, rather than strengthen, community.

Each of these alternatives can serve an incredibly important role, but they will not satisfy every community. Some are too geographically dispersed, or too small, to sustain a daily minyan, no matter what heroics are employed. In other cases, the idea of individual or small group prayer, without Mourner's *Kaddish*, will not be satisfactory for those who wish to recite a "full" service. The draw of Mourner's *Kaddish* is not to be underestimated. The ability to bring multiple communities together is particularly powerful, but may not always be practical.

¹⁵⁶ <https://www.rabbinicalassembly.org/story/prayer-when-there-no-minyan-saykaddish>, and see also Rabbi Pamela Barmash, "How to Recite Mourner's Kaddish while Physically Distancing during a Pandemic," Y.D. 376.4.2020

¹⁵⁷ For many years, my congregation held its evening daily minyan in a Jewish nursing home, rather than in the synagogue building, with inclusion of the seniors being one of the goals.

¹⁵⁸ B. Berakhot 7a.

XI Limitations

A. Mourner's *Kaddish* Only

One area of debate is whether to permit virtual minyan for all *devarim shebikedushah*. Surprisingly, there is precedent for considering a group as constituting a minyan for one purpose, but not another.¹⁵⁹ A number of poskim (including some of my colleagues on the committee when the original *hora'at sha'ah* was offered), were not willing to take the leap to a full virtual minyan, but were willing to do so specifically for the purpose of Mourner's *Kaddish*. One media report¹⁶⁰ attributed a similar view to Rabbis Eliezer Melamed and Rabbi Benjamin Lau. There are several reasons to be more lenient specifically for Mourner's *Kaddish*, even if one does not accept the concept of a virtually constituted minyan for most other purposes:

The classic source in Mishnah *Megillah* 4:4 does not mention *Kaddish* as one of the items requiring a minyan. Though it was composed as a doxology, assuming communal recitation and response, it is only added to the list in the post-Talmudic minor tractate *Sofrim*.¹⁶¹ All later sources agree that a minyan is required for Mourner's *Kaddish*. In fact, the *Siman* in the *Tur* and *Shulhan Arukh*, which discusses minyan, is presented in the context of *Kaddish*, rather than any of the other prayers requiring a minyan! Therefore, while we could not endorse recitation of Mourner's in the absence of a minyan of ten Jewish adults, we might concede (like the *Hashukei Hemed*) that even if they are joined together in a sub-standard way, it might be sufficient.

We routinely engage in other leniencies with respect to Mourner's *Kaddish*. For example, we allow all of the mourners to recite Mourner's *Kaddish* together, even though this is violation of the principle of “two voices together may not be distinguished”¹⁶² which is applied to all other *devarim shebikedushah*.

There is no issue of a *beracha l'vatala*, a blessing in vain, if Mourner's *Kaddish* is recited without a minyan. The “worst case scenario” for saying *Kaddish* without a proper minyan is that it does not have the intended spiritual effect.

Ironically, the practice of Mourner's *Kaddish* may be less than a millennium old,¹⁶³ but has captured the imagination and attention of many in our communities far beyond its stature in the

¹⁵⁹ For one example, see the Rema on *Shulhan Arukh* 690:18, who considers the possibility of counting women for a minyan for the purpose of *Megillah* reading on Purim, though he would not permit it in other contexts, and the commentaries on *Sahnedrin* 74a-b, including R. Ya'akov Emden *Migdal Oz*, (*Even Bochen* 1, 69) and *Einanyim LaMishpat*, which suggest that women are included in a minyan for the purpose of constituting a “public” setting for the purpose of martyrdom, though they would presumably not constitute the same for the purpose of public prayer. Below I will cite *Mishnah Berurah* 55:24 which permits counting a minor as the tenth, but, alas, specifically **not** for Mourner's *Kaddish*!

¹⁶⁰ הרב אליעזר מלמד: מותר להגיד קדיש במפגש וירטואלי March 18, 2020. <https://g.kipa.co.il/956904/1/>

¹⁶¹ *Sofrim* 10:7.

¹⁶² B. *Rosh Hashanah* 27a.

¹⁶³ The idea that a child should pray for his/her parent is found in the post-Talmudic tractate *Kallah Rabati* 2:9, but is not connected there to *Kaddish*. Some have suggested that another post-Talmudic tractate, *Soferim* chapter 19 hints at the idea of Mourner's *Kaddish*, but it is inconclusive. The idea of *Kaddish* specifically as a mourner's prayer appears for the first time in the *Sefer HaRokeach* of Rabbi Elazar of Worms, and the 13th century *Or Zarua*, *Shabbat* 2:50, as a regional custom. Maimonides, writing in the 12th century in Egypt, does not mention the idea of *Kaddish* specifically as a mourner's prayer anywhere in his *Mishneh Torah*, but within a few hundred years it had become a cherished practice among most Jewish communities.

liturgy. There are certainly a significant number of people whose commitment to daily prayer begins with the experience of Mourner's *Kaddish*. In practice, there is often a particular hunger for minyan specifically for the purposes of Mourner's *Kaddish*. It is unfortunate that for some, *Kaddish* has become the "tail that wags the dog" for participation in daily minyan, and it is worthwhile to undertake educational efforts to reverse that trend, but in the meanwhile, many daily minyanim rely on the pull of Mourner's *Kaddish*. While, as a regular davener, I would prefer to be able to recite the *Barkhu* and *Kedushah*, and would be disappointed if the time I spent preparing the Torah reading were to go waste, I am more concerned for those who came specifically to recite Mourner's *Kaddish* whose distress can be far greater. In some synagogues the search for a 9th or 10th person will reach a crescendo specifically around *Aleinu*, without care for the other parts of the service which have been missed. This concern is particularly pressing in a shiva setting, where the mourners may not be familiar with the daily service, but there is a strong pull for Mourner's *Kaddish*.

Maintaining the ability to say *Kaddish*, but not other tefillot or the Torah service may create enough "glue" to hold a group together and avoid distress and embarrassment, while still providing an incentive to strive for an in-person minyan to create a fuller community.

Conversely, there is a challenge involved in going "part way" on this question, which is that sometimes a *humra*, a stricture, is also a *kula*, a leniency. While there is no strict obligation for an individual to seek a minyan, once a minyan is gathered, certain obligations apply to that group. The group does not have the option of skipping *devarim shebikedushah*, and they must attempt to read Torah, if a scroll and a reader are available. While I have expressed this discussion in terms of leniency, if one accepts the idea that a minyan may be constituted virtually, then one cannot "pick and choose" when it might apply, and one might be obligated to consider a virtual group to be a minyan, whether or not it is convenient.

B. Torah Reading

There are specific issues with regard to Torah reading. As I indicated above, the reader must be with a scroll. The question of whether a remote participant in services may receive an aliyah from a location away from the scroll is a question that is being asked by many. During the pandemic the CJLS offered some temporary guidance on this topic,¹⁶⁴ which required that the reader and the *oleh* (or the primary *oleh*, if one accepts the premise of joint aliyot¹⁶⁵) be present at the scroll as well. This advice cannot be assumed to apply in the post-pandemic era, and may require further revision. Rabbi David Fine, in his paper opposing this one¹⁶⁶ offers a summary of his thoughtful analysis of this issue that originated in an unpublished *teshuvah* that he composed during the pandemic, and argues forcefully that the *oleh* must be present in person, since the *oleh* must hold onto the scroll. Others have suggested based on Rabbi Danny Nevins' *teshuvah* on a blind person receiving an aliyah¹⁶⁷ that the *oleh* need not see the scroll, that it might be acceptable.¹⁶⁸ For the purpose of this *teshuvah*, I will conclude that the reader must be in the same place as the *sefer Torah*, and defer the question of a remote *oleh* for further analysis.

¹⁶⁴ <https://www.rabbinicalassembly.org/story/torah-reading-during-covid-19>

¹⁶⁵ For contrasting views on the topic, see Avram Israel Reisner, "[Joint Aliyot](#)" OH 136.1992, Kassel Abelson, "[Aliyot for Couples](#)" OH 136.1993.

¹⁶⁶ <https://www.rabbinicalassembly.org/sites/default/files/2021-07/fine%20-%20minyan%20in%20person.pdf>

¹⁶⁷ Daniel S. Nevins, "[The Participation of Jews Who are Blind in the Torah Service](#)" OH 139:2.2003

¹⁶⁸ See also the exchange between Rabbi Ahron Meir Meisels and Rabbi Moshe Sternbuch, preserved at <https://rabbidunner.com/a-sensational-ruling-from-rav-moshe-sternbuch-shlita/>, and Sternbuch's later ruling in ליקוט מכתבים ומאמרים בעניין מגיפת הקורונה ניסן תש"פ.

During the pandemic, some congregations partially resolved this issue by distributing Torah scrolls to their readers at remote locations. While there is a potential concern about switching scrolls during a reading,¹⁶⁹ in a Zoom context it is obvious to all why different scrolls are being used. There are also potential concerns about relocating a Torah scroll for just a single reading, but Rabbi David Golinkin addressed these concerns.¹⁷⁰

In a post-pandemic world, I would assume that the Torah scroll and the majority of the minyan would be at a central location. Indeed, in practice, it is clearly preferable to have not only the Torah reader, but the *gabbaim*, present in the place where the Torah is being read, since the *gabbaim* serve not only a practical role of “quality control” assisting and correcting the reader, but in fact serve a ritual role, as the *Shulhan Arukh* notes:¹⁷¹

אם ש"צ רוצה לברך לעצמו ולקרות צריך שיעמוד אחר אצלו שכשם שנתנה תורה ע"י סרסור כך אנו צריכים לנהוג בה ע"י סרסור:

If the reader wishes to say his own blessings and then read, another should stand with him for just as the Torah was given with an intermediary, so too we must receive it with an intermediary present.

In non-pandemic times, even if there is not a full minyan gathered in person, if a Torah service is to be held, it is preferable to have at least 6 or 7 of the minyan present where the scroll is, so that there are enough present in person to read, serve as *gabbaim*, receive *aliyot*, and perform *hagbah* and *gelilah*. This number is not just a practical consideration, but also takes into account the tradition that on a fast day there should be at least 6 or 7 present who are fasting in order for the fast day reading to be read.¹⁷²

If it is not possible to read from a scroll, then, as I noted above, an alternative to the full Torah service would still be appropriate. The Torah could be read from a *Humash*, without the normal blessings, but could be accompanied by songs, celebrations of milestones, and prayers for healing of the ill, and the *El Maleh* remembrance of the dead, that might normally would be a part of the Torah service.

¹⁶⁹ *Shulhan Arukh* OH 144:4.

¹⁷⁰ Rabbi David Golinkin <https://responsafortoday.com/en/moving-a-sefer-torah-for-a-one-time-reading/>

¹⁷¹ *Shulhan Arukh* OH 141:4.

¹⁷² See *Mishnah Berurah* 566:14. I have not given this topic its full due.

C. From Nine To Ten

There is precedent for reserving the concept of virtual participation only for situations where there are nine in person and a tenth must be added. These types of scenarios create strong communal pressure. The Talmud¹⁷³ notes the story of Rabbi Eliezer who freed a slave in order to make a minyan, and concludes that in addition, a different slave was counted as the tenth. As Rabbi Fine notes, the Talmud¹⁷⁴ explores and rejects the idea that the ark might be counted as the 10th. Interestingly enough, Rabbi Azulai whom I cited above regarding those quarantined in Lazaretto, explains that in this text, the word ארון does not refer to the literal ark, but rather is an acronym for אהד רואה ואינו נראה one who sees but is not seen!¹⁷⁵ The implication would be that this is referring to God, the ultimate One who sees but is not seen, but it could hypothetically be a human who sees but is not seen as well. Another view, found in later sources¹⁷⁶ permits counting a minor as the 10th only, though many still reject this view, or accept it for some parts of the service and not others.¹⁷⁷ The Arukh Hashulhan OH 55:20 that I cited above permits counting someone outside the synagogue only if they are the tenth, and indeed there are many sources that are more lenient regarding the tenth person.

XII. Implications for Communities

It is clear that at least during the week, virtual participants who can see and be seen, hear and be heard, are participating in a way superior to those who are passive viewers watching via stream, unable to interact with the minyan itself. For those who are truly unable to participate in person for reasons including medical and physical limitation or of distance, virtual participation can be a tremendous lifeline. For some, these limitations are due to an acute but transitory illness. For others, these barriers may be life-long. Allowing for a phone link as well creates a lesser degree of connection, (and would not be sufficient to constitute a minyan) but removes a barrier for those who may not have easy access to, or facility with, a device with high-speed internet.

There are also those who live so far from any community offering a daily minyan, or face challenges of transportation, such that travel twice or even once daily would be prohibitive. In addition, there are those whose work or child-rearing responsibilities make it difficult to be present at the synagogue at scheduled times. During the winter months, Minḥa presents a particular challenge, since the afternoon service must be recited before sundown, and while travelling to and from a synagogue during the workday is an unlikely scenario, reserving 15 minutes for participation in a remote service might be far more practical.

Literally thousands of Jews have developed a new relationship with communal prayer during COVID-19 times. Some will make the transition to in-person prayer, others will not be able to for a variety of reasons. Those who have come to rely on virtual participation in services, especially those who face limitations of mobility that prevent them from attending synagogue in person, have been vocal, asking that this new lifeline not be taken away.¹⁷⁸ Individuals who find virtual participation to be a meaningful and accessible way to participate in the prayer life of

¹⁷³ B. *Berakhot* 47b. As modern readers who find slavery abhorrent, we must appreciate the ways in which this text is challenging, in all of its implications. The two implications intended by this text are that Rabbi Eliezer suffered a financial loss in order to make a minyan, and that one slave can be included in a minyan but not two.

¹⁷⁴ B. *Berakhot* 47b.

¹⁷⁵ Mirpasin Igra, 22:3, cited in Daf al ha Daf *Berakhot* 47b.

¹⁷⁶ Tosafot *Berakhot* 48a, s. v. v'leit, and Shulhan Arukh 55:4.

¹⁷⁷ See Mishnah Berurah 55:23-24.

¹⁷⁸ https://www.washingtonpost.com/health/chronic-illness-pandemic-isolation-mecfs/2021/05/07/315f3fec-ad21-11eb-ab4c-986555a1c511_story.html

their communities may well seek out other communities to meet their needs if the virtual way of doing so is withdrawn by their preferred community. Virtual prayer also allows for people to retain connections with home synagogues even after they have relocated, either permanently or temporarily.

In my paper on Streaming on Shabbat and Yom Tov, I mention the phenomenon of Peloton. Even before the pandemic, the Peloton tech-connected home stationary bicycle, and related technologies, generated an almost cult-like enthusiasm among their fans.¹⁷⁹ They pay monthly for the privilege of participating in live streamed or recorded rides and feel strongly bonded to instructors they have never met in person, and to each other. They set times to ride together and encourage each other from their homes. Many of those who are the most avid are individuals who were not previously setting aside time for personal exercise, let alone going to spin class. Models of virtual community in the larger world have a lot to teach us about how to reinforce community in our own institutions.

There are more Jews than ever exploring how to build communities for prayer, study, and more that exist only in a virtual context. While some such efforts began before COVID-19 the pandemic expanded these parameters significantly into more mainstream organizations. So, for example, the Women's League for Conservative Judaism created a daily on-line gathering for study of Psalms and recitation of Kaddish. This effort was structured to constitute a minyan for the purposes of Mourner's *Kaddish*, but intentionally did not replicate one of the three daily services, so as not to compete with local congregations. This *teshuvah* may be seen as opening the door to more such attempts to create virtual-only communities. I think only time will tell whether such efforts will create communities which generate ongoing connections on a par with what can be created in person, or whether they will fade out or eventually spawn in-person gatherings.

My hope and experience is that in best practice, virtual and in-person gatherings may have the potential to reinforce each other, but just because something *can* be justified does not mean that it *should* be.

If a community is offering virtual participation in worship, individuals may wonder, rightly, "why *schlep* to synagogue?" While some may appreciate the distinctive feeling of being physically present in community, others will prefer the convenience of being on line. Many of the discussions of the last 18 months (and earlier precedents) were focused on how to handle a situation where ten Jews could not gather in person. What if they could, but simply choose not to? Will virtual participation kill the daily minyan? The Talmud¹⁸⁰ speaks of the importance of a community having ten "*batlanim*," idlers who do not have to worry about their livelihood. Rashi¹⁸¹ interprets this term to refer to people who are supported by the community so that they are available to be present in the synagogue to ensure a minyan. Some modern communities are blessed to have these *batlanim*, while others hope for the availability of those who are battling traffic. I believe that there are communities for whom the ability to constitute a minyan virtually will be a significant strengthener of community and daily prayer.

¹⁷⁹ There is a Peloclergy group on Facebook, made up primarily of Rabbis and Cantors, and there was even a "Rabbis Ride" as part of the Rabbinical Assembly's 2020 virtual convention.

¹⁸⁰ B. Megillah 5a and B. Sanhedrin 17b.

¹⁸¹ Rashi on B. Megillah 5a and Sanherin 17b.

Despite the strengths of the arguments that I have made, I feel compelled to note that even if virtual participation is a substitute for in person participation, and justified under certain circumstances, it is still ultimately only a substitute. Early in this *teshuvah*, I cited Shulhan Arukh 90:10: “A person should try to pray with a minyan,” as a reminder that communal prayer is not, strictly speaking, a requirement, and one may fulfill one’s obligation to pray without setting foot in a building. On the other hand, two paragraphs later, Karo¹⁸² summarizes a countervailing view expressed in the Talmud¹⁸³ by Reish Lakish, framed not in terms of strict legal obligation, but in terms of, for lack of a better word, guilt:

מי שיש לו בית הכנסת בעירו ואינו נכנס בו להתפלל נקרא שכן רע וגורם גלות לו ולבניו :

One who has a synagogue in their city and does not enter it to pray is called a bad neighbor and causes exile for himself and his children.

The Shulhan Arukh also cites¹⁸⁴ another Talmudic source¹⁸⁵ that there is a specific reward associated with each step taken to synagogue.

There is a lively discussion beginning with the Rishonim regarding how far one must travel to daven with a minyan. Rashi¹⁸⁶ in a view supported by Tosafot¹⁸⁷ and codified by the Shulhan Arukh,¹⁸⁸ says that one need not travel in search of a minyan more than four mil further in the direction one is already going in, and one mil out of one’s way backward. Exact definitions of a *mil* vary, but we can assume that it is about a kilometer. The Mishnah Berurah¹⁸⁹ concludes that the one mil measurement also applies to one who is at home, and takes the opportunity to offer further criticism of those who do not trouble themselves to attend minyan in person. However, many people who attend daily minyan in our communities live further away than that distance! It is true that a mil is also a measure of time (the 18 minutes it takes to walk 2000 paces), and so on that basis some poskim suggest that one must travel 18 minutes. With the availability of modern modes of transportation, this could be a much greater distance, or depending on traffic, surprisingly not much further. How does the ready availability of communal prayer experiences, without leaving one’s home, change that equation? Does it create a greater obligation to seek a prayer community, albeit a virtual one?

¹⁸² Shulhan Arukh OH 90:11.

¹⁸³ B. Berakhot 8a.

¹⁸⁴ Shulhan Arukh OH 90:12.

¹⁸⁵ B. Bava Metzia 107a.

¹⁸⁶ Rashi, B. Pesachim 46a, s.v. *l'gaval*.

¹⁸⁷ Tosafot B. Pesachim 46a s.v. *uletetfillah*

¹⁸⁸ Shulhan Arukh OH 90:16.

¹⁸⁹ Mishnah Berurah 90:52.

A Closing Note

The story is told of a student in yeshiva who goes to one of the rabbis and asks if they may dine and drink alcohol while studying Torah. The answer is a furious “No!” His study partner explains “you framed the question wrong!” and asks another teacher, “If we are eating and drinking, would it be appropriate to study Torah while doing so?” This reformulated answer brings an enthusiastic “of course!” Do we see the opportunity to constitute a minyan virtually as an improvement on lesser engagement, or as a diminution of engagement that was previously strong?

There are some individuals and communities who, presented with the opportunity for virtual worship, would invest less effort in creating in-person prayer than they had previously. I share the fear that others have expressed that there are communities that had previously sustained an in-person minyan where the opportunity to “phone it in” would decrease the success of that endeavor. As a result, the experience of community would be diminished, and those who did not accept the reasoning of this *teshuvah* would be left high and dry. On the other hand, there are also many individuals who feel a sense of community and divine presence created by the interactive and inclusive nature of a “virtual” minyan and for a variety of reasons, would not be frequent participants in in-person daily worship. As a result, they would engage more frequently in personal prayer. During the pandemic, I witnessed dozens of people logging into minyan from their place of work, or while tending to children or making dinner for their families. Their focus on prayer may not have been the ideal contemplated by the rabbis who preferred that agricultural workers climb down from the trees they were tending before reciting the Amidah,¹⁹⁰ but I am confident that in the absence of the virtual option, these individuals would not have davened at all. Similarly, there are communities that might be able to sustain more frequent communal prayer than would otherwise be possible.

Pirkei Avot 5:11 and 12 presents the idea that some trade offs are *יצא שכרו בהפסדו*- the short term gain is wiped out by the long term loss, while in other cases, *יצא הפסדו בשכרו*- the short term loss vanishes in light of the long term gain. Some communities will fall on one side of the balance just as surely as others fall on the other, and Rabbis and the communities they serve must be thoughtful in considering which approach will put them on the positive side of the balance.

In my paper on Post-Pandemic practice, I analyze the concept of *she'at hadehak*- the idea that in a pressing circumstance, one may rely on minority opinions that would not otherwise be accepted. Examples include students who overslept after drinking and were allowed to say the evening *shema* even though the preferred time had clearly passed,¹⁹¹ or a wedding that ran late due to a dispute between the families, and a sage decided to continue the wedding into Shabbat rather than cancel it.¹⁹² Neither of these sages would have offered blanket permission for such an activity, but they understood that in that particular situation, there was a precedent that could, and should be relied upon. Neither of these rulings were, strictly speaking, a *hora'at sha'ah* (a one time ruling) because they remained within the stream of precedent, and were, indeed, preserved for future generations to rely on when appropriate.

¹⁹⁰ Mishnah Berakhot 2:4.

¹⁹¹ B. *Berakhot* 9a.

¹⁹² Rema on Shulhan Arukh OH 339:4.

I believe that the reasoning that I have presented here falls into this category. A practice that we originally constituted as a *hora'at sha'ah*- outside of precedent, can in fact be justified within the system of precedent, using minority opinions and precedents, albeit ones that might not be universally accepted. As such, it is not an option to be sought as a matter of course, but may be applied to specific circumstances of *she'at hadehak* where the normative approach does not meet the needs of a community.

Rabbis and communities may debate what level of disruption constitutes *she'at hehak*. In the traditional sources, the term is typically applied in a situation where an attempt to do things properly has failed, a particular expected resource is not available, or there is the potential for conflict, upset, or significant financial loss. Some might choose to include weather which disrupts transportation. Others might apply the opinion to small or dispersed communities that would not be able to gather a minyan on a daily basis, or a shiva setting where there would be particular distress if a minyan was not attained. I very intentionally leave this question of how far to extend *she'at hadehak* in the hands of those making *halakhic* decisions for a particular community.

P'sak

In the absence of pandemic conditions, the original *hora'at sha'ah* allowing for a minyan to be constituted virtually will expire, but there is enough justification, even post-pandemic, for communities to consider instituting the practice under specific circumstances.

Our tradition values in-person attendance in ritual. Historically, members of a community could be compelled to attend minyan under certain circumstances, and our sages expressed disdain for those who were able to attend in person and chose not to do so.

There are advantages to allowing remote two-way participation in services (particularly when the letter and spirit of Shabbat are not at issue). Communities that have offered this option have seen many more participants in worship. While some who previously attended in person may have been less engaged as a result, others began participating who would not have engaged in daily prayer at all, let alone in person. Even communities that do not consider the argumentation of this *teshuvah* to be convincing, or appropriate to their circumstances, may consider having an in-person minyan with the adjunct technology to allow those who are not physically present to be seen and heard by those who are. Similarly, those communities that do not accept any of the options below may still choose to constitute a virtual service, even if it is conducted without the trappings of minyan.

There are minority opinions, and conceptual understandings of technology, that can be extended to allow a minyan to be constituted via virtual means. These may be relied upon *bishe'at hadehak*, in a community which faces other emergent conditions, including not being able to constitute a regular minyan otherwise.

In order for the conditions to be met, there must be 10 individuals who would otherwise count in a minyan who are able to hear and see each other live. Services which have been pre-recorded or streamed live one way from a location where a minyan is not constituted, cannot be considered a minyan, and one does not fulfill the requirements of communal prayer by viewing such a stream.

Some would see this permission for a “virtual minyan” as sufficient to constitute a minyan for all matters, while others would limit it further. The committee members were given the opportunity to indicate which approaches they supported.

Option 1: Some may not find the arguments for “virtual minyan” sufficiently convincing to apply to most prayers and activities that require a minyan, (for example, Torah reading or recitation of *kedushah*) but given the specific attributes and leniencies of Mourners Kaddish, one may justify its recitation in a virtually constituted quorum.

Vote Total: This option was approved on July 23, 2021, by a vote of seventeen in favor and three opposed (17-3). Voting in favor: Rabbis Jaymee Alpert, Pamela Barmash, Suzanne Brody, Nate Crane, Elliot Dorff, Susan Grossman, Judith Hauptman, Joshua Heller, Jan Caryl Kaufman, Amy Levin, Micah Peltz, Avram Reisner, Tracee Rosen, Robert Scheinberg, Deborah Silver, Ariel Stofenmacher, and Ellen S. Wolintz-Fields. Voting against: Rabbis David J. Fine, Barry Leff, and Daniel Nevins.

Option 2: If a community already uses other loopholes to constitute a minyan of ten when only nine Jewish adults are present in person (for example, counting a minor who is old enough to be an intentional participant as the tenth), then the virtual minyan approach may be used in the same way, meaning that if nine adults are present in person, a virtual participant can be counted as the tenth only.

Vote Total: This option was approved on July 23, 2021, by a vote of eleven in favor, six opposed, and three abstentions (11-6-3). Voting in favor: Rabbis Jaymee Alpert, Suzanne Brody, Elliot Dorff, Susan Grossman, Joshua Heller, Barry Leff, Micah Peltz, Tracee Rosen, Robert Scheinberg, Deborah Silver, and Ellen S. Wolintz-Fields. Voting against: Rabbis Pamela Barmash, Nate Crane, David J. Fine, Jan Caryl Kaufman, Avram Reisner, and Ariel Stofenmacher. Abstaining: Rabbis Judith Hauptman, Amy Levin, and Daniel Nevins.

Option 3: If there is a minyan present through virtual means, or a “hybrid” group with part of a minyan in a common location and others joining via live video, then as long as there is a real-time video and audio link such that at least 10 adult Jews can be seen by each other and can see and hear the leader, then any rituals for which a minyan might be required may (and should) be performed. The full Torah service is included but requires special care.

Vote Total: This option was approved on July 23, 2021, by a vote of nine in favor, nine opposed and two abstentions (9-9-2). Voting in favor: Rabbis Jaymee Alpert, Suzanne Brody, Elliot Dorff, Susan Grossman, Judith Hauptman, Joshua Heller, David J. Fine, Deborah Silver, and Ellen S. Wolintz-Fields. Voting against: Rabbis Pamela Barmash, Nate Crane, Jan Caryl Kaufman, Barry Leff, Amy Levin, Daniel Nevins, Avram Reisner, Robert Scheinberg, and Ariel Stofenmacher. Abstaining: Rabbis Micah Peltz and Tracee Rosen.