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Are We There Yet? The Pandemic's End, and What Happens Then

Approved on June 30, 2021 by a vote of 17-0-1 Voting in favor: Rabbis Jaymee Alpert Pamela Barmash, Suzanne Brody, Nate Crane, Eliot Dorff, David Fine, Susan Grossman, Joshua Heller, Jan Karyl Kaufman, Barry Leff, Amy Levin, Daniel Nevins, Micah Peltz, Tracee Rosen, Robert Scheinberg, Deborah Silver and Ellen S. Wolintz-Fields. Voting Against: none. Abstaining: Rabbi Ariel Stofenmacher.

She'elah

What factors should be used to determine when the threat of the COVID-19 pandemic has passed to such an extent in a particular community that stringencies or leniencies adopted in response to the pandemic should no longer apply in that particular community?

What guidelines can be used to determine whether a particular new practice enacted during the pandemic may or should continue even after the danger has passed?

Teshuvah¹

I. Introduction

During the COVID-19 pandemic, many communities felt compelled to diverge from their previous practice in order to protect human life and deal with unprecedented restrictions on public activity. The Committee on Jewish Law and Standards (CJLS) and other halakhic authorities offered guidance to these communities and their leaders. These changes addressed many aspects of Jewish life. To list just a few examples: in the realm of synagogue ritual, opinions allowed for streaming of services on Shabbat,² conducting seder via Zoom,³ and counting a minyan via Zoom when it was not safe to gather 10 Jews together in person.⁴ We

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 Tracee Rosen and Elliot Dorff who provided significant proofreading. Emily Volz served as a CJLS fellow and offered a number of important suggestions for this teshuvah. In addition, many of the ideas for this teshuvah were workshopped with a "Professional Learning Collective" at 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.

² Rabbi Joshua Heller "Streaming on Shabbat and Yom Tov" 2020.

<https://www.rabbinicalassembly.org/sites/default/files/2020-05/Streaming%20on%20Shabbat%20and%20Yom%20Tov%20Heller.pdf>

³ Rabbi Joshua Heller "Streaming Seder" 2020 <https://www.rabbinicalassembly.org/story/streaming-seder>

⁴ Rabbi Elliot Dorff and Rabbi Pamela Barmash, "CJLS Guidance for Remote Minyanim in a time of COVID-19." <https://www.rabbinicalassembly.org/story/cjls-guidance-remote-minyanim-time-covid-19>

offered leniencies regarding foundational practices like circumcision⁵ and conversion.⁶ We also offered *humrot* (strictures) and imposed obligations surrounding vaccination⁷ and masking and distancing.⁸ Communities are now asking whether these practices should continue post-pandemic, which also begs the question as to how to determine when the pandemic is over in a given community.

The first part of this teshuvah will summarize four different levels of halakhic flexibility: normative practice, *she'at hadehak*, *sakkanah*, and *hora'at sha'ah*, and the implications of each, and will suggest criteria for assigning COVID-time decisions to each of those categories. Two subsequent teshuvot will build on this reasoning to address extensively two specific questions that have attracted significant interest: streaming services on Shabbat and counting a minyan via remote presence (Zoom minyan). Other CJLS responsa or later appendices provide updated guidance with regard to other practices enacted during the pandemic; they can be found along with this one on the CJLS portion of the Rabbinical Assembly website.

The second part of this teshuvah will examine criteria that may be used to determine when (or to what extent) the COVID-19 pandemic can be considered to be ended in a particular community. This determination provides a legal and ethical framework for communities to pace their return to a “new normal.” The timing of this transition is also important because leniencies and strictures enacted specifically in response to the pandemic are in some cases significant deviations from normative practice, and it is important to know when they should come to an end.

The third part of this *teshuvah* will note the particular challenges that arise during the transitional time as the pandemic draws to a close and communities and members of those communities are affected to differing degrees.

II. Criteria for P'sak

A. Normative Practice

Defining “normative” practice is not always as simple as it sounds. Some *poskim* use the terminology of “baseline” halakhah, with the assumption that there is a single preferred practice. Sometimes, when they say this, what they really mean is, “what the *Mishnah Berurah* thought the *Rema* meant.” In fact, a distinguishing factor in authentic Jewish law is that while precedent is incredibly important, on many issues there are multiple precedents and conceptual approaches

⁵ Rabbi Daniel Nevins, “Early Circumcision in a Pandemic” 2020.

<https://www.rabbinicalassembly.org/sites/default/files/2020-12/Early%20Circumcision%20During%20a%20Pandemic%20final.pdf>

⁶ Rabbi Elliot Dorff, Rabbi Pamela Barmash, Rabbi Joshua Heller and Rabbi Lionel Moses “Conversion in a Time of COVID-19” <https://www.rabbinicalassembly.org/story/conversion-time-covid-19>

⁷ Rabbi Micah Pelz “Vaccination and Ethical Questions Posed by COVID-19 Vaccines” 2021

<https://www.rabbinicalassembly.org/sites/default/files/2021-03/Vaccination%20and%20Ethical%20Questions%20Posed%20by%20COVID-19%20Vaccines%20-%20Final%20B.pdf>

⁸ Rabbi Elliot Dorff and Rabbi Susan Grossman, “[Wearing Face Covering, Physical Distancing, and Other Measures to Control the COVID-19 Pandemic](https://www.rabbinicalassembly.org/sites/default/files/2021-03/Dorff%20Grossman%20Masks%20final%20reclassified.pdf)” 2021 <https://www.rabbinicalassembly.org/sites/default/files/2021-03/Dorff%20Grossman%20Masks%20final%20reclassified.pdf>

that must be considered in application. As a result, on many issues there is a range of legitimate positions, some more lenient and some more strict, suggested by particular decisors or followed by different communities. Our movement in particular embraces a halakhic pluralism that encompasses the possibility of multiple views endorsed by the CJLS, the *Va'ad Halakhah* of the Masorti Movement in Israel, and *batei din* constituted in particular regions, as well as the discretion retained by an individual *mara d'atra* to make appropriate choices based on the situations in their own community. For the purposes of emerging from the pandemic, we would define normative practice as the conjunction of the following two categories of practice:

1. Whatever was considered the accepted practice in a community before the pandemic.
2. New positions approved by the CJLS or others on the basis of conceptual analysis and precedent, that do not rely on precedents and reasoning specific to the danger to life or logistical challenges of the pandemic situation,

This definition therefore specifically excludes practices that arose during COVID times and relied on the unique circumstances of that time.

In other words, normative practice following the COVID-19 pandemic may include practices that may have been developed or expanded during COVID times **but only** if they have been reviewed and confirmed to have a firm basis beyond the unique circumstances of COVID times.

B. *She'at Hadehak*

She'at Hadehak is an expansive category within Jewish law. The essence of *she'at hadehak* is that in a pressing, but by no means life or death situation, one may rely on a minority (typically more lenient) view that is normally not accepted as normative. For example, the Talmud⁹ cites the case of two sages who became intoxicated at the wedding of the son of Rabbi Joshua Ben Levi and fell asleep before they had the opportunity to recite the *Shema*. They came before Rabbi Joshua ben Levi, and he permitted them to say the evening *Shema* after dawn, following the opinion of Rabbi Shimon bar Yohai, even though that was a position R"YBL did not usually endorse. He said, "Rabbi Shimon is worthy to rely upon in a pressing situation (*bishe'at hadehak*)." Engaging in revelry such that one has missed the evening *Shema*, is a situation that could certainly be avoided, and yet, when it happens, one may rely on a lenient position. While the case of a delayed *Shema* may not be convincing on its own (after all, one may recite the *Shema* at any time and at least receive credit for having studied Torah), the same permission is also granted in situations with more serious consequences, including a possibly invalid Get.¹⁰ In the Shulhan Arukh,¹¹ the category of *she'at hadehak* is invoked in the case of having a non-Jew perform labor on Shabbat in order to address a crisis situation or facilitate the performance of a mitzvah.

פת שאפה עכו"ם לעצמו בשבת, יש אוסרים ויש מתירים; ובשעת הדחק או לצורך מצוה, כגון סעודת ברית מילה או לצורך ברכת המוציא, יש לסמוך על המתירים. הגה: אבל אסור ליתן לו מעות מערב שבת, ושיתן לו הפת בשבת, דאז אדעתא דישראל קא עביד

With regard to bread that a non-Jewish person bakes for himself on Shabbat: there are those who forbid [eating it] and there are those who permit it. When in pressing circumstances (*she'at hadehak*) or for the sake of a Mitzvah such as a Brit Milah or for the blessing of Hamotzi one may rely on the opinion of those who permit it. *REMA*:

⁹ TB Berakhot 9a.

¹⁰ TB Gittin 18b-19a, Shulhan Arukh EH Order of the Get.

¹¹ Shulhan Arukh OH 325:4.

Nevertheless, it is prohibited to give him money on Friday in order that he should bake him bread on Shabbat because then he is baking the bread for the Jew.

The Rema also invoked this principle in a famous case¹² where a wedding was scheduled for Friday afternoon, and as a result of a dispute, the wedding ceremony ran into Shabbat. He allowed the wedding to proceed, out of concern for the embarrassment of the bride and groom. There is a number of other related categories, such as *hefsed merubeh* (a significant financial loss),¹³ that have similar applications.

Types of situations that might be seen as *she'at hadehak* might include a power outage, running out of food, a situation of severe conflict, or where people will be embarrassed if a solution is not found. There is always a temptation to take a such a precedent and stretch it as far as it might go. However, *she'at hadehak* opinions should not be used as a primary plan or a “default” option. They should only be relied on by individuals or communities facing unusual circumstances. They reflect how far we can stretch when faced with a situation that is beyond our control and not the ideal.

Some positions enacted during COVID times may fall into this category and could be applied in comparable crisis situations. So, for example, in the original teshuvah on streaming services on Shabbat, some of the leniencies suggested would not be appropriate for normal times, but it would be possible to invoke them, even in the absence of a pandemic, if there was a pressing circumstance.

C. Sakkanah- danger to life and health

Sakkanah is risk to life and health. This may be danger to an individual or a risk to all the members of a particular community, and it may be of a severe or mild degree. Severe *sakkanah* is sufficient excuse to override almost any prohibitions,¹⁴ even those of a biblical origin. Mild *sakkanah* would be sufficient to permit violations of laws of rabbinic origin. The pandemic clearly created a case of severe *sakkanah*.

Going forward, we hope that situations of communal *sakkanah* as defined above will be few and far between. However, in some communities that state may linger longer than in others, and it is possible that local outbreaks of COVID-19 or other potentially fatal infectious diseases may cause a return to that category for specific communities.

We saw during the pandemic that the desire of some Jews to participate in communal prayer was so great that they sought to attend services in person, against legal prohibitions and the advice of medical experts. In doing so, they may have risked their own health and safety in potentially being exposed to those who were ill. Conversely, there were also those who ignored their own possible disease symptoms or previous exposure and by doing so risked the lives of all others

¹² Rema on Shulhan Arukh OH 339:4

¹³ See Shulhan Arukh OH 467:11, YD 23:2, and YD 35:5 which identify them as two different, but parallel categories.

¹⁴ The exceptions being murder of an innocent person, idolatry, and certain forbidden sexual relations.

attending, creating a real situation of *sakkanat nefashot*.¹⁵ Technological access created an alternative to bringing people together in unsafe ways.

Some have seen the pandemic as justification to engage with technology, violating Shabbat on a rabbinic level, in order to maintain community. A precedent for this is found in the Talmud,¹⁶ in a situation where Roman decree forbade the public study of Torah:

אָמַר רַבִּי יְהוּדָה: מַעֲשֵׂה בְשָׁעַת הַסַּכָּנָה וְהַיְיָנוּ מַעֲלִין תּוֹרָה מִתְּצַר לָגַג, וּמִגַּג לְתֵצֵר, וּמִתְּצַר לְקַרְפֵּף לְקִרוֹת בּוֹ.
Rabbi Yehuda said: It happened during a time of danger, we would carry a Torah scroll from courtyard to roof, and from roof to courtyard, and from courtyard to enclosure, to read from it.

It is worth noting that it would have been possible to read from the Torah on another day, but the sages insisted on maintaining the practice of reading Torah on Shabbat. So, too, during COVID times, some communities were successful in maintaining virtual contact by offering streaming only at non-Shabbat times. Particularly creative solutions involved offering Yizkor a day or two before or after *yom tov* and creating meaningful Kabbalat Shabbat and Havdalah gatherings.

It is also worth noting that there are important limits to the extent of this precedent. One is that the Biblical prohibition on carrying on Shabbat applies to bringing an item from a public domain to a private domain or vice versa, or to transport it in a public domain. The types of carrying described here are between other types of spaces, and therefore would be considered only rabbinic violations. Furthermore, the practice stopped when the danger stopped.

The category of *sakkanah* applies to danger to individuals as well. This category includes those facing individual health situations that constitute a risk to life and wellbeing, even if they remain at home, as well as those who would be subject to undue risk, or create undue risk for others in their households, if exposed to large groups of people. There is already extensive precedent for suspending prohibitions for the sake of those who are ill, with the severity of the illness determining the types of prohibitions that are suspended.

One of the classic sources on individual *sakkanah* from an individual health perspective is found in the Talmud¹⁷

אָמְרֵי נְהַרְדְּעֵי: חֵיהָ שְׁלֹשָׁה שָׁבָעָה וּשְׁלֹשִׁים. שְׁלֹשָׁה, בֵּין אֲמָרָה "צָרִיכָה אָנִי", וּבֵין אֲמָרָה "לֹא צָרִיכָה אָנִי" — מְחַלְלִין עָלֶיהָ אֶת הַשַּׁבָּת. שָׁבָעָה, אֲמָרָה "צָרִיכָה אָנִי" — מְחַלְלִין עָלֶיהָ אֶת הַשַּׁבָּת, אֲמָרָה "לֹא צָרִיכָה אָנִי" — אֵין מְחַלְלִין עָלֶיהָ אֶת הַשַּׁבָּת, אֲבָל עוֹשִׂין עַל יְדֵי אַרְמָאֵי.

The Sages of Neharde'a say: For a woman in childbirth, [there are halakhic distinctions between] three, seven, and thirty days after she gives birth. During the first three days after birth, whether she said: I need [Shabbat to be desecrated] or whether she did not say: I need [Shabbat to be desecrated], one desecrates Shabbat for her. Between three and seven days after birth, if she said: I need Shabbat to be desecrated, one desecrates Shabbat for her. If she said: I do not need Shabbat to be desecrated, one does not

¹⁵ On more than one occasion, I witnessed someone attend services after having had a confirmed COVID exposure or showing symptoms, or even in one case, having received notification of a positive COVID test!

¹⁶ TB Eiruv 91a.

¹⁷ TB Shabbat 129a.

desecrate Shabbat for her. Between seven and thirty days after birth, even if she said: I need Shabbat to be desecrated, one does not desecrate Shabbat for her; however, we perform all necessary prohibited labors by means of a non-Jewish person.

בְּדֶרֶב עוֹלָא בְּרִייה דְּרַב עֵילָאִי, דְּאָמַר: קָל צָרְכֵי חוּלָה נַעֲשִׂין עַל יְדֵי אַרְמְאֵי בְּשַׁבַּת, וְכִדְרַב הַמְּנוּנָא, דְּאָמַר רַב הַמְּנוּנָא: דְּבַר שְׂאִין בּוּ סַכְנָה — אֹמְרִי לְגוֹי וְעוֹשֶׂה.

This ruling is in accordance with the statement of Rav Ulla, son of Rav Ilai, who said: All needs of a sick person whose life is not in danger are performed by means of a non-Jewish person on Shabbat. And this ruling is in accordance with the opinion of Rav Hamnuna, as Rav Hamnuna says: With regard to a matter in which there is no danger to life, one says to the non-Jewish person to perform the act, and the non-Jewish person performs the act.

What is particularly significant about this approach is that it assumes a “sliding scale” of danger that decreases over a period of time, with a corresponding decrease in the leniencies and exceptions allowed as a result. As we emerge from the pandemic, we undergo a similar transition, where the level of danger does not drop all at once.

These rulings are carried forward as normative in the *Shulhan Arukh*.¹⁸ In particular, note the even more permissive view carried forward by the Rema:¹⁹

הגה מותר לומר לעכו"ם לעשות תבשיל לקטן שאין לו מה לאכול דסתם צרכי קטן כחולה שאין בו סכנה דמי (ר' ירוחם גי"ב ח"ט ורמב"ם ורשב"א) וכל שאסור לעשותו ע"י ישראל אפי' ע"י החולה בעצמו אסור אבל כשעושה לו העכו"ם מותר לחולה לסייעו קצת דמסייע אין בו ממש

It is permitted to tell a non-Jewish person to cook for a minor who has nothing to eat, for the needs of a minor are like the needs of a person who is sick but not in danger, and whatever is forbidden to be done by a Jew cannot be done by the sick person herself, but if a non-Jewish person does it for him, *the sick person may help him a bit*, for one who helps is not performing substantive labor.

In a case of sufficient danger to life, one may ask a non-Jewish person to perform forbidden labor, directly, on shabbat itself, in ways that would ordinarily not be permissible.

The question has also been asked about other sources of danger. I would suggest that some weather situations, like snow and ice storms, are more likely classified as *she'at hadehak* rather than *sakkanah* because they are typically of short duration, and one can avoid all risk by staying home for a few days, and so the risk to life is easily identified and managed in a way that infectious disease cannot be. On the other hand, a tropical storm, war, or civil unrest would be easier to place into the category of *sakkanah* because the risk to life is unavoidable. Ultimately, each *mara d'atra* must determine which criteria apply to their community in a particular situation.

D. Hora'at Sha'ah: a Temporary Measure.

A *hora'at sha'ah* is a ruling intended for a particular, unique situation. Early rabbinic literature often applies this criterion to actions in Biblical texts that do not comport with rabbinic understandings of halakhic practice. (For example, Manoah building an altar outside of the

¹⁸ *Shulhan Arukh* OH 330:4.

¹⁹ *Shulhan Arukh* OH 328:17.

Tabernacle,²⁰ and Ezra using the Tetragrammaton outside of the Temple.²¹) However, it is also used to describe rulings of the sages themselves that do not align with later understanding. Maimonides, in his *Mishneh Torah*,²² provides a commonly cited summary of the ways in which a court may be strict or lenient far beyond precedent in order to accomplish a greater good.

וְנִשְׁלַח בְּיַד דִּין לְעֵקֶר אֶף דְּבָרִים אֵלּוּ לְפִי שְׁעָה אֶף עַל פִּי שְׁהוּא קָטָן מִן הָרְאשׁוֹנִים שְׁלֵא יְהוּ גְזֵרוֹת אֵלּוּ חֲמוּרִין מִדְּבָרֵי תוֹרָה עֲצֻמָּה שְׁאֵפְלוּ דְּבָרֵי תוֹרָה יֵשׁ לְכָל בֵּית דִּין לְעֵקֶרוֹ הוֹרָאתָ שְׁעָה. כִּי צַד. בֵּית דִּין שְׁרָאוּ לְסוּק הַדָּת וְלַעֲשׂוֹת סִיג כְּדֵי שְׁלֵא יַעֲבְרוּ הָעַם עַל דְּבָרֵי תוֹרָה. מִפְּנֵי וְעוֹנֵשׁוּיִן שְׁלֵא כְּדִין אֲכָל אֵין קוֹבְעִין הַדְּבָר לְדוֹרוֹת וְאוֹמְרִים שְׁהִלְכָה כֹּה הוּא. וְכֵן אִם רָאוּ לְפִי שְׁעָה לְבַטֵּל מִצְוֹת עֲשֵׂה אוֹ לְעֵבֵר עַל מִצְוֹת לֹא תַעֲשֶׂה כְּדֵי לְהַחֲזִיר רַבִּים לְדָת אוֹ לְהַצִּיל רַבִּים מִיִּשְׁרָאֵל מִלְּהַכְשֵׁל בְּדְבָרִים אֲחֵרִים עוֹשִׂין לְפִי מָה שְׁצָרִיכָה הַשְׁעָה. כְּשֵׁם שְׁהוֹפֵא חוֹמֵךְ יָדוֹ אוֹ רִגְלוֹ שְׁלֵא זֶה כְּדֵי שְׁיַחֲיֶה כָּלוּ כֹּה בֵּית דִּין מוֹרִים בְּזִמְנֵן מִן הַזְּמַנִּים לְעֵבֵר עַל קִצְתָּ מִצְוֹת לְפִי שְׁעָה כְּדֵי שְׁיִתְקַנְמוּ [כָּלָם] כְּדָרְךָ שְׁאֲמָרוּ חֲכָמִים הָרְאשׁוֹנִים חָלַל עָלָיו שְׁבַת אַחַת כְּדֵי שְׁיִשְׁמַר שְׁבַתוֹת הַרְבֵּה :

A court may, however, suspend the application of such [rabbinic] decrees temporarily, even if it is of lesser stature than the original court so that these decrees should not be considered as more severe than the words of the Torah itself. For any court has the authority to abrogate even the words of the Torah as a temporary measure.

How so? If a court sees that it is necessary to strengthen the faith and create a safeguard so that the people will not violate Torah law, they may apply beatings and punishments that are not sanctioned by Torah. They may not, however, establish the matter for posterity and say that this is the halakhah.

Similarly, if they saw that temporarily it was necessary to nullify a positive commandment or violate a negative commandment in order to bring people at large back to the Jewish faith or to prevent many Jews from transgressing in other matters, they may do what is necessary at that time. To explain by analogy: Just like a doctor may amputate a person's hand or foot so that the person as a whole will live; so, too, at times, the court may rule to temporarily violate some of the commandments so that they will later keep all of them. In this vein, the Sages of the previous generations said: "Desecrate one *Shabbat* for a person's sake so that he will keep many *Shabbats*."

The category of *hora'at sha'ah* may be confused with a ruling made in response to a danger to life (*sakkanah*), or a situation of unusual pressure (*she'at hadehak*). Indeed, the decision to offer a *hora'at sha'ah* may be motivated by either of these circumstances, among others. The distinctiveness of a *hora'at sha'ah* is that it does not require justification through previous precedent and may in fact uproot previous precedent. In addition, a *hora'at sha'ah* is temporary and unique to a particular situation and cannot be assumed to establish a precedent for later rulings.

An example of a *hora'at sha'ah* was the permission to constitute a minyan via entirely electronic means, with 10 individuals gathered remotely.²³ This ruling was enacted in order to address the

²⁰ TB Zevahim 108b, based on Judges 13:19.

²¹ TB Yoma 69b.

²² MT Hilkhoh Mamrim 2:4.

²³ Rabbi Elliot Dorff and Rabbi Pamela Barmash, "CJLS Guidance for Remote Minyanim in a time of COVID-19" <https://www.rabbinicalassembly.org/story/cjls-guidance-remote-minyanim-time-covid-19>

needs of communities in an unprecedented situation (that it was impossible to gather a minyan legally or safely, in many Jewish communities, for months at a time). While it did refer to a previous precedent, it was issued only with that situation in mind.

III. When is the Pandemic Over?

Public Health authorities may debate the exact definition of the term “pandemic,” but one commonly used definition²⁴ is “an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people.” Due to differences in approach, vaccination rates, and the emergence of new regional variants, the impact of COVID-19 on different countries, and different areas within countries, has varied significantly, and it is likely to continue to do so. Sometimes a disease-causing pathogen may be essentially eradicated, while in other cases a pandemic will diminish until the pathogen that causes it persists in lower numbers, or in a variant that has a more minimal impact on the community (it becomes “endemic”). These definitions are important but are beyond the scope of this analysis.

The question that concerns us is: What criteria can be used in a particular community to determine that the risk of COVID-19 allows a return to “normal” activity, though perhaps with additional precautions? By extension, this is the point at which restrictions and leniencies (in particular, those that have the status of *hora'at sha'ah* or response to communal *sakkanah*) enacted in order to address the hazards of the pandemic would no longer apply in that community.

This conversation has the potential to be fraught with tension, as some elements of a community will be driven to return to normal practice as quickly as possible and others may be far more reluctant. Members of the community may have wildly different definitions of what constitutes “reasonable” risk, and sometimes these views may be based on misinformation or motivated by factors other than safety. Clergy and other Jewish professionals may feel unique pressure to balance the vibrancy of their community and their desire to serve the spiritual needs of their congregants against potential risk to life of those in their community, and even their own personal wellbeing.

It is also worth noting that while medical advice is certainly necessary for the conversation, not all physicians are experts or current in every area of medical practice. Any patient facing a potentially life-or-death choice of treatment options would, if time allowed, seek a second or third opinion, and would make sure that the physicians consulted were experts in the specific area of treatment. Therefore, while medical advice is clearly essential, it is vital that the voices heard are those that are most informed about the latest developments in the fields of infectious disease and public health and do not reflect out-of-date information or marginal agendas within the medical community.

Furthermore, while communities may ease restrictions as local vaccination numbers and/or disease levels dictate, they must keep in mind that there is the possibility of renewed outbreaks,

²⁴ Last JM, editor. *A Dictionary of Epidemiology*, 4th edition. New York: Oxford University Press; 2001.

perhaps driven by the rise of new, more contagious or more lethal variants, that may reverse existing progress.

We will examine five possible criteria that a community can consider.

A. The Halakhic Definition of a Plague:

The Mishnah²⁵ offers a specific definition of what constitutes a plague

אֵינָהוּ דָּבָר, עִיר הַמוֹצִיאָהָ חֶמֶשׁ מֵאוֹת רַגְלֵי, וְיִצְאוּ מִמֶּנָּה שְׁלֹשָׁה מֵתִים בְּשָׁלֹשָׁה יָמִים זֶה אֶחָד זֶה, הָרִי זֶה דָּבָר. פְּחוֹת מִכָּאן, אֵין זֶה דָּבָר :

What constitutes a plague? In a city that can supply five hundred foot-soldiers and three deaths emerged on three consecutive days, behold this constitutes a plague. Less than this is not a plague.

Later sources²⁶ codify that for an outbreak of disease to be considered a “plague” worthy of attention, there must be at least one death a day per 500 adult male residents for three consecutive days. During the pandemic, very few cities have met this criterion for an extended period of time. However, this definition is specifically for the purpose of requiring fasting and other liturgical interventions. It does not address what medical precautions should be taken to prevent illness.

B. Civil Decree, Removal of Government Restrictions:

Another criterion that could be considered is *dina d'malkhuta dina*- that the law of the land is considered legally binding. This principle arises initially in the context of whether taxation or civil seizure by a civil government is seen to be legally effective. For example, the Talmud²⁷ records the following view

אמר שמואל דינא דמלכותא דינא אמר רבא תדע דקטלי דיקלי וגשרי גישרי ועברינן עלייהו
 Shmuel says: “The law of the kingdom is the law.” Rava said: “Know this because [the government] cuts down palm trees [without the consent of their owners] and constructs bridges from them, and yet we cross over them.”

Later sources extend this to other regulations enacted by a government with just purpose. It would be permissible, and even required, to disobey unjust laws that are designed by an anti-Semitic government specifically to thwart Jewish worship, or to cause harm to human life. On the other hand, if regulations are created for the sake of public safety and apply to all, irrespective of faith, then *dina d'malkhuta dina* would apply, and compliance would be required. Jewish communities should continue to follow any restrictive local regulations or recommendations limiting gatherings.

However, a declaration by local health authorities that it is safe to return to normal practice is *necessary*, but not *sufficient*. Local governmental officials may be motivated by factors other

²⁵ Mishnah Ta’anit 3:4.

²⁶ Cf. Maimonides Mishneh Torah, Laws of Fasts 2:5.

²⁷ TB Bava Kama 113b.

than public safety in removing restrictions. For example, in the United States, some states removed or reduced restrictions on worship to avoid potential First Amendment concerns, even while still restricting other gatherings of comparable density and duration. In such cases, Jewish communities should not take advantage of exceptions for religious worship, when general permissions or recommendations on gatherings of similar size, density, and duration are more stringent. A community may follow the advice of its own medical advisors to pursue a more cautious path than that permitted by governmental authority, but it should not violate restrictions enacted by a justly chosen government with the intent of preserving human life and health.

C. Any Level of Danger is Too Much:

There is a thread in the halakhic tradition of *Sakkanta Hamira Me'isura*- danger to life is more pressing than a prohibition. This concept is explicated by Rabbi Moshe Isserles in his glosses to the *Shulhan Arukh*.²⁸

הגה וכן יזהר מכל דברים המביאים לידי סכנה כי סכנתא חמירא מאיסורא ויש לחוש יותר לספק סכנה מלספק איסור (ב"י בשם הש"ס) ולכן אסרו לילך בכל מקום סכנה כמו תחת קיר נטוי או יחידי בלילה (שם) וכן אסרו לשתות מים מן הנהרות בלילה או להניח פיו על קלוח המים לשתות כי דברים אלו יש בהן חשש סכנה (רמב"ם) ומנהג פשוט שלא לשתות מים בשעת התקופה וכן כתבו הקדמונים ואין לשנות (אבודרהם ומרדכי ס"פ כל שעה רוקח סימן ער"ה ומהרי"ל ומנהגים) עוד כתבו שיש לברוח מן העיר כשדבר בעיר ויש לצאת מן העיר בתחילת הדבר ולא בסופו (תשובת מהרי"ל סי' ל"ה) וכל אלו הדברים הם משום סכנה ושומר נפשו ירחק מהם ואסור לסמוך אנס או לסכן נפשו בכל כיוצא בזה

Similarly, one should be careful of all things that cause danger, because danger is more severe than forbidden acts, and one should be more careful with a suspected danger than with a suspected forbidden act. They [the Rabbis] also prohibited walking in a dangerous place, such as under a leaning wall, or alone at night. They also prohibited drinking water from rivers at night or putting one's mouth on a stream of water and drinking, because these matters have a concern of danger. It is the widespread custom not to drink water during the equinox; the early ones wrote this, and it is not to be changed. They also wrote to flee from the city when a plague is in the city, and one should leave at the beginning of the plague and not at the end.

Indeed, the very last Siman of the *Shulhan Arukh*²⁹ emphasizes this idea even further.

כל העובר על דברים אלו וכיוצא בהם ואמר הריני מסכן בעצמי ומה לאחרים עלי בכך או איני מקפיד בכך מכין אותו מכת מרדות והנזהר מהם עליו תבא ברכת טוב

Anyone who transgresses any of these things and says "I will endanger myself, and why should anyone else care?" or "I'm not picky about this"- should be lashed as a rebel, and one who is careful of these things will receive blessings of good.

The prohibitions described here were based on common sense and/or the medical understandings of the day. Based on this criterion, any level of risk is too great. The advice to flee at the beginning of a plague is indicative of a special care needed against infectious disease. On the basis of this passage, some have suggested that even the tiniest risk of death is not to be accepted. However, this is clearly not correct. Our tradition clearly requires us to reduce risk whenever possible. **Hence our position that every eligible individual is required to receive vaccinations, and that communal institutions may require this for participation, except in cases**

²⁸ Rema on *Shulhan Arukh* YD 116:5.

²⁹ *Shulhan Arukh* HM 427:10.

where an individual might have a specific medical condition that would contraindicate it.³⁰

However, following this approach to the extreme would mean a curtailment of almost every human activity, since everything from eating to travelling entails some level of risk.

D. “Everybody’s Doing it” *Dashu Bei Rabim*

There is a converse approach, that if the masses commonly engage in an activity, it is acceptable, even though it is objectively unsafe. So, for example, a Talmudic text³¹ permits certain types of women to use barrier contraception (which would normally be forbidden) when their lives or the lives of their existing children would be endangered, but concludes that if they prefer, they may proceed without contraception, based on the verse from Psalms³² “The Lord preserves the simple.”

The idea is more firmly developed in other precedents. Circumcision is one of the most important positive mitzvot, and normally entails only negligible risk. However, during the 40 years of travel in the desert, the Israelites did not practice circumcision on a regular basis, deferring it until arrival in the holy land.³³ The Talmud³⁴ explains that the postponement was due to weather conditions that were considered to render circumcision potentially more hazardous:

א"ר פפא הלכך יומא דעיבא ויומא דשותא לא מהליגן ביה ולא מסוכריגן ביה והאידינא דדשו בה רביים (תהלים קטז, ו) שומר פתאים ה' :

Rav Pappa said: Therefore, learn from here that on a cloudy day or on a day that a south wind [shuta] blows, we may neither circumcise nor let blood. But nowadays, when the masses trample through [these safeguards], the verse “The Lord preserves the simple” (Psalms 116:6) is applied.

The implication is that even though an activity is hazardous, with a level of avoidable risk, if the masses are accustomed to it, we do not protest, even though the activity is objectively unsafe. Another text³⁵ uses the same language to permit bloodletting on the eve of Shabbat, even though the astrological wisdom of the day was that doing so was a severe risk to health.

Throughout the pandemic, there were those (including some segments of the Jewish community) who chose to ignore a potentially life-threatening illness on the theory that God would protect them, and many needless and tragic deaths resulted. Indeed, many people are often poor judges of risk, as is indicated by the United States statistics for drinking and texting while driving. In 2019, a typical year for US automobile fatalities, over 36,000 people died in auto accidents, but many of those deaths were avoidable, with 25% of these fatalities related to drunk driving,³⁶ and another 10% related to texting while driving.³⁷

³⁰ Rabbi Micah Peltz “Vaccination and Ethical Questions Posed by COVID-19 Vaccines” and Rabbi David Golinkin [Does Halakhah Require Vaccination Against Dangerous Diseases Such as Measles, Rubella, Polio, and COVID-19?](#)

³¹ TB Yevamot 12b.

³² Psalms 116:6.

³³ Joshua 5:5-7.

³⁴ TB Yevamot 72a.

³⁵ TB Shabbat 129b.

³⁶ <https://www.nhtsa.gov/risky-driving/drunk-driving>.

³⁷ <https://www.nhtsa.gov/risky-driving/distracted-driving>

We do not accept this precedent when there is a verified, avoidable danger. While some previous poskim³⁸ used *דשו ביה רבים* to permit smoking, our movement has rejected these views, and the principle of *dashu beih rabim*.³⁹ Even if many members of the general public are engaging in needlessly unsafe activities, as individuals we should refrain from doing so, and communities and institutions should not encourage life-threatening behavior.

An important counterweight to the option of *dashu beih rabim* is the concept of *hillul hashem*. We are commanded⁴⁰ “You shall not profane My holy name, that I may be sanctified in the midst of the Israelite people—I God who sanctify you.” In the narrowest sense, this refers to the obligation to sacrifice one’s life rather than violate key precepts of the Torah, or publicly comply with an oppressive decree,⁴¹ but the concept of *hillul hashem* is also used more broadly. Our tradition is meant to elevate those who follow it: “Observe them faithfully, for that will be proof of your wisdom and discernment to other peoples, who on hearing of all these laws will say, “Surely, that great nation is a wise and discerning people.”⁴²

Maimonides⁴³ expands the category of *hillul hashem* to refer to situations where a Jewish person acts in a way that causes bystanders to think less of our observance and traditions. People who cast them themselves as “Godly” should not act in a way that would cause God to be viewed as less worthy of respect. Some Jewish communities ignored medical advice and other norms during COVID-19 outbreaks. In addition to the terrible loss of life, their behavior also diminished the respect of others for those communities and their approach to Jewish tradition. A community or institution that causes an outbreak due to carelessness would undoubtedly have the same effect going forward. We have offered guidance⁴⁴ that leaders and communal institutions have a particular obligation to serve as role models of prudent behavior.

E. Acceptable Risk

One final approach to be considered is a concept of commonly accepted risk, where the question is whether the risk of engaging in a particular activity for a worthy purpose is comparable to the level of risk commonly considered acceptable for other normal life activities. This view is subtly different from *dashu beih rabim* because it is not that we are taking an *elevated*, or *unnecessary* risk in the hopes that God will protect fools, but rather a recognition that there is an unavoidable baseline risk of illness, injury, and even death that comes with every activity. If we were to avoid any risk to life, no human activity would be possible. The sages acknowledge that the conduct of society requires that people take on dangerous professions. In discussing the prohibition on withholding a worker’s wages, the Talmud⁴⁵ interprets Deuteronomy 24:16 “he sets his soul upon it” to imply “For what reason did this laborer ascend on a tall ramp or suspend himself from a tree and risk death to himself? Was it not for his wages?” We have also seen that our sages understood that pregnancy has the potential to be a life-threatening activity, but our

³⁸ Rabbi Moshe Feinstein, Igros Moshe YD II:49.

³⁹ Rabbi Reuven Hammer “Teshuvah Concerning Smoking” HM 427:8.2020.

⁴⁰ Leviticus 22:32.

⁴¹ See Mishneh Torah Hilkhos Yesodei HaTorah 5:1-3.

⁴² Deuteronomy 4:6.

⁴³ See Mishneh Torah Hilkhos Yesodei HaTorah 5:11.

⁴⁴ <https://www.rabbinicalassembly.org/story/clergy-and-shelihei-tzibbur>

⁴⁵ TB Bava Metzia 112a.

tradition still strongly encouraged childbearing because it is a necessary activity.⁴⁶ Our tradition understands that people undertake a certain level of risk because their labor⁴⁷ is essential.

One expression of this concept is found in a Teshuvah of the 16th century rabbi, Rabbi Moshe Ben Yosef di Trani, known as the Mabit. For much of Jewish history, moving to live in the land of Israel was only a dream, and the international journey, by land or by sea, entailed serious risks to life. He wrote in a time when many Jews lived within the Ottoman Empire, which also ruled over the land of Israel, and in theory the risk of travel within the empire was lower. He himself had made the journey from Turkey as a 16 year old. He wrote concerning whether one spouse could demand that their partner join them in the arduous journey to the land of Israel.⁴⁸

לעולם הולכים ובאים ויכולים לכופף אם לא בשעת חירום אפילו שהוא מלכות אחד גם כי לפעמים יש סכנת שביה וסכנת נפשות לעולם כל הדרכים הם בחזקת סכנה וצריכים להודות לאל יתברך כמו הולכי המדברו' ואינו מעכב את הכפיה לעלות אלא באותם הימים שיש סכנה ידועה בדרכי' אבל כשכל הסוחר' אינם נמנעים מללכת בדרכי' גם איש ואשתו יכולים לכופף זה את זה

[regarding a couple forcing each other to make Aliyah despite the danger of the journey]: They should always go and can force each other if it is not a time of emergency. Even if there is a united Empire, there is still a danger of captivity and death, for all highways have a presumption of danger, and they must give thanks [recite the Gomer prayer upon arrival], but this does not prevent them from forcing each other to make Aliyah, except when there is established danger on the way. But when all of the merchants do not refrain from travelling on the roads, a husband and wife can force each other to do so as well.

Rabbi Eliezer Waldenberg, in citing the teshuvah,⁴⁹ adds:

וכדאי לציין דאפילו בסכנה מוחשית ונראית בעליל בכל זאת אם דרך העולם ליכנס בה לשם צורך פרנסה נהפך הדבר להיתר

And we should note that even when a tangible danger is clearly felt and seen, even so, if it is the way of the world to enter into it for the sake of business, then it becomes permitted.

There is a blessing, *birkhat hagomel*, that is recited upon surviving a dangerous situation. The original Talmudic source⁵⁰ refers to reciting the blessing after being imprisoned, suffering a serious illness, or returning safely from a long journey. Later tradition expands the blessing to airplane travel overseas as well. While our ethical tradition would never permit a person to voluntarily contract a dangerous illness, we often and routinely undertake journeys, for the purpose of fulfilling a *mitzvah*, for business and even for pleasure, that require the recitation of *birkhat hagomel*, despite the implied risk.

Similarly, our tradition requires circumcision for boys. Later sources are unanimous in demanding that the *brit milah* be postponed if there are any specific identified risk factors, but

⁴⁶ See Teshuvot Shem Aryeh YD 27.

⁴⁷ Or their labor!

⁴⁸ Responsa of R. Moshe Ben Yosef di Trani 2:216.

⁴⁹ Tzitz Eliezer 15:37.

⁵⁰ TB Berakhot 54b and reinforced in Shulhan Arukh OH 219:1.

they set aside the Talmudic concern of which direction the wind blows and do acknowledge that there is some minimal risk entailed in any procedure with a medical aspect.

There will always be a risk in any worthwhile activity. We can, and must take steps to mitigate that risk, but we cannot and need not reduce it to zero. Driving to synagogue during the week is clearly permitted, despite the fact that there is a risk of injury and death for every mile driven. We expect that those doing so will take appropriate precautions. Even walking to synagogue carries risks.⁵¹ During the worst of the pandemic, some suggested that “COVID is no worse than the flu.” While at the time that claim was clearly and tragically false, as in many places hundreds of people died each day, the risk may never be zero, but for some (for example, those who are vaccinated) it will eventually be lower than that for other diseases.⁵²

F. Suggested approach:

It is impossible to make a blanket determination for all communities and all issues. Ideally, decision making processes around reopening should err on the side of caution and be made collaboratively by clergy and lay leadership. In determining risk, specific attention should be paid to the guidance of doctors and public health professionals with specific expertise in the area of infectious disease, and trusted, verified statistics.⁵³

We suggest that the pandemic and its restrictions and permissions be considered ended for a community at large when all of the following criteria are met.

1. Public gatherings of equivalent size to typical worship are permitted by government policy, provided that policy is not unduly influenced by non-medical considerations.
2. In particular, a community should not take advantage of exceptions for religious worship that may be motivated by political or legal, rather than public health, concerns.
3. These gatherings are not contraindicated by expert medical guidance, which may be more cautious than government policy.
4. The risks of serious illness and (God-forbid) death due to COVID-19 for the participants are no greater than those generally accepted for other dangers (car accidents, other infectious diseases) that are endured for the sake of worthwhile activities. If the community chooses to be more cautious, under the guidelines of *sakkanta hamira m'issura*, there is some merit to that, but if the majority of members of the community are gathering for other purposes, then the leniencies and exceptions from normal practice enacted in order to protect from COVID-19 would no longer apply.
5. The danger of COVID-19 may decrease gradually over time and may even increase again temporarily. It is permissible, and may be prudent, for communities to set a “sunset

⁵¹ <https://forward.com/news/184591/deadly-yom-kippur-crash-spurs-safety-push-for-obse/>

⁵² To take an extreme example, a few weeks after my congregation re-opened its preschool, several children were home with mild fever and flu-like symptoms. After testing revealed that some indeed had influenza, and not COVID-19, parents were relieved, but in fact, recent data (<https://www.cdc.gov/flu/symptoms/flu-vs-covid19.htm#:~:text=The%20risk%20of%20complications%20for,and%20COVID%2D19.>) suggests that for otherwise healthy children, the common flu would have been more dangerous than the variants of COVID circulating at that time.

⁵³ While physicians will sometimes disagree about the details of best practice, there is often a consensus of mainstream medical guidance, and views which diverge too far from the mainstream should be regarded with caution.

period” where COVID practices are continued for some time beyond when statistical milestones are reached.

However, just because COVID-19 restrictions (and the associated permission) have ended for a majority of vaccinated individuals does not mean that it has ended for all. There have always been individuals who are at greater risk, and the needs of these individuals may offer grounds for delaying a return to normative practice even after the risk for the general public is minimal.

IV. Considerations of Inclusion

Community and connection are key Jewish values. A minyan is required for communal prayer. Hillel⁵⁴ said “do not separate from the community.” There is a recognition that the community is obligated to ensure that individuals are not left behind. We see two examples of this in *Parashat Be’ha’aloteha*. We read⁵⁵ that the congregation did not travel while Miriam was recovering from the illness called *tzara’at*. However, this deference is extended not only to prominent individuals. If the majority of the Jewish people is in a state of ritual impurity, the paschal sacrifice may be offered by all despite the fact that they are in that state.⁵⁶ If only a minority are in that state, they are not excluded, but are able to participate in *Pesah Shenit* a month later. It is worth noting that in this case, the existence of those in the community who cannot participate normally does not prevent the regular observance of the larger community, but rather, an accommodation is made so that those with different needs are not left out. Our movement has made a strong commitment to remove barriers to participation in Jewish observance. Teshuvot regarding those who have limitations in sight⁵⁷ and hearing⁵⁸ are just two examples. Our movement has already issued unofficial guidance on matters of inclusion during COVID times,⁵⁹ which may still be useful even as restrictions are gradually relaxed.

A. Those for whom the risk of COVID-19 or other disease is still higher, despite vaccination availability

While many of the commonly available COVID-19 vaccines seem to be as safe as any other medical treatment, there may be individuals who have an allergy to one of the ingredients. Of greater concern are those who are immunocompromised and therefore are not guaranteed to develop an immune response from the vaccine. In the United States, by some estimates⁶⁰ almost 3% of the population is significantly immunosuppressed. This immunosuppression may be the result of a naturally weakened immune system or may be a side effect of essential medication to stave off autoimmune conditions or prevent rejection of transplanted organs.

It is assumed that patients who develop fewer or no antibodies as a result of vaccination are protected to a lesser degree, and perhaps not at all. As of this writing (June 2021), initial

⁵⁴ Pirkei Avot 2:4.

⁵⁵ Numbers 12:15.

⁵⁶ Pesachim 79b, Mishneh Torah Korban Pesah Chapter 7.

⁵⁷ Daniel S. Nevins, "[The Participation of Jews Who are Blind in the Torah Service](#)" OH 139:2.2003

⁵⁸ Pamela Barmash, "[Status of the Heresh and of Sign Language](#)" HM 35:11.2011a

⁵⁹ <https://www.rabbinicalassembly.org/story/ethics-gathering-when-not-all-us-may-attend-person>

⁶⁰ “Prevalence of Immunosuppression Among US Adults” Rafael Harpaz, Rebecca M Dahl, Kathleen L. Dooling, *Journal of the American Medical Association*, 2013.

research⁶¹ indicates that almost half of organ transplant patients who were taking anti-rejection regimens did not generate antibodies as a result of vaccination. Many of the remainder generated reduced levels. For these individuals and those close to them, a safe return to normal may take much longer. Beyond those who are severely immunocompromised, there are many more people who take medications that cause a milder degree of reduced immune system function as part of treatments for common diseases like Crohn's disease, lupus, or psoriasis. In addition, many of us may at times be temporarily immunosuppressed. For example, there is some evidence that infection with some strains of influenza may increase susceptibility to COVID-19.⁶²

As such, while vaccinated individuals who have no significant health risk may move on from the restrictions of COVID times and no longer take advantage of its leniencies, communities who have members who are at risk still have an obligation to provide for the needs of these individuals who are still in a place of *sakkanah*.

Therefore, communities should be mindful that those who are immunosuppressed not be "left behind." Of particular concern are employees of Jewish institutions, synagogues, and schools who either are at higher risk themselves or who have family members who are at increased risk.

B. Those who have not yet received vaccination.

There are Jewish communities where full vaccination may take time to be available to the general public, and it is certainly prudent to assume that all pandemic permissions and restrictions remain in place until vaccination is widely available in a community.

In the United States, anyone over the age of 12 may receive the vaccination. Some institutions are requiring proof of vaccination in order to attend activities in person. Some might try to make an argument that excluding someone on the basis of vaccination status violates Jewish values. For example, Bryan Wexler pointed out Sanhedrin 91b to support that view:

אמר רב יהודה אמר רב כל המונע הלכה מפי תלמיד כאילו גזולו מנחלת אבותיו שנאמר (דברים לג, ד) תורה צוה לנו משה מורשה קהילת יעקב

Rav Yehudah said in the name of Rav- anyone who keeps Halakhah from a student is as if he stole his inheritance, as it says "Moses commanded us the Torah, an inheritance of the congregation of Jacob."

However, we have already noted that this concern is overridden by the danger to health for others. While there might be a temptation to say that those who choose not to be vaccinated are responsible for the consequences of their own decisions with regard to their own health, these individuals are in violation of the precept of *sakanta hamira me-issura* for their own lives, and "you shall not stand by the blood of your neighbor"⁶³ with regard to the risk that they pose to others. Nevertheless, a congregation might be motivated to continue pandemic practices longer for the sake of these individuals. First of all, these individuals may well be acting out of ignorance, as victims of misinformation. In addition, there may be cases where those who are

⁶¹ Brian Boyarsky, William A Werbel, Robin K. Avery "Antibody response to 2-Dose of SARS-CoV-2 mRNA Vaccine in Solid Organ Transplant Recipients" , Journal of the American Medical Association, 2021.

⁶² "Coinfection with influenza A virus enhances SARS-CoV-2 infectivity" <https://www.nature.com/articles/s41422-021-00473-1> .

⁶³ Leviticus 19:16.

unvaccinated might choose to lie about their vaccination status in order to participate, and in doing so and endanger others in the community.

While we noted above that the category of *dina d'malchuta dina* must be considered, there is one important exception. In some cases, local governments may not only relax restrictions, but in fact enact regulations that increase risk to life, (for example, prohibiting asking about vaccination status, or not allowing an institution to exclude individuals from an activity based on that status). In such a case, the criteria of *pikuah nefesh* would override *dina d'malkhuta dina*. A community or institution constituted on religious grounds would be justified, from a *halakhic* perspective, in following the *teshuvot* of Rabbis Peltz and Golinkin cited above, and that of Rabbi Joseph Prouser⁶⁴ to require vaccination for participation in certain activities, if the *mara d'atra* of the community, in consultation with medical advisors, thought that this step was necessary to conduct those activities without endangering others.

In addition, the question of unvaccinated children must be considered. The risk to children from the most widely circulated variants of COVID is considered to be minor in comparison to the risk to older adults. As such, a reasonable ethical approach, as specified above, would permit otherwise healthy, unvaccinated children to participate in activities if the adults with whom they come in contact are all fully vaccinated so that there is a low level of risk to the children or to those around them. However, this is not a blanket permission. Experts in infectious disease or epidemiology should be consulted to confirm whether the risk level is in fact low enough in a particular community for this permission to apply, and what specific precautions would still be necessary. However, some parents might choose to be more cautious, and there are certainly children with medical conditions placing them at higher risk, who would require continued precautions, and the community must explore ways for these children to continue to be included.

IV Implications for Virtual Worship

Follow-up *teshuvot* will be released shortly exploring the implications of the end of the pandemic to virtual worship.

Some of the modes of streaming on Shabbat and Yom Tov can be justified within the category of normative practice and, as such, could be continued by communities that determine that it is appropriate for their particular circumstances. Others could be applied under the criteria of *she'at hadehak*, to address emergency situations other than the pandemic, or *sakkanah*, to meet the needs of those who are affected by severe or chronic illness, and might still be undertaken on a more limited basis by communities that assess that those criteria apply. Still others (in particular, those that involve Jewish people engaging with electronics in ways that are violations of Biblical prohibitions) are, if they were adopted in a particular community during the pandemic, best understood as *hora'at sha'ah*. Whether or not those *hora'at sha'ah* approaches may have been justified at the time of the pandemic, they should certainly not be viewed as a precedent when COVID-19 is no longer a major threat. An update to the original *teshuvah* on streaming on Shabbat and Yom Tov will provide revised guidance that communities can use to determine

⁶⁴Rabbi Joseph Prouser "Compulsory Immunization in Jewish Day Schools" HM 427:8.2005
https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/prouser_immunization.pdf.

whether it is appropriate for them to continue streaming, in the absence of a COVID-19 threat, and if so, how they might modify their practice given the changed circumstances.

The permission to count a minyan virtually, as long as 10 adult Jews could see each other through technological means, fell into the category of *hora'at sha'ah*, since it specified that this practice would apply only when it was unsafe and/or illegal to gather a group of 10 adults in person. While this permission may be extended somewhat beyond that point as conditions improve, when the pandemic ends (as defined above), the temporary pandemic permission will also end. However, while the previous ruling in itself is not a precedent for future activity, the door remains open for further discussion as to whether this practice could continue post-pandemic, and the CJLS is currently preparing guidance on this question.

Other practices instituted during the pandemic should be reviewed as well to determine whether it is appropriate to continue them in the “new normal.”

V. P'sak

- A. The permissions and temporary guidance enacted by the CJLS for COVID times continue to apply in each community throughout the “return to a new normal,” until the pandemic is considered to have passed within that particular community. Clergy and lay leaders of each community should make that determination in consultation with qualified medical professionals. Following the principle of *dina d'malkhuta dina*, a declaration of the end of a state of emergency by local authorities is necessary, but not sufficient to abandon the restrictions required during the pandemic.
- B. It is certainly within the bounds of Jewish ethics and *pikuaḥ nefesh* to return to a pre-COVID-19 norms at such time that the risk of COVID-19 is no greater than other risks (automobile accidents, other transmissible illnesses) that are otherwise considered acceptable for everyday activities, after reasonable precautions are taken. Many communities will find it prudent to observe a transitional or grace period, where some COVID practices are preserved even as some normal activities have resumed. A slower return allows for people to re-acclimate. It is also possible that further waves of disease may require a reinstatement of further pandemic practices and restrictions, so a more gradual approach also reduces the possibility of “whiplash” if a further wave caused by a new variant requires a return to a greater level of caution.
- C. There are those who will continue to be at increased risk for some time after the risk to the community at large is low. Communities must consider how to include these individuals until they are able to participate without increased risk.
- D. It is only a matter of time before many of the practices initiated during the pandemic under the aegis of *sakkanah* will no longer be necessary or even appropriate for the general public, but they may be continued in a modified form specifically to serve the needs of those who had previously been excluded from Jewish life due to health or ability concerns having nothing to do with COVID-19.