

## A Minyan is Constituted by Ten

### *In Memory of Rabbi Robert E. Fine ז"ל*

*Approved on April 16, 2025, by a vote of 15-0-2. Voting in favor: Rabbis Adam Baldachin, Pamela Barmash, Emily Barton, Chaya Bender, Nate Crane, Aviva Fellman, David J. Fine, Joshua Heller, Daniel Nevins, Matthew S. Nover, Avram Israel Reisner, Robert Scheinberg, Miriam Spitzer, and Stewart Vogel. Abstaining: Rabbis Suzanne Brody and Rachel Safman.<sup>1</sup>*

#### **שאלה (Question)**

May a minyan be constituted by nine plus a sacred object, like a Torah scroll?

#### **תשובה (Answer)**

There is a widespread custom of opening the ark to make “the tenth.”<sup>2</sup> I have never served a community that did not ask me about that and insist that they had “always done it in the past.” The custom derives from an ancient practice attributed by the gemara to Rav Huna and rejected by Rav Nahman, and apparently the *stam*: אמר רב הונא תשעה וארון מצטרפין. א"ל רב נחמן וארון גברא הוא. —“Rav Huna said: ‘Nine and the ark count [for a minyan].’ Rav Nachman said to him: ‘Is the ark a person?’”<sup>3</sup> The gemara then offers an alternative (i.e. more palatable) suggestion as to what Rav Huna said: תשעה נראין כעשרה. אלא אמר רב הונא: תשעה נראין כעשרה. Rather, Rav Huna said: nine who appear as ten may be counted [as a minyan]. Some said when together and some said when apart. That is, what Rav Huna must have meant when he taught a leniency on constituting a minyan was that nine can count when nine looks like ten, which some said means when they are clustered together making it difficult to count them, and others said when they are spread wide making it difficult to count them. The “what Rav Huna must have said” phrasing of the gemara implies that the gemara (i.e. the *stam*) cannot conceive that Rav Huna actually meant that one could simply count the ark as the tenth to make a minyan. Rav Huna must have meant something else, which the gemara theorizes on, that perhaps the “minyan” could appear as a minyan if we did not count properly. The gemara does not go on to affirm or deny the validity of the alternative reading of Rav Huna, and it appears that the tradition of leniency with how to constitute a minyan circles back to Rav Huna’s original statement, challenged by Rav Nahman and the *stam*.

While the custom has survived, it is modified by the codes so that the ark is replaced by a human (in response to Rav Nachman’s challenge), albeit a minor. As the Shulhan Arukh states: יש מתירין לומר דבר שבקדושה בתשעה וצירוף קטן שהוא יותר מבן שש ויודע למי מתפללין, ולא נראין דבריהן לגדולי הפוסקים, that there are those who are lenient and permit a minor to count as the tenth in the minyan as long as he is older than six and understands to Whom we pray, but this is not accepted by the major poskim.<sup>4</sup> The theological standard offered by Karo, that the minor must understand to Whom we pray, is informed by the continuation of the

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<sup>1</sup> 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.

<sup>2</sup> This paper takes and expands on a section from my “A Minyan Is Constituted in Person” CJLS OH 55:14.2021b [fine-minyan-in-person.pdf](#)

<sup>3</sup> Babylonian Talmud, Brakhot 47b. With thanks to Rabbi Robert Scheinberg for bringing the Talmudic source for this custom to my attention, and for his insights on the evolutionary history of the leniency.

<sup>4</sup> Shulhan Arukh, Orah Hayim 55:4.

same section of the gemara in Brakhot, where a discussion of including a minor to recite the zimmun (the opening call-and-response) of the Birkat Hamazon (prayer after meals) concludes: דאמר רב נחמן: קטן היודע, למי מברכין מזמנין עליו, that Rav Nahman said, a minor who knows to Whom we bless, may be included in the zimmun.<sup>5</sup> Karo has taken the phrase היודע למי מברכין, “who knows to Whom we bless,” and modified it to who knows to Whom we pray. The Talmudic phrase uses “bless” because it relates to the Birkat Hamazon, whereas Karo uses “pray” as it relates to the prayer service of the minyan. It is noteworthy that this is the same Rav Nahman who rejected Rav Huna’s proposed leniency of using the Ark for the tenth in a minyan. Here Rav Nahman offers his own leniency, but it involves a sophisticated human child, not an object (albeit sacred), and is also a leniency for Birkat Hamazon, which is not equivalent to the requirements of a minyan in prayer. Karo nevertheless presents this leniency as it has been applied to constituting a minyan, but he qualifies that it is rejected by most decisors.

The evolutionary line from the ark to the minor can be discerned from the gloss of the Rema: ואפילו על ידי חומש שבירו אין לצרפו. מיהו יש נוהגין להקל בשעת הדחק, that even when the boy is holding a Torah in his hands one should still not include him, but there are those who practice this leniency in a she’at dehak (emergency circumstance).<sup>6</sup> The cited leniency involves a minor who understands what is going on, because the distinction of the attainment of bar mitzvah age is a technicality that might be waived to make the tenth. The Rema, while disagreeing with the practice, tells us that they would have the boy hold a Torah to indicate that he is able to read it (thus suggesting eligibility for the minyan in a more discernible way than the theological standard suggested by Karo). He emphasizes that the leniency, even according to those who employ it (which he does not), can only be applied in a she’at dehak, an emergency circumstance. The idea that a Torah as a Torah can count in a minyan is not the meaning of the leniency cited by the Rema. The Torah in the ark does not count as the tenth. But a Torah can be held by a minor as a “prop” for the child to count the child. The fact that Karo and the Rema prefer a pre-Bar Mitzvah boy over the inanimate ark, but still oppose the leniency, suggests both its longstanding use as a she’at dehak and its long-standing opposition by rabbis.

The appropriateness of the leniency of counting a minor with a Torah in a she’at dehak continued to be debated by the Aharonim, with the more prominent authorities ruling against it.<sup>7</sup> The question for us can be addressed in two parts: 1) the appropriateness of the leniency, and 2) the definition and application of “she’at dehak.”

The leniency itself stands on shaky grounds. The original version of Rav Huna in the gemara is rejected by Rav Nahman and the stam, that a tenth human being cannot be substituted by an inanimate object, even a holy ark with a sefer Torah. The qualified acceptance of a leniency towards a quorum by Rav Nahman is applied to a minor, not a sefer Torah, and is applied to the Birkat Hamazon, not to a minyan for prayer. However, Rav Nahman’s leniency of counting a minor who can understand to Whom the Birkat Hamazon is addressed survives through the ages with various evolutionary modifications: the child who can conceive of addressing God changes to the child who can read from the Torah, which changes to the child who can hold a Torah, while the Birkat Hamazon is extended to a minyan for prayer. And then, in our own day, the practice continues to evolve to where the Ark is opened, and sometimes a sefer Torah is removed, but the child is no longer required to be present. And the leniency is objected by halakhic authorities at every step of the way.

Those who report the leniency do so because they cannot deny that it is “out there,” although they often object to its application in any circumstances, while stressing that those who do employ it may only do so in a she’at dehak. As Rabbi Karen G. Reiss Medwed writes in *The Observant Life*: “Some

<sup>5</sup> Babylonian Talmud, Brakhot 48a.

<sup>6</sup> Shulhan Aukh, Orah Hayim 55:4 gloss.

<sup>7</sup> See Mishneh Brurah to OH 55, par. 24; Arukh Hashulhan to OH 55, par. 10; Shulhan Arukh HaRav to OH 55.

congregations fall back on different customs to create some kind of a *minyan* even in the absence of ten adults. Thus, there are congregations that will count one child among the worshipers (if that child is holding a sacred book, usually a printed edition of the Torah, popularly called a *humash*) to consider the quorum duly constituted and others that will open the Ark and count a Torah scroll, so to speak, among the worshipers. This practice is deemed acceptable by some communities in constrained situations (cf. the gloss of the Rema to SA Orah Hayim 55:4).<sup>8</sup> How, then, can we understand a she’at dehak and how can it apply to this question?

The CJLS discussed the theory of she’at dehak in 2021 in the context of special rulings that were issued during the Covid-19 pandemic. Rabbi Joshua Heller defined the concept as follows: “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.”<sup>9</sup> In the debate that same year at the CJLS that resulted in the approval of Rabbi Heller’s paper on the continuance of the “Zoom Minyan” and my opposing paper on that question, Rabbi Heller applied the concept of she’at dehak to a community that has trouble forming a minyan of ten in person but can do so via video conference. One of the three conclusions of his paper (each of the three was accepted by varying votes by the Committee), titled “Option 2” reads: “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 participant can be counted as the tenth only.”<sup>10</sup> Much of my objection to Rabbi Heller’s arguments in permitting a leniency on constituting a minyan via Zoom was based on a difference of opinion on the applicability of the concept of she’at dehak. In my opinion, a she’at dehak, a “pressing” circumstance, can only be applied to a temporary emergency.<sup>11</sup> My concern with constituting a minyan virtually is the same as using a leniency when there are only nine Jewish adults: the leniency will end up becoming regular practice because in almost all of the real-life circumstances where this would arise, it is not that there are not ten available to form a minyan, only that nine have come to form a minyan from a larger community. But even Rabbi Heller, who does not deny the usage of a leniency to form a minyan when there are only nine, cites the form of the leniency described by Karo and the Rema as using a minor. He does not cite the custom of using a Torah (without a child).

I dedicate this teshuvah to the memory of my late father and teacher, Rabbi Robert Fine, because he always opposed the custom of opening the ark to make “the tenth” in the congregations he served, and taught me to do the same. As he used to explain it to me, the custom might make sense in a shtetl in the Old Country where there were only nine Jewish men over bar mitzvah and the closest neighboring village was a journey away. In one of my last halakhic discussions with him the week before he died after I had just agreed to write this paper for the CJLS, he added that the leniency might apply if one were on the wagon train in the Old West. But it should not apply in our communities where it is not that we do not have enough Jews as that the Jews choose not to come to synagogue. Jewish non-observance should not constitute the she’at dehak that the Rema was conceding. The effect of the employment of this leniency, my father taught, would essentially be to reduce the requirement of a minyan from ten to nine. By

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<sup>8</sup> Rabbi Karen G. Reiss Medwed, “Prayer” in Martin S. Cohen, ed., *The Observant Life: The Wisdom of Conservative Judaism for Contemporary Jews* (New York: Rabbinical Assembly, 2012), p. 12. The Rema’s wording, which Rabbi Medwed cites, more likely refers to the child holding a Torah scroll than a printed “humash.”

<sup>9</sup> Rabbi Joshua Heller, “Are We There Yet? The Pandemic’s End and What Happens Then,” p. 3. CJLS HM 427:8.2021y [heller pandemic end teshuva \(1\).pdf](#)

<sup>10</sup> Rabbi Joshua Heller, “Counting a Minyan via Video Conference,” p. 50, and see discussion on p. 45 of sources cited here and others. CJLS OH 55:14.2021a [heller - zoom minyan \(2\).pdf](#)

<sup>11</sup> The argument and sources are presented in my paper “A Minyan is Constituted in Person,” pp. 12-15.

permitting a leniency that was originally intended only as a she'at dehak to general practice, we will in essence be lessening the standards of forming a minyan and relieving our communities of the incentive to gather ten for public prayer. The endorsement of this leniency would likely be employed by congregations that are not too small to maintain a minyan because they have too few Jews, but rather have too few Jews who will commit to come to synagogue to maintain a minyan, essentially reducing the definition of "minyan" from ten to nine.

But what about the case of a synagogue in a community where there are only nine Jews of the age of mitzvot? The two examples my father gave me of when the historical (minority opinion) leniency might apply, the isolated Old World shtetl or the Old West wagon train, are both situations in the past. What has changed in our own day is that our world is exponentially smaller. Not only are distances less insurmountable, but the technologies of communication have brought us together in real time in ways that our predecessors could never have imagined. Because the CJLS has already approved the various options proposed by Rabbi Heller in 2021 of employing remote technology to help form a minyan, it seems to me that one is better to rely on those opinions that involve real adult Jews through virtual connection over the use of an inanimate sacred object like a Sefer Torah. And because both the tshuvot by Rabbi Heller and myself agree (לפי כל הדעות) that one may fulfill the obligations of prayer and saying kaddish through connecting remotely with a minyan in a different location, as argued in the paper by Rabbi Avram Reisner that the CJLS approved in 2001,<sup>12</sup> there is less reason to employ a leniency to constitute a minyan of less than ten. That is not to say that there are not any reasons. It is understandable that a community will want to have its own physical minyan so it can read Torah and partake of the rituals of prayer including saying Kaddish. However, part of the "magic" and "power" of that ritual (that is, its effectiveness) is rooted in the achievement of a quorum, a minyan that is constituted by ten.<sup>13</sup>

#### **פסק דין (Ruling)**

One may not constitute a minyan by nine and a sacred object such as a Torah scroll.

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<sup>12</sup> Rabbi Avram Israel Reisner, "Wired to the Kadosh Barukh Hu: Minyan Via Internet" CJLS OH 55:13.2001 [Reisner - internet](#)

<sup>13</sup> For a statement on the value of prayer when there is no minyan, and parameters on what can be said, see Rabbi Amy Levin, "The Parameters and Power of Community Prayer in the Absence of a Minyan" CJLS OH 55:1.2022 [1731001548.pdf](#)