

Mayer Twersky

Rav Schachter *shlit"a* reviewed the Hebrew original¹ of the following essay before its dissemination on May 22. He then offered the following approbation: “very accurate, and, in my opinion, it is a *mitzvah* to publicize it.” Rav Schachter’s handwritten letter is appended.

“Go my nation, come to your rooms²”: an essay concerning the prohibition at present to assemble *minyanim* or other gatherings.

Introduction

Lately, there has been much discussion within our communities (in the USA) about renewing *tefillah be'tzibur*, in both outdoor *minyanim* and, where permitted by local governmental regulations, indoor venues. Similar discussions have ensued regarding reopening *batei midrashos*, *yeshivos*, or, *mutatis mutandis*, summer camps and the like.

Presently, all of the above are clearly and categorically forbidden because of the inherent danger in such reopenings. In the presence of such danger, silence is not an option. Hence, the following essay is presented.

Everything which will be discussed is both clear and self-evident, and actually requires no sourcing; in *Chaza'l*'s locution: “the rationale is self-evident (*sevara hu*); why do I need a(n explicit source from) a *pasuk* (*la'mah lē kra*)”? Moreover, in the present context citing sources is misleading. It threatens to obscure the one-sidedness of the issue, the indisputability of the prohibition. However, wholesale confusion preponderates; and extraordinary times call for extraordinary measures. Thus, some representative, illustrative sources have been included.

¹ https://www.torahweb.org/torah/docs/rtwe_chadorecha.pdf

² *Yeshayahu* 26:20

Collective danger

COVID-19 poses a public danger. The entire Jewish community (amidst the broader society) is imperiled by this potentially lethal sickness. Accordingly, it is simply and wholly wrong to assess the level of danger in terms of the individual who elects to participate in these *minyanim*. Rather, we must gauge the risks such *minyanim* pose to the Jewish community. I.e., we do not assess the risk of an individual *minyan* in a vacuum by only considering the risk factors of its specific participants. Instead, we are obligated to consider the resultant danger to which the American Jewish community is susceptible.

It is self-evident that even if the calculated risk to specific individuals within any given *minyan* were negligible, this calculation would be entirely immaterial because of the danger posed to the *k'lal* as a whole by convening *minyanim*. It is a near-certainty -- if not an absolute certainty -- that amongst the many individuals who will elect to participate in such widespread *minyanim*, there will be at least a few who will indeed contract this dangerous disease. It is therefore categorically prohibited to establish such *minyanim*.

[The prohibition has already been unequivocally established. We should, however, emphasize the sheer magnitude of the potential danger which inheres in any premature convening of *minyanim*. Given how contagious COVID-19 has proven to be, those individuals within a *minyan* who will nigh inevitably contract the virus may very well in turn infect and endanger an untold amount of people before realizing that they are contagious.]

How can anyone claim to know beyond even a remote doubt (*s'fek s'feika*) that reconvening *minyanim* is definitely safe and doesn't pose a danger to the *k'lal*?!

By way of illustration, we will consider a few sources which reflect this undeniable, self-evident *halacha*.

Shulchan Aruch rules:

Some maintain that in our times even if [the marauders] are [only] coming for monetary reasons (and their goal is not to physically attack) we override *Shabbos* to repel the attack -- the rationale being that a member of the community might resist and consequently be killed. Considering this possibility, we deem the situation to be potentially life-threatening.

Magen Avraham comments:

This requires consideration, for he should allow [the marauder] to take his money and obviate the need to desecrate *Shabbos*. Possibly, (the meaning of the *Shulchan Aruch* is) that generally people do not restrain themselves from protecting their assets. Accordingly, we are concerned that amongst the many there might be an individual who tries to resist and consequently will be killed. Due to this concern, we override *Shabbos* to repel the attack. An individual, however, should allow them to take his money and not desecrate *Shabbos* (since preventing monetary loss doesn't warrant desecrating *Shabbos*).

In other words, per the *Magen Avraham*, an individual is obligated to cede and allow the marauders to take his money. When, however, the marauders descend on the masses, one is obligated to consider the *k'lal* and the possibility that amongst the *k'lal*, someone is liable to stand up to marauders and subsequently be killed. (Even those authorities who challenge the *Magen Avraham* only do so regarding his treatment of the solitary person who is individually victimized by the marauders. All agree that we do not merely consider the personal risk of each individual. Instead, we consider the risk to the community -- viz., is the community completely safe, or is there a possibility (*safek*) that, at least, one of its members will be imperiled.

In a similar vein, *Shulchan Aruch* rules:

Any wild animal or insect who bites and/or kills is certainly killed on *Shabbos* even if [the animal] isn't running after [the person].

Sha'ar HaTziyun comments:

Now, from (the formulation of) the *Rambam* it seems that (we only kill the animal, even when the animal isn't actively in pursuit) when it appears before him, but [it is] not [permitted] to search after [the dangerous animals] . . . [However,] if [the animal] was in a location with many people, it would seem that even according to the *Rambam*, it is permitted (to search after the animal to kill it).

While this case is certainly not identical to ours, nonetheless we once again see that danger is to be assessed using a communal metric and not merely by evaluating the risk present to the individual qua individual.

Scientific knowledge and scientific surmise

Relying on experts is an established fundament of the halachic process. Nonetheless. It is obvious that we must insightfully and discriminatingly assess their words.

First of all, while doctors provide much instruction, guidance, and direction, the value of such pronouncements varies. Some guidance etc proffered by doctors is predicated on scientific knowledge, while other guidance is based on their surmise, an educated guess. (Doctors do not intend, God-forbid, to mislead by blurring the difference between the two; however, it is accepted practice within the medical community to uniformly represent empirically sound prescriptions and educated guesses). Therefore, when presented with medical protocol or guidelines, it is imperative that we differentiate expert knowledge from assumptions and educated guesses.

COVID-19 is a new, paradigm-changing disease. The state of scientific knowledge concerning this disease changes daily, even hourly. At times, newly discovered information refutes heretofore widely-accepted paradigms and practices. Treatment that had been considered therapeutic is now recognized to be dangerous. Symptoms that were considered innocuous are now recognized as markers of disease, and so forth. No one is at fault, of course; we simply lack the most basic and elementary knowledge of COVID-19.

In this situation, when doctors provide recommendations and protocols, *per force* they resort to surmise. It is imperative that we recognize that, as yet, the medical knowledge needed for definitive, safe recommendations and protocol simply does not yet exist. Thus, it is impossible for doctors to provide guidelines which preclude even a remote danger to life as the halacha requires. (It is to the credit of the medical establishment that they implicitly acknowledge this and caution those who are high-risk from relying on these guidelines).

Another factor deserving of scrutiny: the objectivity and reliability of medical advice is often compromised by doctors (unwittingly) venturing beyond their area of expertise. Our case at hand illustrates this weakness.

When experts are asked if it is possible to safely convene *minyanim* (or, even worse, how best to convene *minyanim*) or other public gatherings, their recommendations *eo ipso* postulate a definition of significant risk. Such a definition is a halachic, not a medical, issue. Furthermore, it is inconceivable that the halachic and medical definitions will align. Simply put, the Torah's concern for life, whereby even a remote possibility of danger represents an unacceptable risk, is wholly unique.

As such, it is a foregone conclusion that the medical standards of risk and safety will not align with those of the Torah. Furthermore, recent experience attests that it is also entirely unrealistic to expect that doctors will be correctly apprised of the Torah's standards. Very, very few individuals know to properly define, evaluate, and apply these standards of *safek sakanah*.

It therefore follows that every allowance offered by the medical community, e.g. reconvening *minyanim*, needs to be investigated thoroughly for it is exceedingly common that such dispensations are based on faulty postulates, such as the non-halachic, medical/societal definition of acceptable risk.

Doctors' personal judgment and evaluations also cause them to venture outside of their area of expertise. At times, they axiomatically assume that certain activities must be resumed and apply their medical training as to how that can be accomplished.

There are some doctors, members of our own community -- people of piety and integrity -- who unwittingly have made medical pronouncements which, in truth, were based on extra-scientific postulates. Take, for example, our current topic: there are doctors (acting *l'shem shamayim*) to whom it is unimaginable that *minyanim* should be put on hold for such a long period of time, and thus axiomatically assume that we must reconvene them now. This erroneous assumption drives their "expert" opinion as to how to restart *minyanim* in a "safe manner." It is self-evident that such advice and instruction is neither the product of expert medical opinion nor halachically sound.

It is self-evident that governmental allowances in no way form a basis for halachic allowances. Governmental guidelines aim to slow the spread of COVID-19, not to reduce danger. Various governmental figures have explicitly said that normal life can resume if it seems that the rate of contagion will be moderate. A slow rate of contagion --and nothing more -- is the government's sole objective. In truth, governmental allowances might actually require us to be increasingly strict, as it seems likely that once the government begins to reopen society, people will circulate to a greater extent and the rates of contagion will increase *r'l*.

A few basic sources regarding the obligation to critically assess all doctors' recommendations, whether stringent or lenient:

See *Bi'ur Halacha* 618 s.v. *choleh*; *Shemiras Shabbas K'Hilchisa*, after citing *Bi'ur Halacha*, adds:

On the other hand, one must investigate if [the doctors] are not being overly strict, as they are unaware of the mandate of "*v'chai bo'hem*, and you shall live by them" (namely) that in a situation where there is a danger, or possibility of danger to life, it is forbidden to be stringent.

Obviously, the same holds true for those who are aware of the mandate "*v'chai bo'hem*" but practically do not know how to apply this mandate even to remote risks.

"This is the *halacha*, but we do not rule accordingly"

The veracity of halachic rulings is assessed by two criteria, theoretical and practical. 1) Is the halachic ruling theoretically true -- i.e. do Torah sources substantiate the ruling? 2) Is the halachic ruling practically true -- will it promote observance and implementation of halacha, or possibly lead to violation(s)? Within this binary system, a lenient halachic ruling may be theoretically true but practically antithetical. In such instances, the halachically required, correct ruling is the stringent one. The Gemara's category of *halach v'ein morin ken* encapsulates all of the above.

When we consider the painful episode of COVID-19, there is no need for guesswork, and no room for doubt regarding the real-life reverberations of permissive rulings. It is a matter of public knowledge that within *minyanim* that

have convened, both prior and subsequent to permissive rulings from some *rabanim shlit"ta*, some individuals have consistently, conspicuously violated [social distancing] guidelines. Accordingly, even if one maintains that in theory it is permissible to convene *minyanim*, in practice we must prohibit such *minyanim* pursuant to Chazal's principle of *halacha v'ein morin ken*.

It is unrealistic to think that granting a conditional dispensation for *minyanim* will improve the situation. On the contrary, any dispensation will reinforce the lax mindset. (Akin to *Rav's* approach in *Eiruvim* 6a "*Rav bik'ah matza v'gadar bah gader*," *Rav* found an open field and fenced it in i.e. in the face of undue laxity, he issued a stringent ruling).

A few relevant, illustrative sources:

- *Beithzah* 28a discusses how, under certain conditions, sharpening a knife on *Yom Tov* is theoretically permissible if it falls under the rubric of preliminary *melacha* involved in preparing food which couldn't be done before *Yom Tov*. As a matter of practical halacha, the Gemara avers, we can not publicize this lenient ruling [for it would lead to improper leniency with preparatory *melachos* which could have been done before *Yom Tov* (Rashi)]. This is codified in *Shulchan Aruch Orach Chaim* 509:2.
- At times, we are mandated to violate *Shabbos* even though, in theory, the situation at hand does not warrant this (!). Practically, however, we do so lest people erroneously extrapolate and refrain from violating *Shabbos* when it is warranted.
 - See *Menachos* 64a regarding encouraging witnesses who saw the new moon to travel to *beis din* even if their testimony isn't necessary.
 - See also *Taz Orach Chaim* 328 s"k 5 and *Mishnah Berurah* ibid s"k 33 regarding opting for a Jew to violate *Shabbos* even if a non-Jew is readily available to perform the necessary *melacha* without delay.
- See *Menachos* 99b. Rabbi Yochanan holds that one technically fulfills the minimal requirement of Torah study through reciting *K'rias Shema* in the morning and evening, but that it is forbidden to relate this *halacha* in the presence of an *am ha'aretz*, an ignorant, uncommitted person. (Rava, who dissents, is clearly disagreeing because of a local reason, but agrees with the overarching principle).
- See *Darhei Hora'ah* (*Maharatz Chiyus*) Chap. 1; part of his treatment is relevant to our present discussion.

Additional Torah Perspectives:

We should add, with God's help, two additional points:

It is indeed true that some members of our community are not concerned with the prevailing possibility of danger. However, even if we were to grant that there are situations where popular attitudes to danger carry halachic weight, in our situation we should take no notice of these dismissive attitudes, as they are a consequence of a lack of knowledge. Some fail to distinguish between medical knowledge and scientific surmise, others fail to anticipate the communal repercussions of their stances and actions. Others err in letting themselves be convinced by, and relying on, the policies of the government. Some do not properly understand the extent of the Torah's mandate "*v'chai bohem*, you shall live by them"; others exaggerate the relative importance of *tefillah b'tzibur*. We have already discussed the fallaciousness of these perspectives. It follows, then, that such attitudes, rooted in error, carry no weight.

By way of example: If a smoker were unaware of the possibly fatal effects of his habit, would smoking cease to constitute a *safek sakanah* for him?

Undoubtedly, people are sincerely perplexed: society is reopening, and reengaging in a wide variety of non-essential activities. Stores are reopening, people are streaming to the beaches, we even venture outside for walks -- how can it be that the *batei k'nesiyos* and *batei midrashos* remain shuttered?

It is critical that we both strengthen ourselves and others in this regard. "We arise early and they arise early. We arise early for the words of the Torah" which mandate that we be exceedingly vigilant to avoid even a remote danger to life (*s'fek sfeika shel sakanah*), while they, on the other hand, "arise early" focused on different goals, operating by different standards. It is inevitable that our paths will diverge greatly. And thus, societal behavior is no indication of correct halachic behavior. (Our venturing outside for walks is also immaterial because we do so in relative solitude).

Conclusion:

Some final notes:

Halacha distinguishes between a passing danger and an abiding one which creates a “new normal.” The transitory nature of a passing danger allows for, and thus obligates us, to take all necessary measures to completely avoid *sakanah*. However, when a danger becomes embedded in the fabric of life (similar to childbirth, for example) we must, to the best of our ability, design a *modus vivendi* that deals with the ever-present danger so as to sustain basic Torah practices and institutions within the “new normal.”

However, even in the latter scenario, we are obligated to act deliberately and responsibly, if at all possible, based on scientific knowledge. We are not to act precipitously and irresponsibly, content with scientific surmise. We must not prematurely craft guidelines based on surmise, nor can we expect doctors to create guidelines based on knowledge that they do not yet possess. With countless studies underway and intensive research ongoing, time allows for the potential of gaining knowledge and increased understanding. This dictates that we wait for a significant period of time before initiating *minyanim* or any public gatherings to allow for possible advances and increased understanding of COVID-19 and, in particular, its modes of transmission.

Some *rabanim shlit"ra* are of the opinion that, all of the above notwithstanding, guidelines for *minyanim* must be provided. Their rationale: *volens nolens*, people are forming *minyanim*. If guidelines are offered, it will at least ameliorate the danger (a mistaken calculation, in my opinion, as above). But, even according to this opinion, it is imperative that this rationale be clearly articulated. The *rabanim* must clearly communicate that the guidelines are medical guesswork, proffered today, possibly to be refuted tomorrow. Thus, halachically, it is currently forbidden to convene gatherings based on these guidelines. If, however, people will nonetheless persist, at the very least they should follow the guidelines.

In terms of the practical halacha:

It is forbidden, currently and in the near future, to convene any and all gatherings (including small *minyanim*). This halachically required forbearance allows for the possibility of gaining and garnering the knowledge necessary to do so safely in accordance with the mandate of

“*v’chai bohem.*” Clearly, we have no guarantee that such knowledge will materialize, but the very possibility of such advances compels us, in the short-term, to wait.

It is possible to wait with such matters; it is impossible to restore even one lost Jewish soul.

May God have pity on us.

Appendix

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הרה"צ רבי שטר
ראש ישיבה וראש כולל
ישיבת רבינו יצחק אלחנן

כבוד וקירוב הרב"ר מאיר, שיחתי,
צדקתו וצדקתו מאתך את' עמי קא
חפזיך, ארצות נבונות מאד, אפ"צ אמת
זי שפ"ק לרבי אמת. רב
רבי