

Jewish Laws COVID Responsa

Michael Broyde
| Emory University
mbroyde@emory.edu

Judaism, Science and Medicine Group Annual Conference

Judaism and Public Health: Living in the Shadows of Pandemics

March 27, 2022

Pandemic Halacha?

- Jewish law – *halakha*, the path of our traditional Jewish life -- is an all-encompassing legal system that addresses every matter of life: from ritual law to commercial law, onto family law and festival law, with side areas in medical ethics and much more. Emergency law (in Hebrew, *hora'at sha'ah*) is part of the Jewish legal tradition as well.
- The situation in America, Israel and indeed world-wide certainly fit into the category of an emergency, both on a national level and on a Jewish level. The United States seemed to be on the cusp of a recession (or worse) with high unemployment and a shortage of health care resources as well as many other emergency situations. Israel entered Passover in a virtual lockdown, with travel more than 100 meters restricted by law. Jewish life is unprecedentedly restricted: synagogues, schools, and yeshivot are closed worldwide, weddings are cancelled or attended by Zoom and Passover was a lonely holiday without family. Furthermore, unlike many other even more desperate situation -- like the Crusades or the Holocaust – there is no anti-Semitic origin to the collapse of Jewish life. Jewish Life has shut down, to a great extent, because flattening the curve is needed to save lives everywhere.
- How to obey Jewish Law in such an environment is the topic of many volumes of Responsa recently published. One is entitled “Jewish Law Decision Related to Corona” by Rabbi Hershel Schachter and the other is entitled “*Minchat Asher: A Collection of Classes, Responsa, Letters and Articles Related to the Corona Pandemic*” by Rabbi Asher Weiss and many others as well. I will focus on these two volumes.

What are Responsa, you ask?

Jewish legal literature since the year 1000 c.e. comes in six basic styles: (1) Talmudic commentaries (think of Rashi or Tosaphot, commenting on the Talmud), (2) Codes (think Rambam's Mishana Torah or Rabbi Karo's Shulchan Aruch), (3) Cases (think *Piskai Din Rabbani*, the proceedings of the Rabbinical Courts in Israel), (4) Biblical Commentaries (think Rashi or Nachmandies), (5) Books of Commandments (think ha-Hinuch, or Maimonides "Book of Commandments) and (6) Responsa, in Hebrew *shelot uteshuvot*, (think of Rabbi Moshe Feinstein or Rabbi Ovadia Yosef). Each of these genres of literature serve a slightly different purpose: Commentaries excel at providing a theoretical grounding of the legal rules in the Talmud and Codes excel at turning rules into black-letter law. Cases serve as a vehicle for resolving disputes (frequently about money) between parties. Commentaries on the Bible and Books of Commandments allow widespread review each week of various laws as they appear in the weekly portion.

Responsa are the vehicle of choice for addressing important and timely problems of Jewish law in the actual world we really live, which is sometime messy and complicated, with real people and practical needs. Responsa are – at many levels – the least theoretical and most practical of the six forms of Jewish law literature. Responsa live in the here and now, with the actual facts of life being lived in this time and this place forming a backdrop for every question. Responsa are also varied: They address both the profound and important – like extubating one patient to intubate another when ventilators are in short supply – to the trivial – like does one sing *Anim Zemirot* when worshipping alone.

What are the advantages of the Responsa literature, you ask?

- Responsa are frequently the vehicle of choice for people who want to write very timely ideas that they are worried have no precedential value. Why no value?
 - Maybe they are a suspension of Jewish Law?
 - Maybe they are extremely fact specific?
 - Maybe the authority is uncertain if correct?
 - Maybe the authority is uncertain if they should write, but the needs of the times are pressing.

**Rabbi Asher Weiss is a well-known
Israeli authority**



Minchat Asher

A Collection of Classes, Responsa, Letters and Articles Related to the Corona Pandemic”

- Rabbi Asher Weiss, the author of “*Minchat Asher: A Collection of Classes, Responsa, Letters and Articles Related to the Corona Pandemic*” is a well known American born (b: 1953) Jewish law expert and authority who currently resides in Israel. A Klausenberger Hasid, he serves as the Jewish Law authority of Shaarei Zedek Hospital in Jerusalem. He is the author of a very well received three volume set of responsa (collectively entitled *Minchat Asher*) as well as countless articles on matters of Jewish law. He is also the central figure in a popular web based Jewish law site entitled <https://tvunah.org/>.
- <https://minchasasher.com/shiur/uncategorized/minchas-asher-on-corona-second-edition/>
- About 100 letters. Very diverse.

A Sample

May a doctor who is at high risk or who has family at high risk work in the current pandemic?

How to conduct a bris (circumcision) in the current environment?

May one sell one's chametz via the internet?

May a woman immerse in a mikva during the day (rather than in the evening as mandated) due to the pandemic?

How should a person under quarantine conduct himself in a variety of religious ritual settings?

Does a person who is suffering from Corona and cannot taste the bitter herbs or matza, need to eat them?

How should a Torah reading conduct itself if people need to stand apart? We will focus on this question more!

**Rabbi Hershel Schachter is a well-known
American authority**



Rabbi Hershel Schachter's Hebrew volume “Jewish Law Decision Related to Corona”

- Rabbi Hershel Schachter's Hebrew volume “Jewish Law Decision Related to Corona” is a similar, but different work. Rabbi Hershel Schachter (b. 1941) is a Rosh Yeshiva at Yeshiva University and the head of its Kollel. Widely perceived to be the heir of Rabbi Joseph B. Soloveitchik at Yeshiva University, Rabbi Schachter serves as the final authority of Jewish Law at the OU and is the author of many books on matters of halacha. This work contains more than 70 responsa on many different areas of Jewish law, both personal and communal. Rabbi Schachter's responsa are broad and well sourced, reflecting his role as a leading Jewish law authority in the Modern Orthodox community.

A sample of some matters

How should the communal sale of Chametz take place?

Triage in medical decisions.

Addressing the needs of the physically and mentally ill on Pesach and Shabbat.

Burial in the current situation.

Getting Married without a minyan present?

Making up missed Torah readings?

Can one run a minyan with social distancing?

**Let me focus on one issue for an example:
Saving as many people as possible by Withdrawing
treatment from one?**

A very old question:

- A dispute between Maimonides and Meiri almost 900 years ago.
- Maybe different if not caused by humans or anti-Semitism?
- Hard to know for sure the correct answer, but 'damned' no matter what you rule, as one side is murder and the other is mass death.

A question that these two authorities disagree about. RAW seems inclined to save the largest number of people and RHS seems inclined to never permit an act called murder.

- Might related to diaspora or Israel?

Let me focus on one issue for an example:

Distant Aliyot during Covid?

- How should Torah reading be done if people need to stand too far away from the person who is reading to see the text?

- The Tosefta in Megillah 3:12 states:

• בית הכנסת שאין להם מי שיקרא אלא אחד עומד וקורא ויושב ועומד וקורא ויושב עומד וקורא ויושב אפילו שבעה פעמים.

- If a synagogue has only one person capable of reading [from the Sefer Torah], then that person should stand up and read; then sit down; then stand [again] and read; then sit down; then stand [again] and read; then sit down – even seven times.
- The implicit premise of this Tosefta is that individuals unable to read (Hebrew) may not receive *aliyot*.

Medieval Innovation?

Nevertheless, Maharil (*Minhagim*, Laws of Torah Reading) ruled that aliyot could indeed be given to *amei haaretz* unable to read, as well as to blind individuals.

- אמר מהר"י סג"ל קורין לתורה אפי' עם הארץ. וכן הסומא, ולא נהגינן כהרא"ש דפסק דהסומא לא יקרא.
- Mahari Segal ruled that we call to the Torah even illiterate people and also blind people. We do not follow the Rosh who rules that a blind person can not get an aliyah.

Why? Now we have Torah readers!

So, during a pandemic, what should we do?

- View people too far apart as if they are blind and give them aliyot?
- Follow the rule of the Tosefta and have one person – the Torah reader -- get all the aliyot?
- Make people prepare to read the Torah themselves so that seven different people read poorly?
- What rule should we adopt?

A Tale of Two Pandemics? Maybe?

Was Maharil's liberal ruling triggered by a devastating pandemic?

We explained above that the widespread phenomenon of reliance on a *ba'al koreh* to read aloud from the Torah for congregation significantly contributed to the idea that even a blind person can get an aliyah. One is tempted to theorize that the devastation inflicted by the Black Death – which mercilessly ravaged Europe in the middle of the fourteenth century, killing an estimated 30%-60% of the overall population – might have weighed significantly in Maharil's revision of the Jewish law here. If communal expectations regarding the ability of individuals to read Torah competently were already in decline, it seems likely that this trend was tragically accelerated and magnified by the Black Death. The Black Death left European Jewish communities devastated reducing Torah literacy in the post-pandemic generation. The introduction to *Sefer Haminhagim* (R. Tyrna), written in the decades shortly after the Black Death, explains the urgent need to compile a record of Ashkenazi Jewish customs as follows:

• יען כי נתמעטו הלומדים ותלמידי חכמים בעונותינו הרבים. [ומ] אחר שאבדו ואפסו אנשי אמנה ותורה ומעשים [טובים] שבאושטריך, עד שראיתי ישוב או אפילו קהילות שלא נמצא בהם ב' או ג' אנשים היודעים אמתת מנהג עירו על בוריו וק"ו [של] עיר אחרת.

- Because the students and scholars have become few, in our many sins. And because people of faith, Torah and good deeds have been lost and annihilated in Austria, to the extent that I have seen towns and even larger communities in which there are not even two or three individuals who know the true customs of their own city – and *kal vachomer* [they do not know the customs] of other cities.

What we have yet to see is what innovations from the pandemic will still be present in a century?

Some of the changes are here to stay and others are already long gone!

But sometimes in the middle of an emergency, it is hard to know which is which?

There are a set of changes coming in all aspects of Jewish law. I am interested in asking pondering what Jewish law changes are here to stay (beyond shorter services in synagogue and no sermons! 😊)

Thank you for listening and I welcome feedback

Michael J. Broyde
mbroyde@emory.edu

