



Demonstrations Yes, Prayer No

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EXECUTIVE SUMMARY: While public gatherings for the sake of communal prayer have been severely restricted in the name of public safety during the coronavirus pandemic, no such restrictions have been placed on public demonstrations. The right to demonstrate is apparently a sacred cow that cannot be interfered with under any circumstances, unlike the right to pray in the manner of one's tradition.

On July 6, 2020, Saudi Arabia issued binding regulations for the Muslim *hajj* (pilgrimage to Mecca) ceremonies, forbidding entry to the Kingdom by foreign pilgrims and restricting the total number of participants in Islam's most sacred event to 10,000, in groups of only a few dozen at a time. In 2019, by contrast, about 2.5 million pilgrims took part in these ceremonies. This sweeping Saudi decision was characterized as a necessary evil in light of the worrisome rates of coronavirus morbidity.

In Israel, prayers for the evening of Tisha B'Av at the Western Wall plaza were restricted, in one fell swoop, to fenced-off "capsules" of 20 worshippers each, with the plaza containing no more than 1,000 people at a time. This went almost unquestioned.

For the religiously observant citizen, whether Jew, Muslim, or Christian, it is no small matter to be subjected to restrictive decrees that cut one off from the ritual framework in which one was raised and educated. In the case of the coronavirus restrictions, the religious public accepts the law of the land and obeys it on the understanding that this is not an arbitrary caprice but a necessity stemming from difficult times—indeed from a force majeure that has visited the global pandemic upon us. What ultimately convinces the individual to cooperate with the governing authority in such circumstances is the notion of *pikuah nefesh*, or the saving of lives, which provides

authorization (at least in Judaism) to override religious prohibitions for that purpose.

The point of the ad hoc limitations that have been imposed on prayer arrangements, then, is clear. A gathering, even in an open space, entails acute risk of infection, so the decree, even if onerous, must be upheld. This problematic regulation is all the more imperative for Jewish communities as the High Holidays approach.

The Israeli medical establishment is unfortunately having difficulty overcoming the pandemic. The rate of infection and morbidity is not stabilizing, with all that this means not only for hospitals but also for the economy, culture, and tourism. This seems to suggest that Israelis of all stripes need to cooperate with the government's regulations regarding public behavior during the health crisis.

And yet, as if in a parallel world where the pandemic is nothing more than an urban legend, fervent mass demonstrations against the prime minister continue to be held regularly, particularly around PM Netanyahu's official residence on Balfour Street in Jerusalem. Thousands crowd together in small spaces for this purpose, making a mockery of social-distancing regulations. Furthermore, the protests' organizers repeatedly take to the media and the social networks to encourage all and sundry to flock to Balfour Street.

All of this is done in the name of democracy and freedom of expression, and with the backing of the Supreme Court and the justice minister, who declared with triumphant pride, "In the coronavirus law we made sure that the right to demonstrate will not be compromised. This is how a strong democracy operates in a time of emergency. Any attempt to subvert this ruling is an attempt to subvert the rights of the citizen."

In other words, the right to demonstrate is a sacred cow that is not to be questioned under any circumstances. The right to pray, however, does not warrant such protection.

A Supreme Court ruling on August 19, 2020 authorized the demonstrations to continue. Among the main justifications for the ruling was Justice Uzi Fogelman's assertion that "the inconvenience to the residents is a kind of 'necessary evil' so that the right to demonstrate can be upheld."

Not a word about the pandemic.

Here it is worth noting a ruling by former Supreme Court Justice Ayala Procaccia on December 6, 2004, which stated:

The right to demonstrate and to protest is indeed based on the right to freedom of expression, and it is one of the lofty manifestations of the idea of human freedom and dignity.... However, the right to express protest is not an absolute right. It is subordinate, first and foremost, to the duty to obey the law and to act within its framework.

The freedom of expression and protest does not entail abandoning all restraints. The freedom of protest is subject to limitations that are aimed at a worthy purpose, and are imposed with the required proportionality. Considerations of maintaining public order and safety, including the prevention of hazards and nuisances in public places that are intended for the use of the public and for the provision of basic needs, are appropriate considerations when it comes to imposing such limitations.

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