

## Coronavirus, the *Halakhah*, and the Counsel of Experts

The Freehof Institute of Progressive Halakhah, 2020 / תש"פ

At this writing, the COVID-19 outbreak has been declared a pandemic by the World Health Organization. Tough measures are being taken around the world to deal with the disease, whether to contain or to mitigate its spread, and to attempt to cushion its economic impact. Travel restrictions and quarantines are in effect in North America and Israel; schools and universities have moved to online instruction; large public gatherings have been banned. This crisis is a test of our ability, as individuals and as communities, to come together to do what is necessary to preserve the public health and to calm the rising fear that many are feeling.

Is there a particularly halakhic insight that might be helpful to us at this time?

It is well known, of course, that one of the primary values in Jewish legal thought is *pikuaḥ nefesh* (פקוח נפש), the preservation of human life, which overrides almost every other religious duty.<sup>1</sup> From this *mitzvah* to save life, it follows that we must heed the advice and counsel of physicians and all others who are particularly qualified to diagnose, evaluate, and remedy dangers to human health. We read in the Mishnah (*Yoma* 8:5): חולה מאכילין אותו על פי בקיאי, “a person who is ill on Yom Kippur is fed according to the instruction of experts.” In other words, the *mitzvah* to fast on Yom Kippur, one of the most seriously-felt duties of the religious Jew, is suspended when the experts – Rambam, in his Commentary to the Mishnah, identifies them as מומחי הרופאים, “qualified physicians” – declare that the patient must eat to maintain his or her health. All this would seem obvious: if *pikuaḥ nefesh* is important enough to set aside even the most stringent prohibitions of the Torah, it’s reasonable that we ought to rely upon qualified experts to tell us just when life and health are endangered and what we need to do to alleviate that danger.

But there’s another theme in that Mishnah. The text continues: ואם אין שם בקיאי מאכילין אותו על פי עצמו עד שיאמר די, “if no experts are at hand, we follow the patient’s own request, feeding him until he says ‘Enough.’” This, too, seems obvious: if we can’t consult a physician, we ought to err on the side of caution, making sure that we do everything possible to save this person’s life. After all, even *safek n’fashot*, a situation in which a person’s life *might* be in danger or in which a particular remedy (e.g., food) *might* be required to save that person, is sufficient to override Yom Kippur and almost all other *mitzvot*. It’s better here to act quickly, to rely upon the patient’s own sense of their situation, rather than wait too long for the doctor to arrive.

You can see where these two themes – rely upon the expert, rely upon the patient – can come into conflict. On the one hand, the expert is more qualified than we are to determine just what the situation requires. And on the other, the individual human being is uniquely positioned to know what she or he needs. As we read in Proverbs 14:10, לֵב יוֹדֵעַ מְרַת נַפְשׁוֹ, “the heart knows its own suffering,” which is why, according to the Talmud (*B. Yoma* 83a) חולה אומר צריך, ורופא אומר, “when the patient says ‘I need to eat’ and the physician disagrees, we heed the patient’s request.” The patient, as it were, outvotes the expert. Yet what is the rule in the

opposite case, when the physician prescribes food or other treatment and the patient says “I don’t need it?” How should we decide that case? The same Talmudic passage declares that שומעין לרופא, “we heed the physician.” But why? Doesn’t the heart know its own suffering? No, says the Talmud, not in this case, because it’s quite possible that the disease has adversely affected the patient’s judgment. So the doctor outvotes the patient.

For a good summary of the ins-and-outs of these rules, let’s turn again to Rambam, in his Commentary to that *mishnah*:

ויש בענין זה חלוקי דינים נבארם לך והוא שחולה כל זמן שבקש לאכול מאכילין אותו ואפילו אמרו כל הרופאים שאינו צריך אוכל מאכילין אותו עד שישבע. ואם הורה רופא מומחה שצריך לאכול, והוא אומר איני צריך כלום מאכילין אותו ואין שומעין לדברי החולה. ואם נחלקו הרופאים ואמרו מקצתם צריך להאכילו ומקצתם, אמרו שאינו צריך שומעים לבקיים או לרוב. ואם היו שוים במנינם ומומחיותם לפי דעתינו מאכילין אותו, לפי שהכלל אצלינו ספק נפשות להקל.

There are various distinctions in the law on this subject; I clarify them for you here.

- Whenever a patient says (on Yom Kippur) “I need to eat,” we feed them until they have had enough, even if all the physicians in the world declare that feeding is not necessary.
- If a qualified physician instructs that the patient needs to eat but the patient says “I don’t need to eat at all,” we feed the patient and ignore their words.
- When the physicians dispute the matter – some say the patient needs to eat while others disagree – we follow the counsel of those who are more expert on the subject or the counsel of the majority of the experts.
- If the physicians are equally divided on the matter, both in their number [i.e., they split 50-50] and in their expertise [i.e., it isn’t clear that either side makes a more convincing medical case], we feed the patient on our own cognizance, because we follow the rule that “when there is doubt, we err on the side of leniency” [and therefore set aside the *mitzvah* to fast on Yom Kippur].<sup>2</sup>

We learn that, even though we take seriously the patient’s own perceptions, the considered opinion of medical experts is *the* vital factor in determining how to fulfill the duty of *pikuah nefesh*. We heed the counsel of experts in virtually every case. The only time we are entitled to ignore that advice is when we have good reason to believe that action *must* be taken to save life and health, even if the expert has not reached that conclusion. We are *not* entitled to ignore the counsel of experts in order to *refuse* the treatment or the precautions that they prescribe.

We are living in a time of when a disturbingly large proportion of the population has made it a habit to ignore the counsel of experts. We hear of “the death of expertise,” a growing tendency to disregard the words of scientists in favor of “alternative facts” and to follow the urgings of favorite politicians and cultural figures, even when those politicians and cultural figures are ignorant of the data and of the scientifically accepted means of evaluating them. We see this in the widespread denial of the findings of climate scientists and in the opposition to medical immunization, particularly (but not only) in the United States. So it is sadly not surprising to hear so many of our fellow citizens disparaging what they experts have to say, even now, in the midst of the most widespread pandemic in recent memory. They may justify their attitude on the

grounds that “the experts are often wrong.” And that may be true. Expertise does not guarantee one hundred percent accuracy. Frequently, the experts must weigh the data in order to make a judgment as to the right course of action, and judgment, by its nature, is a matter of probability and reasonability rather than precision. But the point is that those of us who are not experts are in no position even to make the sort of careful judgment that the expert, who considers the data through the lens of scientific training and experience, can provide. That’s why the *halakhah* leaves it to the judgment of the *baki*, the expert physician, to determine just when an individual must set aside even the *mitzvah* of fasting on Yom Kippur.

If, therefore, Jewish tradition offers insight at this moment of crisis, it is that there is precious little *pikuah nefesh* in the absence of expertise. The denial of expertise, of science itself, is a violation of Jewish law. And it is our Jewish responsibility to call out and to condemn that sort of ignorance wherever and whenever we encounter it.

After all, lives are at stake.

---

<sup>1</sup> With the exception of idolatry, acts of incest or adulterous sex, and murder; *B. Sanhedrin* 74a.

<sup>2</sup> For all the details, see *Sulḥan Arukh Oraḥ Ḥayyim* 618.