

## *Endangering Oneself to Save the Lives of Others*

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This paper is written in the midst of the COVID-19 pandemic, a crisis that has raised any number of ethical dilemmas to the public consciousness. One of these concerns the risks that must be assumed by many individuals – [medical personnel](#), certainly, but [workers in retail services](#) and [delivery](#) as well – in performing the duties of their employment. In a very real sense, of course, these risks are unavoidable. The lives and welfare of the community demand that these tasks be performed. But the deeper question has to do with the ethics of the situation: under what circumstances may individuals place their lives in danger, even in order to provide vital services to others? Is the community is entitled to ask, let alone demand, that some individuals place themselves at risk? But more fundamentally: are these individuals themselves are entitled to assume such risks voluntarily?

In Jewish law and ethics, such questions have traditionally been framed as follows: to what extent is one obligated, or entitled, or forbidden to enter a situation of *sakanah*, danger to life, in order to aid another who already is in danger? The issue has been debated for centuries in the halakhic literature. As is often the case when addressing such weighty matters, the tradition is clear when it comes to fundamental principles but subject to strenuous *mahloket* (dispute) over the details. And the details are critical ones.

### *1. The Duty to Rescue*

From a Jewish point of view, none of this would be a problem if the Torah didn't require that we come to the aid of those whose lives are in danger. But it does. As we read in Leviticus 19:16:

לֹא תַעֲמֹד עַל־דַּם רֵעֶךָ אֲנִי ה'.

Do not stand *idly* by the blood of your fellow; I am Adonai.

The word “*idly*” is in quotes because it doesn't appear explicitly in the Hebrew of this obscure verse.[1] The idea that these words impose a duty of rescue is found in Rabbinic teaching.

*Talmud, Sanhedrin 73a*

תנו רבנן: מניין לרודף אחר חבירו להרגו שניתן להצילו בנפשו - תלמוד לומר לא תעמד על דם רעך.  
והא להכי הוא דאתא? האי מיבעי ליה לכדתניא: מניין לרואה את חבירו שהוא טובע בנהר, או חיה גוררתו, או לסטין באין עליו, שהוא חייב להצילו - תלמוד לומר לא תעמד על דם רעך.

How do we know that, should a pursuer threaten an intended victim, one is permitted to kill the pursuer if necessary to save the victim? Scripture says: Do not stand *idly* by the blood of your neighbor.

Does the verse in fact come to teach us that lesson? The verse is actually the basis of the following: if one sees his fellow drowning, or attacked by wild beasts, or menaced by robbers that one is obligated to come to his rescue? Scripture says: Do not stand *idly* by the blood of your neighbor.

Note the context that the Talmud assumes: the would-be rescuer likely must submit her- or himself to the same risk (drowning, wild beasts, robbers) that the victim faces. From this, we would conclude that the positive duty[2] to rescue requires that we subject ourselves to danger in order to save the life of a potential victim.

But that conclusion would be a hasty one.

## 2. *Pikuaḥ Nefesh and the Prohibition of Self-Endangerment*

It's well known that *pikuaḥ nefesh*, the duty to preserve human life, is the highest of all the ethical *mitzvot*, taking precedence over almost every other obligation mentioned in Torah.[3] We learn this, say the Rabbis, from Leviticus 18:5:

וּשְׁמַרְתֶּם אֶת־חֻקֹּתַי וְאֶת־מִשְׁפָּטַי אֲשֶׁר יַעֲשֶׂה אִתְּם הָאָדָם וְחַי בָּהֶם אֲנִי ה'

You will observe all my statutes and laws, for the one who performs them shall live by them; I am Adonai.

The literal sense of this verse suggests that one must observe the *mitzvot* in any and all circumstances, for it is in the doing of them that one finds life. The midrash, translates that sense into something quite different:

*Tosefta Shabbat* 15:17 (Lieberman ed.) [4]

וחי הים – ולא שימות בהם אין כל דבר עומד בפני פקוח נפש חוץ מע"ז וגלוי עריות ושפיכות דמים.

“Shall live by them”- meaning that one should not die by them, that is, in the performance of them. Thus, no *mitzvah* stands in the way of *pikuaḥ nefesh*, except for the prohibitions of idolatry, adultery and incest, and murder.

That is, the obligation to save life, including one's own life, overrides the obligation to fulfill virtually every other *mitzvah*. For our purposes, this duty materially affects the extent of the obligation to rescue: if the act of rescue, itself an instance of *pikuaḥ nefesh*, would lead to your death, then by the very logic of the *mitzvah* of *pikuaḥ nefesh* you are exempt (*patur*) from undertaking it. Otherwise, the Torah would be requiring that you commit suicide. This logic is at work in the following (and familiar) texts.

*Talmud, Bava Metzi`a 62a*

שנים שהיו מהלכין בדרך, וביד אחד מהן קיתון של מים, אם שותין שניהם - מתים, חבירו. עד שבא רבי עקיבא ולימד: וחי אחיך עמך - חייך קודמים ואם שותה אחד לחיי חבירך.

Two men are wandering in the desert. One of them holds a container of water. If both of them drink it, they will both die [Rashi: there is not enough water for both]. If the one who holds the water drinks it all, he will survive to reach civilization. Ben Petura said: it is better that both of them share the water, so that the one not look upon the death of his fellow (*cf.* Gen. 21:16: ואל אראה במות הילד). But Rabbi Akiva taught: "that your brother may live with you" (Lev.25:36: *if your kinsman, being in straits, cannot support himself, you shall assist him...and your brother shall live with you*); that is, your own life takes precedence over the life of your fellow.

In this no-good-alternative hypothetical, the traveler who holds the container has the opportunity to fulfill the *mitzvah* of rescue: he can give the water to his fellow, saving that person's life. The problem, of course, is that by doing so he commits suicide, and neither of the two opinions cited in this text requires him to take that step.[5] Ben Petura says he should share the water, presumably because by keeping the water for himself he condemns his fellow to death. By sharing it, on the other hand, he upholds the principle that each human life is of equal value and that neither is more worthy of rescue than the other. Rabbi Akiva learns from a *pasuk*, a verse from the Torah, that in this particular set of circumstances one is allowed to favor one's own life over that of another.[6] Neither sage requires that the traveler must surrender his own life in order to *rescue* his fellow.

*Talmud, Sanhedrin 74a*

רוצח גופיה מנא לן? - סברא הוא. דההוא דאתא לקמיה דרבה, ואמר ליה: אמר לי מרי דוראי זיל קטליה לפלניא, ואי לא - קטלינא לך. - אמר ליה: לקטלוך ולא תיקטול. מי יימר דדמא דידך סומק טפי דילמא דמא דהוא גברא סומק טפי.

And how do we know (that one may not commit a murder, even in order to save one's own life?) — **It is a matter of common sense**,  
As in the case of the person who came before Rava and said to him, "The governor of my town has ordered me, "Go and kill *Ploni*; if not, I will slay you."  
Rava answered him, "Let him kill you than that you should commit murder; who knows that your blood is redder (than that of *Ploni*)? Perhaps his blood is redder (than yours)."

This case is the necessary corollary of the first. In *Bava Metzi`a*, the traveler holding the water is allowed (according to Rabbi Akiva) to save his own life. Here, the unfortunate victim of the local governor is forbidden to take the only action that will save his life. What unites both cases, though, is the principle of the equal worth of each and every human person (*nefesh*). Faced with a decision like this – i.e., "it's either him or me" – when your blood and the other person's blood

are both equally red, the only morally proper response is שב ואל תעשה, *shev v'al ta'aseh*, to do nothing that would alter the situation to favor *either* your life or that of the other. That is essentially the message that Rashi delivers in his commentary to the *Sanhedrin* passage.

**סברא הוא** - שלא תדחה נפש חבירו, דאיכא תרתי, אבוד נשמה ועבירה, מפני נפשו דליכא אלא חדא אבוד נשמה והוא לא יעבור, דכי אמר רחמנא לעבור על המצות משום וחי בהם משום דיקרה בעיניו נשמה של ישראל, והכא גבי רוצח כיון דסוף סוף איכא איבוד נשמה למה יהא מותר לעבור - מי יודע שנפשו חביבה ליוצרו יותר מנפש חבירו - הלכך דבר המקום לא ניתן לדחות.

**It is common sense** – that one’s own life does not take precedence, for to say that would involve two evils: the death of an innocent person and a transgression (the act of murder). To accept death, on the other hand, involves only one evil, namely the death of an innocent person.

For when the Torah permits us to violate the *mitzvot* in order that we may “live by them,” it does so because human life is precious in God’s sight.

But here, when in any case one person will end up dying, on what grounds can we say that it is permitted to transgress the commandment against murder?

From this principle of the equality of human persons, it follows that one is not entitled to make the kind of fatal choice described in either of these two cases. One is therefore forbidden to place one’s own life in mortal danger in order to fulfill the *mitzvah* of rescue.

## 2. *Safek Sakanah*

Then again, not all danger is *mortal* danger. The halakhic tradition distinguishes between two levels of risk to life: ודאי סכנה, *vada'i sakanah*, a clear and present threat to life, and ספק סכנה, *safek sakanah*, a lesser degree of danger. It’s clear from the above texts – and, as Rashi says, it makes perfect sense - that you are not obliged to risk *vada'i sakanah* in order to rescue another; indeed, as such an act is tantamount to suicide, you’re likely forbidden to do so. But suppose that the rescue would involve a less-than-mortal danger to your life. Are you obligated, or at the very least permitted, to accept that lesser degree of risk to yourself in order to save the life of a person who faces mortal danger?

Many halakhic authorities answer in the negative, a conclusion that reflects the rationale behind the midrash on Leviticus 18:5, that is, “one shall live – but not die – by keeping the *mitzvot*.” In the Talmud (*B. Yoma* 85b), this midrash is cited as proof for the assertion that the *mitzvot* are suspended even in a case of *safek sakanah* (or *safek n'fashot*), where there is a possibility, but not a certainty, that a person’s life is in danger. As Rashi explains the logic:

*Rashi, B. Yoma* 85b, s.v. *d'shmuel leit leh pirkha*.

אשר יעשה האדם המצות שיחיה בהם ודאי, ולא שיבא בעשייתה לידי ספק מיתה - אלמא : מחללין על הספק.

The verse means: “(these are the *mitzvot*) that one shall *certainly* live by doing them”, i.e., and not place oneself in a situation where there is a possibility of death. Therefore, we override (Shabbat) in cases of potential danger.

That is to say, we are to perform *mitzvot* in a way that does not involve any significant danger to ourselves. This interpretation of the verse exerts a considerable effect upon how we define the *mitzvah* of rescue. Let’s take a classic example: you are standing on a riverbank and see a person drowning in the stream. Do you jump into the water to save that person? If you don’t know how to swim, the answer obviously is “no” – you would be placing yourself into a situation of clear and present danger (*vada’i sakanah*), which as we’ve seen you are not obligated and (to the extent that your action is tantamount to suicide) even forbidden to do. But what if you do know how to swim and have even had some training in lifesaving? In that instance, by jumping into the water you would be undertaking *safek sakanah*, some degree of risk, even if the danger to yourself is not as high as it is to the drowning person. After all, the drowning person will thrash around and threaten your own safety in the water. Yet as Rashi explains the midrash on Leviticus 18:5, you are *forbidden* to attempt the rescue: the requirement that we should “live” by the *mitzvot* requires that, in fulfilling them, our survival remains certain. Thus, we are not permitted to place ourselves in any significant degree of danger in performing *mitzvot*, including the *mitzvah* of rescue.

### 3. The Stance of the Halakhah: Self-Endangerment is Prohibited

Does Rashi’s interpretation of the midrash reflect the mainstream of halakhic opinion? Let’s look at some of the major sources.

*Rambam, Mishneh Torah, Hilkhot Rotzeah 1:14*

כל היכול להציל ולא הציל עובר על לא תעמוד על דם רעך, וכן הרואה את חבירו טובע בים או ליסטים באים עליו או חיה רעה באה עליו ויכול להצילו הוא בעצמו או שישכור אחרים להצילו ולא הציל... וכל כיוצא בדברים אלו, העושה אותם עובר על לא תעמוד על דם רעך.

Whoever *is able to rescue* and does not rescue transgresses against the commandment “do not stand idly by the blood of your neighbor.” Likewise, one who sees another drowning or attacked by robbers or wild beasts and *is able to rescue* the victim, either personally or by hiring another to perform the rescue, and does not rescue... and in all similar cases [7], one who behaves thusly transgresses against the commandment “do not stand idly by the blood of your neighbor.”

The words “is able to rescue” (= יכול להצילו) are emphasized because they give rise to an interpretive possibility: does “ability” to rescue mean the ability to rescue without danger to the rescuer? One of the leading *rishonim* does draw that conclusion:

Rabbi Menachem HaMe'iri (ca. 1300, Provence), Beit Hab'hirah, Sanhedrin 73a

מי שראה חברו טובע בנהר או חיה גוררתו או ליסטים באים עליו חייב להשתדל בהצלתו... אם הוא יכול בלא סכנה...

Whoever sees another drowning or attacked by wild beasts or robbers is obligated to take efforts to save that person... if he is able to do so without endangering himself...

HaMei'iri is clearly following Rambam's language here, and he seems to intend his words as an interpretation of Rambam's *p'sak* (ruling). Perhaps the level of danger to which he refers is *vada'i sakanah*, in which case it is clear that the would-be rescuer is not obliged to act. But the following text points specifically to *safek sakanah*:

R. Yoel Sirkes (Poland, d. 1640), Bayit Hadash to Tur, Hoshen Mishpat 426

נראה דלפי דמלשון הברייתא משמע דחייב להצילו אפילו אינו ברור לו שיוכל להצילו חייב להכניס עצמו בספק סכנה להצילו אבל הרמב"ם כתב ויכול להצילו וכו' דמשמע דדוקא בדאין ספק שיכול להצילו אבל אינו חייב להכניס עצמו בספק סכנה להצלת חברו.

From the language of the *baraita* [i.e., the Talmudic passage *B. Sanhedrin 73a*, above] it would seem that the duty to rescue applies even when one is not certain that the attempt can succeed. One is required to undertake *safek sakanah*, a less-than-mortal danger, in order to save the victim. The Rambam, however, writes "whoever *is able to rescue*, etc.", which implies that there is no doubt that the attempt will succeed. But one is not obligated to undertake *safek sakanah* in order to rescue another.

If the *BaH*, as he's called, is correct, this means that both Rambam and the *Shulhan Arukh*, *Hoshen Mishpat 426:1*, who repeats Rambam's language verbatim, rule that there is no obligation to risk significant but less-than-mortal danger in order to rescue a person who faces mortal danger. R. David ibn Zimra, *Radbaz* (16<sup>th</sup> century, Egypt/Eretz Yisrael) goes farther in his memorable formulation:

ואם יש ספק סכנת נפשות הרי זה חסיד שוטה דספיקא דידיה עדיף מוודאי דחבריה

one would be a pious fool (*hasid shoteh*) to risk *safek sakanah* in order to rescue another, for the potential danger to oneself outweighs the clear-and-present danger to another[8]

Any number of *aḥaronim* ("later" halakhic authorities, those who lived since the publication of the *Shulhan Arukh* in the sixteenth century) have addressed this question. And as R. Ovadyah Yosef (Israel, d. 2013) summarizes the situation, the majority of them agree that "one is not permitted to place oneself in a situation of potential danger in order to save another who faces mortal danger." [9]

#### 4. Limitations of the Rule

That conclusion may reflect an accurate interpretation of the sources. But we would not want to apply it literally to the world in which we live. An absolute prohibition against self-endangerment would call into question the work of first responders, who in the normal course of their work must risk *safek sakanah* to themselves to save the lives of others. And even were we to set that difficulty aside – after all, who would wish to live in a society with no police, fire, and rescue services, let alone medical teams that treat patients with contagious diseases? – the halakhic rule strikes us as harsh and uncaring. To say that one must never risk potential danger to rescue another would be to enshrine an ethic of self-preservation above every other concern; it is to describe as the halakhic ideal a world in which none will undertake risk to help their brothers and sisters. In practical terms, this *p'sak* would forbid such things as live organ donation, where the potential recipient needs, say, a kidney in order to survive and where the potential kidney donor would have to undertake the slight (but by all medical accounts eminently manageable) risk of surgery. Halakhic authorities have permitted live organ donation,[10] but in order to do so they have had to overcome the difficulty posed by the prohibition against self-endangerment. To do this, they propose two major lines of argument.

First, not all instances of potential danger are created equal. In order to find that a particular risk qualifies as *safek sakanah* and thereby exempts the would-be rescuer from the obligation to act, we must arrive at a reasonable definition of that term. Thus, Rabbi Isser Yehudah Unterman (d. 1976), a former chief rabbi of Israel, in his *Shevet Mi'hudah*, p. 23:

ברם מכיון שכל הפוסקים לא הביאו דין זה כלל ודאי שאין לחייבו בכך ומספיקא נדון בזה דין חייך קודמים. אלא שצריכין להגדיר מהו ספק סכנה, שאין לומר כי כל חשש ופקפוק מצד זה שמוטל עליו להציל נפש יחשב לספק. למשל אם איש טובע בנהר ויש אדם היודע לשחות ויכול להצילו אלא שחוכך בדבר שמא יזיקו לו המים הקרים ויצטנן ע"י כך - האם זה ספק סכנה מקרי? וכששומע קול צוחה של שכנו הקורא לעזרה מפני שאנשים התנפלו עליו היתכן לומר שיהי פטור מלעזור בכל מקרים כאלה מפני החשש שמא יפגעו בו?

Since the leading codes do not rule explicitly (that one is obligated to assume potential danger in order to rescue), the uncertainty in the law requires that we apply the rule “your own life takes precedence.” Yet we must define what we mean by *safek sakanah*. Not every fear or concern on the part of the would-be rescuer deserves to be called “danger.” For example, if a person is drowning in a river, and a man is present who knows how to swim but worries lest he catch cold on account of the chilly water – can this really be called *safek sakanah*? Suppose that a person hears his neighbor cry for help against men who are attacking him. Is this person exempt in any such case from offering assistance, simply because he fears that the attackers may harm him?

Rhetorical questions such as these lead R. Ovadyah Yosef [11] to propose a distinction between two kinds of *safek sakanah*. The first he calls *safek shakul*, a “weighty” or reasonable level of danger that, though it does not quite measure up to *vada'i sakanah*, exempts an individual from the obligation to rescue. The second is *k'tzat safek sakanah*, where the risk exists but is minimal and manageable. In this latter category he places organ donation: given that expert physicians

testify that the transplantation surgery does not pose an unreasonable risk to the donor, the donation is both permitted (מותר) and praiseworthy (מצוה), even if it is not obligatory (חובה).

The second line of argument is a direct appeal to our moral commitments alongside the question of legal obligation. We find a powerful expression of this thought in the words of R. Yeḥiel Mikal Epstein (d. 1908) in his *Arukh Hashulḥan, Hoshen Mishpat* 426, par. 4: [12]

ומיהו הכל לפי הענין ויש לשקול הענין בפלס ולא לשמור א"ע יותר מדאי... וכל המקיים נפש מישראל כאלו קיים עולם מלא.

(Although the *poskim* have ruled that one is not obligated to risk potential danger to rescue another who faces mortal danger), this matter must be judged according to the situation. One must consider the case carefully and not protect oneself more than is necessary... (for) when a person saves one Jewish life it is as though he has saved an entire world.

We progressives, of course, would not quibble over whether the victim is Jewish or Gentile. But we certainly join R. Epstein in his discomfort with the strict application of the *safek sakanah* rule. He obviously recoils from the prospect of a world that operates according to that strict application. And so should we. In this instance, our moral sense as human beings called upon to do justice and to love mercy serves to modify (and moderate) the literal interpretation of the *halakhah*.

### 5. Implications for Our Question

To summarize: our sources tell us that one is prohibited from undertaking an *unreasonable* degree of risk in order to save the life of one who faces mortal danger. What, precisely is “unreasonable” in any case is a decision that requires judgment. To the extent that we – or, more to the point, those who are experts in these matters – judge the danger to be slight or manageable, then to that extent an individual is permitted and even encouraged to undertake that risk on behalf of those whose risk is greater. This suggests that medical personnel, other first responders, and workers performing other vital social functions are not prohibited from doing their jobs during a time of pandemic, provided of course that medical experts have assessed these individuals’ level of risk as acceptable and that they undertake all precautions necessary to keep them safe from the disease. This conclusion assumes that these tasks are in fact “vital” as we define the matter at the outset of this paper: “The lives and welfare of the community demand that these tasks be performed.” This is meant as a serious and restrictive criterion. The public faces a situation of *vada’i sakanah* during this pandemic, but not every job is “vital” to the public welfare. Thus, exceptions to shelter-in-place orders should be severely limited.

There is, finally, an issue that the halakhic sources on *safek sakanah* and the duty to rescue do not address. That issue is one of simple social justice. Many of the individuals who expose themselves to *safek sakanah* on behalf of the community are those whose jobs with low pay and insufficient or nonexistent benefits. On its face, this is an inequity: the wealthy and the relatively well-off can afford to shelter themselves from the virus while lower wage earners are compelled to risk life and health to bring vital services to them. There is, admittedly, no easy solution to this

inequity, which forces so many to make the difficult choice between preserving health and bringing home a paycheck. But as long as we are viewing this question through the lens of progressive *halakhah*, we can only conclude that no solution is adequate unless it takes into account the rank injustice that, at this time of COVID-19, our society is perpetrating upon those who are least able to withstand economic hardship

## NOTES

[1] The Septuagint, e.g., reads “do not rise up against the blood of your fellow,” a principle very different from that of rescue.

[2] Since it is phrased as a negative in the Torah, Rambam classifies it as a negative commandment, i.e., do not be negligent in rescuing your fellow; *Sefer Hamitzvot*, Negative Commandment no. 297.

[3] *B. Sanhedrin* 74a; *Mishneh Torah, Hil. Y’sodei Hatorah* 5:1-3; *Shulhan Arukh Yoreh De`ah* 157:1.

[4] With numerous parallels in the Rabbinic sources.

[5] Moreover, if you say that the first traveler ought to hand the water to his companion, that companion would logically have a similar moral obligation to hand it back.

[6] Rabbi Akiva reads Leviticus 25:36 as follows: in order to have the substance to assist your kinsman (i.e., by paying his debts and releasing him from indentured servitude), you must first take care of your own financial well-being.

[7] The sections of this text that are omitted refer to other, less physical examples of rescue from danger.

[8] *Resp. Radbaz* 3:627.

[9] *Resp. Y’havei Da`at* 3:84

[10] See CCAR responsum no. [5753.2](#), “Live Liver Transplantation.”

[11] See note 9.

[12] For a similar statement see *Pithey T’shuvah to Hoshen Mishpat* 426, no. 2: אולם צריך לשקול – “one must consider the case carefully to determine whether this is really a situation of *safek sakanah* and not be too strict about it... for the one who insists too strictly upon his own safety will one day find himself in the same situation” (i.e., where others will refrain from saving him out of concern over *safek sakanah*).