

GUIDELINES: HOW MUCH MUST WE GIVE UP TO SAVE LIVES?

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A Jewish legal and ethical perspective offers the following guidelines for individuals, community leaders and governments looking to approach risk responsibly during the COVID-19 pandemic:

- **Preserving life is a paramount value in Jewish tradition.** We are required to forgo even our deepest commitments and endure inconvenience as individuals and as a body politic to keep ourselves and the masses safe and healthy.
- **Risk is an inherent part of life, and individuals are entitled to take reasonable risks.** What is considered reasonable, however, should itself be framed strongly by the value of life.
- **Our individual and communal fates are inextricably intertwined.** Individuals who choose to undertake personal risk are also impacting the health prospects of everyone around them.
- **Governments and community leadership have a responsibility to steer communal norms** toward protecting each other's life and health, normalizing public health precautions, such as masking and avoiding in-person, dense physical interaction to benefit the population as a whole and especially less privileged populations who are by definition more vulnerable.
- **Financial concerns hold halakhic weight, but so do matters of the spirit.** Honoring the elderly, education and rest are forms of communal wealth.
- **The only economic interest that justifies risking lives is preventing poverty.** To the extent that restrictions are loosened, they should be loosened for the sake of preventing the most economically vulnerable people in the community from sinking into dangerous poverty, including food and home insecurity. Corporate profits, a robust stock market, and GDP, in and of themselves, may not be preserved at the cost of human lives. Only when public health is relatively secure should we begin to concern ourselves with accumulating wealth.

How Much Are We Required to Give Up to Save Lives?

(Narrative Source Sheet)

Source Sheet by Meesh Hammer-Kossoy and Aryeh Bernstein

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OUR QUESTION:

Few people would give their life or even endure illness to spend the day at work, go to the movies or attend their loved one's wedding. But even in a time of the COVID-19 pandemic, the risk of an otherwise healthy individual dying because of any particular public event is small, if not insignificant. At the same time, the Talmud (Bava Kama 60b) long ago named the simplest, most effective response to a global pandemic: "לך עמי בא בחדרך" "Go, my people, hide in your chambers and close the door behind you." (Isaiah 26:20).

Staying home on any particular day, missing my good friend's wedding, high holiday prayers or a day of work, may not save my life or anyone else's, but if we all do it, fewer people will certainly die. But long-term reduction of public life also comes at great economic and social cost. On July 26, Haaretz reported that four people in Israel died from COVID-19 that day while 1,625 tested positive. In the same month, 1,010 returned to work as 2,904 new job seekers were registered. On that same day, the INYT reported that hundreds of millions in the developing world are threatened with poverty as remittances dry up and the NYT reported massive unemployment in the developing world pushing billions who already live on the edge back into poverty. Short term local gains may have long term costs in multiple locales.

While Jewish law (halakha) affirms the primacy of saving life over almost every other commitment, it also recognizes the inevitability of risk in day to day life, as well as the balance between short and long-term risks. What can Jewish law teach us about which pillars of individual, communal, and civic life, including livelihood should be neglected in order to protect public health? And who gets to decide?

I. THE IMPERATIVE OF PRESERVING LIFE

Jewish law values the preservation of human life to such an extent that one must even violate Shabbat, a capital crime, in order to save a life or even for the possibility of saving a life. The early Rabbis take this for granted and supply many Scriptural reasons for this, the most prominent of which, in subsequent Rabbinic literature, is that the commandments are given for the sake of life - so of course preservation of life is paramount. Here is the concise summary of the Rambam (Maimonides, 1135-1204, Egypt) of the Rabbinic commonplace that preserving life precedes the mitzvot.

Mishneh Torah, Sabbath 2:1

(1) Like all the other commandments, Shabbat is overridden by danger to life.

משנה תורה, הלכות שבת ב'א'

(א) דחוייה היא שבת אצל סכנת נפשות כשאר כל המצוות.

For more in depth teaching on the priority of pikuah nefesh/saving lives, see here.

Just as it is paramount to save lives, the Torah forbids endangering them in the first place. In fact, various mitzvot in the Torah mandate actions taken to protect one's own and others' safety. The Rambam digests this legal category forcefully.

Mishneh Torah, Murderer and the Preservation of Life 11:4-5

There is no difference between a roof or anything else that is dangerous and likely to cause death to a person who might stumble. If, for instance, one has a well or a pit in their courtyard, they must build an enclosing ring ten handbreadths high, or put a cover over it, so that a person should not fall into it and die. So too, any obstruction that is a danger to life must be removed as a matter of positive duty and extremely necessary caution. The Sages have prohibited many things because they are dangerous to life. Anyone who disregards them and says : "What claim have others on me if I risk my own life?" or "I do not mind this" should be lashed for disobedience.

משנה תורה, הלכות רוצח ושמירת נפש י"א ד'ה'

אחד הגג ואחד כל דבר שיש בו סכנה וראוי שיפשל בה אדם וימות. כגון שהיתה לו באר או בור בתצרו בין שיש בו מים בין שאין בו מים חייב לעשות חללא גבוהה עשרה טפחים. או לעשות לה פסוי כדי שלא יפל בה אדם וימות. וכן כל מכשל שיש בו סכנת נפשות מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה יפה. שנאמר (דברים ד ט) "השמר לה ושמר נפשך". ואם לא הסיר והגייח המכשולות המביאין לידי סכנה בטל מצות עשה ועבר ב(דברים כב ה) "לא תשים דמים": הרבה דברים אסרו חכמים מפני שיש בהם סכנת נפשות. וכל העובר עליהן ואומר הריני מסכן בעצמי ומה לאחרים עלי בקד או איני מקפיד בקד מכין אותו מכת מרדות:

According to numerous sources from which we have selected just a few examples here, halakhah teaches us that keeping people alive is our core Jewish value. This must be our point of departure when we evaluate potential resumptions of "normal life" -- opening workplaces, schools, places of recreation and travel, etc. -- before the pandemic is eradicated. We are required to forgo even our deepest commitments to that end and to take numerous inconvenient measures as individuals and as a body politic to keep ourselves and the masses safe and healthy.

II. PERMISSIBLE RISKS

As paramount as saving a life is, halakhah also recognizes that some risk is inevitable. Crossing the street, driving cars, even cooking and eating dinner can be dangerous. How are we to distinguish between reasonable and unreasonable risk?

The most basic category of permitted risks derives from a verse in Psalms.

Psalms 116:6

(6) The LORD protects the simple; I was brought low and He saved me.

תהילים קט"ז:ו'

(ו) שִׁמְרָ פְּתָאִים יְהוָה דְּלוֹתַי וְלִי יְהוֹשִׁיעַ:

This verse is invoked repeatedly in the Talmud, codes, and later authorities to promise Divine protection from risks when engaging in activity that entails reasonable risk that is difficult to avoid. Admittedly, the examples below are rooted in ancient understandings of nature, but the principle remains relevant.

Niddah 31a

The Sages **taught** in a *baraita*: With regard to **one who engages in intercourse** with his wife **on the ninetieth day** of her pregnancy, **it is as though he spills her blood**. The Gemara asks: **How does one know** that it is the ninetieth day of her pregnancy? **Rather, Abaye says: One should go ahead and engage in intercourse** with his wife even if it might be the ninetieth day, **and** rely on God to prevent any ensuing harm, as the verse states: **“The Lord preserves the simple”** (Psalms 116:6).

נדה ל"א א

תנא המשמש מטתו ליום תשעים כאילו שופך דמים מנא ידע אלא אמר אביי משמש והולך (תהלים קטז, ו) ושומר פתאים ה'

In addition, this verse is invoked to claim protection in cases where the community has disregarded a known risk so much that it is no longer taken seriously.

Yevamot 72a

Rav Pappa said: Therefore, learn from here that on a **cloudy day** or on a **day** that a **south wind** [*shuta*] blows, we may **neither circumcise nor let blood** [*mesokhrinan*], owing to the danger involved. **But nowadays, when many are accustomed to** ignoring these safeguards, the verse **“The Lord preserves the simple”** (Psalms 116:6) is applied, and it is assumed that they will come to no harm.

יבמות ע"ב א

א"ר פפא הלכך יומא דעיבא ויומא דשותא לא מהליגן ביה ולא מסוכריגן ביה והאידינא דדשו בה רבים (תהלים קטז, ו) שומר פתאים ה':

It seems that then as now, people found it difficult to consistently avoid risk in the long term. The halakhah seems to acknowledge the inevitability of relaxing strictures over time. In the case of COVID, this principle permits individuals to undertake risks that are necessary, such as important errands, doctors appointments, and caring for neighbors.

Importantly, the second passage clarifies that communal norms are binding on individuals. If the community as a whole tolerates a risk, that risk seems to be halakhically sanctioned. Thus, halakhah probably permits outside or inside dining at restaurants in communities in which this risk is legal and commonly accepted. Of course, being more careful than the norm is always praiseworthy, but not required.

Conversely, many authorities have suggested that when a community as a whole understands that a behavior is dangerous and inappropriate, even if individuals might happily tolerate the risk, the halakhah frowns on it. God is not expected to protect those more foolish than average. We will return to this below.

The second principle permitting undertaking personal risk ironically originates from a stringent ruling of Rabbi Yehezkiel Landau (1713-1793, Poland and Prague). While he prohibits hunting for sport because of the inherent risk involved, he permits it for livelihood.

Noda BiYhudah II, Yoreh Deah 10:20

(20) Thus far I have addressed the aspect of proper behavior, [contending] that man ought to distance himself from [hunting for sport.] Now I say that it is even forbidden, for anyone who engages in this must enter the forests and place themselves in great danger, in places of packs of wild animals. And the Merciful One said: "Take great care of yourselves" (Deut. 4:15). And who was a greater and more expert hunter than Esau, about who Scripture attests: "Esau was a skillful hunter..." (Genesis 25:27). Yet look at what he said about himself: "I am about to die..." (ibid. 32). And no Scripture departs from its plain meaning, which is that he endangers himself each day among packs of wild beasts. So explains Nachmanides. So then how can a Jewish man insert himself into a place of packs of wild and vicious beasts? Yet even here, if one who is poor and does so for sustenance, the Torah permitted it, like any maritime trader crosses the sea—for with regard to anything that is for the needs of one's sustenance and livelihood, there is no choice. The Torah has said [about the

נודע ביהודה מהדורא תנינא, יורה דעה י"כ'

(כ) ועד כאן דברתי מצד יושר ההנהגה שראוי לאדם להרחיק מזה ועכשיו אני אומר אפילו איסורא איכא שהרי כל העוסקים בזה צריכין להכנס ביערות ולהכניס עצמם בסכנות גדולות במקום גדודי חיות ורחמנא אמר ונשמרתם מאוד לנפשותיכם, ומי לנו גדול ואומן בקי בצידה יותר מעשו שהכתוב העיד עליו ויהי עשו איש יודע ציד וכו' ופוק חזי מה אמר הוא על עצמו הנה אנכי הולך למות וגו' ואין מקרא יוצא מידי פשוטו שהיינו שהוא מסתכן בכל יום בין גדודי חיות וכן פירשו הרמב"ן, ומעתה איך יכניס עצמו איש יהודי למקום גדודי חיות רעות ואף גם בזה מי שהוא עני ועושה זו למחייתו לזה התורה התירה כמו כל סוחרי ימים מעבר לים שכל מה שהוא לצורך מחייתו ופרנסתו אין ברירה והתורה אמרה ואליו הוא נושא את נפשו ואמרו רז"ל מפני מה זה עלה בכבש ונתלה באילן ומסר עצמו

wages of a day laborer]: “His life depends on it” (Deuteronomy 24:15). And the sages said (Bava Metzia 112a): “Why did this person ascend a ramp, dangle from a tree, and place himself at risk of death? Is it not for his wages?” But one whose main intention is not for sustenance, rather, he goes to the place of packs of wild animals due to his heart’s appetite, and endangers himself, violates “Take great care of yourselves.” (Deuteronomy 4:15)

למיתה לא על שכרו כו', אבל מי שאין עיקר כוונתו למחייתו ומתאות לבו הוא הולך אל מקום גדודי חיות ומכניס עצמו בסכנה הרי זה עובר על ונשמרתם מאוד כו'.

Rabbi Landau reads the Talmudic passage creatively. In his mind, the very fact that the Talmud assumes that the worker is risking their life for profit implies that such risk is permitted. From his time forward, this principle is invoked repeatedly to justify risking one’s life for professional reasons, even while similar behavior is prohibited for "elective" pursuits. Rabbi Landau states explicitly that this risk is permissible because it is unavoidable. The immediate limited risk of working is preferable to the long term risk of starvation without employment.

There are those who are even more permissive about risk taking. (See further, Mishkenot Yaakov 15, Rav Yaakov Ariel, Rav Friedman Tehumim 29.)

When it comes to COVID-19, because the risk of exposure is so small in any individual outing, many people may be willing to justify undertaking personal risk--especially when that risk involves an event of significance to them, such as a wedding, celebration, or financial gain. At first glance, these principles seem to back them up. However, a broader understanding of the problem is required.

III. GOVERNMENT AND COMMUNAL LEADERSHIP RESPONSIBILITY FOR PUBLIC SAFETY

In the context of a pandemic, each individual taking a risk increases the risk for others. Once infection spreads, some individuals may be able to choose to protect themselves by following the Talmudic imperative to stay indoors. However, many do not have that privilege. Elevated risk will impact not only those who choose to take risks but also medical professionals, essential workers, and other people who have no choice. Similarly, the elevated risk makes it difficult or impossible for the elderly or other vulnerable populations to have the social contact they need, or for students to go to school safely. The rabbis call this form of mutual responsibility as arevut/guarantorship.

Vayikra Rabbah 4:6

(6) Hezkiya taught (Jeremiah 50:17): "Israel are scattered sheep" - why are Israel likened to a sheep? Just as a sheep, when hurt on its head or some other body part, all of its body parts feel it. So it is with Israel when one of them sins and everyone feels it. (Numbers 16:22): "When one man sins [will You be wrathful

ויקרא רבה ד' ו'

(ו) תְּנִי תְּזַקֶּיָהּ (ירמיה נ, יז): שְׁה פְּזוּרָה יִשְׂרָאֵל, נִמְשְׁלוּ יִשְׂרָאֵל לְשֶׁה, מֵה שְׁה הִזָּה לּוֹקֵה עַל רֹאשׁוֹ אוֹ בְּאֶחָד מֵאַבְרָיו וְכָל אַבְרָיו מְרַגִּישִׁין, כִּי הֵן יִשְׂרָאֵל, אֶחָד מֵהֶן חוֹטֵא וְכָלֵן מְרַגִּישִׁין, (במדבר טז, כב): הָאִישׁ אֶחָד יַחֲטֵא, תְּנִי רַבִּי שְׂמֵעוֹן בְּרַ יוֹחֵאִי,

with the whole community]." Rabbi Shimon bar Yochai taught a parable: Men were on a ship. One of them took a drill and started drilling underneath him. The others said to him: What are you doing?! He replied: What do you care? Is this not underneath my area that I am drilling?! They said to him: But the water will rise and flood us all on this ship.

מִשָּׁל לְבָנֵי אָדָם שֶׁהָיוּ יוֹשְׁבֵין בְּסִפִּינָה נָטַל
אֶחָד מֵהֶן מִקְדָּח וְהִתְחִיל קוֹדֵחַ תַּחְתָּיו,
אָמְרוּ לוֹ חֲבֵרָיו מַה אַתָּה יוֹשֵׁב וְעוֹשֶׂה,
אָמַר לָהֶם מָה אֲכַפֵּת לָכֶם לֹא תַחֲתֵי אֲנִי
קוֹדֵחַ, אָמְרוּ לוֹ שְׁהַמִּים עוֹלִין וּמְצִיפִין
עָלֵינוּ אֶת הַסִּפִּינָה.

Jewish law sees the governing authority and communal leadership as responsible for public safety in general, and goes so far as to suggest that leaders who are negligent in their duty are held personally responsible for the loss of life incurred.

Moed Katan 5a

And from where is it derived **that if** agents of the court **did not go out and do all these** repairs, **that** with regard to **any blood that is shed there** on account of their negligence, **the verse ascribes to them guilt as if they had shed it? The verse states** with regard to the cities of refuge that offer protection to someone who committed inadvertent manslaughter: "That innocent blood be not shed in your land, which the Lord your God gives you for an inheritance, **and so blood be upon you**" (Deuteronomy 19:10).

מועד קטן ה' א

ומנין שאם לא יצאו ועשו כל אלו שכל
דמים שנשפכו שם מעלה עליהם הכתוב
כאילו הם שפכו ת"ל (דברים יט, י)
והיה עליך דמים

A more extensive treatment of this question, including a justification for limiting personal liberty, can be found here.

Because as we discussed above, communal norms are binding on individuals, communal leaders including religious institutions, schools, employers and local and national governmental authorities are all charged to actively promote a culture of caution. Normalizing a safe culture is the modern equivalent of building a guard rail on a roof, or making sure that roads are safe for travelers. Once they create these norms, individuals can no longer claim "the community has disregarded the danger, and G-d will protect me (B. Talmud Yevamot 72a, above)." Conversely, leaders who do not set norms where they could have will be unable to say "Our hands did not spill this blood." (Mishnah Sota 9:6, Guide to the Perplexed 3:40)

Once we have established governmental responsibility, we might suggest that it extends beyond the level of education and safety legislation. Rabbi Landau, who gave individuals permission to risk their lives to preserve their livelihood above

might also suggest that today the government should mitigate the need for workers to risk their lives by legislating safer workplaces, as well as providing a safety net during the pandemic to make it possible for residents to stay home safely without working and without fear of hunger.

IV. COMMUNAL LEADERSHIP THROUGH EDUCATION AND SHIFTING NORMS: HIGH RISK BEHAVIOR AS INDIRECT DAMAGE

One instructive example of an attempt to shift cultural norms, which also provides us with an additional argument against risky behavior, can be seen in Rabbi Moshe Feinstein's responsa on smoking. In 1964, when the dangers of smoking were just becoming well known but when smoking was prevalent in his community, Rabbi Feinstein argued that it was better not to smoke but invoked "G-d protects the simple" to justify those who do (YD 2:49). However, in 1981, as medical research progressed and the dangers became clearer, that communal norm was questioned. On the one hand, Rabbi Feinstein affirmed his earlier permission for those who are already addicted to smoking, but prohibited others from picking up the habit (HM 2:76). At the same time, he sided with those who wanted to prohibit smoking in the bet midrash and synagogue, ostensibly out of concern for the non-smokers, thus indirectly upending the norm sanctioning smoking.

Igrot Moshe Hoshen Mishpat 2:18

It is simple and clear that even if there is not concern for loss of life or serious illness, but that it is just difficult [for others sharing a communal space] to tolerate [the smoke], and they are troubled by it, it is prohibited to smoke [in communal spaces]... as Rabbi Tuvi bar Matana said "Indirect damage is prohibited". Similar to those bloodletters whom Rav Yosef prohibited from letting blood on their land because the blood attracted ravens to eat the blood and destroyed the dates. And there it explains that there was not a genuine loss because normal people would have washed the dates and eaten them and thus would not have incurred any loss. However, Rav Yosef was fastidious and unwilling to eat such dates...The fact that the status quo ante was to tolerate the behavior is halakhically meaningless whenever there is a case of intolerable damage from the perspective of the complainant, even if other people might suffer the same situation, so ruled the Tur (155:59) and the Shulchan Arukh (155:41). And if so, how much the more so with respect to

שו"ת אגרות משה חושן משפט חלק ב

סימן יח

והנה פשוט וברור שאפילו אם ליכא חשש סכנה וחשש חולי דנפילה למשכב אלא שקשה להם לסבול דמצטערין מזה אסור שם לעשן... דא"ר טובי בר מתנא גרמא בנזקין אסור... וכהנהו אומני שאמר ר' /ר/ב/ יוסף שאסור להם להקיז דם בקרקע שלהם מחמת שעל ידי הדם אתו עורבי אכלי דמא ומפסדי תמרי ומפורש שם דלא היה הפסד ממש אלא לסתם אינשי לא היה שום הפסד דהיו רוחצין התמרים ואכלי להו ורק לר' /לר/ב/ יוסף שהיה איסטניס לא היה אוכל תמרים כאלו... כל נזק שידוע שאין המערער יכול לסובלו אף על פי שסובלין אותו שאר בנ"א אין לו חזקה נגד מערער זה, והביאו הטור להלכה בסימן קנ"ה סעיף נ"ט ובש"ע שם סעיף מ"א. וא"כ כ"ש בעישון סיגארעטן /סיגריות/ שאלו שאין יכולין לסבול הוא צער ממש בעצם לא ענין קפידא ואיסטניסות

In the first part of our study, we have seen that rabbinic literature highlights saving lives as a core religious responsibility. While individuals might be justified in assuming some personal risk, the government and communal leadership is responsible for protecting the lives of its citizens to the extent possible by creating safe norms.

Nevertheless, as we began to explore in the Noda BiYhudah in section II above, the same literature also highly values the preservation of economic welfare, sometimes in ways that suggest that there may be personal or even public health risks which we should be prepared to accept in order to prevent economic loss. The second half of our study further considers how a community should balance the priority of life with other concerns, especially economic. To begin with, our tradition recognizes that prioritizing saving lives in the short term can result in endangering the community as a whole in the long term, especially on the economic level.

Gittin 45a

MISHNA: The captives are not redeemed for more than their actual monetary value, for the betterment of the world...

GEMARA: A dilemma was raised before the Sages: With regard to this expression: For the betterment of the world, is it due to the financial pressure of the community? Is the concern that the increase in price will lead to the community assuming financial pressures that impoverish them? Or perhaps it is because the result of this will be that they will not seize and bring additional captives, as they will see that it is not worthwhile for them to take Jews captive?

גיטין מ"ה א

מתני' אין פודין את השבוין יתר על כדי דמיהן מפני תיקון העולם ... גמי איבעיא להו האי מפני תיקון העולם משום דוחקא דצבורא הוא או דילמא משום דלא לגרבו ולייתו טפי

Before raising the possibility that redeeming captives at excessive prices incentivizes and increases captive taking in dangerous ways, the Talmud first suggests that it is unwise to spend so much money saving a few individuals that the community as a whole is impoverished. This first suggestion prioritizes the long term overall economic health of the community over the lives of a few individual captives. Redeeming captives is considered a basic life saving act (Rambam Gifts to the Poor 8:10), but sometimes saving individual lives is just too expensive. The community is directed to refrain from action and thus sacrifice some lives when necessary for the economic health of the majority. Economics is a legitimate factor even when life is at stake. Perhaps we should also conclude that an economic shutdown is too high a price to pay to save lives.

VI. RISKS TO LIFE THAT ARE VALIDATED IN ORDER TO AVOID ECONOMIC LOSS

We have seen that rabbinic literature highlights saving lives as a more powerful responsibility than anything besides avoiding idolatry and incest. Nevertheless, the same literature also highly values the preservation of economic welfare, sometimes in ways that suggest that there may be personal or even public health risks which we should be prepared to accept in order to prevent economic loss. For example, Rabbi Yohanan teaches that robbing someone of even a tiny amount of money is like

taking their very breath from them, equivalent not only to murdering them, but to murdering their children.

Bava Kamma 119a

Rabbi Yoḥanan says: Anyone who robs another of an item worth one *peruta* is considered **as though he takes his soul from him, as it is stated: “So are the ways of every one that is greedy for profit; it takes away the life of the owner thereof”** (Proverbs 1:19). **And it states: “And they shall consume your harvest, and your bread, they shall consume your sons and your daughters”** (Jeremiah 5:17). Since they will consume the harvest and bread, it is as though they consume one’s children as well because there will be no food to feed them.

The idea that economic needs are equivalent to the preservation of life finds blunt expression in the Talmud's claim that poverty is like death.

Nedarim 7b

And poverty is so harsh that it is considered **like death, as it is stated: “For all the men are dead** who sought your life” (Exodus 4:19). The Sages had a tradition that Dathan and Abiram had sought to have Moses killed in Egypt and that they were the men referred to in the quoted verse (see 64b). They were still alive at that time but had become impoverished.

Perhaps most chillingly, the tanna Rabbi Yose rules that in a time of drought, when our town has more water left than the neighboring town, we may prioritize our animals and even our laundry needs over the lives of the residents of the neighboring town, denying them water, suggesting that maintaining a comfortable lifestyle, or at least a life without socio-economic privation and extreme discomfort, can be prioritized over immediate threats to human life.

Tosefta Bava Metzia 11

(14) A well of city-dwellers:

בבא קמא קי"ט א

א"ר יוחנן כל הגוזל את חבירו שוה פרוטה כאילו נוטל נשמתו ממנו שנאמר כן ארחות כל בוצע בצע את נפש בעליו יקח ואומר (ירמיהו ה, יז) ואכל קצירך ולחמך בניך ובנותיך

נדרים ז' ב

ועניות כמיתה שנאמר (שמות ד יט) כי מתו כל האנשים

תוספתא בבא מציעא י"א

(יד) מעין של בני העיר:
הן והן ואחרים הן קודמים לאחרים.

They or others: they take precedence over others.

Others or their own animals: The lives of others take precedence over their own animals. R. Yose says: Their own animals take precedence over the lives of others.

Their animals or others' animals: Their animals take precedence over the animals of others.

Others or their laundry: The lives of others takes precedence over their laundry. But R. Yose says: Their laundry takes precedence over the lives of others.

Their laundry or others' laundry: Their laundry takes precedence over others' laundry.

Others' animals and their laundry: Others' animals take precedence over their laundry.

Their irrigated fields and others' animals: Their irrigated fields take precedence over the animals of others.

All of these ultimately get charged with a bill.

אחרים ובהמתן חיי אחרים קודמים
לבהמתן. רבי יוסי אומר בהמתן קודמת
לחיי אחרים.

בהמתן ובהמת אחרים בהמתן קודמת
לבהמות אחרים.

אחרים וכביסתן חיי אחרים קודמין
לכביסתן. ורבי יוסי אומר כביסתן קודמת
לחיי אחרים.

כביסתן וכביסת אחרים כביסתן קודמת
לכביסת אחרים.

בהמת אחרים וכביסתן בהמת אחרים
קודמת לכביסתן.

בית השלחין שלהם ובהמת אחרים בית
השלחין שלהם קודמת לבהמת אחרים.
וכולן עולין לחשבון באחרונה.

At first glance, R. Yose's position might seem to imply that a body politic need not accept any significant economic shutdown or privation in order to save lives: the town is justified in prioritizing its own laundry over human lives. The Talmudic passage on this text (Nedarim 81a) tells that one student of R. Yose's was so distraught about R. Yose's incomprehensible position that he skipped class for three days after his teacher taught this. Most commentators teach that the halakha accords with R. Yose's position, so the stakes are high.

However, read his position more carefully. R. Yose didn't allow townspeople to use their water for a recreational fountain or swimming pool at the potential cost of other people's lives! He allowed using our water to feed animals and to do laundry. Keeping our animals alive and healthy is itself a pikuach nefesh concern. If we let our animals, our nutrition source, die, we won't be far behind.

Similarly, with laundry, he's not talking about contemporary laundry in which an otherwise clean shirt will be tossed into a machine if you spill a little juice on it. Think about laundering diapers. The Talmud justifies R. Yose's view through explaining that the kind of laundry he means is the kind without which people can become seriously ill. In other words, a body politic is justified in prioritizing its own longer-term pikuach nefesh concerns over other communities' immediate pikuach nefesh concerns.

In our context of COVID-19, some citizens, pundits, and elected officials advocate acceptance of robust risk and significant rates of infection and death in order to keep the economy strong. In light of what we've seen, do they have an halakhic foot on which to stand? That all depends on what is meant by "the economy". The texts we have seen that equate economic sustenance with life itself refer only to conditions of dire penury. It is poverty that is equated with death. R. Yose, here, weighs animal feed and public sanitation in balance with immediate water consumption, because loss of animal feed and public sanitation themselves lead to loss of life. Similarly, recall Rabbi

Yohanan's statement above, in Talmud Bava Kamma, that robbing someone is like taking their soul, or robbing them of life. Tosafot (12th-14th Century French commentators) explain that this statement refers only to situations of dire hunger:

Tosafot on Bava Metzia 58b

"This affects body and that affects money"
-- And that which we said on Bava Kamma 119a, "Anyone who robs another of an item worth one peruta is considered as though he takes his soul from him", that is because sometimes there is a hard famine and he has nothing with which to buy anything, but plenty of people are not lacking to that degree.

תוספות על בבא מציעא נ"ח ב

זה בגופו וזה בממונו - והא דאמרי' פרק הגוזל בתרא (ב"ק ד' ק"ט.) הגוזל לחבירו שוה פרוטה כאילו גזל נשמתו היינו משום דפעמים רעב כבד ואין לו במה לקנות אבל יש הרבה בני אדם שאינם חסרים כל כד:

Losing money is equivalent to losing life when the loss of money puts one in poverty, because poverty poses myriad threats to life. As we saw in the Talmud's pithy formulation above, it is poverty that is akin to death.

Feared economic loss is akin to feared loss of life precisely inasmuch as that economic loss becomes itself life-endangering. This is articulated by the Magen Avraham (R. Avraham Gombiner, c. 1635-1682, Poland), in his explanation of why a person on a journey whose traveling partners refuse to stop for Shabbat may violate Shabbat in order to continue traveling with them:

Magen Avraham 248:16

"You may go..." And if you are afraid to be detained in the wilderness lest bandits attack and rob you of your animal and you will not be able to go by foot, or lest they take your money and you won't be able to live any longer, or lest they take your clothing in the cold season, such that you may freeze to death, all of these are called saving a life ("pikuah nefesh") and it is permitted to go with them.

מגן אברהם רמ"ח:ט"ז

(טז) יכול ללכת וכו'. ואם מתיירא להתעכב במדבר שמא יפגעו בו לסטים ויגזלו ממנו הבהמ' ולא יוכל ללכת ברגליו או אם יקחו ממנו לא יוכל להיות עוד או אם יקחו מלבושיו בזמן הקור במעט ימות בקרירות כל א' מאלו מקרי פ"נ ומותר לילך עמה' (רמ"ג סימן ק"ט):

Not all economic loss is equal. Poverty is akin to death because poverty causes death. We may not loosen our COVID protocols and cause death to many people in order to protect or revive the *economy*, certainly not to the extent that that means a diminished standard of living for people whose survival is not at stake. Where there are hard questions and where it may be justified to loosen COVID restrictions, individually or collectively, is where those unloosened restrictions will plunge people into poverty, since poverty itself is a fatal disease.

VII. BEYOND POVERTY: QUALITY OF LIFE

Having established the sanctity of life and the need to balance this ultimate value against long term poverty prevention for the population as a whole: what else, if anything, is worth endangering human life? As governments reopen schools, places of worship, wedding halls, even bars and shopping malls, which gatherings should be prioritized and based on what criteria? Much of the public discourse has centered around “the economy” writ large, but which sectors of the economy should be prioritized? Governments have suggested curfews beginning immediately after the workday and on weekends, emphasizing the importance of work and dismissing the imperative of social contact, religious worship, and leisure.

This emphasis on economics and capital devalues matters of the spirit and other forms of quality of life. It runs counter to our religious tradition which encourages us to transcend consumerism and pursuit of wealth as central values. Not only does our tradition hallow values that cannot be monetized, it makes some strong demands on how we forgo our wealth in order to live these values. We are charged to give 10-20% of our income to tzedakah (Rambam Gifts to the Poor 7:5), and to spend 20% of our fortune to perform a mitzvah if necessary (Talmud Bava Kamma 9a). We forgo earning money every seventh day in honor of Shabbat, and in biblical times, every seventh year for the Sabbatical year (Exodus 23:9-12). Torah study is considered more precious than pearls, and worthy of enduring poverty to undertake (Rambam Hilkhos Talmud Torah 3).

Dama ben Natina was willing to forgo a fortune to honor his father:

Kiddushin 31a

The Sages raised a dilemma before Rav Ulla: **How far** must one go to fulfill the mitzva of **honoring one’s father and mother**? Rav Ulla said to them: **Go and see what one gentile did in Ashkelon, and his name was Dama ben Netina. Once the Sages sought to purchase merchandise [perakmatya] from him for six hundred thousand gold dinars’ profit, but the key for the container in which the merchandise was kept was placed under his father’s head, and he was sleeping at the time. And Dama ben Netina would not disturb his father by waking him, although he could have made a substantial profit.**

קידושין ל"א א

בעו מיניה מרב עולא עד היכן כיבוד אב ואם אמר להם צאו וראו מה עשה עובד כוכבים אחד באשקלון ודמא בן נתינה שמו פעם אחת בקשו חכמים פרקמטיא בששים ריבוא שכר והיה מפתח מונח תחת מראשותיו של אביו ולא ציערו

Rabbi Eliezer suggests that one should not just forgo profit, but also endure significant loss:

Kiddushin 32a

The Gemara further suggests: **Come and hear: They asked Rabbi Eliezer how far one must go in honoring his father and mother. Rabbi Eliezer said to them: Such**

קידושין ל"ב א

ת"ש שאלו את ר"א עד היכן כיבוד אב ואם אמר להם כדי שיטול ארנקי ויזרקנו

that the father takes a purse and throw it into the sea in front of his son, and the son does not embarrass him.

לים בפניו ואינו מכלימו ואי אמרת משל
אב מאי נפקא לי' מיניה בראוי ליורשו

Given the threat of COVID-19 to the elderly, these stories are especially relevant. Protecting elders may not make economic sense. But how do we put a value on caring for our elders with dignity? What price might we be willing to pay to make sure that they do not cry out: “Do not reject me in my time of old age” (Psalms 71:9)? While it is difficult to concretize, these traditions seem in stark contrast to the suggestion of Peter Singer that in balancing the sanctity of life against economy need that we consider “the number of years lost”, thus discounting the lives of our elders. Our tradition teaches that lived values are often even more precious than money.

Many Jewish values like the observance of mitzvot including honoring the elderly, Torah study, tzedakah, and Shabbat and holidays override financial considerations. They are important enough that we should be willing to sacrifice our fortunes and live simply. And yet the Torah declares: live in them, (Leviticus 18:5) do not die for them (Yoma 85b). Observing all of these precious commandments is worth parting with our fortunes, but it is absolutely prohibited to risk our lives for them.

These considerations further drive home our understanding as to which economic concerns can justify risk to life. All economic concerns are not created equal. While preventing poverty is equivalent to saving a life, accumulating wealth does not justify enduring risk.

CONCLUSION: GUIDELINES FOR NAVIGATING ECONOMIC AND PUBLIC HEALTH RISKS DURING THE COVID-19 PANDEMIC

- **Preserving life is a paramount value in Jewish tradition.** We are required to forgo even our deepest commitments and endure inconvenience as individuals and as a body politic to keep ourselves and the masses safe and healthy.
- **Risk is an inherent part of life and individuals are entitled to take reasonable risks.** What is considered reasonable, however, should itself be framed strongly by the value of life.
- **Our individual and communal fates are inextricably intertwined.** Individuals who choose to undertake personal risk are also impacting the health prospects of everyone around them.
- **Governments and community leadership have a responsibility to steer communal norms** toward protecting each other's life and health, normalizing public health precautions, such as masking and avoiding in-person, dense physical interaction.
- **Financial concerns hold halakhic weight, but so do matters of the spirit.** Honoring the elderly, education and rest are forms of communal wealth.
- **The only economic interest that justifies risking lives is preventing poverty.** To the extent that restrictions are loosened, they should be loosened for the sake of preventing the most economically vulnerable people in the community from sinking into dangerous poverty, including food and home insecurity. Corporate profits, a robust stock market, and GDP, in and of themselves, may not be preserved at the cost of human lives. Similarly, government economic relief policies should be focused on poverty relief and other, lesser, broader human needs the long term loss of which can impede public health. Only when public health is relatively secure should we begin to concern ourselves with accumulating wealth.

