

GUIDELINES: CONTACT TRACING, CIVIL LIBERTIES AND PUBLIC HEALTH

Rabbi Shahaar Colt and Rabbi Ben Gurin



Contact tracing initiatives that honor Jewish ethical imperatives should:

- **Be built in collaboration with trusted local community leaders.** The historical experience of American-Jewish immigrants highlights that panic and distrust of leaders can severely undermine public health initiatives. Community “insiders” offer crucial mediation that builds trust and encourages compliance.
- **Involve evidence that the strategies are actually effective at saving lives.** In order to justify overriding the value of privacy for individuals and communities, authorities must demonstrate that a contact tracing initiative fulfills the value of preserving life.
- **Involve explicit permission from participants.** People are more likely to trust and participate in a public health system if their privacy and agency are valued.
- **Respect the privacy of individual health information now and in the future.** Our ancestors’ resistance to being counted shows a strong Jewish value of protecting personal information from authorities who might exploit it.

Contact Tracing, Civil Liberties and Public Health

(sources only)

Source Sheet by Shahar Colt and Ben Gurin

[More info >](#)

Framing: How do we arrive at contemporary Jewish ethics?

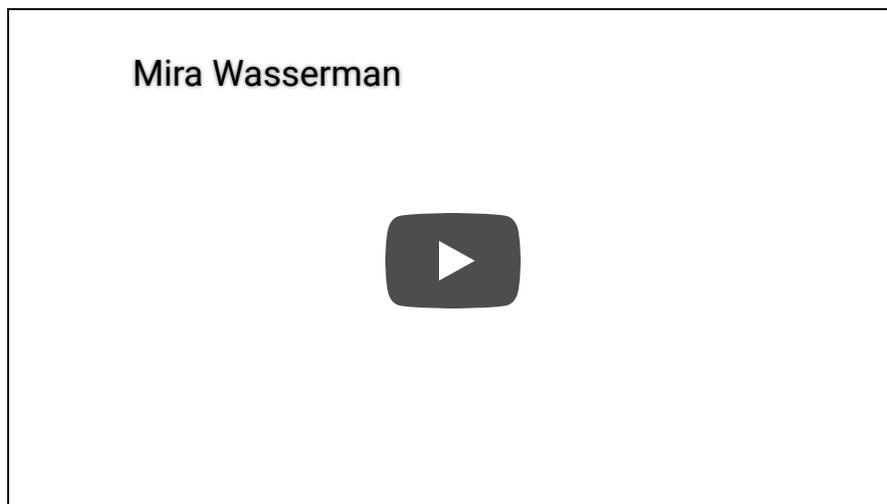
Elliot N. Dorff, “A Methodology for Jewish Medical Ethics.”

If... we judge that innovations in medical practice have made conditions relatively different from what they had previously been, we will have to stretch some halakhic and aggadic sources beyond their original meanings. We should do this in order to retain clear connections to the tradition... at the same time, we should openly state what we are doing- namely, that we are choosing both the texts to apply and the interpretations of those texts in order to develop a Jewish medical ethic which carries tradition, Jewish concerns effectively into the contemporary setting.¹

Rabbi Mira Wasserman, Center for Jewish Ethics

Jewish Values and the Coronavirus

Video courtesy of Reconstructing Judaism



Values for Considering Contact Tracing: Health, Privacy and Community

1. Preserving Life

Yoma 85b

Rabbi Elazar ben Azarya answered and said: **Just as the mitzva of circumcision, which rectifies only one of the 248 limbs of the body, overrides Shabbat, so too, a fortiori, saving one's whole body, which is entirely involved in mitzvot, overrides Shabbat.** Other *tanna'im* debated this same issue.

Rabbi Yosei, son of Rabbi Yehuda, says that it is stated: “**But keep my Shabbatot**” (Exodus 31:13). One **might** have thought that this applies **to everyone** in all circumstances; therefore, **the verse states “but,”** a term that restricts and **qualifies**. It implies that there are circumstances where one must keep Shabbat and circumstances where one must desecrate it, i.e., to save a life.

Rabbi Yonatan ben Yosef says that it is stated: “**For it is sacred to you**” (Exodus 31:14). This implies that Shabbat is **given into your hands, and you are not given to it** to die on account of Shabbat.

Rabbi Shimon ben Menasya said: It is stated: “**And the children of Israel shall keep Shabbat,** to observe Shabbat” (Exodus 31:16). **The Torah said: Desecrate one Shabbat on his behalf so he will observe many Shabbatot. Rav Yehuda said that Shmuel said: If I would have been there** among those Sages who debated this question, **I would have said that my proof is preferable to theirs,** as it states: “You shall keep My statutes and My ordinances, which a person shall do

יומא פ"ה ב

נענה רבי אלעזר ואמר ומה מילה שהיא אחד ממאתים וארבעים ושמונה איברים שבאדם דוחה את השבת קל וחומר לכל גופו שדוחה את השבת

רבי יוסי בר' יהודה אומר (שמות לא, יג) את שבתותי תשמורו יכול לכל ת"ל אך חלק

רבי יונתן בן יוסף אומר (שמות לא, יד) כי קודש היא לכם היא מסורה בידכם ולא אתם מסורים בידה

ר' שמעון בן מנסיא אומר (שמות לא, טז) ושמרו בני ישראל את השבת אמרה תורה חלל עליו שבת אחת כדי שישמור שבתות הרבה א"ר יהודה אמר שמואל אי הואי התם הוה אמינא דידי עדיפא מדידהו (ויקרא יח, ה) וחי בהם ולא שימות בהם

and live by them” (Leviticus 18:5), and not that he should die by them.

**Rabbi Aryeh Klapper, A Teshuvah Regarding Pikuach Nefesh in a Time of Pandemic
CMTL Shavuot Reader 2020 Edition**

[The concept of] *Shomer petaim Hashem* [literally, “the Lord preserves the simple”] allows people to engage in at least some forms of dangerous but remunerative employment, so long as the risks involved are considered negligible by one’s society. Similarly, Rav Aharon Lichtenstein zt”l would ask when teaching *Bava Kamma*, which assigns compensation for all the various destructive things that bulls can do: Why didn’t the Torah just ban owning bulls? Rabbi Dr. Moshe Tendler asks the same question on the societal level...If *pikuach nefesh* overrides everything, why is it permitted for a state to build parks, rather than spending its entire GDP on healthcare?

The answer is not that jobs, bulls and parks are more important than *pikuach nefesh*. Rather, we need to recognize that “most important” values should not become “exclusive values.” Preserving life is an enormous value, but other values are what makes life worth preserving. *Shomer petaim* is just one of the 17 principles *halakhah* used to hedge *pikuach nefesh* about and ensure that it does not utterly dominate the halakhic scene.

Sanhedrin 17b

And it is taught in a *baraita*: A Torah scholar is not permitted to reside in any city that does not have these ten things: A court that has the authority to flog and punish transgressors; and a charity fund for which monies are collected by two people and distributed by three, as required by *halakha*. This leads to a requirement for another three people in the city. And a synagogue; and a bathhouse; and a public bathroom; a doctor; and a bloodletter; and a scribe [*velavlar*] to write sacred scrolls and necessary documents; and a ritual slaughterer; and a teacher of young children. With these additional requirements there are a minimum of 120 men who must be residents of the city. **They said in the name of Rabbi Akiva:** The city must also have varieties of fruit, because varieties of fruit illuminate the eyes.

סנהדרין י"ז ב

ותניא כל עיר שאין בה עשרה דברים
הללו אין תלמיד חכם רשאי לדור בתוכה
בית דין מכין ועונשין וקופה של צדקה
נגבית בשנים ומתחלקת בשלשה ובית
הכנסת ובית המרחץ וביהכ"ס רופא ואומן
ולבלר (וטבח) ומלמד תינוקות משום ר'
עקיבא אמרו אף מיני פירא מפני שמיני
פירא מאירין את העינים:

Rashi on Sanhedrin 33a

“An expert [judge]:” He has the power to retry, as the litigant cannot say to him: I [prefer to] follow your first ruling. But with regards to a non-expert [judge] he (the litigant) can say to him (the non-expert judge): who is to say that your later ruling is the true one?! Perhaps your first is correct and the second is in error!?

2. On Privacy

Deuteronomy 24:10-11

(10) When you make a loan of any sort to your countryman, you must not enter his house to seize his pledge. (11) You must remain outside, while the man to whom you made the loan brings the pledge out to you.

Bava Batra 60a

Rabbi Yoḥanan says that the verse states: “And Balaam lifted up his eyes, and he saw Israel dwelling tribe by tribe; and the spirit of God came upon him” (Numbers 24:2). The Gemara explains: What was it that Balaam saw that so inspired him? He saw that the entrances of their tents were not aligned with each other, ensuring that each family enjoyed a measure of privacy. And he said: If this is the case, these people are worthy of having the Divine Presence rest on them.

Yoma 4b

Rabbi Musya, grandson of Rabbi Masya, said in the name of Rabbi Musya the Great: From where is it derived with regard to one who tells another some matter, that it is incumbent upon the latter not to say it to others until

רש"י על סנהדרין ל"ג א

במומחה - יש בו כח לחזור ולא מצי למימר ליה בעל דין אנא כי טעמא קמא דידך עבדינא אבל בשאינו מומחה מצי אמר ליה מי יימר דטעמא בתרא דידך עיקר דילמא קמא עיקר ובהאי הוא דטעית:

דברים כ"ד:יז-י"א

(י) כִּי־תִשֶׂה בְרַעְיָךְ מִשְׁאֵת מְאוּמָה לֹא־תִבָּא אֶל־בֵּיתוֹ לְעִכְט עֲבָטוֹ: (יא) בְּחוּץ תַּעֲמֹד וְהֵאִישׁ אֲשֶׁר אֶתָּה נֹשֶׂה בּוֹ יוֹצִיא אֵלֶיךָ אֶת־הָעֲבוֹט הַקּוֹצֵה:

בבא בתרא ס' א

א"ר יוחנן דאמר קרא (במדבר כד, ב) וישא בלעם את עיניו וירא את ישראל שוכן לשבטיו מה ראה ראה שאין פתחי אהליהם מכוונין זה לזה אמר ראויין הללו שתשרה עליהם שכניה:

יומא ד' ב

אמר ר' (מוסיא בר בריה דרבי מסיא משמיה דר' מוסיא) רבה מניין לאומר דבר לחבירו שהוא בבל יאמר עד שיאמר

the former explicitly **says to him: Go and tell others? As it is stated: “And the Lord spoke to him from within the Tent of Meeting, saying [lemor].”** Lemor is a contraction of *lo emor*, meaning: Do not say. One must be given permission before transmitting information.

לו לך אמור שנאמר (ויקרא א, א) וידבר
ה' אליו מאהל מועד לאמר

3. The Necessity of Community Trust

Exodus 30:12

(12) When you take a census of the Israelite people according to their enrollment, each shall pay the LORD a ransom for himself on being enrolled, that no plague may come upon them through their being enrolled.

שמות ל': י"ב

(יב) כִּי תִשָּׂא אֶת־רֹאשׁ בְּנֵי־יִשְׂרָאֵל
לִפְקֻדֵיהֶם וְנָתַנּוּ אִישׁ כְּפָר וּכְפָשׁוּ לַיהוָה
בְּפָקֹד אַתֶּם וְלֹא־יְהִיָה בָהֶם נֶגֶף בְּפָקֹד
אַתֶּם:

Rashi on Exodus 30:12:2

גַּף THAT THERE BE NO CALAMITY AMONG THEM — for numbers (i. e. things that have been numbered) are subject to the influence of the “evil eye”, and therefore if you count them by their polls pestilence may befall them, as we find happened, in the days of David (II Samuel 24:10 and 15).

רש"י על שמות ל': י"ב:ב'

וְלֹא יְהִיָה בָהֶם נֶגֶף. שְׁהַמְנִין שׁוֹלֵט בּוֹ עֵינַי
הָרַע, וְהַדְּבָר בָּא עֲלֵיהֶם, כְּמוֹ שְׁמַצִּינוּ בִּימֵי
דָּוִד (שְׁמוּאֵל ב' כ"ד):

II Samuel 24:1-15

(1) The anger of the LORD again flared up against Israel; and He incited David against them, saying, “Go and number Israel and Judah.” (2) The king said to Joab, -his army commander, “Make the rounds of all the tribes of Israel, from Dan to Beer-sheba, and take a census of the people, so that I may know the size of the population.” (3) Joab answered the king, “May the LORD your God increase the number of the people a hundredfold, while your own eyes see it! But why should my lord king want this?” (4) However, the king’s command to Joab and to the officers

שְׁמוּאֵל ב' כ"ד: א'-ט"ו

(א) וַיִּסְף אֶף־יְהוָה לַחֲרוֹת בְּיִשְׂרָאֵל וַיִּסֹּת
אֶת־דָּוִד בָּהֶם לֵאמֹר לֵךְ מְנֶה אֶת־יִשְׂרָאֵל
וְאֶת־יְהוּדָה: (ב) וַיֹּאמֶר הַמֶּלֶךְ אֶל־יוֹאָב |
שׂוּר־הַחַיִל אֲשֶׁר־אִתּוֹ שׁוּט־נָא בְּכָל־שִׁבְטֵי
יִשְׂרָאֵל מִדָּן וְעַד־בְּעֵר שְׁבַע וּפְקֹדוּ
אֶת־הָעָם וַגִּדַעְתִּי אֵת מִסְפַּר הָעָם: (ג) (ד)
וַיֹּאמֶר יוֹאָב אֶל־הַמֶּלֶךְ וַיֹּסֶף יְהוָה אֱלֹהֶיךָ
אֶל־הָעָם פְּהַם | וְכָהֶם מֵאָה פְּעֻמִּים וְעֵינַי
אֲדַגֵּ־הַמֶּלֶךְ רְאוֹת וְאֲדַגֵּי הַמֶּלֶךְ לָמָּה תִּפְּצֵן
בְּדַבַּר הַזֶּה: (ד) וַיִּתְּקֶן דָּבַר־הַמֶּלֶךְ אֶל־יוֹאָב
וְעַל שְׂרֵי הַחַיִל וַיֵּצֵא יוֹאָב וְשְׂרֵי הַחַיִל לִפְנֵי

of the army remained firm; and Joab and the officers of the army set out, at the instance of the king, to take a census of the people of Israel. [...] (9) Joab reported to the king the number of the people that had been recorded: in Israel there were 800,000 soldiers ready to draw the sword, and the men of Judah numbered 500,000. (10) But afterward David reproached himself for having numbered the people. And David said to the LORD, “I have sinned grievously in what I have done. Please, O LORD, remit the guilt of Your servant, for I have acted foolishly.” (11) When David rose in the morning, the word of the LORD had come to the prophet Gad, David’s seer: (12) “Go and tell David, ‘Thus said the LORD: I hold three things over you; choose one of them, and I will bring it upon you.’” (13) Gad came to David and told him; he asked, “Shall a seven-year famine come upon you in the land, or shall you be in flight from your adversaries for three months while they pursue you, or shall there be three days of pestilence in your land? Now consider carefully what reply I shall take back to Him who sent me.” (14) David said to Gad, “I am in great distress. Let us fall into the hands of the LORD, for His compassion is great; and let me not fall into the hands of men.” (15) The LORD sent a pestilence upon Israel from morning until the set time; and 70,000 of the people died, from Dan to Beer-sheba.

הַמֶּלֶךְ לִפְקֹד אֶת־הָעָם
אֶת־יִשְׂרָאֵל: [...] (ט) וַיִּתֵּן יוֹאָב אֶת־מִסְפָּר
מִפְּקֹד־הָעָם אֶל־הַמֶּלֶךְ וַתְּהִי יִשְׂרָאֵל שְׁמֹנֶה
מֵאוֹת אֶלֶף אִישׁ־חִיַּל שְׁלֹף חֶרֶב וְאִישׁ
יְהוּדָה חֲמֵשׁ־מֵאוֹת אֶלֶף אִישׁ: (י) בַּיּוֹם
לְבִדּוֹד אָתּוֹ אֶחָד־יֶכָן סִפֵּר אֶת־הָעָם (ס)
וַיֹּאמֶר דָּוִד אֶל־יְהוָה חַטָּאתִי מְאֹד אַעֲשֶׂה
עֲשִׂיתִי וְעַתָּה יְהוָה הַעֲבֹר־נָא אֶת־עֵינֶיךָ עַבְדְּךָ
כִּי נִסְפַּלְתִּי מְאֹד: (יא) וַיִּקַּם דָּוִד בְּבִקְרֵי (פ)
וַדְּבַר־יְהוָה הָיָה אֵלָיו הַנְּבִיא חֲנָנִי דָוִד
לֵאמֹר: (יב) הֲלוֹךְ וּדְבַרְתָּ אֶל־דָּוִד כֹּה אָמַר
יְהוָה שְׁלֵשׁ אֲנֹכִי נוֹטֵל עָלֶיךָ בְּחַרְלֶךָ
אֶחַת־מֵהֶם וְאַעֲשֶׂה־לְּךָ: (יג) וַיִּבְאֵר־גָּד
אֶל־דָּוִד וַיִּגְדֵּלֵהוּ וַיֹּאמֶר לוֹ הִנֵּה הֵבִיא לְךָ שְׁבַע
שָׁנִים | רָעַב | בְּאַרְצְךָ אִם־שְׁלֹשָׁה חֳדָשִׁים
גִּסָּה לִפְגִּי־צָרֶיךָ וְהוּא רֹדְפְךָ וְאִם־הָיִיתָ
שְׁלִשָׁת יָמִים דָּבָר בְּאַרְצְךָ עַתָּה גַּע וּרְאֵה
מָה־אֲשִׁיב שְׁלַחֲתִי דְבָר: (יד) וַיֹּאמֶר דָּוִד
אֶל־גָּד צַר־לִי מְאֹד נִפְלְה־נָא בְּיַד־יְהוָה
כִּי־רָבִים רַחֲמוֹ [רַחֲמָיו] וּבְיַד־אָדָם
אֶל־אֶפְלָה: (טו) וַיִּתֵּן יְהוָה דְּבָר בְּיִשְׂרָאֵל
מִהַבְּקָר וְעַד־עֵת מוֹעֵד וַיָּמָת מִן־הָעָם מִדָּן
וְעַד־בְּאֵר שֶׁבַע שְׁבַעַיִם אֶלֶף אִישׁ:

Alan M. Kraut, “Immigration, Ethnicity, and the Pandemic.”

At times, native-born Americans' fear of disease from abroad became a rationale for an equally great and preexisting prejudice, fear of the foreign-born, or nativism... At the end of the 19th century, tuberculosis was dubbed the “Jewish disease” or the “tailor's disease... Not surprisingly, the Spanish influenza epidemic of 1918 aroused fears of anti-Semitism within the Jewish immigrant community. History had taught Jewish spokespeople that they must at all costs deflect blame for the pandemic away from Jewish immigrants lest they trigger the sort of medicalized anti-Semitism they had left Eastern Europe to escape. At the same time, the health and safety of the people had to be protected by discussing disease prevention in every available public forum... Foreign-born physicians, ethnic community leaders, and the foreign-

language press were important mediators between public health officials and immigrants. They labored to diminish fears of the native-born that newcomers might be responsible for the epidemic. Institutions organized by the ethnic groups to which the newcomers belonged provided much-needed assistance to their own and to others during the crisis...The foreign-born needed information and assistance in coping with influenza. Among the two largest immigrant groups, Southern Italians and Eastern European Jews, immigrant physicians, community spokespeople, newspapers, and religious and fraternal groups shouldered the burden. They disseminated public health information to their respective communities in culturally sensitive manners and in the languages the newcomers understood, offering crucial services to immigrants and American public health officials.²

Jacobson v. Massachusetts, 197 U.S. 11 (Justice Harlan, 1905)

Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members (197, 27). But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that... “Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law.”(197, 26).³

Jay Stanley
Human Rights and Surveillance during COVID-19

Jay Stanley of the ACLU



Footnotes

1. Elliot N. Dorff “A Methodology for Jewish Medical Ethics,” in Contemporary Jewish Ethics and Morality: A Reader, edited by Elliot N. Dorff & Louis E. Newman, 166. New York: Oxford University Press, 1995.
2. Alan M. Kraut, “Immigration, Ethnicity and the pandemic,” Public Health Reports 123 Suppl 3 (2010): 123-33, doi:10.1177/00333549101250S315
3. Jacobson v. Massachusetts,
<https://supreme.justia.com/cases/federal/us/197/11/#tab-opinion-1921098>

