

# CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חירות ואחריות

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"Taking Responsibility for Torah"

## BEYOND PIKUACH NEFESH:

## WHY WE NEED A NEW AND DIFFERENT TORAH CONVERSATION ABOUT LIFE DURING A PANDEMIC

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Devarim 22:8 mandates that we build parapets on our accessible roofs to prevent people from falling to their deaths. This mandate is also framed as a negative commandment: "*lo tasim damim b'veitekha*," "Do not place bloodguilt in your house." On Ketubot 41b, Rabbi Natan cites this prohibition as the ground for banning Jews from keeping vicious dogs to guard their houses, and halakhic tradition generally understands it as a prohibition against leaving dangerous conditions on our property uncorrected.

Here's the question: Why is such a prohibition necessary? Why isn't it redundant? Isn't leaving such a situation a *safeik shefikbut damim* (doubtful homicide), and therefore prohibited anyway? Usually the danger is greatest for those living in the house; shouldn't they be obligated to correct the situation because of *pikuach nefesh*?

One answer emerges from a question Rav Aharon Lichtenstein zt"l asked: Why does halakhah permit Jews to keep oxen? It seems from the Mishnah and Talmud that oxen caused vastly more carnage than dogs of any sort! Rav Lichtenstein's answer was that keeping oxen was part of normal life, and the Torah balances its desire to prevent harm with the value of living a normal life.

The Torah does not require or even want us to live a life organized entirely around staying alive. *Lo tasim* is needed to shift the burden of proof, so that endangering oneself or others requires a **very** strong justification (most likely on a sliding scale, in proportion to the extent of the danger).

In the early stages of the pandemic, poskim acted heroically to make sure that *pikuach nefesh* was given the priority it deserved in communal decisionmaking. Bold halakhic decisions were accompanied by fiery rhetoric about the centrality of lifesaving in halakhah. This hyperbole very likely saved lives.

Perhaps it still would, if people followed its implications consistently. But that is not where we are as a community. Instead, the embers of that rhetoric are generating feelings of hypocrisy or despair, and a sense that halakhah is irrelevant to real-world problems.

If minimizing risk of death were really the Torah's absolute priority, no Orthodox school would consider reopening this fall. Everyone frum would wear masks everywhere, even when socially distanced outdoors. No one frum would walk into a grocery store. We would unanimously support shutting the country down, regardless of economic and other costs. Clearly this is not our reality.

The truth is that saving lives is a profound value in halakhah, but not the only one, or even paramount. The halakhic consensus is that a Jew must die rather than commit murder, idolatry, or adultery, or publicly desecrate the Name of G-d.

Those are the simple cases, where the tradeoff is immediate and the outcomes are clear. What does halakhah say when the tradeoff is between physical and mental health (some have argued that teenagers, and children generally, are suffering from a silent epidemic owing to lack of physical connection with their friends)? Between mortality rates in the short-term, and life expectancy over the next fifty years (which realistically correlates with the nation's economic condition)? Between quantity and quality of life?

Halakhah also distinguishes between private and public decisions. For example: On Nazir 23b, Rav Nachman bar Yitzchak praises Yael for committing adultery to save Israel (see Tosafot Yevamot 103a), even though adultery to save individual lives is forbidden, and later authorities cite Yael as halakhic precedent even though the language used is "sin for the sake of Heaven." Conversely, Rabbi Akiva and Rav Chanina ben Tradyon heroically martyr themselves for public Torah study even though Torah study is not one of

“the big 3.” But what is the boundary between public and private? For example: if public policy demands that schools open in person, must teachers come in to teach? If public policy demands that everyone wear masks outdoors even when distancing, must people for whom mask-wearing triggers panic attacks comply?

Sefer Chasidim (Margolies 995) describes a person who takes a dangerous route to yeshiva, when a short delay would mitigate the risk, as “the righteous destroyed by their righteousness” (Kohelet 7:15). What if the delay would last a year, or mean the loss of one’s only realistic opportunity for full-time study? What if it means that an entire community’s learning will be curtailed for the year, or longer?

These vital questions require careful and nuanced balancing of legitimately competing values.

Sanhedrin 14a glorifies Rabbi Yehudah ben Bava for martyring himself to preserve the original line of *semikhah*. That line has long vanished, and yet halakhah survives, so why was Rabbi Yehudah ben Bava’s martyrdom praiseworthy? Rabbi Shlomo Riskin reports an explanation from the Rav: Rabbi Yehudah ben Bava knew that his creative Torah contributions would be wiped out if his students were not empowered as halakhic authorities. “He did not sacrifice himself by giving them semikhah; rather, he acquired eternal life for himself.” This suggests that the balancing act describes private decisions as well, and is legitimately affected by subjective values and considerations of religious identity and legacy.

The time has come to put away the hyperbole, and say openly: Since we don’t know how long the pandemic will last, we need to consider what risks are appropriate and necessary to sustain our community’s practical and spiritual infrastructures, and to nourish individual souls.

We cannot write that “safety is our only concern” – almost everything we do together as a community is riskier than not doing it. In-person school adds risk; in-person shul adds risk. We still don’t know enough about COVID-19 transmission, and about human behavior, to even evaluate risks reliably. The OU explicitly acknowledges this by allowing college students to attend JLIC events only if they sign a waiver of any claim to compensation for COVID-19 contracted at such events. If pikuach nefesh is the only value, why run events at all?

Any policies we develop will require profound communal buy-in to work. We live in a situation of literal *areivut*, in which every risk you take affects me, and vice versa. Minyanim, shiurim, and kiddushes can be run perfectly, but if one attendee plays indoor team basketball unmasked, or takes commercial flights for business, the risks escalate for everyone present. And things won’t run perfectly unless everyone is fully committed to making it run perfectly.

We need to decide clearly which risks are acceptable, and which unacceptable, and which precautions everyone must take regardless, and which leave space for individual choices. Many of these decisions will require great subtlety and human sensitivity. All the subtlety and sensitivity in the world will be useless unless people are prepared to hear them with open minds and hearts.

We will get the necessary buy-in only if these vital values conversations take place openly and publicly, and ideally with the participation of the entire community.

To make this conversation happen, our communities also need to earn the deep trust of our rabbinic, professional, and lay leaders. We need to support them and express ongoing enormous gratitude to them for the amazing work they are doing and the heavy burdens they are shouldering. They are legitimately overwhelmed by emergencies such as the start of school and the Yamim Noraim. They have many good reasons for focusing on the short-term and for narrowing rather than widening their circles of consultation.

A crisis is also an opportunity. The possibility that COVID is a long-term issue gives us the space and urgency to rethink the roles of online education and online socializing, the ways in which our institutions are funded, how our communities can include people who are excluded from physical aspects of many of our core events (as the deaf have been excluded, and the high-risk – and those living together with the high-risk, including children – may be excluded going forward). With the specters of recession and mass unemployment looming, we must get vastly better at removing economic barriers to entry and full membership in our communities.

We must develop the education and infrastructure necessary for informed, thoughtful, Torah-based public discussion of these challenges and opportunities, so that we can move as a community from strength to even greater strength.