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MISHPATIM

WHY PANDEMICS HAPPEN TO GOOD PEOPLE

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The question of theodicy, of how or why a just God allows evil in the world, has occupied thinkers for millennia. And as Eliezer Berkowitz noted in his classic work on the subject [*Faith after the Holocaust*](#), the death of one innocent is as theologically unjustifiable as are the deaths of six million.¹ The Bible understood this too. It only takes one Job to undermine the claim that God is just. But somehow, large numbers of deaths that occur over a very short span of time from natural disasters make the question all the more pressing. It took the deaths of thousands in the Lisbon earthquake of 1755 for leading European intellectuals like Voltaire, Immanuel Kant, and Adam Smith to revisit the question of how a decent deity could allow such devastation. "In the five years following the disaster," wrote the historian Mark Molesky in his popular history of the earthquake, "hundreds of books, articles, letters,

¹ Eliezer Berkowitz, [*Faith after the Holocaust*](#) (New York: Ktav, 1973).

treatises, poems, reviews, sermons, and scientific tracts on the subject were published across the continent...Was God solely to blame or had nature or a combination of natural forces played the leading role? And perhaps more importantly: how could a just and all-powerful God have sanctioned the deaths of so many innocent people? The ensuing debate was arguably the most significant of the European Enlightenment."² But these thinkers ignored the same question that should have been raised by walking the streets of Paris, Königsberg, or Edinburgh, where poverty, disease, and the suffering of innocents were on display. In our time, it is the sheer magnitude of deaths from COVID-19 that raised the question of theodicy once again, for Jews across the spectrum of belief and practice.

There have, of course, been previous modern attempts to address the theological questions raised by a sudden epidemic. Chief among these was the terrible AIDS epidemic of the 1990s. Rabbi J. David Bleich, a Professor of Jewish Law and Ethics at Yeshiva University in New York, wrote then that "the question of punishment is one that should not arise with regard to our relationship vis-à-vis individuals who engage in deviant sexual behavior or, for that manner, with regard to our relationship

² Mark Molesky, [*This Gulf of Fire: The Destruction of Lisbon, or Apocalypse in the Age of Science and Reason*](#) (New York: Alfred A. Knopf, 2015), 322.

vis à-vis any person who violates any of the commandments of the Torah.”³ While unequivocally condemning homosexuality as a behavior “that cannot be accepted with equanimity,” Rabbi Bleich wrote that there are also natural consequences of our actions, and that these consequences do not require any theological explanation:

Surely, if a person puts his hand into a fire he should not expect God to work a miracle so that the hand will not be burned. One would have to be an extraordinary individual to merit divine intervention in natural processes in order to escape the necessary effect of a physical cause. This consideration applies to AIDS as well. Exposure to contagion, whether through transfusion or contaminated blood or sexual intercourse with an infected person, is no different from exposure to extreme heat or cold in a sense that the resultant disease is the product of man's own folly or negligence.⁴

But “even the laws of nature” he continued, “are the product of divine authorship... Although, for the individual victim, AIDS maladies may be natural rather than providential, nevertheless, it is incumbent upon society to examine the present-day AIDS epidemic in order to determine what can be learned from it. From a global perspective,

³ J. David Bleich, “[AIDS: A Jewish Perspective](#),” *Tradition* 26.3 (Spring 1992): 49-80.

⁴ *Ibid.*, 55.

perhaps mankind is being taught a lesson.” Rabbi Bleich might have only suggested it, but the implication is unavoidable: AIDS is God’s way of punishing humanity for homosexual behavior.

Rabbi Bleich also recognized that there were many AIDS victims who had not caught the disease from an act that was “a serious transgression of divine law.”⁵ Some were health care providers “who have led an exemplary lifestyle, individuals who have never had contact with controlled substances or engaged in deviant sexual behavior, but who have unfortunately contracted this disease as a result of a needle prick, scalpel wound or exposure of skin lesions to infected body fluids.” How might their suffering be understood? “A response based upon the notion that AIDS victims are simply suffering the just results of their immoral actions,” Rabbi Bleich concluded “is entirely inappropriate and, in many cases, is based on a fundamental error.” The error is not articulated, but we are to suppose it is

⁵ Rabbi Bleich’s language, now some thirty years old, seems anachronistic, even within the orthodox university from which he heralds: “For the vast majority of humanity, homosexual activity is deviant behavior; it is unnatural and repugnant—an abomination. To speak of such conduct as losing one’s way—“going astray”—is almost to minimize the infraction...Countenancing a homosexual lifestyle as morally or socially acceptable constitutes deviation from divinely established norms and hence social institutions legitimizing such arrangements cannot be accepted with approbation.” But in making this judgment, Rabbi Bleich was not an outlier. About 43% of the Americans surveyed in a 1987 Gallup poll thought that AIDS was a “divine punishment for moral decline” (“[Gallup Poll Shows Rise in Compassion for Victims of AIDS](#),” *The New York Times*, Nov 22, 1987 Section 1, 48.) Three decades later Yeshiva University is facing a lawsuit brought by students that the school violated the city’s human rights law by denying them the right to form a recognized LGBTQ student club. See Molly Meisels, “[I Shouldn’t Have to Choose between My Judaism and My Queerness](#),” *ibid.*, June 10, 2021.

that of assuming that there is a correlation between illness and sin.

Within the Conservative and Reform movements of Judaism there was early support for the victims of the HIV pandemic. Both movements passed resolutions to support patients with disease, and called on their congregants to provide the same comfort and care that they would for any ill person.⁶ What was missing in these important declarations was any attempt at a theology of the pandemic, an answer to the question of why the benevolent God of Judaism would allow this to happen.

While still in the midst of the COVID pandemic, J. David Bleich wrote about the ways in which Jewish law and custom had been challenged by the disease, and the various approaches taken by rabbinic authorities to solve practical questions. And yet in his lengthy two-part survey of recent *halakhic* literature, and in stark contrast to his writing in the same journal about the AIDS pandemic thirty years earlier, he did not address any aspect of theodicy. The closest he came was in his opening paragraph. “The untimely loss of rabbinic scholars, religious mentors, communal figures, family members, colleagues and neighbors has been devastatingly painful,” he wrote.⁷ And that was it. In over

⁶ For details see Gregg Drinkwater, “AIDS Was Our Earthquake: American Jewish Responses to the AIDS Crisis, 1985–92,” *Jewish Social Studies* 26 (2020): 122–42.

⁷ J. David Bleich, “[Survey of Recent Halakhic Literature Coronavirus Queries \(Part 1\)](#),” *Tradition* 52.4 (Fall 2020): 89–125, and “[Survey of Recent Halakhic Literature Coronavirus Queries \(Part 2\)](#),” *Tradition* 53.1 (Winter 2021): 97–132. Of course, it could be claimed that this was not the forum for Bleich to discuss theology. His long running articles in *Tradition* survey *halakhic* literature, that is, the literature of Jewish law, and not *hashkafic* literature, the literature of

seventy pages of analysis, not a word of theology. There was no analysis of why the good die young, or how a just and benevolent God could allow such devastation. Neither was there anything that addressed this issue on the websites of the Union for Reform Judaism or The United Synagogue of Conservative Judaism. There were resources of course; “How to Stream Services: A Guide for Jewish Communities,” for example, and there were lots of prayers in English to say, such as the *Prayer for Healing in the Era of Coronavirus* or [A Prayer for Medical Scientists](#).⁸ But the Union for Reform Judaism’s [Ask BIG Questions](#) conversation guides did not update an online module titled [How do you think about God?](#) It made no mention of the pandemic or the questions that arise when the innocent suffer.⁹

The theological questions raised by a pandemic was addressed early in 2021 in a book of essays by academic and rabbinic contributors edited by Rabbi Erin Leib Smokler of Yeshivat Maharat in New York.¹⁰ Perhaps the most striking feature of this book is that much of it focuses on the question of theodicy, or as Smokler called it, the “theological vertigo” in proximity to the pandemic. It is important therefore to understand how this

Jewish thought. But had Rabbi Bleich felt the need, he could have taken the opportunity to revisit the question of theodicy in the same manner that he had during the HIV pandemic.

⁸ See [Liturgy for Concerns Regarding the Coronavirus](#), produced by the Central Conference of American Rabbis. Of course individual rabbis may have addressed the question of God’s justice in their on-line and in-person sermons.

⁹ <https://www.askbigquestions.org/urj>. The series is co-created by URJ and Hillel International.

¹⁰ [Torah in a Time of Plague: Historical and Contemporary Jewish Responses](#), ed. Erin Leib Smokler (New Jersey: Ben Yehuda Press, 2021).

collection of English essays addressed the thorny question of plague theodicy.

The Talmud in *Bava Kamma* that deals with behavior during a pandemic describes where to walk and when to remain indoors. Nowhere in the few brief sentences on the matter is there a discussion of the cause of pandemics, or a suggestion that they are a result of sin.¹¹ This lacuna was the focus of the essay by Rabbi Shaul Magid, a professor of Jewish studies who received several orthodox rabbinic ordinations, although he has since moved away from these roots towards a more egalitarian practice of Judaism. Magid noted that this passage “resists the notion of collapsing plagues into covenantal categories, whereby we can see them as acts of divine intervention to punish evildoers, Jews or non-Jews. Rather...plagues seem to be arbitrary occurrences.” Magid argues that plagues and pandemics are cases of what he calls a “covenantal exception.” This exception is a crucial theological category, for “without the notion of the arbitrary as extra-covenantal, Judaism becomes vulnerable to making all disasters, even those that equally affect non-Jews, the fault of the Jews, which could easily, and understandably, evoke negative reactions. Plague as the exception thus enables Jews to understand natural disasters outside the paradigm of reward and punishment.”¹² To support this suggestion, Magid cites a talmudic passage which serves as an introduction of sorts to the passage in *Bava Kamma*. In it, the Angel of Death was given permission to kill “Miriam the braider of women’s hair” but instead killed “Miriam the raiser of babies.” Rav Yosef, a Babylonian sage

¹¹ B. *Bava Kamma* 60b.

¹² Shaul Magid, “Covid-19 and the Theological Challenge of the Arbitrary,” in *Torah in a Time of Plague*, 12.

who died in 323 C.E., observes that pandemics do not distinguish between sinners and saints and developed it into a theological tenet: “Once permission is given to the Destroyer to kill, he does not distinguish between the righteous and the wicked.”¹³ Pandemic deaths are arbitrary. Magid notes that unlike the response to famine which includes penance, personal reflection is not mentioned in the Talmud as a reaction to pandemic deaths. The Talmud could have offered “a predictable response that would include both physical avoidance and acts geared towards nullification.”¹⁴ But it was silent.

Magid’s theory of covenantal exception might illuminate the passage in *Bava Kamma*, but it does not explain numerous other Talmudic references which teach that pandemics are the consequence of community sin or personal religious laxity.¹⁵ Neither does it explain the many rabbis who, over the fifteen hundred years since the closing of the Talmud, have continued to emphasize the same message: pandemics are caused by sin and may be extinguished by repentance.¹⁶ There was no

¹³ B. *Bava Kamma* 60a.

¹⁴ Magid, “The Theological Challenge,” 16.

¹⁵ And there were other Talmudic sages who remained convinced that there could be no innocent victims before God. According to Rabbi Hanina (B. *Hullin* 7b) “a person injures his finger on earth only if they declare about him on high that he should be injured.”

¹⁶ See for example Eliyahu Hacohen Haitamri, *Shevet Musar* [*The Rod of Ethics*] (Constantinople: Yonah ben Yaakov Mazalazitz, 1712) (Hebrew), 121a, (chapter 36, section 12) where the author writes that a *shohet* who uses a knife with a blemish will die in a plague. Rabbi Hayyim Palagi (1788-1868) claimed that pandemics were the result of immorality; see Hayyim Palagi, *Hukkei Hayyim* [*Statutes of Life*], 2 vols., vol. 2 (Izmir: Hayyim Abraham di Shigora, 1891) (Hebrew), 145b. For Rabbi Hayyim Medini (1834-1904) the sin that brought about a pandemic was that of a married woman not

covenantal exception when the Torah described the deaths of twenty-four thousand people in a plague that punished immorality.¹⁷ There was no covenantal exception in the Mishnah when it taught that plagues were the result of sins punishable by death.¹⁸ And there was no covenantal exception made for the epidemic waves of diphtheria, called *askara* in the Talmud, that was described as the most painful of all deaths and was the punishment for eating foods that are not kosher and for speaking ill of others.¹⁹

Magid's approach is lacking because it does not account for these other cases. However, it uncovers a much larger theme. There has never been a *single* Jewish response to the problem of theodicy. In some locales, in some books and in some eras, a pandemic was understood to be divine retribution for religious offenses of one sort or another. And in other locales, eras, and books, pandemics were understood to be natural disasters that killed those who were entirely innocent of sin. Magid's theory of covenantal exception can only explain the latter, and even then, it leaves unanswered the question of why pandemics kill the just and the innocent in a world that is supposed to exist under the watchful protection of a benevolent God.

properly covering her hair. See Hayyim Hezekiah Medini, *Sedei Hemed Asefat Dinim [Pleasant Fields]*, vol. Ma'arehet me'ot daled ad zayin (Warsaw: Yosef Zevi Lev, 1903) (Hebrew), 3b (6). Rabbi Pinhas Mikaritz (1726-1791), who was a student of the Baal Shem Tov, believed that pandemics were caused by the sin of lying (Pinhas Shapira Mikaritz, *Imrei Pinhas Hashalem [The Complete Teachings of Pinhas]* (Bnei Berak: Yehezkel Shraga Frankel, 2003) (Hebrew), 449. There are many more examples of this phenomenon.

¹⁷ Numbers 25:8.

¹⁸ *Avot* 5:8, 9.

¹⁹ B. *Shabbat* 33b.

Writing in the same volume as Shaul Magid, David Zvi Kalman of the Hartman Institute of North America pointed out that “natural disaster theologies,” in his terms, are at best feeble and at worst deadly. Most moderns will find them “ideologically unwanted and regarded with suspicion.” Instead, he suggests that we should follow the advice of the late British Chief Rabbi Immanuel Jakobovits, who, responding to the terrible AIDS epidemic of the 1990s wrote that “we should beware of identifying specific forms of grief, suffering, or anxiety with specific moral or any other shortcomings.”²⁰ To claim that innocents are killed because of the sins of another person, Kalman writes, “is not just impolite, but a diminishment of the deceased's value as a human being.”²¹ Kalman further suggests that human beings have taken over much of the responsibility for natural disasters that Judaism once assigned to God. Where once God was responsible for famines, we now understand that many of these are clearly the fault of poor public policy. And if earthquakes are not caused by humans, we may bear responsibility for some of their devastation by failing to require earthquake-proof buildings or tsunami warning systems. The end result is that natural disasters entangle divine and human responsibility, and the questions raised by theodicy now demand that we ask, “why does God *and* why do humans allow the good to die?”

Indeed, as we understand more and more about natural disasters, the role of God seems to be rapidly shrinking. For example, we once thought that God brings rain; we now understand that it is low pressure barometric systems whose origins lie

²⁰ David Zvi Kalman, “The Natural Disaster Theology Dilemma,” in *Torah in a Time of Plague*, 57.

²¹ *Ibid.*, 53.

in the irregular way in which the sun heats the surface of the earth. The “God of the Gaps” has fewer and fewer scientific spaces in which his intervention is required.²² But while this acknowledgement of pandemics as a natural and, to a large degree, understandable feature of the world might leave less of a role for God, it does not get him off the hook for the damage wrought and the innocents killed by them. It just pushes the question back one level. We no longer ask why God allows a pandemic to occur; instead, the question becomes “why did God create the kind of world in which pandemics occur and the innocent are killed?” To paraphrase Magid, if God was not a party to the pandemic, how can the covenant survive? And if God was a party to the pandemic, what kind of God can survive?²³

Two other essays on the theology of pandemics appeared in 2021 in a new journal called [Panim](#). One was written by Rabbi Yitz Greenberg, a noted

²² The “God of the Gaps,” in which God is invoked to explain that which science had not yet been able to, seems to have been first invoked by Nietzsche (1844-1900): “[I]nto every gap they put their delusion, their stopgap, which they called God”; Friedrich Nietzsche, [The Portable Nietzsche](#), trans. Walter Kaufmann (London: Penguin, 1988). But to use God to explain that which our incomplete knowledge cannot is doomed to give the divine an ever-shrinking place. The German theologian Dietrich Bonhoeffer who was murdered by the Nazis in 1945 understood this very well. “For the frontiers of knowledge are inevitably being pushed back further and further,” he wrote in his [Letters from Prison](#), “which means that you only think of God as a stop-gap. He also is being pushed back further and further, and is in more or less continuous retreat. We should find God in what we do know, not in what we don't know. God wants us to realize his presence, not in unsolved problems but in those that are solved. See Dietrich Bonhoeffer, [Letters and Papers from Prison](#) (New York: Touchstone, 1997), 311.

²³ Magid, “The Theological Challenge,” 23.

scholar who is now affiliated with the Hadar Institute in New York.²⁴ He began with a discussion of what he believed are two errors that are made when discussing a theology of pandemics. The first is “the claim that the pandemic is God’s punishment to all of us.” Those who suggest this are, in his estimation, “religiously...in a very wrong place.” Rabbi Greenberg emphasized that God created a natural order, and that once created, “it is not subject to manipulation and tricks.” In doing so, he echoes the sentiments of Rav Yosef in the Talmud that we cited earlier; “once permission is given to the Destroyer to kill, he does not distinguish between the righteous and the wicked.” The second error is a consequence of the natural origins of the pandemic. It is to assume that “because I’m devout, the virus can’t hurt me,” which is nothing other than magical thinking. The correct theological response is a call to action, first by “wearing masks, washing hands, and participating in other behaviors to avoid exposure.” He writes:

This is our way of fighting sickness and fighting on God’s side to fill God’s world with life, but that is not enough by itself. One must turn to the other aspect to help the poor, to look after the elderly, to stay in touch with the isolated, to make a phone call, to run errands for those in need. If we do all this together, we have the power to roll it back, to minimize the harm. And we have seen exactly that in the last few

²⁴ Yitz Greenberg, “Theological Responses to the Covid-19 Pandemic,” [Panim 1](#) (September 2021): 1-6.

months. Countries that were well-led and carried this out were able to reduce the spread of the virus and save lives. And for countries that were poorly led, made the wrong choices, and did not choose life, the spread of the pandemic has been devastating.

But we should be clear that this is not a theological response at all; it does not address the question of theodicy. It may leave us looking after one another—surely a wonderful state of affairs—but still wondering where God went.

A second essay in the same journal by Shlomo Zuckier (which also appeared on [the Lehrhaus](#)) is a review of some theological positions regarding the content of prayer during COVID.²⁵ It focuses on the position of Rabbi Mosheh Lichtenstein, who is a Rosh Yeshiva at Yeshivat Gush Etzion in Israel. In an essay that was first written in Hebrew for his students in March 2020, Rabbi Lichtenstein distinguished between two kinds of prayer: prayer from a place of normalcy, and prayer from a place of crisis.²⁶ Any attempt to maintain a sense of Jewish life as normal during COVID was profoundly misguided: “Familiar routine is a comfort; but when the world order has turned upside down, the objective should not be to seek calm or comfort, but rather to face reality, and understand that our relationship with the world around us has shifted.” As a consequence of this new relationship, Rabbi Lichtenstein called for the

²⁵ Shlomo Zuckier, “[The Pandemic Theology Dilemma: Preserve Normalcy or Embrace Crisis?](#)” *ibid.*: 7-19; also published at [the Lehrhaus](#).

²⁶ Mosheh Lichtenstein, “[A Letter About Covid](#),” *the Lehrhaus*, May 10, 2021.

recitation of *Tahanun* during the month of Nissan, even though the prayer, which is a call to God for help during dark and depressing times, is usually omitted for that entire and usually happy month. “The real reason is that there is a compelling religious and emotional need to do so,” he wrote. “If in times like this we don’t cry out to the *KBH* [*Kadosh Barukh Hu, the Holy One, Blessed Be He*], then when should we do so?” Rabbi Lichtenstein was not addressing the larger question of how a just God could allow such natural injustice. Instead, he was presenting an argument for the recitation of a specific prayer. In doing so, he was opposed by others (including Rabbi Hershel Schachter, Zuckier explains), who ruled that it was more important to maintain a sense of normalcy. As a result, the standard rules remained in place and *Tahanun* should be skipped. For some, questions about which prayers to recite during COVID may serve as a helpful mechanism to live amidst a pandemic that has now killed upwards of five million people worldwide. But for many others, individuals and communities who are grappling with the religious vertigo that the pandemic has caused, there are no answers here. Indeed, the focus on a debate over *Tahanun* might only add to their frustration as they seek to answer the question of why bad things happen to good people in a pandemic.

None of these theological questions appear in another English language response to the COVID pandemic, printed by the ArtScroll Mesorah series. At the end of the [fifth volume of his *Living Emunah* series](#), Rabbi David Ashear included a section called “Chizuk for the Challenging Covid-19 Crisis,” which began with a short essay by Rabbi Nosson Scherman. Rabbi Scherman holds a special place within this publishing house because he served as

the general editor of their popular English translation of the Talmud, as well as the Humash and the Siddur. There is no person alive, the rabbi wrote, “who could deny that ...man is not in charge of the universe.” It was an unusual opening observation, since it is not clear who precisely was making the claim that “man” was indeed “in charge of the universe.” In any event, Rabbi Scherman suggested that God was sending a message to the modern world: “Do you, arrogant man, really think that you have mastered the universe and that there is no room for Me in your world? I will send you a microscopic virus to infect you with humility! Will you hear My message?”²⁷

Rabbi Scherman suggested that the Jewish community was being taught to focus: “Schools and shuls have been closed, and personal contact has been limited by ‘social distancing.’ It may be that we are being shown that, as a community, we have not shown sufficient respect for shuls and for the outstanding privilege of communal *tefilah*.” This is an example of Jewish religious exceptionalism, where the suggestion is that a worldwide pandemic was part of a divine plan to have Jews show more appreciation for their synagogues. This theme was repeated by Rabbi Ashear, who wrote that the tiny COVID virus had taught a lesson to “China, which supplies the world with inexpensive goods, and Italy, which supplies the world with luxurious merchandise. [Both are] in disarray from this little creation of Hashem.”²⁸ “Corona,” noted Ashear, can be spelled phonetically in Hebrew as *qerah-na* meaning “please call out to me.” He called for introspection and submission to the divine plan:

²⁷ David Ashear, [Living Emunah: Achieving a Life of Serenity Through Faith, Vol. 5](#) (Rathway, New Jersey: Mesorah Publications, 2020), 283-285.

²⁸ Ibid., 293.

Hashem has brought the entire world to its knees. Our security cannot protect us. Our businesses and finances cannot protect us. With all the advanced technology in the world of 2020, nobody can figure out how to cure it. Only the healthy body created by Hashem has the ability to fight it off, with Hashem’s help. The world around us is being shut down. Will we finally come to the realization that nobody and nothing can help us other than *Avinu shebashamayim*.²⁹

There was only a single theological message that Rabbi Ashear gleaned from the COVID pandemic, and it was to place more trust in God. There was no grappling with the death of the innocent and the randomness of nature. In fact, there appears to be no place for such thought at all. “The same way Hashem tells each blade of grass to grow and calls out to each star by name, He controls every last protein of this virus,” he writes, “and, therefore, we must feel calm and at ease knowing we are in His hands.”³⁰

Among the religious Hebrew literature that was published in response to the COVID pandemic there has also been no theological attempt to grapple with the randomness of the deaths, to explain how one might still pray to a God who appears so indifferent to the plight of humanity. Instead, this pandemic was used as pandemics have

²⁹ Ibid., 288.

³⁰ Ibid., 299-300. Later he writes, “a person’s allotted years are calculated by Him down to the last second...Whatever happened was exactly what was supposed to happen” (307).

been in the past: to shore up religious laxity and reaffirm a Jewish way of life. Rabbi David Cohen, who heads the famous *Hevron Yeshiva*, wrote that the pandemic should trigger self-reflection and introspection. It taught that “there is divine providence and that human actions are futile.”³¹ He suggested paying scrupulous attention to reciting one-hundred blessings each day and reciting the *shema* during morning and evening prayers with extra attention and punctiliousness. The message was repeated by another *Rosh Yeshiva*, Rabbi Chaim Feinstein. “The reason for this world event, may God protect us, is only for the Jewish people...That they may think about their actions and learn their lesson. So that they should fear and repent...In each of us there should be an arousal to repent, for this is why it has happened, and for no other reason... something like this must lead to fear and trembling before God; look what God has done to his world! It is so that you will see and learn the lesson. Perhaps you will repent. I am not here just addressing you. I am speaking to myself. Perhaps it will bring me [to repent]...”³²

As a final example we will consider a book published in 2021 by Rabbi Nahman Steinmetz, who lives in Borough Park, New York. He is a *dayan* of the Skver Hasidim, named after the Ukrainian city of *Skvyra* from where the first leader of the sect originated. Like other works of the

³¹ See his essay titled “Plague: the removal of the influence of the Blessed Creator” in *Havieni Hedrov*, ed. Natan Feldman (Jerusalem: Tzof, 2020) (Hebrew), 548-550. The fourteenth century code of Jewish law known as the *Arba Turim* (*The Four Rows*) explained that during the reign of King David there was a plague that was killing one-hundred people per day. It only ended when the rabbis ruled that a person should say one-hundred blessings each day. See *Tur, Orach Hayyim* 46.

³² Feldman, *Havieni Hedrov* 585.

genre, his book addresses the many real-life questions of Jewish practice that arose because of the COVID pandemic. What is important for our purposes is his lengthy essay at the start of the book titled “Save Us on the Day That We Call.”³³ It contains fourteen sections, runs over sixty pages, and astonishingly contains not a single reference to Rabbi Yosef’s talmudic statement that “once permission is given to the Destroyer to kill, he does not distinguish between the righteous and the wicked.” Instead, it focuses on strengthening faith by understanding how the pandemic demonstrates God’s dominion over the earth:

Suddenly and all at once God sent a tiny thing, smaller than five-hundred nanometers (let us note in order to appreciate this, that there are 1,000,000 nanometers in a millimeter), and it has managed to stop the world and to disrupt daily life to a degree that we could not imagine possible. There is no one to save the people. Even the greatest physicians have acknowledged God and declared his kingship saying “it is the finger of God” (Exodus 8:15). We can now clearly see that there is a ruler over all of creation, and only he is all powerful. The greatest technology is of no help at all... clearly demonstrating that “Unto God belongs kingship, and he

³³ Nahman Steinmetz. *Sefer Ateret Nevonim* [*Crown of The Wise*] (Brooklyn, New York: n.p., 2021) (Hebrew), 9-74. In his introduction (page 5) the author explains that the title is a play on words, referencing the fact that *corona* means a crown.

rules all the nations” (Psalm 22:29).

The COVID pandemic raised no theological questions for Rabbi Steinmetz. Instead, it provided an opportunity to remind his congregants to pray and say the daily blessings with greater intention.³⁴ The results are apparently guaranteed: “If we stir ourselves to bless God and to thank him daily for all the good that he has provided for us, then not only...will we not die prematurely, heaven forbid, but we will be granted a lengthy life.”³⁵ This book is clearly written for the ultra-orthodox Hasidim of Skver and suggests that no one is grappling with the question of the seeming injustice of the world. Perhaps though, Rabbi Steinmetz and others of this genre are more consistent than those for whom the pandemic raised questions of theodicy. As we noted, the death of even a single innocent should raise the same profound question of God’s justice as would the deaths of many millions in a pandemic. The scale of the injustice does not make it harder to address. Since the ultra-Orthodox are at peace with the challenge of theodicy, it is not raised by those who lead them, even though the Talmud itself thought that the question was worth asking.

Questions remain (of course they do) about how a just and benevolent God could allow the devastation we have seen from COVID—but only for an unlucky few. The rest of us are either at peace with the question of theodicy or have never thought about it in the first place. Perhaps it is the under-examined life that makes living easier.³⁶

³⁴ Ibid., 19.

³⁵ Ibid., 22.

³⁶ See David Shatz, *Jewish Thought in Dialogue* (Boston: Academic Studies Press, 2009), 387-412.

Excerpted from [The Eleventh Plague; Jews and Pandemics from the Bible to COVID-19](#), by Jeremy Brown. To be published by Oxford University Press in the Fall of 2022.

VACCINE TRIAGE IN JEWISH ETHICS – AN INTERMEDIATE APPROACH

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e thoroughly enjoyed and appreciated the recent **W**articles in the Lehrhaus by [Doctors Sharon Galper Grossman, Shamai Grossman](#), and [Alan Jotkowitz](#)¹ on Halakhic approaches to COVID-19 vaccine allocation. We are grateful to Doctors Galper-Grossman and Grossman for their extensive treatment of [our article](#) on the Jewish ethics of vaccine triage from 2010, in which we postulated a country with medication must first worry about its own citizens before attempting to aid another country based on the ruling of [Rabbi Akiva in the Talmud Bava Metzia](#) that one’s own life takes precedence over the life of another.

We would like to clarify our position from our article, as well as make some general observations on the subject. As Dr. Jotkowitz stated – these remarks are meant in the spirit of *mahloket le-shem shamayim*.

A Matter of Law or Ethics?

The current discussion about vaccine triage and distribution seems to be more of a discussion regarding Jewish ethics and less a question of

¹ In full disclosure, Dr. Jotkowitz is the director of Aryeh Dienstag’s former medical school.

Jewish Law per se. Inasmuch as Jewish law refers to formal, precisely legislated requirements, ethics on the other hand concerns itself [with why and how one ought to act](#), providing us with guides on what is the right thing to do in all aspects of life. These types of guidelines are frequently not feasible for legislation and may contain opposing values in a greater ethical system.² Consequently, a clinical bioethics consultation will frequently clarify conflicting moral issues in a given ethical dilemma³ as well as mediate communication between various stakeholders in a given situation,⁴ as opposed to giving a concrete black and white answer to a given dilemma.⁵ Rabbi Aharon Lichtenstein and Rabbi Walter Wurzburger championed the concept that Judaism demands allegiance to [ethical conduct inside of Judaism but outside of the formal law](#).⁶ In the words of Rav Lichtenstein:

² [“Ethics and the Law,”](#) Center for Health Ethics, University of Missouri School of Medicine, 2020.

³ Joe Fins, Ellen Fox, and Marion Danis, “Developing Standards for Clinical Ethics Consultation,” Plenary Session, *11th Annual International Conference on Clinical Ethics & Consultation*, May 20, 2015.

⁴ Jochen Vollmann, “The Implementation Process of Clinical Ethics Consultation: Concepts, Resistance, Recommendations,” [Clinical Ethics Consultation: Theories and Methods, Implementation, Evaluation](#), ed. Jan Schildmann, John-Stewart Gordon, and Jochen Vollmann (New York: Routledge, 2010).

⁵ Lynette Cederquist et al., [“Identifying Disincentives to Ethics Consultation Requests Among Physicians, Advance Practice Providers, and Nurses: A Quality Improvement All Staff Survey at a Tertiary Academic Medical Center,”](#) *BMC Med Ethics* 22, 44 (2021).

⁶ Judah Goldberg, [“Is There an Ethic Beyond Formal Jewish Law?”](#) VBM: The Israel Koschitzky Virtual Beit Midrash, Yeshivat Har Etzion.

If, however, we equate Halakhah with the din, if we mean that everything can be looked up, every moral dilemma resolved by reference to code or canon, the notion is both palpably naïve and patently false. . . . Which of us has not, at times, been made painfully aware of the ethical paucity of his legal resources? Who has not found that fulfillment of explicit halakhic duty could fall well short of exhausting clearly felt moral responsibility?⁷

Rav Yuval Cherlow, Rosh Yeshiva of Yeshivat Hesder Amit Orot Shaul in Tel Aviv as well as head of the Tzohar Center for Jewish Ethics, has stated that the question of [allocation of vaccines](#) falls into the area of Jewish ethics and not that of Jewish Law.⁸ As such, the solution to the question of vaccine allocation should allow for a flexible, multidimensional approach rather than an approach of purely *din* or law. Similarly, broader holistic sources including *pesukim* from *Navi* and works of *Hashkafah*, such as those listed by [Dr. Jotkowitz](#), are more appropriate for a question of Jewish ethics than a purely legalistic question.

Does the Need for Boosters Outweigh the Need to Share?

When addressing the medically relevant elements in booster distribution, Doctors Grossman quote a disagreement between the [WHO](#) and [NIH director Dr. Francis Collins](#). Dr. Mike Ryan of the WHO compares boosters to “planning to hand out extra life jackets to people who already have life jackets,

⁷ Aharon Lichtenstein, “Does Judaism Recognize an Ethic Independent of Halakhah?” [Leaves of Faith: The World of Jewish Living](#), 38-39.

⁸ Yuval Cherlow, [“Ha-mabat ha-iti me-ahorei hisunei ha-Corona”](#) (Hebrew), January 28, 2021.

while leaving other people to drown without a single life jacket.” NIH director Dr. Francis Collins, while taking issue with the analogy, suggests perhaps that vaccines are more akin to life jackets that are losing some of their flotation ability (in the interview cited, Dr. Collins acknowledges he was taking the analogy too far).

The truth seems to be somewhere in between. When looking at Israeli data, people who have been vaccinated but have not received boosters show a higher rate of morbidity and mortality compared to those boosted, but still show a significantly lower rate of morbidity and mortality compared to the unvaccinated.⁹ After the original vaccine came out, in May 2021, a study by [Haas et al.](#) in *The Lancet*¹⁰ compared mortality between vaccinated and unvaccinated individuals. For the unvaccinated aged 45 to 65 the estimated mortality was 0.5; for those greater than 65 estimated mortality was 6.6 per 100,000 person days. In the vaccinated cohort mortality was estimated to be between less than 0.1 to 0.2 per 100,000 person days. A recent article in the *New England Journal of Medicine*¹¹ by [Arbel et al.](#) analyzed death rates post booster vaccination in an over fifty year old cohort. The death rate in the booster group was 0.16 per 100,000 persons per day, while in the non-booster group it was 2.98 per 100,000 persons per day -

⁹ [“The Coronavirus Pandemic in Israel: A General Picture,”](#) Israel Ministry of Health, retrieved on December 14, 2021.

¹⁰ Eric J. Haas et al., [“Impact and Effectiveness of mRNA BNT162b2 Vaccine Against SARS-CoV-2 Infections and COVID-19 Cases, Hospitalisations, and Deaths Following a Nationwide Vaccination Campaign in Israel: An Observational Study Using National Surveillance Data,”](#) *The Lancet* 397, no. 10287 (May 5, 2021): 1819-1829.

¹¹ Ronen Arbel et al., [“BNT162b2 Vaccine Booster and Mortality Due to Covid-19,”](#) *The New England Journal of Medicine* 385 no. 26 (December 23, 2021): 2413-2420.

significantly higher than in the booster group but less than the Haas study of the same population. However, given that in all estimates the morbidity and mortality in patients varies significantly based on age, perhaps one must include these other factors in the determination of risk for allocating vaccine doses.¹² Even in the above 50 age category, the estimated infection fatality rate of those who have been vaccinated but received no booster approaches that of influenza and is even significantly less than the risk from influenza depending on the year, particularly in younger age categories. H1N1 influenza mortality estimates ranged from 0.4 per 100,000 in the youngest cohort (5-14) and 16 per 100,000 for those between 60-69 when looking at confirmed deaths, but estimated deaths are at an even higher rate approaching 1,099 per 100,000.¹³ This is of course not to minimize the dangers of COVID, rather to highlight the morbidity and mortality of influenza in a pandemic season. Therefore, in light of the diverse morbidity and mortality risk COVID-19 represents, a more nuanced approach might consider the varying risks within the populations at large, including age, to more equitably distribute available vaccine resources to maximize benefits worldwide. In an interconnected worldwide economy, damage to areas not limited to one's own country can have significant impacts on others in the supply chain.

¹² Andrew T. Levin et al., [“Assessing the Age Specificity of Infection Fatality Rates for COVID-19: Systematic Review, Meta-analysis, and Public Policy Implications,”](#) *European Journal of Epidemiology* 35, no. 12 (December 8, 2020): 1123-1138.

¹³ Jessica Y. Wong et al., [“Infection Fatality Risk of the Pandemic A\(H1N1\)2009 Virus in Hong Kong,”](#) *American Journal of Epidemiology* 177, no. 8 (April 15, 2013): 834-40

The U.S. Surgeon General Vivek Murthy has advocated the approach that rich countries should run booster campaigns concurrent to their efforts to vaccinate the rest of the world¹⁴: “The notion that somehow us providing adequate protection for the American people is not right, I don’t accept that premise ... We have to do both. We can’t choose between one and the other.” However, many ethicists have rejected this approach, stating any booster will take away the ability from someone in a poor country to receive that vaccine.¹⁵ Conversely, some have contended that the third world suffers from a [deficit of vaccine delivery](#) and not vaccine supply.^{16,17} Doctors Grossman present a gamut of ethical positions analyzing this issue. However, one could point out that countries constantly are faced with the need to finance a multitude of projects, often based on conflicting value systems. Part of the responsibility of a legislature when it passes a budget is to divide limited resources among the different projects a country believes it should attempt. Moreover, nations regularly budget funds for both mundane matters and international relief at the expense of increasing funding for domestic life saving measures. Rabbi Shlomo Dichovsky, former member of the Rabbinic High Court and director of the Israeli rabbinical courts, has justified this policy based on the Gemara in *Gittin* 45a,

¹⁴ Josh Wingrove, “[Biden’s Vaccine Booster and Export Plans Collide at Summit](#),” *Bloomberg*, September 19, 2021.

¹⁵ Sara Reardon, “[Will Giving COVID Booster Shots Make It Harder to Vaccinate the Rest of the World?](#)” *Scientific American*, October 20, 2021.

¹⁶ Krishna N. Das, “[India Stuck with COVID-19 Vaccines It Can’t Export](#),” *Reuters*, December 15, 2021.

¹⁷ Lynsey Chutel and Max Fisher, “[The Next Challenge to Vaccinating Africa: Overcoming Skepticism](#),” *The New York Times*, December 1, 2021.

contending that although Judaism attaches supreme importance to the obligation to save a human life, the broader the needs of a general community receive a priority of the same magnitude as saving an individual life.¹⁸

Jews vs. Non-Jews

In Dr. Jotkowitz’s response to the Grossman and Grossman article, he observed the *teshuvot* quoted by the Doctors Grossman regarding triage deal with resource allocation among Jewish populations and therefore it is unclear what these halakhic authorities would rule if the choice were between Jews and non-Jews. One could take the question even further and question whether one should use the hierarchy listed by the Talmud itself with regards to triaging life saving efforts. The Talmud in [Horayot 13a](#) prioritizes religious scholarship and genealogy as the primary criteria for which lives should be saved in cases where it is impossible to save all. Many secondary sources list the Gemara in *Horayot* as one of the primary sources concerning questions of triage and Halakhah.¹⁹ However, although there are some authorities who disagree on this matter,²⁰ the predominant contemporary view is that the order listed in the Talmud *Horayot*

¹⁸ Shlomo Dichovsky, “Priorities in Public Life Saving,” *Torah Shebaal Peh*, 31, 1990; Shlomo Dichovsky, “[Pikuah Nefesh of an Individual and a Community in the time of Corona Pandemic](#),” *Asia*, 117-118 (2020): 52-72.

¹⁹ Avraham Steinberg, “Priorities in Medicine,” [Encyclopedia of Jewish Medical Ethics](#) (Feldheim 2003), 849-850; David Etengoff, “Triage in Halacha: The Threat of an Avian Flu Pandemic,” *Journal of Halacha and Contemporary Society* (RJJ, 2008), 75-81; Abraham Abraham, [Nishmat Avraham](#), Yoreh Deah 252:B 181-185; Moshe Sokol, “[The Allocation of Scarce Medical Resources: A Philosophical Analysis of the Halakhic Sources](#),” *AJS Review*, 15, no. 1 (Spring 1990): 63-93.

²⁰ *Chazon Ish on Bava Metzia* 62a

is not applicable today.²¹ Similarly, Rabbi Ovadia Yosef,²² Rabbi Eliezer Yehuda Waldenberg,²³ and Rabbi Isser Yehuda Unterman²⁴ have ruled that in today's day and age a physician working in a health system has a corresponding obligation to saving both a non-Jewish life and a Jewish life.²⁵ Furthermore, [Rabbi Professor Avraham Steinberg unequivocally writes](#) that "determinations based on gender, race, religion, nationality, economic status, communal status, vocation, and the like are not factors in determining precedence,"²⁶ in essence rejecting both the order of priorities mentioned in the Talmud *Horayot* as well as a differentiation between Jew and non-Jew.²⁷ Therefore, there may

²¹ *Iggrot Moshe Hoshen Mishpat* 2 73:2. Along these lines the *Mishnah Berurah* states that we have no Torah Scholars in our time and this cannot be used as a way to decide which person should be saved first (547:12); the *Magen Avraham* states this as well. See *Minhat Shlomo Tanina*, 86:1; Avraham Steinberg, "Allocation of Scarce Resources," [Encyclopedia of Jewish Medical Ethics](#) (Feldheim 2003), 45-46; David Etengoff, "Triage in Halacha: The Threat of an Avian Flu Pandemic," *Journal of Halacha and Contemporary Society* (RJJ, 2008), 75-81; Avraham Steinberg, "Priorities in Medicine," [Encyclopedia of Jewish Medical Ethics](#) (Feldheim, 2003), 849-850; Abraham Abraham, *Nishmat Avraham*, Yoreh Deah 252:B p181-185; Rabbi Yuval Cherlow, "[Allocating measures for life-saving treatments in an emergency - Position Statement](#)," Tzohar Ethics, April 3, 2020.

²² *Yabia Omer* 8:38, *Yalkut Yosef Shabbat* p266.

²³ *Tzitz Eliezer* 8:15

²⁴ *Or Ha-Mizrah* 15 (1965): 227-231.

²⁵ Although these rulings were stated with regards to the laws of desecration of Shabbat, they set a precedent of practically utilizing rules of *pikuah nefesh* for a non-Jew.

²⁶ Avraham Steinberg, "[The Coronavirus Pandemic 2019-20: Historical, Medical and Halakhic Perspectives](#)," 2nd edition, KolCorona, 2020.

²⁷ Rabbi Steinberg analyzes this issue at length in the third edition of his Hebrew work on COVID19. See Avraham Steinberg, "[The 2020 Coronavirus Pandemic: Historic, Medical, and Halakhic Perspectives](#)" (Hebrew), 3rd edition,

be justification to extrapolate from the primary halakhic sources to the current question of vaccination equity.

Distributive Justice

[Distributive justice](#) is a field of both philosophy and the social sciences that is concerned with the fair distribution of the burdens and benefits of social cooperation among diverse persons with competing needs and claims. Distributive justice theories vary on what basis the distribution should be made (equality, maximization, according to individual characteristics, according to free transactions, etc.)²⁸ Recently, Bar-Ilan University's Jewish Law Clinic sponsored a conference on the [distributive justice of international vaccine distribution](#) through the [lens of ethics and Halakhah](#).²⁹ In the conference, [Rabbi Cherlow](#) stated that countries have an obligation to finish vaccinating their own citizens before distributing vaccines to other countries. He bases his position on the opinion of Rabbi Akiva in [Bava Metzia 62a](#) regarding two individuals who are lost in the desert with a jug of water, as well the rule stated in [Bava Metzia 71a](#) that one should prioritize the poor of one's own city when giving charity. However, Rabbi Cherlow qualified his ruling by highlighting that the talmudic rule is that with regards to charity, the citizens of one's own city receive priority but not exclusivity. Therefore, Rabbi Cherlow posits that once a country has vaccinated its citizens and keeps a few vaccines in reserve,

KolCorona, 2020.

²⁸ Julian Lamont and Christi Favor, "[Distributive Justice](#)," *The Stanford Encyclopedia of Philosophy* (Winter 2017 Edition), Edward N. Zalta (ed.).

²⁹ "[Distributive Justice of International Vaccine Distribution](#)," Faculty of Law, Bar Ilan University, May 24, 2021.

they should work to vaccinate people in other countries.³⁰

At the same conference, [Rabbi Professor Yitzchak Brand](#) took an approach focused more on international distributive justice. Rabbi Brand highlights that the Torah, particularly the book of Deuteronomy,³¹ emphasizes the need for sensitivity towards the non-Jewish stranger, with the Jewish nation filling the dual role of both cosmopolitan engagement and a separatist group.³² Tanaic literature minimizes the universal nature of the precepts in Deuteronomy,³³ with non-Jews receiving only based on an a posteriori circumstance.³⁴ Rabbi Brand states that with the founding of the state of Israel, the Jewish nation should return to the more universal ethic of universal / multinational charity described in Deuteronomy. He bases this approach on Rabbi Isser Yehuda Unterman's (the second Chief Rabbi of the State of Israel) understanding of *darkhei shalom*³⁵ among other sources. Rabbi Brand therefore concluded that giving humanitarian aid to countries lacking vaccines during the pandemic should be a priority for the state of Israel during the pandemic.³⁶

³⁰ ["Equal Distribution of Vaccines - What Does Halakhah Say?" Arutz Sheva](#), May 25, 2021, retrieved December 14, 2021; Yuval Cherlow, ["Distributive Justice of International Vaccine Allocation - Ethics and Halakhah"](#) (Hebrew), June 8, 2021

³¹ Deuteronomy [15:1-3](#), [15:7](#), [23:20-21](#), [24:17-18](#)

³² Deuteronomy [4:6](#), Deuteronomy [14:2](#), Deuteronomy [28:10](#)

³³ [Sifri Kedoshim 1:3:4](#), [Sifri Devarim 110](#), [Sifri Devarim 116](#).

³⁴ [Mishnah Gittin 5:8](#), [Tosefta Pe'ah 3:1](#), [Tosefta Gittin 3:13](#).

³⁵ *Shu"t Shevet Yehudah* 3:70 p293-295.

³⁶ ["Equal Distribution of Vaccines - What Does Halakhah Say?" Arutz Sheva](#), May 25, 2021, retrieved December 14, 2021; [Reaction to Distributive Justice of International Vaccine Allocation - Ethics and Halakhah](#) (Hebrew), June 8,

Further in the conference both [Rabbis Cherlow and Brand](#) agreed that there was not much difference in their respective approaches, with the possible discrepancy of where the line should be drawn between how many vaccines are kept for the state of Israel and how many should be sent as humanitarian aid.³⁷

Conclusion

In our original article we stated that a country in possession of medication (in our case vaccines) must first worry about its own citizens before attempting to aid another country based on the ruling of Rabbi Akiva in *Bava Metzia*.³⁸ However, two years into the current pandemic the situation is too complex to act purely based on this talmudic passage. As we discussed above, the lethality of COVID-19 to a vaccinated person who has not received a booster does not approach the lethality in an unvaccinated individual when one considers the vast differences in infection rates between age groups. Therefore, we believe the current situation is more akin to the situation described by [Rabbis Cherlow and Brand](#), where a country with greater resources is in a sufficiently secure situation where they may be obligated to donate resources to a country that has already been affected by the pandemic. We would therefore posit that at the current stage in the pandemic, Jewish Ethics would support the approach of U.S. Surgeon General Vivek Murthy,³⁹ concurrently engaging in a

2021.

³⁷ ["Reaction to Distributive Justice of International Vaccine Allocation - Ethics and Halakhah"](#) (Hebrew), June 8, 2021.

³⁸ Aryeh Dienstag, ["Rationing During a Pandemic Flu," Verapo Yerapey](#)

³⁹ Josh Wingrove, ["Biden's Vaccine Booster and Export Plans Collide at Summit," Bloomberg](#), September 19, 2021.

booster campaign along with one to vaccinate other nations. Although such a compromise limits both efforts, in the murky world of competing halakhic values this may be the best possible route.

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