

The Obligation to Save Life

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In his detailed article Professor Kirschenbaum has shown that in Jewish law lifesaving is a legal, as well as a moral, obligation.¹

Pursuant to his article, I would like to examine the normative criteria of this obligation, its practical ramifications and its effectiveness, as well as its limitations.

Normative Criteria and Effectiveness of the Obligation

As far as normative criteria are concerned, the obligation to save life is established in the codex of Jewish law as a legal obligation which obligates whoever happens to chance upon a situation where he can intervene and save life.

The source of this obligation in the Torah is found in the positive commandment “You shall surely return it to him”² and in the negative commandment “You shall not stand idly by.”³ The Talmud⁴ explains that the positive commandment is the principal source, while the negative commandment broadens the obligation requiring the lifesaver to spend money when saving life.⁵

The obligation to save life appears in halachic literature. In the *Mishneh Torah* it is mentioned in the heading of a special section, “The Laws of Homicide and Lifesaving,” and in the *Shulchan Aruch* it appears in *Choshen Mishpat* 425-427.

In Jewish law the obligation to save life is considered to be a primary obligation which supersedes other laws. In the dilemma of conflict of laws, the law of lifesaving prevails over all other laws (e.g., lifesaving supersedes the laws of Shabbat, whose violators are subject to capital punishment) with three exceptions: idolatry, homicide, and prohibited intercourse.

1. According to Uri Yadin in “*Al Dinei Pikkuach Nefesh*” in *Mishpatim* 2 (5730): 252, 256, the obligation is purely moral in nature.

2. Deuteronomy 22:16.

3. Leviticus 19:15.

4. *Sanhedrin* 73a.

5. The lifesaver is entitled to reimbursement despite the victim's not having agreed to pay in advance. See N. Rakover, *Osher ve-Lo be-Mishpat* (5748), chs. 4-5. This comprehensive study was not mentioned by Prof. Kirschenbaum.

As far as the effectiveness of the legal obligation is concerned, Jewish law, unlike other disciplines, is not merely measured in terms of authority, enforcement, or punishment. Jews have adhered to Jewish law despite the lack, since the days of the Hasmoneans, of any juridical autonomy or administrative authority to enforce it. Therefore, any discussion of the court's powers of compulsion is purely theoretical.

A rabbinic court has the inherent authority to compel compliance with positive commandments.⁶ Although coercion is not generally applied in cases of positive commandments whose fulfillment brings material rewards, we find that the court does compel compliance with the laws of philanthropy. Although philanthropy is indeed a positive commandment (“Because for this the Lord your God will bless you in all your deeds”⁷), coercion in matters of philanthropy is based on a parallel negative commandment (“Do not withhold your hand”⁸). In this regard, compliance with the laws governing weights and measures is similar to philanthropy; although compliance with these laws brings its own material reward, court enforcement is mandated.⁹

Fulfillment of the positive commandment to restore one's life (“You shall surely return it to him”) does not bring its own material reward. Even if the Torah had established a reward for the lifesaver as part of the positive commandment, there is still a parallel negative commandment: “You shall not stand idly by.” Therefore, the court is empowered with the general authority to compel compliance and coerce anyone to save a life. Regarding coercion, lifesaving is like any other positive commandment.

Various Torah articles that have appeared over the last few years have expressed diverging opinions on the specific authority of the court to compel such compliance in cases of lifesaving.

Rabbi Eliezer Yehuda Valdenberg¹⁰ concludes that according to Ramban, no one who desists from fulfilling the commandment to save a life can be compelled to do so in *mundane law*. This is because the commandment is incumbent upon everyone, and the court cannot compel any specific individual to fulfill it. A further

6. *Ketubbot* 86a.

7. Deuteronomy 15:10.

8. Shakh, *Yoreh De'ah* 248:3.

9. *Choshen Mishpat* 231.

10. Retired member of the rabbinic court of the Chief Rabbinate, author of *Responsa Tsits Eliezer* (21 vols.), and recipient of the Israel Prize.

(utilitarian) reason can be found in the *Drisha*: “The court which compels compliance with commandments should better send help in loading and unloading animals.”¹¹ Rabbi Valdenberg does not dispute the rabbinic court’s *general* authority to compel compliance. Unfortunately a person who refrains from saving human life because of practical considerations is not compelled, as he explained.

Rabbi Yehoshua Yogel, however, introduces a new understanding of the *Tosafot*.¹² Anyone may compel another to drive away a lion from his flock. It follows that coercion is proper with respect to the commandment of restoring lost property just as with respect to any other commandment.¹³ Further, the authority to compel compliance is given to every citizen without requiring him to apply to the court for permission. In lifesaving, for example, a physician or an ambulance driver engaged in lifesaving is permitted to take a ladder, board, rope, or any other private property without prior judicial authorization.¹⁴

Rabbi Naftali Bar-Ilan, in his article “*Terumat Moach ha-Etsem – Hebbetim Hilchatiyyim*,”¹⁵ supports the opinion that coercion is proper. His article goes far in enabling coercion even in cases where there is some limited danger to the lifesaver. “It is obvious that there is room to compel a donor to give his bone marrow just as we compel compliance with the laws of philanthropy.”

Rabbi Valdenberg’s approach, which rejects coercive powers, receives some support in a personal story published by Rabbi Avigdor Nebenzahl, the rabbi of the Old City of Jerusalem. In his youth, Rabbi Nebenzahl was sent to ask whether it is permitted to try and influence someone to donate blood. The Brisker Rav, Rabbi Isaac Soloveitchik, answered that it is permitted to tell someone that so-and-so requires blood, but one should in no way pressure him to donate.¹⁶

There are different degrees of coercion: in philanthropy we employ “strong coercion,”¹⁷ whereas in supporting one’s parents we

11. *Tur, Choshen Mishpat* 272:10.

12. *Bava Metsia* 31b, s.v. *im*.

13. Cf. *Ritva, Yevamot* 27.

14. The question was presented to both of them. Their answers were published in “*Va-Chay ba-Hem*” (*Refuah Mishpat ve-Halacha*) *Nissan* 5752, ed. E. Ben Shlomo.

15. *Assia* 51 (*Iyyar* 5752): 59-71.

16. *Assia* 53-54 (*Elul* 5754): 208.

17. *Beit Yosef, Yoreh De’ah* 248.

employ only minimal coercion.¹⁸ Occasionally, “verbal coercion” is deemed sufficient.¹⁹

However, despite the divergence of opinion regarding specific coercive authority in cases of lifesaving, the court is empowered with general authority to compel compliance. Even when compulsion is not applied, anyone who performs the commandment of lifesaving enjoys legal protection if he is sued for having taken someone’s property in order to save a life.

Criminal Sanctions: Penalizing One Who Refrains from Lifesaving

The rabbinic court has general inherent authority to impose punishment as needed: “Said Rabbi Eliezer ben Yaakov: I heard that the rabbinic court imposes lashings and other punishments in addition to what the Torah mandates. This is not a violation of Torah law, rather a defense of it.”²⁰

Rambam summarized various types of punishment, among them “confiscating private property as seems proper to preserve religious law and to strengthen the society, or fining those who are violent... to argue with someone who is deserving of being argued with and to curse him... or imprisoning.”²¹

However, exercising this authority requires great care and responsibility, as Rambam writes: “In all matters they shall act for the sake of heaven, not for honor... The honor of the Torah is in performing its laws and ordinances.”²² According to halachic principles, though, there is some difficulty in punishing someone who refrains from lifesaving. This is because the commandment “You shall not stand idly by” is violated through inaction, and “inaction is not punished by lashing.” Therefore, no specific, fixed punishment can be established for a passerby who refrains from lifesaving.

Furthermore, both in halacha and in Torah-observant Jewish society, punishment, no matter how harsh, does not necessarily provide a measure of the severity of a law or its enforcement. On the contrary, there are cases where there is no mundane punishment precisely because of the case’s severity. So we find in the prohibition of passing one’s children to Molekh, the prohibition of

18. *Taz*, *Yoreh De’ah* 240:1.

19. *Ketubbot* 53a; *Bava Batra* 8b, *Tosafot*, s.v. *achifa*.

20. *Yevamot* 90b.

21. *Sanhedrin* 24:4-10.

22. *Ibid.*

unwitting homicide, which borders on murder, and the prohibition of “not having any other gods beside me.”

Limitations of the Obligation

There are two limitations on the obligation of lifesaving, one as regards the lifesaver and another as regards the victim.

Regarding the Lifesaver

A. Acceptable Danger

The lifesaver need not sacrifice his own life. Rabbi Akiva explained: “Your brother shall live with you”²³ means that your life takes precedence over your friend’s life.²⁴ Compare the distinction drawn in *Chiddushei Rabbi Chayyim ha-Levi, Yesodei ha-Torah* 8 (beg.).

We mentioned above that the commandment of lifesaving supersedes the other commandments except for the prohibition of idolatry, homicide, and illicit intercourse. The exception of homicide is based on the logical argument that “your blood is no redder than his.”²⁵ However, the same argument would apply conversely: “your friend’s blood is no redder than yours.”

This approach can be understood in terms of formal law on the basis of the verse “And you shall keep my statutes and my judgments, which if a man does, he shall live by them” (Lev. 18:5). Shmuel concluded that lifesaving supersedes the observance of Shabbat and Yom Kippur (*Sanhedrin* 85 and 74a). Just as the commandment “to live by them” (lifesaving) supersedes the laws of Shabbat and Yom Kippur, so does it supersede the commandment of restoring lost property or health and the commandment “you shall not stand idly by.”²⁶

Rambam quite justifiably added a limitation to the obligation of lifesaving: “if he can save him.”^{27,28} Therefore, if a heavy man is drowning, a weak observer is not obligated to jump into the river to try and save him as there is a grave risk that he too may drown (*Sefer Chasidim* 674).

23. Leviticus 28:36.

24. *Bava Metsia* 62a.

25. *Sanhedrin* 73.

26. Maharam Schick *ad Pos.* Comm. 238.

27. *Rotseach* 1:15.

28. See in detail Resp. *Tsits Eliezer* 9:40 (5), and especially (8-13).

B. The Obligatory Degree of Danger in Lifesaving

According to Rabbi Yitzhak Zilberstein²⁹ there are two approaches to this matter.³⁰ The maximalist approach states:

There are certain forms of danger which people are willing to undergo for their own financial advantage, for their own honor, etc. Danger such as this, which people assume they will survive, must be accepted by everyone when they engage in lifesaving. But no one is obligated to endanger himself when the danger is so great that no one would undergo it even to acquire great wealth. Therefore, in cases of minor danger, such as crossing the sea or climbing to high places, everyone is obligated to engage in lifesaving despite the danger.

The minimalist approach states:

In any case of potential danger which would require the violation of Shabbat there is no obligation to endanger oneself to save the life of another. Therefore there is no obligation to endanger oneself even if the probability of saving a life is greater than the probability of succumbing to the danger. This is so because even possible threat to life calls for violating Shabbat.

In addressing practical issues which have arisen in our times, Rabbi Valdenberg has written that physicians are permitted to treat communicable diseases.³¹ But Rabbi Zilberstein has written that a pregnant physician has no obligation to treat a rubella patient.³² In addition, Rabbi Valdenberg wrote that while living one should not donate internal organs “unless a board of medical specialists determines that there is no possible danger to the life of the donor.”³³

The maximalist approach can be applied in defining the level of a lifesaver’s obligation as a function of his profession. This approach distinguishes between the level of obligation of a physician who has voluntarily entered into medical practice and the obligation of a layman. The minimalist approach, however, applies equally to everyone.

29. Rabbi, Ramat Elchanan (Bnei Braq); head of the Panel for Medicine and Halacha at *Anshei Madda Shomrei Torah*; and Associate of Ladiano and *Ma’ayanei ha-Yeshua* hospitals.

30. *Assia* 41:5-6

31. *Tsits Eliezer* 9:17 (5).

32. *Assia* 41:6-8.

33. *Ibid.* 48.

C. Protecting the Lifesaver who Failed

A physician has only partial protection when he injures a patient due to error while providing medical treatment. If the physician is licensed to practice medicine he is exempted from mundane liability by a rabbinic court, but he is liable in the eyes of Heaven. If he kills through error, he must seek refuge in a “city of refuge.”^{34,35}

Chatam Sofer,³⁶ however, discussed the case of a woman who endeavored to revive a girl who had fainted. She thought she was providing the girl a bottle of brandy, but in her haste gave her a bottle of poison. The girl died and Chatam Sofer exempted the woman from guilt.

Chatam Sofer distinguished between the case of a father who disciplines his child and an officer of the court whose duty it is to impose corporal punishment. In the case of the officer of the court, the punishment itself is potentially lethal. Therefore it is clear that an error in applying corporal punishment can lead to death. But the woman who gave poison to the girl was attempting to save her life, and the administration of the poison was inadvertent. Such inadvertence is exempt from guilt.

The woman who failed in her attempt to save the girl was, from her point of view, engaged in risk-free lifesaving. But a surgeon who operates must know that his procedure is dangerous although he hopes that the chances of success are greater than those of failure.³⁷ In the opinion of Chatam Sofer, a lay person is entitled to protection both on the basis of halacha and policy considerations. A lay person fulfills the *obligation* to save life by executing a lifesaving *procedure*. We consider his error to have been done unwillingly (אונס), rather than unwittingly (שוגג). Policy considerations encourage lifesaving. If the lay person fears that he will be sued, he will refrain from volunteering.

It follows that the lay lifesaver is afforded broad protection, both from criminal prosecution and from tort liability. Since laymen may not take risks, this protection applies in situations which are thought to be risk-free. Further, anyone who engages in lifesaving and fails is free of guilt.

34. *Yoreh De'ah* 334:1.

35. Regarding physicians' error, see Rabbi Y. Zilberstein, “Medical Error,” in *Emek Halacha*, p. 124, and Rabbi Eliezer Y. Valdenberg, *Tsits Eliezer* 4:13 and 5 (*Ramat Rachel* 22), both of whom adduce more sources.

36. *Orach Hayim* 177.

37. See *Beit ha-Behira, Kiddushin* 43a, with the notes of Rabbi A. Sofer, p. 216, line 8.

Regarding the Victim

A. The obligation to save life is autonomous and applies even in cases where the victim endangered himself on purpose.

In theory, one might argue that a person who intentionally endangers himself is responsible for his own death.³⁸ This theory could be supported by considering the source of the obligation to save life: “You shall surely return it to him.” This commandment deals primarily with the return of lost property and does not apply to property which has been purposely abandoned.³⁹

However, the medieval commentators distinguished between loss of property and loss of life. A person is the owner of his property and has the right to abandon it, give it away, or destroy it. But no one has ownership over his body or his life.^{40,41}

B. Prof. Kirschenbaum’s article deals with lifesaving procedures in cases of drowning, attack by wild animals, collapsed buildings, etc., where immediate professional response is required.

A special discussion is needed regarding medical practice where the physician performs dangerous procedures (such as surgery) in order to lengthen the patient’s life. The physician does not cause injury in the same way as a wild animal or a river. He engages in the fulfillment of the commandment of healing. The acts of the physician are directed to healing which benefits the patient. He is only permitted to execute procedures which will probably benefit his patient.⁴² As a rule, the physician is permitted to cause pain and suffering to the patient as long as the pain and suffering might be *beneficial* to the patient (and the benefit is greater than the suffering).

Medical technology allows artificial maintenance of the respiratory and cardiovascular systems without saving the patient’s life. This situation is beyond the scope of lifesaving.

Leading contemporary rabbinic figures have decided that no patient is obligated to suffer without purpose. A patient suffering

38. Cf. *Ritva* on *Eiruvin* 29b, s.v. *u-vikkeshu alav chaverav rachamim*, and the notes of *Ya’avets*, *ibid.*

39. *Bava Metsia* 23b; 25b.

40. Rambam, *Rotseach* 1:4.

41. Resp. *Maharam me-Rothenberg* (ed. Bloch), Sect. 39; *Tsits Eliezer* 15:15 (4:3-4). See Rabbi Reuven Margoliot, *Margoliot ha-Yam* 73a (12); Rabbi B. Rakover, “*Chiyyuv Lehatsil Me’abbed Atsmo le-Daat*” in *Kol Torah* 11 (5717) 8: 11-12 and 9: 11-12; Rabbi G. Zinner in *Bi-Shvilei ha-Refuah* 8 (5747): 78, quoting the Klausenberger Rebbe.

42. Cf. *Responsa Maharshal* 91 and *Gittin* 34a.

from cancer is permitted to refuse to continue chemotherapy that instead of curing him will merely lengthen his suffering. If a terminal patient in such a condition stops breathing or if his heart stops beating, there is no obligation to resuscitate him or to lengthen his life and his suffering.⁴³

Leading rabbis have established guidelines for *gradually* stopping treatment when systems shut down. In such situations there is, on the one hand, a prohibition against shortening life in any active way and, on the other hand, prevention of needless suffering.⁴⁴

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43. *Nishmat Avraham* 4, *Yoreh De'ah* 339.

44. See “*Klalim le-Hitnahagut Rofe be-Yechida le-Tippul Nimrats*” by A. Steinberg in *The Proceedings of the Second International Conference on Medicine, Ethics, and Halacha*, Tammuz 5756.