

## What Contemporary Bioethics Can Learn from Progressive *Halakhah*

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It is the fall of 2020, the beginning of the Jewish year 5781, and the COVID-19 pandemic shows no signs of abating. We await a vaccine, wondering about its effectiveness and about whether the world's governments can organize properly to manufacture it in massive quantities and to distribute it efficiently and equitably. There is much we do not know about the future, but one thing we can say with certainty is that the coronavirus pandemic has changed the world. There's no question that we as a society feel more vulnerable now than we did a year ago. We feel vulnerability, not only in the face of the virus itself, but also because our response to it has been abysmal. This is especially true in many liberal Western countries (the [United States](#), [Europe](#), [Israel](#)) where, in contrast to [the world's largest authoritarian society](#), our governments have thus far failed to bring the disease under control. That failure has led to no little social unrest and a deep loss of confidence in our political leadership and in the ability of our vaunted technological prosperity to keep us safe.

Perhaps this change is not permanent. Perhaps, when this is all over and life returns to normal (whatever "normal" will look like), we will lose that sense of vulnerability and go back to our old ways of thinking. But perhaps not, at least not entirely.

One area of life and thought that may never be the same is the sphere we call bioethics, the meeting ground where our moral reasoning encounters the life sciences and the technologies of modern medicine. In a provocative [article](#) (Hebrew; here's [an English summary](#)) published in the Israeli journal [ביו-אתיקה](#) (*Bioethics*), [Dr. Hagai Boas](#) and [Professor Nadav Davidovitch](#) argue that the experience of the pandemic threatens the dominance of the "liberal paradigm" in Western bioethical thinking. Liberal bioethics is "liberal" in that it privileges the rights of the individual – the patient – over almost all other considerations. The principles of patient autonomy, informed consent, and physician-patient confidentiality are central to its way of thinking. Liberal bioethics has taken the place of an older bioethical paradigm that the authors call "public health ethics." The product of such 19<sup>th</sup>-century intellectual currents as nationalism and the newly-developed social sciences, public health bioethics "emphasizes the social, economic, and political contexts of health and the social and political forces that shape the decision-making process within the society. Its primary concerns include access to medical care, sanitation, water, electricity, as well as differences among communities in the degree of access to these basic services." Where liberal bioethics conceives of the individual as "an actor whose autonomy is sacred," public health bioethics begins its thinking with the welfare of the community within which the individual lives in relationship with others.

There exists, obviously, no little tension between these two paradigms of bioethics. As a "well-known example" of this tension, the authors point to immunization. The physician working under the liberal paradigm will focus upon the individual patient, who has the ultimate right to decide upon a course of treatment that either includes or excludes immunizations. Against this, public health bioethics will grant precedence to the community's right to a healthy environment.

“Liberal bioethics stresses the freedom of individual choice, while public health bioethics emphasizes more collective values such as communal solidarity and the good of the whole.” We are familiar with the battles over [immunization](#) in our societies.

The coronavirus pandemic poses a different sort of challenge. The strict measures adopted by many governments in the name of public health – lockdowns, business closures, mask-wearing ordinances, compulsory testing, the monitoring of cell phones in order to track the movement of citizens, and on and on – represent a sharp and sudden move away from the liberal paradigm to one that grants preference to the public health. This goes a long way to explain public opposition to these measures; as justified as they may be from a purely medical standpoint, they are experienced by many as unwarranted government intrusion and a loss of personal freedom. That opposition may be ill-advised – [we certainly think that it is](#) – but the sudden lurch from liberalism to an ethic of public health means that the public may not have been adequately prepared for the measures that have been imposed on them. Many of our fellow-citizens in Western countries still live their lives in accordance with the liberal bioethical paradigm: my health is *my* business, a matter to be discussed between me and my physician. Restrictions placed by governments and healthcare bureaucracies upon one’s personal freedom of association – *especially* when those restrictions involve economic and social hardship – will inevitably encounter serious – and [sometimes violent](#) - resistance.

None of this means we must dump liberal bioethics into the trash-heap of history. Boas and Davidovitch are careful to remind us that liberalism’s “sanctification” of personal autonomy has brought to an end “a gloomy history of exploitation and coercion of patients.” The liberal approach has taught us that medical care must be delivered with no regard to the patient’s gender, race, or economic status (however imperfectly these goals have been realized). These transformations are permanent fixtures of our intellectual and moral world; we Westerners will not easily surrender our autonomy, nor should we. But the experience of the pandemic teaches us that an exclusively liberal paradigm can blur our focus upon public health by prioritizing individual concerns over those of the community. Political leaders tell us to go out, to enjoy ourselves, and in the absence as yet of an effective vaccine “to learn to live with the disease,” to place our hopes in the attainment of “[herd immunity](#)” – [with disastrous consequences](#). This clearly will have to change. The liberal bioethical paradigm that has prevailed in our societies is quite literally killing us, and if we are going to make progress in the near and far-range future it shall have to enter into serious conversation with the public health paradigm.

This is easy to say – but how is it to be done? How can we imagine a productive “conversation” between two paradigms when each of them proceeds from such contradictory premises?

Progressive *halakhah* offers a model of just such a conversation. It is rooted first of all in the Jewish legal tradition, which is a communitarian tradition rather than a liberal one. It is *communitarian* in that it speaks a language of covenant (*b’rit*), of *mitzvah* and obligation (*hiyuv*, חייב) – to God and to our fellow humans - rather than a discourse of individual autonomy. It is a *tradition* in the sense of Alasdair MacIntyre’s definition of that term:[1]

A living tradition, then, is an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition. Within a

tradition the pursuit of goods extends through generations, sometimes through many generations. Hence the individual's search for his or her good is generally and characteristically conducted within a context defined by those traditions of which the individual's life is a part...

At the same time, those who conduct their inquiries within the tradition of progressive *halakhah* do so consciously from a liberal perspective. We progressive halakhists are citizens of Western culture who affirm that culture's highest and deepest ethical values. In other words, we participate fully in *both* traditions, the halakhic *and* the liberal, and we are therefore committed to the proposition that the two of them, despite their differences, can and must be brought into coherent conversation. The proof, especially relevant for this topic, lies in the wealth of Jewish legal writing produced by non-Orthodox scholars on issues of bioethics. These essays,[2] responsa,[3] and monographs[4] demonstrate that one *can* argue questions of bioethical concern in a manner that is simultaneously and unmistakably Jewish as well as liberal. The answers will not always persuade; progressive halakhic writers are as capable of *mahloket* (disagreement) as those working in other fields of thought. But together, they show us that it is indeed possible to think about matters of life and death from a perspective that tries to do justice to both ways of thinking about and understanding our moral responsibilities.

Boas and Davidovitch advocate a similar approach for bioethics, one which brings together the ethical assumptions of two conflicting paradigms so as to arrive at nuanced understandings informed by both. Nobody should imagine that this will be easy. But as the experience of progressive *halakhah* suggests, it *can* be done.

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[1] Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, Second Edition (Notre Dame, IN: University of Notre Dame Press, 1984), p. 222.

[2] See, for example the volumes on "Addiction," "Medical Frontiers," "Aging and the Aged," "The Fetus and Fertility," and "Death and Euthanasia" at <https://www.freehofinstitute.org/publications.html>. Other bioethical writings appear throughout the Institute's website (<https://www.freehofinstitute.org>).

[3] Much of this material is available at the websites of the CCAR [Responsa Committee](#) and the [Committee on Jewish Law and Standards](#) of the Rabbinical Assembly. And, gradually by stages, it will all be collated at <https://www.freehofinstitute.org/otzar-hahalakhah-hamitkademet.html>.

[4] See Elliot N. Dorff, *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics* (Philadelphia, Jewish Publication Society of America, 1998) and Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: URJ/Behrman House, 2010), pp. 217-264.