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Playing Russian Roulette with our lives

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“They’re gonna have to.”

That is how our former governor, Chris Christie, responded to a question posed recently by CNN’s Dana Bash.

“There are going to be deaths,” he said, “and there are going to be deaths no matter what.” When asked whether Americans would accept 3,000 deaths a day in order to reopen the economy, which is what even the White House projects, Christie quickly answered with “They’re gonna have to.”

We are supposed to be “One Nation, under God,” but unless the issue involved is a cause célèbre for the evangelical Christian right, God seems to have no influence when it comes to setting policy. It is not the Almighty, but the “Almighty Buck” that rules.

We are seeing that now with the push to get the economy going despite the risks to people’s lives. What many state governors and Trump administration officials are playing with now—what Christie was referring to without using the term—is something known by various names, among them the risk-benefit analysis or cost-benefit analysis. By whatever name, it is an unfortunately common computation that weighs the risk of harm a product may cause against whether making it safer will negatively impact its profitability.

Two egregious cases come to mind. The first involved the Ford Pinto. It debuted in 1971 and continued to be produced throughout that decade. The car was Ford’s first and arguably most popular sub-compact, with at least two million of them on the road by time the Pinto bubble began to burst—literally as well as figuratively—in early 1974 when lawsuits began to make the news. As it turned out, the car should never have been put on the road because pre-production testing revealed a very serious design flaw which went uncorrected. The Pinto’s fuel tank was located just five inches or so forward of the rear bumper. In a rear-end collision at only 25 or 30 miles per hour, the car’s back end would be totally smashed in. The gas tank would be pushed up onto the rear axle where four sharp bolts were located that could easily puncture it, causing the gas to pour out. All it would then take was a single spark and the car would explode. If the collision was at a speed above 30 miles or so, the doors would jam and everyone in the car would be trapped in a blazing inferno.

Ford could have held up production until this was corrected. It could have used a much safer gas tank design, for which it already held the patent, or it could have easily redesigned the rear end so that the gas tank was behind the axle, not in front of it. The simplest and cheapest fix was to put a shield over the axle that would cause the tank to ramp over it. Ford did none of those things, however, because it determined that the benefit to the company’s profitability outweighed the risk to its customers. It estimated that the cost accruing to it from the deaths and inju­ries that might result would total $49.5 million. The cost of making the Pinto safer was estimated at $137 million. “Thus,” a Ford official asserted in a 1973 internal memo (Fatalities Associated with Crash-Induced Fuel Leakage and Fires), “the cost is almost three times the benefits” to Ford’s bottom line and was thus not “cost­ effective.”

In other words, it was cheaper to let people die horrible deaths than to do anything to avoid those deaths.

That is how the cost-benefit analysis works. The late U.S. District Court Judge Miles W. Lord (dubbed “the people’s judge” by fellow Minnesotan Hubert H. Humphrey) oversaw the second egregious case, this one involving the Dalkon Shield, an IUD produced in the early 1970s by the now-defunct A.H. Robins Company (they made Robitussin, among other products). Lord once referred to the cost-benefit analysis as playing Russian Roulette with people’s lives.

“In the olden days—you know, golden olden days—if you killed somebody, if you produced something that would hurt somebody, you were stopped,” he said in a 1981 speech. “If you poisoned someone’s cattle, you were stopped. If you burned all of the surface off someone’s lands, you were stopped. Not today. To­day, we have the cost-benefit analysis, where you weigh how much a human life is worth. Funny, I always thought life was a sacred and priceless thing….When you put a price on the priceless, all is lost….We sort of play Russian Roulette.…”

In a 1984 court hearing, Lord minced no words in referring to the Dalkon Shield as ''an instrument of death, mutilation and disease.” Looking directly at Robins executives, he said, “You have taken the bottom line as your guiding beacon and the low road as your route.” At least 200,000 women in this country alone were injured or made sterile by the IUD; some died because of it.

“The whole cost-benefit analysis is warped,” he later told an interviewer. “They say, well you can kill so many people if the benefits are great enough. Then they can take the benefits and circulate them through the given industry, they circulate them through the oil company, through the gasoline station, through the garage, the hardware store, the drugstore, the shoemaker, the grocery store, and if they don't have enough statistics there, they just circulate them through a bunch of other businesses.”

Russian Roulette is precisely what the Trump administration and various state governments are playing as they ignore the experts and seek to restart the nation’s economy. As Dr. Anthony Fauci , director of the National Institute of Allergy and Infectious Diseases, warned senators on Tuesday, to “prematurely open up” the economy the way it is being done could lead to “suffering and death that could be avoided.” He added, “I have been very clear in my message—to try to the best extent possible to go by the [federal] guidelines, which have been very well thought out and very well delineated.”

Halachah does not operate in the public sphere. If it did, it is highly doubtful that governments or corporations would be allowed to play this game where lives are concerned. To be sure, Jewish law does allow for weighing risks—but it always comes down on the other side of the equation.

As often discussed here, the principle of law involved is known as pikuach nefesh, threat to life. It is pre-eminent in Jewish law. Concern for life takes precedence over almost every Torah law—over 610 out of the 613 commandments, or just over 99.5 percent—and certainly over talmudic decrees. The three exceptions are: if someone says your life will be forfeit unless you kill another person, or unless you commit a sexual crime—rape or incest—against another person, or unless you publicly lead a community into abandoning Judaism for another faith. In those three cases, you have to allow yourself to be killed. Those are the only exceptions, however. (See the Babylonian Talmud tractate Sanhedrin 74a.)

That life comes before law is made clear by the Torah itself. Leviticus 18:5 quotes God as saying, ““You shall therefore keep My statutes, and My ordinances, which if a man does so, he shall live by them.” This means, the Talmud explains, that “man shall live by God’s laws, not die by them.” (See the Babylonian Talmud tractate Sanhedrin 59a.) The extra-talmudic text the Tosefta (see Shabbat 16:14) makes the same point using the same words, as does Maimonides, the Rambam, in his Mishnah Torah, The Laws of Shabbat, 2:3.

Lest anyone argues that this applies only to men, because Leviticus 18:5 only says “a man,” and that women’s lives therefore do not count, BT Sanhedrin 59a also explains why “man” in that verse applies to everyone.

Simply put, if a person’s life is in danger, even if only as a possibility, the law must take a back seat no matter who that person is. Life comes before law.

This plays out in many ways. We are commanded by the Torah to fast on Yom Kippur, the “Sabbath of Sabbaths,” in the Torah’s words. Nevertheless, if a pregnant woman smells food and craves it, even it is unkosher food, she is to be fed that food. Similarly, “If a person is seized with an obsessive craving [for food], he is to be fed even with non-kosher food, until he recovers…, [for] whatever threatens to endanger life supersedes [the observance of] Shabbat.” (See the discussion in BT Yoma, beginning with the mishnah on 82a.) The Talmud makes clear that this applies even if the danger is a possibility, but not a certainty.

Clearly, life supersedes not just Shabbat, but virtually all the laws, including kashrut. Life comes before law in Judaism because the law itself says it must.

So, yes, Jewish law also has its own risk-benefit analysis. In its case, it requires weighing the risks to life—and choosing life over law. It is the Almighty who rules, not the “Almighty Buck.”