

First Things First: Parsing Prioritization Policy Proposals

Adapted from the writings of Dayan Yitzhak Grossman

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The previous two articles in this series set forth the basic rules established by *Chazal* and the *poskim* for the prioritization of scarce medical resources and lifesaving help in general. We have seen that there are basically three sets of criteria:

1. *Chazal* focus on the relative importance of those in danger. Thus, a *talmid chacham* has the highest priority, even ahead of a king or kohein *gadol*, since “Torah wisdom surpasses all else,” and a *talmid chacham* who dies is irreplaceable, whereas “all of Israel is fit for royalty.” A man precedes a woman, and the Be’er Sheva explains that this is because he is holier than she, because he is obligated in all the mitzvos and she is exempt from time-bound ones.[1] R’ Yaakov Emden maintains that while a woman who is “modest, learned, and a woman of valor” takes precedence over an ordinary woman, she does not take precedence over a man, since she is not obligated in the mitzvah of Torah study.[3]
2. Contemporary *poskim* focus on the relative danger to the patients’ lives, the relative expected chances of saving them, and their relative life expectancies (at least with regard to the distinction between *chayei olam* and *chayei sha’ah*).
3. Other rules mentioned by the *poskim* include first come, first served; closest to the physician first; and choosing via lottery.

In this article, we briefly consider the current COVID-19 vaccine allocation prioritization policies in light of these rules.

Prioritizing those most at risk of death

R’ Yair Hoffman writes:

The criterion as to who should be vaccinated first should be made solely with one factor in mind—to maximize the saving of life.... Those most at risk for dying should receive the vaccine first—this should be the only criterion....

Who are they to place value on one life versus the other? ... [The Center for Disease Control’s inclusion of various categories of “essential workers” in its “1b” phase] is sheer madness, and actually a murderous, illegal, immoral policy. We have thrown out all the logic of triaging and have adopted politically correct notions in who shall live or who shall die.[4]

But as we have seen, this is an oversimplification; our Torah, as well (*l’havdil*), does “place value on one life versus another,” and clearly takes into account the relative inherent worth and value to society of individuals in need of scarce lifesaving resources. While the considerations in #2 above may override the Talmudic hierarchy, as we discussed in our first article in this series, and one can certainly challenge the CDC’s classifications of particular workers as essential and particular individuals as being more deserving, it is incorrect to categorically assert that any consideration of societal good and relative inherent merit automatically constitutes

“murder” and “madness.”

(The general idea that the halacha incorporates a variety of criteria, and does not focus exclusively on maximizing lifesaving in the allocation of scarce medical resources, is articulated at length by R' Yaakov Emden, who lists numerous different criteria, including, inter alia, spiritual superiority (Torah scholar vs. ignoramus, man vs. woman), genealogical superiority (kohein vs. *levi*, *levi* vs. *yisrael*),[5] and greater life expectancy.[6] Rav Emden's framework is endorsed by R' Shmaya Dichovsky.[7])

Prioritizing according to a person's value to the public

In the course of his single-minded argument, Rav Hoffman writes:

The argument has been made that healthcare workers should receive it first because otherwise no one will be there to help those who are sick. This is actually not true.... They are the real heroes of COVID-19 and would do it anyway. We are underestimating the nature and character of our nurses and healthcare workers. And by doing so, we have adopted a policy that will kill untold tens of thousands.

In an interview back in Nisan, discussing the anticipated vaccine, R' Yigal Shafran disagrees with Rav Hoffman with regard to both health-care workers in particular and essential workers in general. He goes so far as to assign precedence even to entertainers!

My opinion is that the distribution must be according to a person's value to the public. So when the first shipment of vaccinations arrives, precedence should go to the medical force, the heads of the government, army, the departments of health and economy, electric workers, bakery workers, water-system employees, etc.

Included in the list must also be people who are important in maintaining the public's spiritual and emotional strength in dealing with the crisis, to avoid the weakening factors of depression and despair, such as rabbis. There is also room for people who keep others happy, such as popular singers and comedians.[8]

Similarly, Rav (Shlomo?) Dichovsky is reported to have asserted (in the context of a hypothetical future severe influenza pandemic) that:

[T]here is a value in saving people whom society needs in order to preserve a functional society.... We vaccinate health-care workers before anyone else. This is because health-care workers are needed to fight the epidemic.... [W]e do save people the community needs such as medical professionals and military professionals.[9]

[1] *Be'er Sheva Horayos* 13a end of s.v. *Ha'ish kodem l'ishah*. Cf. *Bais Yosef O.C. siman* 46, regarding the reason for the blessing of *shelo asani israh*.

[2] *B'ohalah shel Torah cheilek* 5 Y.D. *siman* 74.

[3] *Biras Migdal Oz*, Even Bochein *Pinah Aleph* os 95.

[4] The Vaccine Scandal, the CDC, and Murder (The Yeshiva World).

[5] He raises the possibility, however, that these may not apply in contemporary times, since our *kohanim* and *levi'im* are reliant upon mere *chazakah* for their status.

[6]Migdal Oz *ibid. osios* 87-100.

[7]*Sefer Asia Vol. 3 pp. 343-44*. The article is attributed to “S. Dichovsky” and is described as an excerpt of the work *Ne’os Deshe*. This work was authored by R’ Shmaya Dichovsky but prepared for publication by his son R’ Shlomo. The article is attributed here to R’ Shlomo Dichovsky, but this would appear to be erroneous.

[8]Tzvi Fishman, Who Gets Treated First, The Jewish Press, 8 Nissan 5780/Apr. 1, 2020. I am indebted to my wife for bringing this and the subsequent citation to my attention.

[9]Aryeh Dienstag, Rationing During a Pandemic Flu, *Verapo Yerape #2*, pp. 181-84.