Priorities in Immunization

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The good news – and who couldn't use some good news at the end of this depressing civil year? – is that a vaccine for COVID-19 is on the way. Two vaccines, actually, both of which at this writing are nearing approval from the Food and Drug Administration (FDA) for use in the United States. The bad news: despite the exaggerated promises from the outgoing American administration, there won't be nearly enough supply of either vaccine to meet the demand. Estimates are that 35-40 million doses of the vaccine will initially be available in a country of 300 million people. The situation in other countries is likely to be similar.

This raises the painful question of rationing. When there isn't enough vaccine to go around, countries are faced with difficult and unavoidable decisions concerning priorities. When all have to stand in line, who comes first, who must wait, and for how long?

A recent article suggests that the answer requires a choice between preventing deaths and curbing the spread of the disease. As a former FDA commissioner puts it, "If your goal is to maximize the preservation of human life, then you would bias the vaccine toward older Americans. If your goal is to reduce the rate of infection, then you would prioritize essential workers. So it depends what impact you're trying to achieve." Of course, if you decide to prioritize "essential workers," you're hardly out of the woods. The U.S. Department of Homeland Security deems as "essential" all those whose jobs are deemed necessary to maintain "critical infrastructure," perhaps 90 million people, a number that swamps the available initial supply of the vaccine. And we haven't begun to address the question of priorities *within* the "essential workers" category: who is more essential than whom? Do "frontline workers," those whose jobs involve the greater risk of direct contact with the public, take precedence? What about schoolteachers\, especially those who teach remotely? They certainly are "essential" in that they relieve parents of childcare duties, but they don't face as much health risk as other workers.

Does *halakhah* have any guidance to offer on these difficult choices? We think it does, though to be sure, that guidance will not be so detailed and specific as to resolve every question. No ethical tradition, for that matter, can entirely relieve us of the responsibility to make decisions between competing goods. But *halakhah* does approach this issue on the basis of some broad principles that, if applied fairly, can help clarify the ethical confusion that confounds us.

As we have argued, the sources of Jewish law can be interpreted to support any one of three different criteria for medical resource allocation.

The first criterion is that of the equality of all human life. If every *nefesh* is of equal value in the eyes of God and the Torah, then we are forbidden to make distinctions as to which lives are more worthy of saving than others. While this criterion is morally unimpeachable – are we all not created in the divine image? – it would deny communities the discretion to make thoughtful medical decisions, leading to waste of resources and would ultimately lead to more, rather than fewer, deaths.

The second criterion is that of social value: medical resources are to be allocated in such a way as to improve society. The goal is to act not only to save individuals but to save (or benefit) the *right* individuals, those who will contribute the most to the general welfare. The obvious problem with this criterion is that the definition of the general welfare – what justice or equity or utility demands in any particular instance – is invariably a matter of controversy. No matter which version of "social benefit" we favor, we will inevitably end up discriminating against some individuals or groups. What then becomes of our commitment to human equality?

The third and final criterion is that of medical efficacy. The practice of medicine (*r'fu'ah*) is an element of the *mitzvah* to preserve and protect human life (*pikuaḥ nefesh*). It follows that we should structure the practice of medicine in such a way as to make it more effective, to save more rather than fewer lives. This is the principle behind medical triage, and it is the best justification for discriminating among individuals. That is, if all lives are of equal worth, the only acceptable warrant for denying or delaying medical treatment for some or many of them is a purely *medical* one: the goal of *pikuaḥ nefesh* is better served if we prioritize treatment for those who need it the most, as opposed to those who can wait, or for those whom we are more certain that we can save, as opposed to those who are more likely to die even if they receive treatment.

Our conclusion was that the best interpretation of the Jewish tradition on these issues is a combination of criteria #3 and #1. The rationing of lifesaving resources should be based as much as possible upon strictly medical criteria. At the same time, we should never lose sight of the fundamental Judaic commitment to the preciousness of each and every human life.

How do these principles apply to the distribution of COVID vaccines? First in line for immunization, apparently, are "the frail elderly," especially residents of nursing homes, and to healthcare workers. These decisions stand well in accord with the criteria we have outlined. The allocations are being made on the basis of clearly *medical* criteria: those who are in the most danger of dying from the disease and those who are essential in treating the disease ought to enjoy first priority.

The real questions concern the next rounds of immunization. We will still not have enough vaccine for all, and allocation – read "rationing" – will be necessary until we possess sufficient quantities of the drug. Who then shall go first? Should priority be given to those who face the greatest risk of death – older persons, those with underlying medical conditions, and the like – or should the emphasis be placed upon those "essential workers" so as to limit the spread of the disease? And what about considerations of racial and social justice? Groups within the population that are economically disadvantaged or are the targets of discrimination can make a strong argument that their members suffer disproportionally from the pandemic and should therefore enjoy a higher priority than others. As a report of the Hastings Center puts it, "Ethical, epidemiological, and economic reasons demand that rationing approaches give priority to groups who have been structurally and historically disadvantaged, even if this means that overall life years gained may be lower."

That's a laudable position, but it runs counter o the message of our tradition. Medicine's *raison d'etre* is first and foremost to save lives. Allocation decisions must be justified by that rubric, as

opposed to other criteria, however worthy those may be. In determining who gets the vaccine and when, communities must practice *medicine* and not social reform.

None of this is to say that considerations of race or economic class are irrelevant to this discussion. Sadly, they figure prominently in matters of public health, and those of us who call ourselves liberals or progressives would hardly think otherwise. But these demographic realities ought to figure in allocation decisions only to the extent that they are *medically* significant. For example, an identified racial or class group may be particularly vulnerable to COVID due to any number of factors (nature of employment; need to use public transportation; lack of adequate healthcare; dense living conditions make it impossible to socially distance; etc.). Members of that group, along with their families, should receive a correspondingly higher priority for vaccination, not specifically because of their racial or class identity and not out of an otherwise laudable desire to rectify past discrimination but simply because the data show that they are relatively more vulnerable to contracting the disease. By contrast, members of more advantaged racial or class groups may justifiably be ranked lower on the priority scale precisely because they *can* socially distance and because their work does not expose them to a comparatively high risk of contracting the virus. The point is that medical decisions ought to be based as much as possible upon strictly *medical* criteria or, at the very least, criteria that can be reasonably defended on legitimate medical grounds.

No thoughtful person would claim that the practice of medicine exists in a vacuum, in splendid isolation from the social and economic realities in which we live. But in a situation of scarcity, when we have to make agonizing, potentially life-and-death decisions of resource allocation, we tread upon shaky ground when we base those decisions on inherently controversial measurements of comparative social worth. When the Torah, as read by the Rabbis and by our progressive halakhic tradition, establishes for us a duty to rescue those who are in danger,[1] it does not condition that obligation upon the endangered person's social or financial status. The only factor that counts is that she or he is a fellow human being in need of our help.

It is a *mitzvah*, a moral duty, to do everything we can to repair the damage and to reduce the suffering caused by racial hatred and economic inequality. Yet it is also a *mitzvah* – the greatest *mitzvah*, the one that outweighs all the others – to save human life. It is to that end, to save lives and, indeed, as many lives as we can, that we practice medicine. It is to that end that we should allocate the coronavirus vaccine.

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[1] Leviticus 19:16, "לא תעמד על דם רעך". The Rabbinic interpretation of this verse as establishing a duty to rescue is found in *B. Sanhedrin* 73a, Rambam, *Hil. Rotze'aḥ* 1:14, and *Shulḥan Arukh Ḥoshen Mishpat* 426 (and see Rashi to the verse). The sources refer to the person in need of rescue as one's "neighbor" or "fellow" (רע, חבר). When the question concerns a moral duty (as opposed to a ritual matter), progressive *halakhah* applies these terms to all humans, not only to one's fellow Jews.