

Jumping the Vaccine Line: Is It Ethical?

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Suppose you get the chance to receive a COVID-19 immunization. “Wait a minute,” you say. “There are people out there, some of whom I know, who have not yet been vaccinated, even though they are more deserving of it than I am.” Perhaps they have medical conditions that ought to rank them higher than you in the scale of priorities. Perhaps they are “essential workers” while you, whatever your job, can do it from home, online, in a much safer environment. Should you accept the immunization? Should you feel guilty about it?

[A recent article](#) (January 21, 2021), drawing upon the opinions of a number of bioethicists, answers these questions “yes” and “no.” You should accept the vaccine because there is no guarantee that, should you turn it down, your dose will in fact go to someone who is more deserving than you. And you shouldn’t feel guilty about getting the shot, because you may be more “deserving” of it than you think. (Priorities are complex things.) Besides, each vaccination brings us closer to our longed-for goal of herd immunity, so that your own shot – no matter how “undeserving” you may be – contributes to the overall level of public health.

We’re not here to criticize that conclusion. Bottom line: you should *not* feel guilty if you get the chance to take the vaccine sooner than you expected you would. Still, the phenomenon called “jumping the line” does constitute a problem in *halakhah* as well as in bioethics. Communities set priorities for the distribution of medical resources precisely because those resources are limited – at least for the time being – to go around. *Some* set of priorities is unavoidable, and the communities presumably have good reasons for choosing their particular set. *We* certainly think there are good reasons for priorities, as we’ve argued [here](#) and [here](#). It matters, then, when these priorities are ignored, and we have to consider the ethical dimensions of an individual’s decision to ignore them.

The term “jumping the line” suggests that an individual has purposefully committed an unfair act. We can probably all agree that one who intentionally pushes forward in the vaccine waiting line, thereby robbing others of the places they previously held, has done something wrong. The more difficult question concerns a person who, through no intentional act of their own, gets the opportunity to jump. Should they take it?

The relevant halakhic text would seem to be an old favorite from *B. Bava Metzi`a* 62a:

שנים שהיו מהלכין בדרך, וביד אחד מהן קיתון של מים, אם שותין שניהם - מתים,
ואם שותה אחד מהן - מגיע לישוב.
דרש בן פטורא: מוטב שישתו שניהם וימותו, ואל יראה אחד מהם במיתתו של חברו.
עד שבא רבי עקיבא ולימד: וחי אחיך עמך - חייך קודמים לחיי חבריך.

Two men are traveling in the desert. One of them holds a container of water. If both of them drink it, they will both die [Rashi: there is not enough water for both]. If the one who holds the water drinks it all, he will survive to reach civilization. Ben Petura said: it is better that both of them share the water, so that the one not look upon the death of his fellow (*cf.* Gen. 21:16: ואל אראה במות הילד). But Rabbi Akiva taught: “that your brother may live with you” (Lev.25:36: *if your kinsman, being in straits, cannot support himself, you shall assist him...and your brother shall live with you*); that is, your own life takes precedence over the life of your fellow.

A bioethical reading of this passage translates “container of water” into “lifesaving medical resource,” be that a vaccine, a drug, a bed in a hospital or emergency room, or anything else. One who “holds the container of water” either has ownership of that resource, is currently receiving medical treatment, or (as in our case) enjoys a place in line, a certain priority in receiving the treatment. The accepted *halakhah* follows Rabbi Akiva: saving one’s own life is the higher priority, so that one is entitled to keep the lifesaving resource should one already possess it. [1] Since the text does not discuss the “resumes” of the two travelers, the implication is that the one who holds the water may keep it even if the other might be judged more “deserving” of survival.

A responsum by Rabbi Moshe Feinstein [2] dealing with priorities in medical care offers an example of this thinking. In the hypothetical, two patients arrive simultaneously at an emergency room that has but one spot available for treatment. Patient A definitely immediate emergency treatment but even with that treatment is unlikely to survive for long. Patient B may or may not require immediate treatment, but the doctors are certain that if treatment begins immediately the patient will recover. Feinstein rules that Patient B takes priority; the *mitzvah*, after all, is to save life, and the doctors know they can save Patient B. If, however, Patient A has already been admitted to the last bed in the emergency room, it is forbidden to remove him or her from there or to cease treatment in favor of Patient B. His reasoning:

דלהחולה עצמו ליכא חיוב להציל נפש אחרים בנפשו, וכיון שהכניסוהו להיחידה לרפאותו כבר זכה בהמקום, לא מיבעיא כשהוא משלם בעד הזמן שנמצא בבית החולים, בין שאינו משלם שמרפאין שם בחנם, ואף אם רק לעניים בחנם והוא עני מ"מ כבר קנה במה שהובא שם להיות שם הזמן שצריך להיות שם והשעבודים שיש על ביה"ח והרופאים דשם לרפאותו ואינו מחוייב ואולי גם אסור שיתן את זכותו.

The patient himself has no obligation to save the life of another at the cost of his own. And once he has been admitted to the unit for treatment, the place is his by right, whether he pays for it or whether he is poor and receives treatment for free. Either way, he acquires the spot. The hospital and the physicians are bound [under *halakhah*] to treat him for as long as is required. He bears no obligation to surrender his right, and he is perhaps forbidden to do so.

Patient A, in other words, ‘holds the container of water’ and is permitted to keep it. He has acquired the right to treatment and need not transfer that right to Patient B, even though the latter, because his life can be saved if he is treated, might be defined as more “deserving” of the limited medical resource.

It's important to stress the word "keep" in the first sentence of the previous paragraph. Rabbi Akiva permits the traveler who holds the water to maintain the *status quo ante*. His opinion does not contemplate the possibility that the traveler who has no water might steal the other's supply. That act of commission (*ma'aseh b'yadayim*) would obviously violate the Torah's injunction against theft and would be tantamount to murder. [3]

Applying that *halakhah* to our question, we would conclude that a person who holds an appointment to receive a vaccine is not required to yield their place in line to another person, even one who is ostensibly more "deserving": of receiving it. So long as one has not acquired that appointment through illegal or devious means (in which case one has stolen that appointment from a person who was entitled to it), one may hold on to it. So you're off the hook.

And yet (isn't there always an "and yet"?) ...

There is something unsatisfying about all this. As we've indicated, the *Bava Metzi'a* text begins from the presumption that the container of water is the legal property of the traveler who holds it. But if we're going to draw an analogy between that text and the allocation of medical care, we have to ask whether the concept of private ownership applies to resources – vaccines; a bed in the emergency room – that truly belong to the public. On this score, R. Feinstein's contention that once treatment has begun the patient acquires an absolute right to it is questionable at the very least. Why shouldn't the community authorities, whose job it is to allocate resources in a manner that most efficiently performs the *mitzvah* of saving human life (*pikuah nefesh*), maintain the discretionary power to distribute those resources accordingly? Why should the community be forced to stick to a system of allocation that is inefficient, that will save fewer lives? Progressive *halakhah* would ask these questions, even if they did not occur to Rabbi Feinstein.

More than that: while the *Bava Metzi'a* passage presumes that the traveler who holds the water possesses it legally, it does not question whether that possession is *morally* justified. In other words, it does not question the rightness of the *status quo ante*. Perhaps the first traveler brings water for the journey because, being richer, better educated, or part of a close and well-functioning family or social support system, he is able think ahead and equip himself properly. This doesn't mean, of course, that the first traveler must share the water with his companion; after all, no one is obligated to commit suicide to save the life of another, however noble that act may seem. The difficulty arises, again, when we use this text as an analogy for the allocation of medical care. Unlike the authors of that text, and unlike Rabbi Feinstein, we have to question the *status quo ante*. Why do some individuals have access to more and to better medical care than others? In this particular case, why do some individuals get the chance to move up the line in vaccination priority? Is it because they are wealthier and more powerful? Because they have better access to the Internet and to social media? Factors such as these mean that some individuals will enjoy connections to doctors, hospitals, and government agencies that will enable them to get the vaccine sooner than they would have if they had simply waited their turn. Maybe that's just the way things go in our unfair world. But it *is* nonetheless unfair, and we have the duty to say so.

Do you detect the whiff of social justice in these words? You're right, and that's what progressive *halakhah* brings to this discussion. Traditional *halakhah* might or might not question

the *status quo ante*; we do and must. Again, this does not mean that you should turn down the chance to receive an immunization if it comes to you sooner than you think it should. You as an individual are not obligated to correct the injustices of society all by yourself. But our vision of *halakhah* requires us to focus our attention upon the communal side of questions such as this. We, the community, must bring our organized power to bear on the phenomenon of line-jumping. Our medical resources, particularly at a time of pandemic, belong to all of us. If we as a community have determined a set of allocation priorities because there isn't yet enough vaccine to go around, then we *as a community* are charged with the responsibility to make sure that those priorities are a) morally justifiable in the first place and b) enforced.

Simple justice – and Jewish law – require no less.

[1] The parallel version of this *mahloket*, in *Sifra, Behar, parashah 5*, ch. 6:3, makes it clear that Ben Petura, like Rabbi Akiva, bases his ruling upon a *midrash* of Lev. 25:26. As he reads the verse, the words “*and your brother shall live with you*” imply an equivalence between one's own life and that of one's “brother” so that neither life enjoys a priority over the other. Rabbi Akiva, presumably, understands the verse to mean that one must see to one's own survival before one can be of assistance to others.

[2] *Resp. Ig'rot Moshe, Hoshen Mishpat 2:7* (1982).

[3] A “non-action” (שב ואל תעשה, *shev v'al ta'aseh*) – i.e., maintaining the previous situation by keeping the water – is *not* considered an act of murder, even though it leads directly to the death of the other traveler, according to Rabbi Akiva's interpretation of Lev. 25:36. Ben Petura, of course, would disagree.