

Thinking and *Paskening* About Vaccine Mandates

The Freehof Institute of Progressive Halakhah, 2021 / תשפ"א

Our [conversation](#) on mandatory immunization against COVID-19 has revealed some differences of opinion. Three of us say “yes,” vaccination ought to be mandatory, while one of us thinks that we should not bar participation in synagogue services and community programs to those who refuse the shot. What unites the two sides is that each one has come to a decision, and this decision has logical and obvious consequences. If your progressive reading of *halakhah* leads you to conclude that vaccination is a *hovah*, an obligation, then it follows that synagogues, schools, and other Jewish institutions have every reason to make it a requirement for all who enter or participate, excepting of course those individuals for whom the vaccines would pose a significant medical risk.¹ After all, if [universities](#), [schools](#), [healthcare systems](#), [concerts](#), and [cruise-ship lines](#) require vaccinations for those who enter or attend, why not Jewish communities? If, on the other hand, you do *not* hold immunization to be mandatory, then you might strongly urge people to get the vaccine yet believe that their failure to do so should not deny them access to our institutions. Either way, you’ve made a decision that is clear and that follows from your reading of the sources. We hope we’ve done that here.

While we’ve expressed our opinions and argued for them, we do not claim to have issued *p’sak*, definitive rulings. Our function was one of *limud* (theoretical learning) and not *ma’aseh* (practical, determinative instruction). That’s because nobody has turned to us with a *she’elah*, a halakhic inquiry requesting a decision. In non-Orthodox Jewish communities, the task of issuing *p’sak* falls to committees of rabbis established for that purpose: the [Committee on Jewish Law and Standards](#) (CJLS) of the (Conservative) Rabbinical Assembly,² and the [Responsa Committee](#) of the (Reform) Central Conference of American Rabbis (CCAR). Each committee issues *t’shuvot* (responsa) that, based upon

¹ One could also allow the unvaccinated in the building under certain appropriate conditions - masking, social distancing, etc. Again, the language of “mandatory” implies that one would impose appropriate *requirements* upon the behavior of individuals.

² In Israel, the [Va`ad Hahalakhah](#) of the Masorti movement exercises this function for the Conservative community in Israel.

the interpretation of *halakhah* and the traditions of its movement, decide questions of Jewish practice. It's true, of course, that neither committee claims absolute obligatory authority for its decisions. The Conservative movement recognizes the local rabbi as *mara d'atra*, the ultimate halakhic authority in his or her community. And Reform responsa, while reflecting the considered opinion of their authors, are famously advisory and non-binding in nature. Still, it's the essence of *p'sak*, even if non-binding, to be *decisive*, to offer what its authors think is the best available interpretation of how Torah and tradition would have us answer this particular question. A non-Orthodox *sho'el/et* (one who submits a question) may or may not accept that answer, but s/he expects that the *poskim* will take a stand and issue a clear and coherent ruling.

Both these *halakhah* committees have dealt with the very question that we've been considering here. Each has produced a thoughtful responsum (*t'shuvah*), well-grounded in the halakhic sources. But we have to confess to just a bit of disappointment at their answers. Each responsum is plagued by a certain lack of decisiveness - a failure to take a clear and coherent stand - that we think reduces its effectiveness as *p'sak*. And that, in turn, raises a larger question about progressive *halakhah*: do we have the courage of our convictions? Are we willing to stand behind our conclusions and to *decide*? And if not, what's standing in our way?

Let's begin with the detailed and comprehensive CJLS [t'shuvah](#), [authored](#) by Rabbi David Golinkin, the Conservative movement's leading Israeli halakhist. The responsum, adopted unanimously by the Committee on January 5, 2021, concludes that vaccines in general and the COVID vaccines in particular are unquestionably to be defined as life-saving medical treatment. And given that our tradition classifies *r'fu'ah*, medicine, under the category of *pikuaḥ nefesh*, the saving of human life, it follows that "there is a halakhic obligation for Jews to vaccinate themselves and their children, unless their doctors determine that it's dangerous for that specific person to be vaccinated due to a pre-existing condition." The finding that vaccination is *obligatory* is eminently reasonable, on all fours with the *t'shuvah*'s textual premises and argument. But consider its very next sentence:

Similarly, it's halakhically permissible for a school or a synagogue anywhere in the world or the government of the State of Israel to enact a *takkanah* or regulation that one must receive a vaccination and to prevent an unvaccinated person from entering a synagogue, a school, or a shopping mall.

“Halakhically permissible?” Rabbi Golinkin has just pulled the teeth of his *p'sak*. If vaccination is obligatory, the language of “permissibility” is out of place. If we're talking about *pikuah nefesh*, then there's no wiggle room; the *halakhah* does not allow us to say no. One would think it's the duty of a *posek* who reasons in this manner to rule unambiguously that the community ought to mandate vaccination. What other conclusion logically follows from his argument? Yet Rabbi Golinkin steps back, leaving that choice to the community leaders and politicians.

A similar problem besets the *t'shuvah* of the CCAR Responsa Committee, “Guidelines for Reopening After the Pandemic.” This responsum comes to the same conclusion as Rabbi Golinkin (whose *t'shuvah* it cites approvingly) regarding immunization in general and the COVID immunization in particular: “the vaccines are *r'fuah b'dukah*, ‘proven medicine,’ as our tradition understands the concept.” This is a fateful choice of language: “our tradition,” as we've noted above in our conversation, understands *r'fu'ah b'dukah* to be mandatory. If a particular medical therapy is “proven,” then on grounds of *pikuah nefesh* an individual may be compelled to accept it and, at the very least, has no good reason under *halakhah* to refuse it. But the responsum quickly backs away from the logic of its textual argument, concluding that while “every community must adhere to public health guidelines as a baseline... We do not want to turn any Jew away from a synagogue; generosity, consideration, and flexibility will be necessary as congregational leadership thinks these questions through beforehand.” Again, no mandate; like Rabbi Golinkin's ruling, the CCAR responsum leaves the decision to the congregation.

This refusal is nothing new in progressive *halakhah*. In 1999, the CCAR Responsa Committee was asked to rule on a congregation's policy to mandate the “standard”

immunizations for children entering its religious school. The [responsum](#) endorsed the policy on similar grounds cited in the responsa which we discuss here, finding that “there are no valid Jewish religious grounds to support the refusal to immunize as a general principle.” In its conclusion, it declares that immunization “is part and parcel of the traditional *obligation* [our emphasis - Freehof Institute] to practice and to avail ourselves of medical treatment.” Yet at the very end it tells us: “A congregation is entitled, should it so choose, to adopt a rule that requires immunization of students before their admission to religious school.” Well, which is it to be? If vaccinations are “obligatory,” the congregation *ought* to require them; why doesn’t the responsum say *that* rather than suggest that the matter is optional?

In each of these three cases, the progressive *poskim* follow the logic of their argument until the very last moment. They find that immunizations are obligatory, but they leave to synagogues, schools, and community institutions the option of deciding whether or not to enforce the obligation. Again, which is it to be? If something is an obligation, then by definition it’s not optional. That’s the contradiction that affects each of these responsa.

One could defend this lack of decisiveness on the grounds that, ultimately, the decision about mandates will be made by individuals, communities, and congregations rather than by *halakhah* committees, which have no power to impose (let alone enforce) vaccine mandates upon anyone. That’s true, and obviously so; we progressives are after all committed to the principles of individual choice and local autonomy. But “autonomy” in Jewish religious life simply means that *tradition*, in the form of legal discipline, lacks the political authority to compel obedience. The individual and the community therefore enjoy the power of choice, but that doesn’t mean that *any* choice they make is equally good or bad. And it certainly doesn’t exempt responsa writers from their duty to teach Torah and to issue *p’sak*. The task of *poskim*, including progressive *poskim*, responding to *she’elot* regarding Jewish religious practice, is to tell us what in their considered opinion we *ought* to choose and why. Those of us who work in the field of progressive *halakhah* are well aware that our communities will not always agree with us. But we still

have to do the work, to engage them in argument, so that the decisions they will make in the end will be informed by Torah, *halakhah*, and Jewish tradition.

That's why the most coherent response, if one holds (as these responsa hold) that the vaccines are obligatory, would be to say that Jewish communities *ought* to mandate vaccination unless they determine that logistical, bureaucratic, and political roadblocks render that course of action impractical. Such a *p'sak* would be realistic. It would acknowledge that the real impediment to vaccine mandates does not lie in our uncertainty over what our tradition teaches - there *is* no uncertainty - but in our lack of the political will and moral backbone to put those teachings into practice. It would be a *p'sak* that is *decisive*... which, in the end, is what our people expect and deserve from us.