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FIRST THINGS FIRST: PARSING PRIORITIZATION POLICY PROPOSALS

Adapted from the writings of Dayan Yitzhak Grossman

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.²

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

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PARSHAS VA'EIRA SORCERY'S SOURCE

Excerpted and adapted from a shiur by
Rav Moshe Zev Granek

And the necromancers did likewise with their whisperings to bring out the lice, but they were unable...

Shemos 8:14

The Rambam (*Hil. Avodah Zarah* 11) lists the types of witchcraft and sorcery that are forbidden by the Torah. He writes that all of these are lies and falsehoods; they have no real power and are only tricks and illusions used to fool people.

This statement seems to contradict many Gemaras, as well as numerous *pesukim*, that speak of witchcraft as a real but impure power. The *Rishonim* and *Acharonim* suggest several answers to this problem, each of which is problematic.

I would like to offer another possible answer. In *Hilchos Yesodei HaTorah*, the Rambam says that a *navi* (prophet) must prove himself with a sign, like successfully predicting the future, in order to be accepted. But how, the Rambam proceeds to ask, is this a sign of prophecy—perhaps the man is a sorcerer who can see the future through the forces of impurity? He answers that sorcerers are only correct some of the time and are always wrong about some of their predictions, so if a person is consistently correct, he must be a true *navi*. It emerges from this Rambam that practitioners of witchcraft might indeed see the future, but they do so unreliably. Perhaps he re-

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

² Biras Migdal Oz, Even Bochein *Pinah Aleph* as 95.

Q&A from the
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Knot Allowed

Last Shabbos night, while trying to untie my shoes, I mistakenly knotted them (an X over an X). Not knowing whether I was allowed to untie them, I slept in my shoes. Would I have been permitted to undo the knot?

Among the 39 prohibited *melachos* of Shabbos are *kosheir* (tying knots) and *matir* (untying knots). The Gemara says there are three categories of knots: the Biblically prohibited, the Rabbinically prohibited, and the permitted.

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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.³

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*),⁴ and greater life expectancy.⁵ Rav Emden's framework is endorsed by R' Shmaya Dichovsky.⁶)

³ The Vaccine Scandal, the CDC, and Murder (The Yeshiva World).

⁴ 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.

⁵ Migdal Oz ibid. *osios* 87-100.

⁶ 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,

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 health-care 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.⁷

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

but this would appear to be erroneous.

⁷ 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.

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According to the Rambam, a professional knot that was intended to be permanent is Biblically prohibited; a knot meeting only one of those criteria—it's either professional or permanent—is Rabbinically prohibited; and one meeting neither is permitted. But according to Rashi and the Rosh, intended duration is all that matters: A permanent knot is Biblically prohibited, one meant to last a long but finite time is Rabbinically prohibited, and a knot made for a short time is permitted. The Shulchan Aruch follows the Rambam, but the Rama only permits a knot allowed by both views, i.e., a short-term amateur knot.

The *Rishonim* discuss the parameters of the "professional" knot. The Rama, citing the Hagahos Alfasi, rules that any double knot should be avoided, as it is possibly professional. And *Rishonim* disagree whether "short" means under 24 hours or under a week. The Biur Halacha (317:4) rules that one should assume it's 24 hours, except in cases of great need, where he may go with one week.

In your case, based on the foregoing rules, it would seem to be forbidden to untie a double-knotted shoelace. But the Chochmas Adam writes (see Mishnah Berurah 317:23) that one may untie a double knot that was made unintentionally. The Chazon Ish (O.C. 52:17) explains that the stringency to avoid double knots is only a minhag, and the custom was never adopted in the case of a mistake. Additionally, even if you had knotted it intentionally, because it was intended for less than 24 hours, it may be untied in a case of great physical distress—like disturbed sleep—because it is a question of a Rabbinic prohibition and is in fact permitted according to many *Rishonim* (see Rama 317:1).

epidemic.... [W]e do save people the community needs such as medical professionals and military professionals.⁸

⁸ Aryeh Dienstag, Rationing During a Pandemic Flu, Verapo Yerape #2, pp. 181-84.



DAYAN YEHOASHUA GRUNWALD

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fers to witchcraft in *Hilchos Avodah Zarah* as falsehood because it is always

partially wrong, unlike the powers of holiness which are always completely accurate.

A source for the Rambam may be found in our *pasuk*: The sorcerers were able to perform some of the same wonders as Moshe—turning staffs

into snakes, turning blood into water, and making frogs appear—but they could not conjure lice. This may be because the powers of impurity only work sometimes and are unreliable.



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