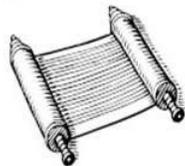


CMTL Yamim Noraim Reader 2020 Edition

Published by the Center for Modern Torah Leadership

Center for Modern Torah Leadership



חרות ואחריות

www.TorahLeadership.org

"Taking Responsibility for Torah"

Unless otherwise noted, all pieces are by Rabbi Klapper and published on the CMTL website or blog.

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Viral Ethics

Originally published in *Times of Israel*

March 13, 2020

Dear Friends,

The coronavirus epidemic is making social media more and more central to Jewish community. There will be fresh voices and fresh ears in all our online spaces. We should take this opportunity to develop a more robust Torah infrastructure for our virtual interactions.

Here is one suggestion: The rules of lashon hora hold us accountable not only for our own words, but also for the reactions they foreseeably provoke in others. My mother a”h loved to teach non-Jewish college students about the prohibition against saying something good about somebody in contexts where that will provoke others to speak ill of them.

Social media fosters precisely that kind of rekhilut – sharing hot takes or other material that stimulates people to write heated and often nasty responses and counter-responses. These are often distortions or hoaxes, but even when the OP is true, the Torah mandates that we consider whether sharing it serves a constructive purpose.

As with all aspects of lashon hara, it is extremely difficult to create a community that supports this norm. And as with all norms of lashon hora, it can be twisted to suppress dissent and discussion. But I think we need to try.

Test case: Should you share this post? Doing so risks provoking some people to make comments that are cynical or harmful with no constructive purpose. Yet allowing such people to control our communal discourse creates a vicious spiral.

I encourage you to share it. I ask everyone who reads it to consider carefully how you express your response, whether you agree or disagree. I ask everyone who reads the responses to consider carefully how you respond to them. Please also consider how best to curate others’ responses on your own timelines.

Best case scenario is that this conversation develops into a useful model for communal discourse going forward.

Thank you very much for your consideration and cooperation.

Aryeh Klapper

Dean, Center for Modern Torah Leadership

A Clarification of Sh'at Hadchak

Originally posted on Facebook

March 9, 2020

A brief and hopefully clarifying note on sh'at hadchak kebedieved dami with regard to listening to megillah via electronic transmission. (Note: This draft has been changed in response to many cogent comments from Summer Beit Midrash alums, and I expect that there are still many factors I haven't paid enough attention to.)

Bedieved means "once it's already done". In the context of DO mitzvot, this means that there is a better way to do the mitzvah, but if one already did it in the bedieved way, then one has fulfilled one's obligation. Generally, you don't need to do the mitzvah again even if you have the opportunity to do so.

Sh'at hadchak kebedieved dami means that in a situation of sh'at hadchak, one may or must intentionally do the mitzvah in the bedieved way.

Sometimes, however, a way of doing the mitzvah is bedieved not because it's objectively less than ideal, but rather because some opinions hold that one does not fulfill the mitzvah that way at all. Ideally one satisfies those opinions, but bedieved one can rely on the opinions that say it's ok.

The term bedieved here does not reflect a single objective condition – it already happened – but rather bedieved in this context means sh'at hadchak. It reflects a sliding scale – the more difficult the situation is, the weaker or less authoritative a position you can rely on. In extremely difficult positions, one can rely even on positions that, if you relied on them in an ordinary situation, we would require you to repeat the mitzvah.

Perhaps the more relevant phrase for such situations is כדאי הוא רבי פלוני לסמוך עליו בשעת הדחק, meaning "Rabbi X is worthy of being relied on in a sh'at hadchak." But that is not necessarily precise either, since it seems to relate to the author of a position rather than to the position itself.

So we may not have a perfect phrase for saying that in extreme circumstances, one can rely on positions that in ordinary circumstances are not sufficient even bedieved.

The halakhic consensus as I understand it is that in ordinary circumstances, a person who heard the megillah via an electronic transmission would be required to hear it again. They did not fulfill their obligation even bedieved. However, there is a position that one can fulfill one's obligation in that way. (I am bracketing the question of whether that position would extend equally to all forms of transmission) If I am correct, allowing one to hear the megillah via electronic transmission constitutes reliance on a person or position in a sh'at hadchak, and not an instance of treating a sh'at hadchak as if the act were already done.

The nafka minahs, or practical imports, are that

- a) one may not rely on an electronically transmitted megillah reading for reasons other than the health concerns that specifically generated this heter (or other circumstances that rise to the same extreme sh'at hadchak level);
- b) those with health concerns should if possible find a way to hear the megillah read live from a kosher megillah in circumstances that don't raise those concerns; and
- c) communities should make every effort to provide such opportunities even if they are also livestreaming. (If communities simply cannot meet the demand, that would constitute a sh'at hadchak. Communities must also consider the ethics of situations in which some people have access to megillahs/readers and others don't.)

This does not mean that people who have been determined to be at risk, or to potentially pose a risk to others, should attend public readings. They must not. People under quarantine who show up at shul should be told to leave, in absolute terms, and told that they are engaging in utterly forbidden and incredibly selfish behavior. If they refuse, they should be identified to the appropriate synagogue authorities, who should have them removed.

In Halakhic Emergencies, Break Glass and Then Read Directions Carefully

March 13, 2020

The Purim coronavirus crisis generated numerous public statements that the mitzvah of hearing the megillah could be fulfilled via a livestream. Coincidentally, after the publication of [my Facebook post](#) clarifying the difference between *sh'at hadchak* and *bedieved*, many of those statements were updated to say that livestreaming was sufficient only when no live option was available. Really what they meant to say was that livestreaming **might** be sufficient to fulfill the mitzvah, and that public and private health concerns required us to rely on that possibility when no safe in-person option was available.

Maybe they were right the first time? Rav Moshe Feinstein's three responsa on the subject seem to state clearly that it seems more likely than not that one can fulfill the megillah by hearing it via microphone or telephone.

Rav Moshe is hesitant to permit this in practice because of social policy concerns. Such concerns should not affect the underlying halakhic question of whether one's obligation has been fulfilled. If changed circumstances have obviated Rav Moshe's concerns, or if one simply doesn't share those concerns, then his position should be an adequate basis for relying on livestreaming in non-emergency situations.

I disagree with this read of Rav Moshe. This claim arises from an imprecise reading of Rav Moshe's responsa, which are carefully nuanced and jurisprudentially sophisticated. Let's take a look at them in some detail (complete texts with my translation are available [here](#)).

The opening paragraph of Igrot Moshe OC2:108 states that "it is inappropriate (אין ראוי) to read the megillah so that people will hear via microphone." Rabbi Feinstein then denies a report that he had previously ruled that one need not object (אין למחות בידם) to people who do this.

In the body of the responsum, however, Rav Moshe rejects his correspondent's confident assumption that one cannot fulfill one's obligation via microphone, because the sound is produced by something which is not itself obligated in the mitzvah. Rav Moshe contends that the microphonic sound is more likely than not **considered** to be the voice of the human speaker. He furthermore is not certain that it is physically correct to say that the microphone produces an independent voice. He concludes:

For this reason it is possible that one should not object (אין למחות) on halakhic grounds to those who wish to read the megillah via microphone,

and there is no risk of corrupting other mitzvot such as shofar and Torah reading on Shabbat and yom tov, because it is forbidden to speak into a microphone on Shabbat and yom tov,

and regarding mitzvot of speech on weekdays, if they were also to read via microphone, if one should not object regarding megillah – all the more so (one should not object) to these.

However, since the matter is not unequivocally permitted, and this is a new matter entirely (ענין חדש בכלל),

one should object (אין למחות) in order to restrain them from chasing after other novelties, which they are ardently attracted to in these lands, as Your Honor wrote.

Rav Moshe formally presents the issue as whether one must object to synagogues that read the megillah via microphone. His conclusion is that one must, but on social policy rather than halakhic grounds. Our question is whether this means that on pure halakhic grounds he endorses the position.

On first blush the answer is yes, since he states that it is more likely correct than not.

But on second thought, maybe not. There are at least three other teshuvot in which Rav Moshe states that an answer is more likely correct than not, and nonetheless frames the halakhah as “One should not object” rather than as “One may act so”:

1. OC 1:93 – The more likely correct position for a Shabbat blech is that covering the fire is sufficient, and one need not cover the controls. Therefore one can be lenient *bish'at hadchak* and need not object to people who rely on this position in ordinary situations.
2. OC 2:84 – The more likely correct position is that attaching things by sticking a needle through them is permitted on Shabbat. This position is certainly correct regarding diapers, where the attachment is necessarily temporary. However, one should not object to women who attach jewelry this way, even though the attachment may last.
3. OC 4:62 – The more likely correct position regarding Shabbat ending time is that of Arukh HaShulchan, and therefore one should not object to people who rely on it. But perhaps it is appropriate to be stringent and account for the conflicting positions.

What emerges from these cases is that Rav Moshe uses “more likely correct than not” for positions that he would choose where a choice is necessary, but that he would rather have people play it safe and avoid choosing. However, he believes that one cannot object to people who make the choice even when choosing is unnecessary. Applying those rules to our case, he would prefer that people not rely on hearing the megillah via microphone, but if someone had already heard it via microphone, he would tell them not to make the berakhot if they read it for themselves later. Not quite endorsement, but pretty close.

However, careful attention to Rav Moshe’s language in OC 2:108 reveals an additional wrinkle. In addition to the language of “more likely correct than not,” Rav Moshe offers another ground for not issuing a definitive ruling:

כיון שלא ברור להיתר והוא ענין חדש
since the matter is not unequivocally permitted, and this is a new matter

The phrase *inyan chadash* also appears in YD 3:30, where the issue is whether placing items in a steam oven constitutes the method of koshering known as *hag'alah*. Rav Moshe states that it seems reasonable that this works. However, because it is a new matter that never came before the rishonim, he permits it only for items that are clean, have been unused for 24 hours, are not generally used for sharp foods. He also states that one should not be lenient even to that extent for Pesach koshering, because even “negative absorbed taste” is forbidden. All this seems more definitive and less positive than his rulings in the three cases above that do not involve a “new matter.” Moreover, the hesitations here are not connected in any way to fears of sociological impact.

Like our case, YD 3:30 is a new matter because it involves new technology. I suggest that Rav Moshe regards rulings about unprecedented technology as inherently tentative. One might have misunderstood the reality, or misjudged the stakes, or erred in some other crucial way. The ruling in such cases will be to avoid choosing among positions if at all possible.

This insight helps explain two confusing elements of a different *teshuvah* regarding microphones.

In OC 4:91:4, dated 5732, Rav Moshe rules that a hospitalized woman should hear *havdalah* by phone if no in-person option is available, and cites his psak in OC2:208 as precedent. But he adds two surprising things.

- 1) *Havdalah* is like all other weekday speech mitzvot in this regard, **except for *keriyat Sh'ma* and *Birkat HaMazon***. One **must object** to anyone setting out to fulfill the Shema and Birkat HaMazon via microphone.

If Rav Moshe endorses the position that hearing via microphone fulfills one's obligation, why should one object in those two cases?

- 2) One must answer Amen to blessings heard via telephone or microphone out of doubt = *misafek*.

Why is this considered a doubt? If it is more likely true than not, we have a majority = *rov*!

I suggest that the answer to both questions is that Rav Moshe had a sort of metadoubt about all rulings issued with regard to new scientific realities. Such rulings may seem "more likely than not," but the overall odds never go above 50%, i.e. never escape the category *safek*. Therefore: One should object to the use of microphones to fulfill Biblical commandments, such as *keriat shema* and *birkat hamazon*. (*Havdalah* is only Biblical when it actually ends Shabbat for you; once you've said *atah chonantanu* or *barukh hamavdil ben kodosh lechol* it becomes Rabbinic.)

In OC 4:126, dated 5740, Rav Moshe returns to the question of whether one can hear the megillah via microphone. A school knew that when its *beit kneset* was packed, as for example to hear the *megillah*, the female students could not hear without a microphone. They had the option of delaying the reading until the cafeteria was cleaned up, and having two smaller minyanim, or else of using the microphone. Rav Moshe insisted that they delay the reading despite what he acknowledges as a "slight *dchak*," without detailing his rationale.

Delaying the megillah means delaying the breakfast. So Rav Moshe imposes a high standard to be considered a sufficient *sh'at hadchak* to allow reliance on microphones. Since he does not mention sociological concerns here, his concerns presumably are genuinely halakhic. This demonstrates again that his *psak* in this context was tentative.

In other words – forced to choose, Rav Moshe chose the position that hearing the megillah by microphone or telephone was sufficient. But he tried to avoid the choice whenever possible, He took a much stronger position against relying on technology for Biblical mitzvot, and emphasized that Amen is answered out of doubt, because he understood that changes in scientific understanding, halakhic understanding, and reality might reveal that his evaluation was wrong. **He was trying to rule as necessary in the moment while avoiding setting a precedent.**

In the forty years since Rav Moshe's third teshuvah, the world has changed enormously. Wireless connections and digital signal processing mean that we are dealing with completely different technology than he discussed. His notion that the propagation of sound waves (which he is somewhat skeptical of) is no different than the transformation of speech into bits seems off. He never discusses systems where microphones generate sound through multiple speakers handling different frequencies. The internet and virtual reality have radically different social roles.

For all these reasons, I think that Rav Moshe's position is a weak reed to build on. In a truly extreme *sh'at hadchak* such as mass quarantines, it can still be relied on. But the halakhic dialogue about fulfilling mitzvot via electronic transmission or other forms of virtual reality should begin from first principles.

(How) Does Halakhah Take Economic and Other Inequalities into Account?

March 20, 2020

The Talmud (Moed Qattan 27a-b) records a series of rabbinic decrees made to protect the dignity of the poor in the contexts of burial and bereavement. For example, “Originally, when they brought (food) to houses of mourning, the rich would use baskets of silver or gold, while the poor used baskets of peeled willow twigs.” Rabban Gamliel led by example and ordered that his own burial shrouds be plain linen. The concluding Mishnah of Masekhet Taanit teaches similarly that the daughters of Jerusalem all wore borrowed white dresses to the public celebrations of 15 Av “so as not to embarrass she who had none.”

However, this does not mean that halakhah always prioritizes the dignity of the poor above other values. Mishnah Bikkurim 3:8 records that “The rich brought their *bikkurim* in baskets of silver or gold, while the poor brought them in baskets of peeled willow twigs.” Tosafot Yom Tov asks: Doesn’t this embarrass the poor? Why didn’t they decree that the rich had to use willow baskets, as they did regarding mourners? Some suggest that the honor of the Temple took precedence. Maybe halakhah is most interested in the dignity of poor mourners, or would-be brides. Or perhaps the Rabbis left *bikkurim* alone because the baskets were given to the *kohanim*, and therefore the rich paid directly and proportionately for their ostentation.

The modern equivalents of gold and silver baskets may be etrogim from family trees descended directly from King David’s, or matzot made so labor-intensively that they are worth their weight in gold. These extravagant products may support businesses that employ many people who would otherwise be poor. The risks are that the poor may be embarrassed to eat their machine matzahs or carry their asymmetrical etrogim, and disengage from the community, or worse, that the non-rich will be driven to spend unsustainable sums on mere halakhic baubles.

All these are cases where halakhah clearly requires nothing beyond the capacity of the poor. What happens, however, when **baseline** halakhah becomes too heavy a burden on the poor, so that they need to avail themselves of halakhic leniencies? Do the non-poor have a right to keep baseline halakhah, even if that will embarrass the poor, or should halakhic authorities – as best they can – seek to compel everyone to adopt the relaxed standard? (Note that Deborah Klapper argues that the same question often arises in the context of disabilities, as for example use of Shabbat elevators.) Is it a Torah value to ensure that the poor can freely invite the rich to meals, or to borrow their lulavim?

A fascinating responsum from the year 1852 addressed this issue head-on. Rabbi Yaakov Meir ben Chayyim Padua, Rabbi of Brisk, was asked to allow the eating of a type בעבליך (=chickpeas?), a type of *kitniyot*, because the poor would find little else to eat otherwise. Likely there was a potato shortage. Rabbi Padua easily reaches the conclusion that this is permissible for the poor. He then goes further:

If you were to say: Here too we will say this because circumstances are pressing (sh’at hadchak), so let us permit this exclusively for the poor who have nothing else to eat, but not for the burghers or the rich –

It would be improper to do this, because in truth there is no intrinsic prohibition, or even trace of a prohibition, in this (eating kitniyot), just (it was prohibited) for some reason they had, that one might come to error or something else (see Pri Chadash 453), and if we permit it for the poor and not the rich – the poor will have their joy of yom tov removed, because they will say: “There is something prohibited about this, but they permitted it to them because of the pressure of circumstances,” and they will be denied the joy of yom tov,

We find that Chazal were afraid of such consequences, as they say in Tractate Niddah “If so, his heart (conscience) will trouble him and he will separate (from his wife) and not fulfill the commandment of procreation” –

so too here, if we permit for the poor alone, some of the G-d-fearing will have their hearts trouble them, and they will avoid eating בעבליך, and thus they will be denied the joy of yom tov. (Teshuvot Maharim miBrisk 48)

Rav Dovid Tzvi Hoffman makes a similar argument in Responsa Melameid L'Hoil 1:58 (the responsum is undated, so late 19th-early 20th century). German public schools met on Saturday. Rich Jewish parents could afford tutors for their children to make up the material missed, but the poor would fail if they were absent. Rabbi Hoffman writes:

You might suggest that the Jew should hire a private tutor to teach his child the material covered in school on Shabbat. Unfortunately, because of our many sins most Jews are poor and incapable of affording the expense of a private tutor for the Shabbat material. Therefore, since the learning is a prerequisite for making a living, it is certainly considered a “slight mitzvah” and universally considered permitted, just like arranging an apprenticeship for a child is permitted in Shulkhan Arukh Orach Chayyim 307:5.

I say further that there are places where even those who can afford a private tutor would do better to send their children to school on Shabbat just as the poor people are compelled to do. An example would be those places where many of our nation, because of our many sins, desecrate the Shabbat by writing, and Jewish students who don't write on Shabbat are rare. If there are more Jewish students committed to not writing on Shabbat, their hands will be strengthened – “they will help one another and say to each other: “Be strong!” If the G-d-fearing students are few, though, we must be concerned that – Heaven forbid – they will not withstand this test of their commitment. Certainly at least the weakest of them will falter. It is appropriate for the rich to do something that doesn't even amount to a “small prohibition” in order to save their Jewish brethren from “great prohibitions.”

I don't mean to say that Maharim miBrisk or Rav Hoffman were necessarily correct in their rulings, or that they expressed a dispositive halakhic principle. For example, Maharim MiBrisk's ruling was lovingly criticized by Rabbi Malkiel Tenenbaum (Divrei Malkiel 1:28) writing in response to a potato shortage in 1880. Rabbi Tenenbaum permits all kitniyot, but only for the poor.

Since the whole basis of the leniency we have explained with Heaven's help is the pressure and compulsion of circumstances – therefore one may not permit except for the poor who endure that pressure, and not for the rich, and everyone who can make the effort not to eat kitniyot without experiencing that pressure is certainly forbidden to eat kitniyot.

But Rabbi Tenenbaum then provides another reason for insisting that the rich share the halakhic lot of the poor:

But according to what we are told, the gaon Maharim miBrisk spoke well in accordance with his times, when food was enormously expensive and there was no money, and certainly that tzaddik realized that there were many people who were ashamed to proclaim their poverty, and kept up the appearance of wealth, so that it would be humiliating for them to eat kitniyot, and they would instead endure the humiliation of hunger on yom tov – therefore he garbed himself in righteousness, as befit him and commanded that all of them eat, as this almost touched on pikuach nefesh according to what I've heard of the great expensiveness and hunger of that time, and in such circumstances we can say that “Better for a chaver to violate a lighter prohibition, etc. (= if he thereby prevents an am ha'etz from violating a greater prohibition).”

Our ongoing crisis will pose many similar dilemmas. Challenges of supply may put inflationary pressure on Pesach products (although so far the news is good), and people who have for years been treated by relatives to Pesach vacations will now be forced to make their own sederim, and find it hard to maintain the yom tov dignity that they are accustomed to. For example, my grandfather z”l refused to join us at the

YU Sukkah for yom tov the year after they switched to serving on disposable dishes. Yet I don't have Pesach china, or Pesach dishwashers.

Perhaps more seriously, the halakhic options available to the elderly and the immunosuppressed, or the quarantined, may become very different than those available to the rest of us. Specifically with regard to mourners, can we say that they must rely on options for kaddish that would be insufficient for the rest of us? Perhaps yes; perhaps this is an opportunity to correct the magical thinking that has arisen around kaddish. But no such arguments would have applied to the megillah, or will to Birkat Kohanim on yom tov. But perhaps we are less concerned outside the sphere of mourning?

Each halakhic issue in any case requires separate treatment. I hope only to have shown that poskim can and should think about class distinctions and other social consequences as they help us navigate these challenging times.

Fighting COVID-19 through Each Amidah Blessing

By Rabbi Judah Kerbel (SBM '15)

March 26, 2020

Originally published in *Times of Israel*

Every Rosh Ha-Shannah and Yom Kippur, we declare that three things can overturn an awful decree: repentance, prayer, and charity. While Rambam and Ramban famously disputed whether our thrice daily prayers constitute a *mitzvah d'oraita* (positive commandment), all would agree that in a time of distress, in a time of desperation, it is a *mitzvah* to pray. Many of us are limited in our ability to actively wipe out the novel coronavirus or cure those who are ill, but our expression of prayer is one aid we can turn to in order to do our share to fight the spread of this virus. It is a religious imperative to pray at a time of disaster and plague (Rambam Ta'aniyot 1:1; Shulhan Arukh Orah Hayim 576:5). In a time where we need to connect with and come closer with God, tefillah can be that instrument.

Tefillah for many is the most natural way to have a conversation with God. While text is fixed no matter the circumstance, different situations and context may inform the intention behind the blessing in different ways. On any given day, I personally try to use the blessings of the Amidah as an opportunity to frame the various issues I encounter in life. The current crisis, found in the pandemic of the novel coronavirus, not only creates a requirement for prayer but also inspires the way through which we recite the blessings of the Amidah.

What follows is a short *kavannah* for each blessing of the Amidah. Some blessings lend themselves to obvious connections; others may be more of a stretch. If even some of these speak to you, great; hopefully they will at least provide a springboard for framing the urgency of the moment in the context of prayer.

1. **Avot** – as we approach You, we know that You are in charge of this world and that we stand in front of You. Your deeds are great in a way that we cannot begin to describe. You are inherently a *gomeil chasadim tovim*, You bestow acts of loving-kindness. Just as You were the “shield of Abraham,” You are our shield. I believe in God’s propensity for kindness and protection.
2. **Gevurot** (Divine Might) – The virus is a manifestation of the fact that God is in control of this world and, through a microscopic species, possesses ultimate power. At the same time, God is *rofei cholim*, as God heals the ill. Once those who are ill are healed, God will be *matir assurim*—we will be able to emerge from the prisons of quarantines and social distancing.
3. **Kedusha** (Holiness) – *u-kedoshim b'chol yom yehalelucha, selah!* (and the holy ones praise You daily, Selah!) Even though we are not able to gather to say *kedusha*, the holy Jewish people are still able to pray from home and continue to pray on a daily basis. We will not cease our service of God!
4. **Da'at** (Knowledge) – we need a lot of wisdom at this moment. Please grant insight to scientists and medical professionals to assist them in developing vaccines and treatment for this novel coronavirus. Please grant wisdom to all of us to make the right decisions in a time of great uncertainty.
5. **Teshuva** (Repentance) – “Bring us back, our Father, to Your Torah” – allow us to return to our *batei midrash* and *yeshivot* to learn Torah together. “Draw us near, Our King, to Your service” – allow us to return to the place where we serve you, in our shuls! “Bring us back to You in full ‘teshuva’” – may we come back to the way things are supposed to be because that is what You want.¹

¹ See Rabbi Menachem Penner’s comments here: <https://www.facebook.com/yakov.horowitz/videos/1901170853348245/>

6. **Selicha** (Forgiveness) – the human condition is that we are flawed, and therefore, we do not live forever. Yet, even if we are deserving of punishment, please forgive us and accept our efforts to be better human beings.
7. **Ge'ulah** (Redemption) – “look on our affliction” – look at all of the suffering throughout the world and feel our pain. “Plead our cause” – not just to empathize with our suffering, but to be on our team. And “redeem us soon for Your name’s sake” – so that we can all be healthy and serve you wholeheartedly.
8. **Refuah** (Healing) – the lists of those in need of healing grow longer and longer. Help us cut down those lists by granting a full recovery to those infected by the virus. “Heal us, Lord, and we shall be healed. Save us and we shall be saved” – only You, in Your great compassion, have the power to grant a complete healing.
9. **Birkat Ha-Shanim** (Prosperity) – due to the viral nature of this disease, many are forced to not work and have lost their livelihood. Please grant those who are suffering economic challenges blessing and prosperity soon!
10. **Kibbutz Galuyot** (Ingathering of Exiles) – as this pandemic has become a global crisis, we are not able to travel. Many who make the pilgrimage to Eretz Yisrael during Pesach will not be able to. Gather us soon so that we can visit Your holy land and support the State of Israel.
11. **Hashavat Ha-Mishpat** (Restore justice) – “restore our judges as at first and our counselors as at the beginning” – Rabbi Samson Raphael Hirsch wrote that “our people need leaders, men who will champion truth.”² Please grant our leaders the courage to lead us through difficult times that take great coordination and vision in order to protect us.
12. **Birkat Ha-Minim** (Against Enemies) – the novel coronavirus is the greatest enemy of the human race at this moment. Destroy it and remove it without delay so that we may all merit to live and serve You faithfully!
13. **Tzaddikim** (The Righteous) – have compassion on the righteous and pious among us, that they will not receive undue suffering. May we all merit to be counted among them.
14. **Binyan Yerushalayim** (Rebuilding Jerusalem) – it is even more painful to not have a Beit Ha-Mikdash during a time of distress like this. Your Holy Temple is meant to serve as a place of prayer for all people, and this is a time period during which all nations of the world need to reach You. May we merit soon to have Your divine Presence so we can reach You more directly.
15. **Malkhut Beit David** (Kingdom of David) – “for yearn for Your salvation all day.” This blessing speaks of the coming of Mashiach. We are told that he will come either “*be'itah*,” in its proper time, or “*achishena*,” God will hurry His coming. Whether this pandemic comes to an end after its proper or course or through God’s more direct intervention, may that time come sooner than later. May we be redeemed from a sorrowful world sooner than later.
We may not always properly yearn for salvation, but now is a time we yearn to be all together in a rebuilt Jerusalem performing the *korban Pesach*, paschal sacrifice.
16. **Shema Koleinu** (Hear our Prayers) – God, we are desperate for this to come to an end. Please listen to the voices of those who are sick. Please listen to the voices of those who have family and friends who are sick. Please listen to the voices of those who are suffering in isolation. Have mercy and compassion on us during this difficult time, and “do not turn us away empty-handed from Your presence.”

² As cited in the *Koren Ani Tefillah Siddur*, ed. Rabbi Dr. Jay Goldmintz, p. 325.

17. **Avodah** (Temple Service) – we do not offer sacrifices anymore, but “instead of bulls we offer the prayer of our lips” (Hosea 14:3). May our prayers be acceptable to you as are sacrifices. May the recital of *Pitum Ha-Ketoret* take the place of offering incense in order to stop this plague.
18. **Hoda’ah** (Thanksgiving) – Even in the midst of crisis, we are thankful for everything we do have. We are thankful for every moment we have to live. For every person who recovers from the virus. For whatever unintended blessings may come out of this difficult time. Our lives are entrusted to you, and we thank You for every small miracle we may experience.
19. **Peace** – may this be a time where the world comes together. Where our leaders come together. May we have peace in our homes, as we spend more time in close quarters with our family. May we have inner peace during a time that provokes anxiety and uncertainty.

“May the words of my mouth and the meditation of my heart find favor before You, Lord my Rock and Redeemer” (Psalms 19:15).³

³ Some translations, by Rabbi Lord Jonathan Sacks, adapted from the *Koren Ani Tefillah Siddur*.

Prayer for Medical Workers

By Rabbi Stephen Belsky (SBM '12)

Originally published on Facebook

March 26, 2020

I was asked, so here is a prayer for the medical workers and researchers on the front lines of treating the afflicted and finding a cure for the COVID19 coronavirus pandemic

מי שבירך אבותינו אברהם יצחק ויעקב
ואמותינו שרה רבקה רחל ולאה
ורפא את מרים הנביאה
וחזקיהו מלך יהודה
ונעמן שר־צבא ארם
ומי מרה וסיר אלישע
הוא יברך וישמור ויחזק וְיַעֲזֵר
את החובשים ואת האחיות ואת הרופאים
ואת כל הפועלים בתחום הרפואה והטיפול
המחרפים נפשם להצלת חיי בריותיו
בעמדם בין המתים ובין החיים לעצור את המגפה
אֲלֵהִים לָנוּ מַחֲסָה וְעֵז עֲזָרָה בְּצָרוֹת נִמְצָא מֵאֵד
רפאנו ' ונירפא, הושיענו וניוושע, כי תהילתנו אתה
כשם שלימדת את משה רבינו לעשות את נחש הנחשת
ואת אהרן הכהן להקטיר קטורת לפניך
אנא אל נא תן נא חכמה בלב כל המדענים והחוקרים
למצוא תרופה למכה
והנח נא רוח חסד ורחמים על כל מנהיגי המדינות
לשמור את שלום הארצות ובריאות העמים
שנזכה ונראה כולנו אותו יום בו כל יושבי תבל ישכנו לבטח
ומלאה הארץ דעה את ' כמים לים מכסים
כי טוב אתה לכל ורחמיך על כל מעשיך
רופא חולי כל בשר אתה ומפליא לעשות
כן יהי רצון
ונאמר אמן

May the One who blessed our ancestors,
Abraham, Isaac, and Jacob,
Sarah, Rebecca, Rachel, and Leah;
who healed Miriam the Prophet, Hezekiah King of Judah, Naaman the Aramean General, and the waters
of Marah and Elisha's pottage;
bless, guard, strengthen, and embolden
the emergency responders, the nurses, and the doctors,
and all those who work in the field of medicine and treatment
who risk their lives
to save the lives of human beings, Gd's creations,
standing between the living and the dead to stop the plague.
God, our shelter and strength! Help in times of trouble, always accessible!
Heal us, God, and we will be healed; rescue us, and we will be rescued; for You are our praise!
Just as you taught Moses our Teacher to craft the bronze serpent,
and Aaron the Priest to offer incense before you,
please, God, please, grant, please, wisdom in the hearts and minds of all the scientists and researchers
to find a remedy for this plague,
and please, bestow a spirit of loyalty and compassion upon the leaders of all states
to preserve the peace of nations and the health of peoples –
so that all of us may merit to behold that day when all inhabitants of the Earth will dwell in safety,

and the Earth will be full of the knowledge of God as water fills the seas.
For You are good to all, and have compassion on all Your handiwork;
You heal the sick of all flesh, performing wonders.
May such be Your will,
and let us say, amein.

Facing the Halakhic Challenges of the Current Crisis

March 27, 2020

The ongoing Covid-19 crisis presents our community with innumerable practical challenges. As with all political leadership, halakhic crisis management depends on effective communication as well as effective action. Led by the superbly Nachshonian RCBC, local and national Modern Orthodox leadership has done a superb job of communicating the absolute priority of social distancing. There have also been many substantive halakhic opinions issued on narrower issues. But the effectiveness of those opinions has sometimes been limited by challenges of communication.

Let me start with an example that is about the context of halakhah, rather than about halakhah itself. There have been many statements about the safety of mikvaot, and therefore the permissibility of immersion, for women who are not at high risk. These properly include caveats that our information about the virus is constantly being updated, which justifies the exclusion of high-risk women.

This is very important. But there are other issues that also must be dealt with. An excellent Israeli directive began with the following:

A woman who feels terrified by the necessity to go to mikveh – is not obligated to immerse.

Her life and peace of mind come before all.

From a halakhic perspective, she of course remains in a condition of prohibition until she next immerses.

Together with this, I will try to explain, as one who is in charge of the mikvaot of X, why in my humble opinion immersion in the mikvah is secure with a high degree of likelihood.

This creates an entirely different tone. It expresses a sensitivity to the possibility of spousal coercion, and validates a woman's right to make their own judgments about safety. It makes clear that trust must be earned rather than assumed. This makes it much more likely that trust will be earned. And that trust will be greatly needed.

At the same time, even this statement has no long-term plan for a community in which many women feel that the mikvaot are genuinely unsafe, let alone for the couples in which the women are being specifically told that they should not go, with no prospect of short-term change. There is also a possibility that experiencing the mikvah under hazmat conditions will be immensely stressful for a significant number of women, with long-term effects.

We also need a plan that can survive our being wrong a few times, as we inevitably will be. Some mikvah somewhere will likely become at least a suspected vector of infection at some point. What resources will we have to demonstrate that it is an anomaly, and that just about every mikvah is in fact punctiliously carrying out recommended best practices? I personally am reeling from the number of infections in Israel attributed to Purim celebrations.

There may be no such plan. But we also cannot casually expect mass religious heroism. In the absence of confidence that we have a humanly realistic plan, people will embrace other plans that seem humanly realistic, even if we strongly doubt their halakhic bona fides.

A major challenge here is that halakhah has a strong preference for dealing with exceptions to standard law in a private, case-by-case fashion. There are good reasons for that – making public exceptions weakens the law and leniencies are often abused. Keeping leniencies individual enables poskim to be more flexible in each case. But I suspect there is a tipping point at which everyone knows that there will have to be so many exceptions that a public rule is necessary.

It would be helpful if we could effectively teach ROSH's idea that some halakhic positions are totally out of bounds – except in emergencies. ROSH held that a dried out lulav was Biblically invalid under ordinary circumstances, but that when literally no other lulav was obtainable, one could make a blessing on a dried out lulav. One would be perfectly justified in denouncing someone who counseled the use of a desiccated lulav in an ordinary year. But what if there's a legitimate reason to fear that no lulavim will be available this year? The Raavad disagreed strongly with ROSH, and the Beit Yosef compromised – yes wave the lulav, but no berakhah. We need at least to make that compromise comprehensible to people (and for ourselves as well, clarify how it plays out with regard to DON'Ts).

The dispute among ROSH, RAAVAD, and Beit Yosef is also key to many of the conversations about virtual ritual. Almost everyone agrees that virtual davening communities do not have the depth of connection and spirituality of in-person communities. Almost everyone agrees that if we could allow mourners to say kaddish now, without fear that next year's mourners would be much likely to show up in person, we would. The question is whether it's possible to allow it now without the laity drawing the lesson that in principle it's good enough.

Crisis leniencies often face another tension. State the actual standard for leniency, and many people who desperately need that leniency, are perhaps even required to use it, will refuse to. State a lower standard, and of course many people will use it who should not be permitted to.

Last week's dvar Torah discussed this question with regard to relaxing the prohibition against kitniyot for the poor in a time of scarcity. Maharim MiBrisk held that it was necessary to relax the prohibition for all, lest the poor feel stigmatized and fail to have the halakhically required joy of yom tov. Divrei Malkiel disagreed. However, Divrei Malkiel conceded that in an economic crisis, many of the genteel poor, who were keeping up the appearances of their past condition, would refuse to take advantage of leniencies if that required acknowledging their poverty. He therefore conceded that in such a crisis Maharim MiBrisk's position would be justified.

This dynamic underlies the conversation about ZOOM seders and communication devices over a three-day yom tov. We all understand that three days without human contact on yom tov will pose a severe health challenge to some of our most vulnerable community members. If we publicly set the standard for leniency as medically verified risk of suicide, not many people will use it unjustifiably. However, it is equally certain that many people who are at risk will refuse to use it. They may be in denial about the severity of their condition (and for that reason may not even have a therapist). Or they may be unwilling to admit their condition to others. A specific aspect of permitting electronic communication is that it requires coordination with a second party. I can't ask you to ZOOM your seder unless we both classify it as pikuach nefesh.

On the other hand, we also all understand that separating families at the seder will cause enormous and profound unhappiness. If we set the standard for leniency at risk of great sadness, many people will use it who cannot plausibly be classified as in danger. Some rabbis may think that the lower standard is proper. But those who don't cannot escape choosing between Scylla and Charybdis.

This is a halakhic tension. But the fundamental issue is whether we can communicate one of these positions effectively enough that mostly the right people use the leniency without guilt, while the wrong ones don't use it at all.

It might help to think about setting up two committees. The first would discuss ways of credibly certifying the Covid-19 precautions of specific mikvaot. The second would engage in halakhic disaster planning. What if mikvaot become actually unsafe? What if we have a dramatic rise in marital unhappiness? What if the first days of yom tov show a dramatic spike in severe depression? Each of these committees must include representative men and women, as well as both halakhists and professionals or volunteers who can credibly convey the concerns and reaction of the community to proposed rulings. If we eschew a formal structure, we need to find ways to ensure that we have the conversations informally.

My belief is that having these conversations will yield both better policy and better communication.

How to Save Lives During a Three-Day Yom Tov?

Originally Published in *Times of Israel*

April 2, 2020

Pikuach nefesh (=lifesaving) pushes aside almost all prohibitions, including those of Shabbat and Yom Tov.

There are at least four ways that social isolation can create pikuach nefesh situations during the upcoming three-day yom tov.

1. People at high risk of death from COVID-19 may risk infection in order to spend time with family or friends
2. People may risk infecting others in order to spend time with family or friends
3. People may become directly suicidal or develop very severe mental illness, such as clinical depression
4. People may become ill and unable to care for themselves

Halakhah should be decided in the ways that IN PRACTICE minimizes the overall risk to life posed by these factors.

As secondary factors, poskim must take into account at least three other values:

1. Minimizing the number of UNNECESSARY violations of Shabbat and Yom Tov
2. Preserving an immediate Yom Tov and Shabbat atmosphere of simchah and kedushah
3. Preventing long-term damage to the Yom Tov and Shabbat atmosphere of our community

Halakhic decisions can be made “wholesale” or “retail.” Some issues are best decided on a communal level. For example, following the lead of the RCBC, the Boston Orthodox rabbinate and many others forbade all public ritual. These are examples of effective “wholesale” psakim. Poskim may similarly choose to issue across-the-board leniencies where any limitations or restrictions will inevitably cause people to act in ways that risk lives.

However, this does not mean that all of halakhah is presumptively suspended during the current crisis. For example: based on pikuach nefesh, one may violate even Biblical prohibitions to fulfill the desires of a choleh sheyesh bo sakkanah (=deathly ill person). The reason for this is that we assume that anything which soothes the mind of a deathly ill patient may contribute to their longevity. However, not everyone who is in danger is a choleh. For example, if I see someone walking obliviously toward a railroad crossing, I cannot feed them a cheeseburger just because they ask for one.

Another important distinction is that preventive measures do not ALWAYS rise to the level of pikuach nefesh. Halakhah does not ban all risk in life, nor require us to spend all our efforts and make all our choices with only longevity in mind. This is true both individually and communally. Psak regarding preventive measures depends on the extent of risk, the reasonableness of the contention that violating the prohibition will lower that risk, and the degree of prohibition.

These distinctions are key to the conversation regarding electronic communication during the upcoming yom tov. One question is whether soothing the minds of those statistically at-risk for

Covid-19 makes them less likely to catch the disease, or more likely to survive if they catch it. Such people are not yet cholim, and so there is no presumption that one can do whatever they ask, or that any degree of psychological comfort justifies every degree of halakhic violation. Indeed, some people may be negatively affected by being treated as if they are already sick. Moreover, breaking Shabbat or yom tov can itself be a trauma for some people who are deeply committed to observance.

Another question is whether these leniencies relate to preventive measures that rise to the level of pikuach nefesh. The psakim banning minyan do not permit driving on Shabbat to buy hand sanitizer, nor do they permit online lashon hora in order to discourage people from meeting friends to gossip.

In light of the above, if giving blanket permission to ZOOM seders on Yom Tov is the best way to prevent people from endangering themselves or others, then poskim should permit them even if many specific ZOOM seders may have no such effect. Similarly, poskim should give blanket permission for check-in phone calls on Shabbat and yom tov if that is the best way to ensure that suicidal individuals receive competent help or to ensure that dangerously ill people obtain proper medical care.

But overly broad leniencies can be unnecessary or counterproductive. Because such psakim must be judged by their real-world outcomes, a ruling that isn't followed is a failure even if you think people should follow it. Effective psak cannot make psychological demands that people will not meet, or be based on minority halakhic positions that are nonstarters in the relevant community, even if you think those minority positions are objectively correct. For example: electronic communication requires the parties at both ends to be willing to engage in it. Ruling that people living alone can videoconference into family seders, or call friends, will not help unless their family and friends cooperate. Since families and friendships often cross communal boundaries, these kinds of leniencies can work only if they are broadly accepted.

A similar consideration applies to the pikuach nefesh concerns of suicide and mental disorders. The people at greatest psychological risk will often refuse to acknowledge that risk, certainly not prophylactically. They may also be stubbornly resistant to unfamiliar leniencies, and unlikely to take advantage of religiously uncomfortable options such as ZOOM sedarim. It doesn't matter whether we think they should; what matters is whether they will. In these and other cases, a broadly accepted narrow ruling is therefore much more effective than a narrowly accepted broad ruling.

Conversely, we must be equally wary of excessively limiting a ruling. For example, requiring medical certification of a suicide risk in order to permit videoconferencing on yom tov runs the risk that the leniency will be dramatically underused. Even people who voluntarily go to therapists, and have access to adequate mental health care, may be unwilling to disclose their mental health challenges to others, and again, videoconferencing requires both sides to participate.

Finding the delicate, lifesaving middle ground between excessive leniency and excessive stringency is extraordinarily hard when dealing with diverse communities. Poskim therefore try very hard to make "retail" rather than "wholesale" decisions. A standard halakhic tactic for accomplishing this is to publish a relatively stringent standard together with a note that anyone with a case anywhere approaching that standard should ask their local Orthodox rabbi. This tactic works well when everyone in the audience has a relationship with a rabbi to whom they are comfortable asking such questions. However, the flood of inquiries opened by the institution of Yoatzot Halakhah suggests that this is not true within every community. Because the downside – death – of people choosing not to ask and "just be machmir" is so great in the present circumstances, I think it would be better to publish a relatively or even maximally lenient standard and offer people the ability to make decisions themselves. That standard must

be formulated practically and concretely. At the same time, it should strongly encourage people to consult with competent halakhic authorities, especially when a decision must be accepted by multiple people in order to be implemented.

When all is said and done, competent halakhic authorities will not all give the same answers, for many legitimate reasons. For example, they may start from different halakhic positions about technology on yom tov and Shabbat, or about whether a high standard that is nonetheless short of pikuach nefesh can justify certain leniencies. My point here is to emphasize that competence in this matter requires deep understanding of the psychological stakes and communal realities; willingness to make difficult halakhic decisions in situations of safeik pikuach nefesh; and the ability to handle the ambiguities of situations which are not obviously pikuach nefesh.

Practically speaking, I think it is very unlikely that across-the-board leniencies for electronic communication on yom tov will gain the support they need to be effective in most of our communities. I therefore don't see much benefit in arguing for or against them. Instead, I believe that our entire community must brainstorm other tactics to diminish each of the four pikuach nefesh risks we began with. Some of these, such as the risk that people living alone will fall ill, would not anyway be helped much by ZOOM seders.

Here are some sample ideas:

1. Everyone living alone, but especially the elderly, will have a pre-arranged check-in time each day, say by a knock at the window. If they don't respond, someone should call them a short time later, and if they still don't respond, call 911.
2. Everyone living alone will have a way to call friends or family, and ideally random community members, in a way that ensures their call will be picked up. They will be strongly encouraged to make such calls if there is even a small chance that doing so will increase their safety. Protocols for answering these calls will include being supportive of the person for making them.

I am confident that many communities are already arranging similar approaches, in consultation with competent halakhic authorities. **We urgently need to arrange the sharing of best practices as widely as possible.**

This process will require rabbis and laity thinking together seriously about halakhah in immediate and practical terms, and may therefore become a small positive outcome of this terribly difficult situation.

Wishing us all joy, health, sanity, and a chag kasher vesameiach!

Public Halakhic Guidance

Originally published on Facebook

April 5, 2020

Public Halakhic Guidance:

The mental health consequences of complete isolation for a three-day yom tov cannot be confidently predicted. Therefore, it is imperative that anyone spending Pesach alone or as a caretaker be able to call friends, family, and rabbis if they feel AT ANY RISK of depression or other grave disorders, let alone if they have suicidal ideation. It is dangerously wrong to suggest that they wait for more severe symptoms to develop. Friends, family, and rabbis must not hesitate to pick up such calls and talk at whatever length seems best. I strongly encourage everyone to reach out to people who will be alone and arrange to recognize their phone numbers or arrange signals to ensure that their phone calls will be picked up.

In the current circumstances, avoiding the mutual exposures inherent in ER admissions may itself be a contribution to lifesaving. So I emphasize again the obligation of making and answering potentially helpful phone calls at the earliest stages of concern.

Ensuring Everyone a Safe Passover

Rabbinical Council of America Statement

Originally published on Facebook

April 7, 2020

As we enter the holiday of Pesach during this time of crisis and upheaval, we are deeply concerned about the safety and welfare of some of the members of our community. The social isolation which is so necessary at this time can significantly impact a person's mental or physical well-being. The upcoming three day yom tov of Passover and Shabbat, during which observant Jews will not use telephones and other forms of electronic communication, may increase someone's sense of isolation and depression, and may negatively impact vulnerable individuals. Our Torah places high value on the preservation of life. Pikuach nefesh (saving a life) overrides almost every other mitzvah in the Torah. Pikuach nefesh, in cases of potential physical or mental harm, requires us to act in ways that are otherwise prohibited.

Because of our great concern, in consultation with our poskim, we share the following instructions:

Those who are at risk of mental deterioration must not wait for severe symptoms, such as suicidal ideation (thinking about committing suicide), to develop before calling for help; preventative calls are Halachically obligatory. Furthermore, it is important to do all we can to prevent hospitalization. In the current circumstances, avoiding the exposure to Covid-19 that may occur if at a hospital is an important factor in protecting one's health. One who feels at any risk of physical danger or depression due to mental, physical, substance abuse, or abuse issues, or other grave disorders, is required to use a phone on Yom Tov or Shabbat to call for help.

Whom should they call?

In cases of immediate danger, call 911. In other cases, some may prefer to call a therapist, friend, family member, rabbi, the hotline at Amudim (888-7-AMUDIM, 888-726-8346 or 718-972-3000), or the National Suicide Prevention Lifeline (1-800-273-8255).

Those with a friend or family member who might call them for such a reason, must leave their phones on during Shabbat and Yom Tov and monitor the caller ID of calls received. They should not hesitate to answer the phone or return a call when that person calls on Shabbat or Yom Tov and may speak as long as is necessary. As public figures known to many, communal rabbis must monitor their phones throughout Yom Tov and Shabbat. If the caller seems to be in immediate danger, they must call 911. If they are not sure what is best for the caller, they should consult with a mental health professional for guidance or call 911. These calls should be encouraged and supported by all of us without judgment or stigma.

Those who know someone who is at risk—a family member, friend or neighbor—should reach out to him/her in a way that maintains the restrictions of social distancing. It is permissible to call him/her on the telephone on Shabbat or Yom Tov.

In non-emergency situations, one should make and answer calls with a shinui (for example, using one's weaker hand or a knuckle). In emergency situations, one should call for help in the fastest and most efficient way possible.

We pray for an end to this terrible pandemic, for the recovery of those afflicted with the virus, and for the safety and well-being of all those who struggle during these difficult times.

Triage and Ventilators: The Position(s?) of Rabbi Shlomo Zalman Auerbach zt"l

May 8, 2020

In the second edition of Responsa Minchat Shlomo (vol. 2-3), #86 Section 1 is titled “Rules of Priority with regard to Treatment and Ventilators.” The section is only three paragraphs long, and yet succeeds in contradicting itself twice, once in a way that has important practical halakhic implications.

The responsum opens by citing Pri Megadim (Mishbetzot Zahav 328:1):

“If there is one whom the doctors et al say is definitely in danger (of dying), and another who may be in danger, and there is only enough medication for one of them – the definite pushes aside the doubtful.”

Pri Megadim cites no evidence for this position, and it seems plainly to contradict the statement in Mishnah Ohalot 7:6 that “we do not push aside one *nefesh* because of another *nefesh*.”

Nonetheless, Rabbi Auerbach treats it as dispositive precedent. More than that – he uses it as the basis for a more expansive claim:

ולכן צריכים בעיקר להתחשב עם גודל הסכנה
ועם הסיכויים להצלה

*Therefore, one must essentially consider the extent of the danger
and the odds of saving*

Pri Megadim made no reference to the “odds of saving”, only to “the extent of the danger.”

If one treats Pri Megadim’s statement as the product of formal legal reasoning, there seems no basis for Rabbi Auerbach’s extension. Rabbi Auerbach also does not discuss what happens if his two criteria point in opposite directions, such as if the more endangered patient is less likely to respond to treatment.

It therefore seems that Rabbi Auerbach understood Pre Megadim as making a general claim, based on reason, that the obligation to save lives, or more precisely the prohibition against failing to save lives, should be fulfilled in the manner that will statistically save the most lives.

Rabbi Auerbach acknowledges that allowing any such choices risks a slippery slope. He immediately denies that the relative age of the patients plays any role, without explaining why. He references the last Mishnah in Horayot, which can be understood as giving priority to men over women, kohanim over Levites, etc., but states – again without explaining why – that “I think it is difficult to act in accordance with this.”

He then expresses strong doubt as to whether the standard derived from Pri Megadim justifies removing a ventilator. This doubt is formulated via a loose analogy – it may be “as if the first patient has acquired the machine.” Even Pri Megadim would concede that a dangerously ill patient has no personal **obligation** to give way to someone sicker or more likely to be saved. If a patient is entitled to resist the machine’s removal, then the doctor has no right to remove it without consent.

Another loose analogy suggests that doctors involved in treating a patient cannot decide to abandon them for another on the basis of efficiency, because “one engaged in a mitzvah is exempt from another,” and in some cases is even forbidden from switching to the second mitzvah.

Rabbi Auerbach ends the first paragraph by commenting that he is not seeking to nail the Halakhah down, because the questions are grave, and he has no clear evidence from precedent.

The second paragraph opens by endorsing a hospital protocol that refuses ventilators to patients who are described as *treifot*, on the grounds that experience shows that non-*treifot* patients will soon arrive. Rabbi Auerbach says that this makes sense because it would be forbidden to remove the ventilator from the *treifah* patient, since that removal would be active killing, and it is taken as given that a subsequent healthier patient would not be allowed to kill the *treifah* and seize the ventilator.

Rabbi Auerbach closes by apparently endorsing the order of priority in Horayot should two patients arrive in medically identical condition, but acknowledges that other decisors disagree.

The two contradictions I see are:

The first paragraph forbids removing ventilators based only on the loose analogy to ownership. The second describes removing ventilators as active killing.

The first paragraph states that the objection to using the order in Horayot is practicality, while the third paragraph mentions only that its use would be controversial.

In addition, the Hebrew term for ventilator in the first paragraph is *machshir hanshamah*, while the second paragraph uses *mekhonat hachaya'ah*.

All this suggests that this responsum is cobbled together from multiple sources. Such an approach is methodologically risky when speculative. In fact, I initially developed an imaginative but completely wrong reconstruction. But happily there ends up being no need for speculation.

The first edition of Minchat Shlomo prints our responsum as #82 Section 2, **and provides separate headings for the paragraphs**. Paragraph 1 is addressed to Dr. Shimon Glick, while Paragraphs 2-3 are addressed to Rabbi Moshe Shternbuch.

Even the first edition does not provide the text of the initial questions. However, Rabbi Shternbuch prints his question in his own responsa collection, Teshuvot veHanahagot 1:858. At the suggestion of SBM alum Rabbi Elli Fischer, I wrote to Dr. Glick, who graciously searched his files and emailed me a pdf of his question and Rabbi Auerbach's answer. (A photo of the answer, but not the question, was published in the periodical Assia.) With the questions in hand, we may be able to explain why Rabbi Auerbach's response to Rabbi Shternbuch says that removing a ventilator is forbidden as killing, while his response to Dr. Glick mentions only the concern that the patient has acquired a right to treatment.

But first we need to make the contradiction worse. As Rabbi Dr. Avraham Steinberg notes in a forthcoming article, the second edition of Minchat Shlomo **simply left the penultimate line out of the first paragraph**. Here it is:

ובנוגע למכשיר הנשמה—
חושבני שתלוי בשיקול הדעת של הרופא,
ואם על פי רוב זה כבר ללא תועלת –
מוטב להעביר את זה לשני
*Regarding the ventilator –
I think that it depends on the doctor's judgment
and if the odds are that it is already not purposeful –
it is better to move it to the second patient.*

Now we have three positions regarding removal of ventilators. (Or even four: the manuscript shows that Rabbi Auerbach originally wrote that it was *barur kashemesh*, clear as day, that it depends on the doctor's judgement, but crossed that out and wrote instead "I think.") Can they be brought together into a coherent whole?

A key starting point is that Dr. Glick and Rabbi Shternbuch asked different questions. Dr. Glick discussed triage choices without using technical halakhic descriptors such as *treifah*, and made no statements about

existing policy. Rabbi Shternbuch reports a question from a doctor that specifically discusses choosing non-*tereifot* over *tereifot*, and in the context of an established policy refusing treatment to *tereifot*.

Rabbi Auerbach's response to Rabbi Shternbuch is that removal of ventilators **in the context of patients who will clearly die without the ventilator** is likely murder, and therefore forbidden. Dr. Glick's question however extends even to choices between patients both whom may live regardless, although their odds of survival are increased by ventilation. In such cases, the issue of murder may not apply, but the question of a right to treatment may.

The key practical question is what standard Rabbi Auerbach intended by saying "if the odds are that it is already not purposeful." The understanding that seems to me most likely is that he meant "if the odds are that ventilation is not prolonging the patient's life." This position is not obvious, and therefore must be stated, it might be forbidden to remove a ventilator so long as there is **any chance** that it is prolonging life. It seems to me that this is the only case involving dying patients that would not run afoul of the position in the letter to Rabbi Shternbuch that removing a ventilator is considered active killing.

I need to make clear that I am not endorsing either Rabbi Auerbach's conclusions or his reasoning. My own strong preference, and ongoing effort, is to develop a halakhic ethics of triage that fiercely resists any efforts to attenuate the force of the statement that we do not push aside one *nefesh* for the sake of another. I am very grateful to those who have challenged and honed my thinking in the series of ZOOM shiurim on this topic, and invite you to join us this coming week.

Halakhah and Moral Intuition: A Case Study

May 15, 2020

In the midst of an exhortation to provide the newly poor with interest-free loans, Vayikra 25:36 declares

וְחִי אֶחִיךָ עִמָּךְ
*and your brother will live **with** you.*

A beraita on Bava Metza 62a cites Rabbi Akiva as making two astonishing interpretational moves with regard to this phrase. First, he contends that it relates to immediate life-and-death situations rather than to loan terms. Second, he contends that it creates a hierarchy rather than an equation: the obligation to save your brother's life applies only if he will live **with you**. You therefore have no obligation to save his life at the expense of yours.

The beraita deliberately presents Rabbi Akiva's position as morally counterintuitive. It begins by presenting the position of Ben Petora as derived from moral reason, whereas Rabbi Akiva responds with an argument from Scripture:

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:
חייך קודמים לחיי חברך.
*Two people traveling on the way
with a canteen of water in the hands of one
If both drink – they die; in one of them drinks – he reaches a settlement.
Ben Petora taught:
Better that both drink and die,
and let not one of them see the death of his fellow:
Until Rabbi Akiva came and taught:
“and your brother shall live with you”
Your life has priority over that of your fellow.*

Why is Rabbi Akiva counterintuitive? Most likely because he directly contradicts what the Talmud understands to be Judaism's most fundamental principle of moral reason (Pesachim 25b, Yoma 82b, Sanhedrin 74a). The principle is formulated as a rhetorical question: “*Mai chazit dedama didakh sumkin tfei? Dilma dama dechavrekh sumkin tfei!* What have you seen (that makes you say) that your blood is redder? Perhaps your fellow's blood is redder!” The halakhic consequence of *mai chazit* is that one cannot kill someone else to save oneself. But the same logic applies to lifesaving.

However, Ben Petora is not the only possible result of applying *mai chazit* to the canteen case. One might instead have the two travelers flip a coin for the water, or forbid both from drinking any water at all.

Nor is it absolutely clear that *mai chazit* forbids all possible cases of killing to save your own life. Tosafot point out that the *mai chazit* question can be asked in reverse: “What evidence suggests that his blood is redder than yours?” Tosafot conclude that *mai chazit* requires one to stay passive when faced with a choice between lives. You can do this even when halakhah constructs passivity as a violation of murder or bloodshedding.

Maybe Tosafot would allow this even when halakhah constructs your activity as merely passive. That way you can reach Rabbi Akiva's result, as drinking the water is only a violation of “Do not stand idly by your peer's blood.” Rambam by contrast requires one to actively choose death before violating any prohibition

of killing. Rabbi Chaim Soloveitchik argues that because the Talmud presents Rabbi Akiva as counterintuitive, Rambam must be correct, and Tosafot incorrect.

But Rabbi Akiva's position is nonetheless accepted by halakhah. What does that say about halakhah's relationship to its own deepest moral intuition? Plainly that intuition is overruled by *and your brother will live **with** you*. But to how great an extent?

Let me raise the stakes before answering. Rambam holds that the *mai chazit* principle is not **just** about choosing yourself, but rather **even** about choosing yourself; *kal vachomer* a third party cannot choose between two other lives. This is the meaning of Mishnah Ohalot's declaration that while one can abort a fetus to save its mother, one cannot commit infanticide once the child's head has emerged, because *ein dochin nefesh mipnei nefesh*, "we do not push one human *nefesh* aside for the sake of another."

Rabbi Akiva's overruling might mean only that in the context of lifesaving, one is entitled to prioritize one's own life over another's. But if *mai chazit* is all that forbids third parties from choosing to kill one person to save another (outside the context of *rodef*), perhaps Rabbi Akiva implies more radically that *mai chazit* does not apply to lifesaving. In the context of triage, we therefore can and should develop criteria to decide whose blood is redder.

This opens the door to understanding the last units of Mishnah Tractate Horayot as establishing triage criteria: Kohens precede Levites, men precede women, and so on. For most halakhists, however, and in that category I include myself, Horayot cannot be interpreted in a way that fundamentally denies *mai chazit*. It seemingly follows that Rabbi Akiva intends only to permit choosing one's own life, and has no implications for choices made by third parties.

This understanding of Rabbi Akiva raises its own moral difficulties. If two people are dying of thirst in the desert, and a third party comes along with enough extra water to save one but not both, what should he or she do? The narrow reading of Rabbi Akiva leads to the conclusion that third parties must follow Ben Petora, and split the water between the two: "Let both die, but let neither see the death of his fellow."

Here we reach a crucial realization. The Talmud presents the **reasoning** of *mai chazit* as intuitive, such that Rabbi Akiva requires a Biblical verse to overrule it. But this does not require that all the **practical implications** of *mai chazit* are intuitive. Following an intuitive principle can lead to profoundly counterintuitive results. If one can never choose among lives, one will sometimes be forced to watch both die rather than save one.

Maybe that is the price we have to pay in order to prevent people from choosing to save people **like** themselves over people unlike themselves. However, I think there may be a way for halakhah to thread the needle and avoid Ben Petora's conclusion without opening a Pandora's box.

Why does Ben Petora require the two travelers to split the water? Rabbi Chaim Soloveitchik in his novellae on the Rambam suggests that according to *mai chazit*, neither of them could choose to drink. Really, they should both die with the canteen still full. Even Ben Petora can't abide a result that absurd, so he allows them both to drink half. That way, neither chooses his own life at the **immediate** expense of his fellow's.

Rabbi Akiva's verse comes to teach that halakhah does not want absurd results. **When not choosing yields a morally absurd result**, halakhah allows you to choose your own life over another's.

What should third parties do in similar situations? For example: Unlike canteens of water, ventilators cannot always be split between patients. Failure to choose would mean intubating neither patient, and letting both die.

We might point out again that Ben Petora's ruling is not the only possible outcome of applying *mai chazit* to lifesaving situations. We could treat patients in the order of arrival, and flip a coin if they arrive simultaneously.

I suggest instead the following. In a YU symposium on CRISPR technology, Rabbi J. David Bleich suggests that the Torah needs to grant permission to heal because healing seems to encroach on G-d's domain, "playing G-d." He argues that the Torah's permission to manipulate the human body is therefore confined to actions that can be constructed as "healing."

By the same token, the Torah's permission to heal allows doctors to heal as effectively and efficiently as they can, even when this entails choosing which patients get access to limited resources. But this permission extends only to choices based on purely medical criteria, and only on the axis of healing. There is no basis for applying the non-medical criteria of the Mishnah in Horayot, or for considering a patient's life-expectancy independent of illness or injury. This enables triage to remain within the bounds of *mai chazit*.

Do Real Cases Make Bad Law?

May 22, 2020

After the death of Rabbi Seligman Bar (Yitzchak Dov) Bamberger (the Wurzbürger Rav) in 1878, his son Rabbi Moshe of Kissingen inherited the manuscripts of his father's practical halakhic responsa. He was troubled about whether to publish them. The Torah in them was certainly publishable and would be eagerly received. But his father had asked him not to publish, because he held that responsa *halakhah lemaaseh* were less reliable than works of pure scholarship. So Rabbi Moshe turned to two of the great poskim of his time, Rabbi Naftoli Tzvi Yehudah Berlin (Netziv) and Rabbi Yitzchok Elchonon Spector.

The question he asked has at least three distinct components. The first is subjective and pastoral: How can I live with myself if I disobey my late father's instructions, and yet how can I let parts of his contributions to Torah die with him? The second is objective and pragmatic: Does my obligation of *kibbud av* forbid me to do what I would otherwise think is right? The third is intellectual: Is my father's opinion about the relative worth of responsa and novella correct?

Underneath it all was a worry: Maybe my father's opinion was correct about his own responsa, and publishing them will damage rather than enhance his legacy.

Rabbi Spector's response (printed in Zekher Simkhah p. viii, ויקיפידיה ה'ת"ח) was fundamentally pastoral. He saw no point in addressing the intellectual questions; what mattered was making the responsa publicly accessible while keeping the son whole. So he opens by expressing his hesitancy about getting involved lest he act against the true wishes of the late *tzaddik*, and he pleads illness to avoid examining the merits of the work (claiming that he isn't even able to read the galleys of his own responsa!). His practical suggestion is that the son write a foreword stating his father's wishes that no one rely on the responsa without examining the evidence for themselves (if they are competent to do so), and that they are intended to spur thought rather than to preempt it. Rabbi Spector cites as precedent that the Shakh's introduction to Yoreh Deah and the Pri Megadim's introduction to Hilkhos Pesach each demand that readers swear never to rely on their conclusions.

Such introductions rarely succeed. The positions of Shakh and Pri Megadim themselves are often cited for halakhic authority without reference to their reasoning, and Rav Moshe Feinstein introduced his first book of responsa with a similarly futile disclaimer. I'm confident that Rabbi Spector knew this. Perhaps his pastoral approach failed because Rabbi Bamberger could not suspend his disbelief, and that's why the responsa were first published many years later, by a grandson.

Or perhaps it was Netziv's fault. He tells Rabbi Moshe directly that his father was simply wrong (Meishiv Davar 1:24):

“Regarding Your Honor's presentation of your father zt”l's opinion not to print the responses he wrote *halakhah lemaaseh*, on the ground that one ought not rely on a responsum as much as on what is written in the course of studying a topic, when you get to know it more comprehensively and accurately than you do at a time that someone comes to ask you something. He rested his words on the consensus of poskim to rely on the Piskei HoRosh more than on his responsa, and also on Chazal's statement that “One does not learn halakhah from what was ruled in practice.” That is the substance of what you wrote in the name of your father zt”l.

But in my impoverished opinion, the words are utterly incorrect in their reasoning:

On the contrary, at the time (poskim) respond *halakhah lemaaseh* – they reach the depth of the matter than when the topic come up in the course of learning, and also there is more *siyata dishmaya* (assistance from Heaven) in the practical moment, and Chazal said in Ketubot (60b) that *siyata dishmaya* is very helpful in issuing correct ruling, and it also says in Bava Batra (130b) that “One does not derive Halakhah from learning nor from what was ruled in practice, rather one must wait until one is told “This is *halakhah lemaaseh*.” See Rashbam's commentary there.

Similarly, in Sanhedrin (86b) regarding the Rebellious Elder: “If he taught in the manner he was used to – he is exempt; but if he ruled *lemaaseh* – he is liable,” so we see that ruling *lemaaseh* is more serious.

As for the consensus of the poskim that we rely more on the *Piskei HoRosh* than on Rosh’s responsa when they differ – this is not a reasoned position, but rather a tradition from Rosh’s son Rabbi Yehudah, and presumably his son knew that the *psakim* were written later than the responsa, and ROSH had recanted . . . so Torah that emerges in the moment of responding *lemaaseh* is stronger and more closely coordinated with truth than what emerges from a person’s mind while learning. The great scholars who did not wish to publish their responsa had a different rationale; they knew that one is entitled to place **more** reliance on responsa, and they did not wish (the responsibility of having) others rely on their opinion, whereas they knew that people do not rely on halakhic novella, and so were not concerned about publishing them.”

I think Netziv clearly has the better case based on precedent. For example, “We do not derive halakhah from the ruling in a practical case” probably refers to instances where we know the ruling but not the reasoning, so what is unreliable is our interpretation rather than the ruling itself.

However, Rabbi Bamberger may have known himself well. I suspect that he was making a subjective rather than an objective claim; **my** teshuvot are not as solid as **my** scholarship.

Netziv and Rabbi Bamberger have been on my mind during this crisis as I read some great contemporary collections of in-the-moment responsa, and make some efforts to generate my own. Some people’s minds are sharpened by urgency, and their conclusions and reasoning become wonderfully solid and consistent. Others meet their communal responsibilities but are scrambling to match their own usual standards of clarity or judgment. We owe them all gratitude. We also owe them all the effort to evaluate their reasoning rather than uncritically granting them authority, and therefore the whole burden of responsibility. One of the best elements of halakhic leadership during this crisis has been the way that public halakhic pronouncements have often been issued only after broad consultation, and then modified in response to practical feedback.

Moreover, as Netziv sets out in the magnificent introduction to his commentary on Sheiltot d’Rav Achai Gaon, some Torah scholars are much better at making decisions than at explaining them, and others are much better at explaining decisions than at making them.

I don’t know whether Rabbi Bamberger fell into either group. But some rulings by necessity are issued without the opportunity for comprehensive research or unhurried reflection. Responsa *lemaaseh* are often written after the fact, and always have been. Rabbi Bamberger could always have taken the time later to write comprehensive responsa.

But it’s very hard to do objective research once one has ruled in practice. I wonder whether Rabbi Bamberger suspected himself of defensiveness, and feared that his responsa sometimes drew the target around the arrow, whereas his scholarship drew the target before the arrow was shot. That would be only human.

But if that was his concern, I’m glad in the end that it was not heeded. We have no choice but to look to human leaders. But we are blessed when our leaders are conscious of their humanity, and the Torah of such leaders should long endure.

Which is Greater During a Pandemic, Study or Action?

May 28, 2020

The Talmud separately records two questions that were debated and decided in the attic of Nitzah in the city of Lod. On Sanhedrin 74a: “Which prohibitions must a person die rather than transgress?” and on Kiddushin 40b: “Which is greater, study or action?”

The attic of Nitzah was probably a hideout at a time when Rome had made studying Torah a capital crime. These questions were immediate life-and-death issues. What is the bare minimum needed for Judaism to survive, with integrity?

Rabbi Tarfon responded that “Action is greater”; Judaism can survive mimetically even if no one understands what they are doing, but study without practice will reach only a narrow band of intellectuals. Rabbi Akiva responded that “study is greater,” because a religion that survives only through blind ritual has no meaning. A consensus emerged that “study is greater, because it leads to action.”

But doesn't that mean that action is really greater?

This seeming paradox has puzzled intellectuals for millennia, and its implications are constantly debated by practical people. How do we allocate scarce communal and individual resources when schools and chesed organizations compete for them? Should Torah education be conceptual or practical? Why do we study the parts of Torah that don't apply in our day, and how should we study them? What do we do if our experience doesn't bear out the hypothesis that more Torah study leads to more Torah action?

The pandemic made action harder. Many interpersonal and ritual mitzvot became harder or impossible to perform. The cause was pandemic not persecution, but the result was the same: many of us ended up isolated in our own attics of Nitzah, trying to figure out how to maintain our religion without physical community and the reinforcement and satisfactions it provides. I hope we'll find ways to share with each other all the insights we developed.

Focusing on study often satisfies me. An essay by Rav Aharon Lichtenstein argues that a life of pure study may be the ideal, at least for Rambam; it's just that study which fails to generate action in the situations it applies to is impure, unfinished, maybe even corrupted. Genuine study naturally brings us to action, but action is not the purpose of study. Rabbi Shimon bar Yochai's cave is a form of Eden. (The story of Rabbi Shimon bar Yochai's isolation, in addition to paralleling the stories of Mosheh and Eliyahu's isolations, ironically reverses Plato's Allegory of the Caves. In Plato, philosophers who have seen sunlight/truth are nevertheless compelled to return to the dark cave of society and take up political responsibility. Rabbi Shimon bar Yochai and his son see pure truth in their cave, but G-d compels them to return to the society that lives in daylight.)

This essay sometimes holds great appeal to me. But with the community in crisis, and so many people making contributions that made the difference between life and death, it was extraordinarily hard to justify engaging primarily in Torah study purely *lishmoh*, for its own sake. So I became enormously grateful for opportunities to make Torah ideas matter practically to people, on issues such as caring for the isolated on yom tov, or whether arranging for faster and more efficient distribution of healthcare resources is considered lifesaving and permits working on Shabbat. Some of those opportunities are reflected in the essay on *pikuach nefesh* in this Reader.

But as time passed, I also realized how much learning with the “regulars” at my online shiurim mattered, to me and to them, regardless of its immediate practical implications. Torah study is itself an action. Some of our learning together is contained in the essay on Bathtub Mikvaot in this Reader, but I still owe a full presentation of Halakhic triage ethics that participates authentically in contemporary moral discourse, and enables Orthodox healthcare workers to work with integrity within the outcomes of that discourse.

We should also acknowledge that so much of what we hope for medically is rooted in ideas that began as “pure science.” The things we need to get through a crisis often come from the things we see as luxuries during a crisis. This is also true in Torah.

Can a Bathtub be a Mikveh?

May 28, 2020

INTRODUCTION

Many observant women are currently avoiding public mikvahs out of fear of contagion. Until a reliable and accountable system develops for certifying compliance with health regulations, such fears are reasonable and legitimate, as the RCA has acknowledged. Moreover, women in high-risk categories (or who live with people in high-risk categories) are medically and halakhically discouraged from immersing even where stringent safeguards are in place. Ad hoc solutions such as taking contraceptive pills or immersing in natural bodies of water are helpful to some but not all of these women. Every possible halakhic effort must be made to enable these women to immerse.

This *sh'at hadchak* (time of pressing circumstances) has generated a polemical debate about whether immersion in tapwater-filled home tubs can be halakhically validated. My goal is to move the discussion away from broad-brush polemics toward halakhic nuance. Whether home immersion is valid depends on many practical variables that have not yet been adequately researched, and may differ from city to city, house to house, and even tub to tub.

FROM RESERVOIR TO TAP

1.

Can a mikvah be filled completely with tapwater?

Vayikra 11:36⁴ establishes two categories of valid mikvah: the *maayan*, which is a flowing stream of groundwater, and the *mikveh*, which is a pool of “still” water, meaning that it has no noticeable outflow (*zochalin*). The standard public “mikvah” is a *mikveh*, meaning that it is a pool of water that must not be *zochalin*.

Municipal water supplies draw their water from a wide variety of sources, including groundwater, snowmelt, rain, and more. Almost all of these are valid sources for *mikveh* water. The relevant question is whether anything happens between source and tap to invalidate the water. Two halakhic requirements might be relevant.

A.

The first requirement, found on Talmud Zevachim 25b⁵, establishes that water for a *mikveh* must not be made to flow over or through (*hamshakhah*) anything that is able to contract ritual impurity (*mekabel tum'ah*). Most useful metal or wood objects are *mekabel tum'ah*, and so one might think that flowing through pipes invalidates the water.

But this is not so. Objects which are permanently attached to the ground are not *mekabel tum'ah*, nor are objects permanently attached to objects that are permanently attached, and so on. The pipes and other elements of a municipal water system can be presumed to fit this description. Therefore, none of them are *mekabel tum'ah*, and tapwater has no problem of invalid *hamshakhah*.

B.

⁴ אך מעין ובור מקוה-מים יהיה טהור ונגע בנגבלתם יטמא:
⁵ תנן התם:

”נתן ידו או רגלו או עלי ירקות כדי שיעברו מים לחבית – פסולין; עלי קנים ועלי אגוזים – כשירה.
זה הכלל: דבר המקבל טומאה – פסולין; דבר שאינו מקבל טומאה – כשירין.”
מנא הני מילי?

דאמר רבי יוחנן משום רבי יוסי בר אבא: ”אמר קרא: אך מעין ובור מקוה מים יהיה טהור – הויתן על ידי טהרה תהא.”

See also Teshuvot haRosh 31:7.

The second requirement is more likely to be problematic.

The Talmud assumes in many places that *mikveh*-water must not be drawn (*sheuvin*).⁶ The classic and universally agreed case of *sheuvin* is when a person draws water in a bucket and then pours the bucket out into a *mikveh*. We can generalize this by saying that to become *sheuvin*, water must be contained in a utensil (*keli*) that was humanly made or purposed. But the definition of *keli* is complex.

A metal or wood object can be *mekabel tum'ah* only if it is considered a *keli*. However, Mishnah Mikvaot 4:1⁷ states that stone and dung containers make water *sheuvin* even though stone and dung are not *mekabel tum'ah*. This demonstrates that not all *kelim* are *mekabel tum'ah*. However, one might still argue that all metal or wood *kelim* are *mekabel tum'ah*. If that were the case, any metal or wood object that is not *mekabel tum'ah* could not create *sheuvin*.

Mishnah Mikvaot 4:5⁸ seems to support this position. It states that a stone container made in-ground does not create *sheuvin*. Since stone cannot be *mekabel tum'ah* anyway, why does being in-ground matter? The simplest answer is that objects connected to the ground (*mechubar lakarka*) are not *mekabel tum'ah*. But then why can detached stone containers create *sheuvin*? We can answer with the following distinction: Detached stone and dung containers are not *mekabel tum'ah* **even though** they are *kelim*, whereas *mechubar lakarka* objects are not *mekabel tum'ah* **because** they are not *kelim*.

If this distinction is correct, then because the components of a permanent water system are generally considered *mechubar lakarka*, the system between source and tap almost certainly would not create *sheuvin*.

However, sugyot on Talmud Bava Kamma 67a⁹ and Bava Batra 65b-66b¹⁰ undermine this distinction. The sugyot cite a beraita stating that if a person carves a depression into a (metal or wood) pipe (so that gravel will settle out of the water flowing through it, thereby making it a container) **while** the pipe is attached to the ground, then the pipe does not create *sheuvin*. However, if the person carves the depression **before** the pipe is attached, then the pipe creates *sheuvin* even after it is attached.

⁶ See e.g. Bava Kamma 67a and Bava Batra 65b-66b below.

⁷ המניח כלים תחת הצנור אחד כלים גדולים ואחד כלים קטנים אפילו כלי גללים כלי אבנים כלי אדמה פוסלין את המקוה
⁸ שוקת שבסלע אין ממלאין ממנה ואין מקדשין בה ואין מזין ממנה ואינה צריכה צמיד פתיל ואינה פוסלת את המקוה
היתה כלי וחברה בסיד ממלאין בה ומקדשין בה ומזין ממנה וצריכה צמיד פתיל ופוסלת את המקוה
ניקבה מלמטה או מן הצד ואינה יכולה לקבל מים כל שהם כשירה וכמה יהיה בנקב כשפופרת הנוד
אמר רבי יהודה בן בתירא מעשה בשוקת יהוא שהיתה בירושלים והיתה נקובה כשפופרת הנוד והיו כל הטהרות שבירושלים נעשות על גבה ושלחו בית שמאי
ופחתוה שבית שמאי אומרים עד שיפחת רובה:

See also Tosefta Parah 1:9

החוקק אמת המים ועשה בהן בית קבלה אף על פי שתלשוה מים וחיברוה אין ממלאין בה ואין מקדשין בה ואין מזין הימנה ואינה צריכה צמיד פתיל ואין נותנין
ממנה לידיים
תלשוה וחיברה וחישב עליה אחר תלישתה ממלין בה ומקדשין בה ומזין הימנה וצריכה צמיד פתיל ונותנין הימנה לידיים:
⁹ ושינוי השם שאינו חוזר לברייתו מי הוי שינוי? והרי צינור, דמעיקרא קציצתא והשתא צינורא, ותניא:
"צינור שחקקו ולבסוף קבעו - פוסל את המקוה; קבעו ולבסוף חקקו - אינו פוסל את המקוה,"
ואי אמרת שינוי השם מילתא היא, אפי' קבעו ולבסוף חקקו נמי ליפסול?
שאיני שאיבה, דמדרבנן היא.
אי הכי, אפילו דרישא נמי!
התם איכא תורת כלי עליו בתלוש, הכא אין תורת כלי עליו בתלוש.
¹⁰ ת"ר:
"צינור שחקקו ולבסוף קבעו - פוסל את המקוה; קבעו ולבסוף חקקו - אינו פוסל את המקוה."
מני? לא ר' אליעזר ולא רבנן?! . . . אלא ר"א דדף, דתנן:
"דף של נחתומין שקבעו בכותל - ר"א מטהר, וחכמים מטמאין"
מני? אי רבי אליעזר, אפי' חקקו ולבסוף קבעו?! אי רבנן, אפילו קבעו ולבסוף חקקו נמי!
לעולם רבי אליעזר היא, ושאיני פשוטי כלי עץ, דטומאה דרבנן.
מכלל דשאיבה דאורייתא?! הא קיימא לן: דרבנן!
ועוד, האמר ר' יוסי בן ר' חנינא: "בדף של מתכת מחלוקת!?"
לעולם רבנן היא, ושאיני שאיבה, דרבנן.
אי הכי, אפי' חקקו ולבסוף קבעו נמי!
שאיני התם, דאיכא תורת כלי עליו בתלוש.

If the pipe in the end is *mechubar lakarka* either way, and therefore not *mekabel tum'ah*, why should it matter whether it became a container before being attached?

The Talmud first answers that the issue of *shevin* is only *derabanan*. This may mean that the issue of *shevin* is never *deoraita*, but that the rabbis decreed against immersing in *shevin* lest one come to immerse **in** a *keli*, which would be invalid *deoraita*. Alternatively, it may mean that *shevin* is *derabanan* in some cases but *deoraita* in others, and that the *beraita*'s rule applies only to the *derabanan* cases. (See Appendix B for whether the distinction between *derabanan* and *deoraita* cases is practically relevant to our discussion.)

Still, the Talmud asks, if an attached pipe is not a *keli*, why would the rabbis include it in the decree against *shevin*? It *answers* that the pipe **had been** a *keli* before it was attached.

The problem with this answer is that Mishnah Kelim 11:2¹¹ and many Tosefot¹² teach that objects **intended** to be used only when *mechubar lakarka* are not *mekabel tum'ah* even before they are attached.¹³ Almost all commentators read the *beraita* above as discussing pipes that were intended to be used only when *mechubar lakarka*. So how can the *beraita* claim that it was ever a *keli*? The solution is that a metal container can be a *keli* without being *mekabel tum'ah*. (For more proofs of this proposition see Appendix A.)

Still, why should it matter that the pipe **had been** a *keli*, if it is now attached? The solution is that if it was a *keli* before being attached (whether or not it was *mekabel tum'ah*), it remains a *keli* even after becoming *mechubar lakarka* (and certainly not *mekabel tum'ah*).

This means that water becomes invalid as *shevin* if at any point it is contained in something that **had been** a *keli* before becoming *mechubar lakarka*. So we cannot validate tapwater solely because all the components of the water system are currently *mechubar lakarka*.

The Secret of the Jews by Rabbi David Miller, a fervent proponent of the validity of home immersion, explains this issue clearly. He states that the components of a system are not a problem so long as “*each and any of these apparati is not capable of holding water in its regular position before being connected or attached, and is made originally for that purpose; and is properly and permanently connected with the regular water system and with the building.*” Similarly, storage tanks are not a problem so long as “*such tanks were originally made for that purpose, to be connected to the ground or building, and are in fact connected thereto and permanently installed; and provided, of course, that they have a hole in the very bottom (which is usually the case) as an outlet.*” The requirements to not be “capable of holding water in its regular position before being installed,” or specifically to “have a hole in the very bottom as an outlet” are ways of saying that the water cannot be in anything that was a container, and therefore a *keli*, before it became *mechubar lakarka*. Rabbi Miller believed that most municipal and home water systems met this requirement, for example stating that an outlet hole at the very bottom “is usually the case.”

Rabbi Nissan Telushkin, in his 1947 work Mikveh Israel (2nd expanded edition 1950), accepts Rabbi Miller's halakhic principles. After studying the New York City water system, he ruled that NYC tapwater was valid for mikvaot except in three neighborhoods where the water passes through pressurized storage tanks. Since these tanks were attached to the ground, and were always intended to be attached to the ground, they are not *mekabel tum'ah*. The basis for invalidating water that passed through them must be

¹¹ כל כלי מתכות שיש לו שם בפני עצמו – טמא,

חוץ מן הדלת ומן הנגר ומן המנועול והפוחה שתחת הציר והציר והקורה והצינור, שנעשו לקרקע:

See however Chatam Sofer 198, who argues that utensils made to be attached are *mekabel tum'ah* before being attached. He agrees however that after being attached they are not *mekabel tum'ah* but still create *shevin*.

¹² See for example Tosefta Mikvaot 5:7

הנוגע באבק טהור שלא נעשה אלא לשמש עם הקרקע

¹³ The standard position is that this relates to the specific object; Beit Yitzchak YD 2:30 contends that the object must belong to a class of objects that are never used other than *mechubar lakarka* (see Appendix A). Note also the position of Avnei Nezer that requires not only intention to be attached, but also to “serve the ground.” He contends that the pipes “serve the water” by filtering it, rather than serving the ground (see Appendix A).

that they were capable of holding water before they were installed, and that they are considered to contain the water that flows through them, because their outlets are on the side rather than on the bottom.

Rabbi Telushkin then points out that rooftop storage tanks in individual houses pose a problem even in other neighborhoods. Under NYC fire regulations, such tanks were required to have two outlets, one on the side and one on the bottom, and under ordinary conditions, to open only the outlet on the side. This ensured that the tank would always contain water for firefighting purposes, even if the fire prevented water from being pumped up to it. So these tanks as well were capable of holding water before being connected to the system, and of containing the water that flowed through them.

Both of Rabbi Telushkin's concerns apply to any tapwater whose progress from source to tap is not fully understood. For example, Cleveland's water department [website](#) shows its supply passing through a series of tanks, each of which have outlets on the side rather than on the bottom. Cleveland may be different from New York because all its water is pumped up from Lake Erie, whereas New York's supply is brought down by gravity from the Catskill Mountains. But it is also possible that requirements for filtration, fluoridation, etc. have changed since Rabbi Telushkin's day, and that nowadays all NYC water passes through such tanks. Certainly the issue must be thoroughly researched before even NYC tapwater can be validated.

Similarly, Rabbi Telushkin's concern may apply nowadays to more than rooftop tanks. For example, standard hot water heaters have outlets on the side rather than on the bottom. Therefore, the water system of each house must be examined before validating water coming from its taps.

THE TUB ITSELF

Let us assume that all this research has been done, and the water coming out of this specific tap is not *shewin*. The tap opens directly into a tub. What are the requirements for the tub to be a valid *mikveh*?

a. SIZE

The Talmud (Eruvin 14a-b¹⁴) provides three ways of calculating the minimum size of a valid *mikveh*:

- a. Sufficient to fully immerse
- b. 3 cubic cubits (*amot*)
- c. Sufficient to contain 40 sa'ah.

Some claim that "sufficient to fully immerse" is a subjective measure, and the *deoraita* standard, while the other measurements are objective and *derabanan*. If that is the case, a small person could presumably immerse *deoraita* in less than 40 *saah*. Similarly, a person could fully immerse and yet fail to satisfy the *derabanan* standard.

Scholars in other halakhic contexts have given values ranging from 18 to 24 inches for the *amah*. A 24 inch *amah* yields a minimum mikvah value of 24 cubic feet, or approximately 180 gallons. An 18 inch *amah* yields 10.25 cubic feet, or approximately 77 gallons.

Rabbi Miller initially required private mikvahs to be 24 cubic feet. In his final edition however, he required only 80.57 gallons. He acknowledged that he could find no one else willing to support him on this, and publishing this position may have damaged his reputational legacy (see my upcoming article on the topic in *The Lehrhaus*).

But let us assume that the situation we find ourselves in justifies relying on his position. The mikveh must be able to retain its full measure during the immersion. A person displaces approximately a gallon of

¹⁴ כדתניא:

"ורחץ מים - במי מקוה; כל בשרו - מים שכל גופו עולה בהן.
וכמה הן? אמה על אמה ברום שלש אמות.
ושיערו חכמים מי מקוה - ארבעים סאה.

water for every 8 pounds they weigh. So even Rabbi Miller's minimum shiur actually requires a tub with a capacity of 90-110 gallons, depending on the person.

What sort of tubs would then be large enough?

The inside of my home's ordinary five-foot bathtub measures 53 x 22 inches at its very top, and 48 x 18 at its floor. It is 11 inches high to the overflow valve, with another inch above that. Even if we took the top measurements as if the tub's walls were straight, and plugged the overflow (which is necessary in any case to prevent the problem of *zochalin*), the tub's volume would be slightly over 8 cubic feet, or around 60 gallons. So it seems clear that ordinary tubs cannot meet the objective *derabanan* standard. Furthermore, such tubs are not big enough for ordinary-sized adults to fully immerse themselves in. However, some higher end tubs or jacuzzis certainly are big enough, and perhaps some older clawfoot tubs are also big enough.

b. *keli*

We learned above that even if the problem of *shevin* is *derabanan*, immersing in a *keli* is invalid *deoraita*. We also learned that if something is a *keli* before being *mechubar lekarka*, it remains so even after being attached, and that being able to hold water in its ordinary position defines something as a *keli*. This would mean that a tub can only be a valid *mikveh* if it was unable to hold water at the moment before it was installed.

Rabbi Miller titled a subchapter in Secret of the Jews (all editions) "A Bathtub is Not a Mikvah," and declares that this was obvious based on the rules given above. Why? Bathtubs have an outlet hole at their very bottom! The explanation I favor is that in the 1930s, bathtub drains were stopped by rubber inserts. Those inserts came with the tub, had no purpose other than stopping the drain, and sometimes were even chained to the tub. They were, in short, part of the tub. Therefore, the tub was able to contain water even before being installed.

If this explanation is correct, Rabbi Miller would not have the same issue with my home tub. The stopper for my tub's drain is built into the pipe running from the overflow valve to the drain. That pipe is attached to the tub after the tub is in place and attached to the plumbing. So my tub was built with a hole in its very bottom and did not become a container until it was *mechubar lekarka*, and furthermore its hole was plugged by something that is itself *mechubar lekarka* (which is currently failing to plug it, but that is another story).

But my tub is too small to be a *mikveh*. The question is whether high-end tubs are built and installed the same way. (Note: Outdoor hot tubs are not connected to plumbing, and obviously hold water, so they are certainly *kelim* and invalid).

One obvious difference is that my tub is made of enameled cast-iron, whereas Jacuzzis and other ready-made high-end tubs tend to be made of fiberglass-reinforced acrylic. Several internet videos purport to show the construction and design of acrylic bathtubs. (See e.g. <https://m.youtube.com/watch?v=5dXMGDRWpqq>). These videos show that acrylic bathtubs are formed out of a single solid sheet, with no holes in the bottom or anywhere else. Holes for the drain etc. are drilled afterward. So there is no question that they begin their existence as *keilim*. Moreover, each tub is tested before shipping by being filled with water!

However, it is possible to "break *kelim*." One way to break a container is to drill a hole in its bottom with a diameter of (taking the smallest possible measurement for "two fingers") an inch and then plugging the hole after connecting it to the ground. (Rabbi Miller and most authorities believe that one has to plug the hole **by** connecting it to the ground.) Drainholes certainly have a large enough diameter. If acrylic tubs have their drainholes plugged in the same way as my cast-iron tub, they would meet this requirement.

I initially suggested that the fact of the water-test was sufficient to invalidate acrylic tubs, because they held water even after the holes were drilled. However, Deborah Klapper argued that they were plugged with a stopper that is intended to be temporary and does not travel with the tub, and therefore cannot be considered part of it. Preliminary halakhic research indicates that her position is tenable.

However, as confirmed to me by an Orthodox contractor, the same video shows that acrylic tubs are not plugged in the same way as metal tubs. Rather, acrylic tubs are “fully plumbed” before installation, including the pipe leading from the overflow valve to the drain, and then lowered onto a drainpipe in the floor. In other words, they are capable of holding water at the moment before they become *mechubar lekarka*.

This means that an acrylic tub is presumptively a *keli* and an invalid *mikveh* unless one knows for certain that for whatever reason its drainpipe with stopper was attached only **after** it was connected to the plumbing,

CONCLUSION

There is no precedent or plausible argument for regarding an ordinary bathtub as a valid *mikveh*. Rabbi David Miller, often cited as validating bathtub immersions, actually denounced them out of hand. However, Rabbi Miller did support building home mikvaot and filling them with tapwater. In the last edition of his book, he radically shrank the required size of a *mikveh*, although an ordinary bathtub would still not be close to big enough.

Rabbi Miller’s arguments for the validity of tapwater remain halakhically sound, and they were endorsed by Rabbi Nissan Telushkin. However, as Rabbi Telushkin demonstrated, these arguments do not apply to **all** public water supplies. It seems likely that many fewer cities meet the criteria than used to, and so each area requires thorough investigation.

Rabbi Miller himself noted that the water supply system in individual houses can be halakhically problematic. Rabbi Telushkin showed that the problems were more widespread than Rabbi Miller indicated, and it seems likely that they have become yet more so. Therefore, each house requires thorough investigation.

Rabbi Miller rejected all bathtubs out of hand, regardless of size. I suggest that changes in plumbing have made his objection obsolete with regard to cast iron bathtubs. However, cast iron bathtubs are almost never large enough. Acrylic tubs, which may be large enough, are generally invalid on the same ground invalidated cast iron tubs in Rabbi Miller’s time.

Outdoor hot tubs that are not connected to plumbing are obviously invalid.

Several possibilities for valid home immersion remain. Inground pools (indoor or outdoor) made of poured concrete, or custom bathtubs that are built in place rather than prefabricated, may be large enough and valid *mikvehs*. However, one would have to investigate the municipal and house water supplies before allowing such *mikvehs* to be filled directly with tapwater. A pool’s filter system also requires investigation, as well as systems for whirlpool massage and the like.

If the available tapwater is invalid, such *mikvehs* could in principle be filled from other sources, such as rainwater, or melting ice, or possibly by conducting the water from the tap to the *mikveh* over a sluice that is not *mekabel tum’ah*. Such methods pose their own practical and halakhic challenges, which are beyond the scope of this article.

APPENDIX A

Proofs that metal containers which are not *mekabel tum’ah* nevertheless are *kelim* for the purpose of invalidating a *mikveh*:

Several colleagues initially argued to me that a container constructed to be used exclusively while *mechubar lekarka* is not a *keli* even before it is attached. It therefore seems worthwhile to catalog some more of the evidence and authority against this argument.

1. Rabbeinu Gershom's text of the beraita apparently read חקקו כדי לקבעו, he carved (the depression in) the pipe **in order** to attach it. However, this text is not supported by any ms. of either sugya (Friedberg).

2. שו"ת נודע ביהודה מהדורא תניינא - יורה דעה סימן קט responds to a student/colleague's critique of Rabbi Landau's position that anything made to be attached to the ground is not *mekabel tum'ah* even before it is attached. The critic argues this position contradicts the beraita, which says that the pipes create *sheuvin* even before being attached. How can that be if the pipes are not *mekabel tum'ah*? Rabbi Landau responds that he is astonished at the critic's conflation *sheuvin* with *kabbalat tum'ah*, since *sheuvin* depends entirely on whether the relevant object is a *keli* regardless of whether it is *mekabel tum'ah*. Both Rabbi Landau and his interlocutor assume that detached containers are *kelim* regardless of why they were made.

ומה שהוקשה לך על מ"ש שם בחיבורי דכל שתחלת עשייתו ע"מ לחבר בקרקע - אינו מקבל טומאה,

והקשית: א"כ, בצינור שחקקו, שיש חילוק בין חקקו ולבסוף קבעו ובין קבעו ולבסוף חקקו,

נפלוג בחקקו ולבסוף קבעו בין חקקו תיכף ע"מ לקבעו ובין נמלך אח"כ לקבעו!?

אני תמה

מה ענין שאיבה, שתלוי רק בשם כלי, ואף שאינו מקבל טומאה, ובזה לא מהני אפילו חקקו ע"מ לקבעו, שאף שאינו מקבל טומאה - מ"מ שם כלי עליו בתלוש,

ועיין בפ' המוכר את הבית דף ס"ו ע"ב ד"ה דאיכא תורת כלי עליו בתלוש,

אבל לענין קבלת הטומאה, אפילו בכלים המקבלים טומאה מן התורה, אם עשאו ע"מ לקבעם בקרקע - אינן מקבלים טומאה:

3. Tosefta Yadayim 1:9 states that if a container formed naturally in groundrock, and then was naturally separated and reconnected, it does not create *sheuvin*. However, if a person "reconnected it ו thought about using it," it creates *sheuvin*. This text seems out of order, as presumably the thought is relevant only if it precedes the reconnection. The GRA accordingly translates "reconnected it **or** thought about using it." The Chazon Ish derives that "thought about using it" makes it a *keli* even if the thought was to use it only after reconnecting it, in which case it is not *mekabel tum'ah*. He cites our beraita about the pipes as evidence.

4. Talmud Shabbat 52b states that a new metal object which one intends to polish is not *mekabel tum'ah*, because it is unfinished. If one changes one's mind about polishing it, it becomes *mekabel tum'ah*, and if one changes one's mind again, it ceases to be *mekabel tum'ah*. However, if it actually becomes *tamei*, then it remains *tamei* even if one decides again to polish it.

Rav Elchonon Wasserman in קובץ שעורים קובץ שמועות חולין אות לב wonders: A broken *keli* does not retain previous *tum'ah*. If an unfinished metal object is not *mekabel tum'ah* because it is not yet a *keli*, and its status is changed by thought, then why isn't deciding to polish it the equivalent of breaking it, so that it is no longer a *keli*? He responds that an unfinished but useful metal object **is** a *keli*, just not one that is *mekabel tum'ah*. Changing its status to unfinished prevents it from becoming *tamei*, because unfinished metal objects are not *mekabel tum'ah*, but does not remove its existing *tum'ah*, because it is still a *keli*.

Rabbi Wasserman cites as parallel a case from Shabbat 52. A needle which has not yet had its eye pierced is not *mekabel tum'ah*, because it is unfinished. However, it is not *muktzah* on Shabbat as useless, since some people use needle blanks for other purposes. Rashi explains that the Torah declares objects to be *mekabel tum'ah* only if they are a *keli maaseh*. Rabbi Wasserman understands this to imply that a useful unfinished object is a *keli*, just not a *keli maaseh*. He then equates the Rabbinic standard of *keli* for

muktzah with the Biblical standard for *mikveh*, specifically citing as examples containers made of stone or dung and containers that were made to be used only while attached.

והנה ברש"י קידושין נ"ט כתב, דאם חישוב שלא לשוף ולשבץ - דנעשה כלי במחשבתו.

אם אח"כ נמלך לשוף ולשבץ, דנעשה גולמי כלי ע"י מעשה - מ"מ לא הוא שבירה אם היה טמא.

ולכאורה כיון דגולמי כלי אינו כלי לקבל טומאה, אין לך שבירה גדולה מזו!?

ועמ"ש בזה בקובץ שעורים פסחים אות קנ"ה.

וי"ל עוד עפ"מ ש"ש רש"י שבת נ"ב ד"ה בגלמי

דכל זמן שלא ניקבה - אינה מקבלת טומאה, דהא לא נגמרה מלאכתה, ולענין טומאה - כלי מעשה כתיב -

משמע דכלי מיהא הוי,

וה"ז דומה לכלי גללים ולדקין שבכ"ח, שאע"פ שאין מקבלין טומאה - פוסלין את המקוה, דשם כלי עליהן, שבת ט"ז.

וכן כלי העשוי לשמש את הקרקע - פוסל את המקוה אף על פי שאינו מקבל טומאה, ואפילו עדיין לא חיברו, כמ"ש הרמב"ם רפ"ט מהל' כלים.

ומעתה אפשר לומר עוד

דאף לענין טומאה, אין דין כלי מעשה אלא תנאי בקבלת הטומאה,

אבל כלי שכבר נטמא, אף על פי שחזר להיות גולם - לא פקעה טומאתו, כיון דאכתי שם כלי עליו.

5. Rabbi A. Y. Kuk in **שו"ת דעת כהן (ענייני יורה דעה) סימן קא** provides another example of a container that is considered a *keli* for *mikveh* purposes despite not being *mekabel tum'ah*. Talmud Bavli Pesachim 109b and Talmud Yerushalmi Yoma 3:8 each declare that the giant Temple basin known as Yam Shel Shlomoh was used as a mikvah; the Bavli adds that it was large enough to contain the water for 150 mikvehs, or 6000 sa'ah, minimally 12,000 gallons. Containers that cannot be moved when full are not *mekabel tum'ah*. Nonetheless, the Yerushalmi challenges the claim that the basin was used as a mikveh on the basis that it was used as a *keli*? Tosafot Pesachim 109b explain that while it was not *mekabel tum'ah*, it was nonetheless a *keli* for the purpose of *shevin*. Rav Yoel HaLevi cited in Mordekhai Hilkhhot Mikvaot 45 uses this logic to explain why immersion in a huge barrel that has been buried in the earth (i.e. *mechubar lekarka*) is invalid, even though it was always intended to be buried.

(RAK: See also Agudah Pesachim. Raavyah Teshuvot uBe'urei Sugyot 990 also quotes Rav Yoel haLevi's position. Note that some contend that the rule about containers that cannot be moved applies only to wooden containers.)

שו"ת דעת כהן (ענייני יורה דעה) סימן קא

ב"ה, ה' תמוז תער"ב, פעה"ק יפו ת"ו,

לכבוד הרב המאור"ג אוצר תו"ר מוה"ר זילבער שליט"א, רב דק' וואוסטער יצ"ו. ד' יברכהו בכ"ט.

הנני בזה להשיב לכת"ר בקצרה, ע"ד המקוה דבדק לן מר בגוה.

מפשט הסוגיא דבב"ת ס"ה דצינור שחקקו ולבסוף קבעו משמע דאפילו נעשה לשמש את הקרקע, שאינו פוסל משום קבלת טומאה לגבי דין דהויה ע"י טהרה בעינין, מ"מ פוסל הוא משום שאובין, דמ"מ שם כלי עליו.

חדא, דצינור זה בפשוטו משמע שנעשה לשמש את הקרקע, א"כ אפילו חקקו ולבסוף קבעו לא היה ראוי לפסול, א"ו אף על גב דאינו מקב"ט - מ"מ פסול שאיבה יש כאן,

וצריך לומר דמיירי בצינור שהוא כלי, כד' תוס' שם ד"ה צינור, דמיירי שחטטו באמצע לקבל צרורות.

ומדברי התוס' הללו עצמם ג"כ מוכח דלגבי שאיבה לא מהני נעשה לשמש את הקרקע,

משום דיש להקשות: מאי דוחקיהו לאוקמי הך דצינור בחטטו לקבל צרורות כדי שתהי' לו תורת כלי, הא אפשר לאוקמי בצינור של מתכת, ומטעם הוייתו ע"י טומאה, ואז פוסל ג"כ כשלא חטטו כלל, דמ"מ הוא מקבל טומאה כדין פשוטי כלי מתכת!?

מיהו יש לדחות משום דמסקנת הגמרא היא שאיבה דרבנן ומוכח דמטעם שאובין אתינן עלה.

אך מדברי הגמ' גופא יש להוכיח,

מדפשיטא להו דמיירי לענין שאובין ולא לענין הוי' ע"י טהרה, והיינו משום דמשמע להו דמיירי בעשוי לשמש את הקרקע. א"ו דאי בכלי מתכת מוקים לה ומשום קב"ט, תקשה איך הוא מק"ט בכל גווי, הא בפשיטות מיירי שעשוי לשמש את הקרקע, ובלא"ה אינו מקב"ט כלל!?! אלא ודאי לאו משום טומאה עסקינן כאן,

אלא משום כלי, ומטעם שאובין, וש"מ שגם בעשוי לשמש את הקרקע ג"כ יש בו משום שאובין, ולא פקע שם כלי מיניה אלא כשקבעו ולבסוף חקקו.

ובפירוש רבנו גרשום כ' מפורש:

ת"ר צינור שחקקו כדי לקובעו מן המעיין ועד המקוה, שילכו המים למקוה דרך הצינור.

משמע שהיתה החקיקה ע"ד לקובעו,

א"כ הויא עשייתו לשמש את הקרקע, דטומאה בכה"ג ליכא אפילו בשל מתכת, או בכלי עץ שיש בו חטיטה לקבלה, - ומ"מ משום שאובין יש כאן.

וכן משמע מהא דפריך שם מברייתא דבית אצינור, מני לא ר"א, והיינו משום דר"א ס"ל דבמתכת, בין חקוקה ובין קבועה, אמרינן כל המחובר לקרקע הרי הוא כקרקע, וכאן אמרינן דבחקוקו ולבסוף קבעו הוי כמטלטלין. ואם נאמר, שכאן לא הוי כמטלטלין לגבי שאיבה, כ"א כשלא עשאו לשמש את הקרקע, לא קשיא כלל, דבפשיטות יש לאוקמי דמתכת עשויה היא לשמש את הקרקע, ותחילת חקיקתה י"ל שהיא לכך.

ויותר מוכח זה מפ"י רבינו גרשום, דלא מפרש כפי' רשב"ם בחילוק שבין מכתשת קבועה לחקוקה, דקבועה מיירי שהיתה חקוקה ועשויה ואח"כ קבעה בקרקע, אלא דגם קבועה פירש שהיתה תלושה מעיקרה והדר קבעה וחקקה. א"כ מיירי בחקקה אחר הקביעות, דכה"ג ודאי לשמש הקרקע נעשית, וא"כ בצינור, דמקשה מיניה, צריך לומר דמיירי נמי בעשוי לשמש את הקרקע, דאם באין עשוי לשמש את הקרקע מיירי כאן, אין כאן שום קושיא כלל לר"א.

ובמרדכי למס' שבועות בהלכות מקואות שם (בד"ה כתב רבינו יואל הלוי) **בטר דמסיק לפסול בגיגית גדולה יותר מארבעים סאה, שמפני שהיא כלי עץ, אינה מקבלת טומאה מאחר שהיא באה במדה, שמ"מ לענין דין שאובין לא מהני, ומביא ראה מבור שבספינה, שפסול משום שאובין, כדאמרינן בספרא, ושם מחזיק הוא יותר מארבעים סאה, ש"מ שאע"פ שאינו מקבל טומאה מ"מ יש בו משום שאובין.**

והדין בזה פשוט הוא, משום דלא עדיף כלי עץ הבא במדה, מכלי אבנים וכלי אדמה, שאינם מקבלים טומאה ופוסלים משום שאובין.

אמנם מסיק שם במרדכי: וקשיא לן ים שעשה שלמה, האיך היו מטבילין בו, הלא כלי הוא ומוכח מזה דגם במחובר לקרקע, ועשוי לשמש את הקרקע, ג"כ פשיטא ליה דפוסל משום שאובין, דאי לא תימא הכי פשוט הוא לתרץ, דים של שלמה קבוע הוי בקרקע, ולכתחילה נעשה לקובעו בקרקע, וא"כ עשוי הוא לשמש את הקרקע. ומתוך קשר הלשון, שכתב שם וקשיא לן, בטר דמסיק לפסול גיגית גדולה שקבעה בקרקע, משמע דאם היינו אומרים שמה שמועיל להפקיע טומאה מהני ג"כ לגבי שאיבה, אז לא הוה קשיא ליה כלל, - והיינו, משום דהי' פשוט ליה לומר, דים ש"ש הוא נעשה לשמש את הקרקע, אבל בטר דמסיק דביטול הטומאה לא מהני לגבי שאובין, מקשה שפיר מים שעשה שלמה. א"כ מוכרחים אנו לומר, שכבר ידע דים שעשה שלמה הי' מחובר והי' עשוי לשמש את הקרקע, דאי לאו הכי אין לו קישור כלל עם הא דגיגית, שהרי הגיגית היא של עץ, והוי דומיא דשק, דאינה מקבלת טומאה כ"א במיטלטלת מלא וריקן, שפיר בגדולה בטל ממנה טומאה, אבל ים ש"ש, שהיה של נחושת, מצד גדלותו לא תפקע טומאתו. וא"כ איך עלה על דעתנו לומר, שהיה מקום לומר, שלא יהיה בו דין טומאה, עד שמסמיכו להא דגיגית, אלא ודאי משום דכמו שגיגית אפשר להפקיע טומאתה ע"י גדלה, ה"נ אפשר להפקיע טומאת הים ע"י עשוי לשמש את הקרקע.

ומ"מ אמר דבתר דמסקינן, דבגיגית לא מהני טהרה לענין שאובין, ה"נ לא יועיל לזה מה שעשוי לשמש את הקרקע, וש"מ דפשיטא ל' דעשוי לשמש את הקרקע אינו מבטל מדין כלי. ולכן הוצרך לטעמא, דרגלי השוורים נקובים היו כמוציא רימון.

וכ"מ יותר מלשון התוס' פסחים ק"ט ב', ד"ה בים שעשה שלמה, דמסיק שם מדהירו"ש, שרגלי השוורים היו מנקבים כרימונים והיו מחוברים למעין שתחתיים, משמע ודאי שהיו מחוברים לקרקע, והים ודאי מסתמא ה' מחובר לשוורים, ומתחילה לכך נעשו, א"כ הוי ממש לשמש את הקרקע, ומ"מ צריכים אנו לנקיבה של רגלי השוורים. מכ"ז מוכח, דעשיית הכלי לשמש את הקרקע לא מפקא לה מדין שאובין, אף על גב דמפקא לה מדין טומאה.

ובירושלמי, יומא, פ"ג ה"ח, לפנינו הגירסא היא: ולא כלי הוא, בקושיא על ים שעשה שלמה, ומשני: אמת המים היתה מושכת לו מעיטם, והיו רגליו שבדרום (או רגלי השוורים) פחותים כרימונים. ולכאורה י"ל, דאע"ג דיועיל שימוש הקרקע לענין שאובין, היינו לטבול במקוה, אף על פי שנשאבו המים בכלי כזה שעשוי לשמש את הקרקע, אבל לטבול בו י"ל שהוא איסור תורה ממש וחמור משאובין, וי"ל דל"מ שימוש הקרקע. ולפ"ז י"ל, שזוהי כוונת הקושיא ולא כלי הוא, ולעולם בשימוש הקרקע לענין שאובין י"ל, דכמו דהוא בטל לגבי קרקע לענין טומאה, הרי הוא בטל לענין שאיבה. וכ"פ בעל קה"ע, דקושיית הירושלמי ולא כלי הוא היא מצד שאין טובלים בתוך הכלים, ולא מצד איסור שאובין. רק בעל פ"מ פ"א מטעם שאובין, והיינו כד' התוס' פסחים הנ"ל, דהי' גירסתם כן, או דס"ל שזוהי כוונת הקושיא. ובאמת בלא"ה קשיא, למה פריך משאובין, דהוא דרבנן אליבא דכמה מרבנותא, וביחוד דעת ר"י בעהתו"ס בב"ת ס"ו, ד"ה מכלל, דכולו שאוב ג"כ מדרבנן הוי, ויותר הו"ל להקשות מדין אין טובלין בתוך הכלים. ואולי י"ל דלדעת תוס' ל"ה הים עשוי לשמש את הקרקע, ולא הוי מחובר כלל לקרקע, אלא הוי מונח על הבקר. והכי משמע יותר בקרא, מלכים א' ז' ומלכים ב' כ"ה, דכליל ליה בשם כלים, ואם הוי עשוי לשמש את הקרקע אינו בכלל כלים, אלא בנין, משו"ה ס"ל שפחתוהו, כדי שיבטל מדין קב"ט, ומ"מ כלי הוי, דמטלטל הוא, ומ"מ דוחק הוא לומר כן, ופשט הענין משמע דל"מ שימוש קרקע לגבי שאובין, ופשיטא דל"מ לענין אין טובלין בתוך הכלים.

וברבנו ירוחם נתיב כ"ו חלק ה', לענין דין צינור, כתב וז"ל לענינינו:

אבל קבעו ולבסוף חקקו אינו פוסל את המקוה, דהו"ל כחוקק בקרקע, ומותר להמשיך בו מים ע"י צינור, להשלים המקוה לארבעים סאה, ובלבד שיהי' במקוה רוב מים כשרים, שהם כ"א סאה, וכ"ש אם היה בו יותר,

וזהו המשכה שמותרת ברוב מים כשרים, אף ע"פ שלא נתערבו חוץ למקוה, כו'.

ולכאורה הדבר תמוה, למה הוצרך לצייר את דין ההכשר של קבעו ולבסוף חקקו, במקוה שיש בו כ"א סאה מים כשרים, ולענין המשכה, ה' לו לומר לענין שאובין ממש, דאם קבעו ולבסוף חקקו אין לו דין שאובין, ומותר למלאות את כל המקוה על ידו, כמו שהיא פשוטת הגמ' דבב"ת דעסיק בדין שאיבה.

א"ו דס"ל דכשהרוב הם מים כשרים, שאז השאובין אינם פוסלין כשהם באים בהמשכה, רק מצד דין הוייתו ע"י דבר המקבל טומאה, אבל מצד דין שאובין אין כאן פסול, ומשו"ה מהני קבעו ולבסוף חקקו. אבל אם נבא להכשיר כשמלא כל המקוה ע"י זה הצינור, כשחקקו ולבסוף קבעו, לא מהני לנו מה שאינו מקבל טומאה, כי סוף כל סוף כלי הוי, ודינו כשאוב ע"י כלי גללים כ"א וכלי אדמה.

וכן סיים שם בדקדוק לישונו, בטעם ההכשר משום דבר המקבל טומאה: כיון שקבעו בתחילה . . .

6. Tosafot Chadashim to Mishneh Mikvaot 6:10 offers an original Biblical basis for the distinction between *kabbalat tum'ah* and *shewin*.

[תוי"ט] סד"ה בזמן כו' עם הקרקע טהור.

ואפי' עדיין אינו משמש לקרקע, אלא דנעשה לשמש עם הקרקע - טהור.

וכבר הקשה כן בכלים פ"ח מ"ט.

אבל אפשר לומר

דיש לחלק בין שאוב לטומאה,

דדוקא לענין טומאה, דכתיב ביה *יומן*, דמשמע כל היכא ששייך נתיצה, וזה אינו אלא בתלוש לגמרי,

משא"כ אם חברים לקרקע, אף שהיה מתחלתו תלוש, כיון דעכשיו מחוברת היא לקרקע;

אבל גבי שאובין, דכתיב ביה כלי, וכיון דחל עליה שם כלי בתלוש. לא מיבטל תו שם כלי מינה.
 וכ"מ בר"ש וברמב"ם לעיל רפ"ד גבי צינור שחקקו ולבסוף קבעו, דהוי שאובים משום דהוי כלי בתלוש.
 וכ"כ הר"ב שם מ"ב.
 וכ"מ בתוספתא שהביא הר"ש כאן ע"ש.
 ועיין ברשב"ם בב"ב דס"ה ע"ב:

The list of names and citations can be greatly extended.

At one point, I wrote (perhaps hubristically) to a colleague expert in Taharot that so far as I could tell, my position was supported by all rishonim and acharonim who address the issue. He responded by citing Avnei Nezer YD:271 and Beit Yitzchak YD 2:30. I therefore present them here as the most likely basis for any conflicting position.

a.

Beit Yitzchak cites גידולי טהרה and לחם ושמלה as disagreeing with NbY's blanket claim that all useful containers create *sheuvin* before being attached. Each adds an additional qualification for being not *mekabel tum'ah* which explain why the pipe is *mekabel tum'ah* despite always being intended for attachment, e.g. that the pipe was useful even before it was a container. Beit Yitzchak rejects all these with regard to *deoraita* issues such as immersing in the container; he is willing to rely on them post facto in cases where the only possible invalidation is derabanan. He himself offers a qualification that adds a stringency to NbY, arguing that objects which are not of a **kind** used exclusively while *mechubar lekarka* are *mekabel tum'ah* on a rabbinic level even if the specific object was always intended to be used while *mechubar*. Note also that Lechem v'Simlah himself rules that one should in practice be stringent in accordance with the position of Noda b'Yehudah.

Each of the proposed qualifications in theory would need to be evaluated for their application to contemporary circumstances. However, since immersion in the container itself is a *deoraita* issue, in practice Beit Yitzchak simply supports my position regarding bathtubs and jacuzzis.

b.

Avnei Nezer argues, with a literary basis, that intention to use something only while it is *mechubar lekarka* is not the relevant standard. The relevant standard is "intention to use something only for the sake of the ground." The depression in the pipe, he argues, serves the **water** (as a filter), not the ground, and therefore the pipe is *mekabel tum'ah*. His example of "serving the ground" is a pipe intended to divert water away from a house.

It is not clear to me what Avnei Nezer's standard means, and therefore how to apply it to cases where the object contains the water, such as a bathtub, rather than having the water pass through it.

Moreover, in my humble opinion Avnei Nezer's ground for disagreeing with Noda b'Yehuda is a very weak reed:

קושיית האבני נזר היא:

לפי דברי הנב"י שדבר נעשה לשמש את הקרקע אינו מקבל טומאה אפילו בתלוש, יתכן שלשיתת הר"ש, שכולו שאוב בכלי גללים פוסל מקוה רק מדרבנן, דעדיין נקרא הוייתן ע"י טהרה,

א"כ אפילו כולו שאוב בכלי תלוש שנעשה לשמש את הקרקע פוסל רק מדרבנן,

וא"כ קשה, שהר"ש מוכיח ממה שמקשה הש"ס "מכלל דשאיבה דאורייתא" בתמיה שאין שום פסול שאיבה דאורייתא,

אמנם קושיית הש"ס נובע מברייתא ד"חקקו ולבסוף קבעו פסול", ולדברי הנב"י היינו אפילו עשאו ע"מ לקבעו שאינו מקבל טומאה, שלשיטת הר"ש אינו פסול אלא מדרבנן אפילו כולו שאוב, וא"כ עדיין היה אפשר לומר שכולו שאוב בכלי המקבל טומאה פסול מדאורייתא, ומה היתה ראיית הר"ש?!

ע"פ זה מסיק האבני נזר שבתלוש אפילו נעשה לשמש את הקרקע מקבל טומאה, ושאיני צינור שנעשה לשמש את המים.

אמנם במח"כ נלע"ד שיש ליישב בפשיטות, שהר"ש סבר שלא רצה הש"ס לאוקים את הברייתא דוקא בנעשה ע"מ לקובעו, דסתמא קתני ואח"כ קבעו, וכעין מה שתירץ בעצמו דסתמא קתני משמע אפילו רק ג' לוגין.

c.

Regardless, the positions of Avnei Nezer and Gidulei Taharah compel me to withdraw my assertion of unanimity. I am still very comfortable saying "overwhelming consensus and preponderance of evidence."

APPENDIX B

RABBI CHAIM AMSALLEM

Rabbi Chaim Amsallem (ובחרת בחיים), published at <https://zera-israel.org/digital-library/>, offers what seems like an argument for validating bathtub immersions. He contends that when all mikvaot are closed by government order, and therefore no women can immerse in accordance with the *derabanan* standard for a valid mikvah, it is necessary and proper for poskim to publicly legitimate immersions that meet *deoraita* but not *derabanan* standards.

Many of his arguments about the halakhic process are stimulating. However, as Rabbi Dr. Michoel Avraham points out in a critique-cum-haskomoh that Rav Amsallem publishes as part of his work, the psak addresses a fictional situation, because the mikvaot were never closed. We don't know what Rabbi Amsallem would say in the real world.

Secondly, Rabbi Amsallem's *deoraita* standard includes the requirement that the whole body be immersed at once. As we have seen, it would take the confluence of an extraordinarily large bathtub and an extraordinarily small women to make this leniency of any practical use. This is likely why his work continually says "or maybe Jacuzzi."

Finally, while Rabbi Amsallem sides with those who hold that *sheuvin* is never more than a *derabanan* issue, he does not address the consensus position that immersion in a *keli* is a *deoraita* issue. He therefore never addresses the issue of the validity of the tub itself. I can only speculate that he is unaware of the ways in which acrylic tubs are plumbed.

Bathtub Mikvaot and the Curious History of a Halakhic Libel

Originally Published in *The Lehrhaus*

June 15, 2020

In his *haskamah* (approbation) to Dr. Yitzhak Frank's *Grammar for Gemara*,¹⁵ Rabbi Nathan Kamenetzky writes:

With regard to grammar, I note that my revered father זצ"ל held that its study is included in the מצוה of תורה תלמוד because its knowledge is crucial for reaching correct Halakhic conclusions. He cited a grammatical error which led a well-intentioned author to propose building a מקוה in every Jewish home. Ignorance of the gender of the noun אצבע in רמב"ם הלכות ספר תורה פ"ט ה"ט had led that individual to advocate מקוואות that were undersized and invalid; their use would have resulted in massive איסורי כרת. Knowledge of grammar is thus not פרפראות לחכמה, which the טוספות י"ט defines as studies undertaken to enhance knowledge—which is not to be denigrated—but גופי הלכות, studies that affect Halakha.

Who was this “well-intentioned author”? Did he in fact advocate for obviously undersized *mikvaot*? Did his position result from grammatical ignorance? Does advocacy of home *mikvaot* necessarily entail advocacy for undersized *mikvaot*? Answering these questions requires some background.

Halakhah sets out detailed standards for a valid *mikvah* in terms of water supply, size, etc. (see *Shulhan Arukh, Yoreh Deah 201-202*). These standards historically made building a *mikvah* practical only for communities, which is why Halakhah declares the *mikvah* first priority for community construction.

The advent of indoor plumbing in the late nineteenth century opened the theoretical possibility of building *mikvaot* in ordinary private homes. Practically, however, the vast majority of Jewish women in the United States at that time did not immerse in any *mikvah*.¹⁶

In the early twentieth century, Rabbi David Miller of Oakland, California dedicated himself “to the revival of the observance of *niddah-tevilah-mikvah*.”¹⁷ He theorized that women were uncomfortable immersing in public *mikvaot* for reasons of hygiene or modesty. (This discomfort may have been the product of improved private bathing facilities.) His proposed solution was “a *mikvah* in every home.” A successful contractor, he published reams of designs for *mikvaot* that (he certified) could be built cheaply and effectively by anyone and fit easily and attractively into living areas as well. They could even be disguised as cabinets or used as the frame for sofas, etc.

Rabbi Miller first published his designs in 1920 in a short Yiddish book titled *Mikveh Israel*. In 1930, he published a more ambitious English tome, *The Secret of the Jew*, which included hundreds of pages of exhortation, a review of the laws of *mikvah* construction, and his designs, of course. *The Secret of the Jew* was self-published and distributed for free in at least eleven editions before his death in 1939. *Mikveh Israel* included endorsements from Rabbi Shlomo Elchanan Jaffe and Rabbi Shimon Tzvi Elbaum,¹⁸ and it was quoted extensively by prominent Chabad posek Rabbi Nissan Telushkin in 1947 in his *Taharat ha-Mayim* (and again in the 2nd expanded edition in 1950).

¹⁵ Yitzhak Frank, *Grammar for Gemara and Targum Onkelos: An Introduction to Aramaic*, 3rd ed. (Jerusalem: Ariel United Israel Institutes, 2016), viii.

¹⁶ Beth Wenger, “Mikveh,” *The Encyclopedia of Jewish Women*, Jewish Women’s Archive, March 20, 2009, <https://jwa.org/encyclopedia/article/mikveh>.

¹⁷ See David Miller, *The Secret of the Jew* (New York: Rabbi David Miller Foundation, 1938), v.

¹⁸ According to Rabbi Yossi Azose, there is also an approbation from Rabbi Moshe Zevulun Margoliot (RaMaZ), but I have not found this. See fn14 in Yossi Azose, “The Use of Municipal City Water for a Mikveh and the Case Study of the Seattle Rabbinate in the 1950s,” Institute for Jewish Ideas and Ideals, August 10, 2017, <https://merrimackvalleyhavurah.files.wordpress.com/2017/08/municipal-city-tap-water-for-a-mikveh-rabbi-yossi-azo-se.pdf>.

The “well-intentioned author” criticized by Rabbi Kamenetzky’s father was unquestionably Rabbi Miller. Did he in fact make the alleged grammatical error, and did it indeed result in his advocacy for undersized *mikvaot*? If not, why would such a libel have developed and spread?

Rabbi Miller’s home *mikvaot* were intended to be filled with ordinary municipal tap water. It is universally agreed that *mikvah* water must not have been stored in a *keli* (utensil) capable of holding water (*Shulhan Arukh, Yoreh Deah 201:6*). Such water is called *she’uvin*. The *mikvah* itself must also not be a *keli*. *The Secret of the Jew* contains extensive explanations of why tap water is not considered *she’uvin* (despite being piped from reservoirs and journeying through holding tanks and water meters) as well as detailed instructions for constructing a water-tight *mikvah* that is nonetheless not halakhically a *keli*.

Rabbi Miller’s approval of tap water *mikvaot* was not radical at the time. Rabbi Yossi Azose argues convincingly that communal *mikvaot* filled from municipal water supplies were common in the United States until at least the late 1950s.¹⁹

Sometime after Rabbi Miller’s death, however, Rabbi C.Y.L. Deutsch began an enduring and successful campaign to “upgrade” such *mikvaot* to systems that connect with rainwater pools (through a mechanism known as *hashakah*). There is no doubt that such systems offer significant halakhic advantages, and it is not hard to construct arguments for invalidating tap water *mikvaot*.

We can understand why supporters of Rabbi Deutsch’s campaign would be unhappy with Rabbi Miller’s proposal for home *mikvaot*, which **assumed** the halakhic validity of tap water *mikvaot* and advocated for their use even in communities with a public *hashakah mikvah*.²⁰

Opponents of home immersion also note correctly that only total immersion is halakhically sufficient, and the vast majority of women cannot fully immerse themselves in standard-size bathtubs. (This is independent of the objective amount of water necessary for a valid *mikvah*.)

If one has not read Rabbi Miller’s books, it is reasonable to suppose that he was advocating for bathtub immersions—that is, for immersion in *mikvaot* that do not enable total immersion. After all, Halakhah does not require a *mikvah* to be used exclusively for religious purposes. There is no halakhic objection to using a *mikvah* as a bathtub. So why should there be an objection to using a bathtub as a *mikvah*?

It therefore makes sense that proponents of bathtub immersion cite Rabbi Miller as their precedent²¹ and that opponents of tap water *mikvaot* accuse him of supporting bathtub immersion. One side sees bathtub *mikvaot* as an evocative symbol of opposition to stringencies that make halakhic observance difficult and empower rabbinic bureaucracies. Meanwhile, the other side uses Rabbi Miller’s alleged validation of bathtub immersions as a rhetorical weapon to cast support for tap water *mikvaot* in a negative light so that it seems absurd.

In fact, Rabbi Miller himself stridently rejected the use of bathtubs as *mikvaot*. A subchapter in *The Secret of the Jew* is titled “A Bathtub is not a *Mikvah*.” Both *Mikveh Israel* and *The Secret of the Jew* contain instructions for building a **separate** *mikvah* in one’s house.

How did this false impression start? Like most urban legends, it has a basis in fact. Let’s look at the Rambam cited by Rabbi Kamenetzky:

¹⁹ Ibid., 3.

²⁰ David Miller, *The Secret of the Jew*, 3rd ed. (New York: Rabbi David Miller Foundation, 1938), 277-282.

²¹ Haim Ovadia, “Mikveh in Every Home,” *Merrimack Valley Havurah* (blog), August 10, 2017, <https://merrimackvalleyhavurah.wordpress.com/2017/08/10/mikveh-in-every-home-by-rabbi-haim-ovadia/>.

The width of the *gudal*²² used in all these measurements and in all other Torah measurements is the *etzba ha-beinoni*. We have carefully calibrated its measurement and found that it is the width of seven medium barley grains placed side-by-side exactly, which is the equivalent of two barley grains in length. The term *tefah* everywhere equals four of these *etzbaot*, and the term *amah* equals six of those *tefahim*.²³

Rabbi Kamenetzky asserts that Rabbi Miller did not correctly identify the gender of the word *etzba*. Why would this matter? The key is that the following word “*ha-beinoni*” is masculine. So if *etzba* is masculine, Rabbi Kamenetzky reasons, then the phrase should be read together: “*the etzba, which is the beinoni*,” or the middle finger. But if *etzba* is feminine, then it must be translated as “*the etzba of the beinoni*,” or “the *etzba* of the average person,” without telling us which finger is the *etzba*.

I do not disagree with Rabbi Kamenetzky about the importance of grammar. But grammarians become terrible interpreters when they assume that all writers share their sense of correct grammar. For interpretation, what matters is not what gender the words *etzba* and *ha-beinoni* have in “correct” Hebrew; rather, it is whether medieval Jewish texts assigned them a consistent gender.

The evidence is clear that they did not do this. For example, Rash (Rabbi Samson of Sens) writes “*ba-etzba, hi ha-beinoni*” in his commentary to *Mikvaot* chapter 6, “with the *etzba*, which (feminine) is the middle finger (masculine).” Meanwhile, Rosh in *Hilkhot Mikvaot* writes the phrase “*ve-etzba, ve-hu ha-beinoni*”; “the *etzba* (feminine in “correct” Hebrew), which (masculine) is the middle finger (masculine),” each of them displaying indifference to the genders of their nouns and pronouns. On the other hand, Netziv—certainly a fine grammarian—writes in *Meishiv Davar* 1:20, “It seems that they were concerned to measure by a person with wider fingers than the average person, **unlike Rambam, who wrote explicitly ‘ve-hu ha-beinoni,’ meaning ‘of the average person.’**”

Plainly, both understandings of *etzba ha-beinoni* are possible. In fact, both have long histories.

Rabbi Kamenetzky presumably assigned *etzba* as feminine, as it is in Tanakh, and adopted Netziv’s interpretation—“of the average person.” He charged Rabbi Miller with the grammatical error of seeing *ha-beinoni* as modifying *etzba* and therefore of mistakenly identifying it with the middle finger. He further claimed that this “error” led Rabbi Miller to advocate for *mikvaot* that were too small.

When I first heard this charge against Rabbi Miller, it seemed obviously incorrect. No one disputes that the minimal halakhic measurement for a kosher *mikvah* is at least enough water for an ordinary person to fully immerse. Any measurement too small to enable this would be useless, and any measurement that enables this is plausible.

Moreover, the Talmud (*Eruvin* 14b) provides an objective volume measurement for a *mikvah*—it must be three *amot* by one *amah* by one *amah*, or three cubic *amot*. Since the range of positions as to the length of the halakhic *amah* ranges from approximately 18 to approximately 24 inches, Rabbi Miller had an easy way of checking his calculations. A 24 inch *amah* yields a 24-cubic-foot *mikvah*, and an 18 inch *amah* yields a 10.125-cubic-foot *mikvah*. Presumably, Rabbi Miller’s number fell somewhere in that range.

The mystery deepened when I looked up Rabbi Miller’s book²⁴ and discovered the following:

- a. he advocated for a 24-cubic-foot *mikvah*, the largest possible size, and
- b. he understood the phrase in Rambam exactly as Netziv and Rabbi Kamenetsky did.

²² *Gudal* generally means “thumb.” However, see [Rabbeinu Bahye, Leviticus 8:23](#) for a position identifying it as the pinky. See also [Bartenura to Mishnah Eruvin 1:1](#).

²³ All translations in the article are my own.

²⁴ David Miller, [The Secret of the Jew](#), 3rd ed. (New York: Rabbi David Miller Foundation, 1938), 359.

Moreover, as Rabbi Miller was certainly aware, Rambam in other places makes perfectly clear how to measure the relevant *etzba*. In *Hilkhot Shabbat* 17:36, *Hilkhot Tzitzit* 1:6, and *Hilkhot Nesi'at Kapayim* 15:4, he writes that any *etzba* mentioned with regard to measurement refers to the thumb, not to the middle finger. (In fact, though Rabbi Miller was not aware of this, the word *etzba* is not present in any manuscript of *Hilkhot Sefer Torah* 9:9. Assuming that this is the correct text, there would be no ambiguity at all.)

So, what was the basis of Rabbi Kamenetzky's charge?

Rabbi Ezra Schwartz of RIETS, my son's wonderful rebbe, put me on to the truth. In 1938, Rabbi Miller became frustrated that his efforts to popularize home *mikvaot* had not been met with sufficient success. He decided that more people would build them if they took up less space. So, he recalculated. The upshot was that for the eleventh edition, he shrank the required size of a *mikvah* from 24 cubic feet = 179.53 gallons to 10.777 cubic feet = 80.57 gallons.

Rabbi Miller acknowledges in this last edition that friends advised him to avoid controversy by adopting the Arukh ha-Shulhan's measurements instead, which he presents as 15.6 cubic feet = 116.7 gallons. He decided regardless to advocate for the smallest possible measurement in order to make the mitzvah as accessible as possible. Furthermore, he writes that empirical observation (he tried it himself) will demonstrate that a *mikvah* of his recommended size is sufficient for full immersion. He reports sending his revision to a broad range of scholars and receiving no factual rebuttals.

And therein lies the rub. Rabbi Miller also does not report receiving any letters endorsing his revised measurement. He acknowledges that it is much smaller than any approved European *mikvah*. It seems likely to me that none of the approbations to his earlier editions would have approved the revision, and it also seems likely that he did not give anyone the option of withdrawing their previous approbations.

Standard *mikvaot* of course use larger measures than Rabbi Miller's as to avoid taking chances. There is no way to know whether adopting the smaller measurement would have generated a wave of home *mikvah*-building and significantly greater observance of the laws of family purity. My suspicion is that vanishingly few home *mikvaot* of any size were built to his design, but I would welcome evidence to the contrary.

Rabbi Miller's new position validated *mikvaot* that were at least within shouting range of the capacity of the very largest bathtubs²⁵ (remembering that to be valid, a *mikvah* must be able to hold its full measure of water while the person is fully immersed). While the eleventh edition of his book still adamantly declared that a bathtub could not serve as a *mikvah*,²⁶ it became superficially plausible to accuse him of approving bathtub *mikvaot* (and to cite him as if he approved such *mikvaot*).

The stage was thus set for the later unfair dismissal of his work via such accusations as Rabbi Kamenetzky's. Rabbi Miller's ideas for home tap-water *mikvaot* may or may not have been plausible in his time, and they may or may not have any relevance in our time. But, his halakhic scholarship deserves respect and consideration.

²⁵ My home's ordinary five-foot bathtub contains slightly over 8 cubic feet, or around 60 gallons.

²⁶ For this author's explanation of why Rabbi Miller invalidated bathtub *mikvaot* for reasons other than size, please see Aryeh Klapper, "Can a Bathtub be a Mikveh?" in *CMTL Shavuot Reader 2020 Edition*, Center for Modern Torah Leadership, May 28, 2020, http://www.torahleadership.org/categories/shavuot_reader_2020.pdf, 8-10.

A Teshuvah Regarding Pikuach Nefesh in a Time of Pandemic

May 28, 2020

Dear Rabbi Klapper,

I have always taken great pride in the way that halakhic Judaism celebrates life. I celebrate my friends who are doctors and nurses as doing the work of Heaven. One of the reasons I so look up to them, and don't envy them, is that they willingly sacrifice their Shabbat experience to save lives. I could never imagine being on-call for work over Shabbat, or having to answer my phone for work.

Until this week. When it became known that healthcare workers and first responders were dying for lack of masks, I turned my high-end tailoring shop into a mask factory, and my workers have all volunteered to come in for free on Shabbat and Sunday to continue production. I'd feel terrible if all my workers were working for free while I was relaxing with my family, and besides, what is pikuach nefesh if not this? And wouldn't it be a terrible chillul Hashem if I didn't go?

But I will also feel terrible violating Shabbat. So please tell me what I should do.

Sincerely,
Ralph L. Schneider

Dear Ralph:

Thank you for your beautiful question. I am humbled by the depth of both your religious and your moral commitments. Words can't express how grateful and impressed I am by your and your workers' willingness to give your time for this purpose – certainly everything about this is a *kiddush Hashem*. It's hard for me to think of telling you what to do. But I'll tell you how I'm thinking about the question, and then we can discuss further how to make the actual decision.

There is no doubt that the Torah gives enormous value to pikuach nefesh. "And you shall live by them" teaches us that all the mitzvot except for three must be violated to save a life. Your volunteering is an enormous mitzvah. But the exceptions for *avodah zarah* and *gilui arayot* teach us that life is not the only Torah value.

All three exceptions are *mitzvot lo taaseh*, DO NOTs. That's because not doing something can be more important than life even in the moment, whereas good things can generally be postponed. For example: There is no need to give up one's life for the sake of studying in the moment, but the martyrdoms of Rabbi Akiva and Rabbi Chanina ben Tradyon suggest that the same might not be true if the price of living meant never learning Torah again.

Moreover, halakhic decisions among competing goods may not rest on which is "more important."

For example: *Shomer petaim Hashem* allows people to engage in at least some forms of dangerous but remunerative employment, so long as the risks involved are considered negligible by one's society. Similarly, Rav Aharon Lichtenstein zt"l would ask when teaching Bava Kamma, which assigns compensation for all the various destructive things that bulls can do: Why didn't the Torah just ban owning bulls? Rabbi Dr. Moshe Tendler asks the same question on the societal level in his article "בעיות הרב ספר כבוד הרב 167-169 בקדימה בהצלה: התקציב הציבורי ודיחוי נפש מפני נפש" If pikuach nefesh overrides everything, why is it permitted for a state to build parks, rather than spending its entire GDP on healthcare?

The answer is not that jobs, bulls and parks are more important than pikuach nefesh. Rather, we need to recognize that "most important" values should not become "exclusive values." Preserving life is an enormous value, but other values are what makes life worth preserving. *Shomer petaim* is just one of the

principles halakhah used to hedge pikuach nefesh about and ensure that it does not utterly dominate the halakhic scene.

The halakhic discussion around autopsies beautifully illustrates this complex halakhic calculus.

In the late 18th century, Rabbi Yechezkel Landau (Responsa Noda B'Yehuda 2:YD210) was forwarded a three-way rabbinic exchange about whether to permit autopsying a patient who had died of bladder-stone surgery in order to improve surgical knowledge for future such operations. Rabbi Landau pointed out that all sides of the previous discussion had ignored the elephant in the room: if knowledge gained from autopsies saved lives, shouldn't that justify any prohibition conceivably involved in conducting autopsies?

One might respond *in hakhi nami*, sure - if dissecting every Jewish corpse would save even one life, then that's what halakhah requires. But Rabbi Landau did not see this as a plausible outcome.

Rabbi Landau further noted that if performing an autopsy to gain medical knowledge constitutes pikuach nefesh, then they may be performed on Shabbat. And if so, then shouldn't anyone working in life-and-death healthcare be permitted to work on Shabbat! One might allow drug manufacturers to run their plants only if there is a chance of a shortage that couldn't be made up after Shabbat. But what about research labs working on cures of cancer, or new vaccine development? Isn't every moment lost from pikuach nefesh inexcusable?

One might respond again *in hakhi nami*, we do whatever halakhah requires. Rabbi Landau instead developed a new halakhic standard for *pikuach nefesh*. That standard was "*choleh lefaneinu*," meaning that *pikuach nefesh* applies only to a concrete, identifiable, physically present patient. One can autopsy Patient A only if Patient B with the same illness is already in one's care.

Rabbi Landau's standard has essentially disappeared as a matter of practice, although it is often paid lip-service. For example, responsa often cite Chazon Ish YD 208:7 for the proposition that *lefaneinu* is only an example, and "the matter is common" suffices. Or one might cite Rav Yechiel Weinberg's opinion (כתבי הרב וינברג א:כב) that in an age of instantaneous communication, every presently ill person in the world is considered *lefaneinu*. Responding to the present crisis, Rav Osher Weiss and Rav Herschel Schachter each ruled that patients whose near-term arrival in hospital is statistically likely are considered *lefaneinu*.

Rabbi Landau's original formulation had no precedent, so I am not overly concerned about whether these rulings hew to his standard. Rather, my question is how, with his standard obsolesced, we respond to Rabbi Landau's concern that *pikuach nefesh* would take up too much space in halakhah, with Shabbat as the specific example.

One last time, one might respond *in hakhi nami*. Doctors and EMTs already carry their cell phones everywhere on Shabbat, and many doctors go in for their regular rotations, and ambulance crews stand by for Hatzolah, and we are glad and admiring of them, and yet Shabbat survives. But maybe the slope is slipping, and we need to draw new lines to hedge in *pikuach nefesh*. Yet at the same time, we must be extraordinarily careful not to draw those lines too tightly.

Poskim tried to draw two new lines in the discussion about ZOOM sedarim and check-in phone calls during the first "3 day Yom Tov" in isolation. The first was between medical professionals and the rest of us. Pulpit rabbis were reclassified as triage therapists, who were therefore **obligated** to check their messages on Yom Tov, while doing so remained completely forbidden to the rest of us. The second is better illustrated than explained. Amudim and then the RCA allowed check-in calls, but insisted that the call be initiated via a *shinui*, e.g. tapping the screen of a smartphone with one's nondominant hand. (Whether or not this actually constitutes a *shinui* is beyond my scope here.)

An effective *shinui* turns a *deoraita* violation into a *derabanan*. But Rabbi Landau explicitly stated that *pikuach nefesh* is a binary switch halakhically; either it permits both *deoraitas* and *derabananans*, or it

permits neither. Moreover, everyone understood that cellphones are not static, so that the *shinui* would not be maintained for all actions during the call, and no one suggested that ambidextrous people could not make the calls. The call for a *shinui* was a *heker*, a marker that this kind of *pikuach nefesh* was different, even if we hadn't yet figured out exactly how.

Here's what I think was the key felt if not yet formulated difference. The phone calls were needed because we were confident that some members of a given group would be in danger of suicide, but not because we knew that any specific person was in danger. So the case did not meet the meaning of the *lefaneinu* standard, even though we could point to a class of people we were treating as endangered. Until we formulate a new standard, demanding a *heker* makes a lot of sense.

Your question similarly fits in the breach where *lefaneinu* used to hold the halakhic line. That means we probably need to think creatively rather than just answering yes and no.

We also need to think about what precedents we'll be setting, positive or negative, and try to be as clear as possible to everyone about why you're making the decisions you are. For example: Would we be fine if all Jews spent their Shabbat afternoons sewing masks, which absent *pikuach nefesh* would certainly involve several capital violations of Shabbat? Do we think that bureaucrats responsible for distributing funds for purchasing or manufacturing PPEs can work on Shabbat, if that means that more equipment will be made available faster?

So here are a few of the questions I think we should be asking in your specific case, but that I think might be relevant in many cases:

- 1) Is working on Shabbat the only option you have for achieving this result? Could you, for example, achieve the same result by telling your workers that you'll come in Saturday night in addition to Sunday?
- 2) Are you giving up all your free time for this, or are you still working 9-6 during the week? Would you cancel a long-planned vacation (if such things were still possible)?
- 3) Is what you are doing personally essential for the work to be done, or do you just think that you're better at the work?
- 4) How confident are you that your masks are going places where they save lives, as opposed to letting people engage more safely in activities not strictly necessary to save lives?

I'm sure you've already thought of other questions along these lines.

Here is what I am thinking of as the halakhic calculus we should use.

1. Halakhah has two models for permitting prohibitions in time of necessity, *hutrah* and *dechuyah*. *Hutrah* means that once the necessity of accomplishing something is established, we don't look to minimize the degree or number of prohibitions you violate. *Dechuyah*, by contrast, means that we permit only the absolute minimum and degree of violations necessary.

The conventional standard for *pikuach nefesh* on Shabbat is an odd hybrid: we formally rule *dechuyah*, but tell people to act as if it the ruling was *hutrah*, because we're afraid that thinking about how to observe a *dechuyah* standard will cause delay and hesitation and eventually cost lives.

2. Halakhah doesn't distinguish between definite risk-to-life and non-trivial-chance of risk-to-life in terms of overriding prohibitions.

3. In cases like this, however, I think we should revert to an actual *dechuyah* standard, and permit only what is absolutely necessary. Moreover, I think that what we should be willing to permit should be directly proportional to the strength of the answers to your questions. For example, if you and your workers are living your ordinary hours during the week, and choosing to work on Shabbat when you could accomplish

the same thing by double-shifting during the week, I would see no basis for permitting any formal Shabbat violations on your part. Maybe you could walk by and give them a thumbs-up, despite the risk that observers will think that you're benefiting economically from their work. If you're working to exhaustion, and no other schedule is feasible, but you're not sure where your masks are going, I might allow more, but certainly not *deoraita* violations. If you know that these masks are going straight to frontline healthcare workers, and that any choice you make other than working on Shabbat will lead to such workers having to do without masks, then I would let you do whatever was necessary, but with a *shinui* where possible without impeding either the masks' or your efficiency.

Thank you again.

With great appreciation,

Rabbi Aryeh Klapper

Pledges and Allegiances

June 5, 2020

The Nazirite is an ersatz High Priest. Taking a vow of nezirut forbids one to cut one's hair or become tamei even for relatives, and just like a High Priest), and to drink wine (parallel to a priest who is actually performing Temple Service). Through the institution of nezirut, the Torah provides an outlet for those who cannot be satisfied by merely fulfilling what is required of them, or who cannot handle having G-d require more from someone else.

Is providing this outlet an ideal, or rather a concession? Is the nazir a laudably ambitious spiritual striver, or an obsessively hypercompetitive soulthlete?

Talmud Nedarim 9a-10a offers a wonderfully nuanced meditation on this question. We'll start at the end and meander our way to the beginning.

The last unit of the sugya centers on a beraita:

ר' אלעזר הקפר ברבי אומר:
וכפר עליו מאשר חטא על הנפש –
וכי באיזו נפש חטא זה?!
אלא שציער עצמו מן היין.
והלא דברים ק"ו:
ומה זה שלא ציער עצמו אלא מן היין – נקרא חוטא,
המצער עצמו מכל דבר – על אחת כמה וכמה!
מכאן:
כל היושב בתענית נקרא חוטא
The great Rabbi El'azar HaKappar said:
"and this will atone for him from his sin against a nefesh" –
What nefesh did the nazir sin against?
It must be that he afflicted himself by denying himself wine.
This generates a kal vachomer:
If the nazir, who only denied himself wine, is called a sinner,
one who denies himself everything – all the more so!
From here (we derive):
Anyone who fasts is called a sinner.

Rabbi El'azar HaKappar presumably was in favor of fasting on Yom Kippur. But he nonetheless calls voluntary asceticism a sin. Perhaps it smacks of ingratitude for G-d's Creation.

The Talmudic narrator, however, calls foul. The verse "and this will atone for him from his sin against a *nefesh*" refers to a *nazir* who accidentally violated his vow by becoming *tamei*. Isn't that violation the sin, rather than the original oath?

There are too many scribal variants in the line that follows to know whether the challenge is answered here. However, the question plainly resonated with someone. Here's how I know.

Yerushalmi Nazir 1:5 reports the following story:

אמר שמעון הצדיק:
מימי לא אכלתי אשם נזיר אלא פעם אחד
שעלה אחד אלי מדרום
וראיתיהו
דמות יפה עינים וטוב רואי קווצותיו תלתלים
ואמרתיו לו:
בני, מה ראית להשחית השער הנאה הזה?!

נומא לי:
 ר', רועה הייתי בעירי, והלכתי למלאות את השאוב מים,
 וראיתי את הבוביא שלי בתוך המים,
 ופחז יצרי עלי ובקש לאבדני מן העולם.
 אמרתי לו:
 רשע, מה אתה מפחז בדבר שאינו שלך?! עלי להקדישך לשמים?!
 וחבקתיו ונשקתיו על ראשו
 ואמרתי לו:
 בני, כמותך ירבו עושי רצון המקום בישראל
 עליך הכתוב אומר איש או אשה כי יפליא לנדור נדר להזיר לה'
Said Shimon the Righteous (and High Priest):
In all my days, I never ate the asham-sacrifice of a nazir except once
when someone came to me from the south
I saw him –
beautiful eyes, good-looking, with curly locks –
and I said to him:
“My son,
What inspired you to shave this beautiful hair (as required at the end of the nezirut term)?”
He replied:
“Rebbe,
I was shepherding in my city, and I went to fill the trough with water,
and I saw my reflection in the water,
and my (evil) inclination seized me and sought to wipe me out of the world,
so I said to it:
‘Wicked one,
you are seizing via something that is not yours? It is my obligation to sanctify you to Heaven!’”
I hugged him and kissed him on the head
and I said to him:
“My son,
May those who do the Will of the Omnipresent like you multiply in Israel!
Regarding you Scripture said: If a man or woman swears an oath of nezirut to G-d.”

Essentially the same story appears in the Bavli, except that this is the only *asham*-sacrifice of a *nazir* **who became tamei** that Shimon haTzaddik ever ate from. The addition of “who became *tamei*” lets the story match the context of the verse. But it seems now that Shimon HaTzaddik regarded only those *nezirim* who became *tamei* as sinners. And why would the handsome southerner’s origin story be relevant to the issue of *tum’ah*?

The Talmudic narrator responds via a sharp observation about human nature. People mean it when they take a vow of *nezirut*, and they accept the required privations without regret – until something goes wrong, and they have to start over. Shimon HaTzaddik thought that every other *nazir* who had become *tamei* had regretted their original oath.

Understand that the *nezirim* who made it through without becoming *tamei* were just lucky – they too would have regretted their oaths had they become *tamei*. They had a cost-benefit calculation in mind when making their oath. Their motive for becoming *nezirim* was at least partly ego-gratification rather than truly “for G-d.” Yet Shimon HaTzaddik did not consider them sinners. Maybe we see the oath as channeling and sanctifying their evil inclinations rather than as indulging them.

That is a fine line indeed. A third beraita presents the issue squarely:

חסידים הראשונים היו מתאווין להביא קרבן חטאת,
 לפי שאין הקדוש ברוך הוא מביא תקלה על ידיהם,
 מה היו עושין?

עומדין ומתנדבין נזירות למקום, כדי שיתחייב קרבן חטאת למקום;

ר' שמעון אומר:

לא נדרו בניזיר

. . . כדי שלא יקראו חוטאין,

שנאמר: וכפר עליו מאשר חטא על הנפש.

The Early Pietists were desirous of bringing a chatat-sacrifice (which atones for accidental sins), because the Holy Blessed One never causes missteps through them (so they never sinned accidentally).

What would they do (to satisfy their desire)?

They would arise and voluntarily vow nezirut to the Omnipresent, so as to become liable for a chatat-sacrifice to the Omnipresent.

Rabbi Shimon said:

They did not take a nazir oath

. . . so as not to be called sinners,

as Scripture says: “and this will atone for him from his sin against a nefesh”

The Early Pietists were frustrated by their lack of access to a category of religious experience. Moreover, G-d deliberately sets out to deny them this experience (as a reward!). But they found a loophole in His defenses. The *nazir* brings a sin-offering even though taking the oath is not prohibited. So they took the oath, according to the anonymous first position in the *beraita*.

Rabbi Shimon denies this. What sort of Pietist sees sating their own spiritual appetite as justifying actions for which the Torah requires atonement?

This brings us back to the sugya's opening *beraita*, which records a dispute between Rabbi Meir and Rabbi Yehudah. Rabbi Meir believes that oaths are best never taken; what justifies taking the risk of nonfulfillment, which is a *deoraita* violation. But Rabbi Yehudah says that the opportunity to fulfill a vow justifies the risk of non-fulfillment.

I suggest that Rabbi Yehudah affirms the religious value of autonomy. He understands why the experience of serving G-d through a self-imposed obligation can add something to the experience of serving G-d by obeying His entirely heteronymous commands. Rabbi Meir may have rejected autonomy altogether. More likely, he read Halakhic Man and believed that all of Halakhah reflects human autonomy, because the law is formulated by human thought.

In the long-term, this sugya may be a useful “safe space” for thinking about whether and how we consider motives when people express a desire for religious experiences that are within halakhah but beyond their personal halakhic obligations. In the short-term, it can be a spur to thinking about whether and how to make public pledges about anti-racism in response to the horrifying killing of George Floyd.

I am leery of pledges – I like to be free to do the objectively right thing rather than being constrained by subjective commitments. There will always be costs that I had not sufficiently considered, and there's often some element of grandstanding. Often we don't really mean to make an unqualified and absolute commitment, and our exceptions eventually generate cynicism rather than inspiration. Fairly generic public pledges may be stalking horses for more extensive campaigns or ideologies I disagree with.

Most of all, I don't want to create the misimpression that opposition to racism is imposed on Torah and Halakhah rather than deeply expressive of them.

On the other hand, pledges create human connections. People from radically different walks of life often trust each others' pledges more than they trust each other's overall moral systems.

Public pledges also create accountability. Putting commitments in nonHalakhic form makes it much harder to hide behind the wonderful complexities of our tradition.

Finally, pledges create pressure on others to do the same, and change the default settings of people without strong opinions.

Connections, accountability, and pressure are emphatically needed with regard to racism in the Orthodox community.

Balancing all these considerations, and with full credit to Uri l'Tzedek for creating an admirable anti-racism pledge, I wish to state the following:

There is a halakhic obligation to object and reprove when Orthodox Jews make racist statements in one's presence.

There is a halakhic obligation to object and reprove when Orthodox community policies discriminate on the basis of race, whether implicitly or explicitly.

If you catch me failing to live up to these obligations, please hold me accountable.

Dialogue: Should Torah Be Non-Partisan?

June 12, 2020

Edited transcript of a conversation this week between the middle-aged Centrist Orthodox politically moderate rabbi of a midsized shul and two wonderfully difficult congregants.

Aharon and Miriam: Rabbi, we're wondering if you plan to tell us which candidates or party to vote for in the coming election. We understand that politics are really tangled, so there's often a really good Torah basis for either side. But surely this year the choice is clear! Even though we disagree about which side to choose.

Rabbi: The task of a public scholar is to make Torah relevant, but not partisan.

Miriam: Why shouldn't Torah be partisan, if one side is closer to Torah than the other?

Rabbi: The Orthodox community is politically diverse. If we make Torah partisan, then some of our members will turn away from Torah, or else we will split the community.

Aharon: If Torah cannot tell people what to do about the major human issues of the day, what use is it? If Orthodox Jews will turn away from Torah rather than obey it, what sort of Fear of Heaven does our community have?

Rabbi: I'm very glad you asked that question. Certainly Torah can and should tell people what to do about specific issues. But a political party or candidate has positions about lots of issues. All I'm saying is that Torah doesn't tell people to support all the positions of Party A or Candidate B just because Torah supports some of their positions.

Miriam: That isn't a sufficient response. Part of the job of Torah is to tell us how to weigh and balance various values, isn't it? So if Candidate B is right about the more important issues, then you should tell us to vote for her. It sounds to me like you're using Torah to cover up for unwillingness to risk the shul's tax exemption.

Rabbi: I can't deny that the tax exemption has crossed my mind. But I'm less worried about losing it than about keeping it dishonestly.

Miriam: Then give it up voluntarily! Or make a clear division between when you're speaking as the rabbi of the shul and when you're speaking privately. For example, I want to make clear that I'm not asking you because of your position, but rather because of my profound respect for your Torah wisdom.

Aharon: Me too!

Miriam: And if you're worried about members leaving, I think you're being slippery. You know full well that taking a position on some issues will be understood as partisan no matter how much you insist that you aren't telling people how to vote.

Rabbi: I'm sure you're right about that.

Aharon: So are you going to avoid taking positions on those issues? Even if they're the most important issues?

Rabbi: Thank you for holding me accountable to my own ideals. I don't think I could live with myself if I was just being cowardly. But I still feel very uncomfortable attaching Torah to one political side or the other, and I'd like help figuring out why.

You know how deeply I believe that halakhah is not meant to turn people into religious automatons who simply obey orders. They have to take responsibility for their own Torah choices. I also say all the time

that Torah scholars have no special knowledge or authority over facts. It feels like telling people how to vote violates both those principles. I think my job is to explain to people what I see as the values and principles the Torah holds dear, and let them decide how those play out in the real world.

Yes, I pasken about kashering dishwashers, and about mechitzah height, and even life-and-death issues. But only where detailed halakhic knowledge is essential, or where the community needs a single standard, or in the rare case that I think a person has the right to defer responsibility.

Miriam: That sounds awfully noble, but I'm not convinced. But let's leave voting aside for the moment. I'm sure a lot of people have asked you how to balance the pikuach nefesh risks of the pandemic against the moral necessity to protest. Did you pasken for them?

Aharon: Also, even if you don't want to pasken, what are you doing, yourself, in public? It would be ridiculous to claim that leading by example deprives other people of their autonomy.

Rabbi: I understand that some people have a very hard time accepting that it could be permitted to attend a mass demonstration at the same time that we're saying that shuls have to stay closed, and permitting only small outside minyanim.

Shuls are closed because a community like ours is very vulnerable to rapid spread, and many of us live with people in high-risk categories. Gathering together isn't just risking our lives, it risks the lives of other people. People who attend demonstrations that don't absolutely maintain social distancing should not be attending minyan at all. The same goes for anyone in their households.

But attending demonstrations is arguably a way of saving lives, and correcting radical injustice on the societal level, especially a society that one participates in, benefits from, and has responsibility for, legitimates assuming a certain amount of risk to oneself. So if people are convinced that the demonstrations can have such results (whether I agree or disagree), I tell them to minimize the risk to themselves and maximize results as best they can. But they must be extraordinarily careful not to expose others who have not voluntarily assumed any risk.

My household has high-risk people, so it's hard for me to justify attending any public gathering. I believe that otherwise, like many of my colleagues, I would be joining protests that observe social distancing.

But let me challenge you for a moment. Demonstrations are a physical risk, but they may be less of a social risk than taking stands within our community, especially when that puts us in conflict with people who generally share our political or religious views. As Dumbledore said, standing up to our friends often requires more courage than standing up to our enemies.

I am absolutely comfortable saying that Torah requires Democrats and Republicans to treat every human being with dignity. This is true in direct dealings and in how we speak about others when they are not present, and with regard to both individuals and groups. Can you tell me what you are doing to make this happen within our community, and within the Orthodox community?

Miriam: I've been sharing like mad on Facebook some amazingly powerful stories and statements from Jews of color who love our community but nonetheless have sometimes felt excluded or disparaged. Also divrei Torah emphasizing that support for equal civil rights is a religious obligation, and statements from politically conservative thought-leaders about how ongoing racism undermines our vision of American exceptionalism.

Aharon: I committed to not being silent when people in my community say or share things that, to me, violate the principle that all human beings are created *b'tzelem Elokim*. But it's really hard – I have a lot fewer “friends” than I did last week, and now I'm a little bit glad that I won't be going to an extended family party for a while. I know that some of my friends who made the same commitment are afraid they'll have to confront teachers they revere. What about you?

Rabbi: One of my teachers coined the term “sustainable hypocrisy” for the idea that people and communities should try to establish public images just a little better than they actually are, and then try to live up to them. This works if the image is just a little better, but not if the gap is large. I’m very happy that so many Orthodox organizations have made statements about committing to eliminating both gross and subtle racism within our ranks, but the gap is too large right now. I’m working to shrink it.

Here are two concrete measures that I think can be implemented soon:

1) having every school and shul put accountable policies in place to ensure that no one is ever asked to prove their Jewishness because of how they look. I can’t tell you how many upsetting stories I have heard about admission interviews or about shul guests. I want to stress the accountability – right now these stories often go nowhere because there’s no safe address for complaints.

2) making clear at every level and in every context, from pre-school to kiddush club, that we view making racist comments as a violation of Halakhah. Statements by organizations or university presidents can too easily be dismissed as exercises in public relations. We need to translate them into consensus halakhic guidelines for shuls and schools with the imprimatur of major poskim. I resist formal sanctions for any but the most blatant or repeat offenders; but our positions and policies should be crystal clear.

Obviously there is much more to do. But if we can establish accountability and Torah rigor in core contexts, we’ll be in much better shape to address the harder questions about both our present and our past, and to provide serious Torah resources for thinking about partisan issues.

Our time together is almost up. Does one of you have a relevant question or comment about this week’s parshah?

Miriam: Well, Aharon and I were discussing, just before you came in, how this week’s parshah is always a gut-check for me because of what happens to Miriam, and maybe – I know this isn’t how most of the rishonim understand it – because she wasn’t welcoming to someone who looked different, and came from a different culture. I wonder how Mosheh Rabbeinu’s children were treated – maybe that’s why they never became communal leaders.

Rabbi: Yeyasher kochekh. A sobering thought to leave on. I look forward to our next conversation.

This dialogue is a work of ideological fiction. Any resemblance to actual persons, living or dead, is coincidental but artistically encouraging.

Beyond Pikuach Nefesh

Originally published in *The Times of Israel*

August 28, 2020

We need a new and different Torah conversation about COVID-19.

In the early stages of the pandemic, poskim were profusely praised for prioritizing public health over public ritual. Halakhic decisions were accompanied by fiery rhetoric about the primacy of lifesaving in halakhah. This hyperbole may have saved lives.

Perhaps it still would, if people followed its implications consistently. But that is not where we are as a community. Instead, the embers of that rhetoric are generating feelings of hypocrisy or despair, and a sense that halakhah is irrelevant to real-world problems.

If minimizing risk of death were really the Torah's absolute priority, no Orthodox school would consider reopening this fall. Everyone frum would wear a mask everywhere, even when socially distanced outdoors (lest one forget to put it on when mixed dancing). No one frum would walk into a grocery store. We would unanimously support shutting our countries down, regardless of economic and other costs. Clearly, this is not our reality.

The truth is that saving lives is a profound value in halakhah, but not the only one, or even paramount. For example, the halakhic consensus is that a Jew must die rather than commit murder, idolatry, adultery, or public desecration of the Name of G-d.

Those are the simple cases, where the trade-off is immediate and the outcomes are clear. What does halakhah say when the trade-off is between physical and mental health (some have argued that teenagers, and children generally, are suffering from a silent epidemic owing to lack of physical connection with their friends)? Between mortality rates in the short-term, and life expectancy over the next 50 years (which realistically correlates with the nation's economic condition)? Between quantity and quality of life?

Professor Ronald Heifetz of Harvard's Kennedy School of Government distinguishes between an emergency and a crisis. An emergency exists in the moment; things will get worse if you do nothing, so you need to do something NOW, even if what you do cannot work in the long term. In a crisis, things may already be terrible, but they won't get worse in the moment unless you do the wrong thing. You can play for time. In a crisis, it makes much more sense to weigh long-term consequences before acting.

Around Purim and Pesach, we treated the pandemic as an emergency. Maybe short-term reactions are still appropriate, perhaps because an effective permanent vaccine will emerge soon, or less virulent strains of the virus will begin to dominate. But I suggest that we will better understand the decisions we are making, and make better decisions going forward, if we think crisis rather than emergency.

Let me illustrate this distinction within halakhah and aggadah. A beraita cited on Berakhot 61b reads:

Once the evil empire decreed that the Jews should not engage in Torah (study). Pappus ben Yehudah came and found Rabbi Akiva, who was engaging in Torah in public assemblies. He said: "Akiva, aren't you afraid of the empire?" Rabbi Akiva replied: "I will give you a parable: to what is this similar? There was a fox walking along the riverbank, and it saw fish gathering from place to place. The fox said to them: 'From what are you fleeing?' The fish said to him: 'From the nets that human beings set for us.' The fox replied: 'Do you wish to come up to dry land, and we will dwell together as my ancestors dwelt with yours?' The fish replied: 'Are you the one they call the smartest of animals?! You are not wise, but foolish! If we are terrified in the medium which keeps us alive, in the medium where we die, all the more so!' So too we – now that we are settled engaging in Torah, in which it is written 'for she is your life and the length of your days' – yet it is so; if we go abandon it, all the more so!"

The public study of Torah is a positive commandment, and in any case *bittul Torah* is not listed among the “big three negative commandments” that one must die rather than commit. So what justified Rabbi Akiva in sacrificing his life to teach Torah publicly?

Even if one holds like Tosafot, against Rambam, that martyrdom for other commandments is permitted, Talmud Torah may be an exception. Bava Kamma 61b quotes King David quoting the Prophet Samuel as follows: “Anyone who risks death for the sake of words of Torah – we do not state halakhic positions in their name”. Meshekh Chokhmah at the end of Parashat Terumah cites this as a prohibition.

Meshekh Chokhmah’s answer is that unlike private study, *Talmud Torah derabbim* – mass Torah study – justifies risking one’s own life, and that of all one’s students. I think Rabbi Akiva’s parable makes the rationale clear. Mass Torah study is an environmental prerequisite for sustaining a healthy Jewish community.

Sefer Chasidim (Margolies 995) describes a person who takes a dangerous route to yeshiva, when a short delay would mitigate the risk, as “the righteous destroyed by their righteousness” (Kohelet 7:15). I think this applies equally to a community. But what if the delay would last a year, or mean the loss of one’s only realistic opportunity for full-time study? What if it means that an entire community’s learning will be curtailed for the year, or longer?

These vital questions require careful and nuanced balancing of legitimately competing values. Pikuach nefesh is a critical consideration. But it is not the only value.

The time has come to put away the hyperbole, and say openly: Since we don’t know how long the pandemic will last, we need to consider what risks are appropriate and necessary to sustain our community’s souls, and also our practical infrastructure.

We cannot write that “safety is our only concern”, or even that “safety is our paramount concern” – almost everything we do together as a community is riskier than not doing it. In-person school adds risk; in person shul adds risk. We still don’t even know enough about COVID-19 transmission, and about human behavior, to even evaluate risks reliably. The OU explicitly acknowledges this by allowing college students to attend JLIC events only if they sign a waiver of any claim to compensation for COVID-19 contracted at such events. If pikuach nefesh is the only value, why run the events at all?

A crisis is also an opportunity. The possibility that COVID is a long-term issue gives us the space and urgency to rethink the role of online education and online socializing, the ways in which our institutions are funded, how our communities can include people who are excluded from physical aspects of many of our core events (as the deaf have been excluded, and the high-risk – and those living together with the high-risk, including children – may be excluded from now). With the specter of mass unemployment looming, we must get vastly better at removing the economic barriers to entry and to full membership in our communities.

Any policies we develop will require profound communal buy-in to work. We live in a situation of literal *areivut*, in which every risk you take affects me, and vice versa. Shul can be run perfectly, but if one attendee plays indoor team basketball unmasked, or takes commercial flights for business, the risks escalate for everyone present. If I play tennis at outdoor public courts (I do), can I come to minyan? If I attend one outdoor non-family burial (I did)? Shul won’t run perfectly unless everyone is fully committed to making it run perfectly and knows exactly what that means, and is machmir about transparency.

We will get the necessary buy-in only if these vital values conversations take place openly and publicly, and ideally with the participation of the entire community. We need to explain convincingly why the risks of shul and school are necessary (within very clear limits), but the risk of basketball is unacceptable (at least without full transparency), and where singing, simchas, and shivas fit in that scheme. We need to understand where we need absolute standardization, and where there is space for individualized decisionmaking; where transparency is utterly essential, and where privacy must be respected. Many of

these decisions will require great subtlety and human sensitivity. All the subtlety and sensitivity in the world will be useless unless people are prepared to hear them with open minds and hearts.

In a crisis, there is time to consult, to discuss, and to empower. It may not feel that way; our rabbinic, professional, and lay leaders are legitimately overwhelmed by emergencies, such as the start of school and the Yamim Noraim. But we need to develop the education and infrastructure necessary for informed, thoughtful, Torah-based public discussion of the long-term issues and opportunities, so that we can move as a community from strength to even greater strength.

Beyond Pikuach Nefesh: Why We Need a New and Different Torah Conversation About Life During a Pandemic

August 28, 2020

Devarim 22:8 mandates that we build parapets on our accessible roofs to prevent people from falling to their deaths. This mandate is also framed as a negative commandment: “*lo tasim damim b'veitekha*,” “Do not place bloodguilt in your house.” On Ketubot 41b, Rabbi Natan cites this prohibition as the ground for banning Jews from keeping vicious dogs to guard their houses, and halakhic tradition generally understands it as a prohibition against leaving dangerous conditions on our property uncorrected.

Here's the question: Why is such a prohibition necessary? Why isn't it redundant? Isn't leaving such a situation a *safek shefikhut damim* (doubtful homicide), and therefore prohibited anyway? Usually the danger is greatest for those living in the house; shouldn't they be obligated to correct the situation because of *pikuach nefesh*?

One answer emerges from a question Rav Aharon Lichtenstein zt”l asked: Why does halakhah permit Jews to keep oxen? It seems from the Mishnah and Talmud that oxen caused vastly more carnage than dogs of any sort! Rav Lichtenstein's answer was that keeping oxen was part of normal life, and the Torah balances its desire to prevent harm with the value of living a normal life.

The Torah does not require or even want us to live a life organized entirely around staying alive. *Lo tasim* is needed to shift the burden of proof, so that endangering oneself or others requires a **very** strong justification (most likely on a sliding scale, in proportion to the extent of the danger).

In the early stages of the pandemic, poskim acted heroically to make sure that pikuach nefesh was given the priority it deserved in communal decisionmaking. Bold halakhic decisions were accompanied by fiery rhetoric about the centrality of lifesaving in halakhah. This hyperbole very likely saved lives.

Perhaps it still would, if people followed its implications consistently. But that is not where we are as a community. Instead, the embers of that rhetoric are generating feelings of hypocrisy or despair, and a sense that halakhah is irrelevant to real-world problems.

If minimizing risk of death were really the Torah's absolute priority, no Orthodox school would consider reopening this fall. Everyone frum would wear masks everywhere, even when socially distanced outdoors. No one frum would walk into a grocery store. We would unanimously support shutting the country down, regardless of economic and other costs. Clearly this is not our reality.

The truth is that saving lives is a profound value in halakhah, but not the only one, or even paramount. The halakhic consensus is that a Jew must die rather than commit murder, idolatry, or adultery, or publicly desecrate the Name of G-d.

Those are the simple cases, where the tradeoff is immediate and the outcomes are clear. What does halakhah say when the tradeoff is between physical and mental health (some have argued that teenagers, and children generally, are suffering from a silent epidemic owing to lack of physical connection with their friends)? Between mortality rates in the short-term, and life expectancy over the next fifty years (which realistically correlates with the nation's economic condition)? Between quantity and quality of life?

Halakhah also distinguishes between private and public decisions. For example: On Nazir 23b, Rav Nachman bar Yitzchak praises Yael for committing adultery to save Israel (see Tosafot Yevamot 103a), even though adultery to save individual lives is forbidden, and later authorities cite Yael as halakhic precedent even though the language used is “sin for the sake of Heaven.” Conversely, Rabbi Akiva and Rav Chanina ben Tradyon heroically martyr themselves for public Torah study even though Torah study is not one of “the big 3.” But what is the boundary between public and private? For example: if public policy demands that schools open in person, must teachers come in to teach? If public policy demands that

everyone wear masks outdoors even when distancing, must people for whom mask-wearing triggers panic attacks comply?

Sefer Chasidim (Margolies 995) describes a person who takes a dangerous route to yeshiva, when a short delay would mitigate the risk, as “the righteous destroyed by their righteousness” (Kohelet 7:15). What if the delay would last a year, or mean the loss of one’s only realistic opportunity for full-time study? What if it means that an entire community’s learning will be curtailed for the year, or longer?

These vital questions require careful and nuanced balancing of legitimately competing values.

Sanhedrin 14a glorifies Rabbi Yehudah ben Bava for martyring himself to preserve the original line of *semikhah*. That line has long vanished, and yet halakhah survives, so why was Rabbi Yehudah ben Bava’s martyrdom praiseworthy? Rabbi Shlomo Riskin reports an explanation from the Rav: Rabbi Yehudah ben Bava knew that his creative Torah contributions would be wiped out if his students were not empowered as halakhic authorities. “He did not sacrifice himself by giving them *semikhah*; rather, he acquired eternal life for himself.” This suggests that the balancing act describes private decisions as well, and is legitimately affected by subjective values and considerations of religious identity and legacy.

The time has come to put away the hyperbole, and say openly: Since we don’t know how long the pandemic will last, we need to consider what risks are appropriate and necessary to sustain our community’s practical and spiritual infrastructures, and to nourish individual souls.

We cannot write that “safety is our only concern” – almost everything we do together as a community is riskier than not doing it. In-person school adds risk; in-person shul adds risk. We still don’t know enough about COVID-19 transmission, and about human behavior, to even evaluate risks reliably. The OU explicitly acknowledges this by allowing college students to attend JLIC events only if they sign a waiver of any claim to compensation for COVID-19 contracted at such events. If *pikuach nefesh* is the only value, why run events at all?

Any policies we develop will require profound communal buy-in to work. We live in a situation of literal *areivut*, in which every risk you take affects me, and vice versa. Minyanim, shiurim, and kiddushes can be run perfectly, but if one attendee plays indoor team basketball unmasked, or takes commercial flights for business, the risks escalate for everyone present. And things won’t run perfectly unless everyone is fully committed to making it run perfectly.

We need to decide clearly which risks are acceptable, and which unacceptable, and which precautions everyone must take regardless, and which leave space for individual choices. Many of these decisions will require great subtlety and human sensitivity. All the subtlety and sensitivity in the world will be useless unless people are prepared to hear them with open minds and hearts.

We will get the necessary buy-in only if these vital values conversations take place openly and publicly, and ideally with the participation of the entire community.

To make this conversation happen, our communities also need to earn the deep trust of our rabbinic, professional, and lay leaders. We need to support them and express ongoing enormous gratitude to them for the amazing work they are doing and the heavy burdens they are shouldering. They are legitimately overwhelmed by emergencies such as the start of school and the Yamim Noraim. They have many good reasons for focusing on the short-term and for narrowing rather than widening their circles of consultation.

A crisis is also an opportunity. The possibility that COVID is a long-term issue gives us the space and urgency to rethink the roles of online education and online socializing, the ways in which our institutions are funded, how our communities can include people who are excluded from physical aspects of many of our core events (as the deaf have been excluded, and the high-risk – and those living together with the high-risk, including children – may be excluded going forward). With the specters of recession and mass

unemployment looming, we must get vastly better at removing economic barriers to entry and full membership in our communities.

We must develop the education and infrastructure necessary for informed, thoughtful, Torah-based public discussion of these challenges and opportunities, so that we can move as a community from strength to even greater strength.

Who Should Decide When We Reopen What? Toward a Moral Decisionmaking Process for the Halakhic Community

September 4, 2020

Why should popular practice matter? I can think of at least three possibilities:

A. All that matters is that practice be standardized; the easiest way to do that is to find out what people are already doing.

B. People are probably doing what some great scholar told them to do a long time ago

C. The collective intuition of the community is very likely to arrive at a practice that fits organically with the rest of Torah.

A fits well with the many places where Halakhah follows the prevailing custom, for example the seven places where the Mishnah says *hakol keminhag medinah* = everything follows local custom. This is largely so with regard to commercial practice and labor contracts – see for example Mishnah Bava Metzia 7:1; but see Mishnah Sukkah 3:11, which applies it to blessings/ritual.

B fits well with Talmud Pesachim 66. Hillel is asked what a Jew should do if he forgot to bring a shechitah knife to the Temple before Erev Pesach that falls on Shabbat. He responds: “I heard this halakhah but forgot it; leave the Jews to their own devices, for if they are not prophets, they are students of prophets.” The next day he sees the knives arriving attached to the bodies of the animals to be sacrificed, and exclaims: “This was the tradition I received from Shemayah and Avtalyon.”

A applies when we don’t really care which option is picked. B applies when an option was already picked, but we’ve forgotten which it was. C is the only model in which the intuition of the halakhic masses makes an original contribution that matters substantively. It suggests that sometimes collective lived experience is more reliable than collective intellect in determining halakhah.

C may be the best fit for our case, where the goal is to decide among conflicting scholarly opinions (and the eventual outcome is a melding of those opinions). More importantly, C may be the only explanation for several Talmudic rulings on apparently literal life-and-death issues:

1. On Talmud Avodah Zarah 30b, Rabbi Eliezer permits eating figs and grapes at night, citing as his rationale Psalms 116:6: “*shomer petaim Hashem*” = “Hashem is the guardian of fools.” The implication is that eating those fruits at night is dangerous. Since Talmud Chullin 10a rules that “*chamira sakanta mei’issura*” = “risk of death is halakhically graver than risk of violating a prohibition,” it follows that *shomer petaim* in some way overcomes that halakhic gravity.

2. On Niddah 45a, the opinion attributed to anonymous Sages (against that of Rabbi Meir) is that some women for whom childbirth is dangerous are nonetheless not obligated (or perhaps even forbidden) to use certain contraceptive methods. The rationale given is “and they will have mercy from heaven, as Scripture says: Hashem is the guardian of fools.” (Note that on Talmud Avodah Zarah 18a Rabbi Chanina Ben Tradyon justifies his willingness to defy a Roman ban on teaching Torah publicly by saying “they will have mercy from Heaven,” but Rabbi Yose ben Kisma responds: “I speak to you reasonably, and you say they will have mercy from Heaven!” and in fact Rabbi Chanina is executed.)

3. On Talmud Shabbat 129b, Shmuel bans bloodletting on Tuesdays as risky, but permits it on Fridays. The Talmud challenges this ruling, contending that the same risky condition exists on Tuesdays as on Fridays! The answer is that: “*keivan dedashu bei rabim – shomer petaim Hashem*” = “since many have trodden this underfoot – Hashem is the guardian of fools.”

4. Similarly, on Talmud Yebamot 72a, Rav Pappa bans circumcision on cloudy days. The anonymous Talmud simply overrules him, saying that “Nowadays, since many have trodden this underfoot – Hashem is the guardian of fools.”

In at least cases 3 and 4, and possibly in all four cases, it seems that popular willingness to accept a certain degree of risk establishes the halakhic acceptability of that risk. (One might argue that the Talmud actually believes that Hashem’s guardianship actually eliminates the risk, but this seems unlikely to me.) Why should that be?

I suggest that while intellectually/textually derived halakhah establishes some fixed halakhic points regarding which risks can be morally justified, the Rabbis left these cases to be decided by the masses. They saw this as the kind of issue that is best left largely to the intuition generated by collective lived halakhic experience. (I say intuition rather than wisdom, as there is no claim that the decision of the masses was made reflectively or after extensive deliberation.)

This seems to me an impressive gesture of humility. But it has a cost that may not be immediately apparent. What happens when genuinely unprecedented cases arise, and the laity turns to the scholarly elite for moral guidance? By definition, unprecedented cases cannot be decided by prior custom.

The problem is that much of the halakhic literature about the boundaries of legitimate risk defaults easily to *shomer petaim Hashem*. That leaves us intellectually exposed when people come to us asking for guidance about, for example, allowing in-class school during this pandemic. Is it possible that Torah texts have nothing to say about these central moral issues, other than “Please wait to see whatever most people do?”

We could respond by using *daas Torah*, understood minimalistically as a claim that the greatest Torah scholars have a commensurate capacity to intuit proper Torah reactions to real-world situations that cannot be decided confidently on textual or intellectual grounds. But I suspect that many of us will find it odd to think of *daas Torah* as a backup plan for if/when mass intuition is sidelined.

Rather, I suggest that the best plan is to create a hybrid, in which scholars set textual and intellectual frameworks, but the conversation consciously integrates halakhically observant laypeople of diverse experience, backgrounds, and economic status. The key question for them, asked in the halakhic laboratory, is which options feel most like an organic continuation of the tradition they observe.

We must acknowledge that the answers we receive will be imaginative rather than reportorial, and will therefore have less probative value than pure *pok chazi*. That’s why the conversation must be framed in Torah. But I contend that the consultation is vital for developing authentic halakhic morality.

All this matters NOW because we are facing a set of risk-evaluation cases whose moral cost-benefit analysis is unprecedented. How do we weigh the advantages of in-person schooling against the risk to teachers? How do we help teachers who cannot afford to retire and yet are unwilling to teach in-person because of well-founded safety fears? What parts of public ritual are essential enough for our national psyche as to justify taking risks of what sort and degree, for whom?

I don’t have firm answers, and I don’t believe that my rabbinic colleagues do either. Nor do I believe that our lay community has the answers, nor the medical community – “following the science” is not a policy without a moral framework, although I share Rav Asher Weiss’s courageously articulated sentiment that Western medical ethics largely works toward the same ends as halakhah.

At least within Modern Orthodoxy, each constituency has done superb work in meeting the emergency of the past six months. The rabbis got out in front on the need to shut down, and to consider not just our own risks but those we pose to others, and worked tirelessly to care for the human needs of their congregations. The doctors developed sane and reasonable protocols for reopening synagogues, and

worked heroically to save lives directly. The laity developed creative ways to sustain the social and economic fabric of our communities, while dealing with loss, radical changes, and onerous restrictions.

But we have been too busy for collective moral deliberation. As we move into the new year, and our emergency becomes a crisis, we need to think more deeply – TOGETHER – about immediate issues, and more broadly about longer-term issues. We need Torah conversations that produce moral and halakhic policies that are sensitive, nuanced, humane, rigorous, and where necessary creative. I pray this essay stimulates many such conversations.

“Those Who Are Not Here With Us Today”: A Responsum on COVID and Community

September 11, 2020

Question:

Dear Rabbi,

I grew up in a family of Orthodox Jews, although not all of us were observant. My uncle used to joke that “the shul he didn’t go to was Orthodox.” I thought that was odd, but now, because of COVID and my being high-risk, that’s me! The shul I don’t go to is Orthodox.

My sister is in the same position as I am, and because neither of us wants to be alone on Rosh HaShanah, I’m going to stay with her in a city several hours drive away from where I live. Here’s my question: I remember being taught in seminary that if you can’t go to shul, you should daven the Amidah at the same time that your shul does. My sister’s shul starts and ends a lot earlier than my home shul does. Which shul’s timing should I try to match?

Sincerely, Janie Doe

Teshuvah:

Dear Janie,

Thank you very much for asking! I suspect that your question is relevant to many people this yom tov. I hope it also gives us the opportunity to explore the vital question of what “shul community” means in the age of COVID.

Your very accurate seminary memory comes from a story on Talmud Berakhot 7b. Rav Nachman was absent from shul one day, and Rav Yitzchak challenged him aggressively. “Why weren’t you in shul?” “I wasn’t able.” “Why didn’t you at least gather a private minyan?” “It was too much bother.” “So why didn’t you have someone come tell you when the *tzibbur* was davening, so you could daven at the same time?”

Here Rav Nachman was puzzled: Why would davening at the same time as the *tzibbur* matter? Rav Yitzchak responds (rabbis bring various Biblical prooftexts) that one should pray in an *eit ratzon*, a time of Divine favor, which Rav Yochanan citing Rabbi Shimon bar Yochai interprets as “at the time that the *tzibbur* is praying.”

Which *tzibbur*? Netziv in Meromei Sadeh argues that the story indicates that a local *tzibbur* is necessary – otherwise, why would Rav Nachman need special notification? Somewhere in the world a *tzibbur* is davening! This position is also adopted by the Steipler Rav in Kehilot Yaakov. He finds a precedent for the idea that a **local** *tzibbur* is critical in the position of Rabbi Yehudah in Mishnah Berakhot 4:7 that “wherever there is a *chever ir* (=citywide prayer fellowship), individuals are exempt from praying *mussaf*.”

However, on Talmud Avodah Zarah 4b, Rav Yosef warns individuals against praying *mussaf* during the early morning hours of the first day of Rosh HaShanah because it is an unfavorable time. The Talmud asks: If so, how can individuals pray Shacharit during those hours?! The response is that the individuals will be praying Shacharit at the same time as the *tzibbur*. Rabbeinu Tam in Tosafot understands this to mean that **whenever** during those three hours the individual prays Shacharit, they will be praying at the same time as a *tzibbur* **somewhere**.

The numerous attempts to reconcile these sources center on a distinction something like this: One can pray **with a congregation** without joining in the prayer **of the congregation**. Praying with a congregation is enough to avoid the negative concern of Rav Yosef, but not enough to meet the positive

requirement of Rabbi Yochanan. Praying **with** a congregation can happen even if the congregation is distant, but one can only join **in** the prayer of a local congregation.

If we accept this approach, then it seems that the right answer is for you to pray at the same time as the shul in your sister's town, which will allow you to pray with that *tzibbur* and to join in its prayer.

However, I prefer a different approach.

The last unit of Mishnah Rosh HaShanah records a dispute as to whether a *shaliach tzibbur* can fulfill the prayer obligations of individuals. The anonymous first position says no, while Rabban Gamliel says yes. Many interpreters understand them to be arguing only about people who are **able** to pray on their own; even the first position agrees that the *shaliach tzibbur* can fulfill the obligation of people who are **unable** to pray independently. The consensus halakhah follows Rabban Gamliel only on Rosh HaShanah and Yom Kippur (possibly only Yom Kippur of Yovel), because prayers on those days were too long for individuals to handle on their own, especially before printing made machzorim widely available.

The obvious problem is that because "All Jews are guarantors for one another," any obligated individual can fulfill the obligation of any other individual to make a mitzvah -blessing. Why is prayer different?

RAN answers that "it seems reasonable for each person to pray for themselves." Okay, but then why does Rabban Gamliel hold that a *shaliach tzibbur* **can** fulfill an individual's obligation?! Why should the presence of a *minyán* overcome RAN's rationale?

One possible answer is that the mechanism is different once a *tzibbur* is involved. The *shaliach tzibbur* does not **substitute for the individual**; rather, the *shaliach* **represents the *tzibbur***, to which the individual belongs.

With this distinction in mind, let us turn to the remarkable understanding of Rabban Gamliel's position offered on Talmud Rosh HaShanah 34b by Ravin, citing Rabbi Yaakov bar Idi citing Rabbi Shimon Chasida. Ravin contends that according to Rabban Gamliel, the *shaliach tzibbur* fulfills the obligation only of the *am shebesadot* (=the masses in the fields), because their work is so all-consuming that their absence from shul is involuntary (*anoos*). In other words, the *shaliach tzibbur* fulfills the obligations only of individuals who are **not** in shul! Tur OC 591 reasonably extends this category to those too elderly or too sick to come to shul.

Ravin's position is cited by RIF and ROSH, but not by RAMBAM. According to Rav Yosef Caro's self-declared principle that the halakhah follows the position held by the majority among those three decisors, we would expect that Shulchan Arukh would cite Ravin – but he does not. Even more confusingly, Shulchan Arukh OC 128 cites the principle that "the people in the fields are consumed with work" to allow them to be included in the Priestly Blessing despite their not being present!

Since by his own rules Shulchan Arukh should follow Ravin, and since he does not explicitly reject Ravin, I suggest that he simply thought that the category "masses in the fields" was no longer relevant on Rosh HaShanah, since the Jews were no longer primarily agricultural in lands where every second was critical around Rosh HaShanah, so that one stayed in the fields to restart work the moment yom tov was over. If this is correct, Shulchan Arukh (and perhaps even RAMBAM) would agree with Tur that the principle applies to the elderly and sick. This is also how Rav Schneur Zalman of Liady rules in his Shulchan Arukh HaRav. On that basis, I am comfortable saying that according to halakhah, those who are prevented by the pandemic from attending synagogue, and cannot pray on their own, have their obligation fulfilled by the *shaliach tzibbur*. Even if they can pray on their own, they are nonetheless also included in the prayer **of the *tzibbur***, certainly if they make the effort to pray at the same time as the *tzibbur*.

This brings us back (finally) to your question – which *tzibbur*? Here I think a beautiful idea emerges from a thesis of Rav Moshe Shternbuch in his Teshuvot veHanhagot 5:43:

One needs to designate not only a place/*makom* to pray, but also a community/*tzibbur* . . .

In the Talmud at the end of Rosh HaShanah (35a) they say that the masses in the fields, who are compelled (not to be in shul), fulfill their obligations via the prayer of the *shaliach tzibbur*.

It seems correct that this is when they bind themselves together to pray together regularly, that then the prayer of the *shaliach tzibbur* is effective for someone who is compelled not to come, because he is attached to **his** *tzibbur*, and the *shaliach tzibbur* prays on behalf of the entire *tzibbur*. Therefore, if he has no regular *tzibbur*, if he does not come – he does not have the prayer of the *shaliach tzibbur* to elevate his prayers, and he loses much.

In my humble opinion, Rav Shternbuch is correct that the core issue is not location, but attachment to community. I think that is why Rav Yitzchak insisted that Rav Nachman pray at the same time as **his usual *tzibbur***, not because he happened to be in that place.

So, bottom line – I think you should pray at the same time as your home shul.

But I want to offer a cautionary note.

Rav Shternbuch offers a thin sense of community – the prayer of the *tzibbur* is only for those who pray together regularly as a *tzibbur*.

Our shuls today are, at their best, communities that pray, not merely prayer communities. The sense of community is built up by many things: volunteering, studying, *chesed*, and many other human interactions.

COVID means that many people belonging to those communities – men and women, some of whom were previously regular minyanaires, and some who were not – are compelled not to pray with their *tzibbur*. I believe that nonetheless, the *shaliach tzibbur* remains *davka* their representative, *davka* on the Yamim Noraim, when we pasken like Rabban Gamliel.

But this is true only while they remain a part of the community. In a shiur I gave at my home shul, Young Israel of Sharon, my learning community came up with at least two possible standards for belonging to a community: being someone who is missed in shul (as Rav Yitzchak noticed Rav Nachman's absence), and bring someone who other people in the community would instinctively identify as belonging. By those standards, many COVID davening-exiles will rapidly cease to belong unless we consciously develop thicker communities that can endure the absence or enforced attenuation of davening together. People who were socially marginal, and whose human interactions occurred largely around davening (Shabbat and/or weekday), will be the most vulnerable to disappearing. This would be a terrible Jewish and moral failure.

The opening of Parshat Nitzavim demonstrates that a covenantal community includes both those who are present and those who cannot be. Let us pray together, and work together, to ensure that our prayer communities live up to that model and emerge from this pandemic stronger than ever.

Reciprocity as the Groundwork for Repentance

by Avinoam Stillman (SBM 2015)

September 2, 2015

Our first association with the term *vidui* is probably the “confession” of sins we recite repeatedly leading up to and on Yom Kippur. As Maimonides codifies in *Hilchot Teshuvah* 1:1, *vidui* is the obligatory verbal expression of *teshuvah*. But the term *vidui* is also used in rabbinic literature for various liturgical recitations, including for offering *bikkurim*, for *ma’aser*, and for animal sacrifices. What unifies these disparate meanings of the term *vidui*?

Verbal declarations create a reciprocal relationship between human beings and G-d. A relationship with G-d, like any other relationship, cannot, by definition, be one-sided. Without the belief that our actions matter to G-d, and the faith that our attempts to reach G-d produce Divine responses, *teshuvah* is meaningless. Thus, developing our understanding of the importance of reciprocity in both human and Divine relationships lays the groundwork for *teshuvah*.

The Palestinian Talmud, at the beginning of *Masekhet Bikkurim*, discusses whether a tree that is propagated using a process known as הברכה (“layering” in English), in which a branch of an “elder” tree is grown into the ground and cultivated as a “child” tree, can be a valid source of *bikkurim* if the tree passes through property not owned by the owner of the tree. The Talmud rules that neither the “elder” tree nor the “child” tree is valid if either passes out of their owner’s domain. This follows the principle that

כשם שילדה חיה מן הזקינה כך הזקינה חיה מן הילדה
“Just as the child lives from the elder, thus does the elder live from the child.”

Here is another model of reciprocity, one in which, as *mori ve-rebbi* Rav Re’em HaCohen of Yeshivat Otniel pointed out, generations are interdependent. What holds true for trees is true for humans as well, as per Deuteronomy 20:19; כי האדם עץ השדה, “for a person is a tree of the field.” Unless both elders and children remain in the same domain, maintain mutual respect and recognize their reciprocal dependence, no first fruits can be brought, none of their products are blessed.

Mishna Ma’aser Sheni 5:13, also found in *Sifrei Piska* 303 on Deuteronomy 26:15, uses a verse from the *vidui ma’aser* to elaborate G-d and Israel’s reciprocity:

... השקיפה ממעון קדשך מן השמים – עשינו מה שגזרת עלינו אף אתה עשה מה שהבטחתנו
“Gaze from Your holy abode, from the heavens” (Deut. 26:15) –
We have done what You decreed upon us, so too You do what You promised us...

Our fulfillment of G-d’s command to provide for the poor creates a reciprocal responsibility for G-d to fulfill the promise of prosperity. As the Alter Rebbe notes in *Likkutei Torah* on *Parshat Re’eh*, the month of Elul is an acronym for Song of Songs 6:3, אני לדודי ודודי לי, “I am my Beloved’s and my Beloved is mine.” In both our human and our Divine relationships, then, Elul is a time to foster the interdependence and responsiveness that allow us to do *teshuvah* in the coming year.

Three Models of Repentance

September 11, 2012

As a Yeshiva University student, I was inevitably heavily influenced by the thought of R. Joseph B. Soloveitchik on almost all Jewish issues, with repentance certainly among them. In *Hakakhic Man*, R.S. presents repentance as the ultimate act of *imitatio dei*, arguing the following: G-d first appears in Torah as the Creator, and His ultimate creation is the human personality. Therefore, our *teshuvah*, by remaking our personality, is imitating G-d.

I have several objections to this powerful vision. (Note: I do not mean to suggest that the Rav was unaware of these issues, or that he did not have reasonable responses to them. This is not a full or fair treatment of his position, rather an introduction to an alternative.)

- 1) It seems to focus exclusively on the act, rather than on the content of repentance. Were someone to repent of their good deeds and resolve to become completely evil, it seems that R.S. would have to consider that as well an act of *imitatio dei*.
- 2) It makes the ultimate act of *imitatio dei* one that Hashem himself could never experience, as He is definitionally unchanging.
- 3) It seemingly should result in a complete lack of responsibility for past actions, as it views the repentant self as an *ex nihilo* creation.

What attracts me most about R.S.'s vision is its depiction of humanity as completely free, unbound not only by the objective past but even by the subjective past.

A radically different, in important ways diametrically opposed, account of repentance is offered by R. Zadok HaCohen of Lublin (N.B. I have read very little of his work myself – the following account is based almost entirely on secondary sources, and may not accurately present his views.) R. Zadok argues that because history enacts a Divine Plan in every detail, it follows that human beings cannot have any substantive impact on history. In other words, he is a historical determinist. However, he is aware that determinism as a philosophy is gravely weakened by its need to deny the substantive reality of perhaps the subjectively strongest human experience, choice. He is unwilling to argue that choice is only a psychological reality, with all decisions determined in advance by the nature of one's character. He therefore concludes that true choice is not about whether to do something, because what will or won't happen is predetermined by Hashem, but rather about the relationship of our will and Hashem's Will. At times we will something not in Hashem's plan, and it happens despite us – we could have chosen instead to have it happen in accordance with our will. More importantly for our topic, sometimes we choose to believe that we are willfully acting against Hashem's plan, although in fact all sins are Planned.

Let me elaborate on that last sentence. R. Zadok believe that all sins are inevitable and determined. Our choice is whether to (arrogantly and falsely) view those sins as the products of our will and against Hashem's Will, or whether to view them – even when *contra-halakhic* – as expressions of Hashem's Will enacted with our acquiescence. (This perspective drives R. Zadok to develop his highly influential notion of *aveirah lishmah*, of the spiritually positive sin.)

For R. Zadok, repentance involve a change of attitude toward the past, a recognition not of responsibility but of lack of responsibility. True repentance is the recognition of the practical futility of one's own will. This conception fits very well with the Talmudic claim that repentance transforms past deliberate sins either into accidental sins or into virtues, as it argues that what changes in repentance is one's responsibility – or at least one's perception of responsibility – for the past.

I am, however, dissatisfied with this account as well. Firstly, my own preference is almost always for accounts that expand the scope and impact of human freedom rather than diminishing it. Secondly, I'm

not comfortable with repentance that disclaims responsibility, especially with an account that removes all possible responsibility for the consequences of sin. After all, if you always do what Hashem wants, how can you be responsible if things turn out badly?

So let me offer a third account. Let us assume that personality is unavoidably continuous, in other words that the past has an indelible impact on our character. Let us further assume that this implies that we can never be divorced of responsibility for our past actions.

The Talmud famously speaks of sublimation as a preferred way of dealing with evil impulses, suggesting, for example, that someone who feels bloodlust should become a ritual slaughterer. I think that a perhaps even stronger case can be made within the tradition for denying the existence of intrinsically evil character traits, although certainly some traits are more easily used for evil than others.

An alternative model of repentance based on the above would involve sober self-assessment together with a commitment to turning every aspect of our current personality, and of the world as we are responsible for it, to the best possible future use. Every aspect of past experience can be useful in Avodat HaShem, even if only by enabling us to better understand those who still commit the sins we have given up (and generally in far more positive ways).

A second point about repentance – how does one decide to change? If one is still the same person, how will one make different and better decisions in the future? An interesting Tosafot opens up an avenue of approach, although it certainly does not provide a rationally compelling answer. The Talmud states that people sin against their own will and HaShem's for three reasons – poverty, depression, and idolaters (or idolatry, depending on one's reading). Tosafot ask why sexual desire is absent from the list, as in several places the Talmud implies that sins under the influence of extreme arousal can be considered coerced. They reply that while on occasion sexual desire cannot be resisted, those occasions can be avoided with sufficient foresight. The Talmud's classic example of a young man bathed, perfumed, bankrolled, and placed in front of a brothel need not come up in every young man's life.

Perhaps, then, the obligation to repent should be carried out not merely through introspection but by actively seeking out the external influences that we are aware encourage our spiritual improvement. If we have inspirational friends or mentors, we should seek them out, and if we find certain texts or book encourage reflection, we should reread them.

Obviously many of us have been deeply affected by the mass murders of September 11. The sheer magnitude of the tragedy should have enabled repentance from specific deeds, and certainly enabled us to forgive others, out of a renewed sense of perspective. My sense, however, is that repentance out of shock is short-lived if not anchored in some other form of influence-to-change.

Gemar Chatimah Tovah. May we merit engaging together in the conversation of Torah for many years to come, and may those years be pleasant and peaceful for all Israel and all humanity as well.

Apples and Honey, Repentance and Covenant

by Batsheva Leah Weinstein (MA 2015, 2016, SBM 2020)

September 8, 2015

We all know of the *minhag* to eat apples dipped in honey on Rosh Hashanah. The reason most often given for this custom, and indeed we say this before we eat them, is that it symbolizes our desire for a sweet new year. However, as the Maharil points out, the language used to describe this *minhag* is "נוטלים התפוח" – "אוכלים דבש עם תפוח" – we eat honey with an apple. This implies that the apples themselves are important. This can also be derived by the fact that we make a bracha "בורא פרי העץ" as opposed to a "שהכל נהיה בדברו", which tells us that it is the תפוח that is the עיקר, the main thing, and not the honey. We can now ask our question: why do we dip apples in honey?

When Yaakov, pretending to be Esav, comes to Yitzchak to receive the bracha for the firstborn, Yitzchak says, "ראה ריח בני כריח השדה אשר ברכו ה'" – see the scent of my son like the scent of a field that was blessed by Hashem. רב יהודה בריה דרב שמואל בר שילת says in the name of Rav, "כריח שדה של תפוחים" – the scent of a field of apples. The *midrash Bereishit Rabbah* says that when Yaakov entered the room, the fragrance of גן עדן came in with him. Thus, the apples that we eat on Rosh Hashanah symbolize גן עדן, an appropriate reference for the Day of Judgement.

In the *midrash* בראשית רבתי, Rav explains this *passuk* in a different way. When Yitzchak saw that the children of Yaakov who rebelled against Hashem "יתנו ריח טוב שיעשו תשובה" – that they will give off a good scent, meaning that they will repent and return to God, the presence of the שכינה rested on him and he was able to give Yaakov the *bracha*. According to this interpretation, the field of apples refers to בני ישראל doing *teshuvah*. Consequently, when we eat apples, it is a reminder for us to do *teshuvah*.

Another reason for eating apples is from a *passuk* in *Shir Hashirim* which says "כתפוח בעצי היער" – like an apple tree amongst the trees of a forest, which refers to בני ישראל. R' Tzadok Hakohen explains that בני ישראל are compared to apples because, just like the fruits of an apple tree come before the leaves, so too בני ישראל said נעשה – we will do – before נשמע – we will hear. Overlooking the scientific accuracy of this statement, our point is, that just like the important thing of the tree – the fruits – come before the less important part of the tree – the leaves, so too בני ישראל put the important thing – doing what G-d commanded – before the less important thing – finding out what G-d wants us to do. Therefore, apples remind us of מתן תורה and our covenant with G-d in which we promised to obey His Torah.

Here we have a number of reasons of why we eat apples on Rosh Hashanah, all based on references to apples in the *p'sukim*. We dip them in honey for a sweet new year but the apples themselves are also symbolic and relevant to Rosh Hashanah.