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It is the purpose of this Journal to study the major questions facing us as Jews in the twentieth century, through the prism of Torah values. We will explore the relevant Biblical and Talmudic passages and survey the halachic literature including the most recent Responsa. The Journal of Halacha and Contemporary Society does not in any way seek to present itself as the halachic authority on any question, but hopes rather to inform the Jewish public of the positions taken by rabbinic leaders over the generations.

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Enabling a Jew to Sin: the Parameters

Rabbi Michael Broyde &
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Enabling a Jew to Sin: the Parameters

Michael Broyde and David Hertzberg

I. Introduction

Lifnei iver, the probihition of aiding, enabling or leading a person into sin, is one of the fundamental rules regulating Jews in their interactions with others. It determines our ability to earn a livelihood in those fields whose products or results can be used for good or evil. For example, lawyers are frequently involved in facilitating transactions prohibited by halacha, storekeepers frequently sell merchandise whose use is prohibited, and doctors prescribe medicine whose purpose is forbidden. Do such actions violate *lifnei iver*? How does the ready availability of others who will freely help the person do[1] the prohibited action, if the religious Jew does not, affect the result? These situations all fall under the rubric of *lifnei iver.*

1. There are major differences between being an aider and a principal. For example, while it is possible that there are situations in which one may be an anesthesiologist for a prohibited abortion, certainly none of the potential liberalities *(kulot)* in that situation apply to the doctor who is actually performing the abortion. The abortionist, unlike the anesthesiologist, is not aiding in the commission of an abortion — he is actually committing one. That is not covered by the rules of *lifnei iver.* There are, however, some situations where this distinction is blurred; see Part IV:B.

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This article is divided into four parts. Part one quotes the relevant portions of Torah and commentaries, as well as relevant Gemara and other Talmudic sources. Part two explains how *Rishonim* and early *Acharonim* understood the essential[2] rules of *lifnei iver*. Part three collects and analyzes applications of *lifnei iver* by modern *Acharonim*. Part four applies the rules developed previously to a number of modern questions that have not yet been fully addressed. In particular, the issues discussed are — being a waiter or a cashier in a non-kosher store or restaurant; the relationship between *lifnei iver* and *kiruv* work; and the application of *lifnei iver* to aiding conduct whose status in halacha is disputed.

Part I

The Torah records the prohibition of placing a stumbling block in front of a blind person in Leviticus 19:14.[3] "Thou shall not curse a deaf person and before a blind person thou shall not put a stumbling block; you should fear your Lord, I am G-d." Rashi explains that a "blind" person is one who is "blind" to the consequences of his actions, and not only to one who is suffering from actual physical blindness.

The *Siftei Chachamim* comments that Rashi must have based this definition upon his explanation of the phrase "fear your Lord, I am G-d." This phrase is used only with respect to actions whose moral standing are dependent upon intent rather than result.[4] However, placing a stumbling block before a person who physically cannot see is so clearly impermissible that the warning as to intent is not needed. The admonition "fear your Lord" would, therefore,

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2. This article will not address a number of distinct rabbinic decrees which prohibit certain specific conduct, though they may be based in part upon *lifnei iver* concerns. For example, it is explicitly forbidden to sell weapons to non-Jews for their personal use, although others will sell them the weapons if Jews do not (see *Avodah Zarah* 14a).
3. Absent any specific indication of source, all references to the Torah and to its commentaries are to Leviticus 19:14; to the Talmud and its commentaries are to *Yoreh Deah* 151:1.
4. See also Leviticus 19:32; 25:17; 25:36; 25:43 for the other times this term is used.

be unnecessary. Hence, the term "blind" must have a different and less apparent meaning encompassing acts whose sinfulness is less apparent.

Rashi's source for this approach is the *Sifra*, which delineates several examples of contextual blindness. The first example concerns misleading a Cohen into a marriage prohibited to him, thus endangering his religious well-being. The second and third examples relate to the offering of bad advice. The former describes the case of giving false directions which will lead a person to a dangerous roadway. The latter describes the case where poor financial advice is given.[5]

In all the cases discussed by the *Sifra* the victim is unaware of the lurking dangers while the "adviser" is aware of them. There is no doubt that the moral depravity assigned to the adviser in the *Sifra* is meant to parallel the moral depravity of the culprit in the verse as it is understood literally. In both instances, one person purposely hurts another, at best for his own personal gain and at worst for the sake of being malicious. This is one distinct aspect of *lifnei iver.*

Although not the primary focus of the *Rishonim,* some do comment on the "bad advice" aspect of *lifnei iver,* as opposed to its more common application as a prohibition of aiding a sinner. Rambam maintains that this is the primary purpose of the prohibition. He states regarding *lifnei iver*:

> By this prohibition we are forbidden to give misleading advice. Thus, if one asks your advice on a matter which he does not really understand, you are forbidden to mislead or deceive him; you must give him what you consider the correct guidance. The prohibition is contained in His words, "before a blind person thou shalt not put a stumbling block", on

5. Merely giving advice whose end result is bad does not violate *lifnei iver*; bad intent by the advisor is needed as well. See *Maharam Schick al Taryag Mitzvot,* Mitzvah 233:2 for a discussion of whether the "advisor" or "facilitator" is in violation of *lifnei iver* if the *Nazir* chooses not to drink the wine or, in the case of the bad advice, the recipient decides not to follow it.

> which the *Sifra* says: "If one is 'blind' in a matter, and asks you for advice, do not give him advice which is not suitable for him."

In addition, Rambam entitled his summary of the commandment of *lifnei iver* as "Giving Bad Advice", rather than "Aiding Sinners".

The *Sefer HaChinuch* also understood this to be the primary focus of the prohibition. The *Chinuch* writes:

> Not to bring Jews to grief by giving them bad counsel, but we should rather guide them correctly when they ask advice, by what we believe to be an honest way and a good plan — as it is stated, "before a blind person thou shalt not put a stumbling block" (Leviticus 19:14).
>
> In the language of the *Midrash Sifra:* This means that before one who is blind about some matter, and he would take advice from you, do not give him counsel that is not suitable for him. And our Sages said: "Let a man not tell his fellow, sell your field and buy a donkey, so that he can then scheme around him and take the field from him." (Negative Commandment 232)[6]

This aspect seems to be the major focus of Rashi on Torah as well, since he explains Leviticus 19:14 based only on the examples found in the *Sifra,* all of which involve bad advice.

The "bad advice" aspect of *lifnei iver,* however, was not the primary focus of either the Gemara or most *Rishonim.* Rather the Gemara advanced a more expansive definition of the prohibition of *lifnei iver lo tetain michshol* in that the parameters of "blindness"

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6. It is interesting to note that it appears from various *Rishonim* and *Acharonim* that perhaps actually placing a stumbling block in front of a physically blind person does not violate the prohibition of *lifnei iver.* Nonetheless, such conduct is prohibited by many other commandments, such as the prohibition of injuring another person, loving one's neighbor, or others. See generally, *Minchat Chinuch,* Negative Commandment 232.

are defined broadly. The Gemara in *Pesachim* (22a) quotes the following statement of R. Natan:

> R. Natan said, "From where do we know that one may not extend a cup of wine to a *Nazir* nor a limb from a live animal to a Noahide? The source is from the verse 'Thou shalt not place a stumbling block before a blind person.' "

Since the Gemara does not distinguish between an intentional and an unintentional sinner, it may be inferred that this conduct is prohibited even when the *Nazir* or Noahide is aware that his actions are prohibited. Thus, in certain circumstances, the Gemara prohibits aiding even an intentional sinner.

Support for this inference can also be found in *Moed Katan* (17a) which states that a father should not strike his grown child because the child may retaliate physically — an act which is a capital offense (Exodus 21:15). The Gemara bases itself on the verse of *lifnei iver*, although the child is fully aware of the consequences of his action. The Gemara has thus expanded the prohibition to include actions which although permissible, may precipitate or lead to transgressions. A "blind" person, hence, includes one who voluntarily sins as a result of a "stumbling block". Such a "stumbling block" can include actions essentially permissible, (striking one's child) but which potentially lead to prohibited actions (the child's hitting back).

In *Bava Metzia* (75b) we see yet a further application of this prohibition. The Torah proscribes both the charging and payment of interest. In addition to the standard prohibitions (see Exodus 22:24 and Leviticus 25:36-37), the Gemara states that all people who participate in or facilitate this illicit transaction — including the guarantor, witnesses and even the scribe of the document — violate *lifnei iver*. The concept that even the ancillary and supportive participants are in violation of *lifnei iver* broadens even further our understanding of the scope of the prohibition. Their participation in such a transaction violates *lifnei iver* only because by enabling the transaction to occur they are helping deliberately "blind" people sin.

From the above sources it becomes clear that the form of

"blindness" which it is prohibited to take advantage of is not limited to the case where the sinner is blinded by ignorance or naivete' but also to the case where the person is blinded by desire.[7] *Lifnei iver* not only prohibits one from maliciously misguiding another, but also prohibits cooperating with one who is misguided by his own (improper) sense of morality or religious commitment.

However, there are certain cases where there is no violation of *lifnei iver*. In *Avodah Zarah* (6b) the Gemara quotes R. Natan's statement (as recited above) and limits its application to an instance of *trei ibra d'nahara* (literally "two sides of a river"). Thus, when a *Nazir* is on one side of a river and wine is on the other side so that he cannot obtain the wine on his own, the one who extends it to him is in violation of *lifnei iver*. On the other hand, according to the Gemara, if the *Nazir* and the wine are on the same side of the river (*chad ibra d'nahara*), so that he could procure the wine on his own, then the person who gives it to him is not in violation of *lifnei iver*. The assumption is that the prohibition will be violated in any case. The Gemara, in *Avodah Zarah* 14a, also states that it is permitted to aid an aider (*lifnei delifnei iver*), i.e., help a person whose action is itself only prohibited because he is an aider.[8] These Talmudic texts serve as the basis for various strands of thought among the *Rishonim*.

Part II

The *Rishonim* focused primarily on one aspect of *lifnei iver*: aiding one who wishes to violate the laws, and who can do so

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7. For an interesting parallel to this, see *Mishneh Torah, Gerushin* 2:20.
8. Most *Rishonim* limit this rule to situations where the first recipient of the aid is not himself obligated in the prohibition of *lifnei iver*; (*i.e.* a non-Jew); see Tosafot, *Avodah Zarah* 15a, 22a and RaN, *Avodah Zarah* 15a. The rationale for this is that *lifnei iver* prohibits aiding in the commission of a prohibited act — even if the prohibited act is itself only a violation of *lifnei iver*; see *Minchat Chinuch* 231:2. For example it is permitted under this rationale to sell wine to a non-Jewish wine salesman who is then going to sell it to a *Nazir*.

   Others have developed a different understanding of when *lifnei delifnei* does not apply; see *Chidushei Anshe Shem Avodah Zarah* (*Rif blot* 4a) #1 and *Iggerot Moshe, Orach Chaim* 4:79.

unaided or with the aid of those not obligated by the law. This was, and still is, the critical application of *lifnei iver* from a practical economic perspective. The *Rishonim* may be divided into three groups.

The first maintains that one may never aid a person who is attempting to violate the law even if, when one declines to aid him, another will do so. This is true whether or not the next person who aids him is also obligated to observe the law. Thus, this position rejects the approach taken by Rabbi Natan in *Avodah Zarah* 6b and makes no distinction between one or two sides of the river. The authors believe this to be the position of Rambam. Although he does not state so explicitly, it can be inferred from a number of his comments. First, in *Sefer HaMitzvot*, negative commandment 299 (quoted above), Rambam does not limit the scope of the Torah's rule to situations where others cannot help. Secondly, he never quotes this limitation in any of the instances he deals with *lifnei iver* in his primary work, the *Mishneh Torah*.[9]

The second position is taken by Rabbenu Nissim (RaN). He asserts that even though according to Torah law, *lifnei iver* is violated only when the aider's assistance is necessary for the commission of the prohibited act, rabbinic law prohibits this conduct even when the aider's assistance is not needed [10] (RaN, *Avodah Zarah* 6b). The *Mishneh LaMelech* (*Malveh ve'loveh* 4:2) adds to this position (perhaps reflecting his understanding of the Rambam) and states that in order for the action to become

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9. Rambam would maintain that the statements by R. Natan in *Avodah Zarah* 6b represent only R. Natan's opinion, and are not accepted by most of the *Amoraim*; to support this he would cite the fact that this limitation on R. Natan is not quoted in the Talmud in any other place.

   This understanding of Rambam is found in *Minchat Chinuch*, Negative Commandment 232;3, and *Melamed LeHoil* 1:34. Thus, in all likelihood, Rambam maintains that a *deorayta* is violated in all circumstances. It is possible that Rambam thinks that there is never any rabbinic prohibition of *lifnei iver*; see *Teshuvot RaDVaZ* 5:1579.

10. The rabbinic prohibition of *lifnei iver* is sometimes called *mesayeha yeday over'ray averah* (aiding the hand of those who sin); see RaN, *Avodah Zarah* 1b, *Minayin (Rif blot)*.

permissible according to Torah law, it has to be able to be done by a non-Jew, or a person otherwise not obligated in this commandment of *lifnei iver* generally, rather than be able to be done by any person. The *Mishneh LaMelech's* approach is based upon his understanding of Tosafot *(Hagigah 13a, Ein Mosrim)* that *chad ibra d'nahara* ("one side of the river") means when the principal can do it on his own or through the assistance of a non-Jew. This makes sense only within the conceptual framework of Tosafot and the RaN, as it seems irrelevant that others can aid in the prohibited act if they too are obligated not to do so.

The third position is taken by Tosafot *(Avodah Zarah* 6b, *Minayin).* Tosafot accept that the Torah's prohibition of *lifnei iver* encompasses only situations of "two sides of the river", *i.e.* when the sinner needs the help of the aider to accomplish his goal. Furthermore, Tosafot state that in "one side of the river" situations (i.e., where the principal can do the act himself or with the assistance of others) there is no prohibition to help him — either according to Torah law or according to rabbinic law.[11] According to Tosafot, this type of conduct is absolutely permitted.[12]

Thus, three approaches can be found with regard to aiding one who wishes to sin. Rambam maintains that a Torah prohibition is always violated by aiding him. RaN believes that only Torah law is violated when others cannot also do the act; all other situations violate only rabbinic law. Tosafot maintain that when there are others who can and will aid the sinner, neither rabbinic nor Torah law is violated.[13]

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11. Obviously, if one accepts Tosafot's framework, the ability of the principal alone to do the complete act unassisted would remove the prohibition of aiding him, as the sinner himself is his own aider. Perhaps even the RaN accepts this rule. See Ramban quoted by RaN, *Avodah Zarah* 6b-7a *(Rif blot).*
12. This position is also found in the Mordecai on *Avodah Zarah.* While Tosafot explicitly maintain that this is the law vis-a-vis non-Jews, they maintain also, in that same note, that there is no difference between Jews and non-Jews vis-a-vis *lifnei iver* in areas where both are obligated to obey the law.
13. One other approach is worth mentioning. Rabbenu Tam maintains that many *lifnei iver* prohibitions can be avoided through the use of a non-Jewish "straw man" as an intermediary on all sales between two Jews. For example, when a

The classical codifiers of the law have taken a number of approaches to this topic. The *Shulchan Aruch,* in *Yoreh Deah* 151:1, when discussing whether one can sell items to a non-Jew which might be used in his (idolatrous) religious practice, apparently adopts the approach of Rambam (or at least RaN) and concludes that it is prohibited to aid a person in the commission of a sin, although others will aid him if one does not. Furthermore, it makes no difference whether the motives of the aider are pecuniary or other. While it is without dispute that a violation of *lifnei iver min haTorah* occurs when a violation of Torah law is aided, it is a matter of great dispute whether a Torah or rabbinic violation of *lifnei iver* occurs when one aids another in the violation of rabbinic law.[14]

The Ramo does not agree with this position. He quotes the position of Tosafot that when others can aid the sinner, it is totally permissible for any other individual to aid him as well. Additionally, he quotes the position of the RaN, that this is prohibited according to rabbinic law. He concludes, "The tradition is in accordance with the first opinion [Tosafot]; pious people (literally: spiritual people) should conduct themselves in accordance with the second opinion [RaN]."[15]

Jew wishes to lend money with interest to another Jew, a transaction fraught with many halachic problems including *lifnei iver,* he could avoid those problems by using a non-Jewish worker as a middle man — even though the middle man must follow the wishes of the principal. See Tosafot, *Bava Metzia* 71a, *kegon.*

14. See Tosafot, *Avodah Zarah* 22a, *Tepuk; Minchat Chinuch* 231:3 (in the *hashmatot*); and *Sdei Chemed* 9: 36 (p.6).

    The analytical basis for the opinion that one violates only *lifnei iver miderabanan* when the underlying prohibition is only *miderabanan* is that the aider cannot violate a biblical prohibition if the principal is not also. The second approach, which labels all aiding in violations of the halacha, whether *min hatorah* or *miderabanan,* as violations of *lifnei iver min haTorah,* maintains that giving bad advice violates *lifnei iver,* and advising or aiding a person who is doing a rabbinically prohibited action is a form of bad advice and thus biblically prohibited.

15. It is most unlikely that the Ramo was referring to the Rambam as the basis for the second opinion; the RaN is a more likely candidate. However, the source

The *Shach* (*Yoreh Deah,* 151:6) adds yet another interpretation. He states that when dealing with a person whom one is not obligated to prevent from sinning (i.e., either a *mumar* (apostate) or a non-Jew) all (Rambam, RaN and Tosafot) agree that if others will aid him to sin if you do not or if he can do the whole act himself, it is entirely permissible to aid him. The basis of the rabbinic prohibition to aid sinners is to separate them from sin and sinning. Thus, according to the *Shach,* it is permissible to aid a non-Jew or a *mumar* in sin when others can aid him since there is no obligation to prevent such a person from sinning. It is only in the case of observant Jews, according to the *Shach,* that the two opinions of the Ramo are relevant.

The *Dagul Merevavah* in his commentary adds yet another leniency. He states that according to the *Shach,* any time a person knowingly violates a particular rule, that person is to be classified as a *mumar* for the purposes of *lifnei iver.* Thus, according to this opinion, one can sell to a generally religious Jew non-kosher foods for him to eat if the purchaser knows they are not kosher but still wishes to eat them.

Thus, in summary, four positions are taken in the *Shulchan Aruch*:

1) One may never aid a person in committing a sin (*Mechaber* and Rambam). (This approach is generally rejected by Ashkenazic authorities.)

2) It is rabbinically prohibited to aid one in sinning when others will aid him if you do not. This is prohibited according to Torah law when no one else can (RaN).

3) It is permitted to aid one in sinning if others will do so if you do not (Tosafot and Ramo).

4) It is permitted to aid a sinner in sinning when one is not obligated to separate him from sinning (*Shach* and *Dagul Merevavah*).

Rabbi Akiva Eiger advances an extremely important principle in reference to the relationship between these rules and their application to minimizing sin. His additional rule, and its many applications, will be discussed extensively in part IV:B.

Part III

While the scope of the understanding of *lifnei iver* is fairly broad in the *Rishonim* and *Shulchan Aruch*, later rabbis *(Acharonim)* have taken a somewhat narrower view of the halacha. The first subsection collects the decisions of various commentaries on *Shulchan Aruch* and compares them with the approaches taken in Part II; the second subsection collects responsa of various *Acharonim*.

A. Commentaries on Shulchan Aruch

Among the *Acharonim*, only the *Chavat Yair* accepts as halachically normative the approach of the Rambam as we interpret him above (*Chavat Yair* 137). All other *poskim* agree that when others can provide the services or goods needed, there can be no Torah violation. Thus, on a *halacha lema'ase* question, one is almost always faced with only a rabbinic prohibition since in the current economic climate it is very rare that a single person is the unique supplier of a commodity within a given geographic area.[16] Hence, most *Acharonim* discuss the approaches of Tosafot, RaN, and the *Shach*. Different approaches are taken when the underlying

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notes for the Ramo provide no guidance as they were not written by the Ramo; see *Sdei Chemed, Clalei HaPoskim* 14.

There is some tension between the Ramo on *Yoreh Deah* 151 and on *Orach Chaim* 163. In *Orach Chaim* the Ramo states that it is prohibited to feed ["*Le'heachil*"] bread to a person who does not wash before he eats. This seems to accept the RaN's approach, whereas in *Yoreh Deah* he accepts Tosafot as correct. The *Mishnah Berurah* explains the tension by stating that the Ramo in *Orach Chaim* is referring to actually feeding — placing food in the person's mouth. That situation almost always involves the person not being able to feed himself *"trei ibra d'nahara"*, which even Tosafot agree is prohibited to do.

16. This is less true in the providing of services related to Orthodox Judaism. The correctness of the *Mishneh LaMelech's* approach (that the other actors must be non-Jews in order for the situation to be considered *chad ibra d'nahara*) is very important in this context. Some *Acharonim* appear to accept the *Mishneh LaMelech*; many do not. (See Rav Ovadiah Yosef, *Yechaveh Da'at* 3:38.) Even if one accepts the *Mishneh LaMelech*, in most situations involving the sale of commercial goods (except for religious supplies), it is most unlikely that, outside of Israel, all of the potential suppliers would be Jews.

prohibition is a Torah or rabbinic prohibition, or even only a violation of *minhag* (custom).

Thus, while the *Shach* does not himself distinguish between whether the underlying act is biblical or rabbinic when he excludes *mumarim* from the obligation of rebuking, many *poskim* only accept the *Shach* when the act itself is only a rabbinic prohibition. For example, while participating in an interest-paying transaction violates *lifnei iver,* when payment of the interest is by check (which most *poskim* think makes it only a rabbinic violation[17]) many *Acharonim* will rely on the *Shach's* approach, as the underlying action is at most a rabbinic prohibition (see *Pri Magadim, Aishel Avraham, Orach Chaim* 163 (2)). This is true even more so, when the underlying act violates only traditions or *takanot* after the close of the Gemara.

Others, however, appear not to accept Tosafot or the *Shach's* approach but embrace the RaN as the better approach.

Thus, the Vilna Gaon (Gra, *Yoreh Deah* 151:8) accepts the RaN.[18] He appears to do so based upon the fact that in other places in Gemara, Tosafot themselves explicitly accept the RaN's approach. The *Magen Avraham* (*Orach Chaim* 347:4) as well accepts the approach of the RaN. The *Levush,* on the other hand, accepts Tosafot's approach (*Yoreh Deah* 151:3) as do both the *Beit Shmuel (Even HaEzer* 5:18) and the *Machatsit HaShekel* (163:2). The *Birchei Yosef* appears to accept the *Shach's* approach; at the very least, he accepts Tosafot as opposed to the RaN (*Yoreh Deah* 151). Thus, it appears that Tosafot, and the *Shach's* further addition to the RaN's rule, are subject to various degrees of acceptability among the classical early commentaries on *Shulchan Aruch.*

Teshuvot

It is interesting to note the wide range of approaches found in

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17. For an excellent article on checks in halacha, and their status as money or its equivalent, see Rabbi J.D. Bleich, *Survey of Recent Halachic Literature: Checks,* 24 Tradition 74 (1989).
18. Rav Aharon Kotler also accepted the RaN as the better approach; see *Mishnat Rav Aharon* 1:6.

the responsa literature as to how the *poskim* dealt with issues of *lifnei iver* with regard to normative practice. For example, Rav Yaakov Ettlinger, in a classic responsum (*Binyan Zion* 1:15), addresses the question as to whether one may use a non-Jewish printer who has Jewish employees who might do the printing on Shabbat. Immediately, he establishes that there is no violation of the biblical prohibition since the printer has many customers, thus making it a case of *chad ibra d'nahara* ("one side of the river"). However, the rabbinic prohibition of aiding a sinner might still exist.

If one were to assume the position of the *Shach,* it would surely be permissible since he would ostensibly be dealing with *mumarim.*[19] In fact, however, Rav Ettlinger rejects this distinction. Nonetheless, he renders a lenient decision based upon his understanding of the parameters of the rabbinic prohibition. According to Rav Ettlinger, only when one aids the person at the actual time of transgression or if the sinner explicitly requests one's aid to perpetrate the sin at a later point in time is the aider guilty. However, if one has even the slightest reason to suspect that the sin will not be violated or if the aid is not explicitly asked for, there is no rabbinic prohibition. It therefore follows that one is permitted to give the material to the printer to print, notwithstanding the possibility that Jews may do the printing on Shabbat, as it is not certain that the printing will take place on Shabbat nor for that matter that Jews will do the printing even if it is done on Shabbat.

Rabbi Naphtali Tzvi Yehudah Berlin, the Netziv, (*Meshiv Davar* 2:32) was asked to respond as to the permissibility of officiating at a marriage where it is known that the couple will not observe the laws of family purity. As in Rav Ettlinger's case, the issue at hand is whether such action would be in violation of the rabbinic prohibition. The fact that there are other people who could officiate eliminates the biblical prohibition.

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19. Though if the Jewish workers are considered *shogegim* or econimic *anusim* this leniency would not apply. See, *Binyan Zion* 2:23; *Melamed LeHoil* 1:29 *Chazon Ish, Orach Chaim* #2 16; *Sridei Aish* 2:156; see also note 29.

In the first part of the responsum, the Netziv agrees with Rav Ettlinger's analysis and resolution of the apparently contradictory rulings of Tosafot and Rabbenu Asher (Rosh) in *Avodah Zarah* 6b and *Shabbat* 3a.[20] He states that according to Tosafot and Rosh, even where it is known for sure that the couple will violate Jewish law, since it is considered a case of *chad ibra d'nahara* and the action of the rabbi comes prior to the transgression of the sin, it is permissible to officiate at such a wedding. In the second part of the responsum the Netziv discusses the approach of the RaN and concludes that according to this approach it would be permissible since it is prior to the trangression, as long as the rabbi charges a fee.[21]

Rav David Zvi Hoffman in *Melamed LeHoil* (1:34) discusses a common Shabbat question that involves certain *lifnei iver* issues as well. He was asked regarding a business that has both religious and non-religious Jewish partners where the non-religious partners, who control a majority of the partnership, now wish to open the business on Shabbat. The religious partners asked whether they were required to sell their share of the partnership. Along with many other issues, Rav Hoffman discusses whether *lifnei iver* is violated when the religious partners allow the business to operate on Shabbat. After stating that he does not agree with Rav Yaakov Ettlinger's approach as quoted above, he provides a new insight into *lifnei iver.* He states that there is no prohibition of *lifnei iver* when the prohibited "action" is not an action at all but only an inaction *(shev ve'al taseh).* Since in this case the only question was

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20. The Ramo in *Yoreh Deah* 151 quoted them as two opinions. The *Shach* claimed that the Gemara in *Shabbat* was discussing an observant Jew whereas the Gemara in *Avodah Zarah* was discussing a *mumar* or non-Jew. Rav Ettlinger differentiated between the cases by stating that the Gemara in *Shabbat* was discussing extending aid during the actual time of transgression whereas the Gemara in *Avodah Zarah* was discussing the extending of aid during a time prior to the transgression.

21. According to the Netziv, the charging of a fee is done in order to earn a living. Whenever an action, such as officiating at a wedding, may be done in order to promote peace *(darchei shalom),* the Netziv thinks it also may be done in order to earn a living.

whether the religious partners must divest themselves of this asset, as the initial investment was already made, Rav Hoffman thought that they need not do so.

Rav Moshe Feinstein in an early responsum (*Iggerot Moshe, Yoreh Deah* 1:72) discusses whether one may cater an affair where there will be mixed dancing. After establishing that the biblical prohibition is not in violation, he rules that in accordance with the *Shach* and *Dagul Merevavah* the rabbinic prohibiton is not in violation either. Although it is true that the *Magen Avraham* argues with the *Shach* and prohibits aiding a *mumar*, Rav Feinstein avers that in this case the *Magen Avraham* would agree with the *Shach*. Rav Feinstein states that the reason the *Magen Avraham* concedes that the caterers' actions are permissible is that if these caterers would not supply these affairs, the people would go to other caterers who are less reliable with regards to their Kashrut standards. Thus, by furnishing food for these affairs, the caterers are saving people from an even worse sin.[22] Rav Feinstein further argues that the rabbinic prohibition only applies when the primary purpose of the item given to the "blind" person, i.e., the potential sinner, is for prohibited purposes. However, in this case the primary purpose of the catering is to serve the meal, which is entirely permissible.

In a later responsum, (*Iggerot Moshe, Even Haezer* 4:61 2) a question was asked of Rav Feinstein by the Chinuch Azmai Network of Hebrew Schools in Israel concerning the procurement of produce from areas which rely on the *heter mechira*[23] (which has the effect of making usable food grown in Israel in the Sabbatical Year) to students in their schools. The Chinuch Azmai system did not rely on the *heter mechira*, but had no other food to give the students and feared that if it wouldn't provide food, the students would go to non-religious schools. The basic thrust of the question

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22. This line of reasoning is similar to R. Eiger's approach discussed below. See part IV:B.
23. See Dayan I. Grunfeld, *The Jewish Dietary Laws*, 2:177-229 for a detailed discussion of the topic.

is whether the rabbinic prohibition of aiding a sinner exists if the aider maintains that a certain action is prohibited, but other recognized authorities maintain that it is permissible.

Rav Feinstein rules leniently for the following reason: the *Shach* and *Dagul Merevavah*, in his explanation of the *Shach*, maintain that there is a rabbinic prohibition of aiding a sinner only if the sinner is a *shogeg* (unintentional). If he is a *maizid* (intentional), the prohibition does not exist. Rav Feinstein explains that according to these opinions the rabbinic prohibition is a function of the commandment to give rebuke — *tochacha*. During the actual time of transgression, if the person is sinning on purpose, it can safely be assumed that rebuke will be of no avail as the conduct is deliberate. Therefore in a case where a biblical prohibition does not exist, neither will a rabbinic prohibition.[24] So too, when a person is doing a certain action based upon rabbinic support, it can be assumed that the person will not heed the rebuke; after all he feels that his action is correct. Based upon this analysis and coupled with the facts that *Shmittah* (Sabbatical Year) regulations according to the majority of *poskim* are presently only rabbinic in nature and the case at hand constitutes a great necessity, Rabbi Feinstein rendered a lenient decision.

Rav Ovadiah Yosef, in *Yechaveh Da'at*, has two responsa dealing with *lifnei iver*. The first of the responsa (3:38) is to a butcher who inquired as to the permissibility of his supplying meat during the "nine days" to customers who he suspects will eat the meat during that time period. The questioner's fear was that if he failed to provide these people with meat he would lose them as customers. Rav Yosef rendered a lenient decision based upon several factors. Firstly, the status of the prohibiton under discussion is a *minhag* which is lower than a rabbinic law. Secondly, the RaDVaZ (*teshuva* 5:1579) maintains that the rabbinic prohibiton of aiding a sinner exists only when the principal prohibition involved is biblical in nature. However, in this case since only a *minhag* is

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24. This understanding of the rabbinic prohibition is in stark contrast to Rav Ettlinger's and the Netziv's understanding as discussed above.

involved, the rabbinic prohibition of extending aid would not apply. Although many argue with the RaDVaZ's thesis, since a strict ruling in this case would result in a financial loss to the purveyor and in addition the Ramban[25] maintains that there is no rabbinic prohibition of aiding a sinner when the biblical prohibition of *lifnei iver* does not apply, Rav Yosef ruled that the butcher may provide meat to his customers even during the "nine days". In principle Rav Yosef seems to be concerned with the opinion of the *Mishneh LaMelech;* nevertheless, Rav Yosef feels that since only a *minhag* is involved, and since many *poskim* argue with the *Mishneh LaMelech* and maintain that even if the only way to violate the sin is through the help of another Jew no prohibition of *lifnei iver* exists, it is appropriate to be lenient.

In the second responsum (3:67), Rav Yosef discusses whether a clothing store may sell clothing which does not meet halachic standards of modesty and propriety. As in the first responsum, he begins with a discussion of the nature of the underlying prohibition involved, in this case dressing immodestly. Unlike the first responsum, here he concludes that the prohibition involved is at times on a biblical level. Due to this crucial distinction, the major thrust of Rav Yosef's lenient ruling in the first case becomes irrelevant, as the issue involves a much higher level of prohibition.

As a result of this difference, Rav Yosef states that even if there are other stores that will sell such clothing, it would still be considered a case of *trei ibra d'nahara* if all the other stores are owned by Jews, in accordance with the ruling of the *Mishneh LaMelech.* It is clear that Rav Yosef's concern with the ruling of the *Mishneh LaMelech* is a function of the severity of the underlying prohibition involved. When the prohibition is a biblical prohibiton (or even perhaps a rabbinic prohibition) he maintains that the definition of *trei ibra d'nahara,* as opposed to *chad ibra d'nahara,* is in accordance with the *Mishneh LaMelech's* understanding.[26]

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25. As quoted by the RaN, *Avodah Zarah 6A (Rif blot).*
26. For obvious reasons, the correctness of the *Mishneh LaMelech* is very important in Israel, and less important for those living in the Diaspora.

Assuming however that there were stores owned by non-Jews, even according to the *Mishneh LaMelech* there would be no biblical prohibition; however, there would still remain the rabbinic prohibition. Here again a distinction in *psak* is evident as a function of the severity of the prohibition. In the first responsum, Rav Yosef maintained that the Ramban's opinion was a legitimate reason to render a lenient ruling. However, in this case he states that the majority of the *Acharonim* assume that there is a rabbinic prohibition, the Ramban's opinion notwithstanding.[27]

Nevertheless, Rav Yosef concludes that if it is uncertain whether the clothing will actually be worn in an immodest manner, there is room to be lenient especially in light of the fact that the store is selling the item for profit and not to aid sinners. However, if the clothing is such that it is almost certain that it will be worn in an immodest manner, he concludes that it would be prohibited to sell such clothing.

In summary, the *Acharonim* seem to advance a number of different approaches to *lifnei iver*. Some focus on the immediacy of the assistance, or the explicitness of the request to aid. Others focus on whether the aiding is prior to or only at the time of the sin, and whether the aid is only incidental. Another factor is whether the prohibited conduct is an action or an inaction, and whether the law which is violated is a *deorayta*, a *derabanan*, or only a *minhag*. A

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27. In a footnote, Rav Yosef discusses the RaDVaZ's opinion, that the *derabanan* of *lifnei iver* only applies when the underlying sin committed violates a Torah commandment. Once again, as opposed to his position in the first responsum, he is hesitant to rely on the RaDVaZ. Firstly, many *Acharonim* argue his thesis, and secondly and even more importantly, Rav Yosef believes that we are dealing with biblical prohibitions in this case. Even if one were to maintain that the actual wearing of the clothing in and of itself only constitutes a rabbinic violation, the wearer would nonetheless be in violation of *lifnei iver* for causing people in the street to have improper sexual thoughts. Therefore, the seller is in violation of *lifnei iver*. See Tosafot *Avodah Zarah*, 15b, *L'oved kochavim* and Rav Perlow, *Sefer HaMitzvot l'Rav Saadia Gaon* 1:650 for similar applications of *lifnei iver*.

Rav Yosef also entertains the possibility of relying on the *Shach*, but concludes that such an option requires further analysis.

final factor is what other alternatives are available to the sinner.

Part IV

Having summarized the various approaches, this portion of the article will demonstrate their application by analyzing three questions frequently asked: (a) Is it permissible to be a waiter or a cashier in a non-kosher restaurant or supermarket; (b) when is it appropriate to engage in activity which apparently leads people to sin in a manner which is intended, in the long run, to reduce sin, *i.e.*, invite non-observant Jews to a seder knowing they will drive to it; and (c) when may one aid religious Jews in doing an action that they think, with some justification, is permissible, even though the aider himself thinks the conduct is prohibited.

Being a Cashier or a Waiter in a Non-Kosher Restaurant or Supermarket

It seems clear that there would be no violation of the Torah prohibition if one were to be a cashier or a waiter in a non-kosher restaurant or supermarket since there are many supermarkets or restaurants for a consumer to patronize.[28] According to the *Rishonim* (Tosafot, Mordechai, Ramban) who maintain that there is no rabbinic prohibition, it would thus be permissible. However, according to many *Rishonim* and *Acharonim*, there does exist a rabbinic prohibition generally, and the question is does it exist in this case.

According to the *Shach* it would be permissible if the consumers are *mumarim*.[29] This is especially true according to the

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28. In the diaspora, this would be true even according to the *Mishneh LaMelech* since there are non-Jewish supermarkets with non-Jewish cashiers. However, in Israel this might not be the case.

29. If the *mumarim* in fact have the status of *tinok shenishbah* (see footnote 19) then the *Shach's* leniency alone would not apply. However, the *Dagul Merevavah's* transformation of *mumar* to *maizid* would probably still allow for this leniency. According to the *Dagul Merevavah* so long as the person is knowingly transgressing and will not heed rebuke, there exists no rabbinic prohibition. It therefore becomes possible to consider a person a *tinok shenishbah* vis-a-vis many halachot such as being counted to a minyan, etc.,

Dagul Merevavah's understanding of the *Shach*, as well as Rav Feinstein's explanation of the overall approach. The case of being a cashier would have the additional advantage of involving a delayed violation, which would make it seemingly permissible according to the *Binyan Zion* and the Netziv.[30]

On the other hand if one accepts Rav Yosef's responsa, these cases seem to resemble the more stringent of his two, as forbidden foods, a biblical prohibition, are involved. Therefore, the strictures of that case would probably apply and being either a waiter or a cashier would be prohibited, unless one could reasonably assume that the consumer is not going to violate the prohibitions of eating non-kosher food, such as when he is not purchasing the food for his own consumption.

Reduction of Sin and Lifnei Iver

Rabbi Akiva Eiger, in his commentary to *Yoreh Deah* 181:6, gives his own extremely important addition to the *lifnei iver* rules. He states that when an action is prohibited, even *min haTorah*, for a person to do himself but is only prohibited for another person to do because of *lifnei iver*, it is better for the second person to do the prohibited action as that reduces the sum total number of sins committed (perhaps to zero). The aider's action do not violate *lifnei iver/mesayeha* as his conduct decreases rather than increases sins. This rule obviously only applies if the sinner can and will do the act anyway so that there is no Torah prohibition of *lifnei iver* and only the *derabanan* of *mesayeha yeday over'ray averah* (aiding the hand of sinners).

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and yet consider him a *maizid* with regard to the rabbinic prohibition of *lifnei iver*. This seems possible according to the *Chazon Ish's* comments in *Hilchot Eruvin*, that a *tinok shenishbah* needs to be educated in accordance with his unique nature and needs. The mere informing of a concept such as Shabbat to a person who has lived many years without knowledge of what Shabbat is, does not remove a person from the category of a *tinok shenishbah*, even though it might make him a *maizid* vis-a-vis *lifnei iver*.

30. Being a cashier in such a restaurantit appears to us to be halachically superior to being a waiter, as customers normally pay after they have eaten, and hence no *lifnei iver* prohibition is involved at all.

The precise example used by Rav Eiger best illustrates his principle. Rav Eiger was asked by a man who was going to shave himself with a razor if it would be better, instead of shaving himself, were a woman to shave him. Rav Eiger replied that it would be better for the woman to shave him, since it is prohibited according to Torah law for a man to shave himself with a razor and it is permissible for a woman to shave a man with a razor *min hatorah* (see *Yoreh Deah* 181:1,6). Furthermore, Rav Eiger posits that the woman's shaving the man is only prohibited according to rabbinic law because of *mesayeha*. Rav Akiva Eiger then reasons as follows: if the man shaves himself, Torah law is violated; if the woman shaves the man, she only violates *mesayeha* and the man violates only lesser Torah prohibitions. Thus he concludes that it should be permissible for the woman to shave the man, without violating any prohibition, if the man will shave himself anyway, as *mesayeha* does not apply when the sinner can and will perform the prohibited act himself, and doing the act for him reduces the violator's prohibitions.

The theme of Rav Akiva Eiger's analysis of *lifnei iver* problems is extremely important in many situations. R. Akiva Eiger's principle underlying his understanding of *mesayeha* is as follows: In situations where a person is going to violate the law regardless of the conduct of the aider, and if the aider does in fact "help" in the committing of the sin by actually doing the sin in a manner which reduces rather than increases the number or scope of the sins, that "aiding" is permitted providing that the aider's conduct is only proscribed by *mesayeha* and no other prohibition.[31]

The applications of this rule are both far-reaching and numerous. For example, if we accept this ruling it would be

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31. *I.e.*, a personal prohibition rather than just *lifnei iver*. For example, if a violator turns to an aider and says "I would like to eat pork; however, if you will eat chicken and milk (which is only a rabbinic prohibition) I will not eat pork", such conduct by the aider is prohibited, as the aider is violating the prohibition of eating meat and milk together. If on the other hand the violator says "If you will serve me chicken and milk, then I will not eat pork" R. Eiger would allow that, as serving him is only *mesayeha*.

permissible to invite[32] a person who is not at all observant for a seder or any other (holiday) meal since the prohibited conduct (driving) will take place anyway, and prohibitions are reduced in that kosher food and a religious environment are provided. No violation of the Torah prohibition occurs by the host since the host is willing to have the guests stay overnight until the holiday is over. Thus no added violations of halacha occur, and the number of violations by the sinner decrease.

An identical situation occurs anytime, when, in order to expose Jews who are not yet religious to Orthodox Judaism, it is necessary to allow sinning to happen — or even to allow the organizer to apparently encourage one form of sin — since in reality the organizer is merely encouraging one form of lesser sin as a substitute for a greater sin, in the hope that this lesser sin will lead to greater observance. If this rationale is correct, it would not violate *lifnei iver* to send an Orthodox rabbi into a non-Orthodox congregation to officiate in the hope that he will make the congregation more religious.[33] (Whether the rabbi can himself pray in this synagogue is a separate question with which we will not deal in this article.) The rabbi's "sin" is at most *mesayeha yeday over'ray averah* (aiding the hand of those who sin) because he encourages people to attend an improper synagogue. This violation disappears if the congregants would go to this, or a less religious synagogue anyway, or would equally violate the Sabbath anyway even if they were to refrain from attending any synagogue at all. According to the principle of Rav Eiger, since the Orthodox rabbi will guide the people to a more Orthodox observance than they would otherwise have, there would be no rabbinic prohibition of *mesayeha* since the total number of sins, and the severity of the sins, have decreased.

Rabbi Meir Schlessinger quotes Rav Shlomo Zalman Auerbach

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32. An interesting question is whether words alone are classified as *shev ve'al taseh* and thus come within the parameters of Rav Hoffman's *heter;* see *Encyclopedia Talmudit,* 6:410 *(dibur c'maseh).*

33. There is still the question of whether this type of behavior constitutes a form of *Ze'uf haTorah.*

as being in agreement with this basic rule,[34] and it can be seen as well in Rav Auerbach's own work, *Minchat Shlomo*, 35:1. Rav Auerbach rules that serving food to people who do not wash prior to eating bread, at most violates *lifnei iver* and there is no prohibition of *lifnei iver* when its adherence will result in an even greater sin than is gained by observing it — in Rav Auerbach's case, encouraging hatred of religious Jews. Rav Moshe Feinstein as well appears to accept this principle when he rules that it is appropriate to provide kosher food to mixed-dancing affairs, under the rationale that providing kosher food reduces the number of sins rather than increases it — as otherwise these groups would have non-kosher food. The *Chatam Sofer*, Rav Eiger's son-in-law, in his *teshuvot* (6:14)[35] also agrees with this approach, as does the *Machatsit*

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34. See Rav Schlessinger, *Mitzvat Chinuch, Shaalei Da'at* p.1 (5749). In this article, Rav Schlessinger, while discussing various aspects of education in halacha, states that one aspect of the rabbinic obligation to educate children is to distance children from specific sins and to familiarize them with the technical performance of mitzvot so that they can grow up to be functional Orthodox Jews. On the other hand Rav Schlessinger states that the Torah obligation of *chinuch* is limited to the general requirement to raise God-fearing and generally ethical children. It does not necessarily include the teaching of specific commandments.

    Rabbi Schlessinger then asks what one does when the two components conflict with each other, such as when too much pressure is exerted upon a child to conform to the details, thus perhaps causing him to abandon the religion completely. Rabbi Auerbach replies that the parameters of the rabbinic component of *chinuch* are similar to those of *lifnei iver*. If the observance of the rabbinic component in a given case will result in more bad than good, then there is no obligation to observe it. Like *lifnei iver*, *chinuch* needs an assessment of what maximizes the total amount of proper behavior rather than what fulfills the technical obligations; see also footnote 36.

35. The *Chatam Sofer* was asked whether it was permissible to bribe the secular "judicial" authorities in an anti-Semitic country if, absent the bribes, Jews will be unfairly discriminated against in secular court. He states that even though bribing any judge normally violate *lifnei iver*, since in this case the bribe is given in order to insure that justice is done, it is permissible. *Lifnei iver*, he states, is not violated by bribing the judge to do what he is commanded to do anyway — on the contrary, since more good than bad is accomplished he claims, a mitzvah is done.

HaShekel(*Orach Chaim* 163:2).[36]

Rav Eiger's approach is also very relevant in any situation where one person is not as obligated as another or is not at all obligated in a specific commandment. This has specific applicability in many hospital situations. For example, if the nurse is a man, he can only hand a Jewish patient a razor to shave with if the patient asks for one, based on Tosafot or the *Shach's* rulings.[37] If the nurse is a woman, it would be preferable for her to shave the patient herself rather than hand him a razor.[38]

In summary, Rav Akiva Eiger's approach is that *mesayeha* or *lifnei iver* does not apply any time the conduct of the aider is halachically successful; i.e., it reduces the level of violation of the sinner. When that happens it is permissible and appropriate to remain active — providing that no other violations of halacha are done by the aider.

Different Opinions within the Halacha

A somewhat related topic is the scope of *lifnei iver* when dealing with religious Jews with whose understanding of the halacha

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36. Semantics are very important in all of these cases. Rav Eiger appears to limit his rule to only the rabbinic prohibition of *mesayeha*. The *Chatam Sofer* on the other hand clearly uses this rule even to the Torah prohibition of *lifnei iver*, since his case involved a non-Jew where no *mesayeha* prohibition exists. Rav Auerbach uses the term *lifnei iver* but is not sure if this distinction works with reference to Torah prohibition of *lifnei iver*. The *Machatsit HaShekel* applies his rule only to *mesayeha*.

37. For an excellent article on the same topic, with a contrary conclusion, see Rabbi Moshe Tendler, *Iyunin BeDin Lifnei Iver*, in *Yovul Hayuvlot* (in honor of Yeshiva University's centennial) p.392 (1986).

38. Another application of this would be to a hospital intern or resident in a non-*Shomer-Shabbat* program who wishes to switch "on-call" days with a non-religious Jew so he can avoid working on Shabbat.

    The only potential problem is *lifnei iver*. If R. Akiva Eiger is correct, by switching days with the non-observant Jew who would otherwise observe no Shabbat, the total number of violations of halacha are reduced (since everyone agrees that working to save people on Shabbat in a hospital is preferable to non-observance). Instead of having one person violate Shabbat by working in the hospital (if in fact that is prohibited) and another violate Shabbat through his non-observance, only one violation occurs. Since the non-religious Jew's sins

one disagrees. Both the *Binyan Zion* (1:62) and the *Sdei Chemed, (velifnei iver* 28) discuss whether if person *A* maintains that something is permissible to eat and person *B* thinks it is halachically impermissible, *A* may feed it to *B* without *B*'s knowledge. The consensus of opinion is that this is prohibited. (See *Chulin* 111a)

A second case occurs when *A* thinks something is prohibited, but wishes to feed it to *B* who thinks it permitted. Rabbi Feinstein's *teshuva* quoted above states that this is permissible *bede'evad*. His case, however, actually involved feeding non-religious, ignorant Jews food whose kashrut was debatable.

The authors are of the opinion that when the second group has a well established, thought out, and reasonable position, it certainly does not violate *lifnei iver* to aid them. Two justifications can be given. First, it is clear that the "rebuke" will not be successful, as the group has an opinion which it believes to be halachically correct. Thus, Tosafot and the *Shach* think *lifnei iver* does not apply when the situation is *chad ibra d'nahara*. Secondly, once the principal's action is itself arguably permissible, the aider's action, again assuming it is *chad ibra d'nahara*, is only a *safek derabanan*. The combination of these two reasons should make this form of aiding permissible.[39]

Conclusion

In summary, there are two basic approaches to *lifnei iver* — that which looks at the effect aiding has on the aider and that which looks at the effect aiding has on the sinner. Many *poskim* (including Rambam) accept the first approach. *Lifnei iver*, they claim, prohibits conduct which aids sinners, not solely when it is efficient or induces sin, but even when it is an act of futility. This

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are reduced, this action is permitted and even appropriate. Hence, no violation of *lifnei iver* occurs; see *Iggerot Moshe, Orach Chaim* 4:79. For a similar application of this rule, in a different context, see *Melamed LeHoil* 1:56:6.

39. Thus, for example, it certainly is permissible to allow the building of an *Eruv* that one does not feel is sufficiently halachically acceptable to carry in, so long as there are opinions that permit its use. It is even permissible to aid such a project. See *Iggerot Moshe, Orach Chaim* 4:89.

approach maintains that the act of aiding is itself prohibited, perhaps because assisting sin affects the aider in improper ways.

The other approach accepts that *lifnei iver* is not violated when aiding does not induce more sin. Sometimes not aiding becomes an exercise in futility, or, even worse, more is lost than gained by non-participation. When the sinner will not listen, does not care, or does not believe that he is sinning, and he can do the act without the assistance of any Jew, *lifnei iver*, this group claims, does not apply. Most Ashkenazi *poskim* follow this approach in one form or another.

Mezonot Bread — Convenience or Misnomer?

Rabbi Binyomin Forst

Mezonot Bread — Convenience Or Misnomer?

Rabbi Binyomin Frost

In recent years so called *"mezonot bread"* has gained wide spread acceptance and popularity. It has become the custom to use *"mezonot bread"* in the place of actual bread. The reason for this is expedience and convenience. In today's busy society, people find it bothersome and difficult to wash *netilat yadayim* and recite *Bircat Ha'mazon*. Eating a conventional meal is simply not compatible with today's "fast food" mentality. While the contemporary practice of eating "on the run" and hurrying through meals deserves critical scrutiny through the view of Torah *hashkafa*, in itself it poses no direct halachic problems. The practice of eating *"mezonot* bread," however, does present major halachic difficulties.

The purpose of this article is to thoroughly examine the relevant questions and present a halachic conclusion. It should be noted that, as in all questions of halacha, the issues must be studied

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[Note: This article was originally written using the *Ashkenazic* pronunciation; it has been changed into *Sefardit* to make it conform with the other articles in this magazine.]

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with a sincere attempt to justify common practice. Even a cursory scan of rabbinic literature confirms that *Poskim* have, throughout the ages, endeavored to justify and support the custom of the time within the framework of accepted halacha. Seeking out problems and creating difficulties certainly has no place in sincere halachic study.

The question relating to *mezonot* bread is twofold: 1) the bread itself; does it qualify for a *mezonot b'racha?* 2) The situation in which it is eaten; does eating *any mezonot food* in this manner leave its *mezonot* status intact.

To understand the pertinent issues one must be acquainted with three basic concepts: I) The general definition of "bread" as opposed to "cake." II) The various types of "cakes." III) The concept of *k'viat s'udah* — eating cake in the setting of a meal.

I — The halachic difference between bread and cake

Foods produced from cooked parts of grain (e.g., oatmeal) or cooked flour dough (e.g., certain types of doughnuts) from any of the five species[1] of grain are called by *Chazal "ma'aseh k'deira"* (literally, "cooked [grain] foods") and were assigned a specific *b'racha* — a *mezonot*. When dough is baked, the grain achieves its full potential. In the language of *Chazal,* this product is called *"pat"*. Certain varieties of *"pat"* are designated as *"lechem"* (bread), while other varieties are classified as *"pat haba'a b'kisnin"* (cake).

Bread is the most prominent of all foods and the mainstay of all meals. Indeed, until modern times, a meal always consisted of some form of bread with or without a secondary food. In view of this special status, *Chazal* ordained a specific *b'racha* for bread alone — *"hamotzi lechem min ha'aretz."*[2] Bread is granted a special status in the Torah as well. One who eats a filling amount of bread is required by Torah law to say *Bircat Ha'mazon. Chazal* extended

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1. Or rice. However, rice cannot attain the status of *pat* nor does it require the *al ha'michya* after-*b'racha* (see *B'rachot* 37a).
2. *Orach Chaim* (hereafter O.C.) 167:2.

this obligation to include even one who only ate a *k'zayit of* bread.[3] Furthermore, *Chazal* required that prior to eating bread one must wash *netilat yadayim* (the ritual washing of the hands).[4]

The special status of bread is due to its prominence as the mainstay of a meal. Thus, one recites *hamotzi* only on those breads that are suitable to be eaten with a meal. These breads require a *hamotzi,* regardless of whether or not the individual happens to be eating them as a meal. Accordingly, one who eats even a crumb of bread must recite *hamotzi.*[5] However, breads which are normally eaten only as a snack cannot be classified as *lechem* even though they too are baked in an oven. These "breads" are not eaten at or with a meal and thus do not qualify for a *hamotzi* and require neither *netilat yadayim* nor *Bircat Ha'mazon.*[6] These "breads" are termed by *Chazal* — *"pat haba'a b'kisnin,"* and are the subject of our discussion.

II — The various types of *pat haba'a b'kisnin."*

Rishonim present us with three apparently different definitions for pat *haba'a b'kisnin:*

A. In the opinion of some *Rishonim,*[7] *pat haba'a b'kisnin* is made of a dough formed into a pocket and filled with fruits, nuts or their equivalent (e.g., apple or cherry pie).

B. Other *Rishonim*[8] define *pat haba'a b'kisnin* as a bread kneaded with any liquid other than water[9] (e.g., eggs, honey or fruit juices)[10] or breads to which a significant amount of spice or flavoring (e.g., sugar or cocoa) has been added (e.g., marble cake).

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3. Rambam *Hil. B'rachot* 1:1.
4. *O.C.* 158:1.
5. *Mishnah Berurah* (hereafter *M.B.)* 168:23. There is however a question as to whether one eating a minute amount of bread must wash *netilat yadayim,* see *M.B.* 158:10.
6. Ibid. See also *Aruch HaShulchan* 168:25.
7. The *Rach* (acronym for *Rabbeinu Chananel,* Talmudic commentator, Kairawan 990-1056), *Aruch* and *Rashba* cited in the *Bait Yosef* 168.
8. Rambam *Hil. B'rachot* 3:9.
9. *Graz* (R' Shneiur Zalman of Liadi 1745-1813) 168:11.
10. Or even raisin wine fit for *kiddush, (Kaf Ha'Chaim* 168:57).

C. A third opinion[11] holds that *pat haba'a b'kisnin* is a dry, thin and brittle bread eaten primarily as a snack and not eaten with a meal.[12] While the first two types of *pat haba'a b'kisnin* are not considered bread because of their *taste*, this third type is not considered bread because of its *form*. Although this bread is made of flour and water without any filling or additives, its form makes it unsuitable for use as a bread (e.g., hard pretzels). One may, therefore, question our custom of reciting a *hamotzi* on matzot since they, too, are dry, thin and brittle. Indeed, Sefardic Jews[13] customarily recite a *mezonot* on matzo.[14] Ashkenazic Jews, however, treat matzot as regular bread and recite a *hamotzi*. *Poskim* explain that our normal custom is to eat matzot in place of bread, thus the matzo attains a status of bread.[15]

Faced with a difference of opinion as to the definition of *pat haba'a b'kisnin*, one should recite *mezonot* on each of the above-mentioned types of *pat haba'a b'kisnin*.[16]

Since our discussion of *mezonot* bread relates primarily to type B mentioned above, we must consider a major provision of that type as established by the *Poskim*. As noted above *pat haba'a b'kisnin* is not considered bread since it is not fit to be eaten with a meal. Accordingly, flavored doughs which acquire the taste of the added flavoring or spice and are unfit to be eaten with a meal as bread are considered *pat haba'a b'kisnin*. *Poskim* limit this definition to those flavored doughs whose flavoring is strong enough to make the bread unfit for normal bread use. A bread

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11. *Rav Hai Gaon* cited in the *Bait Yosef* 168.
12. *M.B.* 168:35,36.
13. See *Y'chave Da'at* 3:12.
14. Except on *Pesach*, when matzo is considered the bread of the festival, see *Maharsham, Da'at Torah* 168:7.
15. In addition, *Poskim* question whether matzot are sufficiently dry and brittle to be classified as *pat ha'ba b'kisnin* (*Tzitz Eliezer* 11:19, *Chelkat Yaakov* 3:173). Matzo crackers, however, are made to be eaten as crackers and require only a *mezonot* despite the fact that they are essentially matzot (*Har Tzvi, O.C.* 91). Egg matzot are the equivalent of those cakes mentioned in section B and certainly require only a *mezonot*.
16. *Bait Yosef O.C.* 168.

flavored to this degree cannot be classified as *lechem* and therefore requires only a *mezonot* (e.g., marble cake or cupcakes). If, however, the taste of the flavoring is not strong enough to significantly alter the taste of the bread (and render it unfit for use as bread), one must recite a *hamotzi.*[17] For example; honey challah of the type customarily baked for *yomim tovim,* although sweetened with honey, is nevertheless fit to be used in place of bread and therefore requires a *hamotzi.* If, however, sufficient honey is added to radically alter the taste of the challah, one recites a *mezonot.* If we were to accept this qualification (as many *Poskim* do)[18] the entire basis for *mezonot* bread would vanish. *Mezonot* bread is certainly fit to be, and indeed is, eaten as bread.

In the opinion of some authorities, however, the above qualification (that the taste must be significantly altered) pertains only to those breads to which minimal amounts of fruit juices are added. If, however, pure fruit juices are added in a quantity greater than that of the water, one recites a *mezonot* even if the taste of the bread is not noticeably altered.[19] Although there is considerable disagreement on this point,[20] in the event that *no* water is used,

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17. In the opinion of the *Shulchan Aruch* 168:7 the fact that the taste of the fruit juice is noticeable is sufficient to render it a *pat ha'ba b'kisnin.* The *Ramo,* however, is of the opinion that the taste of the fruit juices must be the dominant taste in the bread, see *M.B.* no. 33. The language chosen above reflects the opinion of the *Ramo.*
18. *M.B.* 168:33 (and in *B.H.* s.v. *"harbeh").*
19. *Da'at Torah* (168:7) citing the *Bait Yosef,* see also the *Graz* 168:11. Note should be taken, however, that these authorities are referring to pure fruit juice. Concentrated fruit juice to which water has been added is considered fruit juice and water, not fruit juice. For example, if one kneads a dough with a mixture of 20% apple juice concentrate and 80% water it must be considered a dough with a majority of water. (See *Responsa Minchat Yitzchak* by Rav Y. Y. Weiss of Jerusalem vol. 9, no. 7. See also *Responsa Minchat Shlomo* by Rav S. Z. Auerbach of Jerusalem for a similar ruling.) Our research has found that many bakeries make *"mezonot* bread" using concentrated apple juice to which a majority of water is added and (considering this mixture apple juice) they then add an additional minority of water and consider the dough as containing a majority of apple juice. In truth, however, the dough is only 10% apple juice and certainly requires a *hamotzi* since it does not distinctively taste of apple juice.
20. *M.B.* 168:33 (and in *B.H.* s.v. *"harbeh"),* who claims that the only advantage of

authorities agree that one recites a *mezonot* even if the taste of the juice is not noticeable at all.[21]

In conclusion, a cake (or *mezonot* bread)[22] baked with a minimal amount of fruit juice (or eggs) certainly requires a *hamotzi*. If the *mezonot* bread contains a majority of pure fruit juice, it is subject to a dispute among *Poskim*. In the opinion of many (including the commonly accepted) authorities it likewise requires a *hamotzi*. One who wishes to rely on the lenient opinions and recite a *mezonot*, may do so. If the *mezonot* bread is baked without any water it definitely requires only a *mezonot*.

III — The concept of k'viat s'udah

We have seen above that *lechem*, by its very definition in halacha, is a bread ordinarily eaten as a meal, whether alone or in combination with other foods. *Pat haba'a b'kisnin*, however, although similar to bread in other respects (i.e. it is made of grain and baked in an oven), cannot be considered *lechem* since it is not normally eaten as a meal. Consequently, if one eats a *pat haba'a b'kisnin* as a substitute for bread, i.e. he eats an amount which constitutes a meal, the *pat haba'a b'kisnin* is halachically considered bread. In this instance, the *pat haba'a b'kisnin* attains the very same quality it was missing at first, namely, to be eaten as a meal. The intent to make a meal of the *pat haba'a b'kisnin* (the *k'viat s'udah)* transforms the cake into the halachic equivalent of bread. Thus, one who makes a meal of cake must wash *netilat yadayim*, recite *hamotzi* and *Bircat Ha'mazon*.[23] Indeed, the obligation to recite *Bircat Ha'mazon* on this cake is identical to that of reciting *Bircat*

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a majority of fruit juice is to guarantee that their taste be dominant. If, however, their taste is not dominant one recites a *hamotzi*. See *Sefer Mekor Ha'bracha* 15 for a broad discussion of this point.

21. See *Magen Avraham* 168:15 and *M.B.* 168:94 citing the *Magen Giborim*. It would seem that bread made without water, or perhaps even with a minimal amount of water, cannot be considered bread. See footnote 19 above regarding concentrated apple juice.
22. Which we are assuming tastes as, and is fit to be eaten in place of bread, as are all *mezonot* breads.
23. *O.C.* 168:6.

Ha'mazon on bread. Thus, one who ate his fill of cake is required by Torah law to recite *Bircat Ha'mazon*. Consequently, if he is unsure as to whether or not he recited *Bircat Ha'mazon*, it must be repeated.[24]

Although there is a minority opinion that *k'viat s'udah* is subjective to the individual,[25] the halachic consensus defines *k'viat s'udah* in terms of normal eating habits. Therefore one who eats a small amount of cake recites a *mezonot* even if he considers it his full meal. Conversely, one who eats a substantial amount of cake recites a *hamotzi* even if he views it as merely a snack.[26] Halacha does, however, consider the fact that different types of people have different eating habits. A child eats considerably less than an adult. Therefore, a child can effect a *k'viat s'udah* by eating the amount that a child normally eats for a set meal, while an adult must eat the amount usually eaten by an adult. The *k'viat s'udah* of an elderly person is, likewise, dependent upon the eating habits of the elderly.[27]

There is a major controversy among authorities concerning the measurement of a *k'viat s'udah*. In the opinion of some *Poskim*, one who eats a volume of cake equal to four (or three) eggs has effected a *k'viat s'udah* and must treat the cake as bread.[28]

Most *Poskim*,[29] however, are of the view that *k'viat s'udah* is measured in terms of the quantity that is generally eaten during the course of a full meal. Thus, one who eats a quantity of cake equal to the amount of bread that would generally be eaten for dinner,[30] if

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24. *Sha'ar Ha'tziyun* 209:14. See also *P'ri Migadim M.Z.* 168:6. The governing principle is *safek d'oraita l'chumra* — any doubt pertaining to a biblical obligation must be resolved in a way that the obligation is definitely fulfilled.
25. The *Ra'avad* cited in *Bait Yosef* 168.
26. *O.C. 168:6* following the opinion of the Rosh.
27. *Bi'ur Halacha* 168:6.
28. The opinion of the *Kapot T'marim* cited in the *Mach'tzit HaShekel* 168:13, *Bircei Yosef* in *Shiyurei B'racha*, see also *Kaf Ha'Chaim* who cites other authorities.
29. The *Mishnah Berurah* (168:24) citing the *Shibolei Ha'leket, Eshkol* and the *Gra*. The *Chayei Adam* 54:4, *Aruch Ha'Shulchan* 168:16, and *Iggerot Moshe*, O.C. *3:32*. See also *Bircei Yosef* 168.
30. The authorities mention a "morning and evening" meal. This certainly refers to

no other food were available, recites a *hamotzi*. This amount is measured in terms of the normal eating habits of each country.[31]

In addition, if one eats cake together with other staple foods the foods combine with the cake to effect a *k'viat s'udah*. For example, one who eats crackers and tuna fish,[32] must recite *hamotzi* if the amount of crackers equals the amount of bread one would eat with a tuna-fish meal.[33]

The halachot of *k'viat s'udah* are thus as follows:

One who eats an amount of cake equal to the amount of bread a person of his type (age, weight, etc.) would eat for dinner (if there were nothing to eat but bread) has effected *k'viat s'udah*. He must, therefore, wash *netilat yadayim*, recite *hamotzi* and recite *Bircat Ha'mazon* even if he does not consider it to be a meal. For example: If people would ordinarily eat five slices of bread or two rolls for dinner, one who eats that amount of a comparable cake[34] must recite *hamotzi*.

One who eats cake or crackers together with other staple foods (e.g., egg salad, chopped liver or herring) must recite *hamotzi* if the amount of crackers is the equivalent of the amount of bread one

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their eating habits. Our breakfasts, however, cannot be considered a full meal, since many people eat only a bowl of cereal, or a Danish and coffee. Indeed, even our lunches are often hardly worth mentioning. A *k'viat s'udah* must therefore be measured in terms of a dinner.

31. *Iggerot Moshe O.C.* 3:32.

32. As opposed to the pie filling which does not combine with the crust to effect a *k'viat s'udah*. Pie filling is not eaten as a meal (or with bread), therefore, eating crust with filling cannot be compared to eating bread with a meal. Tuna fish (or any staple food) is eaten with a meal, thus, eating crackers with tuna fish is analogous to eating bread with tuna fish.

33. *M.B.* 168:24 citing the *Magen Avraham* 168:13. Many *poskim*, however, disagree with the *Magen Avraham;* see *Bircei Yosef* 168:6, *Aruch Ha'Shulchan* 168:17, *Kaf Ha'Chaim* 168:47. The *Graz* 168:8 likewise, makes this conditional on the fact that one ate a minimum of bread equal to the volume of four eggs. The *M.B.*, however, follows the ruling of the *Magen Avraham* as does the *Iggerot Moshe O.C.* 3:32 (the *Iggerot Moshe* rejects the condition of the *Graz* as does the *Aruch Ha'Shulchan).*

34. We assume that a fluffy cake, such as chiffon, should be measured against a fluffy bread, i.e. a roll. Similarly, a dense cake such as mandelbread should be measured against a comparably dense bread.

would eat with a meal of that same dish. The fact that his intention was to snack — not to eat a meal — is immaterial. Often, people attending a buffet eat crackers and egg salad, chopped liver or herring, (which, in quantity, constitute an obvious *k'viat s'udah)* without being aware that they are required to wash *netilat yadayim,* recite *hamotzi* and *Bircat Ha'mazon.* This practice of eating without *netilat yadayim* and *hamotzi* has been censured by *Poskim* of the previous generation.[35]

IV — The problem of mezonot bread

After presenting the fundamental principles governing *pat haba'a b'kisnin,* let us examine their relevance to *mezonot* bread.

A. The *"mezonot* bread" itself:

We have previously discussed the three types of *pat haba'a b'kisnin:* Pie, a cracker and a sweet cake. *"Mezonot* bread," however, is neither filled with fruit as a pie nor is it thin and brittle as a cracker. The only claim *"mezonot* bread" has to a *mezonot* is the fact that it is kneaded with apple juice instead of water. As we have noted above, however, kneading a bread with fruit juice is effective only when the taste of the fruit juice is clearly distinguishable. *Mezonot* bread, however, has no noticeable taste of apple juice. Indeed, if it were to taste of apples, it would be not be used as bread. Therefore *mezonot* bread cannot be considered cake. We did, however, cite above, the opinion of some *Poskim,* that whenever the *pat* contains more juice than water, one may recite a *mezonot* even though the juice taste is not noticeable. In their opinion, the above-mentioned objection is not valid whenever the *mezonot* bread contains more juice than water. One has, therefore,

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35. See *Aruch Ha'Shulchan* 168:18 who soundly condemns this practice. Although the *A.H.* does find a slight excuse for the practice, his closing words, "may the Merciful forgive the sin," clearly reflect his true feelings on the matter. However one who eats cake (and certainly *mezonot* bread) as a meal must recite *hamotzi* if he eats a volume equal to the amount of bread one would eat with a meal. M.B. 168:24 citing the *Magen Avraham.* Thus, one must avoid eating *mezonot* bread equal to the amount of bread that is eaten with a meal.

the option of following that opinion. Let us, however, proceed.

B. Again, regarding the "*mezonot* bread" itself:

We have seen above that the custom of Ashkenazic Jews is to recite a *hamotzi* on matzo. The reason given for this is the fact that customarily people eat matzo as a meal, not a snack. Apparently, being classified as one of the types of pat *haba'a b'kisnin* is, in itself, not an adequate reason to recite *mezonot* if the *pat haba'a b'kisnin* is usually eaten as a meal. All varieties of *mezonot* bread are undoubtedly made to be eaten as bread, as their name confirms, and are therefore inappropriately classified as *pat haba'a b'kisnin.* Thus, even if we concede that the amount of apple juice in "*mezonot* bread" is of sufficient quantity to render it the status of *pat haba'a b'kisnin,* it should, nevertheless, require a *hamotzi.* Consequently, the term "*mezonot* bread" is self-contradictory.

C. "*Mezonot* bread" is normally used for sandwiches, for example: salami sandwich, a frank on roll or a falafel pita. We learned above that whenever the amount of *pat haba'a b'kisnin* eaten with other foods equals the amount of bread that would be eaten with a meal of those foods, the *pat haba'a b'kisnin* becomes *lechem.* Thus, even if we disregard the previous arguments, the fact that the *mezonot* bread" is eaten as a sandwich (in an amount appropriate for a bread meal) effects a *k'viat s'udah.*

In summary, it is difficult to imagine a situation where eating *mezonot* bread poses no halachic problems. The problems cited above are compounded by the fact that one usually eats his fill of these *mezonot* bread foods. One who eats his fill of *pat haba'a b'kisnin* is required by Torah law to recite *Bircat Ha'mazon.* Nevertheless, one who eats a snack[36] of a small amount of *mezonot* bread eaten alone does have a halachic basis to recite *mezonot,* although, as noted above, it is subject to halachic dispute.

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36. See *Iggerot Moshe O.C.* 1:56, 3:32.

V — Practical problems of mezonot bread:

A. Franks, falafel and sandwiches:

One who eats a filling meal of "franks-on-roll," falafel or salami sandwich, regardless of the fact that the breads are kneaded with apple juice, is required by Torah law to recite *Bircat Ha'mazon*. Consequently, one who treats *mezonot* bread as cake usually neglects a positive commandment of the Torah.

B. "*Mezonot* challah":

Some caterers serve "*mezonot* challah" at wedding banquets to save their guests the inconvenience of *netilat yadayim* and *Bircat Ha'mazon*. This practice is regrettable since the guests are encouraged to neglect their requirement of *Bircat Ha'mazon*. These challahs are eaten before or during the meal in the place of normal challah, and are thus considered as *pat haba'a b'kisnin* eaten together with other foods, which effects a *k'viat s'udah*.[37] However, one who eats cake or cookies for dessert need not be concerned with this problem. The cake is not eaten as part of the meal and does not combine with the other foods to effect a *k'viat s'udah* (unless one eats a considerable amount of cake, in which case the cake alone may constitute a *k'viat s'udah*).[38]

C. Airline meals:

Airlines usually serve packaged kosher meals. These meals are commonly accompanied with a roll or bun marked "*mezonot*." This practice is misleading and improper. Although the bun itself may require only a *mezonot* (which is by no means certain, see above), the fact that the bun is eaten with the other foods as a meal gives it a status of *k'viat s'udah*. One must certainly wash, recite *al netilat yadayim* and *ha'motzi*. However, one may eat the meal without the bun, recite a *b'racha achrona* and eat the bun as a snack later during the course of the flight. In this case, one may, perhaps, rely on those opinions cited in II-C above, that one may recite *mezonot* even if the taste of the fruit juice is not noticeable.

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37. See M.B. 168:42.

Tevilah of Utensils

Rabbi Alfred Cohen

Tevilah of Utensils

Rabbi Alfred S. Cohen

Tevilah (immersion in a mikvah) of dishes and other eating utensils is a mitzvah whose observance suffers from ignorance. Many Sabbath-observant Jews are unaware of the obligation to *"toivel"* their dishes and thus neglect the practice entirely. Others know that dishes and utensils require immersion in a mikvah and consequently dip virtually everything used in the kitchen, without discriminating between those items which require it and those that don't, those that require a *beracha* with the immersion, and those that don't. It is the purpose of this essay to clarify some of the classic issues which concern the requirement to *toivel* dishes, as well as to consider how these regulations apply to the many new materials which are on the market today.

The source for the commandment to immerse kitchen utensils[1] arises from a directive issued to the Jewish people in the desert, after a military encounter with the forces of Midian. Moshe Rabbenu instructed the victorious Jewish warriors that they could not use the vessels which they had captured as booty until

כל דבר אשר יבא באש תעבירו באש וטהר... וכל אשר לא יבא באש תעבירו במים

1. Only dishes owned by a Jew and used by a Jew require *tevilah*. If a Jew purchases dishes to be used only by a non-Jew (for example, a maid employed in his household), they do not require *tevilah*. מהריל דיסקין ס"ה אות קל"ו.

Rabbi, Young Israel of Canarsie; Rebbi, Yeshiva University High School

> Whatever comes [is customarily used] in fire, pass through the fire, and it will be purified... and whatever does not go into the fire, pass through water. (Numbers 31:23)[2]

Commenting on this directive, the Gemara explains

> תנא וכולן צריכים טבילה בארבעים סאה הוסיף לך הכתוב טהרה אחרת

> And all require immersion in forty *se'ah* [of water — i.e., a mikvah]. Scripture has added an additional purification [other than *tevilah*]. *(Avoda Zara* 75b)

In other words, when the Israelites captured the vessels of the Midianites in battle, they could not use them until they had purified them — either in fire or boiling water, depending on their method of use. *After that,* after all impure matter had been expunged from the vessels (i.e., *"kashered*), then the vessels had to be immersed in a mikvah containing forty *se'ah* of water.[3] This is the origin of the requirement for *tevilah* of utensils.

However, we are not to confuse the requirement of *kashering* with the need to dip the dishes in a mikvah. They are not connected.

> אמר רב נחמן אמר רבה בר אבוה, אפילו כלים חדשים במשמע

> Rav Nachman said, Rabba the son of Avuya taught, Even new utensils are included in the directive [to immerse in a mikvah]. (ibid.)[4]

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2. The question arises why the Torah did not teach this law at an earlier time, such as the war with Sichon and his people. Ramban discusses this, as do רבנו בחיי, דעת זקנים מבעלי התוספות. The resolution of this question may have a bearing on the laws of *tevilah,* for there are those who learn from this passage that metal utensils made in Eretz Yisrael do not require *tevilah.* However מנחת יצחק ח"ד קי"ד פרק ד' אות ב' disagrees.
3. ר"ן, רש"י שם ד"ה וטהר.
4. To understand how this regulation is derived from the biblical verse, see the

All dishes and vessels which were previously owned by a Gentile (even if not used) require *tevilah*, whether new or used, before a Jew may use them.[5] Furthermore, vessels which were previously used by a non-Jew or for a non-kosher product must first be purified *(kashered)* to expunge the foreign material.[6]

Purpose

Our rabbis viewed *tevilah* as a process which purifies and uplifts the utensil:[7]

> וטעם הטבילה כדי שיצאו מטומאתו של ע"ז לקדושתו של ישראל

Thus, any food utensil coming into the domain of a Jew needs

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commentaries of Rashi and Ramban.

5. Rav Tzvi Pesach Frank (שו"ת הר צבי יו"ד ק"ט) considers the question of a vessel which comes to the Jew's possession indirectly from the Gentile. For example, he buys a pot manufactured by a non-Jew, in a Jewish-owned store. Rav Frank rejects the suggestion that since the pot is coming only indirectly from the Gentile, it need not be *toiveled*. (The suggestion had been made that when Israeli soldiers overrun an abandoned Arab village, they would not need to dip the pots and utensils they capture, because they were not being taken from the ownership of a non-Jew but were, rather, abandoned property (שערים מצוינים בהלכה ס' לז בשם חדות יעקב ס' מ"ב). Similarly, מנחת יצחק rejects the suggestion that metal vessels made in Israel do not require *tevilah*, as mentioned in note 2 above.
6. Tosafot (ד"ה מגעילין) maintain that if a vessel needs to be *kashered* and also to be immersed, the *tevilah* may precede the *kashering* process. This position is not universally accepted. See פתחי תשובה קכ"א ג,ד,ה; יו"ד שם.
7. ש"ך ס"ק כ אות א', citing the Jerusalem Talmud at the end of *Avoda Zara*. According to this reasoning, writes דרכי תשובה ס"ק ד, if a non-Jew converts to Judaism, his utensils would require *tevilah*. However, he expresses his amazement that he did not find this in any of the earlier sources. שערים מצוינים בהלכה חלק א דף קצו extends this principle even to an apostate (מומר) who repents and returns to Judaism.

   However, ציץ אליעזר ח"י"ט אות ה' records that he checked the sources and indeed did find texts directly contradicting דרכי תשובה. He cites sources to the effect that a convert does not need to dip his dishes in a mikvah, nor does a repenting apostate. But שבט הלוי חלק ד צב אות ב considers that a convert should have to immerse his dishes.

to be immersed.[8] It is comparable to a person who wishes to convert[9] to Judaism who must immerse him/herself in a mikvah as part of the process. Even a Jewish apostate who repents and wants to re-join his people requires immersion in a mikvah.[10]

However, the *Or Zarua*[11] and the Rosh[12] are of the opinion that *tevilah* has nothing to do with removal of *tume'ah* (impurity) but is in the category of *"gezerat hakatuv"* — ruling of Scripture. The relationship between *tume'ah* and *tevilah* of utensils will be discussed more fully later in this study.

Rabbinic or Torah Law?

Anytime we discuss a mitzvah, it is crucial to determine whether that mitzvah has its origin in the Torah itself *(mid'oraitha)* or whether it represents a regulation instituted by the rabbis *(miderabbanan)*. The centrality of the distinction arises from the well-known principle of Jewish law that when there is a doubt or

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8. אגרות משה יו"ד ב ל"ט. Rav Feinstein extends the obligation of immersing vessels even to a Jew living in a society where everything is owned by the state — where, technically, no person is the previous owner of the utensil. Furthermore, the דרכי תשובה פ"א writes that if a Jew sells his company to a Gentile in order to be able to have the business open on the Sabbath, and then wants to buy it back for the other days of the week, his vessels need *tevilah*.

   The same reasoning will apply to dishes sold by a Jew to a Gentile for the duration of Pesach — if he wants to buy them back after Pesach, he would have to immerse them! דרכי תשובה אות ד (פתחי תשובה אות יג) agrees with this ruling about dishes after Pesach, but ערוך השלחן ס' נ"ב does not.

   The operative principle in all these discussions is ownership of the factory, and not the workers who are employed therein. For a case where there is doubt as to the true ownership of a factory, see אגרות משה או"ח ג'ד.

   The Meiri in *Avoda Zara* writes that dishes which became *trefe* and had to be *kashered* do not require *tevilah* (assuming that throughout they had been in the possession of the Jew).

   For the proper procedure if a vessel of a Jew was broken and fixed by a Gentile, there are many rules, as explicated in the שולחן ערוך and ערוך השולחן נ"ז.

9. ריטבא ע"ז.
10. יו"ד רס"ז'ח.
11. אור זרוע רצ"ג.
12. ראש ע"ז ס' ל"ו.

question about a matter which is ordained by the Torah, we must rule according to the stricter opinion; but when it is a rabbinic regulation, we may be more lenient.

The overwhelming majority[13] of rabbinic authorities over the ages has ruled that the mitzvah of *tevilah* for dishes is Torah-ordained.[14] The notable exception is the Rambam, who writes

טבילה זו שמטבילין כלי סעודה... אלא מדברי סופרים

> This *tevilah* which we immerse utensils for a meal ...is only from the teaching of the *Soferim* (Rabbis).[15]

However, although a simple reading of the Rambam seems to indicate that he held this to be a rabbinic regulation, the Rashba[16] and others claim that the terminology *"midivrei soferim* — from the teachings of the rabbis" merely indicates that in Rambam's view we are dealing with a law not explicitly formulated in the Torah, but one which the rabbis had to derive from the verse. In that sense, this is a Torah law which we know through the teaching of the rabbis.[17]

In practical terms, Jewish law deals with the obligation to immerse dishes in a mikvah as a Torah law, which means that questionable situations are resolved by means of the stricter opinion in most cases.

Materials Requiring Tevilah

The Torah requirement *(mid'oraitha)* for *tevilah* applies primarily — some say exclusively — to metal utensils used in food preparation.[15] In the case of vessels made out of metal and something else — for example, a wooden salad bowl with metal handles, or steel flatware with wooden handles — the vessel should be *toiveled* only if the metal part is coming into contact with food. The *Shulchan Aruch* rules

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13. ערוך השולחן ק"ס אות ד.
14. שרי חמד מערכה ט, יחוה דעת ד מד, ספר טבילת כלים דף לא-לז. Although the list of those who consider it a mitzvah *mid'oraitha* is very long, so too is the list of those convinced it is a rabbinic regulation.
15. הלכות מאכלות אסורות י"ז הלכה ה'.

כלי עץ שיש לו חשוקים של ברזל מבחוץ שמעמידים אותו אינו טעון טבילה

A wooden vessel which has metal supports on the outside which enable it to stand does not require *tevilah*.[16]

The Vilna Gaon explains that since it is only the inside of the vessel which comes into contact with food, it does not need immersion.[17] However, the *Shach* had previously ruled that such a vessel should be *toiveled*, without a *beracha*, for in his opinion the metal supports which make it able to stand are the essential feature which made this vessel usable.[18]

Although the Torah command initially appears to be limited to metal vessels, glass vessels are also included, as the Gemara records (*Avoda Zara* 75b):

אמר רב אשי הני כלי זכוכית הואיל וכי נשתברו יש להם תקנה ככלי מתכות דמי

Rav Ashi said, glass utensils are comparable to metal ones, for if they break, they can be repaired.

Apparently, the rabbis considered that glass vessels, which are formed through molding heated materials, can be re-formed if needed. In that respect, they are similar to metal vessels, which can likewise be repaired through heat. Consequently, they should be considered as in the metal category, requiring *tevilah*.[19]

If this were the only Talmudic text concerning *tevilah* of vessels, we would have no problem. However, such is not the case. In Tractate *Shabbat*[20] the Gemara rules that glass utensils are

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16. שו״ת חלק ג׳ ס׳ רנ״ה. However, elsewhere the Rashba expresses the opposite point of view on the significance of the term מדברי סופרים. See his חידושים לע״ז. See also שאגת אריה סימן ב׳.
17. The same terminology is employed in סוכה פרק ג׳ משנה י״ג, רמב״ם פרק א׳ מתפילה.
18. ש״ך אות י״ב.
19. רשי, ד״ה הואיל
20. טו:.

considered as being in the category of earthenware, since glass is made from sand. Thus, the Talmud seems to be contradicting itself.

Since these two Talmudic texts contradict each other, the Raavad[21] suggests that for the purposes of discussing the laws of *tevilah*, we rely solely on the text in *Avoda Zara* for direction. He rules that metal and glass utensils should be immersed in a mikvah, with a *beracha*. The Meiri,[22] on the other hand, maintains that we must adhere to the strictures arising from both Talmudic texts. He also requires glass vessels to be immersed in a mikvah.

Rambam records the normative law as follows:

> הלוקח כלי תשמיש סעודה מן העכו"ם מכלי מתכות וכלי זכוכית.. מטבילן במי מקוה ואחר כך יהיו מותרין

> One who acquires vessels for use with a meal from a Gentile, whether metal vessels, or glass vessels... he should immerse them in a mikvah and afterward they are permitted for use.[23]

The *Shulchan Aruch* rules the same way:

> הקונה מעכו"ם כלי סעודה של מתכות או זכוכית... צריך להטבילן במקוה

> One who buys from a Gentile vessels for eating, made of metal or glass... must immerse them in a mikvah.[24]

Nevertheless, two questions remain:

1. Do glass utensils fall into the same halachic category as metal, i.e., is the requirement to *toivel* them of *Torah* origin, or must they be immersed because of a *rabbinic* regulation? Rabbi Akiva Eiger[25] held that the obligation to dip glass dishes was in the category of rabbinic regulation; therefore he was willing to be

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21. סוף ע"ז.
22. שבת, שם.
23. רמב"ם, הלכות מאכלות אסורות פרק י"ז, הלכה ג. It is not clear why the מגיד משנה ס"ק ו was under the impression that the Rambam had omitted to discuss glass.
24. יו"ד ק"כ ס' א'.
25. יו"ד ס' י"ד.

lenient and to allow a child to perform the immersion. Most rabbinic decisors seem to agree with him.[26]

2. A second question arises concerning new materials which were not known in the days of the Gemara but which may have some of the same properties as glass (i.e., if they break they can be melted down and repaired). Should they be considered as requiring *tevilah* equally as glass? Rabbi David Z. Hoffman[27] in the last century was asked the halacha concerning *"klei etzem"* and similar questions have been posed in this century.[28] The issue is not merely whether to immerse these vessels or not, but rather — what do we do with a rabbinic regulation? Did our Sages legislate certain regulations, intending them to apply only as indicated, or should their regulations be extended to all items which are similar to the original one they discussed? The resolution of this fundamental problems concerning rabbinic regulations will be the core of our halachic policy concerning bone china, plastic, melmac, and perhaps Corning ware and pyrex.

Most rabbis have taken the position that although the Gemara may offer the rationale for a regulation (in our case, that if glass breaks it can be re-formed), nevertheless the stated reason is not the only reason for their regulation. Consequently, only those items specifically included by the rabbis in their decree come within the purview of their regulation, and we should not extend their reasoning to other, albeit similar, objects. We should rule, therefore, that these new materials do not require *tevilah*, or at best, *tevilah* without a *beracha*.[29]

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26. For a complete list, see ספר טבילת כלים דף מ־מ״א. The exception is מאמר מרדכי או״ח שכ״ג.
27. יו״ד מ״ט.
28. ציץ אליעזר ז־ל״ז.
חלקת יעקב ח״ב יו״ד מ״ט.
יביע אומר יו״ד־ח.
יחוה דעת ג־ס׳.
29. Some rabbis even felt that it would be forbidden to *toivel* them lest by mistake the person recites a *beracha* לט״ש. דרכי תשובה יו״ד ק״כ אות י״ד cites אהל אברהם as disagreeing with this principle and ruling that if the reason applied, one should indeed *toivel* the dishes. However, ציץ אליעזר reports that

As far as porcelain dishes are concerned, the *Shach* and the *Pitchei Teshuva*[31] rule that they do not require *tevilah* since they are made from earth. Once broken they cannot be repaired, and therefore they are in a different category. *Aruch Hashulchan* in his compendium of Jewish law echoes the above ruling[32] but notes that people *do toivel* their porcelain dishes, although *"aino muvan hatta'am"* "the reason is not understood."

The *Aruch Hashulchan* does indicate one exception — glazed porcelain should be immersed.[33] Perhaps, he says, this exception misled people into thinking that porcelain requires *tevilah.*

Vessels Requiring Tevilah

Not all vessels and utensils in the Jewish home require *tevilah.* In directing the Jewish soldiers how to purify the articles they had captured in the war with Midian, the Torah indicates that this applies only to "whatever is used in the fire" — and only cooking utensils are used with fire.[34] The Gemara *(Avoda Zara* 75b) rules that only vessels which are termed *"k'lei seudah"*,[35] utensils for eating or preparation of food, require *tevilah.* That means that not all vessels which contain food or come in contact with food are obligated in *tevilah* — but which ones do and which don't, occupies a major area of controversy among the many *poskim* who have grappled with the problem. We shall try to elucidate some of the issues:

Utensils used in the cooking or baking process which don't

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he checked the sources and is under the impression that אהל אברהם was actually not certain how to rule. See also מנחת יצחק ג־ע״ו־ע״ח.
תפארת ישראל ריש סדר טהרות אות מ״ד מה שכתב לחלק על הגר״א בעינן זה.

30. ש״ך, אות ב׳.
31. פתחי תשובה אות ב׳.
32. אות כ״ט.
33. Ibid. One wonders why a glazed dish would need *tevilah* since it could be used without the thin glaze. Ramo ס״ז writes that if the main part of the vessel is wood, no *tevilah* is needed הואיל ואפשר להשתמש בו בלא ברוא.
34. רשי ע״ז עה:.
35. דרכי תשובה ק״כ אות י׳ cites — and rejects — the opinion that pots used for *hage'alah* need *tevilah.*

come into contact with food do not require *tevilah.*[36] Thus, racks in the oven or grates over the stove do not need to be immersed,[37] since they come into contact only with pots and not with food. A toaster-oven need not be *toiveled,* but the tray inside does, for food is commonly deposited directly on the tray. On the other hand, a toaster may need *tevilah,* for the bread slices rest directly on the toaster.[38]

But how far do we extend the criterion that only utensils coming into contact with food require *tevilah?* The Mordechai[39] takes up the question of a knife used to slaughter an animal. One could argue that it is a utensil coming into direct contact with food to be used for a meal; however, the Mordechai rules that the knife for slaughter should not be immersed in a mikvah. Following the lead of this major halachic authority, the *Shulchan Aruch* rules:

סכין של שחיטה יש מי שאומר שאין צריך טבילה

> The knife for *shechita,* there is one who says it does not need *tevilah*[40]

However, the Ramo does not accept this totally, noting

ויש חולקין וטוב לטובלו בלא ברכה

> But there are those who disagree and therefore it is good to immerse it without a blessing.

What guidelines for *tevilah* can be deduced from the position of the Mordechai? Why did he exempt the slaughtering knife?

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36. It would seem that neither a cup for holding a boiled egg nor a nutcracker, would require *tevilah,* since the utensil does not come in contact with the edible portion of that food. However, ספר הטבילת כלים דף קע"ה הערה י וקצ"ז, ק"ה, reports that Rav S.Z. Auerbach ruled differently — that since boiled eggs and nuts are brought to the table whole, the utensils for holding or cracking them should be immersed. A pot for boiling eggs or a utensil for warming a baby's bottle would not need *tevilah,* however, as they do not come in contact with the actual food.
37. יו"ד קב"ד.
38. For more specifics see section titled "Electrical Appliances."
39. פ"ק חולין.
40. ק"כ אות ה'.
41. Ibid.

According to the *Shach*[42] the Mordechai reasoned that even after *shechita,* the animal is still not in edible form, and therefore the knife is exempt. The *Shach* interprets the Mordechai's ruling to be based on the principle that only those utensils which come into contact with the food *in its final stage* need *tevilah.*

Following this principle, the *Shach* rules that an instrument used to cut a fruit or vegetable from the ground needs *tevilah*[43] unless the vegetable will be cooked thereafter, in which case it does not. Similarly, the knife used to flay the hide off an animal or remove feathers from a fowl does not require immersion.[44] If we follow this reasoning, then a mixing bowl and beaters used in the preparation of bread or cake need also not be *toiveled,* since the dough or batter is not in its final stage when it is in the bowl.

However, the *Aruch Hashulchan*[45] does not accept the *Shach's* interpretation of the Mordechai's motivation in exempting a slaughtering knife from *tevilah.* He considers that the slaughtering knife cannot correctly be termed a utensil employed in the *preparation of food,* and for that reason is exempt. The slaughtering knife is used in fulfillment of a religious obligation, and really has nothing to do with food preparation, according to this view. Similarly the knife which flays the hide off the carcass is used for esthetic enhancement of the meat, for it is considered not refined to eat the flesh with the hide. But it is not actually used in preparation of food for eating. The *Aruch Hashulchan* rules that all vessels and utensils used at any stage of preparation of food for consumption require *tevilah* — he would insist that beaters and mixing bowls, etc., be immersed in a mikvah.

Thus, we are in some doubt as to how to proceed. We can only

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42. אות י.
43. עיין ט״ז אות ז׳.
44. רמ״א אות ה׳. In his commentary to the Mishnah, end of *Avoda Zara,* the *Tosafot Yom Tov* expresses amazement at the conclusion of Rav Ovadiah Bertinoro that knives do not require *tevilah.* The *Shulchan Aruch* יו״ד קי״ד discusses both sides of the question and rules that most knives do require *tevilah.*
45. ערוך השולחן יו״ד ק״כ אות ל״ה. Why the knife is not considered functional too needs explanation — after all the animal is not going to be eaten while alive.

speculate why the Mordechai considered that a slaughtering knife needs no *tevilah*, but yet the Ramo felt it should be *toiveled*, albeit without a *beracha*. The *Shach* considers that the operative principle is that only utensils coming into contact with the food in its final stage require *tevilah*, while the *Aruch Hashulchan* considers that the exemption of the slaughtering knife arises from its religious (as distinct from its food-preparation) function. Consequently, *Aruch Hashulchan* mandates *tevilah* of all objects which are used at any stage of the process of food preparation, including mixing bowls, beaters, etc.

Since there does not seem to be a clear resolution of this controversy, it seems best to make *tevilah* on all these questionable items, but without pronouncing a *beracha*. (Sephardic Jews, who follow the *Shulchan Aruch* rather than the Ramo, are advised to consult Sephardic *poskim* for guidance as to actual practice.)

Mix-up

It may happen that a person buys some dishes to fill in those that are missing or have broken, and then mixes up the new with the old dishes, and can't tell which have been immersed already. What should he do? The question is whether it is possible to apply the principle that since most of the dishes have had *tevilah*, it is considered as if the entire set is *toiveled*, or should we rather apply the principle that דבר שיש לו מתירין if "something has a way of becoming permissible" (i.e., all the dishes can be immersed), that procedure must be followed in order to make them permissible?

Rav Danzig[46] rules that when there is a great deal of trouble involved, it is not a דבר שיש לו מתירין. Similarly, if there is great expense involved, it is also not דבר שיש לו מתירין.

Nevertheless, Rav Frank[47] advises that all the dishes, old and new, be immersed, albeit without a blessing since there is some doubt about this. However, if all the dishes will be immersed at one

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46. חכמת אדם כלל כ"ג.
47. שו"ת הר צבי יו"ד פ"ג; ראה ג"כ שבט הלוי חלק ד' צ"ג; ציץ אליעזר יא-נ"ח.

time, then a blessing may be recited, since at least some certainly require it.

Performing The Tevilah

Since it may be quite troublesome to immerse all one's utensils and dishes, the easiest solution is often to "send the kids", or, for those who can, to "send the maid." Is this permissible? The trenchant point is, does the mitzvah require "intent" *(kavana)* or is it simply that the dishes can't be used until they are dipped in the mikvah?

In halachic literature, the immersion of dishes in a mikvah is compared to immersion of a woman in the mikvah after her period of *Nidah.*[48] Thus, the Gemara in *Chullin* 31 records a disagreement between Rav and Rav Yochanan whether a woman requires the intention to perform the mitzvah of *tevilah* when she immerses herself. The *Shulchan Aruch*[49] records the law as follows:

נדה שטבלה בלא כונה... מותרת לבעלה

> A woman who immersed without intention... is permissible to her husband.

But the Ramo adds his note of disapproval

ויש מחמירין ומצריכין אותה טבילה אחרת

> But there are those who are strict and require her to immerse again.

Some rabbis[50] reason that just as there is the opinion that a woman's immersion may be valid even without her intention, so too, dipping the dishes may be done without "intention" — i.e., a

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48. It should be noted that, contrary to popular misconception, the mikvah for dishes must also fulfill the requirements for a mikvah for women. It is a mistake to think that any mountain stream or hardware mikvah are automatically acceptable, without certification by a competent halachic decisor.
49. קצ"ח מ"ח.
50. ש"ע-ט"ו.
רשב"א-ג'-רנה, רנ"ט.
תרומת הדשן רנ"ז.

child may do it, even though by definition neither a child's thoughts nor those of a non-Jew have any halachic status as "intention." However, others[51] maintain that since the Ramo required a woman who may have gone swimming in the ocean[52] for pleasure to immerse herself again with the specific intention of performing the mitzvah, so too, the dishes would have to be *toiveled* again after a child did it.

In fact, the *Shulchan Aruch*[53] rules definitely that a child should not be sent to dip the dishes, although if he does it under the supervision of an adult, it is acceptable; but this is not because of the factor of "intent" but rather because the child's claim to have dipped the dishes properly is simply not accepted in Jewish law. The uncorroborated testimony of a minor has no validity in halacha. Furthermore, if a non-Jew did do it for the Jew, post facto it is acceptable, although not a desirable practice initially.[54]

(The situation under discussion concerns a Gentile who immerses the dishes *under the supervision of a Jew.*[55] It is not acceptable at all if he does it himself — a general principle of Jewish law is that a non-Jew's testimony is not accepted on these matters.)

There are those[56] who distinguish between objects which require *tevilah* according to Torah law and those which are only rabbinically mandated. (For example, immersion of glass dishes is a

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51. ב"ח יו"ד ק"כ; גר"א אות ל"ח.
52. This is not to imply that the ocean is an acceptable substitute for a mikvah even if she has the best of intentions. See יו"ד ס' ר"א בתחילה.
53. יו"ד ט"ו.
54. ט"ז אות ט"ז reasons that since a non-Jew cannot recite the *beracha* for the mitzvah, he should not be entrusted with this task unless a Jew also participated and recited the blessing. However, פתחי תשובה חשן משפט תכ"ז notes that if a non-Jew constructs for a Jew a fence around a porch or roof (fulfilling the requirement of *ma'akeh)* then since he is the agent for the Jew, the Jew may recite the *beracha* for it although he does none of the work. This contradicts the position of *Taz.* Meiri at end of *Avoda Zara* rules that since *tevilah* is a *mitzvah* it can not be done by a non-Jew.
55. גר"א יו"ד ק"כ אות ל"ח.
56. רעק"א על ט"ז אות ט"ז.

rabbinic regulation which might acceptably be performed by a child.[57])

Cans

One of the topics which arises often in discussions of *tevilah* of vessels is what to do with cans.[58] Is a can a vessel which needs *tevilah*, and if so, must one remove the contents of the can immediately and immerse it, or may one empty the can gradually in the ordinary manner of usage? May the can be re-used without *tevilah*?

In general, the halachic rulings tend to be lenient in this regard.[59] The Mishna in *Keilim* 16:5 states:

> חותל שהוא נותן לתוכו ונוטל מתוכו טמא ואם אינו יכול עד שיקרענו... טהור
>
> A wrapper made of reed matting — if one is capable of putting things into it and taking things out, then it can become *tameh*. But if the only way of removing the contents is by tearing (the container), then even if it comes into contact with something *tameh*, it remains *tahor*.

This is taken as an indication that if there is no way to get the contents out without destroying or tearing the container, it is

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57. It will also depend on how *tevilah* is viewed: if the *tevilah* is done to remove an *issur* (איזחזק איסורא), the rule is that a child is not believed (see Ramo קכ"ז ג'). But if it is only a mitzvah, then this distinction is irrelevant. Others considered that even if it is a question of איתחזק איסורא a child may be relied on for glass objects. See יביע אומר ב' יו"ד ט'.

58. Not all cans containing foodstuffs would necessarily even have to be considered for *tevilah*. ציץ אליעזר ח־כ"ו maintains that cans which contain coffee certainly do not require *tevilah* because coffee is not a food ready to eat. On the other hand, cans which hold food ready to eat, without the addition of water such as coffee requires, would need *tevilah*. See also שמירת שבת כהלחתה פרק ו' and שו"ת טוב טעם ודעת כ"ב.

59. But ספר טבילת כלים דף ק"ו cites Rav Konevsky to the effect that the *Chazon Ish* insisted that as soon as a can is opened, the contents have to be removed.

permissible to use it.

An additional factor which is taken into account is that a can may not technically qualify for the halachic definition of a *k'li*, a vessel. That is because a can, which has to be "torn" (the metal has to be cut) in order to remove the contents is not a vessel but functions rather almost as a wrapping, not a true vessel. Since it is not a *k'li* in the halachic sense, it would require no *tevilah*. Furthermore, one could argue that even if it is a *k'li* it certainly is not one until the user cuts off the top of the can; it is removal of the cover which makes it a *k'li* — and since the Jew is opening the can, he is making it into a *k'li*. Thus it is not a vessel which is coming into the domain of the Jew from the previous ownership of a Gentile. On the contrary, it is the Jew who is making it into a vessel![60]

Tzitz Eliezer[61] also cites Rav Y.L. Diskin to the effect that one is not obligated to remove the contents after opening the can. That is because the person opening the can has the option to reject ownership of the can (and claim that he only wants the contents), in which case he would have no obligation whatever to *toivel* the can. He finds it comparable to the situation which arises when someone brings *chametz* into a Jew's home on Pesach — the houseowner should declare that albeit the *chametz* has entered his property, he renounces any desire to acquire this *chametz*.[62] Even though the *chametz* is within his domain and technically should become his, he has the option to renounce its ownership.[63]

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60. The *Chazon Ish* employed this rationale to forbid the opening of cans on Shabbat, for he held that by opening the can, the person is making the can into a *k'li*, which is forbidden on the Sabbath. On the other hand, if it is the action of removing the cover which makes the can into a *k'li*, it seems self-contradictory for the *Chazon Ish* to insist that a can is a *k'li* (before it is opened) and therefore one has to remove the contents right away. This inconsistency is pointed out by ס' טבילת כלים. See the citation in the previous note. ציץ אליעזר ח־כ״ו ד״ה ואפתח brings a somewhat different ruling in the name of *Chazon Ish*.
61. ציץ אליעזר אות ד'.
62. או״ח תמ״ח.
63. ט״ז אות ג'.

Much of the halachic discussion about whether it is necessary to empty the contents of a can immediately apply also to jars and other sturdy containers. Note, however, that if a person wants to use the jar thereafter, on a permanent basis (such as for food storage), the jar must be immersed just as any other container.

Disposables And Other Containers

In order to determine whether disposable baking tins and the like require *tevilah*, it is necessary to arrive at a precise halachic definition of *k'li*. Only a *k'li* requires *tevilah*, but, as we have mentioned, not every container which we might call a vessel would be termed a *k'li* by the halacha.

If a person owns a vessel but does not have the intention of keeping it or using it, does that negate the status of the vessel as a *k'li*? Does the fact that the owner intends to discard it mean that it has no status, or should we say that the vessel is a vessel, the owner's intentions notwithstanding?

Interestingly enough, it seems that the owner's intentions have a definite impact on the status of an object.[64] In Tractate *Keilim* one of the rabbis discusses a situation which was common at the time: When people traveled, they had to pay duty on the objects they brought with them. A person transporting metal had to pay considerable duty on it; however, metal vessels were not taxed at all. In order to escape the tax, a man had his metal cast into the shape of a large and heavy pot, intending to break the pot at the and of his journey. "And the rabbis considered it *tahor* since he had no intention to have it remain."[65]

In other words, this traveler's intention to discard the metal vessel at the end of his trip disqualified it from being a vessel; it is

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64. חלקת יעקב ג־קל״ו.

65. ר״ש למסכת כלים י״א, סוף משנה ג׳.

66. However, Rav Breisch, in the responsum cited, cites ספר שם יעקב who brings a number of halachic authorities who do not accept the connection between ability to absorb *tume'ah* and necessity for *tevilah*. As we have also noted, there are those who consider the requirement for *tevilah* as simply a "decree of Scripture."

tahor because only a *k'li* is capable of absorbing *tume'ah*. Similarly, only a *k'li* needs *tevilah*. If it is *tahor* because it is not a *k'li*, by definition, that exempts it from *tevilah*.

We have other evidence that containers which were going to be discarded did not qualify as a *k'li* (i.e., were incapable of absorbing *tume'ah;* only a *k'li* can absorb *tume'ah).* The Rosh (see note 64 above) cites the *Tosefta* that "a wrapper where he will eat the dates therein and then throw it away, is *tahor*" and the Rambam also rules that "a wrapper of reed matting where he intends to eat that which is within it and to discard it, is *tahor.*"[67]

Rav Breisch writes that although if he wanted to, he could use the article on a permanent basis, nevertheless, since it is his intention to discard it, it needs no *tevilah.*[68] On the other hand, if a person does intend to keep using a container — such as a jar — on a permanent basis, it should be immersed.[69]

We should point out that in order to be consistent, if a container is not considered a *k'li* for one case it cannot be considered a *k'li* in another. Thus, if disposable cups are not "vessels" regarding *tevilah,* they are equally not "vessels" regarding *kiddush* — and there are halachot governing the cup over which one may recite *kiddush.* In fact, Rav Moshe Feinstein protests against using a paper cup to make *kiddush,*[70] and he rules that if a vessel is not permanent, even if it can be used a few times, it does not have the status of a *k'li.*[71]

An additional factor complicating the halacha is the fact that virtually all disposable pans are manufactured out of aluminum.

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67. רמב"ם, הלכות כלים ה', הלכה ז'.
68. מנחת יצחק ה"ל"ב. חלקת יעקב, שם calls this use a "תשמיש ארעי." Even though תשמיש ארעי is also forbidden, Rav Weisz considers that only if the vessel is really made to be used on a permanent basis, then the fact that the person only wants to use it temporarily would have no bearing. But if it cannot be used permanently, then the תשמיש ארעי is permissible.
69. שמירת שבת כהילכתה, פרק ו', הגה"ה. He also discusses re-use of a container for which a deposit has been paid, which will ultimately have to be returned. He refers the reader to דרכי תשובה יו"ד ק"כ אות ע'.
70. אגרות משה או"ח ג"ל"ט.
71. תורה והוראה חוברת ב'.

Although aluminum is undoubtedly metallic, it is an alloy which was not known in earlier times and thus does not appear on the classic list of metals with which the halacha deals. Rav Moshe Feinstein goes into this situation in a responsum dealing with ways to *kasher* an aluminum-interior dishwasher.[72]

Using Non-Immersed Dishes

In general, the accepted halacha is that a person may not use his dishes (especially the ones which, by Torah law, require immersion) unless they have been immersed in a mikvah. What should be done if there is no mikvah available, or if he remembers on Shabbat that he had not *toiveled* them?

Although the Gemara does not discuss the possibility of immersing dishes on the Sabbath, it does take up the case of an object which needs *tevilah* because it has become *tameh*[73] (since the destruction of the *Beit Mikdash*, we do not observe the laws of *tum'eah* and *taharah* as regards vessels.) There, the Gemara rules that *tevilah* may not be performed on such a vessel on the Sabbath, offering four reasons why it is prohibited:

a) Rabba said it was a decree, lest someone carry the vessel in the public domain on Shabbat, in getting to the mikvah.

b) Rav Yosef said it was because of fear that water would be wrung out (if it was cloth being immersed).

c) Rav Bibi said it was decreed so that people would not put off the *tevilah* until the Sabbath, and in the meantime any *terumah* put in the vessel would become unusuable.

d) Rava said it was forbidden because it looks as if the person is "fixing" or improving it on the Sabbath.

Assuming that we can try to draw an analogy between the question of *tevilah* of articles to remove them from *tume'ah* on the Sabbath and the *tevilah* of vessels, the rabbinic authorities have

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72. אגרות משה או"ח ח"ג נ"ח — also see his question of a Cohen being on a plane made of aluminum, with a dead body.
73. ביצה יח.
74. שם.

issued various rulings. The Rif,[74] pointing to the reasons given by Rav Bibi and Rav Yosef as being non-applicable to the problem of new dishes,[75] permits immersion on Shabbat. His opinion is cited as the first — and thus preferable — ruling in the *Shulchan Aruch*, where it is recorded that

מותר להטביל כלי חדש הטעון טבילה בשבת

> It is permissible on the Sabbath to immerse a new dish which requires *tevilah*.[76]

However, the Rosh[77] had disagreed with the ruling of the Rif, and so his opinion is also brought in the *Shulchan Aruch*, which continues, "but there are those who forbid it."[78]

It is worth mentioning that elsewhere,[79] the *Shulchan Aruch*, in discussing the same dilemma of what to do on the Sabbath with a dish that was not immersed, does not direct that it be immersed. Rather, he offers alternate suggestions or solutions in case of great need:

וירא שמים יצא את כולם ויתן הכלי לאינו יהודי במתנה ויחזור וישאלנו ממנו ואין צריך לטבילה

> And a G-d fearing person can avoid all the problems by giving the vessel as a gift[80] to a non-Jew[81] and then turn around and borrow it from him, and it will not require *tevilah*...

It is difficult to know how to proceed in actual practice, for many rabbinic decisors[82] felt that the stricter opinion should become

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75. עיין ראש שם.
76. או"ח שכ"ג ז.
77. ראש, ביצה יח.
78. For whether this refers to all dishes, including those required by the Torah to have *tevilah*, see קרבן נתנאל אות ס', ביאור הלכה.
79. יו"ד ק"כ ס' ט"ז.
80. מגן אברהם ש"ר-ט"ז discusses giving a gift to a non-Jew, in light of the prohibition of לא תחנם. See ר"ן ורשבא גיטין ל"ח.
81. או"ח שם ויו"ד ק"כ-ט"ז.
82. שאגת אריה נו-נ"ז.
ודרכי משה.

the normative law, while others pointed to the *Shulchan Aruch's* apparent preference for the permissive position[83] (at least in part).

As for the same situation on *Yom Tov*, the *Shulchan Aruch* rules that "the law is the same as for Shabbat."[84] Surprisingly, the *Mishnah Berurah*[85] rules that on *Yom Tov* "one should be strict, inasmuch as we have seen that on Shabbat one should be strict." How the *Mishnah Berurah* arrives at the conclusion is difficult to ascertain, for we have seen that the *Shulchan Aruch* distinctly prefers the lenient option.[86]

This is all the more surprising because the Ramo,[87] the major Ashkenazi *posek* of the past four hundred years, had earlier seemed to favor permitting *tevilah* even on Shabbat.[88] He advises dipping the vessel into the mikvah in such a way that it will not be noticeable that it is being done for the purpose of *tevilah* — for example, one may immerse a pot in the mikvah and draw out water, so that it appears that it is being done because he wants the water...

As we have noted, it is not permissible for a person *a priori* to use his utensils which have not been immersed, although food which was prepared in such vessels does not, after the fact, become non-kosher or prohibited.[89]

But what is the halacha as regards dishes which belong to *someone else* whom we suspect of not immersing his vessels? May one eat in such a person's house? And may one eat in a kosher restaurant which has not immersed its vessels?

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83. משנה ברורה אות ל"ג.
84. תק"ט ז' (או"ח).
85. אות לי.
86. However, see ט"ז שכ"ג־ה
מגן אברהם ס"ק ט"ו
אם לא היה אפשר לטבול מערב יו"ט מדוי מכשירי אוכל נפש דלא היה אפשר מערב יו"ט.
87. זכ"ג־ז. See also דרכי תשובה אות קי"ג.
88. This suggestion was only to be followed in unusual circumstances, since the *beracha* will be lacking.
89. רמא, יו"ד ק"כ ס' ט"ז־ואם עבר והשתמש בכלי בלא טבילה לא נאסר מה שנשתמש בו ויטבלנה עוד. See, however אור זרוע סוף ע"ז who disagrees with this ruling, and the reason for it offered by ערוך השולחן אות י"ז.

The majority of halachic authorities find great difficulty with permitting a person to eat in a home where he knows or suspects that the dishes were not *toiveled.*[90] Rav Ovadia Yosef forbids it outright,[91] although some permit it if it is only an occasional occurrence, based on a presumed "double doubt" *(s'fek s'feka)* — there is doubt whether the owner dipped his dishes and there is doubt whether the dishes required *tevilah* — they may have been purchased from a Jewish manufacturer.[92]

A further rationale for being lenient about eating in the home of someone who may not have immersed his dishes is suggested by Rabbi Liebes.[93] The *Shulchan Aruch* states that a "borrower" of non-*toiveled* dishes must immerse them prior to use.[94] However, it might be possible to be lenient on this point because the guest eating at someone's table is not truly a "borrower" of the dishes in the halachic sense — he would not carry the liabilities of a "borrower", for example, to pay for any broken dishes, etc.

It is difficult to know how to proceed in actual practice. May one assume that a "religious" person has dipped his dishes, or is it more realistic to consider that this mitzvah is not that well known and consequently not properly observed, even in otherwise Orthodox homes? We do not have clear guidelines:

In the Gemara[95] we find enumerated the characteristics of an "*Am Ha'aretz*" — "he does not recite the *Shema* morning and evening, he does not put on *Tefillin*, he does not provide a Torah education for his children..." Are we justified, then, in assuming that people who do keep Shabbat, who do wear *Tefillin*, who do send their children to yeshiva, need no further scrutiny as concerns the *tevilah* of their dishes? We might think so, yet the Rosh records that he was not so sanguine in his acceptance of these factors.[96]

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90. מהר"ש ענגיל חלק ו'נ"ו הובא בשערים מצוינים בהלכה דף קכ"ט.
91. יחוה דעת ד'מ"ד.
92. ק"כ אות ע'.
93. שו"ת בית אבי קט"ז.
94. יו"ד ק"כ אות ח'.
95. ברכות מז; סוטה כ"ב.
96. שלטי גבורים, גיטין.

When a person appeared before him and claimed that he had permissibly collected his debts with a *Pruzbul* (a legal document which has the effect of suspending application of the biblical requirement to annul all debts in the seventh year, *Shmitta)* he, the Rosh, would not automatically accept the statement. "For the prohibition of annulment of debts is not well known to the public, and they do not observe this injunction." Consequently, he would closely question the claimant about the *Pruzbul* rather than automatically accepting his word on the matter.

The Rosh acknowledges that Rabbenu Tam did not agree with his approach; nevertheless, he chose to be cautious in this regard.

Centuries of divergence between halachic decisors on the question of reliability are reflected in a passage in the *Shulchan Aruch.* Speaking for the position that a "religious" Jew is to be trusted without further inquiry, unless we have reason to believe that he is not trustworthy, is the author of *Shulchan Aruch:*

> A person who is suspected of eating forbidden foods... is not to be trusted for these foods, and if one is his guest, he should not eat those food about which he is suspected.[97]

However, the Ramo voices the alternate position, to wit, that one should accept the reliability only of one specifically known to be careful in the laws of kashrut.[98]

On the ancillary question of reliability in observing a little-known or much-neglected precept, the Ramo had this to say:

> Someone who is suspected of transgressing a matter that [most] people do not realize is a transgression, is not considered "suspect"; yet for that particular matter, he is not considered reliable...[99]

For Ashkenazi Jews, who follow the Ramo, the issue is

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97. יו"ד ק"יט ס"ק א.

98. Ibid. But he does permit one to eat in the house of someone about whom he is not sure, if he is a guest there. Here the *Shach* appends that the Ramo intended not only an accidental guest.

99. יו"ד קי"ט ס"ק ו'.

therefore whether most observant, *Shomer-Shabbat* Jews in America are fully aware of the obligation to immerse their dishes; if we assume that this mitzvah is not well-known and well-observed, it might be prudent to proceed on the assumption that considerable numbers of people who keep a kosher home do not *toivel* their dishes. On the subsequent problem of whether one may eat in such homes, there exists a wide range of halachic opinion, as we have seen.

Let us turn now to the topic of dishes used in commercial establishments: The question arises of buying a Coke, or a beer, or some other drink, without knowing if the glass belongs to a non-Jew and is thus exempt. The author of *Darchei Teshuva* issues a lenient ruling[100] on this question based on three reasons:

a) The glass requires *tevilah* only by rabbinic, not Torah law.

b) The person drinking the soda is only borrowing the glass.

c) The glass does not truly require *tevilah* since the owner of the concession purchases the glasses not for his own use but rather for his customers.

Although *Darchei Teshuva* does not discuss this last item further, his opinion may be seen to be based on the *Shulchan Aruch:*

שאם לא לקחו הראשון לצורך סעודה... אין צריך טבילה

...For if the first person [the owner] did not take it for the purpose of a meal... it does not require *tevilah.*[102]

Darchei Teshuva sees this also as the reason why even people who are careful to observe the mitzvah of *tevilah* do not bother to immerse the containers in which they bottle mineral water for sale to the public — they are not *k'lei seudah* but are being used for

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100. Ibid. Yet, there are some *poskim* who hold that one should not eat in commercial establishments whose dishes have not been immersed. However, ספר טבילת כלים cites the opinion of R. Shlomo Zalman Auerbach to permit a sick person to eat from utensils that were not immersed, if that be necessary.

102. יו"ד שם.

business. In a letter to Rav Yechiel Weinberg (author of *S'ridei Eish),* Rav Breisch[103] discusses the same question, of whether one has to be careful only to purchase food which is sold in pre-dipped vessels. After noting that "since the public is not careful about this, probably they have a reliable rationale" and even if not, "no person is permitted to be strict on a matter where we see that even very righteous people aren't careful..." Rav Bresich proceeds to explain why it is acceptable to buy food from Jews in containers which haven't been immersed: the purchaser is not truly interested in buying the container, for that would put him in the position of violating the halacha (having his food in un-*toiveled* jars). Therefore, the container doesn't become his and he need not be concerned about its lack of prior immersion.[104]

According to the *Shulchan Aruch,* vessels used in a restaurant need not have *tevilah,* but others[105] maintain that they should be immersed, albeit without recitation of a *beracha.*[106]

Rav Braun[107] writes in the name of Rav Diskin that the reason commercial containers do not require prior *tevilah* is that the container is of negligible importance (בטל) compared to the contents in the jar. We find this line of reasoning employed with respect to the purchase of foodstuffs with the money of the Second Tithe (מעשר שני). Monies from the Second Tithe could technically only be spent for the purchase of food, yet the Gemara in *Eruvin* 26b permits the purchaser to buy food in containers, even if part of the

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103. But that does not mean to imply if a Jewish storeowner buys dishes to sell in his store, the Jewish purchaser would not have to *toivel* them, for the Ramo appends very specifically: וכן אם קנה ישראל השני מן הראשון לצורך סעודה צריך טבילה.

104. A similar concept is stated in ט"ז או"ח תמ"ח אות י"ד.

105. ט"ז, ש"ך ליו"ד ק"כ.

106. Even if occasionally the restaurant owner himself eats from the dishes, it is not a factor which would require him to immerse them, since their status depends on the use to which they are put most of the time, and that is clearly for business. The same opinion is expressed in דרכי תשובה אות ס"ז ופ"ח, שו"ת טוב טעם ודעת סימן כ"ב מהדורה ג' חלק ב'.

107. שערים מצוינים בהלכה ל"ז.

total cost includes the cost of the container, since the container is negligible as against the food.

Similarly, a person buys the food and the container is quite insignificant. It becomes a true vessel only in the hands of the Jew who has purchased it — and a vessel made by a Jew requires no *tevilah.*[108]

Rabbi Ovadia Yosef considers that the majority of *poskim* held that *tevilah* of utensils was only a rabbinic enactment, and therefore he permits eating in restaurants where the dishes have not been immersed. As a matter of fact, if the owner wants to immerse his restaurant dishes, Rav Yosef does not allow recitation of the *beracha.* On the other hand, he is very strict and does not permit eating in a private home where the dishes have not been dipped.[109]

Electrical Appliances

The modern kitchen is lavished with an abundance of electrical appliances and gadgets. Designed to bring ease into our lives, they have also undoubtedly raised some troublesome and intriguing halachic questions regarding their immersion in a mikvah. What is to be done with electrical equipment which might be ruined as a consequence of total immersion in a mikvah? Is that enough reason to absolve it of the need for immersion?

An electrical appliance is subject to the same regulations as any other vessel according to many authorities — although with limitations, as we will see[110] — and thus must be immersed at one

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108. אגרות משה יו"ד ב־ס' מ' וס' קל"ז דף רל"ב. The topic is also discussed in great detail in המאור חשט"ו.

109. יחוה דעת ד־מ"ד.

110. In ספר טבילת כלים, דף קפ"ה הערה נב, it is reported that Rav S.Z. Auerbach requires *tevilah* for an electric toaster, comparing it to a spit used for roasting meat, which also needs *tevilah.* Although the author of יסודי שמחות, note 134, reports that he heard from R. Moshe Feinstein that a toaster needs no *tevilah* because the bread can be eaten as is, without toasting, however ספר טבילת כלים notes that R. Feinstein himself, in תורה והוראה, ruled that despite the fact that bread can be eaten as is, the toaster should nevertheless be immersed. He also reports that Rav Feinstein considered that a malted machine should be *toiveled.* However, if it would be damaged thereby, he allowed it to be used without

time in its entirety[111] and may not have any *chatzitza* (intervening object) preventing the water from touching every part.[112] Many appliances are now manufactured with a removable cord, which of course does not need to be immersed. However, some appliances, such as a popcorn maker, or a toaster, have wiring within the utensil itself.

When electricity first began to be used in the last century, the halacha had to grapple with this problem. *Pitchei Teshuva* suggested an intriguing solution — dismantle the appliance and then have a Jew put it back together again. This way, it would be a vessel made by a Jew, requiring no *tevilah.*[113] Alternately, he suggested a hole be made in it, ruining the appliance, and then have it fixed by a Jew, which would have the same halachic effect.[114]

Rav Shmuel Wosner writes concerning an electric urn for heating water that "there is no rationale for being lenient and absolving it from the requirement of *tevilah* out of fear that the electrical part will be ruined... and I see no other way to use it [assuming it will be ruined by immersion] other than [dismantling it and removing the cord and] attaching the cord after the *tevilah.*"[115]

However, this is hardly the last word on the subject, and there are a considerable number of rabbis who have found reasons for being lenient — although each of them seems to disagree with the

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tevilah, since all the ingredients of a malted can be eaten without using the machine. In the case of a toaster, too, if it was necessary, one could adopt this rationale.

111. פתחי תשובה יו"ד ק"כ אות ג'.

112. יו"ד ק"כ ס"ק י"ג. Even the rust must be removed.

113. פתחי תשובה יו"ד קכ"א אות א'.
For a discussion whether it is better to immerse it whole or in parts, see הר צבי יו"ד ק"ח.

114. ספר טבילת כלים דף קז אות כ"ד reports that Rav S.Z. Auerbach approves of this ploy, but only in the case of an electrical appliance, since there are other reasons for being lenient.

115. שבט הלוי יו"ד ב' נ"ז אות ג'. However, Rav Auerbach considers that if an attached cord is removed, and then re-affixed to the appliance, it is as if the Jew is making it into a vessel and therefore requires no *tevilah.* Of course, if the appliance is manufactured with a detachable cord, this ploy would not apply ספר טבילת כלים דף קפה אות נא.

reasoning of the others. One solution offered is as follows: a vessel which is not capable of becoming *tameh* (אינו מקבל טומאה) needs no *tevilah;*[116] anything connected to the ground cannot become *tameh;* when the electrical appliance is being used, it is plugged into a socket in the wall, which is attached to the ground — thus the appliance is "attached" to the ground, incapable of becoming *tameh,* and consequently not in need of *tevilah!*[117]

This thesis is hotly debated. The *Aruch Hashulchan* writes that the rule (regarding something attached to the ground) cannot apply to any object which was originally not connected to the ground and became attached later. תלוש ובסוף חברו הוי כתלוש "If it was detached [from the ground] and later attached, it is [considered] as if detached."[118] Using much stronger language, Rav Wosner ridicules the suggestion altogether, calling it הבל ורעות רוח.[119]

On the other hand, Rav Moshe Feinstein is of the opinion that only that part of the appliance which comes into contact with food need be immersed.[120] Thus, only the tray in a toaster-oven needs *tevilah,* only the bowl and blades of a blender, only the blades of an electric knife. Also, Rav Feinstein suggests that an electrical appliance which cannot be separated may be considered as two distinct vessels; the part which is used with food can be *toiveled,* while the electrical components, which are on the top or bottom need not be immersed.[121]

Rav Breisch also confronts this situation: rejecting the suggestion that the vessel be given to a Gentile and then borrowed

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116. פתחי תשובה ו׳
שב יעקב ל״א
חלקת יעקב ב־ס״א.
However, see מנחת יצחק ד־קי״ד, who considered this ruling to be contrary to halacha.

117. חלקת יעקב א־קב״ו.

118. ערוך השולחן אות ל״ט.

119. Ibid. The same is found in מנחת יצחק ב־ע״ב.

120. אגרות משה יו״ד נ״ז.

121. Explaining his reasoning in exempting parts of the appliance from immersion, Rav Feinstein cites יו״ד ר״ב ט׳ וט״ז שם to the effect that these parts are considered בית הסתרים and not subject to the laws of *chatzitza.* See also אבני נזר יו״ד רס״ג.

from him, obviating the need for *tevilah*, he rules that electrical appliances must be totally immersed. However, he advises that the person doing the immersion may first wet his or her hand in the mikvah, then use his wet fingers to cover up the opening which houses the electric wires.[122] Another suggestion he makes is to put something to seal up the electrical opening, and keep it there for seven days, at which times the applicance may be immersed with the covering in place.[123]

It is only proper to append here a practical note: many people report immersing their electrical appliances (not the cord) without any harm resulting therefrom. Of course, one must be careful to shake out any water which may have entered, and then let it dry for at least a day. Even if the appliance smokes a bit the first time it is used, it will last just as long and work just as well as any other.

Mumar

A recurring problem in Jewish society is how to relate to those who have strayed from the path of Torah. This problem surfaces in many guises, and its resolution is never a simple matter. Within Jewish thinking there appear two very basic rabbinic teachings which have equal validity but which are strikingly at odds with each other. One rabbinic teaching is that "a *mumar* (a Jew who rejects his heritage) who desecrates the Sabbath, is like a Gentile", while the other dictum, equally forceful, bids us remember that "a Jew, even though he may have sinned, remains a Jew."

How then should we term irreligious Jews today? May we count a *mumar* for a *minyan*? May we use wine he has touched? If he makes dishes, do they need *tevilah*, or shall we consider them made by a Jew? More fundamentally, are we entitled to read any Jew out of the Jewish people because he is not observant of the mitzvot? In the light of the world as it is today, should he be

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122. חלקת יעקב ח״ב ס׳ ס״א. Similar questions are discussed in ישועות משה א־ס; ר׳ משה פיינשטיין, תורה להוראה.

123. חלקת יעקב ב־ס״א, מנחת יצחק ג־ע״ג.
According to יו״ד ק״כ־ב׳ וקצ״ח כ״ח. The author of אבני נזר יו״ד, ב, רס״ב allowed a woman to wet her fingers in the mikvah and then cover her ears, in the event no water was allowed to enter her ear canal.

considered more correctly as a *"tinok shenishba"*, equivalent to a baby who was kidnapped from his Jewish home and never trained in the paths of Judaism?

These are deep questions, and the present halachic study is certainly not the proper forum to resolve them.[124] However, in practical terms it is necessary to know whether the halacha considers a non-observant or perhaps even anti-religious Jew as yet a Jew — or not.

It is interesting to learn that the Ramo, some four hundred years ago, recorded the custom for a *mumar* who wanted to repent to immerse himself in a mikvah, as a sign of his renewed quest for purity.[125] This leads some rabbis to reason that if the apostate himself only immerses himself in a mikvah out of custom, certainly there cannot be a more stringent requirement for his dishes! Certainly it would not be credible that dishes which he made or owned would need *tevilah*.

Rav Moshe Feinstein[126] rules that any utensils imported from (Jewish) Israel require no *tevilah*, and one need not be concerned that they were manufactured by irreligious Jews or Sabbath violators.

* * *

Keeping kosher has always been the hallmark of the Jew devoted to his religion. Fortunately for us in America, observing the laws of kashrut represents relatively little hardship. It is thus all the more important for us to be aware of the additional requirements in our obligation to sanctify the physical aspects of our lifestyle.

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124. This very serious question has received extensive treatment by a number of outstanding Jewish thinkers:
חזון איש הלכות שחיטה
אגרות משה או"ח ג'ד
יביע אומר ב'י"ד'ט
אבני נזר יו"ד ק"ט
A thorough treatment of both sides of the question is presented in an exchange between R. Eliezer Waldenberg and Rav Sternbuch in ציץ אליעזר חלק ח' י"ד'ב"ב.

125. רמ"א יו"ד רס"ח י"ב.

126. אגרות משה או"ח ח"ג ד'.

Unconventional Therapies And Judaism

Dr. Fred Rosner

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I. Introduction

More and more patients who traditionally sought healing from conventional physicians are seeking out alternative therapies or more natural forms of therapy. Such unorthodox therapies may include naturopathy, acupuncture, homeopathy, chiropractic, herbal remedies, metabolic therapies, and vitamin and mineral therapies.[1]

Alternative and unorthodox medicine have a long history,[2-3] particularly in relation to cancer prevention and treatment. Unproven or questionable dietary and nutritional methods in cancer prevention are those which have not been "responsibly, objectively, reproducibly, and reliably demonstrated in humans" to be efficacious and safe.[4]

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1. Sobkowski, A. "Alternative medicine: Tales of Hoffman," *The New York Doctor*, June 26, 1989, pp. 10-12.
2. Cooter, R. (ed). *Studies in the History of Alternative Medicine*, New York, St. Martin's Press, 1989. XX and 180 pp.
3. Gevitz, N. (ed). *Other Healers: Unorthodox Medicine in America*. Baltimore and London, Johns Hopkins Univ. Press, 1988. XII and 302 pp.
4. Herbert, V. "Unproven (questionable) dietary and nutritional methods in cancer prevention and treatment." *Cancer*, 1986; *58*:1930-1941.

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Despite some progress in cancer therapy, unorthodox treatments continue to hold a fascination for cancer patients. More than fifty per cent of patients undergoing conventional cancer therapy simultaneously pursue unorthodox programs, often from an early stage of their illness. A substantial proportion of such patients ultimately reject conventional treatments.[5] Such widespread use by patients of unorthodox or unproven cancer treatments represents an important social, economic and clinical problem. The public spends billions of dollars annually on unproven cancer cures[6] labelled as metabolic (e.g., laetrile or hydrazine), dietary (e.g., grape diet or macrobiotic diet), immunologic (e.g., fetal vaccines), megavitamin (e.g., high dose vitamin C), and imagery (e.g., Simonton technique).

Contrary to stereotypes, patients who seek unproven methods tend to be well-educated, upper middle class, and not necessarily terminal or even beyond hope of cure or remission by conventional treatments.[7] Many practitioners of unorthodox cancer care are licensed physicians who specialize in homeopathic or naturopathic medicine.

Why do people seek out such alternative therapies? People may be discouraged and despair about the realities of conventional cancer treatment. Fear, side effects, previous negative experience, and a desire by the patient for more supportive care are other reasons. People are unhappy with the "disease-oriented technologic authoritarian health care system." People may reject conventional care because they are attracted to the ideology which includes "an emphasis on self-care, a systemic rather than a localized view of pathology and of health, and belief in the fundamental importance of nutrition and whole-body fitness."[7]

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5. Brigden, ML. "Unorthodox therapy and your cancer patient."*Postgraduate Medicine*, 1987; *81* 271-280.
6. Pepper, C. Select Committee on Aging, House of Representatives. 98th Congress, Second Session. May 31 1984. *Quackery. A $10-Billion Scandal.* U.S. Govt. Printing office. Comm. Pub. No. 98-43s VII and 250 pp.
7. Cassileth, BR. "Unorthodox cancer medicine." *Cancer Investigation*, 19086; *4*:591-598.

Today's physician is many times more effectual than his predecessors of previous generations, but his practice has changed from intensely personal service to an objective and highly intellectualized approach. "The quack may return in the role of comforter — the provider of hope at small cost and of death in natural dignity."[8]

In addition to operating in areas of legitimate medical practice, unorthodox therapies involve irregular practitioners and medical sects and groups all engaged in medical practice. The legal struggles to establish the legitimacy of these nonorthodox practices form a fascinating chapter in medical history.[9] In 1987, the American Medical Association, the Amercian College of Radiology, and the American College of Surgeons were found guilty of anti-trust violations in a suit brought against them by American chiropractors. This case, which has been before the courts for twelve years, is currently under appeal.[10]

How does Judaism view the healing arts, be they "conventional medical," alternative, or unorthodox therapies? How does Judaism view the practices of chiropractic, homeopathy, naturopathy and similar medical sects? Even if these are acceptable as alternative or additional or supplementary methods of healing, how does Judaism view health quackery? Are faith healing or spiritual healing acceptable modes of therapy in Judaism? In Judaic teaching, can amulets, incantations, and/or prayers be substituted for conventional therapy?

In order to examine alternative therapies in Judaism, one must first discuss the physician's obligation to heal and the patient's obligation to seek healing. Biblical license is given to a human physician to heal, and biblical mandate is given the patient to seek healing from a human healer. What does this mandate include?

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8. Dusseau, JL. "Quack-quack-quack: Donald Duck Dissents." *Perspectives in Biology and Medicine*, 1987; *30*:345-354.
9. King, L. "Quackery." *Journal of the American Medical Association*, 1989; *261*:1979-1980.
10. Gevitz, N. "The chiropractors and the AMA: Reflections on the history of the consultation clause." *Perspectives in Biology and Medicine*, 1989; *32*:281-299.

Does this mandate specifically exclude unconventional or unorthodox therapies? Is a patient allowed to supplement standard medical treatment with holistic or with spiritual healing? Is quackery condoned in Judaism?

The Physician's Obligation to Heal

Specific permissibility, sanction, and even mandate for the physician to practice medicine is given in the Torah, based on the rabbinic interpretation of the biblical phrase "and heal he shall heal" (Exodus 21:19). The Sages in the Talmud interpret the duplicate mention of healing in the phrase "heal he shall heal" to mean that authorization was granted by G-d to a physician to heal (*Baba Kamma* 82a). The biblical view is that there are two physicians; one is Almighty G-d, the true Healer of the sick, and the other is the human physician who serves as an instrument of G-d or an extension of G-d in the ministrations to the sick.

Many biblical commentators echo this Talmudic teaching. By the insistence or emphasis expressed in the double wording, the Bible opposes the erroneous idea that having recourse to medicine shows lack of trust and faith in divine assistance. The Bible takes it for granted that medical therapy is used and actually requires it.

Moses Maimonides and others derive the biblical sanction for a physician to heal from the scriptural commandment "and thou shalt restore it to him" (Deuteronomy 22:2) which refers to the restoration of lost property. In his Mishnah commentary, Maimonides asserts:

> It is obligatory from the Torah for the physician to heal the sick and this is included in the explanation of the scriptural phrase "and thou shalt restore it to him," meaning to heal his body."[11]

Thus, Maimonides states that the law of the restoration of a lost object also includes the restoration of the health of one's fellow man. If a person has "lost his health" and the physician is able to

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11. Maimonides M. *Mishnah Commentary* on *Nedarim* 4:4.

restore it, he is obligated to do so. Maimonides' reasoning is probably based upon a key passage in the Talmud which states: "Whence do we know that one must save his neighbor from the loss of himself? From the verse "and thou shalt restore it to him." Thus, even if someone is attempting suicide or refuses treatment for illness, one is obligated to intervene to save the person's life and health.

The second scriptural mandate for a physician to heal is based on the phrase "Do not stand idly by the blood of your neighbor" (Leviticus 19:16). This passage refers to the duties of human beings to one another. One example cited in the Talmud is following:

> Whence do we know that if a man sees his neighbor drowning or mauled by beasts or attacked by robbers, he is bound to save him? From the verse "Do not stand idly by the blood of your neighbor" (*Sanhedrin* 73a).

Maimonides codifies this Talmudic passage in his famous *Mishneh Torah* as follows:

> Whoever is able to save another and does not save him transgresses the commandment "Do not stand idly by the blood of your neighbor." Similarly, if one sees another drowning in the sea, or being attacked by bandits, or being attacked by a wild animal and is able to rescue him... and does not rescue him... he transgresses the injunction "Do not stand idly by the blood of your neighbor."[12]

Such a case of drowning is considered as loss of one's entire body and one is obligated to save it. Certainly one must cure disease which often afflicts only part of the body.

In summary: It is evident in Jewish tradition that divine license is given to a physicican to heal, based on the interpretation of the biblical phrase "heal he shall heal." Many Jewish scholars such as Maimonides claim that healing the sick is not only allowed but is

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12. Maimonides M. *Mishneh Torah, Rotze'ach* 1:14.

obligatory. R. Joseph Karo's *Shulchan Aruch* seems to combine both thoughts:

> The Torah gave permission to the physician to heal; moreover, it is a religious precept and is included in the category of saving life; and if he withholds his services, it is considered as shedding blood.[13]

The Patient's Obligation to Seek Healing

It is thus clear that a physician is divinely licensed and biblically obligated to heal the sick because of the Jewish concept of the supreme value of human life. Is a patient, however, authorized or perhaps mandated to seek healing from a physician? Is a patient allowed to rely solely on faith healing? Is a patient who asks a physician to heal him denying Divine Providence? Is a person's illness an affliction by G-d that serves as punishment for wrongdoing? Does one forego atonement for one's sin by not accepting the suffering imposed by Divine Judgment and seeking medical care from a physician? Are alternatives to medical treatment allowed in Judaism?

The strongest evidence in Jewish soures that allows and even mandates a patient to seek healing from a physician is found in Maimonides's *Mishneh Torah,* as follows:

> A person should set his heart that his body be healthy and strong in order that his soul be upright to know the Lord. For it is impossible for man to understand and comprehend the wisdoms [of the world] if he is hungry and ailing or if one if his limbs is aching.[14]

He also recommends,[15] as does the Talmud *(Sanhedrin* 17b), that no wise person should reside in a city that does not have a physician. Maimonides' position is further expanded and codified as follows:

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13. *Shulchan Aruch, Yoreh Deah* 336.
14. *Mishneh Torah, Deot* 3:3.
15. Ibid 4:23.

> Since when the body is healthy and sound [one treads] in the ways of the Lord, it being impossible to understand or know anything of the knowledge of the Creator when one is sick, it is obligatory upon man to avoid things which are detrimental to the body and to acclimate himself to things which heal and fortify it.[16]

There are numerous Talmudic citations which indicate that patients when sick are allowed and even required to seek medical attention. One who is in pain should go to a physician (*Baba Kamma* 46b). If one is bitten by a snake, a physician is called even on the Sabbath because all restrictions are set aside for possible danger to human life (*Yoma* 83b). If one's eye is afflicted, one may prepare and apply medication even on the Sabbath (*Avoda Zara* 28b). Rabbi Judah the Prince, compiler of the Mishnah, suffered from an eye ailment and consulted his physician, Mar Samuel, who cured the ailment by placing a vial of chemicals under the rabbi's pillow so that the powerful vapors would penetrate the eye (*Baba Metzia* 85b).

From these and other Talmudic passages, it is evident that an individual is not only allowed, but probably required to seek medical attention when he is ill. In Jewish tradition, the patient is obligated to care for his health and life. He is charged with preserving his health. He must eat and drink and sustain himself and must seek healing when he is ill in order to be able to serve the Lord in a state of good health.

A rather negative attitude to the question of the patient's obtaining medical assistance is taken by Moses Nachmanides, known as Ramban, who, in his commentary on the scriptural phrase "My soul shall not abhor you" (Lev. 26.11) states that G-d will remove sickness from among the Israelites as He promised, "for I am the Lord that healeth thee." During the epochs of prophecy, continues Ramban, the righteous, even if they sinned and became ill, did not seek out physicians, only prophets. Only people who do not believe in the healing powers of G-d turn to physicians for their

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16. Ibid 4:1.

cure, and for such individuals the Torah sanctions the physician to heal. The latter should not withhold his healing skills lest the patient die under his care, nor should he say that G-d alone heals.

Ramban seems to stand alone in his apparent discouragement for some patients to seek medical aid. It is certain that he refers only to the wholly righteous, who are free of illness because of their piety, and who do not require human healing. Alas, the general populace, even devout believers in G-d, are not on a level to be saved by prayer alone, and thus are allowed to seek human healing. Such an interpretation of Ramban's discussion is found in the commentary of Rabbi David ben Shmuel Halevi (popularly known as *Taz* or *Turei Zahav*) on the *Shulchan Aruch.*[17] It may also be that Nachmanides refers only to heavenly illnesses, but for man-induced wounds and sickness, healing may be sought.

Prayer and Faith Healing

The tradition of healing which combines elements of religion or spiritual healing with classical scientific medicine has probably always existed. In some parts of the world, such techniques range from religious faith healing to nutritional faddism, witchcraft, and ceremonies of the occult. All these treatment forms rely to a considerable extent on faith and belief of the patient in the practitioner. Faith healing includes those healing efforts for which there is no scientific evidence to support purported "cures." The scientific community, including the medical profession, tends to dismiss such healing as quackery. To true believers in faith healing, the explanation is simple — it is a miracle.

Recourse to prayer in Judaism during pain or illness is not necessarily an indication of despair in the efficacy of traditional medicine. In fact, the majority of mankind prays for the sick at one time or another. The prayers may differ in content, in the manner in which they are offered, or in the person or deity to whom they are addressed, but both religious and non-religious people offer

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17. *Shulchan Aruch, Yoreh Deah 336.*

prayers for recovery when they are sick.

The Patriarch Abraham prayed for the recovery of Abimelech (Genesis 20:17), and G-d healed him. David prayed for the recovery of his son (II Samuel 12:16), but his son died. Elisha prayed for the recovery of the Shunamite woman's son (II Kings 32:34), and the boy recovered. King Hezekiah prayed for his own recovery (II Chronicles 32:24), and G-d added 15 years to his life. Moses prayed for the recovery of his sister Miriam, who was afflicted with *tzara'at*. Said Moses: *El na refa na la* (O G-d, heal her, I beseech thee), and she recovered. (Numbers 12:13)

Regarding the specific question of the efficacy of prayer in the Talmud, one may cite the following (*Berachot* 32b):

> Rabbi Eleazer said: Prayer is more efficacious even than good deeds, for there was no one greater in good deeds than Moses our teacher, and yet he was answered only after prayer... Rabbi Eleazar also said: Prayer is more efficacious than offerings....

Another circumstance in which prayers are said to be efficacious is the need of the community for the sick person. Thus the Talmud states (*Eruvin* 29b):

> It once happened that Rabbi Hanina ate half an onion and half of its poisonous fluid and became so ill that he was on the point of dying. His colleagues, however, begged for heavenly mercy, and he recovered because his contemporaries needed him.

One should never be discouraged from praying even under the most difficult and troublesome conditions. The Talmud says that "even if a sharp sword rests upon a man's neck, he should not desist from prayer" (*Berachot* 10a). On the other hand a person should never stand in a place of danger and say that a miracle will be wrought for him (*Shabbat* 32a). One should not count on being cured by direct intervention by G-d without the patient's seeking healing from traditional human medical practitioners.

The relevant references to prayer in the Codes of Jewish law

are cited by Rabbi Jacobovits,[18] who concludes:

> These laws indicate unmistakably that while every encouragement was given for the sick to exploit their adversity for moral and religious ends and to strengthen their faith in recovery by prayer, confidence in the healing powers of G-d was never allowed to usurp the essential functions of the physician and of medical science.

Amulets

From the earliest times people have attempted to ward off misfortune, sickness, or "evil spirits" by wearing on their person pieces of paper, parchment, or metal discs inscribed with various formulae which would protect or heal the bearers. Such artifacts, known as amulets or talismans are frequently mentioned in Talmudic literature. To the Jews, the amulet is called *kemiya* and consists either of a written parchment or of roots (*Tosefta Shabbat* 4:9) or herbs (*Yerushalmi Shabbat* 8b). It is worn on a small chain, or in a signet ring or in a tube. A *kemiya* is considered to be of proven efficacy if it cures a sick person on three different occasions or if it cures three different patients (*Shabbat* 60a). An assurance by a physician who prescribed or wrote such an amulet was considered part of the legitimate therapeutic armamentarium of the physician.[19]

There is no objection in Jewish religious law against the use of amulets for healing purposes. Amulets are apparently deeply rooted in our tradition. Although a long list of acts falling in the category of idolatrous customs is found in the Talmud (*Tosefta Shabbat*, Chapters 7 and 8), anything done for the sake of healing is specifically excluded. Hence, it is permitted even on the Sabbath "to carry as amulets the egg of a certain species of locust [against earache], the tooth of a fox [against insomnia or drowsiness], or the

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18. Jakobovits, I. *Jewish Medical Ethics*, New York, Block Publ. Col., 1975, pp. 15-23.
19. Preuss J. (F. Rosner transl). *Biblical and Talmudic Medicine*, New York, Hebrew Publ. Co., 1978, pp. 146-149.

nail from the gallows [against swelling]."[20]

The rabbinic responsa literature of the past several hundred years is replete with references to amulets as preventives to ward off the "evil eye," to avert demons, to prevent abortion as well as to cure a variety of diseases such as epilepsy, lunacy, fever, poisoning, hysteria, jaundice, and colic.[21] A distinction is made in Jewish law between the prophylactic and therapeutic use of amulets as follows:

> It is permitted to heal with amulets, even if they contain [divine] names; similarly it is allowed to wear amulets containing scriptural verses, but only if they serve to protect the wearer from becoming ill, but not to heal him if he is afflicted with a wound or a disease. But it is forbidden to write scriptural verses in amulets.[22]

Amulets were usually pendants worn by the user at all times to prevent or to cure certain ailments. Talismans did not have to be carried or worn at all times. Other objects are also cited in Jewish sources as efficacious against specific complaints. A coin tied to the sole of the foot was worn to prevent or heal bruises.[23] A preserving stone is mentioned in the Talmud (*Shabbat* 66b) which was widely believed in ancient times to protect the wearer against a miscarriage. In his *Mishneh Torah,* Maimonides dicusses the subject of amulets and preserving stones which were thought to be efficacious.

> One may also go out with a garlic skin, an onion skin, or a bandage over a wound — it is also permissible to tie or untie the bandage on the Sabbath — with a plaster, a poultice, or a compress over a wound, or with a coin or a callus, or wearing a locust's egg, a

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20. Jakobovits. pp. 24-44.
21. Zimmels, HJ. *Magicians, Theologians and Doctors: Studies in Folk Medicine and Folklore as Reflected in the Rabbinical Responsa (12-19th centuries).* London, E. Goldston and Sons, 1952, pp. 135-137.
22. *Shulchan Aruch, Yoreh Deah* 179:12.
23. Ibid, *Orach Chayim* 301:28, based on *Shabbat* 65a.

> fox's tooth, a nail from the gallows of an impaled convict, or any other article suspended on the body for medical reasons, provided that physicians say that it is medically effective (*Shabbat* 19:13).
>
> A woman may go out wearing a preserving stone — or its counterweight which has been weighed accurately for medical use. Not only a woman already pregnant may wear such a stone, but any other woman also may do so as a preventive of miscarriage in the event of pregnancy.
>
> One may also wear a tested amulet — that is an amulet which has already cured three patients, or was made by someone who had previously cured three patients with other amulets. If one goes out into a public domain wearing an untested amulet, he is exempt, because he is deemed to have worn it as apparel when transferring it from one domain to the other (*Ibid.* 19:14).

We are at a loss to explain the efficacy of amulets, although perhaps amulets and the like were efficacious because of their placebo effect. Patient attitude toward the physician and patient confidence in the treatment being used certainly play a role in the psychological if not physiological well-being of the patient.

Astrology

The work of astrologers was not confined to predicting the future from the stars. They claimed to be able to influence the future by changing misfortune into good fortune. They applied occult virtues of heavenly bodies to earthly objects. Their medicine was an image made by human art with due reference to the constellation. On this principle is based the method of curing diseases with figures especially made for this purpose. For example, Rabbi Solomon ben Abraham Adret, known as Rashba, writes that to cure pains in the loins or in the kidneys, people used to engrave the image of a tongueless lion on a plate of silver or gold.[24]

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24. *Responsa Rashba*, Part 1 #167.

The generally-prevalent belief in astrology during the Middle Ages was fully shared by the Jews, many of whom were convinced of the fundamental truth of the power of celestial bodies to influence human destiny. Moses Maimonides was one of the few who not only dared raise his voice against this almost universally-held belief, but even branded it as a superstition akin to idolatry. He unequivocally prohibited anyone to influence his actions by astrology, as an offense punishable by disciplinary flogging. In his treatise on idolatry and heathen ordinances, he categorically rejects astrology and other superstitious practices and beliefs.[25]

In his famous *Letter to Yemen,* Maimonides denounces astrology as a fallacy and delusion.[26] In his psychological and ethical treatise entitled *The Eight Chapters (Shemonah Perakim),* Maimonides again sharply inveighs against astrology, denouncing it as a deception that is subversive to the faith and teachings of Judaism: "I have entered into this subject so thou mayest not believe the absurd ideas of astrologers, who falsely assert that the constellation at the time of one's birth determines whether one is to be virtuous or vicious."[27]

In his *Letter on Astrology,* in answer to an inquiry from Jewish scholars of southern France, Maimonides exposes the foibles and fallacies of astrology.[28] Noteworthy in this letter is the oft-quoted comment that the Second Temple was destroyed and national independence forfeited because the Jews were occupied with astrology. Maimonides told his correspondents that he did not take the matter lightly, but had studied it thoroughly and came to the conclusion that astrology was an irrational illusion of fools who

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25. *Mishneh Torah, Avodat Kochavim* 11:16.
26. Halkin AS. *Moses Maimonides Epistle to Yemen,* New York, American Academy for Jewish Research, 1952, XX and 111 pp.
27. Garfinkle JL. *The Eight Chapters of Maimonides on Ethics,* New York. AMS Press, 1966, XII and 104 pp. (English); 55 pp. Hebrew.
28. Marx A. "The correspondence between the Rabbis of Southern France and Maimonides about Astrology." *Hebrew Union College Annual* 1926; 3:311-538 and 1927; 4:493-494.

mistake vanity for wisdom and superstition for knowledge.*

Medical Charms and Incantations

The medical effectiveness of incantations was never in doubt in classic Jewish sources. Incantations to heal a scorpion's bite are permitted even on the Sabbath, as are snake or scorpion charming to prevent injury or harm by them.[29] Maimonides points out that such incantations are absolutely useless but are permitted because of the patient's dangerous condition, so that he should not become distraught.[30] The *Shulchan Aruch* is of the same opinion.[31] However, in earlier sources we find evidence of belief in the effectiveness of these techniques. One whispered a spell to heal eye illnesses (*Tosefta Shabbat* 7:32). Rabbi Chanina healed Rabbi Yochanan by uttering an incantation (*Song of Songs Rabbah* 2:16). A bone stuck in the throat can be dislodged by an incantation (*Shabbat* 67a).

The main question concerning the permissibility of incantations in Judaism is whether or not they represent a form of forbidden heathen practice in that Jews are commanded not "to go in the ways of the Amorites" (Leviticus 18:3). Some Talmudic sages declare that if one whispers a spell over a bodily illness, one is deprived of everlasting bliss, i.e., the world to come. (However, we have noted that other rabbis certainly employed incantations). These sages further prohibit a person from calling another to recite a biblical verse to calm a frightened child (*Yerushalmi Shabbat* 6:8b).

* Editors Note: *However, in contrast to the Rambam, the Ramban does not dismiss the efficacy of astrological forecasts, although he does not advocate seeking out astrological advice. This somewhat more benign attitude is reflected also in the normative halacha as encoded in the Shulchan Aruch. This is discussed more fully in Vol. XVI of this Journal, Fall 1988, pp.20-23*

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29. *Shulchan Aruch, Yoreh Deah* 179:6-7.
30. Maimonides M. *Mishneh Torah, Avodat Kochavim* 11:11.
31. *Shulchan Aruch, Ibid.*

On the other hand, the Talmud clearly states that whatever is used for healing purposes is not forbidden on account of " the ways of the Amorites" (*Shabbat* 67a). This rule is codified by R. Asher ben Yechiel, known as Rosh, who states that charms used for the promotion of health are covered by the exemption of "anything done for the sake of healing."[32] Rashba states that the prohibition on account of the "ways of the Amorites" is limited to those practices specifically enumerated in the Talmud (*Tosefta Shabbat*, Chapters 7 and 8).

Zimmels lists a variety of diseases cured by charms as found in the *Responsa* literature, including certain eye diseases, headache, infertility, and epilepsy.[33] He also describes the custom of transference, whereby an illness can be transferred to an animal or a plant by a certain procedure with or without the recitation of an incantation.[34] For example, patients with jaundice were told to put live fish under their soles to transfer the jaundice to the fish. In more recent times. pigeons were placed on the abdomen of the jaundiced patient to transfer the illness to the pigeons.

Sorcery and Witchcraft

Judaism categorically prohibits sorcery as the first and foremost abhorrent practice of the nations. These practices include those who augur, soothsay, divine, practice sorcery, cast spells, consult ghosts or familiar spirits, or inquire of the dead. "Anyone who does such things is abhorrent to the Lord" (Deuteronomy 18:9-14). Witchcraft in general is also outlawed: "Thou shalt not suffer a witch to live" (Exodus 22:17). Crimes of sorcery are considered tantamount to idolatrous crimes of human sacrifices (Deuteronomy 18:10). The various forms of sorcery are defined in detail in the Talmud (*Sanhedrin* 65a).

Whether the use of sorcery for medical or healing purposes was exempted from the prohibition was a much-debated question in

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32. Commentary of *Rosh* on *Shabbat* 6:19.
33. Zimmels. op. cit. pp. 140-141.
34. Ibid. pp. 141-142.

the writings of medieval Jewish authorities.[35] One view is that the types of practices used in the Middle Ages were not of the idolatrous type prohibited in the Bible as sorcery.[36] Another view is that the prohibition of sorcery can be waived in cases of grave danger ot life.[37] Yet another view is that sorcery or witchcraft may be resorted to but only for conditions thought to have been caused or induced by sorcery or witchcraft.[38]

The related topics of exorcism of demons, the "evil spirit" and the "evil eye," the *"dreck-apotheke,"* and other superstitious, occult and scatological cures are discussed by Jakobovits[39] and Zimmels.[40]

Quacks and Quackery

Judaism has always held the physician in high esteem. Ancient and medieval Jewish writings are replete with expressions of admiration and praise for the "faithful physician." Therefore, it is not surprising that the derogatory Talmudic statement "the best of physicians is destined for Gehenna" (*Kiddushin* 4:14) generated extensive discussion and commentary throughout the centuries.[41]

The Hebrew epigram *"tov sheberofim legehinnom,"* is variously translated as "the best among physicians is destined to Gehinnom,"[42] "the best of physicians is fit for Gehenna,"[43] "the best of doctors are destined for Gehenna,"[44] "to hell with the best

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35. Zimmels. p. 221, note 90.
36. Habir, S. *Responsa Nachalat Shiva* #76.
37. Ettlinger J. *Responsa Binyan Zion* #67.
38. Luria S. *Responsa Maharshal* #3.
39. Jakobovits. pp. 135-149.
40. Zimmels. pp. 135-149.
41. Rosner F. "The best of physicians is destined for Gehena." *New York State Journal of Medicine*, 1983; *83*:970-972.
42. Zimmels. p. 170.
43. Friedenwald H. *The Jews and Medicine*. Baltimore, Johns Hopkins Press, 1944, 2 vols, pp. 11-13.
44. Epstein I (ed). *The Babylonian Talmud. Seder Nashim, Tractate Kiddushin*, Feldman H. (trans). London, Soncino Press, vol. 4, p. 423.

of the physicians,"[45] and "the best physician is destined to go to hell."[46]

According to Kalonymus ben Kalonymus, a Provencal writer and philosopher, in his ethical treatise *Even Bochan (The Touchstone),* the epigram "physicians are fit only for Gehenna" refers not to genuine physicians but to quacks because "their art is lying and deception; all their boasting is empty falsehood; their hearts are turned away from G-d and their hands are covered with blood."[47]

Based on many interpretations, Jakobovits concludes that "to hell with the best of the physicians" was never understood as a denunciation of the conscientious practitioner. Physicians are among a group of communal servants who have heavy public responsiblities and are warned against the danger of negligence or error. The Talmudic epigram with its curse is thus limited to physicians who are overly confident in their craft, or are guilty of commercializing their profession, or lie and deceive as do quacks, or who fail to acknowledge G-d as the true healer of the sick, or who fail to consult with colleagues or medical texts when appropriate, or who perform surgery without heeding proper advice from diagnosticians, or who fail to heal the poor and thus indirectly cause their death, or who fail to try hard enough to heal their patients, or who consider themselves to be the best in their field, or who otherwise fail to conduct themselves in an ethical and professional manner.

Jewish law requires a physician to be skilled and well-educated. If he heals without being properly licensed, he is liable for any bad outcome. If he is an expert physician and fully licensed but errs and thereby harms the patient, he is exempt from payment of damages "because of the public good" (*Tosefta Gittin* 4:6). The divine arrangement of the world requires and pre-supposes the existence of physicians. If one were to hold the physician liable for every

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45. Jakobovits I. pp. 202-203.
46. Preuss. p. 26
47. Friedenwald H. p. 74.

error, very few people would practice medicine. The physician, however, is still liable in the eyes of Heavan.[48]

If a physician caused an injury deliberately or acted without a proper license, he can be sued for damages no matter how competent he is (*Tosefta Gittin* 3:13). A physician who kills a patient and realizes that he was in error, is exiled to the cities of refuge just like anyone else who kills another person through error (Numbers 5:11 and Deuteronomy 19:3).

Blamelessness in case of error only applies to a *rophe umman,* an expert or well-trained healer, who heals "at the request of the authorities," that is to say, a licensed physician. A non-licensed physician is subject to the general law and can be sued and must pay for damages he inflicts. Error and ignorance are used as excuses by quacks whom Judaism looks upon with disdain.

Summary and Conclusion

Judaism considers a human life to have infinite value. Therefore, physicians and other health-care givers are obligated to heal the sick and prolong life. Physicians are not only given divine license to practice medicine, but are also mandated to use their skills to heal the sick. Failure or refusal to do so with resultant negative impact on the patient constitutes a transgression on the part of the physician. Physicians must be well-trained in traditional medicine and licensed by the authorities.

Patients are duty bound to seek healing from qualified healers when they are ill and not rely solely on divine intervention or faith healing. Patients are charged with preserving their health and restoring it when ailing in order to be able to serve the Lord in a state of good health. Quackery is not condoned in Judaism whether or not it is practiced by physicians. Those who deceive patients into accepting quack remedies "are destined for Gehenna."

On the other hand, Judaism seems to sanction certain alternative therapies such as prayers, faith healing, amulets, incantations and their like, when used as a supplement to

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48. *Shulchan Aruch, Yoreh Deah* 336:1.

traditional medical therapy. However, the substitution of prayer alone for rational healing is condemned. Quackery, superstition, sorcery, and witchcraft are abhorrent practices in Judaism, but confidence in the healing powers of G-d through prayer and contrition is encouraged and has its place of honor alongside traditional scientific medicine.

The Ethics of Using Data from Nazi Medical Experiments

Baurch Cohen

The Ethics of Using Medical Data from Nazi Experiments

Baruch Cohen

Introduction

Following World War II, leading Nazi doctors were brought to justice before the International Military Tribunal at Nuremberg. Twenty doctors were charged with War Crimes and Crimes Against Humanity. The Nuremberg trial of the doctors revealed evidence of sadistic human experiments conducted at the Dachau, Auschwitz, Buchenwald and Sachsenhausen concentration camps.

Since the Nuremberg trials, our society has had to confront the reality that the Nazi doctors were guilty of premeditated murder masquerading as research. Professional modern medicine has had little difficulty condemning the Nazi doctors as evil men. But what is being said of the continued use of the Nazi doctors' medical research? Many scholars are now discovering in reputable medical literature multiple references to Nazi experiments, or republished works of former SS doctors. These studies and references frequently bear no disclaimer as to how the data was obtained. In recent years several scientists who have sought to use the Nazi research have attracted and stirred widespread soul-searching about the social responsibility and potential abuses of science.

These incidents prompt a number of questions for the scientific community. Is it ever appropriate to use data as morally

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Attorney with Milgrim, Thomajan and Lee,
Century City, California

repugnant as that which was extracted from victims of Nazism? If so, under what circumstances?

The Ethical Dilemma

This paper addresses the serious ethical problems of using tainted data from experiments on patients who were murdered and tortured by the Nazis in the name of "research." In weighing this moral question this paper will address a number of ancillary issues which are relevant to the discussion: (1) the scientific validity of the experiments; (2) the medical competence of the experimenters; (3) the social utility in using the experimental data; (4) case studies of proposed uses of the Nazi scientific data; (5) the policy considerations involved when scientists use immorally-obtained data; (6) suggested conditions and guidelines as to how and when data is to be used.

The present inquiry is undertaken with the utmost caution. The reader should be aware that the moral climate in the Jewish community is unforgiving to those who find any redeeming merit from the Nazi horrors. Anyone who dares suggest the historical lessons which can be learned from the Holocaust, or from the victims' suffering, risks being labeled a heretic or a sensationalist bent on distorting history for personal gain. Many in the community seriously fear that insights might replace condemnation of the Nazi evil.[1]

Furthermore, after reviewing the graphic descriptions of how the Nazis conducted the experiments, it becomes increasingly difficult to remain objective regarding their subsequent use. This difficulty is further complicated by the use of the amorphous term, "data". "Data" is merely an impersonal recording of words and numbers. It seems unattached to the tortured or to their pain. One cannot fully confront the dilemma of using the results of Nazi experiments without sensitizing oneself to the images of the frozen, the injected, the inseminated, and the sterilized. The issue of

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1. R.J. Lifton, *The Nazi Doctors, Medical Killing and The Psychology of Genocide*, New York; Basic Books, 1986.

whether to use the Nazi data is a smokescreen from the reality of human suffering. Instead of the word "data," the author suggests that we replace it with the image of an Auschwitz bar of human soap. This horrible bar of soap is the remains of murdered Jews. The vision sensitizes and personalizes our dilemma. Imagine the extreme feeling of discomfort, and the mortified look of horror upon discovering that one just showered with the remains of six million Jews. The ghastly thought of the Nazis' melting human beings (and perhaps even one's close relatives) together for a bar of soap precludes any consideration of its use. How could any civilized person divorce the horror from the carnage without numbing himself to the screams of the tortured and ravaged faces of the Holocaust? Indeed, it is only with this enhanced sensitivity to the suffering that one can hope to deal properly with the Nazi "data." Any analysis that fails to see realistically the Nazi data as a blood-soaked document fails to comprehend fully the magnitude of the issue.

May this disclaimer serve as a personal guarantee that the purpose of presenting the Nazi data for consideration is not to dilute nor detract from the enormous and unspeakable suffering of those who perished in or survived from the death camps. The purpose of this project is to consider the widespread effect of the Nazi evil.

The Nazi Experiments

The Nazi physicians performed brutal medical experiments upon helpless concentration camp inmates. Their experiments fell into three basic categories: (1) Medico-Military Research; (2) Miscellaneous, Ad Hoc Experiments; and (3) Racially Motivated Experiments. However, it will not be necessary to explore the moral issue in each of these areas. We will focus on a limited number of experiments, which will suffice to illustrate the moral problem.

Medico-Military Research

Hitler's regime sponsored a series of inhumane experiments for alleged ideological, military and medical purposes. They were undertaken under Heinrich Himmler's direct orders to gain

knowledge of certain wartime conditions faced by the German Luft-Waffe.

Freezing Experiments

Prisoners were immersed into tanks of ice water for hours at a time, often shivering to death, to discover how long German pilots downed by enemy fire could survive the frozen waters of the North Sea. It was generally known at the time that human beings did not survive immersion in the North Sea for more than one to two hours.[2] In fact, in the Titanic disaster, all the persons found floating in their lifejackets appeared dead when rescuers arrived approximately two hours after the victims' immersion in the cold water.

Doctor Sigmund Rascher attempted to duplicate these cold conditions at Dachau, and used about 300 prisoners in experiments recording their shock from the exposure to cold. About eighty to ninety of the subjects died as a result.[3]

Doctor Rascher once requested the transfer of his hypothermia lab from Dachau to Auschwitz, which had larger facilities, and where the frozen subjects might cause fewer disturbances. Apparently, Rascher's concentration was constantly interrupted when the hypothermia victims shrieked from pain while their extremities froze white.[4]

Proposed Uses of Nazi Scientific Data: Pozos' Chilling Dilemma

Doctor Robert Pozos is Director of the Hypothermia

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2. J.S. Hayward, "Physiological Responses & Survival Time Prediction For Humans in Ice water," *Aviation Space & Environmental Medicine, March, 1984, 55(3):206-12.*
3. J. Boozer, *The Political, Moral, and Professional Implications of the "Justifications" by German Doctors for Lethal Medical Actions, 1938-1945,* Papers Presented at the International Scholars' Conference, Oxford University, 10-13 July, 1988.
4. L.J. Hoenig, M.D., "The Nazi Medical Crimes," *Medical Times,* July, 1987 pp. 93-104.

Laboratory at the University of Minnesota School of Medicine at Duluth. His research is devoted to methods of rewarming frozen vicitms of cold. Much of what he and other hypothermia specialists know about rescuing frozen victims is the result of trial and error performed in hospital emergency rooms. Pozos believes that many of the existing rewarming techniques that have been used thus far lack a certain amount of critical scientific thinking.

Pozos points out that the major rewarming controversy has been between the use of passive external rewarming (which uses the patient's own body heat) and active external rewarming (which means the direct application of exogenous heat directly to the surface of the body). Hospitals have thus far microwaved frozen people, used warm blankets, induced warm fluids into body cavities (through the peritoneum, rectum, or urinary bladder), performed coronary bypass surgery, immersed the frozen bodies into hot bath tubs, and used body-to-body rewarming techniques.[5] Some victims were saved, some were lost. This might be due to lack of legitimate information on the effects of cold on humans, since the existing data is limited to the effects of cold on animals, and animals and humans differ widely in their physiolgical response to cold. Accordingly, hypothermia research is uniquely dependent on human test subjects.

Although Pozos has experimented on many volunteers at his hypothermia lab, he refuses to allow the subject's temperature to drop more than 36 degrees. Pozos has to speculate what the effects would be on a human at lower temperatures. The only ones that put humans through extensive hypothermia research (at lower temperatures) were the Nazis at Dachau.

The Nazis attempted various methods of rewarming the frozen victims. Doctor Rascher did, in fact, discover an innovative "Rapid Active Rewarming" technique in resuscitating the frozen victims. This technique completely contradicted the popularly accepted method of slow passive rewarming. Rascher found his active

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5. *Pozos' Dilemma*, CBS Radio Network, "Newsmark", Bill Lynch Reporting, June 17,1988.

rewarming in hot liquids to be the most efficient means of revival.[6]

The Nazis' data on their hypothermia experiments would apparently fill the gap in Pozos' research. Perhaps it contained the information necessary to rewarm effectively frozen victims whose body temperatures were below 36 degrees. Pozos obtained the long-suppressed Alexander Report on the hypothermia experiments at Dachau. He presently plans to analyze for publication the Alexander Report, along with his evaluations, to show the possible application of the Nazi experiments to modern hypothermia research. Of the Dachau data, Pozos said, "It could advance my work in that it takes human subjects farther than we're willing."[7]

Pozos' plan to republish the Nazi data in the *New England Journal of Medicine* was flatly vetoed by the *Journal's* editor, Doctor Arnold Relman.[8] Relman's refusal to publish Nazi data along with Pozos' comments was understandable given the source of the Nazi data and the way it was obtained. However, Relman's censorship policy failed to address the data's potential social utility.

Hayward's Equally Chilling Dilemma

Doctor John Hayward is a Biology Professor at the Victoria University in Vancouver, Canada. Much of his hypothermia research involves the testing of cold water survival suits that are worn while on fishing boats in Canada's frigid ocean waters. Hayward used Rascher's recorded cooling curve of the human body to infer how long the suits would protect people at near fatal temperatures. This information can be used by search-and-rescue teams to determine the likelihood that a capsized boater is still alive.

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6. R.M. Harnett, J.R. Pruitt, & F.R. Sias, "A Review of the Literature Concerning Resuscitation from Hypothermia: Part 1 — The Problem and General Approaches," *Aviation Space & Environmental Medicine*, May, 1983, 54 (5) 425-434.
7. B. Siegel, "Can Evil Beget Good? Nazi Data: A Dilemma for Science," *Los Angeles Times*, Sunday, October 30, 1988.
8. K. Moe, "Should the Nazi Research Data be Cited?"*Hasting Center Report*, December, 1984, pp. 5-7.

Hayward justified using the Nazi hypothermia data in the following way:

> "I don't want to have to use the Nazi data, but there is no other and will be no other in an ethical world. I've rationalized it a bit. But not to use it would be equally bad. I'm trying to make something constructive out of it. I use it with my guard up, but it's useful.[9]

Hayward continued to rely on the data even though the subjects were lean, malnourished, and emaciated prisoners, with little or close to no insulating body fat (and therefore unrepresentative of the general populace to be benefited from the study). Hayward still trusted the data because the general linear shape of Doctor Rascher's cooling curve (as the prisoners neared death) appeared to be consistent with the cooling curve at warmer temperatures.[10]

Since a better knowledge of survival in cold water has direct and immediate practical benefits for education in cold water safety, and in the planning of naval rescue missions at sea, Pozos and Hayward see it as criminal *not* to use the available data, no matter how tainted it may be.

EPA Bars Use of Nazi Data on the Study of Phosgene

Last year, the Environmental Protection Agency (EPA) considered air pollution regulations on phosgene, a toxic gas used in the manufacture of pesticides and plastic. Approximately one billion pounds of phosgene is produced annually in the United States.[11] Tragically, phosgene was used in chemical warfare in the Iran-Iraq war.

As part of their research, the EPA scientists analyzed how different doses of phosgene affected the lungs, particularly of the people living around the manufacturing plants that process the gas.

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9. *Ibid.*
10. *Ibid.*
11. M. Sun, "EPA Bars Use of Nazi Data," *Science Magazine*, April 1, 1988, Volume 240 Number 4848.

They found that except for local irritation to the skin, eyes and upper respiratory tract, the lungs could be considered the target organ of phosgene gas. Even at intermediate and low concentrations, phosgene destroys enzymes in the lungs. This causes fluid build up, and can lead to death by "drowning."[12]

Until now, the EPA scientists depended solely on animal experiments to predict the effect of the gas on humans. Human data would naturally be the ultimate preference to work from, but it is rarely available. To date, no information about intentional exposure in occupational settings exists for the EPA to analyze.[13]

Because of the lack of human data connected to the gas, scientists in the EPA's Assessment Branch suggested using the Nazi data on phosgene, since the Nazi experiments provided comparatively more data on humans, rather than the existing data derived from animal research.[14]

An experimental study on the acute toxicity of phosgene on humans was performed during World War II. Fearful of a phosgene gas attack by the Allies in Africa, Heinrich Himmler ordered Doctor Bickenbach to experiment on humans in an effort to develop a means of protecting the Germans against phosgene poisoning. Fifty-two French prisoners were exposed to the toxic gas. Four of the prisoners died in the experiments conducted at Fort Ney, near Strasbourg, France. The remaining weak and emaciated prisoners developed pulmonary edema from the exposure to the gas.[15] Rumor had it that Bickenbach herded the prisoners into an air-tight testing chamber, broke open a vial of phosgene gas, and counted how long it took for the prisoners to die. This sordid report of the experiment was revealed during the War Crimes trial in France.[16]

Serious concerns were raised by EPA scientists that recorded

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12. J. Vandenberg, "Interim Phosgene Exposure and Risk Analysis" *New York Times*, Wednesday, March 23, 1988.
13. P. Shabecoff, "Head of the EPA Bars Nazi Data in Study on Gas," *New York Times*, Wednesday, March 23, 1988.
14. *Ibid.*
15. Sun, "EPA Bars Use of Nazi Data"
16. Shabecoff, *Ibid.*

data were flawed. They based their skepticism on the fact that Bickenbach's report failed to note how the pulmonary edema was measured, nor what the victim's sex or weight was.

But Todd Thorslund, a Vice President of ICF-Clement, an environmental consulting firm that used the Nazi data in preparing the draft study under contract with the EPA, staunchly defended the accuracy of the Nazi data. He observed that the poor health of the prisoners was not an important factor for consideration because the EPA was concerned about the health of sensitive populations, and that using the Nazi data would provide a conservative model. Also, the lack of information about the prisoners' sex and weight was similarly irrelevant because phosgene is so toxic that it is the dose in the air that makes the difference.[17]

The Nazi phosgene data could save the lives of the residents who live near the manufacturing plant. It could even save the lives of our American troops stationed in the Persian Gulf, in the event of a chemical attack by the Iraqis or the Iranians. The need is real. People's lives are and could be severely threatened. Should the EPA use the Nazi data or ignore it?

Some reasons advanced include moral outrage, the availability of similar information from other sources such as animal tests or the medical records of people accidentally exposed to gas, and the charge that it would be "stupid" to open the EPA up to criticism. Others argue that such rejection of Nazi data is unfair to people who could be helped by it and that it is "unprofessional" to reject Nazi data.

Analysis

In recent years, there has been a sharp debate regarding the scientific validity of the experiments and whether data gathered from lethal experiments on unwilling subjects could be used in any way by the scientific community. To begin the analysis, one must

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17. *Mathematical Dose-Response Modeling of Health Effects Potentially Resulting from Air Emissions of Phosgene,* Prepared for the EPA, by ICF-Clement, Washington, D.C.

address the Nazi experiments' scientific validity, and the medical competence of the experimenters.

(A) Scientific Validity

Nazi concentration camp science is often branded as bad science. First, it is doubtful that the physiological responses of the tortured and maimed victims represent the responses of the people whom the experiments were meant to benefit. Second, additional doubts about the scientific integrity of the experiments surface when we consider the Nazi doctors' political aspirations and their enthusiasm for medical conclusions that proved Nazi racial theory. Finally, the fact that the Nazi experiments were not officially published nor replicated raises doubts about the data's scientific accuracy.

Doctor Jay Katz of the Yale University School of Law, who emphatically opposes the reuse of the Nazi data, suggests nonetheless that the experiments be republished in full detail so that no one may deny that they occurred. He would then condemn the data to oblivion. Dr. Katz dismisses the Nazi experiments with one phrase: "They're of no scientific value."[18]

However, Dr. Leo Alexander, a Major in the United States Army Medical Corps, and the psychiatric consultant to the Secretary of War and to Chief Counsel for War Crimes at the Nuremberg Doctors' Trial, wrote a report evaluating the Nazi hypothermia experiments at Dachau. Reading his synopsis is almost as chilling as the subject at hand. Doctor Alexander was somewhat ambiguous on the Nazi data's validity. On one hand, he stated that Doctor Rascher's hypothermia experiments satisfied all of the criteria of accurate and objective observation and interpretation.[19] He later concluded that parts of the Nazi data on hypothermia were not dependable because of inconsistencies found in Rascher's lab

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18. J. Katz, "Nazi Data Too Bloody to Touch," *Los Angeles Herald Examiner*, January 23, 1988.
19. L. Alexander, *The Treatment of Shock from Prolonged Exposure to Cold*, Combined Intelligence Objective Subcommittee, Item No. 24, File No XXVI-37, pp. 1-228, July, 1945.

notes. According to Rascher's official report to Himmler, it took from 53 to 100 minutes to kill the frozen prisoners. Alexander's inspection of Rascher's personal lab record revealed that it actually took from 80 minutes to five or six hours to kill the subjects.[20]

Historians have suggested several reasons for Rascher's inconsistent hypothermia data. The most revealing theory was that Rascher was under strict orders, by Himmler himself, to produce hypothermia results or else. Apparently, Rascher dressed up his findings to forestall confrontations with Himmler. Shortly before the German surrender, Himmler discovered Rascher's lies, and had Rascher and his wife (Himmler's mistress) murdered because of Rascher's deceptions.[21]

Experts agree that the Nazi experiments lacked scientific integrity. The Nazis even perverted scientific terminology. Their experimental "control subjects" suffered the most and died. "Sample size" meant truck loads of Jews. "Significance" was an indication of misery, and "response rate" was a measure of torment. Behind the niceties of their learned discourse were the horrors of Nazi torture. Some have suggested against terming them "experiments," since they were really brutal beatings and muggings.

(B) Scientific Competence of the Nazi Doctors

The debate over the scientific validity of the Nazi experiments must include the scientific and medical competence of the Nazi doctors. Our general impression of a Nazi doctor conjures up an image of a deranged madman working in an isolated dungeon. In certain instances, the Dr. Frankenstein stereotype is an accurate one.

For example, consider Doctor Otto Prokop's critique of Doctor Heissmeyer and of his tuberculosis experiments. Dr. Prokop was Germany's forensic authority, and his criticism illustrated

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20. *Ibid.*
21. *W.E. Seidelman, "Mengele Medicus: Medicine's Nazi Heritage," The Milbank Quarterly,* Volume 66, number 2, 1988.

Heissmeyer's limited medical competence:

> One characteristic feature of Heissmeyer's experiment is his extraordinary lack of concern, add this to his gross and total ignorance in the field of immunology, in particular bacteriology. He did not then, nor does he now, possess the necessary expertise demanded in a specialist in TB diseases ... He does not own any modern bacteriology textbook. He is also not familiar with the various work methods of bacteriology ... According to his own admission, Heissmeyer was not concerned about curing the prisoners who were put at his disposal. Nor did he believe that his experiments would produce therapeutic results, and he actually counted on there being detrimental, indeed fatal, outcomes to the prisoners.[22]

Author William Shirer reported that Nazi medical incompetence was not limited to a few isolated instances. Shirer felt that the Nazi doctors were generally murderous "quacks," and were people of the "lowest medical standard."[23]

But Shirer's image of the Nazi doctors as irrational psychopathic butchers, on the fringes of professional medicine, failed to appreciate that these doctors were actually among the top professionals in their fields. Their experimental results were presented in scientific journals and in prestigious conferences and academies.

Even Mengele (known as the Angel of Death) once boasted a respectable professional career. An article pertaining to Doctor Joseph Mengele's work at the Institute of Heredity & Racial Hygiene of the University of Frankfurt was listed in the 1938 edition of the prestigious Index Medicus.[24] Mengele's earlier work

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22. G. Schwarberg, *The Murders at Bullenhauser Dam*,Bloomington: Indiana University Press, 1984.
23. W.L. Shirer, *The Rise and Fall of the Third Reich*, Greenwich, Conn: Fawcett, 1962.
24. J. Mengele, "Rassenmorphologische Untersuchung des Vorderen Unterkieferabscnittes bei vier rassischen Gruppen," *Morphologisches Jahrbuch* 19:60-117.

in oral embryology and in the developmental anomalies of cleft palate and harelip have been cited in several texts and articles on the subject.[25] Additionally, in recognition of Mengele's work with his mentor Von Verschuer, the German Research Society provided a generous financial grant to Mengele, enabling him to continue his work on the study of inmates with eyes of different colors.[26]

(C) The Irrelevance of the Argument

Ultimately, the arguments as to whether the experiments were scientific or not, or whether the doctors were medically competent or not, leaves one with the impression that had such experiments been "good" science and the doctors medical professionals, these facts would somehow change our impression of the doctors and their experiments. This is not true. The sadistic evil of the Nazi butchery is is no way lessened by its scientific value. Conferring medical or scientific validity on the Nazi murderers is not an option for consideration.

Benefits To Society

Despite the arguments that the Nazi experiments were unscientific, the data do exist. Although the data are morally tainted and soaked with the blood of the victims, one cannot escape confronting the dreaded possibility that perhaps the doctors at Dachau actually learned something that today could help save lives or "benefit" society.

Author Kristine Moe suggested that by using the hypothermia experimental data, "good" would be derived from the evil:

> Nor, however, should we let the inhumanity of such experiments blind us to the possibility that some "good" [quotations mine] may be salvaged from the ashes.[27]

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25. W.E. Seidelman, "The Professional Origins of Dr. Joseph Mengele, *Canadian Medical Association*, Vol. 133, December 1, 1985, pp.1169-1171.
26. Seidelman, "Mengele Medicus,".
27. Moe, "Should the Nazi Research be Cited?" pp.5-7.

What kind of "good" could be salvaged from the victims' ashes? What societal benefit, if any, could be so compelling as to justify using the Nazi data? Arguably, when the wickedness of the experiments has been very great, then only a colossally important objective can justify its use. I would argue that those who wish to use the data have to satisfy the burden of proof, which becomes greater in proportion to the wickedness of the experiment.

It is easy to see the futility of advocating the data's use when the intended benefit to society is trivial and moderate. Conversely, if the intended benefit is to save lives, many could agree that the data might be used.

Using The Data To Save Lives: A Theoretical Analogy

Consider the following hypothetical situation:

Suppose that a recipient and likely donor have been selected for a heart transplant operation. Usually, the donor is chosen among accident victims, close to death. Immediately after death, the donor's heart must be quickly removed because his heart must still be alive or at least capable of living again, to save the recipient's life. Prior to death, the donor is in the category of a terminally ill patient, and one must be very careful not to do anything that might hasten his death.

Given, then, that *A* is the donor, and that *B* is the worthy recipient, it would certainly be unethical to remove *A's* heart while he was still alive (thereby killing him) with the intent to transplant it into *B's* body. *B's* blood is not redder than *A's*, and both *A* and *B* deserve an equal chance to live. But what if the doctor disobeyed our warning, and removed *A's* heart anyway? Can he transplant *A's* murdered heart to save *B's* life? *B* still needs a new heart or he will die. The moral problem is: what do we do with *A's* murdered heart? Do we throw it away because it was immorally obtained? If so, must the needy recipient *(B)* suffer and die because of *A's* unfortunate death? If so, is it ethical to have *B's* death on our conscience? And what of the doctor? Suppose he transplanted *A's* murdered heart into *B*. Would the doctor be considered *A's* murderer or *B's* hero? Could he be both? Would *B's* renewed life suffer because of *A's* death?

This hypothetical scenario suggests a situation in which life can actually emerge from death, and good can emerge from evil. An argument could be made that withholding the murdered heart from the worthy recipient would be tantamount to murder. The underlying rationale in using the heart is to focus prospectively on the present medical crisis. The recipient desperately needs a transplanted heart, or else he dies; this murdered heart will save his life.

Do the Nazi data share the same supposed propensity for saving human lives as does an available organ to a needy recipient? If it does, then one could theoretically agree that it should be used. Perhaps justice would ultimately be served if we were to allow life to emerge from the Nazi murders. Although the data's untested potential to save lives seems to be a bit more tenuous than that of the healthy heart, the potential to save a life might still be present. Therefore, it could be argued that the data should be used when lives are at stake.

Is There A Higher Ethical Concern?

For Jews, there are times when saving a life is not the ultimate good to be achieved. While it is true that saving a life overrides almost all other commandments, a Jew is commanded to sacrifice his life rather than transgress the three cardinal sins (idolatry, murder, and sexual immorality).[28] In fact, if one had the opportunity to save a life through the use of idolatry, he would be forbidden to do so.[29] Furthermore, the Talmud seems to indicate that it is desirable to eliminate certain negative societal influences, even if this would lead to an increased loss of life.

There used to be a book in ancient times titled *The Book of Cures (Sefer Harefuah)*. Many famous rabbis ascribe the authorship to King Solomon, and Maimonides states that the book contained remedies based on astrological phenomena and magical incantations, as well as prescriptions for the preparation of poisons and their

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28. Babylonian Talmud, *Tractate Sanhedrin*, (74a).
29. *Ibid.*

antidotes. The Gemara tells us that King Hezekiah hid *The Book of Cures* because people were cured so quickly and effortlessly that illness failed to promote a feeling of contrition, humility, and a recognition that G-d is the true healer of the sick. Furthermore, corrupt people used this information to kill their enemies by poisoning them.[30]

What wouldn't doctors give to have Hezekiah's *Book of Cures?* King Hezekiah certainly knew of the *Book's* definite potential to save lives. He certainly understood the infinite value of life. Yet he condemned the *Book* to oblivion, and the Sages of Israel agreed with his decision. Hezekiah concluded that the lives that would have been saved, but for the idolatrous use of the book, were not worth preserving. They were better off dead than living under the destructive influence of idolatry.

Perhaps the same conclusion could be made with regard to the Nazi data? Perhaps certain illnesses are not meant to be cured, if the victim's cure is to be found through employing the results of wholesale slaughter and torture? Perhaps the modern-day frozen hypothermia victims who were unsuccessfully rewarmed by normal conventional methods were just not meant to survive?

But perhaps such an important conclusion could only be made by a completely righteous individual such as King Hezekiah. Without such authority, or rabbinic guidelines to the contrary, the *Book of Cures* cannot be analogized to the Nazi data. Perhaps we should use the information to save lives? Unfortunately, there seems to be very little material in the Talmud which could serve as a precedent for solving this moral dilemma.

(1) Cleopatra's Experiments On Embryo Formation

The Babylonian Talmud in *Niddah* (30b) relates the legal controversy between Rabbi Ishmael and the other rabbis concerning the amount of time it takes a male or a femle embryo to become formed. R. Ishamel refers to "Cleopatra's experimental data" to

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30. Babylonian Talmud, *Tractate Pesachim,* (56a).

substantiate his theory that a male fetus takes 40 days to fashion fully and a female fetus takes 80 days.

According to the Talmudic account, when Cleopatra's handmaids were sentenced to death under government order, she subjected them to insemination and subsequent operations. Upon opening their wombs, Cleopatra discovered that the male embryos were fully fashioned on the 41st day after conception and the female embryos were fully fashioned on the 81st day.

The Talmud questions the scientific accuracy of Cleopatra's experiment. Assurances were made that the experiments were conducted and recorded in an accurate manner, because prior to the handmaids' insemination, they were forced to swallow a serum designed to obliterate and scatter any existing semen in their wombs. This abortive precaution served as a guarantee against prior inseminations and embryo formations before the experiments began. Furthermore, a warden was appointed to carefully monitor the girls, to prevent them from becoming pregnant before the commencement of Cleopatra's experiment.

In attempting to discredit Cleopatra's experiment and result, the rabbis argued that "no one adduces proof from fools." This might mean that one should not trust the results of a murderous "quack" on the fringe of professional medicine. The Talmudic passage concludes in favor of Rabbi Ishmael's original premise, that boys are formulated in 40 days and girls in 80 days, but no further discussion ensues as to the propriety of relying on Cleopatra's unethical research. We are left to speculate.

(2) Rabbi Ishmael's Students Experiment On A Human

In *Bechorot* (45a) the Babylonian Talmud relates that the students of Rabbi Ishmael dissected the body of a prostitute who had been condemned to death by the King. They examined her body and found a total of 252 joints and limbs. The students returned to R. Ishmael (who claimed that the human body contains 248 joints and limbs), told him of their experiment and conclusion, and challenged him for an explanation of the discrepancy (which he provided).

R. Ishmael offered no comment as to properiety of his

students' experiment. Again, we are left to speculate.

It has been asserted that the Talmud's silence on the propriety of quoting and relying on the data from the above-mentioned experiments suggests that the Talmud had no moral qualms about using the data for the advancement of legal, medicinal and factual determinations. But some Talmudic experts hold that we are not entitled to make such conclusions merely due to the Talmud's silence. Perhaps the rabbis were only concerned with the major topic they were discussing and did not wish to comment about the source of the data in the context of their debate. That is not to say that the rabbis were not at all concerned about it. It just means that there were more pressing concerns that merited their comments at that time. It is therefore unclear whether the Talmud's willingness to use data obtained under questionable conditions justifies use of the Nazi data, for we have not shown that they considered this question relevant to their topic of discussion.

Policy Considerations

(1) Absolute Censorship and its Deterrent Effect

One might argue that since footnotes are among the few rewards scientists get for their research, citation or use of the Nazi data would constitute a scientific recognition of the Nazi doctors. Sanctions against the citation of Nazi data would deter doctors from abusive practices.[31]

However, the individual deterrent effect of noncitation would at best be minimal, because the Nazi doctors who performed the experiments are either dead or presumably too old to be practicing medicine. They cannot be deterred.

Perhaps the deterrrent effect of non-citation would apply to other would-be-Mengeles of the world who are contemplating the

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31. R. Martin, *Using Nazi Scientific Data*, Dialogue XXV (1986) 403-411.

re-creation of the Nazi experiments, or publishing their own collection of the Nazi medical horrors.

It is still unclear whether the threat of non-citation would serve to deter future use of the data. Insofar as a scientist is motivated by the advancement of science and medicine, or of his own career, the threat of non-citation might have some deterrent effect regarding his future unethical research. But in the situations where experiments are performed because the scientist is being paid or ordered to administer them, the threat of non-citation would hardly deter him.

(2) The Best Of Both Worlds

Others argue that should scientists use the Nazi data, it would constitute some sort of ceremony of respect or scientific acceptability of the Nazi doctors, and of disrespeect towards the victims' memory.[32] But would use of the Nazi data necessarily imply *both* results? Perhaps a compromise position exists. It has been suggested that scientists be allowed to make full use of the Nazi data (to benefit medicine) and simultaneously denounce and condemn the Nazi doctors and their experiments (thereby preserving the victims' memory). This compromise solution would serve to give those plagued by the dilemma the "best of both worlds."

Despite its attractions, this compromise seems to carry with it more than a touch of moral hypocrisy. When the medical profession uses Nazi data, or when a court of law uses tainted evidence, legitimacy is indirectly conferred upon the manner in which the data/evidence was acquired. The policy guidelines deploring the means used in acquiring the tainted evidence would be undercut by the mere fact of its use. This would not result in the "best" of both worlds.

(3) Beecher's Exclusionary Rule Analogy

Dr. Henry Beecher, the late Harvard Medical School Professor,

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32. A. Schafer, *Using Nazi Data: The Case Against*, Dialogue XXV (1986) 413-419.

analogized the use of the Nazi data to the inadmissability of unconstitutionally obtained evidence (the Exclusionary Rule). Dr. Beecher said that even though suppression of the data would constitute a loss to medicine in a specific localized sense:

> This loss, it seems, would be less important than the far reaching moral loss to medicine if the data were to be published.[33]

Beecher's analogy is to be given serious consideration. Although use of the Nazi data might benefit some lives, a larger bioethical problem arises. By conferring a scientific martyrdom on the victim, it would tend to make them our retroactive guinea pigs, and us, their retroactive torturers.

(4) Scientists Need To Be Sensitive To The Victims' Suffering

Let us return to our earlier analogy of bathing with a bar of human soap from Auschwitz. Assume for argument's sake that one bathed with the soap, knowing of its ugly origin. Our initial suspicion would be that the bather probably approved of the Nazi atrocity merely by virtue of the fact that he used the soap in his shower.

But suppose the bather clearly condemned the Nazi evil, and rationalized his actions in the following way: that his use of the Auschwitz bar of human soap did no further harm to the dead Jews, nor did it reward the dead Nazis. It will not encourage further acts of Nazism, and in fact, the bather is convinced that the soap's use has no moral relevance for the future. Instead, the Auschwitz bar of soap is a perfectly good bar of soap for cleaning his body, so that there would not be any reason why he should not be allowed to use it. While the bather's argument seems logically sound it is actually terribly wrong morally.

Ethical persons, including scientists and doctors, cannot isolate the human agony from this bar of soap. In fact, it is repugnant to

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33. H.K. Beecher, "Ethics and Clinical Research," *New England Journal of Medicine*, June 16, 1966, pp. 1354-1360.

any civilized individual. No one will question the fact that the bather's skin is cleansed by the soap, but his humanity is indelibly tainted. This can not be an acceptable ethic upon which to base research which seeks to benefit humanity.

VII. Conclusion

Some ethicists and scientists offer the following guidelines:

Absolute censorship of the Nazi data does not seem proper, especially when the secrets of saving lives may lie solely in their contents. Society must decide on its use by correctly understanding the exact benefits to be gained. When the value of the Nazi data is of potentially overwhelming benefit to humanity, perhaps the morally appropriate policy would be to utilitze the data, while explicitly condemning the atrocities. But the data should not be used just with a single disclaimer. To further justify their use, the scientific validity of the experiment must be clear; there must be no other alternative source from which to gain that information, and the capacity to save lives must be evident.

Robert J. Lifton has suggested furthermore that citation of Nazi data should not be cited pro forma but must include a thorough expose' of exactly what tortures and atrocities were committed for that experiment. Nazi data should never be mentioned without an accompanying condemnation. The author who chooses to use the Nazi data must be prepared to expose the Nazi doctors' immoral experiments as medical evil, never to be repeated.

More than 40 years have passed since Nuremberg. Despite the preservation of Auschwitz's barracks, railway tracks, barbed wire fences, and crematorium, there is a growing feeling that all remaining traces of the Nazis should now be obliterated. A widespread desire exists to suppress the nightmares of the Holocaust.

Within West Germany itself, there has been a disturbing climate of professional denial by its scientific medical community, with reluctant condemnation of the Nazi doctors and their experiments.

Europe's embarrassing amnesia of the Nazi atrocities enabled the unrepentant Clauberg (upon his release from a Russian jail), to list on his professional business card his position at Auschwitz. Upon returning to West Germany, he held a press conference and boasted of his scientific work at Auschwitz. After survivor groups protested, Clauberg was finally arrested in 1955; however, the German Chamber of Medicine refused to divest Clauberg of his license to practice medicine.[34]

After the war, West Germany allowed Doctor Baron Otmar Von Verschuer to continue his professional career. Doctor Von Verschuer was the mentor, inspiration and sponsor of Mengele. After he executed his victims, Mengele would personally remove the victims' eyes, while they were still warm, and ship them to Von Verschuer to analyze.[35]

Germany's efforts to erase its Nazi-medical past is most recently illustrated by the controversy surrounding a West German doctor, Harmut M. Hanauske-Abel. Dr. Hanauske-Abel wrote an "honest expose" on the German health industry's apathy and complicity during World War II. His expose' was so unpopular in Germany that Dr. Hanauske-Abel was subsequently fired from his hospital position and lost his license to practice medicine in Germany. The same German Chamber of Medicine that staunchly upheld Von Verschuer's medical license rigorously cancelled Abel's license. Today he is a clinician and research scientist at Boston Children's Hospital while his appeal for reinstatement awaits a review in the Supreme Court of Germany.[36]

Europe's collective memory is about to become history. Especially since most of the witnesses have died, and the Nazi saga becomes subject to greater distortions and reinterpretation, our society ought to confront the collective sets of conflicting memories *now*, before the events of this era and its implications fade.

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34. Lifton, *The Nazi Doctors, Ibid.*
35. Seidelman, *Mengele Medicus, Ibid.*
36. H.M. Hanauske-Abel, "From Nazi Holocaust to Nuclear Holocaust: A Lesson to Learn?" *The Lancet*, August 2, 1988.

IX. Epilogue

It would only be appropriate to comment on the victims of the Nazi experiments. Would the victims have approved of our analysis and conclusions? Would they be consoled to learn that their deaths produced life, or would they be mortified to know that their suffering is being exploited by others?

The question is, unfortuantely, an academic one, since the dead no longer have anyone to represent them. Several experts profess to speak on their behalf.

Efraim Zuroff, the Israeli Representative of the Simon Wiesenthal Center in Los Angeles, suggested that if Pozos, Hayward, the EPA and other researchers dedicated their research to the memory of the 6,000,000 Jewish victims of the Nazis, it would serve as a "nice" way of reminding people about the horrible experiments.[37]

Others have suggested that use of the data would serve as a lesson to the world that the victims did not die futilely, and that a post mortem use of the data would retroactively give "purpose" to their otherwise meaningless deaths.

Doctor Howard Spiro, of the Department of Internal Medicine at Yale University, insists that no one honors the memory of the dead victims by learning from experiments carried out on them. Instead, we make the Nazis our retroactive partners in the victims' torture and death.[38]

Lord Immanuel Jakobovits, Chief Rabbi of the British Commonwealth of Nations, and pioneer of Jewish medical ethics, has said that using the Nazi data offers not a shred of meaning to the 6,000,000 deaths. In fact, use of the data would serve to dishonor them even more so.[39]

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37. "Minnesota Scientist Plans to Publish Nazi Experiment on Freezing," *The New York Times*, May 12, 1988.
38. H. Spiro, "Let Nazi Medical Data Remind us of Evil," Letter to the Editor, *The New York Times*, March 24, 1988.
39. I. Jacobovicz, "Some Modern Repsonsa on Medical-Moral Problems," *Jewish Medical Ethics*, Volume No. 1, May 1988.

I would hope that our society need not look to the Nazi data to find "purpose" in the victims' deaths.

The present study is offered in the hope that it will stimulate meaningful consideration of painful and difficult moral positions. It does not pretend to solve a complex moral dilemma, yet another dreadful legacy of the Holocaust.

To the Editor

I have read with interest and appreciation the discussion in the last *Journal* concerning Jewish withdrawal from Yehuda and Shomron for the sake of *pikuach nefesh.* More power to you.

May I raise a point which I did not find mentioned in those articles? The plain reading of the verses in *Yechezkel* 36: 17-21 is that relinquishing or leaving Eretz Yisrael as a result of weakness is considered a *Chilul Hashem:* "...and they desecrated my Holy Name when it was said of them, 'These are Hashem's people but they departed His land.' " Naturally, *pikuach nefesh* cannot supersede *Chilul Hashem.* It strikes me that this point would render the entire discussion — whether returning Yehuda and Shomron may or may not be undertaken due to *pikuach nefesh* — entirely moot. Even the risk to life would not sanction a *Chilul Hashem.*

(While bartering cities in Eretz Yisrael, as King Solomon did (see *Melachim* I 9:11) is definitely not *Chilul Hashem,* the question remains concerning his policy why that was not a contradiction to the *issur* of *lo te-chanem.)*

The halachic application of the point I have raised, relying on the source from the Prophet Yechezkel, would depend on the manner in which any returned territories would be relinquished: If it were done as a response to the intifada, it strikes me that this would constitute *Chilul Hashem.* But if it were done in the context of circumstances in which Israel might suggest a trade of sorts, under conditions which could not be construed by the world as bowing to pressure, then it might be permissible.

I am not drawing any halachic conclusions. Rather, I submit this idea to scholars for their appraisal לשוח ולתת במלחמתה של תורה.

Sincerely yours,
DOVID COHEN
Rav, Congregation Gvul Yaavetz