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The Journal of Halacha and Contemporary Society

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Understanding the Criteria for the Chilazon

Mendel E. Singer, Ph.D.

Background

The Torah commands us to wear a thread of blue, **techeilet**, in each corner of our **tzitzit**.¹ While **tzitzit** serve as a visual reminder to do the mitzvot, the blue thread reminds us of Hashem: “**Techeilet** resembles [the color of] the sea, and the sea the sky, and the sky the throne of glory.”² The Gemara informs us that the **techeilet** dye comes from a bodily fluid (lit: blood)³ of the **chilazon**.⁴ At some point it became forgotten which species is the **chilazon**. Exactly when **techeilet** ceased to exist is unknown. Though some have suggested this happened sometime between 500-700 C.E.,⁵ there is evidence that **techeilet**

1. Bamidbar 15:38.

2. Menachot 43b.

3. Hebrew: **dam**. The **chilazon** has two “bloods”, one that is the life blood, and another that is stored in its own sac. This other “blood” is the source of the **techeilet** dye (Rabbeinu Tam, Tosafot, Shabbat 75a).

4. Menachot 44a, Masechtot Ketanot Masechet Tzitzit Ch. 1, Halacha 10; Tosefta Menachot 9:16.

5. Rabbi Isaac Herzog, “Hebrew Porphyrology”, in Ehud Spanier, ed., *The Royal Purple and the Biblical Blue: Argaman and Tekhelet* (Jerusalem, 1987), p.112. Baruch Sterman, “The Science of Tekhelet”, in Rabbi Alfred Cohen, ed., *Tekhelet: The Renaissance of a Mitzvah*

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continued to be dyed in some places for another several hundred years.⁶

In the 1880's, Rabbi Gershon Henoch Leiner, the Radzyner Rebbe, set out to identify the *chilazon* species. Although widely known for his talmudic expertise (e.g. *Sefer Sedrei Taharot*), he had studied biology, chemistry and engineering, and practiced medicine as well.⁷ Guided by the *simanim* (signs) provided by the Talmud and the *Rishonim*, he traveled across Europe, studying at the famed aquarium of Naples. He decided that the long lost *chilazon* is *sepia officinalis* (the common cuttlefish), believed by some to be the opinion of Rambam.⁸ He wrote three books on *techeilet*, comprising nearly 500 pages. In the words of one of his present day dissenters, "These books still stand as the definitive works on the subject, and form the halachic foundation of any discussion of the topic."⁹ Even today Radzyn produces *techeilet* from the cuttlefish.

Rabbi Dr. Yitzchak Herzog, a brilliant talmudist, Jewish historian, and the Chief Rabbi of Eretz Israel from 1936-1959,

(New York, 1996), p.70.

6. The Radzyner Rebbe bases this on the fact that *Geonim* did not write about halachot that were no longer applicable, and two of the *Geonim* wrote about the laws of *tzitzit* based on *techeilet* (Rav Natronai Gaon, Rav Shmuel bar Chofni). He also notes that Rambam explained in a responsum the practical application of the laws of *techeilet*, implying they were wearing *techeilet* in Lunel. See Rabbi Gershon Leiner, *Sefunei Temunei Chol*, published in *Sifrei HaTecheilet Radzyn* (Bnei Brak, 1999), pp. 5-6. A nearly complete English translation of this *sefer* can be found at <http://www.begedivri.com/techelet/Sefunei.htm>.

7. Chapter on Rabbi Gershon Leiner in Frenkel, Rabbi Isser, *Yechidei Segulah* (Tel Aviv, 1967).

8. Ludwig Lewysohn, *Zoologie des Talmuds*. (Frankfurt, 1858), pp. 283-285.

9. Sterman, *ibid.* p. 73.

was fluent in numerous languages, and **techeilet** was the subject of much of his doctoral dissertation. Rabbi Herzog rejected the Radzyner Rebbe's position, and concluded that the **chilazon** was a member of the **Janthina** species.¹⁰ However, the dye produced by the **Janthina** turned brown, and was not permanent. It appears that Rabbi Herzog did not pursue this matter further, and no **techeilet** was ever produced from the **Janthina**.

In recent years there has been a movement in favor of the **murex trunculus** snail as the **chilazon**. Fueled by the work of Dr. Irving Ziderman, an academic scientist at the Israel Fiber Institute, followers of this theory formed an organization, **Petil Tekhelet Foundation**. Based largely on archeological and scientific evidence, they have been active in publishing, lecturing, and electronic dissemination.¹¹ Their work has, for the most part, gone without critical appraisal.

This article will attempt to elucidate the criteria for identification of the **chilazon**, clarify what is required to meet these criteria, and then evaluate the theory that **murex trunculus** was the **chilazon**. The criteria will be presented in 4 categories: The first section will discuss the primary criteria, based on statements brought by the Gemara for the purpose of describing the **chilazon**. This is followed by an analysis of the Gemara's chemical tests for **techeilet**. Secondary criteria will deal with those characteristics of the **chilazon** which can be deduced from statements made for other purposes. Lastly, there is a section for other evidence which might be brought to lend

10. Herzog, *ibid.*

11. The Petil Tekhelet Foundation maintains an excellent online library on their web site, <http://www.techeilet.co.il>. This library was the source for many of the pro-**murex** arguments cited here. Their great efforts at publicizing the neglected mitzvah of **techeilet** is inspiring.

further credence to, or discredit, a claim.

Primary Criteria

The strongest criteria for identifying the **chilazon** come from the Gemara Menachot, where the subject of *techeilet* is discussed extensively.¹² There, the Talmud cites several sources in order to describe the **chilazon**. These statements are of the utmost importance because they were cited for the sole purpose of describing the **chilazon**. Chazal, knowing which species was the **chilazon**, chose these statements to describe it. As such, in order for a candidate species to satisfy these criteria, it is not sufficient to meet these criteria in a minimalist sense. It must be reasonable that Chazal would have chosen these statements to describe it. In evaluating whether a particular species is the **chilazon**, a strong case must be made for all of the primary criteria.

The primary criteria for the **chilazon** come from the following statements:

Chilazon zehu gufo domeh l'yam, ubriato domeh
l'dag, v'oleh echad l'shiv'im shanah u'bdamo tzov'in
techeilet, l'fichach damav yekarim.¹³

This establishes four primary criteria for the **chilazon**

1. The [color of its] body is like the sea,
2. its form is like a fish,
3. it comes up once in 70 years; its “blood” is used for *techeilet*, therefore
4. it is expensive.

As Rabbi Herzog points out, the first requirement uses the

12. Menachot 41-44.

13. Ibid, 44a.

term *gupo*, meaning body or flesh.¹⁴ It does not refer to the shell, which is usually rendered *nartik* or *klipah*. The terminology here, *gupo domeh l'yam*, (its body is similar to the color of the sea) is similar to the statement just a few lines earlier in the Gemara, *techeilet domeh l'yam*, where it is understood that the color of *techeilet* is similar to the sea. There the comparison is extended to the sky and the sapphire, indicating that *techeilet* is blue.¹⁵ If, just a few lines apart, dealing with the same subject, we find the same expression, *domeh l'yam*, it is reasonable to conclude that the meaning is the same in both cases. If *techeilet* and the body of the *chilazon* are both *domeh l'yam*, then the color of *techeilet* and the color of the body of the *chilazon* must be similar, i.e. both blue. This is supported by the *lashon* (language) of the *braita* of *tzitzit*, which states “*gupo domeh l'rekiah*” (its body is similar to the sky).¹⁶

The body of the *murex* does not resemble the sea. The Petil group argues that the shell of the *murex trunculus* is sometimes covered with a sea fouling. The color of these organisms will vary from place to place, but is sometimes blue or green.¹⁷ This argument fails on three counts: First, the requirement is for the body, not the shell. Second, the color of the sea fouling is only sometimes blue. Since it is usually not blue, the Gemara certainly would not choose to describe it as blue. Third, it is implausible that *Chazal* would choose to identify the *murex trunculus* by giving a description of the sea fouling, which is neither a part

14. Herzog, *ibid.*, p. 70.

15. Although Rashi states that *techeilet* is green (*Shemot* 25:4), it should be pointed out that there were few color designations in the Gemara, and that green represented a color classification that includes blue (Herzog, *ibid.* p.92). Indeed, elsewhere Rashi states the color of *techeilet* resembles the darkened sky at dusk (*Bamidbar* 15:41).

16. *Masechtot Ketanot Masechet Tzitzit*, Ch. 1, Halacha 10.

17. Sterman, *ibid.*

of the creature nor distinctive, since it covers everything else in the area as well.¹⁸

Some have tried to argue that the Hebrew word *yam* can also mean seabed. However, only the shell is colored like the seabed, not the body. Considering that *yam* almost always means sea, and is used as such in regards to the color of *techeilet* in many places, it is hard to believe it could be used to mean seabed here. In fact, the requirement that the color of the body of the *chilazon* be like the *yam* is just a few lines after the Gemara's statement that *techeilet* is the color of the *yam*, which everyone, including the *murex* supporters, agrees means sea.

As for criterion 2, the statement in the Gemara is "briato domeh l'dag." *Briato* means "its form", as explained by Rashi and Rabbeinu Gershom.¹⁹ *Murex trunculus* in no way resembles a fish. Supporters of the *murex trunculus* theory suggest *briato* could mean "its creation," since *murex* spawn like fish. Aside from relying on an interpretation of *briato* that is contrary to the classical *mefarshim*, there is another difficulty. Since most mollusks spawn, it is unlikely that *Chazal* would have chosen this characteristic to distinguish the *chilazon* from other species.

Regarding criterion 3, the requirement of once in 70 years, the Radzyner Rebbe says this means that there are times when the *chilazon* is abundant.²⁰ Likewise, Rabbi Herzog, citing also the *baita* of *tzitzit* that says the *chilazon* comes up every 7 years, is of the opinion that there should be some cycle, though not necessarily 7 or 70 years.²¹ *Murex trunculus* has no known cycle or times of unusual abundance. Petil followers have tried

18. Ibid. p.69.

19. Rashi, *Shita Mikubetzet*, and Rabbeinu Gershom, *Menachot* 44a; Herzog, *ibid.* p.65.

20. Leiner, *ibid.* p.4.

21. Herzog *ibid.* pp. 69,73.

to argue that the Hebrew **sheva shanim** in the **braita** could also mean seven-fold, and Pliny the Elder mentions an optimal seven-month cycle for harvesting **murex** snails.²² This not only ignores the Gemara's expression of 70 years, but also assumes that seven-fold means seven one-month periods. They do not suggest a reason why the base unit should be one month. Clearly the intention of the Gemara and the **braita** is that it is unusual for there to be an abundance, and every seven months is hardly unusual or noteworthy.

Purple dye from all species of **murex**, including **trunculus**, was exceedingly expensive. This was because each snail possessed so little dye that it took about 8,000 snails to make one gram of dye!²³ In criterion 4, Rashi explains that the **techeilet** dye was expensive because of the **chilazon's** rare appearance, and not because of the minute dye quantity.²⁴ This follows from the language of the Gemara where the statement that the dye is expensive is introduced with the word **lefichach**, "therefore", and the preceding statement was about the once-in-70-years appearance of the **chilazon**. Rabbi Herzog indicates that this requirement implies that the quantity of dye in the **chilazon** was not very small, which is inconsistent with **murex** **trunculus**.²⁵

Chemical Tests

In ancient times, there were unscrupulous individuals who

22. R.J. Forbes, *Studies in Ancient Technology*, Vol 4, 2nd edition (Leiden, 1964), p.120.

23. P. Friedlander, "Über den Farbstoff des antiken Purpurs aus **murex brandaris**", *Berichte der Deutschen Chemischen Gesellschaft*, 42(1909):765-770.

24. Rashi on *Menachot* 44a.

25. Herzog, *ibid.* p. 70.

would substitute an imitation *techeilet* dye known as *k'la ilan*, for the real *techeilet*. *K'la ilan* is widely understood to be indigo, traditionally derived from a plant.²⁶ Indigo was the predominant source of blue dye in ancient times, and was both readily available and relatively inexpensive. This counterfeit *techeilet* was virtually identical to the color of the real *techeilet*. Accordingly, the Rabbis proposed chemical tests that could distinguish between the chemical that made up the authentic *techeilet* and the chemical that made up the counterfeit *techeilet*.²⁷ These tests are based on subjecting the dyed wool to a fermentation process²⁸ and ruling it *k'la ilan* if the color worsens.

Fermentation processes were used in the traditional method of dyeing indigo, and caused the blue indigo to change to a yellow solution.²⁹ Chazal used this knowledge to design tests that indigo would fail. The chemical test proposed by Rav Yitzchak the son of Rav Yehudah describes a fermentation vat

26. *Aruch* on *k'la ilan*; *Nimukei Yosef, Baba Metzia* 34a; Herzog, *ibid.*, pp.94-96; *Responsa Ridbaz* v.2, 685.

27. *Menachot* 42b-43a.

28. Herzog, *ibid.* p.102.

29. Indigo, to be able to penetrate wool, must first be converted (oxygen removed) into its chemically reduced form, known as "indigo white" (which is really more of a yellow, or yellow-green). After wool is dipped into "indigo white", it is removed from the solution and turns blue upon exposure to the oxygen in the air. The chemical reduction of indigo into "indigo white" was done by immersion into a fermentation vat. The first of the two tests in the *Gemara* describes such a fermentation vat, which should reduce the indigo, thereby fading the blue color and failing the test. Descriptions of fermentation vats can be found in: Edmund Knecht, Christopher Rawson, and Richard Loewenthal, *A Manual of Dyeing*, Eighth edition, (London, 1925), and J.N. Liles, *The Art and Craft of Natural Dyeing*, (Knoxville, 1990).

typical of what was used in ancient dyeing of indigo. The main ingredient was fermented urine, *mei raglayim*.³⁰ Whether the Gemara's language of "ben arba'im yom" means the *mei raglayim* had to be 40 days old (thereby sufficiently fermented), or whether it could mean the *mei raglayim* had to be from someone 40 days old,³¹ the *mei raglayim*, as Rashi notes, must be fermented.³² *Mei raglayim* of babies under 6 weeks old consists mostly of water, making it a poor choice for fermentation. Thus, the Gemara's use of "ben arba'im yom" could reasonably be understood either way. Regardless, it is clear that the Gemara's chemical tests were based on the chemical properties of indigo and were designed so that indigo would fail the test.

The Petil group uses mucus from the *murex trunculus* snail, and through a process creates indigo, chemically identical to plant indigo. In other words, Petil is saying that real *techeilet* and imitation *techeilet* are the same chemical, just made from different sources.³³ This position is untenable. Obviously, if the Gemara gives chemical tests to distinguish *techeilet* from *k'la*

30. The ingredients of the test, fermented urine, juice of the fenugreek plant and alum, seem puzzling at first glance. It would not appear to be a convenient test if it involves waiting many days for the *mei raglayim* to ferment. However, knowing that this is merely describing a typical fermentation vat used for dyeing indigo, the matter becomes clear. *Techeilet* dyeing was probably done at or near the dye houses. Anyone wishing to test *techeilet* could merely walk over to where indigo was being dyed and put it in a fermentation vat and check it in the morning. The second test uses a hard, leavened dough that has fermented as much as possible (Rabbeinu Gershom, *Menachot* 43a).

31. Rashi on *Menachot* 44a.

32. Rambam, *Hilchot Tzitzit*, Ch. 2, Halacha 5; Tosafot on *Menachot* 43a; Tosafot on *Nidah* 63a.

33. The Petil writings and web site boast (bold print) of how their *techeilet* is chemically equivalent to indigo.

ilan, they cannot be the same chemical! Dr. Allen Kropf, a retired professor of pigment chemistry familiar with the Petil dyeing process, writes in a personal communication, "There should absolutely be no chemical difference between plant and snail indigo. Thus, any chemical test that posits a difference, is not valid, in my opinion."

Therefore, the Gemara's chemical tests cannot possibly be testing plant indigo vs. snail indigo. This leaves two possibilities: plant indigo is not *k'la ilan* or snail indigo is not *techeilet*. Given the wide acceptance of indigo as *k'la ilan*, and the corroboration afforded by the Gemara's tests which are clearly based on detecting indigo, the only conclusion would seem to be that *techeilet* is not snail indigo. Nonetheless, Dr. Roald Hoffman, a Nobel-prize winning chemist, does reach a different conclusion. Recognizing the impossibility of distinguishing plant indigo from snail indigo, he clings to the conclusion that *murex* indigo is *techeilet*. He writes of the Gemara's chemical tests, "These tests don't work, because the chemical is the same."³⁴ Since the Gemara's tests were clearly based on sound scientific knowledge and the tests were actually used ("Rav Yitzchak the son of Rav Yehudah used to test it thus...")³⁵, it would seem rather presumptuous to doubt the veracity of the Gemara's tests. It is the scientist's conclusion that *murex* indigo is *techeilet* that needs to be re-examined.

Even Dr. Irving Ziderman himself, the chemist whose work led to the creation of the Petil group, acknowledges that *murex* indigo is guaranteed to fail the Gemara's chemical tests and therefore rejects the theory of *murex* indigo as genuine

34. Hoffman, Roald, "Blue as the Sea", *American Scientist*, 78 (July/August 1990):308-9.

35. *Menachot* 42b.

techeilet.³⁶ Petil writings have suggested that the chemical tests might be designed to detect impurities that might be found in plant indigo, but are not found in snail indigo. This logic demonstrates a lack of understanding of the nature of the chemical tests. It is clear from the above discussion that the Gemara's tests are based on the chemical nature of indigo, and not any remaining impurities. Thus, the **murex**-indigo used by Petil for **techeilet** will fail the Gemara's tests, rendering it invalid.

However, a distinction must be made between evaluating whether a species is the **chilazon** and assessing whether a particular dye is **techeilet**. Even though **murex** indigo cannot be genuine **techeilet**, this does not by itself preclude the possibility that **murex trunculus** is the **chilazon**. There may be an as-yet-undiscovered, alternative process that creates a different blue dye (i.e. not indigo) from the **murex trunculus**. Therefore, it is still necessary to evaluate whether **murex trunculus** meets the criteria for the **chilazon**.

An interesting side-note: the process used by Petil to make indigo from **murex trunculus** would also work for the other species famous for their use in ancient purple dyeing, **murex brandaris** and **purpura (thais) haemastoma**.³⁷ Indeed, none of the arguments presented in Petil writings appear to uniquely identify **murex trunculus**.

Secondary Criteria

36. I.I. Ziderman, "On the Identification of the Jewish Tekhelet Dye", *Gloria Manis* [Antwerp] 24(4): 77-80.

37. P.E. McGovern, "Ehud Spanier: The Royal Purple and the Biblical Blue (Argaman and Tekhelet): The Study of Chief Rabbi Dr. Isaac Herzog on the Dye Industries in Ancient Israel and Recent Scientific Contributions", *Isis* 81:308 (September 1990):563.

There are other sources from which additional information about the **chilazon** can be deduced. These criteria can lend valuable support to a theory postulating a particular species as the **chilazon**. However, care should be taken in determining the weight placed on these criteria. These criteria were not brought for the purpose of identifying the **chilazon**, as was the case with the primary criteria discussed above. As such, it may be that a particular statement should not be understood literally or exactly. Unlike the primary criteria, meeting secondary criteria should only involve a plausible explanation, and does not have to bring out the uniqueness of the **chilazon**, and may be difficult to understand without already being familiar with the species. There is also the complication that it is not always clear when the Gemara's use of the word **chilazon** is speaking specifically of the **chilazon** from which one can derive **techeilet**. In some of these cases the classical **mefarshim** clarify this, in other cases it remains ambiguous.

Shell grows with it: The Midrash says about the **chilazon**, "its shell (*gartiko*) grows with it."³⁸ This would rule out hermit crabs, for example, since they do not grow shells but rather move into shells they find. This would also rule out species like the lobster that, when outgrowing their shell, discard it and grow another. Elsewhere, the **Midrash Rabbah** says "when it grows, its **malvush** grows with it."³⁹ **Malvush**, garment, would appear to be some form of growth on the exterior of the **chilazon**. The term **malvush**, garment, seems to imply that it is not merely attached, but covers the body of the **chilazon**, or surrounds it. **Murex trunculus** has a shell of its own, but doesn't seem to have anything else that could be termed a **malvush**. It may be that the Midrash is using **malvush** as a synonym for shell. This would make sense in the context of the Midrash, which discusses

38. *Shir HaShirim Rabbah* 4:11.

39. *Devarim Rabbah* 7:11.

the issue of whether the Jews in the desert outgrew their clothes. The **chilazon** is brought as an example to suggest that the clothes grew with the wearer. Referring to the shell as **malvush**, garment, would be consistent with the context. Based on this understanding of **malvush**, **murex trunculus** would appear to meet this criterion.

Hard shell: The Gemara discusses the case of someone who extracts the dye from the **chilazon** on Shabbat.⁴⁰ The verb used by the Gemara in describing the action of the person extracting the dye is **potzea**. **Potzea** is usually understood to mean to crush or crack open.⁴¹ This would imply that the **chilazon** has a hard shell, though this could be an external or an internal shell. Rashi says that the person squeezes (**docheik**) the **chilazon** in his hand to get out the blood (dye secretion). From Rashi's comment we can only infer that squeezing the **chilazon** can make the dye come out. Rashi's use of the word "squeeze" is difficult to understand since it seems to imply a soft substance, not a hard shell. This difficulty in understanding Rashi might be resolved if the **chilazon**, while being held in the hand, has a shell on one side, and flesh on the other. Thus, the person squeezes the fleshy side of the **chilazon**, and in the process may crack open, or crush, the hard shell on the other side. **Murex trunculus** has a hard, external shell that is cracked in order to get the dye out. The shell almost completely encloses the body. This would be consistent with the usual understanding of **potzea**, but not with Rashi's **docheik**.

Dye is better while chilazon is alive: We learn in the Gemara that people try not to kill the **chilazon** when extracting the dye because the dye is better if extracted while the **chilazon** is

40. Shabbat 75a.

41. Leiner, ibid. p.27. Herzog, ibid. p.57.

alive.⁴² From this Gemara we learn that there is a significant difference in the dye when extracted while the **chilazon** is alive and when it is extracted just moments after its death. Petil followers argue that the **murex** secretion (mucus) loses its dyeing power a few hours after the snail's death. This doesn't help since the Gemara is speaking not of a few hours, but mere moments after death. Another problem is Pliny's statement that the **murex** discharges its dye upon death.⁴³ If so, the reason not to kill the **murex** when removing the gland containing the dye is because otherwise the precious few drops of dye will be lost!

Hidden in the sand: The Gemara in *Megillah* states that the verse in *Devarim* 33:19, "sefunei temunei chol" ("hidden treasures of the sand"), refers to the **chilazon shel techeilet**.⁴⁴ It is not clear how restrictive this criterion is. It might only mean that the **chilazon** is considered to be a creature of the sand and that it is hidden. In this case, it would seem to be sufficient to be hidden by its own shell, and that it would not be necessary to bury itself in the sand. On the other hand, it might mean that it is hidden because it is buried in the sand. This is the understanding of the Radzyner Rebbe, citing the *Sefer HaKaneh* (*Hilchot Tzitzit*) as stating that the **chilazon** buries itself in sand with its head sticking out.⁴⁵ The **murex trunculus** lives on the sand, and simply by virtue of hiding its body in its shell could be considered hidden. There are times when it buries itself in the seabed, which might satisfy the general requirement of burying itself in the sand. Given that this is a secondary criterion, **murex trunculus** would seem to

42. *Shabbat* 75a and *Rashi* ad loc.

43. Aristotle, *Historia Animalium*, Book V, Ch. 15; Pliny the Elder, *Naturalis Historia*, Book 9, Ch. 60.

44. *Megillah* 6a and *Rashi* ad loc. See also *Bamidbar Rabbah* 13:16.

45. Leiner, *ibid.* p.29.

reasonably meet this criterion, though not in the manner described by the *Sefer HaKaneh*.

Color of the blood: Rambam states that the “blood” of the *chilazon shel techeilet* is “black like ink.”⁴⁶ Rashi states that the appearance of the “blood” of the *chilazon shel techeilet* is like the color of *techeilet*.⁴⁷ The Radzyner Rebbe reconciles the apparent contradiction between Rashi and Rambam by explaining that when Rashi says *maris damo*, “appearance of its blood,” he is referring to the “blood” after it is prepared for dyeing, while Rambam refers to the original color of the “blood.”⁴⁸ Supporters of the *murex* theory follow the lead of Rabbi Herzog who, unable to find a source to support Rambam’s statement, speculated that Rambam was basing this on an erroneous statement of Aristotle, and dismissed this statement of Rambam.⁴⁹

However, it is not clear that the Petil group’s *techeilet* meets the description of Rashi, either. The *murex* secretion is essentially clear. Left in the sun it turns purple-blue. When it is placed in a chemical solution it turns yellow. It is then exposed to ultraviolet radiation, after which the wool threads are dipped in the solution. The wool turns blue when it is removed from the solution and exposed to the air. Thus, the *murex trunculus* dye is never blue as a liquid, only turning blue after it is already on the garment. This might be reconciled by saying that when Rashi refers to the appearance of the blood of the *chilazon*, he means the dye as it appears on the *tzitzit* after the dyeing is completed. As a secondary criterion, this would seem to be an acceptable explanation of Rashi, although there is still the

46. Rambam, *Hilchot Tzitzit*, Ch.2, Halacha 2.

47. *Chulin* 89a, Rashi.

48. Leiner, *ibid.* pp. 28-9.

49. Herzog, *ibid.* p.77.

problem of dismissing the Rambam on a matter of science.

Treatment for hemorrhoids: The Gemara also tells us that the **chilazon** was used to treat hemorrhoids.⁵⁰ Rabbi Herzog states that modern pharmaceutics knows nothing of the use of a mollusk to treat hemorrhoids.⁵¹ Rabbi Herzog's comments are a bit puzzling. Given that this treatment was from the times of the Gemara, it would be likely that mention of this would be found now only in non-traditional medical sources, what might be deemed today to be "alternative medicine." Additionally, the Radzyner Rebbe had already written that cuttlefish ink has been used as a treatment for hemorrhoids since ancient times.⁵² Indeed, it is still sold today for this purpose.⁵³ As for **murex trunculus**, in ancient times it was considered to be bad for the bowels.⁵⁴

Tentacles bent like hooks: The Mishnah describes a chain hanging on the wall, with something called a **chilazon** attached to the head of the chain.⁵⁵ The **mefarshim** say it was called this because it was shaped like the **chilazon shel techeilet**,⁵⁶ and **Tiferet Yisrael** explicitly states that this was an iron hook attached at the end which was used to hang the chain on a

50. *Avodah Zarah* 28b.

51. Herzog, *ibid.* p.59.

52. Rabbi Gershon Leiner, *Ein HaTecheilet* in *Sifrei Techeilet Radzyn*, pp.292-3. That this was known in the times of the Gemara can be confirmed in three 1st century texts: Pliny the Elder, *ibid*, Book 32:1; Celsus, *De Medicina*, Book 2:29; Dioscorides, *De Materia Medica*, Book 2:23.

53. *Sepia*, cuttlefish ink, is sold in tablet form as a treatment for hemorrhoids. One such store is Vitamin USA of Findlay, OH (www.vitaminusa.com/pharmacy/03-06960-67713.html).

54. Celsus, *ibid.*, Book 2:30.

55. *Keilim*, ch. 12, Mishnah 1.

56. *Idem*, Rav Ovadiah MiBartenura, *Melechet Shlomo*.

wall. The Radzyner Rebbe understands this to mean the **chilazon** has long tentacles that are bent like hooks.⁵⁷ No part of a **murex** snail would fit this description.

Snake-like extensions: The Gemara speaks of red flesh-like warts, forming a snake-like shape in the eye.⁵⁸ This disease is called both **snake** and **chilazon**. The Radzyner Rebbe states that the **chilazon** must have snake-like limbs or extensions, and have red warts.⁵⁹ This description does not fit **murex trunculus**.

Other Evidence

Aside from establishing criteria to identify the **chilazon**, it may be possible to find evidence to corroborate an opinion regarding the identity of the **chilazon**. The following paragraphs discuss this type of evidence in the context of the **murex trunculus** theory.

Archeological evidence: There can be little doubt that **murex trunculus** was used in ancient dyeing. It has long been accepted that **murex trunculus** was used for dyeing purple in ancient times.⁶⁰ There is significant archeological evidence to support this. However, all of the evidence suggests it was used for purple dyeing. There is absolutely no evidence to suggest that **murex trunculus** was used to dye **blue**. In fact, as Dr. Ziderman himself points out, it would be absurd to think that non-Jews would use **murex** to make indigo blue when they could make the same thing easier and cheaper using plants, as was done

57. Leiner, *Sefunei Temunei Chol*, p.27.

58. *Bechorot* 38a-b.

59. Leiner, *ibid.* p.27.

60. P.E. McGovern, and R.H. Michel, "Royal Purple Dye: Tracing Chemical Origins of the Industry", *Analytic Chemistry* 57(1985):1514A-1522A.

all over the world.⁶¹ One might argue that **murex**-indigo was used to make **techeilet**, while the identical but inexpensive plant indigo was used for all other blue dyeing. However, piles of **murex trunculus** shells have been found at many ancient dyeing sites, not just in the vicinity of the Jews. Certainly at those other sites they would only have used **murex trunculus** for purple. The notion that **murex trunculus** was used for making indigo is both illogical and groundless.

Let us examine the archeological evidence: Mounds of **murex trunculus** shells (as well as two related species, **murex brandaris** and **purpura haemastoma**) have been found at ancient dye sites in many locations. These shells were cracked in the exact spot to get the dye. This is solid proof that **murex trunculus** was used in ancient dyeing, but does not imply it was used for dyeing blue. A 13th century B.C.E. potsherd from Sarepta has a stripe of dye that is believed to be from the **murex trunculus** – it is a purple stripe, with no detectable blue (indigo) content.⁶² A vat from a dig at Tel Shikmona has purple **murex** dye on it, not blue as previously described in a brochure from the Petil Tekhelet Foundation; (from the picture it is obviously purple, but the text erroneously said blue). Pliny speaks in great depth about dyeing with **murex**, different shades of purple, red and violet, but not blue. Petil followers point out that at one site the shells of **murex brandaris** and **purpura haemastoma** were together, but the **murex trunculus** shells were in a different area. They leap to the conclusion that **murex trunculus** must have been used for dyeing blue. They are ignoring Pliny (among others), who states that the famed Tyrian purple shade was produced by double-dyeing with **murex**

61. Ziderman, *ibid.*

62. McGovern, *ibid.*

brandaris and *purpura haemastoma*.⁶³ Thus, it was logical that those two species were found together, and apart from *murex trunculus*. How does that suggest *murex trunculus* was used for dyeing blue?

In fact, it is hard to see how chemical analysis of archeological finds could ever support the idea that *murex trunculus* was used for dyeing blue. If the chemical is purely indigo, the natural assumption would be that the source was plant indigo, which was used around the world. If indigo was found with traces of purple, it might be suggestive of *murex trunculus* dye. *Murex trunculus* dye is naturally a mix of purple and blue, and has to be irradiated to induce a photochemical reaction from which blue dye results. If this process were not completed, the dye would be mostly blue with traces of purple. However, *murex trunculus* produces dyes with varying mixtures of indigo and purple (brominated indigo). Some batches of dye may turn out to be almost all indigo, and other batches might turn out to be all purple. Thus, even when the intention is to use the natural purple-blue of *murex trunculus*, a particular batch could turn out to be almost pure indigo. Also, mixing of dyes was common. A mix of blue and purple might be the product of *murex trunculus*, or it might be the mixture of plant indigo with purple dye from other *murex* species. Not only is there no archeological support for the notion that *murex trunculus* was used to dye blue, it may be that it is not even possible for archeological evidence to accomplish this through chemical analysis alone!

It has been suggested that the image of a *murex* shell on a Bar Kochba coin is “apparently irrefutable evidence” that *murex trunculus* was the source of *techeilet*.⁶⁴ Why else would a

63. Pliny, *ibid.*, Book 9, ch. 62.

64. Rabbi Norman Lamm, “New Discoveries and the Halakhah on

non-kosher species appear unless it was used for a mitzvah? **Murex** dyeing was a major industry, with some regions employing half their population in **murex** fishing.⁶⁵ Moreover, the **murex** was a status symbol, associated with wealth and royalty. Bar Kochba was not original: **murex** images showed up on coins from many places, both before and after Bar Kochba's time.⁶⁶ It would appear that Bar Kochba used the **murex** image either for the same reason as others did (i.e. status symbol, commercial importance), or, perhaps, to give his government the appearance of more legitimacy by following the lead of other governments that printed coins with **murex** images.

Linguistic Proofs: Petil followers offer some linguistic arguments in attempting to support their position. The word **chilazon** is a general term for snail, not only in modern Hebrew but in some other languages as well. Aside from not pointing specifically to **murex trunculus**, it is not clear which species **chilazon** referred to at the time of the Gemara. It may have been a general term for mollusk. Did it only include gastropods, or could it have included cephalopods such as octopus and squid? This is unclear.

Petil writings also mention the Septuagint's Greek translation of **techeilet** as **porphyros** (word used for purple or **murex**). Rabbi Herzog raises this issue and dismisses it rather handily.⁶⁷ He points out that everywhere else (including that

Tekhelet" in Rabbi Alfred Cohen, ed., **Tekhelet: The Renaissance of a Mitzvah** (New York, 1996), p.23.

65. Franco Brunello, **The Art of Dyeing in the History of Mankind**, translated by Bernard Hickey (Venice, 1973), pp. 91-92.

66. Found on Corinthian and Tyrian coins (Brunello, *ibid.*, p.92; Sterman, *ibid.*, p.64). Also found on a coin from Taras (Taranto), minted hundreds of years before Bar Kochba (Brunello *ibid.* p.105) – see coin at <http://www.geocities.com/~dougsmit/feac50tar.html>.

67. Herzog, *ibid.*, p.78.

same chapter) the Septuagint uses *iakinthos* for *techeilet* and *porphyra* for *argaman*, and shows how the Hebrew text they must have been given could not have matched our Masoretic tradition, and that the translation was probably given for *argaman*, not *techeilet*.

Some have suggested that Raavya (*Berachot* 9b, Siman 25) equates *techeilet* with *porphyrin*, the Greek word for *murex*, though they do not supply a full explanation of this statement by Raavya and do not mention that in both Greek and Latin the word for *murex* and the word for purple are the same. Let us examine the passage in question. Raavya quotes a *Yerushalmi* (a part that is no longer extant) explaining the time for reciting the morning *shema*: “[from the time when one can distinguish] between *techeilet* and *karti*, between *porphyrin* and *parufinen*, which is a coat that is called in Latin *purpura*.⁶⁸ A logical explanation of this *Yerushalmi* is that the second comparison *bein porphyrin bein parufinen* is a color distinction that would be as hard to tell apart in the dark as blue (*techeilet*) and green (*karti*). *Porphyrin* is from the Greek word meaning purple. *Parufinen*, from the Raavya’s description, appears to be from the Greek *parufaino*, meaning “a robe with a hem or border of purple”,⁶⁸ which is consistent with the *hagahot* where this color is equated with *argaman*. Thus, *bein porphyrin bein parufinen* might mean to distinguish between the purple border of a robe and the rest of the garment.

Petil suggests that this *Yerushalmi* is equating *murex* with *techeilet*. Obviously they cannot mean that *techeilet* is the *murex*, but rather the source of *techeilet* is the *murex*. However, this logic would render the *Yerushalmi* as “between *techeilet* and *karti*, between a *murex* snail and a purple coat.” Aside

68. Liddell-Scott-Jones Lexicon of Classical Greek, <http://www.perseus.tufts.edu>.

from sounding bizarre, it is difficult to see how a purple coat could be the source of *karti*. *Karti* is usually understood to be green, like a leek.⁶⁹ There is a minority view that *karti* is not green, but a different color close to *techeilet*.⁷⁰ However, even if you rely on this view, which is based on a citation from *Aruch* which is no longer extant, to explain a *Yerushalmi* that is no longer extant, the wording still doesn't work. Additionally, this would require equating *karti* with *argaman*, which does not fit with any opinion. There does not appear to be a way to interpret *Raavya*'s statement as equating *murex* with *techeilet*.

Proof by Omission: There is a simple logic that argues against *murex trunculus* as *chilazon*. At the times of the *Gemara*, purple dyeing with *murex* snails was pervasive throughout the region. This may explain why the *Gemara* does not mention the source of the *argaman* (red-purple) dye – everyone knew! *Murex* snails were famous: *Murex* dye sold for more than its weight in gold, its shell appeared on many governments' coins, royal edicts were issued to monopolize use of the dye, and *Pliny* wrote about the *murex* dyeing process. There was even a well-known term for the *murex* that was the same in Greek and Latin (*porphyra, purpura*). If this species was the source of *techeilet*, why didn't the *Gemara* tell us this? Why didn't the *Gemara* say that the *chilazon* was from the family of purple-giving snails? Wouldn't this have been simpler and clearer than the signs provided by the *Gemara*?⁷¹ It is implausible that the *Gemara* would choose to ignore a well known classification term, opting instead to describe the *chilazon* through a set of characteristics from which someone might be able to determine the correct species.

69. See, for example, *Targum Onkelos Bamidbar* 11:5, *Sukkah* Ch. 3 *Mishnah* 6.

70. *Rabbeinu Yonah* on *Berachot* 9b.

71. *Herzog*, *ibid.*, p.60.

Summary

The identity of the **chilazon** was lost for many centuries. Without a tradition as to the correct species, and without a sample of ancient **techeilet**, it might not be possible to identify the **chilazon** with certainty.⁷² However, there are minimum requirements that can be expected to be met in order to seriously entertain the possibility of a particular species being the **chilazon**. **Chazal**, knowing the identity of the **chilazon**, chose several distinguishing characteristics to describe it. For a species to be considered as the **chilazon**, these criteria would have to be clearly met in such a way that it would have been reasonable for **Chazal** to have chosen these statements to describe this species. The Gemara also provides chemical tests to distinguish between genuine **techeilet** and **k'la ilan**, imitation **techeilet**. Any **techeilet** that would clearly fail this test could be rejected with certainty. It would also be reasonable to expect the species under consideration to fit most of the characteristics of the **chilazon** that can be deduced from sources outside of the **sugya** of **techeilet**.

Murex trunculus does not meet any of the primary criteria. Arguments brought in favor of the **murex trunculus** depend

72. The archeologist Yigael Yadin believed he found **techeilet** from the Bar Kochba era (circa 135). The unspun, purple wool that he found was subjected to chemical analysis and found to be made of indigo and kermes, a common red dye made from an insect. This combination was a common, inexpensive substitute for the expensive **murex** purple. It is puzzling why Dr. Yadin thought this was **techeilet**. The wool was just beginning to be spun. It was not attached to a garment. No white threads were intermingled. Despite Dr. Yadin's imaginative drawings of how this wool was actually partially completed **tzitzit**, any connection between this wool and **tzitzit** is pure speculation. See Yigael Yadin, *Bar-Kochba: The rediscovery of the legendary hero of the Second Jewish Revolt against Rome*, (New York, 1971).

on new interpretations of the Gemara that contradict the classical **mefarshim** and even the precise language of the Gemara. Even with these explanations, it could not be reasonably stated that Chazal would have chosen these statements to describe the **murex trunculus**.

The **techeilet** dye produced by the Petil Tekhelet Foundation must fail the chemical tests provided by the Gemara since it is the exact same chemical as **k'la ilan**. Additionally, the Gemara's tests were designed to make indigo fail the test, and Petil's **techeilet** is indigo. Thus, **murex**-derived indigo as **techeilet** is an utterly untenable position. This is acknowledged even by the chemist whose work led to the Petil group's formation.

Murex trunculus meets few of the secondary criteria, and archeological evidence provides no support whatsoever for the proposition that **murex trunculus** was used in the ancient dyeing of blue in general, let alone **techeilet** in particular.

Since **murex** snails were famous for their purple dyeing and there was a well-known term for **murex**, it would seem rather odd that the Gemara chose not to use this term, instead providing descriptive statements that have failed to provide a consensus opinion for many centuries.

In summary, the case for **murex trunculus** as the **chilazon** has little merit. Indeed, the evidence against **murex trunculus** as the **chilazon** is overwhelming.

Gynecological Procedures and Their Interface with Halacha

Rabbi Kenneth Brander

Preface

There is often a perception that any gynecological procedure causing a bloody show creates the status of **niddah**. However, it is only when we have an understanding of the medical procedures and of the halachic paradigms that we can evaluate whether or not the status of **niddah** is conferred. This article attempts to offer insights into the relationship between the laws of **niddah** and gynecological procedures/exams. Moreover the aim of this article is to sensitize the reader to various issues, allowing for a more effective interface between modern gynecological practice and the halachic framework of **Taharat ha'Mishpacha**.

There are three fundamental talmudic **sugyot** that must be explored in order to understand the halachic issues concerning gynecological procedures.

Dam Niddah & Dam Makkah

The status of **niddah** occurs in a woman when blood is hormonally released emanating from the **makor**, the halachic location of menstrual blood. That is, the blood must be from the endometrial lining of the uterus or the endocervical canal. (The exact halachic determination of what is **dam min ha-makor** and whether it includes the endocervical canal will be discussed

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later.) Blood that originates from other locations (i.e. vaginal area) or from a wound, even in the cervix or uterus, does not create a status of **niddah**. The following talmudic passage provides a list of protocols for determining which blood sources do and do not confer the status of **niddah** upon a woman.

How does a woman examine herself? She inserts an absorbent [cloth into the vagina]. If blood is found on the top of the absorbent, it may be known that it emanated from the source [cervical canal or uterus], and if no blood is found on the top, it may be known that the blood emanated from the sides [and not from the cervical/uterine area]. Therefore, the woman is considered **tahor**.] However, if she has a wound in the uterine area [even when the absorbent cloth shows blood on the top], she may attribute the blood to her wound [and is considered **tahor**] However, if [she knows that] the nature of the blood of her wound is different [in pigmentation] from that of the blood that she observes [on the absorbent material], she may not attribute it [to the wound]. A woman is believed when she says I have a wound in the source [cervical or uterine area] from which blood is discharged.¹

The protocols, determining which blood sources create the **niddah** status, are codified in the **Shulchan Aruch**².

If there is an injury in the uterine area, we assume the blood flow is from the injury. If the blood from an injury is discernibly different from the blood of the menstrual flow, we do not automatically assume the blood is from the injury [rather we look at the pigmentation of the blood – if it looks like menstrual blood, it creates the status of **niddah** and if it is blood of an injury, it does

1. Niddah 66a.

2. Yoreh De'ah 187:5,6.

not].³

[Ramo appends] The above statements are referring to situations when a woman has a regular menstrual flow (veset kevuah), for then we are able to suggest, when she is not expecting her menstrual period, that the blood is from an injury, even though we have not determined with certainty that this wound emits blood. If a woman does not have a regular menstrual cycle [veset she-ena kevuah] and we are undecided from where the blood emanates – from the uterus/cervical canal or from the side [a location from which a flow of blood would not create the status of niddah], we still relegate the flow of blood to the injury; for it is considered a s'fek s'fekah. Maybe the blood does not come from her uterus/cervical canal but emanates from the side [from another part of her body, which has no consequence on the issue of niddah]. Even if it comes from the uterus/cervical canal it may be blood from the injury [which does not create the status of niddah]. However, if you know that it comes from the uterus and the woman does not have a regular cycle even though the woman has an injury in the uterus, you cannot assume that the blood is from the injury unless you are certain that the wound emits blood.⁴

3. It has been my experience, and I have corroborated this with gynecologists, that the difference between blood of an injury and blood of the uterus/cervix is recognizable. The blood that comes from a fresh wound is often bright red while that which comes from the uterus/cervix is typically brownish red. While this alone does not establish that it is *dam makkah*, in such an instance an exam is recommended to determine where the blood is emanating from.

4. There are *Rishonim* who disagree with the additional requirement stated by the Ramo (the need to know that the wound emits blood). They suggest that as long as the woman is certain of a

All that has been stated above does not apply during the days she is expecting her menstrual flow, which would normally occur on the thirtieth or the thirty-first day of the month. For if you suggest that on these days it is blood emanating from an injury, she will never be considered a niddah. However if is not a flow that has been seen, rather just a stain, [if there is an injury] you may assume that the stain comes from the injury [even on the thirtieth or thirty-first day], eliminating the need to classify this woman as a niddah.

A woman is believed to state that she has an injury in the location from where the blood is flowing.

Furthermore, she is trusted to state that the flow of blood that is being observed is not coming from the uterus/cervical canal [rather another location that does not create the status of niddah] and remains tehora.

These halachot frequently have a significant impact when they are applied practically. There are many situations in which a woman undergoes a gynecological procedure that leaves her wondering if this has rendered her a niddah. Therefore, by ascertaining that the blood is attributed to an injury, or that the blood is not from the uterus/cervical canal (*min ha-makor*), we can assume the woman is not a niddah.

Rav Shlomo Zalman Auerbach⁵ explains that the talmudic definition of blood from an injury includes blood from the

wound, additional proof that the wound emits blood is not required. See the Rashba *Torat haBayit*, *Dinei k'tamin*, *bayit sh'vi-i sha'ar r'vi-i, daf chof-gimel*.

5. *Nishmat Avraham* 187:2; Rav Shlomo Zalman Auerbach states that the prohibition of niddah is limited to blood emanating from hormonal changes, not blood caused through injury.

uterus (endometrium) or the cervix. In such a case, the woman would not be considered a **niddah**. When the endometrium is somehow compromised by a procedure or injury – even though that same lining is what causes the menstrual flow – what is of critical importance is *what caused the blood to flow* from the lining. If what caused the flow is definitely an injury, then the blood is not **dam niddah**.

Dam niddah is only blood that is discharged due to a woman's hormonal ebb and flow, causing the endometrial lining to slough away from the walls of the uterus. Blood originating from this exact location, which flows due to injury, is considered **dam makkah** and not **dam niddah**.

Rav Wozner⁶ explains that if a woman, during her seven clean days, has a medical procedure which induces blood, if she has already performed a halachically acceptable **hefsek taharah** and a **bedikah** on the first day,⁷ such blood does not compromise the counting of her seven clean days. Once a **hefsek taharah** and a check on the first day have been established, the **chazakah** of **niddah** has been obviated. The blood attributed to an injury even during the seven clean days does not interrupt the preparation to visit the **mikvah**. Therefore, it is possible to have a situation where a woman is bleeding during the seven clean days without contradicting her status of being **tahor**, enabling her to attend the **mikvah** after completing these seven days. This is true for blood that may result from a gynecological procedure as well as blood that a woman feels is emanating from an injury.

6. *Shiurei Shevet HaLevi Siman 187:5* no. 3 u-mikol makom b'sha-at vestah.

7. The need for a **b'dikah** on the first day can often be suspended when there are special concerns such as fertility. This must be done in consultation with a *posek* informed on these issues.

Often, it is apparent from the placement and pattern of the blood on a **bedikah** cloth that the blood is from an injury. For example, when blood is confined to one limited area on the cloth, it is often due to the fact that a woman has sustained an injury in one location. Thus, when a woman does the **bedikah** and touches her wound, it draws blood and shows up on the cloth in that one specific location. In such a situation, the presence of an injury can be ascertained either by the experience of pain three times in one specific location when doing the **bedikah**, or through undergoing an internal examination in which an injury is seen.

In a situation in which a woman observes blood due to an injury and cannot even establish a **hefsek taharah** or the **bedikah** on the first day, she may go to a gynecologist or skilled nurse and allow them to perform the **bedikah**. By examining the vaginal area, the doctor/nurse can perform a physical **bedikah** without touching the place of injury. The preferred way to accomplish this is for the doctor/nurse to perform a physical internal **bedikah** prior to sunset, taking the place of the **hefsek taharah**. The woman then waits in the office until **tzet ha'kochavim**, and the doctor/nurse performs a second **bedikah**, taking the place of the **bedikah** for the first day.

II. Ee-efshar P'tichat Kever B'lo Dam

The Talmud raises the issue of **ee-efshar p'tichat kever b'lo dam**, whenever the uterus is "opened", blood is discharged. Nevertheless, sometimes the uterus is opened (dilated) and no blood is visibly discharged. The Gemara mentions the case of a woman who miscarries early in her pregnancy. Even if this woman does not see blood as a result of her miscarriage, we assume that a flow of blood accompanies the opening of the uterus once the uterus opens a certain amount.

For it was taught in a Baraita, if a woman was in

difficult labor for two days and on the third day she miscarried and does not know what she miscarried (whether it was a fetus or something else or whether any bleeding accompanied the miscarriage) . . . R. Yehoshua says she brings an offering and it is eaten, for it is impossible for the uterus to open without blood emerging.⁸

This statement in the Talmud is concretized by the *Shulchan Aruch*:

If one miscarries within forty days [of conception] we do not consider the discharge to be fetal matter (there is no *tumat yoledet*) yet we are concerned with the status of *niddah* even if no blood was observed. [Ramo adds] because *ee-efshar p'tichat kever b'lo dam* – the uterus cannot be opened without the discharge of blood . . .⁹

However, the above comments of the Talmud and the *Shulchan Aruch* refer to a situation in which the uterus is opened through an internal stimulus. What happens when the uterus is opened externally through a medical procedure? Is there still a concept of *ee-efshar p'tichat kever b'lo dam*? Perhaps the Talmud's concern is limited to the case where an internal stimulus dilates the uterus and not a medical procedure

8. *Niddah* 21b.

9. *Yoreh De'ah* 194:2. This is supported by many of the Geonim and Rishonim, including: *She'ilot Vayikra* 85, *Tur Shulchan Aruch* *Yoreh De'ah* 194, *Ravad Issurei Biah* 5:13, *Rosh Niddah* 3:1, *Hagahot ha'Ramach* 5:13, *Meiri Niddah* 21a, and *Ramban Hilchot Niddah* 7:15 (printed at the end of the *Chidushei haRamban*). Other Rishonim disagree with this conclusion, including: *Rambam Issurei Biah* 5:13, *Rambam's Commentary on the Mishnah*, *Niddah* 21a, *Magid Mishnah Issurei Biah* 5:13, *Ohr Zerua*, *Hilchot Niddah* 343; as well as *Rabbeinu Ovadya M'Bartenura*, *Niddah* 3:1 s.v. *Rebbe Yehudah*.

(external factor). This issue is disputed by rabbinic authorities.

Rav Yechezkel Landau¹⁰ indicates that there is no halachic difference between the uterus dilating due to an internal or an external stimulus. In both cases the law is, **ee-efshar p'tichat kever b'lo dam** – if you open the uterus to some extent, even externally, you create a situation in which blood is assumed to depart from the uterus, even when not visible.¹¹ The Chazon Ish¹² cites opinions that disagree with the **Noda Bi-Yehudah**; and suggest that the idea of **ee-efshar** may only apply if the uterus is opened internally, due to physiological stimuli occurring within the woman. However, when the doctor opens the uterus externally, we do not assume that bleeding automatically ensues. The Chazon Ish is not convinced that every time the uterus is opened externally, blood automatically flows.¹³ Therefore, the Chazon Ish concludes that this issue requires further thought. Nevertheless, Rav Moshe Feinstein¹⁴ rules according to the opinion stated by Rav Landau in the **Noda Bi-Yehudah** that we assume there is a flow of blood whenever the uterus is opened a certain amount, whether by internal or external forces.

The next question is to define the minimal amount necessary for the uterus to be opened for it to be considered **ee-efshar p'tichat kever b'lo dam**. This issue is widely debated.

10. **Noda bi-Yehudah**, Vol. II **Yoreh De'ah** 120. See also the **Pitchei Teshuva** 194:2 and **Avnei Nezer**, **Hilchot Niddah**, siman 224.

11. This opinion is supported by many including the **Arukha Shulchan** 188:51, **Avnei Nezer Yoreh Deah** 224, **Har Tzvi Yoreh Deah** 148 & 154, **Da'at Kohen Yoreh Deah** 79.

12. **Yoreh Deah**, **Hilchot Niddah** 83.

13. Other poskim who concur with this approach include Rav Yaakov Emden, **Sheilat Ya'avetz** 2:5, **Maharsham** IV: 146.

14. **Iggerot Moshe Orach Chaim** 3:100.

According to the Rosh,¹⁵ as well as Shulchan Aruch¹⁶ as understood by R. Dovid ha'Levi in the *Turei Zahav*¹⁷ and R. Shabbetai ben Meir Ha-Kohen in the *Siftei Kohen*,¹⁸ as well as the Gaon of Vilna in the *Biur haGra*,¹⁹ any cervical opening of the internal os²⁰ (the opening of the cervix into the uterine cavity) above the norm creates the halachic dilemma of *ee-efshar p'tichat kever b'lo dam*. The majority of poskim, particularly within the Sephardic community, advocate this approach and therefore any dilation larger than three millimeters is halachically problematic. However, Rav Moshe Feinstein²¹ and others²² present a more lenient opinion, stating that the internal os must be opened at least three-quarters of an inch to create a situation of *ee-efshar petichat kever b'lo dam*.

15. *Niddah* 3:1.

16. *Yoreh Deah Hilchot Niddah* 188:6.

17. *Ibid. s'if katan* 6.

18. *Ibid. s'if katan* 12.

19. *Ibid. s'if katan* 23; see *Ohalot* 7:4 and the commentary of Rabbenu M'bartanura on that Mishnah.

20. While there is an argument of whether *p'tichat kever* is when the external os is dilated or when the internal os is dilated since the entire idea of an external dilation causing *p'tichat kever* is questionable, in these situations we define *p'tichat kever* in the most lenient fashion – namely the dilation of the internal os. See *Sheilot u'Teshuvot Beit Yitzchak* (*Hilchot Niddah* 14:9), *Sheilot u'Teshuvot Da'at Kohen* (*Yoreh Deah* 79), *Har Tzvi* (*Yoreh Deah* 152).

21. *Iggerot Moshe*, *ibid.*

22. See the opinion of Rabbi Avraham Borenstein of Sochatchov (*Avnei Nezer Yoreh Deah* 224). R Shalom Mordechai Shwadron (*Maharsham* 4:146) is even more lenient, suggesting an instrument the size of two fingers is necessary to create a concern of *petichat kever*.

The practical difference between the schools of thought is the following: according to Rav Moshe Feinstein's definition, if a woman has a procedure in her doctor's office and receives no anesthesia, she can be assured that the uterus has not been dilated to an extent that would create the halachic dilemma of **ee-efshar p'tichat kever b'lo dam**. However, a woman will occasionally undergo a special procedure (i.e. D&C) which may dilate the cervix (including the internal os) more than three-quarters of an inch. In such a case, she would be given some form of anesthesia, local or general, to ease the pain involved in dilating the cervix to such a large degree. Even in the hospital, not all procedures will use a dilator that will expand the cervix to such a degree. One should check with the doctor to inquire as to the type of dilator used to determine if **ee-efshar p'tichat kever b'lo dam**, according to the definition of Rav Moshe Feinstein, was achieved, thereby creating a halachic concern of **niddah**.

Rav Moshe Feinstein's approach is based on a comment in the *She'iltot*.²³ There, *p'tichat kever* is defined as an opening equal to the size of a forty-one day old embryo. That size is approximately 19-21 mm., which is 3/4 of an inch.²⁴

III. Defining the Halachic Uterus – *Dam Min Ha'makor*

The definition of **dam niddah**, halachic menstrual blood, is discussed in great detail in the Talmud.²⁵ The understanding of this **sugyah** is a matter of controversy throughout the literature of the **Rishonim** and **Acharonim**.

23. *Parshat Tazria* 85.

24. I wish to thank Rabbi Moshe Dovid Tendler for sharing this halachic reference with me.

25. *Niddah* 41b.

Many²⁶ state that the definition of **dam niddah** includes any blood emanating from the uterus or the cervical canal ending slightly above the external **os** (the opening of the cervix from the vagina).

Due to the enormous consequence of this issue, we follow this opinion and consider any blood emanating from the uterus up to the external **os** of the cervix as **dam niddah**.

IV. Gynecological Procedures

When a woman goes for a standard gynecological exam,²⁷ the gynecologist will first check the outside of her vaginal area (the vulva) to check for abnormal lesions or signs of infection. Then the doctor will use a speculum to check the external **os** of the cervix and the vaginal walls. The speculum is inserted into the vaginal area and never even touches the cervix. When the speculum is inserted, it may pinch the vaginal walls and draw a little blood. This blood is not from the cervix or the uterus and is therefore not **dam niddah**.

Yearly, or when the doctor is concerned about the cervix, a Pap smear will be performed. The Pap smear takes a sampling of the outside of the cervix (ectocervix) and from the beginning of the endocervical canal, which is then analyzed by pathology. The instrument used for the Pap smear has guides on it so that the brush used to collect the sampling of cells will not ascend deep into the cervix, the place that we call the "makor" – the halachic uterus. However the instrument may cause

26. *She'elot u'Teshuvot Bach ha'Chadashot* 34; *Encyclopedia Talmudit* Vol. 2, column 508 footnote 13a; *Shevet haLevi* 188:3 #4 s.v. **u'L**-halacha.

27. As described by obstetricians and detailed in an article written by M. Sara Rosenthal, "The Pelvic Exam" in *The Gynecological Sourcebook* (Lowell House, 1999).

bleeding/staining. Normally, this blood comes from an area outside the one considered the source of **dam niddah**. Furthermore, even if it is **dam min ha'makor**, the blood emitted during this process is **dam makkah**, blood induced through injury.

If the Pap smear is abnormal or inconclusive, many doctors will perform a colposcopy, a procedure whereby a doctor looks at the outside of the cervix through a colposcope. The doctor is seeking to observe if there is any section of the outside of the cervix which appears to be irregular. A biopsy of that irregular section is taken. Photographs may also be taken. During this procedure, a blind scraping of the endocervical canal is also taken and evaluated. Blood appearing due to this procedure is **dam makkah** and does not create the status of **niddah**.

When a woman has irregular bleeding often, an endometrial biopsy is often required. During an endometrial biopsy, an instrument is placed through the canal of the cervix into the uterus to scrape a sample from the endometrial lining of the uterus. This procedure takes place in the area which is classified as **dam niddah**, but the blood that emanates because of this procedure is **dam makkah**, blood caused by the "wound" inflicted with the gynecologist's instrument – **dam makkah m'oto makom**, and is not halachically problematic. Therefore, it does not create a status of **niddah** or affect the counting of the **shiva n'kiyim**. The instrument used in this procedure is much smaller than three-quarters of an inch in diameter, so there is no concern of **p'tichat kever**.²⁸

An important caveat: when an endometrial biopsy or a colposcopy is performed, the doctor should check, prior to beginning the procedure, that there is no blood visible within

28. Even according to poskim who consider a smaller dilation to be **p'tichat ha'kever**, there is no concern with this procedure.

the cervix. This obviates any concern that prior to the procedure there was any blood descending from the uterus/cervix, guaranteeing that all visible blood has been caused by the procedure.

There are situations in which a woman must undergo a D & C (dilation and curettage). A D&C is often performed when there is an irregular endometrial biopsy to remove residual tissue after a miscarriage or occasionally a childbirth, or when a woman is experiencing abnormal menstrual/uterine bleeding and the doctor wishes to affect the lining of the uterus. A D&C procedure dilates the cervix with one instrument and the entire endometrial lining is sampled with another. After this procedure, there is visible blood. While one can dismiss the bloody show due to the fact that it is categorized as *dam makkah*, the dilation of the cervix may create *p'tichat kever*, creating the status of *niddah*. The patient should ask the doctor if the dilation was three quarters of an inch or more. If the response is in the affirmative, the woman becomes a *niddah* immediately. If the D&C is being performed after a miscarriage, and the aborted fetus is more than forty days old, there will be a concern for *tumat yoledet*. This requires a waiting period of fourteen days in which the woman is required to establish a *hefsek taharah* culminating with a visit to the *mikvah* at the conclusion of the waiting period.

V. Infertility Procedures

A similar situation arises when either a laparoscopy or a hysteroscopy is performed to diagnose specific problems of infertility. The doctor checks that the fallopian tubes flow freely into the uterine area. In a laparoscopy, an instrument and camera are placed through the navel, which allows the doctor to see the uterus, ovaries, fallopian tubes as well as the rest of the pelvis and the abdominal area. A dye is inserted into the cervix itself, and the camera follows the dye to see if the fallopian

tubes are fully open and functional. Since the woman is under anesthesia when the cervix is dilated, it may be dilated to such an extent that even according to Rav Moshe Feinstein's definition of *p'tichat kever* (a dilation of 3/4 inch or more) a status of *niddah* is created. However, many gynecologists, even when the patient is under anesthesia, do not dilate the uterus to such a large extent, since the dilation necessary for dye to be injected into the cervix does not require a large dilator. Therefore, when a laparoscopy is performed, a woman should inquire to what extent the uterus was dilated to determine if she is considered a *niddah*. When a hysteroscopy is performed, the cervix needs to be dilated to a much larger extent. Although in such a situation there is a significant chance that the dilation will make her a *niddah*, the question should still be asked regarding the size of the dilator and the extent of the dilation that occurred.

VI. Fibroids and Polyps

A fibroid is a growth that is found within the muscle/wall of the uterus or cervix and causes the wall(s) of the uterus to protrude into the cervical or uterine cavity, corpus of uterus. This can create a rubbing of the walls of the uterus or cervix, creating constant bleeding. Approximately twenty to twenty five percent of reproductive-age women have fibroids with only ten to forty percent of those women experiencing the symptoms mentioned.²⁹

Polyps are growths that begin with a stem from the uterine wall and grow into a mass, which can bleed or can cause bleeding from the polyp rubbing against the wall of the uterus or cervix.

29. "Leiomyomata" by Dr. Chad Friedman found in Volume 1 (page 322) of the Columbus Comprehensive Review Ob/Gyn Review Conference (Prenatal Resources, Inc. & Reproductive Research & Education Association, 1995).

While normally such blood can be dismissed as **dam makkah**, there is research that indicates that the presence of a polyp/fibroid and its rubbing against the walls of the uterus/cervix may cause a hormonally induced release of blood.³⁰ Therefore, the lack of clarity in the establishment of the cause of blood, created by the removal of a polyp/fibroid and blood attributed to its existence, creates a status of **niddah** in a woman.

VII. Pregnancy

Often, during the first three months of a woman's pregnancy, one may observe some spotting. This is often due to implantation of the embryo in the uterine wall. If the spotting is limited to less than a **ketem*** or if found on colored undergarments, the halachic concern is obviated. However, if the bleeding is more significant or the spotting happens on white undergarments (i.e. during the **shiva n'kiyim**) and is more than a **gris** (a stain larger than a dime), this blood is considered **dam niddah** – caused by physiological changes in the woman, rendering her a **niddah**.

There are additional situations in the pregnancy in which the placenta can cause **dam niddah**. One example is **placenta previa**, where the placenta is found in front of the baby, (i.e. between the baby and the cervix) blocking the opening of the cervix. In such a case, the placenta may bleed. The blood emanating from the placenta is considered uterine blood and renders the woman a **niddah**.

30. **Principles and Practice of Clinical Gynecology** (page 549) edited by Nathan G. Kase and Allan B. Weingold (John Wiley & Sons, New York 1983); ACOG (American College of Obstetricians and Gynecologists) Technical Bulletin Number 192 (May 1994, Washington D.C.).

Conclusion

As we strive to be the guarantors of Torah, we must insure that halacha's response to contemporary medical issues integrates a familiarity with procedures in question, and an understanding of the sugyot in Shas and the literature of the poskim dealing with the issue in question. It is through our commitment to such integration that the eternality of the covenantal relationship is guaranteed.

* A stain minimally the size of a dime.

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Are Potato Chips Subject to the Prohibition of *Bishul Akum*?

Rabbi Moshe Rosenstein

Introduction

The potato chip has certainly become a favorite snack food of America and the world at large. In any snack store or vending machine, one can find numerous varieties, flavors and forms of the potato chip. Potato chips are made by slicing raw potatoes into thin slices and deep frying them in vats of boiling oil. As the flavorings and oils used may very well consist of non-kosher ingredients, there is no question that before purchasing or eating the chips one must ascertain that they are in fact kosher.¹ Additionally, there are many other types of deep fried snack foods that are completely not kosher and one must ascertain that the chips are not produced by a company that fries them in the same oil or vats used for non-kosher snack items. There is, however, another possible concern regarding the kashrut of the potato chip. The focus of this article will be to try to ascertain whether or not potato chips are subject to the prohibition of *Bishul Akum*.

Bishul Akum is a rabbinic prohibition that pertains to the consumption of food prepared by a Gentile. The methods of cooking and types of food that are subject to this prohibition are discussed at length in the Gemara, *Rishonim*, *Shulchan Aruch* and *Poskim*, and many criteria and qualifying factors are set

1. See *Iggerot Moshe, Yoreh Deah* Vol. 4 48, 5.

forth. Those criteria that specifically pertain to a food like potato chips will be examined.

Understanding the Potential *Bishul Akum* Issues

Most *Rishonim* accept that the prohibition of *Bishul Akum* was instituted as a means of causing a separation between Jews and Gentiles, so as to avoid socialization which could ultimately lead to intermarriage.² As such, the enactment limited the prohibition to foods that could possibly begin the descent down this slippery slope. There were two scenarios which our Sages assessed as plausible entrees for too close a friendship forming between a Jew and a Gentile. The first was if the eating of the food engendered true feelings of gratitude towards, and in turn a sense of kinship with, the non-Jew for having prepared the food for the Jew to eat. The second was if the food was prepared in such a way that the non-Jew would feasibly invite the Jew to dine at his home, so that they may partake of it together.

The Gemara in *Avodah Zarah* discusses what the base requirement would be for these feelings of gratitude and closeness to be generated, and by extension, where the prohibition of *Bishul Akum* would and would not apply.³ The

2. This is the opinion of the vast majority of the *Rishonim* in explaining the Mishnah in *Avodah Zarah* 35b and subsequent Gemara on the topic. There is one comment in Rashi, however, which seems to indicate that the prohibition was instituted as a safeguard against being fed non-kosher food by the non-Jew; see Rashi *Avodah Zarah* 38a s.v. *Midirabonon*. Indeed this view of Rashi is quoted (*Beit Yosef Yoreh Deah* 113 and *BACH* at the beginning of 112) as a secondary reason for *Chazal* having instituted the prohibition.

3. Although the Gemara itself does not explain the criteria along these lines, this is the way the *Rishonim* interpret the parameters set up in the Gemara. See *Ritva Avodah Zarah* 38a; *Ran Beitza* 8b in *dapei haRif* s.v. "Im tz'la'an nochri"; *Rambam Ma'achalot Asurot* 17:15, cited

Gemara concludes that only foods that fit both of the following criteria are to be subject to the prohibition:

- a. Food that was inedible in its raw state, i.e. prior to its being cooked by the non-Jew.
- b. Food that would be "*Oleh al Shulchan Melachim*" – literally, food that would be served on the table of kings.⁴

Additionally, the food has to have been cooked with no Jewish involvement at all. Although there is a dispute amongst the *Rishonim* regarding to what extent a Jew must be involved in order not to render the food prohibited, all are in agreement that the involvement of a Jew in the cooking process would obviate the prohibition.⁵

Applying the Criteria to Potato Chips: the Development of Common Practice

A cursory analysis would seem to indicate that potato chips that were made only by a non-Jew simply do not fit these criteria and should therefore not be subject to the prohibition of *Bishul Akum*. While potatoes certainly are inedible in their raw state and are only rendered edible by the intervention of the non-Jew, they certainly are not the type food that would be found on the table of kings. Even if a king were to eat a given food as a snack, virtually all *poskim* would agree that that would not make it included in the category of *oleh al shulchan shel melachim*. The food would have to appear, in some form, on

by the *Beit Yosef* and later *poskim*.

4. 37b-38a. The Gemara also includes the criterion of "*nishtaneh mibriyato al yedei ha'ur*," that it is changed in its nature by the fire. See the *Shach* 113, s.k. 1 where he discusses why this is not cited *lehalacha lema'aseh*.

5. *Avodah Zarah* 38-39 and *Shulchan Aruch Yoreh Deah* 113.

the king's *table*.⁶ (The fact that nowadays there no longer exists the kind of royalty that was prevalent in the times of the Gemara and *Rishonim* makes defining the exact qualifications for "oleh al shulchan melachim" somewhat more difficult. This is a point that is discussed extensively among the *poskim*.⁷) This straightforward approach seems logically sound – and indeed is accepted as *psak halacha* by some modern day kashrut organizations who certify potato chips as kosher without a Jew's having taken any part in the cooking process.⁸

6. The Gemara (38a) states "*kol she'eino ne'echal al shulchan melachim lilafet bo et hapat*", "all that does not appear on the king's table to accompany the bread," is excluded from the prohibition. This is generally accepted to exclude those foods that do not constitute the main part of the meal. (See *Shulchan Aruch Orach Chaim* 177, 1 and *Mishnah Berurah* s.k. 1, as well as *Pri Chadash*, Y.D. 133, s.k. 10.) The *Shulchan Aruch Yoreh Deah* 113, 1, incorporates the view of the Rambam (*Ma'achalot Asurot* 17:19) which includes a wider range of foods found on the king's table. The addition of "...*lilafet bo et hapat oh liparperet*" includes foods that are not necessarily the main course of the meal, but also foods that serve as appetizers and accompaniment to the main course. However, this extension would certainly still not include potato chips in the prohibition.

7. It is accepted that what constitutes "oleh al shulchan melachim" depends on the time and place where the food was made. This point is stressed by the *Acharonim* in many instances. See, for example *Pri Chadash* 113, s.k. 7; *BaCH* 114; *Chochmat Adam* 66, 4; *Aruch HaShulchan* 113, 18. Therefore, one may not point to what is or is not brought down specifically by earlier *poskim* to decide whether or not a given food is considered *oleh al shulchan melachim*. In fact, looking at the *poskim* specifically with respect to potatoes, one will find divergent views based on the time period or the place that the respective *Acharonim* were living. See *Aruch HaShulchan* (*ibid.*) who discusses that in his time, potatoes were certainly not considered to be *oleh al shulchan melachim*, as opposed to the *Chochmat Adam*, whom he quotes as applying the *issur* of *Bishul Akum* to potatoes in the time that the *Chochmat Adam* was living.

8. This is the approach that is accepted by such major kashrut

Taking a Closer Look at the Sources and the Possible Difficulties Encountered:

How is “*Oleh al Shulchan Melachim*” Defined?

However, upon further examination of the *poskim*, this commonsense approach may not necessarily be universally accepted. The issue revolves around the following questions: When looking at a given food item to determine whether or not it should be subject to the criterion of *oleh al shulchan melachim*, how do we categorize the food?

- a. Do we assume that this specific food itself, as it is now, must be *oleh al shulchan melachim* in order for it to be prohibited, and if this exact food would not qualify for *oleh al shulchan melachim*, it is permissible?
- b. Do we determine this based on the type of food in question (i.e., a potato), regardless of how it was prepared, in effect saying since this food would be *oleh al shulchan melachim* in *some* form, therefore *all* forms would be prohibited?
- c. Are there any other criteria that determine how to categorize what is *oleh al shulchan melachim*?

The answers to these questions will clearly determine how we categorize potato chips, as a potato is clearly a food that might appear on a "royal table", in a variety of forms.⁹

Expanding the Scope of “*Oleh al Shulchan Melachim*”

If we were to confine the prohibition of *Bishul Akum* to

organizations as the OU, Kof-K, Star-K and others. See below note 33.

9. See note 7. See also *Sheilot Uteshuvot Shevet HaLevi* Vol. 2, 35 and Vol. 9, 23.

food that would itself, in its current form, be *oleh al shulchan melachim*, the scope of the *issur* would be severely diminished, including only the very finest foods, cooked and seasoned to virtual perfection. Certainly most packaged, store-bought, mass-produced food items would be easily excluded. Indeed, the feasibility of such a mass exclusion is exactly what is raised by the *Sheilot Uteshuvot Chesed LeAvraham*¹⁰ in his discussion of what is considered *oleh al shulchan melachim*.

His discussion comes in response to an inquiry involving a certain type of food that was made by non-Jewish cooks, consisting of very thin strips of dough baked on a pan over a flame (perhaps looking similar to spaghetti). It was sold in a ready-to-eat form; however, the usual way for preparing it for actual consumption involved re-cooking it with oils, honey and spices. This final preparation would be performed by a Jew. The one posing the question wondered if it should be included in the prohibition of *Bishul Akum*, taking for granted that the finished product would be fit for *shulchan melachim*. However, the form this food was in at the time of purchase from the non-Jew would most certainly not be fit for a royal table, and therefore perhaps it could be excluded from the prohibition. The *Chesed LeAvraham* states unequivocally that the deciding factor is not whether or not *this* food, as is, would appear on a king's table. Certainly, he responded, if the food in question *could be* seasoned or prepared in a way that would allow it to appear on the table of the king, it is subject to the prohibition of *Bishul Akum*.

The *Chesed LeAvraham* brings the *Shulchan Aruch* itself as evidence. The Gemara discusses to what extent must a food be cooked by a non-Jew for it to be considered halachically

10. Vol. I *Yoreh Deah* Siman 8. Quoted in part in *Darchei Teshuva* 113, s.k. 9.

"cooked" and therefore subject to the prohibition of *Bishul Akum*.¹¹ There is much discussion among *Rishonim* regarding the outcome of this debate in the *Gemara*.¹² The result, on a practical halachic level, is a dispute between the *Shulchan Aruch* and the *Ramo*. The view of the *Shulchan Aruch* (which is accepted halachic practice among Sephardim today) is that if a Gentile cooked the food to a state of "*Maachal Ben Derusai*" (considered for these purposes to be 1/3 cooked¹³) and the Jew finishes the cooking process,¹⁴ the food is nevertheless prohibited.¹⁵ The *Ramo*, (stating the current common practice among Ashkenazi Jews) disagrees and rules that in such a situation the food will be permissible.

Several *poskim* raise a question on the *Shulchan Aruch*: is not a food that is merely 1/3 cooked certainly to be excluded from this prohibition altogether, as it would never be *oleh al shulchan melachim*? The *Chesed LeAvraham* points to this as evidence of his stance. Of course *this* food (i.e. an item cooked only to a state of *maachal ben derusai*) would not appear on the table of kings; however, if it would appear on a royal table with just a little more work – be it seasoning or, as in this case, cooking¹⁶ – it is subject to the prohibition of *Bishul Akum*.¹⁷

11. *Avodah Zarah* 38a.

12. For a general overview of this *machloket*, see *Beit Yosef* on *Y.D.* 113, 9. The central figures of this discussion are the *Rashba* (*Torat HaBayit HaKatzar Bayit* 3, *Sha'ar* 7) who maintains that if the non-Jew cooked the food to a stage of *maachal ben derusai* it is forbidden, and the *Rosh* (*Avodah Zarah* Chapter 2 *siman* 32) who disagrees and rules that a Jew's intervention even at that stage can save the food from being prohibited.

13. *Shulchan Aruch*, *Y.D.* 113, 8.

14. See note 12.

15. Both views can be found in *Y.D.* 113, 9.

16. It is interesting to note that Rav Yaakov Kamenetzky *zt"l* brought

Further Expanding the Parameters

Based on this, one could suggest that perhaps any type of food that is found on kings' tables should now be prohibited in any form. Seeing that we do not look at the actual food in question, but rather at whether it could have been made in such a way as to appear on a king's table, we will now be including that "*min*," or type, of food in the *issur*. In effect this argues that since potatoes do appear *al shulchan melachim*, then potato chips should be prohibited since they *could have been* made to appear *al shulchan melachim* as well.

In fact, this is a view held by some. The *Sheilot Uteshuvot Emek Halacha*¹⁸ maintains that the deciding factor for a food to be considered *oleh al shulchan melachim* is whether that given

a proof from the Gemara to bolster this view in a slightly different way. Here we are discussing something that is under-cooked, yet still subject to the *issur* of *Bishul Akum* because this food would, under other circumstances, be *oleh al shulchan melachim*. The Gemara in *Avodah Zara* 38a discusses a case of a Gentile who had set fire to a marsh, burning it and all its contents down. The Gemara tells us that if there were *chagavim* (species of kosher grasshoppers) that were roasted in this fire, they can be subject to the *issur* of *Bishul Akum* (assuming the non-Jew had intent for cooking these insects with the fire). Rav Kamenetzky contended that certainly these "roasted" grasshoppers would not be *oleh al shulchan melachim* as is – it is not possible for a raging marsh fire to happen to roast an unwitting *chagav* to perfection. Yet the Gemara concludes that the grasshopper, as is, could be prohibited – and not excluded because it would not be *oleh al shulchan melachim*. This insight has recently been published in *Emet LeYaakov al Shulchan Aruch*, *Yoreh Deah* siman 113.

17. See *Sefer Chelkat Binyomin* on Y.D. 113, 9 s.v. *Im Bishlo*, who quotes several other answers to this question. One suggestion, offered by the *Shem Avraham*, is that the food is prohibited only when the Jew himself finishes the cooking process, thereby rendering the food *oleh al shulchan melachim*.

18. *Siman* 50.

type of food, in any form at all or at any degree of preparation, would appear on a king's table. If so, then that entire "min" (genre) of food is prohibited. He uses this line of reasoning to answer the question raised earlier regarding the cooking of a food to a state of "Maachal Ben Derusai" by a non-Jew. Even though that food itself would not be *oleh al shulchan melachim*, since that *type* of food would be, that partially cooked food would be prohibited. This view would certainly dictate that potato chips fall under the prohibition of *Bishul Akum*.

This point, however, is a source of great debate. Many *poskim* disagree and reject this notion out of hand as too inclusive a rule. They cite several proofs from the *Shulchan Aruch* and *Acharonim* that indicate the possibility of one food being considered *oleh al shulchan melachim* and other forms of that same food not being subject to the prohibition of *Bishul Akum*. Indeed, the more lenient approach to this matter is adopted by the major kashrut organizations.¹⁹

19. See, for example Rambam *Hilchot Maachalot Asurot* 17:18; *Kaf HaChaim* 113, s.k. 18 (who quotes others as well); *Aruch HaShulchan* 113, 16 and 18; *TaZ* 113, s.k. 12 quoting the *Beit Yosef* regarding fish that, when salted, is *oleh al shulchan melachim*. See also *Sefer Chelkat Binyomin* 113, s.k. 8 who proves this point from the fact that the *Ramo* 112, 1, rules that rice bread (or bread of various grains that are not of the five which are prohibited due to the prohibition of *Pat Akum*) is not prohibited under the laws of *Bishul Akum* because it is not *oleh al shulchan melachim*. But certainly rice (or the other grains mentioned) can appear on a king's table in other forms. (Indeed, there are *Acharonim* who consider that *Ramo* holds that other forms of rice bread *itself* can at times be *oleh al shulchan melachim*. See note 29.) Therefore, we see that the fact that rice can appear on a king's table does not automatically include any form of rice in the prohibition of *Bishul Akum*.

This issue carries over into the discussions of the later *Acharonim* with many proofs and counter proofs presented on both sides. Rav Yaakov Kamenetzky was a proponent of being stringent regarding this matter. See *Emet LeYaakov al Shulchan Aruch*, Y.D. 113 note 42,

Defining "*Oleh al Shulchan Melachim*"

We now have a partial answer to the question we began with. According to some *poskim*, a food need not be eligible for the king's table in its current state in order for it to be subject to the prohibition. So long as it can be made to appear *al shulchan melachim* it may be considered *Bishul Akum*. Others hold that just because one form of this type of cooked food can be *oleh al shulchan melachim*, that does not automatically include all foods of that type in the prohibition. Based on what we have seen until now, it would seem that potato chips would still be excluded from this edict of our Sages.

There is, however, another angle that must be explored. Despite the fact that a potato chip in no way and with no manner of seasoning or preparation can be made to appear on a king's table, and despite the fact that the appearance of baked or roasted potatoes will not automatically include fried potato chips in the prohibition, there is still one question that requires

where he brings the same proof as the *Shu"t Emek Halacha*. See above, note 16 for another proof brought by Rav Kamenetzky. See *Teshuvot VeHanhagot* 1, 438, for a discussion of the reasons for being stringent on this matter. See also *Am HaTorah*, III:10 pp. 75-89, for a comprehensive analysis of this issue written by HaRav Pesach Eliyahu Falk, *shlit"a*, where he supports the lenient view.

The Orthodox Union's Kashrut Division (OU) maintains a database of internal responsa regarding a myriad of practical kashrut issues and protocol for their staff. Regarding how actual kashrut organizations deal with this issue, see OU Document A-21 and 23, where Rav Herschel Schachter *shlit"a* discusses this topic and presents both sides of the debate, as well as Document A-106 where, in a lengthy *teshuva*, Rav Belsky *shlit"a* strongly supports the lenient opinions on this matter. See also note 33 below. If the reader would like to understand the details of this discussion, it is suggested that he or she read the materials mentioned. To include an exhaustive discussion of all of the issues and proofs involved would easily require a separate article.

our attention.

Most kashrut organizations maintain as an accepted fact that fried potatoes *do* appear in some forms at fancy dinners and affairs.²⁰ One can therefore assume that in today's day and age, fried potatoes would be considered as fit for a royal table. The question becomes, at what point, if any, should we consider

20. This has been established through discussions both with caterers of such events and *mashgichim* (kashrut coordinators) from well-known kashrut organizations that oversee such events. (See note 33 below.) In addition, in OU Document A-23, Rav Herschel Schachter addresses potato chips and potato latkes. In his discussion of the various possible leniencies that may apply to these foods, at no time does Rav Schachter indicate that fried potatoes would *not* generally be considered *oleh al shulchan melachim*. Rav Yisroel Belsky also addresses the issue of whether or not fried potatoes appear at fancy dinners and affairs. In Document A-106, Rav Belsky explains that the "fried" potatoes that appear as side dishes at weddings and the like are in fact fully edible boiled potatoes that are merely placed in oil to deep fry for "a small" amount of time in order to brown them. Hence, the potatoes are not actually considered "fried," but rather cooked and then browned in oil. The OU therefore maintains that these are not, in fact, fried potatoes.

It is possible, however, to view this in a different light. One would have to determine whether the desired result was in actuality a fried potato or a boiled potato browned in oil. If the desired food was in fact a fried potato, and as a matter of convenience or expedience a savvy chef figured out that a pre-boiled and then browned-in-oil potato in fact tastes sufficiently the same as a fried potato, one could certainly posit that this means that fried potatoes *are* indeed *oleh al shulchan melachim*. In a discussion with Rav Belsky addressing this point, however, Rav Belsky stated that there is no question that the desired result is *not* in fact a fried potato. Rav Belsky maintained that fried potatoes do not appear in any form whatsoever at fancy affairs in such a way as to make them considered *oleh al shulchan melachim*. The fact that french fries appear at children's tables at weddings or that deep-fried potatoes have recently begun appearing at events for contemporary, nouveau-style gatherings do not make fried potatoes *oleh al shulchan melachim*. See below note 33.

a fried potato as not fit to be *oleh al shulchan melachim*? It would not be uncommon to find a whole or halved fried potato appearing on a king's table, as well as fried mashed potatoes. There is therefore no question that potatoes appearing in this fashion must be rendered *Bishul Yisrael* by involving a Jew in the cooking process. Given these circumstances, is there any way to make a delineation of the exact width and thickness to which a potato must be sliced, prior to the frying, that would exclude it from the category of *oleh al shulchan melachim* – as opposed to the exact same potato sliced to a width that is just enough thicker to make it qualify?

It may be suggested that each situation should be judged on an individual basis to determine whether or not the specific food in question would be served at a king's table, thereby determining when the prohibition of *Bishul Akum* would or would not apply. However, this does not seem to be the way the *poskim* deal with this issue.

In order to understand the perspective of modern *poskim* on this issue, it is first necessary to examine another disagreement between the *Shulchan Aruch* and the *Ramo*, this time regarding baked products with an egg coating, that are baked by a non-Jew. [The discussion in the *Shulchan Aruch* takes for granted that one is lenient in the laws of *Pat Palter*, bread baked by a non-Jewish baker, and that the bread itself would be permissible.²¹] The discussion at hand pertains to whether or not the layer of egg wash on the outside of the bread baked by the Gentile would cause the entire item to become forbidden due to *Bishul Akum*. The *Shulchan Aruch*²²

21. Regarding the prohibition and subsequent discussions of *Pat Akum*, see *Avodah Zarah* 35b and *Tosafot* s.v. *Michlal d'Ika*; *Rosh siman 27*; *Rambam Ma'achalot Asurot* 13:12; *Shulchan Aruch* Y.D. 112, 1-2.

22. Y.D. 112, 6.

rules that the bread is permissible and that we are not concerned about the fact that the eggs were, in effect, “cooked” by the Gentile. Ramo disagrees and maintains that the eggs are subject to the prohibition of *Bishul Akum*, and therefore rules that the entire bread is forbidden.²³

The implications of this view are underscored by a comment in the *Sheilot Uteshuvot Avnei Nezer*’s discussion of this ruling of Ramo.²⁴ The *Avnei Nezer* points out that a difficulty with Ramo’s reasoning is that this thin smearing of egg on the outside of a bread would not, on its own, be *oleh al shulchan melachim*. It is only together with the bread that it can appear on a king’s table, and at that point, it is rendered halachically insignificant with respect to the bread. Therefore, since the bread itself is permissible, the eggs must be as well. The *Avnei Nezer* offers

23. There are two explanations of the point of disagreement between the *Shulchan Aruch* and Ramo offered in the *Acharonim*. One viewpoint, in the *Aruch HaShulchan* 112, 21, maintains that the subject of the dispute revolves around the ability of the bread to make the eggs “*batel*” (incidental) to it. The position of the Ramo is that anything more than a thin gloss (“*c’mo she anu mosh’chin hachalot b’erev Shabbat Kodesh*, like we smear on the *challah* on *Erev Shabbat*”) will be prohibited.

This opinion, however, is not shared by the other *Acharonim* who deal with this question. See *BaCH*, *Biur HaGra* 14 and *Pri Chadash*, who all explain the *machloket* in a way that is somewhat different from the approach of the *Aruch HaShulchan*. They concur that the discussion is regarding *bitul* of the egg, but that the issue at hand has to do with the broader halachic question of “*chazuasa milta*,” the ability of something (usually a form of *issur*) that is present for aesthetic purposes to become *batel* despite the fact that it is clearly visible. The *Shulchan Aruch* rules that in this instance *chazutah lav milta hi* and the eggs are *batel* to the bread. The Ramo disagrees. However, according to this approach, both the *Shulchan Aruch* and Ramo would agree that a greater quantity of egg, or perhaps even the same amount of egg that was *not* serving a strictly aesthetic function, would be prohibited.

24. *Avnei Nezer* Y..D. siman 94.

no answer to this question and in fact indicates that this line of reasoning is indeed what the Ramo is based on.²⁵

The Ramo's ruling, taken in this light, is now quite germane to our discussion. The Ramo obviously maintains that despite the fact that eggs in this fashion and quantity would not appear on the king's table, since cooked eggs in greater quantity *would* be *oleh al shulchan melachim*, these eggs *are* subject to the prohibition of *Bishul Akum*.²⁶

[Perhaps it is possible to put forward an alternate approach to understanding the Ramo's ruling. In an OU document regarding this matter,²⁷ it has been suggested that perhaps the Ramo's intention was to prohibit this egg because it *can* actually be *oleh al shulchan melachim* – as it is, on that bread. This would have several implications. Any bread product that is not *oleh al shulchan melachim* and has an egg glaze would now be permissible. In addition, this line of reasoning would also limit the scope of the Ramo's ruling to eggs that would *themselves* be *oleh al shulchan melachim*, albeit only as a glaze on bread, thereby excluding a lone thin layer of egg that would not be served by itself.

There may be, however, difficulties with this approach. Despite the fact that this Ramo is discussed extensively in the

25. Ibid. In part based on the strength of this question, the *Avnei Nezer* actually disagrees with the Ramo's ruling on this matter and upholds the more lenient opinion of the *Shulchan Aruch*.

26. It should be noted that even the *Shulchan Aruch*, who disagrees with the Ramo on the halacha regarding the bread with an egg glaze, does so for other reasons. This line of reasoning posited by the *Avnei Nezer* for disagreeing with the Ramo does not appear in any of the other *poskim* mentioned in note 23.

27. Document A-63 regarding a French toast product that consists of bread and eggs cooked by a non-Jewish company that does not have a Jew involved in the cooking process.

Acharonim, this suggested explanation of the Ramo does not seem to be mentioned.²⁸ Furthermore, if this is indeed the intention of the Ramo, it seems that he should have to include in his ruling a vital caveat: that this prohibition applies only to bread that in fact would be *oleh al shulchan melachim* itself. Certainly if the bread would not appear on a king's table, the egg atop it would now be considered merely an additional thin layer of egg that would be excluded from the prohibition of *Bishul Akum*. This differentiation is distinctly absent in the ruling of the Ramo. In addition, despite the fact that the *Acharonim* discuss the possibilities of applying the prohibition of *Bishul Akum* to bread foods that are or are not *oleh al shulchan melachim*, this seemingly important distinction does not seem to be made.²⁹ Perhaps it is for these reasons that Rav Yisroel Belsky, did not fully agree to this explanation of the Ramo's ruling.^{30]}

28. See notes 22 and 30. Following a similar line of reasoning, the *Avnei Nezer* disagrees with the Ramo – but even he does not attempt to learn that this is what the Ramo himself meant to say.

29. The discussion in the *Acharonim* revolves around the ruling of the *Shulchan Aruch* and Ramo in 112, 1, where the guidelines of the prohibition of *Pat Palter* are delineated. The *Shulchan Aruch* rules that only breads made of the five principle grains are included in the prohibition (and subsequent leniencies). Breads made of rice or millet, however, are excluded from the prohibition of *Pat Palter* and would also be excluded from the prohibition of *Bishul Akum*, provided that they are not *oleh al shulchan melachim*. See *Chelkat Binyomin* 112 s.v. *ve gam aino assur* for a discussion of how the *Acharonim* interpret this ruling.

30. See OU Document A-63, where this explanation of the Ramo's ruling is analyzed: "...seemingly the reason there is *bishul akum* for the glaze on bread is because bread is served at *shulchan melachim*, but if French toast is not served at *shulchan melachim* there cannot be *bishul akum*... Rav Belsky was unsure of [the discussed] lines of reasoning..."

Applying the New Standard

The ruling of the Ramo in the above case would now help establish a different set of parameters for what can be considered *oleh al shulchan melachim*. As mentioned earlier, there are opinions that maintain that the deciding factor in determining this criterion is whether or not this food type could be *oleh al shulchan melachim*. However, this view was not widely held among the poskim. Hence, just because a given food type can be *oleh al shulchan melachim* in one form or via one method of cooking, that would not automatically include all other forms of that same food type. It would seem that a given food type that is also prepared in a fashion that could be *oleh al shulchan melachim* will be prohibited, even if this specific food could in no way be made to appear on a king's table. The determining factors seem to be

- Food type
- Method of cooking employed.

While this distinction is subtle, if we were to take this principle and apply it to the case of potatoes, we would now come out with a different ruling altogether. Since a fried potato halved or cut into sizable chunks would be considered *oleh al shulchan melachim*, then the mere fact that such a potato is sliced down to a thinner size should not change the halachic status of that potato. A potato chip is nothing other than a fried potato, albeit cut to a different size than what one would normally expect to find *al shulchan melachim*. The same logic applied by the Ramo when he ruled that the thin layer of egg on the bread would be prohibited because still and all it is a cooked egg,³¹ would also have to prohibit the potato chip.³¹

31. As mentioned earlier, the *Shulchan Aruch* and *Avnei Nezer* both disagree with the ruling of the Ramo on the matter of the egg coating

Halachic Rulings Issued by Contemporary *Poskim*

There is scarce mention of the potato chips issue in contemporary halachic literature. However, based on what is available, it seems that there are three primary approaches to dealing with the *Bishul Akum* issues presented by potato chips.

As mentioned in our initial analysis, many kashrut organizations adopt the stance that potato chips are simply not *oleh al shulchan melachim* and therefore are easily excluded from this prohibition. The kashrut company *poskim* who address this issue focus their attention primarily on the opinion that maintains that an entire food-type may be included in the classification of *oleh al shulchan melachim* based on one food of that type's inclusion. Much of the discourse centered on permitting potato chips revolves around disproving this opinion

on top of bread (see note 23 for a discussion of what the grounds for disagreement are between the *Shulchan Aruch* and *Ramo*). But it seems that among the Ashkenazi *poskim*, the *Avnei Nezer* is a lone dissenting opinion on this matter. The *BaCH*, *Gra* and *Aruch HaShulchan* cited above all seem to agree with the *Ramo*. And indeed common practice amongst the major kashrut organizations seems to be stringent and they do not automatically permit an egg-glazed bread based on the *Shulchan Aruch* or *Avnei Nezer*. The *Aruch HaShulchan* agrees in principle with the *Ramo*, and for purposes of the discussion of potato chips would seem to agree entirely with the *Ramo*'s ruling. However, regarding the specific question of the egg glaze, the *Aruch HaShulchan* learns that even the *Ramo* would permit the types of glazes found nowadays on *challah* and the like. It should be noted that even *this* leniency is not relied upon by many major kashrut agencies. See OU Document A-63 where the thin egg glaze on commercial white bread is discussed. "Rav Belsky said that although the simple reading of the *Ramo* does not agree with *Aruch HaShulchan*'s interpretation, the glaze on white bread is nonetheless permitted because it is barely visible and is not the "*b'en*" which *Ramo* refers to. Thus, although we do not agree with *Aruch HaShulchan*, we can rely on it in this case. (However, the egg in French toast is quite visible and does not qualify for this *heter*)."

and limiting the prohibition only to actual foods that themselves would be found on a king's table, thus not allowing one *type* of cooked potato to cause *all* potatoes to be prohibited. This view, specifically as it pertains to potato chips, is discussed in great detail and championed by Rav Pesach Eliyahu Falk, *shlit"a* and by Rav Yisroel Belsky, *shlit"a* of the Orthodox Union Kashrut Division.³² They maintain that the fact that *potatoes* can appear *al shulchan melachim* has no direct bearing on the specific food of potato chips.³³

Others assert that an entire type of food is included in the prohibition of *Bishul Akum* if that food, in *any* form, could be served *al shulchan melachim*. As mentioned earlier, following that line of reasoning, the potato chip would certainly be included in the prohibition. This is explained in the name of

32. See notes 19 and 20 above.

33. In addition to the approach of the OU (discussed extensively above in note 19), this is the view adopted by several other kashrut organizations as well, who require *bishul Yisrael* for fried potato foods like potato *latkes*, yet do not require a Jew's involvement in the cooking of the potato chips which they certify. This is the approach adopted by the Star-K [related to the author in a conversation with Rabbi Avraham Mushell (in the name of Rav Moshe Heinemann, *shlit"a*)] and the Kof-K [related to the author in a conversation with Rabbi Pinchas Juravel]. Rav Belsky is singled out in the text above only because he is the only *posek* from the kashrut companies mentioned whose *teshuvoth* (in writing) the author has in hand. In a personal conversation with the author [May 31, 2001], Rav Belsky stated that he maintains that no truly fried potato product is actually *oleh al shulchan melachim* nowadays. Based on a great many discussions with caterers and kashrut companies, Rav Belsky explained that any fried-looking potato food found at fancy affairs is either not actually considered fried (see above note 20), or is not actually considered *oleh al shulchan melachim* on its own. Rav Belsky added that were it in fact the case that fried potato foods *did* appear *al shulchan melachim*, perhaps the OU might insist on *Bishul Yisrael* for its potato chip products.

Rav Yaakov Kamenetzky *zt"l*, who cites potato chips as an example of a food that would be prohibited due to these guidelines for what is considered *oleh al shulchan melachim*.³⁴ This seems also to be the view of Rav Shmuel HaLevi Wosner *shlit"a*, who expressly includes potato chips in the prohibition of *Bishul Akum*.³⁵

This viewpoint is adopted by some kashrut organizations as well, who therefore do require the potato chips they certify to be rendered *Bishul Yisrael* by a Jew's involvement in the cooking process.³⁶

However, as we have shown, there is another possible approach to this issue. It is conceivable for one to disagree with the all-inclusive approach, but yet not look only at the actual food in question when determining its status as *oleh al shulchan shel melachim*. If the food type, coupled with the cooking process employed, would end up being *oleh al shulchan melachim* it might be considered *Bishul Akum*. Indeed, it appears from rulings issued by Rav Moshe Feinstein *zt"l* that he did not feel that entire *types* of food could be included in the prohibition merely because that food-type could appear in some form *al shulchan melachim*.³⁷ Yet (in a responsum published

34. *Emet LeYaakov Al HaShulchan Aruch Y.D. Siman 113*. Rav Raminetsky includes other foods in this category as well. He cites salami, for example, as a food that itself would not be *oleh al shulchan melachim*, but since meat that has been cooked would be found on a king's table, salami would be subject to the prohibition as well.

35. *Shevet HaLevi* vol. 9, 23. HaRav Wosner simply deals with the issue of whether or not the *min* (genre) of potatoes appears *al shulchan melachim*, albeit only as a "parperet."

36. This is the practice adopted by the Kahal Adas Jeshurun (KAJ) kashrut division [related to the author by Rav Edelstein].

37. See, for example, *Iggerot Moshe Yoreh De'ah* Vol.4, 4 where Rav Moshe *zt"l* says that he agrees with what his grandson, Rav Mordechai

posthumously) Rav Moshe Feinstein ruled that potato chips would indeed be subject to the prohibition of *Bishul Akum*.³⁸

Tendler, says regarding bagels. Even if after the dough is boiled it would be edible, it would certainly not be *oleh al shulchan melachim* as is and is therefore permissible. This is despite the fact that many cooked dough products can indeed be *oleh al shulchan melachim*.

38. *Iggerot Moshe Yoreh Deah* Vol. 4, 48, 5 in a *teshuva* to his son, Rav Reuven Feinstein, *shlit"a*. In the *teshuva*, Rav Moshe states that certainly one can assume that if a potato chip brand is certified by a reliable *mashgiach* (or for our purposes, a kashrut organization), then one can certainly rely on the fact that they have taken care of this issue as well as the other kashrut issues involved. He concludes by saying that if there are those who are lenient in this matter and eat potato chips that are not *Bishul Yisrael*, one need not rebuke them for this act.

This aside, it is clear from the *teshuva* that Rav Moshe considered that potato chips are indeed subject to the prohibition of *Bishul Akum*. One may be tempted, however, to suggest somewhat of a difficulty in trying to ascribe this line of reasoning to Rav Moshe's ruling. Elsewhere, Rav Moshe discusses whether or not bagels should be subject to the prohibition of *Bishul Akum*, since in making bagels, the dough is boiled in water prior to being baked. Rav Moshe gives several reason why the prohibition does not apply. Among the reasons discussed, Rav Moshe rules that even if the boiled dough would be edible prior to being baked, it would still not be prohibited, even at that stage, inasmuch as boiled dough in that form is not *oleh al shulchan melachim*. This would seem to run contrary to the argument set forth above. Surely boiled dough foods (such as noodles or *kreplach*) would be considered *oleh al shulchan shel melachim*, at least as an appetizer or side dish. Thus, one would think that boiled dough products of any form, even those that are not *per se* fit for a king's table, would be prohibited. However, from Rav Moshe's bagel ruling, we see that this in fact is not the case.

Nevertheless, a rather simple distinction between the two cases might be suggested. Boiled chunks of bagel dough are surely not to be considered "*kreplach*, just a little bit thicker," nor "thick pasta." It is a different food altogether, with different ingredients in the dough and a different constitution entirely. When it comes to the similarity between the oil-fried potatoes found at fancy dinners and potato

Rav Yosef Shalom Elyashiv *shlit”a* has also ruled that potato chips that are not rendered *Bishul Yisrael* are to be prohibited because of *Bishul Akum*.³⁹

Summary and Conclusion

In discussing the application of the laws of *Bishul Akum* to the potato chip it would seem that there are three ways one can view the criterion of *oleh al shulchan melachim*. One can assess each individual food that is presented and decide whether or not it would appear on a king’s table. By this yardstick, we can be certain that a food like potato chips would be excluded from the prohibition, as they would certainly never appear as a mainstay of a king’s meal. This appears to be the accepted norm in many major kashrut organizations.

Alternatively, one can include in the prohibition any food whose general food-type can be made, in any way, to appear *al shulchan melachim*. Obviously, this approach would include potato chips in the prohibition. While this position seems to have support among the *poskim*, specifically with respect to the issue of potato chips, it seems that only a few major kashrut organizations subscribe to such a view.

If, however, for inclusion in the prohibition we don’t consider the entire type, or just the particular food in question, but rather apply broader, more clearly defined rules, a variant conclusion will be reached. If the defining factors in determining

chips, this is not at all the case. We are dealing with the exact same food and the exact same cooking process, the only difference being that the chip is sliced to a thinner width. This distinction was clarified by R. Shmuel Felder *shlit”a* in a conversation with the author.

39. This ruling was made in an unpublished *teshuva* faxed to Rav Shmuel Felder *shlit”a*. Rav Felder related to the author in a personal conversation that the reasoning for this *p’sak* was not necessarily the same as Rav Moshe’s, however the *p’sak halacha* was clear.

a food's inclusion in the category *oleh al shulchan melachim* are (a) the general food type *combined with* (b) the method of cooking employed, we may conclude that there are foods which themselves would not actually be found on a king's table but nonetheless may be included in the halachic category *oleh al shulchan melachim* and may therefore be prohibited. The potato chip is one such food.⁴⁰

40. It is important to note that even according to those opinions which maintain that the potato chip is subject to the laws of *Bishul Akum*, and even if the chips were in fact produced by the potato chip company without the involvement of a Jew, there *may* be other mitigating factors that would still render the chips acceptable. These may include the fact that commercial foods are mass produced and cooked in ways very different from the cooking methods available in the times of *Chazal*. *These other factors are discussed in the poskim and are not intended to be the subject of this article.* The question we have discussed is limited to the applicability of *Bishul Akum* in general – not the actual kashrut status of a certified-kosher store-bought potato chip.

Regarding the other factors involved, it may be instructive for the reader to see (among many other sources) *Birchei Yosef* Y.D. 112, 9; *Darchei Teshuva* ibid. 13 and 16; *Shu"t Minchat Yitzchak* 3, 26 and 72; *Shu"t Teshuvot VeHanhagot* 1, 470 (where he quotes a printed letter from the Chazon Ish) and 3, 247; *Mesorah* vol. 1, pp. 93-94, where Rav Menachem Genack discusses Rav Moshe Feinstein's opinions regarding factory-cooked foods.

It should be noted, however, that it is clear from the *Iggerot Moshe* cited above (note 39) that Rav Feinstein did *not* accept any other mitigating factors as a means of permitting potato chips that were cooked without any Jewish involvement. Rav Feinstein states that he sees only one "leniency" arising from such mitigating factors. He rules that [even though normally if one were to see his friend eating a non-kosher food, one would be required to stop the friend from doing so and make clear that the food in question was in fact not kosher,] in the case of potato chips, one need not "rebuke" another for eating chips produced in a factory where there was no Jew involved in the cooking process. Likewise, in the *teshuva* from Rav Wosner (cited in note 35) he addresses the issue of factory-produced food

being excluded from the prohibition of *Bishul Akum* and clearly states that he does not feel one should rely on that leniency (at least with respect to the issue of potato chips).

As a final note, one should not apply the halachic issues discussed in this article to the popular snack food Pringles. They are made from potato flour and are not subject to the same *Bishul Akum* issues as potato chips.

Preventive Medicine

Dr. James DiPoce and
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Introduction

Prevention, as a function of the practice of medicine, seeks to increase longevity and to improve the quality of life. Primary prevention is directed at minimizing the risk factors for the development of disease. Secondary prevention consists of screening in an attempt to detect disease early in its course, to thereby improve outcome. The purpose of this paper is to address whether halacha (Jewish Law) views preventive medicine as obligatory, advisory, volitional, or constrained. While many of these preventive measures have no undesirable risks, does an inherent, low level of risk (such as exposure to radiation or injection of live attenuated organisms or proteins with a small potential risk of complication) impact on halacha?

Limitations On The Permission/Obligation To Heal

One of the principal sources in religious thought for the permission to heal is derived implicitly from a verse in the

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Torah "v'rapo yirapei [and heal, he shall heal]"¹ requiring one to provide compensation for the medical fees incurred after injuring one's neighbor. Nonetheless, the parameters of this permission are debated. For example, in his commentary on the Torah,² Ibn Ezra contends that one has permission to treat only externally inflicted injury. He reasons that internal illness is divinely decreed and to take measures against such illness could be construed as an affront to the divine will.³

It seems likely that the Ibn Ezra believes just as faith is the only recourse for an internal illness, one may only rely on faith if one is not ill at all, with obvious implications for preventive medicine.

Interestingly, a form of preventive medicine emerges from Ibn Zarza⁴ in his commentary on the Ibn Ezra known as the *Mekor Chaim*.⁵ Ibn Zarza states that the implication of "I am the L-rd your healer," is that the intention of the laws of ritual impurity, kashrut, and the laws governing cohabitation is disease prevention, that is, to ensure one's health and increase the potential to serve *Hashem*.⁶ Hence, by following *Hashem*'s mitzvot, one is afforded protection from illness, not in a metaphysical sense, but rather in a very direct manner. A new light is shed on disease prevention; namely, mitzvah observance as a direct preventive health measure. The Ramban, in a more

1. *Shemot* 21:19.

2. Ad loc. s.v. "v'rapo yirapei".

3. Rabbeinu Bachaye in his commentary on the Torah draws the same conclusion.

4. Valencia, circa 1360's.

5. Ad loc.

6. See also the *Kli Yakar* who has a similar approach to this verse.

limited context,⁷ also gives a rational explanation for the laws of kashrut particularly regarding fowl, stating that the reason for the mitzvah is that non-kosher birds are hazardous to one's health.⁸ But Abarbanel takes issue with Ramban, charging, "If this is so, then the Torah is reduced to a book of medicine, and a small one at that."⁹

In contrast to the position of the Ibn Ezra, normative halacha has mandated the treatment of all illness, including internal illnesses, without reservation. The *Shulchan Aruch*¹⁰ rules that it is a mitzvah to desecrate Shabbat for any life-threatening illness.¹¹

In his commentary on the Torah, Ramban postulates that reliance on medicine is second best to faith,¹² although in practice he states that it is a mitzvah to seek medical treatment (*Torat*

7. *Vayikra* 11:13.

8. In *Vayikra* 26:11, Ramban writes, "The function of the physician is only to warn or instruct [regarding consumption of] food or drink." Apparently, he maintains that the essential purpose of medicine is prevention of disease by fostering health-conscious lifestyles.

9. *Ibid.*

10. *Orach Chaim* 328:3.

11. See Bleich JD, Rosner F. "The Obligation to Heal in Jewish Tradition," in *Jewish Bioethics*, Hebrew Publishing Co.: NY 1979, p.43, n. 100, where Rabbi J. David Bleich cites an exhaustive list of authorities who unequivocally rule that halacha dictates the treatment of internal illness. Among these authorities are *Responsa Tashbetz* 3:82; *Bach*, Y.D.336; *Magen Avraham*, O.C. 328:6; *Responsa Chatam Sofer*, O.C. 176; *Binyan Tzion* #111; *Kitzur Shulchan Aruch* 193:3; *Ma'aseh Avraham*, Y.D.# 55; *Kenaf Ra'anannah*, O.C. #60; *Birkei Yosef*, Y.D. 336:2; *Yabia Omer*, vol. 4, C.M. 6:4.

12. *Vayikra* 26:11. "For it is not the nature of man to use medical cures, but they have accustomed themselves to them." See also *Berachot* 60a.

HaAdam).^{13,14} Ramban is stating a philosophy that in an ideal world, perhaps the Messianic era, faith is the most appropriate way to approach illness.¹⁵ In the same vein,¹⁶ Tosafot and Rashba state explicitly that the verse, "...and heal, he shall heal", grants the permission to heal both man- and heavenly-induced illness.

Referring to a comment by Rashi in his Torah commentary, Rav Chaim Palagi¹⁷ captures the idea of acting in opposition to the divine will in order to foster preventive health. Rav Palagi points out that Moshe Rabbeinu himself spearheaded a preventive health measure seemingly against the divine will. The Torah states,

Hashem spoke to Moshe, saying "Remove yourselves from this assembly and I shall destroy them in an instant." They fell on their faces. Moshe said to Aharon, "Take the fire-pan and put on it fire from the altar and *ketoret* [incense] – and go quickly to the assembly and provide atonement for them, for the fury has gone out from the presence of *Hashem*, the plague has begun."¹⁸

13. *Kitvei HaRamban* II, p. 43.

14. See *Avnei Nezer*, *Choshen Mishpat* 193, who quotes his father as allowing a patient to follow the simple reading of the Ramban on the Torah and refuse medical treatment.

15. See *Emet L'Yaakov* (Rav Yaakov Kamenetzky) on this verse. Moreover, the *prima facie* interpretation of the Ramban's statement in his commentary on the Torah appears to contradict a ruling in *Sanhedrin* 17b, which states that a scholar must not reside in a city that lacks a physician. Other examples in Talmud where scholars availed themselves of physicians include *Gittin* 56b, *Bava Metzia* 85b. See the above-cited article by R. Bleich for a further discussion of these sources.

16. *Bava Kamma* 85a.

17. *Refuah v'Chaim*, Chapter 5, subheading 53, p. 92.

18. *Bamidbar* 17:11.

It is clear that Aharon's lighting the *ketoret* staved off a divinely-decreed plague. Thus, it would seem that Moshe Rabbeinu, of his own accord, engaged in an effort to prevent the spread of a plague which *Hashem* had decreed upon the entire assembly.¹⁹

The Extension To Preventive Medicine

One may contend that perhaps the obligation to heal applies only to the sick and not to the healthy; i.e. is there any obligation or even permission to prevent illness before it occurs? One early discussion of this topic is found in a Gemara in *Shabbat*,²⁰ where Rav Huna chastises his son Rav Chisda for not attending a lecture about preventive health matters, which he considers not merely a secular topic but akin to Torah study and mitzvah observance. Another text in *Shabbat*²¹ discusses the fundamental issue of taking proactive steps toward maintaining one's health as opposed to relying solely upon faith. The Gemara asks, "When is a man judged for his actions?" to which Reish Lakish responds, "When he crosses a bridge," which Rashi explains, connotes anything dangerous. The Gemara continues,

Rav never boarded a boat with idol-worshippers lest one of them had a judgment against him and they would die together. Shmuel never boarded a boat without an idol-worshipper since the Satan cannot rule over two nations at once. Rav Yanai checked the boat [Rashi: for

19. This episode should be compared with *Hashem*'s direct command to Moshe to make a copper snake for the people to look at to be cured from a plague of snakes. In that case, it is clear that their protection was due to faith in *Hashem* brought about by looking upward beyond the copper snake, and to Heaven.

20. 82a.

21. 32a.

a hole] and went aboard. This is in accordance with Rav Yanai's position that a person should never stand in a place of danger and rely on a miracle, lest one does not occur. If a miracle is performed for him, some of his merits are subtracted... Rav Yitzchak said in the name of Rav Yehuda, a man should always pray for compassion that he not become ill, because if he becomes ill, they [the Heavenly court] say to him, bring your merits, or die.

The Maharal²² comments that the purpose of earning merits is to ensure one's position in the "World to Come." When one relies on the performance of a miracle, it detracts from the store of merits.²³ In this vein, the *Iyun Yaakov*²⁴ points out that even though illness can have beneficial effects on the soul by eliciting repentance, one must make efforts to prevent illness, because it requires a "miracle" to be cured.²⁵

The concept that one should not rely on miracles is a fundamental part of the philosophy of Judaism. This concept may be crucial to a discussion of medicine, especially preventive health, in halacha. King Asa of Judea is reprimanded²⁶ for only seeking doctors to cure his illness and not turning to *Hashem*. The *Metzudat David* states that King Asa's shortcoming was his trust in doctors to the exclusion of prayer. Similarly, the *Chovot HaLevavot*²⁷ writes,

22. *Chidushei Gur Aryeh*, *Shabbat* 32a.

23. Ran to *Shabbat* 13a understands the verse (*Bereishit* 32:10) "I have been diminished by all the kindnesses..." to mean "My merits have decreased because of the kindness that You did for me."

24. Commentary on *Shabbat* 32a, found in the *Ein Yaakov*.

25. See also *Gemara Nedarim* 40a that makes a similar point.

26. *Divrei HaYamim* II, 16:12.

27. *Sha'ar HaBitachon*, Chapter 4.

Even though a man's days are decided beforehand by *Hashem*, one should engage in obtaining food, clothing...according to his needs. He should not say, "If *Hashem* wishes me to live, He will sustain me without food, so I will not trouble myself to find food." Similarly, one should not endanger himself relying [solely] on his trust in *Hashem*.

Consistent in his approach, Ibn Ezra concludes that King Asa was at fault because he sought treatment for an internal, and therefore divinely decreed, illness.²⁸

Regarding a contemporary issue of preventive medicine, Rav Moshe Feinstein²⁹ writes in favor of testing for the Tay-Sachs gene when one begins dating, despite the biblical directive "*tamim tihyeh im Hashem Elokecha*"³⁰ [be simple/complete with *Hashem* your G-d].³¹ He does not see the verse as mandating blind and simple faith that "all will be well," if there are means to forestall a dreadful situation by taking precautions. This is in line with most *Rishonim* who understand that this verse prohibits reliance on fortune-telling, such as necromancy, but does not require only faith, to the exclusion of preventive medicine.³²

28. See *Chovot HaLevavot*, *Sha'ar HaBitachon*, Chapter 3 which explains the position of the Ibn Ezra.

29. *Iggerot Moshe, Even HaEzer* IV, Siman 10.

30. *Devarim* 18:13.

31. Notably, Rav Moshe is allowing *chabalah* [injury] to oneself for the purpose of a diagnostic test while one is healthy, and the results of the test do not directly affect one's health. See *Tosafot to Shabbat* 50b where emotional pain is considered pain.

32. See *Chizkuni*, *Rashbam*, *Ramban*, *Mizrachi* and *Siftei Chachamim* to *Rashi*, and *Rabbeinu Bachaye*; see also *Megillat Esther* to the *Ramban*'s additions to the *Sefer HaMitzvot*, who suggests why the *Rambam* did not include this verse as a mitzvah.

The concept of preventive care also emerges in the *Shulchan Aruch*,³³ which forbids reciting incantations that include verses from the Torah in order to cure an ill person. The *Taz* explains that the Torah was not given to cure the body, but rather the soul. Nevertheless, a healthy person who is using the verses only for protection from harm, and not as a cure, is permitted to recite verses of Torah. For this reason, the *Taz* states, *kriyat shema* is recited before lying down to sleep at night.³⁴

V'nishmartem m'ode l'nafshoteichem – "And you shall protect your souls exceedingly"

In search of a biblical source for safeguarding one's health, one might review two verses in *Devarim*:³⁵ "*Rak hishamer lechah u'shmor nafshecha...*" ["Only guard yourself and protect your soul"] and "*V'nishmartem m'ode l'nafshoteichem...*" [And you shall protect your souls exceedingly]."³⁶ While the simple reading of these phrases appears to deal with the issue of protecting one's health, when read in the context of the entire verses, it is clear that they address not forgetting the Torah and not worshiping idolatry, respectively. While a text in *Berachot*³⁷ uses the verse "and you shall protect your souls exceedingly" in the context of caring for one's health, *Maharsha*,³⁸ *Minchat Chinuch*,³⁹ and *Torah Temimah*⁴⁰ point out difficulties⁴⁰ in the Gemara and

33. *Yoreh De'ah* 179:7-10. See *Nishmat Avraham* vol. 2, p. 72 (3) for further discussion of this topic.

34. *Taz* to *Yoreh De'ah* 179 (8).

35. 4:9 and 4:15.

36. 32b-33a.

37. Ad loc.

38. Mitzvah 546, the mitzvah of "ma'akeh".

39. *Devarim* 4:9.

40. See *Tzlach* and *Ben Yehoyada* to *Berachot* 32b as well as *Taz* to

state that the verse is used as a colloquialism, even in this text. However, the Gemara in *Shevuot*⁴¹ does extend the verse "only guard yourself..." as the source for the prohibition to curse oneself. While *Ritva*⁴² further extends this to entering any situation of danger, *Tosafot*⁴³ do not seem to accept this extension. Nevertheless, the *Sefer Chareidim*,⁴⁴ as well as the *Rashbatz* in *Zohar HaRakia*⁴⁵ list both verses as two separate negative biblical commandments which forbid cursing oneself, and they both learn the prohibition to endanger oneself from, "And you shall guard your souls exceedingly."

The Mitzvot Of Ma'akeh And Lo Tasim Damim – A Protective Fence

While some commentators have given rational explanations for certain mitzvot such as kashrut, ritual impurity, and forbidden relations as mentioned above, other mitzvot lend themselves to rational understanding because the Torah itself seems to give the reason for the mitzvah. One such case is the mitzvah of "ma'akeh", a protective fence built around the roof. The Torah states,⁴⁶ "If you build a new house, you shall make a fence for your roof, so that you will not place blood in your

Orach Chaim 66:1; and *Magen Avraham* to *Orach Chaim* 104:1 for various ways to understand this Gemara.

41. 36a.

42. Ibid.

43. Ibid, s.v. *u'shmor nafshecha*. This is because the ruling that one who curses himself receives lashes is unopposed in the Gemara, yet the ruling regarding one who endangers himself is debated. See *Oznaim laTorah*, *Devarim* 4:9 who explains why the extension cannot be made.

44. Chapter 24:15, 16.

45. See section 118 and 291. See also *Nishmat Avraham* vol. 2, p. 225.

46. *Devarim* 22:8.

house if one who falls, falls from it.⁴⁷ The Rambam⁴⁸ elucidates,

Not only a roof, but any object which is dangerous and a person may stumble and die, e.g. a well or a pit in one's own yard with or without water in it, one is obligated to erect a barrier ten handbreadths high, or to cover it, so that no one will be able to fall into it and die. Similarly, there is a positive mitzvah to remove every stumbling block which endangers life, to guard oneself from it, and to be very wary of it, as the verse states, "*Hishamer lecha u'shmor nafshecha*." If one does not remove [it] and allows these dangerous stumbling blocks to remain, one has neglected a positive mitzvah and has transgressed the [negative mitzvah of] "*lo tasim damim* [you shall not place blood]."⁴⁹ Many things were forbidden by *Chazal* because they are dangerous. Anyone who sins and says "I will endanger myself, and what do I have to do with anyone else regarding this" or "I am not particular about this" [thing which is dangerous], receives lashes for rebelling.

A discussion about this teaching of Rambam revolves around the level of infraction a person has transgressed when he endangers himself. The Rambam states that the person receives lashes for rebelling, which typically, are administered for a rabbinic level ordinance. Rav Moshe Feinstein therefore concludes that this mitzvah is only rabbinic. Rav Yechiel Michel Epstein, in *Aruch HaShulchan*,⁴⁹ states unequivocally that the mitzvah to protect one's health is biblical, but that for technical

47. See *Ketubot* 41a where the law of *ma'akeh* is extended to removing anything that may cause damage.

48. *Hilchot Rotzei'ach u'shmirat nefesh*, Chapter 11, halacha 4,5.

49. Chapter 427:8.

reasons biblical lashes could not be administered, so a rabbinic decree of lashes was enforced.⁵⁰

It is interesting that when codifying the prohibition of cursing oneself, the Rambam cites the verse, "**Hishamer lecha** [guard yourself]"⁵¹ and states that the punishment is lashes, apparently for violating a biblical injunction. Yet, when quoting the same verse with regard to avoiding dangerous scenarios, he states that the punishment is "lashes for rebelling."⁵² Possibly a solution to this difficulty which would support Rav Feinstein's understanding of the Rambam is that Rambam believes the prohibition to curse oneself carries biblical stature (per *Shevuot* 36a). However, the Rambam may argue that this Gemara may not be extended to any scenario of danger.⁵³ Perhaps Rambam holds that a rabbinic ordinance was made forbidding one to endanger himself in any way other than cursing himself and this is why he stated the punishment is "lashes for rebelling".⁵⁴

50. In fact, *Ein Zocher ma'arechet* 30:19 quoting the *Tevuot Shor*; the *Sdei Chemed*, *ma'arechet* 1:22; *Rashbash* siman 610, all seem to conclude that the Rambam considered this a biblical command with rabbinically instituted lashes. See also *Be'er HaGolah* to *Choshen Mishpat* 420:70, who is uncertain whether this is a biblical or rabbinic obligation.

51. *Hilchot Sanhedrin*, chapter 26, Halacha 3.

52. *Hilchot Rotzei'ach u'shmirat nefesh*, chapter 11, halacha 5.

53. This would be against the position of the *Ritva* and in the same manner as the *Tosafot* quoted by Rav Zalman Sorotzkin.

54. The *Minchat Chinuch* points out that the language of the Rambam is strange because there is a general rule that the words "Hishamer," "pen," "al," and "lo" all connote a negative commandment, whereas the Rambam calls this a positive commandment (see *Makkot* 13b). The *Minchat Chinuch* points out that the Rambam himself abides by this rule, cited in *Hilchot Sanhedrin* 26:3 when discussing this same verse, as well as in *Hilchot Beit HaBechira* 8:11. As we have already seen, the *Rashbatz* and *Sefer Chareidim* specifically refer to the verse

The *Ben Ish Chai*⁵⁵ brings the halachot of **ma'akeh** in the same manner as the Rambam and then enters a discussion about other scenarios which were prohibited because of danger. This is significant because the *Shulchan Aruch*⁵⁶ codifies these dangerous scenarios separately from his discussion of the laws of *ma'akeh*, and it is not clear what the working principle is that makes these scenarios forbidden. *Ben Ish Chai* seems to relate dangerous scenarios to the laws of **ma'akeh** in the same manner as the Rambam, but with the *Shulchan Aruch*'s additions.

Caring For One's Health –A Foundation Of Belief?

According to several halachic authorities, protecting one's health and leading a healthy lifestyle are fundamental to faithful service of *Hashem*. The *Tur* writes, "It is a mitzvah to conduct oneself in appropriate measure, and it is appropriate conduct to guard one's health in order to be healthy and strong for the service of the exalted *Hashem*."⁵⁷ Accordingly, Rav Yosef Karo rules⁵⁸ that one may eat bread in the morning⁵⁹ after prayer but before engaging in the study of Torah if this is one's habit, and he advises that it is good to make this one's practice.⁶⁰ In a similar vein, Rambam⁶¹ writes,

The state of a healthy body is the way of *Hashem*. Since

of "Guard yourself..." as a negative commandment.

55. Shanah Shniah, Parshat Pinchas, "Hilchot Ma'akeh and things which are prohibited because of danger."

56. *Yoreh De'ah* 116.

57. *Tur*, *Shulchan Aruch*, *Orach Chaim* 155.

58. *Shulchan Aruch*, *ibid*.

59. See *Bava Metzia* 107 for a discussion of the benefits of "pat shacharit" [morning bread].

60. See *Mishnah Berurah* 155:2, who quotes the *Tur*.

61. *Mishneh Torah*, *Hilchot De'ot*, Chapter 4.

it is impossible to understand or know anything of the knowledge of *Hashem* while one is ill, one must distance himself from things which destroy his body and conduct oneself in a healthful and restorative manner.⁶²

The Rambam continues by listing numerous suggestions for maintaining health. Rav Moshe Feinstein reasons⁶³ that the Rambam is merely making suggestions of food and drink which are healthful but did not state them in the language of biblical or rabbinic imperatives. Interestingly, *Kitzur Shulchan Aruch*⁶⁴ devotes a chapter to the promotion of healthful practices, many of which are taken directly from this chapter of the Rambam, emphasizing, "As it says [in the Torah, *Devarim* 4:15] 'and you shall guard your souls exceedingly'." The *Be'er HaGolah*⁶⁵ in his commentary to *Shulchan Aruch* underscores the point that caring for one's health is a foundation of Jewish belief:

It appears in my humble opinion that the reason the Torah gives warning about protecting one's health is because *Hashem* created the world with kindness to benefit His creations so that they recognize His greatness and serve Him by keeping his mitzvot... and to give good reward for their toil. It is as if one who endangers himself despises the will of his Creator and does not want to serve him or desire the reward [for the service]. There is no greater heretical contempt than this...

The Chafetz Chaim uses a similar argument regarding

62. See also *Shemonah Perakim* of the Rambam, Chapter 5, where the Rambam makes similar healthful suggestions.

63. *Iggerot Moshe, Choshen Mishpat* II, 76.

64. Chapter 32. It is very interesting to note that in this chapter, the *Kitzur Shulchan Aruch* strongly advises against drinking alcohol before age 21 as a matter of health!

65. Note 90 in *Shulchan Aruch, Choshen Mishpat* 427.

smoking cigarettes,⁶⁶

Regarding smoking [and anything else where a person endangers himself], I said to them, "Who permitted you to make it such a habit?" True, *Chazal* said in *Bava Kamma* 90b, "one who injures himself, even though he has no permission, is exempt [from punishment]."⁶⁷ Nevertheless, they did say "he has no permission..."⁶⁷

Prevention In Halachic Literature

Rav Yosef Karo devotes a chapter of *Shulchan Aruch*⁶⁸ to the topic of specific dangerous situations:

The Sages forbade drinking an uncovered liquid lest a snake had drunk from it and deposited venom in it. One must be careful not to eat meat with fish as it can cause *tzara'at*. One must wash his hands between eating meat and fish, and eat bread also, to clean one's palate. One needs to be careful with human sweat, because human sweat is the "drug of death", excluding facial sweat. One must be careful not to put coins in his mouth lest there is dried spit of someone with boils...

Rav Moshe Isserles (Ramo) adds,

66. *Likutei Amarim* Chapter 13. It is also worthwhile to see the Chafetz Chaim's argument that smoking is both a waste of time and money.

67. See *Nishmat Avraham* Vol. III, *Choshen Mishpat* 427:2, 155:2, and *Orach Chaim* Vol. I, 511:1 for further discussion and sources. For further discussion regarding the permissibility of smoking, see also *Yechaveh Da'at* vol. 5:39; *Iggerot Moshe Yoreh De'ah* 2:49, *Idem, Choshen Mishpat* 2:76; "Danger to Health and Smoking in Halacha" by Rav E. Waldenberg, in *Halacha u'Refuah*, 1983, pp. 320-324. See also *Rivavot Ephraim* vol. 8:586 (Rav Ephraim Greenblatt) who unambiguously prohibits smoking.

68. *Shulchan Aruch, Yoreh De'ah* 116.

One must be careful of anything that is dangerous because we treat something that is dangerous more stringently than something forbidden by religious law.⁶⁹ Furthermore, one should be more concerned with an uncertain danger than with a doubt in religious law [*Beit Yosef*]. Therefore, they [the Sages] forbade one from walking any place there is danger such as beneath a bent wall or alone at night. They also forbade drinking water from rivers at night or to put one's mouth on a spigot to drink because these things may be dangerous [Rambam]...One should flee from a city afflicted by a plague, and one should leave at the beginning of it, not at the end [Responsa *Maharil*, #35]...One who guards his soul [life] will keep far from it, and it is forbidden to rely on a miracle or to endanger his soul [life] in any similar way.

In a recently found collection of writings of Rabbi Refael Mordechai Malachi,⁷⁰ who served as Chief Rabbi and as a physician in Jerusalem in the early seventeenth century, Rav Malachi deals with the issue of leaving a town during a time of plague. He states, "When there is a plague in the city [where one lives], it is good to leave the city, even if it means to sit outside the city in the fields or vineyards, as long as one does not leave his house there [in the fields] to walk on the highways." It would seem that he recommended leaving the city to avoid its plague and living in a home in a rural setting. Although one is permitted to give up the security that a city affords from bandits on account of the plague, one is not permitted to accept a greater risk of bandits by travelling on highways in such a

69. *Sakanta chamira me'issura*. See [Shechitat] Chullin 10a.

70. *Ma'amarim B'Refuah* of Rabbi Refael Mordechai Malachi arranged by R. Meir Beniahu, Yad HaRav Nissim Publishing Co.: Jerusalem, 1985. Page 139.

scenario. Notably, he does not posit the suggestion of leaving the city and its plague as an obligation but rather proposes the notion in what would seem to be an advisory tone.⁷¹

Interestingly, Rav Chaim Palagi cites the *Yerushalmi Berachot*,⁷² which states that all highways [between towns] are "B'chezkatakanah" [assumed to be dangerous]. Nevertheless, he writes that it is still best to leave at the onset of the plague.⁷³ Rav Palagi cites *Chesed L'Avraham* that one should not flee from small villages, presumably because these less traveled roads were more dangerous. Rav Chaim Palagi responds⁷⁴ that if it was early in the plague, before the roads became dangerous due to the influx of bandits aware of an increased number of potential victims, then it is permissible to leave even small villages.⁷⁵ Additionally, Rav Palagi,⁷⁶ citing *Beit Lechem Yehudah*,⁷⁷ states that if one was present in a town when a plague struck and survived, he need not leave if the plague returns. However, he points out that in his own time, due to their many sins, even if one was previously afflicted, he must still leave the town if a plague strikes. It would seem that this exchange between Rav Palagi and the *Beit Lechem Yehudah* is referring to immunity and whether one can rely on having developed complete immunity to allow him to be

71. Furthermore, one must understand from a historical point of view what level of danger was present on the roads, and if the level of danger involved in travelling the roads between towns was accepted by the populace, or if only in certain circumstances – i.e. financial necessity.

72. 4:4.

73. See also *Responsa Ramo* (A. Siv edition), Siman 20 and note 55.

74. *Refuah v'Chaim*; Chapter 5:53, page 93.

75. See also *Beit Elokim* of the *Mabit*, Chapter 16, Page 18a.

76. *Refuah v'Chaim*, ibid.

77. *Shulchan Aruch*, *Yoreh De'ah* 116:13.

exposed to the danger of a plague.⁷⁸

The Rashbash⁷⁹ asks rhetorically, "what good is it to run from a pestilence? If a person was inscribed for death on the previous Rosh HaShanah, what good is fleeing? If he was inscribed for life, he will not be harmed by staying." The Rashbash answers that even though a person's life span is fixed, he may add or subtract years from his life by committing sins or performing mitzvot. The Rashbash continues by offering an ingenious approach to a text in *Bava Kamma*,⁸⁰ which states that when there is a plague in the city, do not walk in the center of the street, and when there is peace in the city, do not walk on the sides of the street. The Gemara reasons that during a time of plague, the Angel of Death is given free reign and therefore walks down the center of the street, at which time it would be dangerous to be found in his path. The Rashbash opines,

During a time of [public] good health, a person must act in moderation [walk "the middle of the road"] regarding his food, drink, clothing, sleep, waking, speaking... his movements, his resting, and his emotions...[One must] go in moderation, not too little or too much. However, in a time of plague, one must make directed measures of protection, one must increase his hygiene, one must not eat too much, eat things which are of good quality, increase rest, distance oneself from weariness and depression, increase happiness; moderation is not sufficient. This is what the Gemara means when it states not to walk in the middle of the

78. This is remarkable given that Rav Palagi's sources preceded modern germ theory by many years.

79. *Responsa Rashbash*, Siman 195.

80. 60b.

road – rather go to an extreme [as necessary.] All of this is a matter of nature.

Bal Tashchit – The Prohibition Of Wastefulness

The Torah prohibits wanton destruction of trees as a matter of wastefulness.⁸¹ Along these lines, the Gemara in *Shabbat*⁸² describes an occurrence where Abaye chastises Rabbah for burning a fine teakwood chair as wanton wastefulness included in the prohibition against destroying trees. Rabbah's response is that since it was cold and he needed warmth, wasting his own health [*bal tashchit d'gufay*] overrides the prohibition against wasting trees. Rabbeinu Yonah in *Sha'arei Teshuvah*⁸³ includes preventing illness as part of the prohibition against being wasteful. The *Maharshal*⁸⁴ and *Torah Temimah*⁸⁵ also take this approach.⁸⁶

"V'hasheivota Lo" – "And You Shall Return It To Him"

The *Torah Temimah*⁸⁷ asks why the Rambam does not include "...and heal, he shall heal" as the obligation to heal. He answers that this verse only gives permission to heal but that the verse

81. *Devarim* 20:19-20.

82. 29a; see also *Shabbat* 140b.

83. *Sha'ar 3*, chapter 82.

84. *Yam Shel Shlomo* to *Bava Kamma* 91b:57.

85. *Devarim*, Chapter 20, note 57.

86. It should be noted that the *Shulchan Aruch HaRav* groups safeguarding one's health with the prohibition of wastefulness at the end of *Choshen Mishpat*. However, he seems to adopt the Rambam's approach to safeguarding one's health. See also *Responsa Bnei Banim* vol. III, #45, where R. Yehudah Henkin draws a similar conclusion from *Devarim* 2:4,5.

87. *Devarim* 22:2 and *Shemot* 21:19.

"**V'Hashevota lo** [and return it to him]" is the source for the obligation to heal.⁸⁸ The *Sifrei*⁸⁹ makes it clear that this obligation applies even to one's own health.

Can we construe this as proof against the obligatory nature of preventive medicine in halacha inasmuch as one cannot return that which is not yet lost? Rav Yehuda Leib Zirelson, in *Responsa Atzei HaLevanon*⁹⁰ rules that the obligation to return a lost object applies to restoring one's health, even before one becomes ill. In *Nishmat Avraham*⁹¹ Dr. Abraham S. Abraham convincingly suggests that this verse applies before a person is ill based on a text in *Bava Metzia*⁹² which states that a person must erect a wall to prevent flood water from destroying another person's field as part of the command to return lost objects. The Rambam⁹³ as well as the *Shulchan Aruch*⁹⁴ both rule accordingly. Therefore, Dr. Abraham concludes that if one is required to prevent one's neighbor from suffering a monetary loss before it occurs, one is certainly obligated to prevent a loss of health before it occurs. Additionally, Rav Eliezer Waldenberg, in *Responsa Tzitz Eliezer*,⁹⁵ argues that "*v'hashevota lo*" is the textual source for both the obligation to heal as well as the obligation to prevent illness, based on his analysis of the Rambam.

88. See Rambam and Ran's commentary on the Mishnah in *Nedarim* 38b.

89. *Devarim* 22:2.

90. *Responsum* 61.

91. Vol. II, *Yoreh De'ah* Chapter 336:4.

92. 31a.

93. *Hilchot Gezeilah v'Aveidah* 11:2.

94. *Choshen Mishpat* 269:9.

95. Vol. 15, *siman* 40.

"Herd Immunity" – One's Obligation To The Community

The advent of immunizations did not only presage significant changes in life span, it also affected the prevalence of disease in the population. For example, smallpox, a serious and once common disease, has been reduced to existing only in the laboratory through aggressive immunization measures. Currently, there are no recommendations for immunizing against smallpox because its prevalence is essentially zero. However, the effectual removal of smallpox from the population was only made possible by mass immunization that decreased carriers of the virus in the population, and thereby, the spread of disease. Does halacha recognize a communal obligation that would require one to immunize or partake of other preventive health measures that are aimed at halting the spread of infectious disease?

Communal responsibility is a central theme in Judaism permeating every facet of life, from the requirement for a quorum for prayer to intricate laws regarding providing sustenance for the poverty-stricken. Moreover, the concept of "all Jews are responsible for one another," although typically applied to aiding one's neighbor in mitzvah performance, attests to a communal responsibility in Judaism. While this may be interesting from a philosophical perspective, the *Sefer HaChinuch*⁹⁶ appears to learn communal responsibility from the mitzvah of "lo ta'amod al dam rei'echah"⁹⁷ [do not stand idly by your neighbor's blood]. He states, "just as someone will save his neighbor, so too, his neighbor will save him. This is how the world will be settled as *Hashem* wants."

96. Mitzvah 237.

97. *Vayikra* 19:16.

It stands to reason that each member of the community is responsible for preventing others from contracting a disease he might be carrying, since the entire community might become endangered. Thus, it appears that each individual is obliged to take appropriate preventive health measures for the sake of community safety. Timely vaccination of children as well as prevention of other communicable diseases may be required, if not on the individual level, but based on one's obligation to the community. In fact, the *Journal of the American Medical Association*⁹⁸ reported recently on "Health Consequences of Religious and Philosophical Exemptions from Immunization Laws." In this article, those granted a religious or philosophical exemption from the measles vaccine were 35 times more likely to contract measles.⁹⁹

An interesting extension of this idea might be whether one is obligated to take preventive health measures that do not seem to directly affect the community in the way that a contagious disease would. For example, would one be required to partake in screening for diseases to save the community the financial burden of having to treat a later stage illness with its concomitant costs of hospitalization, procedures, and rehabilitation?¹⁰⁰

98. Salmon D, Haber M, Gangarosa EJ, Phillips L, Smith N, Chen R. "Health Consequences of Religious and Philosophical Exemptions from Immunization Laws." *JAMA* 282:1, July 7, 1999, pp. 47-52.

99. This author was told that in the wake of this article, parenting magazines suggested not permitting one's children to socialize with unvaccinated children.

100. See *Tradition* 31:3, where Rabbi J. David Bleich discusses the possible requirement to purchase medical and life insurance as a community in order to defray costs for individuals and to provide a socially responsible charity for strangers and the poor. See the Mishnah in *Bava Batra* 7b where all members of a town are required to contribute to the construction of a protective wall around the town.

Other Possible Biblical Sources

A famous dictum found in the Torah states,¹⁰¹ "v'chai bahem [and you shall live by them]" from which the Gemara in *Yoma*¹⁰² derives that we are to live by the mitzvot and not die because of them. This verse is typically applied to scenarios where performing a mitzvah entails endangering one's life. The *Sefer Chasidim*¹⁰³ implies that this verse would also apply to protecting one's life from any danger.

The prohibition to commit suicide is typically derived from the verse, "Ach et dimchem... [Only your blood of your soul will I demand]."¹⁰⁴ Perhaps the obligation to safeguard one's health may be derived as a degree of suicide. The *Sefer Chasidim*¹⁰⁵ states, "if, while walking in a dangerous place, such as a lake which has iced over, one falls through the ice, he bears guilt on account of the verse 'Ach et dimchem.'" Interestingly, the *Tosefta to Bava Kamma*,¹⁰⁶ as well as the *Sefer Chasidim*,¹⁰⁷ state that the prohibition to damage one's body and possessions are also learned from the verse "Ach et dimchem."

See also *Shulchan Aruch*, *Choshen Mishpat* 163:1, and *Responsa Beit Shlomo*, *Choshen Mishpat* #48. It should be noted that such a requirement to purchase insurance may be imposed only as a communal decree or a *takanat beit din*.

101. *Vayikra* 18:5.

102. 85b.

103. Section 769.

104. *Bereishit* 9:5. See *Bava Kamma* 91b.

105. Chapter 675 in Bologna edition, 163 in the Berlin edition. It is worthwhile to see a subtle difference in these editions caused by the substitution of the letter "hei" for "chet".

106. End of Chapter 9.

107. Chapter 676 in Bologna edition, 164 in the Berlin edition.

Elsewhere,¹⁰⁸ the Torah states that if a homeowner catches a thief breaking and entering into his home, he has permission, and perhaps even an obligation, to kill the thief.¹⁰⁹ Rashi, quoting Sanhedrin,¹¹⁰ states that the reason for this permission is that the thief knows that the homeowner will fight to prevent his valuables' being stolen, and, in breaking and entering, the thief is prepared to kill the homeowner. In light of this very strong assumption, the homeowner is given permission to defend himself from the outset and "kill him before he kills you." One might suggest that if it is permitted to go so far as taking a human life to defend his own life, based solely on a strong assumption of danger, it might be logical to state that one is certainly permitted and even obligated to launch a pre-emptive strike against disease, even if there is not as strong an assumption of danger.

Shomer Petaim Hashem – *Hashem* Protects The "Simple"

A verse in Tehilim¹¹¹ is central to the discussion regarding accepting risk and relying on *Hashem* for protection. The verse states, "*Hashem* protects the simple..." One aspect of the discussion depends on how one understands the word "simple." While "simple" might connote simply having faith in *Hashem*, it can also mean feeble-minded. Consequently, the Radak¹¹² notes that two interpretations of this verse emerge. Either *Hashem* protects those who simply put their faith in Him, or

108. Shemot 22:1

109. See Sanhedrin 72b. See also Mishneh Torah, Hilchot G'neivah 9:7.

110. Ibid.

111. 115:9.

112. Ibid.

Hashem protects those who are incapable of protecting themselves. However, it is the contention of Rashi¹¹³ and the *Yalkut Me'am Lo'aiz*¹¹⁴ that the word "simple" in this context should be understood only as "feeble-minded." Accordingly, *Trumat HaDeshen*¹¹⁵ and *Chatam Sofer*¹¹⁶ rule that a talmid chacham [Torah scholar] may not rely on the protection afforded by this verse.

The second issue of "Shomer petaim" is what level of danger does the verse allow one to accept? In *Yevamot*¹¹⁷ the Gemara debates whether contraception is obligatory for an eleven year old girl, since pregnancy at such a young age is dangerous, or whether she may rely on the verse "shomer petaim." There are several approaches among the recent authorities. One way, articulated by Rav Akiva Eiger,¹¹⁸ as quoted in *Pitchei Teshuva*,¹¹⁹ is that one may rely on "shomer petaim" if the activity is common practice, even if the risk is great. A second way to understand this text is espoused by Rav Chaim Ozer Grodzinski,¹²⁰ who concludes that the specific case in the Gemara, of an eleven year old conceiving, is unlikely.

113. Ibid.

114. Ibid.

115. Responsum 211.

116. Even HaEzer Vol. 1, Responsum 23

117. 12b, 72a, See also *Shabbat* 129b, *Niddah* 31a, *Avodah Zarah* 30b.

118. Vol. 1, responsum 71, 72.

119. *Shulchan Aruch*, Even HaEzer 23:2. See also *Responsa Chatam Sofer*, *Yoreh De'ah* 172; *Avnei Nezer*, Even HaEzer 80; *Iggerot Moshe*, Even HaEzer Vol.1 63 for a better understanding of this position.

120. *Achiezer*, Even HaEzer Vol. 1, responsum 23. See also *Divrei Malkiel*, Even HaEzer 20; *Tzemach Tzedek*, Even HaEzer vol. 1, 86; *Iggerot Moshe*, *Choshen Mishpat* vol. 2, 76, and *Tzitz Eliezer* vol. 10, 25:17.

What emerges is that one may rely on "shomer petaim" if 1) the activity is common practice, and 2) the risk is small. An alternative way to understand the Gemara is found in the Binyan Tzion,¹²¹ which states that one is only afforded protection by the verse "shomer petaim" if 1) the activity is commonplace, 2) the danger is not at hand, and 3) there is less than a 50% chance that harm will occur.

In an enlightening responsum, Rav Shlomo Zalman Auerbach¹²² defines a "possibly life-threatening scenario" according to halacha. He states,

...I have been very uncertain about this. But based on logic, it seems, in my humble opinion, that anything that causes the majority of people to flee, as they flee from danger, would be a "possibly life-threatening [scenario.]"¹²³ ...However, if the majority of people are not concerned, it would not be considered a danger. An example of this is immunizations for children. Even though from the standpoint of halacha, it is possible that we truly need to administer the immunization at the earliest time possible if the physician has stated that the time has come for it, nevertheless, we are clearly not accustomed to give the immunization speedily [once the person is the appropriate age, we are not careful to give it specifically on that day.] Therefore, even if there would be a small amount of danger, it would fall into what Chazal have called "*shomer petaim Hashem*" and G-d forbid we transgress Shabbat. However, if there is a scenario that one knows with certainty if the

121. Responsum 137. See also *Tzitz Eliezer* vol. 15, 37.

122. *Minchat Shlomo* vol. 2, *siman* 29:4.

123. "To which 'v'chai bahem v'lo sh'yamut bahem' (and you shall live by them [the Torah's laws] and not die by them) would apply."

immunization is not given now, on Shabbat, one would have to wait four or five years [to receive it], it is possible that this would appropriately be considered as a life-threatening scenario to set aside Shabbat. This is because over such an extended period, certainly we [the majority] would be concerned.¹²⁴

The wide acceptance of vaccinations and the protection against illness that they afford, even in the face of small actual risk for acquiring disease, would seem to give them the status of a mitzvah based on the aforementioned ruling of Rav Shlomo Zalman Auerbach. Nevertheless, Rav Yehoshua Neuwirth¹²⁵ explained¹²⁶ that the question is not the objective level of risk, but the subjective one. If an individual is frightened by the preventive measure, he can refuse.¹²⁷ Further, he explained that,

[O]ne could not obligate any healthy person to receive treatment as a preventive measure. Although one may try to convince the individual, he may do no more. If there was absolute evidence that [an individual] could be a danger to others, such as in spreading infection which could be fatal, then there would be a case for forcing him to have a vaccine, but only if it were certain that the vaccine itself was not dangerous to him.

In contrast, in a responsum in his *Tzitz Eliezer*,¹²⁸ Rav Eliezer Waldenberg reaches a different conclusion. Rav Waldenberg was asked specifically whether there is an obligation for yeshiva students, of whom 86% suffer from decreased visual acuity, to have regular ophthalmic exams to prevent further deterioration

124. See *Shmirat Shabbat Kehilchata*, chapter 32, footnote 2.

125. Author of *Shmirat Shabbat Kehilchata*.

126. Personal communication through Dr. Abraham S. Abraham.

127. See *Nishmat Avraham*, vol. 4, p. 193.

128. Vol. 15, siman 40.

of vision which might lead to blindness in one or both eyes for a certain subset of the population. He writes,

In our case regarding children in schools, the parents, teachers, and administrators, who have the power in their hands to compel their children to receive the measures they see as necessary, are required, based on the power of the positive commandment of "v'hasheivota lo [and return it to him]." The teachers should inform the children of the amazing words of the Rambam in *Hilchot De'ot* [where he states the importance of good health] and explain to them the greatness of the obligation of protecting one's vision...

Rav Waldenberg affirms that medical treatment, even a preventive measure, can even be performed against the will of the patient, citing authorities for support.¹²⁹ He argues that "regarding children, who have no knowledge/understanding, saving him from an illness is a matter of "zakin l'adam sh'lo befanav [benefiting someone without his knowledge]." He also rules that communal funds should be set aside for the purpose of financing this preventive measure of vision testing. Rav Waldenberg concludes that there is an obligation to participate in the preventive measure of regular vision testing also based on the verse "v'ahavta l're'acha kamocha [love your neighbor as yourself]." He also emphasizes that by not participating in the preventive measure, in this case regular ophthalmic visits, one has violated "lo tuchal l'hitaleim [you shall not hide],"¹³⁰ the prohibition to refrain from returning a lost object.^{"131}

129. See *Mor u'Ketzia* to *Orach Chaim* siman 328 and page 8 of *Rashbatz* (Rappaport edition) on *Ketubot*.

130. *Devarim* 22:3

131. See *Maharsha* to *Sanhedrin* 4b s.v. *lahitzilo b'nafsho* and *HaEmek She'elah* al *HaSheiltot*, *shailta* 38:1

Rav Hershel Shachter explains¹³² that when one's risk of developing disease is a *miut hamatzui* [small, yet recognizable] one would be obligated to undergo the appropriate testing for the disease.¹³³ Rav Shachter suggests that a *miut hamatzui* would be in the range of 10%.¹³⁴ In the scenario where one's risk for an illness might be lower than 10%, he feels that although there might not be an obligation based on *miut hamatzui*, it would still be very advisable to undergo such testing. Thus, if a person's risk were in the range of 10%, he would be obligated to be vaccinated.¹³⁵ He explained that a vaccine would not be considered *chabalalah* [injury] because it is for *tikkun haguf* [betterment of the body].¹³⁶ Rav Shachter also asserted that where vaccines are mandated by the state, such as in the case of immunizations before entering school, one would be obligated to be immunized based on the concept of "*Dina d'Malchuta Dina* [the law of the land is the law]."¹³⁷

Therefore, a competent halachic authority must be consulted to evaluate the actual risk, the societal perception of risk, and the benefit of preventive measures. For example, if society

132. Rosh Yeshiva, Rabbi Isaac Elchanan Theological Seminary of Yeshiva University, in a personal communication.

133. This is because if something occurs at the frequency of *miut hamatzui*, this would set aside a *rov* [majority rule] and one would not be able to rely on *shomer petaim Hashem*. See the Ramban in *Milchemot Hashem* to *Chullin* 3b in the pages of the *Rif*.

134. See *Responsa Mishkenot Ya'akov*.

135. He asserted that if the adverse reaction risk for a given vaccine was in the range of 1 in 1,000,000, the concept of *batla daita eitzel kol adam* would be applied to mitigate an individual's fear which might have prevented him from being vaccinated.

136. See *Iggerot Moshe, Choshen Mishpat* II, siman 65 for a similar idea.

137. See *Bava Batra* 54b. See the Ramo in *Shulchan Aruch, Choshen Mishpat* 369:11.

evolves so that low fat-low cholesterol diets become standard, it might not be enough to look for proper kashrut certification on food labels, but become a halachic imperative to read the "Nutrition facts" label as well, since danger is treated more stringently than prohibition, as mentioned above.

In conclusion, the positive performance of a mitzvah appears to be present for any endeavor which will increase health and longevity. Such endeavors appear in general permitted and volitional, and obligatory when one's risk is significant. A minority opinion would constrain their use as an affront to the divine will. Rabbi Moshe Machir,¹³⁸ author of *Seder HaYom*,¹³⁹ keenly presents the philosophical approach of halacha to preventive medicine.

If one's set time for learning is long, and he is weak, and because of his weakness, he will not be able to learn properly, it is best to eat something before going [to learn]...to prepare oneself. It is considered a prerequisite for one's learning as long as one does not [eat merely] for pleasure, but rather to strengthen oneself. This is especially so if one is weak and fears any particular illness if he delays [eating] for a long time, for he has certainly committed a sin if he does not eat and strengthen his body. This is because it is a mitzvah for man to seek the way of health for his body so that he will be strong and healthy to learn Torah and perform mitzvot. Even though there is an aspect of neglecting Torah study or prayer [while one is involved in looking after his health], mitzvot were not given so that a person should kill himself and leave the world [having lived]

138. 16th century, Tzefat.

139. Found in the chapter dealing with "*kavanat aleinu v'seder halimud achar hatefilah*", pp. 46-47 in the Even Yisrael edition.

half his days. For what good is the profit of 100 mitzvot if he will lose 1000 or 2000? Heaven forbid that one believes that [he cannot make time to care for his health], for he is a pious fool who kills himself for something that the Torah has not commanded. Not only will he have no reward [for his countless unperformed mitzvot], but he will be held accountable in the future [for not caring for himself] since the Torah commands, "and live by them" and do not die by them, "guard yourself and protect your soul," "and guard yourselves exceedingly," and many other issues like these. For one is warned to protect one's health in order to be healthy and strong to live on Earth to learn Torah and perform mitzvot...

One should know that one of the most stringent mitzvot in our holy Torah is keeping Shabbat. One who keeps one Shabbat according to halacha, merits many things. Nevertheless, [Chazal] were lenient in its observance regarding pikuach nefesh [matters of life-threatening illness], and not only certain pikuah nefesh, but also if it might be life-threatening...Therefore, a *kal v'chomer* [a *fortiori* reasoning] can be used. If one is permitted to set aside one of the most stringent negative precepts which carries a sentence of either spiritual excision or capital punishment, in order that [the person who is ill] may benefit to keep other mitzvot, certainly if there is no transgression of any mitzvot involved, it is appropriate to protect one's health by "shev v'al ta'aseh [refraining from any harmful activity...].

Letters To The Editor

To the Editor:

In the Cheshvan 5761 edition of *Itturai Kohanim*, published by Yeshivat Ateret Kohanim in Jerusalem, there appears a response by Rav Shlomo Chaim HaKohain Aviner, the Rosh Yeshiva of Ateret Kohanim and a Rav in Bet El, concerning the enjoyment of produce grown and harvested in Israel during the *sh'mita* year. I believe that this fascinating responsum has extremely important implications for observant Jews, especially as they prepare for this coming Sukkot when we will all need *etrogim* from Israel and, in general, for the fruits and vegetables which will be harvested this summer and sold throughout the world. In my opinion, it would be an important service to the Jewish community to make Rav Aviner's opinion known to a larger audience. I have translated his responsum and am sending it to your attention. I have appended to the text – in parenthesis – a few comments of my own during the course of the translation.

(H.L.)

Question: "May one purchase fruits and vegetables grown by Jewish farmers on the basis of the *heter ha-mechira*" [the permission by rabbis to sell Jewish-owned land in Israel in order to exclude it from the rules of *sh'mita*] or would it be preferable to buy fruits and vegetables from non-Jewish sources and thus avoid any prohibition and not rely on leniencies?

Answer: First of all, one should understand that the *heter ha-mechira* is a clear and straightforward halachic decision which was rendered by the great rabbis among our people upon whom we rely for so many issues. For example: Rabbi Isaac Elchanan, Rabbi Yehoshua of Kutna, Maharil Diskin, Rabbi Avraham of Sochatshav, Rabbi Shmuel Mohilever... Rabbi Yosef Engel, and others. This is not "the *heter* of Rav Kook" as some like to describe it.

In the **sh'mita** years of 1889, 1896 and 1903, it was widely practiced. In 1910 our revered teacher, Rabbi Kook, strengthened it and clarified it fully.

To be sure, this doesn't mean that other **Geonim** cannot decide differently. This is the way of Torah. There are different opinions as in the *Mishnah*, *Gemara* and among *Rishonim* and *Acharonim*. But one cannot say that the **heter ha-mechira** is some questionable institution. The **heter ha-mechira** is an absolute **heter**. Whoever doesn't accept it is in the category of a **machmir** [one who is particularly strict]. Of course, it is good to be a **machmir**. Our sages say that one who is a **machmir** is blessed; but it is not proper to force a **chumra** on someone else and to define that other person as violating the religion. It is a major principle in a pious life that one should not shame someone who is not excessively strict (see the *Talmud Yerushalmi* at the end of the second chapter of *Berachot* and *L'Netivot Yisrael*, volume II, page 224).

Perhaps one will say that the selling of Jewish-owned lands to a non-Jew is not an actual sale but rather a legal fiction. If so, then we would have to invalidate the selling of **chametz** before Pesach. As a matter of fact, **chametz** is a Torah prohibition while **sh'mita**, in our day, is only a rabbinic rule. According to most rabbinic authorities the **heter ha-mechira** is absolutely reliable.

Perhaps one will argue further as follows: is it not prohibited to sell the land of Eretz Yisrael to a non-Jew as it is written, "lo t'chanem" – do not give them **chanaya** [a foothold, or rootedness] in the land [Avodah Zarah 20-21]? Great worldly scholars have already answered that question by saying that this sale is not a sale in the general legal sense but rather in a religious sense. In fact, the land remains Jewish and no one is giving a foothold to non-Jews in the Land of Israel. Quite the contrary, because of the labor of farming the land, we are strengthening our hold on the land of Israel. Furthermore, if

Jews do not work in agriculture during the **sh'mita** year and, instead, purchase goods and produce from Arabs, this act in itself will give them [the Arabs] a stronghold in the land. Finally, this is a temporary sale, not a permanent one.

One might add, parenthetically, that in this connection we sometimes see a very strange development: there are Jews who refuse to rely on the **heter** because of the prohibition of selling Israeli land to a non-Jew, but they are perfectly prepared to give to the enemy, in a very concrete way, large sections of Eretz Yisrael, G-d forbid! [Rav Aviner takes a very strong view on the issue of transferring Israeli land to the Arabs. He believes, on the contrary, that we should be buying land from the Arabs in order to be able to settle the entire land of Israel. His oblique reference here is to religious parties that accept the exchange of land for peace but eschew the **heter mechira**].

Therefore, the **heter** is very well founded. It would appear, however, that to be a **machmir** on **sh'mita** is very commendable. Our sages referred to the meticulous observers of **sh'mita** as "heroic of spirit and performers of G-d's will." A Jewish farmer who watches while his field is covered with weeds and forgoes all profits from his work is, in truth, a **gibor**, a hero. However, one should make it clear that the expression "heroic" refers to the farmer. The grocer or the supermarket owner is not a hero. What difference does it make to him whether he buys his produce from an Arab or from a Jew?

If the grocer wants to be a real hero and very strict he has a way to do so: let him forgo all debts of people who owe him money and let him not rely on **pruzbul** [a special **heter** for the transfer of debts] at the end of the **sh'mita** year [when all debts would otherwise be canceled]. All religious strictures require balancing priorities. When it comes to an absolute law there is no equivocation. But for strictures, the book **Mesilat Yesharim** devotes an entire chapter ("evaluating **chasidut**").

Sometimes there is a stricture which brings about a leniency. Such is the case here: If a person purchases farm products from Arabs and thereby hurts the economic standing of Jewish farmers – shall this be considered a religious stricture? Quite the contrary, it is a mitzvah to buy from Jews: “Purchase from the hands of your brother” (Leviticus, 25:14). Shall the ruination of Jewish farming be considered a religious stricture (worthy of praise)? Shall the strengthening of the hold of the Arabs in our holy land be considered a religious stricture (worthy of praise)? On the contrary, it is a much greater religious stricture to buy from Jews on the basis of the heter ha-mechira [Rav Aviner’s emphasis].

Our teacher, Rav Kook, wrote:

My pen quivers in my hand at the thought of this disgraceful action perpetrated upon our brothers who live in the farming communities. After we have established the principle of not giving kashrut supervision to non-Jewish wine manufacturers, in order not to affect adversely the Jewish farmers who are mired in poverty [the reference is to the grape growers of Rishon l’Zion in the early 20th century] and they are depending on the profits made possible by the purchase of their grapes; now after this entire matter has been taken care of and the issue of sh’mita has been resolved for the explicit purpose of benefiting our brothers in the agricultural field, there come forth underground forces who advise us to purchase clandestinely from non-Jews specifically, and to raise the honor of our enemies who laugh at our Sabbath. How can we ourselves persecute our brothers who are part of the covenant of Abraham? Heaven help us! One cannot adequately assess the greatness of the shame and the desecration of G-d’s name and the extent of the evil

that is being perpetrated here. My blood boils in my heart. My pain reaches to heaven from this terrible situation. How far we have fallen from authentic Torah and fear of heaven in this matter [Iggerot Ha-Rayah, 316].

Believe me, as a former kibbutznik for eight years [Rav Aviner was the Rav in Kibbutz Lavi], I can testify that even in our days it is not so easy to sustain oneself through farming. There are natural disasters, crop diseases, unstable markets and expensive middlemen. Farming is delightful and holy work – but it is very hard work.

Further, if the economic life of our farmers will be adversely affected every seven years, no one will want to work in agriculture. The whole Jewish farming industry will disappear and we will no longer be a farming nation, a natural nation, a normal nation, a healthy nation. All the more so when we live in a state which is under constant threat of war. No nation in the world can afford to allow itself not to be engaged in agriculture.

A *machmir* [one who observes religious strictures] shall certainly be considered blessed. But the question is: What is the *chumra*? The *chumra* is not to purchase from non-Jews outside of Israel and inside of Israel but rather to purchase agricultural produce from our Jewish brothers. In actuality, this is not a *chumra*; this is an absolute requirement! It is a mitzvah to strengthen the hands of Jewish farmers, to strengthen Israeli agriculture, to strengthen the Land of Israel!

We would do well to consider Rav Aviner's writings when we shop for *etrogim* this Sukkot and when Israeli fruits are brought to market in the United States this fall. We should ask ourselves, what is the real stricture and what is the real leniency?

RABBI HASKEL LOOKSTEIN

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To the Editor:

Re: Steven Oppenheimer, "Journalism, Controversy, and Responsibility: A Halachic Analysis", JHCS XLI (Spring 2001), 99-119.

As someone who has been an editor and publisher of independent Jewish newspapers in the U.S. and Canada during the past two decades, I was interested to read Dr. Oppenheimer's learned attempt to set the Jewish journalism field in an halachic context. I do not, however, recognize my actual efforts in his description of what a Jewish journalist does, or ought to do.

First, Dr. Oppenheimer consistently misstates the role which Jewish journalists and Jewish newspapers by-and-large see themselves as fulfilling today. Thus he writes about a newspaper article "correcting the situation" (p. 117) or drawing "attention to those conditions that need reform" (p. 119). He thereby suggests a journalistic intent affecting social conduct, which is not an immediate goal of the profession. In North America, Jewish journalists (I am referring to reporters and not editorial or feature writers; the author sometimes confuses their distinct roles) have an objective and secular purpose: to analyze and describe events and trends in a society. That purpose is not intrusive, in the sense that journalists are neither advocates for, nor enforcers of, a moral code (these characterizations are largely true whether one is talking about journalists who work for Jewish federation-owned newspapers or for those employed by independently-run businesses; the author, who does not mention the difference, may believe that the philosophical and behavioral distinctions which exist between the two are irrelevant for his discussion). One might correctly argue that

during the 19th and early 20th centuries – the days of the founder of the Zanz Chassidic dynasty or of the Chafetz Chaim, both cited by the author – journalists and newspapers were partisan and ideological. But that was then; this is today.

Secondly, while contemporary Jewish and non-Jewish journalists dwell on the "is" rather than the "ought" of social conduct, they are nonetheless guided by general ethical and professional principles. Here, too, Dr. Oppenheimer appears largely unfamiliar with the terrain. Fairness and accuracy are essential values esteemed by journalists today; in an ideal situation, it is not deemed professional to introduce personal or (particularly in the case of the independent Jewish journalist) specific communal agendas. In this regard, the author's introduction of the Chafetz Chaim's seven halachic guidelines concerning *lashon hara* (pp. 109-110) is particularly difficult, because in uncritically applying them to the media (rather than restricting them to the individual) one is led into redundancy. Thus, points 1, 3, 4 and 7 all deal with the same thing: the fundamental need for accuracy, honesty, fairness, and disinterestedness on the part of the journalist. These halachic principles are accepted by journalists today. Points 2, 5 and 6 all relate to that intrusive personal element which, as I have stated, is not found in the contemporary journalist's press kit.

Had Dr. Oppenheimer discussed the journalistic aspect of this topic with greater precision, I believe that he would have come up against an inherent tension between modern journalism (including in theory, at least, Jewish journalism) and halacha, which may well be impossible to resolve. This is because in this country the press has become the Fourth Estate, an independent investigative and protective power which looms on a level of equality with, and occasionally even superiority over, the other "estates" of our democratic system. The legal concept of freedom of the press, especially as understood by the courts during the last century, has only affirmed the press's

ability to act with limited restraint as it conducts its business of reporting and commenting on issues of the day. That is the position of a free press in this free society; it would seem that by definition halacha neither does, nor can, recognize the possibility of an Estate which would be separate but equal to it, or even potentially more powerful. Halacha can use the press for its purposes, and Dr. Oppenheimer shows how that can occur. But in order to do so one ends up distorting that vision of a free press to which we have become accustomed in American society.

Finally, I would like to comment on the author's timely reference to a recently published article about an unnamed rabbi by an unnamed Jewish journalist in an unnamed Jewish newspaper (p. 99). Although Dr. Oppenheimer eschews directly expressing his opinion on that case, I suspect that after reading his piece many will conclude that what was done by the unnamed Jewish journalist in that incident was improper, from an halachic perspective.

That would be a shame, because I think that the relationship between halacha and contemporary journalists and journalism remains to be satisfactorily explored. In the meanwhile, as a total outsider to the case but as one who has read the initial news report to which Dr. Oppenheimer's remarks allude, I am convinced that the unnamed journalist's tempered and responsible conduct was laudable, was appropriate professionally, and appears to have accurately conveyed information of urgent import to the Jewish community.

Sincerely,

DOUGLAS WERTHEIMER, PHD
EDITOR & PUBLISHER, CHICAGO JEWISH STAR

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Dr. Oppenheimer responds:

There seems to be a fundamental philosophical and ideological difference between the approach that I took in writing the article and that which is suggested by Dr. Wertheimer. The halachic guidelines of the Chafetz Chaim and the responsa of the poskim are not anachronistic dictates relegated to the past but apply with equal validity in our time and will continue to resonate into the future.

It is true that I did not point out the journalistic differences among reporters, feature and editorial writers, investigative reporters, etc. This is because they must all look to the halacha to be guided in conducting their individual and collective responsibilities. The principles of *lashon hara* apply equally to discussing what "is" and what "ought" to be. The words used in writing an article, the pictures chosen to accompany an article, the headline that introduces the article and the placement of an article certainly affect the public's perception of what "is." A story can be written many ways. We all know, for example, how Israel is currently treated in the press.

Dr. Wertheimer feels that the Chafetz Chaim's instruction to be accurate, not exaggerate, be truthful, do no intentional harm, and not be motivated by an agenda should not apply to journalists because these are "values esteemed by journalists today." While this is commendable, it is not always observed. Considering whether a story needs to be published and the consequences of publishing the story are not even in Dr. Wertheimer's "press kit" because he feels that journalists are not concerned with the "ought of social conduct." Halacha instructs all of us to be concerned with social conduct and the consequences of our actions. It is interesting that Dr. Wertheimer makes no mention of my advice that the Jewish media seek rabbinic counsel in helping them navigate the difficult task of writing the news. Lawyers play a role in advising the media on their legal responsibilities. Wouldn't the guidance of a posek help the newspaper avoid halachic pitfalls?

The courts in this country may have allowed the press wide latitude in conducting its business but that does not mean the press should act without limits. Halacha defines these limits for the Jewish press. The Jewish media may not place themselves above the law and disregard these limitations. Dr. Wertheimer's bold assertion that the press is supra-halachic because it has assumed the role of the Fourth Estate is incredible. Halacha does not have an agenda and does not seek to "use the press for its purposes." Halacha is a code of laws by which Jews conduct themselves. If Dr. Wertheimer rejects the primacy of halacha in Jewish life, it will take more than my letter to convince him.

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To the Editor:

I would like to make a comment on Rabbi Koenigsberg's article on the canvas succah, in particular with regard to the question of *maamid* and *maamid d'ma'amid*. In note 23 he states that according to Chazon Ish both are prohibited. However, Rabbi Pris (*Techumin* 16, p. 66) points out that Chazon Ish holds that *ma'amid d'ma'amid* is certainly permitted. The disagreement is over the definition of *ma'amid*. Chazon Ish considers even indirect support to be *ma'amid*. The difference is that since Chazon Ish disagrees with the *Shulchan Aruch* about indirect support, it would mean that *Shulchan Aruch* allows the use of *ma'amid*.

Independently, Rabbi Chaim Soloveitchik allowed the use of *ma'amid*. Rabbi J.B. Soloveitchik (see *Harerei Kedem* pp. 178-181 and *Mesorah* 14, p. 27) explains that ordinary *ma'amid* is acceptable. However, where the *ma'amid* becomes part of the *s'chach* rather than simply a support, then it is not acceptable. Hence, a ladder (*OC* 629:7) is not acceptable because it becomes *s'chach pasul* and not because of *ma'amid*.

SINCERELY,

