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THIS ISSUE OF THE  
JOURNAL OF HALACHA  
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IS DEDICATED IN MEMORY OF  
OUR GRANDFATHER

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ר' אביגדור בן ר' שמעון  
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Born in Radomysl, Poland, he was the youngest of five children raised in a Chassidic home. He spent the war years running from the Nazis and ultimately fled to Italy where, weeks after the birth of his only child, he was murdered.

While his own life was cut short, his courage and sacrifice were rewarded with generations of his family who have followed in his path, leading Torah-observant lives that honor his legacy and perpetuate the shalsheles of Klal Yisroel.

AVI & MICHAL SCHICK AND FAMILY

# **Journal of Halacha and Contemporary Society**

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**Rabbi Dovid Cohen,  
Editor**



# The Journal of Halacha and Contemporary Society

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The Journal of Halacha and Contemporary Society is published twice a year by the Rabbi Jacob Joseph School whose main office is at 3495 Richmond Road, Staten Island, New York, 10306. We welcome comments on the articles included in this issue and suggestions for future issues. They should be sent to the Editor, Rabbi Dovid Cohen at [editor@journalofhalacha.org](mailto:editor@journalofhalacha.org).

Manuscripts submitted for consideration should be in Word format and sent via email to Rabbi Cohen. Each article will be reviewed by competent halachic authority. In view of the particular nature of the Journal, we are especially interested in articles that concern contemporary halachic issues.

More generally, it is the purpose of this Journal to study through the prism of Torah law and values major questions facing us as Jews in the twenty-first century. This encompasses the review of relevant biblical and talmudic passages and the survey of halachic literature, including recent responsa. Most importantly, the Journal of Halacha and Contemporary Society does not present itself as the halachic authority on any question. Rather, the aim is to inform the religious Jewish public of positions taken by respected rabbinic leaders over the generations.

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# Uttering the Names of Idols

*Rabbi Reuven Chaim Klein*

## **Idols in everyday speech**

Most of us do not spend a lot of time discussing idols. Or do we? When talking about manned spacecraft, the name “Apollo” just rolls off our tongues. When discussing brand name footwear, we mention “Nike” without any second thoughts. And of course an old-fashioned glass thermometer is a “mercury thermometer.” However, most of us have forgotten the idolatrous origins of these words: Apollo was the Greek god of the sun, Nike was the Greek god of victory, and Mercury was the Roman god of travel.

Are we halachically allowed to say these names, and if so, under what circumstances?

## **The prohibition of saying the names of idols**

The Bible exhorts a Jew to *be careful regarding everything I [G-d] have said to you. The name of the gods of others you shall not mention, nor shall your mouth cause it to be heard* (Ex. 23:13). This is traditionally understood<sup>1</sup> to prohibit a Jew from causing the

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1. Nachmanides (there) understands that this prohibition is derived from the plain reading of the verse cited, implying that the prohibition of mentioning the name of an idol is Biblically-ordained. However,

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name of an idol to be uttered, whether by himself or by others.<sup>2</sup> One practical application of this law is that a Jew may not say, "Meet me next to such-and-such idol."<sup>3</sup> Another corollary is that a Jew may not engage in a business partnership with an idolater, lest the Jew be required to take an oath and swear in the name of the idolater's god.

The Talmud<sup>4</sup> offers two notable exceptions to this prohibition against saying the names of idols. Firstly, one is allowed to utter the names of idols if one does so mockingly.<sup>5</sup> Secondly, one is allowed to utter the names of idols that are explicitly mentioned in the Bible.<sup>6</sup> A number of commentators

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Maimonides (*Sefer ha-Mitzvot*, Negative Commandment #14 and in Laws of *Avodah Zarah* 5:10) understands that only *swearing* in the name of an idol is Biblically forbidden, while the prohibition of *mentioning* an idol's name in other contexts is of Rabbinic origin. This approach is also adopted by *Sefer ha-Chinuch* (#86) and *Ralbag*(to Ex. 23:13).

2. R. Yitzchak Luria (1534–1572), better known as Arizal, taught that this prohibition also includes saying any name of the Satan (Samael), including "Diablo" (see *Likkutei Torah, Parshat Mishpatim*). The author of responsa *Torah li-Shmah*, ostensibly R. Yosef Chaim of Baghdad (1832–1909), writes (there §426) that he is careful to refer to the archangel by the first two letters of his name, *Samech-Mem*. R. David Grossman (the voice of the Shaspod) calls him "Sammy."

3. *Piskei ha-Rosh* (*Sanhedrin* §7:3) cites an opinion which maintains that this prohibition *only* applies to using the name of an idol for a utilitarian purpose, but to use the name for no practical reason is permitted. However, *Piskei ha-Rosh* rejects this view, arguing that mentioning a name of an idol for no real reason is *worse* than doing so for a practical reason. *Piskei ha-Rosh*'s rejection of that opinion is codified by the author's son in the *Tur Yoreh Deah* §147 (see also *Beit Yosef* there) and *Shulchan Aruch* (there).

4. *Sanhedrin* 63b.

5. The Talmud (*Sotah* 42a) says that scoffers are among those who do not merit being greeted by G-d's Holy Presence. Nonetheless, those who mock idolatry are an exception to this rule. Similarly, *Maharsha* (to *Megillah* 25b) writes that the notion of "clean language" does not apply to discussions about idolatry, so one may use crude expressions in deriding idols.

6. R. Chaim Benveniste in *Shiyarei Knesset ha-Gedolah*, *Yoreh Deah* §147 points out that this dispensation applies even when not said mockingly. The commentators disagree about exactly why the Talmud allows one to say the names of idols mentioned in the Bible.

rule that the same is true when the name of an idol is recorded in the Targum.<sup>7</sup>

- R. Achai Gaon (d. 752) understood that the Talmud allowed this because once explicit mention of the idol is allowed in one case, it is permitted in all cases (see *Gilyonei ha-Shas* to *Sanhedrin* 63b). In other words, since one is certainly allowed to pronounce those names when reading the Torah, then one may also utter those names in other contexts. (S. Mirsky (ed.), *Sheiltot de-Rav Achai Gaon* vol. 3 (Jerusalem: Yeshiva University/Mossad HaRav Kook, 1962), pg. 136.)
- R. Eliezer of Metz (d. 1175) (*Sefer Yeraim*, §75 [§245 in other editions]) writes that one is allowed to utter names of idols mentioned in the Bible because if the Bible decided to mention those names, then apparently those idols were already annulled.
- R. Yehonatan Eyebschitz (1690–1764) (*Yaarot Dvash* (vol. 2, *derush* #2) writes in the name of the *Zohar* that the reason that names of idols mentioned in the Bible may be said is that these idols have an element of holiness to them. This stands in contrast to the names of idols not mentioned in the Bible, which are wholly evil as they are the root of all impurity, so uttering their names defiles one's mouth and tongue.

R. Yair Chaim Bachrach (1639–1702) (*Responsa Chavot Yair* vol. 1, §1) raises a difficulty with R. Eliezer of Metz's approach: The reason for allowing one to utter the names of idols mentioned in the Bible cannot be that those idols were already annulled, because that is not always true. For example, Isaiah's prophecy (Isa. 46:1) foretelling the future downfall of Bel and Nebo (two well-documented Babylonian deities) clearly implies that these deities still existed in Isaiah's time. Thus one cannot say that if the Bible mentions a deity, it already ceased to be worshipped.

Some suggest splitting R. Eliezer of Metz's reasoning into two arguments. Accordingly, he means that the names of *most* idols mentioned in the Bible may be said because *by now*, they have already been annulled. As for the other idols, which have not yet been nullified, they may nonetheless be uttered for whatever other reason the Bible was allowed to mention them. This answer is proposed by R. Yosef David Zinzheim (1745–1812) in *Yad David* (to *Sanhedrin* 63b) and by *Shem Chadash* to *Sefer Yeraim* (there).

7. R. Chaim Yosef David Azulai (1724–1806)—the *Chida*—in *Birkei Yosef* to *Yoreh Deah* §147 and *Orach Chaim* §285, and R. Emmanuel Chai Ricci (1687–1743) in *Aderet Eliyahu* to *Brachot* 8b. See the same ruling in *Yaarot Dvash* (vol. 2, *drush* #2), *Tiferet Yehonatan* (to Num. 32:3), and *Sefer Maamarei ha-Rama mi-Fanu* vol. 2 (Jerusalem: Yismach Lev-Torat Moshe, 2003), pg. 177), cited in *Responsa Tov Ayin* 18:59.

The proof to this position comes from a question and answer of R. Bachya to Num. 32:3 as to why the Talmud (*Brachot* 8a-b) singles out a

## Names which preceded idolatrous usage

R. Yair Chaim Bachrach (1639–1702) argues that there is another type of idol whose name may be said, even though it is not mentioned in the Bible. That is, if an entity existed before its name became associated with idolatry, then one is allowed to continue using its original name, despite its idolatrous association. He proves this assertion by noting that even though the seven astral forces (i.e., the sun, the moon, and the five closest planets) have historically been used for idol worship, Jews have not stopped using the names of those forces. That is, they continue to say Saturn for *Shabtai*, Jupiter for *Zedek*, and Lucifer (Venus) for *Nogah*, even though these entities have regrettably become associated with idolatry. He then notes that the seven astral forces are in any case not really idols because the gentiles do not view them as gods, *per se*, and even those who pray to these forces are only using them as intermediaries, not gods.<sup>8</sup>

## Mentioning obsolete idols

R. Bachrach asks: how can the Talmud say that “Rav and Shmuel did not go to the Temple of Netzrafi”,<sup>9</sup> which was an idol,<sup>10</sup> if it is forbidden to mention the names of idols? He suggests that perhaps the prohibition only applies at the time that a given idol is still being actively worshipped. Once any idol becomes obsolete, one may utter its name—even if it is not mentioned in the Bible.

Nonetheless, he notes that according to this explanation, an

specific verse when teaching the principle that Targum must be read weekly for each verse.

8. Responsa *Chavot Yair* (vol. 1, §1).

9. *Shabbat* 116a.

10. M. Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature* (New York: Judaica Press, 1971) pg. 930 claims that the term *Netzrafi* is a disguise of the word *Notzri* (נוצרי, Christian).

incident in the Talmud becomes difficult to understand. The Amoraic sage Ulla was criticized for mentioning that he had lodged in Kal-Nebo, for Nebo was the name of an idol. One must therefore postulate that Nebo was still worshipped in Ulla's time because otherwise the Talmud's criticism would be baseless.

However, this does not seem plausible because the joint downfall of Nebo and Bel is prophesied by Isaiah, and Bel had certainly already been eliminated by the time of Daniel (long before Ulla's time). One would therefore assume that since Isaiah linked the downfall of Nebo and Bel, if Bel was no longer worshipped, neither was Nebo.<sup>11</sup> To resolve this, R. Bachrach posits that one must say that even after Daniel eliminated the idols of Bel and Nebo, they were later reinstated, so that in the generation of Ulla, they were still worshipped.<sup>12</sup>

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11. R. Bachrach does not reveal his source for the assertion that Daniel eliminated the Babylonian idol Bel. Nonetheless, this idea is found in two early sources: Yanai, an early *payytan* (poet) who lived in the Holy Land, wrote a poem about different miraculous feats which had historically occurred at night. This poem, popularly recited towards the conclusion of the Passover Seder, mentions the destruction of Bel between mentioning the miraculous destruction of Sanncherib's army and Daniel miraculously interpreting Nebuchadnezzar's dream. This placement implies that the idol's destruction happened in the time of Daniel and Nebuchadnezzar. Additionally, *Yossiphon* (Book I, Ch. 3), a Hebrew work loosely based on Josephus' writings, relates the story of Daniel proving to an unnamed Babylonian king that Bel itself does not eat the sacrifices offered to it, but rather its priests eat those sacrifices and pretend that the idol ate it. The priests of Bel admitted to perpetuating this ploy, prompting the Babylonian king to destroy the Temple of Bel.

12. R. Yaakov Emden (1697–1776) in his glosses to *Avodah Zarah* 11b also makes this suggestion about Bel. Archeology suggests that this restoration of the idol happened sooner rather than later, because the Alexander Chronicle (BM 36304) records that Bel-worship existed at the time of King Darius' downfall (although scholars disagree about whether this refers to King Darius I or Darius II). See A. Hool, *The Challenge of Jewish History* (Mosaica Press, 2014), pgs. 53–54.

## Idol names for studying Torah

R. Bachrach also suggests that one is permitted to say the name of an idol for the purposes of discussing and clarifying Torah. He bases himself on a Mishnah,<sup>13</sup> which relates a story where Rabban Gamliel justified his use of the bathhouse of Aphrodite [a Greek goddess] based on details specific to that bathhouse (when it became associated with Aphrodite, the fact that it is a bathhouse, etc.). R. Bachrach reasons that the Mishnah deemed it appropriate to mention the name Aphrodite—and did not just mention an “idol” in a vague way—because mentioning the names of idols is permitted for the purposes of clarifying the details of Torah and halacha.<sup>14</sup> The same idea is proposed by the fourteenth-century authority R. Menachem ha-Meiri (1249–1310),<sup>15</sup> who allows for mentioning names of idols which are not in the Bible if needed in order to learn and rule halachic matters. He cites, as an example, the case of the Roman god Marculus (Mercury), which is consistently mentioned by name in Rabbinic literature, even though it does not appear in the Bible.<sup>16</sup>

However, this allowance is not universally agreed upon. Rabbeinu Tam (1100–1171), writes in his explanation of the etymology of the name Marculus that the name itself speaks disparagingly of the idol and is not its real name.<sup>17</sup> Consequently, when R. Chaim Benveniste (1603–1673) compares the explanation of Rabbeinu Tam with that of ha-

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13. *Avodah Zarah* 3:4.

14. *Responsa Chavot Yair* (vol. 1, §1).

15. *Beit ha-Bechirah* to *Sanhedrin* 63b.

16. See commentary of R. Avraham Sofer (1897–1982) to ha-Meiri, and see also *Aruch la-Ner* to *Sanhedrin* 63b.

17. *Tosafot* to *Sanhedrin* 64a and *Avodah Zarah* 50a. [For more on this, see *Maharam* (to *Sanhedrin* 64a) and *Maharshal*'s commentary to *Smag* (Negative Commandment #32) with R. Benveniste's commentary there (*Chamra de-Chayei* to *Smag*).] See a similar approach by R. Isaiah of Trani (1180–1250) in *Piskei Rid* (to *Sanhedrin* 63b).

Meiri, he explains that R. Tam's engaging in onomastics shows that he disagrees with ha-Meiri's approach.<sup>18</sup>

It is noteworthy that recently discovered Medieval sources set up Rabbeinu Tam's statement in a manner which supports the notion that Rabbeinu Tam himself actually agreed with ha-Meiri.<sup>19</sup>

### **The Rabbis corrupted the names of idols**

The Talmud<sup>20</sup> offers a list of "permanent places of daily idolatry": the Temple of Bel in Babylon, the Temple of Nebo in Kursi, Tar'ata in Mapug, Zerifa in Ashkelon, and Nishtra in Arabia.<sup>21</sup> The Tosafist R. Yehuda b. Klonymous takes issue with this delineation of idolatrous names and asks how the Talmud could mention them if they are not found in the Bible (save for Bel and Nebo). He answers that the Talmud slightly altered their names in order to present these idols in a disparaging way. For example, the name *Tar'ata* conjures the

18. *Shiyarei Knesset ha-Gedolah*, *Yoreh Deah* §147, also cited by *Darkei Teshuvah* (there).

Another commentator (*Parashat ha-Kesef* to Maimonides' Laws of *Avodah Zarah* 5:10) suggests conflicting proofs to the two opinions noted in the text, from the Talmud in *Avodah Zara* 11b (which lists idols not mentioned in the Bible), and the Talmud in *Sanhedrin* 63b, which finds it problematic that a Tannaitic source refers to a specific idol by name even though that was done in a halachic context.

19. The relevant passage appears at least twice in the recently published writings of R. Yehuda Sir-Leon (1166–1224): M. Y. Blau (ed.), *Tosafot Rabbeinu Yehudah mi-Paris*, *Avodah Zarah* (New York, 1929), pgs. 250–251 and N. Zaks (ed.), *Tosafot Rabbeinu Yehudah*, *Brachot* vol. 2 (Jerusalem: Machon HaTalmud HaYisraeli HaShalem, 1972), pg. 618. It also appears in *Tosafot ha-Rosh* (to *Avodah Zarah* 50a and *Bava Metzia* 25b). See also *Tosafot* to *Bava Metzia* 25b and *Sefer ha-Yashar le-Rabbeinu Tam* (*Chiddushim*, §699).

20. *Avodah Zarah* 11b.

21. See Harkavy (ed.), *Zichron la-Rishonim ve-gam la-Acharonim* vol. 1, pg. 22 (Petersburg, 1879), for a Geonic responsum that discusses the somewhat-related issue of which ancient Persian holidays mentioned by the Talmud (there) were still practiced.

word ‘*arai* (עראי, temporary), alluding to the “temporary existence” of this idol until its eventual downfall. The god Nishtra was spelled *nishra*, conjuring the word *neshira* (נשירה, falling/balding).<sup>22</sup>

Similarly, the Mishnah offers a list of pagan holidays celebrated in Roman times and includes in that list a holiday known as *Saturnura* (סָטוּרְנוּרָא).<sup>23</sup> R. Yisrael Lipschitz (1782–1860) points out that the real name of this winter holiday was *Saturnalia*, the day which celebrates the astral force *Shabtai* (known in Latin as *Saturn*).<sup>24</sup> R. Lipschitz explains that the Rabbis purposely distorted the word *Saturnalia* in order to avoid the issue of explicitly using the name of an idol. They referred to it as *Saturnura*, which is a portmanteau of *satar* (סָטוּר, far away) and *nura* (נוּרָא, fire), a reference to the Earth’s distance from the sun during the winter period.<sup>25</sup> (In some ways, this follows R. Lipschitz’s general approach of explaining that while the Hebrew language does incorporate some elements of foreign languages, the Rabbis insured that it would not do so verbatim, but would slightly alter the meaning and/or pronunciation of adopted foreign words.<sup>26</sup>)

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22. See Y. Maimon (ed.), *Yechusei Tanaim ve-Amoraim* (Jerusalem: Mossad HaRav Kook, 1963), pg. 161.

23. *Avodah Zarah* 1:3.

24. The Italian scholar R. Chananiah Elchanan Chai Cohen (1750–1834) in *Bamot Baal* (Reggio, 1809), pg. 36a, answers this discrepancy differently. He posits that for some reason when transliterating the name of the Roman holiday from Latin to Hebrew, the *l*-sound of the word *saturnalia* switched to an *r*-sound to produce *saturnura*. He notes that the inverse phenomenon is found in the name of the Roman god Mercury in which the second *r*-sound was switched into an *l*-sound in Hebrew to produce the name *Marculus*. Indeed, Egyptologists also see the interchangeability of these two sounds in the Ancient Egyptian language. Linguists recognize that both the *r*-sound and the *l*-sound are considered “liquid” and are therefore somewhat interchangeable.

25. *Tiferet Yisrael* to *Avodah Zarah* 1:3, *Yachin* §8.

26. See R. C. Klein, *Leshon HaKodesh: History, Holiness, & Hebrew* (Mosaica Press, 2015), pg. 159.

A third instance of this phenomenon is found where the Talmud<sup>27</sup> mentions an Egyptian deity named *Sar-apis* (סַר אֲפִיס). The Talmud explains that this god is named after the Biblical Joseph, who was *sar u-mefis* (סַר וּמַפִּיס), he disappeared and [then ended up] sustaining [the entire world during the years of famine]. R. Yaakov Emden (1697–1776) notes that in this case, the Talmud purposely split the god's name Serapis into two words in order to disparage it. That is, the Talmud's spelling of the Egyptian deity's name is orthographically similar to *Sar efes* (סַר אֲפֵס), which literally means "prince of nothing."<sup>28</sup>

## Using idol names in everyday life

R. Yitzchok Schmelkes of Lvov (1828–1905) discusses using the names of idols in everyday correspondence. He rules that it is unbefitting of the local *Bikur Cholim* chapter (an aid group which visits the sick and infirm) to bear the name Gaia, because Gaia was the name of a Greek goddess responsible for health. He notes that even though it seems that this idol has already been rendered obsolete, the possibility still exists that somewhere, someone believes in it. He also denounces using the Yiddish phrase *gesundheit* because the German word *gesund* (health) recalls the name of the Greek goddess Gaia, regardless of whether or not the German word preceded the establishment of the Greek pantheon. He then notes that even though the Hebrew word *mammon* (מַמְוָן, money) was derived from the pagan god of silver,<sup>29</sup> its usage as the term for money is somehow not connected to that god in any way, while the

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27. *Avodah Zarah* 43a.

28. *Hagahot Yaavetz* to *Avodah Zarah* 43a.

29. I have not found any source for this assertion. R. Reuven Margolis in *Mekor Chesed* to *Sefer Chassidim* §427 points out that the Midrash (*Bamidbar Rabbah* §22:8) offers another explanation of the Hebrew word *mammon*: It is an abbreviation of the phrase *mah atah moneh kelum* (מה אתה מונה כלום, what are you counting—nothing).

German word for health is, in fact, directly related to the Gaia.<sup>30</sup>

*Maharal* (1512–1609) writes that it is forbidden to mention certain well-known coins which were named after idols.<sup>31</sup>

## Writing names of idols

R. Yosef Babad (1801–1874) writes that he is unsure about whether or not the prohibition of *saying* the names of idols also applies to *writing* them.<sup>32</sup> After discussing the matter, R. Schmelkes effectively rules that there is no prohibition to write the names of idols, a view upheld by R. Ezriel Hildesheimer (1820–1899), as well.<sup>33</sup> However, R. Schmelkes adds the caveat that one who wrote about an idol, “this is my god” has violated a capital prohibition in the same way as one who says those words.<sup>34</sup>

R. Menashe Klein (1924–2011) quotes these sources to allow writing the addresses of streets and towns named after idols. He further justifies his position by noting that according to R. Eliezer of Metz, one is allowed to say the name of any idol that is obsolete. Accordingly, since streets and towns<sup>35</sup> are usually

30. Responsa *Beit Yitzchak*, *Yoreh Deah* vol. 1, §152.

31. *Gur Aryeh* to Ex. 23:13.

32. *Minchat Chinuch*, §86.

33. Responsa *Rabbi Ezriel* (*Yoreh Deah* §180).

34. Responsa *Beit Yitzchak*, *Yoreh Deah* vol. 1, §152.

35. R. Chaim Halberstam of Sanz (1793–1876) is reputed to have refrained from pronouncing the given names of cities because he suspected that they contained allusions to idolatry. Instead he would purposely mispronounce the name of the city or use some other way of identifying the city besides its name. Nonetheless, R. Meir Amsel dismisses the story about R. Chaim Sanzer as an unsourced rumor and points to several halachic responsa where R. Chaim Sanzer himself uses the gentile names of cities. See Responsa *Hamaor* (New York, 1967), vol. 1, pp. 493–494 and *ha-Ish ha-Domeh le-Malach* (Bene Barak, 2002), p. 62. Similarly, the town known in Hungarian as Szatmárnémeti and in Romanian as Satu Mare was historically known amongst Jews as Sakmar/Sakmir. In fact, its own rabbis such as R. Yoel

named after obsolete forms of idolatry, there is generally no problem. Nonetheless, R. Klein concludes that, if possible, one should try to avoid directly writing the name of an idol when writing out a city or street name, and should instead purposely misspell the idolatrous name.<sup>36</sup>

### Places named after idols

R. Moshe Sternbuch tolerates uttering the names of idols in situations that most people do not realize those names are actually of idolatrous origins. R. Sternbuch applies this reasoning to justify, for example, using the secular names for months which are named after idols (see below). He also uses this to permit saying the name of the Indian city Bombay, even though it is named after an idol. Regarding Bombay, R. Sternbuch also notes that the actual Indian goddess for whom the city is named was Mumbai and when the British occupied India, they changed the name of the city from Mumbai to Bombay,<sup>37</sup> thereby showing their disregard for the theistic implications of its name. Once this occurred, the name of the city can no longer be said to be associated with that idol.<sup>38</sup>

In discussing streets named after idols, R. Efrayim Greenblatt (1932–2014) notes that nowadays those streets only refer to the idols in name, but do not actually conjure their

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Teitelbaum of Satmar referred to the town as such. The phenomenon was likely due to an urban legend which argued that Satu Mare refers to "Saint Mary". Nonetheless, others point out that the name Satu Mare simply means "large city" in Romanian.

36. *Responsa Mishneh Halachot* vol. 9, §169.

37. When asked by my colleague R. Dovi Leibowitz of Givat Zev HaChadashah about the 1995 legislation in India that restored the name Mumbai to the city, R. Sternbuch responded that even so, people still continue to call the city Bombay, so his ruling remains. Furthermore, noted R. Sternbuch, even if the name Mumbai catches on, since most people do not realize that it is the name of an idol, it is still permitted to be mentioned.

38. *Responsa Teshuvot ve-Hanhagot* vol. 6, *Yoreh Deah* §178.

memory. Nonetheless, he writes that when one needs to mention the name of an idol when writing the address for a mail item, one should optimally abbreviate the idol's name, instead of writing it out in full. R. Greenblatt also notes that in 1951, R. Moshe Feinstein (1895–1986) told him that, if possible, one should refrain from verbally mentioning street names that refer to idols (similar to R. Klein's ruling), but if it cannot be avoided, one should express the name in a way that it is clear that he conveys no religious significance to the idol. When all is said and done, R. Greenblatt concludes that while some people are stringent in this matter, the norm is to be lenient.<sup>39</sup>

The late R. Avraham Weinfeld argues that places named after idols are allowed to be mentioned provided the idol itself is not located in that place. Nonetheless, if the place actually houses the idol for which it is named, uttering the place's name would be forbidden.<sup>40</sup>

### Names of idols in dates

Seven Days of the Week and the Astral Forces				
	<u>Days of the week:</u>	<u>Norse gods:</u>	<u>Planets / Roman gods:</u>	<u>Names of Mazalot corresponding to the planets:</u>
1	Sunday	(the sun)	Sun	חמה, <i>chamah</i>
2	Monday	(the moon)	Moon	לבנה, <i>levanah</i>
3	Tuesday	Tyr (Tiu)	Mars	מאדים, <i>maadim</i>

39. *Responsa Riveivot Efrayim* vol. 8, §556.

40. M. Amsel (ed.), *Kovetz Hamaor* vol. 18 (Brooklyn, 1951), pg. 9 and *Kovetz Chachmei Lev* (Jerusalem: Yeshivat Lev Avraham, 1998), pgs. 75–78.

4	Wednesday (Midweek in German)	Woden (Odin)	Mercury	כוכב כתוב <i>cochav/</i> <i>katav</i>
5	Thursday	Thor	Jupiter	צדק, <i>tzedek</i>
6	Friday	Frige (Frigg, Freyja)	Venus	נוגה, <i>nogah</i>
7	Saturday	n/a	Saturn	שבתאי, <i>shabtai</i>

There are several complicated issues that arise when referring to dates by the conventional Western system. The names of some components used in this system allude to elements of idolatry, leading to the possibility that a Jew is forbidden from using such a dating system:

**1. Years:** The secular calendar supposedly begins counting its years from the birth of the Christian deity Jesus. By using that date as one's point of reference, one lends significance to that religion, which may be forbidden. Nonetheless, after discussing the matter at great length, R. Ovadia Yosef (1918–2013) allows using the secular year in private letters. Interestingly, he proves that in any case, the year 1 CE was not actually the year of Jesus' birth.<sup>41</sup> Some authorities mention that if one wants to be especially stringent, he can use the Christian year in correspondence, but should note that such is the year "according to *their* calculation" to exclude himself from giving any significance to the Christian counting. Alternatively, if one omits the millennium and only counts the century and the year in the century (e.g. if in the year 1987 he simply writes 987), he is in the clear because he has sufficiently deviated from the Christian nomenclature. Nonetheless, R.

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41. Responsa *Yabia Omer* vol. 3 *Yoreh Deah* §9 and vol. 7 *Yoreh Deah* §32.

Meir Amsel (1907–2007) proves from various rabbinic responsa that all of this is unnecessary.<sup>42</sup>

**2. Months:** The names of the first six months of the conventional calendar are derived from names of Greek and Roman gods (January=Janus, February=Februus, March=Mars, April=Aphrodite, May=Maia, June=Juno). Nonetheless, R. Sternbuch rules that this does not cause a problem in using those names, because since people do not realize their idolatrous origins, they may be uttered.<sup>43</sup> Another complicating factor is that using the numbers of the secular months (1 for January, 2 for February, 3 for March, et al.) may be considered a violation of the Biblical directive (Ex. 12:2) that Nissan should always be considered the first month.<sup>44</sup>

**3. Days of the week:** The conventional names for the days of the week are related to the idolatrous names of the seven astral forces. In English and German, most of those names are related to Norse gods, while in other Latin-based Romance languages (such as Spanish, French, and Italian) the days are named after Roman gods.<sup>45</sup> This raises an issue with using those names because they speak of idols. Furthermore, halacha calls for connecting the days of the week to the Sabbath: The fourth of the Ten Commandments commands the Jews to *Remember the Sabbath day to sanctify it...* (Ex. 20:8). *Mechilta de-Rashbi* explains that this commandment entails remembering the Sabbath during the rest of the week by naming each day of the week as a function of the days elapsed since the previous Sabbath. Thus, Sunday is “the first day,” Monday is “the second day,” and so forth (see footnote<sup>46</sup>).

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42. See *Responsa Hamaor* vol. 1 (New York, 1967), pgs. 490–491.

43. *Responsa Teshuvot ve-Hanhagot* vol. 6, *Yoreh Deah* §178.

44. See R. Yaakov Yerucham Warschner’s *Seder Yaakov* vol. 2 (Jerusalem, 2010), pgs. 373–375 who offers a survey of the various opinions on this matter.

45. Interestingly, Portuguese is the only Romance language in which the days of the week (except Saturday and Sunday) are named ordinally, not nominally (see below).

46. *Mechilta de-Rabbi Yishmael* (there) simply quotes the Tannaitic sage Rav

R. Yehuda Herzl Henkin<sup>47</sup> rules that one is permitted to say the names of foreign deities which are no longer worshipped

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Yitzchak who said, “you should not count in the way that others count; rather you should count for the sake of the Sabbath.” Nachmanides (to Ex. 20:8) and Ritva (to *Rosh HaShanah* 3a) explain that this means that the days of the week should not be given nominally, but rather ordinally in relation to how many days passed since the previous Sabbath. Their explanation bridges the statements of *Mechilta de-Rabbi Yishmael* and *Mechilta de-Rashbi*.

R. Yosef Elbo (1380–1444) in *Sefer ha-Ikkarim* (9:33) quotes Nachmanides and adds that this means that one should not use the names *Lunis*, *Martis*, *Marculus* (the respective Spanish words for Monday, Tuesday, and Wednesday) to refer to the days of the week. R. Yosef Teomim (1727–1792), better known as the *Pri Megadim*, in *Sefer Notrikon* (Bilguriya, 1910), pg. 10 also quotes Nachmanides and adds that this means that one should not use the German/Yiddish names *Sonntag* (Sunday), *Montag* (Monday), et al., for the days of the week.

This begs the question: How can the Jewish community at large use the names for the days of the week in their respective languages, if they really should name the days of the week in the above manner? R. Baruch Epstein (1860–1941) writes in *Baruch she-Amar Al Haggada Shel Pesach* (Tel Aviv, 1965), pg. 84 that because of the bitter exile, Jews have become caught in the general custom of giving pagan names for each day of the week. He notes that they retain the Jewish custom of dating days of the week to the Sabbath in religious documents such as *Gittin* (ritual bills of divorce) and *Ketubot* (marriage documents). Thus, while R. Epstein raises the issue, he fails to offer an adequate solution, instead attributing the phenomenon *post facto* to outside causes.

An answer is proposed by both R. Yoel Teitelbaum (1887–1979) in *Responsa Divrei Yoel* (vol. 1 §15) and R. Menachem Kasher (*Torah Shleimah* vol. 11, pg. 181). They explain that *Mechilta*’s requirement to correlate the names of the days of the week to the Sabbath does not require one to *always* refer to the days of the week vis-à-vis the previous Sabbath. That is, if one mentions the day of the week as it relates to the Sabbath once a day, he has already fulfilled the requirement of the *Mechilta* and this allows him to continue referring to that day in other ways. In the daily liturgy, the Song of the Day is prefaced with an introduction, “Today is the xth day of the week and on it, the Levites would sing in the Holy Temple...” Simply reciting this declaration allows one to fulfill the *Mechilta*’s obligation, permitting him to use other means of referring to the day afterwards. [This does not entirely solve the problem according to those who follow the custom of the Vilna Gaon who recited different Psalms on special days because those Psalms are not prefaced with a declaration mentioning the day of the week.]

47. *Responsa Bnei Banim* vol. 3 §35.

nowadays because once the deity is no longer worshipped, its name can no longer be said to be a name of idolatry. Furthermore, he argues that the Torah only forbids uttering the name of a foreign god *per se* but does not prohibit uttering the names of places or the like which are *named after* foreign gods. With this in mind, he justifies using the names of Norse gods in the days of the week. However, he too notes that if the idol in question is located inside the city which bears its name, then uttering the city's name is forbidden.

Interestingly, while the consensus seems to permit using secular dates, R. Ovadiah Yosef clearly writes that his lenient ruling does not allow for using secular dates on Jewish tombstones.<sup>48</sup>

## Conclusion

In short, there are several common cases in which the *Poskim* allow for one to verbalize the names of idols. The first two cases—speaking of an idol disparagingly or saying a name mentioned in the Bible—are explicitly mentioned in the Talmud. As a corollary of the second case, many *Poskim* also allow for saying the names of idols mentioned in the Targumim, even if they are not mentioned explicitly in the Bible.

Some sources see a dispute between R. Tam and ha-Meiri about whether one is allowed to mention the names of idols not found in the Bible when doing so in the context of Torah study, with ha-Meiri ruling in the affirmative and R. Tam disagreeing. However, there is evidence that points to the contention that R. Tam himself actually agrees to ha-Meiri's lenient ruling—as long as the idolatrous name is not overly flattering of the deity.

Another leniency is that it is permissible to say the names of

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48. Responsa *Yabia Omer* vol. 3, *Yoreh Deah* §9 and vol. 7, *Yoreh Deah* §32.

idols which are no longer worshipped or to say their names in contexts outside of their existence as deities (i.e. things which are named after those gods). In practice, contemporary *Poskim* generally adopt lenient positions when the names of idols appear as street names, city names, and in other everyday uses. The consensus is to rule even more leniently when the matter concerns merely *writing* names of idols, as opposed to actually *saying* them.

# Brushing Teeth on Shabbat: A Reevaluation in Light of Recent Research

*Rabbi Dr. Ephraim Rudolph DDS*

In 2002, R. Aryeh Lebowitz published a comprehensive review of the halachic issues relevant to brushing teeth on Shabbat, which were discussed by many of the *Poskim* (halachic authorities) of the previous generation.<sup>1</sup> R. Lebowitz presents a number of potential issues that may pertain to brushing one's teeth on Shabbat, including *molid* (causing a change in the physical property of a substance),<sup>2</sup> *sechitah* (squeezing liquid out of a solid substance),<sup>3</sup> *chavalah* (causing a

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1. R. Aryeh Lebowitz, "Brushing Teeth on Shabbat," *The Journal of Halacha and Contemporary Society* 44 (Fall 2002), pp. 51-79.

2. The Gemara (*Shabbat* 51b) prohibits squeezing or crushing ice in order to use the resulting liquid. *Rashi* (s.v. *k'day*) explains that this is forbidden because it appears as though one is creating water, thus resembling a *melacha*. Brushing teeth may entail a similar problem, in that the toothpaste is transformed from a semi-solid into a liquid.

3. *Sechitah* is a subcategory of *dosh* (threshing). *Dosh* entails the removal of one part of the wheat-- the chaff-- from another part-- the kernels. Squeezing is similar in that it separates the liquid part of a substance from the solid part (*Rambam, Hilchot Shabbat* 8:10; *Aruch HaShulchan* 320:3). According to most authorities, the prohibition of squeezing applies to non-food items as well, such as in the case of squeezing a wet cloth (see *Tosafot, Ketubot* 6a; see also *Rambam, Hilchot Shabbat* 9:11, who disagrees), and *Chazal* extended the prohibition to squeezing wet hair (*Rambam, Hilchot Shabbat* 2:11 and *Kesef Mishneh* ad loc.). Based on this, it is possible to argue that squeezing toothpaste or water out of the toothbrush bristles presents a problem of squeezing on Shabbat.

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wound),<sup>4</sup> *uvda d'chol* (weekday activity)<sup>5</sup>, and *hachono* (preparing for after Shabbat).<sup>6</sup>

Two central questions that R. Lebowitz addresses regarding tooth-brushing on Shabbat relate to *memarayach* (spreading) and *refuah* (healing). *Memarayach* is a *toldah* (subcategory) of the primary forbidden Shabbat activity (*melachah*) of *memacheik* (smoothing). The *melachah* of *memacheik* prohibits smoothing any hard surface,<sup>7</sup> while the *toldah* of *memarayach* refers to smoothing out a pliable solid or semi-solid substance.<sup>8</sup> Toothpaste is a semisolid, and smoothing it on one's teeth on Shabbat might therefore entail the prohibited act of *memarayach*.

*Chazal* prohibited the use of medicine on Shabbat, and subsequently most forms of healing (*refuah*), in order to avoid

4. The *Rishonim* debate whether *chavalah* is subsumed under the *melachah* of *shocheit* (slaughtering an animal), as it entails a partial *netilat neshamah* (taking of life), or whether it is a subcategory of *dosh* (threshing), as it entails the removal of blood from the blood vessels (see *Biur Halacha* 316:8, s.v. *hachovel*; *Rambam*, *Hilchot Shabbat* 8:7). All agree, however, that causing bleeding is forbidden on Shabbat. Thus, if one's gums normally bleed when he brushes his teeth, it may be prohibited to do so on Shabbat.

5. The Rabbis established the prohibition of *uvda d'chol*, performing a weekday activity on Shabbat, in order to enhance and protect the uniqueness and sanctity of Shabbat. The criteria and parameters of *uvda d'chol* are not concrete and straightforward. The Rabbis debate as to the exact definition of a weekday activity. As Rabbi Lebowitz explains, the categorizing of brushing one's teeth on Shabbat as a weekday activity depends on how one defines an *uvda d'chol*.

6. In order to safeguard the honor of Shabbat, as well as to curtail any extra work, or *tircha*, on Shabbat, the Rabbis prohibited any activity on Shabbat that is not for the sake of Shabbat. The Gemara (*Shabbat* 118a) prohibits washing dishes late Shabbat afternoon if they will not be used again on Shabbat. *Rashi* (s.v. *shuv*) explains that this prohibition is due to the fact that washing dishes in this scenario is really for after Shabbat. Perhaps rinsing a toothbrush after use on Shabbat, with no intention to use it again, is a similar situation and maybe considered *hachono*.

7. *Shabbat* 75a; *Rambam*, *Hilchot Shabbat* 11:5.

8. *Rambam*, *Hilchot Shabbat* 11:6.

the possibility that one might come to grind the ingredients on Shabbat (*shechikat samamanim*), which would violate the *melachah* of *tochen* (grinding).<sup>9</sup> The prohibition is limited to one who experiences “*meichush b’alma*,” mild pain and discomfort.<sup>10</sup> R. Lebowitz discusses the possibility that preventing cavities by brushing teeth is forbidden on Shabbat as an act of *refuah*.

In the present article, we will discuss the issue of tooth-brushing as *refuah* in light of recent research. We will then note how the new science affects the question of *memarayach* as well.

### *Refuah*

R. Moshe Zweig ruled that brushing teeth is prohibited on Shabbat because of the prohibition (*issur*) of *refuah* (healing) on Shabbat.<sup>11</sup> R. Zweig based his view on a *Tosefta* that states that it is forbidden to rub one’s teeth with “*sam*,” medicine, when this is intended for the purpose of *refuah*; it is only permissible if done solely for the purpose of eliminating bad breath.<sup>12</sup> R. Zweig maintained that toothpaste is akin to the “*sam*” mentioned in the *Tosefta*, and it is therefore forbidden to be used on Shabbat.

The majority of *Poskim* did not share this view.<sup>13</sup> Most of the responsa on brushing teeth on Shabbat were written when the prevailing belief was that toothpaste and brushing merely prevent future tooth decay from occurring, but do not heal existing cavities. The prevalent perception was that brushing with the help of toothpaste removes food that is stuck on the

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9. *Shabbat* 53b.

10. See *Shulchan Aruch* 328:1.

11. *Ohel Moshe* 2:98.

12. *Tosefta, Shabbat* 13:17. The *Rambam* (*Hilchot Shabbat* 21:24) and the *Shulchan Aruch* (*Orach Chaim* 328:36) cite this *Tosefta* as the halacha.

13. *Yabia Omer* 4:29-30; *Ketzot HaShulchan* 8:99.

teeth, and thereby prevents cavities from developing. Since brushing was perceived as solely preventative, most authorities maintained that it is not prohibited due to the prohibition of *refuah*. As R. Ovadia Yosef explained, preventing cavities by removing food from the teeth is not considered *refuah*; it is simply “*mavriach ari*,” “chasing away a lion” – it removes something bothersome, but cures no illness.

However, recent research has shown that in addition to preventing plaque build-up on teeth, tooth brushing may, in fact, heal existing tooth decay. Thus, R. Zweig’s opinion that brushing teeth is prohibited on Shabbat as a form of *refuah* may warrant reconsideration.

Cavities develop because bacteria build up on teeth and form plaque (dental biofilm). This plaque feeds on the sugars in food and produces acid. In the demineralization process, the acid “dissolves” the main component of tooth enamel, making the tooth soft and susceptible to bacterial penetration and cavity development.<sup>14</sup>

For many years, the scientific community assumed that fluoride prevents tooth decay only by preventing the demineralization process.<sup>15</sup> However, recent research has

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14. This is a simplification of the process; demineralization is more complicated and entails the lowering of the pH of the oral cavity.

15. See Frank E. Law, Margaret H. Jeffreys, and Helen C. Sheary, “Topical Applications of Fluoride Solutions in Dental Caries Control,” *Public Health Rep.* 76(4) (April 1961): 287–90; O. Fejerskov, A. Thylstrup, and M.J. “Rational Use of Fluorides in Caries Prevention: A Concept Based on Possible Cariostatic Mechanisms,” *Acta Odontol Scand.* 39(4) (1981): 241–9. In the 1960s, it was thought that when fluoride is incorporated into a developing tooth, it makes the tooth stronger by creating stronger chemical bonds than the chemical bonds that naturally exist in the tooth. Because the teeth become stronger, the tooth is less susceptible to demineralization. The concept of “systemic fluoride” led to the implementation of water fluoridation and the use of fluoride tablets. It was later discovered that fluoride prevents demineralization in a completely different way, which is related to the concentration of the fluoride ion on the surface of the tooth. The concept of “topical fluoride” is now the prevailing view of how fluoride

shown that fluoride not only prevents demineralization, but also repairs existing demineralization.<sup>16</sup> Fluoride facilitates remineralization, or the re-hardening of areas that have been previously damaged by bacteria, and it can reverse small damage, such as white spots ("white lesions").<sup>17</sup> According to many, the main way in which fluoride prevents tooth decay is actually through remineralization, not the prevention of demineralization.<sup>18</sup> Research in the remineralization process has progressed to the extent that new toothpaste technology is being developed and marketed that enhances the remineralization abilities of toothpaste and fluoride.<sup>19</sup>

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prevents demineralization.

It is important to note that there are two main aspects of brushing that help prevent cavities: the mechanical removal of the biofilm and the fluoride that is incorporated in the toothpaste. Mechanical removal of the dental biofilm through the act of brushing is very important for the prevention of tooth decay. However, the incorporation of fluoride in toothpaste is a critical and a necessary element in the prevention of cavities. The present discussion is not an attempt to minimize the importance of the mechanical removal aspect of brushing teeth, but is merely focusing on the fluoride aspect of brushing.

16. E. Hellwig and A.M. Lennon, "Systemic Versus Topical Fluoride," *Caries Res.* 38(3) (May-Jun 2004): 258-62.

17. A. Dijkman, E. Huizinga, J. Ruben, and J. Arends, "Remineralization of Human Enamel *In Situ* after 3 Months: The Effect of Not Brushing Versus the Effect of an F Dentifrice and an F-Free Dentifrice," *Caries Res.* 24 (1990): 263-6. Fluoride slows demineralization and enhances remineralization in multiple ways. The exact mechanism of how this is accomplished is beyond the scope of this article. See John Hicks, Franklin Garcia-Godoy, and Catherine Flaitz, "Biological Factors in Dental Caries: Role of Remineralization and Fluoride in the Dynamic Process of Demineralization and Remineralization (part 3)," *The Journal of Clinical Pediatric Dentistry* 28(3) (2004): 203-215.

18. Jaime Aparecido Cury and Livia Maria Andaló Tenuta, "Enamel Remineralization: Controlling the Caries Disease or Treating Early Caries Lesions?" *Braz. Oral Res.* 23(11) (June 2009): 23-30; John D. B. Featherstone, "Prevention and Reversal of Dental Caries: Role of Low Level Fluoride," *Community Dentistry and Oral Epidemiology* 27 (1999): 31-40.

19. Steven R. Jefferies, "Advances in Remineralization for Early Carious Lesions: A Comprehensive Review," *Compendium of Continuing Education in Dentistry* (April 2014).

Through remineralization, fluoride arrests or reverses the progression of a carious lesion. Although the white spot will probably still be noticeable on a radiograph because the tooth will never remineralize completely, the use of fluoride does improve the outcome.<sup>20</sup> Professional use of fluoride, over-the-counter toothpastes, and prescription extra-strength fluoride toothpastes reverse dental caries. Thus, tooth brushing not only prevents decay, but also treats areas with existing decay. It therefore may be viewed as *refuah*, and not only “*mavriach ari*.”<sup>21</sup>

The risk of developing dental caries depends on many factors, including genetics, food intake, and strains of bacteria in one’s mouth, oral hygiene habits, age, and access to fluoridated water.<sup>22</sup> Every person is unique in the cause of his

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20. H.E. Kim, H.K. Kwon, B.I. Kim, “Recovery Percentage of Remineralization According to Severity of Early Caries,” *Am J Dent.* 26(3) (June 2013): 132-6; F.N. Hattab, “Remineralization of Carious Lesions and Fluoride Uptake by Enamel Exposed to Various Fluoride Dentifrices in Vitro,” *Oral Health Prev Dent.* 11(3) (2013): 281-90; A.R. Prabhakar, A.J. Manojkumar , and N. Basappa, “In Vitro Remineralization of Enamel Subsurface Lesions and Assessment of Dentine Tubule Occlusion from NaF Dentifrices With and Without Calcium,” *J Indian Soc Pedod Prev Dent.* 31(1) (Jan-Mar 2013): 29-35; S.G. Damle, V. Bengude, and E. Saini, “Evaluation of Ability of Dentifrices to Remineralize Artificial Caries-Like Lesions,” *Dent Res J (Isfahan)* 7(1) (Winter 2010): 12-17; E. Casals, T. Boukpessi, C.M. McQueen, S.L. Eversole, and R.V. Faller, “Anticaries Potential of Commercial Dentifrices as Determined by Fluoridation and Remineralization Efficiency,” *J Contemp Dent Pract.* 8(7) (Nov. 2007): 1-10; J. Timothy Wright, Nicholas Hanson, Helen Ristic, Clifford W. Whall, Cameron G. Estrich, Ronald R. Zentz, “Fluoride Toothpaste Efficacy and Safety in Children Younger Than 6 years: A Systematic Review,” *Jada* 142:2 (Feb. 2014): 182-9; J.A. Cury and L.M. Tenuta, “Enamel Remineralization: Controlling the Caries Disease or Treating Early Caries Lesions?” *Braz Oral Res.* 23(1) (2009): 23-30.

21. According to this understanding of how fluoride functions, use of toothpaste is very different from cleaning one’s skin, an analogy that R. Lebowitz suggests in his article, note 35.

22. Robert H. Selwitz, Amid I. Ismail, and Nigel B Pitts, “Dental Caries,” *Lancet* 369 (2007): 51-59.

or her carious lesions. Furthermore, there is a wide range of caries susceptibility. There are people who regularly brush their teeth and still develop cavities, while others never brush their teeth and never develop cavities. Even in one individual, caries risk and development can vary over time. For those people who have a minimal caries risk (they either never or rarely developed cavities or they have not had cavities for many years<sup>23</sup>), the remineralization process probably provides very little support in maintaining disease-free teeth; even without fluoride, their teeth would remain healthy. However, a significant portion of the population has a caries problem and develops cavities constantly, such that remineralization is vital in the fight against the disease. It is for this significant portion of the population that remineralization may be viewed as *refuah*.

In addition to remineralization of the tooth enamel, brushing teeth treats gingivitis, an inflammation of the gums that occurs predominantly among people who do not regularly brush their teeth. The mechanics of brushing removes the plaque and bacteria that elicit this inflammatory response. In addition, the antimicrobial antiseptic ingredients in all toothpastes approved by the American Dental Association reduce and prevent gingivitis.<sup>24</sup>

Furthermore, in addition to fluoride being able act on the tooth, it has been shown that fluoride also has the ability to act directly on bacteria; it is bactericidal (kills bacteria) and bacteriostatic (stops bacteria from reproducing).<sup>25</sup> Moreover,

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23. As determined by consistent dental visits for exam and cleanings.

24. [http://www.ada.org/~/media/ADA/Science%20and%20Research/Files/Seal%20guidelines/SCI\\_Seal\\_Guideline\\_Chemotherapeutic\\_Prodfor\\_Controlof\\_Gingivitis\\_2011Nov01.ashx](http://www.ada.org/~/media/ADA/Science%20and%20Research/Files/Seal%20guidelines/SCI_Seal_Guideline_Chemotherapeutic_Prodfor_Controlof_Gingivitis_2011Nov01.ashx).

25. R.E. Marquis, "Antimicrobial Actions of Fluoride for Oral Bacteria," *Can J Microbiol.* 41(11) (Nov. 1995): 955-64. Fluoride cannot penetrate the tooth to kill the bacteria inside a cavity, but it can render the bacteria that are on the outside of the tooth inactive, thereby preventing cavities. With respect to gingivitis, fluoride's bactericidal properties can help heal the

some toothpastes contain additional ingredients that are antimicrobial.<sup>26</sup> Research has proven that regular toothpastes can kill the bacteria that create cavities and cause gingivitis.<sup>27</sup>

Thus, brushing teeth can provide *refuah* for people with the early stages of the cavity process or gum disease. Since a significant percentage of the population has at least some dental cavities and/or gingivitis, tooth-brushing may be considered *refuah* for many people, and may therefore present a problem on Shabbat.<sup>28</sup> Indeed, the *Shulchan Shlomo* quotes R. Shlomo Zalman Auerbach as presenting the possibility that if toothpaste can disinfect the tooth of bacteria and reduce inflammation of the gums, then it may be considered *refuah*.<sup>29</sup>

## Prevention of Future Illness

Despite the recent research indicating the therapeutic benefits of brushing teeth, it is possible to argue that it should not be classified as *refuah* because remineralization may be considered a dynamic process, rather than healing, and the

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gingivitis, not merely prevent it.

26. For example, Colgate toothpaste contains Triclosan.

27. Marieke P.T. Otten, Henk J. Busscher, Henny C. van der Mei, Chris G. van Hoogmoed, and Frank Abbas, "Acute and Substantive Action of Antimicrobial Toothpastes and Mouthrinses on Oral Biofilm *In Vitro*," *European Journal of Oral Sciences* 119(2) (2011): 151-5. In certain situations, dentists use fluoride-releasing materials to help prevent the tooth from developing recurrent, new decay under a filling or crown.

28. The *Mishnah Berurah* (328:130) rules that when the benefit of a particular *refuah* practice could not be accomplished by taking a pill, that practice is permitted on Shabbat. R. Lebowitz notes a number of reasons why this leniency would not apply to toothpaste (see his article, note 32). The most important reason is that the benefits of toothpaste can, in fact, very often be attained through a pill. In areas that do not have fluoridated water, many children take fluoride tablets to strengthen their developing adult teeth. Additionally, if remineralization is *refuah*, than using any of the "Kosher" Shabbat products, such as the Shabbat toothbrush and toothpaste, would not be permitted if fluoride is one of the ingredients in the toothpaste.

29. *Shulchan Shlomo*, *Shabbat* 3:328:39.

“white spots” that are “cured” by fluoride are not actual cavities that would classify someone as a *choleh* (an ill individual). Furthermore, some professionals and scientists still question the validity of the idea that the remineralization process can reverse caries. They maintain that the regression of the white lesion may be due to brushing the biofilm off the teeth or that the fluoride in toothpaste cannot positively affect the demineralization-remineralization struggle.<sup>30</sup> Additionally, not all scientists agree that the bactericidal capabilities of fluoride have any direct effect on the reduction of cavities,<sup>31</sup> and some studies have shown that only certain toothpastes have the ability to reduce bacteria.<sup>32</sup> Given all of this, it may be possible to argue that toothpaste does not provide *refuah*.

However, there nevertheless may be an *issur* of fluoride use on Shabbat due to the fact that all agree that fluoride at the very least **prevents** future decay. Accordingly, the status of tooth-brushing is related to the question of whether a healthy person may engage in an act on Shabbat that will fortify his wellbeing and thereby prevent future illness.

The *Magen Avraham* argues that a healthy person may not take medicine on Shabbat for the purpose of *refuah*,<sup>33</sup> whereas the *Beit Yosef* writes that it is permissible for him to do so.<sup>34</sup> R. Ovadia Yosef writes that even the *Magen Avraham* would

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30. L.L. Tathiane, Anelise Fernandes Montagner, Fabio Zovico Maxnuck Soares, and Rachel de Oliveira Rocha, “Are Topical Fluorides Effective for Treating Incipient Carious Lesions? A Systematic Review and Meta-Analysis,” *JADA* 147:2 (February 2016): 84-91.

31. Cesar R. Reyes, Raphael Hirata Jr., and Paulo P. Sergio, “Evaluation of Antimicrobial Activity of Fluoride-Releasing Dental Materials Using a New In Vitro Method,” *Quintessence International* 34(6) (June 2003): 473-7.

32. V.I. Haraszthy , J.J. Zambon, and P.K. Sreenivasan, “Evaluation of the Antimicrobial Activity of Dentifrices on Human Oral Bacteria,” *J Clin Dent.* 21(4) (2010): 96-100.

33. *Magen Avraham*, *Orach Chaim* 328:43. The *Pri Megadim* quotes the *Levush*, who agrees with this view.

34. *Beit Yosef*, *Orach Chaim* 328:37. The *Bach* concurs with this view.

permit tooth-brushing because toothpaste is not a medicine; the purpose of tooth-brushing is to remove the food and plaque from the teeth before they cause the teeth to rot. As cited above, R. Yosef classifies this as "*mavri'ach ari*," not as *refuah*.

However, as we noted, this is not how brushing prevents cavities. Even if we do not consider remineralization to be "healing," it is indisputable that the prevention capabilities of fluoride go beyond simply the removal of plaque. Since this form of prevention is more than just *mavri'ach ari*, the *Magen Avraham* might indeed maintain that it is prohibited on Shabbat.

One might argue that even given its extensive preventative qualities, brushing teeth is similar to taking vitamins, which in general are not taken to cure illnesses, but rather to strengthen healthy individuals.<sup>35</sup> The permissibility of taking vitamins on Shabbat is subject to dispute among the *Poskim*.

R. Moshe Feinstein explains that the *Magen Avraham* is referring to people who are healthy but have weak dispositions, who wish to take medicines that will help them fortify their constitutions. In such individuals, the medication leads to some sort of physiological change, and it is therefore prohibited for them to take medication on Shabbat. However, if a healthy person has no health concerns, but nevertheless wants to take the medication in order to further strengthen himself, even the *Magen Avraham* would allow him to do so on Shabbat.<sup>36</sup> R. Feinstein writes that vitamins fall in the latter

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35. There may be some vitamins that are capable of *refuah* as defined by halacha.

36. R. Feinstein reaches this conclusion because of two seemingly contradictory statements of the *Magen Avraham*. With regard to the halacha of *ma'achal beri'im* (328:37), the *Magen Avraham* writes that a healthy person may not take medicine for *refuah* purposes – that is, for prevention. However, in the context of the *Shulchan Aruch*'s ruling that one is permitted to place a bandage over a healed wound (328:27), the *Magen Avraham* writes

category. They do not create any real change in the body or alter a person's overall constitution; they only minutely fortify a person, in the same manner as eating fruits and vegetables. Therefore, he concludes, it is permitted to take vitamins on Shabbat even according to the *Magen Avraham*.<sup>37</sup>

R. Shlomo Zalman Auerbach, in contrast, is of the opinion that it is forbidden to take vitamins on Shabbat. Vitamins are permitted only if they are taken as a food supplement, not in order to strengthen oneself.<sup>38</sup> According to this view, any vitamin, no matter the degree to which it will strengthen a person, is prohibited.<sup>39</sup>

Fluoride in toothpaste should at the very least be viewed as akin to a vitamin, and therefore subject to this disagreement between R. Feinstein and R. Auerbach. However, one could argue that even according to R. Feinstein, toothpaste is problematic according to the *Magen Avraham*. In his responsum, R. Feinstein concludes that if a person is truly weak in his nature and the vitamins actually cause the body to become strong, the scenario is subject to the disagreement between the *Beit Yosef* and the *Magen Avraham*, and we should be strict in this case because the *Pri Megadim* and the *Levush* seem to agree with the *Magen Avraham*'s view. Since, as explained above, most people's teeth naturally become weak through demineralization, and since fluoride "strengthens"

that this is permitted because the bandage is intended only to guard, not to heal. R. Feinstein explains this contradiction by explaining that the *Magen Avraham* is strict only when the person has a weak constitution; in the bandage case, the person in question is completely healthy. Another possible explanation is that the *Magen Avraham* was only strict in the case of real medicine, whereas a bandage is only a protective cover.

37. *Iggerot Moshe, Orach Chaim* 3:54. R. Feinstein claims that the *Pri Megadim* is also in agreement with his *chiddush*(novel idea), but he points out that the *Machatzit HaShekel* is not.

38. *Minchat Shlomo* 2:34:37; *Shulchan Shlomo* 3:328:1; *Shemirat Shabbat KeHilchata*, ch. 34, note 85.

39. See *Yalkut Yosef* 328:55:63, who cites this debate. See also *Pitchei Teshuvot* 328:62, notes 496 and 499.

the tooth by either reducing and inhibiting demineralization or by enhancing remineralization, perhaps even R. Feinstein would maintain that tooth-brushing is prohibited on Shabbat.

Furthermore, the very comparison to vitamins is questionable. As presented earlier, fluoride and other ingredients act directly on bacteria. This is more than what a vitamin is capable of doing; vitamins enhance and strengthen the body, but do not act directly on bacteria.

In summary, it may be difficult to classify fluoride's anti-cavity prevention powers as purely *mavri'ach ari*. Additionally, the prevention that is taking place is for someone who is in a weakened state – due to the demineralized enamel – in which case even R. Feinstein would be strict. Finally, according to many researchers, toothpaste has antibacterial properties, which would preclude toothpaste from being classified as a preventative material.<sup>40</sup>

With respect to gingivitis, a conscientious brusher would most likely not have gum disease. In his case, brushing will solely help prevent future gingivitis. However, the prevention of gingivitis is different from the prevention of cavities. The ingredients in toothpaste prevent gingivitis by killing the bacteria before they can become harmful or by preventing the colonization of the bacteria. Thus, use of toothpaste may be more similar to the case of using a bandage to cover a healed wound, and the *Magen Avraham* permits this type of prevention.<sup>41</sup> The act of brushing itself also prevents gingivitis, as frequent brushing removes plaque, which is used by the bacteria to cause harm, and also disrupts the biofilm, thereby

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40. The only possibility of permitting fluoride on Shabbat even if one compares fluoride to vitamins is if one adopts the view of the researchers who do not believe that toothpaste has significant antimicrobial properties, reject the notion that demineralization is considered a weakened state, and follow R. Feinstein's leniency.

41. *Magen Avraham, Orach Chaim* 328:31. See note 36.

preventing colonization on the teeth.<sup>42</sup> This would be classified as *mavri'ach ari*, and not *refuah*.

## Possible Leniencies: Common Perception

In response to a question posed by this author, R. Asher Weiss responded that the prohibition of *refuah* is based on common perception, and not on science and scientists.<sup>43</sup> People brush their teeth with the intention of maintaining a healthy mouth. They do not brush with the perception or intention that they are healing their teeth with toothpaste, or even that they are strengthening their teeth with some sort of vitamin. Therefore, even if remineralization is indeed *refuah*, there would still be no prohibition of *refuah* on Shabbat.<sup>44</sup>

Furthermore, R. Weiss notes that the *Shulchan Aruch* and the *Magen Avraham* are of the opinion that if a person is not sick and the medicine is only to guard against future illness, he will not become *bahul* (in turmoil), and he will not come to grind the ingredients for the medicine.<sup>45</sup> This is all the more

42. Richard H. Nagelberg, "Understanding Advances in Oral Rinse Technologies," *Compendium of Continuing Education in Dentistry* (October 2011).

43. R. Yitzchak Zilberstein gave a similar oral response to a friend of the author: people brush with the intention of removing plaque, not of healing teeth.

44. This idea is very similar to the concept of "*refuah she'einah nikeret*"; see below, n. 46.

It is possible that R. Auerbach would not agree with R. Weiss's distinction. As recorded in *Shulchan Shlomo*, R. Auerbach considered the question of whether brushing should be prohibited based on the new scientific knowledge, yet he never mentioned this leniency.

45. *Shulchan Aruch* 328:23, 24, 27 and *Magen Avraham* 31. See *Rif*, *Shabbat* 24 in the *dapei haRif*.

It is unclear how R. Weiss would explain the contradictory rulings of the *Magen Avraham* cited in n. 35 above. R. Weiss seems to be suggesting that the *Magen Avraham* agrees with the *Beit Yosef/Shulchan Aruch* that a healthy person can take medicine on Shabbat, but in 328:27, the *Magen Avraham* appears to write that this is prohibited. Furthermore, neither explanation for

true in our case, in which the person does not think that he is sick or that he is even taking medication; he will not become *bahul*, and there is therefore no reason for concern.

R. Weiss did not address the question of whether the halachic status of tooth-brushing would change if the common perception were to change, such that the general population were to become more aware of the true effects of fluoride on the teeth.

### *Ma'achal Beri'im*

One possible leniency that might permit tooth-brushing on Shabbat is the leniency of "*ma'achal beri'im*," food for healthy people. A *choleh* (sick person) is allowed to eat and drink items on Shabbat that are normally consumed by healthy people, even if the sick person is using them for healing purposes. For example, many healthy people drink tea. Therefore, a sick person is also allowed to drink tea, even if he does so in order to heal a sore throat.<sup>46</sup> Perhaps fluoridated toothpaste should be considered a *ma'achal beri'im*, as it is used by healthy

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the contradiction between the *Magen Avraham*'s rulings would provide for a comparison between a bandage and fluoride that would enable one to say that the *Magen Avraham* is lenient in the case of fluoride.

46. There is a debate among the *Rishonim* regarding the reason that *ma'achal beri'im* is permitted on Shabbat. *Rashi* (*Shabbat* 108b) is of the opinion that consumption of *ma'achal beri'im* creates a "*refuah she'einah nikeret*," healing that is not recognizable as such. Since healthy people use this item, if a sick person uses it on Shabbat, it would not be evident that he does so for *refuah* purposes. The *Rashba* (*Berachot* 38a) suggests another explanation: any normal food item that healthy people eat or drink is not included in the decree of *refuah*. See also *Ra'ah*, *Berachot* 38a; *Ritva*, *Shabbat* 111; and possibly *Rambam*, *Hilchot Shabbat* 21:21-22. (See below in the text for further relevance of this discussion.)

According to the second approach, it is possible that anything that is not a food or drink (or ointment) item would automatically not be considered a *ma'achal beri'im*. However, the *Sha'arei Teshuvah* (328:30) discusses whether or not snuff is a *ma'achal beri'im* and snuff is not a food item. Accordingly, even non-food items may be classified as *ma'achal beri'im*.

people, and it should therefore be permitted for use even by people with cavities or other dental problems.<sup>47</sup>

However, the recent research regarding demineralization has demonstrated that a significant portion of the world's population should be considered *cholim* in regard to their teeth,<sup>48</sup> and it has also been found that a significant percentage of the population has gum disease.<sup>49</sup> Furthermore, if classification as *ma'achal beri'im* is dependent on specific times and places, there are many cities and areas in the world in which the majority of people have cavities. Given that many of the people using toothpaste are really "sick," perhaps it cannot be considered a *ma'achal beri'im*.<sup>50</sup>

It could possibly be argued that toothpaste is a *ma'achal beri'im* due to the fact that, as noted above, a sizable portion of the population do not need and do not benefit from remineralization. Their teeth are usually not found to be in a significantly demineralized state, and even if their teeth do become demineralized, the caries process rarely progresses from demineralization to cavity formation. These individuals should not be considered *cholim* regarding their teeth. Perhaps this population is large enough to create a *ma'achal beri'im* status for toothpaste.

However, even if it is argued that the non-*cholim* population is sizable enough to create a *ma'achal beri'im* status, toothpaste

47. R. Asher Weiss also noted this leniency in his *teshuva*.

48. See <http://amjdent.com/Archive/2009/Bagramian%20-%20February%202009.pdf>; <http://www.nidcr.nih.gov/DataStatistics/FindDataByTopic/DentalCaries/DentalCariesAdults20to64.htm>.

49. J.M. Albandar and T.E. Rams, "Global Epidemiology of Periodontal Diseases," *Periodontol* 29 (2002): 7-10; R.C. Oliver, L.J. Brown, and H. Löe, "Periodontal Diseases in the United States Population," *J Periodontol* 69 (1998): 269-78.

50. It is notable that R. Moshe Zweig, who ruled that brushing is forbidden on Shabbat based on the *issur* of *refuah*, clearly did not believe that *ma'achal beri'im* is a valid leniency. Similarly, R. Ovadia Yosef does not cite *ma'achal beri'im* as a reason to reject R. Zweig's opinion.

may still not be considered *ma'achal beri'im* due to the fact that fluoride still effects *refuah* through remineralization for those who are considered *cholim* regarding their teeth. In a personal conversation, R. Hershel Schachter agreed that the classification of fluoride as a *ma'achal beri'im* is questionable. He compared this case to that of aspirin. Many people take aspirin on a daily basis, yet it is still forbidden for one to take aspirin on Shabbat for a minor headache. R. Schachter explained that even though many non-*cholim* take aspirin, aspirin is itself a medicine, and a medicine cannot be considered a *ma'achal beri'im*. R. Yitzchak Weiss similarly writes that aspirin is "*ikran lerefuah*," its main purpose is to heal, and it therefore cannot be considered a *ma'achal beri'im*.<sup>51</sup> In the same manner, even though most people do not know how toothpaste works, it is nevertheless *ikran lerefuah*, and therefore should not be considered as *ma'achal beri'im*.

The *Shulchan Shlomo* similarly states that if toothpaste can disinfect or reduce gingival inflammation, **even though healthy people use it** (my emphasis), there is still a questionable status as *refuah*.<sup>52</sup>

However, R. Moshe Stern writes that he heard that R. Yonasan Steif permitted the use of aspirin on Shabbat based on its classification as a *ma'achal beri'im*,<sup>53</sup> and R. Schachter noted that R. Yosef Dov Soloveitchik also permitted taking aspirin on Shabbat.<sup>54</sup> According to these opinions, if most people are not considered *cholim* regarding their teeth, even if toothpaste is comparable to aspirin, brushing teeth with

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51. *Minchat Yitzchak* 3:35:2.

52. *Shulchan Shlomo*, Shabbat 3:328:39.

53. *Be'er Moshe* 1:33:5 and 2:32. R. Stern writes that he is personally wary of this opinion.

54. *Yalkut Yosef* (328:51) writes that although some authorities are lenient, the halacha follows the view of those who are strict. See also *Pitchei Teshuvot* 328, n. 499, who lists additional *Poskim* who agree with the lenient approach, but writes that the practice is to be strict, as many *Poskim* are strict.

fluoridated toothpaste should be permitted on Shabbat due to its being considered a *ma'achal beri'im*.

According to the view that use of fluoride does not constitute *refuah*, fluoride is more comparable to vitamins, as opposed to medication such as aspirin. In the view of R. Moshe Stern and R. Moshe Sternbuch, vitamins are permitted nowadays according to all opinions – even that of the *Magen Avraham* – because so many people take them that they should be considered *ma'achal beri'im*.<sup>55</sup> Other modern day *poskim*, in contrast, maintain that vitamins are still not considered *ma'achal beri'im*.<sup>56</sup> According to the view of R. Stern and R. Sternbuch, if we accept the argument that fluoride can be compared to vitamins, toothpaste should also be considered a *ma'achal beri'im*.<sup>57</sup> According to the other position, even if

55. *Be'er Moshe* 1:33:4; *Teshuvot VeHanagot, Orach Chaim* 3:104.

56. *Minchat Shlomo, Tinyana* 60:16. See *Pitchei Teshuvot* 328, n. 496, for a list of *Poskim* who prohibit vitamins on Shabbat.

57. R. Sternbuch writes (*Teshuvot VeHanagot, Orach Chaim* 3:104) that it is permissible to take vitamins on Shabbat even according to the *Magen Avraham*, because the *Magen Avraham* was stringent only regarding a case in which the ingested item is essentially medicine, “*ikar lerufah*,” but happens to be taken by healthy individuals as well. Even though such an item might be classified as a *ma'achal beri'im*, it may not be used on Shabbat even for prevention. Since, however, vitamins are generally not *ikaran lerefua*, R. Sternbuch argues that even the *Magen Avraham* would permit their use for prevention. However, this may not be true of fluoride. In the scientific community, fluoride would likely be viewed as a vitamin that is *ikar lerefua* – to heal cavities. Therefore, it might be problematic according to R. Sternbuch even if used only for prevention.

Similarly, R. Stern distinguishes between vitamins that are used to strengthen and fortify, used for prevention, and vitamins that are for *refuah*. Regular vitamins are *ma'achal beri'im*, while vitamins for *refuah* are not. If we do not compare fluoride to a real medication yet still view remineralization as *refuah*, fluoride should be compared to vitamins that are for *refuah*, in which case it would not be *ma'achal beri'im*.

It is unclear from the *Be'er Moshe* why the classification of *ma'achal beri'im* does not apply to these types of vitamins. It appears that he does not include this category of vitamins as *ma'achal beri'im* because he considers them a completely separate category from regular vitamins. Vitamins taken *lerefua*

toothpaste is comparable to vitamins, toothpaste would still not be considered a *ma'achal beri'im*.

However, R. Sternbuch himself concludes with an important distinction. If one is taking the vitamin for *refuah*, because he has a weakness, then he should not take the vitamin on Shabbat, whereas if one is healthy and the vitamin is purely for prevention, it is permitted. The same distinction should apply to tooth-brushing. In the case of those who are brushing due to their many current and previous cavities, it should be forbidden to brush their teeth on Shabbat, but for those who have good teeth and are brushing for prevention, brushing is permitted on Shabbat.<sup>58</sup>

### *Refuah She'ainah Nikeret*

One might argue that toothpaste should be permitted as a *ma'achal beri'im* because most people still think that brushing teeth only prevents future cavities by removing plaque from the teeth. One of the explanations for why *ma'achal beri'im* is permitted on Shabbat is that it is unclear to the observer that the item is ingested for *refuah* purposes, as it is commonly taken by healthy individuals. It is a “*refuah she'ainah nikeret*” – the action heals, but it is not readily apparent that it was performed for *refuah* purposes.<sup>59</sup> Similarly, since most people are not aware of how fluoride really works, when people

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cannot be subsumed under the regular vitamins' leniency of *ma'achal beri'im*; they need to be evaluated independently. This implies that vitamins for *refuah* could theoretically be considered *ma'achal beri'im*; they are not, simply because the consumption of that category of vitamins is not widespread. If so, even if toothpaste is comparable to a vitamin for *refuah*, since the use of toothpaste is widespread, it should be considered a *ma'achal beri'im*.

58. Ibid. Additionally, R. Sternbuch writes that some *Poskim* do not allow the use of vitamins on Shabbat because vitamins have a bad taste and are not fit to be eaten. Therefore, he writes, even if they are considered *ma'achal beri'im*, it is best not to take them if there is no real need to do so on Shabbat. Similarly, toothpaste is not fit for consumption.

59. See note 46 above.

brush their teeth, the onlooker does not consider or understand that *refuah* is taking place.

This argument seems questionable, however. *Refuah she'einah nikeret* may only refer to a situation in which others will misinterpret what is taking place because of the normal usage of the item, not because people in general do not understand how the item is used.

However, according to R. Weiss, who maintains that the prohibition of *refuah* is based on the public perception and not on science, it may be that the leniency of *refuah she'einah nikeret* is also based on the common perception.<sup>60</sup> However, as noted above, there may come a time when the general population does indeed know that fluoride rebuilds teeth.

R. Chaim Jachter adds an additional reason to apply the category of *refuah she'einah nikeret* to tooth-brushing. As noted, the impact of tooth-brushing varies by individual, and even varies from time to time for a particular individual. Since absent a professional evaluation one cannot know if he is actually engaging in an act of *refuah*, he suggests that perhaps tooth-brushing should be considered *refuah she'einah nikeret*.<sup>61</sup>

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60. In truth R. Weiss's *teshuva* seems to be an extension of this leniency, although he does not use this phrase in his response. Indeed, his *chiddush* may be that *refuah she'einah nikeret* does not refer only to a case of misinterpretation of the situation, but also to one of lack of knowledge that this item has healing properties. Furthermore, classically, *refuah she'einah nikeret* implies that the onlooker is mistaken in his evaluation of the action; R. Weiss extends the category to include even those people performing the action. It is possible that R. Weiss is making a logical inference – if the fact that an onlooker is unaware that an action constitutes *refuah* makes that action permissible, then it certainly should be permissible if the one performing the action is unaware of its *refuah* properties.

61. In a personal conversation with Rabbi Jachter. Similar to Rabbi Weiss, Rabbi Jachter is broadening the leniency of *refuah she'einah nikeret* to include even the person performing the action and not just the onlooker, as well as a case of lack of knowledge as opposed to just a mistaken understanding of the situation; see previous note.

However, R. Jachter's insight would only apply with regard to the medicinal aspect of toothpaste. With regard to fluoride's preventative qualities – which make it comparable to a vitamin – nearly all scientists are in agreement as to its benefit. Just about everyone can assume that fluoride strengthens or fortifies his teeth, even without the diagnosis from a professional.

In summary, if many people are considered *cholim* with regard to their teeth, the leniency of *ma'achal beri'im* may not apply. Even if that is not the case and the non-*cholim* segment of the population is large enough to create a *ma'achal beri'im* status, the classification of *ma'achal beri'im* may still not apply if fluoride is considered to be a type of medication (as in the case of aspirin). Although it is possible to argue that toothpaste is comparable to vitamins, which are permitted by some *Poskim* as a *ma'achal beri'im*, other *Poskim* do not permit the consumption of vitamins on Shabbat. The fact that many people are not aware of how fluoride affects their teeth may not indicate that it is in fact a *ma'achal beri'im*. However, based on the *teshuva* of R. Weiss, it may still be possible to rely on the leniency of *refuah she'einah nikeret* and *ma'achal beri'im*.

## Routine Medication

R. Jachter suggests another leniency based on the opinions that the prohibition of *refuah* does not apply to an activity that is performed routinely. R. Shlomo Kluger and the *Chazon Ish* permit taking medicine on Shabbat if it is part of a routine that was established before Shabbat.<sup>62</sup> R. Yosef Adler cites R. Yosef Dov Soloveitchik as reporting that R. Chaim Soloveitchik adopted the same approach.<sup>63</sup> Thus, for example, if someone is taking antibiotics for ten days, he may take the antibiotics on Shabbat as well. In this situation, the concern that one may

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62. *Shemirat Shabbat KeHilchata*, ch. 34, n. 76.

63. In a personal conversation with Rabbi Jachter.

grind medicine on Shabbat is moot, as one usually obtains the medicine before Shabbat if he knows that he must take this medicine for a specific period of time.

According to this approach, there should not be concern for *refuah* regarding tooth-brushing, as it is performed on a daily basis. Research has shown that a frequent and constant low concentration of fluoride is critical for remineralization success, and it is therefore important to brush on a daily basis.<sup>64</sup>

However, R. Jachter notes that R. Moshe Feinstein, R. Shlomo Zalman Auerbach, and R. Eliezer Waldenberg express serious reservations about this lenient approach.<sup>65</sup>

## Brushing for Non-Health Reasons

The Mishnah states that one is not permitted to drink “*mei dekalim*” for *refuah* purposes on Shabbat, but one may drink it to quench his thirst.<sup>66</sup> *Rashi* explains that this leniency refers only to healthy people, not *cholim*; only healthy people are permitted to use the medication of *mei dekalim* for a non-medicinal use.<sup>67</sup> The *Biur Halacha* cites many *Rishonim* who disagree with *Rashi* and maintain that even sick people are permitted to use medication for non-medicinal purposes, but the *Biur Halacha* leaves this question unresolved.<sup>68</sup>

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64. K. Rošin-Grget, K. Peroš, I. Sutej, K. Bašić, “The Cariostatic Mechanisms of Fluoride,” *Acta Med Acad.* 42:2 (Nov 2013): 179-88; D.F. Nóbrega, C.E. Fernández, A.A. Del Bel Cury, L.M. Tenuta, J.A. Cury, “Frequency of Fluoride Dentifrice Use and Caries Lesions Inhibition and Repair,” *Caries Res.* 50:2 (March 2016): 133-40. It is important to note that although a constant low level of fluoride is necessary for remineralization, missing one morning brushing will not greatly affect the process.

65. *Iggerot Moshe, Orach Chaim* 3:53; *Shemirat Shabbat KeHilchata*, ch. 34, n. 76; *Tzitz Eliezer* 8:15:15:15.

66. *Shabbat* 14:3.

67. *Rashi, Shabbat* 109b, s.v. *mei*.

68. *Biur Halacha, Orach Chaim* 328, s.v. *aval*.

Based on this, perhaps it could be argued that it is permissible to brush one's teeth on Shabbat for purely hygienic or esthetic reasons. People know that missing one morning brush will not affect their overall health; they could have in mind that they are only brushing to have clean, fresh, and pleasant smelling mouths.<sup>69</sup> Since most *Rishonim* are lenient in this scenario – coupled with the fact that it is not certain that toothpaste is *refuah* and the possibility that the leniency of *ma'achal beri'im* does apply to toothpaste – it is possible to argue that it would be permissible for these individuals to brush their teeth on Shabbat, as they are brushing their teeth for non-medical purposes.

### *Sakanat Ever*

In a personal conversation with this writer, R. Hershel Schachter concurred that it is possible that given the recent research on the therapeutic benefits of fluoride and antimicrobial agents, there is a concern that brushing one's teeth might be considered a prohibited act of *refuah* on Shabbat. However, R. Schachter suggested that brushing teeth on Shabbat is nevertheless still permitted – even for people with cavities and gingivitis – because if the cavity is not treated properly, no matter how small it is at present, the damage may progress and potentially result in tooth loss and diminished function of the jaw.<sup>70</sup> Similarly, gingivitis can progress to periodontitis, a gingival inflammation coupled with bone loss, and severe periodontitis can result in tooth loss.<sup>71</sup> Thus, neglecting to brush one's teeth on Shabbat raises a

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69. Some may object and claim that this may be an issue of *ha'aramah*, circumventing the halacha, and only those individuals who brush daily for hygienic reasons and not health reasons can utilize this leniency.

70. O. Fejerskov and E.A.M. Kidd, eds., *Dental Caries: The Disease and its Clinical Management* (Copenhagen: Blackwell Monksgaard, 2003).

71. M. Schatzle, H. Loe, W. Burgin, A. Anerud, H. Boysen, and N.P. Lang, "Clinical Course of Chronic Periodontitis: Role of Gingivitis," *J Clin Periodontol* 30(10) (2003): 887-901; A. Hugoson, B. Sjodin, and O. Norderyd,

concern of *sakanat ever*, loss of the proper function of a limb.<sup>72</sup> Although not all neglected cavities and gingivitis result in tooth loss, there is at least a doubt of *sakanat ever*, and we treat a *safeik sakanat ever*, a possible loss of limb, as a *vadai sakanat ever*, as a certain loss of limb.<sup>73</sup> Since one is allowed to violate a Rabbinic prohibition in order to prevent *sakanat ever*, R. Schachter maintains that brushing one's teeth is permitted on Shabbat despite its therapeutic benefits.

R. Shlomo Zalman Auerbach rules that if a person is not currently sick but he will become sick if he does not take medicine, he is allowed to take medicine on Shabbat.<sup>74</sup> This is true even if the person will only get sick after Shabbat if he does not take the medication on Shabbat.<sup>75</sup> Similarly, R. Schachter notes, even though cavities and gingivitis will not progress to the point of tooth loss on Shabbat itself, and indeed will take years to reach that level, it should be permitted to brush teeth on Shabbat in order to prevent *sakanat ever* in the future.

R. Schachter points out that although in theory missing one

"Trends Over 30 Years, 1973-2003, in the Prevalence and Severity of Periodontal Disease," *J Clin Periodontol.* 35(5) (2008): 405-14.

72. See *Ketzot HaShulchan* 138; *Badei HaShulchan* 18.

73. *Minchat Shlomo (Tinyana)* 60:15. R. Auerbach rules that even if it is not a case of a life threatening sickness, if the person will become sick enough that he would need to lie down or feel sick in his entire body, he can still take the medicine on Shabbat.

74. *Ibid.* 60:16. The *Radbaz* writes that *refuah* is forbidden on Shabbat even if one thinks that he will become sick in the future. R. Auerbach clarifies that this is true only when there is a *safeik* if one will become sick; if he certainly will (*vadai*), then *refuah* is permitted. Our case is also only one of *safeik*; if one does not brush his teeth, he may lose his teeth. However, the *Pitchei Teshuvot* (328, n 24) suggests that the *Radbaz* is referring only to *refuah* that violates a *melachah*. Taking medication is a lesser prohibition, so he might agree that it is permitted even if there is only a *safeik* that one will become ill in the future otherwise. Alternatively, one could argue that the *Radbaz* was speaking about a *choleh she'ein bo sakana*, a person not mortally sick, while our case is one of *sakanat ever*.

75. *Pitchei Teshuvot* 328, n. 514.

day of brushing and rinsing will not cause tooth loss, many people are busy during the week and take care of their teeth properly on the weekend. Therefore, in reality brushing teeth on Shabbat is critical to prevent a person from *sakanat ever*

There is a significant difference between R. Schachter's approach and that of R. Weiss. The foundation of R. Weiss's leniency is the current perception of the goal of tooth-brushing, which, as noted above, is subject to change. Due to the push in the dental and oral health care community to educate people about this new understanding of fluoride's properties, it is possible that the perception of brushing teeth will change. While many people may not fully understand the process of remineralization, they may in the future come to perceive fluoride as a vitamin that they are using to re-harden their teeth, in which case R. Weiss's leniency would not apply. In contrast, the current perception of the goal of tooth-brushing is irrelevant to R. Schachter's leniency.

R. Schachter's approach is a novel suggestion, a substantial *chiddush*, that was not proposed by any of the earlier *Poskim*. Although those authorities may have not been aware of the remineralization aspect of brushing, they did know that brushing prevents the decay that results in tooth loss, yet no one applied the leniency of *sakanat ever* to permit brushing on Shabbat. This leniency can further be questioned from a practical standpoint. Is it really true that many people only brush properly on the weekends and that if they would forgo brushing on Shabbat they would be in jeopardy of losing their teeth? And is it true that brushing only on weekends will prevent tooth loss? As noted above, remineralization requires a constant level of fluoride; if remineralization is the key to retaining teeth, then brushing teeth only on Shabbat may not be successful in preventing decay and future tooth loss.

### *Memarayach*

As noted in the introduction, in addition to possibly

violating the prohibition of *refuah* on Shabbat, tooth-brushing might potentially violate the prohibition of *memarayach*, smoothing out a pliable solid or semi-solid substance.<sup>76</sup> R. Ovadia Yosef ruled that tooth-brushing does not pose a problem of *memarayach* because in order to violate the *melachah*, one has to have intention that the substance that he is spreading will remain on the surface. This is not the intention, he writes, of one who spreads toothpaste on his teeth; his intention is only that toothpaste facilitate the removal of plaque, not that it remain on his teeth.<sup>77</sup>

However, based on the new understanding of the mechanism of fluoride, there are new instructions for brushing teeth: one should have the toothpaste remain on the teeth for at least two minutes and then spit it out, without rinsing after brushing.<sup>78</sup> In order for fluoride to provide its health benefits, it must remain on the teeth for a significant period of time. Accordingly, if one brushes properly and follows the new guidelines, then he indeed intends to have the toothpaste remain on the teeth. Furthermore, the longer toothpaste remains on plaque, the more likely the antimicrobials in the toothpaste will be able to penetrate the biofilm and kill the bacteria, thereby reducing or preventing gingivitis.<sup>79</sup>

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76. *Memarayach* is the prohibition of spreading a substance onto a surface. The consistency and density of that substance determines whether the violation is Biblical or Rabbinic. If the substance is a pliant solid, *memarayach* constitutes a Biblical prohibition; if the substance is a semi-solid, it would only be a Rabbinic injunction. Most *Poskim*, such as R. Yosef (*Yabia Omer, Orach Chaim* 4:27:1), maintain that *memarayach* with toothpaste would at most violate a Rabbinic prohibition. In his article, R. Lebowitz (n.5) notes that it is possible to argue that there is a Biblical prohibition involved here as well, based on a slightly different understanding of which substances are Biblically forbidden.

77. *Yabia Omer, Orach Chaim* 4:27.

78. K. Sjögren, J. Ekstrand, and D. Birkhed, "Effect of Water Rinsing After Toothbrushing on Fluoride Ingestion and Absorption," *Caries Res* 28 (1994): 455-9.

79. P.D. Marsh, "Microbiological Aspects of the Chemical Control of Plaque and Gingivitis," *J Dent Res* 71 (1992): 1431-8.

It is possible to argue that R. Yosef meant that one has to intend that the substance should remain on the surface for a significant amount of time, which is still not the case regarding toothpaste. Additionally, R. Soloveitchik ruled that toothbrushing is not a problem of *memarayach*, as *memarayach* is violated only when the new smooth outer coating remains on the surface it is applied to.<sup>80</sup> Toothpaste does not remain on the surface in a significant way for a long period of time.

## Conclusion

The new research regarding how toothpaste prevents cavities may significantly impact the halachot of brushing teeth on Shabbat. The halachic topics of *refuah* on Shabbat, the status of preventative medication, *ma'achal beri'im*, and *memarayach* must be re-addressed, as the new science may undermine the lenient approaches of R. Soloveitchik and R. Ovadia Yosef to teeth brushing on Shabbat. However, we have presented new responsa from R. Asher Weiss and R. Herschel Schachter, as well as other possibilities, that defend the lenient position despite these developments. Those who follow the lenient approach and brush their teeth on Shabbat should consult with their Rav to see if they are still permitted to do so.

In addition, R. Chaim Jachter notes that many people who adopt the strict approach of R. Moshe Feinstein regarding tooth brushing on Shabbat use either mouthwash or liquid toothpaste, which is formulated to avoid concern for *memarayach*. Based on the new research, without the leniencies mentioned, these items may also be prohibited on Shabbat due to the prohibition of *refuah* on Shabbat.

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80. *Nefesh HaRav*, pp. 168-9.

# The Quinoa - *Kitniyot* Conundrum

*By Rabbi Yehuda Spitz*

Generally, this time of year is the busiest for rabbis the world over; fielding questions on every aspect of the myriad and complex laws of Pesach observance. This year is no different. Interestingly, the question that seems to be uppermost on people's minds is not about *chametz* or even cleaning properly. No, in 2017, the biggest issue still seems to be whether quinoa (pronounced Keen-Waah) is considered *kitniyot* and whether Ashkenazim can eat it on Pesach. Perhaps the prominence of this 'new' food has something to do with the fact that the U.N. declared 2013 as the 'International Year of the Quinoa'. Whatever the reason, this monograph sets out to thoroughly examine the issue.

## Quinoa Questions

While not (yet) too common here in Yerushalayim, quinoa has developed an international following. Packed with protein (essential amino acids) and fiber, as well as magnesium, phosphorus, calcium and iron (and naturally cholesterol free!), quinoa packs quite a dietary punch. Although billed as the 'Mother of All Grains' and 'the Super Grain', this native of the Andes Mountains (think Bolivia and Peru) is actually a grain that isn't; it does not even contain gluten. It turns out that

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quinoa is really a member of the 'goose-foot' family (*Chenopodium*), related to beets and spinach. But while its health benefits sound terrific, it still may be problematic on Pesach.

### *Kitniyot Clash*

The actual prohibition of *chametz* on Pesach pertains exclusively to leavened products produced from the five major grains: wheat, barley, oats, spelt, or rye.<sup>1</sup> Yet, already in place from the times of the *Rishonim*,<sup>2</sup> there was an Ashkenazic<sup>3</sup> prohibition against eating *kitniyot* (legumes; literally 'little things') on Pesach, except in times of famine or grave need.<sup>4</sup>

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1. Mishnah *Pesachim* (Ch. 3: 1), Gemara *Pesachim* (42a - 43a), *Rambam* (*Hilchot Chametz U'Matzah* Ch. 5: 1). These are also the only grains with which one may fulfill his obligation of *Achilat Matzah*, the Biblical commandment to eat matzah, which is mandatory at least for the Seder - see Mishnah *Pesachim* (35a), *Rambam* (*Hilchot Chametz U'Matzah* Ch. 6: 4), and *Tur* and *Shulchan Aruch* (O.C. 453: 1).

2. See for example *Mordechai* (*Pesachim* 588), *SMa"K* (222), *Ra'avad* (*Hilchot Chametz U'Matzah* Ch. 5: 1), *Hagahot Maimoniyot* (ad loc.), *Ohr Zarua* (vol. 2: 256), *Rabbeinu Manoach* (on the *Rambam* ad loc.; cited in *Biur Halacha* 453: 1 s.v. *v'yeish*), *Maharil* (*Minhagim*, *Hilchot Ma'achalot Asurot B'Pesach* 16), *Terumat Hadeshen* (113 and 133), *Ritva* (*Pesachim* 35a s.v. *hani*), and *Tur* (O.C. 453). Not that they all hold of the prohibition of *kitniyot*, but they all mention it. See also the *Pri Megadim*'s Introduction to *Hilchot Pesach* (vol. 2, Ch. 2: 6) and the *Chida*'s *Tov Ayin* (18).

3. The *Rambam* (*Hilchot Chametz U'Matzah* Ch. 5: 1) explicitly permits *kitniyot*, and even the *Shulchan Aruch* (*Beit Yosef* O.C. 453) calls it an Ashkenazic issue.

4. *Chaye Adam* (vol. 2, 127: 1; and *Nishmat Adam*, *Hilchot Pesach*, Question 20), *Mor U'Ketzia* (O.C. 453), *Shu"t Teshuva M'Ahava* (259), *Shu"t Chatam Sofer* (O.C. 122), the *Maharatz Chiyus*'s *Kuntress Minchat Kina'ot*, *Mishnah Berurah* (453: 7 and *Sha'ar Hatziyun* 6), and *Aruch Hashulchan* (ad loc. end 5). For a discussion on what is considered great need in order to allow *kitniyot*, see *Shu"t Zeicher Yehosef* (O.C. 157), *Shu"t Shoel U'Meishiv* (*Mahadura Tinyana* vol. 4: 128) and *Shu"t Divrei Malkiel* (vol. 1, 28: 20). On the other hand, the *Vilna Gaon* is quoted (*Ma'aseh Rav* 184) as being extremely careful with *kitniyot*, even in a year of near-famine.

Although several authorities opposed this prohibition,<sup>5</sup> nonetheless it is binding on Ashkenazic Jewry and in full force, even today.<sup>6</sup>

All our great luminaries maintain that the *kitniyot* prohibition is compulsory on all Ashkenazic Jewry, although they refer to it slightly differently, i.e. the *Kitzur Shulchan Aruch* references it as an '*issur*' (prohibition), the *Mishnah Berurah* as a '*chumrah*' (stringency), the *Aruch Hashulchan* as a '*geder*' (fence), Rav Tzvi Pesach Frank *zt"l* as a '*gezeirah*' (ordinance), Rav Moshe Feinstein *zt"l* as a '*minhag*' (custom), and the Klausenberger Rebbe *zt"l* as a '*takanah*' (amendment).<sup>7</sup>

5. As mentioned previously, the *Rambam* (*Hilchot Chametz U'Matzah* Ch. 5: 1) explicitly permitted *kitniyot*. See also *Beit Yosef* (beg. O.C. 453), quoting *Rabbeinu Yechiel* and *Rabbeinu Yerucham*, who called the *kitniyot* prohibition a "*minhag shtut*, a ridiculous custom". The prohibition is also noticeably rejected by the *Tur* (O.C. 453), who writes regarding abstaining from rice and *kitniyot* on Pesach as a "*chumra yeterah, v'lo nahagu kein*"—an excessive stringency and this was not the custom. The *Ya'avetz* (*Mor U'Ketzia* beg. O.C. 453), quoting his father, the *Chacham Tzvi*, famously declared that if he had the ability to cancel the *kitniyot* prohibition he would, as it mostly affects the poor. The controversial *sefer Shu"t Besamim Rosh* (348) even posits that the *kitniyot* prohibition was started by Karaite (!) and should not be followed. On the other hand, several authorities, including the *Beit Meir* (O.C. 453), *Sha'arei Teshuva* ad loc. 1), and *Maharsham* (*Da'at Torah* ad loc. 1) counter his words.

6. *Rema* (O.C. 453: 1 and *Darchei Moshe* ad loc. 2), *Levush* (ad loc. 1), *Bach* (ad loc.) *Pri Chadash* (ad loc. 1; he cites a source from the *Gemara Pesachim* 40b), *Gr"a* (*Biur HaGr"a* ad loc. and *Ma'aseh Rav* 184; citing the same source), *Shulchan Aruch Harav* (O.C. 453: 3 - 5), *Chaye Adam* (vol. 2, 127: 1), *Sha'arei Teshuva* (ad loc. 1), *Kitzur Shulchan Aruch* (117: 4), *Mishnah Berurah* (453: 6 and *Biur Halacha* ad loc. s.v. *v'yesh*), and *Aruch Hashulchan* (453: 4 and 5). See also the *Maharsham's* *Da'at Torah* (ad loc.), the *Chida's* *Tov Ayin* (18), as well as the *Maharatz Chiyus's* *Kuntress Minchat Kina'ot*, *Shu"t Chatam Sofer* (O.C. 122), *Shu"t Tzemach Tzedek* (Lubavitch; O.C. 56), *Shu"t Ma'amar Mordechai* (32), *Shu"t Maharam Brisk* (48), and *Shu"t Divrei Malkiel* (vol. 1, 28), all of whom discuss the strength of this compulsory prohibition.

7. *Kitzur Shulchan Aruch* (117: 4), *Mishnah Berurah* (453: 6), *Aruch Hashulchan* (ad loc. 4 and 5), Rav Tzvi Pesach Frank (*Mikra'ei Kodesh*, *Pesach* vol. 2, 60: 2), Rav Moshe Feinstein (*Shu"t Iggerot Moshe* O.C. vol. 3, 63), and the Klausenberger Rebbe (*Shu"t Divrei Yatziv* O.C. vol. 2, 196).

In fact, the *Aruch Hashulchan* avers that “once our forefathers have accepted this prohibition upon themselves, it is considered a ‘*geder m’din Torah*’, a fence set up by Torah law, and one who is lenient is testifying about himself that he has no fear of Heaven”. He adds, echoing Shlomo *Hamelech*’s words (*Kohelet* Ch. 10: 8) regarding a ‘*poretz geder*’, that one who breaks this prohibition deserves to be bitten by a snake.

Several reasons are given for the actual prohibition,<sup>8</sup> including that *kitniyot* often grow in close proximity to grain; that they are commonly stored together with grain and actual *chametz* might actually end up mixed inside the *kitniyot* container; that cooked dishes made from grain and *kitniyot* look similar; and that *kitniyot* can likewise be ground up into flour - a ‘bread’ of sorts can actually be made from them. Since there are many who will not be able to differentiate between them and their Biblically-forbidden *chametz* counterparts, *kitniyot* was likewise prohibited.

## Potatoes, Peanuts, and Corn...Oh My!

So how does our quinoa measure up? Although it has been used in the Andes for millennia, it has only recently, in the last score years or so, gained popularity around the world. Does quinoa fit the *kitniyot* criteria or not?

Perhaps we can glean some insight to quinoa’s *kitniyot* status from halachic precedents of other now-common food staples, such as potatoes, peanuts and corn, that were introduced to the Jewish diet long after the *kitniyot* prohibition started.

It would seemingly be quite difficult for anyone to mix up potatoes with *chametz* grain, so that rationale to regard

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8. See *Beit Yosef* and *Rema* (O.C. 473: 1) and major commentaries, including the *Biur HaGr”a* (ad loc. 5), *Shulchan Aruch Harav* (ad loc. 3, 4, and 5), *Chok Yaakov* (ad loc. 5 and 6), *Sha’arei Teshuva* (ad loc. 1), and *Mishnah Berurah* (ad loc. 6, and *Biur Halacha* ad loc. s.v. *v’yesh*).

potatoes as *kitniyot* is out.<sup>9</sup> But, potatoes can be and are made into potato flour and potato starch, and there are those who do bake potato 'bread'. Yet, even so, we find that in actual practice potatoes are not considered *kitniyot*.<sup>10</sup> One of the main reasons for this is that at the time when the Ashkenazic *Rishonim* established the decree prohibiting *kitniyot*, potatoes

9. See *Pri Megadim* (O.C. 464, E.A. 1), *Shu"t Levushai Mordechai* (O.C. vol. 1, 127 s.v. *a"d*) and *Halichot Shlomo* (*Mo'adim* vol. 2, *Pesach* Ch. 4, *Dvar Halacha* 28). This is a very important factor, as the *Levushai Mordechai* writes that although there are several reasons mentioned for the *kitniyot* ban, the most important one is that *kitniyot* look similar to grain and get mixed up. This would obviously exclude potatoes from the *kitniyot* category.

10. Although the *Chaye Adam* (*Nishmat Adam, Hilchot Pesach*, Question 20) writes that potatoes should be *kitniyot* and the *Pri Megadim* (O.C. 453, M.Z. 1) mentions that he knows of such a *minhag*, nevertheless the vast majority of *Poskim*, including the *Pri Megadim* himself (O.C. 464, E.A. 1) rule that potatoes are not considered *kitniyot*. Others who explicitly write that potatoes are not *kitniyot* include Rav Yaakov Emden (*Shu"t Sheilat Ya'avetz* vol. 2, 147: 4 s.v. *u'vhiyoti*), the *Divrei Malkiel* (*Shu"t* vol. 2, end 112; he adds an additional reason to be lenient: potato flour doesn't look like grain flour and has a different consistency, therefore mitigating potential mix-ups), *Yad Aharon* (*Shu"t* 16: 5), *Aruch Hashulchan* (O.C. 453: 5; he adds that with the advent of potatoes one should never have to rely on the *heter* of permitting *kitniyot b'sha'at hadchak*), *Levushai Mordechai* (*Shu"t* O.C. vol. 1, 127), *Kaf Hachaim* (O.C. 453: 21), Rav Moshe Feinstein (*Shu"t Iggerot Moshe* O.C. vol. 3, 63), Rav Shlomo Zalman Auerbach (*Halichot Shlomo* *ibid.*), the Pupa Rav (*Shu"t VaYa'an Yosef, Mishpatecha L'Yaakov* O.C. 41), and the *Chelkat Yaakov* (*Shu"t* new print, O.C. end 207). It is widely quoted that the famed *Divrei Chaim* of Sanz questioned how the *Chaye Adam* could possibly have forbidden potatoes on Pesach when his *sefer* is titled '*Chaye Adam*', literally 'the Life of Man' and potatoes are a necessity in life. In this vein, for introducing potatoes to the European continent, Sir Francis Drake was merited to be classified by the *Tiferet Yisrael* (*Avot* Ch. 3, *Mishnah* 14: *Boaz* beg. 1) as one of the *Chassidei Umot Ha'Olam* (Righteous Gentiles), as over the centuries potatoes have saved countless lives from starvation. Others included in this exclusive list include Johannes Gutenberg, who invented the printing press and thus enabled the disseminating of Torah on a mass scale, Johann Reuchlin, who defended the Talmud from being burned in numerous debates against the apostate Pfefferkorn, and Edward Jenner, creator of the modern smallpox vaccine, saving 'tens upon tens of thousands' of people. Thanks are due to Rabbi Elchanan Shoff, author of *V'Ani BaHashem Atzapeh* and *Birchata V'Shirata*, for pointing out this fascinating source.

were completely unknown! It is possible that had they been readily available they might have found themselves on the “forbidden list” as well. Yet, since they were never included, as well as the reality that they do not fit most of the criteria, contemporary authorities could not add “new types” to the list.<sup>11</sup>

However, it must be noted that there also are other important reasons why potatoes were excluded. Of the four criteria given for the prohibition of *kitniyot*, potatoes only fit one, that it can be made into flour and a ‘bread’ of sorts can be baked from it. No one would ever mix up a potato with a grain kernel. As Rav Shlomo Zalman Auerbach *zt”l* noted,<sup>12</sup> *Klal Yisrael* never accepted the *kitniyot* prohibition to include potatoes.

We find that similar ‘New World’ logic was used by several *poskim*, including Rav Moshe Feinstein *zt”l*, to permit peanuts

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11. *Shu”t Sheilat Ya’avetz* (vol. 2, 147: 4 s.v. *u’vhiyoti*), *Shu”t Levushai Mordechai* (O.C. vol. 1, 127 s.v. *v’ra’isi*), *Shu”t Iggerot Moshe* (O.C. vol. 3, 63), and *Shu”t Chelkat Yaakov* (new print, O.C. end 207), similar to the rule set by the *Chok Yaakov* (O.C. 453: 9). The first mention of such logic is in *Shu”t Zeicher Yehosef* (O.C. 157) who writes that *b’sha’at hadchak* one may eat ‘*she’u’it*’, green beans, on Pesach due to this logic. [However, it is important to note that he only said to be lenient in extenuating circumstances. Also the *Sha’arei Teshuva* (453: 1) seemingly and directly argues, writing simply that they are *kitniyot* and therefore prohibited.] Others who cite this opinion include the *Shu”t Melamed L’Hoyeel* (vol. 1, 87 and 88), and *Shu”t Seridei Aish* (vol. 2, 37: 2; new print vol. 1, 50: 2).

12. *Halichot Shlomo* (*Mo’adim* vol. 2, Pesach Ch. 4, *Dvar Halacha* 28). However, Rav Shlomo Zalman personally was stringent with potato flour [starch] (ad loc. footnote 109). It is known that the *Badatz Eida Chareidit* of Yerushalayim were also stringent until the renowned *Minchat Yitzchak* became the *Av Beit Din* and ruled that there was no reason to be *machmir*, even with potato starch. Other *poskim* who explicitly permit potato starch on Pesach include the *Aryeh D’vei Ilai* (*Shu”t*, *Kuntress Avnei Zikaron* 10, based on the *Pri Chadash*’s *hetter* - O.C. 461: 2 regarding matzah meal), the *Levushai Mordechai* (*Shu”t* O.C. vol. 1, 127), and *Sha’arim Metzuyanim B’Halacha* (117: end 7 s.v. *v’ugot*). On the other hand, the *Arugat HaBosem* (*Shu”t* vol. 2 – O.C. 124) concludes that it is *assur*, based on the similarity of baking use of potato starch and *chametz*.

for Pesach for those who did not have an opposing custom.<sup>13</sup> Nevertheless, this ruling was not as widely accepted<sup>14</sup> since peanuts are a true legume and, as opposed to potatoes, can get mixed up with grain. In fact, the *minhag* in Yerushalayim (dating back at least several centuries)<sup>15</sup> is to consider both the

13. *Shu”t Iggerot Moshe* (O.C. vol. 3, 63; see also Rav Shmuel Kamenetzky’s *Kovetz Halachot on Hilchot Pesach*, Ch. 10: 8, and footnote 9). Others who accept peanuts for Pesach consumption include the *Seridei Aish* (*Shu”t* vol. 2, 37, 2; new print vol. 1, 50: 2), the *Yeshuat Moshe* (*Shu”t* vol. 1, 35; he opines that the *kitniyot* prohibition never applied to legumes that are eaten raw, but concludes similar to Rav Moshe, that if one has an existing *minhag* not to eat peanuts on Pesach he still should not do so), and the *Riveivot Efraim* (*Shu”t* vol. 7, 257; only if it came still in its shell). Based on this, the ‘Kedassia’ kashrut agency of London, and Rav Yaakov Landau *zt”l* of Bnei Brak used to grant Pesach *hashgacha* on peanut oil. On the other hand, those who were stringent include the *Shoel U’Meishiv* (*Mahadura Kama* vol. 1, 175), the *Avnei Nezer* (O.C. 373 and 533), the *Ma’amar Mordechai* (*Shu”t* 32), and the *Sdei Chemed* (*Ma’arechet Chametz U’Matzah* 6, 1). This issue was also one of the points of contention between Rav Kook and the *Badatz HaChassidim* of Yerushalayim (forerunners of the *Eida Chareidit*) regarding the permissibility of sesame oil for Pesach – see footnote 15]. See also *Shu”t Atzei Halevanon* (vol. 1, 18) who also permits peanuts for Pesach, yet based on his description it seems he is referring to a pistachio (as per the *Yeshuat Moshe* *ibid.*).

14. There are several *Poskim* who technically agree in logic that the peanut should not be considered *kitniyot*; yet, since it can get mixed up with grain, they rule that only its oil or derivatives may be used. These include Rav Chaim Soloveitchik *zt”l* of Brisk (cited in *Mikraei Kodesh*, Pesach vol. 2, 60: 2), the *Melamed L’Hoyeel* (*Shu”t* vol. 1, 87 and 88; the *Har Tzvi* (*Mikraei Kodesh* ad loc.), Rav Yosef Eliyahu Henkin *zt”l* (*Teshuvot Ibra* Ch. 2, 28: 3; and in his posthumously published *Shu”t Gevurot Eliyahu* vol. 1 - O.C., 141: 3), and the *Chelkat Yaakov* (*Shu”t* new print O.C. end 207).

15. See the *Chida’s Birkei Yosef* (O.C. 447: 14 and 453: 5) who writes that in *Eretz Yisrael*, already in his time (late 1700s) they were strict (*machmir*) not to use sesame oil on Pesach. An early *Acharon* based in Yerushalayim, the *Mahari Chagiz* (*Shu”t Halachot Ketanot* vol. 1, O.C. 150) ruled similarly. This is also cited by the *Melamed L’Hoyeel* (*Shu”t* vol. 1, 87 and 88) in the late 1800s, that the *minhag* in Yerushalayim (*Takkanat Yerushalayim*) dating back to at least 5602 / 1842 (!) was not to use sesame oil, nor various nuts for Pesach. In fact, in 5669 / 1909 there was a huge controversy between Rav Avrohom Yitzchok Hakohen Kook (at the time Chief Rabbi of Yaffo) and members of the *Badatz HaChassidim* of Yerushalayim, about the permissibility of using sesame oil for Pesach (as fascinatingly detailed at length, with the responsa of both sides printed in the plainly titled “Kuntress”). Although under his

peanut and its oil *kitniyot*.

The issue of whether oil from *kitniyot* maintains *kitniyot* status is a complicated one and actually is huge point of disagreement among halachic authorities to this day. Additionally, there are authorities who make a distinction if the *kitniyot* item in question is inedible in its natural form, such as cottonseed (which is also not true *kitniyot* but rather a seed). Anecdotally, this author once heard from Rabbi Berel Wein that when he was head of the OU's Kashrut department, the question arose whether or not to permit peanut oil for Pesach. Rabbi Wein related that he had remarked that "the great Kovno Rav, Rav Yitzchok Elchanan Spektor ruled that peanut oil is not *kitniyot*, and Berel Wein is not going to be the one to say it is."

On the other hand, we find that another New World crop, corn, was seemingly unanimously included as part of the *kitniyot* prohibition.<sup>16</sup> Aside from the fact that the words 'corn'

personal *hashgacha* for Pesach, Rav Kook was nevertheless informed not to let the manufacturers bring the sesame oil to Yerushalayim, as there it was always considered *kitniyot*. Many are of the opinion that this *Minhag Yerushalayim* dates back to the students of the Vilna Gaon (*Talmidei HaGr'a*), as it is well known that the Vilna Gaon was extremely insistent about considering seeds, as well as their oils, as *kitniyot*. The *Badatz Eida Chareidit* of Yerushalayim trace their *minhagim* regarding *kitniyot* back to the Gaon as well. It is known that Rav Moshe Feinstein was personally strict as well, and did not use cottonseed oil on Pesach. [See *Shma'atseh D'Moshe* (Pesach, *Shemu'ot Moshe* 453: 2, pg. 368), *Mesoret Moshe* (vol. 1, pg. 149: 301), and *Kuntress Yad Dodi* (pg. 119, *Hilchot Pesach* Question 53)]. This is opposed to the common American *minhag* to allow cottonseed oil for Pesach - based on the *Shulchan Aruch Harav* (*ibid.*) that the *kitniyot* prohibition does not include seeds, and especially as cottonseed is inedible in its natural form. Many authorities including the *Melamed L'Hoyeel* (*ibid.*), *Tzelemer Rav* (as cited in Rabbi Avrohom Blumenkrantz's annual *Kovetz Hilchot Pesach*), Rav Yosef Eliyahu Henkin (*ibid.*), Rav Tzvi Pesach Frank (*ibid.*), and the *Chelkat Yaakov* (*ibid.*) outright permitted it for Pesach use.

16. See *Chok Yaakov* (O.C. 453: 1), *Elya Rabba* (ad loc. end 2), *Pri Megadim* (*Eshel Avraham* ad loc. 1), *Ba'er Heitiv* (ad loc. 1), *Machatzit Hashekel* (ad loc. 1), *Aruch Hashulchan* (ad. loc. 3), *Mishnah Berurah* (ad loc. 4), *Shemirat Shabbat Kehilchata* (new print - Ch. 40: 92), and *Mesoret Moshe* (vol. 2, pg. 101: 190).

and ‘grain’ both stem from the same root, ‘corn’ is actually only the name for the grain ‘maize’ that is used in the United States, Canada, and Australia. In other parts of the English-speaking world and much of Europe, the term ‘corn’ is a generic term for *cereal* crops, such as real *chametz* – wheat, barley, oats, or rye. In fact, the infamous British Corn Laws (1815 - 1846) concerned wheat and other grains, not corn!<sup>17</sup>

Additionally, corn exhibits many characteristics of real *kitniyot*: it grows near other grains, has small kernels, is made into flour (that can be easily confused with grain flour), and corn bread is made from it. Therefore, since corn fits many of the criteria of *kitniyot*, as opposed to potatoes, it was included in the prohibition.

## Contemporary Quinoa Controversy

So, which category should quinoa be a part of? Like the potato and be excluded from the prohibition? Or like corn and be considered *kitniyot*? Actually, contemporary authorities and Kashrut agencies have been debating just this very question. It turns out that quinoa is halachically similar to the peanut, meaning that its status is debated.

### View #1 - Quinoa is not *kitniyot* [Star-K, cRc, and Kof-K]

Several Kashrut agencies, including the Star-K,<sup>18</sup> which follows the *psak* (ruling) of Rav Moshe Heinemann, and the

The *Chatam Sofer* (*Shu”t* O.C. 121) even feels that we should treat corn as a ‘*chashash dagan*’ possibly grain.

17. Thanks are due to Rabbi Arnie Wittenstein for pointing this important fact out to me.

18. See *Kashrus Kurrents* article titled “Quinoa: The Grain That’s Not” by Rabbi Tzvi Rosen of the Star-K, originally published in 1997, and the Star-K 2013 Passover Directory pg. 52.

cRc (Chicago),<sup>19</sup> following the *psak* of Rav Gedalia Dov Schwartz, as well as the Kof-K,<sup>20</sup> maintain that quinoa is essentially Kosher for Pesach. Since it is not even remotely related to the five grains, (in fact, it is also not a legume and not botanically related to peas and beans which are of the original species of *kitniyot* included in the decree) and was not around at the time of the *kitniyot* prohibition, it is not considered *kitniyot*. Additionally, the Star-K tested quinoa to see if items cook with it would rise-- yet instead it decayed, a sure sign that it is not a true grain. The only issue, according to them, is the fact that quinoa is processed in facilities that other grains are processed in. Therefore, they maintain, that if quinoa is processed in facilities under special reliable Pesach supervision, there is no Pesach problem. In fact, every year since, the Star-K has granted special kosher for Passover *hashgacha* on certain types of quinoa.<sup>21</sup>

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19. See [cRc alert](#) dated February 23, 2012: "In 2007 HaRav Gedalia Dov Schwartz, *Shlit" a*, the Av *Beit Din* of the Chicago Rabbinical Council, issued a *p'sak* that quinoa is not considered *kitniyot* and therefore may be used on Pesach. Most of the quinoa comes from Peru and Bolivia and has been grown in areas where other (problematic for Pesach) grains were generally not grown. However, as the popularity of quinoa has risen, this is no longer the absolute case. This was confirmed this year by a Star-K *mashgiach* who visited Bolivia and found that barley does indeed grow in those areas. It was also recently discovered that some farmers cover their quinoa with barley and/or oats to keep the birds from eating the quinoa while it dries. Finally, there is a concern that the sacks used to transfer the quinoa may have been previously used to hold barley or oats. We have, therefore, determined that the only way to allow quinoa for use on Pesach is to track the quinoa from certain farms that are free from the above concerns. The Star-K spearheaded this endeavor and sent a supervisor (*mashgiach*) to find such a farm. While they were successful in their search, it proved to be challenging from a practical point of view, as the company visited generally sells their products in large quantities. The Star-K has now worked with other companies to pack the usable quinoa into smaller packages, and several options have been approved for Pesach quinoa consumption."

20. As per personal communication received from Rabbi Moishe Dovid Lebovits, Rabbinic Coordinator at the Kof-K.

21. As per the cRc and Kof-K, it is important to note that even the quinoa that is under Pesach supervision should be carefully checked before Pesach

## View # 2 - Conversely, Quinoa is Classified as *kitniyot*

However, Rav Yisroel Belsky *zt"l*,<sup>22</sup> Rosh Yeshiva of Torah Vodaath and *Posek* for the OU, disagreed. He argued that since quinoa fits every criterion for *kitniyot*, it should be included in its prohibition. Quinoa is the staple grain in its country of origin. It is grown in proximity to and can be mixed up with the five grains. It is collected and processed the same (and in the same facilities) as the five grains, and is cooked into porridge and breads the same as the five grains. He maintained that it should be compared to corn, which was, for similar reasons, included in the *kitniyot* prohibition. Although quinoa is a New World food item and was not included in the original prohibition, nevertheless, he explained that that line of reasoning applies exclusively to items that are not clearly *kitniyot*, to foods that may share only several characteristics with *kitniyot*. However, since quinoa and corn would certainly have been included in the restriction (*gezeira*) had they been discovered, as they share every criterion of *kitniyot*, they are consequently by definition considered *kitniyot*. This stringent view is shared by Rav Dovid Feinstein, Rav Osher Westheim of Manchester, and Rav Shlomo Miller of Toronto, among other well-known *Rabbanim*.

## The OU's Approach

On the other hand, the OU's other main halachic decisor, Rav Herschel Schachter, Rosh Yeshivat Rabbeinu Yitzchak Elchanan (Y.U.), permits quinoa, concluding that if it is processed in a special facility with no other grains, it should

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for any foreign matter before use. This can be done by spreading the quinoa out on a plate and carefully checking there are no other grains or foreign matter mixed in. However, this author has been informed by Rabbi Zvi Goldberg of the Star-K that if one purchases the quinoa for Pesach that is under their *hashgacha*, checking is unnecessary.

22. *Ve'Kasher HaDavar* (July 2012, pg. 9). Rav Dovid Feinstein's opinion is stated in *Kuntress Yad Dodi* (pg. 119: *Hilchot Pesach*, Question 51).

essentially be permitted for Passover use. Due to the difference of opinions of their top *Poskim*, in the past, the OU did not certify quinoa as Kosher for Pesach.<sup>23</sup> However, in late 2013, the OU made a decision allowing quinoa for Pesach, provided that it is processed with special Passover supervision. In fact, the OU recommended quinoa for Pesach 2014 and actually certified special Pesach processing runs.<sup>24 25</sup> This certification

23. Although the OU's other main *posek*, Rav Herschel Schachter, permits quinoa, until recently the OU did not grant it Pesach approval out of deference to Rav Belsky's ruling. This is what the OU released about quinoa in the past: <http://oukosher.org/passover/guidelines/food-items/quinoa/>: "There is a difference of opinion among Rabbinic decisors (*machloket ha-poskim*) as to whether quinoa is considered *kitniyot*. Ask your Rabbi for his guidance. Additionally, while quinoa is not one of the five grains that can create *chametz* (wheat, oat, barley, spelt and rye), and quinoa is not grown in the same vicinity as the grains mentioned above, the processing of quinoa is sometimes done at the same location where they process wheat and wheat flour. It is highly doubtful that the mills are effectively cleaned between grains. The concern of wheat flour or particles finding their way into the quinoa flour would be a serious one."

24. This author has also communicated with Rabbi Shoshan Ghoori of Aish HaTorah of Chile, who had the unique experience of performing the quinoa investigation in the Andes Mountains for the OU. He presented the following information and findings after studying various growing and processing regions of the Andes: Since quinoa is a prized product both for export and for local consumption it is generally grown in large fields that are focused on just quinoa. He added that as quinoa popularity and prices rise this point is even stronger. He has found that the traditional use of quinoa is not the same as the use of grains. It is not generally made into breads or other similar grain type foods by the Andean communities, but rather is an all around 'super food' used for soups, and teas etc., just like maca, canihua and kiwicha. After visiting approximately fifteen quinoa processing plants he has yet to have found one (not a gathering nor a washing station) that produces or mixes problematic grains (that could be an issue for *chametz* or *kitniyot*) in the same plant as quinoa.

25. This does not mean that Rav Belsky *zt"l* had actually changed his position. In fact, this author has heard from several of his *talmidim*, as well as my father, renowned *kashrut* expert Rabbi Manish Spitz, who spoke with Rav Belsky directly shortly before his *petirah*, that he still personally did not recommend quinoa for Pesach use. This is also reported by his nephew, Rabbi Dovid Ribiat, author of '*The 39 Melachot*' in his recent *Kuntress Hilchot Pesach - Halachot of Pesach* (2015 edition, pg. 152) in a conversation on Pesach

continued for Pesach 2015 and beyond, as well.<sup>26</sup>

### Other Agencies and Poskim

However, not every Kashrut agency in North America agrees with their permissive ruling. The OK<sup>27</sup> does not certify quinoa for Pesach, as they consider it *kitniyot*, as does the *Hisachdut Rabbonim* (CRC - New York),<sup>28</sup> and the COR of Toronto.<sup>29</sup> This author has heard that the Kashrut Authority of Australia deems it *kitniyot* as well. This also is the *Badatz Eida Chareidit* of Yerushalayim's approach, as in their annual *Madrichet HaKashrut*,<sup>30</sup> they maintain that food items that are planted in the ground as seeds (*zironim*), harvested as seeds (*garinim*) and are edible, are considered *kitniyot*.

5774, after the OU started Pesach supervision for quinoa.

26. See article on the OU's website here: <https://oukosher.org/passover/articles/ou-p-2015/>. "The OU continues to give certification to Passover Quinoa. Pereg and Goldbaum will be selling OU-P quinoa as well as Setton Farms. The OU-P quinoa is from a factory in South America which does not deal in *chametz* or *kitniyot* and was packed under constant supervision (*Mashgiach Temidi*). Pereg will be introducing quinoa flour as a new OU-P item this year."

27. As per personal communication received from a consumer liaison at the OK.

28. As per personal communication with a Kashrut representative on Jan. 17, 2017. He added that those who are lenient about eating *kitniyot* on Pesach (*Sefardim*) should make sure to only use quinoa with a reliable Pesach *hashgacha*, as it otherwise is generally processed in the same plants as *chametz*.

29. See article on the COR website titled "Is Quinoa *Kitniyos*"; and in personal communication with Rabbi Tsvi Heber, Director of the COR. He wrote that while the COR will not change its position vis-à-vis its own certified establishments, it has decided to advise the public to consult with their own Rav regarding the status of quinoa.

30. *Badatz Eida Chareidit* of Yerushalayim's annual *Madrich HaKashrut* (Ch. 15, 4; 5772, pg. 47; 5773, pg. 163; 5774, pg. 173). This can also be seen on pg. 38 of the 5773 Pesach *Madrich HaKashrut* by the listing of baby cereals which are permitted for Pesach use even though they contain *kitniyot*, such as rice, *quinoa*, and corn flour; and on pg. 133, quinoa is outright classified as *kitniyot* (pg. 143 in the 5774 edition). Thanks are due to Rabbi Tzvi Price for pointing this out to me.

## The View from Israel

Other *Poskim* who ruled similarly include Rav Yosef Shalom Elyashiv *zt"l*, who ruled that it should be considered *kitniyot*<sup>31</sup> after being shown quinoa and hearing from representatives of various *kashrut* agencies, and Rav Asher Weiss (the *Minchat Asher*), who recently addressed this topic in his weekly halacha *shiur*,<sup>32</sup> as well as in several responsa, and concluding that it is indeed *kitniyot*. This is also the opinion of Rav Yehoshua Yeshaya Neuwirth *zt"l*, author of *Shemirat Shabbat Kehilchata*, Rav Yaakov Ariel of Ramat Gan, and Rav Mordechai Najari of Ma'aleh Adumim.<sup>33</sup> Similarly, the current Ashkenazi Chief Rabbi of Israel, Rav Dovid Lau, wrote that quinoa is only permitted on Pesach for 'Ochlei *kitniyot*', those who do eat *kitniyot*.<sup>34</sup> This also appears to be the Israeli

31. As heard from Rav Elyashiv's *talmid*, Rav Nochum Eisenstein, *Mara D'Atra* of Ma'ilot Dafna, Yerushalayim, and in personal communication with Rabbi Sholem Fishbane, Kashrut Administrator of the cRc. Rav Elyashiv's position and his meeting with members of American kashrut agencies regarding quinoa's status first appeared in the English Israeli *Yated Ne'eman* in 2006. See also <http://www.ohelyonah.com/shutim/%D7%A7%D7%99%D7%A0%D7%95%D7%90%D7%94%D7%91%D7%A4%D7%A1%D7%97.pdf>.

32. Shiur delivered on March 6th, 2013 - <https://www.box.com/shared/a1y5cl7vio1x34ziwh6h>. Rav Weiss also has written several unpublished teshuvot on topic, including one to this author – see <http://en.tyunah.org/2014/03/23/quinoa-on-pesach/>.

33. As mentioned in this article by Rav Dovid Avraham Spektor of Bet Shemesh: <http://www.ohelyonah.com/shutim/%D7%A7%D7%99%D7%A0%D7%95%D7%90%D7%94%D7%91%D7%A4%D7%A1%D7%97.pdf>. However, although he personally concludes that quinoa is indeed *kitniyot*, following the above mentioned *Rabbanim* as well as Rav Elyashiv, he also notes that Rav Avigdor Nebenzahl of the Old City of Yerushalayim and Rav Dov Lior of Kiryat Arba are of the opinion that it is not, and is permissible for Pesach. Rav Spektor adds that in his opinion, if one normally eats quinoa every day for health reasons, he may rely on those who are lenient on this matter and do so on Pesach as well, even though this does not fit into the classic category of an actual *choleh*, sick person.

34. *Shu"t Maskil L'Dovid* (end 15, s.v. *quinoa*). He concludes that although quinoa is commonly referred to as 'The Mother of All Grains', nonetheless,

Rabbanut's position as well.<sup>35</sup> Additionally, the largest Sefardic kashrut agencies in Israel, the 'Beit Yosef' and Rav Shlomo Machpud's 'Yoreh De'ah', although giving *hashgacha* on quinoa for Pesach, both qualified that it is reserved exclusively for 'Ochlei kitniyot', squarely calling quinoa *kitniyot*. In light of all this, it seems much less likely to see quinoa gracing Pesach tables in *Eretz Yisrael*.

## A Balanced Approach

Rav Avrohom Blumenkrantz *zt"l*, in his annual *Kovetz Hilchot Pesach*, took a middle road approach, acknowledging both sides to this quinoa quarrel. He did not give carte blanche for everyone to use it for Pesach, but concluded that anyone who suffers from gluten or any Pesach-related allergies or conditions (ex. celiac) may comfortably use quinoa on Pesach without hesitation. This is also the opinion of Rabbi Dovid Ribiat, author of '*The 39 Melachot*', as well as the view of the London *Beit Din* (KLBD).<sup>36</sup>

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since it is not an actual grain, it is still permitted for Sefardim to eat on Pesach. See here: <http://hebrewbooks.org/pdfpager.aspx?req=41222&andst=andpgnum=223&hilite=www.mysite.com>.

35. Rav Lau's responsum on *kitniyot* and quinoa is reprinted in the Rabbanut's *Madrich HaKashrut* (Pesach 5774, pg. 47) as their official position on quinoa.

36. *Kovetz Hilchot Pesach* (2006, ppg. 141 - 143). This is also the position taken by Rabbi Dovid Ribiat, author of '*The 39 Melachot*', in his recent *Kuntress Hilchot Pesach - Halachot of Pesach* (2015 edition; pg. 153, 3 par. Halachic conclusion) "In practice, persons with limited diets, or who are otherwise sensitive to gluten and ordinary grain products may rely on the lenient opinions regarding quinoa. This applies even to those for whom grain products are not dangerous, but merely a cause of significant discomfort". The KLBD recently released this statement (United Synagogue's *Daf Hashavua, Parshat Tzav* 5775, pg. 4): "Given its *kitniyot* qualities, KLBD does not permit eating quinoa on Pesach unless you have specific health-based dietary requirements. If you have such requirements, please contact both your rabbi and doctor for advice before Pesach."

## Quinoa Conclusion?

It seems that there truly is no clear conclusion to this contemporary kashrut controversy. Can one eat it on Pesach? One must ask his own personal, local halachic authority for guidance to clear up any quinoa / *kitniyot* kashrut confusion or questions. But all concerns being equal, one thing is certain regarding a holiday that is all about tradition: quinoa was not served at Bubby's Seder!

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*This article was written l'zechut Shira Yaffa bat Rochel Miriam  
v'chol yotzei chalatzeha for a yeshua teikif umiyad.*

# Teaching the Whole Truth in the Classroom

*Rabbi Chaim Burman*

Recently, while visiting an institution of higher Jewish learning, I was made aware of an issue which had presented an acute ethical dilemma. I was told by a senior faculty member about an incident which had occurred earlier that year. The institution was hosting a class aimed at introducing major Talmudic personalities to a group of elementary school students who belonged to marginally-affiliated Orthodox Jewish families. It was felt that providing an interesting biographical account of major Talmudic Rabbis was an appropriate medium for introducing beginners to the concept of Talmud and its methodologies.

The faculty, in preparation for this class, was presented with a dilemma: the personality that would be the focus of the class was of undoubtedly high moral caliber, there was no shortage of sources which indicated that. However, there was one (post-Talmudic) source which identified an incident which – at least to modern mores – seemed highly questionable. The question was: should the educators report this episode, which seemed so incongruous to the plethora of positive source material surrounding this Rabbi?

One faculty member felt that the kids didn't need to hear about it, there was more than enough to discuss without delving into this sensitive and confusing topic: "These students have never heard of the Talmud, why must we

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complicate things for them?" Another teacher was adamant that as educators, there was a responsibility to maintain intellectual integrity and teach what happened *as it happened*. "It is not our job", he claimed, "to censor and whitewash what the sources tell us about Rabbi N". I was told that the class was given and this controversial content was shared.

This episode intrigued me. Each side had a compelling argument, and the ethical implications of either course of action were fascinating. What is the correct course of action (if there is one) when the duties of academic integrity, of providing open and impartial access to information, may potentially hinder deeper engagements and Jewish growth? This led me to undergo focused research regarding truth-telling in the classroom. Elsewhere I have explored the concomitant concerns from the perspective of halachic, professional and legal standards,<sup>1</sup> and in this article I will explore the relevant halachic issues in further depth.

## Truth-telling in Halacha – The Background

There is currently no authoritative halachic guide to truth-telling. Much like the laws of *Lashon Hara* (evil talk), the relevant laws are scattered around the *Poskim* (halachic authorities) but were not systematically codified by the *Shulchan Aruch*.<sup>2</sup> A discussion of how the halachic principles of truth telling may be applied in the classroom is therefore highly pertinent.

It is interesting to note that when the *Ben Ish Chai*<sup>3</sup> was requested to provide the guidelines to be used for truth-

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1. *A guide for truth-telling in the school class room for the UK Orthodox Jewish educator*. Jerusalem: London School of Jewish Studies.

2. Rabbi Y. I. Silver, (2011). *Emet Knei* (Acquire Truth (Trans.)). Jerusalem: Self-published; Rabbi M. Dratch, (1988). "Nothing But the Truth", *Judaism*, 218-228; Rabbi Y. Sherlow (2000). *Midvar Sheker Tirschak: Kitzur Hilchot Sheker* (Hebrew). *Tzohar*, 13-24.

3. *Responsa Torah Lishma*, 364.

telling, he merely relayed to the questioner the Talmudic precedents and directives regarding the issue. His letter is long, inaccessible to one without solid proficiency in Talmud study, and a practical guideline is not included; he suggests that the questioner should derive the halacha himself. R. Sherlow<sup>4</sup> suggests that the lack of direct regulation is due to the multiple factors which must be taken into consideration in the application of this halacha. There are so many associated issues to be considered, it would be impossible, he argues, to formulate an accurate guide, as no two situations are alike. Rather, one must be familiar with the principles and moral intention of the halacha in this area; subjects like this were not included within the text of the *Shulchan Aruch*.

Although there is no halachic guideline to truth-telling, there is ample clarity throughout Talmudic, halachic and moralist literature regarding the nefariousness of lying. The strongest statement appears in Tractate *Sanhedrin* (92a) where a liar is considered to have "served idolatry". Some commentators emphasize that this is not to be taken literally,<sup>5</sup> while others find the likeness to idolatry in that just as there is one true G-d, there can only be one truth; a denial of the truth is therefore analogous to denial of G-d.<sup>6</sup> In other places the Talmud states that liars are one of the four categories of people who do not "receive the Divine Presence"<sup>7</sup> and that G-d hates liars.<sup>8</sup>

Jewish moralists too have used strong language decrying lies: "there is nothing more disgusting than them",<sup>9</sup> "a most prevalent sickness amongst men",<sup>10</sup> as if they remove the

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4. R. Sherlow *ibid.*

5. *Piskei Riaz, Sanhedrin*, 11, 1, 18; *Orchot Tzadikim, Sha'ar HaSheker*.

6. *Shelah, Parshat Shoftim, Torah Ohr*.

7. *Sotah*, 42b; *Shabbat* 149b.

8. *Pesachim*, 113b.

9. *Sefer HaChinuch*, 74,

10. *Mesilat Yesharim*, 11.

“foundation of the world” (*ibid*), “abomination of the L-rd”.<sup>11</sup> Halachists too have stated the need to remove oneself from lies “to the greatest of distances”<sup>12</sup> and not incur a lie even indirectly,<sup>13</sup> even when accomplished by a mere physical gesture.<sup>14</sup> Many of the above sources cite Biblical verses as evidence of the abhorrent nature of lying, and praise of one who speaks the truth.<sup>15</sup>

Based upon the vast literature decrying lies, it is surprising to many that the actual source of the prohibition is elusive and subject to much debate. Identifying the source of a prohibition is no small matter; it has implications on the severity of transgression (e.g. Biblical prohibition vs. Rabbinical) and also practical consequences affecting its implementation.<sup>16</sup> For this reason it is important to consider what the Biblical source of the prohibition to lie is, and whether certain applications might, in fact, be Rabbinic.

The controversy surrounds the verse in Exodus 23:7 – “Distance yourself from a false matter (*תרחק שקר מדבר*)”. Taken out of context, this verse does indeed appear to be a Divine command to adhere to truth-telling. However, it should be noted that the verse is situated among laws pertaining to proper practice in *Batei Din* (courts of Law), and although there have been at least thirteen instances of Tannaitic exegesis regarding this verse, twelve relate to conduct in *Beit*

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11. *Shaarei Teshuva*, iii, 179.

12. *Mishnah Berurah*, 556.4.

13. *Responsa of Chatam Sofer*, *Even Ha'ezer* i,20, cited by R. Sherlow *ibid*.

14. R. M. Breuer (1968). “*Al Emet b'Chinuch*” (Concerning truth in education (Trans.)). *Hamayon*, 3-18, 1968. c.f. *Sefer Chasidim*, *Seder Brit Olam*, 47.

15. See, for example: Exodus 23:7; Leviticus 19:11; Proverbs 6:16; 8:13; 12:22; 13:5; 16:13; 14:4; 17:7; 26:28; 29:12; Isaiah 59:3; 63:8; Psalms 101:7 (see *Shelah, Shavuot*, *Ner Mitzvah* who relates this verse to education); Jeremiah 9:4; Zephaniah 3:13 and Zachariah 8:17.

16. See *Bava Kama* 105b and *Makkot* 5b.

*Din*, and the final instance is unrelated to truth-telling.<sup>17</sup> Many Biblical commentators (*ad loc.*) restrict the verse's meaning to judicial application.<sup>18</sup> Nonetheless, there certainly are opinions who consider the source of the prohibition to lie as deriving from the above verse,<sup>19</sup> and there are those who have also identified *Rishonim* (medieval authorities) who assume this position.<sup>20</sup>

### The “Pedagogical Lie” – an Inappropriate Recourse

Although there are times when lies are justified, or even mandated by the halacha,<sup>21</sup> many opinions write that this is never true of a pedagogical context. This unequivocal position was adopted by the Chazon Ish.<sup>22</sup>

In this context we will briefly summarize the various justifications offered for this position. One danger is the concern that the educator's dishonesty may be exposed. This would present a number of problematic issues: firstly, students may lose trust in their educator.<sup>23</sup> R. Silver<sup>24</sup> advances a compelling case that this is more dangerous in Jewish education than in other educational contexts. Our tradition, he

17. See, however, *Ketubot* 17a; *Mechilta*, *Mishpatim* 20 and *Tanna D'bei Eliyahu Zuta* 3. Nonetheless, these texts are inconclusive evidence as the verse is not cited as a Biblical derivation for a prohibition ( “לֹא תֹּמַנַּן...”), merely within an *aggadic* text.

18. See, for example, *Ibn Ezra*, *Rashbam*, and *Rav Hirsch ad loc.*

19. R. Chaim Paltiel (Exodus 23:7), *Aruch L'Ner*, *Yevamot* 65b also in *Responsa Binyan Tzion* 21; *Mesilat Yesharim*, 11; *Perishah*, *Even Ho'ezer* 65,1; *Beit Shmuel*, *ibid.*, 2; *Responsa of Rema*, 11.

20. *Smag*, *Asin* 107; *Smak* 227; *Sefer Yereim*, 235; *Sefer HaChinuch*, 407 & 74.

21. See R. Y.C. Fisch (2004), *Titen emet l'yaakov* (Give truth to Jacob (Trans.)). Jerusalem: Self-published, *Emet Knei* (*ibid.*), and *A guide for truth-telling in the school class room for the UK Orthodox Jewish educator* (*ibid.*).

22. Cited from *Ma'asei Ish* Volume 5 Page 61, by R. Fisch (*ibid.*); see also *Piskei Teshuvot* O.C. 156:21.

23. See *Sanhedrin* 99b, and *Al Emet b'Chinuch* (*ibid.*).

24. *Emet Knei* (*ibid.*).

asserts, is proliferated by intergenerational transmission; we know what we know, and we believe what we believe, because our teachers and parents connect us to an oral chain of tradition that links us to Sinai. Once a student loses trust in the chain of transmission, the entire mechanics of Jewish transmission of faith are at stake.

Furthermore, we are concerned for the negative effects of the educator's dishonesty, and the dreadful impressions that are being inculcated. Once students perceive those in positions of authority as being less than totally honest, they too may take liberties with the truth and learn to lie. A useful illustration of this is found in *Yevamot* 63a. The Talmud relates that Rav's wife was behaving in a contrary manner, deliberately ignoring basic requests from her husband. Whenever Rav would request a certain type of food, she would intentionally prepare a dish which was to his distaste. Their son, Chiya, who had discerned his mother's thought process, decided to intercede on his father's behalf, and began to invent scenarios wherein his father had requested a certain food, when in truth he had asked for something else. This request prompted his mother to prepare just the opposite of the food that she thought Rav had asked for, but which was really the one he wished. When Rav found out about this he instructed his son to desist: "You should not do this, as it is written "and they have accustomed their tongues to speak falsehood" (*Jeremiah* 9:4)". Commentators<sup>25</sup> are troubled by this text: surely Chiya's behavior was consistent with acting for the sake of "peace", and therefore justified?<sup>26</sup> By providing his father with the dish he desired he would be minimizing strife between his parents. Why then did Rav rebuke him? They answer that since, in this instance, "changing for the sake of peace" had the negative collateral damage of accustoming Chiya to speak falsehood, it could not be condoned. In other words, Rav's pedagogical

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25. *Meiri* (ad loc.), *Yam Shel Shlomo* (*Yevamot* 6:46), *Maharsha* (*Yevamot* 63a).

26. See *Yevamot* 65b.

concern for the ethical education of his son was of overriding importance, and it superseded the employment of changing for the sake of “peace”.

Additionally, since falsehoods in the classroom take place behind closed doors, there is little check on the appropriateness of a teacher’s usage, and there is potential for teachers to misuse “white lies” for personal gain. This is a general concern; once a “white lie” becomes an acceptable recourse, those who confront difficult moral choices between truthfulness and deception often make up their own rules.<sup>27</sup> The issue is compounded when we consider R. Dessler’s affirmation that even when the halacha permits “changing for the sake of peace”, it may only be done with great reluctance, altruistic motivation and without personal agenda.<sup>28</sup>

Furthermore, it is questionable whether even “white lies” are permitted on a continual basis, or whether it may be permissible only as an emergency, “one-off” solution.<sup>29</sup> There is also the potential for *Chillul Hashem* (desecration of the Divine image) when it becomes apparent that a teacher was less than honest.<sup>30</sup>

The consensus within Orthodox Jewish thought is that classroom lies are an inappropriate recourse for the educator. I shall proceed in my consideration of appropriate conduct regarding truth-telling by exploring the values which will govern the nature of Orthodox educators’ pedagogical practice.

### **The Orthodox Educator: neutral agent or spiritual guide?**

Before embarking on a discussion of proper conduct for

27. See *Nothing But the Truth* (ibid.).

28. *Michtav m’Eliyahu*, Volume 1 pages 94-96.

29. See *Yam Shel Shlomo*, ibid.

30. See R. A. Frimer & R. D. Frimer (1998). “Women’s prayer services - theory and practice”. *Tradition*, 5-118.

Orthodox Jewish educators, it is important to provide a basic axiology of Orthodox education as a means of creating a conceptual framework for which discussion may take place. How will the values and ideal goals influence the way that Orthodox Jewish educators are expected to teach? Obviously, this is a broad issue, but I would like to focus on one crucial and defining aspect which is influential in all policy construction. Namely, to what extent should the Orthodox Jewish educator be focused on a method of teaching where students will leave his classroom with a greater engagement and connection to their Judaism?

This is a question which will deeply influence teaching practice: is the educator an impartial agent of neutrality, or is he an influential vessel of spiritual growth? The answer to this question will, of course, depend on practical factors, such as parent and school expectations, but I would like to explore the halacha's perspective on this issue. I am assuming that the Orthodox educator defers to the halacha as a guide for ethical practice, and therefore requires a focused exploration of relevant issues.

Although some question the validity of "skipping over problematic texts", when "intellectual honesty" and "academic integrity" (read: unabashed disclosure of potentially discouraging content) will be at odds with desired Orthodox development, the traditional halachic stance appears to be staunchly **opposed** to unmitigated divulgence. The overwhelming indication from traditional halachic literature is that, in fact, when omitting Torah content will be more beneficial than disclosure, it is appropriate to do so (*Sefer Chasidim*, 1061).<sup>31</sup> This idea is echoed in the Talmudic principle "*halacha, v'ain morin ken*" ("this is the Law, yet it is not divulged").<sup>32</sup>

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31. See R. Silver *ibid.*

32. For example, *Beitzah* 28b, and *Bava Kama* 30b.

There is another widely used principle germane to our discussion, “*davar zeh assur l’galoto l’am ha’aretz*” (“this matter may not be disclosed to a person who is ignorant”), which needs clarification.

### “And the Matter may not be Taught to an *Am Ha’aretz*”

The Gemara<sup>33</sup> cites a dispute between Rabbi Yochanan and Rava concerning a statement by Rabbi Shimon Bar Yochai. Rabbi Shimon asserted that even one who merely recited the morning and evening paragraphs of the *Shema* fulfills his obligation of “*lo yamush etc.*” (“This Torah shall not depart from your lips”).<sup>34</sup> In other words, recitation of the twice daily prayers would actually minimally fulfill the obligation to learn Torah each day. Rabbi Yochanan stated that it is prohibited to disclose this lenient opinion to an *am ha’aretz*, whereas Rava rules that it is actually a mitzvah to relate R. Shimon’s words to an *am ha’aretz* (an unlearned person).

*Rashi*, *Rabbenu Gershom* (ad loc.) and *Responsa Sha’gat Aryeh* (1) explain that R. Yochanan’s concern is that if unlearned people are made aware of this leniency, they may suffice themselves with this minimal amount of Torah learning, or may not encourage their children to pursue advanced Torah studies. Rava, however, felt that it is a mitzvah to share this information since it demonstrates the greatness of Torah scholars who do not suffice themselves with the bare minimum (R. Gershom), or that it will encourage them to be careful to at least comply with the minimum requirement.<sup>35</sup> Even Rava, who encourages disclosure, does not do so out of concern for “intellectual honesty”. Rather, like R. Yochanan, he too is concerned for religious engagement, yet he feels that it is disclosure, rather than omission which will be

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33. *Menachot* 99b.

34. *Joshua* 1:8.

35. *Tos. Rid* and *Maharsha ad loc.*, see also *Sefat Emet* ad loc.

most conducive to achieving this goal. Thus, both R. Yochanan and Rava accept the principle that "education" has a specific purpose, with neither suggesting that the whole truth must always be revealed, and their disagreement is merely a pragmatic one as to which choice in this case accomplishes the goal better.

Subsequent authorities have drawn upon R. Yochanan's position in formulating restrictions of informing "*amei ha'aretz*" of halachic leniencies.<sup>36</sup> It would seem apparent that the motivation for disclosure and omission in the context of classroom education too, should be governed by considerations of what will encourage students to engage more meaningfully with their Judaism. This approach to Jewish education is decidedly didactic, and encourages the enculturation of students towards further engagement and observance. This has been succinctly articulated by the pedagogical theoretician, Michael Rosenak:<sup>37</sup>

If education is about values, then it is legitimate to initiate learners into a culture. Therefore, teachers may legitimately envision educated persons who have been brought into a community that speaks the same language. They have the right to anticipate that pupils, in the course of the process of learning and growing, will become loyal, identified, and culturally reliable. They will have membership of participation.

The issue of omission due to didactic objectives has been brought into focus in recent years regarding debates surrounding the portrayal of Jewish history by biographies and other Torah publications. In his study of this topic, Rabbi

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36. See *Chiddushei HaRamban* (*Avodah Zara* 61a); *Mishnah Berurah* 317,7; *Beit Yosef* O.C. 317,3 and C.M., 34; *Rema* Y.D. 124,24; *Shach*, Y.D. 160,22; *Pri Megadim*, *Eshel Avraham*, O.C. 406; *Chayei Adam* ii,20 and ii,26,2; *Chochmat Adam*, *Sha'ar Issur v'Heter* 76

37. Rosenak, M. (1999). *Roads to the palace: Jewish texts and teaching*. Oxford: Berghahn Books.

J. J. Schacter<sup>38</sup> cites numerous sources that indicate that omissions of historical fact (even problematic ones) from the annals of history (historiography) are akin to “suppressions” of truth. He is therefore disturbed by R. Schwab’s<sup>39</sup> assertion that the purpose of biographies of Rabbis is not “realism” and as such, does not need to include all relevant facts. Rabbi Schwab writes:

We want to be inspired by their example and learn from their experience... Rather than write the history of our forebears, every generation has to put a veil over the human failings of its elders and glorify all the rest which is great and beautiful. That means we have to do without a real history book. We can do without.

R. Schwab’s assertion is that the remit of Orthodox teaching (here, history) is necessarily didactic and therefore will omit certain elements when necessary; academic accuracy that is of potential detriment to Jewish engagements is not favored. This issue was revisited by Shapiro,<sup>40</sup> who cites the opinion of Rosh Yeshiva R. Aharon Feldman that the essential goal of “Orthodox history” is not a thorough enquiry into past events, but to increase Torah learning and fear of Heaven. Similarly, Yaakobi<sup>41</sup> has cited directives of an influential Jerusalem Rabbi (R. Dovid Soloveitchik) that it is appropriate to include whichever facts “that are of benefit to the community” in biographies of famous community figures.

Thus, notwithstanding the reservations of some modern

38. Rabbi J. J. Schacter (1998-1999). “Facing the truths of history”. *The Torah U’Maddah Journal*, pp. 200-273.

39. Rabbi Shimon Schwab (1988). *Selected Writings*. Lakewood: CIS Publications.

40. Shapiro, M. (2015). *Changing the immutable: how Orthodox Judaism rewrites its history*. Portland, Oregon: The Littman Library of Jewish Civilization.

41. Yaakobi, Y. (2016). *Me’achorei kol ish gadol* (Behind every great man (Trans.)). Kolmus, pp. 20-27.

thinkers, from a halachic perspective the position of these Rabbis is sound. As noted, the halacha forbids disclosure of information that may lead the uninitiated towards undue leniencies. Arguably, if disclosing facts of history may have the effect of inculcating negative concepts or attitudes, it is frowned upon by the halacha.

## Reservations Regarding Omissions

There are other factors, however, which should influence teachers' thinking before considering omission as preferable to disclosure. A number of reservations regarding direct distortion in the classroom are also relevant to omissions. Issues of trust are relevant if students intuit that the educator is withholding knowledge. As mentioned above, this is especially significant in Jewish education. Moreover, omission necessarily results in gaps in knowledge. R. Feuerman,<sup>42</sup> in a fascinating exploration of potential method for Orthodox educators about elements of Judaism that refer to physical intimacy, is concerned that students are left with an incorrect view of religious practices. These incorrect views may remain with them into adulthood, leaving them with a permanently distorted view of Judaism and Jewish practice.

Aside from these concerns, there is another relevant issue which must be considered, and this will be the second major factor for consideration in this paper.

## Distorting Torah Content

Earlier it was asserted that direct falsification is an inappropriate pedagogical recourse. I will now explore an

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42. Rabbi S. Feuerman (2012, June 18). "A Torah perspective on teaching our children about sexuality". Retrieved 08 22, 2016, from Jewish Press: <http://www.jewishpress.com/sections/family/parenting-our-children/a-torah-perspective-on-educating-our-children-about-sexuality-part-vi/2009/09/30/0/?print>.

additional compromising factor voiced by R. Sholmo Luria (*Maharshal*). This will provide a useful framework for considering alternative approaches of disclosure of problematic content.

*Maharshal*<sup>43</sup> writes that the substantive content of halacha may never be falsified. This is an obligation that one is enjoined to observe under all circumstances, even at the expense of one's life when necessary. His logic is as follows: just as one must rather be killed than serve idolatry, since by doing so one denies the most essential tenets of the Jewish faith,<sup>44</sup> so too by perverting the Torah's laws, it is as if one is denying the essential nature of the Torah (*Kefirah*). Without comment, *Shelah* (*Shavuot, Ner Mitzvah*) rules this position is the imperative of halacha. It is never permitted to lie about a Jewish law.

The proof-text for *Maharshal* is a text of Talmud in *Bava Kama* 38a, which relates an incident where the Sages were forced to teach Torah to some Romans. In the course of their instruction, these Sages taught passages of Torah Law to two Roman emissaries which could have provoked or incited the Romans, thereby endangering their own lives (and their community). Why, asks *Maharshal*, did they not merely falsify the text? He draws the conclusion that in no situation may one distort Torah Law, as this is akin to heresy.

Nonetheless, there are other Talmudic examples which appear to demonstrate that it is, in fact, permitted to relay a distorted impression of Torah Law in order to ensure a positive outcome, for example, to prevent transgression.<sup>45</sup>

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43. *Yam Shel Shlomo, Bava Kamma*, 4:9.

44. See *Sanhedrin* 74a.

45. See *Keritut* 8a cited by Dayan Y.Y. Fisher who is cited by R. Fisch (*ibid*) (although see there in *Rashi* and *Bartenura* who indicate that that instance was exceptional and one therefore cannot generalize from this text); *Berachot* 63a, *Maharsha* (ad loc.) and *Rama Mi'Pano* (*Responsa*, 108) cited by R. R. Frimer (*ibid.*).

Moreover, *Maharshal* himself acknowledges a difficulty from another narrative text in the Talmud<sup>46</sup> regarding inaccurate translations of Torah formulated by seventy-two Jewish Sages for King Ptolemy. During the Hellenistic era, when Judea was under the rule of Egypt, King Ptolemy ordered seventy sages to translate the Torah for him. For various reasons, the Rabbis decided to make some revisions or omissions in their translation. This precedent would appear to buttress the argument that it is acceptable or even desirable to distort. *Maharshal* resolves this issue by noting that the text in *Megillah* itself addresses this problem by indicating that the seventy sages were guided by Divine intervention; therefore, we cannot generalize from this incident. Moreover, the “changes” were merely alterations in syntax and indirect translations that would prevent distortion of the Torah’s true intended meaning. In other words, by their alterations the Sages were actually preserving the intention of the text (*ibid*).

Problematic, however, is that one of the alterations described included an omission from a list detailing the non-kosher animals, since the animal’s name was deemed potentially offensive to the King (it resembled his wife’s name). Surely this omission is of significant consequence to halacha? Moreover, *Yad Eliyahu*<sup>47</sup> notes that Scriptural accuracy too is an essential feature of Torah, and modification in syntax and word-meaning is akin to changing Laws.

A fascinating piece of anecdotal evidence for leniency is the response formulated by Napoleon’s “Grand Sanhedrin” to the government of France’s inquiries into Jewish Law. When asked regarding whether Jewish Law differentiates between Jews and non-Jews regarding usury, they replied that there is no distinction, which is actually untrue. Other misrepresentations are also apparent. However, since the “Sanhedrin” was an artificial body with only a few rabbinic

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46. *Megillah*, 9a.

47. *Yad Eliyahu* Responsa 48.

members, and was organized by the autocrat Napoleon, its action have no halachic relevance at all, nor are they even expressions of valid Jewish thinking. They are merely the frightened response of a beleaguered minority to the whims of a volatile dictator.

It is worthwhile to note an issue regarding *Maharshal*'s method. His proof comes from a homiletic text of Talmud; he has drawn a halachic conclusion from an *aggadic* (homiletic) narrative, a practice which is often considered questionable. Extrapolating halachot from *aggadic* narratives, be they Biblical or Talmudic, is an issue which requires greater clarification. Although there are many such instances throughout the Codes where this is considered legitimate, it is not done universally without criticism. The traditional reservation has been that just because the *aggada* records the fact that a course of action was once taken, that incident does not legitimize it to be codified as halacha, even if the perpetrator was of great stature. We see this reservation expressed, for example, in *Iggerot Moshe*<sup>48</sup> and *Yad Eliyahu* (Responsa, 61), who speculate that the cited behavior might have been mistaken; or maybe that course of action was appropriate for that time specifically but lacks generalizability; it is difficult to be aware of all the necessary and relevant factors of a scenario that are required to allow us to make contemporary application.<sup>49</sup>

Despite some evidence that indicates otherwise, the vast majority of halachic authorities have sided with *Maharshal*, and rule that under no circumstances is it permitted to intentionally falsify a Law of the Torah.<sup>50</sup>

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48. *Iggerot Moshe* Y.D. ii,150 (third question) page 258 s.v. *aval*.

49. See R. Sherlow, *ibid.*

50. R. R. Zilberstein (*Chashuke Chemed*, *Bechorot* 43a; *ibid*, *Bava Kama* 38a)); *Mishneh Halachot* (Responsa, ix, 381); *Yad Eliyahu* (Responsa, 48, c.f. 61); R. Y. Kanievsky (*Kreina D'Iggreta*, 203).

## Distortion vs. Omission

However, even *Maharshal* notes that although intentional distortion is prohibited, one is not enjoined to offer the Torah content when asked, just because someone asked for it. Both *Maharshal* and *Shelah* consider omission as an appropriate recourse when disclosure will be more damaging than omission.

A fascinating application of this method in the context of teaching was made by R. Nissin Karelitz.<sup>51</sup> An Israeli Rabbi who delivered a daily lecture in Talmud, following a set text (*Daf Hayomi*), reached a problematic portion of the Talmud while preparing the lecture. The text detailed various physical defects which, when found on an animal, invalidated it as a sacrifice in the Temple. One of the members of the lecture had a visible physical deformity which was exactly as detailed by the text. The Rabbi was confronted with an ethical dilemma: should he proceed to teach this text to the students, as this was the topic of that day's portion, or should he omit the text, saving the student the embarrassment of discomfiting stares from other members of the lecture? Alternatively, could he distort the meaning of the text?

R. Karelitz, basing himself upon *Maharshal*, ruled that it is forbidden to misrepresent the meaning of the text. However, it is also forbidden to embarrass a member of the lecture. He therefore ruled that the Rabbi should skip this part of the text entirely. This is an example of a position which holds that the omission of Torah content for the sake of “peace” is justified and recommended.

## Parameters of *Maharshal's* Position

At this point it is important to clarify which areas the educator may not, under any circumstances, distort. In other

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51. Cited by R. Zilberstein in *Chashuke Chemed, Bechorot* 43a.

words, according to the halacha, what precisely is considered objectionable distortion of Torah Law. I will begin by establishing areas in which there is clarity, and proceed by noting areas where further research is needed.

### **A. Halacha**

Firstly, it is important to highlight that this issue is relevant specifically to the misrepresentation of halachot and not of other potentially problematic areas. For example, when justified for means of “peace”, this prohibition does not extend to discussions of Jewish cultural activities, the personal lives of respected community members, or even Jewish history, although deception here does entail other ethical dilemmas mentioned above. It is equally clear that this prohibition *does* pertain to discussing permissibility or prohibition in any circumstance upon which the **halacha** is unequivocally clear in an issue. There is no justification, for example, for an educator to suggest that the laws of family purity are no longer relevant.

### **B. Reasoning**

Other areas, however, are not as clear-cut. Consider the issue of reasons for and rationale behind practices of Jewish Law – why we do what we do. If, for example, a Jewish educator is asked why the halacha mandates a certain form of behavior, is it permissible to offer a false rationale if he feels that it will enhance the students’ practice?

In the above anecdote R. Karelitz prohibited the Rabbi to present an explanation of the Gemara that was false, even though it would not make a practical difference to the halacha. It seems that he has extended the ruling of *Maharshal* to *distorting* presentations of Judaism even when they do not pertain to the Law.

Talmudic precedent seems to differ with this ruling. In *Avodah Zara* (29b and 35a) R. Yehoshua presents a number of

inauthentic reasons to justify a decree prohibiting cheese manufactured by non-Jews. Each attempt is rebutted, and he eventually succeeds in distracting his questioner to another subject. The Talmud (35b) questions his reluctance to expose the real reason for the decree, and answers that his behavior was consistent with a procedure of halachic jurisprudence: when new enactments are made, their reasoning is not provided for a specific amount of time, in order to assure their acceptance. He therefore attempted to rationalize the prohibition based upon other, long established practices.<sup>52</sup> Seemingly then, it is permissible to offer disingenuous reasons when warranted. Specifically, what is included in the term “when warranted” in actual practice, needs to be clarified by consultation with a competent rabbinic authority.

This is consistent with a ruling of R. Chaim Kanievsky (made during personal correspondence with R. Aryeh Frimer) who ruled that it was permitted to change the *reasoning* behind a law as long as one can be sure that this will not change the *substance* of the law.<sup>53</sup> Arguably, the distinction between distorting Law and distorting its reasoning is due to the fact that we never actually know all of the intentions and reasoning behind the law. Regarding Torah Laws there are said to be at least three thousand reasons for each law,<sup>54</sup> and even Rabbinical Laws have much more depth and intent than is immediately apparent.<sup>55</sup> Perhaps for this reason one is justified to offer alternative explanations for laws, as it cannot be said that there is any one definitive rationale. In summary, the normative halachic practice in this issue appears to be that it is permissible to offer non-conventional reasons for laws; see the footnote for possible explanations for why R. Karelitz

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52. *Rashba (Responsa, i, 48)* cited by Frimer & Frimer (1998).

53. See article by Frimer and Frimer cited earlier.

54. See *Eiruvin* 21b, and *Rashi* s.v. *mashal*.

55. See *Eiruvin*, ad loc.; *Vilna Gaon* (as cited in *Ma'aseh Rav, Ma'acholot Asurot*, 95) and *Meshech Chochmah*, Exodus 12:1; *Yaavetz* (*Responsa* i,47).

ruled differently.<sup>56</sup>

### C. *Minhagim* – Jewish Custom

Another important area to consider is the issue of Jewish custom (*minhag*). Although *minhag* is treated differently as it pertains to Torah and Rabbinical Law, it too is a sub-section of halacha which Jews are obligated to follow, and appears in the *Shulchan Aruch* and all subsequent commentaries and codes alongside all other halachot. As such, the question arises whether distorting a *minhag* would also be prohibited, even for the sake of “peace”, since it arguably falls into the category of halacha.

The counter-argument would be that distorting presentations of customary practice cannot be considered a denial of the essential nature of the Torah in the same way as misrepresentation of standard halacha, which is ordained by Divine Word or Rabbinic decree. As explained above, the reasoning of the *Maharshal* is that distortion of the Torah is equivalent to denial of the Torah. Custom has important halachic *significance* but it does not have the same inherent *sanctity* as Torah or Rabbinical Law. Although this area requires further exploration and research, there is anecdotal evidence that R. S. Z. Auerbach once temporarily misrepresented Jewish custom in order to procure a truthful outcome in a matrimonial dispute.<sup>57</sup>

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56. It may be suggested that R. Karelitz is only of this opinion regarding exposition of Talmudic texts, which he understands to have a normative and singular interpretation, as denoted by his language: “**פירוש האמת**” – “**שברגרא**” – “the true explanation of the Talmud” (*Chashuke Chemed*, ad loc.). Alternatively, although there can be a multiplicity of legitimate reasons for any law and various legitimate understandings of a Talmudic text, there are obviously interpretations that are incorrect. Perhaps the Rabbi wished to offer an interpretation that was clearly false.

57. Related by R. Y. Berkovitz, and cited by R. D. Y. Travis, D. Y. (2001). *Priceless Integrity*. Jerusalem: Targum/Feldheim. There is another reason why this may have been permitted. R. Berkovitz cites convincing Talmudic

## D. *Hashkafa* – Worldview

A final questionable area of application of *Maharshal*'s ruling is regarding issues of *hashkafa* (Jewish worldview, often equated with *weltanschauung*). On the one hand, matters of this nature do not necessarily pertain to Jewish Law, and as such, the halacha is not being perverted. Nonetheless, *hashkafa* is comprised of principles of faith, philosophy and general world outlook which are consistent with and shaped by the dictates of the Torah. If this is the case, surely misrepresenting Torah *hashkafa* is akin to distorting Torah Law and may therefore be subject to the prohibition mentioned by *Maharshal*.

Even if this extension were to be true, the application of this prohibition would be much more complicated as very few areas of *hashkafa* are subject to unanimous agreement. A multiplicity of opinions abounds in most topics, and unlike much of halachic thought, there is no authoritative codification of normative *hashkafa*. As such, whether there is one, ascertainably true Jewish *hashkafa* at all is brought into question.<sup>58</sup> This issue is most likely to be of relevance in issues where a traditional Orthodox *hashkafa* is at odds with a prevalent Western understanding that is adopted by students.

In relation to all of the above areas, it is pertinent to examine an alternative approach which may be employed to bridge gaps of philosophical or cultural distance. Perhaps the educator could offer content which is within the realm of Orthodox thinking, yet is not the standard/normative Orthodox position. For example, may an educator present a minority opinion that has precedent, albeit weak, in Jewish thought, if this is deemed more palpable to students?

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evidence that it is permitted to distort halacha if one's intention is to disclose the true law immanently (e.g. in order to test a student). Since R. Auerbach intended to disclose the true custom a few minutes later, it may have been permitted for this reason.

58. See, for example, R. M. Meiselman in *Torah, Chazal and Science*. New York: Israel Bookshop Publications.

I posed this question to a noted halachic authority (R. Yaakov Moshe Hillel, Jerusalem) who asserted that much depends on the readiness of the student. At times since a minority view is nonetheless a “legitimate Orthodox opinion” it may be used as a kind of “coping mechanism”, enabling students to remain engaged in Judaism until their exposure to Jewish thought and practice enables them to accept the mainstream view. Arguably, a good way of providing this content would be to note that there are a variety of opinions on the issue, present them all, and then suggest that the student “runs with” whichever approach resonates most.

### The “Ambiguity Rationale”

There is another important Talmudic text relevant to our discussion. Instead of complete omission, partial disclosure where the “offensive” material is left ambiguous would appear to be an appropriate recourse. The Talmud (*Avodah Zara* 25b) states that if, while journeying, one is apprehended by highway robbers, one should tell them that his destination is much farther than he actually intends to go, because this may gain him enough time to seek refuge in his true intended location. The text concludes that this is the correct course of action, just as Jacob did to Esau when he encountered him on the way to Sukkoth, telling him that he would meet him in Seir.

*Benayahu*<sup>59</sup> notes that the Midrash<sup>60</sup> relates that there was little deception here, since Jacob did intend to actually meet Esau in Seir, but this would not occur until the end of days. Since we are told that the correct course of action is to do as Jacob did, *Benayahu* deduces that the Talmud indicates that when it is necessary to withhold information, it is always better to mitigate deception as far as possible, even if this incurs

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59. *Benayahu* to *Avodah Zara* 25b.

60. *Bereshit Rabbah*, *Vayishlach*, 78.

subsequent action. Accordingly, he writes that after being saved from danger, one should actually travel to the destination that he told the robber he was headed. According to this principle, whenever dishonesty is necessary, it should be done in a manner which will mitigate the falsehood denoted by one's words as far as possible.<sup>61</sup>

It should be noted that even this "ambiguity rationale" is inherently problematic and not in keeping with the Torah's emphasis on honesty. Although this form of prevarication may technically keep one's basic integrity intact, it is far from the Torah's admonition to "keep far from a false matter":

## Conclusion

In this paper I have attempted to demonstrate that from the perspective of normative halacha, omission is preferred to unfettered disclosure in situations where full disclosure is perceived to have negative consequences. I have also identified areas of uncertainty regarding how "difficult" Jewish customs, reasoning and *hashkafot* can be discussed with students to which these present philosophical distance.

Regarding publicizing information which portrays a Talmudic personality in a negative light, and which could potentially damage students' respect for rabbinic authority, we have cited opinions on both side. No one is perfect, and therefore before presenting an incongruous and confusing text or episode, one must first impress upon students the upstanding moral character of this sage, an image which is consistently apparent throughout Talmudic literature.

An educator has to bear in mind certain halachic guidelines on delicate matters, and also take into account the age, maturity, and relative sophistication of the students. Since these are indeed delicate matters and have the potential to

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61. R. Sherlow *ibid.*

strengthen or weaken the faith of students, the prudent educator will discuss these important issues with a competent rabbinic authority.

# In-Hospital Circumcision and the Mitzvah of *Milah*

*Michael I. Oppenheim, MD*

## Introduction

The National Center for Health Statistics of the Centers for Disease Control published a report in 2013 on the rates of circumcision performed on newborns prior to discharge from the hospital.<sup>1</sup> In 2010, the last year covered by the report, approximately 60% of all newborns nationwide were circumcised immediately after birth while still in the hospital, and approximately 67% of boys born in the Northeastern US were circumcised in-hospital. Based on statistical probabilities, some of those children are Jewish boys born to parents who are not observant. There are a number of elements of an in-hospital circumcision that are not consistent with circumcision according to halacha. First, the circumcision may well be performed by a gentile physician. Secondly, in-hospital circumcision typically occurs before the eighth day of life. What is the halachic status of such a child? Would he require some intervention to make his circumcision valid? Would the child be considered circumcised or is he halachically

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1. [http://www.cdc.gov/nchs/data/hestat/circumcision\\_2013/Circumcision\\_2013.htm](http://www.cdc.gov/nchs/data/hestat/circumcision_2013/Circumcision_2013.htm)

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considered an *arel* (uncircumcised)?<sup>2</sup>

This analysis will assume that the in-hospital circumcision completely removes all the tissue and membranes that are required for a *brit milah* and will only address the issues of circumcision performed by a gentile and circumcision performed before the eighth day.

## Circumcision Performed by a Gentile

The Talmud (*Avodah Zarah* 26b-27a) presents a variety of potential reasons to invalidate or forbid circumcision performed by a gentile. The potential reasons cited include that the gentile might perform the circumcision with intention of serving his own deity, or that an idol worshiper [in those days] was suspected of harboring homicidal intentions; furthermore, there may be a requirement that the *milah* be performed *lishmah* (with intention to fulfill the mitzvah) which would not be the case if it is done by a non-Jew. In addition, the circumcision should be performed by someone who is himself obligated to have a *brit milah*, which would not happen if it is done by a non-Jew.

It is not immediately clear from the discussion in the Talmud as to the status after the fact (*b'dieved*) of a circumcision performed by a gentile. If invalidation of a gentile's actions stems from the concern of the gentile harming the child, once the circumcision is complete and that concern is no longer in play, perhaps the circumcision might be acceptable *post facto*?

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2. The fact that someone did not have a proper circumcision does not automatically relegate that person to the status of being an *arel*. This dissociation is stated explicitly by the *Meiri* on Talmud *Megillah* 20a. The Mishnah lists a series of mitzvot which cannot be performed at night but notes that if any of them are performed before sunrise but after dawn that is acceptable. The *Meiri* comments that before dawn one would not fulfil his obligation even *b'dieved* (after the fact) but adds, "nevertheless for circumcision he is circumcised and is removed from the category of "*arel*", albeit the one performing the circumcision did not fulfill the commandment to circumcise."

Additionally, the Talmud gives no indication about how we rule regarding the requirement for circumcision to be done *li'shmah*, for the sake of fulfilling the biblical commandment. Finally, if the specific requirements of the laws of *milah* are derived purely from the fact that the Torah has mandated it--a *gezeirat hakatuv*--then there is no clear indication as to the status of such a circumcision when done differently than prescribed by the Torah. There is no clear indication whether even *b'dieved* such a circumcision would qualify as fulfilment of the mitzvah.

The *Shulchan Aruch*<sup>3</sup> states that a gentile, even if circumcised, should not perform a circumcision upon a Jewish child, but if he does, the child does not require a repeat circumcision. The *Ramo* cites a dissenting opinion requiring that the child undergo *hatafat dam brit* -- a bloodletting in the area of the foreskin which is done when a circumcision-like action is required but no foreskin is present. The *Ramo* indicates that he believes the halacha follows the opinion that requires *hatafat dam brit*. The opinion to which the *Ramo* refers is probably the *Sefer Mitzvot Gedolot*, who is quoted by the *Tur*<sup>4</sup> as requiring *hatafat dam brit* for a child who was circumcised by a gentile.

The *Tur* also cites the opinion of the *Rambam*<sup>5</sup> who states that a gentile should not perform a circumcision but *אם מל אין צרייך להזרר ולמול שנייה* -- “if [a gentile] did circumcise a Jewish child, one is not required to circumcise again.” However, the *Beit Yosef*<sup>6</sup> suggests that perhaps the *Rambam* is not actually arguing with *Sefer Mitzvot Gedolot* (who requires *hatafat dam brit* if a gentile performs a circumcision). The *Beit Yosef* notes that the full text of the *Sefer Mitzvot Gedolot* reads *אם מל הגוי צרייך להזרר ולמול ולהתור מעת כי אם להטיף דם ברית* -- “if the gentile already circumcised one is not required to go back

3. *Yoreh Deah* 264:1.

4. *Yoreh Deah* 264.

5. *Mishneh Torah Hilchot Milah* 2:1.

6. *Beit Yosef* commentary on *Tur*, *Yoreh Deah* 264.

and circumcise by cutting off a little [skin], but rather to [incise and cause to] flow a little blood of *brit*." The *Beit Yosef* notes the similarity to the words of the *Rambam*, אֵין צָרֵיךְ לְחַזּוּר וְלִמְוֹל שְׁנִיִּה – one is not required to go back and perform another *milah* – and suggests that maybe the *Rambam* meant the same as the *Sefer Mitzvot Gedolot*, that one is not required to do any skin removal but is required to perform *hatafat dam brit*.

Based on the sources cited, a circumcision performed by a gentile would not be acceptable according to the *Ramo*, the *Sefer Mitzvot Gedolot*, and possibly the *Rambam* according to the *Beit Yosef's* understanding of the *Rambam*. Rav Karo himself accepts such a circumcision *b'dieved* in *Shulchan Aruch* and that certainly seems to be the more straightforward understanding of the opinion of the *Rambam*.

## Circumcision Performed Prior to the Eighth Day

In *Shabbat* 137a, the Mishnah and Talmud discuss the circumstance of two children requiring circumcision, one of them on Shabbat and the other on Sunday, and the child who should have been circumcised on Sunday is accidentally circumcised on Shabbat. The Mishnah asserts that the *mohel* is liable for violating the prohibition of wounding on Shabbat. In explicating this ruling, *Rashi* states that the reason for the liability is that no mitzvah was fulfilled when this circumcision was performed before the proper time; the *mohel* thus "wounded" the child. This suggests that when circumcision is performed prior to the eighth day, the mitzvah of circumcision is not fulfilled, since the Torah specifically says that the child should be circumcised at eight days.

Similarly, another Mishnah (also found on *Shabbat* 137a) notes that a child born *bein hashemashot* (the period between sunset and nightfall) has his circumcision performed on the 9th day of life. That is because there is doubt (*safek*) halachically whether that interim period is part of the outgoing day or part of the night, which would make it the

next day. If a child is born on Monday evening during the *bein hashemashot* period, then the following Monday might only be the seventh day of his life if we rule that the interim *bein hashemashot* period is actually the beginning of Tuesday. (In Jewish law, nightfall is the beginning of the next day). Therefore, the child is to be circumcised on the following Tuesday, which would be the eighth day by the latter count. Rather than circumcising the child on what might be the seventh day, we delay the circumcision until Tuesday even though we are taking the risk that the child is not being circumcised until what might be the ninth day of life (if *bein hashamashot* is part of the outgoing day and this child was born on Monday according to halacha then Tuesday is actually the ninth day of life). From this Mishnah, one can conclude that a circumcision performed early is a more significant problem than a circumcision performed later than the prescribed time.

The Talmud itself does not explicitly record the status of such a child nor indicate whether any remedy is required or available if circumcision were performed prior to the eighth day. However, there are two circumstances discussed in the Talmud which might serve as a paradigm for what to do for the child who was circumcised too early. The first circumstance is the case of *nolad mahul*, a child who is born without any (obvious) foreskin. The second circumstance is when a non-Jewish man is undergoing conversion but had been previously circumcised because of his own gentile customs or traditions (*aravi mahul* or *Givoni mahul*). In both of these cases, when the time for circumcision arrives, there is no foreskin to be removed. The Talmud discusses whether *hatafat dam brit*-- incising and causing bleeding from the area in which the foreskin was located-- should be performed for a child born with no foreskin or a convert who was circumcised prior to his conversion process. These cases may serve as paradigms for someone who underwent circumcision prior to the eighth day of life and therefore has no foreskin to remove on the eighth day.

The Torah forbids one who is uncircumcised from partaking in the *korban Pesach* (the Passover sacrifice), stating “any *Arel* may not eat from it”.<sup>7</sup> In *Yevamot* 70a, the Talmud records a disagreement between R. Eliezer and R. Akiva regarding a child who was born circumcised and no further action was taken. R. Eliezer allows such a child to partake in the *korban Pesach* because no further action is required for this child, while R. Akiva asserts that such a child cannot eat from the *korban Pesach* until some symbolic bloodletting --*hatafat dam brit*-- is performed. In that discussion, no reason for the disagreement is recorded in the Talmud.

A more detailed discussion is found in the Talmud in *Shabbat* 135a. The Talmud records three opinions regarding a dispute between *Beit Shammai* and *Beit Hillel*.

		Tanna Kammah	R. Shimon Ben Elazar	R. Eliezer Hakefar
<b>Born Circumcised</b>	<i>Beit Shammai</i>	Requires <i>hatafat dam brit</i>	Requires <i>hatafat dam brit</i> because has fused foreskin	Requires <i>hatafat dam brit</i> and it can be done on Shabbat
	<i>Beit Hillel</i>	Does not require <i>hatafat dam brit</i>		Requires <i>hatafat dam brit</i> but it cannot be done on Shabbat
<b>Convert Circumcised Before Conversion</b>	<i>Beit Shammai</i>		Requires <i>hatafat dam brit</i>	

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7. Exodus 12:48.

	<i>Beit Hillel</i>		Does not require <i>hatafat dam brit</i>	
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According to one opinion, the subject of the debate between *Beit Shammai* and *Beit Hillel* is actually whether or not a child born circumcised needs *hatafat dam brit*. According to the other two opinions, both require *hatafat dam brit* for a child born circumcised. Only one opinion addresses a convert who was already circumcised, prior to, and not as part of the conversion process; this opinion asserts that this question is actually the subject of the debate between *Beit Shammai* and *Beit Hillel*. Subsequently, the Talmud cites a dispute between Rabba and R. Yosef<sup>8</sup> whether the requirement for extracting a symbolic drop of blood for a child born circumcised is because the child definitely has some sort of non-discernable foreskin ("*arlah kevusha*") or only because there is a possibility that the child has such a foreskin.

*Tosafot* note that the statement preceding the dispute is a *derasha* from the verse stating "And on the eighth day, he should circumcise the flesh of the foreskin".<sup>9</sup> The Talmud derives from this verse that only a definitive foreskin would allow violation of Shabbat to perform a circumcision, but those with questionable status (e.g. born *bein hashamashot*) cannot be circumcised on Shabbat. *Tosafot* argue that this *derasha* also teaches that one who is born without a foreskin does not require *hatafat dam brit*. However, *Tosafot* assert, based on the *Ba'al Halachot Gedolot*, that a convert previously circumcised requires *hatafat dam brit* for his conversion. The *Rosh* on *Shabbat* 135a agrees with *Tosafot* that the rule for one born without a foreskin is derived from this *derasha*.

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8. Understood by most commentators to be regarding the opinion of R. Shimon ben Elazar.

9. Leviticus 12:3.

The *Rif*<sup>10</sup> asserts that the halacha follows the opinion of Rabba that one performs *hatafat dam brit* for a child born without a visible foreskin, based on the possibility that there is some amount of foreskin which is not easily discernable. Although their reasoning is not explicitly stated, both the *Tur*<sup>11</sup> and *Shach* on *Shulchan Aruch*<sup>12</sup> rule that *hatafat dam brit* should be performed but without a blessing, presumably because it is only being performed for the possibility of a non-visible foreskin.

Based on the opinions above, the case of a child born without a foreskin may or may not serve as a paradigm for one who had his foreskin removed prematurely. According to *Tosafot* and the *Rosh*, the child born circumcised is exempt from *hatafat dam brit* through a specific *derasha* from a *pasuk*, which cannot automatically be extrapolated to other circumstances; therefore, *hatafat dam brit* might be required for a child circumcised before the eighth day. According to the other *poskim* cited, the requirement for *hatafat dam brit* for a child born seemingly circumcised is a concern for a foreskin that is not readily apparent. One might infer that since the only factor obligating *hatafat dam brit* for the child born seeming circumcised is the possibility of a not-readily-apparent foreskin, in the case of a child circumcised before the eighth day, where no such concern exists, perhaps *hatafat dam brit* should not be required.

The *Ramban*,<sup>13</sup> in discussing the case of a convert who was previously circumcised, states that he would still require a symbolic drop of blood to be drawn because *מילה ראשונה לא מילאה שלא נעשית בהלכה ואעפ' שמיל ערל הוא* – “his original circumcision does not help as it was not done according to halacha and even though he has a circumcision he still has the

10. *Rif* on *Shabbat* 135a, pages 53b-54a in the pages of the *Rif*.

11. *Yoreh Deah* 263.

12. *Shulchan Aruch Yoreh Deah* 263:4; *Shach se'if katan* 4.

13. Commentary on *Shabbat* 135a.

status of an *arel*." This opinion is quoted in the commentaries of the *Rashba*, the *Ritva* and the *Ran*.<sup>14</sup>

According to these *Rishonim*, the case of a gentile circumcised prior to his conversion would certainly not be a paradigm for one circumcised prior to the eighth day. According to the *Ramban*, the *hatafat dam brit* done to the convert is a specific requirement associated with the conversion process as the convert changes from a gentile to a Jew. This is certainly not the case for a Jewish child whose circumcision was performed prematurely.

A dissenting opinion regarding a previously circumcised convert is found in the *Meiri*'s commentary to *Shabbat* 135a. He argues that *Beit Hillel* (according to R. Shimon ben Elazar, the only opinion addressing a convert) holds that a previously circumcised convert does NOT require *hatafat dam brit*. The *Meiri* argues that we typically *pasken* like *Beit Hillel* and therefore *hatafat dam brit* should not be required for the convert. According to the *Meiri*, a child circumcised prior to the eighth day would probably not require *hatafat dam brit* either.

### ***Rishonim and Acharonim on Circumcision Prior to the Eighth Day***

There seem to be three major schools of thought around a circumcision performed before the eighth day. [1] The *Rashba*, *Minchat Chinuch*, *Meiri* and *Shaagat Aryeh*<sup>15</sup> seem to hold that

14. *Ran* on the *Rif* on *Shabbat* 135a, page 54a in the pages of the *Rif*.

15. *Responsa Rashba* (in versions including additions from manuscripts), #141, cited in *Korban Netanel*, Gloss #9 to *Rosh*, *Shabbat* 135a, and *Minchas Chinuch* (Mitzvah 2); *Meiri*, *Shabbat* 132b (cited earlier in the article); and *Shaagat Aryeh* (52-55). A review of the proofs and subtle differences between these opinions is beyond the scope of this article.

It bears mentioning that while the *Shaagat Aryeh* considers circumcision before the eighth day a "distortion that cannot be corrected", this seems to be vis-à-vis the ability to fulfill the mitzvah of *milah*. In the four *Responsa* in

no mitzvah is performed, yet no *hatafat dam brit* is required. The *Rashba* explicitly states that such a circumcision can be performed by a gentile. [2] The *Shach*<sup>16</sup> agrees that no mitzvah is performed, but he requires *hatafat dam brit* for any circumcision performed early. [3] The *Ramo*<sup>17</sup> not only allows circumcision before the eighth day in an urgent situation, but also permits it to be performed by a gentile, and seems to hold that one even fulfills a mitzvah of *milah* through such a circumcision.

### Fulfilling the Mitzvah of *Milah* Through a *Milah* That is Not a *Milah*

The opinion of the *Ramo* seems puzzling. How can one fulfill the mitzvah of *milah* when it is done before the requirement of circumcision exists for this child and when it is performed by a gentile, something for which the *Ramo* generally requires *hatafat dam brit* to correct? It is also unclear why he seems to contradict himself, in *siman* 262 stating that one fulfills the commandment, but in *siman* 264 he refers to this kind of circumcision with the words “it is not called a *milah*”.

One approach to understanding the *Ramo* is found in Rav Yechezkel Landau’s commentary (*Tzalach*).<sup>18</sup> Rav Landau suggests that the *Ramo* certainly did not mean that there is a fulfillment of the mitzvah of *brit milah* at the moment when a circumcision is performed before the eighth day. However,

which he discusses this topic, he never describes the child as an *arel* nor suggests that he would be subject to any of the restrictions or penalties imposed on an uncircumcised Jew. In discussing the rules should this child later have excess skin overgrow the location where circumcision is performed, he equates this child to someone who had a normal circumcision with the words “דינו כמוהו” – he is treated as one who had a [normal] circumcision.

16. *Shach, Yoreh Deah* 262:2.

17. *Ramo, Yoreh Deah* 262:1.

18. *Tziyon L’nefesh Chayah* (*Tzelach*) on *Pesachim* 72b.

when the eighth day arrives there is a fulfillment of the biblical command "And on the eighth day the flesh of his foreskin shall be circumcised",<sup>19</sup> since that commandment requires that on the eighth day he should be a circumcised person – something which is fulfilled even if the actual act of circumcision happened earlier.

Similarly, there is an extensive discussion among contemporary decisors about the use of laser (a technique used to incise tissue without bleeding because the tissue is immediately cauterized) when performing a circumcision on someone with hemophilia (congenital inability to properly clot blood). By Jewish law, someone whose brothers died as a result of circumcision is himself exempt from circumcision.<sup>20</sup> Normally, *milah* requires the use of a cutting instrument, ideally metal,<sup>21</sup> and classically there is assumption that bleeding is required.<sup>22</sup> Some *poskim* discuss whether someone who is exempt from circumcision because of a bleeding risk should undergo circumcision using a laser or other bloodless devices which would not be considered a classic *milah* meeting all requirements but would ultimately enable the person to have the foreskin removed.

As part of the discussion of this question – which essentially is removal of the foreskin through an action which is not a *milah* – the *poskim* cite numerous *acharonim* who, though formulating their opinions slightly differently, understand that there is an ongoing fulfillment of the mitzvah of *milah* associated with being circumcised, not just with the performance of the actual act of circumcision (and therefore potential value to use of a bloodless circumcision procedure for hemophiliacs).

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19. Leviticus 12:3

20. *Shulchan Aruch, Yoreh Deah* 263:2.

21. *Shulchan Aruch, Yoreh Deah* 264:2.

22. See R. Moshe Shternbuch, *Teshuvot Vehanhagot*, Volume 5, *Yoreh Deah* 291, section "Hotza'at Dam Brit hi Me'ikar Mitzvat Milah".

One such opinion cited is that of the *Avnei Nezer*,<sup>23</sup> who writes that one who is born circumcised fulfilled his obligation of *milah* by virtue of being innately circumcised. Later in the paragraph he explicitly equates a child circumcised before the eighth day to a child born circumcised.

Similarly, the *Maharach Ohr Zarua* writes<sup>24</sup> that the mitzvah of *milah* is analogous to the mitzvah of *tefillin* or *succah*. For those mitzvot, there is no specific fulfillment in the physical placement of *tefillin* or in the building of the *succah*. Rather, having the *tefillin* on the body or having one's self in the *succah* is the actual fulfillment, and all the time one is wearing his *tefillin* or sitting in the *succah* he is fulfilling the mitzvah. He bases this understanding on the narrative (*Menachot* 43b) describing King David feeling devoid of mitzvot in the bathhouse until he recalled his circumcision. The *Maharach Ohr Zarua* states that if the fulfillment of the mitzvah of *milah* were solely the moment at which the foreskin is removed, then what mitzvah did King David have in the bathhouse?

Rav Yosef Engel<sup>25</sup> suggests that perhaps this question is the underlying source of a dispute between the *Rambam* and *Ra'avad*.<sup>26</sup> The *Rambam* states that one is not deserving of the punishment of *karet* (having one's lineage cut off) for being an *arel* and for having abolished the positive commandment of *milah* until the end of his life. The *Ra'avad* disagrees, arguing that he is liable each and every day that he is uncircumcised. Rav Engel suggests that the *Rambam* is of the opinion that the mitzvah of *milah* is the one-time action of circumcising, which he cannot be considered as having failed to fulfil until he can no longer perform it (i.e. the end of his life). The *Ra'avad*, on the other hand, holds that the mitzvah consists of being circumcised, and, consequently, he is culpable for every

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23. *Responsa Avnei Nezer, Yoreh Deah* 1, *Hilchot Milah*, Siman 334, section 8.

24. *Maharach Ohr Zarua*, Siman 11.

25. *Ben Porat* Volume 1, Siman 2.

26. *Mishneh Torah, Hilchot Milah*, 1:2.

moment that he is not.<sup>27</sup>

One may suggest that perhaps this point is behind the dispute regarding whether a child born without a foreskin needs a *hatafat dam brit* or not. Perhaps the opinions that do not require *hatafat dam brit* are rooted in the belief that the mitzvah of *milah* is fulfilled by being circumcised and therefore no further action is required. In contrast, the opinions who require *hatafat dam brit* believe that the mitzvah of *milah* is the actual act of circumcision, thus *hatafat dam brit* is required to enable fulfillment of this mitzvah.

The idea that there is fulfillment of the mitzvah of *milah* associated with being circumcised, irrespective of how the person came to be that way, is used by the aforementioned *acharonim* to explain why the *Ramo* states that a circumcision performed before the eighth day, even if performed by a gentile, still enables one to fulfill the mitzvah of circumcision.

## Conclusion

There are a variety of opinions around whether a child who is circumcised prior to the eighth day requires *hatafat dam brit*. Among the *poskim* who do not require *hatafat dam brit*, there are those who assert that such a circumcision can even be performed by a gentile and one opinion (*Ramo*) that such a circumcision is in some way still a fulfillment of the mitzvah of *milah*. The most stringent position is that of the *Shach* who requires *hatafat dam brit*,<sup>28</sup> and there are a number of

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27. See *Responsa Beit HaLevi*, Volume 2, #47 who suggests that the point of dispute noted in the text, may be at the root of a different difference of opinion involving *Rambam* (*Hilchot Milah* 2:4) and *Tur* (*Yoreh Deah* 264) regarding a possible requirement to remove residual tissue that was not cut during the *milah* (but which does not inherently invalidate the *milah*). Ultimately (section 4), the *Beit HaLevi* suggests that these are not necessarily “either-or”, but that those who hold there is an ongoing mitzvah can also hold there is a mitzvah associated with the act of circumcising.

28. It seems clear that the opinions not requiring *hatafat dam brit* would not

contemporary *poskim* who have indicated that one should follow this strict opinion.<sup>29</sup>

There is a broad range of opinions about whether a child who is circumcised prior to the eighth day requires a corrective bloodletting-- *hatafat dam brit*—on the eighth day or thereafter. Although many would recommend it, there seems to be consensus that he would likely not be considered an *arel* if that were not done. As always, the correct procedure to follow is to seek the guidance of a rabbinic expert. As we have seen, it is a complex question with many permutations.

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consider this child an *arel*, but it is not explicitly stated how the *Shach* would view the status of this child if *hatafat dam brit* were not performed. In a personal communication with the author, R. Shay Schachter reported that his father, R. Herschel Schachter, indicated that he does not think the *Shach* would consider such a child an *arel*.

29. R. Hershel Schachter (Responsa *Teshuvot Ve'hanhagot*, Volume 5, *Yoreh Deah*, Siman 191).

## Letters

*The Journal of Halacha and Contemporary Society has featured a number of articles on techelet, which is the essential color specified in the Torah for a thread in tzitzit. The Editors have received comments on this topic from a scientist whose field of expertise is the science of dyeing and analysis of colors. In the interests of clarifying some of the controversial issues surrounding production of techelet in the modern age, the Editors have decided to share his insights with our readers.*

To the Editor:

The currently commercially available *techelet tzitzit* is based on blue wool containing the dye indigo. Although the material obtained for the murex snail is made up of precursors that would give rise to a mixture of monobromoindigo, 6,6'-dibromoindigo (*argamman* or Tyrian purple) and indigo, the final product containing only indigo results from the exposure to sunlight during the reduction phase of the dyeing process. In addition, it is commonly accepted that *kalei ilan* that the Gemara cites as source for counterfeit *techelet* is a plant source of indigo.

Before presenting an alternate theory as to the identity of both *techelet* and *kalei ilan*, I would like to pose the following questions:

1. If both *chilazon techelet* and *kalei ilan* are indigo, how is *Chazal's* test to differentiate between the two possible?
2. If photodebromination indeed occurred, presumably discovered inadvertently by dyeing under a strong Mediterranean sun, how was it possible to dye *argamman* successfully (*argamman* being predominantly 6,6' dibromoindigo)?
3. Why does the Gemara use the term *kalei ilan* for the indigo producing plant when the Mishna in *Sheviit* uses the term *isatis*?

4. Why did the non-Jewish world adopt *argamman* (Tyrian purple) as its prestige color whereas the Torah chose *techelet*?
5. Of the 3 biblical dyes, why did *tolaat shani* and *techelet* have a ritual role whereas *argamman* remained solely decorative?

Some researchers have suggested that the *techelet* dye is predominantly monobromoindigo that was converted to a blue shade by means of a thermochromic reaction. It is highly unlikely that the brominated and non-brominated indigoid precursors would combine asymmetrically rather than statistically.

It is humbly suggested that the *techelet* is a red-blue or purple blue color resulting from the admixture of the indigo with the mono and dibromoindigo. In addition, it is proposed that *kalei ilan* is orchil obtained from lichen. Orchil was known in antiquity and reported in the 4th century BCE as a method to counterfeit Tyrian purple (*argamman*). In order to get an accurate duplicate shade for both *argamman* and *techelet*, the orchil didn't replace all of the expensive murex dyes but rather was used as a ground color which was overdyed by the genuine murex dyes thus saving 70 – 80% of the cost. Orchil is sufficiently different from the indigoid dyes to envision a chemical test able to differentiate between legitimate and counterfeit dye.

The insistence that *techelet* must be blue is primarily based on the statement of Rabbi Meir that *techelet* is like the sea, the sky and the *kisei hakavod*. Since we don't know the color of the *kisei hakavod* the statement may be interpreted metaphorically. Following Rabbi J.B. Soloveitchick's suggestion that *techelet* represent the mysterious and *lavan* the clear and understandable, the sea represents the mystery of the unseen, the sky represents the unattainable and *kisei hakavod* the incomprehensible. The paradox of the Gemara's chemical test is usually refuted by citing a contradicting Gemara that states

that even God is unable to differentiate between genuine *techelet* and that produced from *kalei ilan*. This may be interpreted that they are visually identical.

This hypothesis implies that *argamman* and *techelet* were considered members of the same color family that resulted from various combinations of red, purple and blue shades. Once the *argamman* shade was chosen as the royal color by the world, at the time of the Exodus, the Torah veered to a shade of its own, namely *techelet*. This suggestion is based on a discussion in the introduction to Rav Kasher's *haggada* where he deals with the question why we don't make a blessing on *mitzvot bein adam lechavero*. It is safe to assume that the Jews brought the dyed fibers needed for the *mishkan* with them from Egypt.

In their insistence that the color of *techelet* must be blue, the current purveyors of *techelet* dyed *tzitzit* have either overlooked or ignored *Rashi's* commentary in *Parshat Teruma*.

ותכלת – צמר צבוע בדם חילזון וצבעו יrok

And *Techelet* – wool dyed with the blood of the *Chilazon* and whose color is green.

Before discussing the implications of *Rashi's* statement, a short description of wool processing will be presented. Much of wool processing has not changed over the millennia and a number of processes have been added over the last century to improve wool's properties as well as the products produced from it.

The fiber, in its raw form, is usually obtained by shearing the lamb (לְזִיז). The raw fiber is then scoured (washed) in order to remove dirt, water soluble contaminants (suint - arising primarily from urine and sweat) and wool grease (lanolin and the like).

The cleaned fiber is then combed and carded into a sliver.

The sliver is then drawn and spun into a yarn and the yarn

may be knitted or woven into a fabric.

Modern technology has developed 3 additional processes:

1. Peroxide bleaching to improve the brightness of the wool and reduce the yellowness of the fiber
2. Chlorination to remove the surface scales of the wool in order to minimize felting. In addition, the process improves the dyeability of the wool
3. Resin treatment to produce machine washable wool products.

The wool may be dyed at almost any step following the scouring; as a fiber, as a yarn or as a fabric.

From *Rashi*, it is quite clear that the *techelet* in the *Mishkan* was brought by the Jews from Egypt as a dyed fiber and subsequently spun into a yarn and then either embroidered and/or woven into the final product in the desert.

This is further supported by *Parshat Vayakhel* (35:25):

וכל אשה חכמת לב בידיה טו.

When looking for the appropriate artisans, they didn't seek dyers but rather people who would spin the dyed fiber into yarns.

It is interesting whether for *tzitzit* one should dye the fiber first and then spin it into a yarn. It is conceivable that the dispute whether *tzitzit* requires one or two of the 8 yarns to be of *techelet*, namely one half or one yarn before folding reflects the above question since you may dye one half of a yarn by dipping but it would be very difficult to spin a yarn half white and half *techelet*.

What about *Rashi*'s statement that *techelet* was green? When I brought it up with the *techelet* people, they immediately dismissed the idea with the claim that green was poorly defined in antiquity and could be any color. This makes little sense in light of the discussion in *Masechet Sukka* regarding a

green *etrog* where it is quite clear that certainly *Chazal* knew what green was. Even the name *yarok* comes from *yerek esev* etc.

There are several possibilities of getting green when dyeing with our favorite *chilazon*:

Unless bleached, wool has a distinct yellow cast and even bleached wool yellows with time. As is well known yellow and purplish blue will yield a green shade. In addition, the dyeing process was carried out in 40 day old urine which is rich in a yellow pigment called urobilin.

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