Shailos V'teshuvos with Rabbi Moshe Sternbuch

Show# 57 | Febuary 20th 2016

Ben Pakuah Shechitah

The Maareh Mekomos on Ben Pakuah Shechitah *click here*

Inviting non-religious for Shabbos if they will drive

תשובות והנהגות כרך א סימן שיט

שאלה: בעל תשובה המזמין אביו ומשפחתו שהם מחללי שבת ליום טוב או לליל הסדר

שורש השאלה שמפורש בש"ע (ר"ס תקי"ב) שאסור להזמין עכו"ם ליו"ט שמא ירבה ויבשל עבורו, ונמצא מבשל לגוי ועובר באיסור תורה ד"לכם" ולא לעכו"ם, ופירש במ"ב דהוא הדין מחלל שבת בפרהסיא שדינו כעכו"ם שאסור לבשל עבורו כמו האיסור לבשל לגוי, לפ"ז לכאורה אסור להזמין אליו ליו"ט מחלל שבת שמא יבשל בשבילו, ואסור להזמין הוריו ובני משפחתו ביום טוב שמא יבשל להם במיוחד שאסור מדאורייתא.

אמנם עיין בספרי מועדים וזמנים ח"ט חליפת מכתבים עם מרן הגאון רבי יעקב קנייבסקי זצ"ל בענין זה ולא אשנה הדברים.

ועיקר דברי המשנה ברורה לאסור לבשל למחלל שבת כמו לעכו"ם צ"ע טובא, שהרי מחלל שבת הוא ישראל גמור ויש אצלו קדושת יום טוב וחייב הוא לשמור יום טוב ולקדשו ובקדושת יום טוב הוא, ומנלן שאסור לבשל עבורו, ובפרט בזמננו רובם תינוקות שנשבו שהרי ההשגחה נסתרת בעו"ה מאד, ויש לדון טובא אם יש לדונו לזה כעכו"ם.

ונסתפקתי לדעת המשנה ברורה, אם יהא מותר למחלל שבת לבשל לעצמו אי נימא שהאיסור הוא עלינו לבשל עבורו שזה לא צורך כ"כ שיהיה לו לשמוח, אבל הוא כשלעצמו הוא יהודי ואמאי לא יבשל לעצמו ולא נאסור לו לעצמו, ועיין במכתבים הנ"ל אם מחלל שבת אסור לו לשתות יין של עצמו כיון שהוא נוגע בו וגם עבורו נאסר כיין נסך או דלמא לעצמו לא, ונ"מ שלא יעברו על לפני עור כשממציאים לו צרכי בישול ואפייה לעצמו, ונראה

להקל בזמננו שרבו הטועים ותינוקות שנשבו כמ"ש, דלא דמי לקראים שגזרו עליהם שיהיו כעכו"ם כהרחקה, אבל אותם מחללי שבת טועים הם ונראה שכאשר מבשלים לעצמם ודאי ראוי להקל ואין לאסור משום לפני עור וצ"ב.

תשובות והנהגות כרך א סימן שנח

שאלה: בן בעל תשובה מזמין הוריו לסעודת ליל שבת ויודע שיחזרו לביתם במכונית

הנה טענת הבן היא שבדרך זו הוא מקרב את הוריו ליהדות, רק שחושש במה שמכשילם לחלל שבת, אבל מאידך הם בלאו הכי מחללים שבת ולא איכפת להם, רק תקותו שלאט לאט יתקרבו, ולדבריו כבר רואה התקדמות שיש אצלם כבר גישה אחרת לדת, ותולה הדבר בזה שמקרב אותם ומזמינם אף שנוסעים בחזרה הביתה, אבל שואל שמא אסור משום איסור לפני עור.

נראה שיסוד האיסור דלפני עור הוא דומיא דעור שמכשילו, אבל אם כוונתו רק לטובת עצמו לא נקרא מכשיל, אלא כמו שרופא מנתח לא נקרא מכה חבירו, כך כאן הלוא אין כוונתו להרע לו או לייעץ לו עצה שאינה הוגנת, אלא שמקוה בזה להדריכם ולקרבם לדרך האמת, ומה שחבירו מחלל שבת עי"ז אינו אלא עושה רעה לעצמו ולכן אין בזה איסור לפני עור, וכיון שאינו מצוה אותם לנסוע, ואדרבה, הודיע להם שמצטער בכך, תו אין כאן חיוב ערבות להפרישם במחללי שבת בפרהסיא, וע"כ נראה שגם איסור לפני עור אין בזה שכוונתו לטובתם. (ועיין ש"ך ודגו"מ יו"ד קנ"א שאין חיוב להפריש מומר מאיסור).

אמנם חילול השם יש כאן, שבאים לביתו במכונית בפרהסיא בעצם יום השבת, ולכן יש לראות שעכ"פ לא יחנו את מכוניתם סמוך לביתו במקום שירגישו שבאו במיוחד אצלו, כי בעון חילול השם אחד שוגג ואחד מזיד ואין תלוי במה שמכוין לטוב, ונראה שישתדל כפי כחו למונעם מחילול שבת, אבל אם זה אי אפשר ומרגיש שיש בזה תועלת להחזירם למוטב, לא ימנע לעשות מפני איסור לפני עור, רק יקרב אותם כפי האפשר, ושמאל דוחה וימין מקרבת, ויזהר ויודיע אותם תמיד חומר חילול שבת ומתיקות שמירתה ובעזרת השי"ת יחזיר אותם למוטב, ואין לך כיבוד אב ואם כמוהו.

ובמק"א הבאתי מדברי המשנה ברורה בשעה"צ סימן ש"ו ס"ק מ"ד שאב חייב לדאוג לבתו שלא תשתמד שהוא גואלה וקרוב לה, ומשמע שזהו חובה מיוחדת בקרובים, ולפי זה נלע"ד דאף שבעלמא במחלל שבת בפרהסיא שאינו עושה מעשה עמך פטורין להוכיחו וכמבואר במשנה ברורה סימן תר"ח ובה"ל שם עיין שם היטב, מכל מקום באביו שנטמע בין העכו"ם חייב לגואלו, וסיבת החיוב אינו רק מצד צדקה שחייבין לכל עניי ישראל, אלא דין גאולה לקרובים ואפילו מחללי שבת צריך להשתדל לפי כחו לגואלם שזהו הלכה מיוחדת.

To see the Headlines article on this subject *click here*

Contradictions between science and Chazal

תלמוד בבלי מסכת בכורות דף ח עמוד א

נחש לשבע שנים, ולאותו רשע לא מצינו חבר, ויש אומרים: מוכססים. מנא הני מילי? אמר רב יהודה אמר רב, ומטו בה משום דר' יהושע בן חנניא: שנאמר ארור אתה מכל הבהמה ומכל חית השדה, אם מבהמה נתקללה מחיה לא כ"ש? אלא לומר לך: כשם שנתקללה הבהמה מחיה אחד לשבעה, ומאי ניהו - חמור מחתול, כך נתקלל הוא מבהמה אחת לשבע, דהוה ליה שב שני.

תלמוד בבלי מסכת שבת דף קז עמוד ב

רבי אליעזר היא, דתניא, רבי אליעזר אומר: ההורג כינה בשבת - כהורג גמל בשבת. מתקיף לה רב יוסף: עד כאן לא פליגי רבנן עליה דרבי אליעזר אלא בכינה, דאינה פרה ורבה. אבל שאר שקצים ורמשים דפרין ורבין - לא פליגי. ושניהם לא למדוה אלא מאילים, רבי אליעזר סבר: כאילים, מה אילים שיש בהן נטילת נשמה - אף כל שיש בו נטילת נשמה. ורבנן סברי: כאילים, מה אילים דפרין ורבין - אף כל דפרה ורבה. אמר ליה אביי: וכינה אין פרה ורבה? והאמר מר: יושב הקדוש ברוך הוא וזן מקרני ראמים ועד ביצי כינים! - מינא הוא דמיקרי ביצי כינים. והתניא: טפויי וביצי כינים! - מינא הוא דמיקרי ביצי כינים.

משנה מסכת חולין דף קכו עמוד ב

עכבר שחציו בשר וחציו אדמה, הנוגע בבשר - טמא, באדמה - טהור, רבי יהודה אומר: אף הנוגע באדמה שכנגד הבשר - טמא.

תלמוד בבלי מסכת סנהדרין דף ה עמוד ב

והאמר רב: שמונה עשר חדשים גדלתי אצל רועה בהמה לידע איזה מום קבוע ואיזה מום עובר.

Advertising on Frum blogs that post Loshon Hora

רמ"א יורה דעה הלכות עבודת כוכבים סימן קנא סעיף א

י"א הא דאסור למכור להם דברים השייכים לעבודתם, היינו דוקא אם אין להם אחרים כיוצא בו או שלא יוכלו לקנות במקום אחר, אבל אם יכולים לקנות במקום אחר, מותר למכור להם כל דבר. (מרדכי דפ"ק דע"ז). ויש מחמירין. ונהגו להקל כסברא הראשונה, וכל בעל נפש יחמיר לעצמו. (ר"ן שם ובתוספות ואשיר"י והגמ"ר פ"ק דשבת לדעת הרב).

מסכת שביעית ריש פרק ט

הפיגם והריבוזין השוטין והחלוגלגות כוסבר שבהרים וכוסבר שבנהרות וגרגים שבנהרות של אפר פטורין מן

המעשרות ונלקחים מכל אדם בשביעית שאין כיוצא בו נשמר רבי יהודה אומר ספיחי חרדל מותרין שלא נחשדו עליהן עוברי עבירה ר"ש אומר כל הספיחים מותרין חוץ מספיחי כרוב שאין כיוצא בהן בירקות השדה וחכמים אומרים כל הספיחים אסורים:

Aquaadvantage salmon that has non-kosher dna

To see the Headlines article on this subject *click here*

Dovid Lichtenstein: The qualities of a true leader

ספרי דברים פרשת וזאת הברכה פיסקא שמד

כל קדושיו בידיך, אלו פרנסי ישראל שנותנים את נפשם על ישראל במשה הוא אומר ועתה אם תשא חטאתם ואם אין מחיני נא מספרך אשר כתבת.

בעל הטורים פרשת כי תשא פרק לד פסוק כט

כי קרן עור פניו. זכה לקירון פנים וכו' וי"א מכתיבת הלוחות זכה לקירון קרן פני משה.

שמות רבה פרשת כי תשא פרשה מז אות ו

ומשה לא ידע כי קרן עור פניו, ומהיכן נטל משה קרני ההוד, רבנן אמרי מן המערה שנא' והיה בעבור כבודי, ר' ברכיה הכהן בשם רבי שמואל אמר הלוחות היו ארכן ו' טפחים ורחבן ו' והיה משה אוחז בטפחיים והשכינה בטפחיים וטפחיים באמצע ומשם נטל משה קרני ההוד, ר' יהודה בר נחמן בשם רשב"ל אומר עד שהיה כותב בקולמוס נשתייר קימעא והעבירו על ראשו וממנו נעשו לו קרני ההוד שנא' ומשה לא ידע כי קרן עור פניו.

חנוכת התורה שמות פרשת כי תשא אות צח

במדרש רבה מהיכן זכה משה לקרני הוד ממה שנשתייר בקולמס וקנחה בציצית ראשו של משה וכו' עיין שם. ויש להקשות היאך הדעת סובלתן לומר אצל הקדוש ברוך הוא שנשתייר דיו בהקולמס וכי לא ידע מתחלה כמה דיו יספיק לכתיבת התורה כולה עד שלקח יותר מהצורך והוא דבר תימה. ועוד קשה בדברי המדרש דהקשה מהיכן זכה ומתרץ על ידי הדיו הא הקושיא היה מאיזה זכות בא לו זאת. ויש לפרש על פי מה דאיתא במדרש בשעה שאמר משה מחני נא מספרך נמחה שמו בפרשת תצוה שלא נזכר שמו כי אם בלשון ואתה תצוה וכו'. והנה בהיות שהקב"ה יודע אחריתו של דבר מראשיתו והיה בתוך הקולמס דיו לצורך כתיבת כל התורה כולו אך כשאמר משה מחני נא חל עליו עונשו ולא נזכר שמו בפרשת תצוה נמצא דאותו דיו שהיה ראוי לכתוב משה היא נשאר בהקולמוס. והנה בעבור שראה הקדוש ברוך הוא שמשה מסר נפשו על כלל ישראל אותו זכות נתפרע לו שקינח הקולמס בציצית ראשו ובעבור זה זכה לקרני הוד על שמסר נפשו על ישראל:

HAARETZ

The Cost of Jewish Living: British Economists Create 'Kosher Chicken Index'

January 18, 2016

Maintaining a Jewish lifestyle in the U.K. costs an extra 12,700 pounds sterling per year, according to two researchers.

Maintaining a Jewish lifestyle in the United Kingdom costs a pretty penny — an extra 12,700 pounds sterling ($17,900) a year, to be exact, found two economists.

Anthony Tricot, a consultant for Ernst and Young, and Andrea Silberman, a British Treasury economist, published their findings at this year's Limmud conference. Their research was driven by a desire to quantify community concerns about the spiraling cost of Jewish living, they said.

"As economists, we wanted to see what actual data was available so we could encourage a more evidence-based debate on whether there is indeed a 'cost of Jewish living' crisis," they wrote in the Jewish Chronicle. Living Jewishly has several big-ticket expenses, they wrote. Observant Jews are likely to spend an extra 2,000 pounds a year or more just on food, their research shows.

Kosher meat costs on average twice that of non-kosher supermarket meat, they found. They based their comparison on five products at London kosher chain Kosher Deli versus similar products at Tesco. That premium works out to 500 pounds a year.

A kosher roasted chicken. Limor Laniado Tiroche

Those who buy only certified kosher food — and not just meat — are liable to spend even more.

Likewise, kosher Indian or Chinese restaurants cost 70% more than nonkosher restaurants. This is due to the higher material cost as well as supervision. There goes 1,500 pounds a year.

One of the biggest expenses of Jewish living is housing. In order to live Jewishly, Jews often choose to cluster in communities. One-fifth of Britain's Jews choose to concentrate in the north London borough of Barnet, where housing costs 150% more than the average, they noted.

"Kosher inflation" outpaces the country's inflation rate, according to the economists' findings. Kosher meat prices have doubled in a decade, compared to a 40% increase for other meat products. Likewise home prices in northwest London have jumped.

Other costs include synagogue membership, at 600–800 pounds per household. Some half of British Jewish households belong to a synagogue. And then there are religious state schools, which cost up to 2,000 pounds per child each year. However, that's cheaper than in the United States or France, where there are no state-funded religious schools, they noted.

Social pressure also makes life more expensive, they say. "Simchahs are a further significant cost, driven by the need to 'keep up with the Cohens,'" they write. Jews spend more than twice the U.K. average on weddings, and also pay for bar and bat mitzvahs...

They caution that the high cost of living Jewishly drives many observant Jews to seek charity, while it may push others away from tradition. They call on community leaders to take action: to increase transparency and to seek ways of becoming more efficient.

"Kashrut authorities need to value the interests of consumers over that of producers when deciding whether to license new stores or products. And communal organizations need to give greater consideration to inclusivity by offering activities and services at a wider range of price points," they conclude.

Is *Ben Pekua* Meat the Solution to Prohibitive Kosher Meat Prices?

It's no secret that kosher meat costs considerably more than ordinary meat, and that the high kosher meat prices contribute towards the high cost of Orthodox Jewish living. According to a report published in early 2016, kosher meat in Great Britain costs twice as much as non-kosher meat.[1] In the United States, the discrepancy is less stark, but still considerable, estimated at 20%.

The reason for the exorbitant prices can be attributed to the combination of three factors: waste, staff, and inefficiency.

Waste: Every animal must be inspected for טריפות — terminal medical conditions, as defined by *halacha* — before its meat can be sent to the kosher market. An estimated 20–30% of all animals that undergo kosher *shechita* are found to have טריפות, and must therefore be either discarded or shipped to the non-kosher market to recover some of the lost money. A staggering 40–50% of slaughtered animals fail to meet *glatt* standards, and are thus discarded. Moreover, the prohibition of *gid ha-nasheh* — the sciatic nerve — results in the impossibility of selling hind quarters on the kosher market, such that considerable portions of even non-טריפה animals cannot be sold. This immense volume of non-kosher animals and meat forces kosher meat producers to drive up prices in order to make the industry profitable.

Staff: Kosher meat requires not only qualified *shochtim* (slaughterers), but also experts to inspect the slaughtered animals and to perform ניקור — the removal of the *chelev* (forbidden fats) and other forbidden parts — as well as מליחה (salting the carcass to extract its blood).

Inefficiency: The obligatory inspections and supervision make the process lengthy and cumbersome, and large-scale production is therefore terribly inefficient. More time and work is needed to produce kosher meat than to produce non-kosher, resulting in higher costs for consumers.

The בן פקועה Solution

As early as 1975, Rabbi Avraham Korman proposed the idea of reducing kosher

1. See media article above.

meat costs by breeding בני פקועה, which eliminates the concern of טריפות, and perhaps even the need to remove the *chelev* and *gid ha-nasheh*.[2]

The *Shulchan Aruch* (Y.D. 13:2), following the majority view in the Mishna (*Chullin* 74a), writes that if a kosher pregnant animal is slaughtered, its fetus — called a בן פקועה — may, on the level of Torah law, be taken from the mother's carcass, alive or dead, and eaten even without *shechita*. By force of Rabbinic enactment, *shechita* is required if the fetus had been fully gestated at the time its mother was slaughtered and it had tread on the ground after being extracted from its mother. In such a case, the young animal must be slaughtered before it is eaten to avoid the misconception that eating ordinary animals without *shechita* is permissible.[3] Significantly, however, the *Shulchan Aruch* rules that in all cases of a בן פקועה, even if the fetus was fully gestated and had tread on the ground, the rules of טריפות do not apply. Since this animal is viewed as part of the mother, which had been properly slaughtered, it is permissible even if it suffers from a medical condition that would render an ordinary animal a טריפה.[4]

What makes the concept of בן פקועה a potential game-changer for the kosher meat industry is the *Shulchan Aruch*'s extraordinary ruling (13:4) that the offspring of two בני פקועה that mated is itself considered a בן פקועה. In the *Shulchan Aruch*'s words, this applies עד סוף כל הדורות — "until the end of all generations." Meaning, no matter how many generations removed an animal is from the original two animals that were extracted alive from their mothers after *shechita*, it still has the status of בן פקועה if its two parents had this status. This remarkable provision offers the possibility of breeding בני פקועה industrially in order to avoid the concern of טריפות. As long as fool-proof measures can be taken to ensure that no other animals enter the breeding ground, בני פקועה can be bred and thus used for meat. Although proper *shechita* would still be required, 100% of the animals would be kosher. No inspections would be necessary, and no meat would need to be discarded out of concern for טריפות. Moreover, producing meat from בני פקועה would eliminate the concern of mistakes and oversights in the inspection process. There would be no margin of error whatsoever, as every slaughtered animal can be 100% guaranteed טריפה-free.

This idea was proposed again in the 1990s by a group of ranchers who

2. In an article published in *Torah U-Madda* 5:1 (Shevat 5735).
3. An exception is made in a case of a בן פקועה with an unusual feature — or, according to some opinions, two unusual features — which distinguishes it from other animals, in which case *shechita* is not needed because people recognize that this animal is different. See *Shulchan Aruch* and its commentaries, Y.D. 13:2.
4. However, the *Aruch Ha-Shulchan* (Y.D. 13:7) qualifies this ruling and maintains that outwardly visible *tereifos* render a בן פקועה forbidden, for the same reason that *shechita* is required.

approached Israel's Chief Rabbinate seeking its approval for a בן פקועה herd. The Rabbinate, under the leadership of Rav Yisrael Meir Lau and Rav Eliyahu Bakshi-Doron, denied the request. The reasons for the Rabbinate's decision were noted and discussed by Rav Bakshi-Doron in an article on the subject published in the Israel-based journal *Techumin* (vol. 19).

The בן פקועה Controversy of 2015–2016

More recently, an Australian rabbi, Rabbi Meir Rabi of Melbourne, after extensive research, concluded that the idea should be put into practice, and he established Ben Pekuah Meats, a company that breeds herds of בני פקועה that are safely isolated. DNA testing is performed to ensure the offspring are pure-bred, and each animal is labeled. The company sells the meat without inspecting the animals for טריפות or removing the *chelev* and *gid ha-nasheh*. This enables them to keep their prices low and to market the hind quarters, which, as mentioned, are not available in the standard kosher meat industry.

Rabbi Rabi's enterprise, not surprisingly, has drawn considerable controversy. He published a thorough article on the subject in the 5775 (2015) edition of *Techumin* (vol. 35), which included a response by Rav Zev Weitman, the head of *kashrus* for the Tnuva food company and a renowned expert on *kashrus*. Rav Weitman challenged several of Rabbi Rabi's claims (as will be discussed below), while acknowledging the advantages of a בן פקועה farm and leaving open the question of whether such an operation is acceptable. In Australia, Rabbi Rabi's initiative was strongly condemned by a group of prominent Australian rabbis, who, on 7 Shevat, 5776 (January 17, 2016), signed a letter declaring that they "support and agree with the halachic ruling of the great Rabbis who have already expressed their adamant objection to the notion of raising herds of *bnei pakuos*…" In the United States, Rabbi Yair Hoffman authored a pair of articles in the *5 Towns Jewish Times* in which he expressed vehement opposition to Rabbi Rabi's operation.[5]

In the pages that follow, we will examine the arguments advanced against Rabbi Rabi's initiative in order to understand why it has met with such widespread opposition.

The Fully-Gestated Offspring of a Preemie

One apparent shortcoming of Rabbi Rabi's analysis is the assumption that

5. "The New Commercially Produced Ben Pekuah Meats," January 7, 2016; "The Ben P'kuah Controversy Rages On," January 13, 2016.

the *chelev* and *gid ha-nasheh* of all animals born in the בן פקועה herd are permissible.

The *Shulchan Aruch* (Y.D. 64:2) rules explicitly that if a בן פקועה was fully gestated at the time its mother was slaughtered, its *chelev* is forbidden for consumption. (According to one view cited by the *Shulchan Aruch*, this applies only if the בן פקועה treads on the ground before it is slaughtered.) Later, in discussing the laws of *gid ha-nasheh* (65:7), the *Shulchan Aruch* cites a view that the *gid ha-nasheh* of a fully-gestated בן פקועה is forbidden, and the Rama accepts this view as authoritative. Accordingly, it is only if a fetus was extracted from its slaughtered mother's body before reaching full gestation that its *chelev* and *gid ha-nasheh* are permissible for consumption. In other words, the *chelev* and *gid ha-nasheh* of a בן פקועה are permissible only when it does not require *shechita*. When, however, *shechita* is required due to the concern of מראית עין — the concern that observers might conclude that even ordinary animals do not require *shechita* — then its *chelev* and *gid ha-nasheh* are likewise forbidden.

In order to avoid these prohibitions, Rabbi Rabi's company is careful to extract the initial בני פקועה before full gestation.[6] Since these animals are בני ח׳ — prematurely born בני פקועה — their *chelev* and *gid ha-nasheh* are permissible for consumption. These animals are then bred, and their offspring are likewise treated as בני ח׳, even though they are born after full-term pregnancies. The underlying assumption is that when two בני פקועה mate and produce offspring, the offspring is the same kind of בן פקועה as the parents. If the parents were both בני ח׳, then the offspring also have the halachic properties of בני ח׳, even though they are themselves בני ט׳ — meaning, they were born after full gestation.

Clearly, however, this assumption is questionable. If *halacha* forbids the *chelev* and *gid ha-nasheh* of a בן פקועה born after full gestation, there seems to be little reason to assume that the same would not be true regarding a child produced by two בני פקועה. We might draw proof from the brief comment of the *Shach* (13:16) that the product of two בני פקועה requires *shechita*, כיוון שהפריסו על גבי קרקע — because it had tread upon the ground, and there is thus the concern of מראית עין. The clear implication of the *Shach*'s remark is that if one wishes to partake of the child of two בני פקועה right after birth, before the newborn animal had stood on the ground, *shechita* is not required. Even though the parents themselves require *shechita*, as they had been fully gestated before being extracted from their mother,[7] the newborn does not require *shechita*. This seems to prove

6. This was explained by Rabbi Rabi in a radio interview on *Headlines with Dovid Lichtenstein*, broadcast on 20 Teves, 5776 (January 16, 2016).
7. It is clear that the *Shach* is referring to a case in which the two בני פקועה parents had been fully gestated before being extracted from their parents, as the *Shach* makes his

that, at least according to the *Shach*, when two בני פקועה mate and produce a child, its status vis-à-vis *shechita* is determined based on its own properties, not its parents' properties. As Rav Yaakov Gezuntheit explains in reference to the *Shach*'s comment, in his *Tiferes Yaakov* (Y.D. 13:8, p. 50):

> כוונתו דס"ד דוקא בבן פקועה ראשון בלא הפריס מותר, אבל בנו כיון שהוא בא מכח האב, והאב צריך שחיטה, לא יהא כחו עדיף מכח האב להתירו בלא שחיטה. קמ"ל כיון דהכל משום מראית העין, והיכא דליכא [מראית העין] אינו צריך שחיטה כל שלא הפריס.
>
> [The *Shach*'s] intent is that we might have thought that specifically the initial בן פקועה is permissible [for consumption without *shechita*] if it had not stepped [on the ground], whereas [regarding] a child [of a בן פקועה], since its status [as a בן פקועה] comes [only] on account of the father, and the father requires *shechita*, its status cannot be greater than the status of the father, such that it is permissible without *shechita*. He [the *Shach*] therefore informs us that since it is all because of מראית העין, where there is no [concern for מראית העין], it does not require *shechita* if had not stepped [upon the ground].

In other words, while one might have assumed that two mating בני פקועה transfer their particular status to their young, in truth, the offspring's status is determined based on its own qualities.

It would thus stand to reason that the status of the product of two בני פקועה as a בן ח' or בן ט' depends on when it was born, and not when its parents were born. Even if its parents were extracted from their mothers before completing gestation, if it was born after full gestation, it is treated as a בן ט', and, as such, its *chelev* and *gid ha-nasheh* are forbidden for consumption.[8]

Rav Weitman raised a different objection to this policy, claiming that in today's day and age, a בן פקועה extracted before full gestation must be treated no differently than a fully-gestated בן פקועה. The reason why *halacha* treats a בן ח' differently, Rav Weitman asserts, is because in ancient times, an animal born in the eighth month was not expected to survive. The *Piskei Ha-Rid* (*Chullin* 72b) writes:

> עגל בן שמונה, אף על פי שיצא חי, אין במינו שחיטה והרי הוא כמת שחיותו אינו חיות.

---

comment in reference to the ruling of the *Shulchan Aruch*, which deals with the case of two בני ט'.

8. Curiously, Rabbi Rabi's company treats their animals as בני ט' in that they make a point of slaughtering them with proper *shechita*, but the company permits the *chelev* and *gid ha-nasheh* as in בני ח', taking a seemingly self-contradictory stance in determining the animals' status.

> A calf [extracted from its mother after] eight [months] — even though it left [its mother] alive, its type does not require slaughtering, and it is considered dead, because its life is not real life.

The *Shach* (Y.D. 13:9) similarly writes that a בן ח׳ is "considered dead" — חשוב כמת. Rav Weitman further notes that when the *Shulchan Aruch* discusses the status of the offspring of a בן פקועה, it speaks specifically of a fully-gestated fetus who grows and mates:

> בן ט׳ חי שנמצא במעי שחוטה כשרה וגדל ובא על בהמה דעלמא...

There seems to be only one reason why the *Shulchan Aruch* speaks in this context about a בן ט׳ — because the author could not envision a situation of a בן ח׳ growing and reaching the age of reproduction. Nowadays, however, we know that a בן ח׳ is capable of living a long life, and Rav Weitman thus claims that a בן ח׳ would have the same status as a בן ט׳, both with regard to the requirement of *shechita*, and with regard to the prohibitions of *chelev* and *gid ha-nasheh*.

Therefore, even though the בן פקועה solution is, at least in principle, effective in avoiding the issue of טריפות, it does not allow for the consumption of the animals' *chelev* and *gid ha-nasheh*.[9]

Practical Considerations

The primary objection to the idea of a בן פקועה herd, however, has to do with the practical risks entailed.

The *Shulchan Aruch* rules explicitly (13:4), based on the Gemara (*Chullin* 75b), that if a בן פקועה mates with an ordinary animal, the offspring is forbidden for consumption, even after proper *shechita*.[10] The reason, as explained by Rashi in his commentary to the Gemara, is that the product of this union is halachically considered to have been partially slaughtered. Since one parent is a בן פקועה, an animal considered to have already undergone *shechita*, the part of the child produced by that parent is already "slaughtered," while the other part is not. The *shechita* of such an animal would thus be invalid in light of the rule

9. Rav Weitman concedes, however, that since the *chelev* and *gid ha-nasheh* of a בן פקועה are forbidden only מדרבנן — by force of Rabbinic enactment, as opposed to Torah law — we may permit the consumption of portions of the animals that are normally removed as a matter of custom, but are technically permissible.
10. The *Shulchan Aruch* addresses specifically the case of a male בן פקועה that impregnates a female animal, but the *Shach* and *Taz* note that this *halacha* applies also in the reverse case, in which an ordinary male animal impregnates a female בן פקועה.

of *shehiya*, which disqualifies *shechita* if there was a delay between the severing of the two pipes (the trachea and the esophagus).

This *halacha* turns the idea of a בן פקועה herd into a very risky operation. If a non-בן פקועה ever manages to mix in with the herd, its offspring is forbidden for consumption on the level of Torah prohibition. Yet, the staff will slaughter the offspring and sell its meat on the kosher market, unaware of the fact that it is forbidden.[11] Likewise, if a בן פקועה from the herd ever escapes and mates with an ordinary animal, the offspring will be forbidden for consumption without anyone realizing it.

Rabbi Rabi's company addresses this concern by ensuring maximum security and protection, as well as through DNA testing, which guarantees that all animals born in the herd are indeed products of other animals in the herd, and not from outside sources.

Another concern that has been noted is the eventuality that the company might one day close down, and the בן פקועה animals would be sold on the open market or released into the wild.[12] This would result in the birth of countless forbidden animals that would be treated as ordinary kosher animals. Thus, even if a foolproof method of safeguarding the herd could be implemented, there is no telling what might happen in the future, when בן פקועה animals might mix and be bred with other animals, creating a colossal halachic dilemma.

Notwithstanding these concerns, some have argued that since rabbinic scholars after the Talmudic era do not have the authority to legislate safeguards and forbid that which *halacha* permits, we do not have the right to object to בן פקועה meat due to practical concerns. The concept that rabbis no longer have the authority to introduce new safeguards to Torah law was developed at length by Rav Tzvi Pesach Frank in a famous responsum published in his *Har Tzvi* (2:2:24) regarding the Manhattan *eiruv*. Rav Frank wrote that while he could not issue a definitive ruling, since he did not actually see the *eiruv*, he felt compelled to denounce those who invalidated the *eiruv* out of the concern that people might conclude that carrying outdoors is permissible on Shabbos. Citing numerous sources, Rav Frank demonstrated that post-Talmudic rabbis do not have the authority to ban that which is permitted, and thus they cannot ban a halachically legitimate *eiruv*. This argument could seemingly be applied to בן פקועה meat as

11. Rav Bakshi-Doron also noted the fact that contemporary industrial breeding is generally done through artificial insemination, rather than by allowing the animals to naturally mate, and thus we would need to trust the hired staff that performs the procedure to ensure that all the sperm is taken from בני פקועה.
12. Rav Weitman wrote that in conversation with Rav Asher Weiss, Rav Weiss pointed to this concern as the reason for his stern objection to the idea of a בן פקועה herd.

well. Once the halachic obstacles have been overcome, perhaps rabbis do not have the authority to forbid the meat.

Rav Bakshi-Doron notes this argument and responds by drawing a clear distinction between enacting a safeguard and reaching a prudent public policy decision. The Rabbinate did not issue a ban against eating the meat of a בן פקועה, but rather decided, as a matter of policy, not to give its stamp of approval to the initiative to create a herd of בני פקועה, because it felt the idea was unwise. This is far different from enacting a prohibition against בן פקועה meat, and it is certainly well within the authority of a rabbinic body.[13]

רצון הבורא

Rav Shmuel Wosner addressed the issue of בני פקועה herds in the eighth volume of his *Shevet Ha-Levi* (178), where he dismisses the idea out of hand, calling the arguments in favor of such an enterprise פטפוטים בעלמא — "meaningless chatter." He writes that while it is true that בן פקועה herds allow us to avoid complications involving טריפות, the Torah specifically wants us to deal with these complex issues, rather than try to escape them:

> דזה רצון הבורא ב"ה שינהוג שחיטה מן התורה ושינהגו בה עפ"י הלכה, וינהגו בה הפרישות מחששי טריפות...
>
> For this is the will of the Creator — that *shechita* should be observed on the level of Torah law and be conducted according to *halacha*, and that we act with restraint due to the concern of טריפות…

Rav Wosner cites the verse in *Sefer Vayikra* (11:47) in which the Torah concludes its discussion of forbidden foods by instructing us to distinguish between permissible and forbidden animals:

> להבדיל בין הטמא ובין הטהור ובין החיה הנאכלת ובין החיה אשר לא תאכל.
>
> To distinguish between the impure and the pure; between an animal that may be eaten and an animal that may not be eaten.

Rashi explains this to mean that we are to carefully distinguish between animals that were properly slaughtered and those that were slaughtered improperly, and between animals that have symptoms of טריפות and those with conditions that do not qualify as טריפות. Rav Wosner proves on the basis of Rashi's comments

13. Rav Bakshi-Doron takes issue with Rav Tzvi Pesach Frank's letter concerning the Manhattan *eiruv*, arguing that it is within a rabbinical body's right to disapprove of an *eiruv* if it feels that this is the best policy.

that "the will of the Creator" is not to avoid the process of properly slaughtering and inspecting animals, but rather to undertake this responsibility, with all the challenges and complexities entailed. In his view, then, cultivating בן פקועה herds to avoid halachic complexities runs counter to the Torah's will, which requires us to address these complexities to the best of our ability, and not to try to escape from them.

In a somewhat similar vein, Rav Menashe Klein (*Mishneh Halachos* 16:130) raises the question of why בן פקועה herds were never before established as a way of avoiding the halachic prohibitions of טריפות. In particular, raising בני פקועה would allow us to drink milk without having to rely on the assumption that the cow from which it was taken is not a טריפה — something that cannot be definitively ascertained without slaughtering and inspecting it. *Halacha* permits relying on the statistical majority, and we may thus drink milk without first killing and inspecting the cow, but we might, at first glance, wonder whether it would be preferable to raise בני פקועה and use their milk in order to avoid the possibility of טריפות. Rav Klein writes:

> אלקים עשה את האדם ישר וכן צותה לשתות חלב, וכל המוסיף גורע.
>
> "God created man upright"[14] and [the Torah] likewise commanded to drink milk, and whoever adds in effect detracts.

In other words, we are expected to conduct our lives normally and to utilize familiar, traditional methods of preparing meat and milk; we should not be looking to outsmart the system through creative innovations.

Historical Precedent

Rabbi Rabi drew support for his idea by noting the precedent of Rav Sherira Gaon, who allegedly bred a herd of בני פקועה.[15] This claim is based on the account presented by the *Or Zarua* (1:440) describing how Rav Sherira Gaon killed בני פקועה without *shechita* and served the meat at a wedding.[16]

It should be noted, however, that there is no indication whatsoever that Rav

14. *Koheles* 7:29. The continuation of the *pasuk* reads, והמה בקשו חשבונות רבים — "but they have sought many calculations."
15. In the interview cited above, n. 6. Likewise, his company's website claims that Rav Sherira Gaon and his son, Rav Hai Gaon, "cultivated herds of *benei pekua* and actively took steps to promote its legitimacy by serving it at public functions." However, there is no indication in the *Or Zarua*'s account that the meat was served at a wedding in order to "promote its legitimacy."
16. Cited in *Hagahos Ashri*, *Chullin* 4:5.

Sherira raised herds of בני פקועה. The *Or Zarua* states simply that Rav Sherira had בני פקועה and once served them at a wedding. No mention is made of בני פקועה being bred together to produce a herd consisting exclusively of בני פקועה. The claim that Rav Sherira Gaon created בני פקועה herds is, at best, pure speculation, and thus cannot be advanced as a basis for dismissing legitimate practical concerns.

We might add that even if we accept the questionable assumption that Rav Sherira Gaon raised herds of בני פקועה, this would mark the glaring exception that proves the rule. The absence of any other documented account of such a practice in centuries' worth of halachic literature speaks far more loudly than this lone passage in the *Or Zarua*. If we would look to halachic precedent as a basis for affirming the legitimacy of this enterprise, the precedent of not raising בני פקועה is overwhelmingly stronger than the precedent possibly set by Rav Sherira Gaon.

Pareve Meat?

Rabbi Rabi also advanced the claim that the meat of a בן פקועה does not have the formal halachic status of meat, and therefore, in principle, it may be cooked and eaten with milk and dairy products. Although Rabbi Rabi does not believe that this should be allowed as a practical matter, he makes this point as an example of the unique status of בן פקועה meat.[17] The practical importance of this claim is that it offers yet another very significant advantage of Rabbi Rabi's initiative, as consumers who do not adhere to the halachic restrictions of בשר בחלב (eating milk with meat) would avoid this transgression when using בן פקועה meat.

The basis for this contention is a passage in Rav Meir Simcha Ha-Kohen's *Meshech Chochma* (*Bereishis* 18:8).[18] Rav Meir Simcha advances the theory that when Avraham hosted the three angels and served them meat, the meat he served was that of a בן פקועה. He then writes, ambiguously:

> ושחיטה התירתו ואין בה משום בשר בחלב, דחלב שחוטה מותר, ועיין שער המלך.

Its slaughtering rendered it permissible, and it was not subject to בשר

17. In the interview cited above (n. 6), Rabbi Rabi said, "Absolutely, the meat is pareve. I don't like the idea of suggesting cooking בשר בחלב; this is not my intention at all. But I use this to highlight dramatically that בן פקועה is a מין בפני עצמו [its own type of entity]."
18. In his article in *Techumin*, Rabbi Rabi develops the theory that *halacha* does not treat בן פקועה as an animal; it is regarded instead as its own kind of creature. He explains on this basis the view he ascribes to the *Meshech Chochma*, that its meat is not halachically considered meat.

בחלב, because the milk of a slaughtered animal is permissible [with meat]; see *Sha'ar Ha-Melech*.

The source referenced here by Rav Meir Simcha is the *Sha'ar Ha-Melech* commentary on the Rambam's *Mishneh Torah*, written by Rav Yitzchak Nunis. In *Hilchos Issurei Mizbei'ach* (3:11), the *Sha'ar Ha-Melech* writes that just as milk extracted from an animal after its slaughtering may, strictly speaking, be consumed with meat,[19] the milk of a בן פקועה may similarly be consumed with meat.[20] A בן פקועה does not require *shechita* (on the level of Torah law) because it is covered by the *shechita* performed on its mother, and thus its milk has the status of חלב שחוטה — milk of a slaughtered animal — which is not subject to the restrictions of בשר בחלב.

Accordingly, the *Meshech Chochma* appears to claim that Avraham served his guests the meat of a בן פקועה together with its own milk. Since the milk was not subject to the prohibition of בשר בחלב, it was permissible according to Torah law to cook it and eat together with meat.[21]

However, Rav Yehuda Cooperman, in his annotated edition of the *Meshech Chochma*, understood this passage to mean that Avraham cooked the meat of a בן פקועה in milk because the meat is not subject to the prohibition of בשר בחלב. According to Rav Cooperman's reading, the *Meshech Chochma* drew a parallel between the milk of a בן פקועה and its meat. Thus, once the *Sha'ar Ha-Melech* established that the animal's milk may be consumed together with meat, it follows that its meat may be consumed together with milk.

As Rabbi Rabi noted, this is also how Rav Moshe Sternbuch understood the *Meshech Chochma*'s comments, in his explanation of this passage in his *Moadim U-Zemanim* (4:319): השחיטה מתיר בבן פקועה **ושרי בחלב** — "The slaughtering [of the mother] renders the בן פקועה permissible, and **it is permissible with milk**."

Whether or not this is the view of the *Meshech Chochma*, it is very difficult to accept. For one thing, the *Sha'ar Ha-Melech* — whom the *Meshech Chochma* cites as the source of his claim — states explicitly that a בן פקועה's milk may be consumed with meat only because it is treated as חלב שחוטה — milk taken from

19. *Chullin* 113b: בחלב אמו ולא בחלב שחוטה. Although such milk is permissible on the level of Torah law, it is nevertheless forbidden by force of Rabbinic enactment; see *Shach*, Y.D. 87:13.
20. This claim that the milk of a בן פקועה may be eaten with meat is made also by the Maharit Algazi, *Hilchos Bechoros* (1:2). A number of *Acharonim*, however, expressed some uncertainty regarding this matter. See Rabbi Akiva Eiger's notes to Y.D. 87:6; *Noda Be-Yehuda, Mahadura Tinyana*, Y.D. 36; and *Chasam Sofer*, Y.D. 14.
21. This is how Rav Shmuel Chaim Domb understood the *Meshech Chochma*'s comments in his annotated edition of the work.

an animal after it had undergone *shechita*. Since a בן פקועה is regarded as having already been slaughtered, its milk may be consumed with meat. This line of reasoning, quite obviously, cannot be applied to the animal's meat, which is forbidden for consumption with milk despite being taken after *shechita*. As such, there is no logical basis at all to consider a בן פקועה's meat pareve.[22]

We may also disprove this position from the Rambam's ruling in *Hilchos Ma'achalos Asuros* (9:7) that one who eats a שליל — an animal fetus — with milk violates the Torah prohibition of בשר בחלב. This ruling is based on the Gemara's comment (*Chullin* 113b) that a שליל is included under this prohibition. It is clear that the Rambam refers here to a case in which the mother had been properly slaughtered; otherwise, the fetus would be already forbidden due to its being part of a נבילה — the carcass of an animal that had not undergone proper *shechita*. As the Rambam rules in the immediately preceding passage, one who eats meat of a נבילה with milk is not liable for בשר בחלב, because the meat had already been forbidden for consumption before it was mixed with milk.[23] Necessarily, then, the Rambam speaks of a fetus found inside of an animal that had undergone proper *shechita* — meaning, a בן פקועה[24] — and he writes explicitly that eating or cooking it with milk transgresses the Torah violation of בשר בחלב.[25]

Finally, even if we accept the assumption that the *Sha'ar Ha-Melech*'s stance regarding the milk of a בן פקועה applies also to its meat, we cannot ignore the fact that several authorities question the status of the milk, and maintain (or at least suggest) that it is subject to the prohibition of בשר בחלב.[26] For this reason as well, we cannot consider permitting the consumption of a בן פקועה's milk with meat or viewing it as anything less than a Torah violation.

---

22. It should also be noted that the *Sha'ar Ha-Melech*'s comments would appear to disprove Rabbi Rabi's contention (mentioned above, n. 19) that a בן פקועה does not have the halachic status of an animal. If this were true, then the *Sha'ar Ha-Melech* would not have had to resort to the rule of חלב שחוטה to explain why the milk of a בן פקועה may be consumed with meat. If the בן פקועה is not halachically an animal, then its milk is not halachic milk, and the fact that the animal is considered to have undergone שחיטה is entirely irrelevant.
23. The basis of this ruling is the well-known principle of אין איסור חל על איסור — a food item forbidden due to one prohibition cannot then become forbidden again by force of a second prohibition.
24. Indeed, the Gemara in *Chullin* (74b) uses the term שליל in reference to a בן פקועה.
25. This can be proven from the Gemara's discussion there as well. Addressing the prohibition of eating a fetus's meat with milk, the Gemara writes that this prohibition would apply even according to the position that אין איסור חל על איסור (see Rashi, ד"ה אין איסור חל על איסור). This is possible only if the שליל was found inside a properly slaughtered animal, as otherwise, it would already be forbidden as נבילה, and thus the prohibition of בשר בחלב could not then take effect.
26. See n. 20.

הרב מאיר רבי

בן פקועה - מין בפני עצמו ואינו בכלל בהמה

ראשי פרקים

❖ ❖ ❖

א. הלכות ייחודיות ותמוהות בבן פקועה

בן פקועה (ב"פ) הוא העובר, בין חי בין מת, בין שלמו חודשי עיבורו (בן ט') ובין אם לא (בן ח'), הנמצא במעי שחוטה כשירה. גם כשהב"פ בן כמה שנים ונראה ונוהג כמו כל בהמה, עדיין הוא ב"פ (חולין עד, שו"ע יו"ד יג). לב"פ יש דינים מתמיהים השונים מכל בהמה רגילה, וכדלהלן, דבר המביא למסקנה שב"פ הוי מין בפני עצמו:

א. בב"פ אין איסור אבר מן החי, ומותר לחתוך אבר או בשר ממנו כשהוא חי ולאכלו.[1]

ב. בב"פ אין פסול טריפות שפוסל בבהמות רגילות.[2]

ג. בב"פ אין איסור גיד, ואין צורך לנקרו כמו בכל בהמה רגילה.[3]

ד. בב"פ אין איסור חֵלב האסור בכל בהמה אחרת.[4]

ה. הראיה הגדולה ביותר המוכיחה שמדובר במין בפני עצמו היא שבגמרא (חולין עה,ב ושו"ע יו"ד יג,ד) נפסק שבניו ובני בניו של ב"פ נחשבים לב"פ עד סוף כל הדורות.[5]

ו. חידוש גדול במיוחד שנמצא באחרונים הוא שמותר לבשל בשר ב"פ עם חלב, ואין לכך כל הסבר אלא אם נאמר שמדובר במין בפני עצמו שכלל לא נחשב לבשר.[6]

1. רש"י בראשית לז,ב ובשפתי-חכמים שם מפרשים שכן עשו בני יעקב, ונדמה ליוסף שזה היה מבהמה רגילה וסיפר מעשיהם ליעקב אבינו. וזו כוונת התורה שהוא הביא דבתם רעה אל אביהם.
[**הערת מערכת:** ראה מאמרו של הרב זאב וייטמן בכרך זה שמפקפק על כמה מהקביעות שבפרק זה ועל הראיות המובאות להלן לשיטת המחבר.]
2. שו"ע יו"ד יג,ב
3. טור יו"ד סה ושו"ע שם סע' ז, וכן שיטת הרי"ף הרא"ש והרמב"ן ועוד. והדבר תמוה שגיד הנשה מב"פ יהיה מותר ומאי שנא מגיד הבהמה עצמה שאסור? לכאורה ההסבר היחיד הוא שב"פ הוי מין בפני עצמו ואיננו מין בהמה כלל, ולכן אין כאן איסור גיד הנשה. שיטת הרמב"ם צריכה עיון שבפ"ח מהל' מאכלות אסורים ה"א כתב שיש איסור גיד הנשה בשליל, אבל לא פירש אם כוונתו דוקא לבן ט' או אפילו לבן ח'. ובשינויי נוסחאות ברמב"ם מהדורת פרנקל מביא מכ"י שיש כאן השגת הראב"ד: "א"א שכלו לו חדשיו כרבינו אפרים". והאחרונים האריכו בשיטת הרמב"ם.
4. שו"ע שם סד,ב
5. כששאלתי את הר"ח קנייבסקי כיצד ניתן להסביר דין תמוה זה ענה בקצרה "כיוצא בו". וכוונתו כמו שכלבים מולידים כלבים, פרות מולידות פרות, כך ב"פ מוליד ב"פ. דהיינו שהוא מין בפני עצמו.
6. ראה משך-חכמה (בראשית יח,ח) על הפסוק "ויקח חמאה וחלב ובן הבקר אשר עשה" שהבשר היה מב"פ, ולכן לא היתה בעיה בכך שישמעאל שחט את בן הפקועה ולא היתה בעיה של בשר בחלב. מדבריו משמע

ז. ב״פ אין בו איסור כלאי בהמה, לא בחרישה ולא ברביעה (בבן ח׳ אליבא דכ״ע ובבן ט׳ רק אליבא דפירוש רבנו גרשום).[7]

להלכה, אם העובר בן ט׳ והפריס על גבי קרקע, גזרו בו כמה גזירות מטעם מראית עין, כמו איסור גיד וחלב וחובת שחיטה. אך על בן ח׳ לא גזרו כלום (יו״ד סד,ב וסה,ז).[8] הגאונים רב שרירא ורב האי החזיקו עדרי ב״פ והגישום לאכילה, בלי לנקר גיד או חלב וגם בלי לבדוק מטריפות.[9]

ב. הוכחות שב״פ הוי מין בפני עצמו

כאמור, ניתן להבין כל זאת רק אם נאמר שב״פ נחשב למין בפני עצמו, וכל עוד הוא במעי אמו קודם ההמלטה איננו נחשב לבהמה. להלן נביא לכך כמה ראיות:

א. בחולין (עה,ב): ״אמר רב משרשיא לדברי האומר חוששין לזרע האב, ב״פ הבא על בהמה מעלייתא הולד אין לו תקנה״. ועי׳ ברש״י שמפרש: ״שהרי הוא כמי שאין לו אלא סימן אחד מצד אמו שהסימן השני שחוט ועומד הוא, שאין שחיטה נוהגת בו, ובהמה בחד סימן לא מיתכשרה, והאי סימנא בתרא לא מצטרף לקמא, שאין לך שהייה גדולה מזו שהראשון שחוט **משנולד**״. ונפסק להלכה בשו״ע (יו״ד יג,ד).

חזינן מדברי רש״י שכתב ״שהראשון שחוט משנולד״, דהיינו כשהוא עדיין עובר אין הסימנים שקיימים במציאות נקראים סימנים, וממילא גם אינם נחשבים שחוטים. רק לאחר שנולד נחשב בהמה ונחשב שסימניו שחוטים, דאל״כ הו״ל לרש״י לומר שנחשב שחוט לפני שנולד, משעת יצירתם.[10]

יותר מכך מפורש בש״ך (שם ס״ק י): ״וכן היכא שגם אמו לא היתה צריכה שחיטה״, שאם שחט האם [ומשמע אפילו הרגה, וכן מפורש בפרי-תואר] קודם שהמליטה – הולד מותר, מטעם שנמצא באם שהיא מותרת באכילה והוי ב״פ, למרות שלאחר לידתו – אין לולד כל תקנה. ואינו גרוע מולד ללא סימני טהרה שלדעת ר׳ שמעון אסור, דגם הוא ניתר כשנמצא באם שחוטה כשירה (חולין סט,א). והיינו טעמא, שעובר הוא מין אחר ולכן לא שייך לומר בו דהוי מין טמא או שיש שהייה בין

שהבין כדבר פשוט שבשר ב״פ אינו אסור בחלב, דהיינו שהוא מין שונה שבשרו איננו בשרי, וכפי שפירשו הרב יהודה קופרמן, והרב משה שטרנבוך בספרו מועדים-וזמנים (ח״ד סי׳ שיט), ולא כפי שפירש מקור-החכמה על המשך-חכמה. וכן אמר לי הרב משה שטרנבוך, שלכו״ע בשר ב״פ הינו פרווה אלא שמסתבר שאין לבשלו בחלב מפני מראית עין. וכן שמעתי גם מהר״ח קנייבסקי.

7. עיין חולין עד,ב: ״אמר רבי אלעזר אמר רבי אושעיא לא הילכו בו [דהיינו ר״י ור״מ שמודים דבן ח׳ חי הוי ב״פ, ולא נחלקו אלא בבן ט׳ חי] אלא על עסקי אכילה בלבד, למעוטי רבעו וחורש בו״ - וע׳ מחלוקת רש״י ור׳ גרשום בפירוש הדברים. ופשוט דבבן ח׳ חי כו״ע מודים שאין איסור כלאים.

8. וגם את הגזירה על בן ט׳ אפשר לעקוף (וראה להלן בפרק ד ובהערה שם).

9. הגהות אושרי ואף שהדברים אינם מפורטים שם כך הסכים גם הר״ח קנייבסקי ועיין בהערה להלן בסוף פרק ד.

10. ולכאורה לא מצאנו מקור לחידוש זה של רש״י, שהסימנים נחשבים סימנים רק משנולד, אם לא שנאמר שכן הבין רש״י בסוגיא של חלב, שעד שהעובר נולד הרי הוא מין אחר ולא שייך בו דין חלב, ומזה למד גם לגבי סימנים שלא שייך לומר שיש בו סימנים, כי גם סימנים שייכים רק במין בהמה, וגם לדעת ר׳ שמעון (בכורות ו,ב), שפרה שהמליטה עגל ללא סימני טהרה העגל אסור – איסורו הוא רק מרגע לידתו והלאה. ולכן גם בולד הנולד מזרעו של ב״פ אין לו תקנה רק לאחר לידתו, אבל כל עוד שהוא במעי אמו ניתר בשחיטת אמו, וכן הוא בשו״ע יו״ד יג,ד: ״והוליד״, וכן הוא בש״ך ובט״ז.

שחיטת הסימנים. ורק כשיוצא לאויר העולם נהפך למין בהמה, ורק אז נהפכים סימניו לסימנים.[11]

ב. בשו"ע (יו"ד סד,ג ומקורו ברמב"ם מאכלות אסורות ז,ד) פוסק כר' יוחנן (חולין עה,א): "הושיט ידו למעי בהמה וחתך מחלב העובר שכלו לו חדשיו והוציאו הרי זה חייב עליו כאילו חתכו מחלב האם עצמה שהחדשים הן הגורמין לאיסור חלב". מבואר מזה דכל עוד שלא יצא לאויר העולם אין זה נחשב חלב, דעדיין אינו מבהמה מעלייתא, ואף שכלו לו חדשיו. וחידש ר' יוחנן דביציאת החלב לבד הגם שעדיין לא נולד כולו מ"מ חל עליו שם חלב. ואפילו לר' יוחנן שאוסר חלבו של בן ט' חי, בכל זאת מתיר חלבו של בן ט' מת כמבואר במגיד-משנה (שם ה"ג), וברור שהטעם הוא היות שהוא לא יצא לאוויר העולם בעודנו חי, הוא נשאר בגדר עובר ואינו יכול להפוך להיות מין בהמה, מאחר שלא יצא עם רוח חיים. וכן מדויק גם בפרי-חדש (סד,ח) "והוציאו ... פירוש קודם השחיטה אבל תלשו והניחו שם ניתר בשחיטת אמו לכ"ע. ודוקא מבן ט' חי דקימא לן כר"י דחדשים גרמי אבל תלש מבן ח' חי או מת או מבן ט' מת לא אסיר משום חלב אלא משום בשר שיצא חוץ למחיצתו דלכ"ע אין חדשים גרמי בלא חיות" ולכן פשוט שאם נשחטה האם ונמצאה כשרה, החלב שנחתך מהעובר ולא הוציאו ממעי האם לפני השחיטה אינו חלב והוא מותר באכילה וכמבואר בדברי הראשונים (הביאם הכס"מ שם עיי"ש), ונפסק כן להלכה בב"י (יו"ד סד) ובש"ך (שם ס"ק ד) ובט"ז (שם ס"ק ו), וזה מטעם דאין לו שם ודין חלב עד יציאתו לאויר העולם, דאם כבר נחשב לחלב שוב אי אפשר להתירו בשחיטת אמו.

וכן לשיטת ריש לקיש, שמתיר חלב של בן ט' חי במקרה הנ"ל שלא שחט את האם, ברור דהיינו טעמא שכל עוד שהעובר לא יצא לאויר העולם הרי הוא מין אחר, ואין בחלבו דין חלב. דהיינו, שגם ביציאת החלב לבדו אינו חלב עד שיולד ויהיה חלק מהנולד, דרק מיציאת הולד נהפך מהותו להיות בהמה מעלייתא שיש לה חלב, אבל כל עוד שהחלב נמצא בתוך האם אין הוא נחשב לחלב. וכן מבואר דלכו"ע שחלב מבן ח' אפילו חי, אינו נחשב לחלב.

ג. הגמ' במסכת חולין (ע,א) מסתפקת האם יתכן שבהמה שתוליד עובר שלא נוצר ממנה, יפטור אותה מדין בכורה. וז"ל הגמ': "הדביק שני רחמים ויצא מזה ונכנס לזה מהו? דידיה פטר, דלאו דידיה לא פטר, או דילמא דלאו דידיה נמי פטר? תיקו", ומפרש רש"י ששאלת הגמ' היא, האם נפטרה הבהמה השנייה מדין בכורה ע"י לידה כזו. וצריך להבין למה הגמ' דיברה דוקא במקרה ש"הדביק שני רחמים ויצא מזה ונכנס לזה", דאינו מעלה או מוריד איך הכניסו לרחם השני והרי אפשר להסתפק בכל וולד בהמה שזה עתה נולד והכניסו לבהמה שנייה, והולידה אותו. אלא פשוט וברור, שדווקא ב"הדביק שני רחמים ויצא מזה ונכנס לזה" (מבלי שיצא לאויר העולם) יש צד לפטור השנייה. אבל אם יצא לאויר העולם פשוט לגמ' שלא יפטור את הבהמה מדין בכורה. ומוכח מזה שיש הבדל מהותי בין עובר לולד, שרק עובר יכול

11. וכן כתב גם הב"ח שכאשר העובר הוא חצי ב"פ מצד אמו, שאחרי שנולד אין לו תקנה עולמית - אם הוא נמצא במעי אמו הוא מותר אף ששחיטת האם איננה שחיטה המתרת והיא רק משום מראית עין. וכן הסכים הפרי תואר שם שכתב: "אי הוי מציאות שתהיה אמו מותרת בלא שחיטה היה גם כן ניתר העובר, דרחמנא אמר כל שבבהמה תאכלו, ודרשתנו בקרא לאו מטעם שהבהמה נשחטה... שאם היתה דרשתנו על זה האופן לא היינו מתירים מין טמא שבבהמה (שדינו כגמל לדעת ר' שמעון) דהא לא אתא קרא אלא למימר דלא בעי שחיטה, ולמימר דשחיטה הראויה לו היא שחיטת אמו אלא ודאי ה"ק, כל בהמה שבשרה מותר לך אכול כל מה שבתוכה אפילו כה"ג".

לפטור בהמה אחרת, אבל ולד אינו יכול לפטור בהמה מדין פטר רחם, כי ולד הוא מין בהמה, משא"כ עובר אינו מין בהמה. ומוכח שרק בשעת הלידה נהפך מהות העובר, ורק אז הוא מקבל שם בהמה.

ד. איתא בגמ' (קג,א): "אמר ר' חייא בר אבא אמר ר' יוחנן אכל חלב מן החי מן הטריפה חייב שתים, אמר ליה ר' אמי ולימא מר שלש, שאני אומר שלש. אתמר נמי, אמר ר' אבהו א"ר יוחנן אכל חלב מן החי מן הטריפה חייב שלש. במאי קמיפלגי, כגון שנטרפה עם יציאת רובה; מ"ד שלש קסבר בהמה בחייה לאיברים עומדת (ולכן חל איסור אבר מן החי מיד בזמן הלידה), דאיסור חלב ואיסור אבר ואיסור טריפה בהדי הדדי קאתו (דהיינו בזמן הלידה). ומאן דאמר שתים קסבר בהמה בחייה לאו לאיברים עומדת, ואיסור חלב ואיסור טריפה איכא, איסור אבר לא אתי חייל.

ביאור דברי ר' אמי ור' אבהו שחייב שלוש הוא - שדין טריפה חל בזמן הלידה היות שאז נטרפה בפועל, ואיסור אבר מן החי אינו חל לפני הלידה, דכתיב "ולא תאכל הנפש עם הבשר", ועובר אינו נפש (עי' ראש-יוסף), ולכן זה חל רק בזמן הלידה. וכן אין איסור חלב לפני הלידה, ורק בזמן הלידה חל אסור חלב. ומפרש רש"י (ד"ה איתמר נמי) שהיינו טעמא "דהא חלב השליל מותר, דכתיב כל בבהמה תאכלו, ואמרינן לרבות את הולד דכתיב כל". והיות ששלוש האיסורים חלים בבת אחת, לכן אין כאן הדין של אין איסור חל על איסור. תוס' מוסיפים לפרש שלאו דוקא שנטרפה בדיוק בזמן לידה, אלא הכוונה שלא נטרפה לאחר לידה. ואיה"נ, שאם נטרפה לפני הלידה, הרי כל הג' איסורים חלים בבת אחת בזמן הלידה. חזינן, דהא דב"פ שנמצא במעי אמו מותר באכילה ואין לו איסורי גיד, חלב או טריפות הוא בעצם מטעם שבעובר אין את כל האיסורים האלו. ואמנם בדרך כלל עובר נהפך לבהמה על ידי הלידה ואז חלים עליו האיסורים הנ"ל, אמנם זהו דוקא שאכן יצא לאויר העולם ע"י לידה כדרך הנולדים, אבל כאשר העובר יוצא לאויר העולם ע"י שחיטת האם הרי דינו נשאר לעולם כעובר. וזו כוונת הדרשה "כל בבהמה תאכלו".

ה. על הגמרא האומרת שאין לעובר חי איסור חלב, מביא רש"י מקור מאותו פסוק שממנו נלמד בגמ' ההיתר דב"פ. ולכאורה איך ניתן ללמוד מאותו פסוק שתי הלכות - דין חלב עובר שהוא מותר וגם דין ב"פ? אלא דהאמת היא ששתי ההלכות הן היינו הך. דהיינו עובר שנמצא במעי אמו ואמו כשירה באכילה [או שנשחטה ואינה טריפה או שהרגה ואינה צריכה שחיטה כי היא עצמה ב"פ] אין לו איסורים וגם שנים רבות אחרי יציאתו לאויר העולם, הוי מבחינת ההלכה, עובר, ומותר. וכן מבואר בתד"ה דאיסור (חולין קג,א) דמפרשים דעת רש"י, וז"ל "והשתא ניחא דכולהו בהדי הדדי קאתו. והא דקאמר שנטרפה ביציאת רובה ה"ה נטרפה במעי אמה, דלא מחייב משום טריפה עד שיולד, כמו חלב".

ו. במשנה (עד,א) מבואר דדם שליל אסור. ובפשטות היה אפשר לבאר שהיות שזה דם ממין בעל חי שדמו אסור, הרי גם זה אסור. אולם הראשונים מיאנו בפירוש זה, ואדרבה תמוה אצלם מדוע הדם נאסר ודינו שונה מדין החלב והגיד, וביארו טעמים מחודשים לאיסור דם בשליל. בראי"ש (פ"ד סי' ה) כתב "לפי שהוא נבלע בכל הגוף וחשיב כדם האיברים שפירש של הבהמה עצמה", והט"ז (יג,ג) ביאר את דבריו,

שהדם שבעובר מתערב עם דם הבהמה עצמה שהעובר נתהווה ונזון ממנו.[12] טעם נוסף מצאנו בר"ן וז"ל ונ"ל דהיינו טעמא דליכא למגמר שריותא מכל בבהמה תאכלו אלא במידי דבר אוכלא כגון חלב וגיד הנשה ד**תאכלו** כתיב, אבל דמו כיון דמשקה הוא לא נפיק משריותא דכל בבהמה תאכלו... וכיון דאיכא לאוקמי אמידי דבר אכילה לא מוקמינן ליה אדם, עכ"ל. חזינן מדברי רבותינו הראשונים דב"פ הוא כולו מין היתר, ומה שאסור ממנו, צריך מקור וטעם לאוסרו.

ז. במשנה (עד,ב) "קרעה ומצא בה בן ט' חי טעון שחיטה, לפי שלא נשחטה אמו". והקשה הדרישה (יג,ב), דמה חידש התנא בזה, הרי הבהמה לא נשחטה, ומהיכי תיתי להתיר ב"פ ללא שום שחיטה כלל. ומתרץ על כך התוי"ט, שהיות שב"פ הוא מין בפני עצמו, וזה מוכח ממה שהתורה לימדה דין ב"פ מהפסוק כל בבהמה תאכלו, שנכתב בפרשת סימני הבהמות הטהורות ושאינם טהורות, ולא בפרשת מצות זביחה. וכיון שכן, ברור שדין ב"פ אינו דין בדיני שחיטה אלא בגדרי מיני בהמה טהורה, ורק ברגע הלידה הופך העובר להיות מין בהמה רגילה החייבת בשחיטה. ולכן היה עולה על הדעת לומר שכל שנמצא בתוך בהמה טהורה נכלל בהיתר כל בבהמה תאכלו וכל עוד הוא לא הפך לולד הוא איננו בגדר בהמה , אלא דינו כמין מותר וכדגים וחגבים שאינם טעונים שחיטה. ולדינא קמ"ל שהוא נשאר בגדר עובר וניתר בשחיטת אמו רק כשנמצא בבהמה המותרת באכילה ולא בבהמה שלא נשחטה.[13]

ח. בגמ' (עב,ב) מבואר דשחיטת בהמה טרפה מטהרתה מטומאת נבילה, בניגוד לבהמה טמאה שאין שחיטתה מוציאתה מידי טומאת נבילה, משום שבטמאה אין דין שחיטה כל עיקר, משא"כ בטריפה יש במינה דין שחיטה. ובסוף המשנה נקבע, "בן שמונה חי [שנולד מבהמה חיה - רש"י] אין שחיטתו מטהרתו, לפי שאין במינו שחיטה". הרי שעובר בן שמונה אפי' שנולד דינו כבהמה טמאה שאין בה שחיטה, דהיינו שאינו מין בהמה. ומפורש כן ברש"י שמפרש "אין לנו במה לטהר אפי' נשחט, לפי שאינו בכלל בקר וצאן".[14] הוא אשר דיברנו שאין בו איסור חלב, גיד, אבמה"ח, וטריפות, בשר בחלב, כלאים וכו' ואין לו שום שייכות לענין שחיטה היות שאינו בן ט', ואפי' לידתו אינו משנה מעמדו להפוך אותו לבהמה מעלייתא.

ג. הסברים אחרים לדין ב"פ ושלילתם

באחרונים מצינו טעמים אחרים לדין ב"פ, אך נראה שטעמים אלו אינם יכולים להסביר את כל ההלכות שמצינו בב"פ:

12. וקשה דא"כ מה הייתה ההוה אמינא של הגמ' (עד) שלר"י דם שליל יהיה מותר כחלב וגיד הרי לפי הרא"ש אין זה דם של העובר? ושמא י"ל דההוא אמינא היא שאף שדם הבהמה נכנס לעובר עצמו, הרי גם דם הבהמה נהפך לדם העובר ונחשב כחלבו וגידו.
13. והחתם-סופר מתרץ קושיא זו, שכוונת המשנה היא באופן שקרע את האם והעובר עדיין בתוך מעיה, שאפי' אם לא נטרפה בקריעה זו, וישחוט כעת את האם ויתירנה באכילה, בכל זאת שחיטה זו לא תתיר את הב"פ, כיוון שעומד לצאת וראה אויר העולם. וצע"ג על פירוש זה, שהרי הדין של משנה זו מובא בשו"ע (יג,ג) בזה הלשון "אם לא שחט האם, אלא קרעה... טעון שחיטה לעצמו" - משמע שלא נשחט כלל, וכן הוא פשטות לשון המשנה, שכתוב "לפי שלא נשחטה אמו".
14. [**הערת מערכת:** רש"י אינו מתכוון לעובר או לב"פ שאינו בכלל בקר וצאן אלא לבן שמונה שאינו בכלל בקר וצאן מכיוון שלא נשלמה יצירתו וסופו למות.
תשובת המחבר: גם אם נאמר דבן ח' לא נשלם ולא ישלים יצירתו דודאי ימות וכמת הוי מעכשיו, ולכן אין בו שחיטה ולא איסור כלאים, עדיין אינו מובן ההיתר לבשלו בחלב, ושאין בו אסורי גיד או חלב, דגם בנבילה יש אסורי גיד או חלב ובב"ח וגם אין מובן דבני בניו הוין ב"פ עד סוף כל הדורות.]

יש שסברו שהעובר נחשב לשחוט ע"י שחיטת אמו וכלשון המשנה והפוסקים "ניתר ע"י שחיטת אמו" או "שחיטת אמו מטהרתו". אלא שהסבר זה לא יסביר כיצד ניתן להתיר גיד הנשה. או חלב וטריפות או נבלה או בהמה טמאה שנמצאת במעי השחוטה, שכל אלו מותרים בב"פ אך לא הותרו מעולם בבהמה שחוטה.

ועוד שנינו במשנה (עד,ב) מחלוקת ר' מאיר וחכמים, שר' מאיר סובר שבן ט' חי טעון שחיטה מן התורה, וחכמים סוברים ששחיטת אמו מטהרתו. ומקשה הרא"ש (סי' ה) לשיטת ר"מ, איך הותר בן ט' מת, דלמא מת לאחר שחיטה (ולפני שהוציאו ממעי אמו)? ומתרץ "אלא ודאי אפילו מת אחר שחיטה, מותר כל זמן שלא יצא חי לאויר העולם" "דגזירת הכתוב הוא, שהרי למדנו מוכל בבהמה תאכלו שאם חותך מן העובר מותר ואילו נחתך מן הבהמה אסור". חזינן בזה שאף שהיה חי בזמן השחיטה, בכל זאת אינו אסור, דהיתרו אינו מחמת השחיטה, אלא המתיר הוא עצם זה שנמצא במעי אמו המותרת באכילה.[15]

אחרים הסבירו שיסוד דין ב"פ הוא שנחשב לחלק מהאם והוא מותר כמו שאר איברי האם. אך גם הסבר זה לא יכול לבאר את הגמרא בריש פרק בהמה המקשה (המובאת להלכה ביו"ד יד,ו) שאם חותכים מאבריה הפנימיים של הבהמה ומה שנחתך נשאר במעי הבהמה עד אחר שחיטתה, החתיכות אסורות מטעם אבר מין החי. דהיינו שהשחיטה אינה מסלקת מהם את איסור אבר מהחי אם הם אינם מחוברים לבהמה. לעומת זאת עובר שנחתך במעי אמו ניתר בשחיטת אמו. א"כ ברור מזה שאין היתרו של ב"פ מטעם שנחשב לחלק מהאם.

הסבר שלישי מצינו והוא דב"פ הוי "גזירת הכתוב" כלומר מילתא בלא טעמא ואין לנו להרהר אחר הגיונו וסברתו, "גזירה היא מלפני ואין לכם רשות להרהר אחריה". אלא שגם זה לא מספיק לפרש דיני ב"פ. כי הנה ר' שמעון שזורי מחדש, ופוסקים כדעתו (יו"ד יג,ד) דבני בניו עד סוף כל הדורות הוין ב"פ. אבל בכל מה שמהפכים בפסוק "כל אשר בבהמה תאכלו", שממנו לבד נלמדים דיני ב"פ אי אפשר למצוא שום רמז או סמך דבני בניו עד סוף כל הדורות הוין ב"פ. וכן גזרת הכתוב איננה יכולה להסביר כיצד יתכן שאין בב"פ לא איסור כלאים ואולי גם לא איסור רביעה[16].

ועל כן פשוט שיסוד דין ב"פ נובע מסברה פשוטה וברורה שב"פ הוי מין בפני עצמו ואינו בכלל דיני בהמה המוכרים לנו, ורק הסבר זה יכול לבאר את כל התמיהות שנאמרו לגבי ב"פ. ולכן גם נראה שאין מקום לגזרת מראית עין כאשר מדובר במין שונה כמו שאין גזירת מראית עין בחתיכת דג הנראה כמו בשר ומותר לבשלו בחלב.

ד. מקרים שבהם אין גזירת אחלופי ומראית עין

אף שכאמור חז"ל גזרו שלא לאכול ב"פ ללא שחיטה מפני מראית עין - דלמא אתי לאחלופי בשאר בהמות כשרואין שאוכל אותו בלא שחיטה וכן אסרו חלבם וגידם.[17] בכל זאת חז"ל הגבילו גזירה זו במקרים רבים, והתירוהו חלבם וגידם (שו"ע יו"ד סה,ז):

א. ב"פ, בן ח' חודשים אפי' כשגדל ואין ניכר שום הבדל בינו לבין בהמה רגילה (שו"ע

15. ודברי הרא"ש הם לכאורה פשט המשנה, שהרי המשנה לא כתבה "השוחט את הבהמה, והיה בה בן שמונה חי", אלא כתוב "השוחט את הבהמה ומצא בה בן שמונה חי", דהיינו שנמצא בזמן שנפקע כריסה ויצא לאוויר העולם. ולכן נקרא דווקא ב"פ, ולא "בן שחוטה", ועי' בש"ך (ס"ק ז) שפירש שם שהולד נקרא ב"פ על שם "שנפקע כריסה ונמצא בה".
16. עיין תוספות ד"ה למעוטי חולין עד ב וברש"ש שם.
17. רש"י עה,ב ד"ה הפריס וכן בש"ך ובט"ז.

יו"ד יג,ב). **ב.** ב"פ בן ט' חודשים שלא הפריס על גבי קרקע (עמד על פרסותיו והלך - שו"ע שם). **ג.** אפילו בן ט' חי שנפסק שטעון שחיטה, היינו דוקא שאין לו סימן או היכר שבהמה זו משונה היא.[18]

ויש להדגיש שלא אסרו את החלב של בני פקועה אלו, ולא חששו לאחלופי בשאר חלב אסור כשרואין אותו אוכל חלב. וכן לא אסרו גידם, ולא חששו לאחלופי. כמו"כ לא גזרו על טריפות שאינם מחמת שחיטה כמבואר בשו"ע (שם, ובש"ך ס"ק ה). ואפילו לראשונים (עי' ספר-התרומה סי' מא) שסוברים שטרפה הניכרת לכל, כגון חסר או יתר רגל שהיא אסורה, היינו דוקא באופן שהב"פ טעון שחיטה.

ה. עמדת הרב שמואל הלוי ואזנר זצ"ל

הלכה למעשה בשו"ת שבט-הלוי (ח"ח סימן קעח) הביע התנגדות לעצת ב"פ. אלא שהמעיין בתשובה יראה שלא נמצאה בה שום טונה הלכתית, והנימוק היחיד המובא בה הוא ש"זה רצון הבורא ב"ה שינהוג שחיטה מן התורה ושינהגו בה עפ"י הלכה, וינהגו בה הפרישות מחששי טריפות".[19]

לעומת דברים אלו, אם אמנם בעדר בני פקועה בני שמונה אין איסור טריפות, חלב וגיד, תהיה בכך תועלת רבה ביותר לעולם הכשרות - הן בהעלאת רמת כשרות הבשר, הן בהורדת מחירי הבשר הכשר והן במניעת זיופי כשרות.

18. דין זה מבואר בגמ' (עה,ב), אמר אביי הכל מודים בקלוט ב"פ שמותר, מאי טעמא, כל מלתא דתמיהא מידכר דכירי לה אינשי, ומפרש רש"י "קול יוצא מאז, קלוט זה ב"פ הוא, ומתוך שתמהין על קליטותו זוכרין את כל דבריו". ונפסק כן להלכה בשו"ע (שם סעיף ב. עיי"ש שיש מצריכים ב' דברים תמוהים ולהלכה אזלינן בספק דרבנן לקולא ודי בסימן אחד). ועל כך מוסיף הרמ"א "או שהיה בו שום שאר דבר תמוה", ומקורו מהאור-זרוע, מובא בהגהות-אשר"י ודרכי-משה וז"ל ורבי שמריה קבל מרבו רבי אליעזר בן רבינו משולם שרב שרירא גאון, אבי רב האי גאון, עשה ב' מעשים... וגם בני פקועות היו לו ולא שחט אחד מהם, אלא המית שניהם בקופיץ בין קרניהם והאכילום בחופה, ואין משם ראיה להתיר בלא שחיטה [כדעת ר"ש שזורי במשנה שאפלו בן חמש שנים וחורש בשדה אין בו גזירת מראית עין] דשאני התם דחופה הוי ותמיהי אינשי, כההיא דאביי דאמר הכל מודים בקלוט ב"פ שהוא מותר בלא שחיטה דמתוך שתמה על קליטתו קול יוצא עליו שהוא ב"פ ולא אתי לאיחלופי עכ"ל. ושאלתי את הר"ח קנייבסקי מנין ידעו הגאונים להשוות דין פרסותיו קלוטות שאין צריך שחיטה, להיא מעשה שעשו כן בחופה, שאינו סימן בגוף הבהמה, ואינו שינוי משעת לידה כמו בפרסותיו. ותירץ (אם פענחתי נכון את הכתב), "סברא"! עוד שאלתי אותו: האם הגאונים גידלו עדרים של בני פקועה? תשובתו: "כן". האם מותר לעשות כן לכתחילה היום? תשובתו: "כן".

19. וז"ל שם: "זה לא מכבר שאלנו מפלפל אחד מחו"ל דהיות דיש כמה בעיות בשחיטות ובדיקת הריאה וכו' הלא אפשר לעשות העצה עפ"י המבואר בשו"ע יו"ד סי' יג ס"ד דבן פקועה הבא על בת פקועה הרי בנו ובן בנו עד סוף הדורות אינם טעונים שחיטה רק מדבריהם ואין טריפות פוסל בהם, ולכן אם נקח היום בן פקועה שבא על ב"פ ונעמיד מהם עדרים עדרים יהיו כל השחיטות כשר חלק, וגם בלי חשש טריפות.
אבל הם פטפוטים בעלמא; חדא דאיני רואה כהיום חששות בשחיטה יותר מכל הדורות. ושנית דזה רצון הבורא ב"ה שינהוג שחיטה מן התורה ושינהגו בה עפ"י הלכה, וינהגו בה הפרישות מחששי טריפות, וכמבואר סו"פ שמיני להבדיל בין הטמא ובין הטהור, ובין החיה הנאכלת ובין החיה אשר לא תאכל, וכמש"כ רש"י שם מתו"כ בין נשחט חציו לבין נשחט רובו בין נולדו סימני טריפה אסורה לבין נולדו סימני טריפה כשרה. סו"ד ח"ו להרהר על המסורה שלנו שאפשר ואפשר להעמיד דת כפי הנמסר מדור דור".

Over 6,000 Households Participate in Beit Hillel's Shabbat Yisraelit

December 17, 2013 in Beit Hillel, News, Projects, Videos
by BeitHillel

On Shabbat Parshat Chayei Sara (October 25, 2013) we witnessed an historical moment in Israel. Over 6,000 households participated in Beit Hillel's country-wide initiative — **Shabbat Yisraelit** — that brought together religious and non-religious families for Friday night dinner. Government Ministers, members of Knesset, mayors, IDF commanders, musicians, as well as thousands of Israelis from over 50 different cities, participated in the initiative. Beit Hillel Executive Director Rav Ronen Neuwirth had the tremendous privilege to host Zev Bielsky, the mayor of Ra'anana and former chairman of the Jewish agency.

Shabbat Yisraelit represents the application of the two halachic rulings that Beit Hillel published over the past year; specifically about Shabbat invitations and the possibility of eating at the home of someone who does not observe Kashrut.

Shabbat Yisraelit received mass media coverage — interviews on TV and radio, print and online news articles, op-ed pieces, and social media outlets. For example, see the Jerusalem Post's review 'Religious-Secular' Shabbat Attracts 6,000 Households.

We also produced an educational booklet specifically for Shabbat Yisraelit, which

contains articles about Shabbat written by both observant and non-observant people. The printed edition was distributed in 110,000 copies across Israel. An electronic version of the booklet (Hebrew) can be downloaded: Shabbat Yisraelit Guide.

Shabbat Yisraelit created a big buzz, and was very well received by both the religious and non-religious communities. In response to the numerous requests of the non-observant guests to host the religious families, Beit Hillel will continue this initiative on Chanukah wherein the families will get together for a joint candle lighting ceremony.

If you haven't already seen it, check out the special humorous video clip (a spoof of National Geographic) that we produced to promote the initiative — a clip that has already received close to 150,000 views.

Outreach or Stumbling Block? Extending Shabbos Invitations to the Nonobservant

One of the most common strategies that are employed in the ongoing effort to draw nonobservant Jews closer to Torah observance is to share with them the beauty and warmth of the Shabbos table. The common practice of extending invitations to the nonobservant has given rise to the difficult and complex question of whether such invitations are indeed a commendable form of *kiruv*, or actually facilitate additional Shabbos desecration. Knowing that the invitee will arrive at the Shabbos meal by car, the host inadvertently causes the guest to commit an additional transgression, even as he intends to inspire him to embrace halachic observance. Extending such an invitation, then, might transgress the Torah prohibition of לפני עור לא תתן מכשול — "You shall not place a stumbling block before a blind man" (Vayikra 19:14) — which is interpreted as referring to causing others to sin. Another issue to consider is the prohibition discussed by numerous halachic authorities against assisting those committing a transgression — מסייע לדבר עבירה.

We will begin our discussion by examining the possibility of equating "spiritual rescue" with the rescue of one's physical life, such that we may suspend Torah law in the effort to reach out to nonobservant Jews and inspire them to lead a halachic lifestyle. We will then proceed to address the parameters of לפני עור and מסייע, and conclude with a survey of the views taken by recent and contemporary *poskim* with regard to this subject.

I. Violating the Torah to Save a Soul

The Rashba and the *Shulchan Aruch*

The possibility of allowing Torah violations for the sake of "spiritual rescue" emerges from a ruling of the *Shulchan Aruch* in the context of Shabbos:

> If someone received word that his daughter was taken from his home on Shabbos for the purpose of removing her from the Jewish nation, it is a *mitzva* to travel to try to rescue her, and he may even travel beyond three

> *parsaos*. If he does not want [to desecrate Shabbos for this purpose], we force him [to do so]. (O.C. 306:14)

The *Shulchan Aruch*'s ruling stems from his discussion in *Beis Yosef*, where he cites and disputes the ruling of the Rashba in one of his responsa (7:267). The Rashba was asked about this case and replied הדבר צריך תלמוד — "this matter requires study." Despite his ambivalence, the Rashba proceeds to take the position that it is forbidden to desecrate Shabbos to rescue somebody from spiritual danger: אין דוחין את השבת על הצלה מן העבירות ("One does not desecrate the Shabbos to rescue [somebody] from sin"). He draws proof from the Gemara's ruling in Maseches Shabbos (4a) regarding the question of removing dough that one had placed in an oven on Shabbos, before it is baked. The Gemara rules that although the one who had placed the dough in the oven will be liable for Shabbos violation if the dough remains in the oven long enough to bake, others are not permitted to remove the bread from the oven — which entails a Shabbos violation — in order to save him from liability. Accordingly, the Rashba rules, it is forbidden to desecrate Shabbos for the sake of preventing a person from sin, and hence one may not travel on Shabbos to rescue somebody who is coming under pressure to renounce and abandon the Jewish faith.

The *Beis Yosef*, however, disputes the Rashba's position, noting Tosfos' discussion concerning the case addressed by the Gemara of the bread placed in the oven. Tosfos questions the Gemara's ruling in light of the Mishna's comment in Maseches Gittin (41b) that the master of a חצי עבד וחצי בן חורין ("half -servant") is forced to release the servant so that he would be able to get married.[1] Despite the fact that releasing a gentile servant transgresses a Biblical command[2], the Mishna nevertheless permits and even requires a master to do so for the sake of enabling the servant to fulfill the *mitzva* of marriage and procreation. Seemingly, this indicates that one may, in fact, transgress a Biblical command for the spiritual benefit of another person. Tosfos suggests two distinctions to reconcile the Mishna's ruling with that of the Gemara concerning the dough in the oven. First, Tosfos proposes that the situation of the servant is unique due to the singular importance of procreation. Whereas generally one may not violate the Torah for the spiritual benefit of others, this is allowed, and even required, to allow somebody to marry and beget children. Secondly, Tosfos suggests that the issue

---

1. A חצי עבד וחצי בן חורין is a servant who was co-owned by two partners until one of them released his "portion" of the servant, such that he is now half servant and half freeman. Under these circumstances, he is unable to marry, as his status as a half-servant makes it forbidden to marry an ordinary Jewish woman, and his status as a half-freeman makes it forbidden to marry a maidservant.
2. See Gittin 38b: כל המשחרר את עבדו עובר בעשה.

might depend on whether or not the person in need of spiritual assistance is at fault. In the case under discussion in Maseches Shabbos, the individual acted wrongly by placing dough in the oven, and the Gemara thus does not allow others to commit a halachic violation to spare him the consequences of his wrongful act. The Mishna in Gittin, however, speaks of a servant who for no fault of his own finds himself halachically unable to marry, and under such circumstances one may violate a Biblical command to give him the ability to fulfill the *mitzva* of procreation.

The *Beis Yosef* notes that according to both answers proposed by Tosfos, it would be permissible to violate Shabbos in the situation discussed by the Rashba. According to Tosfos' first answer, Torah law is suspended for the sake of facilitating a *mitzva* of special importance such as procreation, a provision that would certainly apply when somebody is at risk of being led away from Torah observance altogether. And according to Tosfos' second answer, one may violate Torah law to save somebody from a spiritually threatening situation which came about through circumstances beyond his control, which is clearly the case when a girl is abducted by missionaries.

The *Beis Yosef* accepts *Tosfos*'s view, and thus allows — and even requires — a father to violate Shabbos in order to save his daughter from missionaries.

The *Nachalas Shiva*

A third view is presented by the *Nachalas Shiva* (*Teshuvos*, 83), who allows and requires violating the Torah for the sake of "spiritual rescue" under all circumstances, regardless of whether the individual is at risk of committing a minor or major transgression, and even if he is to blame for the situation. The *Nachalas Shiva* bases his view on the premise that rescuing one's fellow from sin is no less vital than rescuing him from death. He writes, להציל נפשו מני שחת ממיתה נצחית לא כל שכן — "To save his soul from destruction, from eternal death, all the more so [that this effort overrides Torah law]." In his view, the provision requiring a person or even many people to desecrate Shabbos for the sake of saving a human life, even if there is some doubt whether the efforts will succeed, is fully applicable in situations of spiritual danger.[3]

3. The *Nachalas Shiva* notes that this rationale was expressed in the question sent to the Rashba in the aforementioned responsum, and that although the Rashba did not accept this argument, he did acknowledge הדבר צריך תלמוד, that the matter requires further study, and did not definitively reject this view. It should be noted, however, that the Rashba indeed appears to implicitly reject this contention by citing the Gemara's ruling in Maseches Shabbos forbidding the minor violation of removing the dough from the oven for the sake of rescuing one from sin.

This is also the implication of the *Taz*, who gives the following explanation for the *Shulchan Aruch*'s ruling requiring the father to rescue his daughter on Shabbos: הכא שרוצים להמירה ותשאר מומרת לעולם אחר כך...יש להצילה בחילול שבת דזה עדיף מפיקוח נפש ("Here, where they are seeking to have her renounce her faith and she would thus remain an apostate forever…she should be saved through Shabbos desecration, as this is even more important than rescuing a life").

The *Minchas Chinuch* (239:6), too, expresses this view, in his discussion of the *mitzva* of *tochecha* (reprimanding violators). He writes that this requirement is included under the prohibition of לא תעמוד על דם רעך (Vayikra 19:16), which forbids remaining idle when another person's life is at risk, and also under the command of השבת אבידה (returning lost property), which includes the requirement to save one's fellow from bodily harm (אבידת גופו; see Sanhedrin 73a). If one is commanded to intervene to rescue a person from physical danger, the *Minchas Chinuch* writes, then one is certainly required to expend efforts to save sinners from spiritual ruin: על אחת כמה וכמה דאם יכול להצילו מן העבירה דהוא אבידת נפשו וגופו ר"ל בודאי חייב להחזירו למוטב ולהצילו — "All the more so, if one can rescue him from sin, which involves the loss of his soul and body, Heaven forbid, he is certainly obligated to return him to proper conduct and [thereby] rescue him."

This rationale actually appears in an earlier source — a responsum of the Maharshdam (Y.D. 204), where he rules that one is required to spend money to rescue another person from sin. He notes the Gemara's ruling (Sanhedrin 73a) requiring one to even incur an expense to save somebody's life, and then comments: ואם להציל דם חבירו חייב לטרוח בין בגופו בין בממונו להצילו, להציל נפשו מני שחת עאכו"כ — "If one is obligated to invest both physical effort and money to save somebody's life, all the more so [he must do so] to save his soul from destruction."[4]

This notion is further developed by the *Chafetz Chaim*, in his work *Chomas Ha-das* (*Chizuk Ha-das*, 3). He writes that just as if we see an ill patient trying to obtain foods that could kill him, we are required by the Torah to try to prevent him from eating such foods, similarly, we are required to try to persuade people to avoid sin. The *Chafetz Chaim* further notes that *Halacha* requires hiring professional lifeguards to rescue a person who is drowning, when this is necessary to save his life, and thus by the same token, "we must search for people who are gifted, God-fearing speakers who know how to draw the hearts of Israel toward their Father in heaven."

---

4. This point is also made by the *Shela*, in *Derech Chaim Tochechos Mussar*, Parashas Kedoshim, where he writes that the prohibition of לא תעמוד על דם רעך applies to rescuing sinners from spiritual "death": ואם נתחייבנו בהצלת הגוף, כל שכן בהצלת הנפש, שאם ידאנו עובר עבירה שמאבד עולמו יצילהו.

A possible basis[5] for this view of the *Nachalas Shiva* is *Chazal*'s comment establishing that leading a person to sin is a more grievous offense than murder:

> המחטיא את האדם קשה לו מן ההורגו שההורגו אין מוציאו אלא מן העולם הזה והמחטיאו מוציאו מן העולם הזה ומן העולם הבא.
>
> One who causes a person to sin has committed a more grievous offense than one who kills him, for one who kills him drives him only from this world, whereas one who causes him to sin drives him from this world and the next. (*Sifrei*, Ki-Seitzei 252)

The *Sifrei* classifies מחטיאו — causing one's fellow to sin — as an especially grievous form of murder. The implication of this remark is that sin is akin to death — and even worse than death — and thus we are required to take the same measures to save a person from sin as we are to save one from death. This emerges more clearly from a passage in the *Midrash Tanchuma* (Pinchas, 4), which cites this comment in reference to the command issued to *Benei Yisrael* to avenge Midyan's scheme to lead them to sin. The *Tanchuma* states in that context, "On this basis, the Sages said: One who approaches to kill you — arise and kill him," and it then proceeds to cite the rule that causing one to sin is worse than murder. It seems clear that the Midrash seeks to equate spiritual ruin with murder, such that the same means that must be employed to protect against death are required to save a person from sin.

Further support for the *Nachalas Shiva*'s theory may be drawn from the comments of the Ritva in Maseches Megilla (14a) concerning the establishment of Chanukah and Purim. The Purim celebration, as the Gemara there notes, was instituted based on the rationale that "if we sing praise for leaving from bondage to freedom [on Pesach], then all the more so [we should celebrate] leaving from death to life." Given the requirement to celebrate our release from Egyptian bondage on Pesach, the religious leaders at the time of the Purim miracle reasoned that a celebration must certainly be instituted for the Jews' rescue from Haman's decree of annihilation. The Ritva briefly comments that this rationale also formed the basis for the establishment of Chanukah after the Jews' victory over the Greeks. Despite the fact that the Greeks oppressed the Jews spiritually, but did not threaten them with annihilation, nevertheless, according to the Ritva, the religious leaders at the time of the Chanukah miracle saw themselves as having been delivered "from death to life." Apparently, the Ritva equated spiritual demise with physical death, and thus the deliverance

5. This point was made by the *Shevus Yaakov*, who, as we will soon see, disputed the *Nachalas Shiva*'s position.

from spiritual persecution is as at least as significant and worthy of celebration than the deliverance from the threat of physical annihilation.

The *Shevus Yaakov*'s Objections

The *Shevus Yaakov* (1:16) cites and dismisses the *Nachalas Shiva*'s theory, noting that the concern for human life overrides virtually all of the Torah's commands (with the well-known exceptions of murder, idolatry and immorality). If sin is akin to, and even worse than, death, the *Shevus Yaakov* argues, then there should be no reason for the protection of life to supersede Torah law. After all, why should one subject himself to spiritual "death" to save himself from physical death?

We may, however, easily respond that the Torah itself mandates protecting one's life at the expense of Torah law. When one commits a Torah violation to save his life, he does not cause himself spiritual "death" at all, because he does precisely what the Torah itself instructs him to do. And thus the suspension of Torah law in situations of life-threatening danger in no way reflects a preference for physical life over spiritual life.

The *Shevus Yaakov* further challenges the *Nachalas Shiva*'s view by arguing that if one commits "spiritual suicide" by engaging in sinful behavior, there is no justification for allowing others to transgress the Torah to intervene and prevent him from sinning. The underlying assumption of this argument appears to be that *Halacha* does not require one to transgress the Torah to rescue a person who attempts to take his own life. But while this is, in fact, the position taken by the *Minchas Chinuch* (237, *Kometz Ha-mincha* 2), Rav Moshe Feinstein rejected this view in several contexts.[6] Accordingly, when it comes to "spiritual rescue," too, it stands to reason that one may transgress the Torah for the sake of trying to rescue a person who knowingly put himself at spiritual risk.

Rescuing a Soul Through a Shabbos Invitation

Returning to our original question, it would appear that according to the *Nachalas Shiva*'s position, that rescuing a person from sinful behavior is akin to rescuing a person's life, efforts to lead a fellow Jew toward halachic observance may be made even at the expense of Torah law. As long as there is a reasonable chance that the measure one wishes to undertake will have the effect of drawing the person to embrace a Torah lifestyle, it would be permitted even if it entails a halachic violation. It must be emphasized that one does not have to know with certainty that the undertaking will succeed in inspiring the Jew or Jews

6. See *Iggeros Moshe* Y.D. 2:174, 3:90, and elsewhere.

in question. *Halacha* permits violating Shabbos to attempt to save a life even if success cannot be guaranteed, as long as there is a reasonable chance of success. And thus once we accept the equation between protecting physical life and protecting spiritual life, outreach efforts may override the Shabbos restrictions, as long as there is a reasonable chance that they will succeed.

As such, according to the *Nachalas Shiva*, if one has reason to believe that a Shabbos invitation could trigger a fellow Jew's return to Torah observance, it would be permissible to extend such an invitation, even if this violates the prohibition of לפני עור לא תתן מכשול by causing the guest to drive on Shabbos.

In truth, it may be argued that even the *Shulchan Aruch* and Rashba would permit such an invitation. The entire discussion thus far has focused on the issue of committing a transgression to prevent **another person** from sin, and, as we have seen, different opinions exist as to whether and when this is permissible. It seems reasonable to assume, however, that all authorities would agree that a person would be permitted to transgress the Torah in order to save himself from sin. After all, the Gemara in Maseches Shabbos states explicitly that the individual who placed the dough into the oven may then remove it, in violation of a minor halachic prohibition, in order to save himself from a capital offense. Presumably, even the Rashba would agree, therefore, that the girl who was taken by missionaries would be permitted to violate Shabbos to extricate herself from their influence. Even though the Rashba forbids others from violating Shabbos to rescue her, she would be allowed to violate Shabbos to flee.

Taking this line of reasoning one step further, as one is allowed to violate Shabbos to save himself from sin, others who facilitate such Shabbos desecration do not violate לפני עור. Since the Shabbos desecration which one facilitates in halachically permissible under the circumstances, the facilitator cannot be considered as causing sin. If so, then even according to the Rashba one would be allowed to extend an invitation to a nonobservant Jew if there is a reasonable chance that the experience will lead to his or her embracing Torah observance.

II. לפני עור

Let us now turn our attention to the prohibition of לפני עור to determine whether it applies to an invitation that causes a Jew to desecrate Shabbos. Irrespective of our previous discussion regarding the possibility of suspending Torah law to bring a fellow Jew closer to observance, would extending an invitation truly constitute "a stumbling block" that transgresses the prohibition of לפני עור לא תתן מכשול?

The Gemara in Maseches Avoda Zara (6b) establishes that providing

somebody with forbidden food to eat[7] violates the Torah prohibition of לפני עור, but only in a situation of תרי עיברא דנהרא — "two sides of the river." Meaning, one violates this prohibition only if the recipient would otherwise be unable to obtain the forbidden food, such as if he is situated across the river from the food. If the recipient has independent access to the food, and somebody happens to give it to him, the latter has not violated לפני עור since he has not facilitated the sin, which could have been violated even without his involvement. This *halacha* is accepted by numerous halachic authorities (see *Shach*, Y.D. 151:6; and *Magen Avraham*, 347:4).[8]

Applying this rule to the question surrounding Shabbos invitations, we might, at first glance, conclude that extending an invitation is permissible, as the host does not actually facilitate the Shabbos desecration. After all, the guest does not require an invitation to violate Shabbos, and, in many cases, he has the ability to arrive at the meal in a permissible manner — by foot — but chooses on his own to drive in the interest of convenience. Therefore, as the host does not actually cause the Shabbos desecration, he does not transgress לפני עור.

Upon further reflection, however, this conclusion is far from simple. First, the Gemara's rule of "two sides of the river" does not necessarily limit לפני עור to situations where the violator would have had no possibility whatsoever of committing the transgression. After all, in the Gemara's case, where the forbidden food is situated across the river, the individual would still be able to obtain it somehow. It seems that לפני עור requires not that one makes it possible for the transgression to be committed, but rather that he makes it reasonably feasible. If the forbidden food is across the river, the individual would not likely have been willing to endure the inconvenience of crossing the river to access the food, and for this reason the person who brings him the food is considered to have facilitated the transgression.

Indeed, the Meiri, commenting on the Gemara's discussion, writes, אם אינו מוצא אלא בטורח אסור להמציא לו בהזמנה — "If he does not find [the forbidden food] readily accessible, then it is forbidden to make it available to him." This formulation clearly indicates that providing one easy access to forbidden food transgresses לפני עור even if the transgression would otherwise have been possible, since one makes the violation more convenient and thus more feasible.[9]

---

7. The examples given are providing wine to a *nazir*, and providing a limb taken from a live animal to anyone, even a gentile.
8. Curiously, neither the Rambam nor the *Chinuch* mention the condition that לפני עור applies only in situations where the violation could not have been committed without the second party's assistance, an enigma noted by the *Minchas Chinuch* (232:3).
9. See also *Chavos Yair* 185; *Kesav Sofer* Y.D. 83.

Accordingly, even if it is possible for the guest to walk by foot to the host's home for Shabbos lunch, the invitation nevertheless encourages the guest to drive, in violation of Shabbos. As driving is far more convenient than walking, the host in effect facilitates Shabbat desecration but putting the guest in a situation of "easily accessible" Shabbos violation. Indeed, Rav Moshe Feinstein (*Iggeros Moshe*, O.C. 1:99) forbade extending an invitation to nonobservant Jews to attend a prayer service if it can be assumed that they would drive, noting, "Even if they are not so far [from the synagogue], nevertheless, if it is known that they will not want to bother walking by foot and will drive in a car, this is forbidden because of לפני עור."

Secondly, even though the guest's Shabbos desecration does not depend upon the invitation, extending the invitation might nevertheless be forbidden insofar as it causes the desecration. The Gemara permits transferring forbidden food to somebody across the river, but there are two conceptual approaches one could take in explaining this ruling. The first is that לפני עור is violated only when it facilitates a transgression that would not have otherwise been feasible. Alternatively, however, we might explain that לפני עור is defined as causing a person to sin, and if a person did not need assistance to commit a transgression, then lending assistance does not constitute לפני עור, as this assistance was unnecessary and thus did not meaningfully contribute to the sinful outcome. The difference between these two perspectives is that the first defines לפני עור as **enabling** one to commit a sin, whereas the second defines the prohibition as **causing** one to sin.

To understand more clearly the difference between these two definitions, let us consider the simple case of a person who instructed his fellow to commit a sin, and the fellow obeys. The violator committed the sinful act independently, without any assistance, but would never have thought to do so had his friend not given the instruction. In this case, the friend did not **enable** the violation, which the sinner committed without any assistance, but he did **cause** the violation, which would not have occurred if he had not issued the directive. Indeed, the *Mishpetei Shemuel* (134) ruled that instructing somebody to commit a sin which he would not have otherwise contemplated constitutes לפני עור, even if the offender needed no practical assistance. Since the one who instructed him was the cause of the sin, he violates לפני עור.

A possible source for this perspective in the Rambam's formulation in defining this prohibition in *Sefer Ha-mitzvos* (*lo ta'aseh* 299): מי שיעזור על עבירה או יסבב אותה — "One who helps [the committing of] a transgression, or **causes it**."[10]

10. This point was made in *Chafetz Chayim* (Introduction, לאוין ד', in *Be'er Mayim Chayim*), and by the Chazon Ish (Y.D. 62:13).

This argument could easily be applied to Shabbat invitations, as well. One who extends the invitation is certainly not **enabling** the sin of driving on Shabbos, but he does **cause** the act of driving by inviting the guest. This appears to have been the view of Rav Moshe Feinstein (*Iggeros Moshe* O.C. 1:98) who forbade inviting nonobservant Jewish youth to a Shabbos prayer service, because "he is considered like instructing them to come to pray with a *minyan* even in a manner that involves *chilul Shabbos*," seemingly referring to the Torah prohibition of לפני עור.[11]

Is There Such a Thing as a Well-Intentioned Stumbling Block?

On the other hand, one might counter that the prohibition of "placing a stumbling block before a blind person" requires, by definition, malicious intent. When a person extends a Shabbos invitation for the purpose of outreach, his intent is obviously not to cause the guest to spiritually "stumble." To the contrary, his intent is to lead him away from the road laden with "stumbling blocks" along which he currently travels, onto the road of Torah observance and fear of God. Even if the immediate, short-term effect of the invitation is an act of Shabbos desecration, the objective and intent are not to cause the individual to "stumble," but rather to grow in halakhic commitment.

Rav Moshe Sternbuch (*Teshuvos Va-hanhagos*, 1:358) advances this theory to permit extending invitations to a nonobservant Jew for the purpose of drawing him closer to observance. He compares such an invitation to the case of a surgeon who inflicts a wound in the patient in order to treat him and cure his illness. Undoubtedly, the surgeon does not commit a forbidden act of violence by making an incision in the patient's skin, as this is done to help the patient's body, not to cause it harm. By the same token, Rav Sternbuch argues, causing a nonobservant Jew to drive on Shabbos for the purpose of guiding him toward halachic observance does not constitute a "stumbling block," as it is done for the guest's spiritual benefit, not detriment.

A source for this contention is Rabbi Akiva Eiger's comments to the *Shulchan Aruch* (Y.D. 181:6) concerning the situation of a woman cutting a man's sideburns. While it is forbidden for men to remove their sideburns and to have their sideburns removed by somebody else[12], this prohibition does not apply to women. According to one view in the *Shulchan Aruch*, a woman is even permitted to remove a man's sideburns, and Rabbi Akiva Eiger raises the question of why this would not be forbidden on the grounds of מסייע לדבר עבירה (assisting

11. Rav Moshe also notes that educating youth about prayer should not come at the expense of educating them about Shabbos observance.

12. לא תקיפו פאת ראשכם — Vayikra 19:27.

in a Torah violation)[13], as the man commits a Torah violation by having his sideburns removed. He suggests that this does not constitute מסייע since the woman ultimately rescues the man from a double Torah violation:

> אם לא היתה מגלחת אותו היה מגלח בעצמו והיה עובר בב׳ לאוין.
>
> If she would not have cut his hair, he would have cut it himself, and he would then be in violation of two prohibitions.

A man who cuts his own sideburns transgresses two Torah violations — removing sideburns, and having his sideburns removed. And thus the woman, by removing the man's sideburns, saves him from one transgression, and, as such, her actions do not constitute מסייע לדבר עבירה.

Rabbi Akiva Eiger here establishes that the broader picture must be taken into account when assessing the permissibility of facilitating a transgression. If the net result is a positive impact upon the person's religious observance, then the action is permissible even if in the short-term it causes a Torah violation. And thus in the case of a Shabbos invitation, too, even if the immediate result is an additional Torah violation, it would be permissible in light of its long-term positive impact.[14]

Moreover, the *Toras Kohanim* interprets the command of לפני עור as referring also to משיאו עצה רעה, offering somebody injurious advice. Clearly, one does not transgress this prohibition by advising his fellow to endure short-term harm for long-term benefit, such as to undergo beneficial surgery, or to make a financial investment with reasonable potential for a large return. Presumably, then, the other prohibition of לפני עור, which forbids causing spiritual harm by causing others to sin, would not apply when one causes another to sin for his ultimate spiritual benefit.

III. מסייע לדבר עבירה

Is There a Prohibition of מסייע?

Beyond the Torah prohibition of לפני עור, we must also consider the possibility of applying to this case the prohibition of מסייע לדבר עבירה, the rabbinic prohibition

13. We will discuss the subject of מסייע לדבר עבירה at length in the next section.
14. One could distinguish between the situation addressed by Rabbi Akiva Eiger, where the positive impact of the woman's action occurs immediately, and the case of a Shabbos invitation, where the positive outcome will be manifest only in the future. Nevertheless, Rabbi Akiva Eiger's comments provide a clear basis for the concept that לפני עור depends upon the broader effects of one's actions, and not only their immediate result.

against participating in a sinful act, even if it could be committed without one's involvement.

The source for this prohibition is Tosfos' comments in the beginning of Maseches Shabbos (3a) concerning the situation of a poor person collecting charity outside someone's door on Shabbos. The Mishna states that if the poor man thrusts his hand through the doorway into the home and takes a gift from the homeowner's hand, the beggar violates Shabbos, but the homeowner commits no violation. In this case, the beggar brings an object from a private domain into the public domain, and thus violates Shabbos, whereas the donor has not committed any prohibited act. Tosfos raises the question of why the homeowner in such a case does not violate the prohibition of לפני עור. Despite the fact that the beggar could have taken the item in question even without the homeowner's involvement, Tosfos notes, "nevertheless, there is still a rabbinic prohibition, as he is obligated to prevent him from prohibited activity." This question is also raised by the *Tosfos Ha-Rosh*.[15] Tosfos thus assumes that although the Torah prohibition of לפני עור is limited to lending assistance that is vital for the sin, there is a rabbinic prohibition against lending even nonessential assistance.

Similarly, the Ran, in Maseches Avoda Zara (1b in the Rif), writes:

> מ"מ מדרבנן מיהא אסור, שהרי מחויב הוא להפרישו מאיסור, והיאך יסייע ידי עוברי עבירה.
>
> Nevertheless, it is still forbidden by the Sages, for he is obligated to prevent him from prohibited activity, and how can one assist those who commit violations?

According to Tosfos and the Ran, then, even if a person is independently capable of committing a transgression, it is forbidden to assist him in the forbidden act, by force of rabbinic enactment.[16]

Other *Rishonim*, however, appear dispute this position. Tosfos in Maseches

---

15. The *Turei Even* (Chagiga 13a) and *Kesav Sofer* (Y.D. 83) challenge Tosfos' question, noting that presumably the Mishna deals with a situation where the homeowner would be unable to prevent the beggar from violating Shabbos, and thus he has no obligation to intervene.

16. Both Tosfos and the Ran base this prohibition upon the principle of אפרושי מאיסורא, the requirement to prevent people from committing a transgression. As this requirement of אפרושי is rabbinic in origin, it stands to reason that according to these *Rishonim*, the prohibition of מסייע is likewise a rabbinic prohibition. This is the view of the *Bach* (Y.D. 303) and *Peri Yitzchak* (1:26). By contrast, the *Sha'agas Aryeh* (58) maintains that מסייע constitutes a Torah violation. Furthermore, the *Kesav Sofer* (Y.D. 83) writes that the obligation of לאפרושי stems from the Biblical command of הוכיח תוכיח את עמיתיך, in which case the prohibition of מסייע לדבר עבירה, by extension, would be regarded as a Torah prohibition. *Talmidei Rabbenu Yona* (Avoda Zara 6b) view the law of מסייע as based upon

Avoda Zara (6b) writes that it is permissible to give non-kosher food to a Jew who has abandoned halachic observance, as long as he can obtain it from other sources. Likewise, the *Mordechai* (Avoda Zara 790) rules that one may lend money or clothing to a Christian even if he knows that it will be used for religious practices, as long as the borrower has other available means of obtaining the money or item in question.

It thus appears that there is a debate among the *Rishonim* surrounding this issue of whether one may assist a person in committing a forbidden act if the violator has the ability to perform the act independently. The Rama cites both views in *Yoreh Dei'a* (151:1).

However, a number of *Acharonim* challenged the Rama's assumption that these sources reflect disparate views. They note that according to the Rama, Tosfos' comments in Maseches Shabbos, establishing the prohibition of מסייע לדבר עבירה, contradict Tosfos' own comments in Maseches Avoda Zara concerning the sale of forbidden foods to a Jew who had abandoned observance. Furthermore, the *Tosfos Ha-Rosh*, as noted earlier, acknowledges the prohibition of מסייע, yet in his commentary to Avoda Zara the Rosh follows the view espoused by Tosfos there in Avoda Zara. Rabbenu Yerucham, too, codifies Tosfos' ruling in Shabbos as well as Tosfos' ruling in Avoda Zara (17:6, 12:3), suggesting that these two rulings do not conflict with one another.

The question, then, becomes, how can we reconcile these two views — the ruling of Tosfos in Maseches Shabbos, and Tosfos' ruling in Maseches Avoda Zara?

Distinguishing Between Intentional and Unintentional Violations

One possibility is proposed by the *Shach*, commenting on the Rama's ruling. He suggests that all *Rishonim* recognized the prohibition of מסייע לדבר עבירה, but this prohibition does not apply to assisting a gentile or a *mumar* (Jew who willfully abandoned the Jewish faith). Although one generally may not lend even nonessential assistance to a Jew committing a sin, it is permissible to lend nonessential assistance to a gentile or *mumar* committing a forbidden act.[17] Tosfos in Maseches Shabbos speaks of a beggar who is ignorant of the Shabbos prohibitions, and they thus raise the question of why the prohibition of מסייע would not apply, whereas in Maseches Avoda Zara Tosfos deals with committed idolaters who knowingly worship a foreign deity.

The *Shach*'s comments give rise to the question of why a *mumar* should

---

the concept of כל ישראל ערבים זה לזה, and thus it would be a Biblical prohibition to assist one in committing a transgression.

17. See also *Bei'ur Ha-Gra*, and *Magen Avraham* (347:4).

be treated differently from any other Jew. After all, as *Chazal* famously taught (Sanhedrin 44a), ישראל אף על פי שחטא ישראל הוא — a Jew does not lose his halachic identity as a Jew even after committing sins. In light of this fundamental rule, it seems difficult to understand why the *Shach* would distinguish between a *mumar* and other Jews with respect to the issue of מסייע לדבר עבירה.

This question was raised by the *Dagul Mei-revava*, who explains that the *Shach* here does not refer specifically to a *mumar*, but rather speaks of any situation where a Jew seeks to intentionally commit a sin. The *Dagul Mei-revava* contends that the requirement to prevent one from sin applies only when one would commit an unintentional violation[18], and therefore, by extension, the prohibition of מסייע לדבר עבירה applies only to assisting people committing a transgression unintentionally. When a person sets out to knowingly commit a transgression, however, it would not be forbidden to assist him, as long as the assistance is not indispensable for the act, because the prohibition of מסייע does not apply. This approach of the *Dagul Mei-revava* is cited approvingly and discussed by Rav Moshe Feinstein, in *Iggeros Moshe* (Y.D. 1:72).

According to this approach, the application of מסייע to extending Shabbos invitations would depend upon the halachic classification of modern-day nonobservant Jews. Many recent and contemporary authorities classify nonobservant Jews under the category of תינוק שנשבה (literally, "an infant that was captured"), referring to the fact that they were denied a religious upbringing and are thus not held accountable for their nonobservance.[19] If so, then modern-day nonobservant Jews are not regarded as intentional sinners, and the prohibition of מסייע would apply.

Participation Before the Sinful Act

Several other *Acharonim*[20] suggest a different distinction to reconcile these conflicting sources, differentiating between assistance given at the time the sin is committed, and participation in the preparatory stages. In the case under discussion in Maseches Shabbos, the donor facilitates the beggar's Shabbos desecration at the time it occurs, and Tosfos therefore raises the question of why the donor is not in violation of מסייע. In Maseches Avoda Zara, by contrast, the assistance is given well in advance of the sinful act, as the individual sells a product that the idolater will later use in pagan ritual. In this case, since one does not participate in the sinful act at the time it occurs, and is involved only in the

18. Indeed, the Talmud speaks of the obligation of אפרושי מאיסורא in the context of minors, who are not considered intentional violators by virtue of their young age.
19. See, for example, *Binyan Tziyon Ha-chadashos*, 23.
20. *Meishiv Davar* (2:31), *Binyan Tziyon* (15), *Kesav Sofer* (Y.D. 83).

preliminary stages, this involvement does not violate the prohibition of מסייע. According to these *Acharonim*, the prohibition of מסייע differs in this respect from the Torah prohibition of לפני עור, which forbids facilitating a transgression even during the preliminary stages, such as by supplying non-kosher food.[21]

If we follow this view, then extending an invitation to a nonobservant Jew before Shabbos would certainly not violate מסייע, as the host's involvement in the Shabbos desecration occurs well in advance of the prohibited act.

We might, however, challenge this distinction on the basis of the Gemara's discussion in Maseches Nedarim (62b) concerning Rav Ashi's sale of lumber to a pagan cult that worships its deity by lighting fires. The Gemara establishes that such a sale would, in principle, violate the prohibition of לפני עור if not for the fact that most firewood is used for personal use (such as heat), and not for religious rituals. Since the wood would be used primarily for permissible purposes, Rav Ashi was allowed to sell the lumber. As noted by several *Acharonim*[22], the Gemara cannot be referring here to the Torah prohibition of לפני עור, as it is difficult to imagine that the cult members could not obtain wood from any other sources. Presumably, the purchase of Rav Ashi's wood was not indispensable to their pagan worship, and thus the Gemara must refer here to the rabbinic prohibition of מסייע, as opposed to the Torah violation of לפני עור.[23] And yet, it clearly considers this prohibition applicable even to involvement in the preliminary stages of sin, forbidding the sale of materials that will be used in pagan rituals.

It appears that these *Acharonim* did, in fact, understand the Gemara as referring to the Torah prohibition of לפני עור, as the plain reading of the Gemara suggests. This is the implication of the Meiri, who writes in the context of the Gemara's discussion, "It is forbidden for a person to provide idolaters items that are suitable for their worship, **for as long as it is possible that they will be unable to obtain [these materials] through other means, he is in violation of** לפני עור לא תתן מכשול." The Meiri clearly understood the Gemara to mean that the cult members would not necessarily have been able to obtain wood for their ritual from other sources, and thus the Torah prohibition of לפני עור could have

21. One might question this distinction in light of the fact that, as mentioned earlier, the prohibition of מסייע is based upon the requirement of אפרושי מאיסורא, which seemingly should not depend on the different stages in the process of committing a violation. See the *Kesav Sofer*'s responsum referred to above (in note 19) for a fuller discussion.
22. See *Keren Ora*, *Maharatz Chayos*.
23. The fact that the Gemara mentions here the prohibition of לפני עור (והאיכא לפני עור) can be explained on the basis of the *Bach*'s comment (Y.D. 303) that the prohibition of מסייע was legislated as an addendum of sorts to the Biblical prohibition of לפני עור.

applied (if not for the fact that most of the wood was needed for innocuous purposes).

While it might at first seem difficult to understand why the cult members were unable to obtain lumber from other sources, we can easily explain the Meiri's interpretation in light of his own comments mentioned earlier. Recall that according to the Meiri, לפני עור applies even if the sinner could have potentially committed the transgression without the assistance he received, if the assistance made the sin considerably more feasible. In this instance, it is entirely possible that the cult members could have found other sources of firewood, but purchasing from Rav Ashi was far more convenient. As such, the Torah prohibition of לפני עור would have applied.

The *Pischei Teshuva* (Y.D. 151:2) also suggests that the Gemara refers to the Torah prohibition of לפני עור, but for a different reason. He references an intriguing theory advanced by the *Mishneh Le-melech* (*Hilkhos Malveh Ve-loveh* 4:2) that if the sinner can obtain the item he needs to commit the forbidden act only from Jews, the Jew who provides the object in question transgresses לפני עור despite the fact that his assistance is not indispensable. Since the other Jews would also transgress לפני עור by lending assistance, this is not considered an alternative option, and thus the one who lends the violator assistance is in violation of לפני עור. The Gemara's rule of "one side of the river" refers only to cases where the violator could have committed the sinful act independently, or with the assistance of a gentile. If he required the assistance of Jews, then the Jew who helps him transgresses לפני עור.[24] Accordingly, it is possible that the cult members who purchased firewood from Rav Ashi had access to other Jewish-owned lumber, but not to wood sold by non-Jews, and thus the Torah prohibition of לפני עור was theoretically applicable.

IV. Conclusion

In light of all we have seen, there are several reasons to permit Shabbos invitations to nonobservant Jews for the purpose of drawing them closer to Torah observance:

1) According to some views, "spiritual rescue" overrides Torah law just like rescuing one's physical life, and thus as long as there is a reasonable possibility that the Shabbos invitation will trigger a process that will lead to religious observance, it is allowed, even if this would entail לפני עור.

24. See the aforementioned responsum of the *Kesav Sofer*, who discusses this theory at length.

2) If the host invites the guest well in advance of Shabbos, and offers him overnight lodging in his home, he is not causing the guest to violate Shabbos, even if the guest chooses on his own to drive rather than walk. The decision to violate Shabbos was made by the guest, not by the host.
3) The prohibition of לפני עור, by definition, requires intent to cause one's fellow to "stumble," and thus if one's goal is to lead the guest toward religious observance, then causing him to drive that evening does not transgress לפני עור.
4) According to the Rama, different opinions exist as to whether one may assist a person committing a sin if the assistance is not needed, and he writes that common practice follows the lenient position. And thus since the guest can desecrate Shabbos even without receiving an invitation, no prohibition is entailed according to the lenient view.
5) According to the *Dagul Mei-revava*, one may lend nonessential assistance to somebody committing a sin willfully. This might apply in the case of Shabbos invitations, depending on how we classify modern-day nonobservant Jews.
6) According to several *Acharonim*, non-essential assistance may be given during the preliminary stages, before the sinful act is committed.

V. Survey of Recent and Contemporary Halachic Rulings

Poskim who ruled leniently:

1) Rav Yaakov Kaminetzky[25] permitted extending an invitation to a Shabbos meal for the purpose of outreach, as long as one explicitly invites the guest to remain with him throughout Shabbos and prepares a room and food for the guest for all of Shabbos, even if he knows the guest will drive home after the meal.
2) Rav Shlomo Zalman Auerbach[26] was asked about making a *minyan* for the purpose of outreach, to which nonobservant Jews would travel by car. He rules that such a *minyan* may be held as long as the invitees are offered accommodations so they would not have to violate Shabbos, and one does not need to instruct them not to drive.
3) Rav Moshe Sternbuch[27] allows inviting nonobservant Jews for a Shabbos meal because the intent is to draw them closer to observance, and not to

25. *Emes Le-Yaakov*, *Choshen Mishpat* 425:5, note 27.
26. *Minchas Shelomo* 2:4:10.
27. *Teshuvos Ve-hanhagos* 1:358.

cause them to "stumble," and because the host does not instruct them to drive.

4) Rav Moshe Soloveitchik of Switzerland[28] appears to have allowed extending such invitations.

Poskim who ruled stringently:

1) Rav Moshe Feinstein[29] was asked whether a *minyan* may be held for nonobservant youths with prizes offered as incentives, given that the participants would likely arrive by car. He ruled that it is certainly forbidden to invite somebody to the program, even if the person lives nearby and could walk. He added that it is uncertain whether it would be permissible to inform people of the program without extending an invitation, and in the end he allowed publicizing the event only if the prizes are reserved for those who arrived by foot. It would appear that Rav Moshe would forbid extending an invitation for a Shabbos meal if it is likely that the guest will come by car.
2) Rav Shemuel Wosner[30] forbids extending such invitations, emphasizing that in some cases this could transgress the Torah prohibition of לפני עור.
3) Rav Yosef Shalom Elyashiv also forbade such invitations.[31]

28. *Ve-ha'ish Moshe*, vol. 1, p. 127.
29. *Iggeros Moshe* O.C. 1:99. (See also 1:98 and 4:71.)
30. *Shevet Ha-levi* 8:165:6.
31. Cited in *Chashukei Chemed*, Pesachim 22b.

SCIENTIFIC
AMERICAN

Would You Eat AquAdvantage Salmon If Approved?

April 26, 2013

by Robynne Boyd

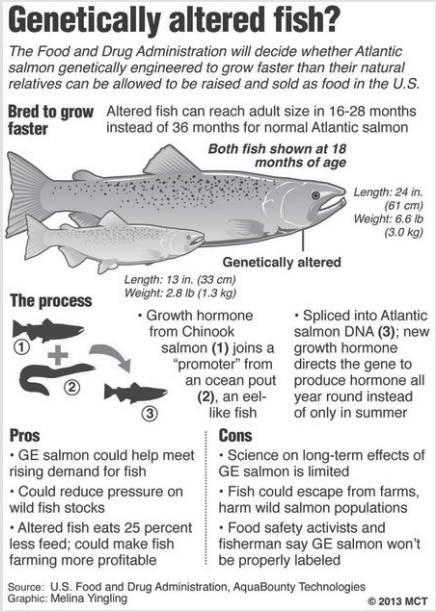
It's been a long battle for AquaBounty Technologies and its divisive fish. Twenty years in the making, the first transgenic animal created for consumption — a doubly fast growing salmon — is now in its last leg of the U.S. Food and Drug Administration approval process.

Regardless of the regulatory hoops AquAdvantage salmon must bound, it's the social hurdles that, in the end, may prove whether this fish will swim or sink.

The small, scaly fish has polarized people, sending fear, indifference and admiration throughout scientific and environmental communities, as well as the general public.

All this, even after a draft Environmental Assessment was done in the early months of 2012. The findings of which reaffirmed the FDA's previous conclusions that the genetically engineered (GE) salmon is as safe to eat as conventional farm-raised Atlantic salmon. The Assessment also says that it's very unlikely the GE salmon could escape into the environment, and even if by some odd chance it did, the salmon would be incapable of reproducing since they will be "effectively sterile."

The FDA's findings have not quelled the concerns of opponents. Food safety critics believe it's a Mad-Max test that could go disastrously wrong.



Regardless of the regulatory hoops

...

In direct response to the FDA approval process, a new bill, the Genetically Engineered Food Right-to-Know Act, is circulating through congress. It would mandate

any GM food ingredient be labelled. Also, the supermarkets Whole Foods, Trader Joes and Aldi, are a few on a list of food providers refusing to stock their shelves with transgenic food product.

AquaBounty's answer to naysayers is that the production of AquAdvantage salmon is in the interest of both the environment and consumers. On the company's website, it says that their objective is to use the technology of genetic engineering to "contribute to increasing aquaculture productivity in an efficient, safe and sustainable manner to meet the demand for high quality seafood from a growing world population." And demand is growing.

"Between 2000–2004, Americans alone ate an average of about 284,000 metric tons of salmon annually, of which two-thirds was farmed," states the FDA's Environmental Assessment.

Despite all the hubbub, the FDA is the final authority who will make the decision whether or not the first genetically engineered food animal will arrive in supermarkets across the country. According to AquaBounty's CEO Ronald Stotish, as quoted in the Guardian, the company should receive approval by the end of the year.

If Stotish's prediction is correct, what I want to know is would you eat the salmon?

Genetically Modified Organisms: Will this be the Greatest *Kashrus* Challenge of Modern Times?

On November 19, 2015, the United States Food and Drug Administration (FDA) announced that for the first time, it had approved a GMO — genetically modified organism — for commercial production and consumption. The approval was granted to AquAdvantage salmon, a product developed by the Massachusetts-based Aqua Bounty company, which calls it "the world's most sustainable salmon," touting the modified salmon as a game-changer in the seafood industry. The decision was issued twenty years after Aqua Bounty first applied for FDA approval, and it was accompanied by a great deal of controversy surrounding the safety of GMOs and the possible long-term environmental impact of genetic modification on an industrial scale.

The idea behind the so-called "super salmon" — derisively dubbed "frankenfish" by its opponents — is to accelerate the fish's growth through genetic modification. The modified salmon needs just about 18 months after hatching to reach market size, as opposed to the three years that salmon normally requires. And it can grow in habitats that would otherwise be inhospitable to salmon; specifically, it can grow in warmer waters. Currently, salmon is bred in waters in the North Atlantic and North Pacific, and has to be shipped to U.S. markets. The genetically engineered fish can be bred in land-based pools, significantly reducing shipping costs and delays.

Aqua Bounty alters the salmon by introducing to the fertilized eggs a growth-regulating gene from the Chinook salmon, which is known as the "king" of salmon, as it is the largest salmon in the Pacific. The gene is "turned on" and kept running by a "promoter" gene taken from the ocean pout, a fish that resembles an eel. The genetically altered eggs are then sold to salmon "farmers" who grow the fish for commercial sale.

Having received FDA approval, AquAdvantage salmon may very well transform the meat and fish industry much as the iPhone transformed the cellular communication industry. With the precedent of an FDA-approved GMO in place, the floodgates have been opened for other companies to genetically modify chickens, turkeys, and livestock, thereby revolutionizing the food market. Genetic modification could be used to accelerate growth, eliminate

disease, and enhance reproduction capabilities, all of which will serve to increase availability and thereby lower prices. Thus, AquAdvantage salmon is poised to be a game-changer not only in the salmon industry, but in the entire food industry.

This specter presents us with what might very well turn out to be the greatest *kashrus* challenge of the 21st century. In the not-too-distant future, we might see companies altering cows with genes taken from pigs or other non-kosher animals to accelerate growth or enhance taste. What would be the halachic status of the meat produced from such a cow?

In the case of AquAdvantage salmon, as with other genetically modified products, this question is actually irrelevant. Although the ocean pout — one of the two fish from which genes are taken for modifying the salmon — is not kosher, the gene from the ocean pout is not actually injected into the salmon egg. Aqua Bounty uses a system called PCR (polymerase chain reaction), whereby synthetic copies of DNA strands are reproduced. As such, no actual substance from an ocean pout is implanted in the eggs of AquAdvantage salmon, and there is thus no reason to question the fish's halachic status. As long as this method remains as the standard genetic modification technique, we can rest assured that our kosher poultry and livestock are, indeed, kosher.

Nevertheless, the prospect of GMOs transforming the food industry compels us to consider the situation of modification through implantation of genes from one species to another. How would the introduction of a gene from a non-kosher organism in a kosher organism affect its halachic status? If the resulting fish, for example, has all the physical properties of a kosher fish, would it nevertheless be forbidden if it contains a gene originating from a non-kosher fish?[1]

This question hinges on two different issues. First, we must ask whether a non-kosher genetic source affects the status of a fish that contains the two identifying characteristics of a kosher fish — fins and scales. In the case of AquAdvantage, the modified salmon bears full physical resemblance to ordinary salmon. Perhaps, then, even if the AquAdvantage salmon would stem from actual non-kosher biological material, this material would have no effect on its halachic status, as the resulting fish features the physical properties of a kosher fish. Second, even if we must indeed take into account the non-kosher status of the fish's "parents" despite its kosher properties, the lone gene taken from a non-kosher fish might be subject to the rule of ביטול ("negation"), whereby

1. This question earned a great deal of attention in the early 2000s, when rumors circulated in Bnei-Brak that genetically altered poultry had infiltrated the kosher market. Rabbi J. David Bleich wrote an extensive essay on the topic in *Tradition* (37:2 [2003], pp. 72–80), surveying the rulings of several leading sages who addressed the issue.

a substance may be ignored due to its constituting an insignificant minority portion of a mixture.

I. Are Fins and Scales Enough?

Eggs and היוצא מן הטהור

The Gemara in *Maseches Nidda* (50b) establishes that a species of bird called תרנגול דאגמא is forbidden for consumption, whereas a different species called תרנגולתא דאגמא is permissible. The words תרנגול and תרנגולתא refer, respectively, to a rooster and a hen. It thus seems, at first glance, that the Gemara speaks here of a single species of bird, and establishes that the males are not kosher while the females are. This is, in fact, *Tosfos*' approach to explaining the Gemara. *Tosfos* (ד"ה תרנגולתא דאגמא) write that the males of this species do not have the physical properties required by the Torah for a bird to be permissible for consumption, but the females do, and thus only the females may be eaten.

This reading, however, gives rise to the question of why we do not apply to this species the rule of היוצא מן הטהור טהור — that something produced by a kosher animal is kosher. The Mishna in *Maseches Bechoros* (5b) establishes that if a kosher animal produces offspring with a genetic mutation, such that the offspring does not have the properties of a kosher animal, it is nevertheless permissible for consumption. Since it was born to a kosher animal, it is considered kosher regardless of its physical properties. Conversely, if a non-kosher animal gives birth to an animal that resembles a kosher animal, the offspring is forbidden for consumption despite featuring the physical characteristics of a kosher species. Since it was born to a non-kosher animal, it is not kosher. Seemingly, if we apply this rule to the תרנגול דאגמא, it should be permissible for consumption despite lacking the properties required for kosher birds. Since it was produced by a תרנגולתא דאגמא, which is a kosher bird, it should be kosher.

Tosfos answer this question by establishing that the rule of היוצא מן הטהור טהור applies to mammals, but not to fowl. The bird that emerges from an egg after hatching is not considered the halachic offspring of its mother, because its fetal development occurred outside of its mother's body. *Tosfos* write:

> האם לא ילדה האפרוח, אלא ביצים הטילה, והאפרוח מעפרא קא גדיל, ונאסר ממילא ע"י סימני טומאה.
>
> The mother did not give birth to the chick; rather, it laid eggs, and the chick grew from the earth, and is therefore forbidden by virtue of its non-kosher characteristics.

Since the chick develops outside the mother's body and does not emerge from

the mother's body in its complete form, it does not fall under the category of היוצא מן הטהור. We view it as the product of the "earth," as its development takes place on the ground, and its kosher status is therefore determined by its own physical properties, and not by its mother's species. In the case of a תרנגול דאגמא, then, the bird is forbidden for consumption because it does not have the required characteristics of a kosher bird, despite its having been produced by a kosher bird.

A different view, however, is taken by *Tosfos* in *Maseches Chullin* (62b, ד"ה תרנגולתא דאגמא). There, *Tosfos* accept the argument that a bird with non-kosher physical characteristics is kosher if it was produced by a kosher bird. *Tosfos* are therefore compelled to advance an entirely different reading of the Gemara's ruling concerning תרנגול דאגמא and תרנגולתא דאגמא, and they claim that the Gemara refers to two distinct species with closely resembling names.

The Rambam appears to have followed the view taken by *Tosfos* in *Chullin*. In *Hilchos Ma'achalos Asuros* (3:11), the Rambam addresses the case of a chick that emerged from an egg laid by a *tereifa* — a bird that has a fatal wound and thus may not be eaten. Based on the Gemara in *Maseches Temura* (31a), the Rambam rules that the chick is permissible for consumption. The chick is not viewed as יוצא מן האסור — something which was produced by a forbidden creature — because, as the Gemara explains, it developed outside of the mother's body. When it left the mother bird's body, it was not yet a chick; it took form after the egg was laid, and thus the chick is not viewed as the product of the mother bird. However, the Rambam adds that the chick is permissible שאין מינו טמא — because it belongs to a kosher species of bird. In other words, if the mother bird that laid the egg belonged to a non-kosher species, then the chick would be forbidden for consumption even if it had the properties of a kosher bird.

According to the Rambam, a bird is not viewed as its mother's offspring with respect to the prohibition of *tereifa*, but it is considered its mother's offspring with regard to its species. Although the bird develops outside of the mother's body, nevertheless, its identity in terms of classification is determined by the mother's species, despite the fact that it is not assigned the mother's other halachic characteristics, such as *tereifa*.

Rav Chaim Soloveitchik of Brisk, commenting on the Rambam's ruling (in *Chiddushei Rabbeinu Chayim Ha-Levi*), explains the conceptual basis underlying this distinction. He writes that the rule of היוצא מן הטמא טמא actually encompasses two different principles, which apply in different contexts. The first is that an animal's identity and classification are determined based on its parents, and not based on its own properties. Thus, with regard to *halachos* that depend not on a certain characteristic, but rather on a creature's formal classification, the animal assumes the status of its parents. The second principle establishes that

something produced by a creature that is forbidden for consumption is itself forbidden for consumption. This principle says nothing about identity; it rather introduces a prohibition against consuming something that was produced by a forbidden creature.

The Rambam distinguished in this regard between the prohibition of *tereifa* and the prohibition of eating a forbidden species. An animal becomes a *tereifa* not because of its essential nature, but rather due to a medical condition. As such, the offspring is forbidden only by force of the second rule of היוצא מן הטמא — namely, the rule that forbids that which emerges from something forbidden. In the case of a hatched egg, however, this rule does not apply, since the chick was not produced directly by the mother, and it is thus permissible. When it comes to the issue of forbidden species, however, the prohibition results not from the creature's having been produced by a forbidden creature, but rather from its species, and its species is determined based on its parents' species. Regarding this matter, the fact that a bird is not produced directly by its mother is of no consequence. Since it was, after all, created by its parents, it halachically belongs to its parents' species. Thus, if the mother belonged to a forbidden species of bird, then it is also forbidden.

The Rambam's view thus clearly reflects the position taken by *Tosfos* in *Maseches Chullin*, that a bird's status of *kashrus* is dependent upon the mother's species, regardless of the bird's physical properties.[2]

Rav Moshe Sternbuch, in a responsum published in *Teshuvos Ve-Hanhagos* (vol. 4, Y.D. 184), cites and follows the view of *Tosfos* in *Nidda* that a bird's kosher status depends on its own characteristics, rather than its parents' species. He thus rules that a chicken with all the properties of a kosher chicken is, strictly speaking, permissible for consumption even if it underwent genetic modification with genes from a non-kosher animal.[3]

Conceivably, this issue would directly affect the case of salmon genetically modified through the introduction of a gene from a non-kosher fish. Fish reproduce by laying eggs, and thus a fish, like a bird, is formed in an egg outside of its

2. This issue also comes to the fore in a responsum of the *Chasam Sofer* (Y.D. 74) regarding a chicken fathered by a non-kosher bird, giving rise to the question of whether the father's non-kosher status affects the status of the egg and chick. The *Beis Shlomo* (Y.D. 144) writes that this would depend on the debate between these two views of *Tosfos* as to whether a bird's status is determined based upon its own properties or the species of its parents.
3. Rav Sternbuch does, however, express concern that a non-kosher genetic source may yield an adverse spiritual effect on an animal's meat, which could, in turn, cause spiritual harm to those who eat it. He thus concludes that such food should be avoided.

mother's body.[4] Hence, according to *Tosfos* in *Nidda*, we may discount the gene taken from a non-kosher source; a fish's identity is not determined based on its biological parents, as it does not grow inside of its mother.[5] However, according to *Tosfos* in *Chullin* and the Rambam, we cannot necessarily disregard the fish's non-kosher source. Since a fish's species with respect to *kashrus* depends upon the mother's species, the fact that the fish is partially produced by an ocean pout could, at least in theory, render it forbidden.

סיבה or סימן

This question might hinge on a broader issue that a number of *Acharonim* have addressed regarding the nature of the סימני טהרה — the characteristics that determine a species' halachic status.[6] Do these characteristics themselves determine the kosher status of an animal, or do these characteristics merely indicate that these species are permissible? In other words, should these characteristics be perceived as a סיבה — the reason why these species are deemed permissible for consumption — or as a סימן — an indicator that these species are halachically suitable for consumption?

According to the first approach, the determining factor is the creature's actual properties, irrespective of its origins. As such, a fish with fins and scales would be permissible even if it has undergone genetic modification through the introduction of a gene from a non-kosher fish. According to the second possibility, however, the fish's status depends on its formal classification, on whether or not it belongs to a kosher species, as the fins and scales are merely indicators of a kosher species. Hence, the presence of fins and scales on a genetically modified salmon would not necessarily mean that the fish is permissible.

As far as fish are considered, proof to the first possibility may perhaps be

---

4. The Gemara in *Maseches Avoda Zara* (40a) actually distinguishes in this regard between kosher fish and non-kosher fish, establishing that a kosher fish lays the egg before the fetus is developed, whereas the fetus of a non-kosher fish develops inside the mother's body and is then laid before hatching. Accordingly, a fish with fins and scales that was produced by non-kosher fish is forbidden for consumption according to all views. (This point was made by Rav Shlomo Zalman Auerbach in *Minchas Shlomo* 2:97:27.) In the case of genetically modified salmon, however, the eggs develop just like ordinary salmon's eggs, outside the mother's body, and thus according to *Tosfos* in *Nidda*, its kosher status depends on its own characteristics, and not those of its parents.
5. This point is made by the *Chasam Sofer* in his commentary to *Chullin* (66a).
6. *Tzofnas Panei'a*ch, *Hilchos Ma'achalos Asuros*; Maharit 1:51. See also Rav Elchanan Wasserman's *Kovetz Shiurim* (vol. 2, *Kovetz Shemuos*, *Chullin* 62b, #27), where he suggests that the aforementioned debate between *Tosfos* in *Nidda* and *Tosfos* in *Chullin* hinges on this fundamental question.

drawn from the Gemara's discussion in *Maseches Nidda* (51b) concerning the properties of a kosher fish. The Mishna asserts that all fish with scales also have fins, raising the question of why the Torah bothered to identify both characteristics. Seemingly, it would have sufficed to inform us that any fish with scales is permissible for consumption. For what purpose, then, did the Torah mention fins? In response to this question, the Gemara invokes the *pasuk* (*Yeshayahu* 42:21), יגדיל תורה ויאדיר — in other words, the fins are mentioned only for the sake of glorifying Torah by adding more Torah material for us to study. But what value is there in adding unnecessary information? How is the Torah "glorified" by the addition of a superfluous word?

The likely explanation is that the Torah sought to instruct that it is these two features — the fins and the scales — that make a fish permissible.[7] If these features were merely physical signs that reflected the fish's kosher status, then there would be no purpose served by adding the requirement of fins. The Torah chose to mention fins because the presence of both fins and scales is the reason why such a fish is permissible for consumption. Indeed, the Ritva, commenting on the Gemara's discussion, writes, ואולי הוא ג"כ גורם טהרתו, ואע"פ שהוא לבדו אינו גורם טהרה — "Perhaps it [fins] also causes its [the fish's] kosher status, even though it independently does not cause its kosher status." These comments clearly suggest that the Ritva viewed fins and scales as the סיבה — the cause of the fish's kosher status — and not indicators of its kosher status.[8]

In truth, however, this discussion may not be relevant to the question of genetically modified salmon, for two reasons. First, the Maharit already noted that this conceptual question concerning the nature of the סימני טהרה seems to be answered by the aforementioned rule of היוצא מן הטהור טהור.[9] The very fact that a creature's status is determined by its mother's species, and not by its own physical properties, would seem to prove that the סימני טהרה do not create an animal's kosher status, but rather reflect the kosher status of its species. As such, we return to the aforementioned debate among the *Rishonim* as to whether the

7. See Rav Yeshaya Horowitz, *Shela*, *Amud Ha-Torah*.
8. This point was made by Rav Shmuel Baruch Deutsch in *Birkas Kohen*, *Parshas Shemini* (57). It is also cited by Rav Shlomo Zalman Auerbach (in the responsum cited above, n. 4) in the name of the *Mitzpeh Shmuel*. Rav Shlomo Zalman dismisses the relevance of this argument, however, writing, אין להסיק הלכה מזה, ובפרט שזה נעשה על ידי בני אדם ולא לסימנים כאלה נתכונה התורה — "We cannot establish the *halacha* on this basis, especially since this was done by human beings, and these are not the characteristics the Torah had in mind." In other words, even if we view fins and scales as the cause of a fish's kosher status, this is true only of fins and scales that appear naturally, and not through human manipulation, such as genetic engineering.
9. Cited above, n. 6. See also Rav Menachem Ziemba's *Zera Avraham* (13:14).

rule of היוצא מן הטהור טהור applies to creatures that reproduce by laying eggs. The discussion regarding the nature of the סימני טהרה is of no practical relevance, as this issue has been halachically resolved with regard to mammals and remains subject to debate in the context of fowl and fish, as we saw above.

Moreover, even if we view the סימני טהרה as indicators of kosher species, rather than as the reason for an animal's permissible status, we might still permit genetically modified salmon that feature fins and scales. The very fact that the scientists did not modify the fish to such an extent that it no longer has fins and scales demonstrates that the modified fish still belongs to a kosher species. The presence of fins and scales, even if it does not create the fish's kosher status, nevertheless indicates that this fish still belongs to the group of kosher fish, despite the introduction of a gene from a non-kosher species.

To illustrate this point, consider the example of a genetically modified kosher fish that no longer grows scales as a result of the modification. Undoubtedly, the absence of scales would render the fish forbidden, not because fins and scales are what make a fish kosher, but because the absence of scales testifies to the fact that the species has been altered and the new species is not a kosher species. By the same token, if a process of genetic modification did not eliminate the fins or scales, we may determine that the fish still belongs to a kosher species.

II. ביטול

Our entire discussion thus far has revolved around the question of whether or not we must take into account the non-kosher origins of genetically modified salmon, or whether we may deem the fish permissible due to its own physical properties, without looking at its genetic history. We will now turn our attention to the second question — namely, whether we may apply the rule of ביטול, and thus disregard the non-kosher gene. In other words, even if we must indeed take into account the fish's biological origins, and the presence of fins and scales thus does not suffice to render the fish permissible, may we nevertheless allow its consumption in light of the fact that the gene from the non-kosher species constitutes a minuscule percentage of the fish?[10]

This question is vitally important with respect to the status of genetically

10. It should be noted that if we permit genetically modified organisms solely on the basis of ביטול, then although the product is permissible for consumption, it would be forbidden for a Jew to perform the modification procedure for the purpose of preparing meat. The well-established rule of אין מבטלין איסור לכתחילה forbids adding a non-kosher substance into kosher foodstuff with the intention that it will be nullified and thus have no halachic effect on the food. Hence, if a kosher animal containing a non-kosher gene is deemed permissible solely on the basis of ביטול, then it would be forbidden for a Jew to knowingly

modified mammals. As noted above, the offspring of a non-kosher mammal is forbidden even if it has all the physical properties of a kosher animal. As such, if a gene is taken from a non-kosher mammal and implanted in the fertilized egg inside a kosher mammal, we might be compelled to forbid the offspring — unless we can apply the concept of ביטול, and thus ignore the offspring's non-kosher genetic origins.

מעורב בתחילתו

One argument against utilizing the concept of ביטול in this context is a significant restriction on the rule of ביטול imposed by the Mordechai (*Chullin* 737). The Mordechai asserts that ביטול does not apply in situations of מעורב בתחילתו — wherein the small portion of forbidden material was present from the inception of the item in question. If a food item contained a small forbidden component already at the time it came into existence, that component may not be ignored, even if it comprises a very small percentage of the food item. The law of ביטול, according to the Mordechai, applies only when two substances existed independently and were then mixed together. If one of the substances constitutes a small proportion (generally, one-sixtieth) of the mixture, then it is deemed "negated" and thus has no halachic impact upon the other food. If, however, a product from the outset consisted of two substances, they are both deemed halachically significant, regardless of their respective proportions. Thus, for example, the Mordechai rules that if a woman performing *chalitza* spits blood instead of saliva, the *chalitza*[11] is valid as long as even a minuscule amount of saliva is mixed with the blood. In such a case, we do not view the small portion of saliva as "negated" by the blood, since the liquid was produced in the woman's mouth from the outset with both fluids, and thus they are not subject to the provision of ביטול.

A number of *Acharonim*[12] drew proof to the Mordechai's position from the Gemara's discussion in *Maseches Chullin* (69a) concerning the law of בן פקועה — a living fetus removed from its mother's carcass after the mother was slaughtered. *Halacha* permits eating the fetus's meat without first slaughtering it, as it was covered by the slaughtering of the mother animal. However, if the mother had begun delivery before it was slaughtered, and part of the fetus — for

create such a situation. This point is made by Rav Yaakov Yisrael Fisher (*Even Yisrael* 8:55), as discussed by Rav Bleich in the article cited above, n. 1.

11. If a man dies without children, his widow must marry his brother, unless she performs the *chalitza* ritual, during which she spits in front of the brother.
12. Rav Moshe Katzenelenbogen, *Ohel Moshe* 22; and Rav Shimon Shkop, *Sha'arei Yosher* 3:26.

example, its leg — had exited the mother's body before slaughtering, that part of the fetus is forbidden for consumption.

The Gemara raises the question of whether one may eat an animal born from the union of two בני פקועה, one of which had a part of its body outside the womb before its mother was slaughtered. Does the forbidden portion of one of the two parents render the offspring forbidden? The Gemara concludes that the animal would be permissible, but not because we apply the concept of ביטול. Throughout its discussion of this case, the Gemara never proposes that the forbidden portion of one of the two parents should be negated by the majority and may thus be ignored. The reason, some *Acharonim* suggest, is that this animal came into existence as a "mixture" consisting of a small forbidden portion and a majority of permissible matter. Since the animal was מעורב בתחילתו — it consisted from the very outset of both permissible and forbidden portions — we cannot apply the rule of ביטול.

Returning to the case of a genetically modified organism, since the animal came into existence with a gene from a non-kosher source, it is seemingly not eligible for ביטול, and it should thus be forbidden.[13]

However, it seems likely that the Mordechai's qualification would not apply to this case. The *Noda Be-Yehuda* (*Mahadura Tinyana*, Y.D. 54), citing his son, asserts that the Mordechai established the exception of מעורב בתחילתו only with regard to certain forms of ביטול. A fundamental distinction exists between the application of ביטול in the context of מאכלות אסורות — the status of food products for consumption — and in other contexts. In other areas of *halacha*, the question that arises when two substances mix with one another is how to halachically define the mixture, given that it consists of two distinct components. The guiding principle in such situations, based upon the verse in *Sefer Shemos* (23:2), is אחרי רבים להטות — the mixture's identity is determined based upon the majority component. According to the *Noda Be-Yehuda*, it is with regard to these situations that the Mordechai establishes the rule of מעורב בתחילתו. Since the substance was made from the outset with both components, they are both

13. It should be noted, however, that even if we accept this line of reasoning, the prohibition might apply only on the level of דרבנן, a Rabbinic enactment. The *Minchas Kohen* (*Sefer Ha-Ta'arovos* 1:4) asserts that although the Torah prohibits eating even very small amounts of forbidden food, this does not apply to forbidden food mixed with permissible food. Even when ביטול does not occur and the mixture is forbidden, eating small quantities of the forbidden food would be prohibited only מדרבנן. (See *Peri Megadim*, *Sha'ar Ha-Ta'arovos* 2:2, who disputes this contention.) According to the *Minchas Kohen*, even if we cannot discount the gene taken from a non-kosher source, what's at stake is only a Rabbinic prohibition, giving us additional flexibility and grounds for relying on leniencies.

halachically significant and the minority component cannot be disregarded. Thus, for example, in the case of *chalitza*, where *halacha* requires the woman to expectorate saliva, the obligation is fulfilled as long as the substance that leaves her mouth includes even a small percentage of saliva.

When it comes to the consumption of food, however, ביטול operates much differently. The principle of טעם כעיקר establishes that a mixture containing forbidden food may not be eaten if it contains the taste of the forbidden food. The determining factor in such situations is not the formal identity of the mixture, but rather the presence or absence of the forbidden food's taste. Accordingly, the *Noda Be-Yehuda* contends, it makes no difference whether the product consisted from the outset of both components or if two separately preexisting entities mixed. Since the critical factor is the forbidden food's taste, the mixture cannot be prohibited if the forbidden food's taste cannot be discerned. As a practical matter, *halacha* generally presumes that a food's taste cannot be discerned when it constitutes a proportion of 1:60 or less. Thus, according to the *Noda Be-Yehuda*, even if a product consisted from the outset of a forbidden component, the product is permissible if the forbidden substance constitutes one-sixtieth or less of the entire product.

Quite obviously, a single gene constitutes far less than one-sixtieth of an organism, and the fish or animal should thus seemingly be permissible for consumption.

We might also add that our case might not even fall under the category of מעורב מתחילתו, since the gene from the non-kosher source is introduced to the egg and immediately "negated" by the majority at that point. Although the salmon emerges from the egg with this gene, that gene had already, halachically speaking, been "negated" the moment it was added to the egg. As such, the fish is entirely permissible.

עיקרו כך

One may, however, contend that ביטול cannot be applied in this case in light of a ruling of the Rashba in one of his responsa (3:214). The Rashba addresses a case in which a small amount of vinegar originating from non-Jewish wine was mixed with honey to produce medicine. This mixture is forbidden for consumption, the Rashba rules, despite the fact that the vinegar constitutes a small proportion of the mixture, because עיקרו כך — this is the ordinary way of making this product. Since the vinegar is supposed to be added to the honey, it cannot be considered "negated" by the honey, and the mixture is therefore forbidden.

We might argue, then, that once it becomes standard procedure to add a

gene to modify a certain creature, this gene cannot be discounted, despite its constituting a minuscule proportion of the final product.

However, the *Noda Be-Yehuda* (*Mahadura Tinyana*, Y.D. 56) notes that many *Rishonim* do not accept the Rashba's position, and one may rely upon their lenient ruling. The *Noda Be-Yehuda* adds that even according to the Rashba, the mixture would be forbidden only מדרבנן — on the level of Rabbinic enactment, as opposed to Torah law — and thus there is certainly room to rely on the lenient position.[14]

דבר המעמיד

Another argument that one might advance to deny the possibility of ביטול in this case is the rule regarding דבר המעמיד — a stabilizing agent in a food product. If the stabilizer is forbidden for consumption, then the food containing the stabilizer is forbidden regardless of how small a proportion of the food the stabilizer comprises. The reason underlying this rule is that the stabilizer's presence is unmistakably discernible, as it lends the food its texture. Since its effects are clear and evident, it cannot be ignored, even if it constitutes a minuscule portion of the product.

At first glance, this principle should be applied to a foreign gene added for the purpose of accelerating growth. Although the forbidden gene comprises an infinitesimally small proportion of the organism, nevertheless, its effects are discernible in the creature's rapid growth. One might argue, then, that we cannot disregard the forbidden gene in light of its evident impact on the creature.

However, there is an important exception to the rule of דבר המעמיד that undermines this argument. The *Shulchan Aruch* (Y.D. 87:11) permits eating a food product with a non-kosher stabilizer (that comprises less than one-sixtieth of the product) if the product also contains another stabilizer that is permissible for consumption. The special stringency of דבר המעמיד applies only if the non-kosher stabilizer is the product's sole stabilizing agent. Accordingly, a non-kosher gene added to an organism should not render the organism forbidden, as it is not the only substance that causes the creature to grow. The gene combines with other material in the organism — which is, of course, entirely permissible — to advance its growth, and it is thus subject to the law of ביטול.

This argument, however, would not be valid if the genetic modification discernibly enhances the flavor of the meat. If, for example, manufacturers begin introducing the gene of pig into livestock to enhance the beef's flavor, it would be difficult to apply the rule of ביטול to permit the beef. Since the minute portion

14. For more on the *Noda Be-Yehuda*'s discussion, see Rav Yitzchak Weiss, *Minchas Yitzchak* (2:28:10).

of forbidden substance is clearly discernible, it cannot be overlooked, and thus the product would perhaps be forbidden.

Orla and the Grafted Branch

There may in fact be a compelling halachic precedent for applying ביטול to our situation and viewing the implanted gene as assuming the identity of the host organism.

The Gemara in *Maseches Sota* (43b) addresses the case of a branch taken from a tree within the first three years after its planting — whose fruit is forbidden due to the prohibition of *orla* — and grafted onto an older tree. The Gemara rules that all the fruit produced by the tree, including by the grafted branch, is permissible for consumption, because the grafted branch loses its identity and assumes the identity of the host tree. Even though the grafted branch likely affects certain biological properties of the host tree, nevertheless, since it has become part of the host tree, it loses its identity and is regarded as a branch of an older tree, which is not subject to the prohibition of *orla*.

Rav Sternbuch, in his aforementioned responsum, suggests drawing an analogy between this case and the situation of a genetically modified organism. In the case of the modified organism, a small portion of one species is implanted within another. Thus, just as the *orla* branch loses its original identity and the fruit it subsequently produces is not regarded as *orla*, similarly, a gene introduced into the egg of a different species should lose its identity and assume the identity of the host species. This analogy might prove that the concept of ביטול is applicable in the case of genetically modified organism, despite the effects of the implanted gene on the host organism.

חצי שיעור

In truth, even if we would conclude that the non-kosher gene cannot be negated through the concept of ביטול, we would still have good reason to permit the consumption of the genetically modified creature, due to a theory postulated by the *Noda Be-Yehuda* elsewhere in his writings concerning the prohibition of חצי שיעור — eating small quantities of forbidden food.

Although *beis din* would not administer corporal punishment to violators guilty of eating small quantities of forbidden food (generally, less than a *kezayis*), nevertheless, *halacha* forbids eating any amount. However, the *Tzelach* (written by the author of *Noda Be-Yehuda*), in *Maseches Pesachim* (44a ד"ה ועוד נלע"ד), makes an exception to this rule. He notes that the reason given for the law of חצי שיעור is the fact that it is חזי לאיצטרופי — the consumption of a small quantity of forbidden food could combine with food eaten subsequently to reach

the amount which renders one liable to *malkos* (lashes). In other words, the consumption of small quantities is forbidden only because a small quantity could eventually combine with additional food to comprise the minimum amount that warrants *malkos*. Accordingly, the *Tzelach* contends, in a case in which there is no possibility of reaching the minimum quantity prohibited by the Torah, חצי שיעור is permitted.

The case he discusses is one who wishes to eat a small morsel of *chametz* in the final moments of Pesach. Since *chametz* will become permissible by the time one would be able to eat a *ke-zayis* of *chametz*, there should, in theory, be no reason to forbid the consumption of a small bit of *chametz* at this point. For this reason, the *Tzelach* contends, the Rambam (*Hilchos Chametz U-Matza* 1:7) cites a Biblical source for the prohibition of eating small amounts of *chametz*.[15] If this were forbidden solely because of חצי שיעור, then it would be permissible to eat a small portion of *chametz* in the final moments of Pesach. The Rambam therefore resorted to a Biblical source to establish that eating small amounts of *chametz* is intrinsically forbidden, and not merely due to the possibility of subsequently reaching the amount of a *ke-zayis*.

This theory of the *Tzelach* should conceivably apply also to situations of a food product containing a minuscule portion of forbidden food that is not, for whatever reason, subject to ביטול. *Beis din* can punish a sinner for eating forbidden food only if the violator partakes of a כזית בכדי אכילת פרס — a *ke-zayis* of forbidden food within the time-frame of אכילת פרס, which is commonly identified as anywhere from 4–9 minutes. According to the *Tzelach*, it would seem, in a case in which there is no theoretical possibility of consuming a *ke-zayis* of forbidden food within this time frame, such as if the forbidden substance constitutes a fractional portion of the food one eats, the food should be permissible.

This is certainly the case with regard to a kosher animal containing a single non-kosher gene. The amount of non-kosher substance in this animal's meat constitutes an infinitesimally small proportion of the meat. As such, even if ביטול cannot take effect, the meat should be permissible because one could not possibly partake of a *ke-zayis* of forbidden foodstuff within the period of אכילת פרס.

Conclusion

When it comes to fowl and fish, the status of a genetically modified organism that has kosher properties but contains a gene from a non-kosher species is subject to debate among the *Rishonim*. Mammals, according to all opinions,

15. לא יאכל חמץ (*Shemos* 13:3).

are forbidden if they were produced by non-kosher animals, regardless of their own physical characteristics.

Nevertheless, it seems likely that we may apply the rule of ביטול and thus overlook the forbidden element within a genetically modified kosher fish or animal. Even if ביטול does not apply in such a case, the forbidden gene constitutes such a small portion of the organism that there is no possibility of consuming a *ke-zayis* of the creature's forbidden substance within the period of אכילת פרס, and thus the fish or animal is permissible (according to the position of the *Tzelach*).