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CONTENTS: Saiman (Page 1); Fried (Page 7)

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HOW HALAKHAH CHANGES: FROM NAHEM TO THE "TISHA BE-AV KUMZITZ"

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Overt Change: The Nahem Model

In the weeks leading up to Tisha be-Av, the Religious Zionist and Modern Orthodox communities engage in the annual rite of agonizing over the relevance of Tisha be-Av in light of the State of Israel and unified Jerusalem. The discussion focuses on the text of a short liturgical prayer titled Naḥem, recited only once a year during the afternoon Tisha be-Av service (in the Ashkenazic practice). Following Rabbi Sacks' translation, Nahem describes Jerusalem as "laid waste of its dwellings, robbed of its glory, desolate without inhabitants. [Sitting] with her head covered like a barren childless woman." The image is stark—and totally at odds with current reality.

Over the years, numerous articles, blog posts, and online forums have debated the continued viability of the received text. As several of the referenced articles note, positions range from advocating wholesale reconstruction to instituting minor amendments, allowing for deviations so long as they remain "private," and, finally, resisting all efforts at change.

The dilemma is easy to understand. On its face, the liturgy strikes a false note—which a community that takes prayer seriously should try and avoid. Further, retaining the liturgy smacks of ingratitude, crying out as if Jerusalem lay in smoldering ruins, when God has granted a beautiful, populated city which sprawls out amongst the hills.[1] On the other hand, the Temple is still not rebuilt—the site currently occupied by a shrine of another religion—and the

[1] See Rabbi David Shloush, Resp. Hemdah Genuzah § 22:8, who advocates for changing the received text due to concerns of making false statements in prayer and demonstrating ingratitude to God.

Jewish hold on the city is not without its complications. There is also a more sweeping objection: "Who are we moderns to tinker with texts that have served as the bedrock of Jewish identity for millennia?" My sense is that within Religious Zionism, there is a slow drift towards allowing for liturgical accommodation, yet the matter remains hotly debated and far from resolved.

In some quarters, the issue has moved beyond (relatively) minor points of liturgy, to questioning whether the fasts commemorating the destruction of the Temple (other than Tisha be-Av itself) remain obligatory in the era of Jewish sovereignty over Jerusalem. From a halakhic perspective, the issue revolves around talmudic interpretations of the prophet Zekhariah's vision which indicates that when peace returns to Israel, the fast days will become holidays, and/or when Jews coexist peaceably with the Gentiles, the fast days become optional. From a theological standpoint, the matter touches on whether the Temple will be rebuilt through human actions by or via miraculous divine intervention (as the text of Nahem suggests). At the moment, the discussion about the fast days remains more of a thought experiment than a direct call to action.[2] But that this has become a thinkable thought within mainstream Orthodox Zionism, is bound up with efforts to assert Jewish rights over the Temple Mount, and reflects a sustained drift towards the idea that Jews may take an active hand in rebuilding the third Temple.

Stepping back, these debates assume a predictable form. Those advocating for change directly challenge an established halakhic norm, (text of a prayer, practice of fasting) and insist that, as a matter of coherence, authenticity, internal logic, and ideology, traditional practice must accommodate to new circumstances. However compelling the claim, this proposition inevitably engages halakhah's reflexive resistance to change and galvanizes a reactionary movement. Conservatives respond that halakhah is immune to such arguments, and that even if the matter can be justified locally, the long-term costs of sustaining halakhic malleability far outweigh what may be gained in this particular instance.

There are times when frontal attacks on established practice gain traction, though it is more common for these movements to peter out, as few are willing to deliberately cross a bright halakhic line. But no matter the outcome, the result is vocal opposition, and, quite often, creation of yet another communal fault line.

While direct attempts to change halakhah engender public debate and attention, in recent years the practices and mood of Tisha be-Av have shifted in far more dramatic ways than modifying the lines of Nahem. These changes respond not only to the contemporary political reality (the Nahem issue) but to the cultural dissonance of wailing over the ruined Temple and bitter exile, as we live in great comfort and security. And yet, these changes go largely unnoticed and unopposed. For even as they bump up against conventional halakhic norms, rather than issue a direct challenge to established practice, they operate just beneath the surface.

Solitude and Despair: The Traditional Account of Tisha be-Av Mourning

Any schoolchild knows that the laws of Tisha be-Av contain five basic prohibitions: no eating/drinking, washing, applying oils or creams, sexual intimacy,

[2] Rabbi Shloush's responsa cited above contains a detailed halahkic analysis of this issue as well.

or wearing of leather shoes. These "capital L" Laws of Tisha be-Av determine the structure the fast, and at least within Orthodoxy, there is little movement afoot to change them.

There are, however, another set of laws, drawn from the halakhot of mourning, that work to shape the atmospherics of the day. On Tisha be-Av one is prohibited from studying Torah, either because it brings joy by engaging with God's word, or because it will distract from the mourning of the day.[3] The Talmudic rabbis permitted studying some of the lachrymose sections of the Bible and Talmud, but even here, halakhic authorities warned that one should not dwell on matters at length, lest one reach some novel insight and find joy in the process.[4]

Other restrictions are designed to highlight a sense of forlorn solitude and suspend the normal rhythms of social and communal life. On Tisha be-Av, Jews are enjoined from greeting one another,[5] and the final meal before the fast is eaten in solitude,[6] so as to minimize the social camaraderie that naturally attends a shared meal. Finally, a ban on instrumental music applies not only to Tisha be-Av itself but to the period leading up to it.[7] This too, stems from a cessation of communal festivities, since in Talmudic times, music was synonymous with wedding celebrations.

Classically understood, Tisha be-Av, particularly the initial night through the following mid-day, was not a time to feel close to God through Torah study, prayer, or thoughts of repentance as on the other fast days. Rather the focus for Tisha be-Av was on mourning which produces a disengagement from life and society and from any sense of routine, or, as the first *kinna* of the morning service opens, "Cease! Get away from me!" Anyone aware of the rabbis' appreciation of Torah study understands that prohibiting it is far more severe than forbidding food. Tisha be-Av reflects "alienation from God, complete separation or isolation from [Him]," as Rabbi Soloveitchik explained.[8] Even prayers are limited, because "all the doors and gates of prayer are closed, barricaded."[9] The pain of destruction ought to send one into such isolation and despair that he must disconnect from the community, and, in some ways, even from the divine presence itself.[10]

Until recently, at least in Orthodox circles, this image of Tisha be-Av was the universally regarded ideal. This does not mean it was consistently met; like all ideals, it rarely was. But in terms of what Tisha be-Av was supposed to feel like, the halakhic goals were clear. Plenty of people surely whiled away the hours in less rabbinically–sanctioned pursuits, but there were no public programs or activities signaling anything to the contrary.

Making Mourning Meaningful: Tisha be-Av as a Time for Religious Growth

Nevertheless, over the past generation, three innovations have significantly altered how Tisha

[3] SA, OH § 554:1. The competing reasons are cited in Taz to OḤ § 554:2 and Maharsha to Taanit 30b.

[4] Mishnah Berurah to OḤ§ 554: 4-5. Arukh ha-Shulhan to OḤ § 554:3.

[5] SA OH § 554:20.

[6] SA OH § 552:8.

[7] Mishnah Berurah to OḤ § 551:16.

[8] Joseph B. Soloveitchik, The Lord is Righteous in All His Ways: Reflections on the Tish'ah be-Av Kinnot, ed. Jacob J. Schacter (Jersey City: Ktav, 2006), 19.

[9] Ibid., 15.

[10] See ibid., 1-31.

be-Av is commemorated, and, in turn, what the day stands for. First, as VHS technology became widely available in the mid-1980s, synagogues started screening "Tisha be-Av videos" throughout the afternoon. These are professionally produced programs that focus on the Holocaust, the tragic points on Jewish history, and/or the dangers of speaking lashon hara (gossip and slander).

Today the practice continues both in synagogues and online, and some of these videos even contain a slight musical accompaniment in the background. Though hardly billed as "social events," these programs have proven popular because they bring the community together and edu-tain them during the long hours of the fast. Notably, the practice does not break along ideological lines, communities from liberal Orthodox to [American] haredi all air programming—although the tone and content may differ substantially. As a friend of mine quipped, haredim, notoriously wary of all forms of entertainment technology, likely get more screen time on Tisha be-Av than any other day of the year!

The second change relates to the in-synagogue services on Tisha be-Av morning. Traditionally, people sat on the synagogue floor until midday reciting complex liturgical elegies known as kinnot in a low, dirge-like tune with little embellishment or explanation.[11] Few had any idea what these poems meant, such that sitting uncomfortably on the floor in a darkened room did most of the work. Boredom and lack of interest were no doubt common, and as far back as the seventeenth century, rabbis already expressed their displeasure at the practice of impromptu games of "bottle-cap soccer" that took place on the synagogue floor during kinnot recitation.[12] Around the mid-2000s, technology enabled day-long lectures/shiurim/seminars on kinnot and related themes to be webcast into homes and synagogues across the county.

One of the most successful exemplars is sponsored by Yeshiva University and led by Rabbi Dr. Jacob J. Schacter. Following Rabbi Soloveitchik's model, Rabbi Schacter begins the presentation at 9.15 am with a sophisticated, two–hour source-based exploration of central Tisha be-Av themes. The program then continues with kinnot until its conclusion at 5 pm. While people sit on the floor and the kinnot are recited in the traditional tune, the overall feel is a far cry (or lack thereof) from the classic kinnot service. The program has a clear intellectual focus (in 2016, the source pack ran over 70 pages), and Rabbi Schacter emphasizes the historical, conceptual, and theological ideas that emerge from these obscure liturgical texts. (Full disclosure: I tune into this webcast every year.)

In addition to YU's program, the Orthodox Union runs its own events in both the US and Israel. Further, even communities that do not subscribe to any of the simulcasts have local rabbis prepare detailed explanatory programs for kinnot recitation which are then advertised to the community in advance. Here, too, we should note the tension between these kinnot seminars and the classical image of Tisha be-Av. While Torah study related to Tisha be-Av themes is permitted, previous authorities stressed that learning should be limited to topics that one is not familiar with and that the study should not delve too deeply into the substantive ideas.[13] These programs, by contrast, are led by scholars who have studied the topics for years

[11] SA, OH § 559: 3 & 5.

[12] See Eliyah Rabbah to OH § 559:17; see also Mishnah Berurah to OH § 559:22.

[13] See notes 3 & 4 above.

and invested considerable energy in preparing the Tisha be-Av lectures. They aim to illuminate Jewish law, theology, and history for their audiences. They are hardly superficial.

"Shall I Weep in the Fifth Month … as I have Done All These Years?"[14]

Notwithstanding the largely diasporic changes described above, the most dramatic shift to the tenor of Tisha be-Av has taken place in Israel, particularly at the Kotel, or what was once called the Wailing Wall. As Hillel Halkin notes, Western writers, Arabs, and Jews of the modern era all referred to the spot as the "Wailing Place" and then the "Wailing Wall," following the Arabic appellation. Travelogues written in the 1870s indicate that wailing was the site's primary activity—and not just on Tisha be-Av.[15] Since 1967 however, Jews refer to it almost exclusively through the older, but less morose Hebrew term, the "Western Wall." In the past generation or two, the Kotel has further transitioned from being the focal the point of Jewish wailing to the locus of Jewish pride, strength, and national resolve. There is no shortage of Facebook wall photos (including my own) that show vacationing Jewish families broadly smiling in front of the Kotel, and for years, the IDF has been holding swearing-in ceremonies for new enlistees at the Kotel plaza. The Wailing Wall is indeed no more.

While rabbis, thought-leaders, and liturgists argue whether these realities should be reflected in the text of Nahem, the experience of Tisha be-Av has already changed on the ground. Since the Kotel is a popular Tisha be-Av destination, it becomes something of a communal gathering, where one inevitably runs into long lost friends and acquaintances. This begets an awkward (and generally unsuccessful) attempt of friends trying to acknowledge one another without running afoul of the halakhic restrictions on greeting. In jest, though reflecting a deeper truth, some have taken to wishing each other a "gutte hurban" ("happy destruction day"). Whereas classical sources warned against congregating in groups on Tisha be-Av, even for otherwise perfectly appropriate activities,[16] lest it turn into a social gathering and distract from the mourning mindset of the sad day,[17] this concern is far less salient to the crowds congregating at the Kotel. The wall that acquired its name due to the Jews' persistent wailing now elicits more smiles than wails—even on Tisha be-Av itself.

The gathering at the Kotel has publicized and popularized another new tradition (likely started in Orthodox summer camps), the "Tisha be-Av kumzitz." (Let that phrase sink in for a moment.) This involves people either sitting on the floor or standing and swaying together at the Kotel plaza while singing soulful Jewish songs—a practice

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[14] This is the question the Jews asked to the prophet Zecharia: Must they continue to fast on Tisha be-Av in commemoration of the First Temple, when the Second Temple was standing?

[15] Halkin quotes the British Reverend Samuel Manning, who traveled to Jerusalem in the 1870 and wrote, "[a] little further along the western [retaining] wall we come to the Wailing-place of the Jews … Here the Jews assemble every Friday to mourn over their fallen state … Some press their lips against crevices in the masonry as though imploring an answer from some unseen presence within, others utter loud cries of anguish."

[16] Rema, OḤ § 559:10 (approvingly citing custom of visiting a cemetery on Tisha be-Av).

[17] See Mishnah Berurah OH § 559:41, citing Rabbi Isaiah Horowitz's Shenei Luhot ha-Berit.

common to periods of intense spiritual focus, but not classically associated with Tisha be-Av.[18] Numerous videos attest to song sessions on the night of Tisha be-Av, as well as throughout the afternoon, but the crowds and intensity clearly grow as the day wears on, culminating in the final hours of the fast. By now, these spontaneous sessions of song have become institutionalized, and the setting is used to strengthen the spiritual resolve and bonds of national/Jewish unity amongst the assembled.

Explaining this practice, one often hears that since the Temple was destroyed due to sinat hinnam—baseless hatred between Jewish sub-groups—it is only proper that Tisha be-Av serve to remedy this national shortcoming. But while the classical literature surely maintains the Temple was destroyed due to baseless hatred, the halakhot of Tisha be-Av all push against the idea that the day itself should be marked by community building and social healing. (In fact, the laws of Purim are far more suited to these aims.)

In any event, by swaying, hugging, and soulfully chanting with Jews of different stripes, the intensity and slight deliriousness that attends the end of 25–hour fast, becomes a moving, ecstatic, and in many ways optimistically joyful expression of religious fervor and unity.This effect is reinforced when these videos are proudly shared across social media, symbolizing the triumph of the Jewish soul and national and spirit. By contrast, can you imagine Jews in eleventh century Worms or nineteenth century Vilna sharing images of their Tisha be-Av as a triumph of Jewish peoplehood? And, while one suspects that members of Jerusalem's older Lithuanian communities, and perhaps even some Religious Zionists, find these "sing-ins" in bad taste and pushing the appropriate boundaries of the day, the practice is rarely criticized. Every year, the size and ideological diversity of the chanting crowds seems to grow.

Analysis and Conclusion

The afternoon videos and lectures, the extended kinnot and Torah-study sessions in the morning, and the kumzitz at the Kotel plaza are all in tension with the spirit, if not the letter, of what until quite recently were accepted halakhic norms of Tisha be-Av. The first two aim to create a more relevant and spiritually "productive" Tisha be-Av. These draw on the modern preference for more affirming and engaging religious experiences, though what they yield is somewhat at odds with the halakhic vision of mourning. The third shift ties the quest for ritual relevance to the process of making Tisha be-Av more congruent with the national state of mind. Though it is exceedingly difficult to square communal song and embrace with the halakhic thrust of the day, the scene at the Kotel reflects the fact that, in a unified Jerusalem, Jews no longer wail in solitude lamenting a distant Temple. Instead, they gather at the theological one-yard line to fervently demonstrate just how close they are to it. And though the event is neither as formally sanctioned or as celebratory as the priestly blessing ceremony held on the major holidays, the effect is not altogether different.

Despite their apparent novelty, these practices range throughout Orthodoxy, and none is associated with liberal or reformist groups seeking to reinterpret or change the character of the day. To take it a step further, those participating in these

[18] A parallel development is the shift from the pre-Selihot fire and brimstone mussar talk, to the "pre-Selihot kumzitz," a phenomenon itself worthy of study. However, there seem to be fewer formal halakhic impediments to communal song before Selihot than on Tisha be-Av.

events tend to be of the most serious and committed Jews who aspire to spend Tisha be-Av engaging its central themes. People who observe Tisha be-Av in a more perfunctory manner are not interested in learned lectures or soulful chants, opting instead to pass the time at home, watching TV or fiddling with electronic devices; to say nothing of the great number of Jews who do not observe Tisha be-Av at all.

In sum, when the status of Tisha be-Av is argued frontally and ideologically, the result is friction, dissention, and a status quo stalemate. The most significant changes, however, occur underneath. Without mounting a structural assault on Tisha be-Av's rules or underlying premises, communities have refashioned the halakhah to fit both their religious sensibilities and political commitments. Thus, the day that classical halakhah portrays as a forlorn emptiness, devoid of community, Torah, and song, is now commemorated—we might even say celebrated—through Torah study, community building, and song.

The fast of the fourth month, the fast of the fifth month, the fast of the seventh month, and the fast of the tenth month shall become occasions for joy and gladness, happy festivals for the House of Judah; but you must love honesty and integrity.

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U-shemor Nafshekha: The Curious History of the (Supposed) Mitzvah to Maintain One's Health

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Introduction

In the Modern Orthodox day schools I attended in my childhood, I heard numerous times that there is a mitzvah to eat healthy and get exercise. The verse that teachers would quote for this mitzvah was either *u-shemor nafshekha* (Deuteronomy 4:9) or *ve-nishmartem me'od le-nafshoteikhem* (Deuteronomy 4:15). Both of these verses can be approximated with the same translation, "Guard your *nefesh*."[1] However, if we look at these verses closely, both in their context in the Written Torah, and the history of their interpretations in the Oral Torah, we will see that a broad mandate for healthy living is far from obvious.

U-shemor Nafshekha in the Bible

We begin by quoting the context of these verses in Deuteronomy 4:5-19:

> 5. See, I have imparted to you laws and rules, as the Lord my God has commanded me, for you to abide by in the land that you are about to enter and occupy. 6. Observe them faithfully, for that will be proof of your wisdom and discernment to other peoples, who on hearing of all

[1] The Hebrew word *nefesh* can be translated in the Torah as either body or soul. To preserve that ambiguity, I will simply leave the word untranslated as *nefesh*.

these laws will say, "Surely, that great nation is a wise and discerning people." 7. For what great nation is there that has a god so close at hand as is the Lord our God whenever we call upon Him? 8. Or what great nation has laws and rules as perfect as all this Teaching that I set before you this day? **9. But take utmost care and watch yourselves scrupulously (*u-shemor nafshekha*), so that you do not forget the things that you saw with your own eyes and so that they do not fade from your mind as long as you live. And make them known to your children and to your children's children:** 10. The day you stood before the Lord your God at Horeb... 12. The Lord spoke to you out of the fire; you heard the sound of words but perceived no shape—nothing but a voice.... **15. For your own sake, therefore, be most careful (*ve-nishmartem me'od le-nafshoteikhem*)—since you saw no shape when the Lord your God spoke to you at Horeb out of the fire—** 16. not to act wickedly and make for yourselves a sculptured image in any likeness whatever: the form of a man or a woman, 17. the form of any beast on earth, the form of any winged bird that flies in the sky, 18. the form of anything that creeps on the ground, the form of any fish that is in the waters below the earth. 19. And when you look up to the sky and behold the sun and the moon and the stars, the whole heavenly host, you must not be lured into bowing down to them or serving them....[2]

In context, the verses are clearly an imperative against theological corruption, not physical corruption. As all of the medieval exegetes make clear, the Torah is warning the reader not to forget the commandments that God gave and not to make any physical image of God (see, for example, Ramban and Bekhor Shor on 4:15). There is no indication anywhere in this section, or in the commentary of the *parshanim*, of anything having to do with maintaining the health of one's body.

U-shemor Nafshekha in the Talmud

Of course, Scriptural context only takes us so far in a Halakhic discussion. Far more important is to see how *Hazal* interpreted it in the Oral Torah. The first place we encounter it is in a peculiar story in *Berakhot* 32b-33a:

> The Sages taught: There was an incident, involving a particular pious man [*hasid*] who was praying while traveling along the road when an officer came and greeted him. The pious man did not respond with a greeting. The officer waited for him until he finished his prayer.
>
> After he finished his prayer, the officer said to him: "You good for nothing! Isn't it written in your Torah: 'Take utmost care and guard yourself diligently' (*u-shemor nafshekha*; Deuteronomy 4:9)? And it is also written: 'Take therefore

[2] NJPS translation (Jewish Publication Society, 1985).

good heed unto yourselves' (*ve-nishmartem me'od le-nafshoteikhem*; Deuteronomy 4:15)? Why did you ignore the danger to your life? When I greeted you, why did you not respond with a greeting? Were I to sever your head with a sword, who would hold me accountable for your spilled blood?"

The pious man said to him: "Wait for me until I will appease you with words." He continued, "Had you been standing before a flesh and blood king and your friend came and greeted you, would you return his greeting?"

The officer said to him: "No."

The pious man said: "And if you would greet him, what would they do to you?"

The officer said to him: "They would cut off my head with a sword."

The pious man said to him: "This is a matter of *kal va-homer* [a fortiori inference]—You, who were standing before a king of flesh and blood, who today is here but tomorrow he is in the grave, would have reacted in that way. I, who was standing before the Supreme King of kings, the Holy One, Blessed be He, Who lives and endures for all eternity—all the more so."

The officer was immediately appeased and the pious man returned home in peace.[3]

While this passage clearly does interpret the verse as an admonition to avoid behavior that will lead to bodily harm, the interpretation comes not from any rabbi, but from a Roman officer, and the *hasid* offers a *kal va-homer* that would be more applicable to this case than the Roman's suggestion anyway.[4] At best, we can perhaps infer from the rabbis' lack of arguing with the interpretation itself that it was accepted. Most *rishonim* have little to say on this passage and very few clues as to whether they take it as halakhically authoritative or not.[5] Even if we assume they did, it certainly did not have any prominent place in most of the practical halakhic guidebooks or codes of the Middle Ages.[6]

[3] Translation adapted from the William Davidson Talmud, trans. Rabbi Adin Steinsaltz, Sefaria.org.

[4] For an overview of contemporary scholarship about Talmudic dialogues between rabbis and non-Jews, see Sarit Kattan Gribetz and Moulie Vidas, "Rabbis and Others in Conversation," *Jewish Studies Quarterly* 19:2 (2012): 91-103, and the articles they cite there.

[5] The only other mention in the Talmud of this verse is *Shevu'ot* 36a, which cites it as a source for the prohibition against cursing oneself. There, Tosafot s.v. *U-shemor Nafshekha Me'od* understand this as being related to the prohibition against causing bodily harm, though they express astonishment that the Gemara would bring this verse to prohibit cursing oneself and never bring it to prohibit injuring oneself. However, see Hatam Sofer ad loc. s.v. *U-shemor Nafshekha* who interprets that Gemara in a way that does not at all relate to a prohibition against causing bodily harm.

[6] Prominent medieval works that do not include any reference to either of these verses in the context of not causing bodily harm include, but are not limited to, *Sefer Mitzvot Gadol, Sefer Mitzvot Katan, Orhot Haim, Torat Ha-adam, Sefer Ha-hinukh, Sefer Hasidim, Abudraham*, and *Kol Bo*.

Rambam and *Shulhan Arukh*

There are a small number of *rishonim* who do cite this verse as a source for a prohibition on causing bodily harm, most notably Rambam.[7] He codifies it in *Hilkhot Rotzeah U-shemirat Nefesh* (11:4-6) following the requirement to have a parapet, or fence, around one's roof:

> *Halakhah 4*: Both a roof and anything else dangerous that a person is liable to stumble on and die, for example, if a person has a well or a cistern in his courtyard, whether they contain water or not, a person is obligated to make a wall ten *tefahim* high around them or make a cover for them, so that a person will not fall in and die.
>
> So too, any obstacle that contains a mortal danger, it is a positive mitzvah to remove it, and to protect oneself from it, and to be very careful regarding these matters, as it says, 'Take utmost care and guard your *nefesh*.' If a person does not remove it and leaves a dangerous obstacle, he negates a positive commandment, and violates the negative commandment: "Do not cause blood to be spilled."
>
> *Halakhah 5*: Many things were prohibited by the sages because they involve a mortal danger. Anyone who violates them, and says: 'I will endanger myself, and what does this matter affect others?' or 'I am not careful about these things,' we punish him with lashes for rebelliousness.
>
> *Halakhah 6*: These are they: a person should not place his mouth over a pipe through which water flows and drink, nor should he drink at night from rivers and lakes, lest he swallow a leech without seeing, nor should a person drink water that was left uncovered, lest a snake or other poisonous crawling animal have drunk from them, and as a result of drinking it, the person would die.[8]

While Rambam calls *u-shemor nafshekha* a positive commandment, it is notable that in his list of the commandments at the beginning of the section, he does not mention it. Additionally, he does not indicate any new obligations or prohibitions on the basis of *u-shemor nafshekha* that would not have already been included in the negative commandment of "Do not cause blood to be spilled." It seems like *u-shemor nafshekha* is being brought as an additional value or motivation for the rabbis to enact the subsequent rabbinic prohibition, rather than as a formal command bearing any specific imperative in its own right. When he says in Halakhah 5 that a person who violates these prohibitions can be punished with lashes for rebelliousness, the simplest explanation is that he is referring to the lashes the rabbis can give for the violation of any rabbinic commandment.[9]

[7] See also *Shu"t Ha-rashba, siman* 1, who cites it in a very similar context to Rambam.

[8] This and all subsequent translations are my own.

[9] See *Shabbat* 40b, *Yevamot* 52a, *Ketubot* 45b, *Nazir* 23a, *Menahot* 70a, and *Hullin* 141b for examples of the use of "lashes for rebelliousness."

It is worth noting that *Shulhan Arukh* does seem to read Rambam somewhat more broadly than this. In *Hoshen Mishpat* 427, he begins in *se'ifim* 7-9 by quoting the aforementioned halakhot of Rambam almost verbatim. However, in *se'if* 10, he adds:

> Anyone who violates these things, **or things similar to them**, and says: 'I will endanger myself, and what does this matter affect others?' or 'I am not careful about these things,' we punish him with lashes for rebelliousness. And one who is careful about these things will receive a blessing of good.

The addition of the phrase, "or things similar to them,"[10] makes it clear that he assumes one can receive lashes not merely for the specific rabbinic prohibitions of placing one's mouth over a pipe, drinking from rivers and lakes at night, or drinking water that has been left uncovered, but for any similarly dangerous activities. He, therefore, clearly understands that the lashes are for the violation of *u-shemor nafshekha* and not for the violation of the specific rabbinic prohibition.[11]

Regardless of whether one takes the *Shulhan Arukh*'s expansive reading of the lashes or a narrower view, one thing is clear. The only things included in this commandment are behaviors that could pose an imminent mortal danger. There is no broad mandate for a good diet and healthy lifestyle. This point is perhaps made most clear not where Rambam mentions *u-shemor nafshekha*, but where he does not mention it. In *Hilkhot De'ot* 4:1, Rambam does discuss the importance of a generally healthy diet and lifestyle. He introduces the section by saying:

> Since having a healthy and sound body is among the ways of God—for it is impossible to understand or to know [anything of the knowledge of the Creator][12] if he is [too] sick—a person must distance himself from things that harm the body and behave in a manner that makes him healthy and strong.

Rambam here appeals to an intuitive logic that one cannot properly serve God through learning Torah and doing Mitzvot if his body is not healthy. He makes no mention of any specific Biblical command. Surely, had Rambam thought healthy diet and lifestyle were included in the command of *u-shemor nafshekha*, this would have been the place to mention it.

Kitzur Shulhan Arukh

The first time we find any usage of *u-shemor nafshekha* as mandating anything beyond avoiding imminent mortal danger is in the 19th century in *Kitzur Shulhan Arukh*. He begins his section on the

[10] See Jonathan Ziring "'Eat, Drink, and be Merry, for Tomorrow We Die': Is There an Obligation to Maintain Good Health?" *Verapo Yerape* 4 (2012): 184, n. 56, where he makes note of this difference (in my name), but is not convinced of its significance.

[11] The lashes cannot be for the violation of the negative command of, "Do not cause blood to be spilled," because, as Rambam says in Halakhah 3 of this same chapter, it is a prohibition that does not contain an action. Additionally, had he been referring to lashes for the violation of a Biblical negative commandment, he would not have used the phrase "lashes for rebelliousness."

[12] The bracketed phrase appears in the Vilna printing of the *Mishneh Torah*. However, see the notes in the Frankel edition, where it is indicated that it is absent from most manuscripts.

importance of a healthy lifestyle as follows:

> Since having a healthy and sound body is among the ways of God—for it is impossible to understand or to know anything of the knowledge of the Creator if he is [too] sick—a person must distance himself from things that harm the body and behave in a manner that makes his body healthy and strong, as the Torah states, 'Be most careful and guard your *nefesh*.'[13]

He takes the language from Rambam *Hilkhot De'ot* about the importance of maintaining a healthy lifestyle and the intuitive logic motivating it, and conflates it with the biblical command of *ve-nishmartem me'od le-nafshoteikhem*. One can only speculate as to what motivated him to do this. Perhaps the logic that was intuitive for Rambam in the cosmopolitan medieval Islamic world in which he lived was not as intuitive in the shtetl world of Eastern Europe, and therefore people would not be motivated without the force of a Biblical verse. Regardless, *Kitzur Shulhan Arukh* was an immensely popular work among the general Jewish population in Eastern Europe,[14] and there is no doubt that this is the source for the now common understanding of the verse that I received from my elementary school teachers.

Iggrot Moshe and Other Contemporary *Poskim*

While *Kitzur Shulhan Arukh*'s broad expansion of the scope of *u-shemor nafshekha* took hold in the minds of the general public, it is unclear how many *poskim* actually accepted it. Rabbi Moshe Feinstein, in his *Iggrot Moshe*, authored numerous responsa on medical and health issues, and only once does he reference *u-shemor nafshekha*: in his 1981 responsum on smoking. While he advises strongly against smoking, he argues forcefully that it would not fall under the prohibition of *u-shemor nafshekha*. He writes:

> It appears obvious that regarding something that causes no detriment to the health of many people, such as types of food that people enjoy very much—like fatty meat, or very spicy food—even though it may harm the health of some people, there is no prohibition to eat it on account of danger, since the majority of people are not endangered by it. See Rambam in chapter 4 of *Hilkhot De'ot*, where he describes which foods and drinks are good for the health of the body or bad for the health of the body. He does not use the language of prohibition, neither Biblical, nor Rabbinically prohibited by the Sages, as he did when he wrote about removing an obstacle that presents a potential mortal danger in *Hilkhot Rotzeah* 11:4 that it is forbidden to place it there and a mitzvah to remove it—even if it is a danger only to himself— based on the positive Biblical command of, 'Take utmost care and guard your *nefesh*,' and the negative command of, "Do not cause blood to be spilled."[15]

[13] *Kitzur Shulhan Arukh* 32:1.

[14] See, for example Y.L. Maimon's introduction to *Kitzur Shulhan Arukh* (Jerusalem: Mossad Harav Kook, 1987), 13-14.

[15] *Iggrot Moshe Hoshen Mishpat* 2:76.

He explicitly rejects the approach of *Kitzur Shulhan Arukh* that includes Rambam's general health advice from *Hilkhot De'ot* under the rubric of *u-shemor nafshekha*.

Rabbi Shmuel Wosner, in his *Shevet Ha-levi*, argues that smoking cigarettes would be included in the prohibition of *u-shemor nafshekha*. However, from the way he presents it, it would seem that the most likely explanation is that he sees a higher level of danger in cigarette-smoking than *Iggrot Moshe* did, not that he has a more expansive view of what is included in *u-shemor nafshekha*. He writes:

> Rambam says in *Hilkhot Rotzeah U-shemirat Nefesh* 11:5, 'Many things were prohibited by the sages because they involve a mortal danger. Anyone who violates them, and says: "I will endanger myself, and what does this matter affect others?" or "I am not careful about these things," we punish him with lashes for rebelliousness.' Included in this list are types of food and drink that the Sages prohibited because they present a potential mortal danger, and Rambam listed them there, as well as Ritva in *Shevu'ot* 27, and wrote that eating these foods that damage the body are included in the Biblical prohibition of, 'Take utmost care and guard your *nefesh*.' It is the responsibility of the sages of our time to proclaim and make known the grave danger involved in smoking cigarettes. It has been verified through thorough investigation beyond all doubt that hundreds of thousands die before their time because of smoking cigarettes. It is also well-known that it is a major cause of severe illnesses of the lungs and heart, and many other things. This has been found in the research of doctors in every country in the world. It is therefore clear that the Halakhah is that it is absolutely forbidden to begin smoking. (*Shevet Ha-levi* 10:295)

Note the extent to which he goes to compare smoking to the things which Rambam prohibits in *Hilkhot Rotzeah* and makes no mention of Rambam in *Hilkhot De'ot*.

Several other *poskim* as well, such as Rabbi Ovadia Yosef[16] and Rabbi Yitzchak Weiss,[17] make mention of *u-shemor nafshekha* only in contexts where actual mortal danger is being discussed. Their rejection of *Kitzur Shulhan Arukh* is not explicit the way it is in *Iggrot Moshe*, and we cannot prove anything absolutely from silence. Nevertheless, we certainly have no proof that any of these major *poskim*, in their extensive responsa literature, accepted a broad mandate for a healthy lifestyle as included in the mitzvah of *u-shemor nafshekha*.

Tzitz Eliezer

In contrast with the approach of these *poskim* is the approach of Rabbi Eliezer Waldenberg in his *Tzitz Eliezer*. Unlike *Iggrot Moshe*, who dealt with many medical questions, and only mentioned *u-shemor nafshekha* once, the verse features prominently in many of the medical responsa in *Tzitz Eliezer*. Many, if not most, of these uses are not surprising. They relate to classic cases of mortal danger, and fit with the simple reading of Rambam and *Shulhan*

[16] See *Yabia Omer Yoreh Deah* 1:8 et al.

[17] See *Minhat Yitzhak* 8:148.

Arukh.[18] However, there are several cases that do not fit this rule, which give us insight into his overall approach. In *Tzitz Eliezer* 17:2, he deals with a patient who did not want medical treatment because he views it as a lack of faith in God. The doctors want to know if they should attempt to persuade him otherwise. He writes in response:

> It is certainly permitted to persuade him to accept medical treatment. Additionally, explain to him that it is a foolish piety not to accept the needed medical treatment, because the Torah said, 'Be most careful and guard your *nefesh*.'

He makes no distinction between whether the medical treatment is for a situation of imminent mortal danger or not. Indeed, if the patient viewed it as a lack of faith to accept medical treatment even in cases of imminent mortal danger, all the more so we can presume he would refuse it if there was no imminent mortal danger. We see from Rabbi Waldenberg's response that he includes in *ve-nishmartem me'od le-nafshoteikhem* a broad mandate to maintain one's health and do whatever the doctors believe is necessary, not merely to avoid situations of imminent mortal danger. In doing so, he is clearly following the approach of *Kitzur Shulhan Arukh*.

In *Tzitz Eliezer* 15:44, Rabbi Waldenberg is asked about marrying relatives (e.g., first cousins). The relatives in question are people whose relationship would not be considered incestuous under Torah law. Nevertheless, the doctors say that marrying these relatives will increase the likelihood of having children with severe birth defects. In summarizing his response, he writes:

> It is impossible to say that marrying these relatives is absolutely forbidden...but it is certainly permitted [for doctors] to warn about the risks. One who decides to refrain [from the marriage] is not violating any prohibition since he is concerned for his *nefesh* because of how strictly we treat danger. He will receive reward for this refraining, since he is doing it in fulfillment of 'Be most careful and guard your *nefesh*.'

His response here is fascinating. One the one hand, he recognizes the distinction between cases with imminent mortal danger and those without. He will not say something is absolutely forbidden without imminent mortal danger. On the other hand, he clearly sees actions related to one's health (or one's children's health) as being a fulfillment of the same mitzvah of *ve-nishmartem me'od le-nafshoteikhem*, even when they present no imminent mortal danger (and perhaps no mortal danger at all—he does not elaborate on specifically which kind of birth defects he was concerned about). He is the only *posek* we have seen who seems to have such a category, and once again seems to be clearly adopting the approach of *Kitzur Shulhan Arukh* that all health concerns are really being addressed by *ve-nishmartem me'od le-nafshoteikhem*.

We can further see how Rabbi Waldenberg views this mitzvah in one of his responsa that deals with a

[18] See *Tzitz Eliezer* 8:15.7, 9:17.4, 9:17.5, 10:25.7, 10:25.21, 12:43, 15:37, 17:8, and 21:8.

situation he believes to present imminent danger. In the course of answering the question, he writes a brief excursus on how the mitzvah is derived:

> Rambam *Hilkhot De'ot* 4:1 rules, 'Since having a healthy and sound body is among the ways of God – for it is impossible to understand or to know anything of the knowledge of the Creator if he is [too] sick—a person must distance himself from things that harm the body and behave in a manner that makes him healthy and strong.'
>
> On the basis of these words of Rambam, we can understand the words of Rambam *Hilkhot Rotzeah* 11:10, where he derives the positive mitzvah to remove an obstacle that could pose a mortal danger and to be very careful about this from the verse, 'Take utmost care and guard your *nefesh*.' (Deuteronomy 4:9). See *Maharsha* in *Berakhot* 32b, commenting on the story about the pious man, whom the officer challenged on the basis of this verse. Maharsha notes that this verse is speaking about forgetting the Torah, as it says, 'lest you forget the things.' Likewise the verse of, 'Be most careful and guard your *nefesh*,' is dealing with not believing in any physical form of God. Neither verse is dealing at all with a person guarding his *nefesh* from physical danger.
>
> However, based on Rambam *Hilkhot De'ot* it makes sense how a warning to protect one's body is also included, because when the body is not healthy and sound, this can also cause one to forget the Torah, as Rambam wrote, 'For it is impossible to understand or to know anything of the knowledge of the Creator.' (*Tzitz Eliezer* 21:8)

He makes explicit here the connection between Rambam *Hilkhot De'ot* and Rambam *Hilkhot Rotzeah* and that he sees them both as part of one big picture: a mitzvah to keep your body as healthy as possible in order to maintain proper knowledge of Torah. This explicit connection leaves no further doubt that Rabbi Waldenberg interprets Rambam in the same manner as the *Kitzur Shulhan Arukh*.

Conclusion

The notion of deriving a mitzvah to protect one's body from *u-shemor nafshekha* or *ve-nishmartem me'od le-nafshoteikhem* is of questionable authority in the Talmud, and there may well have been *rishonim* who did not accept it at all. Nevertheless, Rambam and *Shulhan Arukh*, followed by most contemporary *poskim*, do accept such a mitzvah. However, based on the simple reading of Rambam and *Shulhan Arukh*, the scope of the mitzvah only includes avoiding situations with the potential for imminent mortal danger. While Rambam does talk about the importance of general health concerns, he appears to base this idea on logic and does not explicitly connect it to this mitzvah.

The first source to make the connection between general health concerns and *u-shemor nafshekha* or *ve-nishmartem me'od le-nafshoteikhem* is *Kitzur Shulhan Arukh*. His approach seems to have taken hold in the minds of much of the current Jewish population, especially elementary school teachers. Nevertheless, most contemporary *poskim* seem to

have rejected such an approach in favor of the simple reading of Rambam, and *Iggrot Moshe* makes this rejection explicit. Only *Tzitz Eliezer* appears to have accepted the approach of *Kitzur Shulhan Arukh* as normative. It is worth noting, as well, the surprisingly few sources available that make use of *u-shemor nafshekha* at all, despite its prominence in popular discourse.

The goal of pointing this all out is not, God forbid, to downplay the importance in Judaism of maintaining one's health. Surely, as we are hopefully emerging from a global pandemic, I do not want anyone to come away from this article thinking that I am advocating for the Halakhah to be less strict with regard to our physical safety. Rather, my goal is to emphasize the significance of logic as the source of this importance. As we see from Rambam, and most contemporary *poskim*, not everything God expects of us can be subsumed under a specific mitzvah.[19] God also expects us to use our heads, and figure out for ourselves what we need to do in order best to serve Him. This message has the potential to speak even more powerfully to the children in the elementary schools as to the importance of maintaining one's health than two verses in Deuteronomy.

[19] This article only addressed one aspect of the halakhic obligation towards one's health; for a full treatment of the issue, including other halakhic principles that are at play in this discussion, see Jonathan Ziring "'Eat, Drink, and be Merry, for Tomorrow We Die': Is There an Obligation to Maintain Good Health?" *Verapo Yerape* 4 (2012): 172-192.