

PARSHAH PERSPECTIVES ON MODERN MEDICINE: BO

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SHOULD A PERSON WITH AN INFECTIOUS DISEASE BE ALLOWED TO PUT ON TEFILLIN, IF HE KNOWS THAT ONCE THE DISEASE RESOLVES THE TEFILLIN WILL NEED TO BE DESTROYED SO AS TO PREVENT FURTHER SPREAD OF THE ILLNESS?

With concerns of infectious disease circulating in the media, it seems appropriate to ponder a somewhat more historical concern that arose for people in the midst of or even convalescing from an infectious illness.

Some infections are so contagious that patients must be kept in isolation for the duration of the contagious portion of their illness, even while they may no longer be experiencing severe or serious symptoms. It's therefore quite possible that a person with such a disease may still feel well enough to daven and even put on tefillin. Barring any medical contraindication, there shouldn't be any halakhic reason not to wear tefillin.

The challenge is that in certain cases, all materials and clothing that enter such a patient's room must be subsequently thoroughly disinfected. Sometimes, and certainly in older times, this entailed burning the various sheets, garments, and gown worn by the patient during his infectious period. If he were to wear tefillin during this period, they would have to be disposed of thereafter, historically speaking, often in fire. A modern equivalent might require strong disinfecting agents that when applied to tefillin may also render them פסול. The Poskim therefore debated whether or not it's appropriate to bring tefillin to such a patient when it's known in advance that these tefillin will eventually have to be destroyed.

Destroying tefillin violates the Torah prohibition of לא תעשון כן לה' אלוקים. The question here really isn't one of destroying or מחיקת השם, but rather creating a situation that will lead to מחיקת השם. The Gemara (Shabbat 120b) is quite clear that מחיקת השם is only violated when the action is done directly - גרמא שרי - עשייה הוא דאסור, גרמא שרי. Since indirect destruction, גרמא, is permissible, the Gemara concludes that a person who has Hashem's name written on their skin may immerse in a mikvah when necessary, even though doing so will cause the name to be erased.

With that conclusion in mind, it would seem that bringing tefillin to such a patient would be permissible. Even while the eventual destruction might be direct and intentional, the act of entering such a situation to begin with seems to be only גרמא.

Rashba however, interprets the Gemara in Shabbat somewhat narrowly. He explains that מחיקת השם is only permissible through גרמא, when the outcome isn't certain. When a person immerses in a mikvah, it's possible that the שם will be erased and it's possible that it may not; Rashba rules that it's that uncertainty that makes it permissible to enter the situation to begin with.

The Gemara in Sukkah (52a) however, seems to paint a different picture. When David Ha-Melekh was digging in Yerushalayim for the future Beit Ha-Mikdash, the waters rose up

PARSHAH PERSPECTIVES ON MODERN MEDICINE: BO

and threatened to flood the world. David thought of a solution to the problem, but didn't know if it was permissible. He asked if anybody knew whether or not it would be permissible to write a particular name of Hashem on a piece of pottery and toss it into the abyss that would cause the waters to recede. The concern was מחיקת השם as the water would cause the Name to eventually be erased. After some persuading, Achitofel ruled that it's permissible, but only because it was necessary to save many lives.¹ Rav Shlomo Kluger (Shu"t Tuv Ta'am va-Da'at, Hilkhot Sefer Torah, 239) explains that this Gemara seems to conclude that when lives are not at stake, מחיקת השם is forbidden, even when done indirectly. This stands in stark contrast to the conclusion of Gemara Shabbat, which indicates that an indirect מחיקת השם is permissible.

To resolve the contradiction, Rav Elyashiv zt"l (He'arot to Sukkah 53b) invokes the Rashba and argues that both passages in the Gemara accept the Rashba's conclusion: Whenever the outcome is certain, even an indirect מחיקת השם is forbidden; it's only permissible when the outcome is still in doubt. He explains that David Ha-Melekh knew full well that by throwing the piece of pottery into the deep waters, that Hashem's name would be erased. Since it was a certainty, it's forbidden even through an indirect means [and only permissible in that case because of pikuach nefesh of the entire nation / world]. The Gemara in Shabbat, he explains, was talking about a less certain situation, where the outcome of מחיקת השם was not guaranteed.²

The Tchebiner Ga'on (Shu"t Dovev Meisharim 99) invokes this idea to argue against allowing a sick infectious patient as described earlier to be allowed to have tefillin. Since it is certain that any and all articles of clothing and accessories that enter the patient's room during his infectious period will be destroyed, bringing tefillin to this patient is not merely indirectly causing the destruction of the tefillin. Since the outcome is certain from the outset, bringing tefillin to such a patient is tantamount to actively destroying those tefillin and a violation of מחיקת השם. His brother, the Chazon Nachum (no. 6) agrees and adds additional sources to support their conclusion.

One of the biggest challenges to this position is adopting the Rashba's approach. Beit Efrayim (Kuntres Takanat Agunot, p. 9) wonders how the Rashba could have possibly understood the Gemara Shabbat. The reason the Gemara discusses indirect מחיקת השם is because it is comparing it to direct vs. indirect extinguishing of a fire on Shabbat. The Gemara seems to be comparing the two prohibitions in terms of defining the parameters of the distinction between that which is considered direct and that which is indirect. The very fact that they are compared, argues Beit Efrayim, indicates that the Gemara thinks that the rationale for the distinction between direct vs. indirect is the same for both הבערה on Shabbat and מחיקת השם.

¹ He finds precedent for doing so by the laws of Sotah, where various pesukim are written on parchment that is eventually erased with the erased remnants forming part of the water that she must drink. Achitofel argues that if Hashem allowed His name to be erased so as to bring peace and harmony to a married couple, then it is certainly permissible to erase His name to bring peace and life to the entire world.

² See Rav Ovadiah Yosef's Me'or Yisrael (Shabbat 120b) for many other ways to resolve this contradiction.

PARSHAH PERSPECTIVES ON MODERN MEDICINE: BO

He argues that if this reading of the Rashba is correct, than the reason that indirect מחיקת השם is permissible is because and only when the outcome is uncertain. But this would then have nothing to do with indirectly extinguishing a flame on Shabbat, particularly as the Gemara describes several situations in which the outcome is virtually guaranteed.

Rav Asher Weiss (Ki Tavo 5779) explains that this is not actually what Rashba had in mind. The case in Gemara Shabbat is about an individual who needs to immerse in a mikvah for taharah purposes. He isn't taking a bath or going swimming, but dunking in the water and then leaving. He isn't spending much time in the water at all and there really isn't any reason that he should think that Hashem's name that is inked on his body will come off in those few moments. If however, Rashba argues, there is some reason to believe that this brief immersion in the water will definitely cause the Name to erase, that cannot be considered indirect at all. It's not that the ink because moist and then so wet that the ink eventually came off. Instead, it's the very act of entering the water that caused erasing almost immediately [not that the time factor is necessarily relevant but rather, in this instance, indicates that it was the act of entering the water and not the eventual dissolution of the ink that caused the Name to be erased]. As such, Halakhah would consider his dipping in the water similar to actively rubbing off the Name, an active violation.³

Re-reading Rashba in this light would mean that it's still possible to conclude that an indirect but certain מחיקת השם is permissible.

Rav Shmuel Landau (son of R. Yechezkel Landau, whose teshuvah is included in his father's collection, Shu"t Noda Bi-Yehudah, Tinyana, OH 17) argues that even those who read Gemara Shabbat more permissively, must nonetheless conclude that indirect מחיקת השם is only permissible לצורך מצוה. The Gemara's discussion is actually about somebody who must immerse in the mikvah—מצוה של טבילה לו נדמנה and it's in that context that the Gemara comments about the permissibility of indirect מחיקת השם. But even if true, the case of allowing an infectious patient to put on tefillin certainly counts as a mitzvah. The Shulhan Arukh even writes that somebody who does not wear tefillin misses out on eight מצוות עשה each day.

Nonetheless, Rav Moshe Feinstein (Shu"t Iggerot Moshe OH 1:4) writes that it's not permissible to violate any prohibitions whatsoever so as to be able to fulfill a מצוה עשה (with the exception of pikuach nefesh, which the Gemara must prove is an exception to the general rule). This is true even for brit milah and shofar as well, where Torah prohibitions may not be violated so as to ensure the fulfillment of the mitzvah, even at the expense of not fulfilling the mitzvah at all.

³ This approach would also require explaining that the Gemara in Sukkah was referring to a situation where the מחיקת השם would have happened immediately upon throwing the piece of pottery into the water, rendering such an action as active and therefore, without Achitofel's argument, should have otherwise been forbidden.

PARSHAH PERSPECTIVES ON MODERN MEDICINE: BO

The Tchebiner starts his teshuvah noting that the questioner offered his own analysis of the issue based on the famous machloket between Ramban and Ba'al ha-Ma'or regarding performing a milah on Shabbat, where it will be necessary to violate Shabbat thereafter for pikuach nefesh purposes. For a full discussion of the issue, please see [the previous post](#). Briefly, Ba'al ha-Ma'or prohibits performing the milah under these circumstances, while Ramban permits. The Tchebiner merely notes that this was part of the question, but doesn't explain why or how it should be relevant.

What seems missing from many of the teshuvot on the topic is the reason that the tefillin must be disposed of in the first place. This was (and in some extreme cases, still might be) considered a form of infection control. It wasn't about the tefillin per se, but about limiting the possibility of spreading the disease. In fact, destroying these tefillin may very well fall within the gambit of pikuach nefesh—it's only being done out of an abundance of caution so that more people shouldn't get sick. That said, it was deemed appropriate that so long as the patient himself was still infectious, there was no problem of him being continually exposed to the tefillin that he may have previously transferred infectious matter to. It was only after he recovered (or unfortunately passed) and the risk was now present for others, that the tefillin needed to be disinfected and properly disposed.

On the face of it, this seems precisely parallel to the question of milah. In both cases there is a mitzvah that is presently incumbent upon a person, with the foregone outcome or ramification of needing to violate another Halakhah for the sake of pikuach nefesh. The Ramban famously rules that אין למצוא אלא שעתה—from each mitzvah's perspective, the only relevant questions are those that exist right now. Since the issue of pikuach nefesh doesn't currently exist and even when it will exist, it will be permissible to violate Shabbat for its sake, there isn't any problem with proceeding with the milah and in fact, it's absolutely required. Shouldn't then the question of permitting this patient to put on tefillin depend on which side we choose in the machloket between the Ramban and Ba'al ha-Ma'or?

Rav Moshe Feinstein argues strongly that the cases are not comparable for two reasons:

1. Milah, by its very nature, demands accepting a low level risk. The risk is significant enough that we may and must take steps to prevent, avoid, and treat it when necessary, even at the expense of חילול שבת. But this is separate and distinct from the milah itself. Even when a milah is performed on a Thursday or Friday, we can already anticipate having to perform some type of medical related action on Shabbat to help prevent or alleviate a potential risk. In these latter two cases, the milah itself does not allow for a Shabbat violation (only a מילה בזמנה permits שבת חילול) but nonetheless, any action that may be deemed necessary to prevent or alleviate a health risk certainly would allow and demand חילול שבת. The fact that we can proactively anticipate needing to violate Shabbat on this child's behalf does not prevent us from performing the milah in the first place. When the Ramban wrote אין למצוא אלא שעתה, he was referring specifically to milah, which by its very nature, is different than other mitzvot.

PARSHAH PERSPECTIVES ON MODERN MEDICINE: BO

2. Just like milah (בזמנה) itself permits violating Shabbat restrictions relevant to the very act of milah, so too, milah permits violating the prohibition of causing a situation that will lead to a Shabbat violation for the purpose of pikuach nefesh.⁴

Since both of these reasons are unique to milah, Ramban's argument is not relevant to the question of tefillin.

That said, there are many who have extrapolated the machloket between Ramban and Ba'al ha-Ma'or to other areas of Halakhah. There are often questions that arise about conflicting values and issues of priority, when engaging in one mitzvah may result in others needing to be violated. On the whole, it seems intuitive to think that there should be some way to weigh the benefit against the cost and see which comes out on top. When it comes to the question of tefillin, it's possible that this patient may be in infectious isolation for a long period of time. If ultimately it might even be permissible to destroy the tefillin because of the risk they might pose to others, why not permit bringing them to the patient in the first place?

In a final paragraph, Rav Moshe adds his own reasoning to reject a comparison to Ramban's logic. Effectively, he argues that we have been thinking about this entire question all wrong. When it comes to the questions of חילול שבת, the only question was whether it is appropriate to set up, enter, or cause a situation that will eventually require חילול שבת for pikuach nefesh purposes. There was never a question of the propriety of the initial act itself, only whether the broader perspective, recognizing the eventual necessity of pikuach nefesh mandated חילול שבת, would militate against performing the initial act to begin with. Even the Ba'al ha-Ma'or (who argues against performing the milah under the circumstances) would agree that somebody who did perform the milah did not violate Shabbat in doing so and needs כפרה. The only debate was about instances where the initial act was completely permissible but it might [or even certainly will] bring about חילול שבת.

But when it comes to tefillin, Rav Moshe argues, the question is entirely different. It's not about the permissibility or advisability of fulfilling the mitzvah of tefillin knowing that doing so will result in the eventual destruction of those tefillin. If that was all that was at stake, it very well might be permissible. Regarding tefillin, the prohibition is violated from the moment that the tefillin enters the patient's room.

Rav Moshe argues that a person violates מחיקת השם when he does anything that eventually will bring about the destruction of כתבי הקודש. As such, the prohibition is already violated when the tefillin are brought to this patient at the very first instance, even if they will not be actually destroyed for quite some time. He argues that the mitzvah of tefillin is unable to cancel out the necessary prohibition of bringing about מחיקת השם by even bringing these tefillin to the patient to begin with. He therefore argues that it's prohibited to bring tefillin to this patient.

⁴ For further discussion and possible connection to [last week's post](#), see Kovetz He'arot 23:3.