HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

106 - ARCHEOLOGY - PART 2
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In Part 1 we saw a number of potential precedents for the use of archaeology in determining halacha. Since the growth of the science of archeology over the last 100 years, how have the poskim weighed the archeological evidence as part of the halachic process?

A] ARCHEOLOGY AND THE HALACHIC PROCESS

A1] THE CHAZON ISH

1. Rabbi Yehuda HaNasi ruled that Beit She'an was exempted from terumot and ma'aserot on a Rabbinic level as it was (for these halachot) just outside the borders of Eretz Yisrael.

2. Does this mean that the residents of contemporary Beit She'an can eat their salad without taking any terumot? The Chazon Ish clearly rules (Shevi'it 3:18-19) that modern Beit She'an is **fully obligated** in terumot and ma'aserot and that any associations of modern Beit She'an with the ancient city based on archeology are simply ‘umdenot’ - conjectures.

3. I am not acquainted with the endeavor of excavations and studies of antiquities, and I oppose this enterprise because of the many uncertainties involved.

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The halacha follows this position and Beit She’an is technically exempted from taking (at least Rabbinic) terumot.

A2] RAV KOOK

Rav Kook (in a letter written in 1912) was more open to understanding and respecting the science of archeology, but was unwilling to rule in halacha that a modern Jewish village should read Megilla on 15th Adar on the basis of an Arab name for the town which connects it to the ancient walled city from the time of Yehoshua. He IS however willing to hear more information if it becomes relevant.

1. The large-scale excavation of ancient Beit She'an only began in 1980, long after the death of the Chazon Ish in 1953. The archeological analysis is thus much more advanced now, although it cannot be known if the Chazon Ish would take a different position because of this.

2. It is well known that many old Arabic place names in Eretz Yisrael mark the locations of the ancient Jewish towns. Consider: Beit Jalla = Gilo, Jenin = Ein Ganim, Silwan = Shiloach, Seilum = Shilo, Tequa = Tekoa, Anata = Anatot, Batir = Beitar, Beitin = Beit El, Jaba = Geva, Mukhmas = Michmash, El-Jib = Gv’on.

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Note that, in this case, there is an established 'rov' - majority (ie most places were NOT walled at the time of Yehoshua) which must be overridden to change the halacha. The archeological evidence that Rav Kook was presented with then was simply not strong enough to do so.

In a 1913 letter dealing with ancient coinage and its impact on halacha, Rav Kook restates his view that scientific determinations cannot simply displace established assessments based on mesora.

B] MODERN APPLICATIONS OF ARCHEOLOGICAL EVIDENCE IN HALACHA

B1] TECHELET

One of the arguments against the modern innovation of wearing techelet from the murex trunculus is that we have no unbroken mesora for wearing such techelet.

- R. Yosef Ber Soloveitchik of Brisk - the Beit HaLevi - opposed the Radziner techelet on those grounds. There are two versions of his letter to the Radziner Rebbe. The version quoted by the Soloveitchik families in the US and Israel is that a positive mesora is required to begin wearing murex Techelet. Since there is no mesora, EVEN if the murex techelet is authentic, we still may not use it.

- However, the version of the Beit Halevi’s letter which appears in the Radziner Rebbe’s sefarim is very different! According to that version, the Brisker opposition was on the grounds that the Radziner Techelet was made from cuttlefish. Since all generations had been aware of that fish and STILL not used it as techelet, this constitutes a ‘negative mesora’ ie a mesora NOT to use it. But the Beit Halevi accepted that if a good candidate could be found that earlier generations did not know about, he would be happy to consider it and if it proved to be true, we would be obligated to use it!

- Rav Joseph B. Soloveitchik of YU spoke about Techelet many times and was opposed on the grounds of mesora. This is the practice of most in the Soloveitchik family.

- Rav Aharon Lichtenstein was opposed, as were his halachic mentors - Rav Hunter, Rav Yosef Soloveitchik, Rav Aharon Soloveitchik and Rav Shlomo Zalman Auerbach. However, many of the Lichtenstein children DO wear techelet.

- Rav Hershel Schachter rules that the argument from mesora is invalid. Previous generations did not use it because they did not have it.

- Rav Eliyashiv (Kovetz Teshuvot 1:2) also says that one should not wear murex Techelet due to the lack of mesora. He writes that just as previous scientific understandings of the correct fish - the cuttlefish by the Radziner and the Janthina by Rav Herzog - were proved wrong, so too future science may prove the murex trunculus to be incorrect.

- Rav Shlomo Zalman Auerbach did not rule in favor of the murex techelet.

4. Note that the letter in question was NOT written by the Beit HaLevi but someone else on his behalf.
5. An extreme example of this is a debate which took place some years ago between Prof. Zvi Yehuda of Telz in Cleveland and Prof. Shneur Leiman (in articles cited below). Prof. Yehuda grew up close to the Chazon Ish and quoted the Chazon Ish as saying that even if we were to find the original Sefer Torah of Moshe it would be invalid if it did not fit with our mesora! R. Leiman disagreed - see further below on the question of manuscripts.
6. This raises the question of why Rav Soloveitchik did not understand the Beit Halevi the same way. Did the writer of the letter misunderstand the Beit Halevi?' Did the Radziner Rebbe misunderstand the Beit Halevi? Did the Beit Halevi say one thing to the Radziner and something else to his family?
7. Rav Eliashiv is quoted by R. Hershel Schachter as having stated that the Radziner version of the letter makes more sense. For more on the issue of mesora and Techelet, see Identifying Tekhelet: Maseoret and Yedi’ah, R. Moshe Tendler, Tekhelet: The Renaissance of a Mitzvah (MSYU 1996) p39.
8. But see below on Rav Shlomo Zalman’s position.
9. Rav Eliashiv’s position is complex. Rav Hershel Schachter recounts how Rav Eliashiv’s opposition to techelet came about. The Ptil Techelet organization presented the murex techelet to him. He asked how much techelet would cost if he started wearing in and all the Charedi world followed suit. The answer was that, due to the intense demand, the price would sky-rocket and be prohibitive. On that basis, Rav Eliashiv said that he would not wear it. This exchange was then published without authorization and Rav Eliashiv asked someone to publish in his name that he actively opposed the murex techelet. The result was the publication of a teshuva in Kovetz Teshuvot, which Rav Eliashiv later confirmed that he had not personally written!
10. But his position is also nuanced. Rav Menachem Borstein, an expert on techelet (and author of the 450-page book on the issue - HaTechelet(1988)) told me that he discussed the matter at length with Rav Shlomo Zalman, who was unwilling to rule in favor of the murex techelet. However he felt that it people began to wear it this would created a new halachic reality (maybe even a regenerated mesora - see the following note on turkey) which would be relevant in future psak.

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• But how strong does mesora need to be? Consider the fact that most people eat turkey without a clear mesora\(^\text{11}\), even though the down-sides are very significant if indeed turkey is treif!
• Rav Kook (Da’at Kohen 140) rules that science can create a ‘safek’, which may or may not be relevant in halacha. Eg the opinion of a doctor that someone needs to eat on Yom Kippur does not ipso facto override the prohibition of eating. It creates a safek pikuach nefesh consideration and THAT permits eating. Sometimes a safek may not be sufficient to override an existing rov or chazaka.
• In the case of techeilet, Rav Eliyahu Tavger understands that the modern science at least creates a safek and there is then a halachic requirement to wear the safek (min haTorah) techelet, which overrides the halachic down-sides.

B2] MEZUZAH

The Gemara states that a mezuzah placed ‘like a door bolt’ is invalid.

Rashi explains (with a diagram) that this prohibits placing a mezuzah horizontally, but vertically is fine.

Rabbeinu Tam rules that the mezuzah may NOT be placed vertically, but should be horizontal.

All notches on door uncovered by archeology indicate either a vertical or slanted placement. None have been found with a horizontal placement. Does this categorically disprove Rabbeinu Tam’s position, meaning that we should now all follow Rashi and fix our mezuzot vertically? There are a number of reasons to argue that it does not:
• Maybe we have not yet found the ancient homes with horizontal mezuzot.
• Maybe Ashkenazim now have a mesora NOT to place the mezuzah vertically, but on a slant.
• Maybe there was always a machloket (as with Rashi and Rabbeinu Tam tefillin) and for that reason we find ancient mezuzot on a slant.

B3] MIKVEH

Hundreds of ancient mikvaot have been unearthed in archeological digs (including on Massada and in Yerushalayim). Most are constructed so as to render the water kosher through zeriath\(^\text{12}\) or hashakah\(^\text{13}\). Does that mean we should now design mikvaot in that way, rather than with all the extra chumrot which go into mikveh design today? Most would answer no, because
• Perhaps the ancient mikvaot were designed in that way because that was all they could do. Today, we have the ability to design mikvaot with more halachic exactitude due to cost and technology considerations.
• Maybe we should be more machmir today due to yeridat hadarot!

\(^{11}\) On the other hand, the Netziv (Meishiv Davar 2:22) felt that we DO have a mesora for turkey now that Jews have been eating it for hundreds of years.

\(^{12}\) Pouring a large amount of non-kosher water into a pre-existing kosher pool, which makes the whole pool kosher.

\(^{13}\) Placing a pool of non-kosher water next to a kosher mikveh and opening a small hole between them to allow the water to mix freely. This makes all the water kosher.

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B4] PURIM

It appears that Beit El was a walled city at the time of Yehoshua. Some archeologists (including Yoel Elitzur) take the view that the modern town of Beit El is located on the site of the ancient town. So do the residents of Beit El read Megila on 15th or 14th Adar?

• R. Shaul Yisraeli ruled that they should read on 14th since archeological evidence was insufficient.
• R. Ovedia Yosef stated that the archeological evidence at least raised a safek which meant that it was appropriate (although not required) to read again on 15th without a beracha.
• R. Mordechai Elyahu ruled that Purim should really be observed in Beit El on 15th if Rabbinic consensus could be reached on the matter.

In practice, residents of Beit El read on 14th as the Rosh Yeshiva, R. Zalman Melamed does not consider the archeological evidence to raise a serious safek. Furthermore, most poskim rule that a resident of a walled city fulfills their obligation believed even on 14th.

The Gemara rules that ancient Lod was walled in the time of Yehoshua.

In the 1940s Ray Yechiel Michel Tukachinsky ruled in his Luach that residents of Lod should read on 14th and 15th due to the safek. In the 1980s some archeologists (including Yoel Elitzur) took the view that the modern town of Lod is located on the site of the ancient town. So do the residents of Lod read Megila on 15th or 14th Adar?

• Rav Eliahih ruled that they should continue to act as directed by Rav Tukachinsky.
• R. Yitzchak Weiss ruled that, given the archeological evidence, residents should be especially careful to read again on 15th without a beracha. This is the practice of many people.
• No poskim rule that residents of Lod should read exclusively on 15th however some poskim rule that 15th is the main day.

B5] HUMAN REMAINS

The excavation of sites containing human bones or corpses raises a number of halachic problems, including: (i) the general prohibition against disinterring the dead; (ii) the proper procedure for disinterment and reburial where permitted; (iii) the prohibition against deriving benefit from a met or kever; (iv) restrictions on what activities are permitted in a beit hakevarot; (v) the problem of determining whether bones are those of a Jewish or non-Jewish met and what assumptions are to be made in cases of doubt.

A Jewish body may be re-interred for only very limited reasons.

One of the justifications for moving a grave is if its location is causing damage to public needs.
The problem of bones being found at construction sites has always existed but its prevalence greatly increased after 1967 with the dramatic proliferation of development in and around Jerusalem. The Asra Kadisha (the Committee for the Preservation of Gravesites), established under the leadership of Rabbi Yitzchak Ze’ev Soloveitchik (the Brisker Rav), Rabbi Eliezer Yehuda Finkel (Rosh Yeshiva of Mir), and Rabbi Yaakov Yisrael Kanivsky (the Steipler), came into being as a response to major excavations at Beit Shearim in 1957-1959. Over the past thirty years, this organization, comprised almost exclusively of Chareidim, has organized protests and demonstrations at a number of archaeological and construction sites including French Hill, Jaffa, Modein, and most recently, at a newly-discovered Hasmonean burial ground. Some of these demonstrations have resulted in pushing, shoving, rock throwing, some arrests, and allegations of police brutality, as well as chillul HaShem. Due to the composition of the demonstrators (largely-Chareidi) and to the occasional excesses in their tactics, many identify those gravesite desecrations as merely a "Chareidi" issue which can then be safely dismissed or ignored as are a variety of other issues significant to that community. It must be emphasized, however, that while the Religious Zionist camp may be less vocal and public in its protests, a number of its leading halachic authorities, such as Israeli Chief Rabbis Lau and Bakshi-Doron and Chief Rabbi Kulitz of Jerusalem, have joined the Asra Kadisha (in principle, if not in tactics) by unequivocally condemning these gravesite desecrations as serious violations of halacha. Many other rabbanim have expressed their concerns privately. The unprecedented scope of these excavations should be of great concern to every Jew faithful to the dictates of his/her religion or, for that matter, even to a non-religious Jew committed to the history of our people. 

In this regard, mention should be made of an important ruling by R. Shaul Yisraeli, the recently-deceased Rosh Yeshiva of Mercaz HaRav, that any activity or project which adds beauty to the land of Israel is treated as a public benefit. Its cessation or removal is conversely regarded as a nezek to the public and in order to avoid such cessation, bones can therefore be removed. It is irrelevant whether the public need preceded the gravesite or the gravesite preceded the materialization of the public need - in either case, removal is halachically authorized. In some circles, R. Yisraeli’s psak has been taken to provide a carte blanche for the indiscriminate exhumation of bones for virtually any type of construction activity on the grounds that the "needs" of the living take precedence over the needs of the dead and that the settlement and habitation of Eretz Yisrael is in itself a factor which adds tiferet. This school of thought regards all of the Asra Kadisha’s protests as being over a non-issue. While R. Yisraeli’s definition of nizka d’rabim is certainly quite broad and expansive, I am not sure if even he would regard one less parking garage as a nizka d’rabim. In any case, the overwhelming majority of rabbanim who have addressed this matter, including R. Yitzchak Kulitz (the Chief Rabbi of Jerusalem), have not been willing to go so far and would not permit the initiation of commercial development with the knowledge that bones are going to have to be removed. ...

The Desecration of Graves in Eretz Yisrael: The Struggle to Honor the Dead and Preserve Our Historical Legacy - Rabbi Yitzchok Breitowitz c.1996

Archaeologists, and occasionally some rabbis, have advanced the argument that in many cases bones that are found at construction sites are of non-Jewish origin, e.g., from the times of the Crusades and the like, and may thus be removed and disposed of with impunity. They further argue that based on the principle of rov (that when in doubt, all cases of unknown origin are assumed to come from the majority class), since there are many more non-Jews than Jews in the world all found bones should be assumed to be of non-Jewish origin unless there is direct evidence to the contrary. This position has been roundly rejected by the gedolai haposkim. Even assuming that the rules against pinui kever do not apply to the bones of non-Jews - which in itself is subject to controversy - in many cases it is crystal clear or at least highly probable that the excavated bones are those of Jews - either by markings on the graves (such as the recently discovered Hasmonean tombs) or by their proximity to well-established Jewish gravesites (such as a number of bones unearthed near the tomb of the Rambam in Tiberius). Thus, many of the archeological claims are simply disingenuous. Even if the matter would be a genuine 50-50 doubt, the dictates of kavod hamet would necessitate stringency. Moreover, as the great R. Yechezkel Abramsky noted almost 40 years ago, reliance on the principle of rov is misplaced and indeed cuts the other way. While a majority of the world population may be non-Jewish, a majority of the bodies buried in Eretz Yisrael over thousands of years may certainly be assumed to be Jewish. As such, the principle of rov, rather than allowing indiscriminate excavation, operates to prohibit it.

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The Mishna lays down the basic principle that someone who does not keep a specific mitzvah cannot have credibility in that mitzvah.21

Gaining new archeological information is almost certainly not considered a relevant need.

21. Someone who willfully and knowingly publicly breaks Shabbat may not have witness credibility in any area of halacha.

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NEW MANUSCRIPTS AND THE HALACHIC PROCESS

A closely related question concerns the discovery of new manuscripts, many from the time of the Rishonim, which were not available to key poskim such as the Shulchan Aruch, Shach, Taz etc. Should the discovery of this new material impact on the practical psak?

C] NEW MANUSCRIPTS AND THE HALACHIC PROCESS

A closely related question concerns the discovery of new manuscripts, many from the time of the Rishonim, which were not available to key poskim such as the Shulchan Aruch, Shach, Taz etc. Should the discovery of this new material impact on the practical psak?

The Rambam used very old talmud manuscripts from hundreds of years before his time to prove that there was a mistake in the standard versions of the Gemara in his day. Based on these manuscripts AND on the fact that the change made sense, he altered the psak.

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The Rema brings many of the kalei hapsak in this section\textsuperscript{27} and rules that, although we generally favor the later authorities over the earlier, if an early minority opinion is found which the majority at the time did not know about, this can be re-introduced in the halachic discussion. It is possible that, had the earlier authorities know about it, they would have ruled like it!

However, over the last two hundred years as many new manuscripts became more available, poskim have taken different positions on whether these should be added to the halachic conversation.

**C1] KIM LI**

In monetary matters there is a halachic defense of ‘kim li’. The defendant can assert that he wishes to rely on a minority halachic opinion, even if that goes against the majority established psak. R’ Yonatan Eibeschutz\textsuperscript{28} (18C Europe) asks whether a defendant could say ‘kim li’ even in reliance on an opinion newly discovered in a manuscript. He rejects this and insists that ONLY positions known to the Shulchan Aruch (even if rejected in the final normative psak) can be used for ‘kim li’. A few reasons are given for this, including:

- the primacy of the Shulchan Aruch and kaballah that the Shulchan Aruch was accepted by the scholars of his generation as

  - the majority of the Shulchan Aruch and

- the logical question of what really constitutes a majority. We cannot even truly know what the majority position was in the time of the Rishonim. Many of poskim never left records or their psak. Those that did may not have been representative. Much that was written did not survive.

**C2] ERUVIN**

The Aruch HaShulchan writes that all urban Eruvin are constructed in reliance on the position of Rashi that a true Reshet HaRabin on a Torah level required 600,000 people passing through. The much stricter position - that any street more than 16 amot wide is a public domain - was rejected since the Shulchan Aruch and classic commentaries understood Rashi’s position to be the majority position in the Rishonim.
However the Mishkenot Yaakov (early 19C Lithuania) challenged this on the basis of MANY newly discovered manuscripts which showed that a large majority of Rishonim that we are now aware of actually held the stricter view! On that basis most towns would require walls and lockable gates in order to carry on Shabbat and the classic urban eruv, which is built on tzurot hapetach doorpost structures, would not work at all.

The Aruch Hashulchan rejects this approach, on both practical grounds but also on the basis of the hashgacha of history which led so many eruvin to be built, which makes it as if a ‘bat kol’ supported that view.

The Beit Efraim (early 19C Poland) also rejects the use of manuscripts to change the psak! Our halachic process is not random, but based on a system which Klal Yisrael has adopted and accepted!

C3] THE CHAZON ISH

The position of the Chazon Ish is much debated\(^\text{30}\). In principle he strongly rejected the use of manuscripts in the halachic process.\(^\text{21}\)

24. I do not know whether it is possible to rely on (works that are) newly printed since the mesora has been interrupted among us and we do not know the identity of the copyists, for the work of copying is very difficult. Even when carried out by persons who are alacritous and meticulous many textual errors are commonly found. And if it transpires that there is even a slight laxity in scrutiny the (meaning of the) entire matter can be totally changed. Therefore, we must deem the words of the authorities from whom the transmission of the mesora to us was not interrupted throughout all the generations, and whose works were guarded assiduously by the scholars of each generation to preserve them and to correct them, to be more accurate. All the more so, it is difficult to rely upon any new text in instances in which it is not possible to make a determination on the basis of the import of the text but rather on the basis of inference from its terminology.

Chazon Ish Eruvin 67:12

25. You sought to explain a sugya and to emend a talmudic passage in accordance with the reading of the Munich manuscript. Do you suppose, then, that the true sense of the passage eluded all the leading scholars from the period of the rishonim until today? And all because of one scribal error that lead to a conflated text which mislead all scholars? I will have none of it. The rishonim would prepare to lay down their lives on behalf of their manuscripts. God’s providence hovered over them so that Torah would not be forgotten in Israel. When they set about to publish the Talmud, the leading sages of that generation were prepared to lay down their lives in order to produce a correct text. If on occasion we benefit from the manuscripts in that they clear up errors that accrued throughout the generations, this provides no license to emend a text that was approved by all our sages without the slightest doubt being raised. Heaven forbid that we destroy!

Chazon Ish, Kovets Iggerot, I, no.32:56

26. . . . for we have received a tradition from the great Torah authorities of the [preceding] generations, of blessed memory, that the rulings of the Shulchan Aruch are not changed as a result of discovery of manuscripts, even those authored by the great early-day scholars. Their reason may be explained as follows: The Holy Spirit shined forth in the house of study of the author of the Shulchan Aruch and the acknowledged decisors according to whose rulings all of the house of Israel conducted themselves for many generations. Accordingly, it is incumbent upon us to continue in their path, even if we now find manuscripts of some early-day authorities whose path is not the same.

R. Moshe Sternbuch, Mo’adim u-Zemanim, IV, no. 274

Rav Moshe Sternbuch extend this precedence beyond the Shulchan Aruch to the key poskim of later generations.

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\(^{21}\) In the articles ob cit, Rabbis Yehuda and Bleich argue strongly the the Chazon Ish took an uncompromisingly rejectionist approach to manuscripts. However, R. Leiman questions this and argues that the Chazon Ish was more open to adapt the halacha based on manuscripts in certain situations.

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