

OBSERVING NIDDAH IN OUR DAY: AN INQUIRY ON THE STATUS OF PURITY AND THE PROHIBITION OF SEXUAL ACTIVITY WITH A MENSTRUANT

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שאלה:

Is it necessary, in our day, to continue the prohibition of sexual activity during and after a woman's menstruation? Is it still necessary for a menstruant to immerse in a *mikveh* before resuming sexual relations? If so, what are the parameters that apply?

PROLOGUE

Fundamental to the Biblical description of reality is the notion of the twinned states of *tum'ah* (impurity) and *tohorah* (purity), one of which (*tum'ah*) is incompatible with the sacred (*kodesh*). It is difficult to concede the reality of these designations in a twenty-first century that is dominated by scientific thought, and which cannot find any trace of these entities in reality. Yet the Torah clearly understands these to be either physical or metaphysical states and defines modes of contracting them and modes of being relieved of them which are quite physical in their nature. It would be convenient, but inconsistent with the Biblical foundation of our religion, to simply profess disbelief in a system described by the Torah at length. It might be noted, in this regard, that God, the soul and the metaphysical reality of Shabbat in the fabric of the universe are all Biblical notions that remain impervious to scientific address.¹

As such, it is important to develop a conception of *tum'ah* and *tohorah* that is symbolic of and affirms principles with which we can feel comfortable. All too often, they have been cast in the negative light of ancient taboos. Thus Mary Douglas, the great anthropologist, viewed the Biblical notions of *tum'ah* and *tohorah* through the prism of the anthropology of primitive peoples, and thus created her seminal work, "Purity and Danger: An analysis of the concepts of pollution and taboo" (1966). Emblematic of this approach are the words of Baruch Levine,

One becoming impure... introduced a kind of demonic contagion into the community...

Impurity was viewed as an external force which entered the person or attached itself to him. The primary

¹ One of the features in which Judaism has gloried is its unyielding insistence that while religious law may progress in detail, it is always tied directly to Biblical text. This is described well by David Halivni in the subtitle of his volume "Midrash, Mishnah and Gemara" as "The Jewish Predilection for Justified Law." Thus is the whole genre of *midrash* created to link our factual behaviors to the authority of divine scripture. In his excellent book on Jewish exegesis, entitled "How Do We Know This", Jay Harris writes,

The... response, which predominates in virtually all halakhic discussions in the literature ... suggests that practically every law is to be derived from the written text of the Torah in some way. The answer to the question, "How do we know this?" is almost always "We learn it from a verse." (pp. 2-3)

Thus, the holiday cycle is described in detail in Vayikra 23 and we observe today the holidays that are described therein (although departing from the detail to include a *Yom Tov Sheni* in the diaspora). The Christians claim the Old Testament as part of their religious cannon, yet they observe holidays based on the New Testament, and have wholly abandoned the holidays listed in the Old. Thus *kashrut* is described in detail in the Bible, and we observe it in abundant detail yet today. Indeed, the very concepts of *tum'ah* and *tohorah* that are at issue here, are used by the Torah to describe the kosher and unkosher species. Even those practices that we adhere to, and which may take a high profile, though they do not appear clearly in the text of Torah, such as the separation of meat and milk, are justified precisely as scripturally based requirements (the three appearances of "do not seethe a kid in its mother's milk"). The Mishnah (*Hagigah* 1.8) calls these "הררים התלויים בשערה" - "mountains hung by a thread" but understands that they are dependent upon the Torah, at least, for the impetus from which the laws derive. [It is the rare matter which fits the Mishnah's category of "פּוֹרְחֵן בְּאֵיר" - "floating in air," that is fully independent of scriptural basis.]

purpose of expiation was, therefore, to rid one's self of this foreign force... *the actualized form of evil forces operative in the human environment.*²

Without any intent to deny the possible propriety of such descriptions of antiquity, many *mitzvot* have undergone philosophical development in the Bible itself, and in the interpretations of the Jewish people in the generations since, as we have been led to address differing views and situations. Such reinterpretation of detail while retaining the integrity of practice has been a hallmark of halakhic Judaism throughout the ages.

In writing about precisely these same forces of *tum'ah* and *tohorah*, Yehezkel Kaufmann asserts that,

In spite of its belief in the substantiality of impurity, the Bible does not accord to it the status of a primary, demonic force... In contrast to the pagan conception impurity is in itself not a source of danger; its divine-demonic roots have been totally destroyed... The 'charge' of the holy involves only its separation from the profane.³

Thus in his Biblical commentary, W. Gunther Plaut comments, that

In Leviticus the demonic background of the *tame* has been all but obliterated... Generally, the laws of purity and impurity are set forth simply as God's commandments... [O]bedience makes Israel a holy people.⁴

But he is not presenting anything not obvious to the ancients. In a dramatic vignette, the curiosity of a gentile about the strange practice of the Red Heifer in purification ritual was assuaged by Rabban Yohanan ben Zakkai by comparing it to a pagan exorcism. No sooner had the gentile left than Yohanan's students complained that they did not perceive *tum'ah* as demonic and the process of purification as an exorcism. That may be a sufficient explanation for the gentile, but what explanation did Yohanan have for them! Said Yohanan, "By your life – a dead body does not cause impurity nor does the purifying water purify. This is a decree of the King of Kings."⁵

That said, a decree without any reason is unfulfilling. Such decrees were regularly the source of speculation, though speculation it was, of the thinkers who sought to give the Biblical *Mitzvot* their reasons, or *T'amim*. Said reasons were never taken to be the reason for observance, that was the divine decree, but were meant as aids to the meaningful performance of the rituals decreed. It is in that light that we seek to understand, or to discover, a rationale for *tum'ah* and *tohorah* that can satisfy us.⁶

2 B.A. Levine, *In The Presence of the Lord: A Study in Cult and Some Cultic Terms in Ancient Israel*, (1974), pp. 75-78. Thus also J. Milgrom, *Studies in Cultic Theology and Terminology* (1983).

3 Y. Kaufmann, *The Religion of Israel* (Heb. 1937-1956; Eng. trans. and abridgement by M. Greenberg, 1960), p. 103-4.

4 W.G. Plaut, *The Torah* (1981), p.818. It is interesting to note that in a more religious venue, Baruch Levine himself is inclined to impute a more benign spin to the laws of *tum'ah* and *tohorah*. About the primary defilement of the dead, for instance, he writes in the Jewish Publication Society's *Torah Commentary on Leviticus* (p. 221), "Biblical religion regarded the dead as impure in the extreme and forbade priests from participating in funerary rites. In the Commentary it is maintained that this prohibition was aimed at preventing a cult of the dead from becoming part of Israelite worship." And of *kashrut* he writes (Excursus 2, pp. 243=8), "Avoidance of the impure is a prerequisite for the attainment of holiness. Conversely, impurity is incompatible with holiness... A triad of religious sins emerges - dietary, cultic and sexual - all associated with impurity... A socioreligious intent clearly underlies the dietary classification system. Ideally, humankind should be sustained by the produce of the earth. When, instead, other living creatures are used as food... such use should be restricted to living creatures... that do not prey on other living creatures... In eating the substance of other living creatures, care must be taken not to eat their 'life', which is to say 'their blood'."

5 *Bamidbar Rabbah* 19.8, *Tanhuma Hukkat* 8, *Pesikta d'Rav Kabana* 4.7 (ed. B. Mandelbaum 1962), vol. I, p. 74. Jacob Neusner, in "The Idea of Purity in Ancient Judaism", p. 105, questions the provenance of this text, but it is at least as early as late antiquity, even if it is not properly attributable to the earlier Yohanan ben Zakkai.

6 Covering the same ground, see the similar comments of R. Aryeh Kaplan in his introduction to *Mikvah*, in *The Waters of Eden*, pp. 7-14.

Philo led the way, in characteristic allegorical fashion, positing that

if you observe this with your reason, rather than with your eyes, you will proceed to wash away the sins and defilements with which you have besmeared your whole life... For you will find that all this careful scrutiny of the animal is a symbol representing in a figure the reformation of your own conduct.

then the details follow. A menstruating woman is unclean so that we might receive the lesson that “the generative seeds should not be wasted fruitlessly,” the touch of a corpse defiles in order to “guard against anyone’s helping to bring about the death of another,” the belongings in the house with a corpse are themselves defiled, “For a man’s soul is a precious thing, and when it departs to seek another home, all that will be left behind is defiled, deprived as it is of the divine image.”⁷

The Talmudic sages tended to take the Biblical system at its face, speculating, on occasion, what sin might have occasioned a particular impurity.⁸ But most impurities are never justified – they simply are – and no overarching theory of impurity follows. Purity was simply one step toward holiness and perfect piety, as the Mishnah suggests:

טומאה מביאה לידי פרישות, ופרישות מביאה לידי קדושה.

Impurity leads to separation and separation leads to holiness.⁹

Not so several medieval Jewish philosophers and commentators. Often, they present vague rationales, as when Yehudah haLevi argues that:

Tum’ah and Kedushah are opposites. One cannot be where the other is... The very meaning of tum’ah is ‘that which prevents a person from touching another thing’... a holy thing.

or when Levi ben Gershon finds that impurity regulations are meant to limit our desires.

But sometimes they are fleshed out more fully, as, for example, when the author of *Sefer HaHinnukh*, generally taken to be Aaron haLevi of Barcelona in the late 13th century, concludes that some, unidentified essence of those things declared impure must be unhealthy for our bodies or for our souls. Those impurities tied to *kashrut* and to genital flow he classes as harmful to the body, noting that, “God distanced His people, whom He had chosen, from all things that harm the body.” Those impurities that had to do with death and slimy creatures, he took to be a threat to the soul, hence the intellect. He writes, that “It is possible that *tum’ah* harms the soul and sickens it slightly... so that the wellsprings of the intellect, which is the apparent soul, are impaired by the *tum’ah*.” And of the corpse – described by the rabbis as אבי אבות הטומאה, the grandfather of all impurities – he explains,

When the form of good, living reason departs from him, and he is left alone, merely flesh, diminished, inferior and tending toward evil, just as, in its evil, [that body] had led the sweet soul astray when they had been together, then it is fitting that it should contaminate its surroundings... and it is truly fitting that those serving God should distance themselves from it.¹⁰

7 Philo of Alexandria, *The Special Laws*, I:259-60; III:32; III:205-7. See J. Neusner, op. cit., who more fully develops the history of the idea of purity in Israel.

8 Thus, for instance, *tzara’at* (leprosy, skin disease) is seen as a sign of sin in Arakhin 16a (and see *Vayikra Rabbah* 17.3).

9 *Mishnah Sotah* 9.15. Ultimately, Maimonides himself, having no better justification for the maintenance of the law of *tum’ah* absent the Temple, cites this *Mishnah* in his peroration to the laws of *Tum’at Okhlin*, 16.12. But he admits to Yohanan ben Zakkai’s diffidence a bit later, see *Hilkhot Mikvaot* 11.12.

10 Yehuda haLevi and Levi ben Gershon’s positions are represented in Y.(I.) Heinemann, *Tāamei haMitzvot b’Sifrut Yisrael*, (3rd ed., Jeruaem 1954), I, pp. 63 and 98. *Sefer haHinnukh*, *Mitzvah* 66, 159, 263 and others. The attribution of *Sefer HaHinnukh* to R. Aaron haLevi is rejected by many scholars, see *Encyclopedia Judaica* 7:1126. This view is put into pure philosophy by Hasdai Crescas in the 14th century.

We are less confident than in a prior pre-scientific age that a physical ailment associated with *tum'ah* can be found, and less inclined to take on faith that some soul-contamination must be meant. Yet the broad allegories of Philo hold more historic interest than conviction and the generalities of Yehudah haLevi need explication. We need, in short, to seek a modern light in which to cast the ancient prescriptions. In that task we are not alone.

In a book entitled, *Biblical and Post-Biblical Defilement and Mourning*, Emanuel Feldman, the editor of *Tradition* magazine, sought a “theology of defilement,” and his considerations serve us well. “Death,” he writes, “is the utmost desacralization.” “In the Biblical/rabbinic scheme, defilement represents estrangement from God,” for God represents life.¹¹ He notes that, contrary to the anthropological views, nowhere in Biblical or rabbinic lore was it set down that an individual must shun defilement. Defilement was never prohibited (it was natural and often required, as for a *met mitzvah*). Prohibition of defilement existed only for the *kohen* because of his work with the sacred. For an individual the only prohibition was against contact of the defiled with the sacred. Feldman cites the Biblical scholar Gerhard von Rad who observes, acutely, that, “Every uncleanness was to some extent a precursor of the thing that was uncleanness out and out - death,”¹² extending the notion to include leprosy and the genital emissions, which were taken to be antithetical to life, or emblematic of the loss of potential life. Indeed, Rabbi Nehama Goldberg testified to the enormous power that the symbolism of purification from the monthly menstrual period, with its intimation of life’s potential renewed, has upon her and other women who have grown attuned to it. Rashi makes the same point with reference to the *tum'ah* and *tohorah* spoken of with regard to *kashrut* in his comments to Vayikra 11:2,

זאת החיה: לשון חיים, לפי שישראל דבוקים במקום וראויין להיות חיים, לפיכך הבדילם מן הטומאה
This is the animal: This is cognate with the term for life (*hayya* = animal, *hayyim*=life), since Israel is committed to God they are worthy of life, therefore He separated them from impurity.¹³

The circle is complete. All impurity, the impurity of death, the impurity of the body, the impurity of inappropriate foods, may be seen as a continuum symbolizing the importance of life and the incompatibility of death with our reverence for life and for the God of life. Indeed, Feldman finds the perfect midrash in *Shmot Rabbah* 38.2:

רבון העולם. אתה מבקש שנהא קדושים. הסר ממנו המות!
Creator of the Universe: You demand that we shall be holy. Then remove death from us.¹⁴

While death restores the soul to the God who created it, it is not in death, but in life, that we find our sacred vocation.

11 E. Feldman, *Biblical and Post-Biblical Defilement and Mourning* (1977), Introduction, p. xix. This is, in fact, not far removed from haLevi's point.

12 E. Feldman, p. 15. G. Von Rad, *Old Testament Theology*, I, p. 277 (1963).

The impurity upon childbirth is hardest to explain in this light. Feldman's attempt is on p. 37. He writes, “The newborn infant now begins a life of its own - and is not *tame* - but the mother's role of life-producing, life-nurturing, and life-sustaining now literally comes to an end, and perhaps that is why she now becomes *tame*.” Levine, in the *JPS Torah Commentary*, Excursus 3, prefers to see this in light of the specific vulnerability of the new mother in antiquity. Neither is fully satisfying. I wonder whether the birthing mother might not be analogous to the priests who prepare the Red Heifer, who become impure while preparing the purifying agent. There is almost a law of conservation at work, that requires that the life inherent in the preparer be symbolically transferred to the preparation. Thus she gives her own life to extend life and becomes *tameh* in the process.

13 Rashi's comment is referred to by Feldman, n.120 to section I, p.153.

14 E. Feldman, p. 35.

IN THE MATTER OF *TUM'AT HANIDDAH*

To argue that the Temple no longer exists is not to argue that the basic Biblical concepts of purity and impurity have no place. They remain real for the fundamental reason that the Biblical perception that life and death are forces that are always in tension remains as true as it ever was. One may be objectively tameh even though that has no ramifications upon one's further activities. With regard to sexual relations with a woman during her menses, the question to be investigated is, given that a menstruant cannot now defile non-existent sancta, is the ban on sexual relations with a menstruant still in force?

Plainly, the answer to that question must be yes, for the Torah clearly prohibits cohabitation with a woman during her menses as a category of illicit sexual relations, without reference to matters of purity, in two separate verses, Vayikra 18.19 and 20.18.¹⁵ This follows, as well, from our sense that menstrual bleeding represents the loss of life's potential; that its impurity flows from the impurity of death. Since the sexual act is at its heart a procreative act, it follows that the prohibition of sexual union during the period of a woman's menses, and the renewal of sexual activity afterward, is richly invested with the meaning of life's overarching demand upon us. It is that sense that Rabbi Goldberg captured when she spoke of the emotional power of the *mikveh* and which the Torah clearly had in mind. While it is certainly true that non-procreative intercourse is permitted,¹⁶ the normative religious model envisions sexuality first as a medium of procreation, a means for the fulfillment of the first *mitzvah*,¹⁷ with the value of joy and intimacy, present in the Genesis story and throughout Jewish literature, being secondary to it. Indeed, that women are often likened to the moon and that the *Rosh Hodesh* (the New Moon) was perceived to be a woman's special holiday, are both of them tied up with the sense that the monthly lunar cycle bears symbolic association with a woman's monthly cycle – both symbols of the renewal of the life of the Jewish people.

The matter of the duration of the prohibition requires our consideration, however. The current halakhic instruction is to refrain from all sexual contact during the period of menstrual bleeding, minimally five days, and for seven full clean days thereafter, a period ranging from 12 to 15 days.¹⁸ This is, however, a conflation of two Biblical norms. The one is the norm of the menstruant (*niddah*), who was to refrain from sexual intercourse and from contact with divine sancta for seven days – inclusive of her flow. That norm is reported in Vayikra 15.19

אשה כי תהיה זבה... שבעת ימים תהיה בנדתה

When a woman has a discharge... she shall remain in her impurity seven days

and is referred to elsewhere, in Vayikra 12.2

אשה כי תזריע וילדה זכר, וטמאה שבעת ימים, כימי נדת דותה טמאה, וביום השמיני ימול...

When a woman at childbirth bears a male, she shall be unclean seven days; she shall be unclean as at the time of her menstrual impurity. On the eighth day...¹⁹

15 That the prohibition of illicit sexual relations with a woman during her menses is not a function of her state of impurity is made clear by the Mishnah's ruling in *Niddah* 5.3-4, codified in Maimonides' *Hilkhot Issurei Biah* 4.1, which distinguishes the state of impurity of *Niddah* which can occur even in a female infant of one day from the punishment for illicit sexual relations with a woman who is *Niddah* which only applies if she is beyond the age of three years.

16 Re non-procreative intercourse, see David M. Feldman, *Birth Control and Jewish Law* (reissued under the title *Marital Relations, Birth Control and Abortion in Jewish Law*), ch. 4.

17 Re the *mitzvah* of procreation, see D. Feldman, *ibid.*, ch. 3. More recently CJLS approved two responsa in 1994 or 1995, that of Elliot Dorff, *Artificial Insemination, Egg Donation and Adoption*, and that of Aaron Mackler, *In Vitro Fertilization*, each of which begin with a statement of the *mitzvah* of procreation. Still more recently, see Elliot Dorff's new book, *Matters of Life and Death* (JPS 1998), chapter 3.

18 Sh. Eider, *Halachos of Niddah*, I, 33 ff. Whereas the five-day minimum period appears to be a measure of an average duration period, Eider is careful to explain that that is not the case. See his discussion, there.

19 See also verse 15.24. This period is inclusive - see, for instance, *Targum Onkelos* to verse 15.19 or Rashi's comment to verse 15.25.

The other is the special rule for a woman with an unusual genital discharge (*zavah* – the woman / *zivah* – the irregular flow), found in chapter 15, verses 25-30. She was expected to wait until the end of her flow and then a further seven clean days. By the middle of the Amoraic period, it became common to wait the longer duration, out of concern that an unusual discharge might be mistaken for a normal menses or vice versa. This is reported in the Talmud on *Niddah* 66a, as follows:

אמר רב יהודה אמר רב – התקין רבי בשדות, ראתה יום אחד, תשב ששה והוא (רש"י: ששה והוא – כדן תורה, ושמא בימי נדה היו) שנים, תשב ששה והן. (רש"י: לחומרא, שמא ראשון סוף זוב ושני תחלת נדה) שלשה. תשב שבעה נקיים. (רש"י: דאילו היו ימי זיבה צריכה ז' נקיים) אמר ר' זירא -- בנות ישראל החמירו על עצמן שאפילו ראות טפת דם כחרדל יושבות עליה שבעת ימי נקיים.

Rav Judah said in the name of Rav: Rebbe (Judah the Patriarch) enacted in Sadot,²⁰ that if a woman experienced a single day's flow, she should abstain that day and six more [Rashi: in accord with the Torah's ruling, for perhaps it was menstrual flow (which would require a seven day period of abstinence)]. If she experienced two days flow she should abstain those two days and six more [Rashi: an added stringency lest the first day was the end of the period of *zivah* and the second was the beginning of *niddah*.] If she experienced three days flow she should observe seven clean days [Rashi: if these were days of *zivah* she must observe seven clean days.] R. Zeira said: Jewish women took it upon themselves to deal stringently (in this matter). Though they saw no more than a speck (of blood), they would abstain for seven clean days.

There is clearly a possibility, here, to untwist the strands and limit the period of sexual abstinence to the biblically ordained seven days. Is there any reason to do so? What were Rebbe in his enactment, and the daughters of Israel, in the custom reported by R. Zeira, concerned about and how did they hope to resolve the problem? Is this how the law should be observed in our day?

Rebbe, as explained by Rashi, was concerned that the woman may be uncertain whether her blood flow was properly to be considered *niddah* or *zivah* [irregular flow. The proper nominative in the Bible is *zov*, but rabbinic usage is *zivah*]. If it were *niddah*, the woman would be obligated by the Torah to wait a total of seven days, including the days of flow before immersing in a *mikveh*; if *zavah*, one or two days of flow cause her to be a *zavah ketanah* [*zavah* minor] and she must wait one further day, that is, one day in which she remains clean, before immersing, but if she experiences a third consecutive day of flow, she becomes a *zavah gedolah* [*zavah* major] and must wait for the end of her flow and an additional seven clean days before immersing. Rebbe's ruling simply resolves the uncertainty by taking the most stringent assumption in each case. In the case of one day's flow, treat her as *niddah*, requiring seven days before immersion. In the middle case, consider the possibility that the first day was *zivah* and the second *niddah*, in which case only the latter day could count toward the seven day *niddah* period..In the third case, *niddah* would require possibly six more days, but major *zavah*, for which this could qualify, would require more, seven clean days. As for the custom of the daughters of Israel (it is noted by many commentators that the halakhic uncertainty had been fully resolved by the enactment of Rebbe), it appears purely formal, erasing the distinction

20 Rashi comments about *b'Sadot* "a place where there are no Torah scholars and they do not know how to count the days to restart *niddah*, [that is] when the days of *niddah* are, and when the days of *zivah*." Most interpreters have taken this as a place name, but I question whether it is not rather a noun, meaning in the bush, that is a generic "place where...". If this were the meaning it would suggest that Rebbe had not enacted a rule that took the place of basic practice at all, as has been assumed, but that he simply enacted a precaution where uncertainty reigned. See below.

in Rebbe's enactment between cases wherein one waits six days and cases wherein one waits seven, at the minor cost of one additional day, but a major advance in simplicity.²¹

Arukh HaShulchan (*Yoreh Deah* 183.16) highlights a weakness in this interpretation of Rebbe's enactment. If a woman were in fact *niddah*, then it is biblical law, not an enactment of Rebbe, that she should wait a total of seven days. And if she were in fact *zavah*, then she should know that, because the Talmud insists that *zivah* can only occur during the eleven days immediately following the seven day *niddah* period, and she would remember that the end of her last period was less than a week and a half before. That *zavah* can occur only on the eleven days following *niddah* appears to be expressly stated as a *baraita* on *Niddah* 72b –

אחד עשר יום שבין נדה לנדה הלכה למשה מסיני

There are eleven days between one *niddah* period and another.

This is a law since Moses at Sinai.

according to Rabbi Elazar ben Azariah, and it is derived from verses according to Rabbi Akiva, there, as well. And this stands behind the *Mishnah* at the beginning of *Arakhin* (2:1) and the *baraita* explicating it on *Arakhin* 8a that calculate how long a woman who does not know if a flow of blood was *niddah* or *zivah* must wait without a flow to be certain that a subsequent flow is *niddah* and not *zivah*,²² and likewise behind *Mishnah Niddah* 6:14. This eleven day period is codified as law by Alfasi (*Hilkhot Niddah* 1088 affixed to the end of his commentary to the first chapter of *Shevuot*), by Rambam (*Hilkhot Issurei Biah* 6.1-6), and in the *Tur* (*Yoreh Deah* 183).

But there is a basic problem lurking in this picture. Rambam presents the simplest and clearest reading of the implications of such an eighteen day cycle.

כל שבעת הימים שנקבעה לה וסת בתחילתן הן הנקראין ימי נדתה, בין ראתה בהם דם בין לא ראתה בהם דם... מפני שהן ראויין לנדה. וכל דם שתראה בהם דם נדה יחשב... וכל אחד עשר יום שאחר השבעה הן הנקראין ימי זיבתה, בין ראתה בהם דם בין לא ראתה... מפני שהן ראויין לזיבה, וכל דם שתראה בהן דם זיבה יחשב... כל ימי האשה מיום שיקבע לה וסת עד שתמות... תספור לעולם שבעת מתחלת הוסת, ואחריהן אחד עשר, ואחריהן שבעה, ואחריהן אחד עשר... שכל ימיה של אשה כך הן שבעה ימי נדה וי"א ימי זיבה, אלא אם כן הפסיקה הלידה...

21 Judith Hauptman interprets R. Zeira's ruling as simply about the classical *zavah*, adding the seven clean days to even one day's flow where the Bible had required only one clean day (*Rereading the Rabbis*, ch. 7, p. 158 and n.33 there, p.173). Contrary to her presentation, the context of Rebbe's statement addresses any blood flow, not just one that is known to be *zivah*, and the custom of the daughters of Israel is but a minor adjustment of Rebbe's enactment, where it would be a major change (six days instead of one) understood as she suggests, and much harder to explain. How could a single day's blood flow ever require seven clean days? Rashi addresses the question on *Megillah* 28b where he suggests two possibilities: A woman who had been *zavah* and was counting her seven clean days, were she to have a single event would need to restart her full seven day count. Or, perhaps the single day's recognized blood flow was in fact the third successive day of an unrecognized flow. But these answers are not convincing. The first scenario requires that she be aware of the situation, in which case, why apply the stringency if it does not apply, and the second is unreasonably far-fetched in an area where we permit other leniencies, such as reliance on the presence of a wound. Judging the custom of the daughter's of Israel as a development from Rebbe's enactment is much more reasonable. If Rebbe's enactment was not general, as proposed in the previous note, then the custom of the daughters of Israel was indeed far reaching, adopting Rebbe's regional enactment generally, while extending it to simplify matters.

22 How can a woman who is uncertain regain her bearings? She should take the most stringent reading of her case and when enough clean days have passed, she may assume that her next blood flow is *niddah*. Thus: If she experienced a flow for one day only, she must wait six more clean days to complete her *niddah* period (if it was *niddah*) and a further eleven days, her period of *zivah*, a total of seventeen days. Then she may assume that any subsequent flow is *niddah*. If she experienced a flow for two days, she must assume that the first might have been in the *zivah* days, but the second might have been *niddah*, so she should wait six days to complete *niddah* and eleven more for the *zivah* period to pass, again seventeen days. Similarly three days of flow. But if there were four days of flow, the time she must wait is less. For if she were to assume she was *zavah* she would need to wait only seven clean days. But if only the first two were in her *zivah* period, and she assumed that the latter two days were part of her seven days of *niddah*, she must wait just five more to complete her *niddah*, plus eleven of *zivah*, a total of 16. And so forth. The waiting period now descends until it reaches a minimum of seven days, the minimal period of clean days required of a *zavah*.

The whole seven days after her set period are called “days of *niddah*,” **whether she has a flow then or not...** because they are appropriate for her period, and any blood during that period is considered menstrual blood... The eleven days which follow those seven are called “days of *zivah*,” **whether she has a flow then or not...** because they are appropriate for irregular flow, and any blood during that period is considered *zivah*... During a woman’s entire life, from the time of the start of her menses until her death (!)... **she should always count seven days from the onset of her menses then eleven days, then seven then eleven... for the whole of a woman’s life is like that... seven days of *niddah* then eleven of *zivah*,** unless they are interrupted by pregnancy...

This reading of the seven/eleven day system by Maimonides has Geonic precedent and may have been the understanding of Alfasi, as well, but runs into immediate and severe problems. The average woman’s menstrual period is of between 28 and 31 days duration, thus, by this count, most women would have a first period in the days of *niddah* (days 1-7) and the second period in the days of *zivah* (*zivah*: days 8-18; *niddah*: days 19-25; *zivah* days 26-36). Thus the menstrual period would have no correlation to *niddah*!²³ Nonetheless, argues *Arukh HaShulchan*, writing in defense of Rambam (183.12), this is correct, for this is the reason behind the enactments of Rebbe and the daughters of Israel – since women could not be expected to keep an accurate life-long count, and any period might be either *niddah* or *zivah*, it is likely that a woman would not know if she were in the period of *niddah* or *zivah* and it was easier and more reliable to enact one or another stringency unifying practice so that the calculation was no longer necessary.

But such a systematization, while successful in explaining these gemarot, runs aground on the calculation in Arakhin, which it must understand as a special leniency for the perplexed woman who, once uncertain, would otherwise be forever unable to know where she stands within this constant count, and on the reality of the menstrual period and rabbinic reliance on the period as indicative of *niddah*. *Arukh HaShulchan* admits as much, writing,

ודע שבעיקר חשבון ימי נדות וזיבות יש להרמב"ם ז"ל שיטה תמוה שכל הראשונים דחו דבריו ועשו דבריו
לדברי שגגה

Know that in the matter of the calculation of the days of *niddah* and of *zivah* Maimonides has a strange system that all of the early authorities have rejected as mistaken.

Rather, the system of the majority of Rishonim is described as follows by Ramban in his *Hilkhot Niddah* 1.4, 9-12

23 Some late authorities, in their attempt to defend Rambam’s system and yet maintain that every regular menstrual cycle constituted *niddah* argued that Maimonides’ explicit statement that the 7/11 cycle reset after pregnancy was true also of every menstrual period. Thus the life-long alternation of 7 and 11 day periods only applies, in women with a regular menstrual flow, to the 25 or so days between periods, when the count restarted [See *Encyclopedia Talmudit* 22, “*yimei niddah / yimei zivah*,” p.616-617 and notes 173-179]. But Rambam himself acknowledges that according to his understanding a woman with a regular period longer than nineteen days will have some periods that qualify as *niddah* and others that qualify as *zivah* [*T’shuvot HaRambam* (Blau) #459. Blau’s text has lacunae, and a more complete text is found on page 461 of Shilat’s edition of the letters of Maimonides].

ד]... הלכה למשה מסיני שי"א יום הסמוכין לז' ימי נדות בלבד שהאש[ה] נעשית בהם זבה, אבל מאחר שנשלמו הי"א חזרה לימי נדו[ת], שאפי[לו] רואה בהן ז' טובלת בליל שמיני וטהור[ה], כמו שביארנו. וי"א ימים אלו הם הנקראים י"א יום שבין נדה לנדה...
ט] ספיר[ת] הנדות והזיבה כך הוא: הרואה דם תחילה יושבת ז' לנדתה. ראתה יום ח' -- נעשית זבה קטנה ושומרת יום כנגד יום. ראתה יום ט' -- שומרת יום כנגד יום. ראתה יום עשירי -- ה[רי] ז[את] זבה גדולה וצריכה ז' נקיים.
י] משעה שהאשה נעשית זבה גדול[ה] אינה חוזרת לימי נדות עד שתספור ז' נקיים... אפילו התחילה נקיים שלה וסתרה וחזרה למנותן וסתר[ה] אינה אלא זבה שסותר[ת] וכשתשלים ז' נקיים ותראה תחזור לתחילת ימי נדה...
יא] ראתה נדה בתחל[ה] ולא ראת[ה] בי"א יום, משתראה ביום י"ט לראייתה -- היא נדה. בתחלה לא ראתה עד יום כ: -- אין מונין ליום הראוי לזיבה אלא ה[רי] ז[את] תחלת נדה.
יב] אין זיבה אלא בי"א שסמוכין לז' שראתה בהן נדות. והזהר במנין זה שכבר טעה בו א' מגדולי המחברים.

4] The law since Moses at Sinai is that only the eleven days immediately following the seven day *niddah* period are such as to make her *zavah*, but after those eleven are completed she returns to days of *niddah*, wherein even should she have a flow for seven days, she may still immerse on the evening of the eighth day and be pure, as we explained. These eleven days are called the eleven days between one *niddah* period and another...

9] The counting of *niddah* and *zivah* is as follows: One who sees blood at first sits seven days as *niddah*. If she sees [blood] on the eighth day -- she becomes a minor *zavah* and waits one day beyond that day. If she saw [blood] on the ninth day she waits one additional day. If she saw [blood] on the tenth day -- she is a major *zavah* and requires seven clean days.

10] From the time a woman becomes a major *zavah* she does not return to her *niddah* days until she counts seven clean days... Even if she began her clean days but nullified them [nb. saw blood, requiring restarting the count of seven clean days], then began to count again and nullified them, she is simply a *zavah* who has nullified -- only when she completes seven clean days and then sees [blood] does she begin at the beginning of the days of *niddah*...

11] If [a woman] saw *niddah* [blood] at first, but did not see any during the subsequent eleven days, when she sees [blood] on the nineteenth day since her original sighting -- she is *niddah*. If she did not see any until the twenty sixth day -- one does not count that as a day of *zivah*, but, rather, that is the start of *niddah*.

12] *Zivah* cannot be except in the eleven days immediately following the seven in which she was *niddah*. Be cautious about that count, for a great sage has erred therein.

Ramban eliminates the cyclical nature of the count, while maintaining fidelity to the Talmud's clear statement that there are only eleven days of *zivah* between one *niddah* period and the next. But he understands that after those eleven days the count is suspended until the next sighting of blood. This solves the problem of a regular woman with a twenty eight to thirty day cycle. Rather than claiming that her regular period may be *zivah* if it falls in those days of a cycle, this system understands that *niddah* refers to the regular period, after which there is a period when blood is expected not to flow, for it has been eliminated in the normal flow, and it may be expected to return after that period, at some variable time, which will be pegged as the start of the next *niddah* period. If blood flows during that short window when it is expected not to, that, then, is an irregular flow. Consistent with this is the Mishnah's declaration (*Mishnah Niddah* 4:7) that during those eleven days a woman may be presumed to be clean:

כל אחד עשר יום בחזקת טהרה.

Throughout those eleven days a woman is presumed pure.

because, as the Talmud explains elsewhere (*Niddah* 68s) אמרינן דמיה מסולקין -- we say that her blood has been drawn out.

Under this approach, what can we say about Rebbe's enactment? Arukh HaShulchan's question, again: if a woman were in fact *niddah*, then it is biblical law, not an enactment of Rebbe, that she should wait a total of seven days. And if she were in fact *zavah*, she should know that, because *zivah* can only occur during the eleven days immediately following the seven day *niddah* period, and she would remember that the end of her last period was less than a week and a half before. The question remains trenchant, because Rebbe's enactment bespeaks doubt as to a woman's status, and, as Arukh HaShulchan points out, it should be clear. And it seems that it should be clear. Women are well aware of their regular menstrual period, therefore they also know which eleven days are days of *zivah*. It is hard to imagine the uncertainty that would lead Rebbe to such an enactment. Nor are the rabbinic texts greatly perplexed about a woman's regular period. While recognizing that not all women had a regular period, or וסת (*veset*) in the Mishnaic term, they recognized that the majority of women did (*Yoreh Deah* 184). Moreover, they recognized that that regular period established a legally valid mechanism for recognizing a flow as *niddah*. The Mishnah cited above, that a woman is presumed free of blood-flow during the eleven day period after her menstrual week, continues:

הגיעה שעת וסתה ולא בדקה, הרי זו טמאה.

If the time of her period arrived, even though she had not checked herself
[for blood], she is [considered] impure.

In fact, then, it was not only the eleven days that were considered free of blood-flow, but, having established the presumption, all days prior to the normal time of a woman's period shared that presumption. In what reality was Rebbe's enactment relevant, then, if a woman were likely to know if she were *niddah* or *zavah*?

The various Rishonim spoke of generalized confusion.

Alfasi:

כיון דאימעוט רבנן דהוו בקיאי בהכי וקלשא לה דעתיינו ולא הוו יכלי לאפרושי בין דם טמא לדם טהור...
וחזו נמי דלא ידעי נשי תיקון וסתות... חשו רבנן למילתא ועבדו הרחקה יתירה לסלוקי כל ספיקי ואצריכו למיתב שבעה נקיים על
כל דם, דלא ליגע באיסורא דאוריין[תא]

Ramban:

כשנתמעט לבן של חכמים מפני כובד הגלות ותכיפת הצרות, חששו שמא יבאו לטעות בדבר שזדונו כרת...
ואפי[לו] תראה דם לחכם גדול ובקי אפשר שתטע[ה] בעצמ[ה] במנין הנדות והזיבה... לפיכך עמד רבינו הקדוש ותקן... ואינה צריכה
להראות דם לחכם ולא למנות ימי נדות וזיבה. א[ף] ע[ל] פ[י] שזו התקנה אין בה בית מיחוש, החמירו במות ישראל על עצמן...

Tur:

משרבו הגלויות ותכפו הצרות ונתמעטו הלבבות, חשו שמא יבאו לטעות באיסור כרת... החמירו לטמא כל מראה דם אדום, וכדי שלא
יבאו לידי טעות בין ימי נידה לימי זיבה הוסיפו חומרא אחר חומרא עד שאמרו שאפילו עם לא תראה אלא טיפת דם כחרדל, תשב
עליה ז' נקיים כזבה גדולה.

Alfasi: Once the Rabbis were diminished, for they used to be expert in such matters, but their judgment failed and they were unable to distinguish between pure blood and impure... and they also saw that women did not know their proper periods... the Rabbis grew concerned and enacted an extra precaution that would eliminate any doubts and required

waiting seven clean days for all blood flows so as not to encroach upon a biblical prohibition.

Ramban: When the sages' heart was diminished due to the weight of the exile and the insistence of many troubles, they grew concerned that they might err in a matter punishable by *karet* (divine excision)... and even were she to show the blood to a great, expert sage, it is nonetheless possible that she would herself err in the matter of calculating the dates of *niddah* and *zivah*... therefore Rebbe arose and enacted... so that she did not have to show blood to a sage nor keep a calculation of the days of *niddah* and *zivah*. Yet, even though that enactment was perfect, the daughters of Israel took on a greater stringency...

Tur: When the exiles increased and the troubles grew more insistent and hearts were diminished, they grew concerned that they might err in a matter of *karet*... so they were additionally stringent with regard to any sighting of red blood, and so that they would not err between days of *niddah* and days of *zivah* they added stringency upon stringency until they came to say that even should a woman experience a single sighting of even one drop as small as a mustard seed, she should observe seven clean days like a major *zavah*.

It is notable that these authorities and others, who could not understand this as Maimonides did, as a general uncertainty about the dates of *niddah* and *zivah*, found much of the problem in determining whether the blood was impure menstrual blood or whether it might have another source, although the specifics of Rebbe's enactment keep leading back to uncertainty about the *niddah* or *zavah* determination. But there is a much better way to understand Rebbe's enactment and that of the daughters of Israel, and that leads to rethinking whether those enactments must stand under current conditions.

The key to understanding both Rebbe and the daughters of Israel is that they had before them a salient problem in determining whether a woman was *niddah* or *zavah*. While the *veset*, the standard monthly time of a woman's blood flow (it is that designated time that resides behind the English usage "period"), was sufficient to establish a legal presumption both to declare pure that which came before (*Mishnah Niddah* 9:8) and to declare impure that which came after (*Mishnah Niddah* 4:7), women in Israel in that period married young, often before their menstruation had begun, entered pregnancy immediately upon marriage or physical readiness, remained pregnant much of their adult life, and died young (Recall Maimonides' comment that a woman maintained her period until she dies -- menopause was not a significant phenomenon). In such a life, the number of months which did not qualify for a regular period exceeded the number of months that did. And even Maimonides, he of the continuous cycle of 7/11, conceded that that was dependent on the *veset* for its origin, **and was changeable after each pregnancy**. Thus Rebbe's enactment was addressed to that situation, described as טועה (*to'ah*), where a woman who experienced a flow of blood was uncertain where she stood in regard to a regular menstrual flow. It was that situation which was addressed in *Mishnah Arakhin* 2:1, the primary context of the discussion of the 7/11 day menstrual system, and *Mishnah Niddah* 6:14. But today women marry late, having established and grown accustomed to their menstrual cycle for years before marriage, have few pregnancies, broadly spaced, and live long after their child bearing years before reaching menopause. It is possible in all but a few cycles of her adult life to rely on the normal period to establish *niddah*.²⁴

²⁴ Indeed, even in its day, part of the enactment of Rebbe was to protect against a rare event. The scenario of two days, the first being *zivah*, the second *niddah*, can occur only if the first day of flow is on day 11 after the last *niddah* period's end, that is, day 18 of the menstrual cycle, and the second day of flow, taken as *niddah*, the first day of the new cycle, on the next day, the 19th of the menstrual cycle. This must be an exceedingly rare scenario, the menstrual cycle being described as averaging 28 days, but ranging from 21-35 days (Barnes and Nobles / *Groliers New American Encyclopedia* 1991). A nineteen day cycle is not considered within the normal range.

Thus, the existence of a regular menstrual period establishes a presumption that that is the woman's *niddah* period, that it is not *zavah*, and it is unnecessary to apply the stringencies of Rebbe and the daughters of Israel except in the case of uncertainty to which they were addressed. Indeed, in some ways the *midrash* explicitly rejects that which has come to be the norm out of concern for uncertainty, in the verse derivation according to Rabbi Akiva on *Niddah* 72b:

יכול הרואה ג' ימים בתחילת נדה רצופים תהא זבה? ... תלמוד לומר "בלא עת נדתה."
Could it be that a woman who experiences [a flow of blood] of three continuous days at the beginning of her *niddah* should be classed as a *zavah*? ... The verse says: "not at the time of her menstrual flow."²⁵

Since the provision of the daughters of Israel runs counter to the assertion of the *midrash*, since it had its provenance in custom, and since it is clearly based on an uncertainty that we do not share, we feel it correct to return to the underlying practice except where there is actual uncertainty.²⁶

But the system of the majority of *Rishonim*, it must be admitted, also fails the test of congruence to reality that was such a glaring flaw in the 7/11 system. If a woman with a standard thirty day cycle experienced a blood flow in the days after the 18th day of her cycle but before her next period, they would be ruled to be her *niddah* flow, and her next regular menstrual period would be found to be *zivah*, requiring seven clean days, for it would be within the eleven days after that irregular "*niddah*." In the case of such a woman with a thirty day cycle, that would imply twelve days every month in which a blood flow would lead to the mischaracterization of that flow and of the subsequent menstrual period. Admittedly, this would occur infrequently and, absent any further irregular flow, the system would reset before the next menstrual period, but the inaccurate description is troublesome nonetheless.

One *Rishon* alone stands out as offering an interpretation of the *gemara* that accords fully with the reality we experience. R. Levi ben Gershon [Gersonides], at the end of his commentary to Leviticus 15:28, adds a halakhic addendum in which he explains that the Talmud's eleven day period is intended not as a statement of the only days in which *zivah* might occur, as both the other systems had assumed, but that it refers solely to the minimum number of days, whereas there might be more, depending on the length of a woman's cycle. He writes, in part,

25 The *midrash* is textually garbled, for which reason the ellipsis here is employed in order to simplify, but the point is clear. A similar text appears in *Sifra Zavim* (Metzora) *perek* 8:1, also textually unclear, but the point is made even more clearly at the end, "אחר נדתה היא מטמאה ואינה מטמאה בתחילה" (she becomes impure = *zavah* = after her menstrual period, but not at its start.)

26 In his *Hilkhot Niddah*, Ramban, representing the position of the majority, accepts that the custom of the daughters of Israel had become normative. He insists (1:19):

חומרא זו שנהגו בנות ישראל הוכשרה בעיני חכמים
ועשו אותה כהלכה [ה] פסוקה בכל מקום, לפיכך אסור לאדם להקל בה ראשו לעולם
This stringency that was adopted by the daughters of Israel met the approval of the sages and they made it a fixed law in every locale, therefore it is forbidden for anyone to neglect it, forever.

While Ramban's opinion of the matter is clear, we do not share his assessment of the valuation of the custom. Whereas the talmud reports in the name of Abaye on *Berakhot* 31a that the custom of the daughters of Israel is a "הלכה פסוקה" (a settled law), in its context on *Niddah* 66a Rava retorts to Rav Pappa, who cited it to make a point, "אנא אמינא לך איסורא ואת אמרת מנהגא? היכא דאחמור אחמור והיכא דלא אחמור לא אחמור" (I am talking about the law and you cite custom? Where they are stringent, they are stringent, but where they are not, they are not). Anecdotaly, it seems that many observant Conservative families have on their own adopted the Biblical seven day *niddah* without adding the clean days, rejecting the stringency of the daughters of Israel, ופוק חזי מאי עמא דבר (just go out and see what the people are doing).

יתבאר שימי זיבה הם על המעט אחד עשר יום אחר ימי הנדה. והיה זה כן לפי שאי אפשר שתקבע האשה וסת לנדתה פחות מי"ח יום בין וסת לוסת... ואולם אם קבעה לה וסת הנה יהיה כל מה שתראה אחר ימי הנדה, זבה. ולזה אמרה התורה "בלא עת נדתה" שכל מה שתראה בזולת העת שקבעה לנתה הוא זיבה.

It will become clear that the days of *zivah* are, at minimum, the eleven days after her *niddah* period. This is so because it is impossible for a woman to have a menstrual cycle less than 18 days between one menstrual time and the next... But if she had established a menstrual cycle, whatever [blood flow] she experiences after her *niddah* period, is *zivah*. When the Torah spoke of 'not at the time of her menstrual flow' it meant that whatever [flow] she experiences outside the time that she has established for her menstrual flow is *zivah*.²⁷

Gersonides' system is alone fully congruent with the facts as they present themselves to most women who are quite regular with a standard length period.²⁸ The Talmud, however, seems to assume that *zivah* does not extend past the eighteenth day (eleven days after the period of *niddah*) throughout its discussions.²⁹ Particularly compelling is the ruling that the eleventh day does not require a clean day *אחד עשר לא בעי שימור* because it is impossible that blood flow on the twelfth and thirteenth day will advance such a minor *zavah* to the category of major *zavah*, for such flow will be classified as a new occasion of *niddah*, for it is no longer within the eleven days of *zivah*. Gersonides was not unaware of this apparent contradiction. He explains that all of the Talmud's discussion relates to *טועות* – women temporarily or permanently without an established period (as we have said of Rebbe's enactment and of the custom of the daughters of Israel), but that an established, regular period overrides or takes the place of those rulings.

לזה, לא יהיו ימי הנדה אלא כשלא היה לה וסת קבוע, שאז נפשט שזה וסת שני

That is why there are no "days of *Niddah*" save where she has no regular period. It is then that we consider [blood flow during those days] a second period.

His jettisoning of the extended Talmudic discussion gives one pause, but it might be noted that the Mishnah hints that the preserved legislation might, in fact, be addressing an unusual situation only.

הרואה יום אחד עשר בין השמשות, תחלת נדה וסוף זיבה...³⁰ הרי אלו טועות. אמר רבי יהושע: עד שאתם מתקנים את הטועות, תקנו את הפקחות.

A woman who experiences blood flow on the eleventh day toward evening, it is the both the beginning of *niddah* and the end of *zivah*... such women are uncertain. Said R. Joshua: Before you attend to the uncertain, you should attend to the regular.

27 Gersonides refers to the Biblical calculation according to R. Akiva that is found on *Niddah* 72a-b and calculates three days for the three day minimum flow of *zavah* plus seven clean days, plus one day separating menstrual flow from *zivah* equals eleven days. This is the minimum, and corresponds, he argues, to reality.

28 The sages themselves recognize this, ruling that a woman should expect the arrival of her monthly period and abstain at that time, because *אורח בזמנו בא* (the menstrual flow arrives on time -- *Niddah* 16a) and that for the purposes of that expectation, a woman without a regular period should expect the arrival of a new blood flow, in light of the average on the thirtieth day (*Niddah* 9b).

29 See particularly *Niddah* 53b-54a and 72a-73a.

30 Text as emended by the *gemara*, *Niddah* 53b-54a.

It is the intent of this Law Committee to be advisory in its opinions, rather than normative. The conclusions of this *teshuvah* will, therefore, address both those who would rule with Ralbag [Gersonides] and those who prefer to recognize the majority opinion.³¹

There are two other major leniencies that apply equally to both systems. The Talmud, on *Niddah* 39b refers in passing to a woman with a regular period who experiences a flow several days before her expected period. Recognizing that early appearance of the period is possible, but that that should not be permitted to disturb an established regularity, R. Yohanan ruled that that be considered an early appearance – דמי יתירי הוא דאתוספו בה – that were merely additional [menstrual] blood. This, too, is codified in *Tur, Yoreh Deah* 189.³² Even if the flow were not continuous, and she then experienced her regular period, the seven days of *niddah* are calculated from the regular appearance of her periodic flow, but the earlier spotting is taken to be part of that flow and adjudged *niddah*. Effectively, then, the period of *zivah* is reduced by the days six days adjacent to her regular flow on which, if a woman experienced spotting she might attribute that to an extended menstrual flow.

Secondly, it is a commonplace that a woman may consider a blood flow as neither *niddah* nor *zivah* if there is any other possible source. To my surprise, the apparent source of this is a *baraita* on *Niddah* 66a (long, begins on 65a). The subject is a woman who, in having sex, experiences a blood flow. This is a highly problematic situation. If it is a recurring phenomenon, she would have to divorce her husband. To avoid that, the *baraita* provides that

אם יש לה מכה באותו מקום תולה במכתה, ואם יש לה וסת תולה בוסתה

If she has a wound in that place [her vagina], she may associate [the blood flow] with her wound, and if she has a menstrual period, she may associate [the blood flow] with her period.

On its face one might imagine limiting these leniencies to that severe situation alone, but the tradition to apply the reliance on a wound or medication to whether a woman is *zavah* is clear. Take, as but one example, the responsum of Chatam Sofer, Responsa, II 154 (*Yoreh Deah*), wherein he considers a woman suffering spotting as a result of a medical condition. He writes:

לפי הנראה אין האשה מרגשת ויודעת³³ שהדם יוצא מן המקור ואם כן חזרנו על כל צדדי קולא ומצאנו שהאשה טהורה לפי [י] ע [ניות] ד [עתי] שהרי יש לה וסת והיא רואה שלא בשעת וסתה ויש לה מכה... תולה בהמכה וכל זה פשוט ומבואר ואינו מקבל אריך

It seems that this woman does not sense or know that the bleeding is from the womb, therefore we have returned to all factors of leniency, and we find the woman pure, according to my judgment, for she has a regular period and yet is bleeding outside her period, and she has a wound... and may associate [the blood] with the wound. All this is simple and clear and requires no elaboration.

31 Some permutations of defenders of the position of Maimonides have adjusted it so as to essentially make it similar, in practice, to that of the majority of Rishonim (see note 23) and rabbis who prefer that route can use this *teshuvah* as well, but the Maimonidean system is so unreasonable, and the adjustments so flagrantly not what Maimonides intended, that I am unable to justify that route.

32 The parallel section is missing in *Shulchan Arukh* for reasons I am unable to determine. This law is represented as normative in Karo's *Beit Yosef* commentary *ad locum*.

33 There is a hesitation to apply the leniencies if she is certain that the bleeding is acknowledged to be from the womb, but the woman in question was experiencing bleeding from the womb, and Chatam Sofer nonetheless considers that the blood might be coming through the womb from another source and classes her as "not knowing for sure" that the bleeding is menstrual. See *Shu"t* YD 187, *Pitchei Teshuva* 22.

But this statement is dangerous, and must be placed in proper context. The Talmudic source uses the ‘excuse’ of the period in a case where a woman experiences a blood flow during sexual activity **at the time of her period**, wherefore she is ruled not to be required to be divorced from her husband (though sexual activity at that time is generally not permitted). The notion that one might use the inverse of that, that any blood flow not at the time of a period is not of concern, is not obvious and bears within it the seeds of eliminating *zivah* altogether for women with a regular period. Such does seem to have been the opinion of the Mordecai, who presents the leniency of relying on *veset* independent of the context in which it appears in the *gemara*. However, the codifiers all limit the use of that inverse proposal by connecting the two factors, that is, understanding that only a woman who has a regular period can claim that blood flow outside her period must have another source, such as a wound, and *Chatam Sofer* should be interpreted in that light.³⁴ While the discussion of what “at the time of her period” might mean in the context of this leniency is also rather restrictive, we do not miss the mark to note that the first leniency, to attribute spotting days before the expected period as “additional menstrual blood” is, in essence, a broad reading of the meaning of “at the time of her period” and permits attributing spotting thereto. Thus together these two leniencies support the principle that אשה בחזקת טהרה עומדת – a woman is presumed to be pure, absent any other indicators.³⁵

ON THE MATTER OF *B'DIKAH*

The traditional practice has been to demand a clear break in the flow in order to be able to count the seven clean days. That break is established by a vaginal swab with a white cloth done shortly before nightfall so as to ascertain that there is no vestigial bleeding (*b'dikah*). As long as it was necessary to count seven perfectly clean days, such a verification of the termination of the flow was necessary. However, reverting to the seven day “*niddah*” rule obviates the necessity for that check. Since most women’s periods last only 3-5 days, a measure of redundancy is built into the required seven days. Unless there is still perceived bleeding up to the latter part of the seventh day, no *b'dikah* is necessary before going to the *mikveh*. Where there is, a woman might undertake one of two strategies. If she wishes to proceed to *mikveh* that night, a *b'dikah* would be in order. Alternatively, she might consider herself a “*shomeret yom k'neged yom*,” a woman who is required to wait one additional clean day before attending the *mikveh*, in which case the day’s buffer obviates the need for *b'dikah*.³⁶ The additional day would apply as well, of course, to that woman who experienced one or two days of spotting between periods, the classic “*shomeret yom k'neged yom*,” including the eighth and ninth days, the days immediately following her period of *niddah*, which are part of the

³⁴ See *Shu'a, Yoreh Deah* 187, 4-5 with Taz 8 there and Beit Yosef to the parallel Tur. The Mordecai’s statement can be found attached to Rif’s *Hilkhot Niddah* at the end of *Shevuot*, #735 (mid second column in standard texts)

³⁵ Shakh, there, 19 but see *Dagul MeReva'ah*.

³⁶ The laws of שומרת יום כנגד יום (“*shomeret yom k'neged yom*” - a woman awaiting one clean day) concern a potential *zavah*, a woman who experiences bleeding outside of her normal period, who is required to have three consecutive days of spotting in order to be considered a *zavah*, as per Leviticus 15.25 ff. One should not, of course, apply this category to the menstruant at all, but our argument is from the factual analogy of the cases. A woman who has spotted cannot know for certain that she will not spot again tomorrow, that being a second step toward her being declared a *zavah*, until the whole next day has passed without incident. That is the upshot of the category of “*shomeret yom k'neged yom*.” The same single clean day, in fact, can serve to obviate the need for *b'dikah*.

eleven days of *zivah*.³⁷ Upon experiencing three consecutive days of spotting outside of her seven days of *niddah*, the specific law depends on the halakhic assumptions of the *mara d'atra* and will be reviewed in the conclusions.

ON THE MATTER OF CHILDBIRTH

The Torah requires seven days *niddah* for the birth of a boy, but fourteen for the birth of a girl (Leviticus 12:1-5) If it was a multiple birth the longer period applies. If the birth was over two days, the latter determines the count. (*Shu'a YD* 194). Since the birth fully explains any blood flow, there is no concern for *zivah*. *Mikveh* follows immediately after that period, even if it is not determined that bleeding has stopped, as the Torah provides that additional bleeding up to forty days for males and eighty for females is considered pure. If the woman had entered a period of *zivah* on account of spotting outside the time of her period before the time of childbirth, such that she had incurred a requirement of seven clean days, that requirement must be fulfilled after her bleeding had ended before *mikveh* is appropriate.

Whereas the Torah provides that bleeding in the forty/eighty day period after childbirth and after the initial seven/ fourteen day period is pure, and sexual activity is permitted, common practice was to treat this as *zivah*.³⁸ This common practice, however, stemmed from the same excessive caution that treated any woman with a blood flow as potentially *zavah*. We have rejected that excess stringency. Nevertheless, it is unseemly to engage in sexual activity while a woman continues to bleed, and *b'dikah* or a single clean day should be employed here as well. Since this blood is considered pure, no *mikveh* is required if the woman has already been to *mikveh* after the initial seven or fourteen day *niddah* period. If not, however, immersion in a *mikveh* to terminate the initial post-childbirth *niddah* period is still necessary.

ON THE MATTER OF THE CONTINUING REQUIREMENT OF MIKVEH

The rabbis as well as the majority of biblical scholars understood that *mikveh* was required to reestablish sexual activity even if no contact with divine sancta was contemplated.³⁹ As we have noted, it is that very gesture of purification that holds the

37 It should be noted that the demand of awaiting one clean day in the event of spotting is a stringency due to the uncertainty if the period has ended or if the woman will be found to be a *zavah*. Clearly, she cannot know that in advance. In unusual cases, where even that one additional day threatens to be a cause of a woman's inability to conceive, a *mara d'atra* may waive this stringency, under the grounds that no legal presumption of her being *zavah* has yet been established. In Rabbi Dorff's responsum, *Artificial Insemination, Egg Donation and Adoption*, he notes, in note 21, the suggestion that where spotting is an issue at the end of a period, colored undergarments may serve to conceal any blood. This leniency may be found in Eider, *Halachos of Niddah*, I, p. 120. Other leniencies may be available. See, Avrohom Blumencrantz, Gefen Poriah.

In general, this responsum, by reducing the *niddah* period to seven days, reduces greatly the number of instances where infertility may be due to halakhically required abstinence. However, where an intractable problem of extremely early ovulation, even within the seven days of *niddah*, is diagnosed, and where that problem is not correctable by the use of hormonal treatment to recalibrate the woman's menstrual cycle, it does not appear that waiving the base biblical period of seven days is acceptable. Similarly, continuous spotting throughout the month is a problem requiring medical management (see R. Grazi, *Overcoming Infertility*, pp. 299ff). Where coitus is not possible within the biblically mandated rules, the less savory approach of injecting semen into the vagina with a syringe, or the more expensive in vitro techniques are mandated. Few cases of infertility will, in fact, fall into this category.

One more major leniency is available to those *marei d'atra* who wish to make this claim. In reading the biblical text (Leviticus 15.25 ff), the Torah clearly defines the period of the status of a woman experiencing an irregular discharge as "*niddah*" only during the duration of her flow, as distinct from the seven clean days which follow. It is only with regard to her "*niddah*" status that sexual relations are expressly prohibited. If, as seems to be the case, her remaining disability during the seven clean days and consequent deferral of *mikveh* relates to her refraining from approaching divine sancta, it would only be an incidental effect that prevents her return to sexual relations (My thanks to R. Miriam Berkowitz for drawing my attention to *Tosafot Shabbat* 13b s.v. *bimei libunayikh*, where Rabbenu Tam makes this point about a regular *niddah*).

"They were wont to have two immersions, one at the end of the seven days when she became pure according to the Torah, and one at the end of her clean days." -- "היי רגילים לטבול שתי טבילות, אחת לסוף שבעה לראייתה שהיא טהורה מדאורייתא ואחת לסוף ליבון" That that appears to be the case is not just an inference from the Torah's specificity of the duration of "*niddah*" as opposed to clean days, but is closely paralleled by the case of a birthing woman who is prohibited from sexual relations for seven days as a "*niddah*," but may resume sexual relations thereafter, even though she continues to be barred from divine sancta for thirty-three days, and even though she continues to bleed. Thus it might be argued that given that the Temple sancta no longer require protection, it is not necessary to maintain the seven clean days.

38 *Shu'a YD* 194:1 in Isserles' comments.

39 Thus *Shulhan Arukh, Yoreh Deah* 197.1: אין הנדה והזבה... עולות מטומאתן בלא טבילה, שאפילו אחר כמה שנים חייב כרת הבא על אחת מהן -- Neither the *niddah* nor the *zavah*... is released from her impurity without immersion. Even after a few years, one who has sexual relations with one of them is punishable by *karet*. And see Hannah Harrington, *The Impurity Systems of Qumran and the Rabbis: Biblical Foundations* (1993), pp. 13-23, 113-116 and 123-126.

mystery of the renewed possibility of life and gives such poignancy and meaning to a woman's monthly cycle. To denude that moment of its ritual context would be shortsighted, even if it were not Biblically and rabbinically ordained.

More to the point, however, the *Mikveh* should be understood as a rite of passage, not simply as a purification. This is certainly the case with regard to the requirement of *Mikveh* for a convert. Although certain voices, historically, saw in this an act of purification from the impurity of the nations, we, who demand mikveh as a requirement of conversion but do not attribute any impurity to our gentile neighbors, certainly understand that it is a rite of transition and rebirth.⁴⁰ This is clear, as well, at the biblical foundations of the immersion ritual. Among many other immersions, the *m'tzora* (conventionally, the leper) was required to immerse in a *mikveh* twice, once to gain entry to the camp and again to gain entry to the Temple. The first immersion was clearly not purification for the purposes of entry to the Temple, which was yet denied. Rather, it was a ceremony of transition symbolizing the lifting of the quarantine and the permission given to the *m'tzora* to reenter the camp.⁴¹ Similarly clear, in the Bible's description in Leviticus 16 of what becomes the Yom Kippur ritual, described further, in detail, in *Mishnah Yoma*, chapter 3, the High Priest on Yom Kippur immersed before every clothing change, though he was pure throughout.⁴² This can only have been a rite of transition and sanctification. As the *Mishnah* there notes (*Yoma* 3.3),

אין אדם נכנס לעזרה לעבודה, אפילו טהור, עד שיטבול.

No one enters the sacred precinct to sacrifice, even if pure, until he has immersed.

Indeed, even the Conservative Movement's less observant women, who do not intend to visit the *mikveh* monthly, may nonetheless attend *mikveh* before their wedding day, understanding, intuitively, the power of the *mikveh* as a symbol of consecration and rebirth. The monthly rite of immersion in the *mikveh*, marking the transition to a new cycle of life and sanctifying anew the *kiddushin* relationship of husband and wife, remains the standard of observance to be followed by all Conservative couples.⁴³

40 See G. Alon, *Mehkarim B'Toldot Yisrael* (1967), I, pp. 120-147. In "A Manual for the Admission of Proselytes" adopted by CJLS in 1938, circumcision and immersion were referred to collectively as "initiation ceremonies" (*Proceedings of the CJLS 1927-1970*, III, 1351). This same approach appears to underlie Rabbi David Novak's assertion, in a responsum entitled "The Status of Non-Halakhic Conversions" passed in 1982 (*Proceedings of the CJLS*, 1980-85, p. 80-81), that "accidental or incidental *tevilah* only applies to a *niddah*. It does not apply to any other situation requiring *kavvanah*... An unintentional conversion is an absurdity." Were immersion simply a technical requirement to wash away an impurity, its fulfillment accidentally, as for a *niddah*, would be conceivable. And see Michael Chernick, "Mikveh: A Medium for Change of Status," *Journal of Reform Judaism*, Spring 1988.

41 Leviticus 14:1-9.

42 The example of the High Priest's immersions was suggested by R. Aryeh Kaplan's excursus on *mikveh* as a "change of status" in *Waters of Eden*, pp. 11-12. He offers several other explications of the symbolism of *mikveh*, there, including likening it to a "womb" from which one is reborn. While we do not propose tying this responsum to this highly speculative theory, it does argue particularly for the consonance of *mikveh* with a woman's menstrual cycle. Similarly, Kaplan's primary explanation, that for which his book is named, ties all the earth's waters to the "river coming out of Eden" (*B'reshit* 2.10), understanding *mikveh* as a response to Adam and Eve's fall, reestablishing the connection to Eden, from which they were banished with the curse, בעצב תלדי בנים ("you will bear children in pain" - *B'reshit* 3.16), pp. 30-36.

43 In the absence of a *mikveh* several solutions are possible. Rivers and oceans are valid as *mikvaot*, and were used as such particularly where no *mikveh* was at hand (*Shulhan Arukh, Yore Deah* 201.2 in Isserles' commentary). Where modesty is an issue, loose fitting clothes are permissible, and are not considered an impediment (S.A., Y. D. 198.3 and *Orah Hayyim* 303.1-2. And see, Ovadia Yosef, *Torat HaTohorah* 14.3). The custom of immersion only at night may be forgone (See Ovadia Yosef, *Torat haTohorah* 4.23 who recommends immersion in the daytime to maintain secrecy from adult children living at home!), though immersion in the daytime must be on the eighth day, after seven full days of the *niddah* period have passed.

It is even possible to imagine a sufficient personal solution. Minimum size of a *mikveh* is one *amah* by one *amah* by three *amot*, in any configuration that allows the complete immersion of the woman without spillage (S.A., Y.D. 201.1) That translates to as little as 10.5 cubic feet and certainly less than 12. (*Amah* measures differ, but a standard measure is 1.5 feet, wherefore "*daled amot*"=six feet. See, recently, *Biblical Archaeology Review* 25.4, July/Aug. 1999, p. 62 in "Sacred Geometry" by David Jacobson). A large Jacuzzi or small hot tub would suffice in size. However, its water supply must be provided in valid fashion (All these details are in S.A., Y.D. 201, in particular see sections 7, 30-31, 36 and 44, there). Rabbi David Miller self-published a tract urging personal *mikvaot*, entitled "The Secret of the Jew" (Vol. II) with technical information about building one's own home *mikveh*, in 1930. Based on various leniencies, his work nevertheless carries the imprimatur of several of the prominent rabbis in New York in the twenties. A note of caution about several of R. Miller's leniencies and about the propriety of allowing home *mikvaot* at all, is voiced by Palestine's former Chief Rabbi, Abraham Isaac Kook in *Da'at Kohan, Inyanei Yoreh Deah*, #100. These details are ones that the *mara d'atra* must take into account. Where a communal *mikveh* is available, that is much to be preferred.

CONCLUSION

- 1] We affirm the biblical requirement of marking a woman's monthly menstrual cycle by the biblically ordained seven day abstinence, to be followed by *mikveh* (assuming bleeding has stopped).
- 2] We recognize that traditional practice has included an extended period of purification, which extended period, the seven clean days, we do not require following a regular period or following childbirth.
- 3] No *b'dikah* is necessary where the menstrual flow terminated prior to the end of the seven days. However, where the flow continued to or beyond the statutory seven days, for one or two days, a woman must wait one additional clean day, or use *b'dikah*, to establish the cessation of her flow before attending *mikveh*.
- 4] Spotting for one or two consecutive days, likewise, requires one clean day before immersion in the *mikveh* and the resumption of sexual relations.
- 5] Three consecutive days of bleeding which occur between the eighth and eighteenth day of the menstrual cycle are considered *zivah* according to all, and an additional seven clean days are required.⁴⁴
- 6] Three consecutive days of bleeding which occur between the nineteenth day of the menstrual cycle and until six days before the onset of the next cycle –
according to Ralbag: are to be considered *zivah* and require the seven clean days. Once those are completed, the next regular period is considered *niddah*.
according to Ramban: and the majority of Rishonim are to be considered *niddah* for a seven day period, after which she may immerse and return to sexual activity. The next eleven days are now classed as days of *zivah* and any three consecutive days of bleeding therein, including the next regular period, require seven clean days. Barring additional irregular bleeding, she will return to her standard *niddah* period the following month.⁴⁴
 - a) After giving birth, or after a miscarriage,⁴⁵ a woman must wait seven days for a boy and fourteen for a girl before immersing in the *mikveh*. Thereafter, should she experience continuing blood flow until the fortieth day after birth for a boy or the eightieth for a girl (counting the day of birth) that blood flow is not impure and does not require *mikveh*. Nevertheless, she should not engage in sexual activity while still bleeding, and she should establish the cessation of bleeding by *b'dikah* or by a single clean day.
 - b) After the fortieth / eightieth day, further blood flow should be treated under the rules of *zivah*, observing seven clean days due to uncertainty (*to'ah*), until the regular period is reestablished.⁴⁶

⁴⁴ According to those who are prepared to see the laws of *zivah* as wholly inoperative in our day, understanding that they existed only to protect Temple sancta from defilement and that their maintenance well into Amoraic times and beyond was simply due to their intimate connections with the laws prohibiting sex with a woman during her menstrual blood flow, or understanding that they might be set aside like the rules of *zav* were set aside, these requirements of seven clean days can be set aside in favor of *b'dikah* or one single clean day before immersion. See note 37.

⁴⁵ Miscarriage refers to fetuses beyond 40 days of development (*Yevamot* 69b). Since some miscarriages are delayed, although the fetus has stopped development long before, the determination of stage of development is best made by the attending obstetrician. Where determination of gender is not possible (e.g. a miscarriage due to a catastrophic accident) the *Mishnah* (*Niddah* 3:6) proposes waiting the longer period.

⁴⁶ Those nullifying the rules of *zivah* would nevertheless need, in this case, to observe the seven day minimum abstinence lest this be *niddah*, rather than simply mark the end of the flow before immersion.