

Expressing Milk on Shabbat and Yom Tov

RABBI JEFFREY FOX

Rosh ha-Yeshiva, Yeshivat Maharat

I would like to accomplish two separate goals with this article. First, I will provide a summary and analysis of the issue of expressing milk on Shabbat and Yom Tov in the Talmud, Rishonim, *Shulhan Arukh* and *posqim*. Then I would like to address a set of practical questions that have been raised by many women who are expressing milk — for the sake of the baby, or for their own sake — on Shabbat and Yom Tov.

Introduction

The Problem

In order to make clear what issues I am seeking to unpack, let me begin by setting the landscape for the questions I want to address. Under what circumstances may a woman express milk on Shabbat or Yom Tov and not be required to dispose of the milk? What if the baby is healthy and the woman is expressing only to relieve her own discomfort; are there mitigating factors that would permit the preservation of that milk? What if the milk were being donated to a breast-milk bank?

Pastoral Preamble

Many mothers and fathers are often taken by surprise when nursing does not come simply. First time mothers (and fathers) imagine that nursing is the most natural behavior and that the baby will simply latch on within a few hours of

birth. While there are occasions when this happens, more often than people are willing to discuss it simply does not work that way.

The silence of the community on this matter engenders a sense of guilt and doubt in mothers who think that only they have ever struggled with this challenge. Our community often confuses the need for modesty as it relates to the human body with the unconscious promotion of ignorance about the way of the world. This is something that must change.

The baby may struggle to latch on for days, weeks or even months. Women who are committed to feeding their babies with their own breast milk will make an extraordinary effort to accomplish this goal. This article is written with a strong bias towards a baby receiving his or her nutrition through their own mother's milk. One need not look further than chapter one of Exodus to find precedent for this bias in Jewish sources.

Saving Mother's Milk

The halakha takes for granted that a child can nurse from its mother and would always have easy and immediate access. The situations that I am describing have become more common with the accessibility of pumping and storing milk for long term usage. Until the advent of modern refrigeration and pumps, this was simply not a reality that most people could imagine. The Talmud could only really imagine saving large amounts of animal milk and saw only limited possibilities for saving mother's milk.¹

Part I — The Tosefta and Its Various Permutations

Tosefta

Our analysis begins with a key passage in the Tosefta (*Shabbat* 9:13, Lieberman Ed.)

1. There is an analogy made between a nursing woman and milking a cow that flows through the entire *sugya*. While there are obvious ways in which these two processes are similar, it is important to note that the comparison is painful to many women and men.

Jeffrey Fox

החולב והמחבץ והמגבן כגרוגרת, המכבד והמרבץ והמרחיץ והסך והרודה חלת דבש;	[One who] milks, stands milk ² or forms cheese the amount of a dried fig; [one who] sweeps, sprinkles, washes, anoints or removes the honeycombs;
”בשבת חייב חטאת וביום טוב לוקה את הארבעים” – דברי ר’ ליעזר.	“[If he did so] on Shabbat he must bring a sin offering, [if he did so] on Yom Tov he receives the forty lashes.” — These are the words of R. Eliezer.
וחכמים א’: ”בין בשבת בין ביום טוב פטור ואינו חייב כי אם שבות.”	The Sages say: “Whether on Shabbat or Yom Tov he is exempt ³ and is only obligated for violating a Rabbinic enactment.”

This *baraita*, with some alterations, appears in b. *Shabbat* 95a, (see also b. *Pes.* 65a):

תנו רבנן:	Our rabbis have taught:
החולב והמחבץ והמגבן כגרוגרת, המכבד והמרבץ והרודה חלות דבש;	[One who] milks, stands milk or forms cheese the amount of a dried fig, [one who] sweeps, sprinkles or removes honeycombs;
”שגג בשבת חייב חטאת, הזיד ביום טוב לוקה ארבעים” – דברי רבי אליעזר.	“If he did so in error on Shabbat he must bring a sin offering, if he violated intentionally on Yom Tov he receives the forty lashes.” These are the words of R. Eliezer.
וחכמים אומרים: ”אחד זה ואחד זה אינו אלא משום שבות.”	The Sages say: “In either case it is only a rabbinic enactment.”

In addition, this text is cited in the *Yerushalmi* (*Shabbat* 7:2, 10c)

”המכבד המרבץ המגבן המחבץ החולב והרודה חלות דבש חייב חטאת” – דברי רבי אליעזר.	[One who] sweeps, sprinkles, forms cheese, stands milk, milks or removes honeycombs is obligated to bring a sin offering. These are the words of R. Eliezer.
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2. There is a lack of clarity as to what this term refers. Rashi has two explanations. His preferred understanding is the straining of the whey. However, Rashi also refers to the standing of the milk in the abomasum. In either case, it is clear that these are the three main steps in the process of making cheese.
3. From either bringing a sin offering or receiving lashes.

Keren I

וחכמים אומרים: "משום שבות." And the Sages say: "[they are obligated] because of a rabbinic enactment."

The most obvious reading of this *baraita* is that R. Eliezer believes that all of the actions listed are prohibited from the Torah while the Sages maintain that all of the actions listed are only prohibited from the Rabbis. This is the simplest and cleanest way to read the *baraita* in its original context as well as how it is cited in the Bavli and Yerushalmi.

However, there is an ambiguity in the Tosefta and the Bavli that the Yerushalmi does not allow. It is possible to understand that the Sages are only debating the second list of items⁴ and that they agree with R. Eliezer regarding the level of prohibition of the first list.⁵ In fact, according to many Rishonim (R. Hananel,⁶ Rif,⁷ Rashi,⁸ Rambam⁹) this is the correct reading of the *baraita* as it appears in the Bavli. Therefore, according to this position, all Tannaim believe that milking (חילב) is prohibited from the Torah.

This reading is only possible because the Tosefta and the Bavli put milking at the beginning of the list and give a minimum amount as a way to divide the list. Although it is possible to read the Sages' comment as relevant only to the second list, it seems to be a stretch. The simplest way to read the *baraita* is in line with the *Yerushalmi*, where it is clear that the Sages disagree with R. Eliezer regarding the level of prohibition associated with all of the listed actions, including milking.¹⁰ While R. Eliezer maintains that everything on the list is forbidden *mi-de-oraita*, the Sages argue and claim that everything on the list is only forbidden *mi-de-rabbanan*.

4. המכבד והמרבץ והמרחיץ והסך והרודה חלת דבש

5. החולב והמחבץ והמגבן כגרוגרת

6. *Shabbat* 95a (ed. Metzger; p. 168 n. 190&191)

7. See the responsa of Rif (312), cited in the *Maggid Mishna* (*Shabbat* 8:7). Rif quotes the *baraita* as it appears in the *Bavli*, with milking at the beginning (pages 31b to 32a in his numbering)

8. b. *Pesahim* 65a s.v. *ehad*

9. See *Shabbat* 21:3 and 8:7

10. See Lieberman, *Tosefta ki-p'shuta*, vol. 3, *Shabbat*, pp. 139 to 140.

Part 2 — The Nature of the Prohibition in the Yerushalmi and Bavli

Yerushalmi

The Yerushalmi's understanding of the nature of the prohibition of milking is rather straightforward. It states (*Shabbat* 7:2):

החולב והרודה חלות דבש חייב משום קוצר.	Expressing milk and removing honeycombs are part of the category of reaping.
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Bavli

The Bavli, on the other hand, is more complex as can be seen from the three *sugyot* that discuss this topic.

1. *Shabbat* 95a

After citing the *baraita* referenced in the previous section, the Bavli goes on to analyze each of the actions and tries to find a category in which to place them. The analysis begins with a series of awkward answers to what should be a simple question:

רב נחמן בר גוריא איקלע לנהרדעא, בעו מיניה: "חולב משום מאי מיחייב?"	Rav Nahman bar Guria arrived in Nehardea, they asked of him: "What is one liable for if one milks [an animal on Shabbat]?"
אמר להו: "משום חולב."	He said to them, "for milking."
"מחבץ משום מאי מיחייב?"	"What is one liable for if one stands milk [on Shabbat]?"
אמר להו: "משום מחבץ."	He said to them: "for standing milk."
"מגבן משום מאי חייב?"	"What is one liable for if one forms cheese [on Shabbat]?"
אמר להו: "משום מגבן."	He said to them: "For forming cheese."

For the purposes of the halakhic understanding of *holev* these answers do not seem to offer much insight. However, what they do seem to show is that even the Amoraim were confused regarding the exact categorization of milking. The pericope continues:

Keren I

אמרו ליה: "רבך קטיל קני באגמא הוה."
אתא שאיל בי מדרשא.
אמרו ליה: "חולב חייב משום מפרק, מחבץ חייב משום בורד, מגבן חייב משום בונה."
They said to him: "Your teacher was a reed-cutter in the swamp."¹¹ He went and asked in the *beit midrash*. They said to him: "One who removes milk is liable for extracting; one who stands milk is liable for sorting;¹² one who forms cheese is liable for building."

What is clear from the above is that, according to the final position in this pericope, the prohibition of milking falls into the category of *mefareq* (extracting). The challenge that remains is to understand the exact nature of *mefareq* as it relates to milking and the expressing of milk.

2. Shabbat 73b

The Bavli quotes Rav Papa as applying two separate sacrificial obligations for the single act of throwing a clod of dirt at a palm tree and causing dates to fall.

אמר רב פפא: "האי מאן דשדא פיסא לדיקלא ואתר תמרי – חייב שתיים. אחת משום תולש ואחת משום מפרק."
Rav Papa said: "One who threw a clod of dirt at a palm tree and caused the dates to fall must bring two sin offerings. One for cutting and one for *mefareq*."

According to Rav Papa this person has violated *tolesh* (cutting) and *mefareq*. *Tolesh* is doubtless part of the category of reaping, as Rashi says immediately. However, the question that remains unclear is into what category to place *mefareq*.

Rashi

In both of the above referenced *sugyot*, Rashi, refers to *mefareq* as being within the category (*toldah*) of threshing (*dash*).¹³ He understands the language of "*poreq*" to imply the unloading of something from its container. However, his understanding opens up a Pandora's Box as can be seen from the third *sugyah*.

11. i.e. your teacher was a fool which is why you give such foolish answers

12. This explanation for the violation of מחבץ makes Rashi's preferred explanation more plausible.

13. b. *Shabbat* 95a, s.v. "*mefareq*", and b. *Shabbat* 73b, s.v. "*mefareq*"; for an analysis of the case on 73b (throwing the clods of dirt against the palm tree) see the commentary of Ramban and *Meyuchas le-Ran* as they offer a different understanding of the case.

3. Shabbat 75a

The Bavli writes:

תנו רבנן: הצד חלזון והפוצעו אינו חייב אלא אחת. רבי יהודה אומר: "חייב שתיים." שהיה רבי יהודה אומר: "פציעה – בכלל דישה," אמרו לו: "אין פציעה בכלל דישה," אמר רבא: "מאי טעמא דרבנן? קסברי: אין דישה אלא לגדולי קרקע."	Our Rabbis have taught: One who captures a <i>hilazon</i> ¹⁴ and squeezes it is only obligated to bring one sin offering. R. Yehudah says: "He must bring two offerings." For R. Yehudah would say: "Squeezing is within threshing." They said to him: "Squeezing is not within threshing." Rava said: "What is the reasoning of the rabbis? They maintain that threshing only applies to things that grow from the ground."
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According to Rava, the reason that the Rabbis only find one Torah violation in the action of squeezing out the ink of the *hilazon* is that the category of threshing only applies to things that grow from the ground. Clearly a *hilazon* is not considered to grow from the ground. But, of course, neither would a nursing cow or mother be.

Rambam

Interestingly enough, in his *Mishneh Torah*, Rambam (*Shabbat* 8:7) categorizes *mefareq* as being a part of the category of *dash* as well. His formulation is useful for demonstrating the problem at its most stark:

הדש כגרוגרת חייב ואין דישה אלא בגדולי קרקע, והמפרק הרי הוא תולדת הדש, החולב את הבהמה חייב משום מפרק...	One who threshes the amount of a dried fig must bring a sin offering, and threshing only applies to items that grow from the ground. And <i>mefareq</i> (extracting) is part of the category of threshing. One who milks an animal ¹⁵ is obligated to bring a sin offering because of <i>mefareq</i> ...
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Again, how can one apply the limitation of things that grow from the ground to an activity that applies to animals and human beings? Although Rambam

14. What exactly a *hilazon* is remains somewhat unclear. It is either a type of fish or a kind of squid. In any case it is a type of animal that lives in the water. See t. *Men.* 9:16, b. *Men.* 44a, and j. *Shab.* 7:2.

15. It is interesting to note that Rambam here refers to "milking an animal" and does not explicitly address a woman's expressing of milk.

is clearly basing himself on the passage in b. Shabbat (75a), his choosing to categorize milking as threshing makes his combination of the pericopae seem impossible.

To put it simply, Rashi and Rambam appear to have painted themselves into a corner. There is a logical inconsistency if one maintains the following three propositions:

1. Removal of milk is prohibited because of *mefareq* (Shabbat 95a).
2. *Mefareq* is part of the category of threshing (Shabbat 93a, Rashi and Rambam).
3. Threshing only applies to things that grow from the ground (Shabbat 75a).

The problem¹⁶ is stated elegantly and precisely by R. Tam (*Tosafot, Shabbat* 73b):

<p>פירש"י דהוה תולדה דדש. וקשה לר"ת דבשילהי המצניע (לקמן צה). אמר דחולב חייב משום מפרק ואי הוה תולדה דדש הא אמר לקמן (עה). גבי הפוצע חליון דלרבנן אין דישה אלא בגידולי קרקע.</p>	<p>Rashi explained that <i>mefareq</i> is in the category of threshing, but R. Tam raised this is a problem based on the end of the tenth chapter (<i>Shabbat</i> 95a) where it says that milking is forbidden because of <i>mefareq</i>. And if it (<i>mefareq</i>) is in the category of threshing then we have a problem with what it says later (75a) regarding the squeezing of the <i>hilazon</i>, for according to the Rabbis threshing only applies to things that grow from the ground.</p>
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It is this problem, created by the combined reading of these three *sugyot* — and the interpretation of *mefareq* as being in the category of *dash* — that drives much of the ensuing halakhic literature.

Part 3 — Resolutions

There are four different methods of resolution found in the *rishonim*. The first is to categorize *mefareq* as something other than *dash*. The second is to accept the categorization of *mefareq* as *dash*, but widen the scope of the limitation

16. The same question animates the *Tosafot* in *Ketubot* 60a (s.v. *mefareq*) as well as the *Tosafot* in *Yebamot* 114a (s.v. *u-qa-savar*)."

of “things that grow from the ground”. The third and fourth methods are attempts to re-read these *sugyot* based on additional material.

Method I: Alternative Categorization

Qozer (cutting)

Firstly, it is worth noting that placing *mefareq* and/or milking into a category other than threshing should not be a surprise. As we saw earlier, the Yerushalmi categorizes milking as *qozer* (cutting). In fact, Rashi himself is aware of another understanding, similar to that of the Yerushalmi, which he summarily rejects:

ואית דאמרי תולדה דקוצר, ולא
היא category of reaping, but this is not the case

Despite Rashi’s rejection, this maneuver does have the benefit of alleviating the problem of how one can perform *dash* on an animal.

Memaḥeq (smoothing)

R. Tam suggests moving *mefareq* out of the category of threshing and placing it in the category of smoothing (*memaḥeq*); (*Tosafot, Shabbat* 73b s.v. *mefareq*):

ונראה לר"ת דמפרק חייב
משום ממחק דכשחולב ממחק
את הדד ומחליקו It seems to R. Tam that *mefareq* is part of the
category of smoothing, for when one milks one
presses the nipple and makes it smooth.¹⁷

R. Tam elaborates upon this maneuver in his *Sefer ha-Yashar* (*hiddushim* 23):

17. This is very strange as the category of smoothing applies to removing hair from a hide so that it can be useful (I fully admit that I do not know much about milking cows). However, one support of R. Tam’s concept comes from b. *Shabbat* (144b) where the fact that the first drop of milk is smoothed onto the udder does have halakhic significance.

Keren I

נר' לר' לפרש דתרי ענייני
מפרק הן מפרק בגידולי קרקע
תולדה דדש הוא מפרק שאינו
בגידולי קרקע כגון הכא תולדה
דממחק.

It seems to our teacher (i.e. R. Tam) that the explanation is that there are two types of *mefareq*. When *mefareq* is performed on things that grow from the ground it is part of the category of threshing, but when *mefareq* is performed on things that do not grow from the ground it is part of the category of smoothing.

Following this argument, since animals and women do not grow from the ground, milking/expressing milk becomes part of smoothing.

Borer (sorting)

Commenting on Rav Hisda's principle that one can milk a goat directly into a pot (of food) but not a bowl (of liquid),¹⁸ the Tosafot comment:

נראה לר"ת דהיינו דווקא בי"ט
דחזיא בהמה לאכילה הוי כמו
אוכלא דאיפרת אבל בשבת לא
חזיא לשחיטה כמו דש חשיבא
שהבהמה היא כפסולת
וכשחולב הוי כנוטל אוכל מתוך
פסולת...

It appears to R. Tam that this is referring specifically to Yom Tov, since the animal would be fit to be eaten... but on Shabbat, since [the animal] may not be slaughtered, it is like *dash*, for the animal is like the *p'solet* (waste), and the person doing the milking is removing the food from the waste...

Although the Tosafot here use the language of *dash*, a number of authorities have interpreted this text as implying that the category under discussion would be *borer* (sorting), since this is classically defined as removing good from bad or vice versa.¹⁹

18. This passage will be discussed later

19. Rivash (121), *Ohel Moed* (Shabbat 4), and Maharsha (ad loc.); oddly this would mean that R. Tam took two different positions on this question. See R. Abraham Danzig, in his *Nishmat Adam* (14:3, 17:2), where he claims that R. Tam actually changed his mind and that his final position was that milking is not because of smoothing. In addition, R. Jacob Ettlinger, in his *Arukh le-Ner* (ad loc.) asks the same question and claims that R. Tam holds that in fact milking can fall into two different categories — sorting and smoothing.

Gozez (Shearing)

A similar approach to that of R. Tam was taken by R. Yitzḥaq ben Avraham (Riva) and his brother R. Shimshon (Rash).

Tosafot ha-Rosh (Shabbat 95a) records Riva's position:

ריב"א פ"י דמפרק חייב משום גוזז דכל דבר שהוא מכביד על בעלי חיים והוא מסירו ומיקל מעליו קרוי מפרק ותולדה דגוזז הוא.	Riva explained that <i>mefareq</i> is a violation of shearing, since anytime someone removes something that is weighing down on an animal, making it easier for it, this is called <i>mefareq</i> and is part of the category of shearing.
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Similarly, Rashba (*Ketubot* 60a) records R. Shimshon's position:

וה"ר [שמשון] ²⁰ ב"ר אברהם ז"ל פ"י דמפרק דבעלי חיים הוי תולדה דגוזז שהוא מפרק הצמר מן הבהמה.	R. [Shimshon] son of R. Abraham explained that <i>mefareq</i> on animals is part of the category of shearing, which is removing (<i>mefareq</i>) wool from the animal.
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Like R. Tam, Riva and Rash obviate the problem of *dash* being restricted to plants by removing *mefareq* from this category and placing it one that is more amenable.

Toḥen (Grinding)

A student of R. Tam, R. Eliezar of Metz (*Yereim* 274) offers yet a fifth alternative category.

20. Our text reads "Shlomo" here, which is probably a mistake, as that would require Rashba to be quoting himself in the third person, or else referring to R. Shlomo Min ha-Har — an obscure reference indeed. In the *Shiṭa Mequbeẓzet*, the position is quoted in the name of Ra"sh bar Avraham, which is probably what it originally said here, i.e. R. Shimshon.

Keren 1

מפרק פ"י תולדה דטוחן
ורבותינו פירשו תולדה דדש
ולא כיוונו דתניא בפ' כלל גדול
[ע"ה א'] הצד חלזון והפוצעו
אינו חייב אלא אחת ר' יהודה
אומר פציעה בכלל דישה ורבנן
סברי אין דישה אלא בג"ק ואינו
יכול להעמיד סתם התלמוד כר'
יהודה

Mefareq should be understood as part of the category of grinding. And our teachers explained that it is in the category of threshing but this is inaccurate. For it says in the seventh chapter of *Shabbat* (page 75a) that R. Yehudah says that squeezing is part of threshing. And the Rabbis maintain that threshing only applies to those items that grow from the ground. And we cannot have the anonymous voice of the Talmud be in line with R. Yehudah [against the majority view of the rabbis].

Summary

All of these *rishonim* address our apparent contradiction by simply moving *mefareq* out of the category of threshing.²¹

Method 2 — Modifying the Rule that Dash Only Applies to Plants

All of the answers in this category attempt to maintain *dash* as the overarching category under which *mefareq* and milking are placed while attempting to reconcile the accepted rule that *dash* only applies to plants with the reality that milking, which is a violation of *dash*, is only done on mammals.

Animals Count as Being from the Ground

In his commentary on Rambam's *Mishneh Torah* called *Maggid Mishna* (*Shabbat* 8:7), R. Vidal di Tolosa offers the simplest answer to this problem.

אף על פי שאמרו שאין דישה אלא בגידולי קרקע בהמה נקראת גידולי קרקע	Even though they said that threshing only applies to things that grow from the ground, animals count as things that grows from the ground.
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21. In his monumental work *Shevitat ha-Shabbat*, R. Yitzchak Maltzen outlines all the various approaches within the *rishonim*. See דש סימן לג and ס"ק סו at length. After quoting the position that milking is only forbidden from the Rabbis he then sides with Rambam.

R. Vidal asserts that while animals are not generally considered to grow from the ground, for the purposes of the laws of threshing they fall into the category.²²

Ramban (*Shabbat* 95a) offers a similar solution as the second of three answers:

ואפשר דבכלל גדולי קרקע
בהמה, Perhaps animals are categorized as growing from the ground.

Additionally, Rashba (*Shabbat* 95a) claims that this is the position of R. Hananel, and defends it from the rules of the second tithe. Finally, this logic resurfaces in R. Avrohom Bornsztain's *Eglei Tal* as well.²³

Needless to say, although this is the simplest answer, it also sounds rather far-fetched. Nevertheless, as many of the supporters of this position note, it is supported by a Talmudic passage (b. *Eruvin* 27b) discussing the laws of the second tithe (*ma'aser sheni*).

תניא: "ונתתה הכסף בכל אשר
תאוה נפשך" – כלל, "בבקר
ובצאן ובין ובשכר" – פרט,
"ובכל אשר תשאלך נפשך"
– חזר וכלל. כלל ופרט וכלל
– אי אתה דן אלא כעין הפרט;
מה הפרט מפורש פרי מפרי
וגידולי קרקע, אף כל פרי מפרי
וגידולי קרקע.

Our Rabbis have taught: (Deut. 14:26) "And you shall give the money for all that you desire" — a generalization; "for cattle and for sheep and for new wine and for old wine" — a specification; "and for anything for which you ask" — a return to a generalization. A generalization following by a specification followed by a generalization — you may include only those things that are similar to the specification. Just as the specification is explicitly fruit from fruit and it grows from the ground,²⁴ so too [anything purchased with *ma'aser* money] must be fruit from fruit that grows from the ground.

ותניא אידך: מה הפרט מפורש
– ולד ולדות הארץ, אף כל ולד
ולדות הארץ.

And it was taught in another baraita: just as the specification is explicitly something that was born of something that was born of the earth, so too [anything purchased with *ma'aser* money] must be something that was born of something that was born of the earth.

22. We will see that Tosafot explicitly rejects this logic.

23. See *Dash* [24:2]. For another creative approach see the comments of the *Kapot Temarim* on b. *Sukkah* 33b.

Keren I

מאי בנייהו? – אמר אביי
"דגים איכא בנייהו," למאן
דאמר פרי מפרי וגידולי קרקע
– הני דגים גידולי קרקע נינהו.
למאן דאמר ולד ולדות הארץ
– דגים ממיא איברו.

What is the difference between these two? Abbaye said: "Fish is the difference." According to the one who says 'fruit from fruit and it grows from the ground' these fish are considered to grow from the ground. According to the one who says 'something that was born of something that was born of the earth' fish were originally created from the water.

As can be seen from above, the Talmud seems to have little problem referring to fish as things that grows from the ground.

Nevertheless, the *Tosafot* (*Shabbat* 73b), among others, explicitly object to this suggestion.

ואין לומר דדוקא חלזון שהוא
דג פטרי רבנן דלא הוי גידולי
קרקע אבל בחולב מחייבי
דבהמה חשיבא גידולי קרקע
כדמוכח בריש בכל מערבין
(עירובין דף כז:; דהא [ע"כ
טעמא דרבנן משום] דילפינן
להו מסמנין שבמשכן דאין
דישה אלא בגידולי קרקע לגבי
דבר הגדל ממש מן הקרקע לא
חשיבא בהמה גידולי קרקע

And we should not say that specifically the *hilazon* which is a fish has been exempt for it is not considered to grow from the ground, but an animal is obligated for it is considered to grow from the ground, as it seems to say in *Eruvin* 27b. Rather, we learn from the dyes in the tabernacle the requirement of growing from the ground and this implies actually growing from the earth, and an animal does not grow from the earth.

The *Tosafot* buttress their objection by referring to a different *sugyah* (b. *Bava Metzia* 89a):

24. This is the literal translation of the phrase, "גידולי קרקע." It is clear that the gemara understands the phrase to mean something that is nourished from the ground otherwise the inclusion of fish would be nonsense.

תנו רבנן: דיש, מה דיש מיוחד
– דבר שגידולי קרקע (ובשעת
גמר מלאכה) ופועל אוכל בו,
אף כל שגידולי קרקע – פועל
אוכל בו. יצא החולב והמחבץ
והמגבן שאין גידולי קרקע ואין
פועל אוכל בו.

Our rabbi have taught: Threshing²⁵ — just as threshing is particular in that it applies to things that grow from the ground, and the laborer may eat while working, so also of everything which grows from the ground the laborer may eat. This excludes [one who] milks, stands milk or forms cheese since they do not grow from the ground and the laborer may not eat while working.

As this *sugyah* explicitly writes that milking does not occur on something that grows from the ground, Tosafot's objections appear quite solid.

The Limitation Applies only to the Main Category (אב)

R. Avraham ben ha-Rambam offers a different argument (*Birkat Avraham* 18), also, ostensibly, defending his father.

אין להקשות מדקימא לן אין
דישה אלא בגדולי קרקע
הדישה שהוא האב מעין האב
אינם אלא בגדולי קרקע
והמפרק שהוא תולדה דדש
ישנו בגדולי קרקע ושלא
בגדולי קרקע

Do not argue [that *mefareq* cannot be categorized as *dash*] since we hold that threshing only occurs with plants, since threshing itself, which is the main category, only occurs with plants, but *mefareq*, which is a subcategory of threshing, can occur even with things that do not grow from the ground.

R. Avraham makes the claim that the limitation of threshing to only things that grow from the ground applies only to the main category (*av*) but not to any of its subcategories (*toldot*).

Ramban (*Shabbat* 95a) offers a similar understanding as one possibility.

י"ל דישה בעצמו של פרי ליתא
אלא בגדולי קרקע אבל להוציא
ממנו פירות מכונסים וטמונים
בתוך כיס שלהן כגון חולב
דומיא דדישת גדולי קרקע היא

One could claim that it is threshing of the fruit itself that applies only to things that grow from the ground, but the removal of the “fruit” from the aperture in which it is hidden and stuck, like in milking, should be considered similar to threshing the ground.

25. The term *דיש* or threshing here refers to the muzzling of an ox so as to not allow it to eat while pulling the yoke of plow.

From this presentation, it isn't fully clear whether this violation should be considered biblical or rabbinic.

Rabbis Expanded the Category

Yet a third way of limiting the application of the “only plants” rule is suggested by R. Yitzḥaq of Vienna (*Or Zarua*, Shabbat 58):

ואף על פי שפירשנו אליבא דהלכתא דאין דישה אלא בגידולי קרקע הני מילי מדאורייתא ולענין חיוב חטאת אבל מדרבנן יש דישה אפי' שלא בגידולי קרקע	Even though we explained that according to halakha threshing only applies to things that grow from the ground, this is only true according to Torah law, insofar as the requirement to bring a sin-offering, but according to rabbinic law <i>dash</i> would apply even for things that do not grow from the ground.
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According to R. Yitzḥaq, the principle of threshing applying only to plants is one of theoretical interest only, since the rabbis expanded the category anyway. It would seem that according to this reading, milking would have to be considered a rabbinic violation.

Method 3 — The Law Follows R. Yehudah

Ri / Tosafot

Responding to R. Tam (discussed earlier), R. Yitzḥaq of Dampierre (Ri) is bothered by the categorization of milking as smoothing. He points out that this suggestion would be in tension with another *sugyah* in the Bavli (*Shabbat* 144b):

אמר רב יהודה אמר שמואל: "סוחט אדם אשכול של ענבים לתוך הקדרה, אבל לא לתוך הקערה." אמר רב חסדא: "מדברי רבינו נלמד: חולב אדם עז לתוך הקדרה, אבל לא לתוך הקערה." אלמא קסבר: משקה הבא לאוכל – אוכל הוא.	Rav Yehudah said in the name of Shmuel: "A person may squeeze a cluster of grapes into a dish, but not into a pot." Rav Ḥisda said: "From the words of our teacher we learn: a person can milk a goat into a dish, but not into a pot." Therefore, he must hold that liquid that comes into food is considered to be food [and not a liquid].
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Having noted this passage, Ri comments (*Tosafot*, *Shabbat* 73b s.v. *mefareq*):

ולר"ת מה לי לתוך הקדרה מה
לי לתוך הקערה ולפידוש
הקונטרס א"ש דמעיקר
כשהיה בדדין חשיב אוכל
וכשחולב לתוך הקדרה נמי הוי
אוכל ולא דמי לדש שנשתנה

According to R. Tam, what would be the difference whether [the milking was done] into a dish or a pot? But following Rashi's explanation, the passage makes sense. When [the milk] was in the udder it was considered food and when it is expressed directly into a full pot it is considered food, and is, therefore, distinct from *dash* which requires a change [in status].

The assumption that one could milk a goat into a full dish but not an empty pot poses a serious problem for R. Tam, and all of the *rishonim* who shift the category. If, in fact, milking is about smoothing (or any other category) then it is very difficult to understand this distinction. Ri, therefore, agrees to the approach of Rashi — that milking is in the category of threshing.

However, having defended Rashi, he is left with the original problem. To answer the question, Ri points to a *sugyah* in *Ketubot* (60a):

תניא: רבי מרינוס אומר: "גונח
יונק חלב בשבת." מאי טעמא?
יונק – מפרק כלאחר יד,
ובמקום צערא לא גזרו רבנן.
אמר רב יוסף: "הלכה כרבי
מרינוס."

It was taught: R. Marinus says: "A man suffering from chest pain may suckle milk [directly from the udder] on Shabbat."²⁶ What is the reason? Nursing is considered to be performing *mefareq* in an unusual manner (and therefore only a Rabbinic violation), and the Rabbis did not apply their prohibition in cases of suffering. Rav Yosef said: "The law follows R. Marinus."²⁷

26. This seems to express a belief in some medicinal properties associated with suckling milk directly from the udder of a goat.

27. There is a parallel to this *sugyah* in *Yebamot* (114a):

אבא שאול אומר: "נוהגין היינו
שיונקים מבהמה טהורה ביום
טוב." היכי דמי? אי דאיכא
סכנה, אפילו בשבת נמי; ואי
דליכא סכנה, אפילו ביום טוב
אסור! לא צריכא דאיכא צערא,
וקסבר: מפרק כלאחר יד הוא,
שבת דאיסור סקילה גזרו
רבנן, יום טוב דאיסור לאו לא
גזרו ביה רבנן.

Abba Shaul says: "It was our practice to suckle from kosher animals on Yom Tov." What is the case? If there was danger, then they should have done this on Shabbat as well. If there was no danger, it should have been forbidden even on Yom Tov. The statement was made for cases of suffering, and he believes that this counts as performing *mefareq* in an unusual manner; on Shabbat, where the violation entails stoning, the rabbis applied their decree, but on Yom Tov, where it is purely a prohibition without punishment, the Rabbis did not apply their prohibition.

Comparing this *sugyah* with the above referenced *sugyah* from *Ketubot*, one notices that there is a distinction between Abba Shaul's and R. Marinus's positions. R.

Noting this passage, Ri suggests the following:

<p>ונראה דלפירוש הקונטרס הלכה כרבי יהודה... ואין נראה לומר דאף לרבנן אסור מדרבנן דמיחזי כמפרק ואף על גב דלא אסירא אלא מדרבנן לא שרי אלא משום דאיכא תרתין כלאחר יד ובמקום צער</p>	<p>It would seem that, following Rashi's interpretation, the law must be according to R. Yehudah... for it would be a stretch to suggest that even the Rabbis forbade [milking an animal] rabbinically because it looks like <i>mefareq</i>, but that even though it was only forbidden rabbinically, they still would not permit it unless it was both done in an unusual manner and in a case of suffering.²⁸</p>
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Unlike Rambam, Ri believes that the assumption of the Talmud is that the halakha follows R. Yehudah, not the Rabbis, and that threshing applies even to things that did not grow from the ground. The Rabbis, on the other hand, would have permitted the milking of the cow in a case of suffering, or drinking from the udder for anybody, since milking is only a rabbinic violation, in their opinion, since it has the appearance of *mefareq*.²⁹

Marinus allows suckling on Shabbat in cases of suffering (like chest pain), whereas Abba Shaul only allows this on Yom Tov.

This contradiction is dealt with in a couple of ways. Rif (*Shabbat* 61a) simply claims that we decide the halakha against Abba Shaul (*Yebamot*) and in accordance with the position of R. Marinus (*Ketubot*). R. Tam attempts to synthesize the two *sugyot* by claiming that they are dealing with different levels of need.

28. This same point is made in the Tosafot in *Ketubot* 60a and *Yebamot* 114a.
 29. This is the simple read of the Ri. However, if one were to take Ri's defense of Rashi at face value (i.e. that milking is part of threshing and must function that way), it would turn out that according to the Rabbis who argue with R. Yehudah and claim that threshing only applies to things that grow from the ground, there would be no prohibition of milking even rabbinically! This — admittedly idiosyncratic — reading seems to have been proposed by none other than R. Meir of Lublin in his glosses on the *Tosafot* (ad loc.):

<p>דאלו לרבנן לפירוש דחולב אינו אסור אלא משום דש ליכא בחולב שום איסור דלרבנן אין דש אלא בגידולי קרקע</p>	<p>For according to Rashi's understanding of the Rabbis that removal of milk is only prohibited because of threshing, there is no prohibition whatsoever associated with milking because, according to the Rabbis, threshing only applies to things that grow from the ground.</p>
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Although it is theoretically possible to understand Maharam as saying that there is no *issur de-oraita* according to the rabbis, the — admittedly — more radical read seems to me to be the more plausible. According to this understanding, the entire passage in the Tosefta about milking, in all its permutations, whether understood as a debate or not, is only true according to R. Yehudah, but the rabbis that argue

Ritva (*Shabbat* 95a), quoting his teacher Ra'ah, who is quoting his own teacher Ramban, objects to Ri's argument.

ואין זה נכון, אבל הנכון בזה	But this assertion is not true. The truth is that even
דאע"ג דחולב כדרכו לרבנן	though milking is only a rabbinic violation
אינו אלא משום שבות לא	according to the Rabbis they still would not have
התירוהו משום צערא, שלא	simply permitted it for someone in pain, since, in
התירו בדבר שאין בו סכנה	cases where there was no danger, they only gave
אלא שבות קל כגון אמירה לגוי	permission to violate weak rabbinic enactments,
שבות, אי נמי שבות על ידי	like asking a Gentile to do something on one's
ישראל על ידי שינוי, אבל שבות	behalf, or a Jew doing something in an unusual
גמור על ידי ישראל שלא	manner, but a Jew violating a solid rabbinic
בשינוי לא התירו – מפי רבי	prohibition in the usual manner was not something
בשם רבו רבינו הגדול ז"ל.	they would permit [just because of pain]. — I heard
	this from my teacher who heard it from our Great
	Master.

For the above reason, as we will see in the next section, Ramban suggested a fourth approach.

Method 4 — Rereading the Sugyot

In his commentary on b. *Shabbat* (95a), Ramban asks the very same question that has been driving Tosafot.

חולב חייב משום מפרק; אי	Milking is a violation of <i>mefareq</i> : And perhaps you
קשיא והא אמרי' בפ' כלל גדול	will ask from the seventh chapter (75a) that
(ע"ה א') אין דישה אלא בגדולי	threshing only applies to things that grow from the
קרקע ומפרק תולדה דדש הוא?	ground and <i>mefareq</i> is in the category of threshing?

Ramban goes on to offer three answers; our interest is in his third answer.³⁰

with him would not forbid this on Shabbat at all. This, of course, is not a position one could make great use of *le-halakha*, but it is interesting to note nonetheless.

30. His other two answers were referenced earlier as part of other models

Keren I

א"נ ר' אליעזר הוא דסבר הכי
אבל רבנן דפטרי קסברי אין
דישה אלא בגדולי קרקע ורבנן
אכולהו פליגי

Additionally, one could suggest that it is R. Eliezer who believes (that milking is categorized as *mefareq*), but the Rabbis, who exempt one from this, believe that threshing only applies to vegetation; i.e. the Rabbis are debating R. Eliezer on all [the cases of the Mishna].

Above we saw the possibility, suggested by Ri and Tosafot, that the debate in the Tosefta should be read according to the position of R. Yehudah. Ramban suggests that, instead, the debate of the Sages and R. Eliezer in the Tosefta should be aligned with the debate between the Rabbis and R. Yehudah recorded in the Bavli.

What emerges is a neat resolution to the apparent contradiction between the two *sugyot*. The Rabbis/Sages hold that threshing only applies to things that grow from the ground. Therefore, the milking of animals and a women's expressing of milk is only a rabbinic prohibition. However, if one accepts R. Yehudah's expansion of threshing to even those items that do not grow from the ground, one will be led to R. Eliezer's conclusion that milking is a Torah prohibition.

The Ramban's reading of all the material is the most persuasive because he deals with all the *sugyot*. The *beit midrash* of the Ramban³¹ accepted his halakhic conclusion that milking must be considered only a rabbinic violation, though each had their own nuanced reading of the various pericopae. What emerges from the collective reading of these *rishonim* is a substantial approach that maintains the possibility of milking only being a rabbinic violation.

Summary

Thus far, we have seen four approaches to the apparent contradiction among these *sugyot*.

1. Categorizing *mefareq* as something other than threshing
2. Expanding the notion of "things that grow from the ground"
3. The law follows R. Yehudah that *dash* applies to everything

31. See Rashba (*Shabbat* 95a, s.v. *holev*), Ritva (*Ketubot* 60a, s.v. *tanya*), Ran (*Shabbat* 95) and *Nimuqei Yosef* (*Yebamot* 42a, s.v. *ha*)

4. Milking is only a rabbinic violation, based on the parallel material in Yebamot and Ketubot.

Part 4 — *Shulḥan Arukh*

As an attempt to understand R. Karo's position, it is worth looking at the two places in which the topic of milking on Shabbat is discussed in the *Shulḥan Arukh*.

Shulḥan Arukh OH 305:20

מותר לומר לאינו יהודי לחלוב	One is permitted to ask a non-Jew to milk one's
בהמתו בשבת משום צער בעלי	animal on Shabbat because of the pain of the
חיים שהחלב מצערה. והחלב	animal associated with the milk. But the milk itself
אסור בו ביום.	is prohibited on that day.

On the face of it this appears to be a simple assertion that since milking is only prohibited rabbinically, asking a non-Jew to perform this act is permissible in a situation of need or suffering.³² This would seem to follow the basic rules as outlined in 307:5,³³ and is, in fact, the reading endorsed by R. Ben-Tzion Uziel (*Mishpetei Uziel* 1:10) in a responsum about the permissibility of milking cows on Shabbat.

32. Indeed, that is the way that Rabbi Eliezer Waldenberg first offers to read this passage (*Ziẓ Eliezer* 2:3), although he ultimately rejects this as the simplest read.

33. It would be strange to claim that all of a sudden Rav Karo decided to follow the position of the *Sefer ha-Ittur* who permits even Torah prohibitions to be violated by a non-Jew when asked by a Jew.

Keren I

... קשה מאד מה שהתיר מרן
לומר לגוי לחלוב בהמותיו
משום צער הבהמה, אם לא
שנאמר בדעתו שהוא סובר
דעיקר אסור חולב הוא מדרבנן
שאין דישה ואין קצירה ועימור
אלא בגדולי קרקע, ובהמה
אינה נקראת גדולי קרקע ואינה
אסורה בחליבה אלא מדרבנן,
ובמקום צער בעלי חיים התירו
רבנן לחלוב ע"י גוי, והכי
מסתברא שהרי מרן בכ"מ (שם)
הביא השגת הרמ"ך על הרמב"ם
במאי דאסר החליבה
מדאורייתא, ולא תירץ כתירוצו
של המ"מ שסובר הרמב"ם
דבהמה חשיבה גדולי קרקע וזה
מוכיח שמרן סובר דחולב אינו
אסור אלא משום שבות וכדעת
הרמב"ן.

... It is indeed very difficult that *Maran* permitted telling a non-Jew to milk his cow because of the pain of the animal, unless we say that he thinks that the prohibition of milking is fundamentally rabbinic because threshing (and cutting and gathering) only apply to things that grow from the ground and an animal is not considered to grow from the ground and its milking is only a rabbinic prohibition. Therefore, in a case of the animal's suffering the rabbis permitted its milking by a non-Jew. And this seems logical for *Maran* quoted the [critical] gloss of the Ramach on the Rambam where he forbade milking from the Torah and he did not offer the resolution of the *Magid Mishneh* that the Rambam thinks that animal are to be considered as thing that grow from the ground. And this proves that *Maran* thinks that milking is only prohibited from the Rabbis as a *shevut* like the opinion of the Ramban.

However, as R. Eliezer Waldenberg points out (*Ziz Eliezer* 2:3), since this section is dealing with that category of *tzar ba'alei haim* (the suffering of animals), which is a Torah principle, it may not be that simple. Rather, this may simply be a case of the Torah principle of limiting the pain of animals pushing off the rabbinic prohibition of asking a non-Jew to violate Shabbat on one's behalf.

באמת י"ל דס"ל להשו"ע
דחליבה בשבת אסור מה"ת,
ולא דמי בכאן להאי דסימן
ש"ז, ד"ל דכאן שאני משום
דצער בלי חיים דאורייתא,
ואתי דאורייתא דחי שבות
דאמירה לעכו"ם.

One can say that the *Shulhan Arukh* thinks that milking is a Torah prohibition... but that this case is different since the prohibition of not causing suffering to animals is from the Torah, and a Torah prohibition can push off the rabbinic prohibition of asking a non-Jew to violate Shabbat [on one's behalf].

From the above dispute between R. Uziel and R. Waldenberg, it seems clear that one cannot prove one way or the other the position of R. Karo, at least from this source.

Shulḥan Arukh, OH 328:33

גונח, מותר לינק חלב מהבהמה, דבמקום צערא לא גזרו רבנן.	A person who is sick may suckle milk from an animal [on Shabbat] because the Rabbis did not apply their decree in a case of suffering.
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As noted above in the discussion of the *sugyah* in *Ketubot/Yebamot* upon which this *pesaq* is based, there is good reason to argue that this would imply that these authorities believe milking to be a violation of the Torah prohibition of *mefareq* (Tosafot/Ri's deduction), since he requires the person both to be sick as well as to obtain the milk via suckling. Nevertheless, following Ramban's interpretation of this text (as quoted by Ra'ah and Ritva),³⁴ this point is not definitive. It would seem reasonable to argue that the same ambiguity maintains in the *Shulḥan Arukh* as well, since R. Karo's says nothing more on this subject that pushes one to think one way or the other.

Part 5 — Aḥaronim

Introduction

From the 16th century forward the vast majority of *posqim* have accepted the position that milking/expression of milk is a Torah prohibition. As this became the dominant position it also became the accepted read of the *Shulḥan Arukh*, despite the possible alternative reading. Furthermore, although he doesn't say so explicitly in his glosses on the *Shulḥan Arukh*, Rama states in a responsum (79) that milking on Shabbat is a violation of Torah law.³⁵ Nevertheless,

34. i.e. that the Rabbis would not allow the violation of a “solid rabbinic prohibition” merely due to pain but no danger.

35. Discussing the forced-feeding of animals, Rama says that women tell him that their geese are so used to the forced-feeding that they (the geese) cannot eat otherwise and it would be *tza'ar ba'alei ḥaim* (cruelty to animals) not to force-feed them. Therefore, Rama argues, it should be permitted on Shabbat, since it is only a rabbinic violation and should be overridden by *tzaar ba'alei ḥaim*. Then he adds:

ואפילו אם נחמיר לאוסרו על ידי ישראל ע"י נכרי מיהא שרי משום צער ב"ח דלא גרע מחליבת הבהמות בשבת ע"י נכרי שהיהו	Even if we are strict and forbid [force-feeding] by a Jew, it should be at least permitted to have a Gentile do it because of the pain to the animals, since it is no worse than milking animals on Shabbat where the <i>posqim</i> permit
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certain authorities in the 17th century and after revert back to Ramban's reading and maintain that milking is only prohibited from the rabbis.³⁶

R. Yaaqov Emden

In a responsum (*She'elat Ya'avaz* 2:77), R. Yaaqov Emden³⁷ seems to imply that milking is only a rabbinic prohibition. The bulk of the responsum is an argument against R. Menahem of Pano, who forbids letting a Gentile partner milk the animals on Shabbat. R. Mehaḥem (*Menahem Azariah* 112) says that this is because milking is a real *melakha* performed on the animal.

R. Emden thinks this is a preposterous point, saying that every *poseq* that has ever written on the subject permits this.³⁸ After making his main argument, R. Emden adds in this line:

<p>ותו בר מן כל דין. ההוא דהמצניע אליבא דר"י איתמר. דאית ליה דישה שלא בגידולי קרקע. עיין בתו'. ואנן כר"ש סבירא לן א"כ קשיא אפילו לשטתיה</p>	<p>Besides all this, the rule in ch. 10 of Shabbat [that milking is <i>mefareq</i>] follows R. Yehudah, who believes that threshing is not limited to things that grow from the ground, see Tosafot. But we follow R. Shimon,³⁹ hence this would be a problem even according to his reasoning.</p>
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R. Emden's point seems to be that since "we" follow the position that *mefareq* only applies to vegetation, then we must believe that milking is only a rabbinic

הפוסקים מכח צער ב"ח אף עלגב
דהתם הוא איסור דאורייתא. having a Gentile do it due to the pain to the animals —
even though in that case the prohibition is a Torah law.

36. It is worth remembering that the idea that milking on Shabbat is only a rabbinic prohibition is also the position of R. Yitzḥaq of Vienna (*Or Zarua*), and would be the position of the Sages according to Ri/Tosafot's reading of the *sugyot*. However, Ramban (and those that follow him) is the main authority cited in defense of this idea.

37. 18th century, died 1776.

38. R. Emden believes that the author of this responsum could not have actually been Rama of Pano, since the author makes the "rookie mistake" of confusing two different concepts in halakha — *melakha* that a Jew cannot perform on Shabbat, and *melakha* that a Jew's animal cannot be made to perform on Shabbat even by a Gentile. There is no Torah prohibition for a Gentile to do *melakha* on a Jew's animal, when the animal is not actively doing anything. R. Emden claims that a scholar like R. Menahem of Pano could not have made such a foolish error.

39. Apparently, R. Emden identifies the position of the Rabbis with R. Shimon

violation, and R. Menaḥem's argument that this is a real *melakha* falls flat anyway. Unfortunately, he does not attempt to demonstrate how he knows "we" hold this way.

R. Malkiel Tannenbaum

Rabbi Malkiel Tzvi b. R. Yonah ha-Levi Tannenbaum,⁴⁰ in his *Responsa Divrei Malkiel* (5:238) discusses a woman expressing milk, arguing that many *poskim* believe that milking is only a rabbinic prohibition at its core.

ובנ"ד יש עוד צד להקל דהא
הרבה פוסקים ס"ל שאין דישה
רק בגידולי קרקע ממש... וא"כ
הוי רק דרבנן. וכשהחלב הולך
לאיבוד הוי תרי דרבנן. ובשבות
דשבות שרי לכ"ע במקום צער.

And in our case there is another reason to be lenient as many *poskim* hold that threshing applies only to things that grow from the ground...and therefore [milking] is only a rabbinic prohibition.⁴¹

R. Ben-Tzion Uziel

The basic logic of Ramban's viewpoint has been defended by R. Ben Tzion Uziel, who we saw earlier, believes that this is the view of R. Karo as well.

ואחרי שראינו דברי הירושלמי
שמהם מוכח בפירוש שרבנן
סוברים שאין אסור מדאורייתא
בחולב, אעפ"י ששני התלמודים
חלוקים בטעם איסור חולב
לר"א, אין זה מוכרח לאפוש
פלוגתא ולומר שהם חולקים
גם בדעת רבנן, והסברא נותנת
לומר ששני התלמודים שוים
בזה שלרבנן אין אסור בחולב
אלא משום שבות,

And after we have seen the words of the Yerushalmi from which it is clear that the Rabbis think that there is no Torah prohibition associated with milking, even though the two Talmuds debate the reason for the prohibition according to R. Eliezer, it is not necessary to increase the debate and to say that they also disagree regarding the [lenient] position of the Rabbis. Logic dictates that both Talmuds agree that according to the Rabbis there is only a rabbinic prohibition associated with the expressing of milk.

40. 19th century, born 1847, died 1910.

41. In this responsum, R. Tannenbaum offers other reasons for leniency. See op. cit. for his full discussion.

R. Ovadia Yosef

The great Sephardi poseq, R. Ovadia Yosef (*Yabia Omer* 9, OH 30), also believes that the Yerushalmi demonstrates the correctness of Ramban's view point.

<p>ומלשון והסדר של הירושלמי הנ"ל מוכח, שחכמים חולקים גם בדין החולב, ושלא כפרש"י דס"ל דרבנן פליגי מהמכבד והמרבץ ואילך, ומודו בחולב ומחבץ ומגבן. וכן הוכיח הרמב"ן... מהירושלמי, שחכמים בכלהו פליגי, וס"ל שהחולב פטור</p>	<p>And from the language and order of the above-referenced Yerushalmi, it is clear that the Sages debate also the ruling as it relates to expressing milk. And this is against the commentary of Rashi who thinks that the Rabbis only disagree with the first list of items in the <i>baraita</i> and that they agree to R. Eliezer regarding the prohibition of expressing... And so the Ramban proved... from the Yerushalmi that the Sages argue about all of them and they believe that one who milks [on Shabbat] is exempt.</p>
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R. Eliezer Waldenberg and R. Avraham Gombiner

Finally, although it seems somewhat of a stretch, R. Eliezer Waldenberg argues (*Ziq Eliezer* 2:3) that no less an authority than R. Avraham Gombiner held that milking was only a rabbinic violation. R. Gombiner writes (OH 305:12):

<p>וה"ה דמותר לומר לעכו"ם להמרות האווזות פעם א' ביום משום צער ב"ח דאין יכולים לאכול (תשובת רמ"א סי' ע"ט) ומשמע שם דאי ליכא עכו"ם שרי ע"י ישראל משום צער ב"ח וטוב לעשות ע"י קטן,</p>	<p>And it is also the law that it is permissible to tell a non-Jew to force-feed the geese once a day on Shabbat because, since they cannot eat on their own, it would otherwise cause them suffering. (<i>Responsa Rama</i> 79). And it appears in that case that if there is no non-Jew available even a Jew is permitted [to force feed] because of the potential suffering of the animal, although it would be best to have a minor do it.</p>
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R. Waldenberg further explains R. Gombiner's position:

ומדמביא המג"א ומדמה זה
לכאן לדין חליבה וכותב בלשון
וה"ה, יש לכאורה מקום לדייק
דס"ל להמג"א דגם כאן הדין כי
דאי ליכא עכו"ם שרי ע"י
ישראל משום צעב"ח ושטוב
לעשות ע"י קטן, וצ"ע בזה,
ואולי משום דס"ל למג"א
דאיסור חליבה הוא מדרבנן
ולחכי אתי צעב"ח דאורייתא
דחיי דרבנן,

And since the *Magen Avraham* quotes and compares that case [of force feeding] to milking and he uses the phrase, "and it is also the law," there is presumably an opening to infer that the *Magen Avraham* would hold that in our case [of milking] that if there were no non-Jew available it would be permissible by a Jew, preferably a minor, because of the suffering of the animal. And this requires further analysis. And perhaps because he thinks that milking is only a rabbinic prohibition, therefore the alleviation of the suffering of the animal, which is a Torah principle, overrides the rabbinic prohibition of milking.

Summary

This discussion should demonstrate that the halakha is far from being decided and that there is ample room to suggest alternative interpretations of the *Shulhan Arukh* and the halakha in general, especially in light of Ramban's view.

Part 6 — Practical Halakha

The general *p'saq* given to women who are pumping for their own sake and not for the sake of the baby is that they must dispose of the milk that they express to relieve their engorgement. Some require that the milk go immediately to waste. This is accomplished by putting some kind of soap in the bottle that is gathering the milk. Others permit the woman to simply spill out the milk after expressing.

The conceptual framework that is at work here is that when milk is expressed and goes to waste we have a *melakha she-eina zerikha le-gufa*,⁴² a labor that is not needed for itself. In the case of threshing, when the item goes to waste, the act of threshing is no longer a *melakha* at all and is entirely permitted.⁴³

42. מלאכה שאינה צריכה לגופה.

43. See Tosafot (*Shabbat* 73b, s.v. *ve-zarich l'eizim*) where they describe how certain

All of this makes perfect sense assuming that the level of prohibition associated with milking/expressing milk is indeed from the Torah. However, given that this very issue is the subject of a far reaching debate, I believe that in our contemporary situation we ought to adopt the position of Ramban. The requirement of disposal is only reasonable when alleviating a potential Torah prohibition.

Although it is true that the majority position has been to assume that the prohibition of milking is a Torah prohibition, as we have seen above, there are Tannaim, Amoraim, as well as a substantial group of Rishonim and Aḥaronim who have adopted the position that the prohibition is rabbinic in nature.

Given the medical and nutritional value associated with mother's milk, and our ability to save and donate that milk the world over, I think it is our responsibility to enable that process. A woman cannot be forced to pump and store milk, of course. However, in a case in which she is already pumping, the disposal of that milk raises serious ethical questions.

In addition, we now understand that mother's milk is substantially better for the baby than infant formula. There are risks associated with infant formula that are only now becoming known to parents and doctors. The ability of mother's milk to protect an infant cannot be overstated. Given that reality the rabbinic community needs to be much more hesitant before recommending the disposal of mother's milk.

In cases in which the infant cannot nurse directly from its mother and

melakhot are defined by the presence of specific outcomes. For example, if one prunes a tree and does not need the branches, while one violates *zomer* one does not additionally violate *qozer* (cutting). Part of the definition of *qozer* is that it is done because one is in actual need of the branches. Perhaps a better translation would be harvesting, which implies a relationship to the object being cut down. Tosafot then go on to reference the permissibility of squeezing out the juice from a pickle for the sake of the pickle and not the juice (see b. *Shabbat* 145a). One could have claimed that this manner of squeezing (threshing) simply falls in to the *melakha she-eina zerikha le-gufa* category and that one would violate a Torah prohibition only according to R. Yehudah (and Rambam), but be forbidden rabbinically according to everyone else. However, the Tosafot explain that when items are squeezed and the liquid is discarded, it is similar to "pruning and not needing the branches" which is simply not a violation of the *melakha*. See also *Sefer ha-Terumah* (Shabbat 244) regarding the squeezing of the cloth stopper and allowing the wine to go to waste. This is another example of the notion that *dash le-ibbud* (threshing and discarding) is totally permitted and not even forbidden *de-rabbanan*.

needs the milk there is no justification at all for the discarding of the milk. As the Talmud states (b. *Yebamot* 114a):

סתם תינוק מסוכן אצל חלב The average baby is considered to be in danger
without access to mother's milk

Hence, the maintenance of the milk for the sake of the baby should be considered, halakhically speaking, quite simple. Formula should not be assumed to be a viable substitute, but rather a suboptimal resource when nothing else will work.

The halakhic challenge becomes most pressing when the mother is expressing for her own sake and not for the sake of the infant. In those cases, if we assume that milking or the expressing of milk is a Torah prohibition then we can only permit that process by disposing of the milk and turning the act into a *melakha she-eina zerikha le-gufa* (a labor that is not needed for itself).

However, if our starting point is that the removal of the milk is only a rabbinic prohibition, then we can make the very simple claim that the pain and discomfort of the mother is sufficient grounds to permit a rabbinic violation, and the milk would not need to be discarded.

While I recognize that the reading of the Talmudic pericopae that understands milking/expression of milk as a Torah violation has been the majority approach, the reading offered by Ramban that it is in fact only a rabbinic prohibition seems eminently plausible. Given the ambiguity of the *Shulhan Arukh* and the fact of a debate amongst halakhic authorities reaching all the way to modern times, I feel confident that a woman who needs to express milk for her own discomfort may choose to save that milk.